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

Proceeding	91223952
Party	Plaintiff Sky International AG
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Submission	Opposition/Response to Motion
Filer's Name	Jessica H. Watkins
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Signature	/Jessica H. Watkins/
Date	04/19/2018
Attachments	MTC_Reply_Exhibit_A.pdf(79270 bytes) MTC_Reply_Exhibit_B.pdf(1514073 bytes) MTC_Reply_Exhibit_C.pdf(122908 bytes) MTC_Reply_Exhibit_D.pdf(126962 bytes) MTC_Reply_Exhibit_E.pdf(2864912 bytes) Reply_to_Applicant_Motion_to_Compel.pdf(426580 bytes)

EXHIBIT A

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

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Sky International AG)		
Dammstrasse 19)		
Zug, Switzerland CH6031)		
)		
)	Opposer,	
)		
v.)		Opposition No.: 91223952
	)		Mark: SKY CINEMAS
	)		Serial No.: 86/481,934
Sky Cinemas LLC)		
1614 West 5 th Street)		
Austin, Texas 78703)		
)		
	)	Applicant	
)		

048398.000201

**OPPOSER SKY INTERNATIONAL AG’S FIRST SET OF INTERROGATORIES TO
APPLICANT SKY CINEMAS LLC**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Opposer, Sky International AG, hereby addresses its First Set of Interrogatories to Applicant, Sky Cinemas LLC, to be responded to within thirty (30) days of service thereof.

DEFINITIONS

1. “Opposer” shall mean Sky International AG, its licensees, and any subsidiaries, affiliates, predecessors, successors, parents, divisions, persons or entities acting for or on its behalf, whether in existence now or at any time.

2. “Applicant” shall mean Sky Cinemas LLC, its licensees, and any subsidiaries, affiliates, predecessors, successors, parents, divisions, persons or entities acting for or on its behalf, whether in existence now or at any time.

3. "Opposer's marks" shall mean the marks owned by Opposer in U.S. Registration Nos. 4,806,322; 4,473,260; 4,405,345; 4,771,129; 4,771,128; 4,771,127; 4,710,310; 3,232,370; 2,912,783; 2,932,761; and 3,110,386.
4. The "SKY CINEMAS mark" shall mean the mark owned by Applicant in U.S. Application Ser. No. 86/481,934.
5. "Document" is defined to be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and includes computer records in any format. By way of further explanation, "document(s)" shall mean all non-identical copies of material of every kind and description which are recorded by hand-writing, printing, typing, photographing, photostatting, graphic representation, mechanical, electronic, magnetic, or any other means of recording, any form of communication, information or representation, including letters, words or numbers or their equivalent, or data compilations of any sort whatsoever. The term "document(s)" is therefore defined to include, among other things, information stored on electronic media, videotapes, motion pictures, computer data, and any other electronic, mechanical or magnetic records or representations of any kind including without limitation all tapes, cassettes, magnetic, optical or other discs, magnetic cards, e-mail, and recordings. A draft or non-identical copy is a separate document within the meaning of this term.
6. "Communication" or "communications" means any oral, written or electronic utterance, notation or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, any documents, correspondence, letters, facsimiles, e-mails, text messages, voice recordings, video recordings, voicemail, instant messages,

conversations, dialogues, discussions, interviews, conferences, meetings, consultations, agreements, and other understandings or exchanges between or among two or more people.

7. “Person” as used herein means any natural person or any entity, including, without limitation, any individual, public company, private company, firm, corporation, limited liability company, joint venture, trust, proprietorship, tenancy, association, partnership, business, agency, department, governmental body, bureau, board, commission, or any other form of public or private entity. With respect to an entity, “person” shall include all subsidiaries and affiliates of the entity, as well as the present and former directors, officers, employees, attorneys, agents and anyone acting on behalf of, at the direction of, or under the control of, the entity or its subsidiaries or affiliates.
8. The terms “you” or “your” means Sky Cinemas LLC, including its respective officers, directors, parents, subsidiaries, divisions, affiliates, predecessors, successors, employees, accountants, agents, representatives and any other person acting under its control or on its behalf.
9. “Relates to” or “relating to” means authorizing, concerning, constituting, comprising, containing, consisting of, connected with, describing, disclosing, discussing, evidencing, explaining, mentioning, pertaining to, proposing, reflecting, regarding, referring to, directly or indirectly, setting forth, showing, or summarizing.
10. Where appropriate:
 - a. use of the singular includes the plural, and vice versa;
 - b. the past tense includes the present tense;
 - c. the words “and” and “or” are both conjunctive and disjunctive;

- d. the words “all” and “any” mean “any and all”;
- e. the word “including” means “including without limitation”; and
- f. use of the masculine includes the feminine, and vice versa.

INSTRUCTIONS

1. Unless otherwise specifically stated in each Interrogatory, the relevant time period shall be the period from January 1, 2010 to the present.
2. Any responsive information not disclosed by reason of a claim of privilege or other basis should be identified in writing by: (a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld pursuant to Rule 26(b)(5).
3. Wherever in the following Interrogatories you are asked to identify documents, it is requested that the documents be identified by stating:
 - a. General type of document, i.e., letter, memorandum, report, etc.;
 - b. Date;
 - c. Author;
 - d. Organization, if any, with which author was connected;
 - e. Addressee or recipient;
 - f. Other distributes;
 - g. Organization, is any, with which the addressee, recipient, or distributes were connected;
 - h. General nature of the subject matter of the document;
 - i. Present location of such document and each copy thereof known to you, including the title, index number and location, if any, of the file in which the document is

kept by you or the file from which such document was removed for the purposes of this case, and the identity of all persons responsible for filing or other disposition of the document.

4. Wherever in the following Interrogatories you are asked to identify persons, it is requested that the persons be identified by stating:
 - a. Their full name, home and business addresses, if known;
 - b. Their employment, job title or description; and
 - c. If employed by you, their dates and regular places of employment and general duties.

5. Wherever in the following Interrogatories you are asked to identify companies or the response to an Interrogatory would require the identification of a company, it is requested that the company be identified by stating:
 - a. Its full corporate name;
 - b. A brief description of the general nature of its business;
 - c. Its state of incorporation
 - d. The address and principal place of business; and
 - e. The identity of the officers or other person having knowledge of the matter with respect to which the company has been identified.

6. Wherever in the following Interrogatories you are asked to identify a good or product, or the marking used in combination with the product, it is requested that the same be identified by stating the catalog, stock, model, or the like number or designation, the trademark, name, type, grade, and any other designation customarily used by the party

concerned to designate such products, or the like, and to distinguish it from others made by the same or a different producer.

INTERROGATORIES

1. Fully describe the nature of Applicant's business or businesses, including the date on which Applicant first engaged in each such business, and identify and fully describe each of the goods and/or services Applicant offers as part of each such business.
2. Identify and fully describe each of the goods and/or services in connection with which Applicant currently uses, intends to use, or has used the SKY CINEMAS mark or any mark containing the term "SKY."
3. For each of the goods and/or services identified in response to Interrogatory No. 2:
 - a. Identify the first use date(s) or intended first use date of the SKY CINEMAS mark or any mark containing the term "SKY" in connection with each such good and/or service, and identify all documents supporting the date on which the marks were first used or will be first used;
 - b. Identify all sales channels used or intended to be used to sell each good and/or service and the state or geographic region where each good and/or service has been and/or is expected to be sold and/or advertised;
 - c. Identify all means used to or intended to be used to market, advertise, and/or promote each good and/or service from its first offering for sale through present, including, without limitation, all social media and the names of newspapers, magazines, trade journals, periodicals, or websites in which Applicant has advertised and/or intends to advertise its goods and/or services under the SKY

CINEMAS mark or any mark containing the term “SKY,” and the dollar amount spent or estimated to be spent in the future on such efforts;

- d. Identify all documents supporting the responses to subparagraphs (a) through (c) above.
4. Identify all stylized versions of the SKY CINEMAS mark, or any mark containing the term “SKY,” used by Applicant in connection with movie theaters, entertainment, television, or audiovisual equipment and the date each version of each stylized mark was first used in connection with these goods and/or services.
5. Identify each different sign, display, point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, promotional materials, and the like, known to Applicant which contains or bears Applicant’s SKY CINEMAS mark or any variation thereof, including all marks containing the term “SKY,” and which is intended to be used or has been used or disseminated at any time by Applicant in connection with movie theaters, entertainment, television, or audiovisual equipment.
6. Identify all inquiries, investigations, surveys, evaluations, and/or studies conducted by Applicant or anyone acting on its behalf with respect to Opposer’s marks, including the date conducted, the name, address, and title of each person who conducted it, the purpose for which it was conducted, the findings or conclusions made, and identify all documents which record, refer to, or relate to each such inquiry, investigation, survey, evaluation, or study.
7. Identify and fully describe the circumstances under which Applicant first became aware of Opposer and/or Opposer’s marks, including the date on which Applicant first became aware of each.

8. Identify all documents and set forth with specificity all facts regarding the selection of the SKY CINEMAS mark including, without limitation, the name, position, and role of each person involved in the decision to adopt, register, and/or use the SKY CINEMAS mark; the date on which Applicant decided to adopt, register, and/or use the SKY CINEMAS mark; the circumstances and method by which Applicant decided to adopt, register, and/or use the SKY CINEMAS mark; and the reasons why any proposed marks or names, if any, were rejected.
9. Describe the meaning and derivation of the term “SKY” as used in connection with the goods and/or services of Applicant upon or in connection with which Applicant has used that term.
10. Identify all marks containing the term “SKY” that are or have been used by Applicant in connection with movie theaters, entertainment, television, or audiovisual equipment.
11. Identify all state and federal registrations, applications for registration, and uses by Applicant of any mark which incorporates the term “SKY,” and for each such registration, application, and use, identify all documents relating thereto.
12. Identify the name of each person and/or agency that has been, now is, or will be responsible for the marketing, advertising, and promotion of all goods and/or services sold under the SKY CINEMAS mark.
13. Identify the ordinary purchaser of the goods and/or services sold and intended to be sold under the SKY CINEMAS mark including, without limitation, the level of care exercised by such an ordinary purchaser in purchasing these goods and/or services.
14. Identify all communications referencing Opposer and/or Opposer’s marks.

15. Identify each person who participated in or supplied information used in answering any of the above interrogatories and identify each interrogatory that person participated in answering.
16. Identify each litigation or administrative proceeding, other than the present opposition proceeding, to which Applicant has been a party and which involved the SKY CINEMAS mark or any mark containing the term "SKY," stating, without limitation, the name of the parties and identification of the proceeding, Applicant's status therein, the mark or marks involved, the type of proceeding involved, the name of the court or agency in which it was filed, the date of the filing and the file number, the ultimate disposition of the proceedings, and the identity of each document relating to such proceeding.
17. Identify all storage devices in your possession, custody, or control that store electronically stored information relevant to the claims and/or defenses asserted by any party in this action.

This sixth day of June, 2017.

