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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92055020
Party	Defendant StreamOne
Correspondence Address	KENNETH F MCCALLION MCCALLION & ASSOC 100 PARK AVE FL 16 NEW YORK, NY 10017 UNITED STATES kfm@mccallionlaw.com, willy@mccallionlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Kenneth F McCallion
Filer's e-mail	kfm@mccallionlaw.com
Signature	/s/
Date	12/25/2012
Attachments	Supplementl affirmation.pdf (16 pages)(130083 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,553,646
Registered December 30, 2008
Mark: STREAMONE and Design

_____x

TECH DATA CORPORATION,

Petitioner,

v.

STREAMONE LLC,

Respondent.

_____x

Cancellation No. 92055020

SUPPLEMENTAL AFFIRMATION OF KENNETH F. McCALLION

KENNETH F. McCALLION, an attorney duly admitted to the practice of law in the State of New York and elsewhere, hereby affirms the following under penalties of perjury:

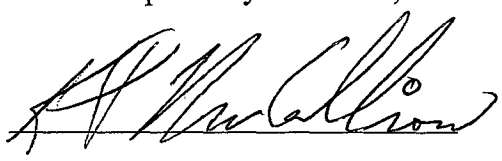
1. I am the principal attorney with the law firm of McCallion & Associates LLP, attorneys for Respondent Streamone LLC. I submit this Supplemental Affirmation in further opposition to the motion by Petitioner for Sanctions in the Form of Entry of Judgment, dated November 12, 2012.
2. In the Reply filed by Petitioner on or about December 6, 2012, Petitioner asserted that, while Respondent had responded to Petitioners document requests, that Petitioner had not filed any Initial Disclosures or Responses to Interrogatories.
3. Petitioner appears to be correct that the Initial Disclosures and Interrogatory Responses were not filed. However, such failure to file those documents was inadvertent, due to the

fact that the employee with our law firm who was responsible for such electronic filings (and is no longer with the law firm) apparently failed to properly file said documents.

4. Attached hereto as Exhibits 1 and 2 are, respectively, Respondents Initial Disclosures, dated June 7, 2012, and Respondents Interrogatory Responses, dated November 3, 2012.
5. It is, therefore, respectfully requested that the Interlocutory Attorney accept these late-filed documents as responsive to Petitioners pending motion, and that said motion be denied.

Dated: New York, New York
December 24, 2012

Respectfully submitted,



Kenneth F. McCallion
McCALLION & ASSOCIATES LLP
100 Park Avenue – 16th floor
New York, New York 10017
Tel: 646-366-0880
Fax: 646-366-1384

Attorneys for Respondent Streamone LLC

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,553,646
Registered December 30, 2008
Mark: STREAMONE and Design

TECH DATA CORPORATION, Petitioner, v. STREAMONE LLC, Respondent.	Cancellation No. 92055020

INITIAL DISCLOSURES

Respondent Streamone LLC, by its attorneys, McCallion & Associates LLP, hereby make these initial disclosures pursuant to 37 CFR §2.120(a)(2) and Federal Rule of Civil Procedure 26(a)(1).

A. INITIAL DISCLOSURE QUALIFICATIONS

1. These Initial Disclosures are based upon information currently known to Respondent and are given without prejudice to producing during further discovery or at trial, data, information or documents that are (i) subsequently discovered; (ii) subsequently determined to be relevant for any purpose; or (iii) subsequently determined to have been omitted from these disclosures.

2. Respondent hereby expressly reserves the right to revise or supplement these

Initial Disclosures at any time. Respondent hereby expressly reserves all objections to the use, for any purpose, of these Initial Disclosures or any of the information and documents referenced herein in this case or any other case or proceeding.

4. By identifying potential witnesses herein, Respondent does not waive, and expressly reserves, the right to object, on any grounds, including, but not limited to, relevance, burden and competence, to the deposition or other testimony of any identified potential witnesses.

5. By identifying documents herein, Respondent makes no representations or admissions regarding the relevance or admissibility of any document, and expressly reserves the right to object, on any grounds, to any document request and/or to admissibility, discoverability and/or relevance.

6. By providing these Initial Disclosures, Respondent does not waive any privileges or other applicable immunities or protections provided by the United States Constitution, statutes or case law, or any confidentiality or protective agreement or order currently existing, and reserves its rights to assert same.

B. INITIAL DISCLOSURES

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information - that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

Subject to and without waiving the Initial Disclosure Qualifications, based upon the information presently available, the following individuals are likely to have discoverable information that Respondent may use to support its claims and defenses:

Chad Creech, of 522 Hunt Club Boulevard #149, Apopka, Florida 32703, owner

of Respondent StreamOne LLC, according to the application filed with the US Patent and Trademark Office on May 12, 2008, would have discoverable information pertaining to the use of Registration No. 3,553,646.

