

APPEAL, COLE, REOPEN, TERMED

United States District Court
Northern District of Illinois – CM/ECF LIVE, Ver 3.2.3 (Chicago)
CIVIL DOCKET FOR CASE #: 1:07-cv-00385
Internal Use Only

Google Inc v. Central Mfg. Inc. et al
Assigned to: Honorable Virginia M. Kendall
Case in other court: 07-01612
07-01651
09-03569
Cause: 18:1961 Racketeering (RICO) Act

Date Filed: 01/19/2007
Date Terminated: 10/16/2009
Jury Demand: None
Nature of Suit: 470 Racketeer/Corrupt
Organization
Jurisdiction: Federal Question

Date Filed	#	Page	Docket Text
02/12/2007	<u>22</u>	2	DECLARATION of Michael T. Zeller regarding response in opposition to motion <u>21</u> , response in opposition to motion, <u>20</u> by Google Inc (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4# <u>5</u> Exhibit 5# <u>6</u> Exhibit 6# <u>7</u> Exhibit 7# <u>8</u> Exhibit 8# <u>9</u> Exhibit 9# <u>10</u> Exhibit 10# <u>11</u> Exhibit 11# <u>12</u> Exhibit 12# <u>13</u> Exhibit 13# <u>14</u> Exhibit 14# <u>15</u> Exhibit 15# <u>16</u> Exhibit 16# <u>17</u> Exhibit 17# <u>18</u> Exhibit 18# <u>19</u> Exhibit 19# <u>20</u> Exhibit 20# <u>21</u> Exhibit 21# <u>22</u> Exhibit 22# <u>23</u> Exhibit 23# <u>24</u> Exhibit 24# <u>25</u> Exhibit 25# <u>26</u> Exhibit 26# <u>27</u> Exhibit 27# <u>28</u> Exhibit 28# <u>29</u> Exhibit 29# <u>30</u> Exhibit 30)(Barrett, William) (Entered: 02/12/2007)
02/12/2007	<u>23</u>	362	MOTION by Plaintiff Google Inc for permanent injunction (<i>Stipulated</i>), MOTION by Plaintiff Google Inc for judgment (<i>Final</i>) (Barrett, William) (Entered: 02/12/2007)
02/13/2007	<u>25</u>	372	SUPPLEMENT by Google Inc to declaration,, <u>22</u> <i>Supplemental Declaration of Michael T. Zeller</i> (Barrett, William) (Entered: 02/13/2007)
02/13/2007	<u>27</u>	382	MEMORANDUM by Google Inc in support of motion for permanent injunction, motion for judgment <u>23</u> <i>Google Inc.'s Separate Memorandum in Support of Joint Motion for Entry of Stipulated Permanent Injunction and Final Judgment</i> (Barrett, William) (Entered: 02/13/2007)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GOOGLE INC.,

Plaintiff,

vs.

CENTRAL MFG. INC. a/k/a CENTRAL
MFG. CO., a/k/a CENTRAL MFG. CO.
(INC.), a/k/a CENTRAL
MANUFACTURING COMPANY, INC.
and a/k/a CENTRAL MFG. CO. OF
ILLINOIS; and STEALTH INDUSTRIES,
INC. a/k/a RENTAMARK and a/k/a
RENTAMARK.COM,

Defendants.

Civil Action No. 07 CV 385

Hon. Virginia M. Kendall

Presentment Date: February 20, 2007

Presentment Time: 9 a.m.

DECLARATION OF MICHAEL T. ZELLER

I, Michael T. Zeller, declare as follows:

1. I am a member of the bar of the State of Illinois, New York and California and a partner of Quinn Emanuel Urquhart Oliver & Hedges, LLP, attorneys for plaintiff Google Inc. ("Google"). I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2. Attached as Exhibit 1 is a true and correct copy of the Order Authorizing The Trustee To Act On Behalf Of Debtor's Wholly-Owned Corporations And Related Relief, dated October 5, 2006 and entered by United State Bankruptcy Court for the Northern District of Illinois (the "Bankruptcy Court") in the bankruptcy proceeding *In re Leo Stoller*, Case No. 05 B 64075 (N.D. Ill.).

3. Attached as Exhibit 2 is a true and correct copy of the Bankruptcy Court's Findings Of Fact And Conclusions Of Law On Motion Of Pure Fishing To Convert To Chapter 7, dated September 26, 2006.

4. Attached as Exhibit 3 is a true and correct copy of Leo Stoller's Petition for Bankruptcy under Chapter 13, dated December 20, 2005.

5. Attached as Exhibit 4 is a true and correct copy of the Bankruptcy Court's December 19, 2006 Order .

6. Attached as Exhibit 5 is a true and correct copy of Stoller's December 8, 2006 Motion For Permission of Court To Allow Leo Stoller To Represent Himself And His Corporate Entities Before the Trademark Trial and Appeal Board ("TTAB").

7. Attached as Exhibit 6 is a true and correct copy of the Bankruptcy Court's December 5, 2006 Order Approving Trustee's Agreement With Google, Inc. To Modify Stay And Compromise Certain Claims Of Debtor's Wholly-Owned Corporations And Related Relief.

8. Attached as Exhibit 7 is a true and correct copy of the Settlement Agreement entered into by and between Google and Defendants (through the Trustee), and accompanying exhibits.

9. Attached as Exhibit 8 is a true and correct copy of Defendant Central Mfg. Co. (Inc.)'s Notice of Opposition to Google Inc.'s application to register the GOOGLE mark for certain goods, without exhibits, dated March 1, 2006 and filed before the TTAB (hereinafter, the "Opposition Proceeding").

10. Attached as Exhibit 9 is a true and correct copy of Defendant Central Mfg. Co. (Inc.)'s Motion for Summary Judgment, without exhibits, dated May 15, 2006 and filed before the TTAB in connection with Defendant Central Mfg. Co. (Inc.)'s Petition for Cancellation of Google Inc.'s registration of the GOOGLE mark for certain goods and services.

11. Attached as Exhibit 10 is a true and correct copy of Defendant Central Mfg. Co. (Inc.)'s Petition for Cancellation of Google Inc.'s registration of the GOOGLE mark for certain goods and services, without exhibits, dated April 18, 2006 and filed before the TTAB (hereinafter, the "Cancellation Proceeding").

12. Attached as Exhibit 11 is a true and correct copy of the transcript of an October 19, 2006 proceeding before the Bankruptcy Court in *In re Leo Stoller*.

13. Attached as Exhibit 12 are true and correct copies of (1) the July 30, 2006 Order by the TTAB dismissing Defendant Central Mfg. Co. (Inc.)'s Opposition Proceeding against Google, and (2) the TTAB Order attached thereto, dated July 14, 2006, finding that Defendant Central Mfg.'s assertions of rights to the GOOGLE mark were "baseless" and done for the improper purposes of coercing monetary payment for trademarks to which it demonstrated no proprietary right.

14. Attached as Exhibit 13 is a true and correct copy of the October 4, 2006 Final Judgment in *Central Mfg. Co., et al. v. Pure Fishing Inc., et al.*, No. 05 C 00725.

15. Attached as Exhibit 14 is a true and correct copy of the transcript of the August 31, 2006 hearing in Bankruptcy Court in *In re Leo Stoller*.

16. Attached as Exhibit 15 is a true and correct copy of an Affidavit Stoller filed in Support of Permission to Appear In Forma Pauperis before the United States Court of Appeals for the Seventh Circuit, dated October 8, 2006.

17. Attached as Exhibit 16 is a true and correct copy of Stoller's Emergency Motion to, among other things, file and appeal in the case of *Central Mfg. Co., et al. v. Pure Fishing Inc., et al.*, filed before the Bankruptcy Court on October 30, 2006.

18. Attached as Exhibit 17 is the Bankruptcy Court's Order denying Stoller's Emergency Motion, dated October 31, 2006.

19. Attached as Exhibit 18 is a true and correct copy of Debtor's Response to Motion of Trustee To Approve Agreement With Google, Inc., filed on December 5, 2006.

20. Attached as Exhibit 19 is a true and correct copy of Google, Inc.'s Amended Proof of Claim in the Bankruptcy Court in *In re Leo Stoller*, dated December 20, 2006.

21. Attached as Exhibit 20 is a true and correct copy of the hearing transcript of proceedings dated October 13, 2005, in *Central Manufacturing Co. v. Pure Fishing, Inc.*, Docket No. 05 C 725, before the United States District Court for the Northern District of Illinois.

22. Attached as Exhibit 21 is a true and correct copy of the Bankruptcy Court's January 18, 2007 Order Granting Google's Motion For Order Declaring Proposed Suit To Be Outside Scope of Stay Or, In The Alternative, Modifying Stay.

23. Attached as Exhibit 22 is a true and correct copy of Google's Motion in the TTAB Cancellation Proceeding brought by Defendant Central Mfg. (1) to Strike Petitioner's Motion for Summary Judgment for Violation of Rule 56 (A), (2) to Suspend Proceeding Pending Final Disposition of Civil Actions and (3) in the Alternative for Extension of Time regarding Opposition to Petitioner's Motion, without exhibits, filed before the TTAB on June 16, 2006.

24. Attached as Exhibit 23 is a true and correct copy the September 30, 2005 Memorandum Opinion and Order in *Central Mfg. Co. et. al. v. Brett et. al.*, No. 04 C 3049 in the United States District Court for the Northern District of Illinois, the Honorable David H. Coar presiding.

25. Attached as Exhibit 24 is a true and correct copy of the July 31, 2006 Fee Award in *Central Mfg. Co. et. al. v. Brett et. al.*

26. Attached as Exhibit 25 is a true and correct copy of a January 10, 2007 filing by Leo Stoller in the TTAB Cancellation Proceeding entitled "Reply to Google, Inc.'s Response to Non-Party Leo Stoller's Purported Opposition To Agreed Dismissal Of Petition For Cancellation."

27. Attached as Exhibit 26 is a true and correct copy of a January 11, 2007 filing by Leo Stoller in the TTAB Cancellation Proceeding entitled "Amended Bankruptcy Fraud Complaint Under Title 18 U.S.C. § 152 & 3571."

28. Attached as Exhibit 27 is a true and correct copy of a January 19, 2007 filing by Leo Stoller in the TTAB Cancellation Proceeding entitled "Judicial Notice."

29. Attached as Exhibit 28 is a true and correct copy of a February 6, 2007 filing by Leo Stoller in the TTAB Cancellation Proceeding entitled "Reply to Google, Inc.'s Objection And Response To Non-Party Leo Stoller's Purported Filings Of February 6, 2007, January 11, 2007 And January 19, 2007 Re: Agreed Dismissal Of Petition For Cancellation."

30. Attached as Exhibit 29 is a true and correct copy of a February 8, 2007 filing by Leo Stoller in the TTAB Cancellation Proceeding entitled "Notice of Filings Supplemental Authority."

31. Attached as Exhibit 30 is a true and correct copy of Leo Stoller's January 4, 2007 Notice of Motion and Motion to Stay Court's Order Lifting Stay For Google Inc. To Sue The Debtor, filed before the Bankruptcy Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 12, 2007, at Los Angeles, California.



Michael T. Zeller

CERTIFICATE OF SERVICE

I, William J. Barrett, certify that I caused to be served on the parties on the following Service List, manner of service and date as indicated below, a copy of the foregoing **DECLARATION OF MICHAEL T. ZELLER (WITH EXHIBITS 1-30)**.

/s/ William J. Barrett

William J. Barrett

SERVICE LIST

Mr. Leo Stoller
7115 W. North Ave., #272
Oak Park, IL 6030
Via email to ldms4@hotmail.com
(Served via email transmission and overnight delivery on February 12, 2007)

Richard M. Fogel
Janice Alwin
Shaw Gussis Fishman Glantz Wolfson & Towbin LLC
321 N. Clark St., Suite 800
Chicago, IL 60610
(Served via messenger delivery on February 13, 2007)

EXHIBIT 1

05-64075-153.1:Motion to Authorize:Proposed Order and Minute Order Entered: 9/28/2006 3:21:30 PM by:Janice Alwin Page 1 of 2

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

<p>In re LEO STOLLER, Debtor.</p>	<p>Chapter 7 Case No. 05-64075 Hon. Jack B. Schmetterer Hearing Date: October 5, 2006 Hearing Time: 10:30 a.m.</p>
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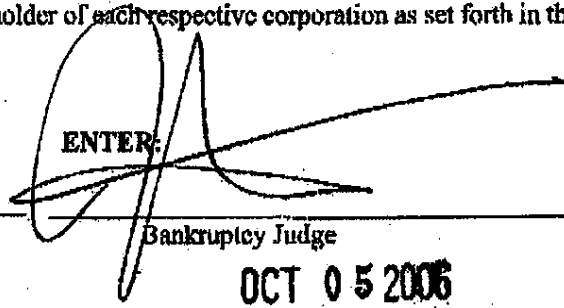
**ORDER AUTHORIZING THE TRUSTEE TO ACT ON BEHALF OF DEBTOR'S
WHOLLY-OWNED CORPORATIONS AND RELATED RELIEF**

Upon consideration of the application (the "Motion") of Richard M. Fogel, not individually, but as chapter 7 trustee (the "Trustee") for the bankruptcy estate of Leo Stoller (the "Debtor"), for the entry of an order authorizing the Trustee to act on behalf of the Debtor's Wholly-Owned Corporations (as defined in the Motion) solely in the Trustee's capacity as the sole shareholder of such corporations; due and proper notice of the Motion having been given; and the Court being otherwise fully advised in the premises; it is hereby

ORDERED:

1. Notice of the Motion as provided for therein is sufficient and further notice is waived.
2. The Trustee is authorized to act on behalf of each of the Wholly-Owned Corporations in the capacity of sole shareholder of each respective corporation as set forth in the Motion.

Dated: 10/17/06

ENTER: 

Bankruptcy Judge
OCT 05 2006

(000 ORD A0143861.DOC)

Proof of Service

I hereby certify that true and complete copies of the foregoing Agreed Dismissal of Petition for Cancellation with Prejudice were served on Opposer Central Mfg. Co., (Inc.) and Leo Stoller by mailing said copies on December 8, 2006, via First Class Mail, postage prepaid to:

Richard M. Fogel, not individually but as
Chapter 7 Trustee for CENTRAL MFG. CO., (INC.)
SHAW GUSSIS FISHMAN GLANTZ
WOLFSON & TOWBIN LLC
321 N. Clark Street, Suite 800
Chicago, Illinois 60610

Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302

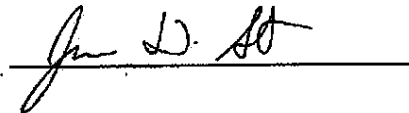


EXHIBIT 2

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:) Case No. 05 B 64075
LEO STOLLER,) Chapter 13
Debtor.) Honorable Jack B. Schmetterer
)
)
)
)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON
MOTION OF PURE FISHING TO CONVERT TO CHAPTER 7**

INTRODUCTION

This case was filed voluntarily under Chapter 13 of the Bankruptcy Code by Leo Stoller ("Debtor" or "Stoller"). A creditor Pure Fishing, Inc. ("Pure Fishing" or "Movant") moved to convert this case to one under Chapter 7. This became a contested proceeding under Rule 9014 Fed.R.Bank.P. Following evidence hearing before the court, both sides rested and final argument of counsel was heard on August 31, 2006.

Following argument, decision was announced from the bench that the case would be converted to one under Chapter 7. It was then stated that written Findings of Fact and Conclusions of Law would be entered to explain that decision in detail, but there were two reasons stated on the record each of which warranted conversion. First, the Debtor who was actively engaged in business for many years lacked business books and records from which his financial condition and income could be ascertained so as to determine whether his Chapter 13 Plan for payments to the Chapter 13 Trustee was proposed in good faith. Second, Debtor deeded title in valuable real estate to a family member shortly before filing in bankruptcy and did so without apparent consideration. The circumstances of that property transfer raised serious questions as to whether it should or could be attacked as a fraud on creditors or otherwise, an issue that should be investigated by a Chapter 7 Trustee.

An order converting this case to Chapter 7 was entered September 1, 2006, effective nunc pro tunc August 31, 2006, when decision was announced. The Court now makes and orders entry of these Findings of Fact and Conclusions of Law as further and more complete reasons for the order of conversion.

NOTICE OF APPEAL

Notice of Appeal for the Order was filed on September 11, 2006. While a trial court judge cannot enter substantive orders after filing of appeal notice, under circumstances where Findings and Conclusions are in preparation when Notice of Appeal is filed, the Appeal does not prevent the filing of Findings and Conclusions so as to aid the reviewing court in understanding detailed reasons for the ruling. See Reinstine v. Rosenfield, et al., 111 F.2d 892, 894 (7th Cir. 1940); Aoude v. Mobile Oil Corp., 862 F.2d 890, 895 (1st Cir. 1988); Evans v. Lockheed-Georgia Co., No. C82-657A, 1983 WL 562, at *2 (N.D. Ga. July 27, 1983). Courts have recognized that entry of Findings and Conclusions to support an order or judgment is permissible even after Notice of Appeal has been filed because that will expedite rather than interfere with the appellate process. In re Continental Airlines Corp., 60 B.R. 466, 470 (Bankr. S.D. Tex. 1986) (citing Gibbs v. Buck, 307 U.S. 66, 59 S.Ct. 725, 83 L.Ed. 1111 (1939) and Johnson v. Heyd, 415 F.2d 1005 (5th Cir. 1969)).

JURISDICTION AND VENUE

On December 20, 2005, Debtor filed a voluntary petition for relief under chapter 13 of the Bankruptcy Code (the "Petition").

Jurisdiction of this matter lies under 28 U.S.C. §§ 1334(a) and (b) and 157(a).

The Motion to Convert is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

Venue of this case and of the Motion to Convert is proper in this Judicial District pursuant to 28 U.S.C. §§ 1408 and 1409.

FINDINGS OF FACT

1. Pure Fishing is an Iowa corporation with its primary place of business at 1900 18th Street, Spirit Lake, Iowa. Pure Fishing is a counterclaim plaintiff in the pending case captioned Central Mfg. Co. v. Pure Fishing, Inc., Case No. 05 C 7255 (N.D. Ill.).

2. Debtor is an individual, a resident of the state of Illinois, and a counterclaim defendant in the Pure Fishing case along with various of his corporate entities and proprietorships. On his bankruptcy Schedules he stated as his home address a United States Post Office -- not a postal box number, just the post office. A Court's notice to Debtor was returned as undeliverable.

3. When Debtor filed his Chapter 13 Petition, he failed to disclose that he filed for bankruptcy on March 23, 1998, in the Northern District of Illinois, Case No. 98-03288. Debtor subsequently filed an amendment to disclose that bankruptcy. (Stip. No. 37.) Debtor also did not disclose that he filed for chapter 13 relief on March 1, 1985 in the United States Bankruptcy Court for the Northern District of Illinois. (See PACER Docket, Case No. 85-02729).

4. Debtor represents that he "has been in the business of litigation since 1968, every day to the current date" (Ex. 7 at pp. 9-10) and that he "is the nation's most renowned Intellectual Property Entrepreneur with over 30 years in the fields of trademarks, licensing and enforcement, expert witness testimony, trademark valuation expert and legal ethics expert." (Ex. 8 at p. 1.) He advertises services that include trademark valuations, legal research, brief writing, and appeals. (Ex. 8 at p. 2.)¹

5. Debtor is not a lawyer. (Resp. to Req. for Admis. 12; Ex. 77.)

6. Debtor has represented that the stated monthly income in his Petition is based on "Royalty income received by corporations owned by Debtor and passed through to him." (Resp. to Interrog. No. 10; Ex. 76.)

¹ Pages numbers referenced for an exhibit generally refer to the pagination added at the bottom of each page for an exhibit that did not already bear a page number. Page numbers for deposition transcripts refer to the deposition page by the designation "Ex. XX at Dep. p. YY."

7. Debtor has admitted that he does not receive W-2 tax and wage statements from regular employment. (Resp. to Req. for Admis. 68; Ex. 77.)

8. Debtor has admitted that he has not filed a tax return for 2005, nor any quarterly estimated payments for that year, and has no documents related to his 2005 taxes, such as a K-1 statement. (Resp. to Doc. Req. No. 5, Ex. 78.)

9. For his business described herein, Debtor did not maintain books, ledgers of account, or records of his income and expenses in any coherent form and had nothing from which creditors or the Trustee might readily be able to ascertain his financial condition.

**I. Debtor Has Failed To Disclose Material Assets
And Asset Transfers In His Bankruptcy Schedules**

**A. Debtor Failed to Disclose Asset Transfers
of Interest in 1212 N. Lathrop Land Trust**

10. Debtor received an interest in Land Trust No. 03-1-8199 (Midwest Bank and Trust Company) (the "Land Trust") for real property located at 1212 North Lathrop, River Forest, Illinois (PIN 15-01-113-041-0000) (the "Property") upon the death of Bertha Stoller on March 14, 2005. (Resp. to Req. for Admis. 55; Ex. 77; Stip., No. 5.)

11. In March 2005, the Debtor's beneficial interest in the Land Trust was worth at least about \$340,000. (Stip. No. 6.)

12. On March 15, 2005, Debtor assigned his beneficial interest in the Land Trust to his daughter, Julia Bishop, but retained a right of reversion and direction. (Stip. No. 7; Ex. 3 at p. 2.)

13. Debtor failed to disclose the Land Trust as a property that he holds or controls. (Ex. 1 at p. 11, Question 14.)

14. In Debtor's Statement of Financial Affairs, Question No. 10 ("Other Transfers") asked for a list of all other property, other than in the ordinary course of the business or financial affairs of the debtor, that was transferred either absolutely or as security within two years

preceding the commencement of this case. Debtor's answer to this question was "none." (Ex. 1 at p. 11.)

15. The assignment by Debtor of an interest in the Land Trust on March 15, 2005 was for no consideration. (Stip. No. 8; Ex. 77 Resp. to Req. for Admis. 57.)

16. Debtor executed a document on April 5, 2005, directing the execution of a mortgage for \$30,000 on Land Trust No. 03-1-8199 for the land trust at 1212 N. Lathrop, River Forest, IL (PIN 15-01-113-041-0000). (Stip. No. 17; Ex. 77 Resp. to Req. for Admis. 58; Ex. 3 at p. 19.)

17. Debtor directed the execution of another mortgage for \$99,000 for the Land Trust in documents dated within one year before Petition Date. (Stip. No. 18; Ex. 3 at p. 35.)

18. In both instances, checks for the proceeds of the mortgages were made out to "Leo Stoller," acknowledged as received shortly before filing the Petition, and deposited by Debtor into the Central Manufacturing Company, Inc." checking account where, it became commingled with other funds deposited therein. (Ex. 3 at pp. 35, 324, and 377.)

19. Receipt of the mortgage proceeds and his payments on the mortgage debt were not disclosed in Debtor's Schedules. (Ex. 1.)

B. Debtor did not disclose rental income derived from the house at 1212 North Lathrop, River Forest, Illinois in his bankruptcy Schedules when he had an obligation to do so

20. Debtor has been leasing to Shelye Pechulis the house at 1212 North Lathrop, River Forest, Illinois (PIN 15-01-113-041-0000) since about June 2005 for \$2250 per month. (Stip. No. 21.)

21. The rent checks issued by Ms. Pechulis were made out to Sentra Industries and deposited in the Sentra Industries, Inc. checking account. (Ex. 5 at pp. 8, 11, 14 and 367.) Following those deposits, checks were drawn on the Sentra Industries, Inc. checking account for deposit into the Central Manufacturing Company, Inc. checking account (Ex. 5 at pp. 8-10, 14-

15, 282 and 291) as well as checks for "cash" and payments to the law firm of Grund & Leavitt for legal fees associated with Debtor's divorce proceedings. (Ex. 5 at 9, 10, 14, and 15.)

22. Debtor had an obligation to disclose, but did not disclose, the rental income in his bankruptcy Schedules. (Stip. No. 23; See also Ex. 1 at p.7., Question 2 ("Income other than from employment or operation of a business"); and Ex. 1 at p. 27, Schedule G.)

C. Debtor receives income from the operation of a number of companies but failed to disclose said income in his bankruptcy Schedules and failed to disclose his interests in said companies

23. Debtor receives income from the operation of a number of proprietorships, unincorporated associations, and incorporated entities. (Stip. No. 24.)

24. Debtor had an obligation to disclose, but did not disclose, his interests in the unincorporated associations, proprietorships, and incorporated entities. (Stip. No. 25.)

25. Checks made out to the unincorporated associations have been deposited to the Central Manufacturing Company, Inc. account. (Stip. No. 26; Ex. 6.)

D. Income From Debtor's Proprietorships Were Required To Be Disclosed In The Bankruptcy Schedules

26. Central Manufacturing Company, Inc. conducts business as "Rentamark." (Ex. 76, Answer to Interrog. No. 1.)

27. Debtor admits that Rentamark is a proprietorship. (Ex. 77, Answer to Req. for Admis. No. 16.)

28. "Central Manufacturing Company, Inc." is a name that debtor uses to conduct his personal business. (Stip. No. 13.)

29. Debtor has admitted that the only records for his business entities are notations on check stubs for his commercial checkbook. (Stip. No. 64.)

30. Debtor has represented in Response to Interrogatory No. 9 (Ex. 76), that the following entities are assumed names for Central Manufacturing Company, Inc.:

Central Mfg. Inc.
Rentamark
USA Sports Network Association

The American Association of Premium Incentive, Travel Suppliers & Agents
The National Veterinarian Service Association
The American Recreational Tennis Association
The American Recreational Golf Association
The National Association of Traveling Nurses
The American Sports Association
The U.S. Hardware Industry Association
The National Physician's Association
The National Secretarial Association
The National Optometry Association
The National Accounting Association
Americans for the Enforcement of Intellectual Property Rights
The American Society of Podiatrists & Chiropractors
Medical Associations
The National Association of Dentistry
The National Association of Alternative Medicine

Debtor testified that he used these names as internet sites to attract business inquiry for his services in obtaining information for a fee. He did not keep records of income from these sources.

E. Central Manufacturing Company, Inc.

31. Central Manufacturing Company, Inc. is not a corporate entity formed under the laws of Illinois or Delaware, or registered with the State of Illinois as a foreign corporation under that name. (Stip. No. 13.)

32. Instead, Central Manufacturing Company, Inc. is a proprietorship that the Debtor uses for personal business. (Stip. No. 14.)

33. Debtor has sole signatory authority for bank accounts in the name of "Central Manufacturing Company, Inc." (Stip. No. 15.)

34. First Security Bank savings account No. 104232 opened on Feb 4, 2005 is in the name of Central Manufacturing Company, Inc. d/b/a Rentamark c/o Leo Stoller. (Ex. 5 at p. 1.)

35. The alleged FEIN associated with this account was represented by Debtor to be No. 36-0637000. (Ex. 5 at p. 1.) Debtor has provided no proof that there is a legitimate FEIN that has been assigned by the U.S. Internal Revenue Service for Central Manufacturing Company, Inc. as a Delaware or Illinois corporation associated with Debtor.

36. "Central Manufacturing Company, Inc." maintains checking Account No. 00-60645-0 at First Security Trust & Savings Bank, Elmwood, Park, Illinois. The account is in the name of Central Manufacturing Company, Inc. d/b/a Rentamark c/o Leo Stoller. (Ex. 5 at p. 17.)

37. Debtor deposited checks made out to a variety of other assumed named proprietorships and corporations into the "Central Manufacturing Company, Inc." checking account, thereby commingling them. (Ex. 6 ¶ 3.a.)

38. Debtor withdraws substantial sums of cash from the "Central Manufacturing Company, Inc." checking account. (Ex. 5 at p. 49.)

39. Debtor did not have a personal bank account until weeks before filing the Petition, when he opened an account in his name with Bank of America. (Ex. 79.)

40. Debtor has not listed any bank account that was in his name for the last three years. (Ex. 76 Resp. to Interrog. 2.)

41. Funds deposited into in the "Central Manufacturing Company, Inc." checking account were and are Debtor's personal property. (Stip. No. 16.)

42. During 2004, Debtor withdrew over \$37,000 in cash from the account in the name of "Central Manufacturing Company, Inc." (Ex. 6, ¶ 3.e.)

43. During 2005, Debtor withdrew over \$44,800 in cash from the account in the name of "Central Manufacturing Company, Inc." (Ex. 6, ¶ 3.f.)

44. Debtor causes checks to be drafted from the Central Manufacturing Company, Inc. checking account to First Security Bank and Trust to pay off the mortgage loans secured by the 1212 N. Lathrop property. (Ex. 5 at p. 95.)

45. Central Manufacturing Company, Inc. is not a signatory on the Notes (Ex. 3 at pp. 32 and 49) and has no property interest in 1212 N. Lathrop or the land trust associated therewith. (Ex. 3 at p. 2).

F. Sentra Industries, Inc.

46. Debtor is the CEO, President, and sole shareholder of the corporation Sentra Industries, Inc. ("Sentra"). (Stip. No. 9.)

47. Sentra maintains checking Account No. 607-187, at First Security Trust and Savings Bank, Elmwood, Park, Illinois (the "Sentra Account"). (Stip. No. 10; Ex. 5 at p. 5.)

48. Debtor has sole signatory authority for the Sentra Account. (Stip. No. 11; Ex. 5 at p. 5.)

49. Debtor uses the Sentra Account as a vehicle to transfer funds, such as rent checks for the 1212 N. Lathrop property (Ex. 5 at pp. 14 and 367), to cash (Ex. 5 at p. 15 Check No. 1009), to his divorce attorneys (Ex. 5 at p. 15 Check No. 1008), and into his proprietorship (Ex. 5 at p. 15 Check No. 1011).

50. Funds are moved between the Sentra Account and an account to Central Manufacturing Company, Inc. without apparent pattern or regular practice. (Ex. 5 at pp. 9, 15.)

51. During the period of June 18, 2005 through August 31, 2005 Debtor withdrew approximately \$2,300 in cash and transferred \$4,000 to the account of Central Manufacturing Company, Inc. (Ex. 5 at pp. 9, 10, 15 and 291.)

52. Quarterly checks from Ms. Shelye Pechulis for rent associated with the 1212 N. Lathrop property are deposited into the Sentra Industries, Inc. checking account, where the funds become commingled with other funds found therein. (Ex. 5 at pp. 11, 16.)

53. Debtor withdraws substantial sums of cash from the Sentra Industries, Inc. account. (Ex. 5 at pp. 9-10, 15.)

54. Debtor admitted that he allocated revenue from his trademark operation between the Rentamark entity and S Industries, Inc., based solely on the tax considerations associated with the allocation. (Resp. to Req. for Admis. 17; Ex. 77.)

G. Central Mfg. Co.

55. "Central Mfg. Co." ("CMC") is an unregistered company name assumed for the Debtor. Its business operates out of an office located on 7622 West Belmont Avenue, Chicago, Illinois. Central Mfg. Co. is not a corporation that has been organized under the laws of any state. (Stip. No. 39, 41.)

56. Central Mfg. Co. is a d/b/a name used for Debtor's personal business activities. (Ex. 77 Resp. to Req. for Admis. 2; Ex. 35, 41, 42, 53.)

57. Illinois also does not recognize Central Mfg. Co. as an assumed business name for any corporation associated with Debtor. (Ex. 43.)

58. There is no Stoller company or entity that is authorized to do business under the name of "Central Mfg. Co.," only an entity under the different name of "Central Mfg. Co. of Illinois." (Ex. 77 Resp. to Req. for Admis. 5; Ex. 46.)

59. Debtor has not disclosed income from Central Mfg. Co. in his Schedules. (Ex. 1.)

60. Debtor has acknowledged that funds in an account under the name of "Central MFG" are his personal assets. This acknowledgment was made in the disclosures provided by the Debtor in connection with his divorce proceeding (Reich v. Stoller, No. 05 D 007216 (Cook County, Ill.)). (Ex. 17 at p. 5.)

61. Debtor signed responses to interrogatories in Central Mfg. Co. v. HEPA Corporation, Opp. No. 91152243 representing that Central Mfg. Co. had yearly annual sales under the STEALTH brand in 2003 and 2004 of \$1,347,691 and \$1,587,453, respectively with advertising expenses for those years of \$87,701.80 and "\$97,348,997" [sic]. (Ex. 77 Resp. to Req. for Admis. 50.)

62. Debtor deposits checks made out to Central Mfg. Co. into the "Central Manufacturing Company, Inc." checking account, where the funds become commingled with funds from other sources deposited therein. (Ex. 5 at p. 41; Ex. 6.)

H. Central Mfg. Inc.

63. Central Mfg. Inc. is registered in Delaware as a corporate entity. Debtor is its president and sole officer. Like his other entities, Central Mfg. Inc. shares the same office address as Central Mfg. Co., Inc. (Stip. No. 40; Ex. 13 at Dep. p. 157.)

64. Central Mfg. Inc. became registered with Illinois as a foreign corporation in 2005 with only the assumed name of "Central Mfg. Co. of Illinois." (Ex. 77 Resp. to Req. for Admis. 5; Ex. 46.)

65. Debtor admits that he has not filed a tax return for Central Mfg. Inc. since at least 2003. (Rcsp. to Doc. Req. 6, Ex. 78.)

66. Debtor deposits checks made out to Central Mfg. Inc. into the Central Manufacturing Company, Inc. checking account, where the funds become commingled with funds from other sources deposited therein. (Ex. 5 at p. 86.)

I. Rentamark

67. Debtor publishes a weblog at <http://rentmark.blogspot.com> where he offers his services to others and publishes various articles. (Ex. 77 Rcsp. to Req. for Admis. 14, 19; Ex. 7.)

68. On May 30, 2006 Debtor held himself out on his weblog to be "the nation's most renowned Intellectual Property Entrepreneur with over 30 years in the field of trademarks, licensing and enforcement, expert witness testimony, trademark valuation Expert and legal ethics expert." (Ex. 7 at p. 1.)

69. Also on May 30, 2006 Debtor was representing that "Rentamark is in the business of buying, selling and licensing trademarks, trademark valuations, expert witness testimony, trademark litigation support services, including legal research, drafting pleadings, appeals etc." (Ex. 7 at p. 2.)

70. Debtor has admitted that he uses the Rentamark (also spelled Rent-A-Mark) entity as a proprietorship for his personal activities. (Ex. 77 Resp. to Req. for Admis. 16; Ex. 26 at Dep. pp. 129 and 160; Ex. 38 at Dep. pp. 30-31; Ex. 40.)