Respectfully submitted,

Sky International AG

By: /s/Mark H. Tidman

Mark H. Tidman

Jessica H. Watkins

Baker Hostetler LLP

Washington Square, Suite 1100

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5304

(202) 861-1500 (Telephone)

(202) 861-1783 (Facsimile)

Email: mtidman@bakerlaw.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this sixth day of June, 2017, a true copy of Opposer's First Set of Interrogatories was served on Applicant via email, per the agreement between the parties, and via U.S. first-class mail, postage prepaid to:

Baxter W. Banowsky
Banowsky & Levine, P.C.
12801 N. Central Expressway
Suite 1700
Dallas, Texas 75243

/s/ Mark. H. Tidman

Mark H. Tidman

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

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Sky International AG))
Dammstrasse 19))
Zug, Switzerland CH6031))
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	Opposer,))
))
	v.))
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Sky Cinemas LLC))
1614 West 5 th Street))
Austin, Texas 78703))
))
	Applicant))
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Opposition No.: 91223952
Mark: SKY CINEMAS
Serial No.: 86/481,934

048398.000201

**OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION
TO APPLICANT SKY CINEMAS LLC**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer, Sky International AG, hereby addresses its First Set of Requests for Production to Applicant, Sky Cinemas LLC, to be responded to and complied with fully within thirty (30) days of service hereof.

DEFINITIONS

1. "Opposer" shall mean Sky International AG, its licensees, and any subsidiaries, affiliates, predecessors, successors, parents, divisions, persons or entities acting for or on its behalf, whether in existence now or at any time.

2. "Applicant" shall mean Sky Cinemas LLC, its licensees, and any subsidiaries, affiliates, predecessors, successors, parents, divisions, persons or entities acting for or on its behalf, whether in existence now or at any time.

3. "Opposer's marks" shall mean the marks owned by Opposer in U.S. Registration Nos. 4,806,322; 4,473,260; 4,405,345; 4,771,129; 4,771,128; 4,771,127; 4,710,310; 3,232,370; 2,912,783; 2,932,761; and 3,110,386.
4. The "SKY CINEMAS mark" shall mean the mark owned by Applicant in U.S. Application Ser. No. 86/481,934.
5. "Document" is defined to be synonymous in meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal Rules of Civil Procedure and includes computer records in any format. By way of further explanation, "document(s)" shall mean all non-identical copies of material of every kind and description which are recorded by hand-writing, printing, typing, photographing, photostatting, graphic representation, mechanical, electronic, magnetic, or any other means of recording, any form of communication, information or representation, including letters, words or numbers or their equivalent, or data compilations of any sort whatsoever. The term "document(s)" is therefore defined to include, among other things, information stored on electronic media, videotapes, motion pictures, computer data, and any other electronic, mechanical or magnetic records or representations of any kind including without limitation all tapes, cassettes, magnetic, optical or other discs, magnetic cards, e-mail, and recordings. A draft or non-identical copy is a separate document within the meaning of this term.
6. "Communication" or "communications" means any oral, written or electronic utterance, notation or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, any documents, correspondence, letters, facsimiles, e-mails, text messages, voice recordings, video recordings, voicemail, instant messages,

conversations, dialogues, discussions, interviews, conferences, meetings, consultations, agreements, and other understandings or exchanges between or among two or more people.

7. “Person” as used herein means any natural person or any entity, including, without limitation, any individual, public company, private company, firm, corporation, limited liability company, joint venture, trust, proprietorship, tenancy, association, partnership, business, agency, department, governmental body, bureau, board, commission, or any other form of public or private entity. With respect to an entity, “person” shall include all subsidiaries and affiliates of the entity, as well as the present and former directors, officers, employees, attorneys, agents and anyone acting on behalf of, at the direction of, or under the control of, the entity or its subsidiaries or affiliates.
8. The terms “you” or “your” means Sky Cinemas LLC, including its respective officers, directors, parents, subsidiaries, divisions, affiliates, predecessors, successors, employees, accountants, agents, representatives and any other person acting under its control or on its behalf.
9. “Relates to” or “relating to” means authorizing, concerning, constituting, comprising, containing, consisting of, connected with, describing, disclosing, discussing, evidencing, explaining, mentioning, pertaining to, proposing, reflecting, regarding, referring to, directly or indirectly, setting forth, showing, or summarizing.
10. Where appropriate:
 - a. use of the singular includes the plural, and vice versa;
 - b. the past tense includes the present tense;
 - c. the words “and” and “or” are both conjunctive and disjunctive;

- d. the words “all” and “any” mean “any and all”;
- e. the word “including” means “including without limitation”; and
- f. use of the masculine includes the feminine, and vice versa.

INSTRUCTIONS

1. In response to these Requests for Production, you are required to furnish all information and documents which are, or have been, in your possession, custody, or control, or in your possession, custody, or control.
2. Any responsive information not disclosed by reason of a claim of privilege or other basis should be identified in writing by: (a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld from production pursuant to Rule 26(b)(5).
3. Documents shall be produced as they are kept in the ordinary course of business pursuant to Rule 34(b)(2)(E), including (a) providing information maintained in the ordinary course of business that indicates the source of the documents, (b) providing file folders, tabs, labels, directories, etc. maintained in the ordinary course of business along with their respective documents, and (c) including attachments to documents as stored in the ordinary course of business.
4. ESI shall be produced electronically, either in (1) Native Format, or (2) as single-page, uniquely and sequentially numbered Group IV TIFF image files. For each ESI document, all metadata must remain intact and all parent/child document relationships must be maintained. All ESI shall be collected using methods that prevent the spoliation of data.
5. The production of ESI as described herein shall be made on an external hard drive, flash drive, CD or DVD (“Production Media”). The Production Media shall include a unique

identifying label specifying: (a) your identity; (b) the date of the production of ESI; and (c) the case name and number.

6. If you contend that any ESI document responsive to this Request for Production is not reasonably accessible: (1) timely identify such ESI document with reasonable particularity; and (2) provide the basis for declining to produce the ESI document, including, for example, any limitations on access, the likely costs that might be incurred in accessing and producing the ESI document, the method used for storage of the ESI document and all locations in which the ESI document is kept.
7. ESI produced as TIFF image files shall be produced as follows: (1) each production of TIFF image files shall be accompanied by a corresponding load file (“Image Load File”); (2) each TIFF image file must contain the same information and same physical representation as the Native Format file from which the TIFF image file was created; (3) each TIFF image file must not be less than 300 dpi resolution; (4) each TIFF image file shall be accompanied by an extracted text file containing the extracted text of the Native Format file from which the TIFF image file was created; (5) each extracted text file shall be named to match the endorsed number assigned to the first page of each corresponding TIFF image file; (6) the extracted text files shall be accompanied by a Control List File (“LST”); (7) each production of TIFF image files shall be accompanied by an image cross-reference load file, such as Opticon (“OPT”), which shall provide the beginning and ending endorsed number of each TIFF image file and the number of pages it includes; and (8) each production of TIFF image files must be accompanied by a data load file (“Data Load File” or “DAT”) that contains both the hash value and all available

metadata of the Native Format files from which the TIFF image files were created.

Further, the following instructions apply to the production of TIFF image files:

- a. For each Native Format file that is converted to TIFF format: (1) all tracked changes shall be maintained so that all changes are visible; (2) OLE Embedded files shall not be extracted as separate documents; (3) author comments shall remain or be made visible; (4) hidden columns, cells, rows, worksheets and other hidden data shall remain or be made visible; (5) presenter notes shall remain or be made visible; and (6) to the extent ESI in a foreign language is produced, processing of such ESI shall be unicode-compliant.
- b. If a Native Format file that is converted to TIFF format is more than one page, the unitization of the file and any attachments or affixed notes must be maintained as it existed when collected. If unitization cannot be maintained, the original unitization must be documented in the Data Load File or otherwise electronically tracked.
- c. If a Native Format file that is converted to TIFF format contains color, the TIFF image file need not be produced in color. However, Opposer reserves the right to make a request for a file to be produced in color.
- d. In the event that production of a Native Format file as a TIFF image would be impracticable, you shall produce such file in Native Format with all metadata intact. You shall provide a single page TIFF image placeholder referencing the title of the Native Format file not being produced as a TIFF image.
- e. All Microsoft Excel files, similar non-Microsoft spreadsheet files, and graphical compilations of spreadsheet data, shall be produced in Native Format with all

cells, columns, rows and worksheets and other information unhidden and expanded.

- f. Opposer reserves the right to demand production in Native Format of any file produced by you as a TIFF image file.
8. Pursuant to Rule 34(b)(1) and (2), all Documents requested below shall be produced for inspection and copying at the offices of Baker Hostetler LLP, Washington Square, Suite 1100, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036 within 30 days.

REQUESTS FOR PRODUCTION

1. Documents sufficient to show every version of all websites owned, operated, or under the control of Applicant that uses the SKY CINEMAS mark or any mark containing the term “SKY” since the website’s creation.
2. Documents sufficient to show each social media account owned, operated, or under the control of Applicant that uses the SKY CINEMAS mark or any mark containing the term “SKY.”
3. Documents sufficient to show every version of each stylized rendering of the SKY CINEMAS mark or any mark containing the term “SKY” used by Applicant since the creation of the mark.
4. All documents that record, refer to, or relate to the sales by Applicant of all goods and/or services ever sold under or in connection with the SKY CINEMAS mark or any mark containing the term “SKY,” including, without limitation, all purchase orders, invoices, receipts, contracts, agreements, and/or sales summaries.

5. Documents sufficient to identify each good and/or service sold or offered for sale, intended to be sold or intended to be offered for sale under the SKY CINEMAS mark or any mark containing the term “SKY.”
6. Documents sufficient to show the first use date of the SKY CINEMAS mark in connection with each good and/or service sold or offered for sale under the mark.
7. Documents sufficient to show the anticipated first use date of the SKY CINEMAS mark in connection with each good and/or service intended to be sold or offered for sale under the mark.
8. Documents sufficient to show all means used to market, advertise, and/or promote the goods and/or services sold or offered for sale or intended to be sold or offered for sale under the SKY CINEMAS mark or any mark containing the term “SKY.”
9. Produce a sample of each and every different advertisement, intended advertisement, item of promotional material, and/or intended item of promotional material printed and/or disseminated by or for Applicant in which the term “SKY” appears.
10. Produce copies of all television commercials, press releases, radio scripts, and other media advertising and/or coverage not previously requested herein, prepared by or for Applicant, whether or not released or aired, in which the term “SKY” appears.
11. Produce a sample of each and every unsolicited third party publication giving mention to the SKY CINEMAS mark or any mark used by Applicant in which the term “SKY” appears.
12. Documents sufficient to show the annual – or monthly, if first use was less than one year ago – dollar amount Applicant has spent on marketing, advertising, and/or promoting

goods and/or services sold or offered for sale under the SKY CINEMAS mark since its first use.

13. Documents sufficient to show all marketing plans and strategies for goods and/or services sold or offered for sale, intended to be sold or intended to be offered for sale under the SKY CINEMAS mark from the first use or anticipated first use of the mark through present.
14. Documents which record, refer to, or relate to the target audience and intended market for the goods and/or services marketed, advertised, and/or promoted under the SKY CINEMAS mark.
15. Documents reflecting the persons, entities, groups, or others who have purchased goods and/or services under the SKY CINEMAS mark or any mark containing the term “SKY” since the mark’s first use.
16. Documents sufficient to show the dollar amount of annual sales – or monthly sales if sales have occurred for less than a year – of each good and/or service sold under the SKY CINEMAS mark since each good and/or service was first offered for sale.
17. Documents sufficient to show the amount of profit earned by Applicant in connection with the sale of any goods and/or services sold under the SKY CINEMAS mark since its first use, including, without limitation, sales figures, gross receipts, material costs, labor costs, general and administrative costs, and/or overhead.
18. Documents which record, refer to, or relate to the channels of trade through which Applicant markets, advertises, promotes, sells, and/or offers for sale, or intends to market, promote, sell, or offer for sale any goods and/or services under the SKY CINEMAS mark.

