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Filing date: **08/16/2012**

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

Proceeding	92055020
Party	Plaintiff Tech Data Corporation
Correspondence Address	ALAN BLUM MOSES & SINGER LLP 405 LEXINGTON AVE NEW YORK, NY 10174-1299 UNITED STATES ablum@mosessinger.com, dshapiro@mosessinger.com
Submission	Motion to Compel Discovery
Filer's Name	Deborah L. Shapiro
Filer's e-mail	ablum@mosessinger.com, dshapiro@mosessinger.com, mschorr@mosessinger.com
Signature	/Deborah L. Shapiro/
Date	08/16/2012
Attachments	Cancellation 92055020 Motion to Compel.pdf (4 pages)(31527 bytes) Cancellation 92055020 Affidavit in Support of Motion to Compel.pdf (36 pages) (798844 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

TECH DATA CORPORATION,

Petitioner,

v.

STREAMONE LLC,

Respondent.

Cancellation No. 92055020

PETITIONER'S MOTION TO COMPEL DISCOVERY

Pursuant to Rule 2.120(e) of the Trademark Rules of Practice and 37 C.F.R. § 2.120(e), Petitioner Tech Data Corporation (“Tech Data” or “Petitioner”), by its attorneys, Moses & Singer LLP, hereby moves for an order requiring Respondent StreamOne LLC (“Respondent”) to (i) provide its initial disclosures, (ii) produce all documents and things requested by Petitioner’s First Set of Requests for Production of Documents and Things (“Document Requests”), and (iii) to respond to Petitioner’s First Set of Interrogatories (“Interrogatories”).

FACTUAL BACKGROUND

On October 19, 2010, Tech Data filed an intent-to-use application for STREAM ONE, Serial No. 85/155,669, in connection with services in International Classes 35 and 42. On April 22, 2011, Tech Data filed an intent-to-use application for STREAMONE and design, Serial No. 85/302,406, in connection with services in International Classes 35 and 42. Office Actions were issued thereafter by the respective Examining Attorneys for each application, refusing both applications claiming a likelihood of confusion with Respondent’s registration for

STREAMONE and design, Registration No. 3,553,646 in connection with “business consultation services” in International Class 35 (the “Registration”). Tech Data filed its Petition for Cancellation on January 5, 2012 (the “Petition”), alleging abandonment of the mark and seeking cancellation of the Registration. Respondent filed its answer on February 13, 2012, denying the allegations in the Petition and asserting affirmative defenses.

The parties engaged in preliminary settlement negotiations between March and June 2012. *See* Affidavit of Deborah Shapiro, dated August 16, 2012, (“Shapiro Aff.”)¹ ¶ 2. Tech Data served its initial disclosures pursuant to 37 C.F.R. §2.120(a)(2), Federal Rule of Civil Procedure 26(a)(1), and TBMP § 401.02 on May 24, 2012. *Id.* ¶ 3, Ex. A.

The last discussion between counsel took place by telephone on June 6, 2012. *Id.* ¶ 4. Counsel for Tech Data followed up with a telephone call to Respondent’s counsel on June 14, 2012, and left a voice mail message. *Id.* After not hearing further from Respondent, Tech Data served upon Respondent its Document Requests and Interrogatories via first class mail on June 26, 2012, with a courtesy copy sent via e-mail the same day. *Id.* ¶ 5, Ex. B. Pursuant to 37 C.F.R. § 2.120(a), Fed. R. Civ. P. 26 and 34, TBMP § 406.04(a), Respondent’s responses were due July 31, 2012.² Counsel for Tech Data sent Respondent’s counsel an e-mail on August 9, 2012, inquiring as to when and if Respondent’s responses would be forthcoming. Shapiro Aff. ¶ 7. Counsel for Tech Data left a voice mail for Respondent’s counsel on August 13, 2012, but received no response. *Id.* ¶ 8. To date, Tech Data has not received any response to its requests,

¹ As required by Rule 2.120(e) of the Trademark Rules of Practice, the Shapiro Affidavit constitutes a written statement demonstrating that Petitioner has made a good faith effort to resolve the issue presented in this Motion, namely, Respondent’s failure to provide initial disclosures and respond to Petitioner’s Discovery Requests.

