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

Proceeding	91176851
Party	Defendant RBC Bearings Inc.
Correspondence Address	RICHARD MICHAUD MICHAUD-KINNEY GROUP LLP 306 INDUSTRIAL PARK RD , SUITE 206 MIDDLETOWN, CT 06457-1517 UNITED STATES
Submission	Answer
Filer's Name	Michael K. Kinney
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Signature	/Michael K. Kinney/
Date	06/29/2015
Attachments	1001-0050-2_Answer and Affirmative Defenses to 2nd Amended Notice of Opp_29 June 2015.pdf(89915 bytes) Exhibit-A_Dec-of-Balderston.pdf(815535 bytes) Exhibit-B_Arbitration-Interim-Award-and-Order.pdf(393285 bytes) Exhibit-C_Arbitration-Final-Award-and-Order.pdf(828375 bytes) Exhibit-D_Dealership-Compliant.pdf(221037 bytes)

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

Peer Bearing Company,	)	**Opposition No. 91176851 (App. No. 78/754,876)**
Opposer,	)	**Mark: 7500 SERIES**
	)	
v.	)	**Consolidated**
	)	**Opposition No. 91171191 (App. No. 78/535,213)**
RBC Bearings, Inc.,	)	
Applicant.	)	Opposition No. 91171191 (App No. 78/535,213)
	)	Mark: 1600 SERIES
	)	Opposition No. 91176823 (App. No. 78/745,178)
	)	Mark: 600 SERIES
	)	Opposition No. 91176837 (App. No. 78/754,894)
	)	Mark: 7600 SERIES
	)	Opposition No. 91176848 (App. No. 78/754,907)
	)	Mark: 6900 SERIES
	)	Opposition No. 91176851 (App. No. 78/754,876)
-- and --	)	Mark: 7500 SERIES
	)	
Peer Bearing Company,	)	Opposition No. 91216123 (App No. 78/664,362)
Opposer,	)	Mark: 1621
	)	Opposition No. 91216129 (App. No. 78/664,347)
v.	)	Mark: 1630
	)	Opposition No. 91216332 (App. No. 78/664,533)
Roller Bearing Company of America, Inc.	)	Mark: 1641
Applicant.	)	Opposition No. 91219688 (App. No. 78/664,336)
	)	Mark: 1635
	)	
	)	Atty. Docket No.: 1001-0050-2

Middletown, Connecticut, June 29, 2015

ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED NOTICE OF OPPOSITION

Applicants, RBC Bearings, Inc., a Delaware corporation ("RBC Bearings"), and Roller Bearing Company of America, Inc., a Delaware corporation ("Roller Bearing Co."), each having offices at One Tribology Center, 102 Willenbrock Road, Oxford, Connecticut 06478, by their undersigned attorneys, Answer the Second Amended Notice of Opposition as follows herein.

With regards to Opposer's stated grounds for Opposition, Applicants answer as follows.

1. In answer to paragraph 1 of the Second Amended Notice of Opposition, Applicant RBC Bearings **admits** that its U.S. Trademark Application for Registration, Serial No. 78/754,876, seeks registration of its 7500 SERIES™ mark, one of several trademarks within its NICE® (U.S.

Trademark Registration No. 3,323,990) brand bearing products, used in connection with bearings sold by Applicants and their predecessors-in-interest including the Nice Ball Bearing Company, at least as early as 1956. However, Applicants **deny** that the 7500 SERIES™ mark is a "common term" used by Applicants, or by any third party, providing the recited goods, and Applicants further submit that the remaining portion of paragraph 1 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

2. In answer to paragraph 2 of the Second Amended Notice of Opposition, Applicants submit that paragraph 2 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

3. In answer to paragraph 3 of the Second Amended Notice of Opposition, Applicants **admit** that the 7500 SERIES™ mark is one of several trademarks within the NICE® brand bearing products, used in connection with bearings sold by Applicants and their predecessors-in-interest including the Nice Ball Bearing Company, at least as early as 1956, that Exhibit A of the Second Amended Notice of Opposition appears to include a portion of a previously used one of Applicants' product catalogs including Applicants' 7500 SERIES™ mark and several of its related marks having a "75xx" formative or surname component of the 7500 SERIES family of marks, used in connection with bearings sold by Applicants in a number of dimensions as well as having a variety of type and numbers of seals, shields, retainers and materials of manufacture recommended for a variety of operational environments, and that Exhibit A includes what appears to be a portion of a purported version of Opposer's product catalog including Applicants' 7500 SERIES™ mark and several of Applicants' related "75xx" marks. However, Applicants further submit that the remaining portion of paragraph 3 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

4. In answer to paragraph 4 of the Second Amended Notice of Opposition, Applicants submit that paragraph 4 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

5. In answer to paragraph 5 of the Second Amended Notice of Opposition, Applicants **deny** that Opposer would be damaged by the registration of the 7500 SERIES™ mark. In addition, Applicants submit that paragraph 5 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same. Further, Applicants submit that competitors have found legitimate ways of competing with Applicants by offering and selling bearing products of varying characteristics and sizes of their own without using the 7500 SERIES™ mark or other marks of the several trademarks, including marks having a "75xx" formative or surname, within Applicants' 7500 SERIES family of marks within the NICE® brand bearing products, to designate their goods.

6. In answer to paragraph 6 of the Second Amended Notice of Opposition, Applicants submit that paragraph 6 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

7. In answer to paragraph 7 of the Second Amended Notice of Opposition, **denied**. Applicants submit that the 7500 SERIES™ mark and other marks of the several trademarks, including marks having a "75xx" formative or surname in the 7500 SERIES family of marks, used on and connection with Applicants' NICE® brand bearing products, are <u>not</u> a "common descriptive" or "generic term" for a bearing of any size or type. Moreover, Applicants submit that there is <u>no relationship</u> between the complete numerals of the 7500 SERIES mark or any of the marks having a "75xx" formative or surname, used on and connection with Applicants' NICE® brand bearing products, and an ingredient, quality, characteristic, function, feature, purpose or use of the goods recited in the instant application. The 7500 SERIES mark, as well as

the marks having a "75xx" formative or surname in the 7500 SERIES family of marks used by Applicants in connection with the recited goods, were arbitrarily chosen and no amount of creative interpretation of the marks results in a bearing of a particular dimension. That is, the numerals of the "75xx" marks cannot be "decoded" by formula or otherwise interpreted to convey an ingredient, quality, characteristic, function, feature, purpose or use of the goods recited in the instant application. This is true of all other "75xx" marks used in connection with Applicants' 7500 SERIES™ and NICE® brand roller bearings, including Applicants' applications for registration described in Answer 13 above. See, for example, the Declaration of Robert I. Balderston (appended hereto as **Exhibit A**), outlining the facts surrounding the adoption of the marks within Applicants' 1600 SERIES™ , 7500 SERIES™ and NICE® brand bearings used to uniquely identify bearing products as being made by Nice Ball Bearing Company (at paragraphs 11 to 20). As Mr. Balderston's Declaration attests, Applicants **invented** a series of marks having the "16xx" and "75xx" formative or surname for their goods, in fact, inherently distinctive marks for its 7500 SERIES™ family within the NICE® brand of bearings. As noted by the declaration, Applicants adopted and has continued to sell its English sizes of bearings under the marks 7500 SERIES™ and NICE®. Therefore, Applicants assert that as created or "coined" terms for its goods, the 7500 SERIES mark and other "75xx" marks for their 7500 SERIES™ and NICE® brand of bearings were developed as **inherently distinctive trademarks** of Applicants and still perform the essential trademark function of identifying Applicants to the purchasing public as a unique source of the recited goods. Further, and as noted above, Applicants submit that competitors have found legitimate ways of competing with Applicants by offering and selling bearing products of varying characteristics and sizes of their own without using the 7500 SERIES™ mark or other marks having the "75xx" formative or surname within Applicants' NICE® brand bearing products, to designate their goods.

8. In answer to paragraph 8 of the Second Amended Notice of Opposition, Applicants **deny** that Opposer would be damaged by the registration of the 7500 SERIES™ mark and that the 7500 SERIES™ mark or other marks having the "75xx" formative or surname within Applicants' NICE® brand bearing products are "common designations." In addition, and as noted above, Applicants submit that competitors have found legitimate ways of competing with

Applicants by offering and selling bearing products of varying characteristics and sizes of their own without using the 7500 SERIES^{TM} mark or other marks having the "75xx" formative within Applicants' NICE® brand bearing products, to designate their goods. Moreover, it is inappropriate to penalize Applicants by finding that their well-known marks are "common names," when in fact, Applicants' 7500 SERIES^{TM} and other marks having the "75xx" formative within Applicants' NICE® brand bearing products, are unique identifiers of the source of Applicants' goods that have been in continuous use by Applicants and its predecessors-in-interest at least since 1956 (about 59 years).

9. In answer to paragraph 9 of the Second Amended Notice of Opposition, Applicants submit that paragraph 9 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

10. In answer to paragraph 10 of the Second Amended Notice of Opposition, Applicants **admit** that in 2006 Applicant Roller Bearing Co. and a related entity, RBC Nice Bearings, Inc., brought suit in United States District Court of the District of Connecticut against Opposer Peer Bearing Company (Civil Action No. 3:06-cv-01380-TLM), however, Applicants submit that the remaining portion of paragraph 10 merely contains legal conclusions of, or mischaracterizations of Applicant Roller Bearing Co.'s statements by, Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

11. In answer to paragraph 11 of the Second Amended Notice of Opposition, Applicants submit that paragraph 11 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

12. In answer to paragraph 12 of the Second Amended Notice of Opposition, Applicants submit that paragraph 12 merely contains legal conclusions of, or mischaracterizations of

Applicant Roller Bearing Co.'s statements by, Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

13. In answer to paragraph 13 of the Second Amended Notice of Opposition, Applicants submit that paragraph 13 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

14. In answer to paragraph 14 of the Second Amended Notice of Opposition, Applicants submit that paragraph 14 merely contains legal conclusions of, or mischaracterizations of the findings of the District Court Judge by, Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

15. In answer to paragraph 15 of the Second Amended Notice of Opposition, Applicants submit that paragraph 15 merely contains mischaracterizations of Applicants' statements and/or the findings of the District Court Judge by Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

16. In answer to paragraph 16 of the Second Amended Notice of Opposition, Applicants submit that paragraph 16 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

17. In answer to paragraph 17 of the Second Amended Notice of Opposition, Applicants submit that paragraph 17 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

18. In answer to paragraph 18 of the Second Amended Notice of Opposition, Applicants submit that paragraph 18 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

19. In answer to paragraph 19 of the Second Amended Notice of Opposition, Applicants **deny** that Opposer would be damaged by the registration of the 7500 SERIES™ mark and that the 7500 SERIES™ mark or other marks having the "75xx" formative or surname within Applicants' NICE® brand bearing products are "common designations." In addition, and as noted above, Applicants submit that competitors have found legitimate ways of competing with Applicants by offering and selling bearing products of varying characteristics and sizes of their own without using the 7500 SERIES™ mark or other marks having the "75xx" formative or surname within Applicants' NICE® brand bearing products, to designate their goods. Moreover, it is inappropriate to penalize Applicants by finding that their well-known marks are "common" names, when in fact, Applicants' 7500 SERIES™ and other marks having the "75xx" formative, within Applicants' NICE® brand bearing products, are unique identifiers of the source of Applicants' goods that have been in continuous use by Applicants and its predecessors-in-interest at least since 1956 (about 59 years).

20. In answer to paragraph 20 of the Second Amended Notice of Opposition, Applicants submit that paragraph 20 merely contains legal conclusions of Opposer's counsel and, as such, Applicants are without knowledge or information sufficient to form a belief as to the truth of the conclusions made and, therefore, **deny** the same.

Affirmative Defenses

21. Without admitting any of the allegations of the Opposer's claims other than those specifically admitted herein and, without prejudice to Applicants' right to plead additional affirmative defenses as the facts may warrant, Applicants hereby assert the following affirmative defenses.

22. In an Order mailed March 2, 2015 the Board granted Opposer's Motion to Strike Applicant's Affirmative Defense No. 2. *Con. Op.*, Doc. 50, p. 3. In support of the Order, the Board stated that "Applicant's suggestion that SKF and opposer are effectively one and the same is not well-taken. The Arbitration panel's majority found otherwise. Final Order at 13-14, and the record in these proceedings and the SKF Oppositions provides no basis for accepting applicant's suggestions." *Id.* at p. 2 and 3. Applicant respectfully disagrees and notes that the Board is relying on a conclusory finding of the Arbitration Panel that is over three (3) years old.

