

ESTTA Tracking number: **ESTTA346550**

Filing date: **05/10/2010**

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

Proceeding	91173869
Party	Defendant Jay Wagnon
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Signature	/s/ Craig S. Hilliard
Date	05/10/2010
Attachments	opp brief to motion to compel 051010.pdf (10 pages)(411431 bytes) Declaration of Schrama.pdf (2 pages)(60742 bytes) Exhibit A.pdf (14 pages)(398869 bytes) Exhibit B.pdf (18 pages)(523374 bytes) Exhibit C.pdf (15 pages)(438332 bytes) Exhibit D.pdf (9 pages)(292097 bytes) Exhibit E.pdf (2 pages)(34534 bytes) Exhibit F.pdf (4 pages)(186332 bytes) Exhibit G.pdf (6 pages)(315615 bytes) certificate of service.pdf (1 page)(18377 bytes)

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

In The Matter of Application Serial No. 78/738,098: SKY FITNESS & WELLBEING
In The Matter of Application Serial No. 78/763,613: SKY FITNESS & WELLBEING

MARY E. INNIS,)		
)		
Opposer,)		
	)	Opposition Nos.	91173869 (parent)
v.	)		1174139
)		
JAY WAGNON,)		
)		
Applicant.)		

**APPLICANT’S MEMORANDUM OF LAW IN OPPOSITION TO
OPPOSER’S MOTION TO COMPEL AND IN SUPPORT
OF APPLICANT’S CROSS-MOTION TO COMPEL**

STATEMENT OF PERTINENT FACTS AND PROCEDURAL HISTORY

Applicant, Jay Wagon (“Applicant”), hereby opposes the motion to compel¹ filed on behalf of Opposer, Mary E. Innis (“Opposer”), and cross-moves for an Order compelling Opposer to submit to depositions.

On March 6, 2009, Opposer served its responses to Applicant’s interrogatories and requests for production of documents. *See* Declaration of Martin P. Schrama (“Schrama Dec.”) at Exhibits A and B. On July 1, 2009, Applicant served its responses to Opposer’s interrogatories and requests for production of documents. *See* Schrama Dec. Exh. C; D. On February 18, 2010, Applicant served its deposition notice on Opposer. *See* Schrama Dec. Exh. E.

Throughout these proceedings, the discovery period has been extended numerous times, based primarily on the parties’ settlement discussions. *See*, generally, Declaration

¹ Applicant does not oppose Opposer’s motion to extend the discovery period.

of Andrea E. Friedman at Exhibit E, pages 2-3, ¶¶ 5, 7. On October 28, 2010, Opposer sent its letter demanding more specific discovery responses and objecting to Applicant's deposition notice of Opposer. *See* Schrama Dec. Exh. F. On April 12, 2010, Applicant responded to Opposer's letter. *See* Schrama Dec. Exh. G.

On April 20, 2010, Opposer filed this motion to compel more specific discovery responses. Applicant opposes that motion and cross-moves for an Order compelling Opposer's deposition pursuant to 37 CFR § 2.120(e). Based on the correspondence and discussions between the parties, Applicant submits that it has made a good faith effort, pursuant to 37 CFR § 2.120(e)(1), to resolve the discovery issues forming the basis of Applicant's cross-motion to compel. *See* Schrama Dec. ¶ 10.

ARGUMENT

I. OPPOSER'S MOTION TO COMPEL MORE SPECIFIC DISCOVERY RESPONSES SHOULD BE DENIED

Essentially, Opposer's motion reiterates its October 28, 2010 letter demanding more specific discovery responses to interrogatories 1a, 4, 5, 6, 7, 8, 9, 11, 12 and 13², and requests for production 11, 12 and 17. *See* Schrama Dec. Exh. F. In Applicant's April 12, 2010 letter, Applicant fully responded to each of Opposer's specific contentions and further stated for each contention that, "[Applicant] would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking." *See* Schrama Dec. Exh. G. Having received no clarification from Opposer (or even any contact from Opposer in an

² Per its moving papers, Opposer has apparently withdrawn its contentions with regard to interrogatory 14.

effort to narrow the issues), Applicant's responses and objections to each of Opposer's specific contentions remain as follows.

In interrogatory 1a, Opposer requested the identity of the geographical place of Applicant's first use of the mark. However, Opposer objected to virtually the same requests that were served on Opposer. *See* Schrama Dec. Exh. A, interrogatories 3 and 8. Notwithstanding, Applicant provided the exact date and place of the initial use of the mark. *See* Schrama Dec. Exh. C. In addition, the documents that Applicant supplied identified the geographical place of first use of the mark³. Further, Applicant identified witnesses possessing the most knowledge on that general subject⁴. Finally, Applicant offered to work with Opposer and retract part or all of Applicant's general and specific objections, if Opposer could further clarify its request. Opposer never even attempted to narrow the issues with Applicant, but instead just filed this motion to compel.

In interrogatory 4, Opposer requested the identity of each use known to Applicant by any third party of any term consisting in whole or in part of "SKY," and the persons with knowledge of such use. Again, Opposer objected to virtually the same request that was served on Opposer. *See* Schrama Dec. Exh. A, interrogatory 18. Moreover, Opposer

³ The reference to business records in response to an interrogatory constitutes proper practice. TBMP § 405.04(b). Further, under TBMP § 402.02, a party may comply with a document request by providing a representative sampling of the information sought, or some reduced amount of information which is nevertheless sufficient to meet the propounding party's discovery needs.

⁴ Contrary to Opposer's contention, the identity of persons possessing the most knowledge concerning the general subject matter of the interrogatory are supplied in an effort to augment complete and proper objections and responses, and because the request for the identity of such persons is incorporated into many of Opposer's interrogatories. Accordingly, Opposer's contention that such information is supplied by Applicant in an effort to "avoid its written discovery obligations under Rule 26 and TBMP § 405," is baseless.

has refused to clarify the undefined terms⁵ “use” and “term.” Furthermore, Applicant does not agree that Opposer’s request does not call for a legal conclusion, simply because Opposer believes that responsive information could be an element of a legal test or standard. Notwithstanding, Applicant also reiterates and adopts Opposer’s limited response to virtually the same interrogatory: “Aspen Club Properties, LLC v. Mary E. Innis, Opposition No. 91160496; and Mary E. Innis v. Jackie Waddell, Opposition No. 91182434.” *Id.* Further, Applicant identified witnesses possessing the most knowledge on that general subject. Finally, Applicant offered to work with Opposer and retract part or all of Applicant’s general and specific objections, if Opposer could further clarify its request. Once again, Opposer ignored the invitation to resolve the issues through agreement, and instead simply filed this motion.

In interrogatory 5, Opposer requested the identity of each investigation which has been conducted relating to "SKY FITNESS & WELLBEING," "SKY SPA" or the word "SKY," and each person having knowledge relating thereto. Again, Opposer objected to very similar requests that were served on Opposer. *See* Schrama Dec. Exh. A, interrogatories 2, 17 and 18. Moreover, Opposer has refused to clarify the undefined term “investigation.” Notwithstanding, Applicant has provided the identity of witnesses possessing the most knowledge on that general subject. Finally, Applicant offered to work with Opposer and retract part or all of Applicant’s general and specific objections, if Opposer could further clarify its request. Opposer rejected the offer.

In interrogatory 6, Opposer requested the identity of any rights in the mark "SKY FITNESS & WELLBEING" or the word "SKY," which Applicant has granted to any third

⁵ Opposer also makes very similar objections based upon clarification of undefined terms. *See* Schrama Dec. Exh. A, interrogatories 1; 14.

party or acquired from any third party, and the persons knowledgeable concerning each grant or acquisition. Again, Opposer objected to virtually the same request that was served on Opposer. *See* Schrama Dec. Exh. A, interrogatory 14. Moreover, Opposer has refused to clarify the undefined term “rights.” Notwithstanding, Applicant has provided the identity of witnesses possessing the most knowledge on that general subject. Finally, Applicant offered to work with Opposer and retract part or all of Applicant’s general and specific objections, if Opposer could further clarify its request. Opposer rejected the offer.

In interrogatory 7, Opposer requested descriptions of the nature of all objections made by or directed to Applicant that relate to Applicant's claimed rights in, "SKY FITNESS & WELLBEING" or the word "SKY," and the identity of the persons most knowledgeable about each objection. Again, Opposer objected to virtually the same requests that were served on Opposer. *See* Schrama Dec. Exh. A, interrogatories 19 and 20. Moreover, Opposer has refused to clarify the undefined terms “objections” and “rights.” Notwithstanding, Applicant also reiterates and adopts Opposer’s limited response to virtually the same interrogatories: “Aspen Club Properties, LLC v. Mary E. Innis, Opposition No. 91160496; and Mary E. Innis v. Jackie Waddell, Opposition No. 91182434.” Further, Applicant identified witnesses possessing the most knowledge on that general subject. Finally, Applicant offered to work with Opposer and retract part or all of Applicant’s general and specific objections, if Opposer could further clarify its request. Opposer rejected the offer.

In interrogatory 8, Opposer requested the identity of each instance of actual confusion, mistake or association of any kind between Applicant or its use of a mark

consisting in whole or in part of the word "SKY," and Opposer or its use of the "SKY SPA Mark," and the identity of each person with knowledge of each such instance. Again, Opposer objected to virtually the same request that was served on Opposer. *See* Schrama Dec. Exh. A, interrogatory 10. Moreover, Opposer has refused to clarify the undefined terms "confusion," "mistake" and "association." Furthermore, Applicant does not agree that that Opposer's request does not call for a legal conclusion, simply because Opposer believes that responsive information could be an element of a legal test or standard. Notwithstanding, Applicant has provided the identity of witnesses possessing the most knowledge on that general subject. Finally, Applicant offered to work with Opposer and retract part or all of Applicant's general and specific objections, if Opposer could further clarify its request. Opposer rejected the offer.

