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

Proceeding no.	92083907
Party	Defendant VIZIO, Inc.
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Submission	Motion to Compel Discovery or Disclosure
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Date	05/23/2025
Attachments	2025-05-23 RESPONDENTS MOTION TO TEST THE SUFFICIENCY OF PETITIONERS RESPONSES TO RESPONDENTS REQUESTS FOR ADMISSIONS AND REQUEST TO SUSPEND PROCEEDINGS - VIZIO.106N.pdf(200966 bytes ) 2025-05-23 DECL OF PHILLIPS ISO RESPONDENTS MOTION TO TEST THE SUFFICIENCY OF PETITIONERS RESPONSES TO RESPONDENTS REQUESTS FOR ADMISSIONS AND REQUEST TO SUSPEND PROCEEDINGS - VIZIO.106N.pdf(179145 bytes ) EXS 1-6 - RESPONDENTS MOTION TO TEST THE SUFFICIENCY OF PETITIONERS RESPONSES TO RESPONDENTS REQUESTS FOR ADMISSIONS AND REQUEST TO SUSPEND PROCEEDINGS - VIZIO.106N.pdf(1529769 bytes )

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

GD Plus LLC,

Petitioner,

v.

VIZIO, Inc.,

Respondent.

Cancellation No.: 92083907

Registration No.: 7,208,240

Mark: ENACT

**RESPONDENT’S MOTION TO TEST THE SUFFICIENCY OF PETITIONER’S  
RESPONSES TO RESPONDENT’S REQUESTS FOR ADMISSIONS AND  
REQUEST TO SUSPEND PROCEEDINGS**

Under Fed. R. Civ. P. 36(a)(6) and TBMP § 407.03(b), Respondent VIZIO, Inc., (“Respondent”) objects to Petitioner GD Plus LLC’s (“Petitioner”) response to Respondent’s Request for Admission No. 5 (“Respondent’s RFA No. 5”). Respondent hereby moves the Trademark Trial and Appeal Board (the “Board” or “TTAB”) to test the sufficiency of Petitioner’s response to Respondent’s RFA No. 5 and, if determined insufficient, declare the matter admitted or, in the alternative, order Petitioner to serve an amended answer. The Declaration of Gregory B. Phillips (“Phillips Decl.”) supports this motion.

Under 37 C.F.R. § 2.117(c) and TBMP § 510.03(a), Respondent hereby moves the Board to suspend proceedings pending the Board’s decision on this motion, as well as to allow the parties to resolve outstanding discovery disputes before progressing to the trial stage.

## **FACTUAL BACKGROUND**

Respondent served its First Set of Requests for Admissions (“RFA(s)”) on Petitioner on July 19, 2024. Phillips Decl., Ex. 1. Petitioner served its responses on August 19, 2024. *Id.*, Ex. 2. The discovery period ended the same day. 2 TTABVUE 3.

On September 24, 2024, Respondent’s counsel emailed Petitioner’s counsel informing them that Respondent determined several of Petitioner’s responses to Respondent’s RFAs deficient and requested a meeting to confer. Phillips Decl., ¶ 6, Ex. 3. The parties met on September 30, 2024, but could not resolve their difference regarding all Petitioner’s responses that Respondent found deficient. *Id.*, ¶ 8. Only hours after the meeting on September 30, Petitioner filed a Motion for Summary Judgment. *Id.*, ¶ 9. Petitioner’s counsel made no mention of their intent to file a Motion for Summary Judgment during the conference with Respondent’s counsel. *Id.* The Board suspended proceedings on October 8, 2024, leaving Respondent’s concerns regarding Petitioner’s responses to Respondent’s RFAs in limbo. 10 TTABVUE. Petitioner’s pretrial disclosure deadline before filing its motion was October 3, 2024. 2 TTABVUE 3.

After the Board denied Petitioner’s Motion for Summary Judgment, Petitioner filed a consent motion to extend its pretrial disclosures deadline, as well as the remaining deadlines by 60 days. 16 & 17 TTABVUE. The Board granted the motion, resetting Petitioner’s pretrial disclosure deadline to May 27, 2025. 18 TTABVUE.

## **LEGAL STANDARD**

Under Rule 36(a)(6) of the Federal Rules of Procedure, the requesting party may move to determine the sufficiency of an answer or objection to a Request for Admission. Fed. R. Civ. P. 36(a)(6); TBMP § 524. Unless the Board finds an objection justified, it must order that an answer be served. *Id.* In addition, a motion to test the sufficiency of an answer must be supported by a

written statement from the moving party that such party or its attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues presented in the motion and has been unable to reach an agreement. TBMP § 524.

### **ARGUMENT**

#### **A. Respondent attempted to resolve this issue with Petitioner in good faith.**

Respondent's and Petitioner's respective counsel met on September 30, 2024, at 11:00 AM PST to discuss Petitioner's responses to Respondent's Requests for Admissions. Phillips Decl., ¶¶ 7-8. In response to Respondent's RFA No. 5, Petitioner replied that they could not admit or deny the request. *Id.*, Ex. 2. During the meeting, Petitioner claimed they could not respond to Respondent's RFA No. 5 because it was not specific to Petitioner's knowledge of whether there were no instances of consumer confusion between the parties' respective marks. *Id.*, ¶ 8. Respondent disagreed that the request was insufficiently specific to not warrant a denial or admission in response. *Id.* The parties did not resolve their dispute concerning Respondent's RFA No. 5 during the conference. *Id.* Petitioner filed a Motion for Summary Judgment mere hours after the conference concluded. *Id.*, ¶ 9. The Board subsequently suspended proceedings pending the disposition of Petitioner's motion. *Id.*, ¶ 10.

