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

Proceeding	91172661
Party	Defendant Wagnon, Jay Wagnon, Jay Suite 608 54 West 21st Street New York, NY 10010 rstark@stark-stark.com
Correspondence Address	CRAIG S. HILLIARD STARK & STARK, P.C. 993 LENOX DR BLDG 2 LAWRENCEVILLE, NJ 08648-2316 UNITED STATES chilliard@stark-stark.com
Submission	Other Motions/Papers
Filer's Name	Craig S. Hilliard
Filer's e-mail	chilliard@stark-stark.com
Signature	/craig s hilliard/
Date	04/24/2007
Attachments	Dec of MPS 042407.pdf (30 pages)(183934 bytes)

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

Jackie Wadell,

Opposer,

v.

Jay Wagnon,

Applicant.

Opposition Nos. 91172661; 91172662

Serial Nos.: 78/763,613; 78/738,098

**DECLARATION OF
MARTIN P. SCHRAMA, ESQ.**

MARTIN P. SCHRAMA, ESQ., deposes and says:

1. I am an attorney at law of the State of New Jersey and a member of the bar of the U.S. District Court for the District of New Jersey. I am an associate of the law firm Stark & Stark, P.C., counsel to Defendant/Applicant, Jay Wagnon ("Wagnon") and, as such, I have knowledge of the facts set forth herein.
2. I make this Declaration in support of Wagnon's Cross-motion under *Fed. R. Civ. P.* 56(f) and 37 *CFR* § 2.127, in response to the Summary Judgment Motion of Plaintiff/Opposer, Jackie Wadell ("Wadell").
3. Wagnon began formulating its mark in June of 2005. See Schwimmer Declaration at Exhibit 3, pp 4 and 5.
4. In September of 2005, Wagnon's counsel performed a search of Wagnon's mark, which, upon information and belief, did not identify Wadell as the potential possessor of a similar mark.
5. Wagnon began processing orders for fitness and exercise facilities in connection with its mark in September of 2005. See Schwimmer Declaration at Exhibit 3, p. 5.
6. Wagnon filed its application to register its mark in November of 2005, before Wadell filed its own application. See Schwimmer Declaration at Exhibit 1, pp. 1-8.
7. Wadell opposed Wagnon's application and served interrogatories, demands for admissions and requests for production on Wagnon on or around November 9, 2006.
8. On December 22, 2006, Wagnon served responses to Wadell's interrogatories, demands for admissions and requests for production. On January 3, 2007, Wagnon forwarded its

responsive documents to Wadell. See Schwimmer Declaration at Exhibits 3 and 4; see Exhibit "A."

9. On February 16, 2007, Wagnon served its interrogatories and requests for production on Wadell. See Exhibits "B" and "C."
10. On March 7, 2007, Wadell requested Wagnon's consent to a three-week extension of time to respond to Wagnon's interrogatories and requests for production. Wagnon consented. See Exhibit "D." Because Wadell sought more time to respond to Wagnon's discovery requests, and because Wagnon wished to pursue additional discovery, Wagnon timely filed a motion to extend discovery on March 19, 2007.
11. Wadell did not advise Wagnon that she intended to file a Motion for Summary Judgment, instead of responding to the discovery requests, during the consented to extension of time for her service of discovery responses.
12. On March 20, 2007, Wadell filed its Motion for Summary Judgment, based upon which the Interlocutory Attorney stayed the proceedings – including discovery. See Exhibit "E." Wagnon's motion to extend the discovery period has therefore not been addressed on its merits.
13. To date, Wadell has not provided any responses to Wagnon's requests for production of documents or interrogatories, and no depositions have been conducted in this matter.
14. Accordingly, and for the reasons more fully set forth in Wagnon's Memorandum of Law submitted herewith, Wagnon hereby moves for a denial or, in the alternative, a continuance of the disposition of Wadell's motion for summary judgment under *Rule 56(f)*, and a lifting of the stay of proceedings to permit necessary discovery to be completed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.