² Putting aside Respondent’s obligation to provide initial disclosures under 37 C.F.R. § 2.120(a), Fed. R. Civ. P. 26(a), TBMP § 401.02.

nor has it received Respondent's initial disclosures, nor any further communication from Respondent's counsel since June 6. *Id.* ¶ 9.

Tech Data now moves for an order requiring Respondent to provide its initial disclosures and respond to Tech Data's Document Requests and Interrogatories. Tech Data also seeks all relief and sanctions that this Board deems just and proper, including, but not limited to, an order of default judgment.

ARGUMENT

Applicant has not satisfied its duty to make a good-faith effort to respond to Tech Data's discovery requests. *See* TBMP § 408.01. Applicant's failure to provide initial disclosures or any responses to Tech Data's requests warrants the Board's issuance of an order to compel discovery. *See* 37 C.F.R. § 2.120(e); TBMP §§ 411.01, 411.02, 523.

CONCLUSION

For the reasons set forth above, Tech Data requests an order compelling Respondent to provide its initial disclosures and responses to Tech Data's Document Requests and Interrogatories. Tech Data also seeks any additional relief deemed proper.

Dated: New York, New York
August 16, 2012

Respectfully submitted,

MOSES & SINGER LLP

By:



Alan Blum
Deborah L. Shapiro
405 Lexington Avenue
New York, New York 10174-1299
Tel: 212-554-7800
Fax: 212-554-7700

Attorneys for Petitioner Tech Data Corporation

CERTIFICATE OF SERVICE

I certify that on the 16th day of August, 2012, I caused a true copy of Petitioner's Motion to Compel Discovery to be served on counsel for Respondent StreamOne LLC, by sending same via first class mail to the following address:

Kenneth F. McCallion, Esq.
McCallion & Associates LLP
100 Park Avenue, 16th Floor
New York, NY 10017

A handwritten signature in cursive script, appearing to read "Deborah L. Shapiro", written over a horizontal line.

Deborah L. Shapiro

counsel on May 24, 2012. A copy of Petitioner's Initial Disclosures is attached as Exhibit A.

4. My last conversation with Respondent's counsel took place on June 6, 2012. I followed up with a telephone call a week later on June 14, and left a voice mail message.

5. After receiving no further response, I caused Petitioner's First Set of Requests for Production of Documents and Things, and Petitioner's First Set of Interrogatories (collectively, "Petitioner's Discovery Requests") to be served on Respondent via first class mail on June 26, 2012, with a courtesy copy sent via e-mail the same day. A copy of Petitioner's Discovery Requests and the related Certificates of Service, as well as the courtesy e-mail of June 26, are attached as Exhibit B.

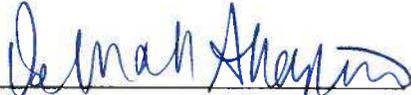
6. Respondent's responses to Petitioner's Discovery Requests were due on July 31, 2012.

7. Having received no responses to Petitioner's Discovery Requests, on August 9, 2012, I sent an e-mail to Respondent's counsel inquiring as to when and if Respondent's responses would be forthcoming. A copy of that e-mail is attached as Exhibit C.

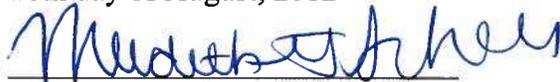
8. I followed up with a phone call to Respondent's counsel further reminding of the need to respond on August 13, 2012, and left another voice-mail message. As with my earlier telephone communications, I did not receive any response from Respondent's counsel.

9. To date, Respondent has served no initial disclosures and no responses to Petitioner's Discovery Requests. I have received no responses from Respondent's

counsel to my communications since June 6, and specifically with respect to Petitioner's Discovery Requests. As a result, Petitioner, by counsel, has been unable to resolve the issues presented in this motion to compel, despite good faith efforts to do so.