In interrogatory 9, Opposer requested the identity of all agreements or arrangements of any kind between Applicant and another party regarding the provision of spa or beauty salon services by parties other than the Applicant. Again, Opposer objected to very similar requests that were served on Opposer. *See* Schrama Dec. Exh. A, interrogatories 13 and 14. Moreover, Opposer has refused to clarify the undefined terms "agreements," "arrangements" and "spa or beauty salon services." Notwithstanding, Applicant has provided the identity of witnesses possessing the most knowledge on that general subject. Finally, Applicant offered to work with Opposer and retract part or all of Applicant's general and specific objections, if Opposer could further clarify its request. Once again, Opposer ignored the invitation to resolve the issues through agreement, and instead simply filed this motion.

In interrogatory 11, Opposer requested the identity of all agreements and negotiations between Applicant and other parties regarding the use of SKY FITNESS & WELLBEING or any other mark containing the word "SKY." Again, Opposer objected to a very similar request that was served on Opposer. *See* Schrama Dec. Exh. A, interrogatory 14. Moreover, Opposer has refused to clarify the undefined terms “agreements” and “negotiations.” Notwithstanding, Applicant referred Opposer to the documents that Applicant supplied. Finally, Applicant offered to work with Opposer and retract part or all of Applicant’s general and specific objections, if Opposer could further clarify its request. Opposer rejected the offer.

In interrogatory 12, Opposer requested the description by date and circumstance how Applicant first became aware of Opposer's SKY SPA Mark, and the identity of each person with knowledge relating thereto. Again, Opposer objected to a virtually identical request that was served on Opposer. *See* Schrama Dec. Exh. A, interrogatory 17. Notwithstanding, Applicant referred Opposer to the documents that Applicant supplied. Finally, Applicant offered to work with Opposer and retract part or all of Applicant’s general and specific objections, if Opposer could further clarify its request. Once again, Opposer ignored the invitation to resolve the issues through agreement, and instead simply filed this motion.

In interrogatory 13, Opposer requested the identity of all market records of any kind and any survey or study Applicant has conducted or caused to be conducted regarding the SKY FITNESS & WELLBEING or SKY SPA marks. Again, Opposer objected to very similar requests that were served on Opposer. *See* Schrama Dec. Exh. A, interrogatories 3-9 and 18; Exh. B, document requests 14 and 15. Moreover, Opposer has

refused to clarify the undefined terms "market records," "survey" and "study." Notwithstanding, Applicant has provided the identity of witnesses possessing the most knowledge on that general subject and referred Opposer to the documents that Applicant supplied. Finally, Applicant offered to work with Opposer and retract part or all of Applicant's general and specific objections, if Opposer could further clarify its request. Opposer declined the offer.

In request for production 11, Opposer requested all documents which relate or refer to Opposer or Opposer's use of or intent to use the "SKY SPA Mark," or other mark consisting in whole or in part of "SKY," including all documents which relate or refer to the circumstances under which Applicant first became aware of Opposer's use or intent to use "SKY SPA." Again, Opposer objected to very similar requests that were served on Opposer⁶. *See* Schrama Dec. Exh. B, document requests 13, 15, 22 and 25; Exh. A interrogatory 17. Notwithstanding the documents already produced by Applicant pursuant to this overly broad and unduly burdensome request, Applicant offered to work with Opposer if Opposer could further clarify its request and produce for inspection and copying any non-privileged responsive documents in Applicant's possession. Opposer rejected the offer.

In request for production 12, Opposer requested all documents which relate or refer to any instances of confusion, mistake, or deception which has or may have occurred between Applicant's use of the mark "SKY FITNESS & WELLBEING" or other mark consisting in whole or in part of "SKY," and Opposer or Opposer's use of, or intent to use "SKY SPA." Again, Opposer objected to virtually identical requests that

⁶ It also bears mentioning that Opposer has not produced a single document in response to Applicant's requests for production.

were served on Opposer. *See* Schrama Dec. Exh. B, document requests 14 and 19; Exh. A interrogatory 10. Notwithstanding the documents already produced by Applicant pursuant to this overly broad and unduly burdensome request, Applicant offered to work with Opposer if Opposer could further clarify its request and produce for inspection and copying any non-privileged responsive documents in Applicant's possession. Opposer ignored the invitation to resolve the issues through agreement, and instead simply filed this motion.

In request for production 17, Opposer requested all documents relating to and showing the content of Applicant's current and past websites for SKY FITNESS & WELLBEING. Notwithstanding the documents already produced by Applicant pursuant to this overly broad and unduly burdensome request, Applicant offered to work with Opposer if Opposer could further clarify its request and produce for inspection and copying any further non-privileged responsive documents in Applicant's possession. Opposer declined the invitation to further discuss the issues.

Based upon Applicant's valid responses and objections to Opposer's interrogatories and requests for production, Opposer's contentions, absent any further clarification, should be rejected.

II. APPLICANT'S CROSS-MOTION TO COMPEL OPPOSER'S DEPOSITION SHOULD BE GRANTED

Applicant cross-moves, pursuant to 37 CFR § 2.120(e), for an Order compelling Opposer's duly noticed deposition. *See* Schrama Dec. Exh. E. Here, Opposer merely cites its aforementioned contentions with regard to Applicant's paper discovery responses as

proper grounds for refusing to produce Opposer for depositions. *See* Schrama Dec. Exh. F, page 3.

First, Applicant takes exception to Opposer's contentions, especially in light of the fact that Opposer has failed to produce any significant discovery responses or any documents whatsoever. Second, under TBMP § 403.03, "a party is under an obligation to respond to an adversary's request for discovery during the time allowed therefore under the applicable rules, irrespective of the sequence of requests for discovery, or of an adversary's failure to respond to a pending request for discovery" (citations omitted). Therefore, Opposer's objection to depositions at this time is improper and Opposer should be compelled to immediately submit to depositions.

CONCLUSION

Based on the foregoing, Opposer's motion to compel more specific discovery responses should be denied and Applicant's cross-motion for an Order compelling Opposer's depositions should be granted.

STARK & STARK
A Professional Corporation

By: _____

CRAIG S. HILLIARD
MARTIN P. SCHRAMA

Dated: 5/10/10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In The Matter of Application Serial No. 78/738,098: SKY FITNESS & WELLBEING
In The Matter of Application Serial No. 78/763,613: SKY FITNESS & WELLBEING

MARY E. INNIS,)		
)		
Opposer,)		
	)	Opposition Nos.	91173869 (parent)
v.	)		1174139
)		
JAY WAGNON,)		
)		
Applicant.)		


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 a shareholder of the law firm Stark & Stark, P.C., counsel to Applicant, Jay Wagnon ("Applicant") and, as such, I have knowledge of the facts set forth herein.
2. I make this Declaration in opposition to Opposer's motion to compel and in support of Applicant's cross-motion to compel.
3. Attached hereto as Exhibit "A" is a true copy of Opposer's responses and objections to Applicant's interrogatories.
4. Attached hereto as Exhibit "B" is a true copy of Opposer's responses and objections to Applicant's requests for production.
5. Attached hereto as Exhibit "C" is a true copy of Applicant's responses and objections to Opposer's interrogatories.
6. Attached hereto as Exhibit "D" is a true copy of Applicant's responses and objections to Opposer's requests for production.
7. Attached hereto as Exhibit "E" is a true copy of Applicant's deposition notice served on Opposer.
8. Attached hereto as Exhibit "F" is a true copy of Opposer's letter to Applicant demanding more specific discovery responses and objecting to Applicant's deposition notice of Opposer.

9. Attached hereto as Exhibit "G" is a true copy of Applicant's letter in response to Opposer's letter to Applicant demanding more specific discovery responses and objecting to Applicant's deposition notice of Opposer.
10. Applicant submits that it has made a good faith effort, pursuant to 37 CFR § 2.120(e)(1), to resolve the discovery issues forming the basis of Applicant's cross-motion to compel Opposer's deposition.

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



MARTIN P. SCHRAMA

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EXHIBIT “A”

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

In The Matter of Application Serial No. 78/738,098: SKY FITNESS & WELLBEING
In The Matter of Application Serial No. 78/763,613: SKY FITNESS & WELLBEING

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)	
Opposer,)	
)	Opposition Nos. 91173869 (parent)
v.)	91174139
)	
JAY WAGNON,)	
)	
Applicant.)	

OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

Opposer objects to Applicant's First Set of Interrogatories to the extent that it seeks to impose obligations on Opposer beyond or inconsistent with those set forth in the Federal Rules of Civil Procedure or the Trademark Rules of Practice. Opposer further objects to Applicant's First Set of Interrogatories to the extent to which they seek the disclosure of confidential information in the absence of the entry of a protective order sufficient to preserve the confidentiality of the information. Opposer also objects to Applicant's First Set of Interrogatories to the text to which they seek information comprising attorney work product or shielded from discovery by the attorney client privilege.

INTERROGATORIES

INTERROGATORY NO. 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.

RESPONSE TO INTERROGATORY NO. 1:

Opposer objects to Interrogatory No. 1 as vague and/or ambiguous in that the meaning of “facts relevant to the within litigation” is not explained or immediately understood. Opposer also objects to Interrogatory No. 1 on the grounds it seeks information protected from discovery by the attorney client privilege. Subject to and without waiver thereof, and to the extent Interrogatory No. 1 is understood, Opposer answers that Mary E. Innis has knowledge of facts relevant to the present proceeding. However, discovery of Applicant may lead to the identification of other persons.

INTERROGATORY NO. 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.

RESPONSE TO INTERROGATORY NO. 2:

Opposer objects to Interrogatory No. 2 on the grounds it seeks information protected from discovery by the attorney client privilege. Subject to and without waiver thereof, Opposer answers that Mary E. Innis has knowledge surrounding Opposer’s formulation, and selection of Opposer’s Mark.