MARTIN P. SCHRAMA

From: Martin Schrama
To: Schwimmer, Ellie
Date: 12/22/2006 4:24:45 PM
Subject: RE: Jackie Wadell v. Jay Wagnon (Sky Sport & Spa)

Ellie,

Here are our discovery responses for opposition number 91172662 - I am making the assumption that, since the requests appear to be the same for 91172661, one set of responses will do (but if not, I will run off another set).

Happy Holidays,
Marty.

Martin P. Schrama, Esq.
Stark & Stark, P.C.
PO Box 5315
Princeton, NJ 08543-5313
direct dial: 609.219.7445
telefax: 609.895.7395

CC: Hilliard, Craig

From: Martin Schrama
To: Schwimmer, Ellie
Date: 1/3/2007 10:14:43 AM
Subject: RE: Jackie Wadell v. Jay Wagnon (Sky Sport & Spa)

Ellie,

Per our responses to your notice to produce, please find enclosed the responsive documents. Please let me know if you have any trouble accessing same.

To save space, I will send back an executed copy of the confidentiality agreement in a second e-mail.

Thanks,
Marty.

Martin P. Schrama, Esq.
Stark & Stark, P.C.
PO Box 5315
Princeton, NJ 08543-5313
direct dial: 609.219.7445
telefax: 609.895.7395

From: Martin Schrama
To: Schwimmer, Ellie
Date: 2/16/2007 1:52:37 PM
Subject: RE: Jackie Wadell v. Jay Wagnon (Sky Sport & Spa)

Ellie,

Please find enclosed our interrogatories and notices for production. I will follow up with hard copies.

Thanks,
Marty.

Martin P. Schrama, Esq.
Stark & Stark, P.C.
PO Box 5315
Princeton, NJ 08543-5313
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 78/763,613
Published in the *Official Gazette* of July 4, 2006

Jackie Wadell,)	
)	Opposition No. 91172661
Opposer,)	
)	
v.)	Applicant's First Set of Interrogatories
)	
Jay Wagnon,)	
)	
Applicant.)	
_____)	

TO: Ellie Schwimmer, Esq.
Keat McFarland & Wilson LLP
9720 Wilshire Blvd., Penthouse Suite
Beverly Hills, CA 90212

PLEASE TAKE NOTICE that the attorneys for Applicant, Jay Wagnon, demand answers to the following Interrogatories from Opposer, Jackie Wadell, in the manner and within the time prescribed by law.

INTRODUCTORY NOTE

These Interrogatories are deemed continuing so as to require supplemental answers should the party or parties to whom they are addressed or their counsel obtain further or supplemental information between the time the answers are served and the final date prior to trial for submitting answers as provided by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

If sufficient space is not provided for your answers, please attach a rider indicating the specific question to which the answer refers.

Whenever an Interrogatory asks for the identification of any document, you shall, in addition to identifying the document, append a copy of the document to the Interrogatory with an identification of the Interrogatory to which it corresponds.

The person answering these Interrogatories shall designate which of such information is or is not within his or her own personal knowledge and as to that information, shall state the name and address of each and every person from whom it was received, or if the source of information is a document, a full description including the location thereof.

For each and every time the person answering these Interrogatories provides that it will be supplied at some future date a specific date shall be set forth by which time said information will have been forwarded.

DEFINITIONS AND INSTRUCTIONS

1. As used herein, "documents" means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including without limitations, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, certificates, drawings, plans, interoffice and intra-office communications or offers, notations in any form made of conversations, telephone calls, meetings or other communications; bulletins, printed matter (including newspapers, magazines and other publications and articles and clippings therefrom), press releases, computer printouts, teletypes, telecopies, invoices, ledgers, worksheets (and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including, without limitation, photographs, charts, graphs and microfiche, microfilm, videotape or film recordings) and electronic, mechanical or electrical records or representations of any kind (including, without limitation, tapes, cassettes, discs, recordings), or transcriptions thereof.

2. The term "all documents" means every document, as defined in Paragraph 1, above which can be located, discovered or obtained by reasonably diligent efforts, including without limitation all documents possessed by:

- (a) you or your counsel; and
- (b) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.