Deborah Shapiro

Sworn to before me this
16th day of August, 2012


Notary Public

MEREDITH G. SCHORR
Notary Public, State of New York
No. 01SC5042007
Qualified in New York County
Commission Expires April 10, 2011

EXHIBIT A

MOSES & SINGER LLP

THE CHRYSLER BUILDING
405 Lexington Avenue, NY, NY 10174-1299
Tel: 212.554.7800 Fax: 212.554.7700
www.mosessinger.com

Deborah L. Shapiro
Direct: 212.554.7618 Fax: 917.206.4330
dshapiro@mosessinger.com

May 24, 2012

Kenneth F. McCallion, Esq.
McCallion & Associates LLP
100 Park Avenue, 16th Floor
New York, NY 10017

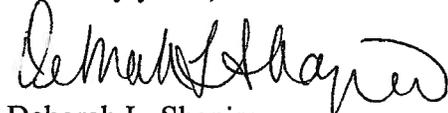
Re: Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020

Dear Mr. McCallion:

I enclose for service Petitioner Tech Data Corporation's initial disclosures.

I left you three voice-mail messages since our last conversation, but I have not heard back from you. I trust we will either receive your initial disclosures within the next few days, or resume our settlement discussions.

Sincerely yours,



Deborah L. Shapiro

DLS:mv
Enclosure

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

Petitioner Tech Data Corporation, by its attorneys, Moses & Singer 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 Petitioner 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. Petitioner hereby expressly reserves the right to revise or supplement these Initial Disclosures at any time.

3. Petitioner 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, Petitioner 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, Petitioner 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, Petitioner 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 to Petitioner, the following individuals are likely to have discoverable information that Petitioner 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 nonuse of Registration No. 3,553,646.

Petitioner 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 Respondent, 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 Petitioner, the following categories of documents, data compilations and tangible things may be used in support of Petitioner's claims and defenses:

None in Petitioner's possession.

Petitioner 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. Petitioner 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 Respondent'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.**

This provision is not applicable to Petitioner.

- (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.**

This provision is not applicable to Petitioner.

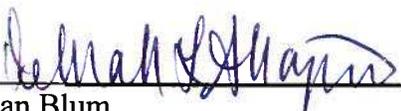
Petitioner's investigation and discovery concerning this proceeding is continuing and, if additional information is obtained after the date of these disclosures, Petitioner reserves the right to and will supplement them. Petitioner also reserves the right to object to future disclosure of any documents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

Dated: New York, New York
May 24, 2012

Respectfully submitted,

MOSES & SINGER LLP

By:



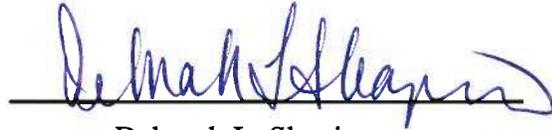
Alan Blum
Deborah L Shapiro
405 Lexington Avenue
New York, New York 10174-1299
Tel: 212-554-7800
Fax: 212-554-7700

Attorneys for Petitioner Tech Data Corporation

CERTIFICATE OF SERVICE

I certify that on the 24th day of May, 2012, I caused a true copy of the attached Initial Disclosures to be served on counsel for Respondent StreamOne LLC, by sending same via first class mail to the following address:

Kenneth F. McCallion, Esq.
McCallion & Associates LLP
100 Park Avenue, 16th Floor
New York, NY 10017

A handwritten signature in blue ink, appearing to read "Deborah L. Shapiro", is written over a horizontal line.

Deborah L. Shapiro

EXHIBIT B

MOSES & SINGER LLP

THE CHRYSLER BUILDING
405 Lexington Avenue, NY, NY 10174-1299
Tel: 212.554.7800 Fax: 212.554.7700
www.mosessinger.com

Deborah L. Shapiro
Direct: 212.554.7618
dshapiro@mosessinger.com

June 26, 2012

Kenneth F. McCallion, Esq.
McCallion & Associates LLP
100 Park Avenue, 16th Floor
New York, NY 10017

Re: Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020

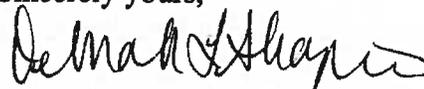
Dear Mr. McCallion:

I enclose for service in the above Cancellation Action:

- (i) Petitioner's First Set of Requests for the Production of Documents and Things,
and
- (ii) Petitioner's First Set of Interrogatories.

We look forward to your responses.

Sincerely yours,



Deborah L. Shapiro

DLS:mv
Enclosure

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

**PETITIONER'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF
DOCUMENTS AND THINGS**

PLEASE TAKE NOTICE that pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure ("FRCP") and 37 C.F.R. § 2.120, Petitioner Tech Data Corporation ("Tech Data"), by its attorneys, Moses & Singer LLP, hereby requests that Respondent StreamOne LLC produce and permit the undersigned to inspect and copy the documents and things described below at the offices of Moses & Singer LLP, 405 Lexington Avenue, New York, New York 10174-1299, within thirty days.

