

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

EJW

Mailed: February 20, 2013

Opposition No. 91207539

NCS Pearson, Inc.

v.

Early Ascent LLC

**ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:**

On January 9, 2013, applicant<sup>1</sup> filed the parties' stipulation comprising applicant's proposed amendment to its application Serial No. 85495756.<sup>2</sup>

By the proposed amendment, applicant seeks to change the identification of goods, as follows:

---

<sup>1</sup> On November 8, 2012, the Board allowed applicant time to either appoint counsel or to inform the Board that it would represent itself. Although applicant did not respond to said order, the Board notes the effective appearance of Heather M. Morado of Rosen Lewis by the submission of applicant's motion (filed December 9, 2012) to extend time. In view thereof, the Board's records have been changed accordingly. The better practice would have been to submit a separate appearance of counsel and/or a change of correspondence address via ESTTA.

<sup>2</sup> The Board notes that applicant failed to provide proof of service of the consented amendment upon opposer's counsel as required by Trademark Rule 2.119, 37 C.F.R. 2.119. However, inasmuch as the motion was executed by opposer's counsel in accordance with settlement of this matter, and to expedite this matter, opposer is directed to the following URL for viewing and/or downloading of applicant's submission:  
<http://ttabvue.uspto.gov/ttabvue/v?pno=91207539&pty=OPP&eno=11>.  
*Strict compliance with the Trademark Rules is expected in future submissions to the Board.*

Opposition No. 91207539

**From:** "Computer educational software for consumer mobile devices, namely, educational software, pertaining to learning to read, for use in obtaining information from the mobile device's camera, microphone, or touch screen and transferring that information across communication networks, for use in obtaining educational and entertainment content; downloadable books and lessons, downloadable video recordings featuring text, images, animation and recorded audio, and computer game software for use on mobile devices, for use in customizing content, and for use in controlling and monitoring the content and for reporting on use of such content, all of the above delivered to mobile devices; computer game software; Children's educational software,"

**To:** "Computer ~~educational~~ software for consumer mobile and touchscreen devices, namely, ~~educational~~ software for playing computer adventure games that help children learn to read; ~~pertaining to learning to read, for use in obtaining information from the mobile device's camera, microphone, or touch screen and transferring that information across communication networks, for use in obtaining educational and entertainment content;~~ downloadable books and lessons pertaining to these video games and computer adventure games; downloadable video recordings featuring text, images, animation and recorded audio pertaining to these video games and computer adventure games; ~~and computer game software for use on mobile devices, for use in customizing content, and for use in controlling and monitoring the content and for reporting on use of such content,~~ all of the above delivered to mobile and touch screen devices, and all of which excludes the fields of psychometrically validated cognitive assessment,

scoring or reporting ~~computer game software; Children's educational software.~~"

The proposed amendment is denied because the proposed change from "Computer educational software for consumer mobile devices, namely, educational software ..." to "Computer software ..." is beyond the scope of the original identification of goods insofar as the proposed identification does not include the term "educational" in the two places where it is used in the current identification. In view thereof, the proposed identification broadens the function or purpose of the software, which is impermissible.<sup>3</sup> An applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services. Trademark Rule 2.71(a), 37 C.F.R. § 2.71(a).

Insofar as the parties appear to desire to settle this matter amicably, applicant is allowed until THIRTY DAYS from the mailing date of this order to submit a revised identification of goods which complies with Trademark Rule 2.71(a), failing which trial dates shall be reset and this proceeding shall be resumed and move forward apace.

This proceeding is otherwise SUSPENDED.



---

<sup>3</sup> The Board also respectfully suggests that applicant change the wording "pertaining to *these* video games and computer adventure games" to "pertaining to video games and computer adventure games that help children learn to read."