3. If any document requested herein was at one time in existence, but has been lost, discarded or destroyed, identify in writing each document and provide the following information:

- (a) the date or approximate date it was lost, discarded or destroyed;
- (b) the circumstances and manner in which it was lost, discarded or destroyed;
- (c) the reason or reasons for disposing of the document (if discarded or destroyed);
- (d) the identity of all persons authorizing or having knowledge of the circumstances surrounding the disposal of the document;
- (e) the identity of the person(s) who lost, discarded or destroyed the document; and
- (f) the identity of all persons having knowledge of the contents thereof.

4. If any request for documents is deemed to call for the production of privileged or work product materials and such privilege or work product is asserted, provide the following information:

- (a) the reason for withholding the document;
- (b) a statement of the basis for the claim of privilege, work product or other ground of nondisclosure; and
- (c) a brief description of the document, including:
 - (i) the date of the document;
 - (ii) number of pages, attachments and appendices;
 - (iii) the names of its author, authors or preparers and an identification by employment and title of each such person;

(iv) the name of each person who was sent, was shown, or was blind-copied or carbon-copied the document, together with an identification of each such person;

(v) the present custodian; and

(vi) the subject matter of the document, and in the case of any document relating or referring to a meeting or conversation, identification of such meeting or conversation.

5. Whenever identification of any person is requested herein, for each such person, separately state:

(a) name;

(b) current business address and telephone number;

(c) current residential address and telephone number;

(d) employer; and

(e) occupation.

6. Whenever identification of any document is requested herein, for each such document, separately state:

(a) the title of the document or description of the document;

(b) the date of the document;

(c) if the document is a letter, memorandum, or other form of correspondence, state the names and the addresses of the addressee of the document; and

(d) identify, in the manner described above, each person having custody or control of the original and all copies of the document.

*In lieu of compliance with instructions 6(a)-6(d), supra, you may attach a duplicate copy of each such document to your answers to these Interrogatories, marking such copies with a number of the Interrogatory answer to which it corresponds.

7. As used herein, the term "person" or "persons" shall mean any individual, partnership, joint venture, corporation, group, association, governmental entity or governmental agency. The term shall also encompass any and all agents, servants and employees of the above entities.

8. The term "you", "your" or "Opposer" shall mean Jackie Wadell.

9. The term "Applicant" shall mean Jay Wagnon.

10. The term "Applicant's Mark" means the logo, design, mark and/or word(s) for which applicant currently seeks registration, as set forth in Application Serial No. 78/763,613.

11. The term "Opposer's Mark" means the logo, design, mark and/or word(s), as set forth in Opposer's Opposition No. 91172661.

INTERROGATORIES

1. Identify all persons with knowledge of any facts relevant to the within litigation and set forth, in detail, the nature and extent of each person's knowledge.

2. Identify all persons with knowledge of the specific circumstances surrounding Opposer's formulation, selection, registration and first use of Opposer's Mark and set forth, in detail, the respective extent of each person's knowledge.

3. Identify all products or services that have ever been offered by Opposer under Opposer's Mark and set forth, in detail, the respective dates that each product or service was offered, from the date of introduction to the present.

4. For each product or service identified in response to interrogatory number 3, set forth, in detail, the sales price and class or type of purchasers that purchased the respective product or service, from the date of introduction to the present.

5. For each product or service identified in response to interrogatory number 3, set forth, in detail, the amount of gross and net monthly sales for each respective product or service, from the date of introduction to the present.

6. For each product or service identified in response to interrogatory number 3, set forth, in detail, the manner in which the respective product or service was advertised, marketed or sold, from the date of introduction to the present.

7. For each product or service identified in response to interrogatory number 3, set forth, in detail, the monthly amount spent by Opposer to advertise, market or sell each respective product or service, from the date of introduction to the present.

8. For each product or service identified in response to interrogatory number 3, set forth, in detail, the domestic State, foreign country and/or geographical region in which the respective product or service was advertised, marketed or sold, from the date of introduction to the present.

9. For each product or service identified in response to interrogatory number 3, identify all persons that have been in any way involved in the advertising, marketing or sale of those products or services, from the date of introduction to the present.

10. Set forth, in detail, each and every basis supporting Opposer's assertion that: "Opposer believes she is being damaged, and will be damaged, by the registration of the mark SKY FITNESS AND WELLBEING."

