
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MODERN FONT APPLICATIONS LLC, a
Utah limited liability company,

Plaintiff,

v.

ALASKA AIRLINES, INC., an Alaska
corporation,

Defendant.

**ORDER REGARDING SEVEN
DISCOVERY MOTIONS:
[52], [63], [68], [84], [87], [89], [95]**

Case No. 2:19-cv-00561-DBB-CMR

Judge David Barlow

Magistrate Judge Cecilia M. Romero

ORDER

THE COURT, having considered the papers filed with respect to the seven motions identified below, the opposition papers, and related briefing and documents that were filed, as well as the oral argument of October 19, 2020, and finding good cause, therefore:

Consistent with the verbal findings and ruling on the record of the hearing,

IT IS HEREBY ORDERED as follows:

Motions re: Protective Order Designations

Regarding Defendant Alaska Airline's (Defendant) Motions to Maintain Protective Order Designations (ECF 52; ECF 84) and Plaintiff Modern Font Application's (Plaintiff) Motion to Amend Protective Order (ECF 87), the Court takes these motions under advisement and orders supplemental briefing.

Each side may submit a supplemental brief of five (5) pages or less identifying and analyzing case law relevant to the burden of proof required to maintain an Attorneys Eyes Only

designation for discovery materials and case law relevant to competitive decision-making, including cases relevant to licensing companies where in-house counsel is involved. Plaintiff's brief shall be filed no later than October 28, 2020. Defendant's brief shall be filed no later than November 6, 2020.

Defendant's Motion to Compel Licensing Documents

Regarding Defendant's Motion to Compel (ECF 63) in connection with LPR 2.2, Interrogatory 8, and Document Requests 1 and 9, the Court is taking the motion under advisement and orders supplemental briefing regarding production of settlement licensing documents.

Each side may submit a supplemental brief of five (5) pages or less. Plaintiff's brief shall be filed no later than October 28, 2020. Defendant's brief shall be filed no later than November 6, 2020.

Plaintiff's Motion to Compel Initial Disclosures

Regarding Plaintiff's Motion to Compel Initial Disclosures and Motion for Sanctions (ECF 68), the Court **GRANTS** the motion to compel initial disclosures and **DENIES** the request for sanctions.

No later than 30 days from the Court's October 19, 2020 verbal ruling, (*i.e.*, by November 18, 2020), Defendant shall:

(a) serve supplemental initial disclosures on Plaintiff. The supplemental initial disclosures shall (i) include all witnesses that Defendant intends to rely on as required under Rule 26(a) without incorporation by reference to Defendant's interrogatory responses; (ii) include the contact information, including work address, home address, and personal phone number for each witness; (iii) identify whether each witness is a current employee of Defendant, an independent contractor, or third-party; (iv) identify for each witness whether the witness has

retained Defendant's counsel and is presently being represented by Defendant's counsel regarding this matter; and (v) provide a description of the subject matter and information on which each witness is likely to provide testimony;

(b) serve a supplemental response to Plaintiff's Interrogatory No. 1 that identifies potential witnesses that may have discoverable information on whom Defendant does not intend to rely under Rule 26 (a). For each potential witness identified in Defendant's interrogatory response (including as supplemented), Defendant shall provide the same information as ordered above for witnesses disclosed under Rule 26(a); and

(c) ensure that its supplemental Rule 26(a) disclosures and supplemental interrogatory response makes clear which witnesses Defendant will rely upon under Rule 26(a) and which witnesses are only identified responsive to Interrogatory No. 1.

Plaintiff's Motion to Compel Source Code

Regarding Plaintiff's Motion to Compel Production of Source Code (ECF 89), the Court **GRANTS** the motion to compel.

LPR 2.2 requires the production of complete source code, not just what the defendant thinks is relevant to infringement. Further, the source code is responsive to Plaintiff's requests for production. The Court finds that Plaintiff has shown that the source code is relevant to its patent claims and that Defendant's conclusory arguments fail to establish that the information is irrelevant or not proportional to the needs of the case. Defendant shall produce the requested complete source code for each of its disclosed handheld device applications (the Alaska Airlines app for iOS, the Alaska Airlines – Travel app for Android, the Hopper app for each of iOS and Android, and the Report It! app for each of iOS and Android), no later than 30 days from the Court's October 19, 2020 verbal ruling, (*i.e.*, by November 18, 2020). As noted during the hearing, now that the Court has clarified its expectation with regard to the production of source

code, the Court expects the Defendant to comply with requests to produce relevant source code.

The Court denies Plaintiff's request for attorneys' fees on this motion because the Court finds that it would be unjust to order the Defendant to pay fees where the Defendant relied on prior guidance from the Court regarding the production of source code.

Plaintiff's Motion to Compel Documents

Regarding Plaintiff's Motion to Compel Production of Documents (ECF 95), the Court **GRANTS** the motion to compel.

Defendant is ordered to produce supplemental responses to Plaintiff's requests for production no later than 30 days from the Court's October 19, 2020 verbal ruling, (*i.e.*, by November 18, 2020).

Defendant's supplemental responses shall exclude: (a) all of Defendant's general objections; (b) any boilerplate objections; (c) any objections referring Plaintiff to SEC documents; (d) any COVID delay objections, or (e) objections directing the Plaintiff to get the documents from other sources unless (i) Defendant can meet the undue burden standard for getting it from another source, or (ii) Defendant does not have possession, custody, or control of the documents.

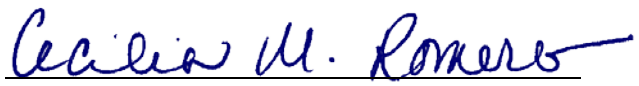
The supplemental response should be abundantly clear on what has and has not been produced, and if not produced why, or if they are subject to any objection, the specific objections at issue. If Defendant is withholding any documents based on privilege, then Defendant must produce a privilege log with its responses identifying what Defendant is withholding based on privilege.

Before filing any further motion based upon the incomplete production of documents or the supplemental responses to requests for production required by this order, the parties shall meet and confer regarding the documents that have or have not been produced.

The Court denies Plaintiff's request for attorneys' fees because the Court finds that both parties submitted boilerplate objections in responses to requests for production and that the meet and confer was insufficient. Based upon this, the Court finds that an award of attorneys' fees would be unjust.

IT IS SO ORDERED

DATED this 3 December 2020.

A handwritten signature in blue ink that reads "Cecilia M. Romero". The signature is fluid and cursive, with a long horizontal stroke at the end.

Magistrate Judge Cecilia M. Romero
United States District Court for the District of Utah