

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TAXI TOURS INC.,

Plaintiff,

-against-

GO NEW YORK TOURS, INC.,

Defendant.

Index No. 653012/2019

I.A.S. Part 54

Hon. Jennifer G. Schechter, J.S.C.

**AFFIDAVIT OF DR. BRETT
HOLLENBECK IN SUPPORT OF
COUNTERCLAIM-DEFENDANTS'
MOTION TO EXCLUDE THE
EXPERT REPORT OF STEVEN M.
SHEFFIELD**

GO NEW YORK TOURS, INC.,

Counterclaim-
Plaintiff,

-against-

BIG BUS TOURS LIMITED, OPEN TOP
SIGHTSEEING USA, INC., TAXI TOURS,
INC., GO CITY LIMITED, GO CITY NORTH
AMERICA, LLC, GO CITY, INC., GRAY LINE
NEW YORK TOURS, INC., TWIN AMERICA,
LLC, and SIGHTSEEING PASS LLC,

Counterclaim-
Defendants.

DR. BRETT HOLLENBECK, being duly sworn, states the following under penalties of perjury:

1. I am Assistant Professor of Marketing at UCLA Anderson School of Management. I have been engaged by counsel for counterclaim-defendants Taxi Tours, Inc., Open Top Sightseeing USA, Inc., Go City North America, LLC, and Go City, Inc. (collectively, “**Big Bus**”) to evaluate the purported expert report of Steven M. Sheffield dated April 27, 2023

(“**Sheffield Report**”) proffered by counterclaim-plaintiff Go New York Tours, Inc. (“**Go New York**”) and, if necessary, to prepare a rebuttal expert report critiquing Mr. Sheffield’s opinions reflected in his report. A true copy of the Sheffield Report is annexed to the accompanying affirmation of Peter M. Sartorius dated June 14, 2023.

2. The Sheffield Report is comprised of two subparts: a document titled “RANE: Privileged & Confidential: Astroturf Campaign” and dated January 28, 2020 (the “**January 2020 Memo**”), and a second document titled “RANE: Privileged & Confidential: Phase II” and dated February 4, 2020 (the “**February 2020 Memo**,” collectively, the “**RANE Memos**”). The RANE Memos appear to have been created by a consulting firm called Risk Assistance Network + Exchange (“**RANE**”) in early-2020, shortly before Go New York asserted its counterclaims in this action on February 6, 2020 [NYSCEF Doc. No. [31](#)].

3. Significantly, Mr. Sheffield does not purport to be the author (or even *an* author) of either of the RANE Memos. Instead, Mr. Sheffield states that he “was part of the team that conducted and supervised the research and deployment of software that led to the two [RANE Memos].” (Sheffield Report at pp.1-2.)

4. I understand that Go New York seeks to proffer Mr. Sheffield as a purported expert in this action to support Go New York’s claim that Big Bus engaged in deceptive business practices in violation of N.Y. General Business Law Section 349 by posting fake *positive* online reviews of its own tour bus services, and fake *negative* reviews of Go New York’s competing tour bus service.

5. On their face, the RANE Memos speak to purported “analyses” of online reviews of Go New York’s and Big Bus’s respective hop-on / hop-off tour bus services in New York City on TripAdvisor. The January 2020 Memo states that RANE “analyzed” 6,416 online reviews

“from TripAdvisor, Yelp, and Groupon” to arrive at various “potential” conclusions, including that the trends in the review data analyzed by RANE “may” be the result of a fake review “astroturfing” campaign by one of Go New York’s un-named competitors (while simultaneously acknowledging that it could also be the result of non-nefarious factors such as “increased tourist activity” in certain months as compared to others, or typical “competition in the industry”).

6. Notably, although the RANE Memos state that the analyses contained therein are limited to the review activity on TripAdvisor (“Due to the statistical significance and large volume of data points acquired, our analysis focused on TripAdvisor,” January 2020 Memo at p.1), the RANE Memos do not state how many of the 6,416 online reviews referenced in the January 2020 Memo came from TripAdvisor, for what periods of time those reviews cover, or how or when they were collected, or by whom they were collected.