19. Documents which record, refer to, or relate to any licenses, assignments, agreements, contracts, and/or arrangements between Applicant and any third party which relate in any manner to the SKY CINEMAS mark in use in connection with movie theaters, entertainment, television, or audiovisual equipment.
20. Documents referring to or relating to any inquiries, investigations, surveys, evaluations, and/or studies conducted by Applicant or anyone on its behalf to determine awareness of the SKY CINEMAS mark or any mark containing the term “SKY” by an entity or person or to gauge any secondary meaning of the SKY CINEMAS mark or any mark containing the term “SKY.”
21. Documents which record, refer to, or relate to any customer or consumer surveys related to any goods and/or services sold or intended to be sold under the SKY CINEMAS mark or any mark containing the term “SKY.”
22. Documents which record, refer, or relate to any instances of actual consumer confusion between Applicant and/or the SKY CINEMAS mark or any mark containing the term “SKY” and any third party and/or third party mark designating movie theaters, entertainment, television, or audiovisual equipment.
23. Documents which record, refer, or relate to Applicant’s decision to adopt, register, and/or use the term “SKY” as part of the SKY CINEMAS mark including, without limitation, any investigation or search related to the availability for adoption and registration, licensing, use, intended use, exploitation, and/or intended exploitation of the term “SKY,” as well as samples of any names, designations, and/or marks considered and rejected.

24. Documents which record, refer, or relate to Applicant's use of the term "SKY" as an element of any designation or source indicator used by Applicant.
25. Documents which refer, relate to, or are in any way concerned with the preparation, filing, and/or prosecution of any applications for registration, state or federal, of marks incorporating the term "SKY" by Applicant.
26. Documents which record, refer to, or relate to Applicant's contention that "at the time of filing its applications, Opposer did not have a bona fide intent to use the following marks in commerce for most of the listed goods and/or services:
U.S. Registration No. 4806322 for SKY NEWS ARABIA
U.S. Registration No. 4405345 for SKY PRO CYCLING
U.S. Registration No. 4771129 for SKY SPORTS
U.S. Registration No. 4771128 for SKY NEWS
U.S. Registration No. 4771127 for SKY NEWS ARABIA
U.S. Registration No. 4710310 for SKY 90."
- Applicant's Second Amended Counterclaim at 2-3.*
27. Documents which record, refer to, or relate to Applicant's contention that certain of the goods and/or services identified in Opposer's marks are "clearly obsolete." *Applicant's Second Amended Counterclaim at 16-17, 35, 57-58, 79-80, 92, and 105.*
28. Documents which record, refer to, or relate to Applicant's contention that "Applicant has been damaged by the allowance of the" '142 Application, '483 Application, '156 Application, '152 Application, '141 Application, and '148 Application. *Applicant's Second Amended Counterclaim at 17, 36, 58, 80, 93, and 105.*

29. Documents sufficient to identify all the goods and/or services in connection with which Applicant contends Opposer did not have a bona fide intent to use the marks listed in Request No. 26.
30. All documents referring or relating to Opposer.
31. All documents referring or relating to third parties using the term “SKY” in the sale or offering for sale of any goods and/or services in the movie and/or entertainment industry.
32. All documents identified in response to Opposer’s First Set of Interrogatories not provided in response to the above requests.
33. All documents and electronically stored information disclosed by you pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii) in your Initial Disclosures.

This sixth day of June, 2017.

Respectfully submitted,

Sky International AG

By: /s/Mark H. Tidman

Mark H. Tidman

Jessica H. Watkins

Baker Hostetler LLP

Washington Square, Suite 1100

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5304

(202) 861-1500 (Telephone)

(202) 861-1783 (Facsimile)

Email: mtidman@bakerlaw.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this sixth day of June, 2017, a true copy of Opposer's First Set of Requests for Production was served on Applicant via email, per the agreement between the parties, and via U.S. first-class mail, postage prepaid to:

Baxter W. Banowsky
Banowsky & Levine, P.C.
12801 N. Central Expressway
Suite 1700
Dallas, Texas 75243

/s/ Mark. H. Tidman

Mark H. Tidman

EXHIBIT B

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

_____)	
SKY INTERNATIONAL AG)	
	)	Serial No. 86/481,934
Opposer,)	
	)	Opposition No. 91223952
)	
SKY CINEMAS LLC,	)	Mark: SKY CINEMAS
)	
Applicant.	)	Publication Date: May 26, 2015
_____)	

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

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant Sky Cinemas LLC, (“Applicant” or “Sky Cinemas”) serves its Objections and Responses to Opposer’s First Set of Interrogatories and states:

I. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Applicant objects to the instructions and definitions to the extent that they seek to impose duties or obligations on Applicant in addition to or inconsistent with the duties and obligations imposed by the Federal Rules of Civil Procedure. Accordingly, in responding hereto, Applicant will do so in accordance with the Federal Rules of Civil Procedure.

Applicant further objects to the definition of the term “Opposer” on the grounds that it is overly broad, calls for a legal conclusion with respect to the several sub-categories of included individuals and entities and otherwise fails to adequately identify such subcategories of individuals and entities. As used herein, such term shall mean and refer to Opposer and its employees.

Applicant further objects to the definition of the term “Applicant” on the grounds that it is overly broad, calls for a legal conclusion with respect to the several sub-categories of included individuals and entities and otherwise fails to adequately identify such subcategories of individuals and entities. As used herein, such term shall mean and refer to Applicant and its employees.

Applicant further objects to the definition of the term “document” on the grounds that the definition is overly broad, vague and exceeds the permissible scope of Fed. R. Civ. P. 26 and 34.

Applicant further objects to the definition of the terms “communication” and “communications” on the grounds that they are overly broad and unduly burdensome. As used herein, such terms shall be given their ordinary meaning.

Applicant further objects to the definition of the term “Person” on the grounds that it is overly broad and unduly burdensome. As used herein, such term shall be given its ordinary meaning.

Applicant further objects to the definition of the terms “you” and “your” on the grounds that they are overly broad, calls for a legal conclusion with respect to the several sub-categories of included individuals and entities and otherwise fails to adequately identify such subcategories of individuals and entities. As used herein, such term shall mean and refer to Applicant and its employees.

Applicant further objects to the definition of the terms “relates to” or “relating to” on the grounds that they are overly broad and unduly burdensome. As used herein, such terms shall be given their ordinary meaning.

II. SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1:

Fully describe the nature of Applicant's business or businesses, including the date on which Applicant first engaged in each such business, and identify and fully describe each of the goods and/or services Applicant offers as part of each such business.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states generally that it has not yet engaged in any business but it anticipates operating a movie theater which will provide goods and services traditionally associated with a movie theater including, without limitation, exhibiting motion pictures and other forms of recorded and simulcast on-screen productions and serving food and beverages via a restaurant, bar and concession stands.

INTERROGATORY NO. 2:

Identify and fully describe each of the goods and/or services in connection with which Applicant currently uses, intends to use, or has used the SKY CINEMAS mark or any mark containing the term "SKY."

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states generally that it has not yet engaged in any business but it anticipates operating a movie theater which will provide goods and services traditionally associated with a movie

theater including, without limitation, exhibiting motion pictures and other forms of recorded and simulcast on-screen productions and serving food and beverages via a restaurant, bar and concession stands.

INTERROGATORY NO. 3:

For each of the goods and/or services identified in response to Interrogatory No. 2:

- a. Identify the first use date(s) or intended first use date of the SKY CINEMAS mark or any mark containing the term “SKY” in connection with each such good and/or service, and identify all documents supporting the date on which the marks were first used or will be first used;
- b. Identify all sales channels used or intended to be used to sell each good and/or service and the state or geographic region where each good and/or service has been and/or is expected to be sold and/or advertised;
- c. Identify all means used to or intended to be used to market, advertise, and/or promote each good and/or service from its first offering for sale through present, including, without limitation, all social media and the names of newspapers, magazines, trade journals, periodicals, or websites in which Applicant has advertised and/or intends to advertise its goods and/or services under the SKY CINEMAS mark or any mark containing the term “SKY,” and the dollar amount spent or estimated to be spent in the future on such efforts;
- d. Identify all documents supporting the responses to subparagraphs (a) through (c) above.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states generally that it was established as a Delaware limited liability company using the Sky Cinemas name on August 19, 2014. The first real estate lease for Sky Cinemas was executed on March 31, 2016. Pursuant to that lease, the first facility is currently under construction. The first business to open under the Sky Cinemas brand is expected to open in

January 2018 and will be located in Austin, TX near the town of Dripping Springs, TX. Future Sky Cinemas facilities may be located anywhere in the United States. The primary sales channel is expected to be on-site sales but some internet sales, primarily of movie tickets, will also take place. Sky Cinemas has been featured in news articles with hard copy publication as well as on the internet. Applicant has not paid for any advertising. Applicant has a website located at <http://www.skycinemas.com>. Upon opening the first facility, Applicant will advertise on-line, and marketing activities may include local newspapers, radio and television advertising. Supporting documents include, without limitation, Sky Cinemas LLC Certificate of Formation dated August 19, 2014; Lease Agreement dated March 31, 2016; website (<http://www.skycinemas.com>); and news articles on the internet describing Sky Cinemas.

INTERROGATORY NO. 4:

Identify all stylized versions of the SKY CINEMAS mark, or any mark containing the term "SKY," used by Applicant in connection with movie theaters, entertainment, television, or audiovisual equipment and the date each version of each stylized mark was first used in connection with these goods and/or services.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states generally that it has not yet engaged in any business but it anticipates operating a movie theater which will provide goods and services traditionally associated with a movie theater. The only stylized version of the SKY CINEMAS mark currently in use can be seen on Applicant's website located at <http://www.skycinemas.com>.

INTERROGATORY NO. 5:

Identify each different sign, display, point-of-sale display, label, hangtag, wrapper, container, package, advertisement, brochure, promotional materials, and the like, known to Applicant which contains or bears Applicant's SKY CINEMAS mark or any variation thereof, including all marks containing the term "SKY," and which is intended to be used or has been used or disseminated at any time by Applicant in connection with movie theaters, entertainment, television, or audiovisual equipment.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states generally that it has not yet engaged in any business but it anticipates operating a movie theater which will provide goods and services traditionally associated with a movie theater. The only version of the SKY CINEMAS mark currently in use can be seen on Applicant's website located at <http://www.skycinemas.com>.

INTERROGATORY NO. 6:

Identify all inquiries, investigations, surveys, evaluations, and/or studies conducted by Applicant or anyone acting on its behalf with respect to Opposer's marks, including the date conducted, the name, address, and title of each person who conducted it, the purpose for which it was conducted, the findings or conclusions made, and identify all documents which record, refer to, or relate to each such inquiry, investigation, survey, evaluation, or study.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not performed any such inquiries, investigations, surveys, evaluations, and/or studies.

INTERROGATORY NO. 7:

Identify and fully describe the circumstances under which Applicant first became aware of Opposer and/or Opposer's marks, including the date on which Applicant first became aware of each.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it first became aware of Opposer or Opposer's marks as a result of the filing of this opposition.

INTERROGATORY NO. 8:

Identify all documents and set forth with specificity all facts regarding the selection of the SKY CINEMAS mark including, without limitation, the name, position, and role of each person involved in the decision to adopt, register, and/or use the SKY CINEMAS mark; the date on which Applicant decided to adopt, register, and/or use the SKY CINEMAS mark; the circumstances and method by which Applicant decided to adopt, register, and/or use the SKY CINEMAS mark; and the reasons why any proposed marks or names, if any, were rejected.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving the foregoing objections, Applicant states generally that the decision to adopt, register and use the SKY CINEMAS mark was made by William S. Banowsky, Jr. and Robert Crane, both principals of Applicant. The decision was made to adopt the use on or about August 19, 2014 and the decision to register the mark was made at or about the date the Applicant filed the application which is the subject of this Opposition. To the extent any documents exist, other than communications with counsel, which relate to the decision to adopt the SKY CINEMAS mark, such documents will be produced in response to Opposer's requests for production.

