

ESTTA Tracking number: **ESTTA449765**

Filing date: **01/05/2012**

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

Proceeding	91200167
Party	Plaintiff M2 Software, Inc.
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Attachments	M2HL - MOTCOMPEL-20120105.pdf (88 pages)(3720121 bytes)

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By: /s David Escamilla Date: January 5, 2012

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

M2 SOFTWARE, INC.

Opposer,

v.

HIGHER LOGIC, LLC

Applicant.

Opposition No. 91200167

For: M2 MOBILE
MEMBERSHIP

Serial Nos.: 85/017,071;85/017,090

Published: 02/15/2011

OPPOSER'S MOTION TO COMPEL PURSUANT TO TBMP § 523.01 AND CFR § 2.120(e)

I. Introduction

1.01 M2 SOFTWARE, INC. ("M2" or "Opposer") hereby moves to compel Applicant's provision of initial disclosures and responses to Opposer's interrogatories and requests for production, and to test the sufficiency of its responses to Opposer's requests for admission.

1.02 Opposer makes this motion only after exhausting good faith efforts to obtain the initial disclosures and discovery sought from the Applicant. *See OppAff*, ¶¶ 2, 6, 10. Applicant appears to be stonewalling all discovery, presenting only minimal information that would be known to its counsel without any inquiry of Applicant, in an attempt to force the case to settle or to otherwise prevent Opposer from having this case reach a Board adjudication. *Id.*

II. Applicant's Initial Disclosures Fail to Meet Its Obligations Under Rule 26(a)(1)

2.01 First, Applicant refused to make required initial disclosures in good faith. Initial disclosures are intended to identify "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 * * *." See Fed. R. Civ. P. 26(a)(1); 37 C.F.R. § 2.116(a); *Byer California v. Clothing for Modern Times Ltd.*, 95 USPQ2d 1175 (TTAB 2010).

2.02 Applicant provided just a single name (“Rob Wenger”) and provided no information about this individual. In violation of its disclosure obligations, Applicant provided no full name, no location where this individual exists (whether in this country or internationally), no information as to whether he is associated with or employed by Applicant or his capacity or title, no telephonic contact, and no information whatsoever as to the subject of the discoverable information known by this individual. *See* Fed. R. Civ. P. 26(a)(1). *See OppAff.*, ¶ 4, Ex. 2 at 22-23.

2.03 Applicant has sought to withhold all other names from its initial disclosure, anonymously identifying other parties holding information only as “Person(s) Most Knowledgeable” and listing the address of counsel “c/o Greenburg Traurig.” *Id.* Such incomplete or evasive identification is not the type of identification contemplated by Rule 26(a)(1).

2.04 For its full document production (for both initial disclosures *and* Applicant’s responses to Opposer’s discovery requests), Applicant identified only a single video clip downloaded from the web, blurred copies of its file wrappers already of record [*Aff.Opp.*, Ex. 2 at 23], and a single legal decision retrieved by its counsel.¹ None of these publicly-available documents are the types of party documents contemplated by Rule 26(1)(a) for initial document identification, and an order to compel is required. *See* TBMP § 523.01 and 37 C.F.R. § 2.120(e):

“If a party fails to make required initial disclosures * * *, or fails to designate a person pursuant to Rule 30(b)(6) or Rule 31(a) * * * or if a party fails * * * to answer any question propounded in * * * any interrogatory, or fails to produce * * * any document or thing, the party entitled to disclosure or seeking discovery may file a motion to compel disclosure, a designation * * * or production * * *.”

¹ The legal decision produced by Applicant as its “document” production was the sole adverse opposition entered against Opposer in its 20-year history. That case, *M2 Software, Inc. v. M2 Communications, Inc.*, 405 F. 3d 1378 (Fed. Cir. 2006), allowed registration of pharmaceutical marketing materials, not enterprise application software that is at issue here and related to at least fifteen (15) other oppositions in which Opposer has succeeded in protecting its established trademark over its 20 year history. The applicant in the sole adverse decision had specifically *deleted* computer software services from its application before that case commenced, which allowed it to argue it did not compete in the software field. In the present case, the application is specifically *for* a trademark in the enterprise software and services field in which Opposer competes.

2.05 Opposer asked Applicant to provide amended initial disclosures to fulfill its Rule 26(a)(1) obligations. *AffOpp.* ¶ 6, Ex. 4 at 57. Applicant refused. *Id.*, Ex. 5 at 61.

2.06 Unlike discovery disputes following initial disclosures that would require violation of an explicit Board Order to invoke sanctions, when a party does not provide its required initial disclosures there is a violation of an implicit order sufficient for similar sanctions:

“If a party fails to make required initial disclosures * * * and such party or the party’s attorney * * * informs the party * * * entitled to receive disclosures that required disclosures will not be made, the Board may make any appropriate order, as specified in paragraph (g)(1) of this section.”

See TBMP § 527.01(b) and 37 C.F.R. § 2.120(g)(2). “Appropriate orders” pursuant to paragraph (g)(1) include many of the sanctions available under Rule 37(b)(2), including, *inter alia*, an order “rendering a default judgment * * *.” Fed. R. Civ. Pr. 37(b)(2)(A)(vi); 37 C.F.R. § 2.120(g)(1).

2.07 Default sanctions are appropriate here because Applicant has repeatedly demonstrated that it does not intend to litigate this case in good faith, and simply seeks to drag its feet with slow, incomplete, or evasive discovery responses intended to increase litigation costs in an effort to spur settlement.

2.08 If this case is not terminated by default judgment as sanction, Applicant must be ordered to file amended initial disclosures. Pursuant to Rule 26(a)(1), such initial disclosures must include the identification by name, title, and full contact information “each individual likely to have discoverable information—along with the subjects of that information—that [Applicant] may use to support its claims or defenses * * *.” Fed. R. Civ. P. 26(a)(1).

2.09 Any amended initial disclosures should include “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 * * *.” Fed. R. Civ. P. 26(a)(1). See 37 C.F.R. § 2.116(a).²

III. Applicant’s Responses to Interrogatories Are Incomplete or Evasive, and Its Objections Must Be Overruled

3.01 On October 12, 2011, Opposer served on the Applicant *Opposer M2 Software, Inc.’s First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Set of Requests for Admission to Applicant Higher Logic, LLC* (“*First Set Discovery Requests*”). *AffOpp.* ¶ 3, Ex. 1 at 5-20. These requests were served on Applicant after Opposer provided initial disclosures, but nearly a full month before Applicant submitted its own.

3.02 On November 11, 2011, Applicant submitted its initial disclosures and responded to the above. *Id.*, ¶ 4, Ex. 2, Ex. 3 at 27-54. Like Applicant’s initial disclosures served on the same date, Applicant’s *Interrogatory Responses* provided hardly any more information than what is already of record in this proceeding, *i.e.* the application file wrapper. So bare were the responses – and restricted to information already in the file – that there is nothing to indicate that anyone other than Applicant’s counsel has ever sought to respond to this discovery.

3.03 Opposer contacted Applicant to request that it supplement its inadequate responses. *AffOpp.*, ¶ 6, Ex. 4 at 57-59. Applicant refused. *AffOpp.*, ¶ 7, Ex. 5 at 61-62. The reasons Applicant provided telegraphed its bad faith intent to wait until the close of discovery to “supplement” its answers with even the basic information that it must already possess:

“As the discovery period in this proceeding does not close until April 2012, and because Higher Logic will adhere to its obligation under the rules to timely supplement its discovery requests should additional information become available to it, your objections are unripe.”

Applicant’s letter response, December 13, 2011 (*AffOpp.* Ex. 5 at 61).

² Proper initial disclosures are not an undue burden on Applicant, but merely basic elements required by the Federal Rules. Opposer sought Applicant’s initial disclosures by multiple requests, to no avail. *AffOpp.*, Ex. 4 at 57 (seeking amended initial disclosure); Ex. 1 at 17, Request for Production #12 (seeking “[a]ll documents and things that APPLICANT has identified or intends to identify * * * in its initial disclosures but which it has not yet produced.”).

3.04 Notwithstanding Applicant's discovery games, and despite Applicant's claim that the issue is not ripe for a motion to compel, Applicant must be compelled to provide its responses *now* to allow for follow-up discovery. Applicant has most if not all of the information it requires to answer such interrogatories (some of which seek historical information, *see e.g. AffOpp.*, Ex. 1 at 9-10, #3, #6) and the Rules provide only thirty (30) days from service to answer. *See* 37 C.F.R. § 2.120(a)(3); Fed. R. Civ. Pr. 33(b)(2).

3.05 Pursuant to Fed. R. Civ. Pro. 37(a)(4), an evasive or incomplete disclosure, answer, or response will be treated as a failure to disclose, answer, or respond. Having exceeded the thirty (30) day response period provided by Rule 33(b)(2), and having refused to supplement its responses after Opposer's follow-up, Opposer's motion to compel Applicant's responses is ripe. Opposer respectfully requests that the Board order the Applicant to respond to the requested discovery to avoid unnecessary extensions while Applicant drags its feet waiting for the close of discovery to submit the actual responses required to allow follow-up discovery.

A. Interrogatory No. 1 – Identity of Individuals Providing Answers

3.06 First, the Board should order the Applicant to properly provide a full and complete answer to Interrogatory No. 1, which merely sought the identification of persons assisting in obtaining answers to the interrogatories, with reference to the interrogatory number and area of participation. *AffOpp.*, Ex. 1 at 9, Int. #1; *Id.* Ex. 4 at 57. Like the missing information on Applicant's *Initial Disclosures* (on which the Applicant similarly provided evasive or incomplete disclosures), such information is crucial to allow Opposer to properly conduct follow-up discovery. Worse, Applicant's omission of the names of respondents prevents any particular individual from being held culpable or responsible for the answers anonymously provided.

B. Applicant's Boilerplate Objections to Compound Interrogatories Are Not Applicable In Federal Proceedings

3.06 Next, Applicant's boilerplate objection as to compound nature of various interrogatories ("This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules") is not supported by Board rules or the corresponding Federal Rules governing this proceeding. *AffOpp*. Ex. 2 at 27-45.³ The Board should order Applicant to supplement all answers in which it has made this inapplicable objection, including but not limited to Interrogatory Nos. 2 through 24 inclusive.

C. Applicant's Objections that there is "No Protective Order" Should Be Overruled Because It Ignores the Board's Standard Protective Order

3.07 Third, all interrogatories which Applicant objected based upon its incorrect claim that there was no protective order in this should be ordered answered. Pursuant to 37 CFR 2.116(g), the TTAB's standard protective order is applicable during disclosure, discovery and at trial in all opposition proceedings. The Board should order supplemental answers to Interrogatory Nos. 3, 4, 5, 7, 10, 16, 17 for which this faulty objection was made. *AffOpp*. Ex. 2 at 27-45.

3.08 As background of this issue, Applicant first claimed that no protective order was in place. *AffOpp*. Ex.2 at 27-35 (Nos. 3, 4, 5, 7, 10, 16, 17). When Opposer noted to Applicant the Board's standard protective order applied under the new rules (*Aff.Opp*. Ex. 4 at 58), Applicant came up with a *new* story, claiming that it could not produce *any* of its documents to Opposer because *all* of its documents were sufficiently confidential to qualify as "attorneys' eyes only." *Aff. Opp*. Ex. 5 at 61. Such a claim defies credulity, and Applicant's changing story is a sign of its bad faith. That Applicant has not produced a *single* paper document other than the PTO file wrapper and one legal document – both documents available to Applicant's counsel

³ While other jurisdictions have different requirements for isolated requests, *see, e.g., California Code of Civil Procedure*, § 2030.060(f), these are not the same requirements before the Board.

without having to contact or inquire of Applicant – suggests that Applicant has not made any good faith effort to investigate or respond to Opposer’s requests.

3.09 Opposer has requested in the *First Set of Requests* and in a follow-up letter that Applicant provide a privilege log for any document it sought to withhold on any grounds of privilege. See *AffOpp.*, ¶ 3, Ex. 1 at 7-8 (requesting log at “Definitions,” Paragraph J), and ¶ 10, Ex. 6 at 64 (letter repeating request for log). Applicant has provided no log, no documents, and no justification for any privilege claimed. Such stonewalling, without a single document identification to reference in this first Motion to Compel, is multiplying the cost of this proceeding for Opposer and wasting the resources of the Board since a follow-up motion will likely be required once the documents are identified if withheld without cause. Opposer respectfully requests that the Board rule that Applicant has waived its privilege objection, and bar such documents from being relied-upon by Applicant, for its failure to provide either a privilege log or documents.