7. According to the January 2020 Memo:

Through our analysis, we identified several anomalous events, where the number of reviews and ratings differed substantially from our forecasts. Research identified suspicious and historically anomalous negative review activity from April to November 2019 which may require further investigation. A smaller negative review campaign may have been present in 2018, but it is difficult to determine as the volume would have been low, and there may have been competing review purchases.

During the data analysis, 6,416 reviews from Trip Advisor, Yelp, and Groupon were collected. Due to the statistical significance and large volume of data points acquired, our analysis focused on Trip Advisor. Upon normalizing the data, the data was corrected to identify steady year-to-year volume increases. We then removed fluctuations in review volume between the summer when sightseeing is the most prolific and the winter months when it lags. The forecasts were essential as they enabled us to view sudden bursts of review volume without the influence of the time of year.

(January 2020 Memo at p.1.)

8. The RANE Memos also contain various colored line graphs and bar charts purporting to summarize certain aspects of the review data analyzed by the author of the RANE Memos. The “trends” identified in these graphs and charts apparently form the bases for the various opinions reflected throughout the RANE Memos and adopted by Mr. Sheffield for his expert report in this action.

9. The RANE Memos also cite to “analyses” (January 2020 Memo at p.1; February 2020 Memo at p.1), “forecasts” (January 2020 Memo at pp.1, 3), and “models” (February 2020 Memo at p.2) utilized or employed by the author of the RANE Memos in connection with his or her analysis of the review data underlying the various opinions reflected throughout the RANE Memos and adopted by Mr. Sheffield.

10. I understand that counsel for Big Bus have requested the data and information underlying the opinions reflected in the RANE Memos and adopted by Mr. Sheffield, including the underlying review data and other materials referenced in the RANE Memos. I also understand that data and information has not been provided to counsel for Big Bus.

11. The starting point for fully evaluating and rebutting the various opinions set forth in the RANE Memos and adopted by Mr. Sheffield is the underlying review data relied upon by the author of the RANE Memos. Without that data, I am unable to fully test those opinions, confirm whether those opinions are warranted based on the data reviewed by the author of the RANE Memos, or proffer alternative explanations for the trends identified by the author of the RANE Memos in the review data he or she analyzed. Without access to the underlying review data, I cannot even determine whether any analysis was even conducted by the author of the RANE Memos, or whether the visual “trends” identified result from coding, transcription or

other errors that might have inadvertently skewed the results reflected in the RANE Memos, or otherwise misrepresent the underlying data.

12. Similarly, without access to the various “analyses,” “forecasts,” and “models” referenced in the RANE Memos, I cannot examine what assumptions were made in the analysis and assess the impact of these assumptions on the results presented, or otherwise evaluate the reliability of the analysis conducted by the author of the RANE Memos in formulating his or her opinions.


DR. BRETT HOLLENBECK

Sworn to before me this
15th day of June 2023


Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

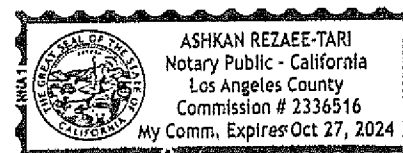
State of California

County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 15 day
of June, 2023, by Brett Hollenbeck

_____, proved to me on the basis
of satisfactory evidence to be the person(s) who appeared before me.

Signature Ashkan Rezaee-Tari (Seal)



CERTIFICATION

I hereby certify that the word count of this document complies with the word limits of 22 New York Codes, Rules and Regulations § 202.8-b. According to the word-processing system used to prepare this document, the total word count for all printed text exclusive of the material omitted under the aforementioned rule is 1,094 words.

Dated: New York, New York
June 15, 2023

/s/ Peter M. Sartorius

PETER M. SARTORIUS