11. Set forth, in detail, each and every basis supporting Opposer's assertion that: "The SKY SPORT & SPA name and mark is an important element of Opposer's business and she has spent thousands of dollars advertising and promoting her business through her website and otherwise."

12. Set forth, in detail, each and every basis supporting Opposer's assertion that: "Applicant's SKY FITNESS & WELLBEING mark so resembles Opposer's SKY SPORT & SPA name and mark as to be likely, when used in connection with Applicant's services, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer and to the public."

13. Set forth, in detail, each and every basis supporting Opposer's assertion that: "The registration of Applicant's SKY FITNESS & WELLBEING mark will dilute the distinctiveness of Opposer's SKY SPORT & SPA mark, with consequent injury to Opposer and to the public."

14. Set forth, in detail, each and every basis supporting Opposer's assertion that: "Because of the similarity of the marks and the related and identical nature of the services of the respective parties, Applicant's future use of the SKY FITNESS & WELLBEING mark for his proposed services will likely result in consumer confusion as to source, affiliation, connection or association with those of Opposer."

15. Identify all persons with whom Opposer has entered any agreements concerning authorization to use Opposer's Mark or any other logo, design, mark and/or word(s) and set forth the details of any such authorizations.

16. Identify any period in which Opposer has discontinued use of Opposer's Mark.

17. Set forth, in detail, each and every lawsuit of any kind, including any actions before the Trademark Trial and Appeal Board, that Opposer has been involved with as a party or witness within the last ten years.

18. Set forth, in detail, when and how Opposer first learned of Applicant's use of Applicant's Mark.

19. Identify each third person of which Opposer is aware who has used the terms "SKY" or "SPORT" or "SPA" alone or in combination as a trademark and set forth the details of any such use.

20. Set forth, in detail, any and all instances in which Opposer has requested that any other person discontinue the use of any portion of any name, mark, design, trademark, trade name, service mark, title or term.

21. Set forth, in detail, any and all instances in which any person has requested that Opposer discontinue the use of any portion of Opposer's Mark or any name, mark, design, trademark, trade name, service mark, title or term.

22. Identify each proposed expert witness which Opposer expects to call at trial in this matter or has consulted with respect to the subject matter of the within litigation, set forth the substance of all oral reports rendered by each expert and attach to Opposer's answers to these interrogatories true and exact copies of each written report and all drafts of each written report

rendered by each expert.

23. Set forth, in detail or by computation, all items of damage or loss Opposer contends are the fault or responsibility of Applicant and the factual basis for such assertions.

24. Identify all documents reviewed, referenced or otherwise utilized in responding to these interrogatories and set forth the number of the respective interrogatory and response for which each document was reviewed, referenced or otherwise utilized.

25. Identify all persons who were involved in formulating the responses to these interrogatories and set forth the number of the respective interrogatory and response in which each person was involved.

From: Martin Schrama
To: Schwimmer, Ellie
Date: 2/16/2007 1:52:37 PM
Subject: RE: Jackie Wadell v. Jay Wagnon (Sky Sport & Spa)

Ellie,

Please find enclosed our interrogatories and notices for production. I will follow up with hard copies.

Thanks,
Marty.

Martin P. Schrama, Esq.
Stark & Stark, P.C.
PO Box 5315
Princeton, NJ 08543-5313
direct dial: 609.219.7445
telefax: 609.895.7395

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

In the Matter of Application Serial No. 78/763,613
Published in the *Official Gazette* of July 4, 2006

Jackie Wadell,)	
)	Opposition No. 91172661
Opposer,)	
)	
v.)	Applicant's First Notice For Production
)	of Documents
Jay Wagnon,)	
)	
Applicant.)	
_____)	

TO: Ellie Schwimmer, Esq.
Keat McFarland & Wilson LLP
9720 Wilshire Blvd., Penthouse Suite
Beverly Hills, CA 90212

PLEASE TAKE NOTICE that attorneys for Applicant, Jay Wagnon, demand answers to the following Notices to Produce from the Opposer, Jackie Wadell, in the manner and within the time prescribed by law.