23. However, to address the Board's concern regarding the record in these proceedings, Applicants herein submit evidence of SKF's control of Peer. In particular, SKF USA and AB SKF of Sweden are two of the Defendants in an anti-trust lawsuit *In Re Automotive Parts Antitrust Litigation*, Master File 12-md-02311, Case No. 2:12-cv-00502-MOB-MKM, Dealership Consolidated Class Action Complaint, Doc. 67, in the United States District Court for the Eastern District of Michigan Southern Division. The *In Re Automotive Parts Antitrust Litigation*, is an action against the Defendants, including SKF USA and AB SKF, for engaging in a lengthy conspiracy to suppress and eliminate competition in the bearing industry by agreeing to fix, stabilize and maintain the prices of these products which were sold to automobile manufactures in the United States. *In Re Automotive Parts Antitrust Litigation*, Doc. 67 at para. 1 (see **Exhibit D**). Upon information and belief, SKF USA and AB SKF have a long practice of sharing executives. *Id.* at para. 135. Moreover, "SKF reports its sales by business segment, such as the Automotive segment rather than by subsidiary. The sales of SKF USA are not separately reported in SKF's Annual report, rather all automotive OEM sales are reported as part of the Automotive segment. The automotive segment president . . . is located in Goteborg, Sweden . . . management in Goteberg exclusively decides whether to open or close new facilities, regardless

of where the facilities are located." *Id*. at para. 136. In addition, "SKF's 2012 report states that "180 SKF distributors took part in the North American Distributor Convention held in Florida." It states later in the report that it held conventions for distributors in North America, so that they could learn more about SKF's products. SKF's report also states that "... demand continued to be good in both Northern and Latin America." In addition, the report states that in 2008, SKF acquired Peer Bearings Company, whose "main market" is North America. The report also mentioned that its anti-counterfeiting campaigns are starting to show results in North America." *Id*. at para. 137. "As part of its criminal investigation, the United States Department of Justice ("DOJ") is seeking information about anticompetitive conducts in the market for Bearings." *Id*. at para. 8. In addition, the "European Commission Competition Authority ("EC") has also conducted raids at the European offices of several of the Defendants." *Id*. Applicant submits that the foregoing evidence is sufficient to support its Fourth and Fifth Affirmative defenses and requests the Board to allow discovery on matters relating to its Fourth and Fifth Affirmative Defenses.

24. First Affirmative Defense

The Second Amended Notice of Opposition fails to state a claim upon which relief can be granted in Opposition Proceedings. If Opposer, as is alleged by Opposer's counsel in paragraph 16 of the Second Amended Notice of Opposition, is "forever entitled to use" Applicants' 7500 SERIES™ mark for bearings, then Opposer is not damaged by registration of Applicants' 7500 SERIES™ mark. Accordingly, following Opposer's own reasoning, the Opposition is moot and without basis due at least to there being no possible injury to Opposer.

25. Second Affirmative Defense

The Second Amended Notice of Opposition is inconsistent with Opposer's claimed right. If Opposer, as is alleged by Opposer's counsel in paragraph 16 of the Second Amended Notice of Opposition that courts have held that Opposer is "forever entitled to use" Applicants' 7500 SERIES™ mark for bearings, then Opposer's Opposition is inconsistent with claiming that right as Opposer is not damaged by registration of the 7500 SERIES™ mark. Accordingly, following

Opposer's own reasoning, the Opposition is moot, without basis, and is a waiver of its claimed right due at least to there being no possible injury to Opposer.

26. Third Affirmative Defense

The Second Amended Notice of Opposition is inconsistent with Opposer's claimed right. If Opposer, as is alleged by Opposer's counsel in paragraph 16 of the Second Amended Notice of Opposition that the District Court of Connecticut held that Opposer is "forever entitled to use" the 7500 SERIES™ mark for bearings, then Opposer's Opposition is inconsistent with claiming that right as Opposer is not damaged by registration of the 7500 SERIES™ mark. Accordingly, following Opposer's own reasoning, the Opposition is moot, without basis, and should be terminated and withdrawn with prejudice as barred by res judicata.

27. Fourth Affirmative Defense

By submitting the Second Amended Notice of Opposition and instituting the present Proceedings, Opposer is in violation of both an Interim Order and a Final Order of the Panel in the Arbitration between Applicants and SKF USA, Inc. In particular, the majority of the Panel and the complete Panel in the Arbitration ordered SKF USA, Inc. to withdraw all oppositions against RBC's trademarks and enjoined SKF USA, Inc. from initiating further oppositions against Applicant's trademark applications. See, an Interim Order and Award of the Panel in the Arbitration, dated March 25, 2011 at Order Paragraph No 1, abridging pages 12 and 13 (included herein as **Exhibit B**), and a Final Order and Award of the Panel in the Arbitration, dated April 4, 2012 at Order Paragraph No 5 on page 25 (included herein as **Exhibit C**). Opposer is a wholly owned subsidiary of SKF USA, Inc. Applicants assert that Opposer cannot participate in the present Opposition without inevitable disclosure or use of information provided by its patent company SKF USA, Inc. pursuant to a common interest privilege and without the aid, assistance and control of SKF USA, Inc. As SKF USA, Inc. has been enjoined from initiating further oppositions against Applicants' trademark applications, Opposer should also be enjoined. Accordingly, this Opposition Proceeding should be terminated and withdrawn with prejudice as barred by equitable estoppel.

28. Fifth Affirmative Defense

By submitting the Second Amended Notice of Opposition and instituting the present Proceedings, Opposer is in violation of both an Interim Order and a Final Order of the Panel in the Arbitration between Applicants and SKF USA, Inc. In particular, the majority of the Panel and the complete Panel in the Arbitration ordered SKF USA, Inc. to withdraw all oppositions against RBC's trademarks and enjoined SKF USA, Inc. from initiating further oppositions against Applicants' trademark applications. See, an Interim Order and Award of the Panel in the Arbitration, dated March 25, 2011 at Order Paragraph No 1, abridging pages 12 and 13 (**Exhibit B**), and a Final Order and Award of the Panel in the Arbitration, dated April 4, 2012 at Order Paragraph No 5 on page 25 (**Exhibit C**). Opposer is a wholly owned subsidiary of SKF USA, Inc. Applicants assert that Opposer cannot participate in the present Opposition without inevitable disclosure or use of information provided by its patent company SKF USA, Inc. pursuant to a common interest privilege and without the aid, assistance and control of SKF USA, Inc. As SKF USA, Inc. has been enjoined from initiating further oppositions against Applicants' trademark applications, Opposer should also be enjoined. Accordingly, this Opposition Proceeding should be terminated and withdrawn with prejudice as barred by a previous arbitration and award.

29. Sixth Affirmative Defense

Applicants' 7500 SERIES^{TM} mark and other marks of the several trademarks, including marks having a "75xx" formative or surname, used on and connection with Applicants' NICE® brand bearing products, are unique identifiers of the source of the recited goods. The marks do not describe a size or type of bearing, nor are s the marks a make, model or part number, nor a grade designation, nor a common or generic descriptor of any type of bearing. Moreover, Applicants' 7500 SERIES^{TM} mark and all other marks having the "75xx" formative, used on and connection with Applicants' NICE® brand bearing products, are not a "common descriptive" or "generic term," as described herein the marks as used by Applicants in connection with the recited goods, were arbitrarily chosen and no amount of creative interpretation of the "75xx" terms results in a bearing of a particular dimension. Applicants assert that as created or "coined" terms for goods, continuously used by Applicants and its predecessors-in-interest including the

Nice Ball Bearing Company, at least as early as 1956, the 7500 SERIES™ mark and other marks having the "75xx" formative, used on and connection with Applicants' NICE® brand bearing products, were developed as **inherently distinctive trademarks** of Applicants and still perform the essential trademark function of identifying Applicants to the purchasing public as a unique source of the recited goods.

WHEREFORE, Applicant requests that the Board dismiss Opposer's Second Amended Notice of Opposition in its entirety with prejudice, that the instant application be passed to issuance, and that the 7500 SERIES mark be allowed registration on the Principle Register.

Applicants hereby appoint the law firm of MKG, LLC and the individual attorneys at such law firm, namely Michael K. Kinney, United States Patent and Trademark Office (USPTO) Registration No. 42,740; John H. Mutchler, USPTO Registration No. 53,362; Elizabeth A. Galletta, USPTO Registration No. 52,941; Robert L. Rispoli, USPTO Registration No. 43,884; and Christine W. Beninati, USPTO Registration No. 37,967; as its attorneys with full power of substitution and revocation to transact all business in and to receive all correspondence from the United States Patent and Trademark Office connected therewith.

Respectfully submitted,

Date: June 29, 2015

By: / Michael K. Kinney /

Michael K. Kinney
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Attorney for Applicant
Roller Bearing Company of America, Inc.
and of the Bar of the State of Connecticut

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED NOTICE OF OPPOSITION has been served by First Class mail, this 29th day of June 2015 upon the attorney for Opposer, at the following address:

Thomas C. McDonough, Esq.
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street, Suite 1700
Chicago, Illinois 60602

With courtesy copy by email to:
Thomas C. McDonough at tmcdonough@ngelaw.com

/Michael K. Kinney/
Michael K. Kinney
MKG, LLC

Dated: June 29, 2015

/ Michael K. Kinney /
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EXHIBIT A

DECLARATION OF ROBERT L. BALDERSTON

I, Robert L. Balderston, of 386 Bair Road, Berwyn, Pennsylvania 19312, duly sworn, do hereby declare:

1. I was employed by the Nice Ball Bearing Company from 1940 until 1972, serving in a variety of capacities in engineering and sales, leading up to my designation as a Vice President of Nice Ball Bearing Company. These responsibilities included developing new products and for the sales of bearings for Nice.

2. Part of my responsibilities from 1940 on through to my retirement in 1972 was to participate in the creation, editing and publication of catalogs produced by Nice Ball Bearing Company.

3. One particular job responsibility was to coordinate with the printing company in getting each new catalog published. One such printing company that did work for Nice Ball Bearing Company was the Franklin Printing Company.

4. After the catalog was printed and ready for distribution, the Franklin Printing Company would prepare a form for filing for copyrights on the catalog. That was the regular practice with each new catalog.

5. I signed the copyright forms as an employee and agent for the Nice Ball Bearing Company as a part of my job responsibilities.

6. As a part of the employment understanding with the company, any catalogs that were created by myself and others in the company were the property of Nice Ball Bearing Company.

7. The document attached as Exhibit A is one such copyright form for Catalog No. 240 filed in 1966. I signed this document as a representative of Nice Ball Bearing Company. My name and address appear with my signature on the form.

8. The Catalog No. 240 was one of the catalogs that I worked on and a copy of it is attached as Exhibit B which I recognize and remember.

9. The Nice Ball Bearing Company was an independent company until about ten years before my retirement when SKF purchased Nice Ball Bearing Company.

10. For the years until my retirement in 1972, SKF did not control or dictate to Nice Ball Bearing Company about how to run our business. We were pretty much free to operate as we had before the purchase by SKF. This freedom included continuing to produce new catalogs under the Nice Ball Bearing Company name.

11. As a part of my job responsibilities, I participated in the development of new bearing products. One product line, was a new type of precision ground ball bearing which was dimensioned in inches or English units, rather than Metric units which most bearings of the time were dimensioned in. This series of precision ground, inch-type bearings needed a unique identification when Nice Ball Bearing Company was developing the line so we could identify the whole line of similar bearings.

12. We sat around a table at work and came up with the new name, 1600 SERIES, to be used for this new type of bearing.

13. We just made up the name and we decided to number the different individual bearings in the 1600 SERIES, by identifying each particular bearing in the series by a four digit designation chosen from the numbers between 1601 to 1699, such as 1601, 1602, 1621, 1635 and 1641.

14. No one else making bearings had ever used either the term 1600 SERIES or the four digit designations ranging from 1601 to 1699. We chose these unique bearing identifiers to clearly represent to customers that these products were made only by Nice Ball Bearing Company. Each designated number had a fixed set of physical dimensions and bearing characteristics which we put in our catalogs.

15. This whole 1600 SERIES bearing line was developed while I was employed by Nice Ball Bearing Company between 1940 and 1972.

16. These unique designations were used to sell the bearing products to customers through distributors as one way to the market. At the time Boston Gear was our main distributor of bearings and we held training sessions regularly for the Boston Gear salesmen to teach them about our products, like 1600 SERIES, at Nice Ball Bearing Company. Boston Gear would sell Nice Ball Bearing Company bearing products to customers sometimes using their own literature that always showed that the products were made by Nice Ball Bearing Company. They always used the 1600 SERIES and the four digit 1600 series numbering for this line of precision ground, inch bearings.

17. Another way Nice Ball Bearing Company sold products was directly to OEM, original equipment manufacturer, customers. In OEM, the 1600 SERIES and the four digit designations were also used to identify that these inch-type, precision ground bearings were made by the Nice Ball Bearing Company.

18. No other company used the 1600 SERIES bearing name or used the four digit 1600 numbers for each bearing in the series all the time I worked at Nice Ball Bearing Company, until 1972. None of our competitors

used those numbers, they were our, Nice Ball Bearing Company's, unique designations recognized by customers. No other company or competitor used our 1600 numbers in the years from 1940 to 1972.

19. Nice Ball Bearing Company also used other SERIES designations for groups of bearings that had similar bearing structures but contained individual bearings of different sizes. Before the 1600 SERIES was developed most of our bearings were unground-type bearings like the 400 SERIES, 600 SERIES and 1200 SERIES bearings. The 3000 SERIES was also developed at about the same time as 1600 SERIES.

20. By 1966 when Catalog 240, attached as Exhibit B, was published, Nice Ball Bearing Company had introduced more special new series of precision ground bearings and used unique names for the new lines, similar to what I said about the 1600 SERIES. We came up with these new designations and no one was using them anytime before I retired in 1972, only Nice Ball Bearing Company. These were the 7500 SERIES and 7600 SERIES of bearings and they had four digit designations similar to how I described the 1600 SERIES earlier.