Respondent reserves the right to supplement this list and/or to call at trial or subpoena for deposition additional individuals, including calling at trial as its own witnesses any witnesses designated by Petitioner, or introducing portions of these individuals' deposition testimony at trial.

(ii) A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

Subject to and without waiving the Initial Disclosure Qualifications, based on the information presently available to Respondent, all relevant documents, data compilations and tangible things that may be used in support of Respondent's claims and defenses are in the possession of Chad Creech, 522 Hunt Club Boulevard #149, Apopka, Florida 32703

Respondent reserves the right to identify and produce additional and different documents and categories of documents to the extent any are located during the course of this proceeding, and to supplement this disclosure as new or additional information becomes available. Respondent reserves the right to supplement this production and/or to use at trial, as its own evidence or otherwise, any documents or things designated by Respondent, including documents and things disclosed in Petitioner's Initial Disclosures.

(iii) A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from

disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered.

Respondent has not yet made a computation of damages that it has suffered as a result of the infringement on its mark by Petitioner, and will disclose such information if and when such damages are calculated.

(iv) For inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

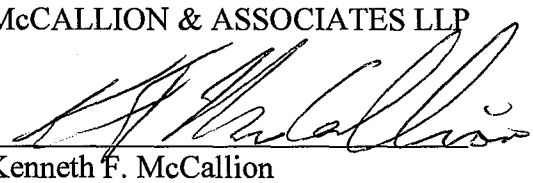
Respondent is presently unaware of any insurance policy or agreement that would be relevant to this action.

Respondent's investigation and discovery concerning this proceeding is continuing and, if additional information is obtained after the date of these disclosures, Respondent reserves the right to and will supplement them. Respondent also reserves the right to object to future disclosure of any documents and/or information.

Dated: New York, New York
June 7, 2012

Respectfully submitted,

McCALLION & ASSOCIATES LLP

By: 

Kenneth F. McCallion
100 Park Avenue, 16 Floor
New York, New York 10017
Tel: 646-366-0880
Fax: 646-366-1384

Attorneys for Respondent StreamOne LLC

EXHIBIT 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 3,553,646
Registered December 30, 2008
Mark: STREAMONE and Design

TECH DATA CORPORATION, Petitioner, v. STREAMONE LLC, Respondent.	Cancellation No. 92055020

RESPONDENT'S RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES

Respondent Streamone LLC, by its attorneys, McCallion & Associates LLP, hereby responds to Petitioner's First Set of Interrogatories pursuant to 37 CFR §2.120 and Rules 26 and 34 of the Federal Rule of Civil Procedure as follows:

1. Identify all persons who provided information or documents for responses to these interrogatories or Petitioner's First Request for the Production of Documents and Things.

Response to Interrogatory No. 1:

Chad Creech, of 522 Hunt Club Boulevard #149, Apopka, Florida 32703, owner of Respondent StreamOne LLC, provided information and documents relating to the responses to these Interrogatories.

2. Describe in detail each use in commerce of the Designation STREAMONE and Design by Respondent in connection with business consultation services in the United States since December 30, 2008, including without limitation the time period for each use (including the date of first use and the date of last use), and all geographic areas (by city and state) in which you have made such use.

Response to Interrogatory No. 2:

Respondent has maintained an active website (streamone.net) which has been registered and active since June 26, 2001. Respondent also has another website (streamone.tw) which was registered on February 28, 2007.

Respondent has provided consulting services to the following clients and companies, and their primary places of business:

1. **Scarsdale Energy: New York with operations in Texas**
2. **Coast to Coast Energy: New York with operations in Trinidad and Tobago**
3. **American Drilling: New York with operations in Texas**
4. **Fieldstone: Ohio with operations in West Virginia, Ohio, and Kentucky.**
5. **The Cornell Group: New York now in Florida**
6. **Coast 2 Coast Investments: Florida, Nevada, Georgia, Louisiana, South Carolina, North Carolina, and England**
7. **Yi Ching Chen: Kaohsiung, Taiwan**
8. **Hui-I Huang: Taipei, Taiwan**
9. **National Real Estate Solutions Group: Florida and across the country.**
10. **Real Estate Solutions Unlimited, Inc., Germantown, Ohio**

3. Describe in detail each use in commerce of the Designation STREAMONE and Design by Respondent in connection with any other goods or services in the United States since December 30, 2008, including without limitation the time period for each use (including the date of first use and the date of last use), and all geographic areas by city and state) in which you have made such use.

Response to Interrogatory No. 3:

See response to Interrogatory No. 2 above.

