



Mozilla Corporation

331 East Evelyn Avenue
Mountain View, CA 94041

August 6, 2020

Scott Lonardo
Pranger Law PC
88 Guy Place, Suite 405
San Francisco, CA, 94105

By Email: [REDACTED]

Re: Mozilla’s use of the descriptive term “lean data”

Dear Mr. Lonardo,

I write on behalf of Mozilla Corporation in response to your letter of July 24, 2020. Mozilla has a longstanding commitment to digital privacy. A key feature of our privacy work is a commitment to reducing the amount of user data that is collected in the first place. Like many privacy advocates, we use the term “lean data” to describe this philosophy. We were very surprised to receive your letter, which claims that our use of this descriptive term somehow infringes LeanData, Inc.’s trademark rights. Your claim is without merit. The USPTO has repeatedly rejected your client’s attempts to register a “LeanData” wordmark. Worse, the design mark you asserted in your letter was cancelled the same day your letter was sent.

Mozilla Corporation, owned by our non-profit parent the Mozilla Foundation, makes the Firefox browser as well as numerous other products, such as Mozilla VPN and Hubs VR meeting rooms. Our products have millions of users. Privacy is fundamental to Mozilla, both with respect to our own software and our public advocacy. We have held events around the world promoting lean data practices and, as you noticed, have a page devoted to our work in this area.¹ Overreaching intellectual property claims shouldn’t interfere with advocacy in the public interest.

¹ See *Lean Data Practices*, Mozilla, <https://www.mozilla.org/en-US/about/policy/lean-data/>; *Business and government leaders urged to adopt lead [sic] data practices*, Africa Tech, May 9, 2019, <https://africabusinesscommunities.com/tech/tech-news/kenya-business-and-government-leaders-urged-to-adopt-lead-data-practices/>; Amba Kak, *Privacy in practice: Mozilla talks “lean data” in India*, December 21, 2018, <https://blog.mozilla.org/netpolicy/2018/12/21/privacy-in-practice-mozilla-talks-lean-data-in-india>.

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Crucially, this is an issue that impacts not only Mozilla but many other scholars, engineers, and commentators that wish to promote a lean data philosophy.²

A review of your client's USPTO filings reveals a years-long, yet unsuccessful effort to claim trademark rights over the term "lean data." In its repeated rejections of your client's applications, the USPTO has cited many sources showing that "lean data" is widely used as a descriptive term. Indeed, the USPTO recently cited the Mozilla page you accuse of infringement as an example of descriptive use. You neglected to mention this in your letter.

A thorough investigation of your client's trademark filings reveals that your client's demand to Mozilla is not just unfounded, but highly inappropriate. I describe the history of the relevant applications below.

Application No. 88109633

In this application, filed on September 8, 2018, your client applied for a standard character mark in "LEANDATA, INC." On December 19, 2018, the examiner issued a non-final office action refusing to register the mark on the grounds that it is merely descriptive. The examiner explained that the "wording 'lean data' refers to

² See Daniel Newman, *Bigger Isn't Always Better: It's All About Lean Data*, Forbes, December 4, 2019, <https://www.forbes.com/sites/danielnewman/2019/12/04/bigger-isnt-always-better-its-all-about-lean-data/#1144411d8940>; Jessie Coates, Dan Gray, *Is lean data, not big data, the answer to the last-mile distribution challenge?*, EY, March 29, 2018, https://www.ey.com/en_gl/purpose/is-lean-data--not-big-data--the-answer-to-the-last-mile-distribu; *Lean Data: How to Use Data to Drive Social Progress*, SXSW, March 13, 2018, <https://schedule.sxsw.com/2018/events/PP99721>; *Lean Data*, European Investment Bank, March 2018, <https://institute.eib.org/wp-content/uploads/2018/03/LeanData.pdf>; *Four core principles for mastering lean data management*, Bloomberg, September 19, 2017, <https://www.bloomberg.com/professional/blog/four-core-principles-mastering-lean-data-management/>; Larry Alton, *Why Lean Data Management Is Vital for Agile Companies*, December 19, 2016, <https://www.smartdatacollective.com/lean-data-management-vital-agile-companies/>; Sasha Dichter, Tom Adams, & Alnoor Ebrahim, *The Power of Lean Data*, Stanford Social Innovation Review, Winter 2016, https://ssir.org/articles/entry/the_power_of_lean_data; Matti Keltanen, *Why 'lean data' beats big data*, Guardian, April 16, 2013, <https://www.theguardian.com/media-network/media-network-blog/2013/apr/16/big-data-lean-strategy-business>; Scott Wambler, *Agile/Lean Data Governance: Proven Strategies*, <http://agiledata.org/essays/dataGovernance.html>.