INTERROGATORY NO. 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.

RESPONSE TO INTERROGATORY NO. 3:

Opposer objects to Interrogatory No. 3 on the grounds it seeks information protected from discovery by the attorney work product privilege. Subject to and without waiver thereof, Opposer states that although Opposer has not yet made use of the SKY SPA mark, Opposer has a *bona fide* intent to use SKY SPA for salon services.

INTERROGATORY NO. 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.

RESPONSE TO INTERROGATORY NO. 4:

Opposer hereby incorporates her objection and response to Interrogatory No. 3 by reference. See above.

INTERROGATORY NO. 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.

RESPONSE TO INTERROGATORY NO. 5:

Opposer hereby incorporates her objection and response to Interrogatory No. 3 by reference. See above.

INTERROGATORY NO. 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.

RESPONSE TO INTERROGATORY NO. 6:

Opposer hereby incorporates her objection and response to Interrogatory No. 3 by reference. See above.

INTERROGATORY NO. 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.

RESPONSE TO INTERROGATORY NO. 7:

Opposer hereby incorporates her objection and response to Interrogatory No. 3 by reference. See above.

INTERROGATORY NO. 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.

RESPONSE TO INTERROGATORY NO. 8:

Opposer hereby incorporates her objection and response to Interrogatory No. 3 by reference. See above.

INTERROGATORY NO. 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.

RESPONSE TO INTERROGATORY NO. 9:

Opposer hereby incorporates her objection and response to Interrogatory No. 3 by reference. See above.

INTERROGATORY NO. 10:

Set forth, in detail, each and every basis supporting Opposer's assertion that: "Applicant's proposed use of SKY FITNESS & WELLBEING for providing fitness and exercise facilities is likely to cause confusion, mistake or deception in that consumers and others are likely to believe that Applicant's services are Opposer's services, or the services of a person, company or entity that is sponsored, authorized or licensed by, or in some other way legitimately connected with Opposer."

RESPONSE TO INTERROGATORY NO. 10:

Opposer objects to Interrogatory No. 10 as overly broad and unduly burdensome. Opposer also objects to Interrogatory No. 10 as improper in that it seeks to require Opposer to specify in detail the evidence it intends to present at trial. Subject to and without waiver of those objections, Opposer states that she has prior rights in the SKY SPA mark and the Applicant's intent, knowledge, the similarity of the marks, services, and channels of trade, and Applicant's unauthorized use of SKY SPA all support a likelihood of confusion.

INTERROGATORY NO. 11:

Set forth, in detail, each and every basis supporting Opposer's assertion that:

“Registration by Applicant of SKY FITNESS & WELLBEING for providing fitness and exercise facilities would be damaging to Opposer.”

RESPONSE TO INTERROGATORY NO. 11:

Opposer hereby incorporates her objections and response to Interrogatory No. 10 by reference. See above.

INTERROGATORY NO. 12:

Set forth, in detail, each and every manner of use of Opposer's Mark ever made by Opposer.

RESPONSE TO INTERROGATORY NO. 12:

Opposer hereby incorporates her objection and response to Interrogatory No. 3 by reference. See above.

INTERROGATORY NO. 13:

Set forth, in detail, all of the overall and day-to-day activities that constitute Opposer's "beauty salon services."

RESPONSE TO INTERROGATORY NO. 13:

Opposer hereby incorporates her objection and response to Interrogatory No. 3 by reference. See above.

INTERROGATORY NO. 14:

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.

RESPONSE TO INTERROGATORY NO. 14:

Opposer objects to Interrogatory No. 14 on the grounds it seeks information protected from discovery by the attorney work product privilege. Opposer also objects to Interrogatory No. 14 as overly broad, unduly burdensome, and irrelevant in that it seeks to require Opposer to state information regarding “any other logo, design, mark and/or word(s)” [emphasis mine]. Subject to and without waiver of those objections, Opposer states that Opposer has entered into a Confidential Agreement with Aspen Club Lodge Properties, LLC regarding consent to register SKY HOTEL.

INTERROGATORY NO. 15:

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

RESPONSE TO INTERROGATORY NO. 15:

Opposer hereby incorporates her objection and response to Interrogatory No. 3 by reference. See above.

INTERROGATORY NO. 16:

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.

RESPONSE TO INTERROGATORY NO. 16:

Opposer objects to Interrogatory No. 16 on the grounds it seeks information protected from discovery by the attorney client privilege and/or work product. Opposer also objects to Interrogatory No. 16 as overly broad, unduly burdensome, and irrelevant in that it seeks to require Opposer, a trademark attorney, to state information regarding “each and every lawsuit of

any kind". Subject to and without waiver of those objections, Opposer states that besides the present proceeding Opposer has been involved in the following two proceedings:

- 1) Aspen Club Lodge Properties, LLC v. Mary E. Innis, Opposition No. 91160496; and
- 2) Mary E. Innis v. Jackie Wadell, Opposition No. 91182434.

INTERROGATORY NO. 17:

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

RESPONSE TO INTERROGATORY NO. 17:

Opposer objects to Interrogatory No. 17 on the grounds it seeks information protected from discovery by the attorney client privilege and/or work product. Subject to and without waiver thereof, Opposer answers that Opposer learned of Applicant's mark upon its publication in the Official Gazette.

INTERROGATORY NO. 18:

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

RESPONSE TO INTERROGATORY NO. 18:

Opposer objects to Interrogatory No. 18 as overly broad, and unduly burdensome, but without waiving this objection, Opposer states that Opposer has been involved in the following two proceedings:

- 1) Aspen Club Lodge Properties, LLC v. Mary E. Innis, Opposition No. 91160496; and
- 2) Mary E. Innis v. Jackie Wadell, Opposition No. 91182434.

INTERROGATORY NO. 19:

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.

RESPONSE TO INTERROGATORY NO. 19:

Opposer objects to Interrogatory No. 19 on the grounds it seeks information protected from discovery by the attorney client privilege and/or work product. Opposer also objects to Interrogatory No. 19 as overly broad, and unduly burdensome in that it seeks to require Opposer, a trademark attorney, to state information regarding “all instances in which Opposer has requested...” [emphasis mine]. Subject to and without waiver of those objections, Opposer states that besides the present proceeding Opposer has been involved in the following two proceedings:

- 1) Aspen Club Lodge Properties, LLC v. Mary E. Innis, Opposition No. 91160496; and
- 2) Mary E. Innis v. Jackie Wadell, Opposition No. 91182434.

INTERROGATORY NO. 20:

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.

RESPONSE TO INTERROGATORY NO. 20:

Opposer objects to Interrogatory No. 20 on the grounds it seeks information protected from discovery by the attorney client privilege and/or work product. Subject to and without waiver thereof, Opposer answers that in Opposition No. 91160496, Aspen Club Lodge Properties, LLC requested that Opposer discontinue the use of Opposer's Mark.

INTERROGATORY NO. 21:

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.

RESPONSE TO INTERROGATORY NO. 21:

Opposer objects to Interrogatory No. 21 on the grounds it seeks information protected from discovery by the attorney client privilege and/or work product. Opposer also objects to Interrogatory No. 21 as seeking confidential information in the absence of the entry of a protective order sufficient to preserve the confidentiality of the information. Furthermore, Opposer objects to Interrogatory No. 21 as vague and/or ambiguous in that the meaning of "within litigation" is not explained or immediately understood. Without waiver of objection, Opposer answers that it will supplement its answer to this interrogatory upon entry of an appropriate protective order.

INTERROGATORY NO. 22:

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.

RESPONSE TO INTERROGATORY NO. 22:

Opposer objects to Interrogatory No. 22 on the grounds it seeks information protected from discovery by the attorney client privilege. Opposer also objects to Interrogatory No. 22 as

overly broad. Subject to and without waiver of those objections, Opposer states that no documents were used to respond to these interrogatories.

INTERROGATORY NO. 23:

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.

RESPONSE TO INTERROGATORY NO. 23:

Mary E. Innis.

Date: March 6, 2009

Friedman Law Group, Ltd.

By: /s/ Andrea E. Friedman
Andrea E. Friedman
Friedman Law Group, Ltd.
1700 W. Irving Park Rd., Suite 305A
Chicago, IL 60613
Telephone: (773) 248.2794
Facsimile: (312) 276.8812

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES** has been served upon Craig S. Hilliard, Esq., Stark & Stark, P.C., 993 Lenox Drive, Bldg 2, Lawrenceville, NJ 08648-2316 this 6th day of March, 2009, by first class mail, postage prepaid.

/s/ Andrea E. Friedman

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EXHIBIT “B”

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

In The Matter of Application Serial No. 78/738,098: SKY FITNESS & WELLBEING
In The Matter of Application Serial No. 78/763,613: SKY FITNESS & WELLBEING

MARY E. INNIS,)	
)	
Opposer,)	
	)	Opposition Nos. 91173869 (parent)
v.	)	91174139
)	
JAY WAGNON,)	
)	
Applicant.)	

**OPPOSER'S RESPONSES TO APPLICANT'S FIRST
NOTICE FOR PRODUCTION OF DOCUMENTS**

Opposer objects to the Applicant's First Notice for Production of Documents to the extent that it seeks to impose obligations on Opposer beyond or inconsistent with those set forth in the Federal Rules of Civil Procedure or the Trademark Rules of Practice. Opposer further objects to Applicant's First Notice for Production of Documents to the extent to which it seeks the disclosure of confidential information in the absence of the entry of an appropriate protective order sufficient to preserve the confidentiality of the information. Opposer also objects to Applicant's First Notice for Production of Documents to the extent to which it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege. Opposer further objects to Applicant's First Notice for Production of Documents to the extent to which it is overly broad, unduly burdensome, and/or seeks the production of documents or information that are not relevant, material, or reasonably calculated to lead to the discovery of relevant, material, or admissible evidence. Subject to the foregoing objections, Opposer responds as follows:

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DOCUMENTS REQUESTED

REQUEST FOR PRODUCTION NO. 1:

Any and all documents identified by Opposer in its answers to Applicant's Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Opposer objects to Request No. 1 to the extent it seeks documents comprising attorney-work product or shielded from discovery by attorney-client privilege. Subject to and without waiver of that objection, Opposer responds that there are no non-privileged responsive documents.

