

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 54**

TAXI TOURS, INC.,

Plaintiff,

-against-

GO NEW YORK TOURS, INC.,

Defendant.

Index No. 653012/2019

Hon. Jennifer G. Schechter

GO NEW YORK TOURS, INC.,

Counterclaim Plaintiff,

-against-

BIG BUS TOURS LIMITED, *et al.*,

Counterclaim-Defendants.

**AFFIDAVIT IN OPPOSITION TO
MOTION TO PRECLUDE AND IN
SUPPORT OF CROSS-MOTION TO
CONDUCT THIRD-PARTY
DISCOVERY**

MAURICE N. ROSS, an attorney duly admitted to practice before the Courts of the State of New York, hereby avers, under penalty of perjury, as follows:

1. I am a partner at the law firm of Barton LLP, counsel for Defendant-Counterclaim Plaintiff Go New York Tours, Inc., (“Go New York”) in the above-captioned action. I am personally familiar with the facts and circumstances of this case. I submit this affidavit in opposition to the motion of Plaintiff-Counterclaim Defendants Open Top Sightseeing USA, Inc., Taxi Tours, Inc. (“Taxi Tours”), Go City North America, LLC, and Go City, Inc. (collectively, the “Big Bus Defendants”) and in support of Go New York’s cross-motion to conduct third-party discovery.

2. Plaintiff-Counterclaim Defendant Taxi Tours Inc., (“Taxi Tours”) began this action on May 21, 2019, by filing a Complaint in New York County Supreme Court. NYSCEF No. 1, Complaint. Among other allegations, Taxi Tours alleged that: “In the context of internet marketing, ‘astroturfing’ refers to the deceptive practice through which a company procures fake, positive reviews to boost the online reputation of its business or products...On information and belief, since at least 2016 and continuing to the present, Go New York has directed an extensive astroturfing campaign with respect to TopView.” *Id.* at ¶¶ 29-30.
3. Go New York decided to investigate these allegations for itself. As part of its investigation, in or about late 2019, Go New York contracted the Risk Assistance Network and Exchange (“RANE”) to investigate anomalous reviews with respect to all parties. RANE created a team, overseen by Steven Sheffield, to produce a report detailing their findings regarding the Big Bus Defendants (the “RANE Report”). In late 2019 and January 2020, this team scraped contemporary reviews of Big Bus from review sites and found an unusual pattern of positive reviews, suggesting astroturfing by Big Bus. Go New York accordingly asserted Counterclaims alleging astroturfing by Big Bus. NYSCEF No. 31, Answer with Counterclaims, at 18-19.
4. Go New York decided to retain Mr. Sheffield as a testifying expert witness with the reports he created as the basis for his testimony and disclosed him as an expert in this litigation on March 31, 2023,. Go New York further stated that Mr. Sheffield would be adopting the RANE reports as his expert reports on April 1, 2023. After opposing counsel requested the reviews on which Mr. Sheffield’s RANE team relied when preparing the Rane Report, our office contacted Mr. Sheffield several times requesting those specific reviews. On May 12,

2023, my associate Barak Bacharach reached out to Mr. Sheffield and two other employees at RANE seeking a status update on their search for the reviews. A true and correct copy of that email, and Mr. Sheffield's response is annexed as **Exhibit A**.

5. On May 19, 2023, Mr. Sheffield informed us that after corporate mergers and personnel departures from RANE, the laptops that originally held the underlying reviews were lost. Exhibit A. Critically, however, Mr. Sheffield stated that could not re-search the reviews that he had previously found online because "The offending posts were deleted from public view, **most likely by the users that created it**. The only way to recreate the reports and data is to subpoena the original posts from backups the platforms maintain." Ex. A (emphasis added).
6. Therefore, third party discovery of TripAdvisor, Yelp, and Groupon is necessary to discover why the allegedly fake reviews were deleted. If indeed discovery reveals that individuals connected to Big Bus deleted the allegedly fake reviews, it would be unfair to preclude use of Sheffield's reports when deliberate action by Big Bus precluded Sheffield from retrieving the underlying data.

Dated: New York, New York
July 10, 2023



Maurice Ross
Sworn to before me on this

10 day of July, 2023

BARAK F. BACHARACH
Notary Public, State of New York
No. 02BA6442914
Qualified in Queens County
Commission Expires 10/24/2026

Notary Public

WORD COUNT CERTIFICATION

In accordance with Rule 202.8-b of the Uniform Civil Rules For the Supreme Court & the County Court, I hereby certify that the foregoing memorandum of law, contains 906 words, exclusive of the caption and signature block according to the Microsoft Word word-processing system on which the affirmation was prepared.

Dated: New York, New York
July 10, 2023

/s/ Maurice Ross
Maurice Ross