Once proceedings resumed after the Board's denial of Petitioner's Motion and the remaining deadlines were reset and then extended by 60 days per Petitioner's request, Respondent approached Petitioner to resume the discussion of Petitioner's insufficient response to Respondent's RFA No. 5, left unresolved due to the filing of Petitioner's Motion for Summary Judgment. *See id.*, ¶¶ 10-14. Although Respondent's counsel believed Respondent's RFA No. 5 warranted an admission or denial, in an effort to resolve the dispute, Respondent offered to revise and serve Respondent's RFA No. 5 again if Petitioner agreed to extend the remaining deadlines in

the cancellation proceeding to provide Respondent time to review Petitioner's response to the revised admission request. *Id.*, ¶ 14, Ex. 6. Petitioner declined Respondent's proposal to resolve the dispute. *Id.*

**B. This motion is timely.**

Although the discovery period ended in August of 2024, Board guidance states that a motion to test the sufficiency of a response to a request for admission does not necessarily have to be filed during the discovery period. TBMP § 524.03. A motion to test the sufficiency of an answer or objection must be filed before the day of the deadline for pretrial disclosures for the first testimony period, as originally set or reset to be considered timely. 37 C.F.R. § 2.120(i); TBMP § 524.03.

Here, after the Board denied Petitioner's motion for summary judgment and removed the cancellation proceeding from suspension, Petitioner filed a consent motion to extend its pretrial disclosures deadline, as well as all other remaining deadlines by 60 days. Phillips Decl., ¶ 12; 17 TTABVUE. The Board granted Petitioner's motion to extend the deadlines, including resetting Petitioner's pretrial disclosures deadline to May 27, 2025. 18 TTABVUE. Respondent files this motion ahead of the deadline for Petitioner's pretrial disclosures as reset. Accordingly, the Respondent timely brings this motion.

**C. Petitioner's Response to Respondent's Request for Admission No. 5 is Deficient**

In response to Respondent's RFA No. 5, Petitioner neither admitted nor denied the request. When a party does not know whether the matter it is asked to admit is true, they may reply that they cannot truthfully admit or deny the request. However, parties making this response must provide in detail why this is the case. Fed. R. Civ. P. 36(a)(4); *see also* TBMP § 407.03(b); 8B CHARLES A. WRIGHT & ARTHUR R. MILLER, FED. PRAC. & PROC. CIV. § 2261 (3d ed.) ("Wright &

Miller”). Furthermore, an answering party may not give a lack of information or knowledge as a reason for failure to admit or deny without stating that it has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. Fed. R. Civ. P. 36(a)(4); Wright & Miller § 2261.

Petitioner’s Response to Respondent’s RFA No. 5 is deficient. Respondent’s RFA No. 5 and Petitioner’s complete response are set forth below:

**REQUEST FOR ADMISSION NO. 5:**

Admit there have been no instances of actual consumer confusion between Respondent’s Mark and Petitioner’s Alleged Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

Petitioner incorporates by reference its Preliminary Statement and its General Objections.

Petitioner specifically objects to Respondent referring to Petitioner’s ENACT Mark as an “Alleged Mark.” The term Alleged is used to convey that something is claimed to be the case or have taken place, although there is no proof. Petitioner’s ENACT Mark is not an Alleged Mark. Petitioner’s Mark has been in use since March 2019. Petitioner has common law rights to the ENACT Mark and has priority over Respondent’s Enact Mark.

Subject to and without waiving the foregoing objections: Cannot admit or deny at this time.

Phillips Decl., Ex. 2.

Petitioner’s response provided no reason for its inability to admit or deny Respondent’s RFA No. 5. Petitioner’s objections to Respondent’s RFA No. 5 address Respondent’s use of the defined term “Alleged Mark” only and have no bearing on why Petitioner states it cannot admit or deny the request “at this time.” *Id.* According to Wright and Miller, a response may be considered insufficient where the explanation for failure to admit or deny is not “in detail” as Rule 36(a)(4) requires. Wright & Miller § 2263; *see also (Princess Pat, Ltd. v. Nat. Carloading Corp., 223 F.2d*

916, 920 (7th Cir. 1955) (finding a response that party “did not possess sufficient information upon which to form a belief of the truth or falsity of such statements, hence neither admitted nor denied them,” was “straddling” and could be given the effect of an admission). Petitioner’s response provides no reason whatsoever for Petitioner’s belief that it cannot truthfully admit or deny Respondent’s RFA No. 5. Petitioner’s response cannot be “subject to” its stated objections because they are completely unconnected to the substance of Respondent’s RFA No. 5. Petitioner’s response contains none of the detail and specificity required by Rule 36(a)(4). *See Phillips Decl., Ex. 2.* Petitioner’s insufficient, “straddling” response thus constitutes no answer at all.

Rule 36(a) also provides that a party may not give a lack of information or knowledge as a reason for failing to admit or deny without stating that it has made a reasonable inquiry and that the information known or readily obtainable is insufficient to enable it to admit or deny. *Wright & Miller § 2261.* Courts have held that even tracking the language of Rule 36(a)(4) by including a simple statement that the party has made reasonable inquiry and that the information necessary to admit or deny the matter is not readily obtainable to them is insufficient to support a response claiming the inability to admit or deny the request. *See Han v. Food and Nutrition Service of U.S. Dept. of Agriculture*, 580 F. Supp. 1564, 1566 (D.N.J. 1984) (finding Plaintiff’s response to defendant’s requests for admissions that he had insufficient information to admit or deny was inadequate because it failed to allege and specify any reasonable inquiry undertaken to obtain information which would enable him to admit or deny admissions requested); *see also Asea, Inc. v. Southern Pacific Transp. Co.*, 669 F.2d 1242, 1246 (9th Cir. 1981) (holding that a response which fails to admit or deny a proper request for admission does not comply with the requirements of Rule 36(a) if the answering party has not made “reasonable inquiry,” or if information “readily obtainable” is sufficient to enable him to admit or deny the matter).