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maximizing efficiency and simplify the collection, analysis and use of digital information.” The office action cited dictionary entries, newspaper articles, and webpages from other consulting firms in support of this conclusion.

Your client did not respond to the USPTO’s office action within the six-month deadline. Accordingly, this application was abandoned on Jun. 20, 2019.

Application No. 88109632

In this application, filed on Sep. 08, 2018, your client applied to register a service mark for what appears to be its current logo. This logo includes the words “lean data” in a stylized font, with black and green colors and a stylized “D.”



In a December 19, 2018 office action, the examiner wrote that the “wording ‘LEAN DATA’ must be disclaimed as it is merely descriptive of an ingredient, quality, characteristic, function, feature, purpose, or use of applicant’s goods and/or services.” The examiner’s letter cited the same material as the December 19, 2018 office action in Application No. 88109633 in support of this conclusion.

Your client did not respond to the USPTO’s office action within the six-month deadline. Accordingly, this application was abandoned on Jun. 20, 2019.

As of August 6, 2020, your client’s website displays an ® symbol beside the “LeanData” logo that was the subject of this abandoned application. Your client has no registered mark for this logo and, as will be explained further below, has no registered “LeanData” marks at all. I am sure you are aware that the ® symbol may only be used for federally registered marks. See 15 U.S.C. §1111; TMEP 906.02.

Application No. 88109635

In this application, also filed on September 8, 2018, your client applied for a standard character mark in “LEANDATA.” As with the applications above, the

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examiner issued an office action on December 19, 2018 refusing to register the mark because it is merely descriptive of your client's services.

On June 18, 2019, your client's then-counsel submitted a response to the office action arguing that "LeanData" is suggestive rather than descriptive. On February 14, 2020, the examiner issued a final office action again refusing to register the mark on the grounds that it is descriptive.

On May 7, 2020, LeanData, Inc., now represented by your law firm, filed a Request for Reconsideration arguing that "LeanData" is suggestive or, in the alternative, has acquired secondary meaning. On June 2, 2020, the USPTO rejected your client's arguments. The examiner cited a variety of sources using "lean data" descriptively, including Mozilla's "Lean Data Practices" webpage.

As of August 6, 2020, your client does not have a registered wordmark on "LeanData." Further, the USPTO's multiple rulings are supported by diverse sources and would be upheld if appealed. In the unlikely event that your client prevailed in an appeal of the USPTO's repeated denials, Mozilla intends to file opposition proceedings. The term "lean data" is used by Mozilla and others to describe a fundamental aspect of digital privacy. Your client's improper attempts to claim a right over this descriptive term will not succeed.

Application No. 85911519 / Registration No. 4447403 (Cancelled)

Finally, we turn to the purported mark that you have asserted against Mozilla. This application was filed in 2013 and registered on December 10, 2013. The mark consisted of the words "LeanData" in stylized font, with "Lean" in green and "Data" in aqua, together with stylized letters "L" and "D" and a check mark.



A declaration of use under Section 8 for this mark was due by June 10, 2020. No declaration of use was ever filed, however. As a result, the USPTO cancelled the registration on July 24, 2020, which is also the date of the letter you sent to Mozilla asserting the mark.



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Your law firm was counsel of record when the Section 8 deadline passed. Based on this fact, which is readily established from the public record, we must assume that you were aware that this mark would soon be cancelled when you attached its registration certificate to the letter you sent us.

In light of the above, we trust that you will have the good sense not to trouble a court of law with this matter.

Best regards,
/s/
Daniel Nazer
Senior IP & Product Counsel

[Redacted signature]

Cc:

[Redacted recipient list]