4. Describe in detail each use of the Designation STREAMONE and Design by Respondent in the advertising and promotion of business consultation services in the United States, including without limitation, the specific media (i.e., newspapers, trade journals, magazines, etc.) in which Respondent advertised or promoted business consultation services, the specific channels of trade through which Respondent promoted business consultation services, and the specific locations in which Respondent promoted such services.

Response to Interrogatory No. 4:

Respondent has promoted its business consultation services through its websites and through recommendations from existing customers and others based upon the Respondent's excellent reputation and performance.

5. Describe in detail each use of the Designation STREAMONE and Design by Respondent in the advertising and promotion of any other goods or services in the United States, including without limitation, the specific media (i.e., newspapers, trade

journals, magazines, etc.) in which Respondent advertised or promoted any other goods or services, the specific channels of trade through which Respondent promoted those goods or services, and the specific locations in which Respondent promoted such goods or services.

Response to Interrogatory No. 5:

See response to Interrogatory No. 4 above.

6. Describe in detail all sales or fees earned by Respondent in the United States for business consultation services using the Designation STREAMONE and Design, including without limitation the amount in dollars of all sales or fees earned for each month earned, the geographic area of such sales, the channels used to make such sales, and the dates of such sales.

Response to Interrogatory No. 6:

7. Describe in detail all sales or fees earned by Respondent in the United States for any other goods or services using the Designation STREAMONE and Design, including without limitation the amount in dollars of all sales or fees earned for each month earned, the geographic area of such sales, the channels used to make such sales, and the dates of such sales.

Response to Interrogatory No. 7:

Respondent objects to this Interrogatory in that it is overbroad, unduly burdensome and calls for the production of confidential business information. Notwithstanding said objection, Respondent has provided its tax returns for 2009 and 2010, as well as bank statements, reflecting its business activities.

8. Describe in detail all business plans referencing Respondent's use or intent to use in commerce the Designation STREAMONE and Design in the United States in connection with business consultation services, including without limitation, the specific business goals, marketing plans, operational plans, projected earnings, and financial plans.

Response to Interrogatory No. 8:

See objections and response to Interrogatory No. 7 above.

9. Describe in detail all business plans referencing Respondent's use or intent to use in commerce the Designation STREAMONE and Design in the United States in connection with any other goods or services, including without limitation, the specific business goals, marketing plans, operational plans, projected earnings, and financial plans.

Response to Interrogatory No. 9:

See objections and response to Interrogatory No. 7 above.

10. Identify each person known or believed by Respondent to have information concerning Respondent's use in commerce of the Designation STREAMONE and Design in connection with business consultation services.

Response to Interrogatory No. 10:

Chad Creech and the principals and employees of the companies identified in response No. 2 above

11. Identify each person known or believed by Respondent to have information concerning Respondent's use in commerce of the Designation STREAMONE and Design in connection with any other goods or services.

Response to Interrogatory No. 11:

See response to Interrogatory No. 10 above.

12. Identify each document concerning Respondent's use in commerce of the Designation STREAMONE and Design in connection with business consultation services.

Response to Interrogatory No. 12:

Respondent objects to this Interrogatory in that it is overbroad, unduly burdensome and calls for the production of confidential business information. Notwithstanding said objection, Respondent has provided its tax returns for 2009 and 2010, as well as bank statements, reflecting its business activities.

13. Identify each document concerning Respondent's use in commerce of the Designation STREAMONE and Design in connection with any other goods or services.

Response to Interrogatory No. 13:

See Response to Interrogatory No. 12 above.

14. Identify each person known to Respondent to have knowledge of any matter relevant to the subject matter of this proceeding, and for each such person, set forth the substance of his or her knowledge.

Response to Interrogatory No. 14:

Respondent objects to this Interrogatory in that it is overbroad, unduly burdensome and calls for the production of information relating to confidential business operations.
Notwithstanding the foregoing, Respondent responds as follows:

Chad Creech and the principals and employees of the companies identified in response to Interrogatory No. 2 above.

15. Identify each person whom Respondent has interviewed, employed or asked to testify as an expert, or whom Respondent plans to call as an expert in this proceeding, and for each such person state that person's qualifications, opinions expected to be offered, and grounds for each said opinion, all documents provided to or reviewed by the expert, and a list of each case in which the expert has been retained within the past five years (including the case caption, file number, and name of the attorney who retained the expert).

Response to Interrogatory No. 15:

Respondent has not yet retained any expert witness.

16. Identify all information concerning Respondent's affirmative defense that "Petitioner is barred by the doctrine of unclean hands from obtaining any relief against Respondent."

Response to Interrogatory No. 16:

Upon information and belief, Petitioner has unlawfully used and infringed on Respondent's mark, resulting in damages to Respondent's business.