71. Debtor has also testified that he uses the Rentamark name as an assumed name for Central Mfg. Inc. (Ex. 39 at Dep. pp. 60-61.)

72. Debtor has also responded in his sworn response to Interrogatory No. 1 (Ex. 76) that Rentamark is an assumed name for Central Manufacturing Company, Inc. (Resp. to Interrog. No. 1; Ex. 76.)

73. Debtor deposits checks made out to "Rentamark.com" and "Rent-A-Mark" into the Central Manufacturing Company, Inc. checking account where it becomes commingled with other funds. (Ex. 5 at pp. 39, 42, 119, 156-58; Ex. 6.)

J. U.S. Hardware Industry Association

74. Debtor receives checks from Freightquote.com, Inc. from time to time which are made payable to the order of "U.S. Hardware Industry Assn." (Ex. 5 at p. 87.)

75. These checks are deposited into the checking account of "Central Manufacturing Company, Inc." and commingled with funds from other sources found therein. (Ex. 5 at p. 87.)

76. Debtor did not produce records from which it can be determined whether he reported in his bankruptcy Schedules the income from U.S. Hardware Industry Assn, which is an unregistered and unincorporated entity.

K. National Association of Traveling Nurses

77. Debtor receives checks from time to time which are made payable to "Natl Assn of Traveling Nurses." These checks are deposited into the checking account of "Central Manufacturing Company, Inc." and commingled with the funds from other sources found therein. (Ex. 5 at pp. 24, 136, 161; Ex. 6.)

78. Debtor did not produce records from which it can be determined whether he reported the said income in his Schedules.

L. American Sports Association

79. Debtor receives checks from an entity known as Freightquote.com, Inc. from time to time, which are made payable to "American Sports Assn." These checks are deposited into the checking account of "Central Manufacturing Company, Inc." and commingled with the funds from other sources found therein. (Ex. 5 pp. 87, 161; Ex. 6.)

80. Debtor did not maintain records from which it can be determined whether he reported this income in his Schedules.

81. No person other than Debtor is involved in running "American Sports Association." (Ex. 13 at Dep. p. 325.)

M. Other Entities

82. Debtor receives checks from time to time made payable to "Havoc Brand Products and Services." These checks are deposited into the checking account of "Central Manufacturing Company, Inc." and commingled with the funds from other sources found deposited therein. (Ex. 5 at pp. 52, 148; Ex. 6.)

83. Debtor receives checks made payable to "Stealth Brand Products and Services" and deposits them into the "Central Manufacturing Company, Inc." checking account where the funds become commingled with funds from other sources deposited therein. (Ex. 5 at pp. 43, 148; Ex. 6.)

84. Debtor deposits checks made payable to "Stealth" and deposits them into the "Central Manufacturing Company, Inc." checking account where the funds become commingled with funds from other sources deposited therein. (Ex. 5 at pp. 93, 137, 145; Ex. 6.)

85. Debtor deposits checks made payable to "American Society of Podiatrists" and deposits them into the "Central Manufacturing Company, Inc." checking account where the funds become commingled with funds from other sources deposited therein. (Ex. 5 at p. 98; Ex. 6.)

86. Debtor has also sent letters to others representing himself to be the President of "Stealth" (Ex. 27), doing business as the proprietorship "Air Frame" (Ex. 28), and doing business as the proprietorship "Aerospace" (Ex. 30).

87. Debtor has filed pleadings that identify Sentra Sporting USA Co. as his proprietorship. (Ex. 37)

88. Debtor has acknowledged that he founded organizations called "Americans for the Enforcement of Attorney Ethics" and "Americans for the Enforcement of Judicial Ethics." He uses his website for these organizations to teach others how to file disciplinary complaints against attorneys and judges. (Ex. 51 at Dep. pp. 98-99.)

89. Debtor refused to answer when asked if these ethics organizations were really just another name for himself. (Ex. 51 at Dep. p. 100.)

90. In 2003, Debtor and his proprietorships "Give a Gift Online," "American Conservation Society," and "Association Network Management" were named in a Consent Decree with the Illinois Attorney General. (Ex. 54.)

91. None of these proprietorships has been disclosed in Debtor's Schedules, and there are no records showing Debtor's income therefrom.

II. Debtor And His Businesses Are Indistinguishable

92. Debtor makes all pertinent decisions for the assumed name entities through which he operates. (Ex. 13 at pp. 6-7.)

93. Debtor testified that he is "the actual controlling entity of where the marks go, quality and control, what entity they – what I choose to put them in." (Ex. 13 at Dep. pp. 23-24.)

94. All of the business entities owned and operated by Debtor have the same office address. (Ex. 13 at Dep. p. 157.)

95. Debtor's corporations do not keep regular corporate books and records of finances. (Ex. 13 at Dep. pp. 163-64, 172-73, 176; Stip. Nos. 63-65, 67; Ex. 78 Resp. to Req. 11.)

96. Funds of Debtor's corporations are commingled with funds from other corporations, proprietorships, and with Debtor's personal funds. (Ex. 6; Stip. Nos. 14 and 16.)

97. Debtor's corporations have not filed tax returns since at least 2003. (Ex. 78 Resp. to Req. No. 6.)

98. Debtor's corporations have not issued W-2 statements. (Ex. 78 Resp. to Req. No. 10; Ex. 16 at p. 2.) Debtor has, however, testified that he has three "employees". (Ex. 13 at pp. 13-14.)

99. Debtor has also testified (at his 341 Meeting) that he uses three "independent contractors" in his office, but represents that there are no documents that reflect any payment of money, funds, or other valuable asset to these individuals. (Ex. 78 Resp. to Doc. Req. No. 10.)

100. Debtor produced no records that his corporations pay, or have paid, dividends. (Ex. 78 Resp. to Req. No. 10.)

101. Debtor described his corporations as having a negative value. (Ex. 16 at pp. 2 and 4.)

102. All stock issued by Debtor's corporations, 1000 shares at issue value of \$1.00 each, are owned by Debtor. (Ex. 1 at p. 17.)

103. Debtor's corporations have no officers other than Debtor. (Stip. No. 40; Ex. 1 at p. 17.)

104. Debtor refers to the assets of his companies and corporations as his personal assets. (Ex. 13 at Dep. pp. 328-29.)

105. Debtor directs licensing revenue between his corporations and his proprietorships based on tax considerations. (Ex. 26 at Dep p. 130-31; Ex. 77 Resp. to Req. for Admis.17.)

106. Debtor deposits checks made out to "Leo D. Stoller" into the "Central Manufacturing Company, Inc." checking account where the funds become commingled with funds from other sources deposited therein. (Ex. 5 at p. 99, 161, 174.)

107. Debtor uses the "Central Manufacturing Company, Inc." checking account as a common account for his personal, proprietorship, and corporate funds where all funds are commingled without associated financial books or records to distinguish funds among the entities. (Ex. 6; Stip. Nos. 63-64.)

108. None of the checks deposited to the "Central Manufacturing Company, Inc." checking account no. 606-450 are made out to the named account holder. The list of payees for checks deposited to this account include about 20 different persons and entities. (Ex. 6.)

**III. Debtor's Schedules Are Replete
With Omissions and Misleading Disclosures**

A. Undisclosed Interests in Other Real Estate

109. In 2005, Debtor has asserted some ownership interests in three residences located in Elmwood Park, Illinois in connection with the divorce proceeding Reich v. Stoller, No. 05 D 007216 (Cook County, Ill.). (Resp. to Req. for Admis. 61; Ex. 77.)

110. Debtor has not disclosed ownership interests in any of these properties in his Schedules. (Ex. 1)

B. Inaccurate Balance in His Personal Bank Account

111. Debtor's Bank of America accounts were opened shortly before filing of his Bankruptcy Petition. (Ex. 79 at p. 7.)

112. In response to Interrogatory No. 2, Debtor did not identify any other bank account in his name, whether closed or open. He identified only accounts in the names of Central Manufacturing Company, Inc. and Sentra Industries, Inc. (Ex. 76 Resp. to Interrog. No. 2.)

113. On the date of the Petition filing, the balance in Debtor's Bank of America account was \$3,255.00, rather than \$200.00 as represented in Schedule B. (Ex. 1 and 79 at p. 9.)

114. Debtor's Bank of America account has been used for business purposes, including the payment of certain fees to the State of Delaware for the benefit of Debtor's corporations. (Ex. 79 at p. 18.)

C. Inconsistent and Unreliable Representations of Income

115. Debtor has represented his stated income in the Response to Marital Interrogatories made in connection with the divorce proceeding Reich v. Stoller, No. 05 D 007216 (Cook County, Ill.) to be approximately \$4,500 per year for the past three years. (Ex. 77 Resp. to Req. for Admis. 48; Ex. 16 at p. 3.)

116. Debtor wrote a facsimile transmission dated November 22, 2005 in which he represented that his businesses take in only about \$100,000 per year. (Ex. 77 Resp. to Req. for Admis. 51; Ex. 18.)

117. Debtor has represented to this Court in "Debtor's Response to Motion to Convert to Chapter 7 and for Immediate Appointment of Trustee," on page 7 thereof, that the gross income from Central Mfg. Co. is around \$200,000 per year. (Ex. 77 Resp. to Req. for Admis. 52.)

118. Debtor has admitted that he does not receive W-2 tax and wage statements from regular employment. (Ex. 77 Resp. to Req. for Admis. 68.)

119. Debtor has represented that he has not filed a tax return for 2005, no quarterly estimated payments, and has no documents related to his 2005 taxes, c.g., a K-1 statement. (Ex. 78 Resp. to Doc. Req. No. 5.)

120. Debtor's tax return for 2001 showed an adjusted gross income of (-\$2,522) on business income of \$9,875. (Ex. 14 at pp. 2-7.)

121. Debtor's tax return for 2002 showed an adjusted gross income of (-\$2,844) on business income of \$12,675. (Ex. 14 at pp. 8-15.)

122. Debtor's tax return for 2003 showed an adjusted gross income of (-\$3,690) on business income of \$12,875. (Ex. 14 at pp. 16-23.)

123. Debtor's tax return for 2004 showed an adjusted gross income of (-\$4,550) on business income of \$7,600. (Ex. 14 at pp. 22-29.)

124. Debtor's 2001-2004 tax returns were all filed in November or December of 2005. (Ex. 14.)

125. Debtor has not filed tax returns for any company, corporation, association, or proprietorship for 2003, 2004, or 2005. (Ex. 78 Resp. to Doc. Req. No. 6.)

126. The company income and advertising expenses presented in Debtor's income tax returns for 2001-2003 do not correlate with the income and advertising expenses described by Debtor in sworn interrogatory responses. (Compare Ex. 14 with Ex. 15 at pp. 2-3 and Ex. 77 Resp. to Req. for Admis. 50.)

D. Undisclosed Trademark Rights and Claims for Trademark Infringement

127. In response to an Order by Judge Coar in Central Mfg. Co. v. George Brett, Case No. 04 C 3049 (N.D. Ill.), Debtor was required to identify to the court and certify his interests in any trademark rights. On March 22, 2006, Debtor identified ownership rights in the goodwill represented by two trademark registrations, US Trademark Registration Nos. 2107047 (MERCHANT OF VENICE for restaurant services) and 1765833 (STRADIVARIUS for stationery and pens). (Ex. 10-11.)

128. Debtor did not disclose in his bankruptcy Schedules his ownership of these two registrations, the business goodwill underlying each, or the business assets associated with each. (Ex. 1.)

129. Debtor has previously testified that he "holds rights to the mark STEALTH." (Ex. 13 at p. 5.) However, no such rights were identified in Debtor's Schedules. (Ex. 1.)

130. Debtor is a named party in more than one current trademark opposition proceeding or appeal in which he alleges a personal interest in one or more valuable trademark rights, yet none of these pending proceedings were identified in the Petition or Schedules. (Ex. 58.)

131. In a letter dated November 29, 2005, Debtor asserted that he has done business under the name GOOGLE since 1981, with an aggressive licensing program. Debtor has levied

allegations against Google, Inc. that suggest a potential claim of trademark infringement against this well known search engine company. Debtor has offered to settle the matter for \$150,000. (Ex. 23.) His potential claim under the name of that entity was not disclosed in his Schedules. (Ex. 1.)

132. In a letter dated September 8, 2005, Debtor provided an entity called Loveland Products with a second notice accusing that company of infringement of an undesignated trademark right for STEALTH. Debtor executed the document as "President." The letterhead identifies an entity called STEALTH. (Ex. 27.) Debtor ultimately filed, and still has pending, an opposition against Loveland Products. (Ex. 59.) Debtor did not disclose any of the information contained herein in his Schedules. (Ex. 1.)

133. Debtor prevailed in a trademark opposition against York International Corporation (Opp. No. 121,420), for use of the mark STEALTH on air conditioners. Debtor asserted, and prevailed, on assertions and submitted proofs of rights in use of that trademark on sales of "fans, air coolers and air conditioners." (Ex. 34, 64.) Debtor has not listed any income nor profits from sales of fans, air coolers, or air conditioners in his Schedules. (Ex. 1.)

134. Debtor submitted an assignment document as an attachment to a pleading in which he asserted that the assignment of trademark rights from S Industries, Inc. to "Leo Stoller d/b/a Central Mfg" gave him standing to oppose certain registrations. (Ex. 53 at pp. 8-9 and 11-16.) Debtor has not disclosed in his Schedules his ownership interest in the trademarks associated with this assignment, the goodwill of the business associated by such trademarks, or the business profits upon which such goodwill must be based. (Ex. 1.)

IV. Debtor Has Failed To Disclose Accurately His Pre-Petition Transfers And Liabilities In His Bankruptcy Schedules

135. Debtor failed to list at least four additional creditors -- First Security Trust, IRS Tax Lien, Benjamin, Berneman & Brom, LLC and Querrey & Harrow in his Schedules. The latter three creditors were identified in Debtor's Disclosure Statement in his divorce proceeding as holding approximately \$60,000 in claims. (Ex. 17 at p. 4.)

136. Additionally, Benjamin, Berneman & Brom filed a proof of claim in this case seeking \$20,826. Querrey & Harrow filed a proof of claim seeking \$25,382.40.

137. Debtor has caused checks from the Central Manufacturing Company, Inc. checking account to be made payable to "Household Credit Services" for account no. 5489 5551 0377 4933 0300 8311. (Ex. 5 at pp. 59, 168.) Debtor has not listed this credit account or his liability associated therewith in his Schedules. (Ex. 1.)

**V. Debtor Does Not Have A Regular
Ascertainable Source Of Income to Fund a Plan**

138. Debtor represented that there is a negative value in Stealth Industries, Central Mfg. Co., and Sentra Industries, Inc. (Stip. No. 32.)

139. Debtor has admitted that he does not receive W-2 tax and wage statements from regular employment. (Ex. 77 Resp. to Req. for Admis. 68.)

140. Debtor obtains his income from trafficking in trademarks. (Stip. No. 42.)

141. The income of debtor is based on false assertions of trademark infringement and/or harm due to registration of the challenged party's trademark application. (Stip. No. 47.)

142. Debtor admitted that he has been sanctioned previously by the United States Trademark Trial and Appeals Board for misconduct during administrative opposition proceedings (Ex. 77 Resp. to Req. for Admis. 35) and is currently under a sanction order by the Commissioner of the U.S. Patent and Trademark Office that restricts certain activities of Debtor for two years and permanently restricts other activities. (Stip. No. 48.) The sanction Order is found in Exhibit 72.

143. Debtor's admitted income is claimed by him to be based on income from the trademark license fees, trademark license royalties, or settlements on trademark infringement claims collected by his businesses. (Resp. to Interrog. No. 8; Ex. 76.) The rest of his income from various businesses is undocumented and not ascertainable.

144. Given Debtor's record in his effort to enforce claims for trademark infringement to generate most of his income, his expectations of regular future income are doubtful. In

Central Mfg. Co. v. Pure Fishing, Inc., No. 05 C 725, 2005 WL 3090988, *1 (N.D. Ill. Nov. 16, 2005), Judge Lindberg found that the Debtor was abusing the judicial system by filing spurious and vexatious litigation. In this respect, he concluded that:

Mr. Stoller, a non-lawyer, has earned a reputation for initiating spurious and vexatious federal litigation. See e.g. Central Mfg. Co. et al. v. Brett, 2005 WL 2445898 (N.D. Ill. Sept. 30, 2005) (Coar, J.) (“Stoller appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation.”); S. Indus. Inc. v. Stone Age Equip., Inc., 12 F. Supp.2d 796 (N.D.Ill.1998) (Castillo, J.) (Stoller initiates “litigation lacking in merit and approaching harassment.”); S. Indus. Inc. v. Hobbico, Inc., 940 F. Supp. 210, 211 (N.D. Ill.1996) (Shadur, J.) (Stoller “appears to have entered into a new industry—that of instituting federal litigation.”). Additionally, Mr. Stoller or his entities have been ordered to pay their opponent’s attorneys’ fees in at least seven reported cases. See e.g. Central Mfg. Co. et al. v. Brett, 2005 WL 2445898 (N.D.Ill. Sept. 30, 2005) (Coar, J.); S Indus., Inc. v. Ecolab Inc., 1999 WL 162785 (N.D.Ill. Mar. 16, 1999) (Gottschall, J.); S Indus., Inc. v. Stone Age Equip., Inc., 12 F. Supp.2d 796, 798-99, 819-20 (N.D. Ill.1998) (Castillo, J.); S Indus., Inc. v. Centra 2000, Inc., 1998 WL 157067 (N.D. Ill. Mar.31, 1998) (Lindberg, J.), *aff’d by* 249 F.3d 625, 627-29 (7th Cir.2001); S Indus., Inc. v. Diamond Multimedia Sys., Inc., 991 F. Supp. 1012 (N.D. Ill.1998) (Andersen, J.); S Indus., Inc. v. Diamond Multimedia Sys., Inc., 17 F. Supp.2d 775 (N.D. Ill.1998) (Andersen, J.); S Indus., Inc. v. Diamond Multimedia Sys., Inc., 1998 WL 641347 (N.D.Ill. Sept. 10, 1998) (Andersen, J.); S Indus., Inc. v. Kimberly-Clark Corp., 1996 WL 388427 (N.D.Ill. July 9, 1996) (Shadur, J.); S Indus., Inc. v. Hobbico, Inc., 940 F. Supp. 210, 212 (N.D. Ill.1996) (Shadur, J.).

Judge Lindberg concluded “[i]n keeping with Mr. Stoller’s reputation, his actions in the instant litigation have been vexatious and sanctionable.” Central Mfg. Co. v. Pure Fishing, Inc., No. 05 C 725, 2005 WL 3090988, *1 (N.D. Ill. Nov. 16, 2005).

VI. Debtor Does Not Maintain Financial Books Or Records That Would Allow Accurate Evaluation Of Debtor’s Assets

145. Debtor does not keep or maintain financial books or records for his business or his entities. (Stip. No. 63.) The only records for his business entities are notations on check stubs for his commercial checkbook. (Stip. No. 64.) These were not produced in response to discovery. (Ex. 78 Resp. to Doc. Req. No. 2.)

146. Debtor’s business and business entities do not have formal end of year audited financial reports for calendar years 2003-2005. (Stip. No. 65.)

147. Debtor has not filed tax returns for any company, corporation, association, or proprietorship for 2003, 2004 or 2005. (Ex. 78 Resp. to Doc. Req. No. 6.)

148. In his current Statement of Financial Affairs, Debtor listed Russell Stoller as the custodian of his records. (Ex. 1.) Debtor has admitted that Russell Stoller died in 2003. (Ex. 77 Resp. to Req. for Admis. 53; Ex. 24; Stip., Nos. 33 to 35.) Debtor has admitted that he knew Russell Stoller was dead when the Petition was filed. (Ex. 77 Resp. to Req. for Admis. 54.)

149. Debtor admitted that his businesses do not use a computer-based accounting system. (Ex. 77 Resp. to Req. for Admis. 25.) Debtor also admitted that his businesses do not have audited year-end financial statements for 2002-2005 (Ex. 77 Resp. to Req. for Admis. 27) and that he has no business financial statements of any kind for 2003 to date. (Ex. 78 Resp. to Doc. Req. No. 11; Stip. Nos. 63 to 67.)

150. Debtor represents that he has no general ledger or equivalent financial books for any of his businesses for years 2003 to date. (Resp. to Doc. Req. No. 11; Stip. Nos. 63 to 67.)

151. Debtor admitted that his businesses do not use an accountant to prepare tax returns. (Ex. 77 Resp. to Req. for Admis. 28.) Debtor admitted that he uses a manual accounting system and prepares any tax returns for his businesses himself. (Resp. to Req. for Admis. 26, 29; Stip. No. 66.)

152. Debtor admitted that the stated value of his shares of stock in his companies is not based on an audited report by a CPA or certified auditor. (Ex. 77 Resp. to Req. for Admis. 30.)

153. Debtor represented that he has no canceled checks, check stubs, bank statements, ledgers, or correspondence showing disbursements and receipts for the last three years (Ex. 78 Resp. to Doc. Req. No. 2) or documents that reflect the sales or income for any of his businesses. (Ex. 78 Resp. to Doc. Req. No. 9.)

154. Debtor previously testified on February 8, 2005, that he tracked income for his businesses by checkbook stubs and mental recall. (Ex. 13 at Dep. pp. 163-64.) This was

basically the same record-keeping system used by him since January 1989. (Ex. 13 at Dep. pp. 172, 176.)

VII. Other Findings Not Necessary

155. In the light of the foregoing Findings, it is unnecessary to deal with the many assertions by Movant that Debtor personally abused other legal proceedings for improper purposes.

156. Additional facts set forth in the Conclusions of Law will stand as additional Findings of Fact.

CONCLUSIONS OF LAW

I. A Petition Filed In Bad Faith Should Be Converted To Chapter 7

Section 1307(c) of the Bankruptcy Code provides that a court may convert a Chapter 13 proceeding to a Chapter 7 proceeding "for cause." 11 U.S.C. § 1307(c).²

"Cause" can include filing a petition in bad faith. See, e.g., In re Smith, 848 F.2d 813, 816 n. 3 (7th Cir. 1988); In re Johnson, 228 B.R. 663 (Bankr. N.D. Ill. 1999).

² Section 1307(c) provides as follows:

- (c) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including--
 - (1) unreasonable delay by the debtor that is prejudicial to creditors;
 - (2) nonpayment of any fees and charges required under chapter 123 of title 28;
 - (3) failure to file a plan timely under section 1321 of this title;
 - (4) failure to commence making timely payments under section 1326 of this title;
 - (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
 - (6) material default by the debtor with respect to a term of a confirmed plan;
 - (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
 - (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
 - (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521;
 - (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521; or
 - (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

Under Seventh Circuit authority, several factors should be considered when deciding whether a chapter 13 petition was filed in bad faith, including:

- a. the nondischargeability of the debt;
- b. the time of the filing of the petition;
- c. how the debt arose;
- d. the debtor's motive for filing the petition;
- e. how the debtor's actions affected creditors;
- f. the debtor's treatment of creditors both before and after the petition was filed;
- g. whether the debtor has been forthcoming with the bankruptcy court and the creditors.

In re Sidebottom, 430 F.3d 893, 899 (7th Cir. 2005); In re Love, 957 F.2d 1350, 1359 (7th Cir. 1992) (same).

Furthermore, in evaluating whether a petition was filed in good faith, the inquiry looks at both subjective and objective criteria. In short, "the good faith inquiry is both subjective and objective. That is, both objective evidence of a fundamentally unfair result and subjective evidence that a debtor filed a petition for a fundamentally unfair purpose that was not in line with the spirit of the Bankruptcy Code are relevant to the good faith inquiry." Love, 957 F.2d at 1357.

Finally, a debtor's pre-petition conduct may sometimes be relevant to the bad faith inquiry. Id. at 1359 ("[T]he bankruptcy court did not err in determining that this prepetition activity was relevant to Love's motives at the time he filed the Chapter 13 petition, as is the Debtor's truthfulness and frankness in helping to piece together pertinent financial matters.").

II. The Debtor's Bad Faith Is Evident From His Lack Of Candor And His Failure To Maintain Books And Records

The Debtor has not been forthcoming with the Court and creditors by any standard. Indeed, he has not maintained any financial records which would allow the Court, the Chapter 13 Trustee or creditors to understand and assemble his financial status and his ability to pay under a Chapter 13 Plan. Parties have no way of verifying whether the Debtor's income vastly exceeds

his liabilities, or whether his ability to pay even the total sum of \$14,000 proposed by Debtor under his Chapter 13 Plan is non-existent or inadequate.

Instead, the Debtor admitted that he does not maintain financial records on such matters. He does not have pay stubs, nor does he have financial statements for his businesses. This lack of candor and records by itself justifies a bad faith finding and conversion to Chapter 7. In re Alt, 305 F.3d 413, 421 (6th Cir. 2002) (dismissing case, in part, based upon debtor's failure to provide proper information about financial matters; concluding: Chapter 13 requires the debtor to be honest, forthcoming, truthful, and frank. Whether the debtor has been forthcoming with the bankruptcy court and the creditors is properly considered in deciding whether dismissal for lack of good faith is appropriate. (See Love, 957 F.2d at 1357).

The Debtor's lack of candor also is evident from his Bankruptcy Petition, Schedules and Statement of Financial Affairs. These documents are replete with false statements, misleading information, and omissions of material facts. The Debtor: (i) failed to identify various proprietorships, alter-ego corporations and personal aliases under which he conducts business; (ii) failed to disclose income, including, at a minimum, the rental income received from the Property; (iii) failed to disclose interests in residential properties; (iv) provided inaccurate information such as his place of residence and that his deceased father was at time of his bankruptcy filing the custodian of his corporate records; (v) failed initially to disclose his prior bankruptcy; (vi) failed to identify the transfer of the Property to his daughter within a year of the Petition Date; and (vii) failed to identify certain creditors in his Schedules.

The Debtor's disregard for his obligations under Bankruptcy Chapter 13 provide an independent basis to conclude that this case was filed in bad faith and should be converted. Sidebottom, 430 F.3d at 899; Love, 957 F.2d at 1350; see also In re Henson, 289 B.R. 741, 752 (Bankr. N.D. Cal. 2003) ("However, it is not necessary to find that Debtor filed bankruptcy in bad faith in order to conclude that cause exists to remove this case from Chapter 13, because Debtor has shown that he is not capable of performing as a Chapter 13 Debtor. Debtor has not

provided reliable information about his financial condition, he will not make himself available to do so in future ... Cause therefore exists for concluding that this bankruptcy case cannot remain in Chapter 13.”).

III. The Debtor’s Bad Faith Is Evident From The Fact That He Would Be Denied A General Discharge In A Chapter 7 Proceeding Due To His Failure To Maintain Records And Perhaps Due To Other Conduct

The Debtor’s failure to maintain adequate records regarding his sole proprietorships, his business enterprises and his own personal finances unrelated to the operation of a business also merits a finding of bad faith because of the nexus between that conduct and a Chapter 7 discharge. Simply, the Debtor would be denied a discharge under Chapter 7 due to his failure to maintain adequate records and, under Seventh Circuit precedent, that fact helps establish the Debtor’s bad faith in filing for Chapter 13 relief. *Id.* at 1359 (7th Cir. 1992) (“[T]his court stated in Schaitz that ‘the requirement of good faith should not be interpreted to permit ‘manipulation of the statute [Chapter 13] by debtors who default on obligations grounded in dishonesty and who subsequently seek refuge in Chapter 13 in order to avoid, at minimal cost, a nondischargeable debt.’”).³

Here, the undisputed fact that the Debtor failed to maintain adequate books and records from which his financial condition or business transactions might be ascertained provides possible grounds to consider denial of his discharge under Section 727(a)(3).⁴

³ Although the Loye case dealt with a nondischargeable obligation under Section 523, there is no reason its analysis would not apply with equal force, if not greater, to a denial of discharge proceeding under Section 727.

⁴ Section 727(a)(3) provides that “[t]he court shall grant the debtor a discharge, unless (3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor’s financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case

Furthermore, the Debtor's transfer of his interest in the house at 1212 North Lathrop within a year of bankruptcy to his daughter for no consideration and failure to disclose that in his bankruptcy filings also provides an independent bad faith basis for considering conversion. Investigation is warranted into that transaction and any grounds that might exist to set it aside. A Chapter 7 Trustee will usually be staffed and equipped for inquiry and litigation into such matters, while the Chapter 13 Standing Trustee is not.

IV. This Case Should Be Converted Because Debtor Failed To Disclose The Existence Of Unincorporated Businesses He Owns

"Debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or are unavailable to the bankruptcy estate." In re Yonikus, 974 F.2d 901, 904 (7th Cir. 1992). Debtors also have a duty to maintain adequate records in order to enable creditors and other interested parties to ascertain the debtor's true financial condition.

A Chapter 13 case should be converted to chapter 7 when, like here, the debtor fails to disclose his interests in unincorporated businesses associations or fails to maintain adequate records. In re Buchanan, 225 B.R. 672, 674 (Bankr. D. Minn. 1998) aff'd, Buchanan v. U.S., No. 98-2291, 1999 WL 314819 (D. Minn. Apr 2, 1999) (case converted to chapter 7, in part, because debtor failed to disclose his interests in sole proprietorships and other businesses: "Right from the beginning, on the first page of his petition the debtor failed to disclose trade names he used in the prior six years. Under the required heading "ALL OTHER NAMES used by the debtor in the last 6 years (Include [] trade names)", the debtor listed "none" when, in fact, he operated at least six sole proprietorships during that period of time, including Health Personnel, Silver Lining Assisted Lifestyles, Monroe Electronics, United Publishing, Monroe Underwater, and Covenant PCA Services."); In re Henson, 289 B.R. 741, 752 (Bankr. N.D. Cal. 2003) ("However, it is not necessary to find that Debtor filed bankruptcy in bad faith in order to conclude that cause exists to remove this case from Chapter 13, because Debtor has shown that he is not capable of

performing as a Chapter 13 Debtor. Debtor has not provided reliable information about his financial condition, he will not make himself available to do so in future, and Lucas has been unable to do so in Debtor's absence. Cause therefore exists for concluding that this bankruptcy case cannot remain in Chapter 13."); In re Fonke, 310 B.R. 809, 817 (Bankr. S.D. Tex. 2004) (Chapter 13 case converted to Chapter 7 case where "Debtor failed to disclose all of his assets on his Schedules, including certain leases, "memberships", farming equipment, livestock, as well as property that he himself judged to be his wife's separate property.").

Nor can the Debtor succeed in arguing that he had no obligation to disclose his interests in various unincorporated businesses ventures. Under Illinois law it is well-settled that an unincorporated business is an asset of the responsible individual and the liabilities of that business also are that same person's liabilities. Corporations are creatures of statute. The corporate entity cannot exist without the authority of law and compliance with the procedures to establish a cognizable corporation that shields personal liability. Stroh v. Blackhawk Holding Corp., 48 Ill. 2d 471, 474 (Ill. 1971) ("A corporation is a creature of statute. It is a legal entity which owes its existence to the fiat of law.").

Thus, use of an assumed name without compliance with the applicable corporate formation laws or assumed name laws creates a sole proprietorship, not a separate legal entity. See Hoskins Chevrolet, Inc. v. Hochberg, 294 Ill. App. 3d 550, 555 (Ill. App. 1998) (finding personal liability by the defendant for improper use of an alleged assumed name, the Court noted that "[t]he Business Corporations Act . . . permits a corporation to elect to adopt an assumed name provided that certain procedures are followed. . . Where those procedures are not followed, the corporation is required to conduct business under its corporate name. . . . The use of an assumed name without complying with the Act or disclosing the corporate name neither creates a legal entity nor does it inform creditors of the existence of the parent corporation."); Vernon v. Schuster, 179 Ill.2d 338, 347-48 (Ill. 1997); Regency Financial Corp. v. Meziere, No. 90 C 428, 1990 WL 103247, at *3 (N.D. Ill. July 16, 1990) ("Where business is conducted under an

assumed name there must be some underlying entity and the Illinois Assumed Business Name Act requires the entity to file with the State both the identity of the actual entity and its assumed name.”).

V. It Has Not Been Established That The Debtor Does Not Qualify For Relief Under Chapter 13

Section 109(e) of the Bankruptcy Code provides that “only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$307,675 . . . may be a debtor under chapter 13 of this title.” 11 U.S.C.

§ 109(e). Accordingly, in order to qualify for Chapter 13 relief, a debtor must not have debts in excess of the threshold amount *and* the debtor must have a regular income. If a debtor has debts that exceed the threshold amount, the case should be converted.

In this case, Pure claims that Debtor’s debts exceed the statutory maximum of \$307,675.

In determining whether a debtor meets the requirements of section 109(e), the Court may look beyond the debtor’s Schedules to the complaints and judgments in the lawsuits from which the debts arise.

Simply because a debt is disputed does not exempt it from being included in the Section 109(e) calculation. In re Knight, 55 F.3d 231, 234 (7th Cir. 1995) (“[I]n light of the virtual synonymy of “debt” and “claim,” therefore, we conclude that a disputed claim is a debt to be included when calculating the § 109(e) requirements”); In re Nicholes, 184 B.R. 82, 87 (B.A.P. 9th Cir. 1995).

Additionally, even a debt that has not been formally liquidated can disqualify a debtor for Chapter 13 relief. Instead, “[i]f the amount of a claim has been ascertained or can readily be calculated, it is liquidated—whether contested or not.” Knight, 55 F.3d at 235 (emphasis supplied).

Pure argues that the Debtor is liable for amounts expended by Pure Fishing in litigating before Judge Lindberg and argues that this liability exceeds \$400,000. However, no such claim was liquidated before Judge Lindberg and no such claim was even filed in this bankruptcy case.

Debtor's Schedules admitted to debts totalling \$183,000 and unscheduled claims totalling \$46,526.71 have been filed. Those debts do not exceed the maximum.

VI. Converting This Case Would Best Serve The Interests Of Creditors

Converting this case to a Chapter 7 case also would best serve the interests of creditors.

Creditors are likely to recover more in a Chapter 7 case than they will under the Debtor's proposed Chapter 13 plan which proposes to pay approximately \$14,000 to creditors. The Chapter 7 trustee will be able to investigate the Debtor's tangled financial affairs and schedule omissions, and also pursue a possible fraudulent transfer to ensure an equitable distribution to creditors. See In re Eatman, 182 B.R. 386, 394 (Bankr. S.D.N.Y. 1995) (converting case to Chapter 7 served best interests of creditors and estate where schedules were riddled with inaccuracies and omissions, where Chapter 7 trustee can investigate the debtor's financial affairs and bring appropriate actions to recover property, and if necessary object to debtor's discharge where the debtor may have disposed of or concealed assets).