3.10 Finally, pursuant to Fed. R. Civ. Pro. 37(a)(4), an evasive or incomplete disclosure, answer, or response will be treated as a failure to disclose, answer, or respond. For the interrogatory responses Applicant has not answered completely (Interrogatories 1 through 20, inclusive), the Board should treat such evasive or incomplete responses as non-answers, and require that Applicant supplement its responses to properly respond.

IV. Applicant’s Incomplete Responses to Requests for Production

4.01 With respect to Applicant’s responses to *Requests for Production* (“RFP”), it similarly appears that Applicant’s counsel simply copied the PTO’s application file, making no good faith effort to seek or obtain any documents from Applicant.

A. Applicant’s Objection On Lack of a Protective Order is Erroneous

4.02 Applicant made protective order objections for RFP Nos. 4 and 5 (“Finally, Applicant objects because this interrogatory seeks confidential information which will not be provided absent a Protective Order in place.”). *AffOpp.* Ex. 2 at 30-32. As set forth above, the

Board's protective order is in effect pursuant to 37 CFR 2.116(g). The Board is respectfully requested to order Applicant to produce its documents subject to the Protective Order. As identified above, Applicant did not produce *any* documents other than the public documents provided with its initial disclosures, and Applicant has ignored Opposer's requests to provide a privilege log. *See AffOpp.*, ¶ 3, Ex. 1 at 7-8 (requesting log at "Definitions," Paragraph J), and ¶ 10, Ex. 6 at 64 (letter repeating request for log).

B. Applicant's "Overbroad" Objections As to Discovery Of the Nature of Its Other Products Should Be Overruled Under TBMP and TMEP Guidelines

4.03 Applicant also lodged objections as to scope of RFP Nos. 1, 2, 3, 4, 5, 6, 7, 8 on the grounds that its other products, some of which directly intersect Opposer's goods, are not at issue here because they are not listed in the subject application. *See AffOpp.*, Ex. 2 at 28-45, Nos. 1, 2, 3, 4, 5, 6, 7, 8 ("[t]his request is overbroad and burdensome as it seeks documents not relevant to the goods and services at issue in this proceeding"). Such objection must be overruled. The other goods and services of the Applicant, even if provided under a different mark, are relevant to demonstrate the types of goods and services likely to be perceived as originating from or sponsored by the same source. *See* TBMP § 419(11); Trademark Manual of Examining Procedure ("TMEP") §1207.01(a)(vi) and 1207.01(d)(iii) (registrations for different product lines "may serve to suggest that the goods or services are of a type that may emanate from a single source").

4.04 The present case involves the Applicant's attempt to register Opposer M2 Software's *identical* "M2" brand alongside a term that merely describes a generic ("mobile membership") sub-category for the *same type* of enterprise application goods produced by Opposer. Companies in the field provide this new and generic sub-category of "mobile membership" functionality alongside business enterprise applications of the type produced by Opposer M2 Software. *See, e.g., AffOpp.* ¶ 13, Ex. 8 at 68 ("*CDC Software Adds Social Media and Mobile Membership Applications to its Not-for-Profit Enterprise Solution*").

See also *AffOpp.* ¶ 14, Ex. 9, at 71:

“The market for social business software is new * * *. Jive says that its primary competition comes from large, well-established enterprise software companies like Microsoft Corp. and International Business Machines Corp. Also, smaller vendors are beginning to add social features to their software, including salesforce.com Inc.”

Id. (article in *Wall Street Journal* re Jive Software).

4.05 The other products and services of Applicant are highly relevant to the issue of the types of enterprise solutions and software companies that would be perceived as producing products with the identified functionality in the emerging “mobile membership” sub-category. Since the subject PTO application is for this new and emerging class of enterprise solutions product, it is actually the information about the Applicant’s traditional *related* products that provides the most guidance about the types of companies that will be perceived as producing the identified goods, and this should not be excluded from the proceeding.

C. Applicant’s Incomplete or Evasive Responses Should be Treated as Non-Responses and the Board Should Issue an Order Compelling Production

4.06 Finally, as set forth above, the minimal documents Applicant has provided in response to Opposer’s requests consisted *only* of its bare initial disclosures: the application file wrapper, a single downloaded video clip, and one legal decision located by its counsel. *AffOpp.* Ex. 2 at 23. Applicant submitted incomplete or evasive responses to all requests, RFP Nos. 1 through 11, inclusive, and such responses should be treated by the Board as non-responses in bad faith. *AffOpp.* Ex. 3 at 45-50. See Fed. R. Civ. P. 37(a)(4) and 37 C.F.R. § 2.116(a)(1). Applicant should be ordered to supplement its response to produce the documents requested.

V. Motion to Test Sufficiency of Admissions Responses

5.01 With respect to the Requests for Admission (“RFA”) that Applicant elected *not* to ADMIT or DENY, Opposer moves to test the sufficiency of Applicant’s responses pursuant to 37 CFR § 2.120(h), TBMP § 524, and Fed. Rule Civ. Pr. 36(a).

5.02 First, as to RFA No. 6, Applicant simply refused to admit or deny the request because it claimed “[t]he term ‘enterprise’ in relation to software products or services is not defined and is not recognized by Applicant.” *OppAff.*, Ex. 3 at 52. Yet, “**enterprise**” is a commonly-understood term in the software industry, and Applicant utilizes the term on its own website. *OppAff.*, ¶ 12, Ex. 7 at 66. Either Applicant’s counsel did not actually seek Applicant’s answers to the requests for admission, or it did not contact any of the relevant software personnel involved with Applicant’s enterprise applications necessary to provide this admission.

5.03 With respect to RFA No. 8, Applicant claims that “Applicant can neither admit nor deny this request because Applicant cannot logically or reasonably know how third parties represent or interpret Applicant's mark and cannot speak on their behalf.” *AffOpp.*, Ex. 2 at 52. The request, however, seeks an admission based upon Applicant’s own knowledge, which can be obtained, for example, by communications to or from third parties that refer to the company or its products in the manner identified in the request (i.e., as “a mark pronounced "M-TWO"). If Applicant claims, whether truthfully or not, that it has no knowledge of such reference, then it must deny the request for admission and allow Opposer to proceed with discovery.

5.04 With respect to RFA Nos. 11, 12, 13, 14, 15, Applicant refused to answer because “Applicant objects to this request on the grounds it is a multi-part request seeking a response regarding products or services that are both ‘sold’ and ‘advertised’ which are different activities and, as such, cannot offer a simple ‘admit’ or ‘deny’ response.” *AffOpp.*, Ex. 2 at 53-54. However, Board Rules require that Applicant must provide an ADMIT or DENY response, even if it must clarify any distinction between an admission of products or services being “sold” or “advertised.” *See* TBMP § 407.03(b) and Fed. R. Civ. P. 36(a)(4).

5.05 For each of the foregoing requests (RFA Nos. 6, 8, 11, 12, 13, 14, 15) Opposer seeks an order that the matter be deemed admitted. TBMP § 524.01.

VI. CONCLUSION

6.01 For the foregoing reasons, Opposer respectfully requests that Board GRANT this Motion, and issue the discovery orders or sanctions identified in this Motion pursuant to the proposed Order set forth as *Exhibit B*.

Dated: January 5, 2012
Chicago, Illinois

Respectfully submitted,

M2 SOFTWARE, INC.

BY: s/David Escamilla/
David Escamilla
President and C.E.O.

OPPOSER

EXHIBIT A

EXHIBIT A: Declaration of Officer

I, David Escamilla, under oath and penalty of perjury state:

1. I am an officer of M2 Software, Inc. (“Opposer”) authorized to appear in this proceeding. I am over the age of eighteen and, if called as a witness, could and would testify competently to the matters set forth herein from personal knowledge.

2. Pursuant to TBMP § 523.02, Opposer has made a good faith effort, by conference or correspondence, to resolve with Applicant the issues presented herein, and has been unable to reach agreement.

3. On October 12, 2011, Opposer timely served its initial disclosures. Opposer also served on Applicant its first set of discovery requests, *Opposer M2 Software, Inc.’s First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Set of Requests for Admission to Applicant Higher Logic, LLC* (“*First Set Discovery Requests*”). A true and correct copy of the *First Set Discovery Requests* is attached as Exhibit 1.

4. On November 11, 2011, the final date of its deadline, Applicant submitted its alleged initial disclosures, entitled *Higher Logic, LLC’s Initial Disclosures*. A true and correct copy of this document is attached hereto as Exhibit 2.

5. On November 11, 2011, Applicant submitted a second document allegedly responding to Opposer’s *First Set Discovery Requests*. A true and correct copy of Applicant’s document, entitled *Higher Logic, LLC’s Response to Opposer M2 Software, Inc.’s First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Set of Requests for Admission*, is attached hereto as Exhibit 3.

6. On December 5, 2011, after having reviewed Applicant’s initial disclosures and discovery responses and determining that neither met the minimal bars of Board precedent and established rules, Opposer submitted a letter to Applicant in a good faith effort to resolve the parties’ differences. In the letter, Opposer identified Applicant’s deficiencies and sought from the Appli-

cant appropriate supplemental disclosures and responses. A true and correct copy of this correspondence is attached hereto as Exhibit 4.

7. On December 13, 2011, Applicant responded, claiming that it had “exceeded its obligation under the rules” for initial disclosures and refusing to provide further supplemental responses. A true and correct copy of this letter with block highlights for referenced sections is attached hereto as Exhibit 5.

8. With respect to its insufficient interrogatory answers, Applicant claimed “[a]s the discovery period * * * does not close until April 2012, and because Higher Logic will adhere to its obligation to timely supplement its discovery requests should additional information become available to it, your objections are unripe.” *See* Exhibit 5.

9. With respect to Applicant’s insufficient document production, Applicant claimed that all responsive documents were too confidential to provide to Opposer, and that it would not provide such documents. *See* Exhibit 5.

10. Opposer responded, noting areas of disagreement with the Applicant’s claims of sufficiency of initial disclosures and responses. A true and correct copy of Opposer’s response of December 14, 2011 is attached hereto as Exhibit 6. Opposer requested that Applicant immediately provide a privilege log identifying the documents and privilege claimed for withheld documents, among other details previously requested for documents withheld for privilege in Opposer’s *First Set Discovery Requests*.

11. Applicant did not respond. Applicant has neither supplemented its responses nor provided a single item on any privilege log identifying any documents being withheld on confidential grounds. Rather, Applicant is continuing to stonewall discovery in a wholesale fashion, producing not a single requested document (other than the file wrapper already of record and one short video clip already published on the Internet), and leaving Opposer with no choice but to seek a Board order compelling appropriate responses.

12. Finally, Applicant refused to respond at all to certain discovery on grounds that the term “**enterprise**” is “**not recognized by Applicant.**” A true and correct copy of Applicant’s own marketing collateral identifying its enterprise products, marketed under the “enterprise” term well-recognized in the parties’ industry, is attached hereto as Exhibit 7 and downloaded December 22, 2011 from: <http://www.higherlogic.com/solutions/enterpriseextensions/>.

13. Attached hereto as Exhibit 8 is a true and correct copy of a news article entitled “*CDC Software Adds Social Media and Mobile Membership Applications to its Not-for-Profit Enterprise Solution,*” dated August 2, 2011 with block highlights for referenced sections, downloaded January 5, 2012 from: <http://www.businesswire.com/news/home/20110802006017/en/CDC-Software-Adds-Social-Media-Mobile-Membership>.

14. Attached hereto as Exhibit 9 is a true and correct copy of a *Wall Street Journal* article entitled “*Jive Software Soars 26% In Debut*” dated December 13, 2011 with block highlights for referenced sections, downloaded January 5, 2012 from:
<http://online.wsj.com/article/SB10001424052970203430404577096390089931970.html#printMode>.

DATED this 5th day of January, 2012.

/s/ David Escamilla
David Escamilla

Exhibit A, Declaration of Officer

EXHIBIT 1

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

M2 SOFTWARE, INC.

Opposition No. 91200167

Opposer,

For: M2 MOBILE
MEMBERSHIP

v.

Serial Nos.: 85/017,071;85/017,090

HIGHER LOGIC, LLC.

Published: 02/15/2011

Applicant.

OPPOSER M2 SOFTWARE, INC.'S FIRST SET OF INTERROGATORIES, FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, AND FIRST SET OF REQUESTS FOR ADMISSION TO APPLICANT HIGHER LOGIC, LLC

Pursuant to TBMP 403.01 and TBMP 408.01, Opposer M2 Software, Inc. ("Opposer")

hereby propounds its First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Set of Requests for Admission to Applicant HIGHER LOGIC, LLC ("Applicant"). A written response shall be due no more than thirty (30) days from the date of service of this request.