17. Identify all information concerning Respondent's affirmative defense that "Petitioner and its claims are barred by the doctrine of latches *[sic]*."

Response to Interrogatory No. 17:

Upon information and belief, Petitioner has been aware of Respondent's use of its mark for a period of many years prior to its filing of this action, and, nevertheless, has unlawfully used and infringed Respondent's mark.

18. Identify all information concerning Respondent's affirmative defense that "Petitioner is estopped from seeking cancellation of the mark owned by Respondent due to its own conduct."

Response to Interrogatory No. 18:

See Response to Interrogatory No. 17 above.

19. Identify all information concerning Respondent's affirmative defense that Petitioner made "false and defamatory statements about Respondent and its right and use of the mark."

Response to Interrogatory No. 19:

Upon information and belief, Petitioner has damaged Respondent's business by falsely asserting that Respondent has not been making use of its mark.

20. Identify all information concerning Respondent's affirmative defense that Petitioner made "false and misleading statements as to the alleged rights of Petitioner to use of the mark 'STREAM ONE' or 'STREAMONE.'"

Response to Interrogatory No. 20:

See Response to Interrogatory No. 19 above.

21. Identify all information concerning Respondent's affirmative defense concerning Petitioner's "improper use of said mark without right or authorization from Respondent."

Response to Interrogatory No. 21:

Upon information and belief, all of Petitioner's business operations that make use of Respondent's mark have been conducted with authorization of the Respondent.

22. Identify all information concerning Respondent's affirmative defense that "[d]ue to its improper and unauthorized use of the mark, Petitioner is barred from now seeking cancellation of the mark."

Response to Interrogatory No. 22:

Respondent objects to this Interrogatory in that it calls for a legal conclusion that is beyond the proper scope of Interrogatories.

23. Identify all information concerning Respondent's affirmative defense that "Petitioner has acquiesced to the rights and use of the mark by Respondent since its issuance on December 30, 2008."

Response to Interrogatory No. 23:

See Response to Interrogatory No. 17 above.

24. Identify all information concerning Respondent's affirmative defense that "Petitioner lacks standing to petition to cancel or otherwise contest the rights, applications and registration of the Respondent."

Response to Interrogatory No. 24:

See Response to Interrogatory No. 17 above.

25. Identify Respondent's address and telephone number at each location at which Respondent has maintained or now maintains an office or place of business since its inception to the present, including the dates each office or place of

business was maintained.

Response to Interrogatory No. 25:

Address: 522 Hunt Club Boulevard #149, Apopka, Florida 32703
Phone Number: 407-614-7234

26. Identify each person whom Applicant plans to call as a witness during the testimony period in this cancellation proceeding.

Response to Interrogatory No. 26:

Chad Creech and possibly principals and employees of company customers, including but not limited to (1) Larry Doherty of Scarsdale Energy Partners and Coast to Coast Energy, and (2) Mark Gonsalves of National Real Estate Solutions Group.

RESPONDENT RESERVES THE RIGHT TO SUPPLEMENT THESE RESPONSES IN THE EVENT THAT ADDITIONAL INFORMATION BECOMES AVAILABLE OR FOR ANY OTHER REASON.

Dated: New York, New York
November 3, 2012

Respectfully submitted,

McCALLION & ASSOCIATES LLP

By: *Kenneth F. McCallion*

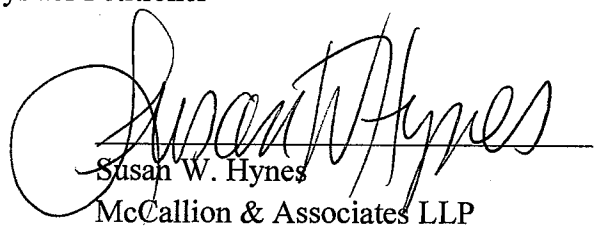
Kenneth F. McCallion
100 Park Avenue, 16 Floor
New York, New York 10017
Tel: 646-366-0880
Fax: 646-366-1384

Attorneys for Respondent StreamOne LLC

Certificate of Mailing

The undersigned certifies that a copy of the Supplemental Affirmation of Kenneth F. McCallion, dated December 24, 2012, in opposition to Petitioner's Motion for Entry of Sanctions in the Form of Entry of Judgment was served by placing in the U.S. Mail, postage prepaid, on the 24th day of December 2012, addressed to the following counsel of record:

Alan Blum, Esq.
Deborah Shapiro, Esq.
MOSES&SINGER
405 Lexington Avenue
New York, New York 10174-1299
Attorneys for Petitioner



Susan W. Hynes
McCallion & Associates LLP