Also, once this case is converted to Chapter 7, the Trustee may, upon investigating Debtor's false statements and lack of records, contend that Debtor should be denied a discharge.

CONCLUSION

Wherefore, and based both on statements from the bench following final argument and the foregoing detailed Findings of Fact and Conclusions of Law, the Order for Conversion of this case to one under Chapter 7 of the Bankruptcy Code was entered.

Entered this 26 th day of September 2006.

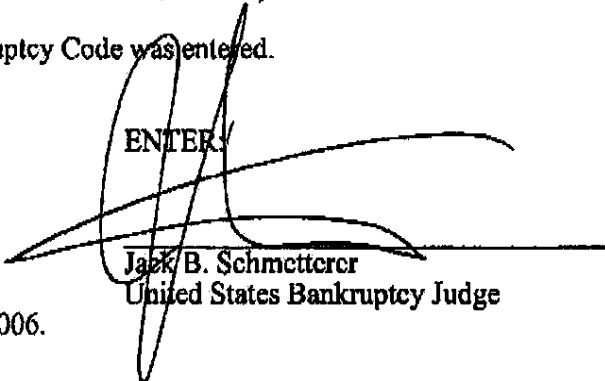
ENTERED

Jack B. Schmutterer
United States Bankruptcy Judge

EXHIBIT 3

(Official Form 1) (10/05)

United States Bankruptcy Court Northern District of Illinois		Voluntary Petition																				
Name of Debtor (if individual, enter Last, First, Middle): Stoller, Leo		Name of Joint Debtor (Spouse) (Last, First, Middle):																				
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):																				
Last four digits of Soc. Sec./Complete EIN or other Tax ID No. (if more than one, state all): xxx-xx-7972		Last four digits of Soc. Sec./Complete EIN or other Tax ID No. (if more than one, state all):																				
Street Address of Debtor (No. & Street, City, and State): 7300 W. Fullerton Elmwood Park, IL		Street Address of Joint Debtor (No. & Street, City, and State):																				
ZIP Code 60707		ZIP Code																				
County of Residence or of the Principal Place of Business: Cook		County of Residence or of the Principal Place of Business:																				
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):																				
ZIP Code		ZIP Code																				
Location of Principal Assets of Business Debtor (if different from street address above):																						
Type of Debtor (Form of Organization) (Check one box) <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Individual (includes Joint Debtors) <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and provide the information requested below.) State type of entity: 	Nature of Business (Check all applicable boxes.) <ul style="list-style-type: none"> <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Nonprofit Organization qualified under 15 U.S.C. § 501(c)(3) 	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <ul style="list-style-type: none"> <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding <input checked="" type="checkbox"/> Chapter 13 																				
Filing Fee (Check one box) <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (Applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (Applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B. 		Nature of Debts (Check one box) <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business 																				
Chapter 11 Debtors Check one box: <ul style="list-style-type: none"> <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <ul style="list-style-type: none"> <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts owed to non-insiders or affiliates are less than \$2 million. 		THIS SPACE IS FOR COURT USE ONLY																				
Statistical/Administrative Information <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors. 																						
Estimated Number of Creditors <table style="width:100%; text-align: center; border-collapse: collapse;"> <tr> <td>1-49</td> <td>50-99</td> <td>100-199</td> <td>200-999</td> <td>1000-5,000</td> <td>5001-10,000</td> <td>10,001-25,000</td> <td>25,001-50,000</td> <td>50,001-100,000</td> <td>OVER 100,000</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>			1-49	50-99	100-199	200-999	1000-5,000	5001-10,000	10,001-25,000	25,001-50,000	50,001-100,000	OVER 100,000	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Estimated Assets <table style="width:100%; text-align: center; border-collapse: collapse;"> <tr> <td>\$0 to \$50,000</td> <td>\$50,001 to \$100,000</td> <td>\$100,001 to \$500,000</td> <td>\$500,001 to \$1 million</td> <td>\$1,000,001 to \$10 million</td> <td>\$10,000,001 to \$50 million</td> <td>\$50,000,001 to \$100 million</td> <td>More than \$100 million</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>		\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
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(Official Form 1) (10/05)

FORM B1, Page 3

<p>Voluntary Petition</p> <p><i>(This page must be completed and filed in every case)</i></p>	<p>Name of Debtor(s): Stoller, Leo</p>
<p style="text-align: center;">Signatures</p> <p style="text-align: center;">Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by §342(b) of the Bankruptcy Code.</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X <u>/s/ Leo Stoller</u> Signature of Debtor Leo Stoller</p> <p>X _____ Signature of Joint Debtor</p> <p>_____ Telephone Number (If not represented by attorney)</p> <p><u>December 20, 2005</u> Date</p>	<p style="text-align: center;">Signature of a Foreign Representative</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.</p> <p>(Check only one box.)</p> <p><input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by §1515 of title 11 are attached.</p> <p><input type="checkbox"/> Pursuant to §1511 of title 11, United States Code, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.</p> <p>X _____ Signature of Foreign Representative</p> <p>_____ Printed Name of Foreign Representative</p> <p>_____ Date</p>
<p style="text-align: center;">Signature of Attorney</p> <p>X <u>/s/ Melvin J. Kaplan, Bennett A. Kahn, Rae Kaplan</u> Signature of Attorney for Debtor(s)</p> <p><u>Melvin J. Kaplan, Bennett A. Kahn, Rae Kaplan</u> Printed Name of Attorney for Debtor(s)</p> <p><u>Melvin J. Kaplan & Associates P.C.</u> Firm Name</p> <p><u>14 E. Jackson Blvd.</u> <u>Suite 1200</u> <u>Chicago, IL 60604</u> Address</p> <p style="text-align: right;">Email: www.financialrelief.com</p> <p><u>(312)294-8989 Fax: (312)294-8995</u> Telephone Number</p> <p><u>December 20, 2005</u> Date</p>	<p style="text-align: center;">Signature of Non-Attorney Bankruptcy Petition Preparer</p> <p>I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)</p> <p>_____ Address</p> <p>X _____ Date</p> <p>Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.</p> <p>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:</p> <p>_____ _____</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><i>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.</i></p>
<p style="text-align: center;">Signature of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____ Signature of Authorized Individual</p> <p>_____ Printed Name of Authorized Individual</p> <p>_____ Title of Authorized Individual</p> <p>_____ Date</p>	<p>_____ Date</p> <p>Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.</p> <p>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:</p> <p>_____ _____</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><i>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.</i></p>

B 201 (10/05)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

**NOTICE TO INDIVIDUAL CONSUMER DEBTOR UNDER § 342(b)
OF THE BANKRUPTCY CODE**

In accordance with § 342(b) of the Bankruptcy Code, this notice: (1) Describes briefly the services available from credit counseling services; (2) Describes briefly the purposes, benefits and costs of the four types of bankruptcy proceedings you may commence; and (3) Informs you about bankruptcy crimes and notifies you that the Attorney General may examine all information you supply in connection with a bankruptcy case. You are cautioned that bankruptcy law is complicated and not easily described. Thus, you may wish to seek the advice of an attorney to learn of your rights and responsibilities should you decide to file a petition. Court employees cannot give you legal advice.

1. Services Available from Credit Counseling Agencies

With limited exceptions, § 109(h) of the Bankruptcy Code requires that all individual debtors who file for bankruptcy relief on or after October 17, 2005, receive a briefing that outlines the available opportunities for credit counseling and provides assistance in performing a budget analysis. The briefing must be given within 180 days before the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted by telephone or on the Internet) and must be provided by a nonprofit budget and credit counseling agency approved by the United States trustee or bankruptcy administrator. The clerk of the bankruptcy court has a list that you may consult of the approved budget and credit counseling agencies.

In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge. The clerk also has a list of approved financial management instructional courses.

2. The Four Chapters of the Bankruptcy Code Available to Individual Consumer Debtors

Chapter 7: Liquidation (\$220 filing fee, \$39 administrative fee, \$15 trustee surcharge: Total Fee \$274)

1. Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer debts are subject to a "means test" designed to determine whether the case should be permitted to proceed under chapter 7. If your income is greater than the median income for your state of residence and family size, in some cases, creditors have the right to file a motion requesting that the court dismiss your case under § 707(b) of the Code. It is up to the court to decide whether the case should be dismissed.

2. Under chapter 7, you may claim certain of your property as exempt under governing law. A trustee may have the right to take possession of and sell the remaining property that is not exempt and use the sale proceeds to pay your creditors.

3. The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. If, however, you are found to have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge and, if it does, the purpose for which you filed the bankruptcy petition will be defeated.

4. Even if you receive a general discharge, some particular debts are not discharged under the law. Therefore, you may still be responsible for most taxes and student loans; debts incurred to pay nondischargeable taxes; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; certain debts which are not properly listed in your bankruptcy papers; and debts for death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs. Also, if a creditor can prove that a debt arose from fraud, breach of fiduciary duty, or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income (\$150 filing fee, \$39 administrative fee: Total fee \$189)

1. Chapter 13 is designed for individuals with regular income who would like to pay all or part of their debts in installments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

2. Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. The period allowed by the court to repay your debts may be three years or five years, depending upon your income and other factors. The court must approve your plan before it can take effect.

3. After completing the payments under your plan, your debts are generally discharged except for domestic support obligations; most student loans; certain taxes; most criminal fines and restitution obligations; certain debts which are not properly listed in your bankruptcy papers; certain debts for acts that caused death or personal injury; and certain long term secured obligations.

B 201 (10/05)

Chapter 11: Reorganization (\$1000 filing fee, \$39 administrative fee: Total fee \$1039)

Chapter 11 is designed for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision by an individual to file a chapter 11 petition should be reviewed with an attorney.

Chapter 12: Family Farmer or Fisherman (\$200 filing fee, \$39 administrative fee: Total fee \$239)

Chapter 12 is designed to permit family farmers and fishermen to repay their debts over a period of time from future earnings and is similar to chapter 13. The eligibility requirements are restrictive, limiting its use to those whose income arises primarily from a family-owned farm or commercial fishing operation.

3. Bankruptcy Crimes and Availability of Bankruptcy Papers to Law Enforcement Officials

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

WARNING: Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information regarding your creditors, assets, liabilities, income, expenses and general financial condition. Your bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

Certificate of Attorney

I hereby certify that I delivered to the debtor this notice required by § 342(b) of the Bankruptcy Code.

<u>Melvin J. Kaplan, Bennett A. Kahn, Rae Kaplan</u>	X <u>/s/ Melvin J. Kaplan, Bennett A. Kahn, Rae Kaplan</u>	<u>December 20, 2005</u>
Printed Name of Attorney	Signature of Attorney	Date
Address:		
14 E. Jackson Blvd.		
Suite 1200		
Chicago, IL 60604		
(312)294-8989		

Certificate of Debtor

I (We), the debtor(s), affirm that I (we) have received and read this notice.

<u>Leo Stoller</u>	X <u>/s/ Leo Stoller</u>	<u>December 20, 2005</u>
Printed Name(s) of Debtor(s)	Signature of Debtor	Date
Case No. (if known) _____	X _____	Date
	Signature of Joint Debtor (if any)	Date

Brett Brothers Inc.
9515 E. Montgomery
Spokane, WA 99206

Counsel Press

Hi-Tec Sports USA
c/o Bremer & Whyte
444 W. C. St., Ste. 140
San Diego, CA 92101

Julia Bishop

NEWDEA, Inc.
c/o Holme, Roberts & Owen
90 S. Cascade Ave., Ste. 1300
Colorado Springs, CO 80903

Pure Fishing
c/o Banner & Witcoff
10 S. Wacker Dr., Ste. 3000
Chicago, IL 60606

EXHIBIT 4

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable JACK B. SCHMETTERER Hearing Date DECEMBER 19, 2006

Bankruptcy Case No. 05 B 64075 Adversary No. _____

Title of Case LEO STOLLER

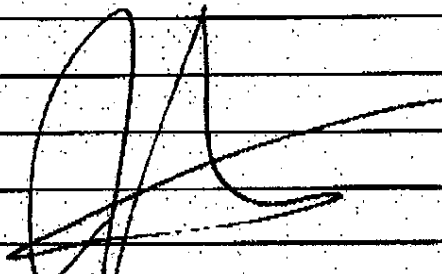
Brief Statement of Motion DEBTOR'S MOTION FOR PERMISSION OF COURT TO REPRESENT HIMSELF AND HIS CORPORATE ENTITIES BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Representing _____

ORDER

IT IS HEREBY ORDERED THAT:

For reasons stated from the bench, Debtor's motion for permission of court to represent himself and his corporate entities before the trademark trial and appeal board is denied.



ENTER: Jack B. Schmetterer, USBJ

EXHIBIT 5

UNITED STATES BANKRUPTCY COURT
FOR NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re:

LEO STOLLER,

Debtor.

Hon. Jack B. Schmetterer

Appeal from the U.S. District
Court for the Northern District,
Eastern Division
Case No. 05-B-64075

NOTICE OF MOTION

TO: TIMOTHY C. MEECE, BANNER & WITCOFF, LTD.,
10 SOUTH WACKER DRIVE, SUITE 3000, CHICAGO, ILLINOIS 60606

RICHARD FOGEL, Shaw, Gussis, Fishman, Glantz,
Wolfson & Towbin LLC., 321 N. Clark Street, Suite 800
Chicago, Illinois 60610

PLEASE TAKE NOTICE that on Tuesday, December 12,
2006 at 10⁰⁰ a.m., Debtor shall appear before the Honorable Judge Schmetterer in
the courtroom usually occupied by him, 219 S. Dearborn, Chicago, Illinois, 60603, and then
and there present Debtor's **MOTION FOR PERMISSION OF COURT TO ALLOW LEO
STOLLER TO REPRESENT HIMSELF AND HIS CORPORATE ENTITIES BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**, a copy of which is attached hereto.

F I L E D
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

DEC - 8 2006

KENNETH S. GARDNER, CLERK
PS REP. - RD



Leo Stoller
7115 W. North Avenue
Oak Park, Illinois 60302
(773) 551-4827
Email: ldms4@hotmail.com

Date: December 7, 2006

C:\MARKS42\STOLLER.N01

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

DEC - 8 2006

KENNETH S. GARDNER, CLERK
PS REP. - RD

In Re:

LEO STOLLER,

Debtor.

Case No: 05-B-64075

Honorable Jack B. Schmetterer

**MOTION FOR PERMISSION OF COURT TO ALLOW LEO STOLLER
TO REPRESENT HIMSELF AND HIS CORPORATE ENTITIES BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

NOW COMES the Debtor, Leo Stoller, and requests that this Court grant permission for Leo Stoller to represent himself and his corporate entities before the Trademark Trial & Appeal Board ("TTAB"). The TTAB rules provide that a non-lawyer can represent a corporation. Leo Stoller has represented his corporate entities before the TTAB for over 25 years.

The Debtor has over 35 pending matters before the TTAB. The Debtor believes that these cases represent a major asset of the estate of the Debtor. The Trustee, Richard Fogel, has posted a letter at the TTAB blog stating that he voluntarily agrees to dismiss these TTAB proceedings.

Before this Court on December 5, 2006, it was assumed and Leo Stoller is working to regain his corporate entities and his assets and reach an amicable resolution in this proceeding. Stoller presented a settlement offer to the Trustee of \$100,000 in full satisfaction an accord of the Debtor's debts.

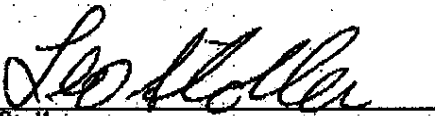
The TTAB recently issued an order on November 29, 2006, in *Central Mfg. Co. v. Jovan Pocekovic*, Opp. No. 91164582, finding that: See a true and correct copy attached hereto and marked as Exhibit 1.

"The Board finds that Mr. Stoller is without authority to file papers in this proceeding, that the authority to act in this matter remains vested with the trustee and the proceeding remains dismissed and terminated."

Leo Stoller has to respond to this TTAB order, otherwise the TTAB will not only dismiss the *Poczekovic* case, but the TTAB will dismiss all 35 of the Debtor's pending cases before the TTAB. The Debtor believes these cases represent the largest asset of the Debtor's Estate. Many of these cases have been pending for 10 years or more. The Debtor made a good faith effort and contacted the Trustee, Richard Fogel, to seek his permission to permit Leo Stoller to represent his companies before the TTAB, in order to avoid having all of the said cases dismissed. The result of which that even if Leo Stoller were to regain his corporate assets, he could never be made whole again. Secondly, Leo Stoller sent an email to Mr. Fogel requesting permission to represent his corporations in order to respond to the said TTAB order. See a true and correct copy attached hereto and marked as **Exhibit 2**.

The Trustee sent a response to Leo Stoller's email, attached hereto and marked as **Exhibit 3**. Mr. Fogel stated that he would not give Leo Stoller permission to appear before the TTAB in order to protect his company's interests.

The Debtor is seeking permission from this Court to allow Leo Stoller to represent his corporate entities before the TTAB and to be able to respond to the order which is marked as **Exhibit 1**. There is an urgency in this request, in that unless permission is granted to Leo Stoller, all of the TTAB cases will be dismissed within the next 30 days.


Leo Stoller
7115 W. North Avenue
Oak Park, Illinois 60302
(312) 545-4554
Email: ldms4@hotmail.com

Date: December 7, 2006

Certificate of Mailing

I hereby certify that the foregoing is being hand-delivered to the following address:

Clerk of the Court
United States Bankruptcy Court
219 N. Dearborn
Chicago, IL 60607



Leo Stoller

Date: December 7, 2006

Certificate of Service

I hereby certify that the foregoing is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to:

Richard M. Fogel, Trustee
Janice A. Alwin, Esq.
Counsel for Trustee
Shaw, Gussis, Fishman, Glantz,
Wolfson & Tow
321 N. Clark Street, Suite 800
Chicago, Illinois 60610



Leo Stoller

Date: December 7, 2006

C:\MARKS42\STOLLER.M07

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Skoro

Mailed: November 29, 2006

Opposition No. 91164582

CENTRAL MFG. CO

v.

Pocckovic, Jovan

This case now comes up on Mr. Stoller's motion for reconsideration of the order dismissing this matter on October 13, 2006. Applicant's counsel has responded.

By way of background, on October 13, 2006 the Board received a copy of an order appointing Mr. Richard Fogel to represent opposer as trustee in bankruptcy in this matter. At the same time the Board received a stipulated dismissal without prejudice between Mr. Fogel, as opposer's representative, and counsel for the applicant. On the same day the Board entered the stipulation and dismissed the proceeding without prejudice. On October 17, 2006, Mr. Stoller filed a request for reconsideration of the dismissal and to suspend the proceeding contending that Mr. Fogel is without authority to act on his behalf and further that Mr. Stoller has filed an appeal contesting Mr. Fogel's authority to act on his behalf and on the behalf of his companies.

EXHIBIT 1

Opposition No. 9114582

Applicant's counsel depended contending Mr. Stoller is operating outside the bankruptcy statute and failed to properly appeal the bankruptcy court's decision on appointing a trustee as well as the trustee's authority to act on corporate matters.

The Board finds that Mr. Stoller is without authority to file papers in this proceeding, that the authority to act in this matter remains vested with the trustee and the proceeding remains dismissed and terminated.

*By the Trademark Trial
and Appeal Board*

-----Original Message-----

From: L Stoller [mailto:ldns4@hotmail.com]
Sent: Wednesday, December 06, 2006 4:40 PM
To: Rick Fogel
Cc: Ac.iana@sbcglobal.net
Subject: RE: Stoller Chapter 7

NOT DISCOVERABLE FOR SETTLEMENT PURPOSES ONLY RULE 408

Mr. Fogel,

I have been responding to your emails today. And I will make every effort after yesterdays court hearing were possible to fully cooperate with you so that the next time we are in front of Judge Schmetterer you will be able to attest to Stoller's full cooperation.

I have asked you earlier in the day today if you will give me written permission to continue to represent my companies before the Patent and Trademark Office, Trademark Trial and Appeal Board so as to prevent the TTAB from dismissing all of my outstanding cases. I have ask you in good faith to let me know today in writing that you would give me permission to do what I believe Judge Schmetterer would like you to do and that is to allow Stoller to protect his assets assuming Stoller will recover them. Thus far I am still waiting for your response. This is an urgent matter and we can both avoid another trip in front of Judge Schmetterer if you would merely state in writing that I have authority to continue to represent myself and my companies before the Patent and Trademark Office, TTAB.

If you rather have Judge Schmetterer this issue so be it, but there is going to be a time when Judge Schmetterer is going to see that the Trustee's position is unreasonable.

I am also putting you on notice that I am appealing yesterday's decisions of Judge Schmetterer. So far I will have three appeals now and will of course move consolidate them for judicial economy. I have nothing better to do than to devote my entire schedule to litigating my cases until I reach an acceptable conclusion the same as I am sure you would do if similarly situated.

Please let me know asap if you are willing to allow me to continue to represent myself so that we do not need any court intervention.

EXHIBIT 2

Mr. Fogel it is my goal to cooperate with you and to attempt to reach an amicable settlement with my creditors and to re gain what ever is left of my assets so that I can devote my time to other matters and not to this one...I am waiting for your response. If I don't hear from you today, I will assume that you will not give me permission and I will file a motion and let Judge Schmetterer decide.

Most Cordially,



Leo Stoller

Mr. Stoller:

I am not going to give you permission to take any action that involves property of your bankruptcy estate outside the context of a settlement approved by Judge Schmetterer. I have just invited you and Mr. Hirsh to have a settlement discussion with me and Janice Alwin tomorrow morning or Friday afternoon.

Richard M. Fogel
Shaw Gussis Fishman Glantz Wolfson & Towbin LLC
321 N. Clark Street, Suite 800
Chicago, IL 60610
Direct dial: (312) 276-1334
Direct fax: (312) 275-0578

EXHIBIT 3

EXHIBIT

5

EXHIBIT 6

05-64075:181.2:Motion to Approve:Proposed Order Entered: 11/15/2006 8:53:41 AM by:Janice Alwin Page 1 of 3

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re

LEO STOLLER,

Debtor.

Chapter 7

Case No. 05-64075

Hon. Jack B. Schmetterer

Hearing Date: December 5, 2006

Hearing Time: 10:30 a.m.

**ORDER APPROVING TRUSTEE'S AGREEMENT WITH GOOGLE, INC. TO
MODIFY STAY AND COMPROMISE CERTAIN CLAIMS OF DEBTOR'S
WHOLLY-OWNED CORPORATIONS AND RELATED RELIEF**

Upon consideration of the application (the "Motion") of Richard M. Fogel, not individually, but as chapter 7 trustee (the "Trustee") for the bankruptcy estate of Leo Stoller (the "Debtor"), for the entry of an order approving an agreement by and between Google, Inc. ("Google") and the Trustee, in his capacity as sole shareholder of certain of the Debtor's Wholly-Owned Corporations (as defined in the Motion) to modify the automatic stay and compromise certain claims (the "Agreement"); due and proper notice of the Motion having been given; and the Court being otherwise fully advised in the premises; its is hereby

ORDERED *for reasons stated from the bench.*

1. Notice of the Motion as provided for therein is sufficient and further notice is waived.
2. The terms of the Agreement as further specified in the Motion are approved pursuant to 11 U.S.C. §§ 105(a) and 362(d) and Federal Rule of Bankruptcy Procedure 4001(d).
3. The Trustee is authorized to take such further actions and execute such documents, including but not limited to the Agreement, as may be necessary to document the terms of the Agreement, as further set forth in the Motion.

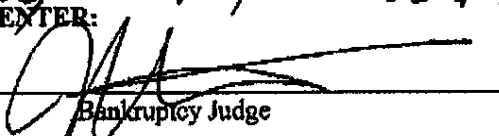
{5814 ORD} A0149767.DXX

05-64075:181.2:Motion to Approve:Proposed Order Entered: 11/15/2006 8:53:41 AM by:Janice Alwin Page 2 of 3

4. The stay, to the extent applicable, is hereby modified consistent with the terms of the Agreement.

5. This Court shall retain ^{s/} jurisdiction to enforce the provisions of this order after notice and a hearing, and to reconsider, or vacate or modify

this order should the bankruptcy case be dismissed,

ENTER:
Date: 12/5/06 
Bankruptcy Judge

DEC 05 2006

Prepared by:
Janice A. Alwin (6277043)
Shaw Gussis Fishman Glantz
Wolfson & Towbin LLC
321 North Clark Street, Suite 800
Chicago, IL 60610
Tel: (312) 276-1323
Fax: (312) 275-0571
email: jalwin@shawgussis.com

*6. for reasons stated the objection
of Mr. Stoller pro se was
overruled.*

EXHIBIT 7

AGREEMENT

This Agreement ("Agreement") is made and entered into this ___ day of December, 2006, by and between, on the one hand, Google Inc. ("Google" or "Plaintiff") and, on the other hand, by Central Mfg. Inc., also known without limitation as Central Mfg. Co., Central Mfg. Co. (Inc.), Central Manufacturing Company, Inc. and/or Central Mfg. Co. of Illinois (collectively, "Central Mfg.") and Stealth Industries, Inc., also known without limitation as Rentamark and/or Rentamark.com ("Stealth") (collectively, Central Mfg. and Stealth are the "Entity Defendants"). Each of the foregoing is a "Party" and together are the "Parties."

WHEREAS, on or about December 23, 2005, Leo Stoller ("Stoller") filed in the United States Bankruptcy Court for the Northern District of Illinois a Petition for Bankruptcy under Chapter 13 of the United States Bankruptcy Code, in the matter encaptioned *In re Leo Stoller*, Case No. 05 B 64075 (hereinafter, the "Bankruptcy Proceeding");

WHEREAS, on or about August 31, 2006, the United States Bankruptcy Court for the Northern District of Illinois converted the Bankruptcy Proceeding to one under Chapter 7 of the United States Bankruptcy Code, and Richard M. Fogel was subsequently duly appointed Chapter 7 Trustee of the bankruptcy estate of Leo Stoller (hereinafter, the "Trustee");

WHEREAS, on or about October 5, 2006, the United States Bankruptcy Court for the Northern District of Illinois entered in the Bankruptcy Proceeding an Order granting the Trustee authority to act on behalf of Stoller's entities in the capacity as sole shareholder, including without limitation as the sole shareholder of the Entity Defendants;

WHEREAS, there is now pending in the Bankruptcy Proceeding a motion by Google requesting that the Court declare that its anticipated lawsuit against the Entity Defendants and against Leo Stoller individually (hereinafter, "Stoller") is outside the scope of the automatic stay under Section 362(d) of the United States Bankruptcy Code (11 U.S.C. § 362(d)) or, in the alternative, that the Court modify the stay for cause to allow Google to proceed with its contemplated action (hereinafter, the "Bankruptcy Motion");

WHEREAS, in connection with the Bankruptcy Motion, Google has provided the Entity Defendants with a Complaint that Google seeks and intends to file against the Entity Defendants and against Stoller alleging claims for false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* and for unfair competition (hereinafter, the "Complaint");

WHEREAS, on or about March 1, 2006, Central Mfg. purported to institute with the Trademark Trial and Appeal Board ("TTAB") Opposition No. 91170256 involving

Google's Application Serial No. 76314811 (hereinafter, the "Opposition"), which Opposition was subsequently dismissed by TTAB by Order dated July 30, 2006;

WHEREAS, on or about October 4, 2006, the United States Court of Appeals for the Federal Circuit dismissed for lack of jurisdiction a Notice of Appeal that Stoller had purported to file in connection with the Opposition, which dismissal is the subject of a currently pending motion for reconsideration purportedly filed by Stoller individually;

WHEREAS, on or about May 8, 2006, Central Mfg. purported to institute with TTAB Cancellation No. 92045778 involving Google's Registration No. 2806075 (hereinafter, the "Cancellation Proceeding"), which proceeding remains pending and is the subject of a pending Motion to Dismiss by Google;

WHEREAS, on or about June 11, 2006, Central Mfg. purported to file an Intent-to-Use Application for the mark GOOGLE with the United States Trademark Office that is pending as S/N 78905472 (hereinafter, the "ITU Application"); and

WHEREAS, the Parties wish to resolve the foregoing matters on the terms set forth and described herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, terms, representations and warranties set forth herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1. "Affiliates" of any person, entity or Party means any and all corporations, proprietorships, partnerships and business entities that, directly or indirectly, have control over, are under common control with, or are subject to control by, such person, entity or Party. Without limiting the generality of the foregoing, each of the entities, proprietorships, d/b/a's and/or other businesses listed in Exhibit B hereto shall be deemed an Affiliate of Central Mfg. and Stealth for purposes of this Agreement.

1.2. "Agreement" means this Agreement, as amended from time to time in accordance with its terms.

1.3. "Google" or "Plaintiff" means Google Inc. and its officers, directors, employees, representatives and agents, and its Affiliates.

1.4. "Entity Defendants" and/or "Entity Defendant" means Central Mfg., Stealth and each of their respective Affiliates.

1.5. "GOOGLE Mark" includes any and all marks, trade names, terms, words, designs and designations that embody, incorporate or include GOOGLE, whether in whole or in part and regardless of what other terms are included therewith, or that are

confusingly similar to or dilute GOOGLE. In addition, "GOOGLE Mark" includes any and all applications for registration and registrations in connection therewith and includes any and all trademark, service mark, trade name, trade dress, design, publicity and all other rights and interests of any kind associated therewith, however denominated, and any portion thereof, including without limitation any and all such rights arising by contract, statute, common law or otherwise.

1.6. "Additional Mark(s)" means any and all marks, trade names, terms, words, designs and designations other than the GOOGLE Mark that have been, are or shall be in the future owned or used by Google and/or the subject of any application for registration or registration by Google. Furthermore, "Additional Mark(s)" includes any and all marks, trade names, terms, words, designs and designations that embody, incorporate or include the Additional Mark(s), whether in whole or in part and regardless of what other terms are included therewith, or that are confusingly similar to or dilute such Additional Mark(s).

1.7. "Proceeding" means any lawsuit, action, application or proceeding of any kind with any court, tribunal or agency, whether judicial, administrative or otherwise, and includes without limitation any application for registration.

1.8. "Entity Defendants' Web Sites" means any web pages within the control of any Entity Defendant.

ARTICLE 2. AGREEMENTS AND REPRESENTATIONS

2.1. Permanent Injunction and Final Judgment. The Entity Defendants agree, warrant and covenant that none of them shall oppose the Bankruptcy Motion. Concurrent with the execution of this Agreement, the Entity Defendants shall execute and return promptly to Google's counsel of record the Permanent Injunction and Final Judgment attached hereto as Exhibit A and incorporated herein by this reference. Service of the Complaint upon the Entity Defendants may be effectuated by delivery of a copy of the Complaint and summons upon the Trustee. After the Complaint is filed and delivered to the Trustee, Google will submit the fully executed Permanent Injunction and Final Judgment to the Court for entry. Should the Court, for any reason, decline to enter the Permanent Injunction and Final Judgment as an order and judgment of the Court, this Agreement shall be void and have no binding effect upon any Party hereto. In the event that the Court enters the Permanent Injunction and Final Judgment as an order and judgment of the Court, the date of such entry shall be the "Effective Date" of this Agreement as that term is used herein.

2.2. The Entity Defendants' Lack of Rights. In addition to acknowledging that the Permanent Injunction and Final Judgment attached hereto as Exhibit A shall be binding upon them as a Court decree upon its entry by the Court, the Entity Defendants represent that the matters set forth in paragraph 4 of the Permanent Injunction and Final Judgment are accurate and warrant and covenant that they shall comply with and abide by

the terms of the Permanent Injunction and Final Judgment as though such terms are set forth herein at length. Without limiting the generality of the foregoing, no Entity Defendant shall make any statement or representation or do any act which may be taken to indicate that it has any right, title or interest in, any ownership of, or any right or ability to use, license, sell, transfer or alienate the GOOGLE Mark. In addition, and without limiting the generality of the foregoing, the Entity Defendants represent that they have no right, title or interest in any trademark, service mark, trade name or designation of origin that is used or has been used by Google as of and/or up through the Effective Date.

2.3. No Other Proceedings and No Assignment. Each Entity Defendant represents, warrants and covenants to Google that, as of the Effective Date, it has not filed or commenced any Proceeding relating to Google, including without limitation to the GOOGLE mark or any Additional Mark(s), except for the Opposition, the Cancellation Proceeding and the ITU Application as identified above. Each Entity Defendant further represents, warrants and covenants that, as of the Effective Date, it has not assigned or transferred, or purported to assign or transfer, to any third party any claim, application or other matter, or any portion of any claim, application or other matter, against or otherwise relating to Google, including without limitation to the GOOGLE Mark and/or the Additional Mark(s).

2.4. Forbearance Relating to the GOOGLE Mark. Each Entity Defendant represents, warrants and covenants that it will forever refrain and forbear from commencing, instituting, filing, maintaining or prosecuting any Proceeding relating to the GOOGLE mark. Without limiting the generality of their other obligations set forth in this Article 2 and the Permanent Injunction and Final Judgment, each Entity Defendant specifically agrees and covenants not to contest the validity and/or enforceability of Google's GOOGLE Mark and not to assert that any person or entity has rights in the GOOGLE mark that are superior to Google's rights.

2.5. Proceedings Involving Additional Mark(s). Each Entity Defendant agrees, represents and covenants that it shall not assert any right to any Additional Mark(s), or file, commence or initiate any Proceeding relating to any Additional Mark(s), without first complying with the requirements of this Section 2.5. As a precondition to and before filing any such Proceeding, the Entity Defendants shall submit for decision by an arbitrator, and shall serve upon Google, a statement and all evidence alleged to support the claim of any Entity Defendant to have right, title or interest in or to such Additional Mark(s). The arbitrator shall determine whether any Entity Defendant has made a sufficient and credible threshold showing of rights such that a Proceeding by such Entity Defendant is justifiable under the facts and applicable law. The arbitration will be conducted in accordance with the then-existing commercial arbitration rules of the American Arbitration Association ("AAA"). The arbitration will be conducted before one arbitrator to be selected as agreed upon by the Parties or, if no such agreement is reached, then as provided in the AAA rules. The Entity Defendants shall solely bear the cost of the arbitrator's fees and expenses. In the event that the arbitrator determines that an Entity Defendant has made a sufficient and credible threshold showing, such Entity Defendant may proceed with its contemplated Proceeding, although such determination

by the arbitrator shall not be binding on Google in any Proceeding and shall not be admissible for any purpose in any Proceeding (except to establish compliance with the requirements of this Section 2.5). In the event that the arbitrator determines that the Entity Defendants have failed to make a sufficient and credible threshold showing, the Entity Defendants shall (a) forever refrain and forbear from commencing, instituting, filing, maintaining or prosecuting any Proceeding relating to the Additional Mark(s) that were the subject of the arbitrator's decision, and (b) reimburse Google for all of its attorney's fees and expenses, including without limitation any expert fees, that Google incurred in connection with the arbitration.