DEFINITIONS AND INSTRUCTIONS

1. Communication: The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
2. Document: The term "document" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.
3. Identify (with respect to persons): When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of

employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

4. **Identify (with respect to documents):** When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

5. **Parties:** The terms “Petitioner” and “Respondent” as well as a party's full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

6. **Person:** The term “person” is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

7. **Concerning:** The term “concerning” means relating to, referring to, describing, evidencing or constituting.

8. **All/Any/Each:** The terms “all,” “any,” and “each” shall each be construed as encompassing any and all.

9. **And/Or:** The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

10. **Number:** The use of the singular form of any word includes the plural and vice versa.

11. **“The Designation STREAMONE and Design”** refers to the designation that is the subject of U.S. Trademark Registration No. 3,553,646, and any designation including the term STREAMONE used by Respondent.

12. **“Use in commerce”** has the same meaning as defined by 15 U.S.C. § 1127.

13. **“Things”** means all categories of tangible objects not included in the definition of documents.

14. **“Substantiate”** means to identify (a) each and every fact that supports, refutes, proves, disproves, negates, or relates to the referenced contention, (b) all documents that reference or relate to such facts of contentions, and (c) each individual with knowledge of such facts or contentions.

15. Where a claim of privilege is asserted in objecting to these requests, Respondent shall identify the nature of the privilege (including work product) which is being claimed; and the following information shall be provided in the objection:

- (a) The type of document;
- (b) The general subject matter of the document;
- (c) The date of the document;
- (d) The author(s) of the document;
- (e) The addressee(s) of the document;
- (f) The recipient(s) of the document; and
- (g) Where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other.

16. If the Respondent objects to the scope or breadth of any of these requests, Respondent shall identify, to the extent possible, those documents that Respondent will produce.

17. In the event that any of these Requests calls for a document that has been lost or destroyed, or for information contained in such a document, such document is to be identified by stating the following:

- (a) The type of document;
- (b) The general subject matter of the document;
- (c) The date of the document;
- (d) The author(s) of the document;
- (e) The addressee(s) of the document;
- (f) The recipient(s) of the document;
- (g) Where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other;
- (h) The custodian(s) of the document or person(s) otherwise responsible for the document's safekeeping, storage or filing;
- (i) The date the document was lost or destroyed; and

- (j) The circumstances surrounding the loss of the document and, if the document was destroyed, the reason for the circumstances surrounding its destruction.

18. As required by FRCP 26(e), Respondent is under a continuing duty to furnish additional and supplemental documents where such further documents becomes known or available between the time of the initial response and the time o hearing or trial in this proceeding. Petitioner reserves the right to propound additional interrogatories.

19. In responding to each request, Respondent is to review and search all relevant files of, and obtain all relevant information from, all appropriate entities and persons.

20. As required by FRCP 34, Respondent must produce all documents requested for inspection or copying either as they are kept in the usual course of business or shall organize and label them to correspond with the categories requested herein.

REQUESTS FOR DOCUMENTS AND THINGS

1. All documents and things identified in response to Petitioner's First Set of Interrogatories dated June 26, 2012.
2. All documents and things that refer to or are related to Respondent's response to Petitioner's First Set of Interrogatories dated June 26, 2012.
3. All documents and things that evidence Respondent's use in commerce of the Designation STREAMONE and design in the United States in connection with business consultation services.
4. All documents and things that evidence Respondent's use in commerce of the Designation STREAMONE and design in the United States in connection with any other goods or services.
5. All documents and things that evidence Respondent's intent to use in commerce the Designation STREAMONE and Design in the United States in connection with business consultation services.

6. All documents and things that evidence Respondent's intent to use in commerce the Designation STREAMONE and Design in the United States in connection with any other goods or services.

7. All documents and things that evidence any business plans, marketing plans, operational plans and financial plans relating to business consultation services using the Designation STREAMONE and Design in the United States.

8. All documents and things that evidence any business plans, marketing plans, operational plans and financial plans relating to any other goods or services using the Designation STREAMONE and Design in the United States.