I declare under penalty of perjury that the foregoing is true and correct. This Certification is made subject to the penalties of 28 U.S.C. Section 1746 relating to unsworn falsifications to authorities.

Dated: April 13, **2007**

Robert L. Balderston

Robert L. Balderston

Signature witnessed by :
Printed name/address of Witness

Robert C. Nicander

Name: ROBERT C. NICANDER
Address: 575 BAIR ROAD
BERWYN, PA 19312

Exhibit A

Application for Registration of a Claim to Copyright in a published book manufactured in the United States of America

A

DO NOT WRITE HERE

Instructions: Make sure that all applicable spaces have been completed before you submit the form. The application must be signed at line 10 and the *affidavit* (line 11) completed and notarized. The application should not be submitted until after the date of publication given in line 4, and should state the facts which existed on that date. For further information, see page 4.

Pages 1 and 2 should be typewritten or printed with pen and ink. Pages 3 and 4 should contain exactly the same information as pages 1 and 2, but may be carbon copies. Mail all pages of the application to the Register of Copyrights, Library of Congress, Washington 25, D. C., together with 2 copies of the best edition of the work and the registration fee of $4. Make your remittance payable to the Register of Copyrights.

1. Copyright Claimant(s) and Address(es): Give the name(s) and address(es) of the copyright owner(s). Ordinarily the name(s) should be the same as in the notice of copyright on the copies deposited.

Name NICE BALL BEARING COMPANY

Address 30th & Hunting Park Ave., Philadelphia, Pa. 19140

Name

Address

2. Title: NICE BALL BEARINGS AND ASSEMBLIES
(Give the title of the book as it appears on the title page)

Catalog #240

3. Authors: Citizenship and domicile information must be given. Where a work was made for hire, the employer is the author. The citizenship of organizations formed under U. S. Federal or State law should be stated as U. S. A. Authors may be editors, compilers, translators, illustrators, etc., as well as authors of original text. If the copyright claim is based on new matter (see line 5) give requested information about the author of the new matter.

Name Robert L. Balderston Citizenship Yes
(Give legal name followed by pseudonym if latter appears on the copies) (Name of country)

Domiciled in U. S. A. Yes XX No ______ Address 386 Fair Road, Berwyn, Pa. 19312

Name ______ Citizenship ______
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Domiciled in U. S. A. Yes ______ No ______ Address ______

Name ______ Citizenship ______
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Domiciled in U. S. A. Yes ______ No ______ Address ______

4. Date of Publication of This Edition: Give the date when copies of this edition were first placed on sale, sold, or publicly distributed. (NOTE: The full date (month, day, and year) must be given.)

[illegible]

5. New Matter in This Version: (NOTE: Leave this line blank unless the following instructions apply to this work.) If any substantial part of this work has been previously published, give a brief general statement of the nature of the new matter in this version. New matter may consist of compilation, translation, abridgment, editorial revision, and the like, as well as additional text or pictorial matter.

Our previous catalog #190 has been partially re-written and revised and brought up to date and a substantial amount of new material added.

6. U. S. Edition of Book in English First Manufactured and Published Abroad: (NOTE: Leave this line blank unless the following instructions apply to this work.) If this is the U. S. edition of a book in English, and all or a substantial part of the English text of an earlier foreign edition was manufactured and first published abroad, complete the following spaces. *For further information, see page 4.*

Year date of first publication of foreign edition ______ (Year)

Was claim to ad interim copyright registered in the foreign edition? Yes ☐ No ☐

Yes No

9. Send certificate to
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Name: NICE BALL BEARING COMPANY
Address: 30th & Hunting Park Avenue
(Number and street)
Philadelphia, Pa. 19140
(City) (Zone) (State)

10. **Certification:** (NOTE: Application not acceptable unless signed)
I CERTIFY that the statements made by me in this application are correct to the best of my knowledge.

Robert L. Balderston
(Signature of copyright claimant or duly authorized agent)

11. **Affidavit (required by law).** Instructions: (1) Fill in the blank spaces with special attention to those marked "(X)". (2) Sign the affidavit before an officer authorized to administer oaths within the United States, such as a notary public. (3) Have the officer sign and seal the affidavit and fill in the date of execution.

NOTE: The affidavit must be signed and notarized only *on or after* the date of publication or completion of printing which it states. The affidavit must be signed by an individual.

STATE OF ....
ss:
COUNTY OF ....

I, the undersigned, depose and say that I am the
☐ Person claiming copyright in the book described in this application;
☒ The duly authorized agent of the person or organization claiming copyright in the book described in this application;
☐ The printer of the book described in this application.

That the book was published or the printing was completed on: (X) November 4, 1966
(Give, month, day, and year)

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(Sign and notarize only on or after date given above)

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Subscribed and sworn to / affirmed before me this 8th
day of November, 1966
Helen O'Neil
(Signature of notary)
Notary Public, Philadelphia, Philadelphia
My Commission Expires February 10, 19

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Application and affidavit received NOV 14 1966	
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1. Copyright... name(s)...
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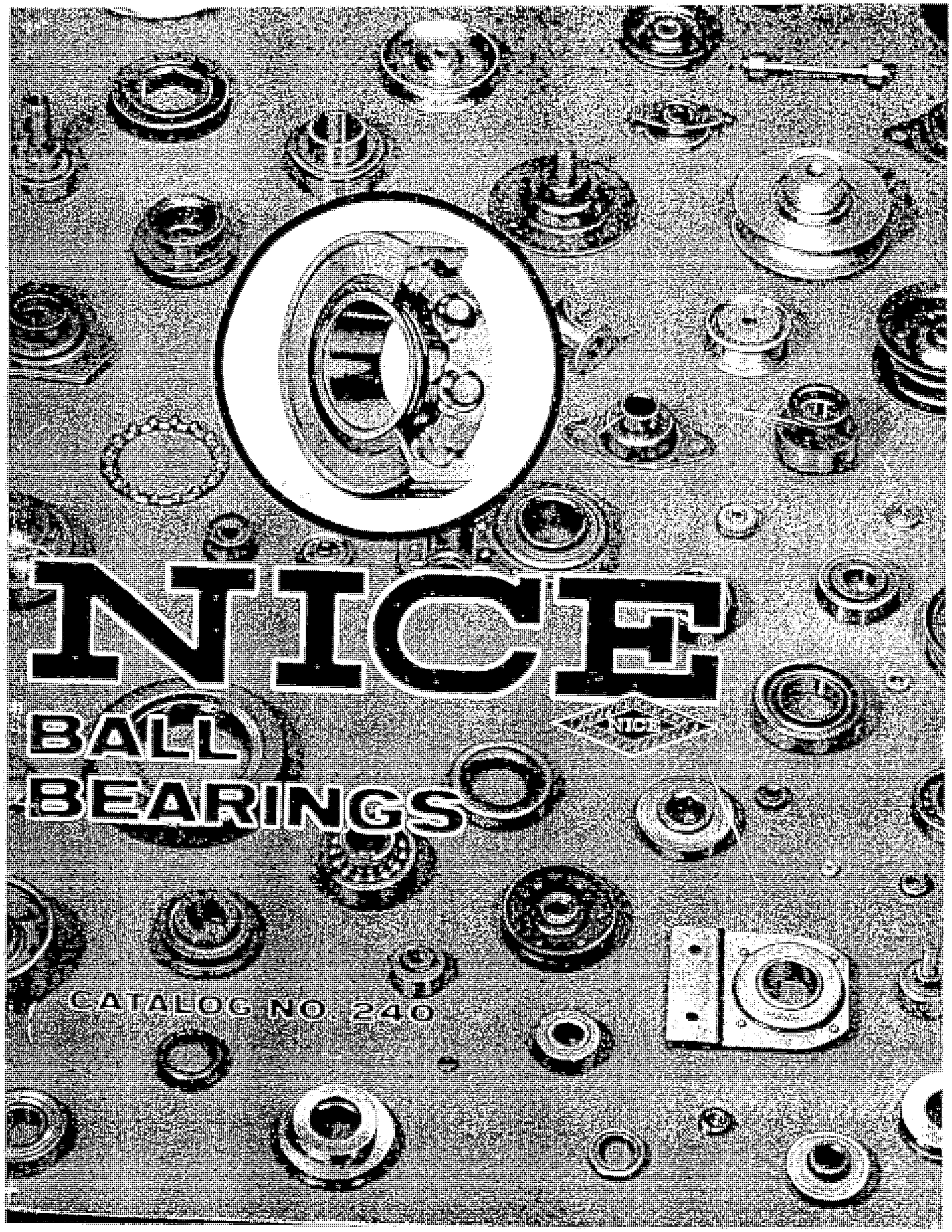
Exhibit B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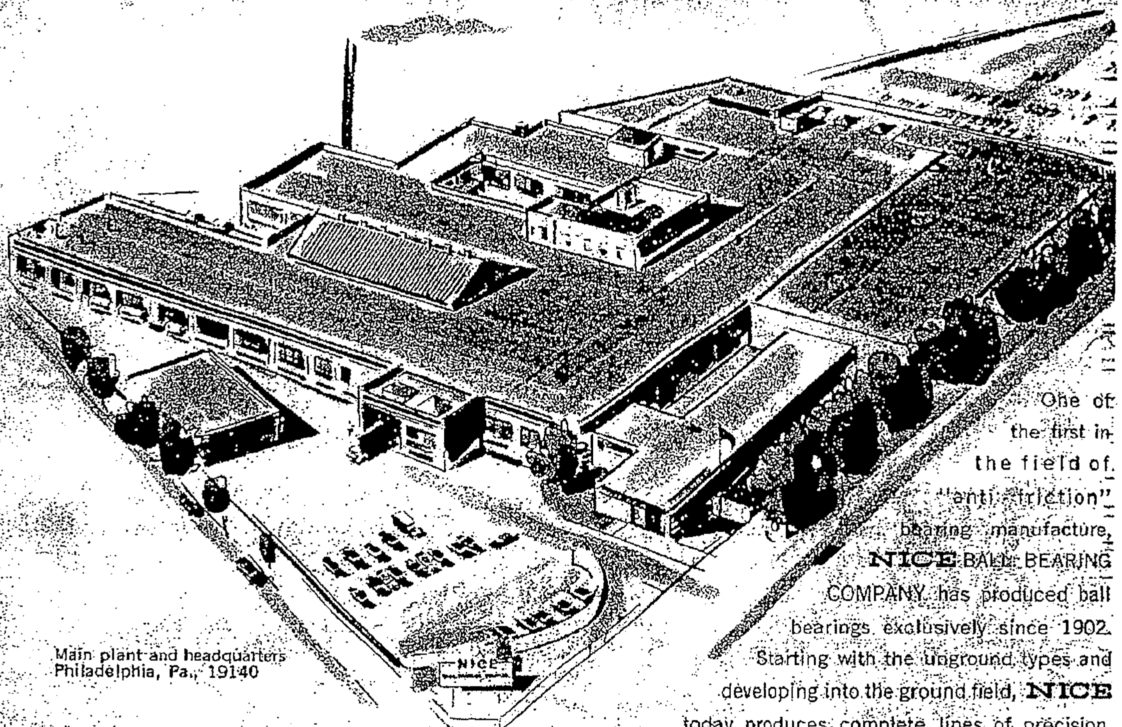
MANUFACTURER OF BALL BEARINGS SINCE 1902



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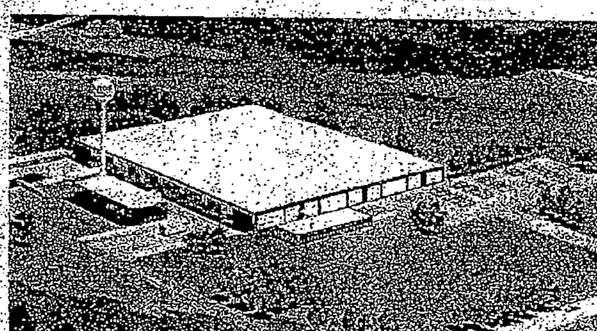

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DESCRIPTIVE INDEX OF BEARING TYPES

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EXHIBIT B

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration Between RBC NICE BEARINGS, INC., ROLLER BEARING COMPANY OF AMERICA, INC., and ROLLER BEARING COMPANY OF AMERICA, d/b/a NICE BALL BERINGS, INC., Claimants, and SKF USA INC., Respondent.	AAA # 14 152 01622 09

Before:
Hon. Arlin M. Adams, Chairman
Hon. George C. Pratt, Arbitrator
Hon. E. Norman Veasey, Arbitrator

INTERIM AWARD AND ORDER

Claimants ("RBC") commenced this arbitration against Respondent ("SKF") by filing a demand for arbitration on September 15, 2009, claiming that SKF had breached provisions in the Asset Purchase Agreement ("APA"), under which RBC had purchased SKF's "Nice" roller-bearing business in 1997. RBC sought compensatory and punitive damages, indemnification, and injunctive relief against SKF and "its affiliates, subsidiaries, servants and/or agents", based on claimed improper use of product designations in the Nice catalog and improper opposition to RBC's trademark applications to the United States Patent and Trademark Office ("PTO").

Answering the demand, SKF denied RBC's claims and argued primarily that RBC did not, under the APA, receive exclusive rights to the product designations. Pointing out that RBC's then-pending lawsuit against Peer Bearing Company in Connecticut District Court could eliminate RBC's claim to the product designations, SKF requested a stay of the arbitration pending judgment in the Peer action. The Panel reserved decision on SKF's stay request.