2.6. Complete Defense. From and after the Effective Date of this Agreement, any violation of Section 2.4 or 2.5 of this Agreement will be deemed a full and complete defense to any Proceeding brought against Google and may be pled as such.

2.7. Discontinuance of Entity Defendants' Proceedings. Within three (3) court days of the Effective Date as described in Section 2.1 above, the Entity Defendants shall: (a) dismiss with prejudice the Cancellation Proceeding by filing with TTAB an executed Dismissal With Prejudice in the form attached hereto as Exhibit B and incorporated herein by this reference; (b) abandon the ITU Application by filing with the Trademark Office an executed Notice of Abandonment in the form attached hereto as Exhibit C; and (c) withdraw any Notice of Appeal filed with the Federal Circuit in their names or on their behalf in the form attached hereto as Exhibit D and shall thereafter treat the dismissal of the Opposition by TTAB and the dismissal of the appeal therefrom by the United States Court of Appeals for the Federal Circuit as final and conclusive and shall not file any further notice(s) of appeal from, or seek in any manner any review or reconsideration of, TTAB's dismissal of the Opposition. At the Entity Defendants' option, the Entity Defendants alternatively may provide to Google's counsel the executed forms attached as Exhibits B, C and D hereto concurrently with their execution of this Agreement, and Google's counsel shall ensure the filing of the executed Exhibits in the event (and only in the event) that the Court enters the Permanent Injunction and Final Judgment as an order and judgment of the Court. In the event that any of the actions described in this Section is insufficient to discontinue the Cancellation Proceeding, the Opposition (including all appeals therefrom and review thereof) and/or the ITU Application, the Entity Defendants represent, warrant and covenant that they shall take any and all further steps necessary to effectuate the final and complete termination of each such proceeding.

2.8. Relief. The Entity Defendants agree that Google has no adequate remedy at law for any breach or violation of the Permanent Injunction and Final Judgment or Sections 2.4, 2.5 and 2.7 above by any Entity Defendant. Accordingly, each Entity Defendant agrees that Google shall be entitled to Court orders mandating specific performance and/or injunctive relief in the event of any such breach or violation by any Entity Defendant without any showing of irreparable harm or the inadequacy of any remedy at law. This right of specific performance and injunctive relief is in addition to any and all other legal and equitable remedies that Google may have for such breach or violation. Neither the foregoing nor anything else contained in this Agreement shall

subject the Trustee, his agents or his attorneys to any claim for monetary damages for breach of any provision of this Agreement.

2.9. Costs and Fees. As between Google and the Entity Defendants, each Party to this Agreement shall bear its own costs and fees, including without limitation its attorney's and expert fees, in connection with the Complaint, the Bankruptcy Motion, the Opposition, the Cancellation Proceeding and the ITU Application. Neither this Section nor anything else in this Agreement shall operate to preclude, restrict or limit Google from seeking reimbursement of its fees and costs or any other monetary or equitable relief from any person or entity not a party to this Agreement, including without limitation Stoller individually.

2.10. Authority. Each Party represents and warrants to each other Party that (a) such Party has the full authority and capacity to make the representations, covenants and promises set forth in this Agreement and (b) each signatory has authority to bind the Party on behalf of whom such signatory is executing this Agreement.

ARTICLE 3 RELEASES

3.1. Voidability. The Entity Defendants acknowledge and understand that Google, in entering into this Agreement, is materially relying upon the accuracy of the Entity Defendants' representations, covenants and promises set forth in Article 2 of this Agreement. Accordingly, the Entity Defendants acknowledge and agree that, should Google discover after the execution of this Agreement that said representations in Article 2 are or were inaccurate in any respect or should any Entity Defendant fail to comply with any obligation set forth in Article 2 above, Google may, at its sole and exclusive election, treat Section 2.1 above and Section 3.2 below as null and void and seek to recover any and all damages, of any and all types permitted by law, including without limitation for recovery of its past attorney's fees. Furthermore, in the event that any Entity Defendant in the future asserts any claim against Google, the release set forth in Section 3.2 shall be voidable at Google's sole election and discretion, and neither the release set forth in Section 3.2 nor anything else in this Agreement or the Permanent Injunction and Final Judgment shall be deemed to limit, restrict or preclude Google from asserting any defense or claim, including without limitation the claims set forth in the Complaint, or seeking any and all damages, of any and all types, including without limitation for its past attorney's fees, in connection therewith. Notwithstanding the foregoing, if any claim asserted by any Entity Defendant against Google in the future is not or was not expressly authorized by the Trustee in writing, then the release set forth in Section 3.2 shall not be voidable to the extent (and only to the extent) that it applies to the Trustee or to the estate then in control of the Trustee (and only if and to the extent then in the control of the Trustee).

3.2. Release by Google. Subject to Section 2.7 and Section 3.1 of this Agreement, and except for the rights, duties, liabilities, and obligations arising out of this

Agreement and the Permanent Injunction and Final Judgment, Google hereby releases and discharges Stoller's bankruptcy estate and the Trustee as the representative of Stoller's bankruptcy estate from any and all claims, demands, causes of action, obligations, damages and liabilities arising out of the claims set forth in the Complaint through, and only through, the Effective Date of this Agreement. Neither the release in this Section 3.2 nor anything in this Agreement applies to Stoller individually, including for acts and/or omissions by Stoller in his capacity as an officer, director, shareholder, agent or representative of any Entity Defendant. Without limiting the generality of the foregoing sentence, neither this Section 3.2 nor anything else in this Agreement shall apply to, release, limit or waive any and all claims, demands, causes of action, obligations, damages and liabilities that Google has against Stoller individually, including without limitation for acts and/or omissions by Stoller in his capacity as an officer, director, shareholder, agent or representative of any Entity Defendant.

3.3. Release by Entity Defendants. The Entity Defendants hereby release and discharge Google from any and all claims, demands, causes of action, obligations, damages and liabilities, of whatever kind and nature at law, equity or otherwise, known or unknown, arising from, in connection with or based in any manner upon any trademark, service mark, trade name or designation of origin that Defendants purport to own or purport to otherwise have any right, title or interest in, from the beginning of time through the Effective Date of this Agreement. The Entity Defendants, and each of them, hereby acknowledge that they are familiar with California Civil Code § 1542 and that they hereby waive the protection of California Civil Code § 1542 with respect to their release set forth in this Section 3.3. California Civil Code § 1542 provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

The Entity Defendants each waive and relinquish any right or benefit which they have or may have under California Civil Code § 1542 and under any comparable statute or common law rule in any other jurisdiction with respect to their release set forth in this Section 3.3.

3.4. No Right or License. Nothing in this Agreement confers, or shall be deemed to confer, any right or license to use Google's GOOGLE mark, its Additional Mark(s) or any of Google's other intellectual property rights in any manner. Nothing in this Agreement otherwise waives, relinquishes, limits or compromises any such rights of Google.

ARTICLE 4
MISCELLANEOUS

4.1. Amendment. This Agreement may be amended, modified or supplemented, but only in writing signed by all of the Parties affected by the amendment.

4.2. Counterparts. This Agreement may be executed in any number of counterparts by the Parties, and when each Party has signed and delivered at least one such counterpart to the other Party, each counterpart shall be deemed an original and taken together shall constitute one and the same Agreement that shall be binding and effective as to all Parties as set forth herein. For the purposes of this Agreement, a facsimile signature will be deemed effective and binding as against the Party executing the facsimile signature.

4.3. Headings. The headings preceding the text of Articles and Sections of this Agreement are for convenience only and shall not be deemed part of this Agreement.

4.4. Fees. The prevailing party in any action or motion brought to enforce or interpret this Agreement or the Permanent Injunction and Final Judgment shall be entitled to an award of attorney's fees and costs, including expert fees, actually incurred in connection with such action or motion.

4.5. Relationship. There is no joint venture, partnership, employment, agency or fiduciary relationship between Google, on the one hand, and the Entity Defendants, on the other hand. Nothing contained in this Agreement shall be construed to imply any such relationship.

4.6. Third Party Beneficiaries. This Agreement is for the benefit of the Parties hereto and their respective Affiliates and, except as otherwise expressly stated herein, no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, liability, reimbursement, claim of action, defense or other right in excess of those existing without reference to this Agreement.

4.7. Term. The term of this Agreement is perpetual.

4.8. Severability. Any part of this Agreement which may be deemed unenforceable or invalid shall not affect the enforceability or validity of the remaining parts of this Agreement, but shall be deemed severed from the remaining parts which shall remain in full force and effect.

4.9. Affiliates. This Agreement shall be binding upon the Parties and each and all of their respective successors, assigns, and representatives, including any corporate parent and corporate subsidiaries and Affiliates, and any of their officers, directors, agents, employees and representatives in their capacity as officers, directors, agents, employees and representatives.

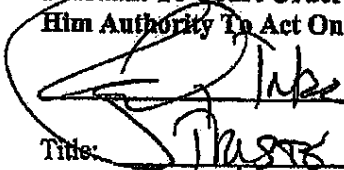
4.10. Entire Understanding. This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, representations and agreements made by and between the Parties with respect thereto. Each Party acknowledges that: (a) prior to signing this Agreement, such Party has carefully read and reviewed with its or his attorneys, and knows and understands, the full contents of this Agreement and is voluntarily entering into this Agreement, (b) no other Party, nor any agent or attorney of any other Party, has made any promise, representation, or warranty whatever, express or implied, not contained herein, concerning the subject matter hereof, to induce such Party to execute this Agreement, and (c) such Party has not executed this Agreement in reliance on any such promise, representation, or warranty not contained herein.

4.11. Construction. Ambiguities, inconsistencies, or conflicts in this Agreement shall not be construed against the drafter of the language but will be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the Parties' intentions at the time this Agreement is entered into. Where the context of this Agreement requires, singular terms shall be considered plural, and plural terms shall be considered singular.

WHEREFORE, the Parties hereby acknowledge their agreement and consent to the terms and conditions set forth above through their respective signatures contained below:

Google Inc.

Central Mfg. Inc., by and through The
Trustee, Not Individually, But
Pursuant To Court Order Granting
Him Authority To Act On Its Behalf



Title: _____

Title: _____

Dated: _____

Dated: 12/06/06

Stealth Industries, Inc., by and through
The Trustee, Not Individually, But Pursuant
To Court Order Granting Him Authority
To Act On Its Behalf



Title: _____

Dated: 12/06/06

Exhibit A

Document1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GOOGLE INC.,)
)
 Plaintiff,)
)
 vs.)
)
 CENTRAL MFG. INC. a/k/a CENTRAL)
 MFG. CO., a/k/a CENTRAL MFG. CO.)
 (INC.), a/k/a CENTRAL)
 MANUFACTURING COMPANY, INC.)
 and a/k/a CENTRAL MFG. CO. OF)
 ILLINOIS; and STEALTH INDUSTRIES,)
 INC. a/k/a RENTAMARK and a/k/a)
 RENTAMARK.COM,)
)
 Defendants.)

Civil Action No. _____

PERMANENT INJUNCTION AND FINAL JUDGMENT AS TO
DEFENDANTS CENTRAL MFG. INC. AND STEALTH INDUSTRIES, INC.

This Stipulated Permanent Injunction and Final Judgment is entered into, on the one hand, by Plaintiff Google Inc. ("Google") and, on the other hand, by Defendant Central Mfg. Inc., also known without limitation as Central Mfg. Co., Central Mfg. Co. (Inc.), Central Manufacturing Company, Inc. and/or Central Mfg. Co. of Illinois (collectively, "Central Mfg."), and Defendant Stealth Industries, Inc., also known without limitation as Rentamark and/or Rentamark.com ("Stealth") (collectively, Central Mfg. and Stealth are the "Entity Defendants"). The parties, by and through their undersigned counsel of record having stipulated to the entry of the following Stipulated Permanent Injunction and Final Judgment, and good cause appearing for the entry thereof:

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, 18 U.S.C. § 1964(c) and principles of supplemental jurisdiction under 28 U.S.C. § 1367(a), as well as personal jurisdiction over the Entity Defendants.

2. The Entity Defendants have been duly served with the summons and Complaint in this matter.

3. By Order dated October 5, 2006, the United States Bankruptcy Court for the Northern District of Illinois, the Honorable Jack B. Schmetterer presiding, duly granted Richard M. Fogel, not individually but as Chapter 7 Trustee of the bankruptcy estate of Leo Stoller (the "Trustee"), all right and authority to act on behalf of the Entity Defendants in connection with the matters that are the subject of this Stipulated Permanent Injunction and Final Judgment. By Order dated December 5, 2006, the United States Bankruptcy Court for the Northern District of Illinois, the Honorable Jack B. Schmetterer presiding, granted the Trustee's motion modifying the automatic stay and approving a Settlement Agreement by and between Google and the Entity Defendants, through the Trustee in his capacity as sole shareholder of the Entity Defendants, that included the terms of this Stipulated Permanent Injunction and Final Judgment.

4. Judgment is hereby entered in favor of Plaintiff Google, and against each of the Entity Defendants, on Plaintiff Google's claims for false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), for violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* and for unfair competition.

5. The Entity Defendants admit each and every fact alleged in the Complaint. Without limiting the generality of the foregoing, each of the Entity Defendants admits and represents:

(a) None of the Entity Defendants has any right, title or interest of any kind in the GOOGLE mark or in any mark, trade name or designation that is confusingly similar or dilutes to the GOOGLE mark;

(b) None of the Entity Defendants has any right or lawful ability to license, or offer for licensing, the GOOGLE mark, or any mark or designation that is confusingly similar to or dilutes the GOOGLE mark, in connection with any goods, services or commercial activities; and

(c) None of the Entity Defendants has any right or lawful ability to hold themselves out as or to identify themselves as any business entity of any kind using, in whole or in part and regardless of what other terms may be included, the GOOGLE mark, or any mark or designation that is confusingly similar to or dilutes, the GOOGLE mark, including without limitation any of the following: "GOOGLE," "GOOGLE™ BRAND TRADEMARK LICENSING," "GOOGLE LICENSING" and/or "GOOGLE BRAND PRODUCTS & SERVICES."

6. Each of the Entity Defendants, as well as their officers, directors, principals, agents, servants, employees, successors, assigns, parents, subsidiaries and affiliates and all those acting on their behalf or in concert or participation with them, shall be and hereby are, effective immediately, permanently enjoined from engaging in any of the following acts:

(a) claiming in any advertising, promotion or other materials, including without limitation on any web site, any right, title or interest in GOOGLE, whether in whole or in part and regardless of what other terms may be included, or in any mark, trade name, term, word or designation that is confusingly similar to or dilutes the GOOGLE mark;

(b) instituting, filing or maintaining, or threatening to institute, file or maintain, any application, registration, suit, action, proceeding or any other matter with any Court, with the United States Trademark Office, with the United States Trademark Trial and Appeal Board or with any other judicial or administrative body that asserts any right, title or interest in GOOGLE, whether in whole or in part and regardless of what other terms may be included, or in any mark, trade name, term, word or designation that is confusingly similar to or dilutes the GOOGLE mark;

(c) holding themselves out as or identifying themselves in any manner as any business entity of any kind using, whether in whole or in part and regardless of what other terms

may be included, the GOOGLE mark or any mark, trade name, term, word or designation that is confusingly similar to or dilutes the GOOGLE mark, including without limitation any of the following: "GOOGLE," "GOOGLE™ BRAND TRADEMARK LICENSING," "GOOGLE LICENSING" and/or "GOOGLE BRAND PRODUCTS & SERVICES";

(d) licensing, offering to license, assigning or offering to assign or claiming the ability to license or assign any mark, term, word or designation that embodies, incorporates or uses, in whole or in part and regardless of what other terms may be included, the GOOGLE mark or any mark or designation that is confusingly similar to or dilutes the GOOGLE mark;

(e) interfering with, including without limitation by demanding in any manner any payment or other consideration of any kind for, Plaintiff's use, whether past, current or future, of any mark, name or designation embodying, incorporating or using, in whole or in part and regardless of what other terms may be included, Plaintiff's GOOGLE mark;

(f) using the GOOGLE mark, whether in whole or in part and regardless of what other terms may be included, or any mark, trade name, term, word or designation that is confusingly similar to or dilutes the GOOGLE mark, in connection with the sale, offering for sale, licensing, offering for license, importation, transfer, distribution, display, marketing, advertisement or promotion of any goods, services or commercial activity of any Defendant;

(g) engaging in acts of unfair competition or passing off with respect to Plaintiff Google;

(h) assisting, aiding or abetting any other person or entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (g) above.

7. Each party to this Permanent Injunction and Final Judgment shall bear its respective attorney's fees, costs and expenses incurred in this action; provided, however, that in any proceeding or on any motion to interpret and/or enforce this Permanent Injunction and Final Judgment the prevailing party shall be entitled to an award of reasonable attorney's fees and expenses, including any expert fees.

8. The Entity Defendants hereby waive any further findings of fact and conclusions of law in connection with this Permanent Injunction and Final Judgment and all right to appeal therefrom. It is the intention of the parties hereto that this Permanent Injunction and Final Judgment be afforded full collateral estoppel and res judicata effect as against the Entity Defendants and shall be enforceable as such. The Entity Defendants further hereby waive in this

proceeding, including without limitation in any proceedings brought to enforce and/or interpret this Permanent Injunction and Final Judgment, and in any future proceedings between the parties any and all defenses and/or claims that could have been asserted by the Entity Defendants against Plaintiff, including without limitation any and all defenses, claims or contentions that Plaintiff's GOOGLE mark is invalid and/or unenforceable and/or that any person or entity other than Plaintiff has superior rights to the GOOGLE mark. Without limiting the generality of the foregoing, in the event that Plaintiff brings any proceeding to enforce this Permanent Injunction and Final Judgment, no Entity Defendant shall be entitled to assert, and each Entity Defendant hereby waives any right to assert, any defense or contention other than that he or it has complied or substantially complied in good faith with the terms of this Permanent Injunction and Final Judgment.

9. Nothing in this Judgment is intended to waive, limit or modify in any manner, and shall not be construed to waive, limit or modify, Google's claims, rights or remedies against defendant Leo Stoller, including without limitation for his acts and/or omissions as an officer, director, shareholder, representative or agent of Defendants, or other person or entity other than Central Mfg. and Stealth in connection with this action or otherwise.

10. This Court shall retain jurisdiction for the purposes of enforcing and/or interpreting this Permanent Injunction and Final Judgment to determine any issues which may arise concerning this Permanent Injunction and Final Judgment.

IT IS SO STIPULATED.

DATED: _____, 2006

GOOGLE INC.

By: _____
One of Its Attorneys

Michael T. Zeller (ARDC No. 6226433)
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Tel.: (213) 443-3000
Fax: (213) 443-3100

William J. Barrett (ARDC No. 6206424)
BARACK, FERRAZZANO, KIRSCHBAUM,
PERLMAN & NAGELBERG, LLP
333 West Wacker Drive, Suite 2700
Chicago, Illinois 60606
Tel.: (312) 629-5170
Fax: (312) 984-3150

DATED: _____, 2006

CENTRAL MFG. INC. and STEALTH
INDUSTRIES, INC., by and through Richard M.
Fogel, not individually but as Chapter 7 Trustee
acting as their Sole Shareholder

By: 
One of The Trustee's Attorneys

Janice Alwin (ARDC No. 6277043)
SHAW GUSSIS FISHMAN GLANTZ WOLFSON
& TOWBIN LLC
321 N. Clark Street, Suite 800
Chicago, Illinois 60610
Tel.: (312) 276-1323
Fax: (312) 275-0571

IT IS SO ORDERED.

DATED: _____, 2006

United States District Judge

Exhibit B

Document

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

In the Matter of:

Registration No. 2806075
For the Mark: GOOGLE
Publication Date: December 4, 2001

Cancellation No. 92045778

CENTRAL MFG. CO. (INC.),

Petitioner,

v.

GOOGLE INC.,

Respondent.

**AGREED DISMISSAL OF PETITION
FOR CANCELLATION WITH
PREJUDICE**

Commissioner of Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451

20056/1969046.1

With the consent of Registrant/Respondent, Petitioner, by and through Richard M. Fogel, not individually but as Chapter 7 Trustee duly authorized by Order of the United States Bankruptcy Court of the Northern District of Illinois to act on behalf of Petitioner herein (see attached), hereby withdraws and dismisses with prejudice the Petition for Cancellation in this proceeding. All pending motions are hereby withdrawn and deemed moot.

Respectfully submitted,

On Behalf of Registrant Google Inc.:

Authorized Representative for Petitioner:

By: _____

By:  _____

Michael T. Zeller
QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Tel.: (213) 443-3000
Fax: (213) 443-3100

Richard M. Fogel, not individually but as Chapter
7 Trustee
SHAW GUSSIS FISHMAN GLANTZ
WOLFSON & TOWBIN LLC
321 N. Clark Street, Suite 800
Chicago, Illinois 60610
Tel.: (312) 276-1334
Fax: (312) 275-0578

Dated: October __, 2006

Exhibit C

Document

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	CENTRAL MFG. CO)
Serial No.	:	78/905472)
Filed	:	June 11, 2006)
Mark:	:	GOOGLE)
Examining Attorney	:	Not Assigned)

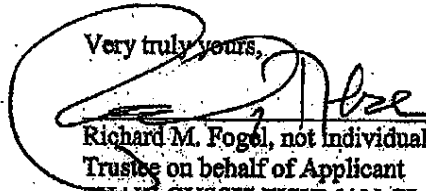
WITHDRAWAL OF APPLICATION

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA
22313-1451

Dear Sir:

Applicant Central Mfg. Co., by and through Richard M. Fogel, not individually but as Chapter 7 Trustee duly authorized by Order of the United States Bankruptcy Court of the Northern District of Illinois to act on behalf of Central Mfg. Co. (see attached), hereby withdraws and abandons its Intent-to-Use Application for GOOGLE, filed on June 11, 2006 and pending as S/N 78905472.

Very truly yours,


 Richard M. Fogel, not individually but as Chapter 7
 Trustee on behalf of Applicant
 SHAW GUSSIS FISHMAN GLANTZ WOLFSON
 & TOWBIN LLC
 321 N. Clark Street, Suite 800
 Chicago, Illinois 60610
 Tel.: (312) 276-1334
 Fax: (312) 275-0578

20056/1969108.1

Exhibit D

Document

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

2006-1534

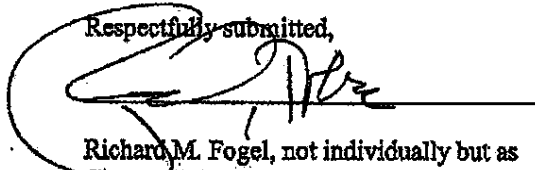
IN RE LEO STOLLER

Appeal from United States Patent and Trademark Office,
Trademark Trial and Appeal Board

CENTRAL MFG.'S WITHDRAWAL OF APPEAL AS TO
TTAB'S DISMISSAL OF OPPOSITION NO. 91170256

Central Mfg. Co. (Inc.), the named Opposer in Opposition No. 91170256, by and through Richard M. Fogel, Chapter 7 Trustee duly authorized by Order of the United States Bankruptcy Court of the Northern District of Illinois to act on behalf thereof (see attached), hereby withdraws the Notice of Appeal, purportedly filed by Leo Stoller on August 17, 2006, with respect to TTAB's Order of July 30, 2006 dismissing Opposition No. 91170256.

Respectfully submitted,



Richard M. Fogel, not individually but as
Chapter 7 Trustee
SHAW GUSSIS FISHMAN GLANTZ
WOLFSON & TOWBIN LLC
321 N. Clark Street, Suite 800
Chicago, Illinois 60610
Tel.: (312) 276-1334
Fax: (312) 275-0578

20056/1972273.1

Exhibit E

Document1

Exhibit E

Association Network Management
Americans for the Enforcement of Attorney Ethics
Americans for the Enforcement of Judicial Ethics
Americans for the Enforcement of Intellectual Property Rights
S. Industries
Sentra Industries
Sentra Sporting USA Co.
The American Association of Premium Incentive, Travel Suppliers & Agents
The National Veterinarian Service Association
The American Recreational Tennis Association
The American Recreational Golf Association
The National Association of Traveling Nurses
The American Sports Association
The U.S. Hardware Industry Association
The National Physician's Association
The National Secretarial Association
The National Optometry Association
The National Accounting Association
The American Society of Podiatrists & Chiropractors
Medical Associations
The National Association of Dentistry
The National Association of Alternative Medicine
USA Sports Co. Inc.
USA Sports Network Association

20056/1967833.1

EXHIBIT 8

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

TTAB

APPLICANT: GOOGLE, INC.
OPPOSER: CENTRAL MFG. CO. (INC.)
APPLICATION SN: 76-314,811
TRADEMARK: GOOGLE
INT. CL. NO: 28
FILED: September 18, 2001

March 1, 2006

Ms. Jean Brown
Board Administrator Attorney
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451
703 308-9300

03-01-2006
U.S. Patent & TMO/TM Mail Rpt Dt #11

Dear Ms. Jean Brown:

In the instant case, we appreciate your serving upon the Applicant, the Opposer's Notice of Opposition.

This Notice of Opposition was sent by Express Mail No: EQ 014137445 US with the U.S. Postal Service in an express mail envelope.

Most Cordially,



Leo Stoller *President*
CENTRAL MFG. CO., (INC.), Opposer
Email - Leo@rentamark.com
Trademark & Licensing Dept.
P.O. Box 35189
Chicago, Illinois 60707-0189
773-283-3880 Fax 708/283-0083

Dated: March 1, 2006



United States Patent and Trademark Office

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Electronic System for Trademark Trials and Appeals

Receipt

**Your submission has been received by the USPTO.
The content of your submission is listed below.
You may print a copy of this receipt for your records.**

ESTTA Tracking number: **ESTTA55062**

Filing date: **11/27/2005**

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

Applicant: **GOOGLE INC.**
Application Serial Number: **76314811**
Application Filing Date: **09/18/2001**
Mark: **GOOGLE**
Date of Publication **11/01/2005**

First 90 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, Central Mfg. Co. (Inc), P.O. Box 35189, Chicago, IL 60707-0189, UNITED STATES, a Corporation, organized under the laws of Delaware , respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown .

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 12/01/2005. Central Mfg. Co. (Inc) respectfully requests that the time period within which to file an opposition be extended until 03/01/2006.

Respectfully submitted,
/Leo Stoller/
11/27/2005
Leo Stoller
President/CEO
Central Mfg. Co. (Inc)

USPTO. ESTTA. Receipt

Page 2 of 2

P.O. Box 35189
Chicago, IL 60707-0189
UNITED STATES
ldms4@hotmail.com
ldms4@hotmail.com

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

CENTRAL MFG. CO. (INC.),
(a Delaware Corporation)
P.O. Box 35189
Chicago, Illinois 60707-0189

Opposer,

v.

GOOGLE, INC.
(a Delaware corporation)
1600 Amphitheatre Parkway
Building 41
Mountain View, CA 94043

Applicant.

Trademark: **GOOGLE**
Application SN: 76-314,811
Int. Class No: 28
Filed: September 18, 2001
Published: November 1, 2005

TTAB/FEE
(IN TRIPLICATE)

03/09/2006 6THMAS2 00000028 76314811

01 FC:6402

300.00 UP

NOTICE OF OPPOSITION

1. In the matter of first use Application SN: 76-314,811, for the mark **GOOGLE**, in International Class 28 for **toys and sporting equipment, namely plastic exercise balls**, the Opposer states as follows:

2. The Opposer has standing and has filed a valid intent to use application for the mark **GOOGLE** in International Class 28 for **sporting goods**.

3. The Opposer sent correspondence to Google, Inc. on *November 29, 2005*. A true and correct copy is attached hereto.

4. The Opposer sent correspondence to Applicant's counsel, **Michael T. Zeller, Esq.** on *January 26, 2006* and *January 29, 2006*. Applicant's counsel responded to Opposer's correspondence on *January 26, 2006*, *January 27, 2006* and *February 17, 2006*. See true and correct copies attached hereto.

5. The trademark proposed for registration by the Applicant, namely **GOOGLE**, is applied to similar goods as those sold by Opposer and so nearly resemble the Opposer's mark

as to be likely to confuse therewith and mistake therefore.

6. The Applicant's mark **GOOGLE** is identical to Opposer's *GOOGLE* mark so as to cause confusion and lead to deception as to the origin of Applicant's goods bearing the Applicant's mark.

7. If the Applicant is permitted to use and register **GOOGLE** for its goods, as specified in the application herein opposed, confusion in trade resulting in damage and injury to the Opposer would be caused and would result by reason of the similarity between the Applicant's mark and the Opposer's mark. Persons familiar with Opposer's mark *GOOGLE* would be likely to buy Applicant's goods as and for a service sold by the Opposer. Any such confusion in trade inevitably would result in loss of sales to the Opposer. Furthermore, any defect, objection or fault found with Applicant's goods marketed under its **GOOGLE** mark would necessarily reflect upon and seriously injure the reputation which the Opposer has established for its products merchandised under its *GOOGLE* marks for over 20 years.

8. If the Applicant were granted the registration herein opposed, it would thereby obtain at least a *prima facie* exclusive right to the use of its mark. Such registration would be a source of damage and injury to the Opposer.

9. The Opposer, located in Chicago, Illinois, believes that it will be damaged by registration of the mark **GOOGLE** shown in Application SN 76-314,811 and hereby opposes same. The Opposer engages in an aggressive licensing program of the mark **GOOGLE**, as well known to the Applicant.

10. The Opposer offers its *GOOGLE* mark to license on a wide variety of collateral merchandise.

11. If the Applicant is permitted to register the mark, and thereby, the *prima facie* exclusive right to use in commerce the mark **GOOGLE** on the goods licensed and sold by the Opposer, confusion is likely to result from any concurrent use of Opposer's mark **GOOGLE** and that of the Applicant's alleged mark **GOOGLE**, all to the great detriment of Opposer.

12. Purchasers are likely to consider the goods of the Applicant sold under the mark **GOOGLE** as emanating from the Opposer, and purchase such goods as those of the Opposer, resulting in loss of sales to Opposer.

EXHIBIT 9

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

TTAB

CENTRAL MFG. CO. (Inc)
(Delaware Corporation)
Petitioner/Opposer

Vs.

CANCELLATION NO. 92045778

GOOGLE INC.

Registrant/Applicant.

528 MOTION FOR SUMMARY JUDGMENT

NOW COMES the Petitioner and moves under Fed. R. Civ. P 56 for the Board to grant Petitioner's motion for summary judgment. The summary judgment is supported by the Petitioner's deceleration. There are no genuine issues as to any material fact and the movant is entitled to judgment as a matter of law. See for example Sweats Fashions Inc. v. Pannill Knitting Co., 833 F. ed 1560, 4USPQ2d 1793 (Fed. Cir 1987). Celotex Corp. v. Catrett, 477 U.S 317 (1986)

Petitioner's Motion for Summary Judgment is timely See 37 CFR 2.127(e)(1) See also TBMP Section 310.01 (Notification to Parties of Proceeding).

The purpose of the this motion is judicial economy, that is, to avoid an unnecessary trial where there is no genuine issue of material fact and more evidence than is already available in connection with the summary judgment motion could not reasonably be expected to change the result in the case. See Pure Gold, Inc., v. Syntex (U.S.A.) Inc., 221 USPTO 151 (TTAB), aff'd 739 F.2d 624, 222 USQP 741 (Fed. Cir. 1984).

1. This motion for summary judgment is for cancellation of the United States **Trademark** Registration No. 2,806,075 brought by **CENTRAL MFG. CO,** (“**Petitioner**”). The **subject** registration is for the purported trademark “Google (the mark) owned by Respondent, GOOGLE, INC. (“Respondent.”).

2. In the matter of Registration No. 2,806,075, for the mark **GOOGLE,** in International Class 42 for **computer services, namely, providing software interfaces available over a network in order to create a personalized on-line information service; extraction and retrieval of information and data mining by means of global computer networks; creating indexes of information, indexes of web sites and indexes of other information sources in connection with global computer networks; providing information from searchable indexes and databases of information, including text, electronic documents, databases, graphics and audio visual information, by means of global computer information networks, or more commonly know as an internet search engine.**

STANDING

3, Pursuant to 37 C.F.R. §2.111(b), the Petitioner asserts that it has standing to file this Petition for Cancellation proceeding because the Petitioner asserts that it will be damaged by the Registration sought to be cancelled. The petitioner asserts common law rights in and to the mark Google for use and trademark licensing on a broad range of products and services. The Petitioner has also filed a Notice of Opposition number 91170256 to Respondent’s pending trademark Application SN: 76-314,811 for the mark GO OGLE.

4. The Petitioner holds Common Law rights in and to the mark GO OGLE for use on sporting goods products and offers the mark GOOGLE for trademark license to third parties. The Petitioner asserts that it will be damaged by the continued registration of the mark GOOGLE.

**GROUND FOR CANCELLATION AND FOR GRANTING PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

5. As specifically amended by the Trademark Law Revision Act of 1988, §14 of the Trademark Act provides for the cancellation of a registration of a mark at any time if the mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered .15 U.S.C. §1064(3).

6. The Respondent, GOOGLE, INC., is the leading computer Internet search engine. The Respondent's mark GOOGLE has become a generic term for the goods and/or services provided by the Respondent. See true and correct copies of dictionary definitions of the GOOGLE mark. The GOOGLE mark has become a "verb".

7. Respondent's mark, GOOGLE, is now included in the dictionary as a "verb"/ The Trademark Trial and Appeal Board has held that material obtained through computerized text search are competent evidence to show that a mark has become "generic" and or "descriptive" under Trademark Act Section 2(f) and/or 2(e)(1) 15 U.S.C. Section 1052(e)(1). In re National Data Corp. 222, USPQ 515, 517, n.3(TTAB 1984) . See true and correct copies of the attached "google" search. Where in the Petitioner merely typed into the google search engines "google is a verb" on May 15, 2006. The evidence is overwhelming that the mark google has become "generic". Google is now a "verb" which is "generic" for searching on the Internet. Google's own lawyers attempted to get the dictionary publishers to change the lexicon as they saw the google mark becoming "generic" but to no avail see attached documents.