DEFINITIONS AND INSTRUCTIONS

1. As used herein, "documents" means all writings of any kind, including the originals and all non-identical copies, whether different from the originals by reason of any notation made on such copies or otherwise, including without limitations, correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, certificates, drawings, plans, interoffice and intra-office communications or offers, notations in any form

made of conversations, telephone calls, meetings or other communications; bulletins, printed matter (including newspapers, magazines and other publications and articles and clippings therefrom), press releases, computer printouts, teletypes, telecopies, invoices, ledgers, worksheets (and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind (including, without limitation, photographs, charts, graphs and microfiche, microfilm, videotape or film recordings) and electronic, mechanical or electrical records or representations of any kind (including, without limitation, tapes, cassettes, discs, recordings), or transcriptions thereof.

2. The term "all documents" means every document, as defined in paragraph 1, above which can be located, discovered or obtained by reasonably diligent efforts, including without limitation all documents possessed by:

(a) you or your counsel; and

(b) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.

3. If any document requested herein was at one time in existence, but has been lost, discarded or destroyed, identify in writing each document and provide the following information:

(a) the date or approximate date it was lost, discarded or destroyed;

- (b) the circumstances and manner in which it was lost, discarded or destroyed;
- (c) the reason or reasons for disposing of the document (if discarded or destroyed);
- (d) the identity of all persons authorizing or having knowledge of the circumstances surrounding the disposal of the document;
- (e) the identity of the person(s) who lost, discarded or destroyed the document; and
- (f) the identity of all persons having knowledge of the contents thereof.

4. If any request for documents is deemed to call for the production of privileged or work product materials and such privilege or work product is asserted, provide the following information:

- (a) the reason for withholding the document;
- (b) a statement of the basis for the claim of privilege, work product or other ground of nondisclosure; and

(c) a brief description of the document, including:

(i) the date of the document;

(ii) number of pages, attachments and appendices;

(iii) the names of its author, authors or preparers and an identification by employment and title of each such person;

(iv) the name of each person who was sent, was shown, or was blind-copied or carbon-copied the document, together with an identification of each such person;

(v) the present custodian; and

(vi) the subject matter of the document, and in the case of any document relating or referring to a meeting or conversation, identification of such meeting or conversation.

5. Whenever identification of any person is requested herein, for each such person, separately state:

(a) name;

- (b) current business address and telephone number;
- (c) current residential address and telephone number;
- (d) employer; and
- (e) occupation.

6. Whenever identification of any document is requested herein, for each such document, separately state:

- (a) the title of the document or description of the document;
- (b) the date of the document;
- (c) if the document is a letter, memorandum, or other form of correspondence, state the names and the addresses of the addressee of the document; and
- (d) identify, in the manner described above, each person having custody or control of the original and all copies of the document.

7. As used herein, the term "person" or "persons" shall mean any individual, partnership, joint venture, corporation, group, association, governmental entity or governmental

agency. The term shall also encompass any and all agents, servants and employees of the above entities.

8. The term “you”, “your” or “Opposer” shall mean Jackie Wadell.

9. The term “Applicant” shall mean Jay Wagnon.

10. The term “Applicant’s Mark” means the logo, design, mark and/or word(s) for which applicant currently seeks registration, as set forth in Application Serial No. 78/763,613.

11. The term “Opposer’s Mark” means the logo, design, mark and/or word(s), as set forth in Opposer’s Opposition No. 91172661.

DOCUMENTS REQUESTED

All documents relevant to the claims and defenses in the within action, including, but not limited to, the following:

1. Any and all documents identified by Opposer in its answers to Applicant's Interrogatories.
2. Any and all documents referred to, consulted or relied upon in preparing Opposer's answers to Applicant's Interrogatories.
3. Any and all documents which may or will be used as an exhibit at trial or any evidentiary hearing in this matter.
4. Any and all documents which have been provided to any expert or lay witness who may or will be called to testify on behalf of Opposer at trial or any evidentiary hearing in this matter.
5. Any and all documents received from any person who may or will be called as an expert or lay witness at trial or at any evidentiary hearing.
6. Any and all documents referring or relating to any items of damage or loss Opposer contends are the fault or responsibility of Applicant.
7. Any and all documents referring or relating to any instance in which any person has requested that Opposer discontinue the use of any portion of Opposer's Mark or any name, mark, design, trademark, trade name, service mark, title or term.
8. Any and all documents referring or relating to any instance in which Opposer has requested that any person discontinue the use of any portion of Opposer's Mark or any name, mark, design, trademark, trade name, service mark, title or term.
9. Each and every curriculum vitae or resume prepared within the past five years by any person whom Opposer intends to call as an expert witness at trial.
10. Each and every curriculum vitae or resume prepared within the past ten years by Opposer.
11. Any and all documents referring or relating to any application to register Opposer's Mark made by or for Opposer anywhere in the world.

12. Any and all documents referring or relating to any agreements actual or contemplated, involving Opposer and another person and the use of Opposer's Mark or any variation thereof.

13. Any and all documents referring or relating to any manner of use of Opposer's Mark made by Opposer.

14. Any and all documents referring or relating to any survey, poll, search, or other investigation undertaken by or on behalf of Opposer in connection with Opposer's Mark, whether for the purpose of ascertaining likelihood of confusion, secondary meaning, or otherwise.

15. Any and all documents referring or relating to trademark searching, trademark clearance, approval, or evaluation of Opposer's Mark or any variations thereof.

16. Any and all documents referring or relating to any other marks that Opposer considered as an alternative to Opposer's Mark.

17. Any and all documents relied upon by Opposer to support its assertion that Opposer's Mark has not been abandoned.

18. Any and all documents upon which Opposer relies to support its contention that Opposer's Mark has acquired distinctiveness.

19. Any and all documents evidencing any instances of actual confusion between Opposer's Mark and any other name or mark.

20. Any and all documents referring or relating to any communication between Opposer and any other person about the Applicant or the subject matter of this proceeding.

21. Any and all documents referring or relating to the specific circumstances surrounding Opposer's selection and first use of Opposer's Mark.

22. Any and all documents referring or relating to any products or services that have ever been offered by Opposer under Opposer's Mark, from the date of introduction to the present.

23. Any and all documents referring or relating to the purchase price and class or type of purchasers that purchased the respective product or service that have ever been offered by Opposer under Opposer's Mark, from the date of introduction to the present.

24. Any and all documents referring or relating to the amount of gross and net sales for each respective product or service that have ever been offered by Opposer under Opposer's Mark, from the date of introduction to the present.

25. Any and all documents referring or relating to the manner in which any respective product or service was advertised, marketed or sold by Opposer under Opposer's Mark, from the date of introduction to the present.

26. Any and all documents referring or relating to the amount spent by Opposer to advertise, market or sell each respective product or service that has ever been offered by Opposer under Opposer's Mark, from the date of introduction to the present.

27. Any and all documents referring or relating to the domestic State, foreign country and/or geographical region in which any respective product or service was advertised, marketed or sold by Opposer under Opposer's Mark, from the date of introduction to the present.

28. Any and all documents referring or relating to the advertising, marketing or sale of those products or services that have ever been offered by Opposer under Opposer's Mark, from the date of introduction to the present.

30. Any and all documents supporting Opposer's assertion that: "Opposer believes she is being damaged, and will be damaged, by the registration of the mark SKY FITNESS AND WELLBEING."

31. Any and all documents supporting Opposer's assertion that: "The SKY SPORT & SPA name and mark is an important element of Opposer's business and she has spent thousands of dollars advertising and promoting her business through her website and otherwise."

32. Any and all documents and things supporting Opposer's assertion that: "Applicant's SKY FITNESS & WELLBEING mark so resembles Opposer's SKY SPORT & SPA name and mark as to be likely, when used in connection with Applicant's services, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to Opposer and to the public."

33. Any and all documents supporting Opposer's assertion that: "The registration of Applicant's SKY FITNESS & WELLBEING mark will dilute the distinctiveness of Opposer's SKY SPORT & SPA mark, with consequent injury to Opposer and to the public."