9. All documents and things that evidence any communications with any advertising agency or public relations firm relating to or referencing the Designation STREAMONE and Design in connection with business consultation services.

10. All documents and things that evidence any communications with any advertising agency or public relations firm relating to or referencing the Designation STREAMONE and Design in connection with any other goods or services.

11. All documents and things that evidence the advertising and promotion channels through which Respondent advertised, promoted, sold, offered, or intended to offer business consultation services with the Designation STREAMONE and Design in the United States.

12. All documents and things that evidence the advertising and promotion channels through which Respondent advertised, promoted, sold, offered, or intended to offer any other goods or services with the Designation STREAMONE and Design in the United States.

13. All documents and things sufficient to show the monthly projected income or fees earned for business consultation services rendered using the Designation STREAMONE and Design in the United States.

14. All documents and things sufficient to show the monthly projected income or fees earned for any other goods sold or services rendered using the Designation STREAMONE and Design in the United States.

15. All documents and things sufficient to show the monthly income or fees earned, for business consultation services rendered using the Designation STREAMONE and Design in the United States.

16. All documents and things sufficient to show the monthly income or fees earned, for any other goods sold or services rendered using the Designation STREAMONE and Design in the United States.

17. All documents and things sufficient to show the monthly projected advertising and promotional costs in connection with the use of the Designation STREAMONE and Design to promote business consultation services in the United States.

18. All documents and things sufficient to show the monthly projected advertising and promotional costs in connection with the use of the Designation STREAMONE and Design to promote any other goods or services in the United States.

19. All documents and things sufficient to show the monthly advertising and promotional costs in connection with the use of the Designation STREAMONE and Design to promote business consultation services in the United States.

20. All documents and things sufficient to show the monthly advertising and promotional costs in connection with the use of the Designation STREAMONE and Design to promote any other goods or services in the United States.
21. All documents and things that use the Designation STREAMONE and design to promote, advertise, publicize, or offer or sell business consultation services in the United States, including without limitation, promotional literature, advertisements, service contracts, flyers, brochures, business cards and letterheads.
22. All documents and things that use the Designation STREAMONE and design to promote, advertise, publicize, or offer or sell any other goods or services in the United States, including without limitation, promotional literature, advertisements, service contracts, flyers, brochures, business cards and letterheads.
23. All documents and things that refer to or relate to any communication relating to the Designation STREAMONE and Design, or the good or services offered in connection with the Designation STREAMONE and Design.
24. All documents and things transmitted between Respondent and any third party relating to Respondent's use in commerce of the Designation STREAMONE and Design in the United States.
25. All documents and things transmitted between Respondent and any third party relating to Respondent's intent to use the Designation STREAMONE and Design in commerce in the United States.
26. All documents and things that evidence the denials set forth in Respondent's Answer to Petition for Cancellation dated February 13, 2012.

27. All documents and things concerning Respondent's affirmative defense that "Petitioner is barred by the doctrine of unclean hands from obtaining any relief against Respondent."
28. All documents and things concerning Respondent's affirmative defense that "Petitioner and its claims are barred by the doctrine of laches [*sic*]."
29. All documents and things concerning Respondent's affirmative defense that "Petitioner is estopped from seeking cancellation of the mark owned by Respondent due to its own conduct."
30. All documents and things concerning Respondent's affirmative defense that Petitioner made "false and defamatory statements about Respondent and its right and use of the mark."
31. All documents and things 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.'"
32. All documents and things concerning Respondent's affirmative defense concerning Petitioner's "improper use of said mark without right or authorization from Respondent."
33. All documents and things 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."
34. All documents and things 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."

35. All documents and things concerning Respondent's affirmative defense that "Petitioner lacks standing to petition to cancel or otherwise contest the rights, applications and registration of the Respondent."

36. All documents and things sufficient to show Respondent's policies for retention or destruction of records, documents or files.

Dated: New York, New York
June 26, 2012

Respectfully submitted,

MOSES & SINGER LLP

By:



Alan Blum

Deborah L. Shapiro

405 Lexington Avenue

New York, New York 10174-1299

Tel: 212-554-7800

Fax: 212-554-7700

Attorneys for Petitioner Tech Data Corporation

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

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

TECH DATA CORPORATION,

Petitioner,

v.