DEFINITIONS

The following definitions are to be considered applicable with respect to each interrogatory, request for production, or request for admission contained herein:

A. The term "DOCUMENT" includes, without limitation, any written, printed, recorded, taped, electronically or digitally encoded, graphic or other information, including originals, identical copies, translations and drafts thereof and all copies bearing notations and marks not found on the original. The term "DOCUMENT" includes, without limitation, affidavits, analyses, appointment books, appraisals, articles from publications, cables, calendars, cd-

roms, charts, checks (cancelled or uncanceled), check stubs, confirmations, contracts, correspondence, credit card receipts, desk calendars, desk pads, diaries, diskettes, drafts, DVDs, electronic files on any media format, estimates, evaluations, filings, financial statements, forms, invoices, journals, ledgers, letters, lists, memoranda, minutes, notations, notes, opinions, orders, pamphlets, papers, personnel files, permanent files, pictures, press releases, projections, prospectuses, publications, receipts, recordings of meetings and conversations, reports, statements, statistical records, studies, summaries, tabulations, telegrams, telephone records, telex, messages, transcripts, understandings, videotapes, vouchers, work papers and sheets, or things similar to any of the foregoing, however denominated.

B. The terms "EVIDENCE" or "EVIDENCING" shall be defined as including, referring to, memorializing, embodying, containing, constituting, supporting, identifying or stating all or any portion of the specified facts or contentions.

C. The term "CONCERNING" means relating to, referring to, describing, EVIDENCING or constituting.

D. The term "COMMUNICATION" shall refer to any transfer of information between persons.

E. The term "AGREEMENT", as used herein, shall include all documents forming a part of any agreement (and proposals thereof), and all amendments thereto, and cancellations thereof, whether oral or written, and all memoranda, drafts and versions of such agreements, or of amendments or cancellations thereof. The term "MEMORANDA", as used herein, includes MEMORANDA to the file or any person or between officers, agents, partners, employees, or representatives of the same person, as well as MEMORANDA communicated

from one person to another. References to AGREEMENTS or COMMUNICATIONS “between” two persons shall include any AGREEMENTS or COMMUNICATIONS to which they both are parties, even though there may be other parties to such AGREEMENTS or COMMUNICATIONS.

F. As used herein, the term “APPLICANT,” “HIGHER LOGIC”, “YOU”, or “YOUR” shall mean Applicant Higher Logic LLC and its affiliates, subsidiaries, and predecessors, including its officers, directors, agents, employees, attorneys and consultants and experts retained by it and/or retained by its counsel, on its behalf.

G. The term "ANSWER" shall refer to Applicant’s Answer to the Opposer’s “Notice of Opposition."

H. The term “PERSON” shall mean in plural as well as the singular, any natural person, firm, association, partnership, corporation or other form of legal entity.

I. The term “M2 MARK” shall refer to the mark “M2” or any derivation thereof, including but not limited to word marks, design marks, and trade names “M2,” “M Two”, “M Squared,” “M2 MOBILE,” or “M2 MOBILE MEMBERSHIP,” alone or in conjunction with any other word or words and in any typographical format including but not limited to the “raised 2” depiction of Application Ser. No. 85/017,090.

J. For each document requested herein that is withheld under a claim of privilege, provide the following information:

1. The number of the request to which the document is responsive;
2. A statement of the basis on which privilege is claimed;
3. A brief description of the nature and subject matter of the document;
4. The location and approximate date of the document;

5. The name and title of each sender and recipient of the document;
6. The name and title of each person (other than secretarial or clerical assistants) participating in the preparation of the document;
7. The name and corporate position, if any, of each person to whom the content of the documents have heretofore been communicated by copy, exhibition, reading or substantial summarization; and
8. The identity and corporate position, if any, of the person or persons supplying the information requested above.

K. For each document requested herein that has been destroyed or lost, in whole or in part, provide the following information:

1. The number of the request to which the document is responsive;
2. A complete description of the nature, subject matter and contents of the document;
3. The name and title of each sender and each recipient of the document;
4. The name and title of each person (other than secretarial or clerical assistants) participating in the preparation of the documents; and
5. In cases where the document was destroyed, the date of the destruction, the name of the person who ordered or authorized such destruction and the reason why the destruction was ordered or authorized.

L. For each admission requested herein, admit or deny such request within thirty (30) days from the date of service. Failure to respond within the required time period will result in each request being deemed admitted for all purposes. If a request for admission is denied and subsequent discovery reveals the truth of the admission sought, Opposer reserves the right, without waiver of any other rights or remedies available to it, to recover all fees and costs associated with prosecution of this proceeding following the Applicant's denial pursuant to Fed. R. Civ. P. 37(c)(2).

INTERROGATORIES

1. Identify any and all PERSONS who assisted in any way in obtaining answers to these interrogatories (including addresses, telephone number, employer, and position) and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

2. Describe in detail APPLICANT'S business structure, identifying: a) APPLICANT and any parents, subsidiaries, partners and/or affiliates and b) the identity of any principals, owners, directors, shareholders, officers, and/or general or limited partners of each entity identified in (a), and the percentage of the respective entity that each of the foregoing owns or controls.

3. Identify and describe APPLICANT'S products and services, including:
 - a. Identify and describe each product or service ever developed, created, licensed, marketed, publicized, sold, provided, and/or distributed by APPLICANT under an M2 MARK.

 - b. Identify and describe each product or service for which APPLICANT has ever had an intent to use an M2 MARK in connection with such product or service.

 - c. Identify and describe each product or service ever developed, created, licensed, marketed, publicized, sold, provided, and/or distributed by the APPLICANT under any trademark.

4. For each product or service identified in Interrogatory No. 3, please identify in detail:
 - a. any software tools utilized to develop the product or service;

b. the name, manufacturer, and version number of any software or database application used to develop the product or service;

c. all programming languages utilized in developing the product or service.

5. For each product or service identified in response to Interrogatory No. 3, please list each product separately and separately identify (including addresses, telephone number, employer, and position):

a.) APPLICANT'S employees most knowledgeable CONCERNING the development of the product or service.

b.) APPLICANT'S employees most knowledgeable CONCERNING the manufacture of the product or performance of the service; and

c.) The PERSONS who actually designed the product or originated the service.

d.) The PERSONS responsible for the adoption or design of the M2 MARK used in connection with the product or service.

e.) All PERSONS who have marketed, publicized, sold, licensed, provided, operated, and/or distributed any or all components of the product or service, and the nature of their participation, including city, state, or other geographic region of such participation.

6. State the exact date(s) on which APPLICANT will rely as to when use of the M2 MARK commenced in connection with the sale, provision, operation, or distribution of each item of goods or services specified in answer to Interrogatory No. 3. Please list each item separately.

7. With respect to the first use(s) of the M2 MARK in connection with the sale or distribution of each item of goods or services identified in Interrogatory No. 3, please list each item separately and state:

a. The manner in which the M2 MARK was used, e.g., by affixation to containers or labels, use on signs, use on web pages, use on printed promotional materials, as a trade name, etc.;

b. If the M2 MARK was printed on containers, labels, printed promotional materials, or web pages for the product or service, the name and address of the PERSON(s) or organization which printed the term;

c. Whether the product or service was sold;

d. Whether the product or service was distributed or provided free of charge.

e. The name and address of the PERSONS to whom the product or service was sold, distributed, or provided;

f. Whether APPLICANT itself manufactured or provided each of the goods or services identified;

g. Whether the sale, distribution, or provision of each item of goods or services under the M2 MARK has been continuous from the date specified in Interrogatory No. 6 to the present;

h. If the answer to Interrogatory 7g. is in the affirmative, whether the circumstances described in answer to Interrogatories 7a., 7b., 7c., 7d., 7f. prevailed throughout the period identified in Interrogatory 7g.;

i. If the circumstances described in answer to Interrogatories 7a., 7b., 7c., 7d., and 7f. did not prevail throughout the period identified in Interrogatory 7g., state how they changed, providing specific dates and names wherever requested; and

j. If the answer to Interrogatory 7g. is in the negative, state the periods of time during which the M2 MARK was not used by the Applicant in connection with the sale, distribution, provision, or operation of any of the items of goods, services or trade entity.

8. Identify the PERSON or PERSONS most knowledgeable CONCERNING the design, ordering, purchase, import, distribution, display or sale of products and the performance of services bearing the M2 MARK, and state the circumstances of such design, ordering, purchase, import, distribution, display or sale.

9. Identify and describe the channels of distribution in the United States of each item of goods or services identified in Interrogatory No. 3, whether actual or intended. Please designate whether each answer pertains to actual or intended status.

10. Identify all purchasers by class of each item of goods or services identified in Interrogatory No. 3, whether actual or intended. Please designate whether each answer pertains to actual or intended status.

11. List all geographical areas (by city, state, and country) in which APPLICANT sells or provides each item of goods identified in Interrogatory No. 3, or intends to do so. Please designate whether each answer pertains to actual or intended status.

12. List all publications, including websites, in which APPLICANT has advertised or publicized, or intends to advertise or publicize, each item of goods or services identified in In-

terrogatory No. 3 and the dates thereof. Please designate whether each answer pertains to actual or intended status.

13. List all trade shows, events, media appearances, or conferences in which APPLICANT has obtained publicity for each item of goods or services identified in Interrogatory No. 3, or in which Applicant intends to do so. Please designate whether each answer pertains to actual or intended status.

14. List all other media, not already identified in Interrogatories 12 and 13, where APPLICANT has advertised or publicized, or intends to advertise or publicize, each item of goods or services identified in Interrogatory No. 3 and the dates thereof. Please designate whether each answer pertains to actual or intended status.

15. Identify all suppliers and trade partners by the nature of such vendor or partner for each item of goods or services identified in Interrogatory No. 3, whether actual or intended. Please designate whether each answer pertains to actual or intended status.

16. For each calendar year since inception, for each item of goods or services identified in Interrogatory No. 3, state the amount expended by APPLICANT in the United States in the advertisement of each item.

17. State by month, if available, or if not, for each separate period reflected in APPLICANT'S books and records, the volume of gross sales, in dollars and in units, of products and services identified in Interrogatory No. 3 and identify the individuals responsible for the maintenance of such sales records.

18. Identify by name and address all person(s) or organization(s) who have been responsible for advertising, publicizing, or marketing each item of goods or services identified in Interrogatory No. 3.

19. Has APPLICANT ever received notice from any person other than Opposer of a claim that the use of the M2 MARK infringed any trademark, trade name, or service mark of said person? If so, for each such notice of a claim of infringement, specify:

- a. the identity of the person asserting the claim;
- b. the date thereof;
- c. the full details CONCERNING the claim; and
- d. the identity of any documents evidencing or relating hereto.

20. Please identify each marketing survey, research, trademark search, or other study performed or to be performed for or by APPLICANT related in any way to the M2 MARK.

21. Describe the manner in which APPLICANT first became aware of the use of the “M2” mark by Opposer and specify:

- a. the date on which APPLICANT first learned of Opposer’s use of the “M2” mark;
- b. the sources of any information CONCERNING such use.

22. Has APPLICANT ever conducted any COMMUNICATIONS or entered into any AGREEMENTS CONCERNING the use or license of any M2 MARK? If so, please identify:

- a. the identity of the PERSONS involved;
- b. the dates thereof and the content of the COMMUNICATIONS or AGREEMENTS, including the nature of any licensed products;

c. the identity of any documents evidencing or relating hereto.

23. Has APPLICANT ever entered into any AGREEMENT or policy providing insurance or other reimbursement for trademark infringement or for any other legal costs in connection with trademark use or registration? If so, please identify:

a. the PERSON or entity providing such coverage;

b. the date on which each AGREEMENT or policy was entered into;

c. the policy number, terms and coverage of such AGREEMENT or policy;

d. the identity of any documents evidencing or relating hereto.

24. Please identify each person you expect to call as a witness in this opposition. If identifying an expert witness, please state separately with respect to each such expert witness:

a. the subject matter on which the expert is expected to testify;

b. the substance of facts and opinions to which the expert is expected to testify and

c. a summary of the grounds for each such opinion.

REQUESTS FOR PRODUCTION

1. Each and every mode, manner, type and grade in which the M2 MARK has been used on or in connection with any goods, services, or trade entity.
2. Documents and things sufficient to show each and every product, service, or trade entity APPLICANT has ever created, developed, marketed, distributed, licensed, provided, operated, or sold under or in connection with the M2 MARK including but not limited to the quantity and revenue amounts of such product or service distributed or provided, the date(s) on which such product, service, or trade entity was distributed, provided, or operated; the person(s) distributing or providing such products or services; the identity of the person(s) to whom such products or services were distributed or provided, including but not limited to the distributor's name, geographical location, and channel of trade.
3. Each different advertisement, catalog, brochure, web page, or other advertising means or media in which the M2 MARK has been used by APPLICANT.
4. Documents sufficient to show the total dollar amount which APPLICANT has expended on advertising the M2 MARK.
5. Documents sufficient to show APPLICANT'S total sales and other revenues, in both dollars and number of units for the goods and services identified in Interrogatory No. 3.
6. Contracts, AGREEMENTS or other understandings, written and oral, between Applicant and any other entity CONCERNING use of the M2 MARK or variations thereof.
7. Documents and correspondence exchanged with the Patent and Trademark Office during the prosecution and registration of APPLICANT'S M2 MARK.