INTERROGATORY NO. 9:

Describe the meaning and derivation of the term "SKY" as used in connection with the goods and/or services of Applicant upon or in connection with which Applicant has used that term.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without

waiving the foregoing objections, Applicant states generally that “SKY” has both its ordinary meaning and references the last three letters of one of the co-founders’ last names.

INTERROGATORY NO. 10:

Identify all marks containing the term “SKY” that are or have been used by Applicant in connection with movie theaters, entertainment, television, or audiovisual equipment.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states generally that it has not yet engaged in any business but it anticipates operating a movie theater which will provide goods and services traditionally associated with a movie theater. The only mark containing “SKY” currently in use can be seen on Applicant’s website located at <http://www.skycinemas.com>.

INTERROGATORY NO. 11:

Identify all state and federal registrations, applications for registration, and uses by Applicant of any mark which incorporates the term “SKY,” and for each such registration, application, and use, identify all documents relating thereto.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving the foregoing objections, Applicant states that, in addition to the application which

forms the basis of this opposition, the only other only application incorporating the term “SKY” is U.S. Application No. 87516507.

INTERROGATORY NO. 12:

Identify the name of each person and/or agency that has been, now is, or will be responsible for the marketing, advertising, and promotion of all goods and/or services sold under the SKY CINEMAS mark.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving the foregoing objections, Applicant states generally that, other than maintaining its website, it has not engaged in any marketing and any decisions regarding future marketing will be made by Applicant’s management.

INTERROGATORY NO. 13:

Identify the ordinary purchaser of the goods and/or services sold and intended to be sold under the SKY CINEMAS mark including, without limitation, the level of care exercised by such an ordinary purchaser in purchasing these goods and/or services.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Subject to, and without waiving the foregoing objections,

Applicant states generally that the ordinary purchaser of its goods and/or services will be movie theater audiences.

INTERROGATORY NO. 14:

Identify all communications referencing Opposer and/or Opposer's marks.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information exempt from discovery by the attorney client privilege and the work product doctrine to the extent that it seeks documents which postdate the filing of this opposition. Subject to, and without waiving the foregoing objections, prior to the filing of this opposition, none.

INTERROGATORY NO. 15:

Identify each person who participated in or supplied information used in answering any of the above interrogatories and identify each interrogatory that person participated in answering.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving the foregoing objections, William S. Banowsky, Jr. and Robert Crane.

INTERROGATORY NO. 16:

Identify each litigation or administrative proceeding, other than the present opposition proceeding, to which Applicant has been a party and which involved the SKY CINEMAS mark or any mark containing the term “SKY,” stating, without limitation, the name of the parties and identification of the proceeding, Applicant’s status therein, the mark or marks involved, the type of proceeding involved, the name of the court or agency in which it was filed, the date of the filing and the file number, the ultimate disposition of the proceedings, and the identity of each document relating to such proceeding.

ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information exempt from discovery by the attorney client privilege and the work product doctrine to the extent that it seeks documents which postdate the filing of any such litigation or administrative proceeding. Subject to, and without waiving the foregoing objections, none.

INTERROGATORY NO. 17:

Identify all storage devices in your possession, custody, or control that store electronically stored information relevant to the claims and/or defenses asserted by any party in this action.

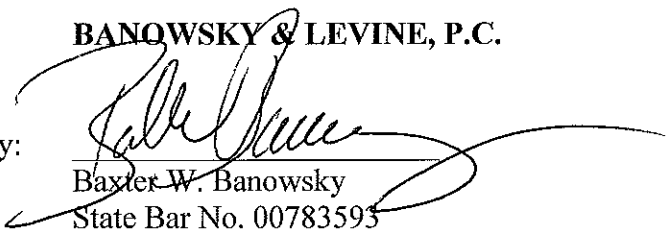
ANSWER:

Objection. Applicant objects to the interrogatory on the grounds that it is overly broad and, as a result, unduly burdensome. Applicant further objects to the interrogatory on the grounds that it seeks the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

BANOWSKY & LEVINE, P.C.

By:


Baxter W. Banowsky
State Bar No. 00783593
bwb@banowsky.com

12801 N. Central Expressway
Suite 1700
Dallas, Texas 75243
Telephone: (214) 871-1300
Facsimile: (214) 871-0038

**ATTORNEY FOR APPLICANT
SKY CINEMAS LLC**

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served, via first class mail and email, upon Mark Tidman, Baker & Hostetler, mtidman@bakerlaw.com, 1050 Connecticut Avenue, N.W. Suite 1100, Washington, DC 20036, on the 6th day of July, 2017.


Baxter W. Banowsky

VERIFICATION

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

BEFORE ME, the undersigned Notary Public, on this date appeared William S. Banowsky, Jr. who stated, upon oath, that he has read Applicant's Objections and Responses to Opposer's First Set of Interrogatories; and that the substantive responses contained herein are either within his personal knowledge, and to the best of his knowledge and belief, they are true and correct.

WSB

SUBSCRIBED AND SWORN TO BEFORE ME on this, the 5th day of July, 2017.



[Signature]
NOTARY PUBLIC, STATE OF TEXAS

My commission expires:

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

_____)	
SKY INTERNATIONAL AG)	
Opposer,)	Serial No. 86/481,934
)	Opposition No. 91223952
SKY CINEMAS LLC,)	Mark: SKY CINEMAS
)	Publication Date: May 26, 2015
Applicant.)	
_____)	

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

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant Sky Cinemas LLC, (“Applicant” or “Sky Cinemas”) serves its Objections and Responses to Opposer’s First Set of Requests For Production and states:

I. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Applicant objects to the instructions and definitions to the extent that they seek to impose duties or obligations on Applicant in addition to or inconsistent with the duties and obligations imposed by the Federal Rules of Civil Procedure. Accordingly, in responding hereto, Applicant will do so in accordance with the Federal Rules of Civil Procedure.

Applicant further objects to the definition of the term “Opposer” on the grounds that it is overly broad, calls for a legal conclusion with respect to the several sub-categories of included individuals and entities and otherwise fails to adequately identify such subcategories of individuals and entities. As used herein, such term shall mean and refer to Opposer and its employees.

Applicant further objects to the definition of the term “Applicant” on the grounds that it is overly broad, calls for a legal conclusion with respect to the several sub-categories of included individuals and entities and otherwise fails to adequately identify such subcategories of individuals and entities. As used herein, such term shall mean and refer to Applicant and its employees.

Applicant further objects to the definition of the term “document” on the grounds that the definition is overly broad, vague and exceeds the permissible scope of Fed. R. Civ. P. 26 and 34.

Applicant further objects to the definition of the terms “communication” and “communications” on the grounds that they are overly broad and unduly burdensome. As used herein, such terms shall be given their ordinary meaning.

Applicant further objects to the definition of the term “Person” on the grounds that it is overly broad and unduly burdensome. As used herein, such term shall be given its ordinary meaning.

Applicant further objects to the definition of the terms “you” and “your” on the grounds that they are overly broad, calls for a legal conclusion with respect to the several sub-categories of included individuals and entities and otherwise fails to adequately identify such subcategories of individuals and entities. As used herein, such term shall mean and refer to Applicant and its employees.

Applicant further objects to the definition of the terms “relates to” or “relating to” on the grounds that they are overly broad and unduly burdensome. As used herein, such terms shall be given their ordinary meaning.

II. SPECIFIC OBJECTIONS AND RESPONSES

DOCUMENT REQUEST NO. 1:

Documents sufficient to show every version of all websites owned, operated, or under the control of Applicant that uses the SKY CINEMAS mark or any mark containing the term “SKY” since the website’s creation.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that the only website operated by it is located at <http://www.skycinemas.com> and all content therein may be accessed via the internet.

DOCUMENT REQUEST NO. 2:

Documents sufficient to show each social media account owned, operated, or under the control of Applicant that uses the SKY CINEMAS mark or any mark containing the term “SKY.”

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it does not currently have any active social media accounts.

DOCUMENT REQUEST NO. 3:

Documents sufficient to show every version of each stylized rendering of the SKY CINEMAS mark or any mark containing the term “SKY” used by Applicant since the creation of the mark.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that the only stylized rendering of the SKY CINEMAS mark or any mark containing the term “SKY” used by Applicant is on the Applicant’s website located at <http://www.skycinemas.com>.

DOCUMENT REQUEST NO. 4:

All documents that record, refer to, or relate to the sales by Applicant of all goods and/or services ever sold under or in connection with the SKY CINEMAS mark or any mark containing the term “SKY,” including, without limitation, all purchase orders, invoices, receipts, contracts, agreements, and/or sales summaries.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services.

DOCUMENT REQUEST NO. 5:

Documents sufficient to identify each good and/or service sold or offered for sale, intended to be sold or intended to be offered for sale under the SKY CINEMAS mark or any mark containing the term “SKY.”

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant agrees to produce an exemplar Executive Summary and Information Package related to Sky Cinemas Dripping Springs, LLC.

DOCUMENT REQUEST NO. 6:

Documents sufficient to show the first use date of the SKY CINEMAS mark in connection with each good and/or service sold or offered for sale under the mark.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services.

DOCUMENT REQUEST NO. 7:

Documents sufficient to show the anticipated first use date of the SKY CINEMAS mark in connection with each good and/or service intended to be sold or offered for sale under the mark.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant agrees to produce a copy of its certificate of formation, an exemplar Executive Summary and Information Package related to Sky Cinemas Dripping Springs, LLC., a copy of the lease for the Dripping Springs facility and an exemplar construction update from the landlord.

DOCUMENT REQUEST NO. 8:

Documents sufficient to show all means used to market, advertise, and/or promote the goods and/or services sold or offered for sale or intended to be sold or offered for sale under the SKY CINEMAS mark or any mark containing the term "SKY."

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant agrees to produce an exemplar Executive Summary and Information Package related to Sky Cinemas Dripping Springs, LLC.

DOCUMENT REQUEST NO. 9:

Produce a sample of each and every different advertisement, intended advertisement, item of promotional material, and/or intended item of promotional material printed and/or disseminated by or for Applicant in which the term “SKY” appears.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services and has not yet engaged in any marketing other than its website located at <http://www.skycinemas.com>.

DOCUMENT REQUEST NO. 10:

Produce copies of all television commercials, press releases, radio scripts, and other media advertising and/or coverage not previously requested herein, prepared by or for Applicant, whether or not released or aired, in which the term “SKY” appears.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services and has not yet engaged in any marketing other than its website located at <http://www.skycinemas.com>.

DOCUMENT REQUEST NO. 11:

Produce a sample of each and every unsolicited third party publication giving mention to the SKY CINEMAS mark or any mark used by Applicant in which the term “SKY” appears.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services and has not yet engaged in any marketing other than its website located at <http://www.skycinemas.com> and is not otherwise in possession of materials published by third parties about the applicant. However, such materials may be obtained by Opposer by using an internet search engine to search for articles referencing the Applicant.