REQUEST FOR PRODUCTION NO. 2:

Any and all documents referred to, consulted or relied upon in preparing Opposer's answers to Applicant's Interrogatories.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Opposer objects to Request No. 2 to the extent it seeks documents comprising attorney-work product or shielded from discovery by attorney-client privilege. Subject to and without waiver of that objection, Opposer responds that there are no non-privileged responsive documents.

REQUEST FOR PRODUCTION NO. 3:

Any and all documents which may or will be used as an exhibit at trial or any evidentiary hearing in this matter.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Opposer objects to Request No. 3 to the extent it seeks documents comprising attorney-work product or shielded from discovery by attorney-client privilege. Subject to and without waiver of that objection, Opposer states that Opposer has not yet determined documents which may be used in this proceeding and that relevant, non-privileged documents will be produced subject to the entry of an appropriate protective order and at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Opposer objects to Request No. 4 to the extent it seeks documents comprising attorney-work product or shielded from discovery by attorney-client privilege. Subject to and without waiver of that objection, Opposer states that Opposer has not yet determined documents which may be used by an expert or lay witness in this proceeding and that relevant, non-privileged documents will be produced subject to the entry of an appropriate protective order and at a mutually agreeable place and time.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Opposer objects to Request No. 5 to the extent it seeks documents comprising attorney-work product or shielded from discovery by attorney-client privilege. Subject to and without waiver of that objection, Opposer states that there are no such documents.

REQUEST FOR PRODUCTION NO. 6:

Any and all documents referring or relating to any items of damage or loss Opposer contends are the fault or responsibility of Applicant.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Opposer objects to Request No. 6 to the extent it seeks documents comprising attorney-work product or shielded from discovery by attorney-client privilege. Opposer also objects to Request No. 6 as seeking confidential documents in the absence of the entry of an appropriate protective order. Subject to and without waiver of those objections, Opposer states that it will produce responsive, non-privileged documents after entry of an appropriate protective order. Opposer further states that it believes that responsive documents as to damage or loss by Opposer are in the hands of Applicant, in terms of Applicant's sales figures, and Applicant has not yet responded to discovery requests. Opposer reserves the right to supplement its response as necessary as further facts are developed in this proceeding.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Opposer objects to Request No. 7 to the extent to which it seeks information shielded from discovery by the attorney client privilege and/or work product. Opposer also objects to Request No. 7 as seeking confidential documents in the absence of the entry of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that it will produce responsive non-privileged documents after the entry of an appropriate protective order, if and to the extent any exist.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Opposer objects to Request No. 8 to the extent to which it seeks information shielded from discovery by the attorney client privilege and/or work product. Opposer also objects to Request No. 8 as seeking confidential documents in the absence of the entry of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that it will produce responsive non-privileged documents after the entry of an appropriate protective order, if and to the extent any exist.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Opposer objects to Request No. 9 to the extent it seeks information shielded from discovery by the attorney client privilege and as overly broad and unduly burdensome. Without waiver of objection, Opposer states that it has not yet identified any of its testifying experts.

REQUEST FOR PRODUCTION NO. 10:

Each and every curriculum vitae or resume prepared within the past ten years by Opposer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Opposer objects to Request No. 10 as overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

Opposer objects to Request No. 11 to the extent to which it seeks information shielded from discovery by the attorney client privilege and/or work product. Opposer also objects to Request No. 11 as seeking confidential documents in the absence of the entry of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that it will produce responsive non-privileged documents after the entry of an appropriate protective order, if and to the extent any exist.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Opposer objects to Request No. 12 to the extent to which it seeks information shielded from discovery by the attorney client privilege and/or work product. Opposer also objects to Request No. 12 as seeking confidential documents in the absence of the entry of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that it will produce responsive non-privileged documents after the entry of an appropriate protective order, if and to the extent any exist.

REQUEST FOR PRODUCTION NO. 13:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Opposer objects to Request No. 13 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege and further objects to the extent it seeks disclosure of confidential information in the absence of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that although Opposer has a *bona fide* intent to use the mark, Opposer has not yet made use of the mark.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Opposer objects to Request No. 14 to the extent to which it seeks information shielded from discovery by the attorney client privilege and/or work product. Opposer also objects to Request No. 14 as seeking confidential documents in the absence of the entry of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that it will produce responsive non-privileged documents after the entry of an appropriate protective order, if and to the extent any exist.

REQUEST FOR PRODUCTION NO. 15:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Opposer objects to Request No. 15 to the extent to which it seeks information shielded from discovery by the attorney client privilege and/or work product. Opposer also objects to Request No. 15 as seeking confidential documents in the absence of the entry of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that it will produce responsive non-privileged documents after the entry of an appropriate protective order, if and to the extent any exist.

REQUEST FOR PRODUCTION NO. 16:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Opposer objects to Request No. 16 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege. Without waiver of that objection, Opposer responds that there are no non-privileged responsive documents.

REQUEST FOR PRODUCTION NO. 17:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Opposer objects to Request No. 17 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege and further objects to the extent it seeks disclosure of confidential information in the absence of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that although Opposer has a *bona fide* intent to use the mark, Opposer has not yet made use of the mark.

REQUEST FOR PRODUCTION NO. 18:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Opposer objects to Request No. 18 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege and further objects to the extent it seeks disclosure of confidential information in the absence of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that although Opposer has a *bona fide* intent to use the mark, Opposer has not yet made use of the mark.

REQUEST FOR PRODUCTION NO. 19:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Opposer objects to Request No. 19 to the extent to which it seeks information shielded from discovery by the attorney client privilege and/or work product. Opposer also objects to Request No. 19 as seeking confidential documents in the absence of the entry of an appropriate protective order sufficient to preserve the confidentiality of the information. Opposer further objects to Request No. 19 as irrelevant. Without waiver of those objections, Opposer responds that it will produce responsive non-privileged documents after the entry of an appropriate protective order, if and to the extent any exist.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Opposer objects to Request No. 20 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege. Opposer also objects to Request No. 20 as overly broad and unduly burdensome. Without waiver of those objections, Opposer responds that there are no non-privileged responsive documents.

REQUEST FOR PRODUCTION NO. 21:

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

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Opposer objects to Request No. 21 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege and further objects to the extent it seeks disclosure of confidential information in the absence of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that although Opposer has a *bona fide* intent to use the mark, Opposer has not yet made use of the mark.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Opposer objects to Request No. 22 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege and further objects to the extent it seeks disclosure of confidential information in the absence of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that although Opposer has a *bona fide* intent to use the mark, Opposer has not yet made use of the mark.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Opposer objects to Request No. 23 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege and further objects to the extent it seeks disclosure of confidential information in the absence of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that although Opposer has a *bona fide* intent to use the mark, Opposer has not yet made use of the mark.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Opposer objects to Request No. 24 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege and further objects to the extent it seeks disclosure of confidential information in the absence of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that although Opposer has a *bona fide* intent to use the mark, Opposer has not yet made use of the mark.

REQUEST FOR PRODUCTION NO. 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.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Opposer objects to Request No. 25 to the extent it seeks information comprising attorney work product or shielded from discovery by the attorney client privilege and further objects to the extent it seeks disclosure of confidential information in the absence of an appropriate protective order sufficient to preserve the confidentiality of the information. Without waiver of those objections, Opposer responds that although Opposer has a *bona fide* intent to use the mark, Opposer has not yet made use of the mark.

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Date: March 6, 2009

Friedman Law Group, Ltd.

By: /s/ Andrea E. Friedman
Andrea E. Friedman
Friedman Law Group, Ltd.
1700 W. Irving Park Rd., Suite 305A
Chicago, IL 60613
Telephone: (773) 248.9455
Facsimile: (312) 276.8812

Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **OPPOSER'S RESPONSES TO APPLICANT'S FIRST NOTICE FOR PRODUCTION OF DOCUMENTS** has been served upon Craig S. Hilliard, Esq., Stark & Stark, P.C., 993 Lenox Drive, Bldg 2, Lawrenceville, NJ 08648-2316 this 6th day of March, 2009, by first class mail, postage prepaid.

/s/ Andrea E. Friedman

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EXHIBIT “C”

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

In The Matter of Application Serial No. 78/738,098: SKY FITNESS & WELLBEING
In The Matter of Application Serial No. 78/763,613: SKY FITNESS & WELLBEING

MARY E. INNIS,)	
)	
Opposer,)	
	)	Opposition Nos. 91173869 (parent)
v.	)	91174139
)	
JAY WAGNON,)	
)	
Applicant.)	

**APPLICANT'S RESPONSES AND OBJECTIONS
TO OPPOSER'S FIRST SET OF INTERROGATORIES**

TO: Andrea E. Friedman, Esq.
101 W. Grand Avenue, Suite 212
Chicago, Illinois 60610

Applicant, Jay Wagon ("Applicant"), hereby responds and objects, pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and the Rules of the Trademark Trial & Appeal Board, to Opposer's First Set of Interrogatories as follows:

GENERAL OBJECTIONS APPLICABLE TO ALL INTERROGATORIES

1. Applicant's responses are made without waiving any objections as to relevance, privilege, or admissibility of any document or information provided in response to Opposer's First Set of Interrogatories (the "Interrogatories") in this or any subsequent proceeding, or at the trial of this or any other action, on any ground. A partial response to any interrogatory that has been objected to, in whole or in part, is not intended to be a waiver of the stated objection.