8. Investigations conducted or authorized by APPLICANT into any uses of the M2 MARK or any similar mark.
9. Any analysis, search report, or study done by or for APPLICANT CONCERNING the M2 MARK.
10. Documents and things which APPLICANT will offer in evidence herein in support of any defense, including in support of any affirmative defenses alleged by APPLICANT in its ANSWER.
11. All documents and things which APPLICANT identified or was requested to identify in response to Opposer's First Set of Interrogatories, identified above, to APPLICANT, or supporting APPLICANT'S denial in whole or in part of any of Opposer's First Set of Requests for Admission.
12. All documents and things that APPLICANT has identified or intends to identify, directly or indirectly, in its initial disclosures but which it has not yet produced.

REQUESTS FOR ADMISSION

1. ADMIT that YOU provide or have provided computer software applications for personal computers or servers.
2. ADMIT that YOU provide or have provided database applications.
3. ADMIT that YOU provide or have provided products or services to associations, or any other groups or organizations, in the media and entertainment sector.
4. ADMIT that YOU provide or have provided products or services to associations, or any other groups or organizations, in the healthcare sector.
5. ADMIT that YOU provide or have provided products or services to associations, or any other groups or organizations, in the financial sector.
6. ADMIT that YOU provide or have provided enterprise software products or services.
7. ADMIT that YOU use or intend to use an “M2” mark in standard character format on various media without the “raised 2” typographical format of the applied-for mark, or have done so in the past.
8. ADMIT that persons in the public or in the trade interpret or have interpreted the M2 MARK that YOU use or intend to use to represent a mark pronounced “M-TWO.”
9. ADMIT that YOU were aware of Opposer M2 Software, Inc. before YOU applied for the M2 MARK subject of this proceeding.
10. ADMIT that YOUR products or services are sold or advertised in the United States.
11. ADMIT that YOUR products or services are sold or advertised in California.
12. ADMIT that YOUR products or services are sold or advertised in Texas.

13. ADMIT that YOUR products or services are sold or advertised in Florida.
14. ADMIT that YOUR products or services are sold or advertised in New York.
15. ADMIT that YOUR products or services are sold or advertised in Illinois

Dated: October 11, 2011

M2 SOFTWARE, INC.
OPPOSER

By:

/s/ David Escamilla

David Escamilla
President
M2 SOFTWARE, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing

OPPOSER M2 SOFTWARE, INC.'S FIRST SET OF
INTERROGATORIES, FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS, AND FIRST SET
OF REQUESTS FOR ADMISSION TO APPLICANT HIGHER
LOGIC LLC

was served on October 12, 2011, upon:

Lauri S. Thompson.
Greenberg Traurig
3773 Howard Hughes Parkway, Ste 400N
Las Vegas, NV 89169
ATTORNEY FOR APPLICANT

by electronic transmission to lvpto@gtlaw.com and U.S. Mail.

/s/ David Escamilla
David Escamilla

Exhibit A, Declaration of Officer

EXHIBIT 2

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

M2 SOFTWARE, INC.

Opposer,

v.

HIGHER LOGIC, LLC,

Applicant.

OPPOSITION NO. 91200167

SERIAL NO. 85/017,071; 85/017,090

MARK: M2 MOBILE MEMBERSHIP

HIGHER LOGIC, LLC'S INITIAL DISCLOSURES

Pursuant to 37 CFR § 2.120(a)(3), HIGHER LOGIC, LLC ("Higher Logic" or "Applicant"), makes the following Initial Disclosures based on information presently available and known to it.

I. Witnesses Likely to Have Discoverable Information

The following individuals are likely to have discoverable information that Applicant may use in support of its claims:

1. Rob Wenger
c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Suite 400N
Las Vegas, Nevada 89169

This person is expected to testify regarding the facts and circumstances underlying the Opposition.

...

...

2. Person(s) Most Knowledgeable
Higher Logic, LLC
c/o Greenberg Traurig, LLP
3773 Howard Hughes Pkwy., Suite 400N
Las Vegas, Nevada 89169

This person is expected to testify regarding the facts and circumstances underlying the Opposition.

3. David Escamilla
M2 Software, Inc.
6725 Sunset Blvd., Suite 230
Los Angeles, CA 90028

This person is expected to testify regarding the facts and circumstances underlying the Opposition.

4. Person(s) Most Knowledgeable
c/o M2 Software, Inc.
6725 Sunset Blvd., Suite 230
Los Angeles, CA 90028

This person is expected to testify regarding the facts and circumstances underlying the Opposition.

Applicant reserves the right to call at trial any witnesses identified by Opposer.
Applicant reserves the right to supplement this witness list.

II. DOCUMENTS

Applicant offers the following documents:

DOCUMENT	BATES NOS.
DVD entitled M2 Software Tutorial Video	HL000001
U.S. Trademark Application file for Serial No. 85/017071 for the mark M2 MOBILE MEMBERSHIP (Standard Character Mark)	HL000002-69
U.S. Trademark Application file for Serial No. 85/017090 for the mark M2 MOBILE MEMBERSHIP (stylized and/or with design)	HL000070-120
Opinion in M2 Software, Inc. v M2 Communications, Inc.	HL000121-138

Applicant reserves the right to use at trial any exhibit identified by Opposer and any documents not presently within the possession or knowledge of Applicant which may become known to Applicant during the course of discovery. Applicant will supplement these Initial Disclosures as additional materials become known to it.

III. Insurance.

N/A.

IV. Damages Calculations.

N/A.

Respectfully Submitted,

Dated: November 11, 2011

/s/ Lauri S. Thompson

Lauri S. Thompson
Laraine M. I. Burrell
Greenberg Traurig LLP
3773 Howard Hughes Parkway,
Suite 400 N.
Las Vegas, NV 89169
Counsel for Higher Logic, LLC

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Higher Logic, LLC's Initial Disclosures** is being being served by first class mail, postage prepaid, on November 11, 2011, on the following:

D. Escamilla
M2 Software, Inc.
6725 Sunset Blvd., Suite 230
Los Angeles, CA 90028

/s/ Cynthia L. Ney

An employee of Greenberg Traurig, LLP

Exhibit A, Declaration of Officer

EXHIBIT 3

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

M2 SOFTWARE, INC.

Opposer,

v.

HIGHER LOGIC, LLC,

Applicant.

OPPOSITION NO. 91200167

SERIAL NO. 85/017,071; 85/017,090

MARK: M2 MOBILE MEMBERSHIP

HIGHER LOGIC, LLC'S RESPONSE TO OPPOSER M2 SOFTWARE, INC.'S FIRST SET OF INTERROGATORIES, FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, AND FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to Rules 33, 34 and 36 of the Federal Rules of Civil Procedure, HIGHER LOGIC, LLC ("Higher Logic" or "Applicant"), by and through its attorneys of record, the law firm of Greenberg Traurig, LLP, hereby responds to M2 Software, Inc.'s ("M2" or "Opposer") First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Set of Requests for Admission.

INTRODUCTORY STATEMENT

These responses are made solely for the purpose of, and in relation to, this action. Each response is given subject to all appropriate objections (including, but not limited to, objections concerning competency, relevancy, materiality, propriety, and admissibility), which would require the exclusion of any statement contained herein if the interrogatory were asked of, or any statement contained herein were made by, a witness present and testifying in court. All such objections and grounds therefore are reserved and may be interposed at the time of trial.

The party on whose behalf the responses are given has not yet completed its

investigation of the facts relating to this action, has not yet completed its discovery in this action, and has not yet completed its preparation for trial. Consequently, the following responses are given without prejudice to the responding party's right to produce, at the time of trial, subsequently-discovered material.

Except for facts explicitly admitted herein, no admission of any nature whatsoever is to be implied or inferred. The fact that any request herein has been answered should not be taken as an admission, or a concession, of the existence of any facts set forth or assumed by such interrogatory, or that such answer constitutes evidence of any fact thus set forth or assumed. All responses must be construed as given on the basis of present recollection.

RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES

REQUEST NO. 1:

Identify any and all PERSONS who assisted in any way in obtaining answers to these interrogatories (including addresses, telephone number, employer, and position) and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

RESPONSE NO. 1:

Objection. This interrogatory is overbroad and overburdensome as to the scope of persons who "assisted in any way" as this is an undefined, ambiguous statement and open to interpretation. Also, this request seeks information potentially in violation of attorney/client privilege and, as such, is not discoverable under the Federal Rules.

Notwithstanding said objection, and without waiver of same, Applicant's counsel obtained answers to all Interrogatories. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 2:

Describe in detail APPLICANT'S business structure, identifying: a) APPLICANT

and any parents, subsidiaries, partners and/or affiliates and b) the identity of any principals, owners, directors, shareholders, officers, and/or general or limited partners of each entity identified in (a), and the percentage of the respective entity that each of the foregoing owns or controls.

RESPONSE NO. 2:

Objection. This interrogatory is compound and overbroad and overburdensome as to the scope of information it seeks. Applicant further objects because the request seeks information not relevant to the claims and defenses of this proceeding as no business entities and/or persons, other than those identified in the application, are claiming ownership rights in the mark at issue.

Notwithstanding said objection, and without waiver of same, see Applicant's trademark applications Serial Nos. 85017090, and 85017090 for identification of the entity claiming ownership in the mark and the individual signing on behalf of the company. See also, Applicant's initial disclosures and list of potential witnesses with information relevant to the claims and defenses in this proceeding. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 3:

Identify and describe APPLICANT'S products and services, including:

(a) Identify and describe each product or service ever developed, created, licensed, marketed, publicized, sold, provided, and/or distributed by APPLICANT under an M2 MARK.

(b) Identify and describe each product or service for which APPLICANT has ever had an intent to use an M2 MARK in connection with such product or service.

(c) Identify and describe each product or service ever developed, created, licensed, marketed, publicized, sold, provided, and/or distributed by the

APPLICANT under any trademark.

RESPONSE NO. 3:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the request seeks information, including information concerning other trademarks, not relevant to the claims and defenses at issue in this proceeding nor likely to lead to the discovery of admissible evidence. Applicant also objects on the grounds that this request seeks proprietary and trade secret information to which Opposer is not entitled. Finally, Applicant objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services at issue in this proceeding.

Notwithstanding said objection, and without waiver of same, see applications for Serial Nos. 85017090, and 85017090 giving a comprehensive list of products and services on which Applicant uses the mark as accepted by the United States Patent and Trademark Office. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 4:

For each product or service identified in Interrogatory No. 3, please identify in detail:

- (a) any software tools utilized to develop the product or service;
- (b) the name, manufacturer, and version number of any software or database application used to develop the product or service;
- (c) all programming languages utilized in developing the product or service.

RESPONSE NO. 4:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the

rules. Applicant further objects on the grounds that this request seeks irrelevant information as Applicant is not claiming rights in any computer software programs or tools owned by third parties and such information is irrelevant to the claims and defenses in this proceeding nor is it likely to lead to the discovery of admissible evidence. Applicant also objects on the grounds that this request seeks proprietary or trade secret information to which Opposer is not entitled. Finally, Applicant objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services at issue in this proceeding.

Notwithstanding said objection and without waiver of same, none at this time. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 5:

For each product or service identified in response to Interrogatory No. 3, please list each product separately and separately identify (including addresses, telephone number, employer, and position):

(a) APPLICANT'S employees most knowledgeable CONCERNING the development of the product or service.

(b) APPLICANT'S employees most knowledgeable CONCERNING the manufacture of the product or performance of the service; and

(c) The PERSONS who actually designed the product or originated the service.

(d) The PERSONS responsible for the adoption or design of the M2 MARK used in connection with the product or service.

(e) All PERSONS who have marketed, publicized, sold, licensed, provided, operated, and/or distributed any or all components of the product or service, and the nature of their participation, including city, state, or other geographic region of

such participation.

RESPONSE NO. 5:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects because this request seeks information not admissible nor likely to lead to the discovery of admissible evidence as it is the use of the mark which is at issue in this proceeding and not the development of the goods or services upon which the mark is used. Applicant further objects on the grounds that this request seeks proprietary or trade secret information to which Opposer is not entitled.

Notwithstanding said objection and without waiver of same, see list of potential witnesses identified in Applicant's Initial Disclosures. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 6:

State the exact date(s) on which APPLICANT will rely as to when use of the M2 MARK commenced in connection with the sale, provision, operation, or distribution of each item of goods or services specified in answer to Interrogatory No. 3. Please list each item separately.