DOCUMENT REQUEST NO. 12:

Documents sufficient to show the annual – or monthly, if first use was less than one year ago – dollar amount Applicant has spent on marketing, advertising, and/or promoting goods and/or services sold or offered for sale under the SKY CINEMAS mark since its first use.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services and has not yet engaged in any marketing other than its website located at <http://www.skycinemas.com>.

DOCUMENT REQUEST NO. 13:

Documents sufficient to show all marketing plans and strategies for goods and/or services sold or offered for sale, intended to be sold or intended to be offered for sale under the SKY CINEMAS mark from the first use or anticipated first use of the mark through present.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant agrees to produce an exemplar Executive Summary and Information Package related to Sky Cinemas Dripping Springs, LLC.

DOCUMENT REQUEST NO. 14:

Documents which record, refer to, or relate to the target audience and intended market for the goods and/or services marketed, advertised, and/or promoted under the SKY CINEMAS mark.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant agrees to produce an exemplar Executive Summary and Information Package related to Sky Cinemas Dripping Springs, LLC.

DOCUMENT REQUEST NO. 15:

Documents reflecting the persons, entities, groups, or others who have purchased goods and/or services under the SKY CINEMAS mark or any mark containing the term “SKY” since the mark’s first use.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services.

DOCUMENT REQUEST NO. 16:

Documents sufficient to show the dollar amount of annual sales – or monthly sales if sales have occurred for less than a year – of each good and/or service sold under the SKY CINEMAS mark since each good and/or service was first offered for sale.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services.

DOCUMENT REQUEST NO. 17:

Documents sufficient to show the amount of profit earned by Applicant in connection with the sale of any goods and/or services sold under the SKY CINEMAS mark since its first use, including, without limitation, sales figures, gross receipts, material costs, labor costs,

general and administrative costs, and/or overhead.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services.

DOCUMENT REQUEST NO. 18:

Documents which record, refer to, or relate to the channels of trade through which Applicant markets, advertises, promotes, sells, and/or offers for sale, or intends to market, promote, sell, or offer for sale any goods and/or services under the SKY CINEMAS mark.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant agrees to produce an exemplar Executive Summary and Information Package related to Sky Cinemas Dripping Springs, LLC.

DOCUMENT REQUEST NO. 19:

Documents which record, refer to, or relate to any licenses, assignments, agreements, contracts, and/or arrangements between Applicant and any third party which relate in any manner to the SKY CINEMAS mark in use in connection with movie theaters, entertainment, television, or audiovisual equipment.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant agrees to produce an exemplar Executive Summary and Information Package related to Sky Cinemas Dripping Springs, LLC. and a copy of the lease for the Dripping Springs facility.

DOCUMENT REQUEST NO. 20:

Documents referring to or relating to any inquiries, investigations, surveys, evaluations, and/or studies conducted by Applicant or anyone on its behalf to determine awareness of the SKY CINEMAS mark or any mark containing the term “SKY” by an entity or person or to gauge any secondary meaning of the SKY CINEMAS mark or any mark containing the term “SKY.”

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it does not has not currently engaged anyone to perform any investigations to gauge any secondary meaning of the SKY CINEMAS mark or any mark containing the term “SKY.”

DOCUMENT REQUEST NO. 21:

Documents which record, refer to, or relate to any customer or consumer surveys related to any goods and/or services sold or intended to be sold under the SKY CINEMAS mark or any mark containing the term “SKY.”

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it does not has not currently commissioned any any customer or consumer surveys related to any goods and/or services sold or intended to be sold under the SKY CINEMAS mark or any mark containing the term “SKY.”

DOCUMENT REQUEST NO. 22:

Documents which record, refer, or relate to any instances of actual consumer confusion between Applicant and/or the SKY CINEMAS mark or any mark containing the term “SKY” and any third party and/or third party mark designating movie theaters, entertainment, television, or audiovisual equipment.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it is not currently aware of any actual consumer confusion between Applicant and/or the SKY CINEMAS mark or any mark containing the term “SKY” and any third party and/or third party mark designating movie theaters, entertainment, television, or audiovisual equipment.

DOCUMENT REQUEST NO. 23:

Documents which record, refer, or relate to Applicant’s decision to adopt, register, and/or use the term “SKY” as part of the SKY CINEMAS mark including, without limitation, any

investigation or search related to the availability for adoption and registration, licensing, use, intended use, exploitation, and/or intended exploitation of the term “SKY,” as well as samples of any names, designations, and/or marks considered and rejected.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant agrees to produce a copy of its certificate of formation and an exemplar Executive Summary and Information Package related to Sky Cinemas Dripping Springs, LLC.

DOCUMENT REQUEST NO. 24:

Documents which record, refer, or relate to Applicant’s use of the term “SKY” as an element of any designation or source indicator used by Applicant.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Subject to, and without waiving the foregoing objections, Applicant states that it has not yet engaged in any business in which it has sold any goods or services and has not yet engaged in any marketing other than its website located at <http://www.skycinemas.com>.

DOCUMENT REQUEST NO. 25:

Documents which refer, relate to, or are in any way concerned with the preparation, filing, and/or prosecution of any applications for registration, state or federal, of marks incorporating the term “SKY” by Applicant.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Applicant further objects to the request on the grounds that it seeks the production of material exempt from discovery by the attorney client privilege and the work product doctrine. Subject to, and without waiving the foregoing objections, Applicant states that the application which forms the basis of this opposition and U.S. application no. 87516507, are the only applications for registration, state or federal, of marks incorporating the term “SKY” by Applicant. Opposer is referred to the USPTO website for any documents related thereto.

DOCUMENT REQUEST NO. 26:

Documents which record, refer to, or relate to Applicant’s contention that “at the time of filing its applications, Opposer did not have a bona fide intent to use the following marks in commerce for most of the listed goods and/or services:

U.S. Registration No. 4806322 for SKY NEWS ARABIA

U.S. Registration No. 4405345 for SKY PRO CYCLING

U.S. Registration No. 4771129 for SKY SPORTS

U.S. Registration No. 4771128 for SKY NEWS

U.S. Registration No. 4771127 for SKY NEWS ARABIA

U.S. Registration No. 4710310 for SKY 90.”

Applicant’s Second Amended Counterclaim at 2-3.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Applicant further objects to the request on the grounds that it seeks the production of material exempt from discovery by the attorney client privilege and the work product doctrine. Subject to, and without waiving the foregoing objections, see the prosecution files for each of the referenced applications along with the documents attached to Applicant's Second Amended Answer and Counterclaim.

DOCUMENT REQUEST NO. 27:

Documents which record, refer to, or relate to Applicant's contention that certain of the goods and/or services identified in Opposer's marks are "clearly obsolete." *Applicant's Second Amended Counterclaim at 16-17, 35, 57-58, 79-80, 92, and 105.*

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Applicant further objects to the request on the grounds that it seeks the production of material exempt from discovery by the attorney client privilege and the work product doctrine. Subject to, and without waiving the foregoing objections, see the prosecution files for each of the referenced applications along with the documents attached to Applicant's Second Amended Answer and Counterclaim.

DOCUMENT REQUEST NO. 28:

Documents which record, refer to, or relate to Applicant's contention that "Applicant has been damaged by the allowance of the" '142 Application, '483 Application, '156 Application, '152 Application, '141 Application, and '148 Application. *Applicant's Second Amended Counterclaim at 17, 36, 58, 80, 93, and 105.*

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Applicant further objects to the request on the grounds that it seeks the production of material exempt from discovery by the attorney client privilege and the work product doctrine. Subject to, and without waiving the foregoing objections, see the prosecution files for each of the referenced applications along with the documents attached to Applicant's Second Amended Answer and Counterclaim.

DOCUMENT REQUEST NO. 29:

Documents sufficient to identify all the goods and/or services in connection with which Applicant contends Opposer did not have a bona fide intent to use the marks listed in Request No. 26.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Applicant further objects to the request on the grounds that it seeks the production of material exempt from discovery by the attorney client privilege and the work product doctrine.

Subject to, and without waiving the foregoing objections, see the prosecution files for each of the referenced applications along with the documents attached to Applicant's Second Amended Answer and Counterclaim.

DOCUMENT REQUEST NO. 30:

All documents referring or relating to Opposer.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Applicant further objects to the request on the grounds that it seeks the production of material neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the request on the grounds that it seeks the production of material exempt from discovery by the attorney client privilege and the work product doctrine.

DOCUMENT REQUEST NO. 31:

All documents referring or relating to third parties using the term "SKY" in the sale or offering for sale of any goods and/or services in the movie and/or entertainment industry.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Applicant further objects to the request on the grounds that it seeks the production of material neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to the request on the grounds that it

seeks the production of material exempt from discovery by the attorney client privilege and the work product doctrine.

DOCUMENT REQUEST NO. 32:

All documents identified in response to Opposer's First Set of Interrogatories not provided in response to the above requests.

ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome. Applicant further objects to the request on the grounds that it seeks the production of material neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence.

DOCUMENT REQUEST NO. 33:

All documents and electronically stored information disclosed by you pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii) in your Initial Disclosures.

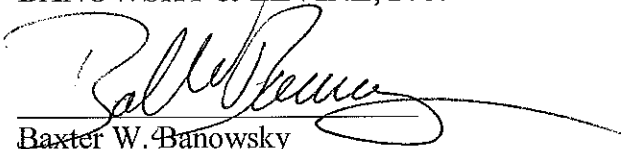
ANSWER:

Objection. Applicant objects to the request on the grounds that it is overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome.

Respectfully submitted,

BANOWSKY & LEVINE, P.C.

By:


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**ATTORNEY FOR APPLICANT
SKY CINEMAS LLC**

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served, via first class mail and email, upon Mark Tidman, Baker & Hostetler, mtidman@bakerlaw.com, 1050 Connecticut Avenue, N.W. Suite 1100, Washington, DC 20036, on the 6th day of July, 2017.

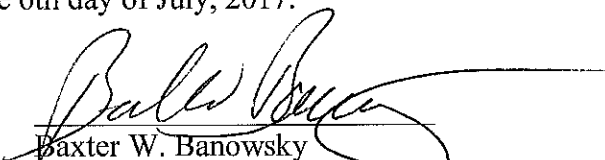

Baxter W. Banowsky

EXHIBIT C

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July 11, 2017

VIA EMAIL (BWB@BANOWSKY.COM) AND FIRST CLASS MAIL

Baxter W. Banowsky
Banowsky & Levine
12801 N. Central Expressway
Suite 1700
Dallas, TX 75243

Re: *TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas, LLC*

Dear Mr. Banowsky:

I am in receipt of Sky Cinemas, LLC's responses to Sky International AG's First Set of Interrogatories and First Set of Requests for Production in the above-referenced matter. These responses are deficient in material ways and certain of the associated objections and privilege claims are without merit. Additional discovery is required to remedy these deficiencies. This letter represents an attempt to resolve these deficiencies without the Board's involvement.

Specifically, I note the following deficiencies:

Deficiencies in Responses to Interrogatories

- In Applicant's general objections, Applicant inappropriately "objects to the instructions and definitions to the extent that they seek to impose duties or obligations on Applicant in addition to or inconsistent with the duties and obligations imposed by the Federal Rules of Civil Procedure," but provides no specific grounds for these objections thereafter and does not describe how Opposer's instructions and definitions fall outside the scope of the Federal Rules.
- In Applicant's general objections, Applicant inappropriately objects to the definitions of the terms "Opposer" and "Applicant" as overly broad and, contrary to Opposer's instructions, strictly limits these terms to mean Opposer and Applicant and their respective employees. In fact, the "subsidiaries, affiliates, predecessors, successors,

parents, divisions, persons or entities acting for or on [the] behalf” of both Opposer and Applicant as defined by Opposer are relevant to this proceeding, as these entities are considered to be under Opposer’s and Applicant’s control and therefore an extension of the parties in their use of the trademarks in question.