Here, the petitioner did not attempt to clear this low bar. In its written response to Respondent's RFA No. 5, Petitioner neither tracks the language of Rule 36(a) by simply claiming to lack the knowledge necessary to truthfully admit or deny Respondent's RFA No. 5 "at this time" nor communicates that Petitioner has undertaken any inquiry to attempt to gain the knowledge sufficient to properly respond to Respondent's RFA No. 5. Phillips Decl., Ex. 2. Respondent's RFA No. 5 contains the specificity to require Petitioner to either admit or deny the request. *Id.*, Ex. 1. Petitioner's response fails to meet *any* of the requirements of Rule 36(a)(4). Thus, Petitioner's response to Respondent's RFA No. 5 is insufficient and inadequate under the Federal Rules of Civil Procedure and the Board's guidance. Fed. R. Civ. P. 36(a)(4); TBMP § 407.03(b).

### **CONCLUSION**

In conclusion, for the foregoing reasons, Respondent respectfully requests that the Board (1) find Petitioner's Response to Respondent's RFA No. 5 insufficient and declare the matter admitted or, in the alternative, order Petitioner to serve an amended answer, and (2) suspend the proceedings pending the Board's decision on this motion to allow the parties to resolve outstanding discovery issues before the trial phase of this cancellation action.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 23, 2025

By: /Gregory B. Phillips/  
Gregory B. Phillips  
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*Attorneys for Respondent - VIZIO, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **RESPONDENT'S MOTION TO TEST THE SUFFICIENCY OF PETITIONER'S RESPONSES TO RESPONDENT'S REQUESTS FOR ADMISSIONS AND REQUEST TO SUSPEND PROCEEDINGS** has been served on the Petitioner's counsel of record on May 23, 2025 via electronic mail to:

Deborah Nessel  
LAW OFFICE OF DEBORAH NESSET  
[dnesset@outlook.com](mailto:dnesset@outlook.com)  
Adam Burke  
[adam@adamburkelegal.com](mailto:adam@adamburkelegal.com)

Signature: *Anokhi Destiche*

Name: Anokhi Destiche

Date: May 23, 2025

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

GD Plus LLC,

Petitioner,

v.

VIZIO, Inc.,

Respondent.

Cancellation No.: 92083907

Registration No.: 7,208,240

Mark: ENACT

**DECLARATION OF GREGORY B. PHILLIPS IN SUPPORT OF**  
**RESPONDENT'S MOTION TO TEST THE SUFFICIENCY OF PETITIONER'S**  
**RESPONSES TO RESPONDENT'S REQUESTS FOR ADMISSIONS AND REQUEST**  
**TO SUSPEND PROCEEDINGS**

1. I am an attorney licensed to practice in the State of California. I am a Partner with the law firm of Knobbe, Martens, Olson & Bear LLP, counsel for Respondent VIZIO, Inc. ("Respondent") in the above-identified Cancellation proceeding instituted by GD Plus LLC ("Petitioner"). I have personal knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify as set forth below.

2. I submit this declaration in support of Respondent's Motion to Test the Sufficiency of Petitioner's Responses to Respondent's Requests for Admissions and Request to Suspend Proceedings.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the Respondent's First Set of Requests for Admissions ("RFA") served on July 19, 2024.

4. Attached hereto as **Exhibit 2** is a true and correct copy of Petitioner's Responses to Respondent's First Set of Requests for Admissions served on August 19, 2024.

5. In response to Respondent's Request for Admission No. 5 – "Admit that there have been no instances of actual consumer confusion between Respondent's Mark and petitioners Alleged Mark" - Petitioner objected to Respondent's use of "Alleged Mark" (despite Petitioner's assertion of common law rather than statutory trademark rights in the Notice of Petition for Cancellation) and responded "[s]ubject to and without waiving the foregoing objections: Cannot admit or deny at this time." *See* Exhibit 2.

6. Attached hereto as **Exhibit 3** is a true and correct copy of an email dated September 24, 2024, from Respondent's counsel to Petitioner's counsel, informing them that Respondent finds several of Petitioner's responses to Respondent's Requests for Admissions deficient and requesting a meeting to confer.

7. Attached hereto as **Exhibit 4** is a true and correct copy of the email exchange on September 27, 2024, between Respondent's and Petitioner's respective counsel scheduling and agreeing to meet on September 30, 2024, to discuss Petitioner's responses to Respondent's Requests for Admissions.

8. The parties met at 11:00 AM PST on September 30, 2024, to discuss Petitioner's responses to Respondent's Requests for Admissions. Petitioner claimed that they could not respond to Admission Request No. 5 because it was not specific to Petitioner's knowledge regarding whether there were no known instances of consumer confusion between Respondent's mark and Petitioner's alleged mark. Respondent disagreed that the request was not specific enough to warrant a denial or admission in response. The dispute was not resolved during the conference.

9. A few hours later, on September 30, 2024, Petitioner filed a Motion for Summary Judgment and a request to suspend the cancellation proceeding. Petitioner's counsel did not

mention their intent to file a Motion for Summary Judgment during the conference with Respondent's counsel that morning. Attached hereto as **Exhibit 5** is a true and correct copy of an email dated September 30, 2024, from Petitioner's counsel to Respondent's counsel, with the first mention of Petitioner's Motion for Summary Judgment.