RESPONSE NO. 6:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds the request seeks irrelevant information as the only dates at issue in this proceeding are the dates of first use of the mark which are clearly identified on the applications. Finally, Applicant objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services at issue in this proceeding.

Notwithstanding said objections, and without waiver of same, see applications Serial Nos. 85017090, and 85017090 stating the dates of first use upon which Applicant intends to rely. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 7:

With respect to the first use(s) of the M2 MARK in connection with the sale or distribution of each item of goods or services identified in Interrogatory No. 3, please list each item separately and state:

(a) The manner in which the M2 MARK was used, e.g., by affixation to containers or labels, use on signs, use on web pages, use on printed promotional materials, as a trade name, etc.;

(b) If the M2 MARK was printed on containers, labels, printed promotional materials, or web pages for the product or service, the name and address of the PERSON(s) or organization which printed the term;

(c) Whether the product or service was sold;

(d) Whether the product or service was distributed or provided free of charge.

(e) The name and address of the PERSONS to whom the product or service was sold, distributed, or provided;

(f) Whether APPLICANT itself manufactured or provided each of the goods or services identified;

(g) Whether the sale, distribution, or provision of each item of goods or services under the M2 MARK has been continuous from the date specified in Interrogatory No. 6 to the present;

(h) If the answer to Interrogatory 7g. is in the affirmative, whether the circumstances described in answer to Interrogatories 7a., 7b., 7c., 7d., 7f. prevailed

throughout the period identified in Interrogatory 7g.;

(i) If the circumstances described in answer to Interrogatories 7a., 7b., 7c., 7d., and 7f. did not prevail throughout the period identified in Interrogatory 7g., state how they changed, providing specific dates and names wherever requested; and

(j) If the answer to Interrogatory 7g. is in the negative, state the periods of time during which the M2 MARK was not used by the Applicant in connection with the sale, distribution, provision, or operation of any of the items of goods, services or trade entity.

RESPONSE NO. 7:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that this request is overbroad and ambiguous and of a convoluted nature making it overburdensome to respond. Applicant also objects on the grounds that this request seeks irrelevant information such as the developer or creator of the goods and services on which the mark is used which is not an issue in this proceeding, nor is this information likely to lead to the discovery of admissible information. Applicant also objects because the request seeks proprietary customer information to which Opposer is not entitled.

Notwithstanding said objection, and without waiver of same, see applications Serial Nos. 85017090, and 85017090 for the goods and services on which the mark is used, and the dates of first use. The marks have been in continuous use since the dates of first use and have been used on Applicant's website found at <www.higherlogic.com>, in print in Higher Logic's product brochure, in print in a dedicated handout, on banners displayed at tradeshow and on the mobile application downloadable onto mobile phones. Applicant reserves the right to supplement this response should additional information become available at a later date.

///

REQUEST NO. 8:

Identify the PERSON or PERSONS most knowledgeable CONCERNING the design, ordering, purchase, import, distribution, display or sale of products and the performance of services bearing the M2 MARK, and state the circumstances of such design, ordering, purchase, import, distribution, display or sale.

RESPONSE NO. 8:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the request seeks information not relevant to the claims and defenses at issue in this proceeding nor likely to lead to the discovery of admissible evidence.

Notwithstanding said objection, and without waiver of same. see list of potential witnesses identified in Applicant's initial disclosures. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 9:

Identify and describe the channels of distribution in the United States of each item of goods or services identified in Interrogatory No. 3, whether actual or intended. Please designate whether each answer pertains to actual or intended status.

RESPONSE NO. 9:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that this request seeks irrelevant information or information not likely to lead to the discovery of admissible evidence. Finally, Applicant objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services, or mark at issue in this proceeding.

Notwithstanding said objection, and without waiver of same, Applicant distributes the goods and services identified in applications Serial Nos. 85017090, and 85017090 through its website at <www.higherlogic.com> and in the DubMeNow.com application store. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 10:

Identify all purchasers by class of each item of goods or services identified in Interrogatory No. 3, whether actual or intended. Please designate whether each answer pertains to actual or intended status.

RESPONSE NO. 10:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects because the terms “class” and “actual or intended status” are undefined and open to interpretation making the request vague and ambiguous. Applicant also objects on the grounds that this interrogatory seeks Applicant’s proprietary customer information to which it is not entitled. Finally, Applicant objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services, or mark at issue in this proceeding.

Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 11:

List all geographical areas (by city, state, and country) in which APPLICANT sells or provides each item of goods identified in Interrogatory No. 3, or intends to do so. Please designate whether each answer pertains to actual or intended status.

RESPONSE NO. 11:

Objection. This interrogatory is overbroad and overburdensome because it is

compound requiring a separate answer for each component and is improper under the rules. Applicant further objects because the terms “actual or intended status” are undefined and open to interpretation making the request vague and ambiguous. Applicant also objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services, or mark at issue in this proceeding.

Notwithstanding said objection, and without waiver of same, Applicant sells only to associations and non-profit organizations through an application store. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 12:

List all publications, including websites, in which APPLICANT has advertised or publicized, or intends to advertise or publicize, each item of goods or services identified in Interrogatory No. 3 and the dates thereof. Please designate whether each answer pertains to actual or intended status.

RESPONSE NO. 12:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects because the terms “publicize” and “actual or intended status” are undefined and open to interpretation making the request vague and ambiguous. Applicant also objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services, or mark at issue in this proceeding.

Notwithstanding said objection, and without waiver of same, Applicant sells only to individual members of their clients’ organizations, associations and non-profit organizations through an application store. Applicant reserves the right to supplement

this response should additional information become available at a later date.

REQUEST NO. 13:

List all trade shows, events, media appearances, or conferences in which APPLICANT has obtained publicity for each item of goods or services identified in Interrogatory No. 3, or in which Applicant intends to do so. Please designate whether each answer pertains to actual or intended status.

RESPONSE NO. 13:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that this request is overbroad and burdensome because it ambiguously seeks information not relevant to the claims and defenses in this proceeding, namely the use of goods and services not identified under the mark at issue. Applicant also objects because the terms “publicity” and “actual or intended status” are undefined and open to interpretation making the request vague and ambiguous. Applicant also objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services, or mark at issue in this proceeding.

Notwithstanding said objection, and without waiver of same, Applicant's mark has been displayed at 20 to 30 conferences, all in the Association and Non-Profit space. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 14:

List all other media, not already identified in Interrogatories 12 and 13, where APPLICANT has advertised or publicized, or intends to advertise or publicize, each item of goods or services identified in Interrogatory No. 3 and the dates thereof. Please designate whether each answer pertains to actual or intended status.

RESPONSE NO. 14:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the term “media” is undefined and open to interpretation making the request vague and ambiguous, as well as duplicative of Interrogatories Nos. 12 and 13. Applicant also objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services, or mark at issue in this proceeding.

Notwithstanding said objection, and without waiver of same, please see Answer to Interrogatory No. 12 above. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 15:

Identify all suppliers and trade partners by the nature of such vendor or partner for each item of goods or services identified in Interrogatory No. 3, whether actual or intended. Please designate whether each answer pertains to actual or intended status.

RESPONSE NO. 15:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the terms “trade partners” and “actual or intended status,” and the scope of “suppliers” are undefined and open to interpretation making the request vague and ambiguous. Applicant also objects on the grounds that the request is overbroad as to scope and does not limit the information sought to the goods and services at issue in this proceeding.

Notwithstanding said objection, and without waiver of same, none at this time. Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 16:

For each calendar year since inception, for each item of goods or services identified in Interrogatory No. 3, state the amount expended by APPLICANT in the United States in the advertisement of each item.

RESPONSE NO. 16:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the term or scope of "inception" and "expended" are undefined and open to interpretation making the request vague and ambiguous. Applicant also objects on the grounds that the request is overbroad as to scope as it does not limit the information sought to the goods and services at issue in this proceeding. Finally, Applicant objects because this interrogatory seeks confidential financial information which will not be provided absent a Protective Order in place.

Applicant reserves the right to supplement this response should additional information become available at a later date.

REQUEST NO. 17:

State by month, if available, or if not, for each separate period reflected in APPLICANT'S books and records, the volume of gross sales, in dollars and in units, of products and services identified in Interrogatory No. 3 and identify the individuals responsible for the maintenance of such sales records.

RESPONSE NO. 17:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the request is overbroad as to scope as it does not limit the information sought to the goods and services at issue in this proceeding. Applicant, also objects on the grounds that this request seeks

information not relevant to the claims and defenses at issue in this proceeding, or likely to lead to admissible evidence. Finally, Applicant objects because this interrogatory seeks confidential information which will not be provided absent a Protective Order in place.

Notwithstanding said objection, and without waiver of same, such information has not been identified at this time. Applicant reserves the right to supplement this request should additional information become available at a later date.

REQUEST NO. 18:

Identify by name and address all person(s) or organization(s) who have been responsible for advertising, publicizing, or marketing each item of goods or services identified in Interrogatory No. 3.

RESPONSE NO. 18:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the request is overbroad as to scope as it does not limit the information sought to the goods and services at issue in this proceeding. Applicant, also objects on the grounds that this request seeks information not relevant to the claims and defenses at issue in this proceeding, or likely to lead to admissible evidence.

Notwithstanding said objection, and without waiver of same, see list of potential witnesses identified in Applicant's Initial Disclosures. Applicant reserves the right to supplement this request should additional information become available at a later date.

REQUEST NO. 19:

Has APPLICANT ever received notice from any person other than Opposer of a claim that the use of the M2 MARK infringed any trademark, trade name, or service mark of said person? If so, for each such notice of a claim of infringement, specify:

- (a) the identity of the person asserting the claim;
- (b) the date thereof;
- (c) the full details CONCERNING the claim; and
- (d) the identity of any documents evidencing or relating hereto.

RESPONSE NO. 19:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the request is overbroad as to scope as it does not limit the information sought to the goods and services at issue in this proceeding. Applicant, also objects on the grounds that this request seeks information not relevant to the claims and defenses at issue in this proceeding, or likely to lead to admissible evidence.

Notwithstanding said objection, and without waiver of same, “no”. Applicant reserves the right to supplement this request should additional information become available at a later date.

REQUEST NO. 20:

Please identify each marketing survey, research, trademark search, or other study performed or to be performed for or by APPLICANT related in any way to the M2 MARK.

RESPONSE NO. 20:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the request is overbroad as to scope as it does not limit the information sought to the goods and services at issue in this proceeding. Applicant, also objects on the grounds that this request seeks information not relevant to the claims and defenses at issue in this proceeding, or likely to lead to admissible evidence.

Notwithstanding said objection, and without waiver of same, none available at this time. Applicant reserves the right to supplement this request should additional information become available at a later date.

REQUEST NO. 21:

Describe the manner in which APPLICANT first became aware of the use of the "M2" mark by Opposer and specify:

- (a) the date on which APPLICANT first learned of Opposer's use of the "M2" mark;
- (b) the sources of any information CONCERNING such use.

RESPONSE NO. 21:

Objection. Applicant objects on the grounds that the request is overbroad as to scope as it does not limit the information sought to the goods and services at issue in this proceeding. Applicant, also objects on the grounds that this request seeks information not relevant to the claims and defenses at issue in this proceeding, or likely to lead to admissible evidence.

Notwithstanding said objection, and without waiver of same, the filing of the Notice of Opposition is the first time Applicant learned of Opposer's use of the "M2" mark. Applicant reserves the right to supplement this request should additional information become available at a later date.

REQUEST NO. 22:

Has APPLICANT ever conducted any COMMUNICATIONS or entered into any AGREEMENTS CONCERNING the use or license of any M2 MARK? If so, please identify:

- (a) the identity of the PERSONS involved;
- (b) the dates thereof and the content of the COMMUNICATIONS or AGREEMENTS, including the nature of any licensed products;

- (c) the identity of any documents evidencing or relating hereto.

RESPONSE NO. 22:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects on the grounds that the request is overbroad as to scope as it does not limit the information sought to the goods and services at issue in this proceeding. Applicant, also objects on the grounds that this request seeks information not relevant to the claims and defenses at issue in this proceeding, or likely to lead to admissible evidence. Finally, Applicant objects on the grounds that this interrogatory seeks proprietary and confidential information not to be disclosed without a protective order in place.

Notwithstanding said objection, and without waiver of same, “no”. Applicant reserves the right to supplement this request should additional information become available at a later date.

REQUEST NO. 23:

Has APPLICANT ever entered into any AGREEMENT or policy providing insurance or other reimbursement for trademark infringement or for any other legal costs in connection with trademark use or registration? If so, please identify:

- (a) the PERSON or entity providing such coverage;
- (b) the date on which each AGREEMENT or policy was entered into;
- (c) the policy number, terms and coverage of such AGREEMENT or policy;
- (d) the identity of any documents evidencing or relating hereto.