2. Applicant objects to the Interrogatories to the extent they call for the disclosure of documents and information that are subject to the attorney-client privilege, that are immune from discovery under the Attorney Work Product Doctrine, that were prepared in

anticipation of litigation, or that are otherwise protected from disclosure under the Federal Rules and relevant case law.

3. Applicant objects to the Interrogatories to the extent they seek to impose discovery obligations that differ from or exceed those set forth in the applicable Rules.

4. Applicant objects to the Interrogatories to the extent that the Interrogatories, given their overbreadth on their face, are unduly burdensome and overly broad, and the information sought is not relevant and not reasonably calculated to lead to the discovery of admissible evidence in this litigation.

5. Applicant objects to the Interrogatories to the extent they seek information which embodies material that is private, business confidential, proprietary, or is a trade secret.

6. Applicant objects to the Interrogatories to the extent they require Applicant to identify documents not within Applicant's custody or control.

7. Applicant objects to the Interrogatories to the extent they contain compound questions.

8. Applicant objects to the definitions and instructions set forth in the Interrogatories to the extent that the definitions or instructions purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific interrogatory on the ground that such enlargement, expansion or alteration renders said interrogatory vague and ambiguous, or overly broad and unduly burdensome.

9. Applicant objects to the definitions and instructions set forth in the Interrogatories to the extent that such definitions and/or instructions are inconsistent with the procedures set forth in the Federal Rules.

10. Applicant objects to the definitions and instructions set forth in the Interrogatories to the extent they seek to impose an obligation upon Applicant to identify or produce documents not currently in Applicant's possession, custody or control, or refer to persons, entities or events not known to them, and on the grounds that such definitions, instructions and Interrogatories seek to require more than the obligation imposed by law upon Applicant or to the extent they seek to impose upon Applicant an obligation to investigate or discover information or materials from third parties who are equally accessible to Opposer, and thus would subject Applicant to unreasonable and undue annoyance, oppression, burden, and expense.

11. Applicant objects to the Interrogatories to the extent they exceed the allotted amount of interrogatories and subparts permitted under the applicable Rules.

12. The responses set forth herein are subject to change as more information becomes available to Applicant. Each of these general objections shall be deemed incorporated in Applicant's responses to each of the Interrogatories.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

a. Describe separately the manner and identify the date and geographical place of Applicant's first use of "SKY FITNESS & WELLBEING" for any good or service in commerce in the United States.

b. Identify the persons most knowledgeable concerning Applicant's present use of or plans to use "SKY FITNESS & WELLBEING."

c. Identify the person most knowledgeable concerning Applicant's marketing or planned marketing of goods or services in connection with "SKY FITNESS & WELLBEING."

d. Describe each manner in which Applicant uses, has used, or plans to use "SKY FITNESS & WELLBEING."

OBJECTION: Applicant specifically objects to this interrogatory insofar as it is unduly burdensome and overly broad, and the information sought is not relevant and not reasonably calculated to lead to the discovery of admissible evidence in this proceeding.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: All of the products and services offered under Applicant's mark are bought by individual consumers, through retail sales, and corporate customers, through corporate sales. The geographical areas of Applicant's ongoing distribution encompass all potential customers reached through Applicant's promotional means which include, but are not limited to: 1) direct sales on premises; 2) website promotions; 3) advertisements in newspaper and other print publications; 4) telephone sales; 5) direct mailing; 6) radio advertisements; 7) television advertisements and exposure; and 8) sponsorship of local sporting events. Applicant first began promoting and

processing orders for fitness and exercise facilities in connection with Applicant's mark out of its home offices on or about 09/29/05. The individuals possessing the most knowledge with regard to the foregoing are: 1) Jay Wagnon, President, Sky, 54 W. 21st St., Suite 608, New York, NY 10010; and 2) Sharol Raspberry, President, Capital Enterprises, Inc., 3445 N. Webb Rd., Wichita, KS 67226. Also, pursuant to Fed.R.Civ.P. 33(d), Applicant responds to this interrogatory by referring to the responsive documents produced by Applicant in connection with this action.

INTERROGATORY NO. 2: Identify each person participating in the preparation or approval of advertisements or promotions of all goods or services marketed in connection with "SKY FITNESS & WELLBEING."

RESPONSE: See responses and objections to interrogatory number 1.

INTERROGATORY NO. 3: State the amount of money Applicant has spent or plans to spend for each type of advertising or promotion Applicant has used or plans to use for goods or services marketed in connection with "SKY FITNESS & WELLBEING."

RESPONSE: Pursuant to Fed.R.Civ.P. 33(d), Applicant responds to this interrogatory by referring to all of the advertising expenditure data referenced by and encompassed within the documents produced by Applicant in connection with this action.

INTERROGATORY NO. 4: Identify each use known to Applicant by any third party of any term consisting in whole or in part of "SKY," and the persons with knowledge of such use.

OBJECTION: Applicant specifically objects to this interrogatory insofar as the terms "use" and "term" are vague and otherwise undefined. Applicant further specifically objects to this interrogatory insofar as it calls for legal conclusions.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Applicant responds to this interrogatory by referring to the responsive documents produced by Applicant in connection with this action. The individuals possessing the most knowledge with regard to the foregoing are: 1) Jay Wagnon, President, Sky, 54 W. 21st St., Suite 608, New York, NY 10010; and 2) Sharol Rasberry, President, Capital Enterprises, Inc., 3445 N. Webb Rd., Wichita, KS 67226.

INTERROGATORY NO. 5: Identify each investigation which has been conducted relating to "SKY FITNESS & WELLBEING," "SKY SPA" or the word "SKY," and each person having knowledge relating thereto.

OBJECTION: Applicant specifically objects to this interrogatory insofar as the term "investigation" is vague and otherwise undefined.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Applicant responds to this interrogatory by referring to the responsive documents produced by Applicant in connection with this action. The individuals possessing the most knowledge with regard to the foregoing are: 1) Jay Wagnon, President, Sky, 54 W. 21st St., Suite 608, New York, NY 10010; and 2) Sharol Rasberry, President, Capital Enterprises, Inc., 3445 N. Webb Rd., Wichita, KS 67226.

INTERROGATORY NO. 6: Identify any rights in the mark "SKY FITNESS & WELLBEING" or the word "SKY," which Applicant has granted to any third party or acquired from any third party, and the persons knowledgeable concerning each grant or acquisition.

OBJECTION: Applicant specifically objects to this interrogatory insofar as the term "rights" is vague and otherwise undefined. Applicant further specifically objects to this interrogatory insofar as it calls for legal conclusions.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Applicant responds to this interrogatory by referring to the responsive documents produced by Applicant in connection with this action. The individuals possessing the most knowledge with regard to the foregoing are: 1) Jay Wagnon, President, Sky, 54 W. 21st St.,

Suite 608, New York, NY 10010; and 2) Sharol Rasberry, President, Capital Enterprises, Inc., 3445 N. Webb Rd., Wichita, KS 67226.

INTERROGATORY NO. 7: Describe separately the nature of all objections made by or directed to Applicant that relate to Applicant's claimed rights in, "SKY FITNESS & WELLBEING" or the word "SKY," and identify the persons most knowledgeable about each objection.

OBJECTION: Applicant specifically objects to this interrogatory insofar as the terms "objections" and "rights" are vague and otherwise undefined. Applicant further specifically objects to this interrogatory insofar as it calls for legal conclusions.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Applicant responds to this interrogatory by referring to the responsive documents produced by Applicant in connection with this action. The individuals possessing the most knowledge with regard to the foregoing are: 1) Jay Wagnon, President, Sky, 54 W. 21st St., Suite 608, New York, NY 10010; and 2) Sharol Rasberry, President, Capital Enterprises, Inc., 3445 N. Webb Rd., Wichita, KS 67226.

INTERROGATORY NO. 8: Identify each instance of actual confusion, mistake or association of any kind between Applicant or its use of a mark consisting in whole or in part of the word "SKY," and Opposer or its use of the "SKY SPA Mark," and identify each person with knowledge of each such instance.

OBJECTION: Applicant specifically objects to this interrogatory insofar as the terms "confusion," "mistake" and "association" are vague and otherwise undefined. Applicant further specifically objects to this interrogatory insofar as it calls for legal conclusions.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: Applicant has no knowledge of any facts responsive to this Interrogatory.

INTERROGATORY NO. 9: Identify all agreements or arrangements of any kind between Applicant and another party regarding the provision of spa or beauty salon services by parties other than the Applicant.

OBJECTION: Applicant specifically objects to this interrogatory insofar as the terms "agreements," "arrangements" and "spa or beauty salon services" are vague and otherwise undefined. Applicant further specifically objects to this interrogatory insofar as it calls for the dissemination of confidential or otherwise privileged information.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Applicant

responds to this interrogatory by referring to the responsive documents produced by Applicant in connection with this action.

INTERROGATORY NO. 10: Identify those persons most knowledgeable about the operations and maintenance of all current and past websites regarding "SKY FITNESS & WELLBEING."

OBJECTION: Applicant specifically objects to this interrogatory insofar as the terms "operations" and "maintenance" are vague and otherwise undefined.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: 1) Jay Wagnon, President, Sky, 54 W. 21st St., Suite 608, New York, NY 10010; and 2) Sharol Rasberry, President, Capital Enterprises, Inc., 3445 N. Webb Rd., Wichita, KS 67226.

INTERROGATORY NO. 11: Identify all agreements and negotiations between Applicant and other parties regarding the use of SKY FITNESS & WELLBEING or any other mark containing the word "SKY."

OBJECTION: Applicant specifically objects to this interrogatory insofar as the terms "agreements" and "negotiations" are vague and otherwise undefined. Applicant further specifically objects to this interrogatory insofar as it calls for the dissemination of confidential or otherwise privileged information.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Applicant

responds to this interrogatory by referring to the responsive documents produced by Applicant in connection with this action.