10. On October 8, 2024, the Board suspended proceedings pending disposition of Petitioner's motion.

11. On March 21, 2025, the Board denied Petitioner's motion and reset Petitioner's pretrial disclosures deadline, as well as the subsequent deadlines in connection with the cancellation proceeding.

12. On March 27, 2025, Petitioner filed a consent motion to extend Petitioner's pretrial disclosures deadline, as well as all subsequent deadlines in the cancellation proceeding by 60 days.

13. On April 3, 2025, the Board granted Petitioner's motion and extended Petitioner's pretrial disclosures deadline to May 27, 2025, as well as all subsequent deadlines by 60 days.

14. Attached hereto as **Exhibit 6** is a true and correct copy of the email exchange between the parties' counsel dated May 12 through May 19, 2025, in which Respondent emailed Petitioner to further discuss Respondent's concerns regarding Petitioner's response to Admission Request No. 5. Although Respondent's counsel believed Admission Request No. 5 warranted an admission or denial in response, in an effort to resolve the dispute, Respondent offered to revise and serve Admission Request No. 5 again if Petitioner agreed to extend the remaining deadlines in the cancellation proceeding to provide Respondent time to review Petitioner's response to the revised admission request. Petitioner declined that proposal to resolve the dispute.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 23, 2025

By: /Gregory B. Phillips/  
Gregory B. Phillips

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **DECLARATION OF GREGORY B. PHILLIPS IN SUPPORT OF RESPONDENT'S MOTION TO TEST THE SUFFICIENCY OF PETITIONER'S RESPONSES TO RESPONDENT'S REQUESTS FOR ADMISSIONS AND REQUEST TO SUSPEND PROCEEDINGS** has been served on the Petitioner's counsel of record on May 23, 2025 via electronic mail to:

Deborah Nessel  
LAW OFFICE OF DEBORAH NESSET  
[dnesset@outlook.com](mailto:dnesset@outlook.com)  
Adam Burke  
[adam@adamburkelegal.com](mailto:adam@adamburkelegal.com)

Signature: *Anokhi Destiche*

Name: Anokhi Destiche

Date: May 23, 2025

# EXHIBIT 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GD Plus LLC,

Petitioner,

v.

VIZIO, Inc.,

Respondent.

Cancellation No. 92083907

Registration No.: 7,208,240

Mark: ENACT

**RESPONDENT VIZIO, INC.’S FIRST SET OF  
REQUESTS FOR ADMISSIONS (NOS. 1-7)**

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and Rule 36 of the Federal Rules of Civil Procedure, Respondent VIZIO, Inc. (“Respondent”) hereby requests that Petitioner GD Plus LLC (“Petitioner”) within thirty (30) days, admit or deny, in writing and under oath, each of the following Requests for Admissions subject to the following definitions and instructions.

**DEFINITIONS**

As used herein, the following terms shall have the meanings set forth below:

1. The term “Respondent” shall refer to VIZIO, Inc.
2. The phrases “use in commerce,” “use in United States commerce,” “used in commerce” and “used in United States commerce,” and similar phrases, shall mean and refer to the definition provided under 15 U.S.C. § 1127.
3. The term “Respondent’s Mark” shall mean the mark ENACT as shown in U.S. Trademark Registration Number 7,208,240.
4. The term “Respondent’s Registration” shall mean and refer to U.S. Trademark

Registration Number 7,208,240.

5. The term “Notice of Cancellation” shall refer to the Notice of Cancellation filed in connection with Cancellation No. 92083907.

6. The term “Respondent’s Services” shall mean and refer to Respondent’s services in International Class 35 identified in Respondent’s Registration for Respondent’s Mark, namely, “Advertising services; Advertising services in the field of linear campaign optimization via connected televisions.”

7. The term “Petitioner’s Alleged Mark” shall refer to Petitioner’s trademark that is the subject of U.S. Application No. 97/475326.

8. The term “Petitioner’s Services” shall mean and refer to all of the services covered under Petitioner’s Alleged Mark or as alleged in Petitioner’s Notice of Cancellation No. 92083907.

9. The term “Petitioner” shall refer to GD Plus LLC.

10. The term “You” or “Your” shall mean Petitioner.

### **GENERAL INSTRUCTIONS**

The following instructions shall apply to each of the Requests herein:

1. If You claim that a Request is overly broad, unduly burdensome, irrelevant, or otherwise objectionable, then admit or deny any portion of the Request that is not objectionable and identify specifically the respect in which the Request is allegedly objectionable.

2. If You contend that all or part of a Request cannot be admitted or denied based on a claim of privilege, then admit or deny the Request to the extent possible without revealing any privileged information, and for each document that includes the claimed privileged information, identify such document with sufficient particularity for purposes of a motion to compel,

including at least the following:

- a. the basis on which the privilege is claimed;
- b. the author or creator of the information, document, or thing;
- c. each individual or other person to whom the information, document, copy thereof or thing was sent or otherwise disclosed; and
- d. the date of the information or document.

3. If Your response to a Request is anything other than an unqualified admission, then identify each portion of the Request that You admit is correct, and state all facts on which You base Your refusal to provide an unqualified admission.

4. Your obligation to respond to these Requests is continuing. Promptly supplement the written responses to include subsequently acquired information, in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

### **REQUESTS FOR ADMISSIONS**

#### **REQUEST FOR ADMISSION NO. 1:**

Admit that Petitioner does not use Petitioner's Alleged Mark to provide advertising services in the field of linear campaign optimization via connected televisions.

#### **REQUEST FOR ADMISSION NO. 2:**

Admit that Petitioner's Alleged Mark is not used with linear addressable TV advertising.

#### **REQUEST FOR ADMISSION NO. 3:**

Admit that Petitioner does not use Petitioner's Alleged Mark to deliver advertising inside cable and broadcast TV programming.