STREAMONE LLC,

Respondent.

Cancellation No. 92055020

PETITIONER'S FIRST SET OF INTERROGATORIES

PLEASE TAKE NOTICE that pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("FRCP") and 37 C.F.R. § 2.120, Petitioner Tech Data Corporation ("Tech Data" or "Petitioner"), by its attorneys, Moses & Singer LLP, hereby requests that Respondent StreamOne LLC answer the following interrogatories fully and separately, in writing and under oath, and deliver to the offices of Moses & Singer LLP, 405 Lexington Avenue, New York, New York 10174-1299, within thirty days.

DEFINITIONS AND INSTRUCTIONS

1. **Communication:** The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
2. **Document:** The term "document" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.
3. **Identify (with respect to persons):** When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph,

only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

4. Identify (with respect to documents): When referring to documents, "to identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

5. Parties: The terms "Petitioner" and "Respondent" as well as a party's full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

6. Person: The term "person" is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association.

7. Concerning: The term "concerning" means relating to, referring to, describing, evidencing or constituting.

8. All/Any/Each: The terms "all," "any," and "each" shall each be construed as encompassing any and all.

9. And/Or: The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

10. Number: The use of the singular form of any word includes the plural and vice versa.

11. "The Designation STREAMONE and Design" refers to the designation that is the subject of U.S. Trademark Registration No. 3,553,646, and any designation including the term STREAMONE used by Respondent.

12. "Use in commerce" has the same meaning as defined by 15 U.S.C. § 1127.

13. "Things" means all categories of tangible objects not included in the definition of documents.

14. "Substantiate" means to identify (a) each and every fact that supports, refutes, proves, disproves, negates, or relates to the referenced contention, (b) all documents that reference or relate to such facts of contentions, and (c) each individual with knowledge of such facts or contentions.

15. Where a claim of privilege is asserted in objecting to these interrogatories, Respondent shall identify the nature of the privilege (including work product) which is being claimed; and the following information shall be provided in the objection:

- (a) The type of document;
- (b) The general subject matter of the document;
- (c) The date of the document;
- (d) The author(s) of the document;
- (e) The addressee(s) of the document;
- (f) The recipient(s) of the document; and
- (g) Where not apparent, the relationship of the author(s), addressee(s) and recipient(s) to each other.

16. If the Respondent objects to the scope or breadth of any of these interrogatories, Respondent shall answer, to the extent possible, that portion of the interrogatory that it can answer notwithstanding its objection.

17. For each interrogatory, identify each person who supplied the information used in the preparation of the answer.

18. If the answer to any interrogatory, or any subsection of any interrogatory, is unknown to the Respondent, so state and identify the name(s) and address(es) of any person that might have such information.

19. If any of these interrogatories cannot be answered in full Respondent shall answer to the extent possible, specifying the reasons for its inability to answer the remainder and stating what information, knowledge or believe Respondent has concerning the unanswered portion.

20. As required by FRCP 26(e), Respondent is under a continuing duty to furnish additional and supplemental information where such further information becomes known or available between the time of the initial response and the time of hearing or trial in this proceeding. Petitioner reserves the right to propound additional interrogatories.

21. In responding to each request, Respondent is to review and search all relevant files of, and obtain all relevant information from, all appropriate entities and persons.

22. As required by FRCP 34, Respondent must produce all documents requested for inspection or copying either as they are kept in the usual course of business or shall organize and label them to correspond with the categories requested herein.

INTERROGATORIES

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 dated June 26, 2012.
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.
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.
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.
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.

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.

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.

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.

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.

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.

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.

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

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

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.

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).

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."
17. Identify all information concerning Respondent's affirmative defense that "Petitioner and its claims are barred by the doctrine of laches [*sic*]."
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."
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."
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.'"
21. Identify all information concerning Respondent's affirmative defense concerning Petitioner's "improper use of said mark without right or authorization from 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."
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."

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."

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.

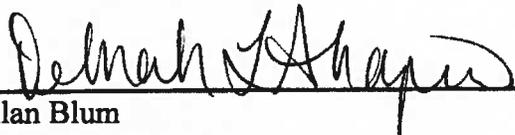
26. Identify each person whom Applicant plans to call as a witness during the testimony period in this cancellation proceeding.