8. Respondent's GOOGLE mark has become generic term for the goods and/or services covered under the registered mark sought to be canceled see attached "google" search documents.

9. Respondent has attempted to perpetrate a fraud on the public by having its representatives contact dictionaries in order to change the lexicon. See attached true and correct copies of documents.

10. Respondent's representatives have written letters to companies that print dictionaries and other sources in an attempt to unlawfully persuade the said companies and/or individuals not to use the word GOOGLE as a generic term.

11. The rights to a trademark can be lost through abandonment, improper licensing or assignment, or genericity. GOOGLE Trademark rights have been lost through genericity. Google's trademark originally distinctive has become generic over time, thereby losing its trademark protection *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111 (1938). A word will be considered generic when, in the minds of a substantial majority of the public, the word denotes a broad genus or type of product and not a specific source or manufacturer. So, for example, the term "thermos" has become a generic term and is no longer entitled to trademark protection. Although it once denoted a specific manufacturer, the term now stands for the general type of product. Similarly, both "aspirin" and "cellophane" have been held to be generic. *Bayer Co. v. United Drug Co.*, 272 F.505 (S.D.N.Y. 1921). In deciding whether a term is generic, courts will often look to dictionary definitions, the use of the term in newspapers and magazines. The evidence supplied by the Petitioner attached here to is conclusive beyond a doubt that the mark "google" has become generic and is no longer entitled to Federal Trademark Registration. WHEREFORE the Petitioner prays that the Board Cancel Google's Trademark Registration No. 2,806,075.

RESPECTFULLY SUBMITTED,



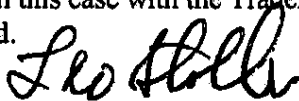
/Leo Stoller/

Leo Stoller, President
CENTRAL MFG. CO., Petitioner
7115 W. North Avenue #272
Oak Park, Illinois 60302
(773) 589-0340

Date: May 15, 2006

Certificate of On-Line Filing

I hereby certify that on May 15, 2006, this paper is being filed online in this case with the Trademark Trial and Appeal Board.



/Leo Stoller/

Certificate of Service

I hereby certify that on May 15, 2006 a copy of the foregoing was sent by First Class mail with the U.S. Postal Service in an envelope addressed to:

Google, Inc.
Building 14
1600 Amphitheatre Parkway
Mountain View, Ca 94043



/Leo Stoller/

Date: May 15, 2006

EXHIBIT 10

STANDING

3. Pursuant to 37 C.F.R. §2.111(b), the Petitioner asserts that it has standing to file this Petition for Cancellation proceeding because the Petitioner asserts that it will be damaged by the Registration sought to be cancelled. The Petitioner has filed Notice of Opposition number 91170256 to Respondent's pending trademark Application SN: 76-314,811 for the mark GOOGLE.

4. The Petitioner holds Common Law rights in and to the mark GOOGLE for use on sporting goods products and offers the mark GOOGLE for trademark license to third parties. The Petitioner asserts that it will be damaged by registration of the mark GOOGLE. See attached true and correct copies of correspondence from GOOGLE's attorneys to the Petitioner.

GROUNDS FOR CANCELLATION

5. As specifically amended by the Trademark Law Revision Act of 1988, §14 of the Trademark Act provides for the cancellation of a registration of a mark at any time if the mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered ... 15 U.S.C. §1064(3).

6. The Respondent, GOOGLE, INC., is the leading computer internet search **EXH A.** engine. The Respondent's mark GOOGLE has become a generic term for the goods and/or services provided by the Respondent. See true and correct copies of dictionary definitions of the GOOGLE mark.

7. Respondent's mark, GOOGLE, is now included in the dictionary. **EXH 1**

8. Respondent's GOOGLE mark has become generic term for the goods and/or services covered under the registered mark. **EXH 2**

9. Respondent has attempted to perpetrate a fraud on the public by having its representatives contact dictionaries in order to change the lexicon.

10. Respondent's representatives have written letters to companies that print dictionaries and other sources in an attempt to unlawfully persuade the said companies and/or individuals not to use the word GOOGLE as a generic term. Such conduct represents a

knowing and willful fraud perpetrated by the Respondent on the American public in order to change the lexicon which now includes Google as a generic term. **EXH 2.6**

11. Respondent has abandoned its GOOGLE mark through a program of naked licensing. **EXH 3**

12. The Respondent has abandoned its GOOGLE mark through a process of mutilation of the GOOGLE mark. See attached true and correct copies of GOOGLE's program for mutilating its Federal Trademark Registration. **EXH 4**

13. The Respondent has abandoned its GOOGLE mark through a process of allowing third parties to mutilate its trademark. See attached true and correct copies of third party mutilation. **EXH 5**

14. Respondent has abandoned its mark because its mark fails to function as a mark and/or is purely ornamental. See attached true and correct copies of Respondent's depictions of its ornamental mark.

15. The Petitioner licenses and/or offers to license the mark GOOGLE.

16. The Respondent's mark, GOOGLE, is likely to cause confusion, mistake or deception in the buying public or cause the public to believe that there is a connection between the parties, or a sponsorship of Respondent's goods by Petitioner.

17. Respondent's mark GOOGLE, when used on or in connection with the goods of the Respondent, is descriptive or deceptively misdescriptive of the goods.

18. Upon information and belief, said application was obtained fraudulently in that the formal application papers filed by Respondent, under notice of §1001 of Title 18 of the United States Code stated that Respondent had a valid first use date. Said statement was false. Said false statement was made with the knowledge and belief that it was false, with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration in that the Respondent, at the time it filed its said application and declaration were in fact an invalid first use date.

19. Upon information and belief, said application was obtained *fraudulently* in that the formal application papers filed by Respondent, under notice of §1001 of Title 18 of the United States Code stated that Respondent had a valid first use in commerce when Respondent

filed its Trademark application on *September 16, 1999*. Respondent had no valid first use in commerce on the date asserted in the said application.

20. Upon information and belief, the Respondent has no evidence to establish a valid first use date.

21. Upon information and belief, the Respondent has no evidence to establish a valid first use in commerce date.

22. Respondent's use application was a fraud in that Respondent had no use on some or all of the said goods listed therein bearing the mark **GOOGLE** on the first use date, as well known to the Respondent.

23. Respondent's said first use statement was a false statement and was made with the knowledge and belief that it was *false*, with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration as well known to the Respondent.

24. Upon information and belief, said first use of the mark **GOOGLE** on the goods in question, was made by an authorized agent of Respondent with the knowledge and belief that said statements was false. Said false statements were made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration.

25. Respondent's mark **GOOGLE** was not applied for according to its correct type¹, as shown in its said application.

26. Upon information and belief, the Respondent was not the owner of the mark for which the registration is requested².

27. Upon information and belief, Respondent's first use application was signed with the knowledge that another party had a right to use the mark in commerce on the same or similar goods.

1. See §108 of the TMEP, page 100-5, Registration As Correct Type of Mark - It is important that a mark be registered according to its correct type, if it is not, the registration may be subject to cancellation. See *National Trailways Bus System v. Trailway Van Lines, Inc.*, 222 F. Supp 143, 139 USPQ 54 (E.D.N.Y. 1963), and 269 F. Supp. 352, 155 USPQ 507 (E.D.N.Y. 1965).

2. See *Huang v. Tzu Wei Chen Food Co. Ltd.*, 849 F.2d 1458, 7 USPQ2d 1335 (Fed. Cir. 1988). See TMEP §§706.01 and 802.06 §1 of the Trademark Act 15 U.S.C. §1051.

28. Concurrent use of the mark **GOOGLE** by the Respondent and *GOOGLE* by the Petitioner results in irreparable damage to Petitioner's marketing and/or Trademark Licensing Program, reputation and goodwill.

29. Upon information and belief, Respondent's first use application was signed with the knowledge that another party had a right to use the mark in commerce.

30. Respondent's mark **GOOGLE** will likely result in financial injury and damage to the Petitioner in its business and in its enjoyment of its established rights in and to its said mark *GOOGLE*.

WHEREFORE, Petitioner prays that Respondent's Registration No. 2,806,075, for the trademark **GOOGLE** be cancelled, and that this Petition for Cancellation be sustained in favor of the Petitioner and that the Petitioner is entitled to judgment.

Petitioner hereby gives notice under Rule of Practice that after hearing and in any appeal on this cancellation proceeding, it will rely on its large family of *GOOGLE* registrations and applications incorporated herein and all of the goods and services listed and covered thereunder, in support of this Petition for Cancellation.

The Petitioner prays for such other and further relief as may be deemed by the Director of Patents and Trademarks to be just and proper.

Enclosed is \$300.00.

Respectfully submitted,



Leo Stoller
CENTRAL MFG. CO., Petitioner
Trademark & Licensing Dept.
7115 W. North Avenue #272
Oak Park, Illinois 60302
(773) 589-0340 FAX: (773) 589-0915

Dated: April 18, 2006

EXHIBIT 11

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Leo Stoller,) 05 B 64075
) Chicago, Illinois
) 1:00 p.m.
Debtor.) October 20, 2006

TRANSCRIPT OF PROCEEDINGS BEFORE THE
CHAPTER 7 TRUSTEE RICHARD FOGEL

APPEARANCES:

For Debtor: Mr. Richard Golding;
For Pure Fishing: Mr. Wm. Factor;
For U.S. Trustee: Mr. David Gucwa;

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1 MR. FOGEL: This is the continued 341
2 meeting in the converted Chapter 13 case of Leo
3 Stoller, S-t-o-l-l-e-r, 05 B 64075. My name is
4 Richard Fogel. I am the case trustee for the Stoller
5 estate. To my right is Janice Alwin, one of my
6 counsel.

7 Counsel for debtor, would you please
8 state your name?

9 MR. GOLDING: Richard Golding.

10 MR. FOGEL: Who else appears, please?

11 MR. FACTOR: William Factor on behalf
12 of creditor Pure Fishing.

13 MR. FOGEL: Sir?

14 MR. GUCWA: David Gucwa on behalf of
15 the U.S. Trustee's office.

16 MR. FOGEL: Sir?

17 THIRD SPEAKER: (Unintelligible) for
18 creditor.

19 MR. FOGEL: Very good.

20 Sir, would you state your name?

21 MR. STOLLER: Leo Stoller.

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22 MR. FOGEL: Do you have a photo I.D.?

23 MR. STOLLER: No, I don't.

24 MR. FOGEL: Do you have proof of your
25 social security number?

3

1 MR. STOLLER: I do.

2 MR. FOGEL: May I see it?

3 MR. STOLLER: I don't have it with me.

4 MR. FOGEL: Mr. Golding, does your
5 client know that he has to provide a photo I.D. and
6 proof of his social security number?

7 MR. GOLDING: I did not remind him.

8 MR. STOLLER: I can get that for you.

9 MR. FOGEL: I will proceed on the
10 representation that the debtor will provide the
11 information to counsel, and I know counsel will
12 forward it on to me. So that would be a photo I.D.
13 and social security number.

14 (Witness sworn.)

15 LEO STOLLER, WITNESS, SWORN

16 EXAMINATION

17 BY MR. FOGEL:

18 Q Mr. Stoller, did you file a Chapter 13
19 bankruptcy case on December 20th of 2005?

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20 A Upon the advice of my attorney I'm taking
21 the Fifth Amendment to all questions that are being
22 asked.

23 Q Mr. Stoller, I show you a declaration
24 regarding electronic filing. Is that your signature?

25 A Upon the advice of my attorney I'm taking

4

1 the Fifth Amendment to all questions that are being
2 asked.

3 MR. GOLDING: The debtor will take the
4 Fifth Amendment as to any and all questions that are
5 presented other than for his name and address.

6 For the record, there -- any further
7 questions will be answered the same way. And that is
8 the result of certain statements that have been made
9 to counsel for the debtor in this case.

10 BY MR. FOGEL:

11 Q Mr. Stoller, have you turned over to me any
12 and all recorded information including books,
13 documents, records and papers that you have relating
14 to property of the estate?

15 A I decline to answer that question on the
16 grounds of the Fifth Amendment.

17 MR. FOGEL: Mr. Golding, have you
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18 discussed with your client the fact that under
19 Section 521(4) of the Bankruptcy Code the debtor
20 shall provide the items I just requested information
21 about whether or not immunity is granted under
22 Section 344?

23 MR. GOLDING: Yes.

24 MR. FOGEL: And he is still not going
25 to answer the question?

5

1 MR. GOLDING: He's not going to answer
2 the question. He may provide the information, but
3 he's not going to answer the question.

4 BY MR. FOGEL:

5 Q Mr. Stoller, do you have any recorded
6 information including books, documents, records and
7 papers?

8 A I'm going to decline to answer the question
9 on the grounds of the Fifth Amendment.

10 Q Mr. Stoller, on your schedules you
11 indicated that you were a shareholder and in other
12 documents you have indicated you were an officer of
13 certain corporate entities. Do you have any
14 corporate records regarding any of those entities?

15 A I'm going to decline to answer that

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16 question on the advice of counsel based on my Fifth
17 Amendment rights.

18 MR. FOGEL: Mr. Golding, have you
19 discussed the case of Braswell versus the United
20 States --

21 MR. GOLDING: I have not.

22 MR. FOGEL: -- with your client?

23 MR. GOLDING: I have not.

24 MR. FOGEL: In case you have
25 forgotten, the cite is 487 U.S. 99, in which an

6

1 individual who has corporate records must produce,
2 cannot resist a subpoena on the ground that the act
3 of production would be incriminating.

4 MR. GOLDING: Did you subpoena any
5 documents?

6 MR. FOGEL: I don't have to because
7 the debtor has a duty under 521 to produce the
8 documents.

9 MR. GOLDING: Well --

10 MR. FOGEL: I'm just bringing this to
11 your attention, sir.

12 MR. GOLDING: You're citing a case and
13 telling me it provides that pursuant to a subpoena.

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14 You didn't subpoena him, so I'm not sure if there's a
15 relevance to the case.

16 MR. FOGEL: You're probably right.

17 MR. GOLDING: But do you want to give
18 me the cite again?

19 MR. FOGEL: No. I will give it to you
20 later.

21 BY MR. FOGEL:

22 Q Mr. Stoller, what domain names do you own?

23 A I'm going to decline to answer that
24 question on the advice of counsel and my Fifth
25 Amendment rights.

7

1 Q Mr. Stoller, do you have any licenses with
2 any entities by the names either Epsco (phonetic)
3 Lindy-Little Joe, Jas. D. Easton, Inc., MD
4 Manufacturing, Inc.?

5 A I'm going to decline to answer that
6 question on my Fifth Amendment rights and upon the
7 advice of counsel.

8 Q Mr. Stoller, do you own any real estate?

9 A I decline to answer that question on my
10 Fifth Amendment rights.

11 Q Mr. Stoller, when you filed your bankruptcy

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12 petition in December of '05, you indicated a bank
13 account at Bank of America. Do you know the account
14 number?

15 A I'm going to decline to answer that
16 question on my Fifth Amendment rights.

17 Q Mr. Stoller, in your schedules you have
18 identified five corporate entities that you claim to
19 be the sole shareholder of. Do you have proof of
20 ownership of any of those companies?

21 A I'm going to decline to answer that
22 question on my Fifth Amendment rights.

23 Q Mr. Stoller, you have indicated that you
24 had trademarks worth \$36,000 on the day you filed
25 your bankruptcy case. Do you have any documentation

8

1 relating to those trademarks?

2 A I decline to answer that question on my
3 Fifth Amendment rights.

4 MR. GOLDING: You know, there really
5 is no need to continue to ask all the questions. He
6 will answer it the same way. We will stipulate that
7 you will ask all the questions and that he will
8 answer by exercising his Fifth Amendment rights to
9 any and all questions other than his name and

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10 address.

11 He's doing so because it has been
12 suggested that this matter would be referred to the
13 United States Attorney's office by the trustee. So
14 there is really no need for us to go through the sham
15 of having to actually ask each question and not -- we
16 will stipulate that you will ask all the questions
17 and that the debtor will respond accordingly.

18 MR. FOGEL: I expected that you would
19 say that, sir, but not all of the questions that I am
20 asking have answers that might lead to incriminating
21 statements. And, therefore, you cannot take a
22 blanket assertion of the Fifth Amendment. You must
23 assert it in response to every question I ask, and
24 then we can later determine which are proper
25 assertions and which are improper assertions, if any
9

1 of them are improper.

2 I'm sorry, I've been instructed to do
3 it the way I'm doing it.

4 MR. GOLDING: Okay.

5 MR. FOGEL: I appreciate that. Thank
6 you.

7 BY MR. FOGEL:

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8 Q Mr. Stoller, how many bank accounts besides
9 Bank of America do you have?

10 A I decline to answer that question on the
11 grounds of my Fifth Amendment rights.

12 Q Have you made any payments to legal counsel
13 since your Chapter 13 case was filed?

14 A I'm going to decline to answer that
15 question on the grounds of my Fifth Amendment rights.

16 Q Did you receive \$20,000 from your
17 soon-to-be ex-wife's estate in connection with
18 payment of legal fees?

19 A I'm going to decline to answer that
20 question on the grounds of my Fifth Amendment rights.

21 Q Do you have any credit cards?

22 A I'm going to decline to answer that
23 question based on the grounds of my Fifth Amendment
24 rights.

25 Q Where are you currently living?

10

1 A My address is 7815 Westwood Drive.

2 Q In Chicago, Illinois?

3 A Elmwood Park.

4 Q Is that a house or an apartment?

5 A House.

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6 Q Do you have any ownership interest in it?

7 A No.

8 Q Who does?

9 A My wife.

10 Q What's your wife's name?

11 A Nancy Reich, R-e-i-c-h.

12 Q Have you received any income from any
13 advertisers on the Rentamark web site in the last six
14 months?

15 A I'm going to decline to answer that
16 question on the grounds of my Fifth Amendment rights.

17 Q Have you sold any address lists to any
18 third parties since the commencement of your
19 bankruptcy case?

20 A I decline to answer that question on the
21 grounds of my Fifth Amendment rights.

22 Q Have you ever owned or operated a business
23 that provided goods or services to any clients,
24 customers or third parties?

25 A I decline to answer that question on the

11

1 grounds of my Fifth Amendment rights.

2 Q Do you have any employees?

3 A I decline to answer that question on the

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4 grounds of my Fifth Amendment rights.

5 Q What's your current source of income?

6 A I'm going to decline to answer that
7 question on the grounds of my Fifth Amendment rights.

8 Q Where are the computers that you used to
9 use when you were in business on Belmont?

10 A I decline to answer that question on the
11 grounds of my Fifth Amendment rights.

12 Q Where's the checkbook for the checking
13 account at First Security Bank in the name of Chemico
14 (phonetic) Manufacturing Company, Inc.

15 A I have no idea. I'm going to decline to
16 answer that question on the grounds of my Fifth
17 Amendment rights.

18 Q What issues are you appealing from in the
19 Pure Fishing case before Judge Lindberg?

20 A I'm going to decline to answer that
21 question on the grounds of my Fifth Amendment rights.

22 Q When was the last time you were at 1212
23 North Lathrop Street?

24 A I decline to answer that question on the
25 grounds of my Fifth Amendment rights.

12

1 Q How did you feel last week when you found

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2 out that I stopped the sale of that property?

3 A I'm going to decline to answer on the
4 grounds of my Fifth Amendment rights.

5 MR. FOGEL: Mr. Factor, do you have
6 any questions?

7 MR. FACTOR: Yes.

8 EXAMINATION

9 BY MR. FACTOR:

10 Q Mr. Stoller, have you committed any
11 bankruptcy fraud in the last year?

12 A I will decline to answer that question on
13 the grounds of my Fifth Amendment rights.

14 Q Mr. Stoller, is the information in your
15 bankruptcy schedules accurate?

16 A I'm going to decline to answer that
17 question on the grounds of my Fifth Amendment rights.

18 Q Mr. Stoller, did you conceal your interest
19 in the 1212 North Lathrop property in River Forest?

20 A I will decline to answer that question on
21 the grounds of my Fifth Amendment rights.

22 Q Mr. Stoller, the information about income
23 that you reported in the bankruptcy schedules, is
24 that correct?

25 A I'm going to decline to answer that

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13

1 question on the grounds of my Fifth Amendment rights.

2 Q Mr. Stoller, have you disclosed all the
3 interests in properties that you held as of the date
4 you filed for Chapter 13?

5 MR. GOLDING: The trustee asked that
6 question. It's already been responded to by the
7 exercise of his Fifth Amendment rights.

8 BY MR. FACTOR:

9 Q Mr. Stoller, is it accurate to say that you
10 engaged in trademark trafficking?

11 A I'm going to decline to answer that
12 question on the grounds of my Fifth Amendment rights.

13 Q Mr. Stoller, it's true, is it not, that you
14 do not have any interest in the Stealth trademark?

15 A I'm going to decline to answer that
16 question on the grounds of my Fifth Amendment rights.

17 Q Mr. Stoller, it's true, is it not, that no
18 company that you have an interest in has any rights
19 in the Stealth trademark?

20 MR. GOLDING: I'm going to object to
21 the continuing line of questions that ask for legal
22 conclusions. I'm letting it go, you know, a little
23 bit here, but all these questions are objectionable

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24 anyhow; they require a legal conclusion. The witness
25 is here and he would testify as to facts and not as

14

1 to legal conclusions.

2 Do you have any other questions?

3 MR. FACTOR: You're instructing him
4 not to answer?

5 MR. GOLDING: I am.

6 BY MR. FACTOR:

7 Q Mr. Stoller, it is true, is it not, that
8 you have manufactured claims of ownership of
9 trademarks in order to extort money from businesses?

10 A I'm going to decline to answer that
11 question on the grounds of my Fifth Amendment rights.

12 MR. FACTOR: I have no other questions
13 at this time.

14 MR. GUCWA: No questions.

15 MR. FOGEL: Mr. Golding, before we
16 conclude for the day, have you discussed with the
17 debtor his obligations under Rule 1019 to file a
18 final report?

19 MR. GOLDING: I have not, but I don't
20 know if Mr. Kaplan has. But I will.

21 MR. FOGEL: Mr. Kaplan has filed a

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22 motion to withdraw is my understanding.

23 MR. GOLDING: I'm aware of that, but I
24 don't know if --

25 MR. FOGEL: Are you planning to file a
15

1 motion to withdraw as well or are you planning to
2 represent the debtor?

3 MR. GOLDING: It's under
4 consideration.

5 MR. FOGEL: I will continue the
6 meeting today for four weeks. I don't know if anyone
7 has a calendar.

8 MR. GOLDING: I do.

9 MR. FOGEL: I will continue the
10 meeting to November 17th at 1:00 o'clock to see how
11 certain other matters play out in connection with
12 this case.

13 Please get me a copy of his photo I.D.
14 and proof of his social security number at your
15 convenience.

16 Please file the report under
17 1019(5)(b) at your earliest convenience. Thank you
18 for attending.

19 MR. GOLDING: Thank you, Mr. Fogel.

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20 (Which were all the proceedings had in
21 the above-entitled cause, October 20,
22 2006, 1:00 p.m.)

23 I, JACKLEEN DE FINI, CSR, RPR, DO HEREBY
24 CERTIFY THAT THE FOREGOING IS A TRUE AND
25 ACCURATE TRANSCRIPT OF THE AUDIO TAPED
PROCEEDINGS HAD IN THE ABOVE- ENTITLED CAUSE.

EXHIBIT 12

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Baxley

Mailed: July 30, 2006

Opposition No. 91170256

Central Mfg. Co. (Inc.)

v.

Google Inc.

By the Trademark Trial and Appeal Board:

Involved application Serial No. 76314811 was published for opposition on November 1, 2005.

Opposer Central Mfg. Co. (Inc.) filed a request to extend time to oppose by ninety days on November 27, 2005, which the Board granted on November 28, 2005. By such extension, opposer was allowed until March 1, 2006 to file a notice of opposition. Opposer filed a notice of opposition on March 1, 2006, and the Board issued a notice instituting this proceeding on April 8, 2006.

In an order signed by the Chief Administrative Trademark Judge on July 14, 2006, all extensions of time filed during and since November 2005 by Leo Stoller and the entities controlled by him, including opposer, were vacated as a sanction. See attached Order.

Accordingly, the extension of time to oppose the involved application that the Board granted on November 28,

2005 is vacated, and the notice of opposition is thus untimely. Based on the foregoing, the above-captioned opposition is dismissed.¹

Application Serial No. 76314811 will proceed to issuance of a registration certificate in due course.

¹ All pending motions in this proceeding are moot.

**UNITED STATES PATENT AND TRADEMARK
OFFICE**
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

July 14, 2006

Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302

Dear Mr. Stoller:

By order dated March 28, 2006, you were informed that the United States Patent and Trademark Office (USPTO) was considering imposing sanctions against you under 37 C.F.R. §10.18(c),¹ and you were allowed thirty days in which to show cause why sanctions should not be imposed. On April 26, 2006, after an extension of time to respond was granted, you filed your response to the order to show cause.

BACKGROUND

Summary of the March 28, 2006 show cause order

The show cause order noted that you and entities you control filed more than 1100 requests for extension of time to file notices of opposition between November 2005 and March 2006. The order noted, further, that the sheer number of such filings by one person is unprecedented and raises serious questions about whether the filings were undertaken for an improper purpose in violation of 37 C.F.R. § 10.18(b)(2), such as for harassment or unnecessary delay of the targeted applications.

The show cause order made reference to the numerous sanctions imposed on you, over many years, in past TTAB proceedings as evidence of your pattern of misconduct and abuse of the TTAB's

¹ The authority to impose sanctions under 37 C.F.R. §10.18(c) has been delegated to the Chief Administrative Trademark Judge from the General Counsel under authority delegated to him by the Under Secretary of Commerce and Director of the United States Patent and Trademark Office.

processes.² The show cause order alluded also to your conduct in Federal court proceedings that resulted in negative comment, chastisement, and the imposition of sanctions. In light of your well-documented history, it was concluded that you most likely had an improper purpose in filing such an extraordinary number of extensions of time to oppose.

You were instructed specifically that your response to the show cause order include, for each of the marks for which you requested an extension of time to file an opposition, evidence

² In particular, the following cases were cited in the show cause order: *S. Indus. v. Lamb-Weston, Inc.*, 45 USPQ2d 1293 (TTAB 1997) (submission of fraudulent certificate of mailing and certificate of service); *S Indus. v. S&W Sign Co.*, Opp. No. 91102907 (Dec. 16, 1999) (fraudulent allegations of ongoing settlement negotiations; allegations of non-receipt of papers found not credible); *Central Mfg. Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210 (TTAB 2001) (submission of false statements in order to secure extension of time to oppose); *S Indus., Inc. v. Casablanca Indus., Inc.*, Canc. No. 92024330 (Oct. 3, 2000) (dilatatory tactics throughout proceeding); *Central Mfg., Inc. v. Flex-Coil Ltd.*, Opp. No. 91117069 (Feb. 19, 2002) ("opposer's representative has filed ... numerous papers [for] the sole purpose of harassing applicant, apparently until it capitulates"); *Bacu USA Safety, Inc. v. Central Mfg. Co.*, Canc. No. 92032631 (Jul 24, 2003) ("respondent has ... failed to show cause why sanctions should not be imposed on it for filing the groundless Rule 11 motion, [and] has ... compounded its wrong by filing a groundless motion for reconsideration"); *S Indus. v. JL Audio, Inc.*, Opp. No. 91110672 (May 13, 2003) (finding opposers' claim "without exception, completely devoid of merit"; opposers engaged in "a pattern of voluminous and piece-meal motion practice against which [they] were warned"); *Central Mfg. Co. V. Astec Indus., Inc.*, Opp. No. 91116821 (Sept. 3, 2003) (judgment entered against opposer for filing abusive Rule 11 motions); *Central Mfg. Co. V. Medtronic Sofamor Danek, Inc.*, Opp. Nos. 91154585, 91154617 (Feb. 19, 2004) (sanctions imposed for filing meritless motions for the purpose of harassment and delay); *Central Mfg. Co. v. Premium Prods. Co.*, Opp. No. 91159950 (Sep. 29, 2004) (sanctions granted for opposer's bad faith omission of date from metered mail); *Leo Stoller v. Northern Telepresence Corp.*, Opp. No. 91162195 (Feb. 11, 2005) (Board found that opposer had submitted untimely extensions of time to oppose notwithstanding use of certificates of mailing and declarations to the contrary; opposition dismissed); *Bacu USA Safety, Inc. v. S Indus., Inc.*, Opp. No. 91108769 (Aug. 14, 2002) ("applicant's pattern of behavior ... reveals a deliberate strategy of delay, evasion and harassment ..., implied threats to the Commissioner, and ... a direct violation of a Board order").

that supports a claim that you may be damaged by registration of the mark.

Finally, you were informed that the sanctions being considered included terminating or vacating any extension of time to oppose found to have been filed in violation of the applicable rules, restriction of your right to appear before the USPTO on your own behalf or as an officer, director, or partner of any entity you control, and/or restriction of your right to request extensions of time to oppose on behalf of yourself or any entity you control.

Summary of Response

Your four-page response, to which you attached many pages of exhibits, consists of quotations from the show cause order, citation to certain cases to which you were a party and in which no sanctions were imposed on you, coupled with a request that the USPTO not impose any sanctions based on your past practices before the TTAB and other tribunals, and general comments concerning your basis for filing the numerous requests for extensions of time to oppose, without mention of any particular request.

References to Other Proceedings

In asking that the USPTO not sanction you for your past conduct in TTAB cases and the cases in other tribunals, you point out that the Executive Committee for the federal judicial district of the Northern District of Illinois issued you a citation on December 15, 2005, allowing you time to show cause why "reasonable and necessary restraints" should not be imposed upon you in view of your activities in the lawsuits brought by you or your wholly-owned companies, before the Court. The Executive Committee quoted Judge Coar in *Central Mfg. Co. v. Brett*,³ 78 USPQ2d 1662, 1664 (N.D. Ill. 2005) as follows:

Indeed, as several judges (including this one) have previously noted, Stoller appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation ... Plaintiff and one or more of his corporate entities have been involved in at least 49 cases

³ The Executive Committee referenced the case as: Case No. 04 C 3049, *Stealth Ind. Inc. v. George Brett & Brett*.

in this district alone. Of these, at least 47 purport to involve trademark infringement ... No court has ever found infringement in any trademark allegedly held by Stoller or his related companies in any reported opinion.

You also noted that, after filing your response, the Executive Committee ruled, without further explanation, as follows:

The Executive Committee of the Northern District of Illinois has considered your response to the citation issued to you on December 15, 2005. After discussion, the Committee will take no further action in this matter.

You then referred to an order in *Leo Stoller d/b/a Central Mfg. Co. v. WFJM Enterprises, Inc.*, Opposition No. 91155814 (TTAB May 5, 2004), in which the TTAB denied, as premature, a motion to impose sanctions on you.

Finally, in asking that the USPTO not sanction you for your past conduct, you refer to the "*S Industries v. Genie Door*"⁴ case wherein the now Chief Judge of the Northern District of Illinois declined, eight years ago, to impose sanctions stating, in part, "the court, however, cannot base its decision to award fees on the plaintiff's conduct in other cases with other defendants."⁵

Comments Regarding Current Extension Requests

You assert that none of the extensions that you have filed on your own behalf or on behalf of entities you control was made for any improper purpose or for harassment or delay. The show cause order specifically required you to provide, for each of the marks for which you have requested an extension of time to oppose, evidence supporting a claim that you may be damaged by registration of the mark. In response, you assert that you have met the standard for filing an extension of time to oppose, because all such extension requests "are not based upon the potential opposer being damaged by a registration, but are based upon the potential opposer merely having an opportunity to

⁴ The copy of the order provided with your response did not include the caption of the case. It appears that the correct designation of the case is *S Industries, Inc. v. GMI Holdings, Inc.*, Case No. 96 C 2232 (N.D. Ill. 1998).

⁵ While the Court did not award fees to defendant (GMI), the Court did award costs to defendant.

investigate the facts, obtain documentation, and to enable the potential opposer to consider its position with regard to potential opposition of an application." You did not provide information regarding any specific steps you have taken with regard to any application for which you have obtained an extension of time to conduct such an investigation.

With respect to the requirement that you support your claim of damage, you state that, through entities which you control, you "hold rights to over 100 Federal Trademark Registrations" and hold "Common Law rights to several thousand trademarks and slogans which can be found at www.rentamark.com." You submitted, as exhibits, excerpts from the referenced website, including a "list of emarks" to which you claim rights. You state that, for each extension filed, you relied on common law rights to a trademark that was, in your opinion, confusingly similar to the applicant's mark.⁶

In requesting that you not be sanctioned, you ask that the USPTO merely give you "... some direction to keep Leo Stoller on a proper course..."

Activities Since Issuance of the Show Cause Order

Since the date of the show cause order, you have filed requests for extension of time to oppose against more than 400 additional applications, bringing the total since November 2005 to over 1800, as compared to only six you filed in the five-month period between June and October 2005. In particular, USPTO records show that during the past year you have filed requests for extension of time to oppose as follows:

June 2005	1
September 2005	3
October 2005	2
November 2005	47
December 2005	238

⁶ "For each of the extensions that Leo Stoller filed, Leo Stoller held Common Law rights to a trademark that was in Leo Stoller's opinion, confusingly similar to the potential opposer's mark." (Emphasis added.) It is assumed that your reference to "potential opposer's mark" was intended, rather, as a reference to the marks against which you filed the extension requests.

January 2006	188
February 2006	151
March 2006	717
April 2006	423
May 2006	63
Total	1,833

In your response to the show cause order, you stated that you had ceased filing extensions of time to oppose in those cases in which you would have relied on your alleged common law rights. It appears that you have done so.

Since the issuance of the order to show cause, you have contacted directly at least some of the applicants whose applications are the subjects of your requests to extend time to oppose. The TTAB has received informal complaints, formal requests for reconsideration of certain, specific extension requests, and at least one objection to the granting of any more extension requests. The nature of your contact, according to the applicant for application Serial No. 76616350, was "a large package of materials requesting money" in exchange for settlement.⁷ Apart from their substantive content, your contact letters request that the receiving applicant consent to an additional 90-day extension of time to oppose, further informing the addressee that such consent will be assumed if you do not hear from the applicant by a date certain and that you will file a "stipulated" request for an additional 90-day extension.⁸

APPLICABLE RULES

⁷ Contacting your potential adversary is not *per se* prohibited conduct. Indeed, many potential opposers do so in order to explore the possibility of initiating good faith, bilateral settlement discussion. Inasmuch as the substance of your contact is being addressed separately in connection with the requests being filed by the applicants who have taken formal steps to seek redress, the USPTO will not discuss in detail the "large package of materials" and other features of the contact letter.