34. Any and all documents supporting Opposer's assertion that: "Because of the similarity of the marks and the related and identical nature of the services of the respective parties, Applicant's future use of the SKY FITNESS & WELLBEING mark for his proposed services will likely result in consumer confusion as to source, affiliation, connection or association with those of Opposer."

35. Any and all documents referring or relating to any agreements concerning authorization to use Opposer's Mark or any other logo, design, mark and/or word(s).

36. Any and all documents referring or relating to any period in which Opposer has discontinued use of Opposer's Mark.

37. Any and all documents referring or relating to each and every lawsuit of any kind, including any actions before the Trademark Trial and Appeal Board, that Opposer has been involved with as a party or witness within the last ten years.

38. Any and all documents referring or relating to when and how Opposer first learned of Applicant's use of Applicant's Mark.

39. Any and all documents referring or relating to any third person of which Opposer is aware who has used the terms "SKY" or "SPORT" or "SPA" alone or in combination as a trademark.

40. Any and all documents referring or relating to any and all instances in which Opposer has requested that any other person discontinue the use of any portion of any name, mark, design, trademark, trade name, service mark, title or term.

41. Any and all documents referring or relating to each and every partnership, corporation, limited liability company or other legal entity with which Opposer has been employed, affiliated or held an ownership interest in the past 10 years.

42. Any and all documents referring or relating to each and every gym, health club, salon, hotel or training facility with which Opposer has been employed, affiliated or held an ownership interest in the past 10 years.

43. Any and all documents referring or relating to any of Opposer's contacts with the Bravo network or any other television network.

44. Any and all documents referring or relating to any of Opposer's contacts with Aspen Club Lodge Properties, LLC, Northridge Capital, Inc., Mary E. Innis, Sky Spa or Sky Hotel, or any of their employees, agents or representatives.

45. Any and all texts, treatises or articles which Opposer intends to rely upon at trial, including but not limited to those referred to by Opposer's experts and those used or to be used in the examination or cross-examination of any experts to be called by any party to this action.

46. Any and all documents referring or relating to any instance where the goods or services currently being offered under Opposer's Mark were offered under any other trademark, logo, design, mark and/or word(s).

47. Any and all investigative reports, both governmental and private, concerning or relating to the transactions or occurrences which are the subject of this action, including but not limited to any such reports by experts who are expected to be called as witnesses at trial.

From: Martin Schrama
To: Schwimmer, Ellie
Date: 3/7/2007 2:20:10 PM
Subject: Re: Infringement of Trademark SKY SITNESS & WELLBEING

Ellie,

No problem.

Thanks,
Marty.

>>> "Ellie Schwimmer" <eschwimmer@kmwlaw.com> 03/07/07 2:06 PM >>>
Hi Marty -

In consideration of the courtesy I extended to you, I am writing to request a three week extension to respond to your discovery requests because I will be out of town most of the next two weeks. I propose the deadline be postponed from March 23, 2007 to April 13, 2007.

Thank you,

Ellie

Ellie Schwimmer, Esq. | Keats McFarland & Wilson LLP | 9720 Wilshire Boulevard, Penthouse Suite | Beverly Hills, California 90212

direct dial 310.777.3755 | main line 310.248.3830 | facsimile 310.860.0363 | email eschwimmer@kmwlaw.com
<<mailto:eschwimmer@kmwlaw.com>>

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Craig Hilliard - TTAB Response

From: <ESTTA@uspto.gov>
To: <chilliard@stark-stark.com>
Date: 3/28/2007 8:23 AM
Subject: TTAB Response

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

Lms Mailed: March 28,
2007

Opposition No. 91172662

Jackie Wadell

v.

Wagnon, Jay

Linda Skoro, Interlocutory Attorney

Proceedings herein are suspended pending disposition of the motion for summary judgment. Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. See Trademark Rule 2.127(d).

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Wagnon E-1

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

Lms

Mailed: March 22, 2007

Opposition No. 91172661

Jackie Wadell

v.

Wagnon, Jay

Linda Skoro, Interlocutory Attorney

Proceedings herein are suspended pending disposition of the motion for summary judgment. Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. See Trademark Rule 2.127(d).

In light of the suspension, applicant's motion for an extension of time, filed March 19, 2007, is hereby rendered moot.