Dated: New York, New York
June 26, 2012

Respectfully submitted,

MOSES & SINGER LLP

By:



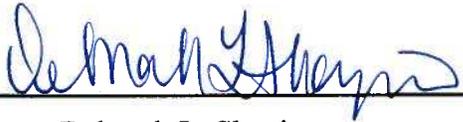
Alan Blum
Deborah L. Shapiro
405 Lexington Avenue
New York, New York 10174-1299
Tel: 212-554-7800
Fax: 212-554-7700

Attorneys for Petitioner Tech Data Corporation

CERTIFICATE OF SERVICE

I certify that on the 26th day of June, 2012, I caused a true copy of Petitioner's First Set of Requests for the Production of Documents and Things to be served on counsel for Respondent StreamOne LLC, by sending same via first class mail to the following address:

Kenneth F. McCallion, Esq.
McCallion & Associates LLP
100 Park Avenue, 16th Floor
New York, NY 10017

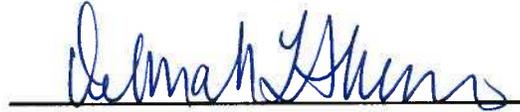
A handwritten signature in blue ink, appearing to read "Deborah L. Shapiro", is written over a horizontal line.

Deborah L. Shapiro

CERTIFICATE OF SERVICE

I certify that on the 26th day of June, 2012, I caused a true copy of Petitioner's First Set of Interrogatories to be served on counsel for Respondent StreamOne LLC, by sending same via first class mail to the following address:

Kenneth F. McCallion, Esq.
McCallion & Associates LLP
100 Park Avenue, 16th Floor
New York, NY 10017

A handwritten signature in blue ink, appearing to read "Deborah L. Shapiro", is written over a horizontal line.

Deborah L. Shapiro

Deborah L. Shapiro

From: Deborah L. Shapiro
Sent: Tuesday, June 26, 2012 3:39 PM
To: 'Kenneth McCallion'
Cc: Alan Blum; 'willy quinones'; 'Willy Quinones'
Subject: RE: Petition for Cancellation of STREAMONE and design (Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020)
Attachments: Letter and Discovery Requests.pdf

Dear Mr. McCallion:

Please find attached a courtesy copy of Petitioner's first discovery requests which were served via First Class Mail today.

Sincerely yours,
Deborah Shapiro

From: Deborah L. Shapiro
Sent: Thursday, May 24, 2012 12:05 PM
To: Kenneth McCallion
Cc: Alan Blum; willy quinones; 'Willy Quinones'
Subject: RE: Petition for Cancellation of STREAMONE and design (Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020)

Dear Mr. McCallion:

Following on my voice mail message from Tuesday, in the interest of moving this matter forward, and as I have not heard back from you since we last spoke in the beginning of the month, attached is a courtesy copy of our initial disclosures served by first class mail.

An amicable settlement would be preferred, but we do need to press ahead.

I look forward to hearing from you.

Sincerely yours,
Deborah Shapiro

From: Willy Quinones [mailto:willy@mccallionlaw.com]
Sent: Thursday, March 15, 2012 8:58 AM
To: Deborah L. Shapiro
Cc: Alan Blum; Kenneth McCallion; willy quinones
Subject: RE: Petition for Cancellation of STREAMONE and design (Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020)

Ms Shapiro,

Please draft the necessary stipulation and I will have it signed for you.
Please include my private email so I may get it while I am away from my desk.

6/26/2012

EXHIBIT C

Deborah L. Shapiro

From: Deborah L. Shapiro
Sent: Thursday, August 09, 2012 4:13 PM
To: 'Kenneth McCallion'
Cc: Alan Blum; 'willy quinones'; 'Willy Quinones'
Subject: RE: Petition for Cancellation of STREAMONE and design (Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020)

Importance: High

Dear Mr. McCallion:

The return date for our discovery requests has passed in this matter, and we have not heard from you. I note we did not receive your initial disclosures either. If we cannot resolve the matter, we do need to push forward with discovery in light of the Board's schedule. The last time we spoke (in June) you indicated that you would seek further guidance from your client. I did not receive any response to my messages thereafter.

Please let me know whether we might be able to reach an amicable resolution, or whether and when you will be providing your responses to our requests.