RESPONSE NO. 23:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the

rules. Applicant further objects because the interrogatory seeks insurance or reimbursement information which, because of the limited scope of a Board proceeding is irrelevant to an opposition proceeding.

REQUEST NO. 24:

Please identify each person you expect to call as a witness in this opposition. If identifying an expert witness, please state separately with respect to each such expert witness:

- (a) the subject matter on which the expert is expected to testify;
- (b) the substance of facts and opinions to which the expert is expected to testify and
- (c) a summary of the grounds for each such opinion.

RESPONSE NO. 24:

Objection. This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules. Applicant further objects because the interrogatory seeks duplicative information which Applicant is required to provide, and has provided, in its Initial Disclosures.

RESPONSES TO FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST NO. 1:

Each and every mode, manner, type and grade in which the M2 MARK has been used on or in connection with any goods, services, or trade entity.

RESPONSE NO.1

Objection. This request is overbroad and burdensome as it seeks documents not relevant to the goods and services at issue in this proceeding. Applicant further objects on the grounds that the terms “mode, manner, type and grade,” and use in connection with a “trade entity” are undefined and vague and ambiguous because they are open to

interpretation.

Notwithstanding said objection, and without waiver of same, please see documents identified in and attached to Applicant's initial disclosures, Bates Nos. HL000001 to HL000120. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUEST NO. 2:

Documents and things sufficient to show each and every product, service, or trade entity APPLICANT has ever created, developed, marketed, distributed, licensed, provided, operated, or sold under or in connection with the M2 MARK including but not limited to the quantity and revenue amounts of such product or service distributed or provided, the date(s) on which such product, service, or trade entity was distributed, provided, or operated; the person(s) distributing or providing such products or services; the identity of the person(s) to whom such products or services were distributed or provided, including but not limited to the distributor's name, geographical location, and channel of trade.

RESPONSE NO.2

Objection. This request is overbroad and burdensome as it seeks documents not relevant to the goods and services at issue in this proceeding. Applicant further objects on the grounds that the request is overbroad and burdensome as to scope as it seeks documents not relevant to the claims and defenses in this proceeding nor likely to lead to the discovery of admissible evidence.

Notwithstanding said objection, and without waiver of same, please see documents identified in and attached to Applicant's initial disclosures, Bates Nos. HL000001 to HL000120. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

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REQUEST NO. 3:

Each different advertisement, catalog, brochure, web page, or other advertising means or media in which the M2 MARK has been used by APPLICANT.

RESPONSE NO.3

Objection. This request is overbroad and burdensome as it seeks documents not relevant to the goods and services at issue in this proceeding. Applicant further objects on the grounds that the request is overbroad and burdensome as to scope as it seeks documents not relevant to the claims and defenses in this proceeding nor likely to lead to the discovery of admissible evidence.

Notwithstanding said objection, and without waiver of same, please see documents identified in and attached to Applicant's initial disclosures, Bates Nos. HL000001 to HL000120. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUEST NO. 4:

Documents sufficient to show the total dollar amount which APPLICANT has expended on advertising the M2 MARK.

RESPONSE NO.4

Objection. This request is overbroad and burdensome as it seeks documents not relevant to the goods and services at issue in this proceeding. Applicant further objects on the grounds that the request is overbroad and burdensome as to scope as it seeks documents not relevant to the claims and defenses in this proceeding nor likely to lead to the discovery of admissible evidence. Finally, Applicant objects because this interrogatory seeks confidential information which will not be provided absent a Protective Order in place.

Notwithstanding said objection, and without waiver of same, Applicant will produce any relevant documents, if any, once located and identified, and if a Protective

Order is in place. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUEST NO. 5:

Documents sufficient to show APPLICANT'S total sales and other revenues, in both dollars and number of units for the goods and services identified in Interrogatory No. 3.

RESPONSE NO.5

Objection. This request is overbroad and burdensome as it seeks documents not relevant to the goods and services at issue in this proceeding. Applicant further objects on the grounds that the request is overbroad and burdensome as to scope as it seeks documents not relevant to the claims and defenses in this proceeding nor likely to lead to the discovery of admissible evidence. Finally, Applicant objects because this interrogatory seeks confidential information which will not be provided absent a Protective Order in place.

Notwithstanding said objection, and without waiver of same, Applicant will produce any relevant documents, if any, once located and identified, and if a Protective Order is in place. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUEST NO. 6:

Contracts, AGREEMENTS or other understandings, written and oral, between Applicant and any other entity CONCERNING use of the M2 MARK or variations thereof.

RESPONSE NO.6

Objection. This request is overbroad and burdensome as it seeks documents not relevant to the goods and services at issue in this proceeding. Applicant further objects on the grounds that the request is overbroad and burdensome as to scope as it seeks documents not relevant to the claims and defenses in this proceeding nor likely to lead

to the discovery of admissible evidence.

Notwithstanding said objection, and without waiver of same, none at this time. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUEST NO. 7:

Documents and correspondence exchanged with the Patent and Trademark Office during the prosecution and registration of APPLICANT'S M2 MARK. Investigations conducted or authorized by APPLICANT into any uses of the M2 MARK or any similar mark.

RESPONSE NO.7

Objection. This request is overburdensome and oppressive because it seeks information that is of public record and, as such, equally available to Opposer, and Opposer has, in fact, produced such documentation attached to its initial disclosures.

Notwithstanding said objection, and without waiver of same, please see documents identified in Applicant's initial disclosures, Bates Nos. HL000002 to HL000120. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUEST NO. 8:

Any analysis, search report, or study done by or for APPLICANT CONCERNING the M2 MARK.

RESPONSE NO.8

Objection. This request is overbroad and burdensome as it seeks documents not relevant to the goods and services at issue in this proceeding. Applicant further objects on the grounds that the request is overbroad and burdensome as to scope as it seeks documents not relevant to the claims and defenses in this proceeding nor likely to lead to the discovery of admissible evidence.

Notwithstanding said objection, and without waiver of same, none at this time. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUEST NO. 9:

Documents and things which APPLICANT will offer in evidence herein in support of any defense, including in support of any affirmative defenses alleged by APPLICANT in its ANSWER.

RESPONSE NO.9

Please see documents identified in Applicant's initial disclosures, Bates Nos. HL000001 to HL000120, and documents attached. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUEST NO. 10:

All documents and things which APPLICANT identified or was requested to identify in response to Opposer's First Set of Interrogatories, identified above, to APPLICANT, or supporting APPLICANT'S denial in whole or in part of any of Opposer' s First Set of Requests for Admission.

RESPONSE NO.10

Please see documents identified in Applicant's initial disclosures, Bates Nos. HL000001 to HL000120, and documents attached. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUEST NO. 11:

All documents and things that APPLICANT has identified or intends to identify, directly or indirectly, in its initial disclosures but which it has not yet produced.

RESPONSE NO.11

Objection. This request is overbroad and burdensome as it is duplicative and seeks documents Applicant is obligated to identify, produce and supplement as part of its Initial Disclosures.

Notwithstanding said objection, and without waiver of same, please see documents identified in Applicant's initial disclosures, Bates Nos. HL000001 to HL000120, and documents attached. Applicant reserves the right to supplement this response should additional materials become available to it at a later date.

REQUESTS FOR FIRST REQUESTS FOR ADMISSION

REQUEST NO. 1:

ADMIT that YOU provide or have provided computer software applications for personal computers or servers.

RESPONSE NO.1

Deny.

REQUEST NO. 2:

ADMIT that YOU provide or have provided database applications.

RESPONSE NO.2

Deny.

REQUEST NO. 3:

ADMIT that YOU provide or have provided products or services to associations, or any other groups or organizations, in the media and entertainment sector.

RESPONSE NO.3

Deny.

REQUEST NO. 4:

ADMIT that YOU provide or have provided products or services to associations, or any other groups or organizations, in the healthcare sector.

RESPONSE NO.4

Admit.

REQUEST NO. 5:

ADMIT that YOU provide or have provided products or services to associations, or any other groups or organizations, in the financial sector.

RESPONSE NO.5

Admit.

REQUEST NO. 6:

ADMIT that YOU provide or have provided enterprise software products or services.

RESPONSE NO.6

The term "enterprise" in relation to software products or services is not defined and is not recognized by Applicant. As such, Applicant can neither admit nor deny this request.

REQUEST NO. 7:

ADMIT that YOU use or intend to use an "M2" mark in standard character format on various media without the "raised 2" typographical format of the applied-for mark, or have done so in the past.

RESPONSE NO.7

Deny.

REQUEST NO. 8:

ADMIT that persons in the public or in the trade interpret or have interpreted the M2 MARK that YOU use or intend to use to represent a mark pronounced "M-TWO."

RESPONSE NO.8

Applicant can neither admit nor deny this request because Applicant cannot logically or reasonably know how third parties represent or interpret Applicant's mark and cannot speak on their behalf.

REQUEST NO. 9:

ADMIT that YOU were aware of Opposer M2 Software, Inc. before YOU applied for the M2 MARK subject of this proceeding.

RESPONSE NO.9

Deny.

REQUEST NO. 10:

ADMIT that YOUR products or services are sold or advertised in the United States.

RESPONSE NO.10

Applicant objects to this request on the grounds it is a multi-part request seeking a response regarding products or services that are both “sold” and “advertised” which are different activities and, as such, cannot offer a simple “admit” or “deny” response.

REQUEST NO. 11:

ADMIT that YOUR products or services are sold or advertised in California.

RESPONSE NO.11

Applicant objects to this request on the grounds it is a multi-part request seeking a response regarding products or services that are both “sold” and “advertised” which are different activities and, as such, cannot offer a simple “admit” or “deny” response.

REQUEST NO. 12:

ADMIT that YOUR products or services are sold or advertised in Texas.

RESPONSE NO.12

Applicant objects to this request on the grounds it is a multi-part request seeking a response regarding products or services that are both “sold” and “advertised” which are different activities and, as such, cannot offer a simple “admit” or “deny” response.

REQUEST NO. 13:

ADMIT that YOUR products or services are sold or advertised in Florida.

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RESPONSE NO.13

Applicant objects to this request on the grounds it is a multi-part request seeking a response regarding products or services that are both “sold” and “advertised” which are different activities and, as such, cannot offer a simple “admit” or “deny” response.

REQUEST NO. 14:

ADMIT that YOUR products or services are sold or advertised in New York.

RESPONSE NO.14

Applicant objects to this request on the grounds it is a multi-part request seeking a response regarding products or services that are both “sold” and “advertised” which are different activities and, as such, cannot offer a simple “admit” or “deny” response.

REQUEST NO. 15:

ADMIT that YOUR products or services are sold or advertised in Illinois.

RESPONSE NO.15

Applicant objects to this request on the grounds it is a multi-part request seeking a response regarding products or services that are both “sold” and “advertised” which are different activities and, as such, cannot offer a simple “admit” or “deny” response.

Respectfully Submitted,

Dated: November 11, 2011

/s/ Lauri S. Thompson

Lauri S. Thompson
Laraine M. I. Burrell
Greenberg Traurig LLP
3773 Howard Hughes Parkway,
Suite 400 N.
Las Vegas, NV 89169
Counsel for Higher Logic, LLC

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Higher Logic, LLC's Response to Opposer M2 Software, Inc.'s First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Set of Requests for Admission** is being served by first class mail, postage prepaid, on November 11, 2011, on the following:

D. Escamilla
M2 Software, Inc.
6725 Sunset Blvd., Suite 230
Los Angeles, CA 90028

/s/ Cynthia L. Ney
An employee of Greenberg Traurig, LLP

Exhibit A, Declaration of Officer

EXHIBIT 4



VIA U.S. MAIL AND ELECTRONIC MAIL

lvpto@gtlaw.com

December 5, 2011

Lauri S. Thompson, Esq. (*counsel for*: Higher Logic LLC)
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Ste 400N
Las Vegas, NV 89169

Re: Trademark Opposition No. 91200167

Dear Ms. Thompson:

I am writing concerning Higher Logic LLC's Initial Disclosures and responses to M2 Software, Inc.'s interrogatories, document requests, and requests for admission (served October 12, 2011). Higher Logic's initial disclosures and responses to our discovery requests are plainly inadequate under Board guidelines. This letter will represent M2 Software's good faith effort to resolve these issues through correspondence without the need for the TTAB's intervention. Please respond in writing with your supplemental responses.

Initial Disclosures

The documents identified in your initial disclosures consisted only of poor copies of Bates-stamped pages of your client's file wrapper already of record in this proceeding. We demand that Higher Logic, LLC provide without delay amended initial disclosures, including but not limited to appropriate identification of all of its witnesses, the address and telephone number of each, the subject matter(s) about which each has information, and the location or production of identified documents.