- In Applicant’s general objections, Applicant does not explain why the term “document” as defined by Opposer is overly broad, vague, and outside the scope of Fed. R. Civ. P. 26 and 34.
- In Applicant’s general objections, Applicant does not explain why the terms “communication” and “communications” as defined by Opposer are overly broad and unduly burdensome, and furthermore does not provide the “ordinary meaning” of these terms as used in Applicant’s responses.
- In Applicant’s general objections, Applicant does not explain why the term “Person” as defined by Opposer is overly broad and unduly burdensome, and furthermore does not provide the “ordinary meaning” of this term as used in Applicant’s responses.
- In Applicant’s general objections, Applicant inappropriately objects to the definitions of the terms “you” and “your” as overly broad and, contrary to Opposer’s instructions, strictly limits these terms to mean Applicant and its employees. In fact, the “respective officers, directors, parents, subsidiaries, divisions, affiliates, predecessors, successors, employees, accountants, agents, representatives and any other person acting under its control or on [the] behalf” of Applicant as defined by Opposer are relevant to this proceeding, as these entities are considered to be under Applicant’s control and therefore an extension of Applicant in their use of the trademarks in question.
- In Applicant’s general objections, Applicant does not explain why the terms “relates to” and “relating to” as defined by Opposer are overly broad and unduly burdensome, and furthermore does not provide the “ordinary meaning” of these terms as used in Applicant’s responses.
- In response to Interrogatory Nos. 1-17, Applicant does not explain with specificity the grounds for its objection that each of these requests is overly broad and unduly burdensome, contrary to Fed. R. Civ. P. 33(b)(4).
- In response to Interrogatory No. 5, Applicant does not provide a list of signage or other promotional materials on which it intends to use the SKY CINEMAS mark, but rather only a link to the mark as it currently appears on Applicant’s website.
- In response to Interrogatory No. 8, Applicant inappropriately objects to the request as “seek[ing] the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence,” despite the fact that Applicant’s selection of the mark SKY CINEMAS in view of Opposer’s preexisting “SKY” marks is an issue directly relevant in this Opposition proceeding. Applicant also

neglects to provide the details surrounding the selection of the SKY CINEMAS mark, such as how the term “SKY” was chosen and whether any other potential marks were considered and rejected.

- In response to Interrogatory No. 9, Applicant inappropriately objects to the request as “seek[ing] the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence,” despite the fact that Applicant’s selection of the term “SKY” in its SKY CINEMAS mark in view of Opposer’s preexisting “SKY” marks is an issue directly relevant in this Opposition proceeding.
- In response to Interrogatory No. 11, Applicant inappropriately objects to the request as “seek[ing] the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence,” despite the fact that Applicant’s selection of the term “SKY” in its SKY CINEMAS mark and/or other marks containing the term “SKY” in view of Opposer’s preexisting “SKY” marks is an issue directly relevant in this Opposition proceeding.
- In response to Interrogatory No. 12, Applicant inappropriately objects to the request as “seek[ing] the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence,” despite the fact that Applicant’s marketing using the mark SKY CINEMAS in view of Opposer’s preexisting “SKY” marks is an issue directly relevant in this Opposition proceeding, as it relates to consumer perception of and confusion between the parties’ marks.
- In response to Interrogatory No. 13, Applicant does not provide the requested level of care exercised by the ordinary purchasers of its goods and/or services under the SKY CINEMAS mark.
- In response to Interrogatory No. 14, Applicant does not identify the requested communications postdating the filing of this opposition, which it claims are subject to privilege, by “(a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld pursuant to Rule 26(b)(5),” as required by Opposer’s instructions. In addition, Applicant inappropriately objects to the request as “seek[ing] the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence,” despite the fact that Applicant’s referencing of Opposer and/or its marks is directly relevant in this Opposition proceeding to the issue of Applicant’s knowledge of Opposer and/or its marks while using its SKY CINEMAS mark.
- In response to Interrogatory No. 15, Applicant inappropriately objects to the request as “seek[ing] the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence,” despite the fact

that the identity of those who participated in or supplied information used in answering Opposer's first set of interrogatories is directly relevant for purposes of Opposer identifying individuals to be deposed and/or drafting further discovery requests.

- In response to Interrogatory No. 16, Applicant inappropriately objects to the request as "seek[ing] the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence," despite the fact that Applicant's involvement in other proceedings involving the SKY CINEMAS mark or other marks containing the term "SKY" is relevant to issues of meaning, use, likelihood of confusion, and estoppel surrounding Applicant's use of the term "SKY," which is at the heart of this Opposition proceeding.
- In response to Interrogatory No. 17, Applicant inappropriately objects to the request as "seek[ing] the disclosure of information neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence," despite the fact that the identification of storage devices containing relevant ESI is directly relevant to Opposer's drafting of further discovery requests and identifying particular storage devices from which it has the right to request extraction of relevant, non-privileged information to use to support its claims.

Deficiencies in Responses to Requests for Production

- In Applicant's general objections, Applicant inappropriately "objects to the instructions and definitions to the extent that they seek to impose duties or obligations on Applicant in addition to or inconsistent with the duties and obligations imposed by the Federal Rules of Civil Procedure," but provides no specific grounds for these objections thereafter and does not describe how Opposer's instructions and definitions fall outside the scope of the Federal Rules.
- In Applicant's general objections, Applicant inappropriately objects to the definitions of the terms "Opposer" and "Applicant" as overly broad and, contrary to Opposer's instructions, strictly limits these terms to mean Opposer and Applicant and their respective employees. In fact, the "subsidiaries, affiliates, predecessors, successors, parents, divisions, persons or entities acting for or on [the] behalf" of both Opposer and Applicant as defined by Opposer are relevant to this proceeding, as these entities are considered to be under Opposer's and Applicant's control and therefore an extension of the parties in their use of the trademarks in question.
- In Applicant's general objections, Applicant does not explain why the term "document" as defined by Opposer is overly broad, vague, and outside the scope of Fed. R. Civ. P. 26 and 34.
- In Applicant's general objections, Applicant does not explain why the terms "communication" and "communications" as defined by Opposer are overly broad and

unduly burdensome, and furthermore does not provide the “ordinary meaning” of these terms as used in Applicant’s responses.

- In Applicant’s general objections, Applicant does not explain why the term “Person” as defined by Opposer is overly broad and unduly burdensome, and furthermore does not provide the “ordinary meaning” of this term as used in Applicant’s responses.
- In Applicant’s general objections, Applicant inappropriately objects to the definitions of the terms “you” and “your” as overly broad and, contrary to Opposer’s instructions, strictly limits these terms to mean Applicant and its employees. In fact, the “respective officers, directors, parents, subsidiaries, divisions, affiliates, predecessors, successors, employees, accountants, agents, representatives and any other person acting under its control or on [the] behalf” of Applicant as defined by Opposer are relevant to this proceeding, as these entities are considered to be under Applicant’s control and therefore an extension of Applicant in their use of the trademarks in question.
- In Applicant’s general objections, Applicant does not explain why the terms “relates to” and “relating to” as defined by Opposer are overly broad and unduly burdensome, and furthermore does not provide the “ordinary meaning” of these terms as used in Applicant’s responses.
- In response to Requests for Production Nos. 1-33, Applicant does not explain with specificity the grounds for its objection that each of these requests is “overly broad and fails to identify the documents sought with reasonable particularity and is therefore unduly burdensome,” contrary to Fed. R. Civ. P. 34(b)(2)(B) and despite the fact that Opposer’s requests are directed toward specific categories and types of documents and things.
- In response to Request for Production No. 1, Applicant does not specify whether its current website has existed in other versions since its creation.
- In response to Request for Production No. 8, Applicant provides its Executive Summary and Information Package, but this Package does not contain a list of all means used to market its goods and services intended to be offered under the SKY CINEMAS mark.
- In response to Request for Production No. 11, Applicant inappropriately directs Opposer to “an internet search engine to search for articles referencing Applicant,” despite the fact that Opposer’s Requests for Production are intended to be answered using Applicant’s knowledge to gather information that might not be publicly accessible to Opposer.
- In response to Request for Production No. 13, Applicant provides its Executive Summary and Information Package and certificate of formation, but these documents do not refer to Applicant’s decision to use the term “SKY” as part of its mark.

- In response to Request for Production No. 23, Applicant provides its Executive Summary and Information Package, but this Package does not contain marketing plans and strategies – aside from general marketing and advertising expense projections – for the goods and services intended to be offered under the SKY CINEMAS mark.
- In response to Request for Production No. 24, Applicant provides an irrelevant answer concerning its lack of sale and marketing of goods and services, and does not provide any information about its use of the term “SKY” as a source indicator.
- In response to Request for Production No. 25, Applicant does not identify the requested documents that it claims are subject to privilege by “(a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld pursuant to Rule 26(b)(5),” as required by Opposer’s instructions.
- In response to Request for Production No. 26, Applicant does not identify the requested documents that it claims are subject to privilege by “(a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld pursuant to Rule 26(b)(5),” as required by Opposer’s instructions. Furthermore, Applicant directs Opposer to the “prosecution files for each of the referenced applications along with the documents attached to Applicant’s Second Amended Answer and Counterclaim,” but provides no further basis for the contention listed in Request No. 26 beyond (a) its own belief that Opposer did not have a bona fide intent to use its marks in commerce and (b) exhibits showing only the first page of results of Applicant’s Google searches.
- In response to Request for Production No. 27, Applicant does not identify the requested documents that it claims are subject to privilege by “(a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld pursuant to Rule 26(b)(5),” as required by Opposer’s instructions. Furthermore, Applicant directs Opposer to the “prosecution files for each of the referenced applications along with the documents attached to Applicant’s Second Amended Answer and Counterclaim,” but provides no further basis for the contention that certain of Opposer’s goods and services are “clearly obsolete” beyond its own unfounded opinion in its Seconded Amended Counterclaim.
- In response to Request for Production No. 28, Applicant does not identify the requested documents that it claims are subject to privilege by “(a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld pursuant to Rule 26(b)(5),” as required by Opposer’s instructions. Furthermore, Applicant directs Opposer to the “prosecution files for each of the

referenced applications along with the documents attached to Applicant's Second Amended Answer and Counterclaim," but provides no further basis for the contention that it "has been damaged by the allowance of" Opposer's applications beyond its own unfounded opinion in its Seconded Amended Counterclaim.

- In response to Request for Production No. 29, Applicant does not identify the requested documents that it claims are subject to privilege by "(a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld pursuant to Rule 26(b)(5)," as required by Opposer's instructions. Furthermore, Applicant directs Opposer to the "prosecution files for each of the referenced applications along with the documents attached to Applicant's Second Amended Answer and Counterclaim," but (a) provides no further basis for the contention that Opposer did not have a bona fide intent to use its marks in commerce in connection with its goods and services and (b) does not provide the requested list of these goods and services.
- In response to Request for Production No. 30, Applicant does not identify the requested documents referring or relating to Opposer, which it claims are subject to privilege, by "(a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld pursuant to Rule 26(b)(5)," as required by Opposer's instructions. In addition, Applicant inappropriately objects to the request as "seek[ing] the production of material neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence," despite the fact that Applicant's referencing of Opposer is directly relevant in this Opposition proceeding to the issue of Applicant's knowledge of Opposer and its SKY marks while Applicant was using its SKY CINEMAS mark.
- In response to Request for Production No. 31, Applicant does not identify the requested documents referring or relating to Opposer, which it claims are subject to privilege, by "(a) date; (b) author; (c) recipient; (d) a list of all other persons to whom the contents of the document or thing or the information was disclosed; (e) general subject matter; and (f) the basis upon which it is being withheld pursuant to Rule 26(b)(5)," as required by Opposer's instructions. In addition, Applicant inappropriately objects to the request as "seek[ing] the production of material neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence," despite the fact that Applicant's referencing of third parties using the term "SKY" is directly relevant in this Opposition proceeding to the issue of Applicant's knowledge of other "SKY" marks in the industry while Applicant was using its SKY CINEMAS mark, as well as Applicant's knowledge of potential consumer confusion between these marks due to the term "SKY" that is at issue in this proceeding.