Sincerely yours,
Deborah Shapiro

Deborah L. Shapiro | Moses & Singer LLP | The Chrysler Building, 405 Lexington Avenue, New York, NY 10174-1299 | Main: +1.212.554.7800 | Direct: +1.212.554.7618 | Fax: +1.917.206.4379 | mail: dshapiro@mosessinger.com

From: Deborah L. Shapiro
Sent: Tuesday, June 26, 2012 3:39 PM
To: 'Kenneth McCallion'
Cc: Alan Blum; 'willy quinones'; 'Willy Quinones'
Subject: RE: Petition for Cancellation of STREAMONE and design (Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020)

Dear Mr. McCallion:

Please find attached a courtesy copy of Petitioner's first discovery requests which were served via First Class Mail today.

Sincerely yours,
Deborah Shapiro

From: Deborah L. Shapiro
Sent: Thursday, May 24, 2012 12:05 PM
To: Kenneth McCallion
Cc: Alan Blum; willy quinones; 'Willy Quinones'
Subject: RE: Petition for Cancellation of STREAMONE and design (Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020)

Dear Mr. McCallion:

8/16/2012

Following on my voice mail message from Tuesday, in the interest of moving this matter forward, and as I have not heard back from you since we last spoke in the beginning of the month, attached is a courtesy copy of our initial disclosures served by first class mail.

An amicable settlement would be preferred, but we do need to press ahead.

I look forward to hearing from you.

Sincerely yours,
Deborah Shapiro

From: Willy Quinones [mailto:willy@mccallionlaw.com]
Sent: Thursday, March 15, 2012 8:58 AM
To: Deborah L. Shapiro
Cc: Alan Blum; Kenneth McCallion; willy quinones
Subject: RE: Petition for Cancellation of STREAMONE and design (Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020)

Ms Shapiro,

Please draft the necessary stipulation and I will have it signed for you.
Please include my private email so I may get it while I am away from my desk.
My cell is 917-685-2122.

Thank you.

Willy Quinones
Litigation Assistant
McCallion & Associates LLP
100 Park Avenue, 16 Floor
New York, New York 10017
Tel: (646) 366-0880
Fax: (646) 366-1384
www.mccallionlaw.com



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From: Deborah L. Shapiro [mailto:dshapiro@MOSESSINGER.COM]
Sent: Monday, March 12, 2012 11:38 AM
To: 'kfm@mccallionlaw.com'
Cc: Alan Blum; 'willy@mccallionlaw.com'
Subject: RE: Petition for Cancellation of STREAMONE and design (Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020)

Dear Mr. McCallion:

8/16/2012

Following up on my message below, and my telephone message of Feb. 28, I just tried to contact you at 646-366-0880, the number listed on your answer. I received an automated response that "there is no room to record your message."

Could you please give me a call to discuss this matter?

Sincerely,
Deborah Shapiro

Deborah L. Shapiro | Moses & Singer LLP | The Chrysler Building, 405 Lexington Avenue, New York, NY 10174-1299 | Main: +1.212.554.7800 | Direct: +1.212.554.7618 | Fax: +1.917.206.4379 | mail: dshapiro@mosessinger.com

From: Deborah L. Shapiro
Sent: Thursday, March 01, 2012 12:22 PM
To: 'kfm@mccallionlaw.com'
Cc: Alan Blum
Subject: Petition for Cancellation of STREAMONE and design (Tech Data Corporation v. StreamOne LLC, Cancellation No. 92055020)

Dear Mr. McCallion:

We represent Tech Data Corporation. I left a message with your assistant on Tuesday regarding the STREAMONE and design cancellation action.

Could we arrange a time to discuss this matter? We have a discovery conference deadline on March 15. It would make sense to adjourn that deadline to allow us the opportunity to have a conversation. With your agreement, I will prepare the necessary stipulation.

I look forward to hearing from you.

Sincerely,
Deborah Shapiro

MOSES & SINGER LLP
COUNSELORS AT LAW

[website](#) [vCard](#) [bio](#) [map](#) [email](#)

DEBORAH L. SHAPIRO | 212.554.7618

The Chrysler Building | 405 Lexington Avenue | New York, NY 10174-1299
Tel 212.554.7800 | Fax 917.206.4379

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