#### **REQUEST FOR ADMISSION NO. 4:**

Admit that Petitioner's Alleged Mark for ENACT means "Entertainment Audience Choice Tracker."

**REQUEST FOR ADMISSION NO. 5:**

Admit that there have been no instances of actual consumer confusion between Respondent's Mark and Petitioner's Alleged Mark.

**REQUEST FOR ADMISSION NO. 6:**

Admit that Petitioner changed its name from Guts + Data to Enact Insight in 2022.

**REQUEST FOR ADMISSION NO. 7:**

Admit that Petitioner registered the domain name <enactinsight.com> in 2022.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 19, 2024

By: /Julie Vo/

Gregory B. Phillips  
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Attorneys for Respondent,  
VIZIO, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **RESPONDENT**  
**VIZIO, INC.'S FIRST SET OF REQUESTS FOR ADMISSIONS (NOS. 1-7)** has been  
served on Petitioner's counsel of record on July 19, 2024 via electronic mail to:

Deborah Nessel  
LAW OFFICE OF DEBORAH NESSET  
[dnesset@outlook.com](mailto:dnesset@outlook.com)  
Adam Burke  
[adam@adamburkelegal.com](mailto:adam@adamburkelegal.com)

Signature: *Julie Vo*

Name: Julie Vo

Date: July 19, 2024

## EXHIBIT 2

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

GD Plus, LLC,

PETITIONER,

v.

VIZIO, Inc.,

RESPONDENT.

PETITION FOR CANCELLATION No. 92083907

Registration No. 7208240

Mark: ENACT

**PETITIONER GD PLUS, LLC.'S OBJECTIONS AND RESPONSES TO RESPONDENT'S  
FIRST SET OF REQUESTS FOR ADMISSIONS (NOS. 1-7)**

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and the applicable Federal Rules of Civil Procedure, in connection with Cancellation No. 92083907 ("Cancellation Proceeding"), Petitioner. GD PLUS, LLC hereby responds to Respondent VIZIO, INC.'s First Set of Requests for Admissions (Nos. 1-7) ("Requests") as follows:

**PRELIMINARY STATEMENT**

1. The following responses are based upon information presently available to and located by Petitioner and its counsel and reflect the current state of Petitioner 's knowledge, understanding and belief respecting the matters about which inquiry was made. Petitioner has not completed its investigation of the facts relating to this Cancellation Proceeding or preparation for trial and anticipates that as this Cancellation Proceeding proceeds, further facts may be discovered. Without obligating itself to do so, Petitioner reserves the right to modify or supplement these responses with any such pertinent information.

2. Petitioner's responses are made without in any way waiving or intending to waive any of the rights set forth below. Petitioner preserves and intends to preserve:

- a. The right to raise all questions of authenticity, relevancy, materiality, privilege and admissibility as evidence for any purpose of the information provided and the documents identified and/or produced in response to these Requests, which may arise in any subsequent proceeding in, or trial of, this or any other action;
- b. The right to object to the use of the information and/or documents in any subsequent proceeding in, or the trial of, this or any other action on any grounds;
- c. The right to object on any ground at any time to these Requests, other requests, or other discovery involving the information and/or documents or the subject matter thereof; and
- d. The right to make subsequent responses if Petitioner uncovers additional information and/or documents called for by these Requests as discovery is still ongoing and Petitioner's investigation of the facts and the evidence pertinent to this action has not been completed.

3. Words and terms used in the following responses shall be construed in accordance with their normal meanings and connotations, and shall in no way be interpreted as terms of art or statutorily defined terms used in trademark law, and Petitioner specifically disavows any such meaning or connotation that might be accorded such terms.

4. Without waiving objections set forth below, and subject to the limitations stated above, Petitioner has provided the information it believes is responsive and the subject of legitimate discovery which has been uncovered by reasonable investigation.

5. Specific objections to various requests are made in the responses set forth below. In addition to those specific objections, Petitioner generally objects to the Requests as follows:

## GENERAL OBJECTIONS

The following General Objections are incorporated by reference to each response set forth below and are not waived with respect to any response.

1. Petitioner generally objects to Respondent's Requests to the extent that they seek disclosure of any information protected, privileged or immune, or otherwise exempt from discovery pursuant to applicable state and federal statutes, the Federal Rules of Civil Procedure, case law, regulations, administrative orders or any other applicable rules, decisions or laws including, but not limited to, information protected by the attorney-client privilege, the work product doctrine and/or other applicable privilege. The specific objections stated below on the grounds of attorney-client privilege and/or work product in no way limit the generality of this objection. Nothing contained in these responses is intended to be nor should be considered a waiver of any attorney-client privilege, work product protection, the right of privacy or any other applicable privilege or doctrine, and to the extent that any request may be construed as calling for disclosure of information protected by such privileges or doctrines, a continuing objection to each and every such request is hereby imposed. Any such protected information will not be provided.

2. Petitioner generally objects to Respondent's Requests, including the instructions and definitions, to the extent they purport to impose upon Petitioner obligations greater than those imposed by the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(d), or other applicable rules or laws.

3. Petitioner generally objects to the Respondent's Requests to the extent they ask Petitioner to admit or deny facts that are protected from disclosure by agreements Petitioner has with another entity, if any, or obligations Petitioner has to another entity, if any.