⁸ Under TTAB rules, you would not be permitted an additional 90-day extension after receiving a first 90-day extension. "After receiving one or two extensions of time totaling ninety days, a person may file one final request for an extension of time for an additional sixty days....No further extensions of time to file an opposition will be granted under any circumstances." Trademark Rule 2.102(c)(3); 37 C.F.R. §2.102(c)(3).

Trademark Rule 2.102 provides, in relevant part, for the filing of requests to extend the time to oppose as follows:

(a) Any person who believes that ... it would be damaged by the registration of a mark on the Principal Register may file ... a written request ... to extend the time for filing an opposition. ... Electronic signatures pursuant to § 2.193(c)(1)(iii) are required for electronically filed extension requests.

(c) ... Requests to extend the time for filing an opposition must be filed as follows:

(1) A person may file a first request for either a thirty-day extension of time, which will be granted upon request, or a ninety-day extension of time, which will be granted only for good cause shown.

Trademark Rule 2.193(c)(2) provides in relevant part as follows:

The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any document by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter. Violations of § 10.18(b)(2) of this chapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 10.18(c) of this chapter.

Patent and Trademark Office Rule 10.18 provides as follows:

(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that-

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that- (i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office; (ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal

of existing law or the establishment of new law; (iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of-

- (1) Holding certain facts to have been established;
- (2) Returning papers;
- (3) Precluding a party from filing a paper, or presenting or contesting an issue;
- (4) Imposing a monetary sanction;
- ...
- (6) Terminating the proceedings in the Patent and Trademark Office.

DISCUSSION

Your assertion that you have met the standard for filing requests for extension of time to oppose and that you need not submit evidence supporting a claim that you may be damaged by registration of the marks in the subject applications amounts to a failure to respond meaningfully to the show cause order. While an unchallenged request for extension of time to oppose, when accompanied by a minimal statement of good cause, is rarely

denied,⁹ your filing of more than 1100 requests for extension of time to oppose within the few months preceding the date of the show cause order suggested a serious violation of your responsibilities as a party before the USPTO. The show cause order thus required you to demonstrate more than what might have been required in the ordinary case to support a single request for extension of time. In particular, you were required to demonstrate that the extension requests were not filed for improper purposes but, instead, were based on cognizable rights you may have arising under the Trademark Act.

Addressing directly the issue of your belief that you will be damaged, you indicate that you own over 100 federal registrations for trademarks and that you have common law rights in several thousand trademarks and slogans, referring to your website and attaching pages from your website to your response. Your submissions do not substantiate your rights in any of the claimed marks, let alone support a colorable claim of damage. For example, you did not submit copies of the registration certificates of the registered trademarks you claim to own. Nor did you even clearly identify your registered trademarks and the goods and services for which they are registered.

In support of your claim of damage to your purported common law trademarks, you provided a listing of your claimed trademarks, running to almost 150 pages (50 terms listed on each page). The listing was derived from your website and includes nothing more than the listing of the marks themselves. You submitted no evidence of products or services bearing these alleged marks, no evidence that you have sold any products or services under these marks, and no evidence of your advertising of goods or services with these marks.

At your website, you offer to "RENT-A-FAMOUS slogan" and offer "Famous Trademarks for Rent On-Line." Your website states that you "control over 10,000 famous trademarks..." Nonetheless, the exhibits from your website do not demonstrate your offering for sale any goods or services, other than the "rental" of the marks themselves, nor do the website exhibits demonstrate the use of any of the asserted terms as trademarks. These excerpts from your website, rather than evidencing support of any purported claim for damage, reinforce the conclusion that you are holding up thousands of applications in an attempt to coerce applicants

⁹ But see, TBMP § 210, 211 (2d ed. rev. 2004) (regarding requests by applicants that the TTAB reconsider granted requests for extensions of time to oppose or deny subsequent requests).

to license, i.e., "rent," trademarks to which you have not demonstrated any proprietary right. Cf. *Central Mfg. Co. v. Brett*, 78 USPQ2d 1662, 1675 (N.D. Ill. 2005) ("Leo Stoller and his companies present paradigmatic examples of litigants in the business of bringing oppressive litigation designed to extract settlement.")

Finally, in requesting that the USPTO not sanction you for your past conduct, you reference in your response two court cases and a single TTAB case in which sanctions were not imposed on you. Although these other tribunals have for various reasons declined to impose sanctions, their decisions also contain findings supporting the conclusion that your recent activities in the TTAB are not isolated or anomalous, but rather reflect a pattern of harassing behavior. The rationales used by those other tribunals for declining to impose sanctions do not apply here, where the behavior is of such a systematic nature as to raise the potential cost of seeking a trademark for the public generally.

DETERMINATION

Your filing of an extraordinary number of requests for extension of time to oppose, particularly in light of your past behavior before the TTAB and the courts, constitutes a violation of your responsibilities under Patent and Trademark Rule 10.18(b). That rule provides that, by filing a paper (including the extension requests at issue here), you represent, among other things, that "[t]he paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office" and that "[t]he claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Patent and Trademark Rule 10.18(b)(2).

Extensions of time to oppose are granted *ex parte*, typically upon a minimal showing of good cause. Nonetheless, the requirements for an extension of time to oppose are clear: "Any person who believes that he, she or it would be damaged by the registration of a mark ... may file in the Office a written request ... to extend the time for filing an opposition." Trademark Rule 2.102(a) (emphasis added). Thus, while the potential opposer's showing

need not be extensive and the TTAB's examination of extension requests is usually cursory, Trademark Rule 2.102 and Patent and Trademark Rule 10.18 require that all requests for extension of time be based on a good faith belief that the potential opposer would be damaged by the potential registration.

The show cause order invited you to demonstrate that your filing of each of the extraordinary number of requests for extension of time to oppose was not improper. ("Any such showing should include evidence that supports a claim that you may be damaged by the registration of each of the marks for which an extension of time to oppose has been filed.") While extensions of time to investigate potential claims are common, the potential opposer must still hold some reasonable belief that it would be damaged by registration of the mark in question. Notwithstanding the opportunity offered to you to demonstrate such a belief, you have declined to make any such showing.

Any impropriety with respect to the letters you have sent to applicants against whose applications you have filed requests to extend time to oppose is not now under review. Nonetheless, the manner in which you request "consent" for prospective further requests to extend time to oppose, such consent being necessary under Trademark Rule 2.102(c)(3), is indicative of your motivation in filing the requests to extend time to oppose that are now under scrutiny. Specifically, your intimation that the individual applicant's consent is presumed if you do not receive an objection is in contradiction of your actual knowledge that any such consent must be explicit. See *Central Manufacturing, Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210 (TTAB 2001) (misrepresenting that applicant has "agreed" to the third and fourth requests to extend time to oppose). Thus, your contact letters, providing misinformation as to the requirements for the final extension request permitted under Trademark Rule 2.102(c)(3), support the finding that the extension requests at issue here were filed for improper purposes, specifically "...to obtain additional time to harass applicant, to obtain unwarranted extensions of the opposition period, and to waste resources of applicant and the Board." *Id.* at 1216.

In view thereof, it is determined that you have not made a showing that you have a colorable claim of damage justifying the extension requests filed during the period in question and have failed to establish good cause for filing such requests. It is determined, further, that you filed the extension requests for improper purposes, namely, to harass the applicants to pay you to

avoid litigation or to license one of the marks in which you assert a baseless claim of rights. Your misuse of the TTAB's procedures dictates that the USPTO impose on you an appropriate sanction.

Sanctions Imposed

In deciding what sanctions to impose, the USPTO considered the egregious nature and extent of your recent misconduct, including the impact of the misconduct on TTAB proceedings. You have been granted 90-day extensions of time to oppose more than 1800 applications. The effect has been to delay by at least three months the issuance of trademark registrations for each of those applications. In addition, the TTAB has had to divert significant resources to answering telephone inquiries from applicants or their representatives concerning your numerous filings. And the applicants against whom you have filed requests for extension of time to oppose have begun to submit formal objections that the TTAB must decide.

Also, the USPTO found it reasonable and proper to consider your recent misconduct in the context of your well-documented pattern of misconduct during many years of litigation before the TTAB and the courts as set out in the show cause order, which included the sampling of TTAB cases in which sanctions were imposed against you¹⁰ and the case in the Northern District of Illinois.¹¹ Cf. C.

¹⁰ Indeed, irregularities with respect to your filing of requests to extend time to oppose have been considered previously. See, for example, *Stoller v. Northern Telepresence Corp.*, 152 Fed. Appx. 923, 2005 WL 2813750 (Fed. Cir. 2005), affirming the TTAB's decision denying as untimely your request(s). See also *Central Manufacturing, Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210 (TTAB 2001), imposing a sanction, for a period of one year, which required the actual signature of the adverse party for any request to extend time to oppose filed by you in which it was alleged that such request was being sought on consent, or had been agreed to, or in which there was any allegation of any type of settlement discussion. This sanction was imposed because the TTAB found that the applicant had not "agreed" to the extension requests, that the parties were not engaged in bilateral settlement discussions, and that applicant had not invited opposer to proffer a settlement agreement, all determinations being contrary to your proffered reasons for seeking the extensions at issue therein. The TTAB further found that you "filed papers based on false statements and material misrepresentations and, moreover, ... engaged in a pattern of submitting such filings to this Board."

Wright & A. Miller, 5A Fed. Prac. & Pro. Civ.3d § 1336.1 (2006) (appropriate to consider prior behavior in other cases when exercising a court's inherent authority); Fed. R. Civ. P. 11, Advisory Committee's Note (1993) (same consideration appropriate under Rule 11). While the USPTO has considered findings made by other tribunals, the pattern of activities in the TTAB alone justify the sanctions imposed below.

The following sanctions are, therefore, hereby imposed:

Grant of Extension Requests Vacated

The approval of each request for extension of time to oppose that you have filed since November 2005 is hereby vacated.¹²

Two-Year Prohibition On Filing Extension Requests

You are hereby prohibited for a period of TWO YEARS from the date of this order from filing, on your own behalf or as an officer, director, or partner of any entity you control, any request for extension of time to oppose under Trademark Rule 2.102. This two-year prohibition applies whether or not you are represented by an attorney.

Requirement Of Attorney Representation For Any Future Extension Requests

You are PERMANENTLY prohibited from appearing before the USPTO on your own behalf or as an officer, director, or partner of any

¹¹ In contrast to the two cited orders of the Northern District of Illinois in which the Executive Committee and the Court declined to impose sanctions, that court has chastised and sanctioned you numerous times. See, e.g., *S Industries, Inc. v. JL Audio, Inc.*, 29 F. Supp.2d 878 (N.D. Ill. 1998) ("This has not been a good year for Plaintiff in the Northern District of Illinois, but, then again, Plaintiff has not been a good litigant."), referencing several other cases before the Court that had been decided against you. See also *Central Mfg. Co. v. Pure Fishing, Inc.*, 2005 WL 3090998 (N.D. Ill. 2005) (and cases cited therein), in which the court imposed the sanction of dismissing plaintiff's claim and granting defendant's counterclaims to cancel registrations you own and for declaratory and injunctive relief. (The *Pure Fishing* case is suspended pending resolution of your petition in bankruptcy.)

¹² Extension requests granted more than 90 days ago have now expired. This sanction is, thus, moot with respect to such requests. But, if you have filed a notice of opposition against any of the involved marks, such notice of opposition is rendered untimely by this sanction, and any such opposition shall be dismissed.

entity you control for the purpose of filing any request to extend time to file a notice of opposition or any paper associated therewith. Any such future request must be filed by an attorney, who will be bound to act in accordance with USPTO Rule 10.18(b).

Request For "Direction"

Finally, you requested "direction" in how to proceed before the TTAB. As a frequent party to proceedings before the TTAB during the past ten years, you have been informed repeatedly about how the TTAB expects proceedings to be conducted. In the past, you have often ignored the direction given you by the TTAB, in the form of information or reprimand, or have found a way to side step such direction with improper or bad faith conduct.

The USPTO provides information to parties and the public electronically in a user-friendly format. The Trademark Act, the rules of practice in matters before the TTAB, The Trademark Trial and Appeal Board Manual of Procedure (2d ed. rev. 2004), and answers to frequently asked questions are all available for viewing and downloading at www.uspto.gov. While an individual may represent himself or herself (or a business in which he or she is an officer or partner) before the USPTO, see Patent and Trademark Rule 10.14(e), the TTAB "strongly recommend[s]" that a party be represented by an "attorney familiar with trademark law." TBMP §114.01 (2d ed. rev. 2004). Those who choose to represent themselves occasionally call the TTAB with questions and are provided procedural information. Overall, after being directed to the TBMP, they abide by the rules. Thus, there is no reason for the USPTO to conclude that the explanations provided in the TBMP are too complicated for *pro se* litigants, particularly for ones with an extensive history of practice before the TTAB.

Consequently, the TTAB's "direction" to you will remain the same that it has been for many years and the same as that given to other litigants representing themselves: engage an experienced trademark lawyer. Failing that, read and follow the applicable statute, rules, and cases and consult the TBMP for guidance.

Potential for Imposition of Broader Sanctions

The applicable rules permit broader sanctions. For instance, the USPTO considered whether to bar you permanently from filing

extension requests or to require that you be represented by an attorney with respect to any future Board matter, not just requests for extensions of time to oppose. At this time, the USPTO has restricted the sanctions imposed herein to those closely related to your recent misconduct and, it believes, the minimum necessary to prevent such misconduct in the future. Nonetheless, the question of broader sanctions will be revisited if you commit further improprieties in proceedings before the TTAB.

So ordered.

/signed/

J. David Sams
Chief Administrative Trademark Judge
Trademark Trial and Appeal Board
United States Patent and Trademark Office

EXHIBIT 13

AE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Central Mfg. Co., et al.

Plaintiff,

v.

Case No.: 1:05-CV-00725

Honorable George W. Lindberg

Pure Fishing, Inc., et al.

Defendant

PROPOSED FINAL JUDGMENT

Having considered Defs.' Motion to Lift Stay and Enter Final Judgment, the Court hereby enters this final judgment in accordance with Fed. R. Civ. P. 54, 55(b), and 58.

IT IS ORDERED that final judgment is hereby entered in favor of Defendants / Counter-Plaintiffs on counterclaims I-IV against Central Mfg. Co., Leo Stoller an individual doing business as Central Mfg. Co. doing business as S. Industries Inc. doing business as Terminator doing business as Stealth doing business as Rentamark doing business as Rentamark.Com doing business as Stealth Sports and Marine doing business as Association Network Management doing business as USA Sports Co. Inc. doing business as Stealth Industries, Inc. doing business as Central Mfg Inc. doing business as S Industries doing business as Sentra Industries Inc.

IT IS FURTHER ORDERED that this case is "exceptional" under 15 U.S.C. § 1117(a). Counter-Defendants are jointly and severally responsible, and shall pay the Defendants'/Counter-Plaintiffs' costs, charges and disbursements, including a reasonable attorneys' fees, incurred in this action. Defendants / Counter-Plaintiffs shall file the information required by Fed. R. Civ. P. 54(d)(2) in support of its fee award within fourteen (14) days after the date of this Order. Defendants / Counter-Plaintiffs shall file a bill of costs and disbursements on the form provided by the clerk pursuant to Fed. R. Civ. P. 54(d), no later than ten (10) days after the date of this Order.

IT IS FURTHER ORDERED that US Trademark Registration No. 1,766,806 and the STEALTH mark for fishing bobbers are lapsed, invalid, abandoned, unenforceable, and forfeit under federal and common laws.

IT IS FURTHER ORDERED that US Trademark Registration No. 1,766,806 and each of the "Stealth" trademark registrations listed in the Complaint are canceled.

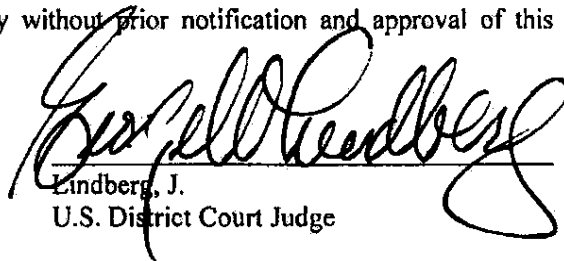
IT IS FURTHER ORDERED that there is no reasonable likelihood of confusion between Plaintiff's STEALTH marks and the SPIDERWIRE STEALTH mark as used by Defendants.

IT IS FURTHER ORDERED that Counter-Defendants, whether or not registered with the State of Illinois, are vexatious litigants and are barred from instituting any lawsuit or trademark opposition without prior leave of this Court pursuant to this Court's authority under the All Writs Act 28 U.S. C. § 1651(a).

IT IS FURTHER ORDERED that Counter-Defendants are liable for the judgment in *S Industries, Inc. v. Centra 2000, Inc.*, 1998 U.S. Dist. LEXIS 10649, 1998 WL 395161 (N.D. Ill. 1998) so as to allow execution of that judgment against such trademark registrations, goodwill, and associated license assets, including US trademark registration nos. 1,332,378 and 1,766,806 and all other trademark registrations at a value of \$245 for each (sanctions of October 12, 2005 hearing) in partial satisfaction of that judgment.

IT IS FURTHER ORDERED that Counter-Defendants are enjoined from dissipating, transferring, assigning, liquidating, or otherwise removing the trademark assets of Plaintiffs and Counter-Defendants to another person or entity without prior notification and approval of this Court.

10/4/06
Date:


Lindberg, J.
U.S. District Court Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Central Mfg. Co., *et al.*

Plaintiff,

v.

Case No.: 1:05-CV-00725

Honorable George W. Lindberg

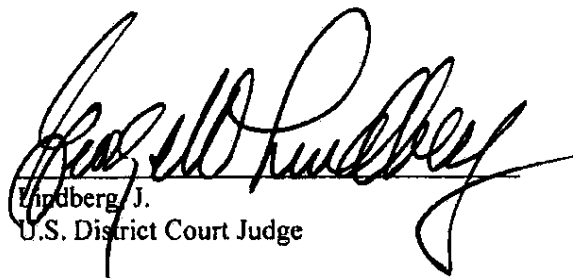
Pure Fishing, Inc., *et al.*

Defendant

PROPOSED ORDER LIFTING STAY

For the reasons expressed in Defs.' Motion to Lift Stay and Enter Final Judgment, the stay in this case is lifted.

Oct 4 '06
Dated:


Lindberg, J.
U.S. District Court Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Central Mfg. Co., et al.

Plaintiff,

v.

Case No.: 1:05-CV-00725

Honorable George W. Lindberg

Pure Fishing, Inc., et al.

Defendant

PROPOSED ORDER

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED that this Court takes judicial notice of the documents attached as Exhibits 1-6 to Defendant's Third Motion for Judicial Notice.

Oct 4 2006
Dated:

George W. Lindberg
(Lindberg, J.)
U.S. District Court Judge

EXHIBIT 14

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Leo Stoller,) 05 B 64075
) Chicago, Illinois
) 1:30 p.m.
 Debtor.) August 31, 2006

EXCERPT (A) OF PROCEEDINGS BEFORE THE
HONORABLE JACK B. SCHMETTERER

APPEARANCES:

For Debtor: Mr. Richard Golding;

For Pure Fishing: Mr. Wm. Factor;
Mr. Lance Johnson;

For Chapter 13 Trustee: Mr. Mark Wheeler;

Court Reporter: Jackleen DeFini, CSR, RPR
U.S. Courthouse
219 South Dearborn
Room 661
Chicago, Il. 60604.

FILED
SEP - 5 2006
JACK B. SCHMETTERER, BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT

1 THE COURT: I think we are ready for
2 final argument. Are we not? The question is whether
3 we do it tonight or tomorrow morning at 9:30.

4 MR. WHEELER: Judge, I can't be here
5 tomorrow morning.

6 THE COURT: Are you planning to
7 address the court?

8 MR. WHEELER: Yes, Your Honor.

9 THE COURT: How much time do you want
10 to talk?

11 MR. WHEELER: Depends on when the
12 court wants to schedule this. I can't be here
13 tomorrow morning. I went back to my office to get my
14 keys and such --

15 THE COURT: What I'm saying is how
16 much time will you need to address the court?

17 MR. WHEELER: Not much, maybe ten
18 minutes. The court's already pretty much articulated
19 my position.

20 THE COURT: The court just asked a
21 question.

22 MR. WHEELER: To summarize my position
23 to the court --

24 THE COURT: You can do that now. I
25 think that the other lawyers probably want to spend

1 more time in argument. That's why I'm asking. I
2 could hear the Chapter 13 trustee tonight and let him
3 depart. And then I want to ask you folks whether or
4 not you want to argue right now or you would rather
5 argue tomorrow morning at 9:30.

6 MR. JOHNSON: If I may? I did not
7 book a room for today. I suppose I could.

8 THE COURT: Oh, yes, you're from out
9 of town.

10 MR. JOHNSON: Yes, we're here from
11 Washington D.C. I would need probably no more than
12 15 minutes.

13 THE COURT: Would you prefer to do it
14 tonight?

15 MR. JOHNSON: If I could, Your Honor.
16 Most of my closing argument is, as you instructed, in
17 our proposed findings.

18 THE COURT: How much time would you
19 need, counsel?

20 MR. GOLDING: I would say probably 15
21 minutes to a half hour.

22 THE COURT: Okay. Well, would you
23 like me to take a recess before we start? We'll do
24 it now.

25 MR. JOHNSON: That would be fine, Your

1 Honor.

2 MR. GOLDING: Whatever Your Honor --

3 THE COURT: Are you ready to go? Do
4 you want to go first, Trustee?

5 MR. WHEELER: Sure, if the court's
6 prepared to make a decision on my motion. Otherwise,
7 if it's going to hinge on the other arguments --

8 THE COURT: I want to decide the Pure
9 motion first. So maybe you want to reserve your
10 argument?

11 MR. WHEELER: That's fine.

12 THE COURT: All right.

13 Counsel for Pure, you need how long,
14 sir?

15 MR. JOHNSON: No more than 15 minutes.
16 I will attempt to do it in even less time than that.

17 THE COURT: Well, I assume part of
18 your argument is contained in your amended findings
19 of fact, conclusions of law.

20 MR. JOHNSON: Yes, the vast majority
21 of that, Your Honor, 98 plus percent.

22 THE COURT: And apart from that, what
23 do you want to say?

24 MR. JOHNSON: Pure Fishing, we would
25 like to summarize -- not summarize, perhaps -- I note

1 for the court that in connection with today's
2 testimony by the debtor, he has not refuted or
3 explained away the numerous errors and omissions in
4 the petition and schedules that were identified in
5 our proposed findings. Moreover, we heard repeated
6 testimony about a number of d/b/as or assumed name
7 entities that are asserted to be assumed names for
8 his corporate entities, Central, Mfg. Inc. That,
9 however, is not the law. The law for corporations is
10 that an assumed name must be registered with a state
11 entity. For a proprietorship in Illinois, an assumed
12 name can be adopted without registration.

13 THE COURT: To what extent is the
14 record issue and the formality observation in
15 maintaining records and business related to the
16 motion -- the standards on the motion to dismiss --
17 pardon me, convert to Chapter 7?

18 MR. JOHNSON: May I turn that over to
19 co-counsel, Mr. Factor, who is more skilled in those
20 areas, Your Honor, than I?

21 MR. FACTOR: Thank you, Your Honor.
22 On the motion to convert there are a couple of
23 grounds, statutory grounds in 1307(c). There is
24 also, and it's well-established by the Seventh
25 Circuit, a basis for converting or dismissing based

1 on a finding of bad faith. And in connection with
2 the bad faith issue the Seventh Circuit enumerated
3 five or six, maybe seven different factors to
4 consider. One of those is did the debtor file for
5 Chapter 13 to avoid denial of discharge or denial of
6 dischargeability on a specific debt. That's one of
7 the factors from the Seventh Circuit in evaluating
8 the lack of good faith.

9 And it's our contention that if this
10 were in a Chapter 7 case, the debtor clearly would be
11 denied a discharge based on 727(a)(2) and 727(a)(3),
12 failure to keep books and records, destruction of
13 books and records. So in a Chapter 7 the debtor
14 clearly would be denied a general discharge.

15 Moreover, in a Chapter 7, and this
16 doesn't relate to books and records, so I won't go
17 down that path, there are other reasons why the
18 debtor -- bad faith is evidence under section 727.
19 But the books and records issue, Your Honor, I think
20 is relevant because in Chapter 7 he would be denied a
21 general discharge, so he files for Chapter 13 instead
22 to avoid the consequences of his sloppy record
23 keeping, careless record keeping, perhaps intentional
24 destruction of records. That's one reason.

25 The second reason is that the lack of

1 records evidences a general disregard for the
2 requirements of Chapter 13. To be a Chapter 13
3 debtor you have to establish a regular income, and
4 you have to make -- you have to establish your
5 expenses. And you match up your income with your
6 expenses. You have disposable income and that's used
7 to pay back creditors. Without records, we don't
8 know if the debtor is earning two million dollars a
9 year, or if the debtor is earning a dollar a year.

10 THE COURT: Whose responsibility is it
11 to monitor the debtor's filings in Chapter 13 when
12 the debtor reports income and expenses? It is partly
13 the creditors and partly the Chapter 13 trustee;
14 right?

15 MR. FACTOR: To monitor? Yes. I
16 think the debtor also has --

17 THE COURT: And the creditors or the
18 Chapter 13 trustee determine his income and expenses
19 from the records that we have learned about.

20 MR. FACTOR: I don't see how that's
21 possible, Your Honor. I don't see how that's
22 possible at all. As I said before, we don't know
23 whether the debtor is taking home two million dollars
24 a year or one dollar a year. There's been no
25 evidence. There's been no paystubs. There's been no

1 testimony from an employer. There's been no checks.
2 There's been nothing produced. So we have no way of
3 knowing whether it's at one end of the scale or the
4 other end of the scale. And I think that that's
5 evidence of bad faith because it's filing a Chapter
6 13 case just to try to take advantage of the super
7 discharge when he's not entitled to it.

8 THE COURT: Thank you.

9 We'll go back to your argument.

10 Thank you very much.

11 MR. JOHNSON: In connection with the
12 assumed name entities, asserting that it is not the
13 law of Illinois that a corporation can assume an
14 assumed name for use in business without prior
15 registration, the state has a very elaborate
16 structure for registration of corporate entity and
17 corporate entity names in order for the express
18 purpose of avoiding fraud and confusion among the
19 public. In the present instance we have a fair
20 amount of assets in terms of bank accounts and cash
21 flowing through that account that are asserted to be
22 in the name of an entity that is registered neither
23 with the state of Delaware or with the state of
24 Illinois.

25 THE COURT: Well, the name you refer

1 to is?

2 MR. JOHNSON: Sentra Manufacturing
3 Company, Inc., as spelled out and attached to the
4 account. We have other evidence in the record,
5 verified pleadings of many number in which the debtor
6 has represented himself to be -- to use the
7 designation Central Mfg., Central Mfg. Co. as a d/b/a
8 for his personal activities, and Central Mfg. Inc. to
9 represent a corporate entity of some sort.

10 I believe that the asset that that
11 entity represents, a proprietorship, should have been
12 disclosed in the petition and schedules.

13 THE COURT: Go ahead.

14 MR. JOHNSON: Moreover, Your Honor, we
15 have identified a number of areas in the schedules
16 where the land trust and the rental income associated
17 with that should have been listed but were not. No
18 adequate explanation at law or in fact has been
19 presented for the failure to so list those assets.
20 And the assets are substantial, Your Honor. Within
21 the last year that was the debtor's largest single
22 asset that if liquidated would return far more to
23 creditors than the \$14,000 proposed by the plan.

24 THE COURT: Repeat that.

25 MR. JOHNSON: The land if liquidated,

1 the land and property --

2 THE COURT: The real estate.

3 MR. JOHNSON: The real estate and the
4 house on it were agreed to be worth about \$340,000,
5 the single largest asset the debtor has, or had.
6 Had.

7 THE COURT: And you are assuming that
8 it could be recouped for a Chapter 7 estate?

9 MR. JOHNSON: Yes, Your Honor.
10 Transferred to a relative for no consideration with
11 retained control over the land and realization of
12 the --

13 THE COURT: How long before the
14 filing?

15 MR. JOHNSON: The transfer occurred
16 March 15, 2005. The petition was filed December 22,
17 2005.

18 THE COURT: A year.

19 MR. JOHNSON: Yes, nine months, Your
20 Honor. And since he was continuing to collect rent
21 associated with that, as he testified, on a monthly
22 basis, it's unlikely that he could have forgotten
23 about it. Accordingly, with the view of the other
24 errors and omissions that's found in the schedules
25 that's unrebutted, we believe it's a strong inference

1 of an actual intent to defraud, and that Chapter 7 is
2 warranted because the creditors would be far better
3 off in a Chapter 7 than a Chapter 13.

4 THE COURT: Well, what vehicle is
5 there in Chapter 13 for that type of inquiry? We can
6 hear from the Chapter 13 trustee, perhaps he'd want
7 to comment on that in a few minutes. But you're
8 assuming that his office is not equipped to do that
9 sort of work.

10 MR. JOHNSON: I believe he testified
11 that was the case, Your Honor.

12 THE COURT: It may be he wants to add
13 something to that.

14 MR. JOHNSON: Yes.

15 THE COURT: So that's the sum of that
16 argument, is that in Chapter 13 there's no one to
17 mount that attack on the real estate problem?

18 MR. JOHNSON: That's correct, Your
19 Honor.

20 THE COURT: Go ahead.

21 MR. JOHNSON: Moreover, the rent, as
22 the debtor testified, the rent checks and checks from
23 a number of other unincorporated associations were
24 all commingled in that Sentra Manufacturing Company
25 Inc. account.

1 THE COURT: Counsel, do we have any
2 evidence of that?

3 MR. JOHNSON: Yes, we do.

4 THE COURT: What is that exhibit,
5 please?

6 MR. JOHNSON: I believe that's Exhibit
7 5, Your Honor. That is the large exhibit of all the
8 checks. And Exhibit 6 is a summary of the checks and
9 amounts, drafted, summarized in connection with that
10 account.

11 THE COURT: Does the summary show his
12 annual gross income?

13 MR. JOHNSON: It shows a sum of cash
14 taken out per year in connection with the account.
15 We do not know, however, whether this is the only
16 account he's ever used.

17 THE COURT: Does it show how much cash
18 flow is taken out?

19 MR. JOHNSON: Yes, it does.

20 THE COURT: What years?

21 MR. JOHNSON: The last three years,
22 Your Honor.

23 THE COURT: What's the latest year?

24 MR. JOHNSON: I believe there is a
25 number to date as of 2006.

1 THE COURT: Does it have '05?

2 MR. JOHNSON: It has '05 and '04. We
3 subpoenaed checks for the last three years.

4 THE COURT: The '05 withdrawals from
5 that account total what? The '04 and '05 withdrawals
6 from that account total what?

7 MR. JOHNSON: In Exhibit 6, page 2,
8 paragraph F, 2005 checks written to cash totaled
9 \$44,815.26.

10 THE COURT: In '05?

11 MR. JOHNSON: Yes.

12 THE COURT: In '04?

13 MR. JOHNSON: In '04, \$37,341.

14 THE COURT: Now the '04 tax return
15 that this gentleman filed, he showed gross receipts
16 of \$7600, plus some other entries regarding some
17 other business property. How do these sums shown to
18 be withdrawn relate, if they do at all, to the tax
19 returns?

20 MR. JOHNSON: They do not, Your Honor.
21 It's wholly inconsistent. There's far more income,
22 far more cash taken out of the business than is
23 reflected on those income tax returns that were
24 filed.

25 THE COURT: The withdrawals you speak

1 of, they are in the range, are they not, of the
2 annual monies he claims to have available to him in
3 his income in his Chapter 13 filing?

4 MR. JOHNSON: Yes. Yes, in the range.

5 He does not account, however, for, as he testified,
6 checks directed to the rent that were not deposited
7 in any bank account after August of this year. That
8 does not relevant for 2005. (sic)

9 THE COURT: Let's assume arguendo that
10 the house is really his. What would be the
11 consequence in terms of income available to him?

12 MR. JOHNSON: Well --

13 THE COURT: What do we know about the
14 mortgage? Let me just break it out that way. What
15 do we know about the mortgage? Is he liable on the
16 mortgage?

17 MR. JOHNSON: No, Your Honor. This is
18 a land trust. And as such --

19 THE COURT: -- mortgage --

20 MR. JOHNSON: It's an unsecured
21 mortgage, so the trustee of the land trust signed the
22 note and the mortgage, but it's a non-recourse --

23 THE COURT: Was he the trustee at that
24 time?

25 MR. JOHNSON: No, Your Honor, Midwest

1 Bank and Trust was the named trustee.

2 THE COURT: So was he liable on the
3 mortgage?

4 MR. FACTOR: Your Honor, if I can
5 explain here because this is related to Illinois land
6 trust law.

7 The property's held in a land trust.
8 The property is essentially encumbered by a mortgage
9 of about \$100,000. I believe that's in evidence.
10 And we don't know what the monthly mortgage payments
11 are. We asked that question and the debtor indicated
12 he didn't know what the monthly mortgage payments
13 were.

14 THE COURT: Does the evidence show
15 who -- whether any human being is liable on the
16 mortgage?

17 MR. FACTOR: The evidence that we saw
18 indicated that the mortgage was non-recourse except
19 for -- so it was non-recourse. It was just -- the
20 property itself was liable.

21 THE COURT: So no individual is.

22 MR. FACTOR: So there's no --

23 THE COURT: If he's the owner, then
24 he's protecting his ownership by paying the mortgage.
25 If that could be proved.

1 MR. JOHNSON: Yes, Your Honor.

2 THE COURT: Thank you. Let's go ahead
3 with the argument, sir.

4 MR. JOHNSON: If the point is that the
5 debtor has testified himself that his income stream
6 is not in fact regular, it depends on whether he can
7 reach a settlement; whether there exists an
8 allegation of an infringement he can make and come to
9 terms. He's testified that his income stream is not
10 regular, which would be inconsistent with the notion
11 of funding a Chapter 13 plan.