INTERROGATORY NO. 12: Describe by date and circumstance how Applicant first became aware of Opposer's SKY SPA Mark, and identify each person with knowledge relating thereto.

OBJECTION: Applicant specifically objects to this interrogatory insofar as it calls for legal conclusions.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Applicant responds to this interrogatory by referring to the responsive documents produced by Applicant in connection with this action as well as the pleadings in this action. The individuals possessing the most knowledge with regard to the foregoing are: 1) Jay Wagnon, President, Sky, 54 W. 21st St., Suite 608, New York, NY 10010; and 2) Sharol Rasberry, President, Capital Enterprises, Inc., 3445 N. Webb Rd., Wichita, KS 67226.

INTERROGATORY NO. 13: Identify all market records of any kind and any survey or study Applicant has conducted or caused to be conducted regarding the SKY FITNESS & WELLBEING or SKY SPA marks.

OBJECTION: Applicant specifically objects to this interrogatory insofar as the terms "market records," "survey" and "study" are vague and otherwise undefined.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Applicant responds to this interrogatory by referring to the responsive documents produced by Applicant in connection with this action. In addition, Applicant has commissioned a number of studies by Third Degree Advertising, 100 East Main , Suite 200, OKC, OK 73104.

INTERROGATORY NO. 14: Identify the persons most knowledgeable concerning the facts that support Applicant's Answer to Opposer's Notice of Opposition, including the Affirmative Defenses.

OBJECTION: Applicant specifically objects to this interrogatory insofar as it calls for legal conclusions.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: 1) Jay Wagnon, President, Sky; 2) Maggie O'Neill, Marketing Coordinator, Sky; 3) Sharol Rasberry, President, Capital Enterprises, Inc.; 4) Quinn Cloninger, Regional Vice President, Sky; 5) Hilary Fields, Group Fitness Coordinator, Sky.

INTERROGATORY NO. 15: If Applicant intends to rely upon the opinion of an expert in connection with this proceeding, provide the information set forth in Rule 26(a)(2) Fed.R.Civ.P., for each expert.

RESPONSE: Applicant has not yet determined whether or not Applicant intends to rely upon the opinion of an expert in connection with this proceeding and will properly identify any such expert pursuant to the Federal Rules and the Rules of the Trademark Trial & Appeal Board and any applicable Orders of the TTAB.

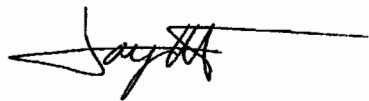
INTERROGATORY NO. 16: Identify each person who provided information or documents or otherwise assisted in the preparation of the above interrogatories or Opposer's First Request for Production of Documents.

OBJECTION: Applicant specifically objects to this interrogatory insofar as it calls for information subject to the attorney-client privilege and work product doctrine.

RESPONSE: Without waiving any general or specific objections, Applicant responds as follows: 1) Jay Wagnon, President, Sky, 54 W. 21st St., Suite 608, New York, NY 10010; and 2) Sharol Rasberry, President, Capital Enterprises, Inc., 3445 N. Webb Rd., Wichita, KS 67226.

CERTIFICATION

I hereby certify that the foregoing answers are factually correct to the best of my knowledge, information and belief. I am aware that if any of the foregoing answers are willfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read "Jay Wagnon", with a long horizontal line extending to the right.

JAY WAGNON

Date: July 1, 2009

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EXHIBIT “D”

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

In The Matter of Application Serial No. 78/738,098: SKY FITNESS & WELLBEING
In The Matter of Application Serial No. 78/763,613: SKY FITNESS & WELLBEING

MARY E. INNIS,)	
)	
Opposer,)	
	)	Opposition Nos. 91173869 (parent)
v.	)	91174139
)	
JAY WAGNON,)	
)	
Applicant.)	

**APPLICANT'S RESPONSES AND OBJECTIONS TO OPPOSER'S FIRST SET
OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

TO: Andrea E. Friedman, Esq.
101 W. Grand Avenue, Suite 212
Chicago, Illinois 60610

Applicant, Jay Wagon ("Applicant") responds and objects as follows to Opposer,

May E. Innis' First Request for Production of Documents:

**GENERAL OBJECTIONS APPLICABLE TO ALL REQUESTS
FOR PRODUCTION OF DOCUMENTS**

1. Applicant's responses are made without waiving any objections as to relevance, privilege, or admissibility of any document provided in response to Opposer's First Set of Requests for Production of Documents (the "Document Requests") in this or any subsequent proceeding, or at the trial of this or any other action, on any ground. A partial response to any document request that has been objected to, in whole or in part, is not intended to be a waiver of the stated objection.

2. Applicant objects to the Document Requests to the extent they call for the disclosure of documents that are subject to the attorney-client privilege, that are immune

from discovery under the Attorney Work Product Doctrine, that were prepared in anticipation of litigation, or that are otherwise protected from disclosure under the Federal Rules and relevant case law.

3. Applicant objects to the Document Requests to the extent they seek to impose discovery obligations that differ from or exceed those set forth in the applicable Rules.

4. Applicant objects to the Document Requests to the extent that the Document Requests, given their overbreadth on their face, are unduly burdensome and overly broad, and the documents sought are not relevant and not reasonably calculated to lead to the discovery of admissible evidence in this litigation.

5. Applicant objects to the Document Requests to the extent they seek information which embodies material that is private, business confidential, proprietary, or is a trade secret.

6. Applicant objects to the Document Requests to the extent they require Applicant to identify or produce documents not within Applicant's custody or control.

7. Applicant objects to the definitions and instructions set forth in the Document Requests to the extent that the definitions or instructions purport to enlarge, expand, or alter in any way the plain meaning and scope of any specific document request on the ground that such enlargement, expansion or alteration renders said document request vague and ambiguous, or overly broad and unduly burdensome.

8. Applicant objects to the definitions and instructions set forth in the Document Requests to the extent that such definitions and/or instructions are inconsistent with the procedures set forth in the Federal Rules.

9. Applicant objects to the definitions and instructions set forth in the Document Requests to the extent they seek to impose an obligation upon Applicant to identify or produce documents not currently in Applicant's possession, custody or control, seek to require more than the obligation imposed by law upon Applicant, or to the extent they seek to impose upon Applicant an obligation to investigate or discover information or materials from third parties who are equally accessible to Opposer, and thus would subject Applicant to unreasonable and undue annoyance, oppression, burden, and expense.

10. The responses set forth herein are subject to change as more information becomes available to Applicant. Each of these general objections shall be deemed incorporated in Applicant's responses to each of the Document Requests.

RESPONSES TO DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1: All documents identified in response to Opposer's First Set of Interrogatories.

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 2: All documents which relate or refer to Opposer's consideration, design, development, selection, adoption, first use, or planned first use of, or bona fide intention to use, the mark "SKY FITNESS & WELLBEING."

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 3: Representative specimens of each label, sign, display, trade dress, wrapper, packaging, advertising or promotion Applicant uses or has used or plans to use in connection with "SKY FITNESS & WELLBEING."

RESPONSE: **Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.**

REQUEST FOR PRODUCTION NO. 4: Documents sufficient to identify Applicant's annual dollar and unit volumes of sales for goods and services sold in connection with the mark "SKY FITNESS & WELLBEING" since Applicant's introduction of each such good or service.

RESPONSE: **Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.**

REQUEST FOR PRODUCTION NO. 5: Documents which reveal the territorial areas in the United States where Applicant markets or has marketed or plans to market goods or services in connection with "SKY FITNESS & WELLBEING" including the time frames such marketing has occurred in each area.

RESPONSE: **Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.**

REQUEST FOR PRODUCTION NO. 6: Documents which reveal the channels of trade through which Applicant promotes or advertises or plans to promote or advertise goods or services in connection with "SKY FITNESS & WELLBEING" including the time frames such promotion or advertising occurred.

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 7: Representative specimens of all advertisements, promotional materials or other documents Applicant uses or plans to use in the advertising or promotion or planned advertising or promotion of goods or services in connection with "SKY FITNESS & WELLBEING."

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 8: Documents which reveal Applicant's annual marketing expenses or planned expenses for goods or services marketed in connection with "SKY FITNESS & WELLBEING," including but not limited to, expenses for advertising and promotion.

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 9: All documents which relate to the provision of, or arrangements or agreements to provide spa or beauty salon services at or in connection with Applicant's "SKY FITNESS & WELLBEING."

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 10: All documents which constitute or relate or refer to any assignment, license, or other transfer or grant of any rights to or from Applicant in "SKY-FITNESS & WELLBEING."

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 11: All documents which relate or refer to Opposer or Opposer's use of or intent to use the "SKY SPA Mark," or other mark consisting in whole or in part of "SKY," including all documents which relate or refer to the circumstances under which Applicant first became aware of Opposer's use or intent to use "SKY SPA."

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 12: All documents which relate or refer to any instances of confusion, mistake, or deception which has or may have occurred between Applicant's use of the mark "SKY -FITNESS & WELLBEING" or other mark consisting in whole or in part of "SKY," and Opposer or Opposer's use of, or intent to use "SKY SPA."

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 13: All documents which constitute, relate, or refer to any formal or informal research, including, but not limited to searches, investigations, surveys, tests, or studies of any kind which Applicant has conducted or has knowledge of pertaining to the Opposer's SKY SPA Mark, or any mark consisting in whole or in part of SKY, or Opposer's "SKY FITNESS & WELLBEING" mark.

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 14: All documents which constitute, relate or refer to each use, former use, or claim of use by Applicant or any other third part of SKY FITNESS & WELLBEING or any other mark consisting in whole or in part of the word "SKY."

