

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SKYRIVER TECHNOLOGY SOLUTIONS, LLC, et al.,	:	Case No. 2:10-CV-1017
	:	
	:	
Plaintiffs,	:	Judge Watson
	:	Magistrate Judge Kemp
vs.	:	
	:	
OCLC ONLINE COMPUTER LIBRARY CENTER, INC.,	:	
	:	
Defendant.	:	

**PLAINTIFFS
SKYRIVER TECHNOLOGY SOLUTIONS, LLC
AND INNOVATIVE INTERFACES, INC.’S
MOTION FOR LEAVE TO FILE A SURREPLY IN OPPOSITION TO
OCLC ONLINE COMPUTER LIBRARY CENTER, INC.’S
MOTION TO DISMISS**

Plaintiffs Skyriver Technology Solutions, LLC and Innovative Interfaces, Inc. move the Court for leave to file a short Surreply Brief in opposition to Defendant OCLC Online Computer Library Center, Inc.’s (“OCLC”) Motion to Dismiss Plaintiffs’ Complaint. Plaintiffs seek leave to file the Surreply for two simple reasons: (1) to make clear they believe the Court should hold oral argument on the Motion, and (2) that although Plaintiffs believe Defendant’s Motion to Dismiss is without merit, if the Court were for any reason inclined to grant the Motion, Plaintiffs wish to preserve their right to request leave to file an amended complaint under Fed. R. Civ. P. 15(a), a request Plaintiffs intend to assert at oral argument if necessary.

A brief memorandum in support of this motion is attached hereto along with the proposed Surreply.

Respectfully submitted,

/s/ Thomas L. Long

Thomas L. Long (0023127), Trial Attorney

tlong@bakerlaw.com

Robert M. Kincaid, Jr. (0017929), Of Counsel

rkincaid@bakerlaw.com

BAKER HOSTETLER LLP

Capitol Square, Suite 2100

65 East State Street

Columbus, OH 43215

Telephone: (614) 462-1541

Facsimile: (614) 462-2616

Mary Jo Shartsis (CA Bar 55194), Co-Counsel *PHV*

mshartsis@sflaw.com

Arthur J. Shartsis (CA Bar 51594), Co-Counsel *PHV*

ashartsis@sflaw.com

Robert E. Schaberg (CA Bar 81430), Co-Counsel *PHV*

rschaberg@sflaw.com

Richard F. Munzinger (CA Bar 217902), Co-Counsel *PHV*

rmunzinger@sflaw.com

SHARTSIS FRIESE LLP

One Maritime Plaza, 18th Floor

San Francisco, CA 94111

Telephone: (415) 421-6500

Facsimile: (415) 421-2922

Attorneys for Plaintiffs

SkyRiver Technology Solutions, LLC

and Innovative Interfaces, Inc.

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS
SKYRIVER TECHNOLOGY SOLUTIONS, LLC
AND INNOVATIVE INTERFACES, INC.’S
MOTION FOR LEAVE TO FILE A SURREPLY IN OPPOSITION TO DEFENDANT
OCLC ONLINE COMPUTER LIBRARY CENTER, INC.’S
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Plaintiffs are fully aware of this Court’s normal procedure set forth in S. D. Ohio Civ. R. 7.2 permitting the filing of a memorandum in support, a memorandum contra, and a reply memorandum in determining motions. It is also clear under the rules of this District that a party must seek oral argument which is granted at the Court’s discretion under S. D. Ohio Civ. R. 7.1(b) (2).

Pursuant to S. D. Ohio Civ. R. 7.2 (a) (2), Plaintiffs seek leave to file a Surreply in opposition to Defendant’s Motion to Dismiss. Plaintiffs do so because for the first time in their Trial Attorney’s nearly thirty-five years of practice before this Court, a party has affirmatively opposed a party’s request for oral argument. (*See* Defendant’s Reply Memorandum in Support of its Motion to Dismiss, p. 20.)

In view of Defendant's unprecedented action, Plaintiffs seek leave to file a Surreply to reiterate their request for oral argument, which should assist the Court in determining the Motion to Dismiss, and to make clear they preserve their right to request leave to file an Amended Complaint under Fed. R. of Civ. P. 15 (a) (2). Normally, if necessary, and Plaintiffs wish to make clear they do not believe it should be necessary, Plaintiffs would make such a request during oral argument. Effectively, Defendant has attempted to foreclose this opportunity by both opposing oral argument and at the same time seeking dismissal of Plaintiffs' Complaint with prejudice.