Interrogatories

Since what you have disclosed is barely more than that which is already available in the file wrapper, the appearance of your interrogatory responses is that you have not approached your client to properly research and respond to our interrogatories. In the alternative, it appears that you have inadequately instructed your client as to its obligations in this formal Board proceeding. Please provide supplementary responses properly addressing our interrogatories. Pursuant to Fed. R. Civ. Pro. 37(a)(4), an evasive or incomplete disclosure, answer, or response will be treated as a failure to disclose, answer, or respond.

First, we demand that you provide a full and complete answer to our **Interrogatory No. 1** as to identification of the persons assisting in obtaining answers to the interrogatories, with reference to the interrogatory number and area of participation. Absent disclosure, you are preventing any follow-up on your responses, to which we are entitled. Worse, your evasion prevents any particular individual from being held culpable or responsible for the answers anonymously provided. If principals of your client, or counsel, preparing each discovery responses is unwilling to be identified with the areas of such participation, we intend to seek a Board order to compel such identification.

more...

Second, your boilerplate objection as to compound nature of various interrogatories (“This interrogatory is overbroad and overburdensome because it is compound requiring a separate answer for each component and is improper under the rules”) is not supported by any Board Rule. We demand your client supplement any answer in which you have made this insufficient objection, including but not limited to **Interrogatory Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24.**

Third, all responses in which you have claimed that there is an absence of a protective order must be answered. The Board’s standard order has been entered. Pursuant to 37 CFR 2.116(g), the TTAB’s standard protective order is applicable during disclosure, discovery and at trial in all opposition and cancellation proceedings.] We demand supplemental answers to **Interrogatory Nos. 3, 4, 5, 7, 10, 16, 17.**

Finally, many of the interrogatories you have simply not answered at all, or have simply provided such an evasive or incomplete answer that it will be treated as a failure to answer. These include your answers to **Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20.** Please supplement your responses.

Requests for Production

With respect to your responses to our Requests for Production (“RFP”), it also appears that you have not made a good faith effort to seek or obtain any documents from your client. The only documents you have produced are pages from the file application wrapper already available to the Board and the parties. Unless supplemented with immediately, we intend to submit a motion to compel.

You have lodged protective order objections for **RFP Nos. 4 and 5** (“Finally, Applicant objects because this interrogatory seeks confidential information which will not be provided absent a Protective Order in place.”). As set forth above, the Board’s protective order is in effect. We demand that you supplement your responses immediately.

You have also lodged objections as to scope of **RFP Nos. 1, 2, 3, 4, 5, 6, 7, 8** (“[t]his request is overbroad and burdensome as it seeks documents not relevant to the goods and services at issue in this proceeding”). Such objection is also not applicable. The goods and services of the Applicant are relevant to demonstrate the types of goods and services likely to be perceived as originating from or sponsored by the same source. Such information pertinent to the likelihood of confusion question. Absent immediate supplementation of your responses, we intend to move to compel production of your client’s documents.

Finally, Higher Logic LLC, has wholly failed to produce any real documents in response to M2 Software’s request for production, other than what is already of record in its application file wrapper. You have not responded, or responded incompletely, to our **RFP Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11**, which we believe the Board will find to be in bad faith. We request that you client supplement its responses to provide appropriate production of the requested documents.

Requests for Admission

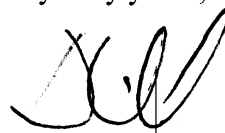
Your objections and non-responses to our Requests for Admission (“RFA”) are also improper. As to **RFA No. 6**, you have refused to answer because you claim “[t]he term ‘enterprise’ in relation to software products or services is not defined and is not recognized by Applicant.” “Enterprise” is a commonly-understood term in the software industry, and your own client utilizes this term. It is clear that you have made little to no effort to contact any of the relevant software development personnel involved with enterprise applications employed by your client. We demand that you properly inquire of your client, and the relevant enterprise software personnel, and ADMIT or DENY this request.

With respect to **RFA No. 8**, you claim that “Applicant can neither admit nor deny this request because Applicant cannot logically or reasonably know how third parties represent or interpret Applicant's mark and cannot speak on their behalf.” The request, however, seeks an admission based on your client’s knowledge, which knowledge can be obtained, for example, by communications to or from third parties that refer to the company or its products in the manner identified in the request (*i.e.*, as “a mark pronounced “M-TWO”). We demand that Higher Logic LLC respond to this request to ADMIT this request, or DENY the request if it wishes to maintain to the Board its contention that persons in the public or in the trade do not interpret, and have not interpreted, the defined M2 MARK to be a mark pronounced “M-TWO.”

With respect to **RFA Nos. 11, 12, 13, 14, 15**, you have refused to answer because you claim “Applicant objects to this request on the grounds it is a multi-part request seeking a response regarding products or services that are both ‘sold’ and ‘advertised’ which are different activities and, as such, cannot offer a simple ‘admit’ or ‘deny’ response.” Your client must provide an ADMIT or DENY response, even if it must clarify any distinction between an admission of products or services being “sold” or “advertised.”

Please supplement any answers and production within five (5) business days of the date of this letter. If we do not hear from you by then, or if your responses continue to be evasive or incomplete, we will move to compel full and complete discovery responses.

Very truly yours,



David Escamilla
President
M2 Software, Inc.

Exhibit A, Declaration of Officer

EXHIBIT 5

December 13, 2011

David Escamilla
M2 Software, Inc.
6725 Sunset Boulevard, Ste. 230
Los Angeles, CA 90028

Re: Higher Logic / Trademark Opposition No. 91200167

Dear Mr. Escamilla:

This letter is responsive to your letter dated December 5, 2011, in which you make numerous, baseless objections to Higher Logic Initial disclosures and discovery responses. We believe our discovery to date is appropriate for the following reasons:

1. Initial Disclosures:

Higher Logic has properly identified those persons it intends to call as witnesses and, because they are represented by counsel, Greenberg Traurig has properly identified itself as the contact for the witnesses.

As to your complaint that the documents produced were of a poor quality, you should address your complaint to the USPTO who scanned the documents. Please note, Higher Logic exceeded its obligation under the rules by producing to you a copy of the file history which was equally available to you.

2. Interrogatories/Requests for Admissions:

Your interrogatories were objectionable under the rules and Higher Logic gave as fair an answer as it could considering the vague and oft times incomprehensible nature of the information requested. Similarly where your requests for admissions were improperly compound and could not be answered with one answer Higher Logic properly objected.

As Higher Logic properly identified the basis as to why it could not answer beyond the response it gave, M2 has the option of redrafting the interrogatories more clearly to avoid Higher Logic's objections. But, more importantly, while M2 complains the answers are inadequate, it fails to recognize that the rules anticipate a party's inability to offer complete information and/or evidence at the commencement of the discovery period and, in fact, allow for supplemental disclosures. As the discovery period in this proceeding does not close until April 2012, and because Higher Logic will adhere to its obligation under the rules to timely supplement its discovery requests should additional information become available to it, your objections are unripe.

3. Requests for Production:


The crux of your objections to Higher Logic's responses to requests for production is that there is a standard protective order in place meaning Higher Logic is obligated to produce even confidential business information to you to see. This is incorrect. If you review the language of the Protective Order you will note that such Confidential or Highly Confidential should be protected and under the Federal Rules that means such information is designated "Confidential - Attorneys Eyes Only" to be viewed only by counsel. You are not represented by counsel.

Second, shielding access to confidential business information by an adverse party is why logically, under the Federal Rules, a business entity **must** be represented by counsel. See Wilen v. Alternative Media Net, Inc., 74 USPQ2d 1053, 1054 (S.D.N.Y. 2005); See also V&S & Spirit Aktiebolag v. Hanson, 61 USPQ2d 1277, 1279 (E.D. Va. 2001) (citing Rowland v. Cal. Men's Colony, 506 U.S. 194, 201-92 (1993) ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel.") This issue was discussed at the Early Case Conference with the Interlocutory Attorney and, if you recall, the Attorney addressed his concerns with your lack of legal representation but you brushed off these concerns.

If your argument were correct that you are entitled to view Higher Logic's confidential information, and it is not, a party could gain access to a competitor's sensitive trade secret and business information simply by filing a lawsuit without being represented by counsel. This is not the intent of the rules.

The bottom line is that Higher Logic will not hand its sensitive, confidential, and trade secret information to you, an adverse owner, to review. Nor is it required to do so under the rules.

Sincerely,

 GreenbergTraurig


Lauri S. Thompson

LST/ih

Exhibit A, Declaration of Officer

EXHIBIT 6



December 14, 2011

VIA ELECTRONIC MAIL ONLY

lvpto@gtlaw.com

Lauri S. Thompson, Esq. (*counsel for:* Higher Logic LLC)
Greenberg Traurig, LLP
3773 Howard Hughes Parkway, Ste 400N
Las Vegas, NV 89169

Re: Trademark Opposition No. 91200167

Dear Ms. Thompson:

Thank you for your letter of December 13, 2011. We disagree with your characterization of your client's Initial Disclosures and responses to our discovery requests as in any way adequate under Board rules. If you are unwilling to supplement your responses to our interrogatories, requests for admission, and requests for production, we have no choice but to make a motion compelling such responses. To the extent that you are claiming any privilege as grounds to withhold responsive documents, please provide your detailed privilege log.

Please identify, without limitation: i) the number of the request to which the document is responsive, ii) the privilege claimed, iii) a description of the nature and subject matter of the document, iv) the location and approximate date of the document, v) full details concerning the sender and recipient of the document (and any parties participating in its preparation), vi) the name and position of any person to whom the content of the document has been communicated in any manner, vii) and the identity and position of the person supplying this information.

To avoid further delay in this case, please forward the logs of your client's documents that you have prepared by the close of business tomorrow, December 15, 2011.

Very truly yours,

/s/David Escamilla
David Escamilla
President and C.E.O.
M2 Software, Inc.

Exhibit A, Declaration of Officer

EXHIBIT 7



SOLUTIONS

[Social Networking & Communities](#)[Resource Sharing & Events](#)[Mobile Membership](#)[Enterprise Extensions](#)[Services](#)[Platform](#)

Enterprise Extensions – Extend the Power

Higher Logic offers optional features to extend your solution and generate additional revenue. These tools allow **you and your committees, chapter and distinct geographical or interest groups to manage their own sites**. This reduces your staff time and allows group managers to attract more members and constituents to your organization. These options are available for the Enterprise Suite only.

Microsite CMS- Distinct, Branded Websites

Microsites allows you to add and maintain separate websites for special events and programs. This easy-to-use tool allows you to brand a separate microsite site by choosing from available templates, selecting the Connected Community products you want to include, modifying the navigation and creating dynamic content layouts. A wizard guides users through the process so that any member can easily use it without extensive training, technical knowledge or programming expertise.

Many associations and nonprofits have Special Interest Groups (SIGs), Chapters, Committees and Regional Groups, often called components. Microsites CMS enables each component or group to manage their own website, while retaining the overall branding of your organization. Microsites CMS allows you to generate a significant non-dues revenue stream with targeted advertising and banner opportunities within the microsite and component websites.

Component Relations Suite- Added Value For Group Leaders

Our Component Relations Suite is an easy to use set of tools which allows component leaders to manage and communicate with their members and constituents. Chapter, committee, council and community leaders can define new member relationships such as "Community Member", "Friend of Chapter", "Event Attendee" or "Prospect", and then sort and analyze member information and engagement. Our comprehensive reporting tools provide valuable insight to **member demographics** such as departing members, expiring memberships and membership type changes. With this optional suite, group managers can develop powerful marketing campaigns with distinct mailing lists, e-mail templates and blast email capabilities.

Higher Logic's Component Relations Suite includes:

- Microsite CMS- Branded websites
- Social Networking- Private communities, resource sharing and more
- Reporting "Dashboard"- Graphical view of activities and trends
- Event Calendar- Consolidated view with your community site and most membership management systems

"Join the next [Learning Series](#) webinar and learn best practices for all things social."

EXPLORE OUR SITE

- [Measuring Social Media ROI](#)
- [Building Communities & Revenue](#)
- [The Higher Logic User's Group](#)

CONTACT US

SEND AN EMAIL

1629 K Street, NW Suite300
Washington, DC 20006

Toll Free 866.670.1402

Exhibit A, Declaration of Officer

EXHIBIT 8



August 02, 2011 08:30 AM Eastern Time

CDC Software Adds Social Media and Mobile Membership Applications to its Not-For-Profit Enterprise Solution

CDC gomembers' Social Community Application Helps Non-Profit Organizations Improve Collaboration with its Membership Community While its Mobile Membership Application Delivers Social Media Functionality to Mobile Devices

SHANGHAI & ATLANTA--(BUSINESS WIRE)--CDC Software Corporation (NASDAQ: CDCS), a hybrid enterprise software provider of on-premise and cloud deployments, announced today the general availability of CDC gomembers Social Community and Mobile Membership applications that help non-profit organizations improve collaboration with their membership and constituents through the creation of private online communities that can be accessed via users' computers or mobile devices.