12 Lastly, the debtor has not explained
13 how the creditors are better off if we remain in
14 Chapter 13 compared to a Chapter 7.

15 Lastly, Your Honor, the absence of
16 books and records in connection with his expenses do
17 not permit us to determine accurately what his true
18 income is. It is possible that he may have been
19 using some of the cash to pay his independent
20 contractors. We saw no checks directed to them. We
21 saw no checks directed to taxes associated with them
22 or social security or unemployment. We have no idea
23 what his true actual income is because he did not
24 have books and records.

25 With that I close.

1 THE COURT: Thank you.

2 Chapter 13 trustee, do you have any
3 remarks you would like to make?

4 MR. WHEELER: Briefly, Your Honor.
5 Your Honor, the court already recognized, and I have
6 mentioned it a couple of times in past hearings, that
7 the trustee's position in this matter is essentially
8 such that if the debtor concedes, is willing to
9 concede to dismissal of that matter, the position I'm
10 taking I don't see how they could offer an
11 appropriate defense to conversion because the
12 language of the statute is clear that on a request
13 for a party in interest after notice and hearing that
14 the case may be converted. So if they're going to
15 concede to dismissal, why in fact wouldn't they be
16 able to concede to conversion of the case?

17 Just a few minutes ago the court asked
18 Mr. Factor a question about confirmability. And
19 that's important that the court hit on this question
20 because this case, the individual specific facts of
21 this case render it almost impossible to determine
22 the confirmability of the case. Where do we look at
23 confirmation standards? We look at 1325(a). We look
24 at 1325(b). We look at 1326. We look at best
25 efforts. Is the debtor making the best effort to

1 repay their creditors? We look at best interests.
2 Is it in the best interests of the creditors? We
3 look at good faith. We also look at some case law in
4 re: Indiana, or Smith versus Indiana, and Rimgale
5 for our confirmation standards.

6 But if we take the basic confirmation
7 standards and we look at best efforts, how do we know
8 he's making his best efforts when we can't tell what
9 his income is, what his assets are. It's too
10 nebulous right now. This case can go on for years
11 and I don't know that you would ever -- that the
12 court or the trustee would ever get to really learn
13 what's available here. Clearly, the creditors' best
14 interests are not being represented by the proposal
15 of the plan for confirmation. That only pays a
16 little over 10,000, between 10 and \$20,000 when
17 potentially there is a piece of real property --

18 THE COURT: You are talking about
19 payment to the unsecured creditors?

20 MR. WHEELER: That's not even the
21 unsecured creditors, that's the total pot. That's
22 the total pot of money available to everybody that we
23 don't know. When I say everybody, I don't know what
24 the creditors are out there.

25 And perhaps most importantly, the

1 third prong is good faith. I think that there's been
2 a very, very strong case made by the creditor, Pure
3 Fishing, that good faith has not -- the requirements
4 of good faith have not been met. Selective memory
5 demonstrated, there's been little or no evidentiary
6 defenses offered to the volumes and volumes of
7 evidence that has been submitted and probably
8 admitted into evidence by the court. So basically
9 the facts are unique to this case, and render it
10 almost impossible to judge whether it's even in fact
11 confirmable or not.

12 Now, there's no question that
13 confirmation would in fact -- or, excuse me, that
14 conversion would in fact render a better dividend to
15 the creditors than leaving it in Chapter 13.

16 THE COURT: I think the plan probably
17 calls for more payment to the creditors than you have
18 --

19 MR. WHEELER: I don't think so. I
20 think it's \$683.

21 Does anybody have a calculator?

22 I think it's a \$683 payment -- \$693
23 payment over 36 months.

24 THE COURT: Well, this is a
25 mathematical thing we're going to look at later. Go

1 ahead with the argument.

2 MR. WHEELER: Now a couple of other
3 requirements I would like to point out.

4 Section 109(e) talks about who is
5 eligible to file in the first place. Only an
6 individual with regular income that owes on the date
7 of filing the petition non-contingent, liquidated,
8 unsecured debts of less than \$307,675 in
9 non-contingent, liquid (sic) or unsecured debts less
10 than \$922,975, or an individual with regular income
11 and such individual's spouse, except a stockbroker or
12 commodity broker that owe on the date of filing the
13 petition non-contingent, liquidated, unsecured debts
14 that aggregate less than \$307,675, and
15 non-contingent, liquidated secured debts of less than
16 \$922,975 may be a debtor under this title. We don't
17 know what the regular income is. It's based on
18 fluctuating income and there are no records. There
19 are no books. So we don't even know if he's eligible
20 because we don't know the stream of income. There is
21 no way we could probably ever tell. I could never in
22 my representation of a Chapter 13 trustee represent
23 to this court I have any faith whatsoever in the
24 debtor making the plan payments.

25 THE COURT: We do have some evidence

1 of how he lives. That is he dips into this account;
2 isn't that right? That's a stream of income -- a
3 stream of cash.

4 MR. WHEELER: It's some stream of
5 cash.

6 THE COURT: And it seems to me he's
7 dipping about the same amount as his annual payments
8 that he proposes under the plan. What have you to
9 say to that form of evidence?

10 MR. WHEELER: There's an
11 independent -- it's not enough just to show there is
12 income. There is an independent duty of the trustee
13 to verify where the money comes from. In other
14 words, if somebody was a drug dealer and they said,
15 well, hey, they've got a bank account that \$10,000
16 goes into a month, and they're making their payments
17 each and every month, they're making the trustee
18 payments each and every month. Should we not
19 investigate where the money is coming from?

20 THE COURT: Can you as an assistant
21 Chapter 13 trustee, or can the Chapter 13 trustee
22 with the aid of assistants such as yourself do that
23 verification process?

24 MR. WHEELER: I would like to say that
25 I would be able to do that, but I think it's

1 impractical if not impossible in this matter. Am I
2 supposed to subpoena -- take -- manage this one case
3 and subpoena every bank record? Who's really
4 benefiting when in fact the case can be converted to
5 a Chapter 7 and administered faster, counsel can be
6 employed, so that somebody's actually getting paid on
7 this. It would turn the system on its ear if you had
8 every small business case, quote, unquote, like this
9 one if the trustee were required to administer and go
10 into an investigation.

11 THE COURT: Have you ever had any
12 experience where your office has actually done this
13 type of investigation on a case of this extent?

14 MR. WHEELER: This case is -- no. No.
15 This case is beyond anything I have ever seen.

16 THE COURT: With regard to this
17 possibility, or let's say facts that indicate at
18 least there should be some inquiry as to whether
19 there was a transfer, fraud of creditors, of the real
20 estate, has your office ever taken any sort of
21 litigation steps to recover property for the estate
22 in Chapter 13?

23 MR. WHEELER: Not in the nine years
24 that I have been representing a trustee.

25 THE COURT: Would your office be

1 staffed and equipped to do that?

2 MR. WHEELER: Not necessarily, no. I
3 mean, I don't want to make it sound like it would
4 never happen, but if the court directed us to do
5 something, of course we're going to listen to what
6 the court has to say. It's not an impossibility,
7 certainly. But, again, the trustee would be in a
8 much -- Chapter 7 interim panel trustee, or whatever
9 the court chooses to call them, would be in a much
10 better position to employ a broker, to get the
11 property administered and get a dividend back to
12 creditors much faster.

13 The other thing we have to keep in
14 mind here is the court can ascertain from a Chapter 7
15 trustee's motions on whether to employ a broker and
16 so forth, make an independent finding of the
17 appropriateness of the action they're taking. We
18 have a budget, an annual budget that we have to
19 submit to the executive office of the U.S. Trustee
20 system, and it's tight. There are not a lot of
21 exceptions made for -- you can't all of a sudden have
22 one case that's going to cost \$50,000 extra to
23 administer.

24 THE COURT: In a Chapter 7 a trustee
25 is funded by the estate. Hopefully. He or she hopes

1 to be funded by the estate. In a Chapter 13 the
2 trustee is funded out of fees from collecting and
3 disbursing monies to the creditors in all the
4 estates. Is that right?

5 MR. WHEELER: That's correct.

6 THE COURT: If you had an added
7 addition to your budget, let's call it a bubble of
8 expense in handling a special case which ran up fees,
9 ran up ordinary and reasonable fees of \$50,000, would
10 that mean that you have to ask the U.S. Trustee to
11 raise the rates that are going to be paid by all the
12 creditors on your cases?

13 MR. WHEELER: Quite possibly. The
14 court recognizes that quite possibly that could
15 happen. That's typically frowned upon because it's
16 difficult enough to run a business.

17 One of the idiosyncrasies of a Chapter
18 13 business that I was astonished to learn is that we
19 can keep no more than two months of operating
20 reserves at any given time in our budget. As crazy
21 as that sounds, we are required to keep no more, no
22 less, than two months' operating reserves for a
23 business that distributes \$60 million a year. That's
24 not an easy thing. And, thank goodness, I'm mainly
25 in the courtroom, I don't deal with that. But it's a

1 difficult matter. And taking over a case, two or
2 three like this, I think cases of this nature are
3 going to become more commonplace under the new law.
4 Cases that get bounced from a 7 under a 727 motion to
5 a Chapter 13 are going to become more commonplace.
6 And it's going to be very, very difficult from an
7 accounting standpoint to maintain the integrity of
8 that two-month cushion.

9 THE COURT: Any final remarks you want
10 to make?

11 MR. WHEELER: No, Judge. I think it
12 should absolutely be converted to a Chapter 7. I
13 don't think it's a close call based on the evidence.
14 And I really don't know, I really haven't heard any
15 objections from the debtor as to why the case should
16 or shouldn't be converted. I guess that bothers me
17 even more that they haven't said strenuously or a
18 reason why it shouldn't be converted. They just said
19 they will consent to a dismissal. But they haven't
20 set forth any evidence, reasons, or general argument
21 as to why it shouldn't be converted.

22 Thank you.

23 THE COURT: Counsel.

24 MR. GOLDING: Well, at the outset
25 first I will make some reply to the counsels'

1 observations, I'll call them.

2 With regard to the suggestion that
3 perhaps because we conceded that we would agree to a
4 dismissal, that that's the equivalent of conversion,
5 that's a new wrinkle that I've never heard of.

6 THE COURT: I'm interested in that
7 argument, but I do not accept it. Okay?

8 MR. GOLDING: Well, I don't either. I
9 won't spend any time on it.

10 First, I think we have to review, if I
11 may --

12 THE COURT: I think the gist of the
13 argument is that some of the same things that would
14 justify dismissal would justify conversion. And
15 since you have stipulated or agreed to dismissal,
16 that is tantamount to agreeing to conversion. I
17 don't think that is correct.

18 MR. GOLDING: I don't either. That's
19 a suggestion that anytime somebody comes in to
20 dismiss a case, if Your Honor denies the dismissal on
21 an 11 or 7, would say -- well, on a 7 you wouldn't
22 convert, but on a 13 or an 11 and they come in for a
23 dismissal and you say I'm not going to grant a
24 dismissal, so therefore I must convert the case.
25 That's just not the law; that's just not what

1 happens.

2 THE COURT: So we're both on the same
3 page. Now let's go on to the other argument.

4 MR. GOLDING: First, I think it's
5 important that we perhaps review the bidding as to
6 why and what we're here on. We are here on Pure
7 Fishing's motion to convert or dismiss. We are not
8 here on confirmation hearing. I think that much of
9 the evidence that was put in was deduced the other
10 day and today is relevant to confirmation perhaps,
11 but that's not before the court today. The trustee
12 has filed no objection to confirmation. He stands
13 before you today and says it's not a confirmable case
14 for this, that or the other reason. But no objection
15 has been filed to confirmation. So that's not why we
16 are before Your Honor.

17 We are here under 1307. I think the
18 court therefore has to rule on this case based on
19 1307 and not other sections of the Code which have
20 not been addressed by motion before the court. And
21 certainly the arguments, with the exception of one,
22 all -- none of them fall under the ambit of 1307(c).

23 There's been no showing of
24 unreasonable delay by the debtor that is prejudicial
25 to creditors. There's been no showing of non-payment

1 of any fees or charges required under Chapter 123 of
2 Title 120 -- 28. There's been no failure to file a
3 plan timely under 1231. There's been no failure to
4 commence making timely payments under Section 1326.
5 There's been no denial of confirmation of a plan.
6 There's been no material default by the debtor with
7 respect to the term of a confirmed plan. There's
8 been no revocation of the order of confirmation, of
9 course. There's been no termination of a confirmed
10 plan. None of those.

11 And sub (9) and (10) are also not
12 relevant here. This is only on the request of the
13 U.S. Trustee, failure to file within 15 days
14 additional time as the court may allow after filing
15 of a petition of commencement of a case, information
16 required by paragraph one.

17 THE COURT: Counsel, 1307(c) provides
18 conversion may come for cause, including and then it
19 includes a number of subparagraphs that you can read.

20 MR. GOLDING: Correct.

21 THE COURT: So the question is whether
22 there's cause. Even though there may or there may
23 not be some specified cause within those paragraphs.

24 MR. GOLDING: That's correct.

25 THE COURT: That's sometimes called a

1 good faith/bad faith analysis. But cause is a --

2 MR. GOLDING: I'll get back to --

3 THE COURT: There have been a number
4 of arguments as to why there are causes in this case.

5 MR. GOLDING: I don't think there have
6 been arguments as to confirmation. There have not
7 been arguments made to the court I believe.

8 THE COURT: Sir, what if I find there
9 have not been sufficient records to enable a Chapter
10 13 trustee readily to administer a Chapter 13 case
11 and verify income and expenses of the debtor?

12 "Readily." Is that cause?

13 MR. GOLDING: Cause for what?

14 THE COURT: Conversion.

15 MR. GOLDING: I don't think it's
16 necessarily cause for conversion. It might be cause
17 for dismissal.

18 THE COURT: If the Chapter 13 trustee
19 cannot readily administer the case among the many
20 thousands of cases that the trustee has to
21 administer --

22 MR. GOLDING: If the court were to
23 find that, but the trustee has not -- other than the
24 remarks made in his closing, has not suggested that.
25 The trustee asked the debtor, I can tell the court,

1 for additional information at the 341 meeting. That
2 meeting I have been advised by both the debtor and
3 Mr. Kaplan's office that the documents, additional
4 information requested was supplied to the trustee.

5 THE COURT: There is not enough
6 records to determine his income.

7 MR. GOLDING: But the trustee hadn't
8 said that. The trustee hadn't come before the court.

9 THE COURT: Pure has certainly argued
10 that.

11 MR. GOLDING: But not the trustee.

12 THE COURT: Well --

13 MR. GOLDING: The trustee is the one
14 who has to administer the case and they didn't make
15 that argument. They made the argument after Pure
16 Fishing has made their motion, but they didn't make
17 the argument they're the ones that have to
18 administer.

19 THE COURT: If Pure has proved that
20 there is not sufficient documentation to enable
21 ascertainment of the income of the debtor, if that is
22 proved, you do not accept that as cause for
23 conversion?

24 MR. GOLDING: I would say it's cause
25 for dismissal. I'm not going to stand here and

1 consent that that is automatically somehow grounds
2 for conversion, no.

3 THE COURT: Well, just assume for the
4 moment that at least it's a possibility, and tell me
5 whether you think there are sufficient records to
6 inform us of his income.

7 MR. GOLDING: I think there are
8 sufficient records to inform the court of his income
9 because he testified that the income, his sole income
10 comes from out of this corporation. And the records
11 before you that, as the court noted, the checks over
12 the last three years are in line with what he
13 suggests his current income is. He testified that
14 it's somewhat irregular; that occasionally he makes a
15 settlement that may increase it or not make a
16 settlement that won't increase it. But that his
17 income is ascertainable from those records. Rightly
18 or wrongly, it's ascertainable from those records.
19 Your Honor asked Pure Fishing that and they answered
20 your question, yes, you know, that's what he gets.

21 THE COURT: Anything you would like to
22 say about the standards of the need to preserve books
23 and records from which his financial condition could
24 be ascertained?

25 MR. GOLDING: Again, this is a Chapter

1 13 proceeding and I think that with regard to the
2 books and records of the corporation, detailed books
3 and records, I don't think there's been a showing
4 that anything but his -- the money that he takes out
5 of that corporation exists. I think that's a
6 sufficient showing of what he gets. And the fact
7 that he doesn't have books and records other than the
8 checking account and what he takes out that he
9 testified is cash, checks made out to cash, is not --
10 is -- is -- that's what he gets.

11 THE COURT: Was that income to him?
12 He doesn't report that much income.

13 MR. GOLDING: That's income to him.

14 THE COURT: He doesn't report it. We
15 don't have his '05 return. We have his '04 return.
16 But he didn't report all of the money he took out of
17 the --

18 MR. GOLDING: He may not have.

19 THE COURT: So what does that mean?

20 MR. GOLDING: I'm not sure. But I
21 don't believe that it means that it's not
22 ascertainable what he's getting for under a Chapter
23 13. And I don't know whether that's grounds to --

24 THE COURT: Is an IRS audit the way to
25 ascertain that?

1 MR. GOLDING: No. I think that there
2 is sufficient ascertainment by knowing what he's
3 taking out of the checking account. And the fact
4 that he may not have recorded that all on taxes,
5 under 1307 that's not grounds.

6 THE COURT: All right. Next point.

7 MR. GOLDING: One of the arguments
8 made again of course is the creditors would be better
9 off in a Chapter 7. Certainly, clearly where
10 Congress has set forth what some of the grounds ought
11 to be for 1307 this one is glaringly missing, that
12 creditors are better off in a Chapter 7. I would
13 think if Congress wanted that to be a measure, it
14 would have been in that list.

15 THE COURT: Well, the question is
16 whether or not that argument falls within the word
17 cause. And the specific argument they made was that
18 there's suspicious circumstances surrounding the real
19 estate and somebody ought to take a look at that.
20 What do you say about that subject?

21 MR. GOLDING: Well, I can say the same
22 thing today which I said about that the other day,
23 which was that if there is a cause there, those are
24 the grounds that the debtor would amend the plan,
25 with the consent of his daughter; put that property

1 into the estate and sell it and pay the creditors.
2 But there's been no finding that it's a fraudulent
3 conveyance. We haven't tried that case.

4 THE COURT: What you're saying is if
5 there was such a case and it was tried and it was
6 found there was a fraudulent conveyance, then he
7 would put the case into his plan and distribute it to
8 his creditors. Is that what you just said?

9 MR. GOLDING: Yes. Not exactly what I
10 said the way I said it, but I think that the result
11 is the same, and Your Honor's assessment is correct.

12 THE COURT: Yes. And how do you ever
13 get to the analysis? Who's going to make the
14 analysis? Do you figure the Chapter 13 trustee is
15 going to make the analysis and file a lawsuit?

16 MR. GOLDING: The Chapter 13 trustee
17 hasn't even made the allegation. If he objected to
18 confirmation on the basis that there was a fraudulent
19 conveyance, we could address that and we could deal
20 with that. We are prepared to do that, but that's
21 not --

22 THE COURT: Pure argues that's one of
23 the causes, so you can argue it.

24 MR. GOLDING: Yeah, they argue that
25 it's a cause, but I don't see it as a cause. And I

1 just argued why. That if it is a cause, if the court
2 were found to find that, we are prepared to address
3 that issue and have the property sold and put the
4 those monies in the plan.

5 I want to point out to Your Honor that
6 the Pure has a contingent --

7 THE COURT: Pardon me just a second
8 before you -- can you hold the thought --

9 MR. GOLDING: Try to.

10 THE COURT: I want to find out what
11 you just meant by --

12 You seem to assume your client has
13 control over the title of this property, the real
14 estate, and if he wanted to could put it into the
15 plan.

16 MR. GOLDING: He does not. He has
17 spoken with his daughter, who is the title holder of
18 this property, about the issues. His daughter lives
19 in Arizona and has allowed mortgages to be put on
20 here to lend money to Mr. Stoller, which is
21 scheduled. And she -- he tells me he's spoken to her
22 about it and she has consented that if that is an
23 issue, that it could be done. But she would only do
24 it if the 13 goes on. Otherwise she'll probably
25 defend a fraudulent conveyance action.

1 THE COURT: Do we have any evidence as
2 to when the mortgages were put on and how much?

3 MR. GOLDING: I believe the mortgages
4 -- copies of the mortgages are in the record, Your
5 Honor.

6 THE COURT: Then when were they put on
7 and how much?

8 (No response.)

9 THE COURT: Were they put on within
10 the last year, Counsel?

11 MR. GOLDING: Yes, Your Honor.

12 MR. JOHNSON: Your Honor, two
13 mortgages, one is dated April 5, 2005, that is
14 Exhibit 3, page 18. There was another mortgage for
15 99,000, that was directed and realized on December 6,
16 2005.

17 THE COURT: Just before the filing?

18 MR. JOHNSON: Yes, 16 days before the
19 filing. That's Exhibit 3, page 35.

20 THE COURT: How much?

21 MR. JOHNSON: That was for \$99,000,
22 Your Honor.

23 THE COURT: What was the first one?

24 MR. JOHNSON: For 30,000.

25 MR. GOLDING: Roughly \$130,000 in

1 mortgages.

2 MR. JOHNSON: I believe the second one
3 subsumed the first, which is why the check issued for
4 the second was for a lesser amount.

5 THE COURT: Counsel, were those
6 scheduled?

7 MR. GOLDING: Were the mortgages
8 scheduled?

9 THE COURT: Yes.

10 MR. GOLDING: It's not your debt. You
11 are not on the --

12 THE COURT: Were those mortgages
13 scheduled?

14 MR. GOLDING: No.

15 THE COURT: Go ahead with your
16 argument.

17 MR. GOLDING: You asked me to hold
18 that point that I was about to make -- okay, I recall
19 what it was now.

20 The Pure Fishing movant has a
21 disputed, contingent and unliquidated claim. They
22 have filed now a claim, although the numbers that
23 have been disputed here are \$240,000, but they filed
24 a claim in excess of \$700,000. But mind you, Your
25 Honor, that's unliquidated.

1 THE COURT: No one has asserted that
2 your client is disqualified by the amount of debt.
3 Why are you raising that?

4 MR. GOLDING: I'm not going to. The
5 amount is -- I'm not raising it in that regard. And
6 of course that wouldn't be applicable as -- in the
7 court because it is disputed and unliquidated. I
8 don't think that anybody could argue about that.

9 The point I'm trying to make is that
10 the court, this court has modified the stay so that
11 the district court can liquidate that amount. It may
12 very well be that the amount of their claim would be
13 well below what the value of this piece of real
14 estate is and they could be paid a hundred cents on
15 the dollar. We don't know that. The court may come
16 back and say, you know, one dollar, no dollars.
17 That's not -- there'd be no relief. We don't know
18 that. That has not been determined. The court
19 clearly did not determine any damages and held that
20 in abeyance.

21 So we are dealing with an objection of
22 one creditor who is nonetheless a disputed and a
23 contingent creditor who ultimately may be paid a
24 hundred cents on the dollar. I don't know what they
25 should be objecting to at this point if that were the

1 case.

2 The last and perhaps -- as it relates
3 to items that the court has briefly pointed out is
4 the bad faith argument. An argument -- and it is
5 often made in some of the cases you'll find in which
6 I kind of personally fail to understand often, is
7 that creditors -- when creditors file cases in this
8 court or in the bankruptcy court generally, when they
9 are faced with sale of assets, a judgment, or tax
10 liens and levies and the like, that's when they file
11 bankruptcies. The fact that this debtor filed a
12 bankruptcy when he was otherwise out of money and
13 really couldn't afford to defend this suit anymore,
14 he had paid a lot in attorneys' fees apparently over
15 the years on this and a couple of other matters and
16 he was out of money and he filed this case. Now the
17 argument is being made, well, he shouldn't have filed
18 the case because he was doing that to avoid a
19 judgment.

20 THE COURT: Sir, since we heard about
21 those mortgages which gave him some cash flow, can we
22 hear what he did with the money from the mortgages?
23 Do we have any evidence that shows that?

24 MR. GOLDING: What he did with the
25 money? No.

1 THE COURT: Does that suggest --

2 MR. GOLDING: We can put him on the
3 stand. He can address that.

4 THE COURT: I don't remember any
5 evidence on that subject.

6 MR. GOLDING: No, there wasn't, but he
7 could address that. I know what the answer is.

8 THE COURT: Does that suggest that he
9 is spending more money than he shows on his expenses?

10 MR. GOLDING: I don't think so. That
11 was a loan from his daughter which is scheduled. And
12 I know he tried to pay some attorneys' fees also and
13 that he could continue to have counsel. But I guess
14 it didn't work out. But that was not income to him,
15 it's a loan and it's duly scheduled.

16 THE COURT: The mortgage?

17 MR. GOLDING: No, the loan from his
18 daughter is scheduled.

19 THE COURT: What was that?

20 MR. GOLDING: \$130,000.

21 THE COURT: So he treats the mortgages
22 as a loan from his daughter is your point.

23 MR. GOLDING: Well, she did, yes.

24 THE COURT: So does he on his
25 schedules.

1 MR. GOLDING: Yes, sir.

2 THE COURT: So he does not show a lot
3 of cash on hand when he filed this; right?

4 MR. GOLDING: He does not. And he
5 claims he doesn't have a lot now. I know that. I
6 tried to get paid.

7 THE COURT: It looks like he ran
8 through a big loan in a short time; doesn't it?

9 MR. GOLDING: I don't think he ran --
10 well, he expended the money, yes.

11 THE COURT: Does that suggest that
12 he's spending more than his expenses show?

13 MR. GOLDING: Well, he was. There's
14 no question that he was -- it would appear to me over
15 the years of his business that very often -- I mean
16 his single biggest expense were attorneys' fees
17 defending or prosecuting these cases. Some were
18 where he was the plaintiff to enforce his rights, and
19 some were where he was a defendant. And that was
20 probably the biggest single cost. I know it was from
21 conversations with him, the biggest single cost of
22 his operation. But that's his stock and trade you
23 might say, are enforcement of those rights. And,
24 again, as the court has acknowledged before, there is
25 his character or the nature of his business, which is

1 not illegal, is simply not an issue, or should not be
2 one considered by the court.

3 THE COURT: I have said that, and I
4 believe that.

5 MR. GOLDING: Okay. Me, too.

6 THE COURT: Anything else?

7 MR. GOLDING: I have nothing else.

8 THE COURT: Rebuttal?

9 MR. JOHNSON: Two points, Your Honor.
10 Just two.

11 First is, Mr. Golding argued that the
12 loan money from Julia Bishop was scheduled. There's
13 nowhere in the schedules that the, either a gift from
14 Julia Bishop in the form of the \$99,000 in mortgages,
15 nor a loan in that amount is found in the schedules.
16 Moreover, we note that to the extent that debtor's
17 business incurs legal expenses, so stated with its
18 continued operation, we have a stipulation on the
19 basis of his business, trial stipulation number 47,
20 is that the income of debtor's business is based on
21 false assertions of trademark infringement and/or
22 harm due to registration of the challenged party's
23 trademark application.

24 Yes, that such a business would incur
25 substantial legal expenses, Your Honor. They are

1 not, however, reflected on the schedule of his
2 expenses. We factored those expenses in. If they
3 are to continue, debtor does not have a viable
4 business. He cannot continue to return income to
5 himself by continuing to operate an illegal business
6 with legal expenses that far outstrip his income.

7 With that, I close.

8 THE COURT: Is that it?

9 MR. JOHNSON: Yes, Your Honor.

10 THE COURT: Anything else you want to
11 say, Mr. Golding?

12 MR. GOLDING: Surrebuttal?

13 Well, just again, we're mixing the
14 expenses of the business with his personal income.
15 And the money that he's been getting out of the
16 business net of those expenses over the years, that's
17 all. And his daughter was scheduled as a creditor.

18 THE COURT: Thank you very much.

19 MR. GOLDING: Thank you, Your Honor.

20 THE COURT: I intend to write -- I
21 intend to enter findings of fact, conclusions of law
22 in detail which will fully explain my reasons. But I
23 can tell you my ruling now. And I'm going to enter
24 the order tomorrow morning, if you will get it to me,
25 and make it nunc pro tunc today as I announce it.

1 I am converting to Chapter 7. There
2 are a number of reasons, but I'm convinced that the
3 lack of adequate documentation prevents an orderly
4 administration by the Chapter 13 trustee in a Chapter
5 13. And it is a definite failure, demonstrates
6 definite failure to keep and preserve books and
7 records from which the debtor's financial condition
8 can be ascertained within the standards required in
9 bankruptcy.

10 Secondly, there are suspicious
11 circumstances concerning the real estate. A Chapter
12 13 trustee is not equipped to do heavy litigation.
13 And indeed if they tried to do that, it would impose
14 a burden upon the debtors who would have to pay more
15 in commissions for the Chapter 13 trustee to fund
16 that litigation. That is one of the reasons that
17 they have not staffed themselves for litigation.

18 There is a serious problem that has to
19 be investigated and is certainly best done by a
20 Chapter 7 trustee. That's the second major ground.
21 There are other detailed grounds which I will set
22 forth in findings of fact, conclusions of law. But I
23 know enough to decide today that I will convert to a
24 7. As I said, the order will show it as nunc pro
25 tunc today.

1 Mr. Stoller, as of now, sir, the bad
2 news is you're no longer in control of your property.
3 As far as I'm concerned, the Chapter 7 trustee is now
4 in control of your property. And I will confirm that
5 by an order which will be nunc pro tunc effective
6 today.

7 May I have that tomorrow morning?

8 MR. FACTOR: Certainly, Your Honor.
9 If we are just talking about an order of that nature,
10 I could perhaps do a minute order right now for
11 reasons stated on the record the case is converted to
12 a Chapter 7.

13 THE COURT: Well, it doesn't matter
14 since it's nunc pro tunc. And we can't docket it
15 today anyway.

16 MR. FACTOR: Okay. I will submit it
17 tomorrow.

18 THE COURT: So we'll docket it
19 tomorrow. Also provide in there that the rule on 10
20 days is waived. It will be immediately effective.

21 MR. FACTOR: Yes, Your Honor.

22 THE COURT: Nunc pro tunc today. This
23 moots the Chapter 13 trustee's motion. We now go to
24 Google.

25 MR. BARRETT: Yes, Your Honor.

1 THE COURT: I'm going to put this in
2 the hands of a Chapter 7 trustee. We'll do our best
3 to get things moving, see if we can get an
4 appointment on Monday. I would certainly like to
5 have a Chapter 7 trustee now take a look at your
6 position and what you want to do. So what I'm going
7 to do I think is set a status on that and try to get
8 a Chapter 7 trustee in there by about a week from
9 tomorrow.

10 What do you think about that?

11 MR. BARRETT: Well, Your Honor, I do
12 understand why the court feels it has to do that.
13 And certainly we'll accept that. We ask, though, as
14 we go forward I think what we'll probably do, because
15 I suppose the debtor will still have standing to
16 oppose this motion since it's seeking --

17 THE COURT: Absolutely.

18 MR. BARRETT: -- relief against the
19 debtor.

20 THE COURT: Except that the trustee
21 has to have more responsibility than the debtor at
22 this point.

23 MR. BARRETT: Especially as a trustee
24 may feel it concerns the estate, obviously.

25 THE COURT: What?

1 MR. BARRETT: That the motion may
2 concern the estate, which we don't believe it does.
3 But I understand a trustee might want to look at it.

4 THE COURT: Well, I don't want to make
5 that decision until I get some input.

6 MR. BARRETT: What I suggest, Your
7 Honor, if we can have a status. I presume a trustee
8 would be appointed tomorrow or early next week.

9 THE COURT: We will get the ball
10 rolling tomorrow when I get the order entered. We'll
11 have it docketed tomorrow. And I will ask my staff
12 to try and find out who the trustee is as soon as
13 possible. I don't know how long it takes. Sometimes
14 it takes several days. Sometimes not. So I will
15 just set this a week from tomorrow for status, status
16 and position of Chapter 7 trustee.

17 Once the Chapter 7 trustee is
18 appointed, would you be good enough to send him a
19 copy of your motion and maybe have a talk with him
20 and see what --

21 MR. BARRETT: Your Honor, we would do
22 that. In fact, I have a bound copy of the entire
23 motion. I don't know if the Court has pulled it off
24 the internet, but I can give the court as well an
25 easier, more accessible copy.

1 THE COURT: I have your motion. What
2 more do we need?

3 MR. BARRETT: All the exhibits.

4 THE COURT: We have your exhibits
5 here.

6 What about September 14th at 11:00
7 a.m., status and position of the Chapter 7 trustee?

8 MR. BARRETT: Thank you, Your Honor.
9 We will contact the trustee.

10 THE COURT: Tomorrow morning for that
11 order. Would 11:00 o'clock be convenient?

12 MR. FACTOR: Yes, Your Honor.

13 THE COURT: That order -- back on the
14 record. The order will say pursuant to remarks from
15 the bench, to be amplified by detailed findings of
16 fact, conclusions of law at the conclusion of this
17 hearing which will be made and entered by the
18 court --

19 At the conclusion of the hearing,
20 pursuant to the remarks from the bench, as will be
21 amplified by more detailed findings of fact,
22 conclusions of law.

23 Then go ahead and prepare the order.

24 Okay, counsel?

25 MR. FACTOR: Yes, Your Honor.

1 (Which were all the proceedings had in
2 the above-entitled cause, August 31,
3 2006, 1:30 p.m.)

4 I, JACKLEEN DE FINI, CSR, RPR, DO HEREBY CERTIFY
5 THAT THE FOREGOING IS A TRUE AND ACCURATE
6 TRANSCRIPT OF PROCEEDINGS HAD IN THE ABOVE-
7 ENTITLED CAUSE.
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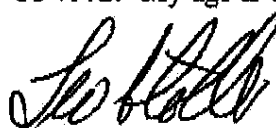
EXHIBIT 15

8. I do not expect any major changes in my financial situation for the next twelve months.

9. I have not paid any attorney any money for services in connection with this case, including completion of this affidavit.

10. I have not paid any one other than an attorney any money for services in connection with this ^{HOV-11} case, including the completion of this affidavit.