Peer obtained summary judgment against RBC on one of the product designations, the "1600 SERIES", and to facilitate its appeal, RBC agreed to voluntarily dismiss its remaining claims in the action. Both the appeal and this arbitration then proceeded. On December 15, 2010 the United States Court of Appeals for the Second Circuit affirmed the District Court, which had dismissed RBC's claim concerning the 1600 SERIES designation on the ground of laches. Whether Peer's right to use some of the product designations, as a result of the Connecticut District Court action, is a factor that impinges upon RBC's applications for trademark registration now pending in the PTO is a question that may have to be addressed by the PTO. It is not, however, an issue for this arbitration panel to determine.

The arbitration hearing was held on November 22-23, 2010. Post-hearing briefing was completed on January 31, 2011, and on February 3, 2011, with the Panel's consent, the AAA Case Manager reported that the arbitration panel had declared the hearing closed as of January 31, 2011. However, in granting that consent, the Panel had inadvertently overlooked a ruling made near the end of the hearing at RBC's request [See Tr. at 504-508]. Since RBC had not, until the second day of the hearing, received a copy of the agreement whereby SKF acquired Peer, RBC requested that the hearing be kept open for the purpose of receiving additional evidence relating to SKS's acquisition of Peer and of SKF's control over Peer. Since the Panel expressly granted that request, it was error for the Panel to have allowed the record to be closed.

Background

In the 1997 APA, SKF sold its Nice roller-bearing business to RBC for $6.8 million. As part of the transaction, SKF sold the "transferred assets" to RBC, which included

> all right, title and interest of [SKF] in, to and under the following, to the extent used, owned by, leased by or in the possession of [SKF] in connection with Business at the time of Closing:
>
> * * *
>
> "(m) all goodwill associated with the Business or the Transferred Assets; [and]
>
> (n) all product designations used in [SKF's] catalog with respect to the Products.

[APA §2.01]

In the APA SKF represented and warranted to RBC that it had "the right to sell, assign, transfer and convey" the transferred assets to RBC [APA §3.09]; and that it "either owns the entire right, title and interest in, to and under, or has the legally enforceable right to use all Transferred assets." [APA §3.18]

Under a separate, simultaneous agreement with RBC, SKF became the exclusive distributor of designated Nice products. By an amendment to that agreement in July 2000, the distributorship was to end on Dec. 31 , 2008. However, in 2006 RBC terminated the distributorship agreement. The agreement had no arbitration clause, and litigation between the parties over the agreement is pending elsewhere.

Beginning in late 2004 RBC had begun seeking from the PTO trademark registrations for its product designations. SKF, which was then still serving as RBC's exclusive distributor, did not oppose RBC's first application that related to the 1600 SERIES. Peer, which for some time had been using the SERIES designations, did oppose RBC's trademark applications, and in March 2006 RBC brought its Connecticut action against Peer, seeking injunctive relief and damages based on Peer's allegedly infringing use of nine of the SERIES designations.

In April 2007, its distributorship arrangement with RBC having ended, SKF filed in the PTO a number of notices of opposition to RBC's various applications for trademark registration of the product designations. Then, in September 2008, SKF acquired Peer as a wholly owned subsidiary and supported Peer's defense against RBC's action in Connecticut District Court as well as Peer's oppositions in the PTO. All of the proceedings in the PTO are still pending.

In this arbitration RBC claims that SKF has breached its obligations under the APA by opposing its trademark applications, by permitting Peer to use RBC's product designations, and by refusing RBC's demand that it execute a formal assignment of what RBC claims were SKF's common-law trademark rights in the product designations. RBC seeks relief preventing SKF from opposing RBC's trademark applications; preventing SKF from permitting Peer to use the designations and to oppose RBC's trademark applications; ordering SKF to complete the common-law trademark assignment; indemnifying RBC for its expenses in defending its trademark applications; and awarding RBC its fees and costs for this arbitration.

SKF presents a number of defenses. Its principal argument boils down to the contention that no one, including SKF and RBC, could have an exclusive right to use the product designations. SKF claims it could not transfer to RBC exclusive rights that it (SKF) did not own. Therefore, what RBC received under the APA was only a non-exclusive right to use those designations, a right that it shares with the rest of the world. Consequently, according to SKF, the product designations cannot be trademarked, and RBC has not been harmed either by Peer's and SKF's oppositions to the trademark applications, or by SKF's support of Peer's use of the designations and its litigation against SKF.

RBC's response is two-pronged: (1) whether the product designations can be trademarked is a decision to be made by the PTO, not this arbitration panel; and (2) even if trademark protection is ultimately found to be not available, the APA created a "special relationship" between SKF and RBC that makes SKF different from every other bearing manufacturer, because SKF transferred to RBC everything it had and used in connection with the Nice business, including SKF's non-exclusive right to use the product designations. RBC argues that having sold that right to RBC, SKF could not, under specific provisions in the APA and under the implicit good faith and fair dealing clause, thereafter use or interfere with RBC's efforts to make use of the product designations through its trademarking efforts. Nor could it, according to RBC, circumvent the effect of the APA by causing a subsidiary company to use the product designations and to oppose RBC's trademark applications.

It is to be noted the Panel concluded that admissible parol evidence could be considered, as the APA is ambiguous. Thus, the Panel received into evidence numerous documents and oral testimony.

Discussion

We turn first to the basic liability issues. When SKF transferred to RBC the product designations and goodwill of the Nice business, did RBC acquire exclusive rights to the product designations, or, alternatively, did RBC acquire whatever rights to use the product designations that SKF then possessed? And if RBC did not in the APA acquire the right to exclude others from using the product designations, did it nonetheless acquire the right to exclude SKF from using them, and did RBC thereby also acquire the right to preclude SKF from directly or indirectly interfering with RBC's efforts to obtain trademark protection?

SKF seeks to make this a trademark case, which it is not. Whether the product designations are entitled to trademark protection is not an issue for this Panel. SKF's argument (that RBC has suffered no harm because in any event the product designations cannot receive trademark protection) seeks a decision on the trademark issue, which is for the PTO, not this panel, to resolve. The Panel, therefore, does not decide whether RBC has trademark rights, either registered or common law, in the product designations. Consequently, if RBC's claims in this arbitration required a determination that it possesses exclusive trademark rights in the product designations, those claims would have to be dismissed. However, RBC's alternative argument, that the APA created a "special relationship" between the parties with respect to the product designations, fares better.

The APA not only specifically listed as a transferred asset "all product designations in [SKF's] catalog"; it also transferred to RBC all of SKF's goodwill associated with the business. And with respect to both, SKF sold "all" of its "right, title and interest". We note, however, that the concept of "special relationship" appears nowhere in the APA or the documents or testimony that the Panel considered as part of the parol evidence needed to resolve this ambiguous contract.

Whatever rights other bearing manufacturers might have with respect to the product designations, SKF is, as RBC contends, in a "special relationship" with RBC arising out of the APA. RBC argues that, at the very least, SKF gave up to RBC its own right, whether as owner of the Nice business, or as a member of the public, to use the product designations. The Panel agrees with this contention. Because of that "special relationship", under which SKF divested itself of any interest in or right to use the product designations, the Panel concludes that after the APA, SKF no longer had any right to use or interest in the product designations and that SKF's subsequent opposition to RBC's efforts to obtain trademark protection, was inconsistent with its obligations to RBC under the APA.

The Panel, therefore, finds and concludes that SKF has interfered with RBC's trademarking efforts in violation of SKF's obligations under the APA and that injunctive and compensatory relief is called for. The next question, then, is what specific relief should be granted. The answer to this question requires consideration of the effect of the Panel's conclusion on SKF's own conduct and on SKF's conduct with respect to its wholly owned subsidiary, Peer. RBC's claims for relief can best be addressed in two groups: (A) relief based on SKF's direct opposition to RBC's trademark applications , and (B) relief based on Peer's conduct.

A. Relief based on SKF's direct opposition to RBC's trademark applications.

RBC seeks (1) an injunction against SKF's opposition to the trademark applications, (2) a requirement that SKF complete the requested assignment of common-law trademark rights, and (3) indemnification for RBC's expenses in defending its trademark applications.

(1) Request for Injunction v. SKF re Trademark Opposition.

This request is granted. As indicated above, whether RBC has or can obtain trademark rights in the product designations that SKF sold to RBC in the APA is an issue for the PTO to determine. Therefore, RBC is not, at this time, entitled to injunctive relief from this Panel on a premise that RBC does possess trademark rights. Nevertheless, as against SKF, RBC acquired through the APA all of SKF's interest in the product designations so that as a party with no interest in the trademark proceedings, SKF's filing of oppositions to RBC's trademark applications and its activities in urging other bearing manufacturers to do the same, were without any sound justification. Consequently, SKF will be ordered to withdraw the oppositions to RBC's trademark applications that it has previously filed, and will be further enjoined from any participation in the future in any PTO proceedings with respect to RBC's existing or future applications for trademark registration of product designations included in the Nice catalog referred to in the APA.

(2) <u>Request to order SKF to complete the assignment to RBC of the common law trademarks.</u>

This request is denied. On August 7, 2009, RBC's counsel wrote SKF's counsel enclosing a form of assignment that described nine claimed common-law "SERIES" trademarks, and requested that the assignment be executed by SKF. SKF refused. RBC based its request on §§ 7.01 and 7.02 of the APA, which required SKF to cooperate, provide information, and provide additional documents "necessary or desirable" "in connection with the consummation of the transactions contemplated by the [APA]".

SKF has insisted throughout this arbitration that the product designations simply were not capable of being the subject of trademark protection, common-law or registered. As noted elsewhere, the Panel leaves that question for determination by the PTO. Moreover, one might well question whether a written assignment of the common-law trademarks was needed by RBC, because SKF expressly had transferred to RBC all of the goodwill in the business, which, by operation of law, would include the transfer of any common-law trademarks. SKF's refusal to execute a formal document of transfer may not, therefore, have been a material breach of SKF's obligations.

Furthermore, RBC's claim to a written assignment is not supported by the two sections in the APA relied on by RBC, §§ 7.01 and 7.02. Those sections trigger SKF's obligation only "in connection with the consummation of the transactions contemplated by [the APA]", and those transactions were "consummated" some 12 years before RBC requested the assignment. RBC has not made a sufficiently strong presentation to warrant granting the affirmative injunctive relief requested with respect to a written assignment.

(3) Indemnification

RBC has claimed that SKF is responsible for all of the expenses it has incurred in defending its trademark applications, whether the defense was related to opposition by SKF, by Peer, or by other bearing manufacturers who were goaded by SKF. RBC is entitled, at least, to be indemnified by SKF for its expenses in defending against SKF's oppositions. RBC's claims for indemnification for its defense against oppositions by Peer or by other manufacturers is considered below. The final award will include an amount, plus interest, for RBC's defense expenses against SKF's oppositions.

B. Relief based on Peer's conduct

Whether the relief to be granted should result from Peer's conduct presents more difficult questions, particularly because (1) Peer was apparently using the product designations both when the APA was signed in 1997 and when SKF acquired Peer in 2008, and (2) RBC has apparently lost its entire action against Peer in the Connecticut District Court (the 1600 Series by adjudication of laches, and the other series by RBC's withdrawal with prejudice), with the result that Peer apparently would have the right to use the product designations at issue in that suit even if the PTO should ultimately grant RBC's applications.

When SKF sold its interest in the product designations to RBC in 1997, Peer was using those designations. Not until nine years later, in 2006, did RBC bring suit against Peer for infringement of RBC's rights to the designations. The suit ended in 2010 with a dismissal with respect to the SERIES 1600 designation on the ground of laches, and a voluntary dismissal with respect to the other designations at issue in the case. While the circumstances of the Peer adjudication did not create any collateral estoppel effect against RBC with respect to RBC's trademark rights as against other possible users of the product designations, it did determine that RBC may not prevent Peer from continuing to use the product designations in issue in that case. In short, whatever trademark rights RBC might have in the product designations, it is not able to enforce those rights against Peer.

A problem for this arbitration is created by the fact that in 2008, while RBC's action against Peer was pending, SKF acquired Peer as a wholly owned subsidiary. This raises the question of whether SKF is responsible for Peer's conduct after the acquisition.

RBC contends that because of certain express provisions in the APA and by virtue of the good-faith-and-fair-dealing clause that is implied in every contract, once SKF had acquired Peer, it had the contractual duty to require Peer to conform to the same obligations toward RBC that SKF had with respect to the product designations. On this theory, RBC seeks to enjoin SKF from allowing Peer to continue to oppose RBC's PTO applications, and to enjoin SKF from allowing Peer to continue using the product designations. RBC also seeks to be indemnified by SKF for its costs incurred since 2008 in defending against Peer's continued opposition to RBC's PTO applications.

Understandably, the APA did not contain any provision that would have prevented SKF from competing with RBC, because at the same time SKF was agreeing to become RBC's exclusive distributor for certain products. Whatever the reason for there being no non-compete provision in the APA, the absence of such a provision left SKF free to compete freely with RBC once the Sales and Supply Agreement was terminated in 2006. After the termination, the only limitation on SKF's ability to compete with RBC was that SKF had no right to use the product designations in the Nice catalog referred to in the APA, having transferred all of those rights to RBC under the APA.