RESPONSE: **Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.**

REQUEST FOR PRODUCTION NO. 15: All documents that relate or refer to Applicant's application to register SKY FITNESS & WELLBEING or other mark consisting in whole or in part of the word "SKY" in the United States Patent and Trademark Office or elsewhere, including App. Ser. Nos. 78/738,098 and 78/763,613.

RESPONSE: **Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.**

REQUEST FOR PRODUCTION NO. 16: All documents that relate or refer to any court action or administrative proceeding filed by or against Applicant, and all written challenges or objections made by or directed to Applicant, relating or referring to Applicant's use or planned use of, or claimed rights in, the mark "SKY FITNESS & WELLBEING."

RESPONSE: **Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.**

REQUEST FOR PRODUCTION NO. 17: All documents relating to and showing the content of Applicant's current and past websites for SKY FITNESS & WELLBEING.

RESPONSE: **Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.**

REQUEST FOR PRODUCTION NO. 18: All documents relating to or that support Applicant's Affirmative Defenses in its Answer to Opposer's Notice of Opposition.

RESPONSE: Applicant will produce for inspection and copying any non-privileged responsive documents in Applicant's possession.

REQUEST FOR PRODUCTION NO. 19: All documents provided to any expert in connection with this proceeding.

RESPONSE: Applicant has no responsive documents in its possession.

Dated: July 1, 2009

STARK & STARK
A Professional Corporation

By:

CRAIG S. HILLIARD

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EXHIBIT “E”

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

In The Matter of Application Serial No. 78/738,098: SKY FITNESS & WELLBEING
In The Matter of Application Serial No. 78/763,613: SKY FITNESS & WELLBEING

MARY E. INNIS,)	
)	
Opposer,)	
	)	Opposition Nos. 91173869 (parent)
v.	)	91174139
)	
JAY WAGNON,)	
)	
Applicant.)	

DEPOSITION NOTICE

TO: Andrea E. Friedman, Esq.
Friedman Law Group, Ltd.
1700 W. Irving Park Road, Suite 305A
Chicago, IL 60613

SIR:

PLEASE TAKE NOTICE that in accordance with Rule 30 of the Federal Rules of Civil Procedure, testimony will be taken by deposition upon oral examination via videoconference before a person authorized by the laws of the State of Illinois to administer oaths at the offices of Barnes & Thornburg LLP, One North Wacker Drive, Suite 4400, Chicago, Illinois 60606 at 10:00 a.m. EST on February 25, 2010, at which time you are requested to produce Opposer, Mary E. Innis, for testimony.

STARK & STARK
A Professional Corporation
Attorneys for Applicant

By: _____
CRAIG S. HILLIARD

Dated: February 18, 2010

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EXHIBIT “F”



Andrea E. Friedman ESQ
direct 773.248.2781
afriedman@marketing-law.com

October 28, 2009

VIA FIRST CLASS MAIL AND EMAIL

Mr. Craig S. Hilliard
Stark & Stark, P.C.
P.O. Box 5315
Princeton, NJ 08543-5315

RECEIVED
NOV - 2 2009

BY: _____

Re: Mary E. Innis v. Jay Wagnon, Opp. Nos. 91173869 and 91174139

Dear Craig:

We are finalizing a settlement proposal in light of your client's clear use of "SKY SPA" in connection with the same services as my client's SKY SPA mark. The documents you have produced show widespread use of "SKY SPA", including, but not limited to, documents bearing Bates label nos. 000000064-67, 133, 134, 136, 144, 145, 147, 178, 179, 181, 182, 183, 200, 203, 205, 207, 213, 220, 222, 223, 225, 226, 229, 237, and 253. Indeed, in numerous instances, your client uses the "™" designation symbol alongside "SKY SPA".

In addition, there are numerous deficiencies in your client's responses to our written discovery. As an initial matter, and as explained more fully below, you have improperly objected to numerous discovery requests on the grounds that they are "unduly burdensome and overly broad." Those blanket objections do not specifically detail what is "unduly burdensome and overly broad," and ignore the fact that our requests are very specific and limited to the issues involved in this proceeding. Finally, your objections disregard the "Selected Discovery Guidelines" in Section 414 of the TBMP.

Interrogatory No. 1a. You failed to completely respond to this interrogatory. The Interrogatory requests Applicant to "...identify the ... geographical place of Applicant's first use of 'SKY FITNESS & WELLBEING' for any good or service in commerce in the United States." Section 414(5) of the TBMP expressly provides that "[i]nformation concerning a party's first use of its involved marks is discoverable." However, your response simply indicates that "[t]he geographical areas of Applicant's ongoing distribution encompass all potential customers..." We request you provide a complete answer.

Interrogatory No. 4. You have objected on the grounds that the terms "use" and "term" are "vague and otherwise undefined" and that the interrogatory "calls for legal conclusions." This objection is improper since one of the likelihood of confusion factors is the number and nature of similar marks in use on similar goods. We request that you withdraw or narrow this objection and supplement your response.

Interrogatory No. 5. We do not agree with and do not understand your objection that this interrogatory is "unduly burdensome and overly broad" and that the term "investigation" is "vague and otherwise undefined." The Interrogatory is limited to investigations relating to "'SKY FITNESS & WELLBEING', 'SKY SPA', or the word 'SKY.'" Moreover, TBMP § 414(19) specifically provides that, "[i]nformation

concerning a defendant's actual knowledge of plaintiff's use of the plaintiff's involved mark...and, if so, when and under what circumstances it acquired such knowledge is discoverable." Therefore, your objection is improper, and we request that you withdraw it and provide a complete answer.

Interrogatory No. 6. We do not agree that the term "rights" is "vague and otherwise undefined" or that the interrogatory calls for "legal conclusions". As indicated in Section 414(9) of the TBMP, such information "...is discoverable to the extent that the responding party has actual knowledge thereof..." Thus, your objection is improper, and we request that you withdraw it and provide a complete answer.

Interrogatory No. 7. We do not agree that the terms "objections" and "rights" are "vague and otherwise undefined" or that the interrogatory calls for "legal conclusions". As expressly provided for in Section 414(10) of the TBMP, such "[i]nformation concerning litigation and controversies including settlement and other contractual agreements...is discoverable." Accordingly, your objection is improper, and we request that you withdraw it and provide a complete answer.

Interrogatory No. 8. We do not agree that the terms "confusion", "mistake" and "association" are "vague and otherwise undefined" or that the interrogatory calls for "legal conclusions". As expressly provided for in Section 414(10) of the TBMP, such "[i]nformation concerning litigation and controversies including settlement and other contractual agreements...is discoverable." Moreover, actual confusion is indisputably one of the likelihood of confusion factors. Accordingly, your objection is improper, and we request that you withdraw it and provide a complete answer.

Interrogatory No. 9. We do not agree that the terms "agreements", "arrangements" and "spa or beauty salon services" are "vague and otherwise undefined". As expressly provided for in Section 414(10) of the TBMP, such "[i]nformation concerning litigation and controversies including settlement and other contractual agreements...is discoverable." Therefore, please withdraw your objection and provide a complete answer.

Interrogatory No. 11. We do not agree that the terms "agreements", and "negotiations" are "vague and otherwise undefined". As stated above, Section 414(10) of the TBMP, indicates that such "[i]nformation concerning litigation and controversies including settlement and other contractual agreements...is discoverable." Therefore, please withdraw your objection and provide a complete answer.

Interrogatory No. 12. We do not agree with and do not understand your objection that this Interrogatory "calls for legal conclusions." TBMP § 414(19) specifically provides that, "[i]nformation concerning a defendant's actual knowledge of plaintiff's use of the plaintiff's involved mark...and, if so, when and under what circumstances it acquired such knowledge is discoverable." Accordingly, your objection is improper, and we request that you withdraw it and provide a complete answer.

Interrogatory No. 13. We do not agree that the terms "market records", "survey" and "study" are "vague and otherwise undefined". Nonetheless, relevant studies and surveys include, but are not limited to, those related to: focus group studies regarding consumer perception, consumer surveys,

market surveys of potential customers and, studies involving existing or potential trade channels. All of these surveys and studies are relevant to the issues in this proceeding and covered by this interrogatory. Thus, we request that you amend your response.

Interrogatory No. 14. We do not agree with your objection that this Interrogatory "calls for legal conclusions." Clearly, Opposer is entitled to take discovery to determine whether grounds exist for any affirmative defenses. See *Johnson & Johnson v. Rexall Drug Co.*, 186 USPQ 167, 171 (TTAB 1975) and *Neville Chemical Co. v. Lubrizol Corp.*, 183 USPQ 184, 187 (TTAB 1974). Accordingly, please withdraw your objection and supplement your answer.

Request for Production No. 11. We have not received any information relating to your client's website. This request specifically asks for "[a]ll documents which relate or refer to Opposer or Opposer's use or intent to use the 'SKY SPA Mark,' or other mark consisting in whole or in part of 'SKY,' including all documents which relate or refer to the circumstances under which Applicant first became aware of Opposer's use or intent to use 'SKY SPA'. Therefore, please supplement your production.

Request for Production No. 12. This request asks for documents relating "...to any instances of confusion, mistake, or deception which has or may have occurred between Applicant's use of the mark 'SKY FITNESS & WELLBEING' or other mark consisting in whole or in part of 'SKY,' and Opposer or Opposer's use of, or intent to use 'SKY SPA.'" In your response, you indicated that you would produce "...any non-privileged responsive document in Applicant's possession." Thus, please identify those documents and/or supplement your production.

Request for Production No. 17. As indicated at No. 11 above, you have failed to produce the content of Applicant's current and past websites. Thus, we request that you supplement your production.

While we understand that you wish to take my client's deposition, the above deficiencies need to be addressed prior to the taking of any deposition, and clearly that cannot happen by **October 29, 2009**. Moreover, we also would like to schedule depositions of your client. Therefore, if you agree, we propose filing a 60-day request for extension of time to address these issues and discuss a potential settlement given your client's clear use of my client's SKY SPA mark. We trust that these concerns can be resolved in good faith and without application to the Board.