4. Petitioner generally objects to Respondent's definitions and instructions in the Requests to the extent they make the individual requests vague, ambiguous or unintelligible, in that Respondent attributes new meanings to ordinary words or defines the same word to have multiple meanings.
5. Petitioner generally objects to Respondent's Requests to the extent that they are overbroad, unduly burdensome or fail to describe the facts sought to be admitted or denied with a reasonable degree of specificity.
6. Petitioner generally objects to Respondent's Requests to the extent that they ask Petitioner to admit or deny facts that are not relevant to the parties' claims or defenses in this Cancellation Proceeding, or are not proportional to the needs of this Cancellation Proceeding. Petitioner further objects to providing information pertaining to activities occurring outside of the United States.
7. Petitioner generally objects to Respondent's Requests to the extent that they ask Petitioner to admit or deny facts based on information that is not in Petitioner's possession, custody or control.
8. Petitioner generally and specifically objects to Respondent referring to Petitioner's ENACT Mark as an "Alleged Mark." Petitioner's ENACT Mark is not an Alleged Mark. The term Alleged is used to convey that something is claimed to be the case or have taken place, although there is no proof. Petitioner's Mark has been in use since March 2019. Petitioner has common law rights to the ENACT Mark and has priority over Respondent's Enact Mark.
9. Petitioner generally objects to Respondent's definition of "'PETITIONER', 'YOU' and 'YOUR' to the extent this definition includes entities that are not parties to this proceeding and/or that Petitioner does not control including but not limited to affiliates and former "owner, officer, officer, director, employee, servant, agent, attorney, or other representative acting on its behalf, related entity, parent corporation, wholly-owned or partially owned subsidiary, predecessor, successor, or affiliate."

## **DEFINITIONS**

As used in Petitioner's responses to Respondent's Requests:

1. The term "Petitioner" shall mean and refer to GD PLUS, LLC.
2. The term "Petitioner's Mark" shall mean and refer to the trademark ENACT, USPTO Application Serial No. 97475326.
3. The term "Petitioner's Services" shall mean and refer to services in International Class 35 identified in Petitioner's trademark application, namely, "Market research services utilizing data analytics, namely, conducting advertising testing, campaign tracking, audience segmentation and targeting, and other custom brand and landscape research on a global scale, primarily concentrated within the entertainment industry."
4. The term "Respondent" shall mean and refer to Vizio, Inc.
5. The term "Respondent's Mark" shall mean and refer to the trademark ENACT, U.S. Reg. No. 7208240.
6. The term "Respondent's Services" shall mean and refer to services in International Class 35 identified in Respondent's trademark application, namely, "Advertising services; Advertising services in the field of linear campaign optimization via connected televisions."

## **RESPONSES TO REQUESTS FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 1:** Admit that Petitioner does not use Petitioner's Alleged Mark to provide advertising services in the field of linear campaign optimization via connected televisions.

### **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Petitioner incorporates by reference its Preliminary Statement and its General Objections.

Petitioner specifically objects to Respondent referring to Petitioner's ENACT Mark as an "Alleged Mark." The term Alleged is used to convey that something is claimed to be the case or have taken place, although there is no proof. Petitioner's ENACT Mark is not an Alleged Mark. Petitioner's Mark has been in use since March 2019. Petitioner has common law rights to the ENACT Mark and has priority over Respondent's Enact Mark.

Subject to and without waiving the foregoing objections: Denied.

**REQUEST FOR ADMISSION NO. 2:** Admit that Petitioner's Alleged Mark is not used with linear addressable TV advertising.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Petitioner incorporates by reference its Preliminary Statement and its General Objections.

Petitioner specifically objects to Respondent referring to Petitioner's ENACT Mark as an "Alleged Mark." The term Alleged is used to convey that something is claimed to be the case or have taken place, although there is no proof. Petitioner's ENACT Mark is not an Alleged Mark. Petitioner's Mark has been in use since March 2019. Petitioner has common law rights to the ENACT Mark and has priority over Respondent's Enact Mark.

Subject to and without waiving the foregoing objections: Denied

**REQUEST FOR ADMISSION NO. 3:** Admit that Petitioner does not use Petitioner's Alleged Mark to deliver advertising inside cable and broadcast TV programming.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

Petitioner incorporates by reference its Preliminary Statement and its General Objections.

Petitioner specifically objects to Respondent referring to Petitioner's ENACT Mark as an "Alleged Mark." The term Alleged is used to convey that something is claimed to be the case or have taken place, although there is no proof. Petitioner's ENACT Mark is not an Alleged Mark. Petitioner's Mark has been in use since March 2019. Petitioner has common law rights to the ENACT Mark and has priority over Respondent's Enact Mark.

Subject to and without waiving the foregoing objections: Admit.

**REQUEST FOR ADMISSION NO. 4:** Admit that Petitioner's Alleged Mark for ENACT means "Entertainment Audience Choice Tracker."

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

Petitioner incorporates by reference its Preliminary Statement and its General Objections.

Petitioner specifically objects to Respondent referring to Petitioner's ENACT Mark as an "Alleged Mark." The term Alleged is used to convey that something is claimed to be the case or have taken place, although there is no proof. Petitioner's ENACT Mark is not an Alleged Mark. Petitioner's Mark has been in use since March 2019. Petitioner has common law rights to the ENACT Mark and has priority over Respondent's Enact Mark.

Subject to and without waiving the foregoing objections: Denied

**REQUEST FOR ADMISSION NO. 5:** Admit that there have been no instances of actual consumer confusion between Respondent's Mark and Petitioner's Alleged Mark.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

Petitioner incorporates by reference its Preliminary Statement and its General Objections.

Petitioner specifically objects to Respondent referring to Petitioner's ENACT Mark as an "Alleged Mark." The term Alleged is used to convey that something is claimed to be the case or have taken place, although there is no proof. Petitioner's ENACT Mark is not an Alleged Mark. Petitioner's Mark has been in use since March 2019. Petitioner has common law rights to the ENACT Mark and has priority over Respondent's Enact Mark.