Peer, on the other hand, was using the product designations long before it was acquired by SKF. The Panel has thus far not been provided with evidence that would warrant sanctioning SKF for its control of Peer after it became Peer's parent. RBC asserts, however, that the SKF / Peer acquisition agreement that was belatedly produced only during the hearing, plus other, related evidence of SKF's control of Peer is the very evidence for which the hearing was to be left open. Therefore, until RBC has a fair opportunity to present that additional evidence and SKF has a fair opportunity to respond, the Panel is unable to rule on RBC's claims for relief against SKF based on what Peer did or did not do. Because some of the opposition by the other manufacturers may have been caused by SKF acting through Peer, determination of any indemnification for those expenses is also left for the final award to be entered after completion of the additional proceedings contemplated by this Interim Decision.

Accordingly, for the reasons set forth in this Interim Decision and Order, it is ORDERED that

1. SKF withdraw all oppositions to RBC's trademark applications that it has previously filed, and is further enjoined from any participation in the future in any PTO proceedings with respect to RBC's existing or future applications for

trademark registration of product designations included in the Nice catalog referred to in the APA;

2. RBC is entitled to be indemnified by SKF for its expenses in defending against SKF's oppositions to RBC's trademark applications to the PTO, and the amount of the indemnification, plus interest, will be included in the final award to be entered in this arbitration;
3. The order closing the hearing as of January 31, 2011, is vacated;
4. The record remains open for the purpose of receiving further evidence and argument from both sides on the issue of whether SKF's relationship to Peer is such as to warrant further relief against SKF based on Peer's conduct toward RBC;
5. The Accelerated Exchange Program for direct exchange of communications between counsel and the Panel is reestablished;
6. A determination of allocation of attorney's fees and costs of the arbitration shall await the final award; and
7. The parties are directed to confer and by April 4, 2011 submit to the Panel an agreed proposal for the remaining proceedings, and absent agreement, each party shall submit its separate proposal.

March 25, 2011

Arlin M. Adams

Arlin M. Adams, Chairman

George C. Pratt

George C. Pratt, Arbitrator

E. Norman Veasey

E. Norman Veasey, Arbitrator

EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION
COMMERCIAL ARBITRATION TRIBUNAL

In the Matter of the Arbitration Between	)	
	)	
RBC NICE BEARINGS, INC., ROLLER BEARING COMPANY OF AMERICA INC., and ROLLER BEARING COMPANY OF AMERICA, d/b/a NICE BALL BEARINGS, INC.	)	AAA # 14 152 01622 09
Claimants,	)	
	)	**FINAL AWARD AND ORDER**
and	)	
SKF USA INC.,	)	
Respondent.	)	

Before:
Hon. Arlin M. Adams, Chairman
Hon. George C. Pratt, Arbitrator
Hon. E. Norman Veasey, Arbitrator

ADAMS AND VEASEY, ARBITRATORS, FOR THE MAJORITY:

BACKGROUND

Prior Proceedings

In our unanimous Interim Award and Order dated March 25, 2011 ("Interim Award"), the Panel determined that, by their Asset Purchase Agreement ("APA"), the parties had created a "special relationship" when SKF[1] transferred to RBC all of its right, title, and interest in and to the product designations ("Series designations") included in

[1] The Identities and descriptions of the parties and other matters as set forth in the Interim Award are continued in this Final Award and Order.

the Nice product catalog. RBC had bought the Nice business from SKF, including the Series designations in the Nice catalog. SKF agreed in the APA to sell to RBC:

> all the assets, ... rights, ... claims, of every kind and description ..., whether tangible or intangible, ..., that are used [or] owned by [SKF] in connection with the Business ... including without limitation all right title and interest of [SKF] in and under the following ...:
>
> > (i) all of [SKF's] patents, copyrights, trademarks ... and other proprietary data;
> >
> > (m) all goodwill associated with the Business or the Transferred Assets; [and]
> >
> > (n) all product designations used in SKF's catalog with respect to the Products ..."[2]

In APA § 3.09 SKF represented and warranted to RBC that it had "the right to sell, assign, transfer and convey" to RBC "all of the Transferred Assets free and clear of all Liens ...."

Accordingly, in the Interim Award, the Panel held: "Because of that 'special relationship,' under which SKF divested itself of any interest in or right to use the product designations, the Panel concludes that after the APA, SKF no longer had any right to use or interest in the product designations and that SKF's subsequent opposition to RBC's efforts to obtain trademark protection was inconsistent with its obligations to RBC under the APA."[3]

The Panel then ordered that "SKF withdraw all oppositions to RBC's trademark applications that it has previously filed, and is further enjoined from any participation in

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[2] APA § 2.01.

[3] Interim Award at 7.

the future in any PTO proceedings with respect to RBC's existing or future applications for trademark registration of product designations included in the Nice catalog referred to in the APA." The Panel also held that "RBC is entitled to be indemnified by SKF for its expenses in defending against SKF's oppositions to RBC's trademark applications to the PTO..."[4]

Further, in the Interim Award, with respect to RBC's request for relief against SKF based on the conduct of Peer and other bearing manufacturers, the Panel held that "[t]he record remains open for the purpose of receiving further evidence and argument from both sides on the issue of whether SKF's relationship to Peer is such as to warrant further relief against SKF based on Peer's conduct toward RBC."[5] It is this issue that the Panel now addresses.

Peer Issue As Discussed in the Interim Award

In leaving open the question whether RBC is entitled to further relief against SKF based on certain activities of Peer, the Panel outlined the then-known facts and described this issue as follows:

> Whether the relief to be granted should result from Peer's conduct presents more difficult questions, particularly because (1) Peer was apparently using the product designations both when the APA was signed in 1997 and when SKF acquired Peer in 2008, and (2) RBC has apparently lost its entire action against Peer in the Connecticut District Court (the 1600 Series by adjudication of laches, and the other series by RBC's withdrawal with prejudice), with the result that Peer apparently would have the right to use the product designations at issue in that suit even if the PTO should ultimately grant RBC's applications.

[4] *Id.* at 12-13.

[5] *Id.*

When SKF sold its interest in the product designations to RBC in 1997, Peer was using those designations. Not until nine years later, in 2006, did RBC bring suit against Peer for infringement of RBC's rights to the designations. The suit ended in 2010 with a dismissal with respect to the SERIES 1600 designation on the ground of laches, and a voluntary dismissal with respect to the other designations at issue in the case. While the circumstances of the Peer adjudication did not create any collateral estoppel effect against RBC with respect to RBC's trademark rights as against other possible users of the product designations, it did determine that RBC may not prevent Peer from continuing to use the product designations in issue in that case. In short, whatever trademark rights RBC might have in the product designations, it is not able to enforce those rights against Peer.

A problem for this arbitration is created by the fact that in 2008, while RBC's action against Peer was pending, SKF acquired Peer as a wholly owned subsidiary. This raises the question of whether SKF is responsible for Peer's conduct after the acquisition.

RBC contends that because of certain express provisions in the APA and by virtue of the good-faith-and-fair-dealing clause that is implied in every contract, once SKF had acquired Peer, it had the contractual duty to require Peer to conform to the same obligations toward RBC that SKF had with respect to the product designations. On this theory, RBC seeks to enjoin SKF from allowing Peer to continue to oppose RBC's PTO applications, and to enjoin SKF from allowing Peer to continue using the product designations. RBC also seeks to be indemnified by SKF for its costs incurred since 2008 in defending against Peer's continued opposition to RBC's PTO applications.

Understandably, the APA did not contain any provision that would have prevented SKF from competing with RBC, because at the same time SKF was agreeing to become RBC's exclusive distributor for certain products. Whatever the reason for there being no non-compete provision in the APA, the absence of such a provision left SKF free to compete freely with RBC once the Sales and Supply Agreement was terminated in 2006. After the termination, the only limitation on SKF's ability to compete with RBC was that SKF had no right to use the product designations in the Nice catalog referred to in the APA, having transferred all of those rights to RBC under the APA.

Peer, on the other hand, was using the product designations long before it was acquired by SKF. The Panel has thus far not been provided with evidence that would warrant sanctioning SKF for its control of Peer after it became Peer's parent. RBC asserts, however, that the SKF/Peer

> acquisition agreement that was belatedly produced only during the hearing, plus other, related evidence of SKF's control of Peer is the very evidence for which the hearing was to be left open. Therefore, until RBC has a fair opportunity to present that additional evidence and SKF has a fair opportunity to respond, the Panel is unable to rule on RBC's claims for relief against SKF based on what Peer did or did not do. Because some of the opposition by the other manufacturers may have been caused by SKF acting through Peer, determination of any indemnification for those expenses is also left for the final award to be entered after completion of the additional proceedings contemplated by this Interim Decision.[6]

After the Panel issued its Interim Award, the parties engaged in further discovery on the Peer issue. The Panel held an evidentiary hearing on September 7-8, 2011, at which the parties adduced evidence on the relationship between SKF and Peer and on certain of RBC's costs. After receiving post-hearing memoranda, the Panel heard final oral argument on January 18, 2012. This is the Final Award and Order of the Panel.

SUMMARY OF THE CONTENTIONS OF THE PARTIES RELATING TO RBC'S APPLICATION FOR FURTHER INJUNCTIVE RELIEF

RBC contends that, because SKF has the power to control Peer and, whether or not it has exercised that power, as a matter of equity and fair dealing, additional injunctive relief against SKF should be ordered to prohibit "SKF from doing indirectly through Peer that which it cannot do directly under the APA."[7]

SKF, of course, contests RBC's contentions with respect to the facts, the law, and the equities. SKF emphasizes: the corporate separateness of Peer and SKF and their independent operation, despite SKF's ability to control Peer; Peer's conduct challenged by RBC long predates the SKF's acquisition of Peer; SKF itself is not using the Series

[6] *Id.* at 12.

[7] *See, e.g.*, RBC Opening Brief (ROB) at 12.

designations or interfering with RBC's trademark efforts, nor has SKF exercised its control over Peer in any way involving the conduct challenged by RBC; and RBC has not satisfied the requirements for piercing the corporate veil or otherwise proving that Peer is the alter ego of SKF.[8]

As set forth above, this Panel found in its Interim Award that "(1) Peer was apparently using the product designations both when the APA was signed in 1997 and when SKF acquired Peer in 2008; and (2) RBC has apparently lost its entire action against Peer in the Connecticut District Court ... When SKF sold its interest in the product designations to RBC in 1997, Peer was using those designations ...."[9]

Nevertheless, RBC seeks to prevent SKF "from allowing Peer to breach the APA."[10] If this request were granted, the Panel would have to order SKF to exercise its previously unexercised control over Peer to cause it to discontinue a course of business conduct in which it had long been engaging. Specifically, the relief RBC seeks would constitute a mandatory injunction directing SKF: (a) to stop Peer from opposing RBC's trademark efforts with respect to the product designations included in the Nice catalog; and (b) to stop Peer from using the product designations.[11]

To support this request for a mandatory injunction, RBC claims that Peer's action opposing RBC's trademark efforts and its use of the product designations results in SKF

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[8] See, *e.g.*, SKF Answering Brief (SAB) at 1-2.

[9] Interim Award at 10.

[10] ROB at 1.

[11] *Id.*

"doing indirectly through Peer that which it cannot do directly under the APA."[12] In support of its contentions and prayers for injunctive relief, RBC asserts that the record shows "the overwhelming control SKF asserts over" its wholly-owned subsidiary Peer, and that SKF has "substantial involvement in Peer's overall and day-to-day business affairs."[13]

As some of the evidence of SKF's power to control Peer, RBC points to the facts that Peer's senior management and its board of directors include a number of current or former executives of SKF or its affiliates; the board changed Peer's bylaws; SKF's personnel on Peer's board and in its executive offices advised Peer on its corporate strategy, such as business opportunities, inventory control, and the like; SKF asserted with Peer a community of legal interest in the Peer litigation against RBC; and SKF controlled Peer's financial and tax affairs.[14]

RBC's legal argument is, essentially, that by possessing control over Peer, SKF is "circumventing" its obligations under the APA through Peer's activities and thus SKF would keep for itself the very assets it sold to RBC. RBC maintains, however, that this is not a veil-piercing case because RBC does not seek to "reach the assets" of one entity to remedy some wrong that another entity committed against RBC. Instead, RBC's central argument is that SKF's inaction in not stopping Peer is inequitable and violates the implied covenant of good faith and fair dealing in the APA. Further, RBC argues that, even if this were a veil-piercing case, it should prevail because of SKF's control over

[12] *Id.*

[13] *Id.* at 2-4.

[14] *Id.* at 5-15.

Peer and the principle that the veil-piercing and alter ego doctrines are grounded in equity.[15]

SKF disputes much of the above and contends that: (a) Peer is a separate juridical entity that is not dominated and controlled by SKF; (b) to the extent SKF has the power to control Peer, it has not exercised that power in relation to the conduct challenged by RBC, including the fact that it is primarily Peer personnel, not SKF personnel, who continue, post-acquisition, to be responsible for managing Peer's day-to-day business operations; (c) Peer has been in the bearing business for many years predating the APA; (d) Peer operates independently of, and even in competition with, SKF; (e) Peer and SKF sell different quality bearings; (f) Peer has used Series designations since the early 1960s; (g) Peer contested RBC's trademark efforts before SKF acquired Peer; (h) Peer is not a party either to the APA or this arbitration; (i) no provision in the APA reaches the activities of Peer; and (j) RBC would be obtaining broad relief for which it did not bargain if this Panel were to order SKF to cause Peer to stop what it has been doing for years.[16]

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[15] *Id.* at 17-23. In addition to the injunctive relief it seeks, RBC seeks indemnification from SKF for its fees and expenses in defending trademark applications before the US PTO. *Id.* at 23-24. For reasons stated hereafter, we need not reach the question of indemnification.