Baxter W. Banowsky

July 11, 2017

Page 8

- In response to Request for Production No. 32, Applicant inappropriately objects to the request as “seek[ing] the production of material neither relevant to the present action nor reasonably calculated to lead to the discovery of admissible evidence,” despite the fact that the documents identified in response to Opposer’s Interrogatories represent a body of information relevant to the issues in this case and important to the support of the parties’ contentions.

I ask that we speak by phone on either July 18 or 19, 2017 regarding these issues in an attempt to resolve them without the Board’s involvement.

Sincerely,

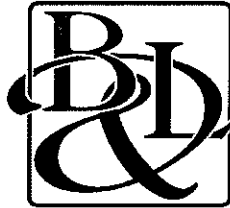
A handwritten signature in black ink, appearing to read "Jessica Watkins". The signature is fluid and cursive, with a large initial "J" and "W".

Jessica Watkins
Associate

cc: Mark Tidman (*via email*)

EXHIBIT D

12801 N. CENTRAL EXPRESSWAY
SUITE 1700
DALLAS, TEXAS 75243



PHONE: 214-871-1300
FACSIMILE: 214-871-0038
www.banowsky.com

BANOWSKY & LEVINE

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS

June 16, 2017

VIA FIRST CLASS MAIL AND EMAIL

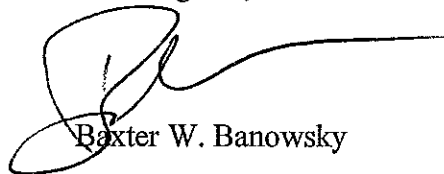
Mr. Mark Tidman
Baker & Hostetler
1050 Connecticut Avenue N.W.
Suite 1100
Washington, DC 20036
mtidman@bakerlaw.com

Re: Sky International AG v. Sky Cinemas, LLC; Opposition Number 91223952 in the
United States Patent and Trademark Office Before the Trademark Trial and
Appeal Board.

Dear Mr. Tidman:

Enclosed please find Applicant's Initial Disclosures in the above-referenced matter.
Should you have any questions, please do not hesitate to call.

Best Regards,



Baxter W. Banowsky

BWB:jnp
Enclosure

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

_____)	
SKY INTERNATIONAL AG)	
	)	Serial No. 86/481,934
Opposer,)	
	)	Opposition No. 91223952
)	
SKY CINEMAS LLC,	)	Mark: SKY CINEMAS
)	
Applicant.	)	Publication Date: May 26, 2015
_____)	

APPLICANT'S INITIAL DISCLOSURES

Applicant, Sky Cinemas, LLC (“Applicant”) serves these initial disclosures, pursuant to Federal Rule of Civil Procedure 26(a)(1), and states:

A. Individuals With Discoverable Information.

William S. Banowsky, Jr.
1614 W. 5th Street
Austin, Texas 78703
(512) 474-0302

Robert Crane
1614 W. 5th Street
Austin, Texas 78703
(512) 474-0302

Susan Hernandez
1614 W. 5th Street
Austin, Texas 78703
(405) 474-0302

B. Documents.

Documents and materials regarding Applicant's intended use of the Sky Cinemas mark. These documents, and electronically stored information, are located at the corporate office located at 1614 W. 5th Street, Austin, Texas, and on the individual computers of the individuals listed in Section A.

C. Computation of Damages.

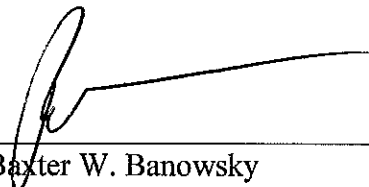
Not applicable.

D. Insurance Agreements.

Not applicable.

Respectfully submitted,

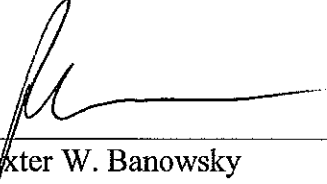
By:


Baxter W. Banowsky
Registration No. 58170
bwb@banowsky.com

BANOWSKY & LEVINE, P.C.
12801 N. Central Expressway
Suite 1700
Dallas, Texas 75243
Telephone: (214) 871-1300
Facsimile: (214) 871-0038
**ATTORNEY FOR APPLICANT
SKY CINEMAS, LLC**

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing was served, via email and first class mail, upon Mark H. Tidman, mtidman@bakerlaw.com, 1050 Connecticut Avenue N.W., Suite 1100, Washington, DC 20036, on the 16th day of June, 2017.



Baxter W. Banowsky

EXHIBIT E

Watkins, Jessica H.

From: Watkins, Jessica H.
Sent: Wednesday, December 6, 2017 7:15 PM
To: 'Baxter W. Banowsky'
Cc: Tidman, Mark H.; BH IP Docket
Subject: Opposer's Amended RFP Response - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201
Attachments: Opposer's Amended Response to Applicant's First Set of Requests for Prod....pdf

Dear Baxter,

Attached is an amended response to your client's First Set of Requests for Production of Documents. The corresponding production will be sent in a zip file in a separate email, along with a username and password to access the documents. If you have any questions, please let me know.

Thank you,
Jessica

Jessica Watkins
Associate

BakerHostetler

Cira Centre
2929 Arch Street | 12th Floor
Philadelphia, PA 19104-2891
T +1.215.564.3290

jwatkins@bakerlaw.com
bakerlaw.com



Watkins, Jessica H.

From: Watkins, Jessica H.
Sent: Friday, March 30, 2018 12:50 PM
To: 'Baxter W. Banowsky'
Cc: Tidman, Mark H.; BH IP Docket
Subject: Opposer's Supplemental Discovery Production - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201
Attachments: SKYINTL0006925-SKYINTL0006984.zip

Hi Baxter – Please find attached Opposer’s supplemental discovery production in the above-referenced proceeding.

Thank you,
Jessica

Jessica Watkins
Associate

BakerHostetler

Cira Centre
2929 Arch Street | 12th Floor
Philadelphia, PA 19104-2891
T +1.215.564.3290

jwatkins@bakerlaw.com
bakerlaw.com



From: Watkins, Jessica H.
Sent: Wednesday, December 6, 2017 7:15 PM
To: 'Baxter W. Banowsky' <bwb@banowsky.com>
Cc: Tidman, Mark H. <mtidman@bakerlaw.com>; BH IP Docket <bhipdocket@bakerlaw.com>
Subject: Opposer's Amended RFP Response - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201

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Thank you,
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Jessica Watkins
Associate

BakerHostetler

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2929 Arch Street | 12th Floor
Philadelphia, PA 19104-2891
T +1.215.564.3290

jwatkins@bakerlaw.com
bakerlaw.com



Watkins, Jessica H.

From: Watkins, Jessica H.
Sent: Thursday, April 5, 2018 3:17 PM
To: 'Baxter W. Banowsky'
Cc: Tidman, Mark H.; BH IP Docket
Subject: RE: Opposer's Supplemental Discovery Production - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201
Attachments: SKYINTL0006985.pdf

Baxter – Please find attached further supplemental production in this proceeding.

Best,
Jessica

Jessica Watkins
Associate

BakerHostetler

Cira Centre
2929 Arch Street | 12th Floor
Philadelphia, PA 19104-2891
T +1.215.564.3290

jwatkins@bakerlaw.com
bakerlaw.com



From: Watkins, Jessica H.
Sent: Friday, March 30, 2018 12:50 PM
To: 'Baxter W. Banowsky' <bwb@banowsky.com>
Cc: Tidman, Mark H. <mtidman@bakerlaw.com>; BH IP Docket <bhipdocket@bakerlaw.com>
Subject: Opposer's Supplemental Discovery Production - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201

Hi Baxter – Please find attached Opposer's supplemental discovery production in the above-referenced proceeding.

Thank you,
Jessica

Jessica Watkins
Associate

BakerHostetler

Cira Centre
2929 Arch Street | 12th Floor
Philadelphia, PA 19104-2891
T +1.215.564.3290

jwatkins@bakerlaw.com
bakerlaw.com



From: Watkins, Jessica H.

Sent: Wednesday, December 6, 2017 7:15 PM

To: 'Baxter W. Banowsky' <bwb@banowsky.com>

Cc: Tidman, Mark H. <mtidman@bakerlaw.com>; BH IP Docket <bhipdocket@bakerlaw.com>

Subject: Opposer's Amended RFP Response - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201

Dear Baxter,

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Jessica Watkins
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Cira Centre
2929 Arch Street | 12th Floor
Philadelphia, PA 19104-2891
T +1.215.564.3290

jwatkins@bakerlaw.com
bakerlaw.com



Watkins, Jessica H.

From: Watkins, Jessica H.
Sent: Thursday, April 19, 2018 9:21 AM
To: 'Baxter W. Banowsky'
Cc: Tidman, Mark H.; BH IP Docket
Subject: RE: Opposer's Supplemental Discovery Production - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201
Attachments: SKYINTL0006992.pdf; SKYINTL0006996.pdf; SKYINTL0006997.pdf; SKYINTL0007000.pdf

Good morning, Baxter,

Please find attached Opposer's further supplemental production responsive to Applicant's discovery requests.

Thank you,
Jessica

Jessica Watkins
Associate

BakerHostetler

Cira Centre
2929 Arch Street | 12th Floor
Philadelphia, PA 19104-2891
T +1.215.564.3290

jwatkins@bakerlaw.com
bakerlaw.com



From: Watkins, Jessica H.
Sent: Thursday, April 5, 2018 3:17 PM
To: 'Baxter W. Banowsky' <bwb@banowsky.com>
Cc: Tidman, Mark H. <mtidman@bakerlaw.com>; BH IP Docket <bhipdocket@bakerlaw.com>
Subject: RE: Opposer's Supplemental Discovery Production - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201

Baxter – Please find attached further supplemental production in this proceeding.

Best,
Jessica

Jessica Watkins
Associate

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jwatkins@bakerlaw.com
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Subject: Opposer's Supplemental Discovery Production - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201

Hi Baxter – Please find attached Opposer’s supplemental discovery production in the above-referenced proceeding.

Thank you,
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Cc: Tidman, Mark H. <mtidman@bakerlaw.com>; BH IP Docket <bhipdocket@bakerlaw.com>
Subject: Opposer's Amended RFP Response - TTAB Opposition No. 91223952 - Sky International AG v. Sky Cinemas LLC - Our Ref. 048398.000201

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Thank you,
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Philadelphia, PA 19104-2891
T +1.215.564.3290

jwatkins@bakerlaw.com
bakerlaw.com



Applicant has also counterclaimed seeking to cancel some of Opposer's many US registrations on the unsupported allegation that there was no bona fide intention to use any of these SKY marks in commerce at the time of filing. Opposer has produced no evidence or support for those propositions, and indeed had none at the time of filing except Google Shopping searches¹ and the unsubstantiated claim that some of Opposer's goods are "clearly obsolete." *See* Dkt. 16.