CDC gomembers Social Community application offers organizations the flexibility to control the look and content to their online communities that can be accessed directly within the gomembers association management system (AMS). The social media application allows organizations to offer their members and constituents a secure online community to conduct association business and connect/collaborate with their staff and with one another through group discussions, blogging, job boards, events and photos, among other things. CDC gomembers Social Community also integrates directly with the popular social media sites like Facebook, LinkedIn, Twitter and others. For instance, an organization's membership can link their twitter feeds and Facebook and LinkedIn profiles to display on the social community home page. An association's membership can promote crowdsourcing ideas for spreading awareness about key issues, raise funds, mobilize supporters, create online advocacy movements or manage political action committees, and receive feedback and content for programs.

“CDC gomembers Social Community and Mobile Membership applications help our non-profit customers create a collaborative online partnership with their members and constituents”

The CDC gomembers Social Community application, with the Mobile Membership application, also can be accessed through iPhone, Blackberry and Android mobile devices.

“CDC gomembers Social Community and Mobile Membership applications help our non-profit customers create a collaborative online partnership with their members and constituents,” said Paul Plaia, president of CDC Non-Profit and Public Sector business of CDC Software. “The social media capabilities in our application can help associations grow since it engages and inspires their members and supporters through exchange of new ideas, participation in shared discussions, communication of events, advocacy movements, feedback, experiences, progress and personal stories. These new products can help non-profit organizations form vibrant, collaborative and effective membership community relationships. In addition, with the powerful gomembers association management application, non-profit associations have a compelling solution to help them control costs and increase revenue opportunities.”

About CDC gomembers

CDC gomembers is part of CDC Software's Not-For-Profit (NFP) and Public Sector software-as-a-service (SaaS) and on-premise suite of solutions. CDC gomembers offers enterprise and association management solutions for non-profit and membership-based organizations that directly address their unique business requirements with a low total cost of ownership. CDC gomembers is tailored for trade groups, professional societies, medical-based not-for-profit organizations, associations, hospitals, colleges and universities, certification bodies, fundraising groups, individual member-based groups, NFP management companies and donor-based organizations. The association management solutions manage an organization's data and automates their processes so they can engage more members, produce more events and meetings, and evaluate their progress.

About CDC Software

CDC Software (NASDAQ: CDCS), The Customer-Driven Company™, is a hybrid enterprise software provider of on-premise and cloud deployments. Leveraging a service-oriented architecture (SOA), CDC Software offers multiple delivery options for their solutions including on-premise, hosted, cloud-based Software as a Service (SaaS) or blended-hybrid deployment offerings. CDC Software's solutions include enterprise resource planning (ERP), manufacturing operations management, enterprise manufacturing intelligence, supply chain management (demand management, order management and warehouse and transportation management), global trade management, e-Commerce, human capital management, customer relationship management (CRM), complaint management and aged care solutions.

CDC Software's recent acquisitions are part of its "integrate, innovate and grow" strategy. Fueling the success of this strategy is the company's global scalable business and technology infrastructure featuring multiple complementary applications and services, domain expertise in vertical markets, cost effective product engineering centers in India and China, a highly collaborative and fast product development process utilizing Agile methodologies, and a worldwide network of direct sales and channel operations. This strategy has helped CDC Software deliver innovative and industry-specific solutions to approximately 10,000 customers worldwide within the manufacturing, distribution, transportation, retail, government, real estate, financial services, health care, and not-for-profit industries. For more information, please visit www.cdcssoftware.com.

Cautionary Note Regarding Forward-Looking Statements

This press release includes "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, including statements relating to our beliefs regarding the CDC gomembers Social Community and Mobile Membership applications, including the features and benefits thereof, our beliefs regarding our market and competitive position, and other statements that are not historical fact, the achievement of which involve risks, uncertainties and assumptions. These statements are based on management's current expectations and are subject to risks and uncertainties and changes in circumstances. There are important factors that could cause actual results to differ materially from those anticipated in the forward looking statements including, among others: the continued ability of our products to address industry and customer requirements; demand for and market acceptance of new and existing solutions; the acceptance of our products in new territories and geographies; the ability and willingness of our partners to fulfill any obligations they may have to us; and the development of new functionalities that would allow customers to operate more effectively. Further information on risks or other factors that could cause results to differ is detailed in our filings or submissions with the United States Securities and Exchange Commission, including our Annual Report on Form 20-F for the year ended December 31, 2010, filed with the SEC on July 15, 2011, and those of our ultimate parent company, CDC Corporation, located at www.sec.gov. All forward-looking statements included in this press release are based upon information available to management as of the date of this press release, and you are cautioned not to place undue reliance on any forward looking statements which speak only as of the date

EX-8 P-68

<http://www.businesswire.com/news/home/20110802006017/en/CDC-Software-Adds-Social-Media-Mobile-Membership>

of this press release. Results may vary from customer to customer, based upon particular facts and circumstances. Any website addresses provided herein for parties other than the company or its subsidiaries or affiliates, are not part of this press release and the contents such websites are not incorporated herein or adopted in any way by the company. The company assumes no obligation to update or alter the forward looking statements whether as a result of new information, future events or otherwise. Historical results are not indicative of future results.

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or

Media Relations

CDC Software

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BusinessWire

Exhibit A, Declaration of Officer

EXHIBIT 9

Unable to connect

Firefox can't establish a connection to the server at ad.doubleclick.net.

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THE WALL STREET JOURNAL

WSJ.com

IPO OUTLOOK | DECEMBER 13, 2011, 4:16 P.M. ET

Jive Software Soars 25% in Debut

By LYNN COWAN

[Jive Software Inc.](#) kicked off a busy week in the U.S. IPO market Tuesday with a strong opening gain of 25% after increasing both the share size and price of the deal.

The company's stock closed at \$15.05 a share on the Nasdaq Stock Market, up from its initial public offering price of \$12. A total of 13.4 million shares were sold, more than the 11.7 million shares that were originally planned, and the stock priced above its expected price range of \$8 to \$10.

Jive had been expected to do well, with enough investor interest early on that the company moved up its pricing by one day. Other deals that are expected to fare well with investors this week are [Michael Kors Holdings Ltd.](#) and [Zynga Inc.](#)

Jive Software begins an active week in the U.S. IPO market, with a total of 11 deals lined up to debut. If all make it out, it will be the most active week since December 2007, when 13 launched in one week. It is also the final week for IPO pricings this year; the market shuts down for a holiday hiatus after this week until about mid-January.

Based in Palo Alto, Calif., Jive makes what it calls "social business software" that allows communication and collaboration between a company's employees and its customers and partners. Within a company, co-workers can communicate and share collaborative work spaces; outside, customers and business partners can connect socially with one another and the host's employees, creating a private online community that allows users to ask questions, post answers and communicate about a product or issue.

The software is cloud-based and is accessed via the Internet or through mobile devices, and can be integrated with existing email, e-commerce and other applications. The company recently launched the Jive Apps Market that allows users to develop applications for its software.

Its current software platform, known as Jive Engage, was introduced in 2007 and is now used by 657 customers, including [Hewlett-Packard Co.](#), [SAP AG](#) and [UBS AG](#).

Total revenue, which is driven by customer subscriptions to its software, has been rising, but so have its losses. Total revenue increased 73% to \$55 million in the first nine months of the year from the same period in 2010, as the company added more customers and increased its average transaction size. The company has a history of losses and warns that it doesn't expect to be profitable in "the foreseeable future" due to increased operating and capital expenditures. Its net loss in the first nine months of the year widened to \$38 million from a loss of \$21 million in the like 2010 period.

The market for social business software is new and widespread adoption uncertain, but there are plenty of competitors entering the space. Jive says that its primary competition comes from large, well-established enterprise software companies like [Microsoft Corp.](#) and [International Business Machines Corp.](#) Also, smaller vendors are beginning to add social features to their software, including [salesforce.com Inc.](http://salesforce.com)

[Morgan Stanley](#) and [Goldman Sachs Group Inc.](#) managed Jive's offering.

Write to Lynn Cowan at lynn.cowan@dowjones.com

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EXHIBIT B

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

M2 SOFTWARE, INC.

Opposer,

v.

HIGHER LOGIC, LLC

Applicant.

Opposition No. 91200167

For: M2 MOBILE
MEMBERSHIP

Serial Nos.: 85/017,071;85/017,090

Published: 02/15/2011

[Proposed] ORDER GRANTING OPPOSER'S MOTION TO COMPEL PURSUANT TO TBMP
§ 523.01 AND CFR § 2.120(e)

The Board, having reviewed *Opposer's Motion to Compel Pursuant To TBMP § 523.01 and CFR § 2.120(e)* ("Motion"), the *Affidavit of Officer* and relevant attachments, hereby finds as follows:

The Board finds that Applicant's initial disclosures did not fulfill the minimal requirements of 37 C.F.R. § 2.116(a) and Fed. R. Civ. P. 26(a)(1). Opposer has requested that the disclosures be supplemented, but Applicant has refused to honor this request. Pursuant to 37 C.F.R. § 2.120(g)(2), "[if] a party fails to make required initial disclosures * * * and such party or the party's attorney * * * informs the party entitled to receive disclosures that required disclosures will not be made, the Board may make any appropriate order, as specified in paragraph (g)(1) of this section." Applicant has failed to cooperate in initial disclosures, and has disabled Opposer from conducting appropriate follow-up discovery as an essential part of this proceeding. As sanction, the Board orders that default judgment against Applicant be entered pursuant to 37 C.F.R. § 2.120(g)(1).

DONE AND ORDERED:

[If default judgment is not entered, the Board alternatively orders:]

The Board hereby orders as follows:

Initial Disclosures

1.) That Applicant immediately supplement its initial disclosures to fulfill its disclosure obligations pursuant to Fed. R. Civ. P. 26(a)(1) and 37 C.F.R. 2.116(a);

Interrogatories

2.) With respect to *Opposer M2 Software, Inc.’s First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and First Set of Requests for Admission to Applicant Higher Logic, LLC* (“*First Set Discovery Requests*”), that Applicant provide a full and complete answer to Interrogatory No. 1 [*Motion* ¶ 2.16];

3.) That Applicant fully answer to those interrogatories to which it lodged an objection as a compound question (Interrogatory Nos. 2-24) [*Motion* ¶ 2.17];

4.) That Applicant fully answer those interrogatories to which it lodged an objection that no protective order was entered (Interrogatory Nos. 3, 4, 5, 7, 10, 16, 17) [*Motion* ¶ 2.18];

5.) That Applicant fully answer those interrogatories to which it provided an evasive or incomplete response, which the Board will treat as a non-answer (Interrogatory Nos. 1-20) [*Motion* ¶ 2.21];

Requests for Production (“RFP”)

6.) That Applicant produce all documents and things to which it objected on the erroneous grounds that no protective order was entered (RFP Nos. 4, 5) [*Motion* ¶ 2.23];

7.) That Applicant produce all documents and things requested in those requests to which Applicant objected as overbroad (RFP Nos. 1-8) [*Motion* ¶ 2.24]. The goods and services of Applicant, even if under a different mark, are relevant to demonstrate the types of goods and services likely to be perceived as originating from or sponsored by the same source. *See* TBMP § 419(11); Trademark Manual of Examining Procedure (“TMEP”) §1207.01(a)(vi) and

1207.01(d)(iii) (registrations for the different product lines “may serve to suggest that the goods or services are of a type that may emanate from a single source”).

8.) That Applicant supplement its responses to all requests that were incomplete or evasive, which the Board must treat as non-responses (RFP Nos. 1-11) [*Motion* ¶ 2.25]. *See* Fed. R. Civ. P. 37(a)(4) and 37 C.F.R. § 2.116(a)(1).

Requests for Admissions (“RFA”)

9.) That RFA Nos. 6, 8, 11, 12, 13, 14, and 15 [*Motion* ¶ 2.27 – ¶ 2.30], for which Applicant submitted answers that failed to comply with Fed. R. Civ. P. 36(a), are deemed ADMITTED pursuant to TBMP § 524.01.

DONE AND ORDERED:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument is being served on January 5, 2012, by electronic service, pursuant to the parties' agreement under Trademark Rule 2.119(b)(6), upon the defendant / Applicant at its address of record.

LAURI S. THOMPSON
GREENBERG TRAUIG, LLP
3773 HOWARD HUGHES PAKWAY STE 400N
LAS VEGAS, NV 89169

lvpto@gtlaw.com

s/David Escamilla/
David Escamilla