[16] SAB at 22-40. Also, SKF denies that RBC is entitled to any indemnification for its expenses (which SKF also contends are excessive). *Id.* at 41-45. Finally, SKF seeks reconsideration of the Panel's Interim Award. *Id.* at 46-52. The Panel sees no basis to reconsider the Interim Award, particularly at this late date and in the context of the matters currently before the Panel.

<u>Summary of the Conclusion of the Majority of the Panel</u>

Based on the fact that the Panel has ruled that SKF may not use the Series designations or oppose RBC's trademark quest, RBC asks this Panel affirmatively to order SKF to stop Peer from using the designations and to stop Peer from interfering with that quest and from using the designations. The majority of the Panel has concluded that RBC's argument is a non sequitur and should be denied, based on the facts and the law.

As set forth below, Pennsylvania law requires a "clear right to relief" for the "extreme" remedy of a mandatory injunction. Under the circumstances presented in this case, the majority finds no basis for entering an unprecedented and extraordinary mandatory injunction ordering SKF to direct Peer to stop using the Series designations or opposing RBC's efforts at the USPTO. This is a contract case, and the Panel is called upon to interpret, not re-write, the parties' contract.

The APA is a comprehensive, integrated, commercial contract between sophisticated parties, comprising 47 single-spaced pages plus schedules and exhibits of another 48 pages. Despite the absence of *express* provisions in the APA mandating its decision, the Panel in its Interim Award has already significantly extended the provisions of the APA by finding that the APA includes an implicit term—a "special relationship" based on the notion that SKF sold for valuable consideration the entire business and cannot take it back. But this interpretation of RBC's contract rights, as found by the Panel, extended only so far as the relationship between RBC and SKF. There is no express provision in the comprehensive APA extending to any of SKF's after-acquired subsidiaries the restrictions imposed on SKF. The Panel's Interim Award found no implied provision to that effect, and the majority finds no such provision that can reasonably be implied here under the facts in this record.

We have heard no evidence that trademark possibilities for the Series designations were ever the subject of pre-closing discussion or negotiation leading up to the APA. Uncontradicted evidence in the record does, however, support a finding that SKF acquired Peer in 2008, long after Peer had been using the Series designations, long after the 1997 APA, and also after Peer had begun opposing RBC's trademark efforts. Moreover, the acquisition was premised on the business plan of SKF USA, Inc. and its parent, AB SKF, to augment SKF's high quality, high price, ball bearing product line by entering the medium-quality, medium-priced market. Despite Peer's status as a wholly owned subsidiary of SKF, however, Peer continues to operate independently of — and in partial competition with — SKF. Peer, not SKF, was (and remains) solely responsible for its day-to-day operations.[17]

In this arbitration, RBC—one sophisticated party to the 1997 comprehensive, integrated, commercial APA—seeks to persuade the Panel to extend the terms of the APA to imply yet another new term. That new term would reach Peer, a non-party to the APA, by resulting in the issuance of a mandatory injunction requiring the only other party to the APA—SKF—to cause Peer to change its conduct.

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[17] *See* text and record references marshaled in SKF's Opening Brief at 7-12; *see also* transcript of January 18, 2012, oral argument ("TR") at 48-54. RBC significantly overstates this record in several ways, including its unsupported statement that the record "demonstrates the overwhelming control SKF exerts over Peer" and that "SKF executives are also heavily involved in controlling Peer's day-to-day operations." (ROB at 3).

The sole grounds on which RBC rests its request for such an unprecedented and extraordinary mandatory injunction from this Panel are: (1) SKF's acquisition of the stock of Peer, as a wholly owned subsidiary of SKF, after the APA; (2) SKF's resulting possession of power to control Peer (although SKF has not exercised that power in a manner related to the conduct challenged by RBC), and (3) RBC's claim that "allowing" Peer to continue its historic activities would be "unfair" or "inequitable" to RBC, by allowing SKF to do indirectly (through Peer) that which it cannot do directly.

The thrust of RBC's contentions and the view of the dissent is that, when SKF acquired Peer and became the owner of all of its stock, it thereby subjected Peer to the same restrictions vis-à-vis RBC that applied to SKF under the APA. Therefore, the argument goes, SKF could not, through its wholly owned subsidiary, Peer, engage in and reap the benefits of, conduct that was off limits to SKF, even though, pre-acquisition, Peer had engaged in the identical conduct.

RBC acknowledged that it is undisputed that SKF has not actually exercised control over Peer with regard to Peer's use of the Series designations and opposition to RBC's trademark efforts. Nevertheless, RBC contends that it is undisputed that SKF *could* prevent Peer from doing those things, and has deliberately refrained from doing so.

Finally, RBC and the dissent conclude essentially as follows: What controls the outcome here are the undisputed *consequences* — namely, that SKF *benefits* indirectly as the owner of all of Peer's stock through Peer's use of the designations and its opposition to RBC's trademark efforts. Therefore, the essence of RBC's claim is that SKF is *doing* indirectly what it cannot do directly. But the majority of the Panel concludes that RBC's contention does not follow from its premise.

The short answer to these contentions is that SKF is *not* "doing" what RBC claims. SKF is not taking *any* affirmative action. SKF is not altering what Peer had been doing before it was acquired by SKF. Moreover, it is not clear what are the "benefits" to SKF, other than the presumed indirect financial benefits that a parent ball bearing company would have from owning a subsidiary that uses Series designations. There was no evidence adduced by RBC that would quantify the vague notion that SKF benefitted from Peer's use of the product designations or the opposition to RBC's trademark quest. SKF is not gaining the benefit of using Series designations for SKF-branded products by its direct furtherance of the use of the Series designations. Peer's use of those designations is the same as it has always been and the same is true for its opposition to RBC's trademark efforts. That is, Peer's current actions do not change the competitive environment that pre-existed SKF's acquisition of Peer.

In the view of the majority, it is the grant of the requested injunction, not its denial, that would imbalance the inequities. RBC is attempting an end run around trademark law through an argument that conflates trademark-type concerns with contract law principles, which would be distorted by an undue expansion of RBC's rights under the express or reasonably implied terms of the APA.

In short, the injunction sought by RBC cannot responsibly be based solely on the "consequences" of what Peer has been doing or the presumed indirect benefits to SKF. What Peer has been doing, long before SKF acquired it, is *not* what SKF is doing. To say that Peer's doing is SKF's doing is to beg the very question this Panel is called upon to decide. What needs to be shown is that Peer is SKF. That is, Peer is SKF's alter ego. The facts show otherwise.

RBC would have the Panel set aside or diminish the central and *undisputed* facts of this case, which not only do not support *any* right to relief, but also fall far below the Pennsylvania standard requiring that a request for the "extreme" remedy of a mandatory injunction, which is rarely granted, must be established by showing a "clear right to relief." That clear right to relief has not been shown, and the undisputed facts in this record showing otherwise include the following:

(1) Peer used the Series designations *well before* the 1997 APA between SKF and RBC and *well before* SKF acquired the stock of Peer;

(2) Peer opposed RBC's trademark efforts before SKF acquired Peer;

(3) Peer is not a party to the APA or to this arbitration and there is no provision in the APA reaching Peer or imposing SKF's restrictions on its affiliates;

(4) Since being acquired by SKF, Peer has not been doing anything vis-à-vis the Series designations or RBC's USPTO proceedings that is more than or different from what it has historically done;

(5) SKF's acquisition of Peer does not alter the extent of any injury (if indeed there is any injury) to RBC as a result of Peer's conduct;

(6) SKF acquired Peer in the exercise of SKF's and its parent company's business judgment to gain the benefits of Peer's expertise and market share in the medium-quality, medium-price bearing market, while SKF's business has concentrated on the high-end bearing market;

(7) There is no evidence that SKF acquired Peer in order to circumvent the APA;

(8) SKF has not engaged in, or interfered with, Peer's day-to-day business operations;

(9) SKF and Peer operated in different markets, independently of each other, and in partial competition with each other;

(10) Although SKF has the power to control Peer, there is no evidence that SKF has exercised its control over Peer in connection with the use of the Series designations or the opposition to RBC's USPTO efforts;

(11) The senior officers who carry out the day-to-day, operational management of Peer's business are not SKF employees; all four of the senior executives of Peer who manage its day-to-day operations, including Peer's chief executive officer, are Peer employees, not SKF employees, and only one of them has ever been employed by any SKF-affiliated company;[18]

(12) Although the five-person Peer board of directors includes three people who are employed by SKF or its affiliates, the board does not control Peer's day-to-day management of the business;[19]

(13) SKF and Peer have exercised proper corporate procedures that are expected of parent and subsidiary corporations (e.g. separate boards, corporate documents, proper minutes, accounting, capitalization, and the like);

(14) There is no evidence whatsoever that SKF has operated or now operates Peer as an "alter-ego," or as a "sham" to circumvent or evade the APA.

In addition to requiring the Panel to ignore the above facts, granting RBC the relief it seeks would require the Panel to substitute its notion of what is "fair" and "equitable" for the bargained-for terms of a contract negotiated between sophisticated commercial parties.

After carefully reviewing the record, briefs, oral argument, and applicable authorities, the majority has concluded, on balance, that RBC has not demonstrated a "clear right" to the relief it seeks, and that SKF has the better of the argument on the

[18] *See* Tr. 50-53. Other Peer officers, who fulfill corporate governance-oriented roles such as Secretary and Assistant Treasurer, are employees of SKF. See *supra* note 17, noting RBC's overstatement of the record regarding Peer's day-to-day business operations.

[19] *Id.* at 54-55.

matter currently before the Panel. Therefore, the majority of the Panel will not take the extraordinary step of ordering the mandatory injunctive relief sought by RBC.

<u>LEGAL DISCUSSION</u>

<u>Pennsylvania Standard for a Mandatory Injunction</u>

A party seeking a mandatory injunction—an "extreme" remedy[20] that "command[s] the performance of some positive act"—must satisfy a very high burden, and mandatory injunctions are rarely granted.[21] The Pennsylvania Supreme Court has stated that mandatory injunctions should be issued "more sparingly" than injunctions that are "merely prohibitory," and that a party seeking a mandatory injunction must establish a "clear right to relief."[22]

<u>Discussion of the Merits</u>

RBC has not satisfied its burden of showing a "clear right" to the "extreme" remedy of a mandatory injunction ordering SKF to direct Peer to refrain from using the Series designations or opposing RBC's efforts in the USPTO. The parties have not cited, and the Panel has not independently found, a comparable case. That is, we have found no case where one party to a contract (which is silent on the point in question) seeks injunctive relief — let alone mandatory injunctive relief — against the other party to

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[20] *Big Bass Lake Cmty. v. Warren*, 950 A.2d 1137, 1145 (Pa. Commw. Ct. 2008).

[21] *Mazzie v. Commonwealth*, 432 A.2d 985, 988 (Pa. 1981).

[22] *Id.*; *see also Sovereign Bank v. Harper*, 674 A.2d 1085, 1092 (Pa. Super. Ct. 1996) ("Because a mandatory injunction compels the defendant to perform an act, rather than merely refraining from acting, courts will only grant a mandatory injunction upon a very strong showing that the plaintiff has a 'clear right' to relief.").

cause it to terminate conduct of the latter party's after-acquired, wholly-owned subsidiary where the subsidiary is not a party to either the contract or the tribunal's proceeding and its unchanged, continuing conduct that predated the contract.

As noted above, long before it was owned by SKF, Peer had been using the product designations (as have others in the bearing business) and it had opposed RBC's trademark efforts (as have others in the bearing business). In the Interim Award, the Panel ordered SKF itself not to engage in these activities directly because the Panel found, by implication in this very ambiguous contract, that a "special relationship"[23] existed between SKF and RBC. As a result, the Panel ruled that SKF divested itself of the Nice business and product designations it sold to RBC. But the question that remains and that is now before the Panel is the following: why should SKF be ordered to cause Peer to stop what it has been doing?

Peer uses and has been using Series designations for decades. SKF had also been using the designations when it sold the Nice business to RBC and entered into the APA. There is no evidence—and no reason to believe based on the contract itself—that RBC thought it was purchasing from SKF the designations used by Peer. SKF did not have any "right, title, [or] interest" in Peer's use of the designations that it could sell.[24] Hence, Peer's entitlements were unaffected by the APA, as interpreted in the Interim Award.

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[23] Interim Award at 7.

[24] APA § 2.01.

RBC claims that it is not seeking a traditional veil-piercing analysis.[25] Instead, it argues that equitable considerations compel the result it seeks. As the Panel understands this argument, it has two components. The first component is the argument that the Panel should apply equitable considerations to prevent SKF from using Peer to "circumvent" the Panel's Interim Award. The second component is related to the first and rests on the implied covenant of good faith and fair dealing.