Subject to and without waiving the foregoing objections: Cannot admit or deny at this time in the proceeding.

**REQUEST FOR ADMISSION NO. 6:** Admit that Petitioner changed its name from Guts + Data to Enact Insight in 2022.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

Petitioner incorporates by reference its Preliminary Statement and its General Objections.

Subject to and without waiving the foregoing objections: Denied.

**REQUEST FOR ADMISSION NO. 7:** Admit that Petitioner registered the domain name <enactinsight.com> in 2022.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Petitioner incorporates by reference its Preliminary Statement and its General Objections.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:  
Admit.

DATED: August 19, 2024

DocuSigned by:  
*Greg Durkin*  
46C4B03E43254C4...  
By: Greg Durkin

**CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2024, a true and correct copy of the foregoing **PETITIONER GD PLUS, LLC 'S RESPONSES TO RESPONDENT'S FIRST SET OF REQUESTS FOR ADMISSIONS (NOS. 1-7)** was served on Counsel for Respondent, via email, addressed as follows:

Gregory B. Phillips  
KNOBBE, MARTEN, OLSON & BEAR, LLC  
[Gregory.Phillips@knobbe.com](mailto:Gregory.Phillips@knobbe.com)

Julie T. Vo  
KNOBBE, MARTEN, OLSON & BEAR, LLC  
[Julie.Vo@knobbe.com](mailto:Julie.Vo@knobbe.com)

Signature: /Deborah Nessel/  
Name: Deborah Nessel  
Date: August 19, 2024

## EXHIBIT 3

**From:** [Julie Vo](#)  
**To:** [Debbie Nessel](#)  
**Cc:** [Thomas Chmura](#); [Gregory Phillips](#); [Adam Burke \(adam@adamburkelegal.com\)](#)  
**Subject:** GD Plus Inc. v. VIZIO, Inc. Cancellation No. 92083907  
**Date:** Tuesday, September 24, 2024 11:46:07 AM

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Debbie,

We find Petitioner's responses to Respondent's First Set of Request for Admissions deficient. In several instances Petitioner denies a request for admission but does not provide appropriate reasons for the denial. Additionally, responding that Petitioner cannot answer a request for admission is improper.

We would like to set up a time this week to meet and discuss these deficiencies. We are available on Friday, 9/27 between 10:30a – 11a and 12p – 4p PT. Please let us know if any of these times work for you.

Best,  
Julie

**Julie Vo**  
Associate  
949-721-6324 Direct  
**Knobbe Martens**  
[www.knobbe.com/julie-vo](http://www.knobbe.com/julie-vo)

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# EXHIBIT 4

**From:** [Julie Vo](#)  
**To:** [Debbie Nessel](#)  
**Cc:** [Adam Burke](#); [Gregory Phillips](#); [Thomas Chmura](#)  
**Subject:** RE: Meeting re admissions  
**Date:** Friday, September 27, 2024 2:44:07 PM

---

Hi Debbie – Thanks. I'll send an invite for 11am PST.

Best,  
Julie

**Julie Vo**  
Associate  
949-721-6324 Direct  
**Knobbe Martens**  
[www.knobbe.com/julie-vo](http://www.knobbe.com/julie-vo)

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**From:** Debbie Nessel <[dnesset@outlook.com](mailto:dnesset@outlook.com)>  
**Sent:** Friday, September 27, 2024 1:49 PM  
**To:** Julie Vo <[Julie.Vo@knobbe.com](mailto:Julie.Vo@knobbe.com)>  
**Cc:** Adam Burke <[adam@adamburkelegal.com](mailto:adam@adamburkelegal.com)>; Gregory Phillips <[Gregory.Phillips@knobbe.com](mailto:Gregory.Phillips@knobbe.com)>; Thomas Chmura <[Thomas.Chmura@knobbe.com](mailto:Thomas.Chmura@knobbe.com)>  
**Subject:** Re: Meeting re admissions

Anytime before 4pm PST works.  
Sent from my iPhone

On Sep 27, 2024, at 1:11 PM, Julie Vo <[Julie.Vo@knobbe.com](mailto:Julie.Vo@knobbe.com)> wrote:

Hi Debbie,

I received the email you sent late last night and unfortunately, we are tied up at 3pm PT today. We have briefly addressed our concerns regarding your responses but would like to discuss further on a call. Can you let us know your availability on Monday?

Best,  
Julie

Julie Vo

Associate  
949-721-6324 Direct  
Knobbe Martens  
[www.knobbe.com/julie-vo](http://www.knobbe.com/julie-vo)

-----Original Message-----

From: Debbie Nessel <[dnesset@outlook.com](mailto:dnesset@outlook.com)>  
Sent: Friday, September 27, 2024 1:07 PM  
To: Julie Vo <[Julie.Vo@knobbe.com](mailto:Julie.Vo@knobbe.com)>  
Cc: Adam Burke <[adam@adamburkelegal.com](mailto:adam@adamburkelegal.com)>  
Subject: Meeting re admissions

Hi Julie

Have not heard back from you about today. Since both Adam and I are traveling can you put in writing what your specific concerns are. Adam and I can confer on the weekend. Then we discuss on Monday?

Thank you

Debbie

Sent from my iPhone

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# EXHIBIT 5

**From:** [Debbie Nessel](#)  
**To:** [Julie Vo](#)  
**Cc:** [Adam Burke](#)  
**Subject:** Enact - GD Plus v. Vizio  
**Date:** Monday, September 30, 2024 2:08:12 PM

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Hi Julie

We will be filing a motion for summary judgment. Could you provide me with a share file for you to receive the documents.