Very truly yours,

A handwritten signature in black ink, appearing to read "Andrea E. Friedman", with a long, sweeping horizontal line extending to the right.

Andrea E. Friedman

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EXHIBIT “G”

STARK&STARK

A PROFESSIONAL CORPORATION

CRAIG S. HILLIARD
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WWW.STARK-STARK.COM

April 12, 2010

VIA E-MAIL

Andrea Friedman, Esq.
Friedman Law Group, Ltd.
1700 W. Irving Park Road
Suite 305A
Chicago, IL 60613

Re: Mary E. Innis v. Jay Wagnon
Opposition No. 91173869
Opposition No. 91174139

Dear Ms. Friedman:

I am writing to respond to your October 28, 2009 letter and your other recent correspondence. First and foremost, I believe that our past discovery responses fall clearly within the standards of the TBMP. Nevertheless, we are willing to work with you to bring any discovery disagreements to an equitable and expedient conclusion. The following are our responses and requests for clarification in correspondingly numbered paragraphs:

Interrogatory No. 1a. You request the identity of the geographical place of Applicant's first use of the mark. You objected to virtually the same interrogatory we served on your client. In any event, we provided the exact date and place of the initial use of the mark. In addition, the documents that we supplied identify the geographical place of our first use of the mark. Further, we have provided the identity of witnesses possessing the most knowledge on that general subject. We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

Interrogatory No. 4. You request the identity of each use known to Applicant by any third party of any term consisting in whole or in part of "SKY," and the persons with knowledge of such use. Once again, I note that you objected to virtually the same interrogatory we served on your client. Moreover, you have refused to clarify the undefined terms "use" and "term." Furthermore, we do not agree that that your request does not call for a legal conclusion, simply because you believe that responsive information could be an element of a legal test or standard. Nevertheless, we have provided the identity of witnesses possessing the most knowledge on that general subject. Finally, we reiterate and adopt your limited response to virtually the same interrogatory that we propounded: *Aspen Club Properties, LLC v. Mary E. Innis*, Opposition No. 91160496; and *Mary E. Innis v. Jackie Waddell*, Opposition No. 91182434. We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

STARK&STARK

A PROFESSIONAL CORPORATION

Andrea Friedman, Esq.

April 12, 2010

Page 2 of 5

Interrogatory No. 5. You request the identity of each investigation which has been conducted relating to "SKY FITNESS & WELLBEING," "SKY SPA" or the word "SKY," and each person having knowledge relating thereto. You have refused to clarify the undefined term "investigation." Nevertheless, we have provided the identity of witnesses possessing the most knowledge on that general subject. We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

Interrogatory No. 6. You request the identity of any rights in the mark "SKY FITNESS & WELLBEING" or the word "SKY," which Applicant has granted to any third party or acquired from any third party, and the persons knowledgeable concerning each grant or acquisition. Again, you objected to virtually the same interrogatory we served on your client. Moreover, you have refused to clarify the undefined term "rights." Nevertheless, we have provided the identity of witnesses possessing the most knowledge on that general subject. We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

Interrogatory No. 7. You request descriptions of the nature of all objections made by or directed to Applicant that relate to Applicant's claimed rights in, "SKY FITNESS & WELLBEING" or the word "SKY," and identify the persons most knowledgeable about each objection. You objected to virtually the same interrogatories we served on your client. Moreover, you have refused to clarify the undefined terms "objections" and "rights." Nevertheless, we have provided the identity of witnesses possessing the most knowledge on that general subject. Finally, we reiterate and adopt your limited response to virtually the same interrogatory that we propounded: *Aspen Club Properties, LLC v. Mary E. Innis*, Opposition No. 91160496; and *Mary E. Innis v. Jackie Waddell*, Opposition No. 91182434. We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

Interrogatory No. 8. You request the identity of each instance of actual confusion, mistake or association of any kind between Applicant or its use of a mark consisting in whole or in part of the word "SKY," and Opposer or its use of the "SKY SPA Mark," and identify each person with knowledge of each such instance. Once again, you objected to virtually the same interrogatories we served on your client. Moreover, you have refused to clarify the undefined terms "confusion," "mistake" and "association." Furthermore, we do not agree that that your request does not call for a legal conclusion, simply because you believe that responsive information could be an element of a legal test or standard. Nevertheless, we have provided the identity of witnesses possessing the most knowledge on that general subject. We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

STARK & STARK

A PROFESSIONAL CORPORATION

Andrea Friedman, Esq.

April 12, 2010

Page 3 of 5

Interrogatory No. 9. You request the identity of all agreements or arrangements of any kind between Applicant and another party regarding the provision of spa or beauty salon services by parties other than the Applicant. You have refused to clarify the undefined terms "agreements", "arrangements" and "spa or beauty salon services." Nevertheless, we have provided the identity of witnesses possessing the most knowledge on that general subject. We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

Interrogatory No. 11. You request the identity of all agreements and negotiations between Applicant and other parties regarding the use of SKY FITNESS & WELLBEING or any other mark containing the word "SKY." Again, as with so many of your requests for more information, you objected to the same requests we served on your client. Moreover, you have refused to clarify the undefined terms "agreements" and "negotiations." We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

Interrogatory No. 12. You request the description by date and circumstance how Applicant first became aware of Opposer's SKY SPA Mark, and identify each person with knowledge relating thereto. You objected to virtually the same interrogatory we served on your client. Nevertheless, the documents that we produced many months ago identify our knowledge of Opposer's mark. Further, we have provided the identity of witnesses possessing the most knowledge on that general subject. We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

Interrogatory No. 13. You request the identity of all market records of any kind and any survey or study Applicant has conducted or caused to be conducted regarding the SKY FITNESS & WELLBEING or SKY SPA marks. You objected to virtually the same interrogatories we served on your client. Moreover, you have refused to clarify the undefined terms "market records," "survey" and "study." Notwithstanding, the documents that we supplied identify such information. Further, we have provided the identity of witnesses possessing the most knowledge on that general subject. We would be happy to work with you if you can point out the manner in which our response is insufficient, or if you can more cogently specify the information that you are seeking.

Interrogatory No. 14. You request the identity of the persons most knowledgeable concerning the facts that support Applicant's Answer to Opposer's Notice of Opposition, including the Affirmative Defenses. We do not agree that that your request does not call for a legal conclusion, simply because you believe that responsive information could be an element of a legal test or standard. Nevertheless, we have provided the identity of witnesses possessing the most knowledge on that general subject – which is all that you requested.

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April 12, 2010

Page 4 of 5

Request for Production No. 11. You request all documents¹ which relate or refer to Opposer or Opposer's use of or intent to use the "SKY SPA Mark," or other mark consisting in whole or in part of "SKY," including all documents which relate or refer to the circumstances under which Applicant first became aware of Opposer's use or intent to use "SKY SPA." Again, you objected to virtually the same document request we served on your client. Moreover, you have apparently sought to broaden your request to include "information relating to your client's website." This request is overly broad and unduly burdensome on its face. We would be happy to work with you if you can more cogently specify the information that you are seeking.

Request for Production No. 12. You request all documents which relate or refer to any instances of confusion, mistake, or deception which has or may have occurred between Applicant's use of the mark "SKY FITNESS & WELLBEING" or other mark consisting in whole or in part of "SKY," and Opposer or Opposer's use of, or intent to use "SKY SPA." You objected to virtually the same document request we served on your client. Finally, we reiterate and adopt your limited response to virtually the same category of discovery requests: *Aspen Club Properties, LLC v. Mary E. Innis*, Opposition No. 91160496; and *Mary E. Innis v. Jackie Waddell*, Opposition No. 91182434 – with no supporting documents. We would be happy to work with you if you can more cogently specify the information that you are seeking.

Request for Production No. 17. You request all documents relating to and showing the content of Applicant's current and past websites for SKY FITNESS & WELLBEING. Per our general objections, this request is overly broad and unduly burdensome on its face. We would be happy to work with you if you can more cogently specify the information that you are seeking.

Finally, you appear to cite your aforementioned issues with our discovery productions as proper grounds for refusing to produce your clients for depositions. First, we take exception to this assertion based upon your own failure to produce any significant discovery responses or document production. In fact, you have failed to produce a single document. Second, under Section 403.03 of the TBMP, "a party is under an obligation to respond to an adversary's request for discovery during the time allowed therefore under the applicable rules, irrespective of the sequence of requests for discovery, or of an adversary's failure to respond to a pending request for discovery" (citations omitted). Therefore, your refusal to produce your client for a deposition is improper.

¹ We note that under Section 402.02 of the TBMP, a party may comply with a document request by providing a representative sampling of the information sought, or some reduced amount of information which is nevertheless sufficient to meet the propounding party's discovery needs.

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April 12, 2010

Page 5 of 5

Please contact us at your earliest convenience, so that we can work through any issues before we schedule the depositions. I would like to take your client's deposition during the week of April 19th or the week of April 26th. Please let me know when your client is available.

I look forward to hearing from you.

Very truly yours,

STARK & STARK
A Professional Corporation

By: _____

CRAIG S. HILLIARD

CSH/MPS/emp

cc: Jay Wagnon

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2010, a copy of the foregoing Applicant's Memorandum of Law in Opposition to Opposer's Motion to Compel and in Support of Applicant's Cross-Motion to Compel and Declaration of Martin P. Schrama, Esq. with exhibits attached thereto was served on Opposer via e-mail to afriedman@marketing-law.com and by Fed Ex overnight delivery to:

Andrea Friedman, Esq.
Friedman Law Group, Ltd.
1700 W. Irving Park Road
Suite 305A
Chicago, IL 60613

BY: s/ Craig S. Hilliard
CRAIG S. HILLIARD