As to the general equitable argument, RBC basically contends that SKF should not be entitled to do indirectly what it cannot do directly and that an injunction will restore RBC to "the value of its purchase."[26] RBC relies primarily on two cases: *Guth v. Guth Chocolate Co.*[27] and *Levitt Corp. v. Levitt.*[28] Both cases are significantly distinguishable and do not support RBC's argument under these facts. And cases of this genre are inherently fact intensive.

Guth and *Levitt* each involved a seller who had sold the use of his name for the purpose of selling a product, and then later used or permitted the use of his name in the

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[25] ROB at 22. Indeed, in this context, applying a veil-piercing analysis to assert an alter ego theory would be particularly unusual, because it would involve "downstream" piercing—that is, it would be seeking to obtain a remedy that would affect the conduct of the subsidiary, Peer, based on an alleged violation of an obligation by the parent, SKF. Downstream veil piercing is more controversial and less frequently applied than "upstream" veil piercing. *See, e.g.*, Michael Richardson, Comment and Casenote, *The Helter Skelter Application of the Reverse Piercing Doctrine*, 79 U. CIN. L. REV. 1605, 1606, 1615-16 (2011).

[26] ROB at 18.

[27] 224 F. 932 (4th Cir. 1915).

[28] 593 F.2d 463 (2d Cir. 1979).

promotion of a competing venture.[29] The *Levitt* court, like the *Guth* court, held on the specific facts before it that injunctive relief was warranted to prevent a seller of the name and goodwill of a business from "arrogat[ing] to himself the trade reputation for which he received valuable consideration."[30]

Those situations are different from the situation here which involves materially different facts and legal principles. In the case before us, SKF sold to RBC its interest in using the Series designations. Then SKF later acquired Peer, which, before the acquisition, had been using Series designations to sell Peer products for decades and had also opposed RBC's efforts before the USPTO. SKF's ownership of Peer does not change the landscape in which Series designations are being and have been used following SKF's sale of its use of Series designations to RBC in the APA. There is no evidence in this record that SKF created or acquired Peer to evade SKF's obligations under the APA. If the Panel were to order SKF to cause Peer to stop using Series designations or cease resistance to RBC's trademark efforts, however, RBC would get more than it bargained for in the APA.

As to the implied covenant of good faith and fair dealing, RBC has not cited a comparable case or adduced proof that SKF acquired Peer to "evade the spirit of the bargain" between RBC and SKF or that it was dishonest or engaged in bad faith.

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[29] *Levitt*, 593 F.2d at 466; *Guth*, 224 F. at 934.

[30] *Levitt*, 593 F.2d at 468.

conduct.[31] Here the facts show that SKF acquired Peer in good faith and endeavored to permit it independently to operate much as it had previously.

It is well established that only parties to a contract are bound by the contract.[32] In *Alliance Data Sys. Corp. v. Blackstone Capital Partners V L.P.*,[33] the Delaware Court of Chancery applied this principle and rejected common control as a basis for finding that a party to a merger agreement, Aladdin, had a duty to cause its affiliate that was not a party to the agreement to take certain actions to facilitate the closing of the merger.[34]

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[31] *See Donahue v. Federal Express Corp.*, 753 A.2d. 238, 242 (Pa. Super. Ct. 2000) ("Good faith has been defined as 'honesty in fact in the conduct or transaction concerned.'"); *Somers v. Somers*, 613 A.2d 1211, 1213 (Pa. Super. Ct. 1992) (describing bad faith in the performance of contractual duties as including "evasion of the spirit of the bargain").

[32] *See, e.g., First Realvest, Inc. v. Avery Builders, Inc.*, 600 A.2d 601, 603 (Pa. Super. Ct. 1991) ("The law in Pennsylvania is clear that where a party enters into a contract with a corporation, no action will lie against the shareholders of that corporation individually for a breach of that contract '[T]he breach of the contract is the breach of a promise made by the corporation, and not the breach of any promise extended by the corporation officer.' Shareholders, officers and directors are not held liable for the corporation's breach of a contract, absent an establishment of participation theory or the successful assertion of the equitable doctrine of piercing the corporate veil." (citations omitted; alteration in original)); *see also, e.g., Alliance Data Sys. Corp. v. Blackstone Capital Partners V L.P.*, 963 A.2d 746, 768 (Del. Ch. 2009), *aff'd* 976 A.2d 170 (Del. 2009).

[33] 963 A.2d 746 (Del. Ch. 2009).

[34] *Id.* at 768-69; *see also id.* at 769 ("A huge amount of wealth generation results from the use of distinct entities by corporate parents to conduct business. This allows parents to engage in risky endeavors precisely because the parents can cabin the amount of risk they are undertaking by using distinct entities to carry out certain activities. Delaware law respects corporate formalities, absent a basis for veil-piercing, recognizing that the wealth-generating potential of corporate and other limited liability entities would be stymied if it did otherwise. To follow this traditional practice here works no unfairness to ADS. ADS knew with whom it was contracting and with whom it was not. The bottom line for ADS is that it only contracted with Aladdin . . . . The fact that ADS wishes it had struck a bargain with Blackstone directly does not change the reality that ADS knew that the Merger Agreement did not impose obligations on Blackstone directly.").

Recognizing that Peer is not a party to the APA, and that Peer itself therefore has no obligations under the APA, RBC claims that it is seeking to hold SKF to its obligations under the APA. That is precisely the argument rejected by the court in *Alliance Data*.

The majority of the Panel concludes that SKF is not circumventing any obligation it had under the contract. As noted above, SKF did not agree to sell to RBC any Series designations used by Peer. Peer was a stranger to the APA entered into between RBC and SKF before SKF acquired Peer. So, Peer's pre-APA and post-APA activities and the question whether Peer should stop its activities complained of now by RBC was not within the reasonable or "justified expectations of the parties" — an oft-cited element of the implied covenant of good faith and fair dealing.[35]

The APA also does not contain any agreement by SKF that it would not acquire control of any company that was using Series designations, or that it would use best efforts (or any efforts at all) to prevent any company that it ever controlled from using Series designations. RBC could have negotiated for such terms, but it did not. The Panel should not "imply a term not explicitly contemplated by the contract" or otherwise rewrite the parties' contract.[36]

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[35] See Restatement (Second) Contracts § 205(a).

[36] *See, e.g.*, *John B. Conomos, Inc. v. Sun Co.*, 831 A.2d 696, 706-07 (Pa. Super. Ct. 2003) ("As this obligation of good faith is tied specifically to and is not separate from the [express] duties a contract imposes on the parties, it cannot imply a term not explicitly contemplated by the contract. Both the implied covenant of good faith and the doctrine of necessary implication are principles for courts to harmonize the reasonable expectations of the parties with the intent of the contractors and the terms in their contract." (citation and internal quotations omitted; alteration in original)); *Middletown Carpentry, Inc. v. Arena & Co.*, 2003 Phila. Ct. Com. Pl. LEXIS 57, at *25 (Pa. Ct. Com. Pl. Nov. 18, 2003) (refusing to impose obligation not contemplated by parties' contract).

In whatever manner RBC's argument relating to the SKF's unexercised control over Peer is phrased, whether as a matter of equitable fairness or as veil-piercing, RBC needs to show that Peer is SKF's alter ego and vice versa. This showing has not been made.[37]

To support its contention that Peer is SKF's alter ego, RBC points to the factors described by the court in *Simeone v. Bombardier-Rotax GMBH*.[38] In *Simeone*, the court conducted an alter ego analysis in order to conclude that Rotax, a wholly-owned subsidiary of Bombardier, was subject to personal jurisdiction in Pennsylvania. The court identified ten non-exclusive factors that Pennsylvania courts consider when determining whether an alter ego relationship exists.[39] The court concluded that Rotax was an alter ego of Bombardier, based in part on the facts that Bombardier management, rather than Rotax management, made major business decisions for Rotax; Rotax sold approximately 45% of its product to Bombardier; Rotax could not develop a new product without authorization from Bombardier; and Bombardier held itself and Rotax out to the

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[37] *See, e.g.*, *Lumax Indus. Inc. v. Aultman*, 669 A.2d 893, 895 (Pa. 1995) ("[T]here is a strong presumption in Pennsylvania against piercing the corporate veil. Also, the general rule is that a corporation shall be regarded as an independent entity even if its stock is owned entirely by one person." (citations omitted)); *Jiffy Lube Int'l, Inc. v. Jiffy Lube of Pa., Inc.*, 848 F. Supp. 569, 580-81 (E.D. Pa. 1994) (discussing the requirements for piercing the corporate veil on an alter ego theory under Pennsylvania law).

[38] 360 F. Supp. 2d 665 (E.D. Pa. 2005).

[39] *Id.* at 675.

public as a single entity.[40] The facts here are different, as demonstrated by the fourteen points summarized above.[41]

Although it is undisputed that SKF has the power to control Peer, there is no evidence that SKF has *exercised* that control in a matter warranting disregard of SKF's and Peer's separate corporate existence. SKF and Peer have publicly maintained their separate identities, and Peer management decides how to operate the business. As SKF points out, under Pennsylvania law there must be "a very high showing of domination and control" and "there is a strong presumption ... against piercing ..." that can be overcome only if the separate corporate status is "ignored" where "separate existence was a mere sham."[42] RBC has not satisfied that high standard, and the *Simeone* analysis is distinguishable.

In support of its contention that veil piercing and a finding of alter ego status is warranted, RBC asserts, among other things, that SKF designees comprise a majority of the Peer board and that SKF personnel comprise a large percentage of Peer's senior management. SKF disputes RBC's calculation of the prominence of SKF personnel in Peer's business and contends not only that Peer personnel occupy a significant percentage of Peer's management, but also that Peer operates independently of SKF.

As noted above, RBC has significantly overstated the record, asserting, among other things, that the record 'demonstrates the overwhelming control SKF exerts over Peer" and that "SKF executives are heavily involved in controlling Peer's day-to-day

[40] *Id.* at 676-78.

[41] See pp. 13-14 supra.

[42] SAB at 28.

operations."[43] Also, as noted above, Peer's senior officers who carry out the day-to-day management of Peer's business are not SKF employees; all four of the senior executives of Peer who manage day-to-day operations, including Peer's chief executive officer, are Peer employees, not SKF employees and only one of them has ever been, but is not currently, employed by any SKF-affiliated company. Other Peer officers, who fulfill corporate governance-oriented roles such as Secretary and Assistant Secretary, are employees of SKF.[44] Although the five-person Peer board of directors includes three people who are employed by SKF or its affiliates, there is no evidence that the Peer board of directors has exercised control over Peer's day-to-day management of the business.[45]

In the view of the majority, however, even if RBC's calculations of Peer's officer and director ranks are correct, no basis for veil piercing has been established. By either RBC's count or SKF's count, such configurations of board and senior management are often common in parent/subsidiary relationships. Wholly owned subsidiaries with such configurations are not necessarily the alter egos or mere instrumentalities of their parents.[46] To conclude otherwise would turn longstanding law of separate corporate existence on its head.[47]

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[43] *See supra* note 17 and accompanying text.

[44] *See supra* note 18 and accompanying text.

[45] *See supra* text accompanying note 19.

[46] See SAB at p. 11, n. 48 (citing HARRY G. HENN & JOHN R. ALEXANDER, LAWS OF CORPORATIONS AND OTHER BUSINESS ENTERPRISES 355 (1983)); *see also, e.g.*, *Shared Commc'ns Servs. of 1800-80 JFK Boulevard, Inc. v. Bell Atlantic Props. Inc.*, 692 A.2d 570, 573 (Pa. Super. Ct. 1997) ("Although a parent and a wholly owned subsidiary do share common goals, they are still recognized as separate and distinct legal entities."); *Commonwealth v. Vienna Health Products, Inc.*, 726 A.2d 432, 434 (Pa. Commw. Ct.

RBC has not pointed to an obligation of SKF under the APA that is violated by SKF's ownership of a subsidiary that has long been engaging in the conduct at issue.[48] SKF argues that granting the mandatory injunction RBC requests would give RBC more than it bargained for.[49] The majority of the Panel agrees. Such an injunction would allow RBC to eliminate Peer's long standing use of Series terms and its opposition to RBC's trademark quest, without RBC having bargained for those terms when purchasing the Nice business from SKF.

Indemnification

There is no indemnification owing to RBC under paragraph 2 of the Interim Award because, under § 9.01 of the APA, the amount of indemnification that RBC would be entitled to receive from SKF under paragraph 2 of the Interim Award did not exceed the $100,000 minimum threshold.

CONCLUSION

NOW, THEREFORE, this 4th day of April, 2012, for the reasons set forth in the first Interim Award and Order and in this Final Award and Order, IT IS ORDERED that:

1. RBC's request for an injunction against SKF regarding the Peer activities is DENIED;

1999) ("The general rule in Pennsylvania is that a corporation is to be treated as a separate and independent entity even if its stock is owned entirely by one person . . . .").

[47] See text and authorities cited *supra* at 17-19.

[48] SKF is not allowing its branding to be used on products sold with series designations by another company.

[49] SAB at 26.