Plaintiffs' motion to file the Surreply will not burden the Court and merely preserves Plaintiffs' rights, if not already preserved, under Fed. R. Civ. P. 15 to seek leave to file an Amended Complaint, if necessary, and to make clear oral argument will assist the Court in determining the issues raised by Defendant's Motion to Dismiss.

A copy of the proposed Surreply is attached hereto.

Respectfully submitted,

/s/ Thomas L. Long

Thomas L. Long (0023127), Trial Attorney

tlong@bakerlaw.com

Robert M. Kincaid, Jr. (0017929), Of Counsel

rkincaid@bakerlaw.com

BAKER HOSTETLER LLP

Capitol Square, Suite 2100

65 East State Street

Columbus, OH 43215

Telephone: (614) 462-1541

Facsimile: (614) 462-2616

(signatures continued next page)

Mary Jo Shartsis (CA Bar 55194), Co-Counsel *PHV*
mshartsis@sflaw.com
Arthur J. Shartsis (CA Bar 51594), Co-Counsel *PHV*
ashartsis@sflaw.com
Robert E. Schaberg (CA Bar 81430), Co-Counsel *PHV*
rschaberg@sflaw.com
Richard F. Munzinger (CA Bar 217902), Co-Counsel *PHV*
rmunzinger@sflaw.com

SHARTSIS FRIESE LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
Telephone: (415) 421-6500
Facsimile: (415) 421-2922

Attorneys for Plaintiffs
SkyRiver Technology Solutions, LLC
and Innovative Interfaces, Inc.

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**PLAINTIFFS
SKYRIVER TECHNOLOGY SOLUTIONS, LLC
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IN OPPOSITION TO DEFENDANT
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Defendant OCLC Online Computer Library Center, Inc. (“OCLC”) filed a motion to dismiss Plaintiff’s Complaint. In their Memorandum in Opposition to the Motion to Dismiss, Plaintiffs requested oral argument as permitted under S. D. Ohio. Civ. R. 7.1 (b) (2). In its Reply Memorandum in Support of its Motion to Dismiss, Defendant OCLC not only opposes Plaintiffs’ request for oral argument, but further asks the Court to dismiss the Complaint with prejudice.

In nearly thirty five years of practice before this Court, Plaintiffs’ Trial Attorney, has never been involved in a case, let alone heard of a case, in which an opposing party affirmatively opposed a party’s request for oral argument. In view of this unprecedented action, Plaintiffs wish to reiterate their belief that in a complicated antitrust case, such as the present case before the

Court, oral argument would be extremely helpful to the Court in determining the motion to dismiss.

In addition, Defendant has requested this Court to grant its motion and dismiss Plaintiffs' Complaint with prejudice. Defendant presents no basis for doing so in its Reply Memorandum. Fed. R. Civ. P. 15 (a) (2) requires the court to freely permit the filing of an Amended Complaint if justice requires. Normally, Plaintiffs would make a request to file an Amended Complaint, if necessary, at oral argument. However, in view of Defendant's Opposition to Oral Argument, if the Court chooses not to hold oral argument, Plaintiffs wish to make clear in the event the Court is inclined to grant Defendant's Motion to Dismiss the Complaint that they request leave to file an Amended Complaint.

Respectfully submitted,

/s/ Thomas L. Long

Thomas L. Long (0023127), Trial Attorney

tlong@bakerlaw.com

Robert M. Kincaid, Jr. (0017929), Of Counsel

rkincaid@bakerlaw.com

BAKER HOSTETLER LLP

Capitol Square, Suite 2100

65 East State Street

Columbus, OH 43215

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(signatures continued next page)

Mary Jo Shartsis (CA Bar 55194), Co-Counsel *PHV*
mshartsis@sflaw.com
Arthur J. Shartsis (CA Bar 51594), Co-Counsel *PHV*
ashartsis@sflaw.com
Robert E. Schaberg (CA Bar 81430), Co-Counsel *PHV*
rschaberg@sflaw.com
Richard F. Munzinger (CA Bar 217902), Co-Counsel *PHV*
rmunzinger@sflaw.com

SHARTSIS FRIESE LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
Telephone: (415) 421-6500
Facsimile: (415) 421-2922

Attorneys for Plaintiffs
SkyRiver Technology Solutions, LLC
and Innovative Interfaces, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Martha C. Brewer
mcbrewer@vorys.com
Douglas R. Matthews
dmatthews@vssp.com
James A. Wilson, Jr.
jawilson@vorys.com
VORYS, SATER, SEYMOUR & PEASE LLP
52 East Gay Street
Columbus, OH 43215
Telephone: (614) 464-6400

/s/ Thomas L. Long

Trial Attorney for Plaintiffs
SkyRiver Technology Solutions, LLC
and Innovative Interfaces, Inc.