Opposer's initial disclosures and written discovery requests were served on June 6, 2017. Applicant's discovery requests were also served on June 6, 2017, but Applicant did not serve its initial disclosures until ten days later on June 16, 2017. Applicant served its discovery responses on July 6, 2017, and Opposer served its discovery responses on July 17, 2017 (thirty days after the delayed service of Applicant's initial disclosures). Opposer sent Applicant a discovery deficiency letter on July 11, 2017, and Applicant sent Opposer a deficiency letter on July 18, 2018. The parties engaged in a telephone conference regarding the deficiency letters on October 30, 2017. Neither party engaged the other on discovery thereafter. Copies of Opposer's discovery requests, Applicant's responses thereto, and Opposer's deficiency letter are attached hereto as Exhibits A, B, and C, respectively.

Now, six months after the parties' last telephone call and more than five months after the close of discovery in this proceeding, Applicant has filed a motion it calls a Motion to Compel. The motion, however, seems to seek an exclusion of evidence, and thus is not a motion to compel at all, but a motion in limine.

¹ While acknowledging that a Google Shopping search in isolation is by no means a complete or necessarily accurate representation of a party's use of its trademarks, Opposer notes that many of the results returned for Applicant's search of SKY PRO CYCLING do, in fact, reveal goods sold by Opposer under the SKY mark. *See* Dkt. 16 at Exhibit B. Similarly, the first three results of Applicant's search for SKY SPORTS reveal goods sold under Opposer's mark. *See* Dkt. 16 at Exhibit C.

ARGUMENT

I. To The Extent Applicant's Motion Is A Motion To Compel, Applicant Has Not Complied With The Trademark Rules Of Practice.

Trademark Trial and Appeal Board Manual of Procedure Section 523.03 provides that motions to compel discovery "should be filed within a reasonable time after the failure to respond to a request for discovery or after service of the response believed to be inadequate." The federal courts have concluded that unreasonable delay on the part of a movant renders a motion to compel untimely. *See Gault v. Nabisco Biscuit Co.*, 184 F.R.D. 620, 622 (D. Nev. 1999) (motion to compel untimely when filed "seventy-six days (76) after the close of discovery and one hundred thirty-six (136) days after the receipt of Nabisco's answers to interrogatories and requests for production of documents"). Indeed, federal courts have looked to the following factors to determine whether a motion to compel filed after the discovery deadline is timely:

- (1) the length of time since the expiration of the deadline,
- (2) the length of time that the moving party has known about the discovery,
- (3) whether the discovery deadline has been extended,
- (4) the explanation for the tardiness or delay,
- (5) whether dispositive motions have been scheduled or filed,
- (7) the age of the case,
- (8) any prejudice to the party from whom late discovery was sought, and
- (9) disruption of the court's schedule.

Days Inn Worldwide, Inc. v. Sonia Investments, 237 F.R.D. 395, 398 (N.D. Tex. 2006). There is thus a recognized need for predictability and promptness when it comes to filing a motion to compel discovery responses. In this instance, Applicant received Opposer's discovery responses on July 17, 2017. Applicant's motion follows **nine months** after its receipt of responses, and **five months** after the close of discovery.

Furthermore, Trademark Rule 2.120(f) requires that the party filing a motion to compel discovery show that "such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues

presented in the motion but the parties were unable to resolve their differences.” Applicant’s reliance on the parties’ prior exchange of correspondence and phone call from *six months ago* is disingenuous, particularly because Applicant has not engaged Opposer on the issue of discovery since that time. Meanwhile, as settlement prospects dissolved, and the Board denied further discovery, Opposer has supplemented discovery herein a number of times, a fact not mentioned by Applicant. Applicant has never supplemented its discovery.

II. To The Extent Applicant’s Motion Is A Motion To Compel, Opposer’s Discovery Responses And Objections Were Timely.

The Board states in its Order of March 22, 2018 that Opposer’s discovery responses were untimely. *See* Dkt. 40 at 3. To the extent this is the Board’s ruling, it should be reconsidered. Applicant served its discovery requests on June 6, 2017. However, Applicant did not serve its initial disclosures prior to or concurrently with these requests – instead, Applicant served its initial disclosures on June 16, 2017 (*see* Exhibit D, attached hereto), ten days *after* service of its discovery requests, rendering the discovery requests premature and inappropriate.

The rules of trademark practice clearly state that “[a] party must make its initial disclosures prior to seeking discovery, absent modification of this requirement by a stipulation of the parties approved by the Board, or a motion granted by the Board, or by order of the Board.” 37 C.F.R. § 2.120(a)(3). *See also Kairos Inst. of Sound Healing, LLC*, 88 U.S.P.Q.2d 1541 (T.T.A.B. Oct. 17, 2008) (“a party cannot seek discovery until it has made its initial disclosures”). Neither the parties nor the Board modified this requirement in this proceeding, and therefore Opposer timely served its discovery responses on July 17, 2017 – thirty days after service of Applicant’s initial disclosures – following Opposer’s research of the issue and a good faith belief that Applicant’s discovery requests were not timely until initial disclosures were

served. This rule is applicable, Opposer's discovery responses and objections were timely, and the Board should so recognize.

III. To The Extent Applicant's Motion Is A Motion To Compel, It Should Be Denied As Untimely.

The core issue in the proceeding is whether Opposer has prior rights in the form of use and registration of a family of SKY marks in the US, and whether there is likelihood of confusion between those marks for delivering entertainment content via all different media and SKY (or SKY CINEMAS) for delivering entertainment content via a movie theater. Opposer has produced thousands of pages of documents responsive to Applicant's requests and supplemented its discovery production with responsive documents following its first wave of production multiple times since (*see* Exhibit E, attached hereto). By contrast, Applicant – whose movie theater operating under the name Sky Cinemas is now open to the public² – has not supplemented its document production, despite its earlier responses stating that it could not fully respond because it was not yet engaged in business. *See, e.g.*, Responses to Opposer's Document Requests Nos. 4 and 6 in Exhibit B, attached hereto. This failure to supplement directly conflicts with the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 26(e) (“A party...must supplement or correct its disclosure or response: (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.”).

² *See* <https://skycinemas.com/>.

IV. Applicant's Request For Relief Amounts To A Motion In Limine Prohibited By The Board.

Applicant admits in the first paragraph of its Motion to Compel, "Applicant does not believe it needs further discovery from Opposer." *See* Dkt. 41 at 1. Thus, as a "motion to compel," denial of the motion is conceded at the outset. Indeed Applicant's prayer for relief in the Conclusion to its Motion to Compel does not request the production of any documents or discovery responses on Opposer's part, but rather requests that the Board preclude Opposer "from offering any evidence during the trial phase of these proceedings which is responsive to such requests and which was not timely produced to Applicant." *See* Dkt. 41 at 10-11.

Obviously, Applicant, facing Opposer's clear prior rights and the evidence of SKY and SKY CINEMA for movie information, trailers and entertainment versus SKY/SKY CINEMAS for movie theaters, is now desperately trying to persuade the Board not to allow Opposer to establish likelihood of confusion. Applicant's motion should be denied on the simple issue of prejudice and injustice, but regardless, it is certainly untimely. The Board's practice regarding prospective evidentiary rulings is clear:

It is not the Board's practice to make prospective or hypothetical evidentiary rulings. Further, the Board will not screen all of a party's proffered evidence before trial. ***Thus, the Board will deny a motion to prospectively exclude evidence that might be introduced at trial and that might be inconsistent with discovery responses or other material not provided during discovery.***

TBMP § 527.01(f) (emphasis added). Applicant's Motion to Compel actually being a motion in limine is inappropriate for Board consideration before trial, requesting a prospective ruling on a certain evidentiary issue in advance of testimony being introduced. *See Hunter Indus., Inc.*, 110 U.S.P.Q.2d 1651 at n.11 (T.T.A.B. Mar. 31, 2014) ("The Board does not entertain motions in limine. Thus, opposer was unable to raise the matter by motion until applicant submitted the

declarations during its testimony period.”); *RTX Sci., Inc.*, CANCELLATION 9205528, 2013 WL 3168102, at *1 (Mar. 22, 2013) (motion denied as premature motion in limine); *Greenhouse Sys. Inc.*, 37 U.S.P.Q.2d 1748 (T.T.A.B. Jan. 25, 1995) (denying motion in limine requesting prospective exclusion of evidence consisting of material not produced in discovery).

Furthermore, even if Applicant’s Motion is couched as a motion for sanctions for alleged discovery deficiencies, this relief cannot be awarded because Opposer has not violated any Board order compelling discovery. *Nobelle.com, LLC*, 66 U.S.P.Q.2d 1300 (T.T.A.B. Feb. 4, 2003) (“Because respondent has not violated any Board order regarding discovery, there is no procedural basis for imposing the discovery sanction requested by petitioner.”). Nor can Applicant point to the timing of Opposer’s production of documents – as opposed to its timely response to Applicant’s Requests for Production – as a basis for the relief it requests. *Id.* at n.6 (“[P]etitioner’s motion is based on a faulty premise, i.e., that respondent failed to comply with its discovery obligations because it failed to make discovery documents available for inspection prior to the close of the discovery period. The Trademark Rules of Practice do not require that the actual production of documents occur prior to the close of the discovery period.”).

Applicant’s listing of alleged deficiencies in Opposer’s discovery responses also does not take into account the responsive documents Opposer has already produced, as discussed in Section III above (*see* Exhibit E, attached hereto). To the extent Opposer is aware and in possession of documents responsive to Applicant’s requests, thousands of pages of documents have already been produced. Pursuant to its duties under the Federal Rules of Civil Procedure, Opposer will supplement its discovery production in the event that information previously unrealized comes to its attention following ongoing review by Sky International AG.

V. Relief Should Be Equitable.

Opposer notes that it has supplemented discovery multiple times (and continues to do so). *See* Exhibit E, attached hereto. Applicant has not been equally forthcoming. There is no attempt at surprise or ambush here – indeed, Opposer and its SKY marks are globally famous, consistently in the news, and well known to Applicant, who has operated in the relevant industry. Applicant, however, has offered no discovery on its counterclaims wherein it speculates as to Opposer’s state of mind at the time of filing. As noted, counsel for Opposer discussed a motion to compel of its own with the Interlocutory Attorney on April 19, 2018 and was told it could not presently be filed due to suspension of this proceeding pending disposition of Applicant’s motion. Opposer makes note of this fact from the standpoint of fairness and timeliness, should a motion be considered necessary following the Board’s ruling on the present motion.

CONCLUSION

Based on the foregoing, Opposer respectfully requests that the Board deny Applicant’s Motion to Compel.

This 19th day of April 2018.

Respectfully submitted,

Sky International AG

By: /s/Mark H. Tidman

Mark H. Tidman

Jessica H. Watkins

Baker & Hostetler LLP

Washington Square, Suite 1100

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036-5304

(202) 861-1500 (Telephone)

(202) 861-1783 (Facsimile)

Email: mtidman@bakerlaw.com,
jwatkins@bakerlaw.com,
bhipdocket@bakerlaw.com
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April 2018, a true copy of Opposer's Reply to Applicant's Motion to Compel was served on Applicant via email, per the agreement between the parties, to Baxter W. Banowsky, bwb@banowsky.com.

/s/ Mark. H. Tidman

Mark H. Tidman