2. RBC's request for indemnification by SKF of its costs occasioned by Peer's actions is DENIED;

3. SKF's request that the Panel reconsider its Interim Award is DENIED;

4. RBC's request for indemnification under paragraph 2 of the Interim Award is DENIED;

5. Paragraphs 1, 3, 4 and 6 of the Interim Award and Order are REAFFIRMED and the remaining paragraphs are moot or are dealt with in this Final Award and Order; and

6. Each party is to pay its own costs, expenses and attorneys' fees. The administrative filing fees of the AAA, totaling $3,625.00, and the fees and expenses of the arbitrators, totaling $401,636.53, shall be borne as incurred

7. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

8. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

FOR THE MAJORITY:

Arlin M. Adams

Arlin M. Adams, Chairman

E. Norman Veasey, Arbitrator

2. RBC's request for indemnification by SKF of its costs occasioned by Peer's actions is DENIED;

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Arlin M. Adams, Chairman

E. Norman Veasey

E. Norman Veasey, Arbitrator

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE AUTOMOTIVE PARTS ANTITRUST LITIGATION	Master File No. 12-md-02311 Case No. 2:12-cv-00502
In re: BEARINGS CASES	Hon. Marianne O. Battani Hon. Mona Majzoub
THIS DOCUMENT RELATES TO: ALL DEALERSHIP ACTIONS	**Jury Trial Demanded**

DEALERSHIP CONSOLIDATED CLASS ACTION COMPLAINT

Plaintiffs Martens Cars of Washington, Inc. ("Plaintiff Martens"), Landers Auto Group No. 1, Inc., d/b/a Landers Toyota ("Plaintiff Landers "), Hammett Motor Company, Inc. ("Plaintiff Hammett "), Superstore Automotive, Inc. ("Plaintiff Superstore "), Lee Pontiac-Oldsmobile-GMC Truck, Inc. ("Plaintiff Lee "), Westfield Dodge City, Inc. ("Plaintiff Westfield "), V.I.P. Motor Cars Ltd. ("Plaintiff V.I.P. "), Desert European Motorcars, Ltd. ("Plaintiff Desert "), Landers McLarty Fayetteville TN, LLC ("Plaintiff Fayetteville "), Dale Martens Nissan Subaru, Inc. ("Plaintiff Dale Martens "), Green Team of Clay Center Inc. ("Plaintiff Green Team "), McGrath Automotive Group, Inc. ("Plaintiff McGrath "), Table Rock Automotive, Inc., d/b/a Todd Archer Hyundai ("Plaintiff Table Rock "), Archer-Perdue, Inc., d/b/a/ Archer-Perdue Suzuki ("Plaintiff Archer-Perdue "), Landers McLarty Lee's Summit Mo, LLC d/b/a Lee's Summit Chrysler Dodge Jeep Ram and d/b/a Lee's Summit Nissan ("Plaintiff Lee's Summit "), Bonneville and Son, Inc. ("Plaintiff Bonneville "), Holzhauer Auto and Truck Sales, Inc. ("Plaintiff Holzhauer "), Pitre, Inc., d/b/a/ Pitre Buick GMC ("Plaintiff Pitre "), Patsy Lou Chevrolet, Inc. ("Plaintiff Patsy Lou "), John Greene Chrysler Dodge Jeep, LLC ("Plaintiff John Greene "), SLT Group II, Inc., d/b/a Planet Nissan Subaru of Flagstaff ("Plaintiff Planet Nissan "), Herb Hallman Chevrolet, Inc., d/b/a/ Champion Chevrolet ("Plaintiff Champion "), Charles Daher's Commonwealth Motors, Inc., d/b/a Commonwealth Chevrolet, Commonwealth Kia, Commonwealth Honda ("Plaintiff Commonwealth Motors "), Commonwealth Volkswagen, Inc., d/b/a Commonwealth Volkswagen ("Plaintiff Commonwealth Volkswagen "), Commonwealth Nissan, Inc., d/b/a Commonwealth Nissan ("Plaintiff Commonwealth Nissan "), Ramey Motors, Inc. ("Plaintiff Ramey "), Thornhill Superstore, Inc., d/b/a Thornhill GM Superstore ("Plaintiff Thornhill "), Dave Heather Corporation, d/b/a Lakeland Toyota Honda Mazda Subaru ("Plaintiff Lakeland "), Central Salt Lake Valley GMC Enterprises, LLC, d/b/a Salt Lake Valley Buick GMC ("Plaintiff Salt Lake Valley "), Capitol Chevrolet Cadillac, Inc. ("Plaintiff Capitol Chevrolet "), Capitol Dealerships, Inc., d/b/a Capitol Toyota ("Plaintiff Capitol Toyota "), Beck Motors, Inc. ("Plaintiff Beck "), Stranger Investments d/b/a Stephen Wade Toyota ("Plaintiff Wade "), John O'Neil Johnson Toyota, LLC ("Plaintiff Johnson "), Hartley Buick GMC Truck, Inc. ("Plaintiff Hartley "), Lee Oldsmobile-Cadillac, Inc. d/b/a Lee Honda ("Plaintiff Lee Honda "), Lee Auto Malls-Topsham, Inc. d/b/a Lee Toyota of Topsham ("Plaintiff Topsham "), Landers of Hazelwood, LLC d/b/a Landers Toyota of Hazelwood ("Plaintiff Hazelwood "), Cannon Chevrolet – Oldsmobile – Cadillac – Nissan, Inc. ("Plaintiff Cannon "), Cannon Nissan of Jackson, LLC ("Plaintiff Cannon Nissan "), Hudson Charleston Acquisition, LLC d/b/a Hudson Nissan ("Plaintiff Hudson Nissan "), Shearer Automotive Enterprises III, Inc. ("Plaintiff Shearer "), and Apex Motor Corporation ("Plaintiff Apex ") (collectively "Plaintiffs "), file this Consolidated Class Complaint on behalf of themselves and all others similarly situated (the "Classes" as defined below).

Plaintiffs bring this class action for damages, injunctive relief, and other relief pursuant to federal antitrust laws and state antitrust, unfair competition, and consumer protection laws, demand a trial by jury, and allege as follows:

NATURE OF ACTION

1. Plaintiffs bring this lawsuit as a proposed class action against the Defendants (defined below), manufacturers, and suppliers of automotive bearings (defined below) globally and in the United States for engaging in a lengthy conspiracy to suppress and eliminate competition in the bearings industry by agreeing to fix, stabilize, and maintain the prices of these products, which were sold to automobile and other manufacturers in the United States and elsewhere.

2. "Bearings" refers to automotive bearings. Examples include, but are not limited to, the following products: ball bearings, tapered roller bearings, roller bearings, and mounted bearings.

3. The "Class Period" refers to January 1, 2004 to the present.

4. The Defendants manufacture, market, and sell Bearings throughout the United States and in other countries.

5. Vehicles[1] containing Bearings, as well as Bearings themselves, made by Defendants, are sold in every state of the United States and the District of Columbia.

6. The Defendants and other co-conspirators (as yet unknown) agreed, combined, and conspired to fix, stabilize, and maintain the prices of Bearings. They carried out their conspiracy by agreeing, during meetings and conversations, to fix the prices of Bearings.

[1] "Vehicles" as used here, means any new vehicles purchased by automobile dealers throughout the United States, including but not limited to sedans, trucks and sport utility vehicles.

Defendants then sold Bearings at noncompetitive prices to automobile and other manufacturers in the United States and elsewhere, for sale in United States.

7. Defendants' anticompetitive conduct is also the subject of a global criminal investigation being conducted by competition authorities in the United States, the European Union, South Korea, Singapore, Australia, Canada and Japan.

8. As part of its criminal investigation, the United States Department of Justice ("DOJ") is seeking information about anticompetitive conduct in the market for Bearings. The European Commission Competition Authority ("EC") has also conducted raids at the European offices of several of the Defendants.

9. The JFTC began its investigation in July 2011 after JTEKT Corporation reported the cartel to the JFTC so that it would be given leniency treatment. Officials of NSK Ltd. and Nachi-Fujikoshi Corp. have also admitted their roles in the cartel.

10. On June 14, 2012, the Japan Fair Trade Commission ("JFTC") filed a criminal accusation alleging a criminal violation of the Japan's Antimonopoly Act against NSK Ltd, NTN Corp., and Nachi-Fujikoshi Corp.

11. On December 28, 2012, Nachi-Fujikoshi Corp. and two of its executives were convicted in Tokyo District Court of violating Japan's Antimonopoly Act .

12. On February 25, 2013, Defendant NSK Ltd. announced that the company was sentenced to a penalty of 380 million yen by the Tokyo District Court for violation of the Antimonopoly Act of Japan regarding sales of Bearings as a result of the June 14, 2012 prosecution by the Tokyo District Public Prosecutors Office. In addition, two of NSK's former officers and a former employee received suspended sentences.

13. On March 29, 2013, the JFTC issued cease and desist orders and surcharge payment orders based on violations of the Japan Antimonopoly Act against NTN Corp., NSK Ltd. and Nachi-Fujikoshi Corp, for conspiring to fix prices on bearings. It also noted that JTEKT Corp. had violated the Antimonopoly Act through its participation in the conspiracy, but was not subject to the cease and desist order.

14. JTEKT Corporation has also pleaded guiltily in Canada, to engaging in the Bearings conspiracy, in violation of Canadian competition laws.

15. As a direct result of the anti-competitive and unlawful conduct alleged herein, Plaintiffs and the Class paid artificially inflated prices for Bearings and for vehicles containing Bearings. Plaintiffs and the members of the Classes have thereby suffered antitrust injury to their business or property.

JURISDICTION AND VENUE

16. Plaintiffs bring this action under Section 16 of the Clayton Act (15 U.S.C. § 26) to secure equitable and injunctive relief against Defendants for violating Section 1 of the Sherman Act (15 U.S.C. § 1). Plaintiffs also assert claims for actual and exemplary damages pursuant to state antitrust, unfair competition, and consumer protection laws, and seek to obtain restitution, recover damages, and secure other relief against Defendants for violation of those state laws. Plaintiffs and the Classes also seek attorneys' fees, costs, and other expenses under federal and state law.

17. This Court has jurisdiction over the subject matter of this action pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Act (15 U.S.C. § 1), and Title 28, United States Code, Sections 1331 and 1337. This Court has subject matter jurisdiction over the state law claims in this action, pursuant to 28 U.S.C. §§ 1332(d) and 1367,

Geissenger is the CEO of both Schaeffler Group USA and Schaeffler AG. Georg F.W. Schaeffler is a Board Member at both Schaeffler AG and Schaeffler Group USA.

132. Defendants Schaeffler Group USA and Schaeffler AG are collectively referred to as "Schaeffler."

133. Defendant AB SKF ("AB SKF") is a Swedish corporation with its principal place of business in Goteborg, Sweden. SKF directly and/or through its wholly owned and/or controlled subsidiaries—manufactured, marketed and/or sold Bearings that were purchased throughout the United States, including in this district, during, the Class Period.

134. Defendant SKF USA, Inc. ("SKF USA") is a Delaware corporation with its principal place of business in Lansdale, Pennsylvania. It is a subsidiary of, and wholly-owned or controlled by, its parent, AB SKF. Defendant SKF USA manufactured, marketed and/or sold Bearings that were purchased in the United States, including in this District, during the Class Period, including by firms that sold such Bearings to Plaintiffs and class members. During the Class Period, its activities in the United States were under the control and direction of its Swedish parent, which controlled its policies, sales, and finances.

135. AB SKF and SKF USA have also shared numerous executives. Tom Johnstone, the Chief Executive Officer and President at SKF AB also served as Co-President and Chief Executive Officer as well as a Director at SKF USA Inc. Henrik Lange, the Executive Vice President and Chief Financial Officer of AB SKF, previously served as President of the Industrial Division at SKF USA Inc. Poul Jeppesen, the Chief Executive Officer and President of USA Operations at AB SKF is also the Chief Executive Officer of SKF USA.

136. SKF reports its sales by business segment, such as the Automotive segment, rather than by subsidiary. The sales of SKF USA are not separately reported in SKF's Annual

report, rather all automotive OEM sales are reported as part of the Automotive segment. The Automotive segment president, Tryggve Sthen, is located at AB SKF, in Goteborg, Sweden. Mr. Sthen periodically reports on the operations of the Automotive Division, both in SKF's annual report and at periodic presentations to investors. Management in Gothenburg exclusively decides whether to open or close new facilities, regardless of where the facilities will be located.

137. SKF's 2012 report states that "180 SKF distributors took part in the North American Distributor Convention held in Florida." It states later in the report that it held conventions for distributors in North America, so that they could learn more about SKF's products. SKF's 2012 report also states that " . . . demand continued to be good in both North and Latin America." In addition, the report states that in 2008, SKF acquired PEER Bearings Company, whose "main market" is North America. The report also mentioned that its anti-counterfeiting campaigns are starting to show results in North America.

138. SKF has an enormous presence in the United States. Approximately 28 of its 140 manufacturing facilities are located in the United States. An average of 5247 persons, or 11.8% of the Group's workforce, were employed in the United States. With respect to SKF as a whole, in 2012, 20% of its sales were made in the USA. With respect to the Automotive Division, in 2012, 19% of its sales were in North America.

139. Defendants AB SKF and SKF USA are collectively referred to as "SKF."

140. Defendant NTN Corporation ("NTN Corporation") is a Japanese corporation with its principal place of business in Osaka, Japan. NTN Corporation— directly and/or through its wholly owned and/or controlled subsidiaries—manufactured, marketed and/or sold Bearings that were purchased throughout the United States, including, in this district, during, the Class Period.