Thank you,  
Debbie Nessel

# EXHIBIT 6

**From:** [Adam Burke](#)  
**To:** [Gregory Phillips](#)  
**Cc:** [Debbie Nessel](#); [Julie Vo](#); [Holly Gordon](#); [Thomas Chmura](#)  
**Subject:** Re: GD Plus v. Vizio - Testimony period  
**Date:** Monday, May 19, 2025 12:32:52 PM

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Greg,

Discovery on this matter closed over a year ago, and motions to compel discovery closed over 7 months ago. We have given you the courtesy of explaining why we didn't respond to that RFA, and now need to focus attention on preparing for trial.

We are more than happy to discuss accommodating schedules, so please let us know your desired trial and pre-trial schedules and we'll aim to work out agreeable dates.

Adam

Adam Burke Legal  
[www.adamburkelegal.com](http://www.adamburkelegal.com)  
O: +1 323.645.7677  
M: +1 323.810.1410

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On May 14, 2025, at 3:16 PM, Gregory Phillips <[Gregory.Phillips@knobbe.com](mailto:Gregory.Phillips@knobbe.com)> wrote:

Adam,

Thank you for your response. Although we believe the admission request is rather straight forward, in an effort to avoid filing a motion with the Board, we will agree to revise the request as you suggest if you agree to consent to extend the current testimony/trial deadlines by 30 days and respond to the revised request within 14 days, or consent to extend the testimony/trial deadlines by 60 days if you want the full 30 days to respond to the request.

We look forward to receiving your response.

Regards,  
Greg

**Gregory B. Phillips**  
Partner  
[Gregory.Phillips@knobbe.com](mailto:Gregory.Phillips@knobbe.com)  
949-721-2894 Direct  
**Knobbe Martens**

2040 Main St., 14th Fl.  
Irvine, CA 92614  
[www.knobbe.com/gregory-phillips](http://www.knobbe.com/gregory-phillips)

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**From:** Adam Burke <adam@adamburkelegal.com>  
**Sent:** Wednesday, May 14, 2025 10:37 AM  
**To:** Gregory Phillips <Gregory.Phillips@knobbe.com>  
**Cc:** Debbie Nessel <dnesset@outlook.com>; Julie Vo <Julie.Vo@knobbe.com>; Holly Gordon <Holly.Gordon@knobbe.com>; Thomas Chmura <Thomas.Chmura@knobbe.com>  
**Subject:** Re: GD Plus v. Vizio - Testimony period

Greg,

Our core objection to that request for admission is that it requires us to speculate as to the thoughts of others. It says “admit there have been no instances” but does not say “admit you have no knowledge of instances”, for example. How are we supposed to know if someone was confused and didn't tell us? If we say that noone was confused but in fact they were, that would be a misrepresentation. As such, we can only respond within our knowledge, but as drafted and due to the fact that RFA's are binary, we cannot honestly respond to what we don't know.

Federal Rule of Evidence 602 states in part: *A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.*

We're happy to meet and confer further, but cannot respond within the rules of evidence per your demand, and are yet to see any authority that we can be compelled to speculate.

Regards,

Adam

Adam Burke Legal  
[www.adamburkelegal.com](http://www.adamburkelegal.com)  
O: +1 323.645.7677  
M: +1 323.810.1410

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hacked and accept that risk.

On May 12, 2025, at 6:29 PM, Gregory Phillips  
<[Gregory.Phillips@knobbe.com](mailto:Gregory.Phillips@knobbe.com)> wrote:

Dear Deborah,

Thank you for your email. We will review our schedules for mid-June and determine what times are available. Are you planning on taking Mr. Durkin's testimony in person or via Zoom or other online video platform? If in person, where will it take place?

Further to our meet and confer conference held on September 30, 2024 before you filed your Motion for Summary Judgement, it was our understanding that you were going to supplement your client's response to our Request for Admission No. 5, which you initially responded that you "cannot admit or deny at this time in the proceeding." As discussed, that was not a proper response to a request for admission. We have not received a supplemental response. Please provide a supplemental response admitting or denying the request by the end of the day this Friday, May 16. If we do not receive a supplemental response by then, we will proceed with filing a Motion with the Board to test the sufficiency of that response.

We look forward to receiving your response.

Regards,  
Greg

**Gregory B. Phillips**  
Partner  
[Gregory.Phillips@knobbe.com](mailto:Gregory.Phillips@knobbe.com)  
949-721-2894 Direct  
**Knobbe Martens**  
2040 Main St., 14th Fl.  
Irvine, CA 92614  
[www.knobbe.com/gregory-phillips](http://www.knobbe.com/gregory-phillips)

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**From:** Debbie Nessel <[dnesset@outlook.com](mailto:dnesset@outlook.com)>  
**Sent:** Monday, May 12, 2025 12:18 PM  
**To:** Gregory Phillips <[Gregory.Phillips@knobbe.com](mailto:Gregory.Phillips@knobbe.com)>; Julie Vo <[Julie.Vo@knobbe.com](mailto:Julie.Vo@knobbe.com)>  
**Cc:** Adam Burke <[adam@adamburkelegal.com](mailto:adam@adamburkelegal.com)>

**Subject:** GD Plus v. Vizio - Testimony period

Dear Mr. Phillips,

GD Plus' testimony period will be starting at the end this month. We have one witness that we would like to give testimony, Greg Durkin. Our team is available for taking his testimony from June 9<sup>th</sup> on. We wanted to contact you early to find a mutual date for the testimony and if you have a preference in how to proceed (ie, we submit a declaration and you take oral testimony afterward, oral testimony for both parties, etc.).

Please provide us with some dates and times that will work for you.

Thank you,  
Deborah Nessel  
(208) 284-0756 (cel)

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