11. My social security number is 327-38-7972. My age is 60 years old.



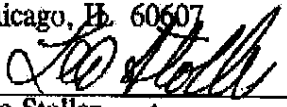
Leo Stoller
7115 W. North Avenue, #272
Oak Park, Illinois 60302
(312) 545-4554
Email: ldms4@hotmail.com

Date: 12/2/06

Certificate of Mailing

I hereby certify that the foregoing is being hand-delivered to the following address:

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For the Seventh Circuit
219 N. Dearborn
Chicago, IL 60607



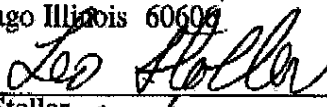
Leo Stoller
Date: 12/21/06

Certificate of Service

I hereby certify that the foregoing is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to:

Richard M. Fogel, Trustee
Janice A. Alwin, Esq.
Counsel for Trustee
Shaw, Gussis, Fishman, Glantz,
Wolfson & Tow
321 N. Clark Street, Suite 800
Chicago, Illinois 60610

Timothy C. Meece
BANNER & WITCOFF, LTD.
10 South Wacker Drive, Suite 3000
Chicago Illinois 60606



Leo Stoller
Date: 12/21/06

C:\MARKS42\STOLL.AFD

EXHIBIT 16

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
OCT 30 2006
KENNETH S. GARDNER, CLERK
PS REP. - SJ

In re Chapter 7
LEO STOLLER,
Debtor.

Case No. 05-64075
Hon. Jack B. Schmetterer
Monday, Oct. 30, 2006
10:00AM

NOTICE OF MOTION AND HEARING

The Debtor ("Debtor"), files and notices its emergency motion for hearing before Judge Jack B. Schmetterer at 9:30, Monday Oct. 30, 2006 in the court occupied by him 682.

Leo Stoller
7115 West North Avenue #272
Oak Park, Illinois 60302

NOTICE OF SERVICE

I certify that the following were served via fax and/or email on Sunday Oct. 29, 2006

addressed to:

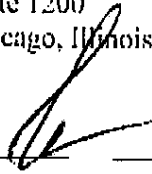
Janice A. Alwin (6277043)
Rick Fogel
Shaw Gussis Fishman Glantz
Wolfson & Towbin LLC
321 North Clark Street, Suite 800
Chicago, IL 60610
Tel: (312) 276-1323
Fax: (312) 275-0571
email: jalwin@shawgussis.com
Chapter 7 Trustee

Richard N. Golding Esq.
500 North Dearborn St.
Second Floor

Chicago, Illinois 60610

Sara E. Lorber Esq.
Seyforth Shaw LLP
131 South Dearborn
Chicago, Illinois 60606
Counsel for Pure Fishing Inc.

Melvin J. Kaplan Esq.
14 E. Jackson
Suite 1200
Chicago, Illinois 60604



UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
OCT 30 2006
KENNETH S. GARDNER, CLERK
PS REP. - SJ

In re Chapter 7
LEO STOLLER,
Debtor.

Case No. 05-64075
Hon. Jack B. Schmetterer

EMERGENCY MOTION *To File an appeal for*

NOW COMES Leo Stoller ("Debtor"), and requests that this Court enter an order stating that the trustee has abandoned the intellectual property and/or trademarks of the estate and other relief and Debtor states as follows:

INTRODUCTION

1. The Debtor Leo Stoller filed a personal chapter 13 in December of 2005. On August 31, 2006, the court converted Leo Stoller to a chapter 7. A trustee was appointed. On Oct. 15, 2006 the court entered an order authorizing the trustee to act on behalf of each of the debtors wholly owned corporations in the capacity of sole shareholder of each respective corporation.
2. The Debtor was in the business of licensing trademarks and litigating to protect those trademarks. The Debtor has over 30 pending Oppositions and Petition to

attached, on Oct. 4, 2006 canceling the Debtors STEALTH trademarks and issuing a sanction against the debtor declaring the debtor a vexatious litigator, assessing attorneys fees against the debtor which may amount to over \$700,000.00 The Debtor and his corporations should be allowed to appeal this order and have the Debtor's corporation represented by counsel. The Debtor has requested permission from the trustee to permit the Debtor's trademark attorney's file a notice of appeal on behalf of the Debtor and the Debtor's wholly owned corporations. The Trustee has refused to give the Debtor permission despite the fact that the cost of the appeal would not be born by the Debtor's estate. Despite the fact that a reversal of the said decision would be an asset of the estate and will result in a large financial payment to the estate.

5. This motion is an emergency motion because the Notice of Appeal must be filed in the Pure Fishing case before Nov. 3, 2006. The trustee prevention of the debtor from having its trademark attorney represent the debtor corporations in an appeal prevents the debtor from realizing the full value of its assets and permits a appeal able judgment to stand, which would not otherwise stand, assessing the Debtor \$700,000 in additional attorney fees, canceling 35 STEALTH Federal Trademarks, declaring the debtor a vexatious litigator and barring the Debtor from the filing of any lawsuits.

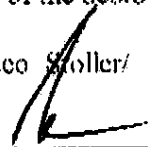
6. The Debtor has waived it right to discharge and the debtor must be permitted under the circumstances to realizing the full value of its assets in order to satisfy the creditors.

WHEREFORE, the Debtor prays, that the court issue an order that the Trustee has abandoned the intellectual property and/or trademarks of the Debtors estate and that they are as a result of abandonment no longer property of the estate and they revert to Leo Stoller.

Secondly, that the court enter an order permitting Leo Stoller to litigating at the Trademark Trial and Appeal Board on behalf of his corporations to protect his trademarks.

Thirdly, that the court enter an order permitting Leo Stoller to retain counsel to represent the debtors corporations in the pending district court cases and Appeals cases in which Leo Stoller and/or his corporations are involved, without any attorney fees being assed to the estate in order for the debtor to realize the full value of its assets. That the court permit the Debtor to retain counsel in order to file its appeal in the Pure Fishing Inc., Case No. 05-CV 00725 on behalf of Debtor's corporations. That the Trustee not be permitted to interfere in all of the Debtors currently filed legal proceedings involving the trademark of the debtor.

/Leo Stoller/



Leo Stoller

7115 West North Avenue #272

Oak Park, Illinois 60302

NOTICE OF SERVICE

I certify that the following were served via fax and/or email on Sunday Oct. 29, 2006

addressed to:

Janice A. Alwin (6277043)
Rick Fogel
Shaw Gussis Fishman Gilantz
Wolfson & Towbin LLC
321 North Clark Street, Suite 800
Chicago, IL 60610
Tel: (312) 276-1323
Fax: (312) 275-0571
email: jalwin@shawgussis.com
Chapter 7 Trustee

Richard N. Golding Esq.
500 North Dearborn St.
Second Floor
Chicago, Illinois 60610

Sara E. Lorber Esq
Seyforth Shaw LLP
131 South Dearborn
Chicago, Illinois 60606
Counsel for Pure Fishing Inc.

Melvin J. Kaplan Esq.
14 E. Jackson
Suite 1200
Chicago, Illinois 60604

/s/ Leo Stoller/ Oct 29, 2006



Stoller Bankruptcy Trustee Willing to Dismiss Pending Proceedings

The Chapter 7 Trustee for the estate of Leo Stoller (see [postings](#) and) has sent the following e-mail to me, indicating his willingness to dismiss without prejudice pending proceedings involving the mark STEALTH. He would also consider resolution of proceedings involving other marks asserted by Stoller. The Trustee's message is set forth below.



Dear Mr. Welch:

By Order of the U.S. Bankruptcy Court for the Northern District of Illinois effective September 1, 2006, I have been appointed the chapter 7 trustee in connection with the administration of the estate of Leo Stoller. This authority vests in me the ability to begin, maintain, terminate, or settle any pending proceeding that involves Mr. Stoller or any of his proprietorship entities. By further Order of the Court effective October 5, 2006 that authority has been extended to include actions as sole share holder of all corporate entities owned or controlled by Mr. Stoller. Mr. Stoller has thus been relieved of his ability to act as a representative of his corporations or proprietorships, including the filing of or response to any motions in any pending trademark opposition or cancellation proceedings.

I have reviewed what information has been provided regarding any business activity that would give rise to potential trademark rights, whether registered or at common law. I have also reviewed the district court's Judgment dated October 4, 2006 in connection with *Central Mfg. Co. v. Pure Fishing, Inc.*, No. 05 C 00725 (N.D. Ill.) which cancelled a number of STEALTH-based trademark registrations.

In connection with any trademark opposition or cancellation that was pending on or before September 1, 2006, you may announce in the TTABlog that I would probably consider any reasonable Agreed Motion to Dismiss without Prejudice such a proceeding that involved any of the STEALTH trademark rights asserted by Mr. Stoiler or one of his corporate entities. I would also agree to consider, on a case-by-case basis, oppositions or cancellation proceedings that involved other trademark rights asserted by Mr. Stoiler following a reasonable investigation into the basis for the proceeding.

Richard M. Fogel
(Not individually but as chapter 7 trustee in the estate of Leo Stoiler)
Shaw Cussis Fishman Glantz Wolfson & Towbin LLC
221 N. Clark Street, Suite 800
Chicago, IL 60610
Direct mail: (312) 274-1334
Direct fax: (312) 275-0578

The Order authorizing the Trustee to act on behalf of Stoiler's wholly-owned companies may be found _____. It would probably be wise to include a copy of that Order as an exhibit to any stipulated dismissal paper.

In two STEALTH oppositions, the applicants have already filed papers signed by the Trustee to effect dismissal of the oppositions without prejudice.

In *Central Mfg. Co. v. Polekovic*, Opposition No. 91164582, the parties filed an "Agreed Motion to Dismiss" (_____) and the Board accordingly dismissed the proceeding without prejudice (_____).

In *Central Mfg. Co. v. Premium Prods., Inc.*, Opposition No. 91159950, the parties filed a "Stipulated Dismissal without Prejudice" (_____). [Under Rule 41(a)(1), FRCP, this stipulated dismissal is effective immediately, even without Board action. I think this is the better of the two approaches]. TTAB dismissal _____.

Text Copyright John L. Welch 2006.

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>ESTTA Tracking number: **ESTTA104313**Filing date: **10/16/2006**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91159950
Party	Defendant PREMIUM PRODUCTS, INC. PREMIUM PRODUCTS, INC. P.O. Box 444 Mount Vernon, VA 22121
Correspondence Address	H. JAY SPIEGEL H. JAY SPIEGEL & ASSOCIATES PO BOX 11 MOUNT VERNON, VA 22121
Submission	Other Motions/Papers
Filer's Name	H. Jay Spiegel
Filer's e-mail	jayspiegel@aol.com
Signature	/H. Jay Spiegel/
Date	10/16/2006
Attachments	groundzerostealth.stipofdismissal.certofservice.101606.pdf (1 page)(25218 bytes)

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

CENTRAL MFG. CO.
P.O. Box 35189
Chicago, IL 60707-0189

Opposer,

v.

PREMIUM PRODUCTS, INC.
(a Virginia Corporation)
P.O. Box 11
Mount Vernon, VA 22121

Applicant.

Trademark: GROUND ZERO STEALTH

Application SN: 76/505,385

Int. Class No.: 28

Filed: April 1, 2003

Published: November 25, 2003

Opposition No.: 91159950

CERTIFICATE OF SERVICE

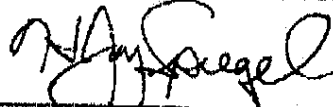
I hereby certify that a true copy of a STIPULATED DISMISSAL WITHOUT PREJUDICE,
electronically filed using the TTAB ESTTA System on October 15, 2006, was served by First Class
Mail, postage prepaid, this 16th day of October, 2006, on the following Opposer:

CENTRAL MFG. CO.
c/o Richard M. Fogel, Esquire
Chapter 7 Trustee of the
Bankruptcy Estate of Leo Stoller
Shaw Gussis Fishman Glantz
Wolfson & Towbin LLC
321 North Clark Street, Suite 800
Chicago, IL 60610.

DATED: October 16, 2006

Respectfully submitted,

H. JAY SPIEGEL & ASSOCIATES



H. Jay Spiegel
Attorney for Applicant
Registration No. 30,722

H. JAY SPIEGEL & ASSOCIATES
P.O. Box 11
Mount Vernon, Virginia 22121
(703) 619-0101 - Phone
(703) 619-0110 - Facsimile

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>ESTTA Tracking number: **ESTTA104110**Filing date: **10/13/2006**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91164582
Party	Defendant Pocekovic, Jovan Pocckovic, Jovan 3815 West 11th. Avenue CAX Vancouver, V6R 2K8
Correspondence Address	JOVAN POCEKOVIC 3815 WEST 11TH AVENUE VANCOUVER, CANADA V6R 2K8 . DA
Submission	Other Motions/Papers
Filer's Name	Lance G. Johnson
Filer's e-mail	ljohnson@roylance.com, usdocketing@roylance.com, john@stealthvodka.com, rfogel@shawgussis.com
Signature	/LanceJohnson/
Date	10/13/2006
Attachments	Dismissal order- Stealth Vodka.pdf (1 page)(7787 bytes) Order converting case and appointing trustee.pdf (1 page)(42831 bytes) Trustee letter of appointment.pdf (1 page)(30533 bytes) Trustee acts for corps.pdf (1 page)(25169 bytes)

IN THE U.S. PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEALS BOARD

Leo Stoller	|	
Central Mfg. Co.,	|	
Opposers	|	Opposition No. 91164582
v.	|	
Jovan Pocckovic,	|	
Applicant	|	

AGREED MOTION TO DISMISS

October 12, 2006

Applicant and the trustee in bankruptcy for Opposers Leo Stoller and Central Mfg. Co. (see attached) hereby agree to dismiss the above-identified opposition without prejudice. All pending motions are hereby withdrawn and deemed moot.

On Behalf of Applicant:

Authorized Representative for Opposers:

/LanceJohnson/
 Lance G. Johnson
 Roylance, Abrams, Berdo & Goodman,
 LLP
 1300 19th Street, NW Suite 600
 Washington, DC 20036
 Tel: 202-659 9076
 Fax: 202-659 9076
 LJohnson@Roylance.com

/Richard Fogel/
 Richard M. Fogel
 (Not individually, but as chapter 7 trustee for the
 bankruptcy estate of Leo Stoller)
 Shaw, Gussis, Fishman, Glantz & Towbin, LLC
 321 North Clark Street, Suite 800
 Chicago, IL 60610
 Tel: (312) 276-1334
 Fax: (312) 275-0578
 RFogel@ShawGussis.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:) Case No. 05 B 64075
LEO STOLLER,) Chapter 13
Debtor.) Honorable Jack B. Schmetterer
)
)
)

ORDER CONVERTING CHAPTER 13
CASE TO A CASE UNDER CHAPTER 7

This matter having been presented to the Court upon the Motion (the "Motion") to Convert Chapter 13 Case to Chapter 7 and for Immediate Appointment of Trustee filed on March 15, 2006, by Pure Fishing, Inc. ("PFI"), and the Court having conducted a hearing on the Motion and having concluded at the end of that hearing, pursuant to comments which shall be amplified by further findings of fact and conclusions of law, that sufficient cause exists to grant the relief requested in the Motion;

NOW THEREFORE, the Court does hereby ORDER that:

1. Pursuant to 11 U.S.C. § 1307(c), the Motion is granted and the captioned case hereby is converted from a proceeding under Chapter 13 of the Bankruptcy Code to a proceeding under Chapter 7 of the Bankruptcy Code, *nunc pro tunc* August 31, 2006;
2. Pursuant to 11 U.S.C. § 701, the United States Trustee shall appoint an interim trustee in this case.

3. This order is effective immediately

ENTERED

SEP 01 2006

JACK B. SCHMETTERER BANKRUPTCY JUDGE
HONORABLE JACK B. SCHMETTERER



U. S. Department of Justice

United States Trustee

Northern District of Illinois

227 West Monroe Street
Suite 3350
Chicago, Illinois 60606

312 886-576
FAX / 312 886-575

September 5, 2006


Richard M. Fogel, Esq.
Shaw, Gussis et al
321 North Clark Street
Suite 800
Chicago, IL 60610

Re: Leo Stoller
Case number 05 B 64075

Dear Mr. Fogel:

The above captioned case converted from Chapter 13 to Chapter 7 of the Bankruptcy Code on September 1, 2006 and you are appointed to serve as trustee in this matter. Bond is fixed and approved as the blanket bond.

If you reject this appointment you must notify the court and this office within five (5) days of the receipt of this letter. Otherwise you will be deemed to have accepted the appointment.

Sincerely,

WILLIAM T. NEARY
United States Trustee

Rejected:

Signature

Date

05-64075-153.1; Motion to Authorize Proposed Order and Minute Order Entered: 9/23/2006 3:21:30 PM by Janice Edwin Page 1 of 2

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

<p>In re</p> <p>LEO STOLLER,</p> <p style="text-align: center;">Debtor.</p>	<p>Chapter 7</p> <p>Case No. 05-64075</p> <p>Hon. Jack B. Schmetterer</p> <p>Hearing Date: October 5, 2006 Hearing Time: 10:30 a.m.</p>
---	---

**ORDER AUTHORIZING THE TRUSTEE TO ACT ON BEHALF OF DEBTOR'S
WHOLLY OWNED CORPORATIONS AND RELATED RELIEF**

Upon consideration of the application (the "Motion") of Richard M. Fogel, not individually, but as chapter 7 trustee (the "Trustee") for the bankruptcy estate of Leo Stoller (the "Debtor"), for the entry of an order authorizing the Trustee to act on behalf of the Debtor's Wholly-Owned Corporations (as defined in the Motion) solely in the Trustee's capacity as the sole shareholder of such corporations; due and proper notice of the Motion having been given; and the Court being otherwise fully advised in the premises; its is hereby

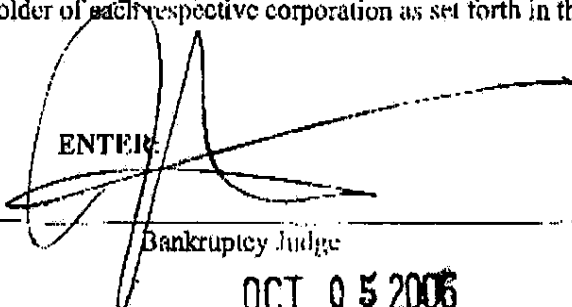
ORDERED:

1. Notice of the Motion as provided for therein is sufficient and further notice is waived.
2. The Trustee is authorized to act on behalf of each of the Wholly-Owned Corporations in the capacity of sole shareholder of each respective corporation as set forth in the Motion.

Dated: _____

10/15/06

ENTERED



Bankruptcy Judge

OCT 05 2006

ML

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Central Mfg. Co., et al.

Plaintiff,

v.

Case No.: 1:05-CV-00725

Honorable George W. Lindberg

Pure Fishing, Inc., et al.

Defendant

PROPOSED FINAL JUDGMENT

Having considered Defs.' Motion to Lift Stay and Enter Final Judgment, the Court hereby enters this final judgment in accordance with Fed. R. Civ. P. 54, 55(b), and 58.

IT IS ORDERED that final judgment is hereby entered in favor of Defendants / Counter-Plaintiffs on counterclaims I-IV against Central Mfg. Co., Leo Stoller an individual doing business as Central Mfg. Co. doing business as S. Industries Inc. doing business as Terminator doing business as Stealth doing business as Rentamark doing business as Rentamark.Com doing business as Stealth Sports and Marine doing business as Association Network Management doing business as USA Sports Co. Inc. doing business as Stealth Industries, Inc. doing business as Central Mfg Inc. doing business as S Industries doing business as Sentra Industries Inc.

IT IS FURTHER ORDERED that this case is "exceptional" under 15 U.S.C. § 1117(a). Counter-Defendants are jointly and severally responsible, and shall pay the Defendants'/Counter-Plaintiffs' costs, charges and disbursements, including a reasonable attorneys' fees, incurred in this action. Defendants / Counter-Plaintiffs shall file the information required by Fed. R. Civ. P. 54(d)(2) in support of its fee award within fourteen (14) days after the date of this Order. Defendants / Counter-Plaintiffs shall file a bill of costs and disbursements on the form provided by the clerk pursuant to Fed. R. Civ. P. 54(d), no later than ten (10) days after the date of this Order.

IT IS FURTHER ORDERED that US Trademark Registration No. 1,766,806 and the STEALTH mark for fishing bobbers are lapsed, invalid, abandoned, unenforceable, and forfeit under federal and common laws.

IT IS FURTHER ORDERED that US Trademark Registration No. 1,766,806 and each of the "Stealth" trademark registrations listed in the Complaint are canceled.

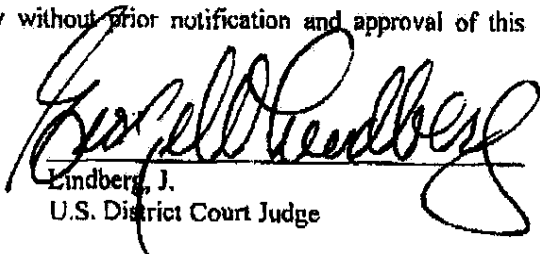
IT IS FURTHER ORDERED that there is no reasonable likelihood of confusion between Plaintiff's STEALTH marks and the SPIDERWIRE STEALTH mark as used by Defendants.

IT IS FURTHER ORDERED that Counter-Defendants, whether or not registered with the State of Illinois, are vexatious litigants and are barred from instituting any lawsuit or trademark opposition without prior leave of this Court pursuant to this Court's authority under the All Writs Act 28 U.S. C. § 1651(a).

IT IS FURTHER ORDERED that Counter-Defendants are liable for the judgment in *S Industries, Inc. v. Centra 2000, Inc.*, 1998 U.S. Dist. LEXIS 10649, 1998 WL 395161 (N.D. Ill. 1998) so as to allow execution of that judgment against such trademark registrations, goodwill, and associated license assets, including US trademark registration nos. 1,332,378 and 1,766,806 and all other trademark registrations at a value of \$245 for each (sanctions of October 12, 2005 hearing) in partial satisfaction of that judgment.

IT IS FURTHER ORDERED that Counter-Defendants are enjoined from dissipating, transferring, assigning, liquidating, or otherwise removing the trademark assets of Plaintiffs and Counter-Defendants to another person or entity without prior notification and approval of this Court.

10/4/06
Dated:


Lindberg, J.
U.S. District Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Honorable JACK B. SCHMETTERER Hearing Date OCTOBER 31, 2006

Bankruptcy Case No. 05 B 64075 Adversary No. _____

Title of Case Leo Stoller

Brief Statement of Motion DEBTOR'S EMERGENCY MOTION TO FILE AN APPEAL

Names and Addresses of moving counsel _____

Representing _____

ORDER

IT IS HEREBY ORDERED THAT:
Debtor's emergency motion to file an appeal is denied without prejudice for the reasons stated from the bench.

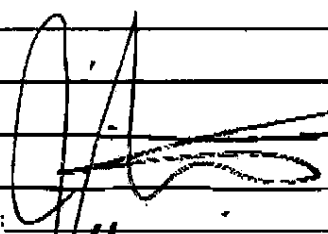
ENTER: 
JACK B. SCHMETTERER
United States Bankruptcy Judge

EXHIBIT 18

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS

DEC 05 2006

KENNETH B. GARDNER, CLERK
P.O. Bldg. - DDS

**UNITED STATES BANKRUPTCY COURT
FOR NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:
LEO STOLLER,

Debtor.

Hon. Jack B. Schmetterer

Appeal from the U.S. District
Court for the Northern District,
Eastern Division
Case No. 05-B-64075

**DEBTOR'S RESPONSE TO MOTION OF TRUSTEE TO APPROVE
AGREEMENT WITH GOOGLE, INC. TO MODIFY STAY AND COMPROMISE
CERTAIN CLAIMS WITH CERTAIN OF THE DEBTOR'S WHOLLY-OWNED
CORPORATIONS AND RELATED RELIEF**

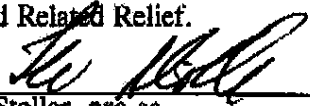
NOW COMES the Debtor in opposition to the Trustee's motion to approve an agreement with Google, Inc., and states as follows:

The Debtor opposes the Trustee's motion on the grounds that the Google case represents a substantial asset to the Debtor's estate. The Trustee's attempt to enter an agreement with Google, Inc. dismissing the petition to cancel the Google trademark at the Trademark Trial and Appeal Board and requesting abandonment of Central Mfg.'s intent to use application 78-905,472 without any consideration, represents an abuse of the Trustee's duty to the Debtor's estate. In the opinion of the Debtor, the Google case represents one of the largest assets of the Debtor's estate. Consequently, the Debtor is requesting that the Court deny the Trustee's motion to approve any agreement with Google, Inc.

Secondly, the Debtor has appealed the decision by this Court to convert to a Chapter 7 liquidation, and the granting of the Trustee's motion will prevent the Debtor from being made whole in the event that the Debtor's appeal is successful.

The third ground for this Court to deny the Trustee's motion is that Debtor has proffered a settlement proposal to the Trustee, Richard M. Fogel, and the Debtor's creditors. The Debtor is requesting that the Court deny Trustee's motion and/or any motion to approve any settlement.

WHEREFORE, the Debtor prays that the Court deny Trustee's Motion to Approve Agreement With Google, Inc. To Modify Stay and Compromise Certain Claims With Certain of The Debtor's Wholly Owned-Corporations and Related Relief.



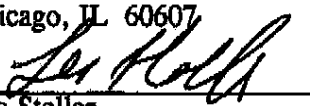
Leo Stoller, *pro se*
7115 W. North Avenue
Oak Park, Illinois 60302
(312) 545-4554
Email: ldms4@hotmail.com

Date: December 4, 2006

Certificate of Mailing

I hereby certify that the foregoing is being hand-delivered to the following address:

Clerk of the Court
United States Bankruptcy Court
219 S. Dearborn
Chicago, IL 60607



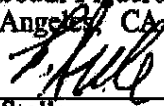
Leo Stoller
Date: December 4, 2006

Certificate of Service

I hereby certify that the foregoing is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to:

Richard M. Fogel, Trustee
Janice A. Alwin, Esq.
Counsel for Trustee
*Shaw, Gussis, Fishman, Glantz,
Wolfson & Towbin LLC.*
321 N. Clark Street, Suite 800
Chicago, Illinois 60610

Michael Zeller
*Quinn, Emanuel, Urquhart,
Oliver & Hedges, LLP.*
865 South Figueroa Street, 3rd Floor
Los Angeles, CA 90017



Leo Stoller
Date: December 4, 2006

C:\MARKS42\STOLLER7.DOC

EXHIBIT 19

FORM B10 (Official Form 10) (04/04)

United States Bankruptcy Court Northern District of Illinois		AMENDED PROOF OF CLAIM
Name of Debtor Leo Stoller		Case Number 05 B 64075
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property) Google Inc.		THIS SPACE FOR COURT USE ONLY
Name and Address Where Notices Should be Sent c/o Michael Zeller Quinn Emanuel Urquhart Oliver & Hedges, LLP 865 South Figueroa Street, 10th Floor Los Angeles, CA 90017		
Account or other number by which creditor identifies debtor:		Check here if this claim <input checked="" type="checkbox"/> amends <input type="checkbox"/> replaces a previously filed claim dated: December 7, 2006
1. BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Wages, salaries and compensation (fill out below) <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death Last four digits of SS# _____ <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other - See attached. Unpaid compensation for services performed <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) from _____ to _____ <div style="text-align: right;">(date) (date)</div>		
2. DATE DEBT WAS INCURRED Jan 2006 to present		3. IF COURT JUDGMENT, DATE OBTAINED:
4. Total Amount of Claim at Time Case Filed: \$ _____ <div style="text-align: right;">(unsecured) (secured) (priority) (Total)</div> If all or part of your claim is secured or entitled to priority, also complete item 5 or 7 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attached itemized statement of all interest or additional charges.		
5. Secured claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff) Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim above, if any: \$ _____		7. Unsecured Priority Claim <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ 250,000 Specify the priority of the claim: Chapter 13 Administrative <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,925)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(1) and § 503(b) *Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
6. Unsecured Nonpriority Claim \$ _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority		THIS SPACE IS FOR COURT USE ONLY
8. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 9. SUPPORTING DOCUMENTS: <i>Attach copies of supporting documents</i> , such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. ANY ATTACHMENT MUST BE 8-1/2" BY 11". (See attached Supplement) 10. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and an additional copy of this proof of claim.		
Date: 12/20/2006	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) /s/ William J. Barrett, counsel for the claimant	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both, 18 U.S.C. §§ 152 and 3571.		

Supplement to Proof of Claim of Google Inc.

Google Inc. ("Google") submits this Proof of Claim to, *inter alia*, preserve its rights as an administrative claimant as described further below and/or in the event any action is taken that potentially impairs the rights and benefits of Google under that Order Approving Trustee's Agreement with Google Inc. to Modify Stay and Compromise Certain Claims of Debtor's Wholly-owned Corporations and Related Relief, signed by the Court on December 5, 2006, and under the settlement agreement and related documents executed by the Chapter 7 pursuant to such Order. Google's claim arises from unlawful conduct committed by the Debtor as a debtor in possession under Chapter 13 of the United States Bankruptcy Code. Google maintains that the entire claim arose after the commencement of this bankruptcy case, although in the event the Court determines that any portion of the claim arose prior to the commencement of this case Google asserts the claim, to that extent, as an unsecured pre-petition claim. The unlawful conduct of the Debtor is described in detail in the Motion of Google Inc. for Order Declaring Proposed Suit to be Outside Scope of Stay or, in the Alternative, Modifying Stay, filed on August 18, 2006, together with its accompanying exhibits, all of which are incorporated herein by reference. Google estimates its claim at \$250,000 which consists of expenses, including but not limited to internal management time and external legal fees, incurred in defending actions and responding to acts committed by the Debtor in the course of his unlawful scheme to injure Google. Google further reserves all claims against the Debtor individually that arose after the conversion of this case to one under Chapter 7 or that are otherwise not discharged in this bankruptcy proceeding.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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CENTRAL MANUFACTURING CO.,)	Docket No. 05 C 725
a Delaware corporation, et al.,)	
)	
Plaintiffs,)	
)	
vs.	)	October 13, 2005
	)	11:00 o'clock a.m.
PURE FISHING, INC., an	)	Chicago, Illinois
Iowa corporation d/b/a)	
BERKLEY, et al.,)	
)	
Defendants.)	
)	

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HON. GEORGE W. LINDBERG

APPEARANCES:

For the Plaintiffs: QUERREY & HARROW
BY: MR. ROBERT R. BENJAMIN
 MS. BEVERLY ANNE BERNEMAN
 MR. JOHN M. BROM
175 West Jackson Boulevard
Suite 1600
Chicago, Illinois 60604

MR. PETER WOOD
111 West Washington Street
Chicago, Illinois 60602

For the Defendants: BANNER & WITCOFF, LTD.
BY: TIMOTHY C. MEECE
10 South Wacker Drive
Suite 3000
Chicago, Illinois 60606

ROYLANCE ABRAMS BERDO &
GOODMAN, LLP
BY: MR. LANCE G. JOHNSON
1300 19th Street NW
Washington, DC 20036

1 APPREARANCES: (continued)

2 ALSO PRESENT: MR. LEO STOLLER

3
4 Court Reporter: MARY M. HACKER
5 219 South Dearborn Street
6 Room 1426
7 Chicago, Illinois 60604
8 (312) 435-5564
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1 THE CLERK: 05 C 725, Central Manufacturing versus
2 Pure Fishing.

3 MR. BENJAMIN: Good morning, Judge. Robert Benjamin,
4 Beverly Berneman and John M. Brom for the firm, and it's our
5 motion that is brought today.

6 MR. MEECE: Good morning, your Honor. Timothy Meece
7 on behalf of defendants Pure Fishing.

8 MR. JOHNSON: Lance Johnson on behalf of Pure Fishing
9 and counterclaim plaintiffs.

10 MR. STOLLER: Leo Stoller, your Honor,
11 counter-defendant.

12 MR. WOOD: Peter Wood for plaintiff.

13 THE COURT: Sandra, did we issue minute orders in
14 this case?

15 THE CLERK: Yes, we did, Judge.

16 MR. MEECE: Your Honor, just for clarity, there is
17 one other pending motion before your Honor today; that's the
18 motion for sanctions.

19 THE COURT: Okay. Now, let's take the motion for
20 leave to withdraw as co-counsel. Let's see. Who wants to get
21 out, Querrey & Harrow?

22 MR. BENJAMIN: That is correct, Judge, Benjamin,
23 Berneman & Brom.

24 THE COURT: Okay. Without objection --

25 MR. STOLLER: Your Honor, if I may, I object to

1 allowing Querrey & Harrow out of the case because --

2 THE COURT: Who are you again?

3 MR. STOLLER: Leo Stoller, your Honor. I'm the
4 counter-defendant and they represent me, and I object to
5 allowing Querrey & Harrow out because they have handled this
6 case 100 percent since the inception. They are the most
7 qualified parties because it involves not only trademark
8 issues but it involves bankruptcy issues.

9 And I have attempted to locate other counsel. We're
10 three weeks away from having to file a motion for summary
11 judgment in the case and it's absolutely impossible for me to
12 find another attorney that will get involved in the case.

13 Mr. Peter Wood, who was involved initially, has had
14 no input into the case since Benjamin, Berneman & Brom took
15 over the case, and a substantial amount of funds of mine have
16 been expended to this firm.

17 You have ordered us sua sponte to file a motion for
18 summary judgment within about 21 days and the case would be
19 over, and it's virtually impossible -- I have interviewed at
20 least 20 lawyers; I got on the phone when they requested that
21 they wanted to leave, and nobody is willing to step into their
22 shoes. And they are familiar with the issues in the case.

23 And the unique thing about this particular firm, not
24 only does it involve trademark issues, but it involves
25 bankruptcy issues because the defendants purchased a \$150,000

1 fee award judgment and they're -- for one dollar, and they're
2 now assessing it against me on the counterclaim, and the
3 defendants are demanding that I turn over my trademarks and
4 hundreds of thousands of dollars in fees to them and put me
5 out of business.

6 And, basically, there is no other law firm that I
7 have been able to find that is as capable as this firm is to
8 handle the case. And there's only three weeks left in the
9 case in the sense that you have ordered motions for summary
10 judgment to be granted -- to be issued. So we filed our
11 motions for summary judgment, and I believe the case will be
12 resolved on motion for summary judgment. And, therefore, my
13 rights would be severely prejudiced if you allow Querrey &
14 Harrow out at this time.

15 THE COURT: Who is Mr. Wood?

16 MR. WOOD: Right here, your Honor.

17 THE COURT: Okay. Well, let me hear from you.

18 MR. WOOD: Your Honor, when we first filed the suit I
19 was involved with my client. Then we came to the first court
20 hearing when the Court established a schedule of things that
21 were to be done. Immediately after that Mr. Stoller said that
22 he was going to seek other representation and that they were
23 going to take the lead. I haven't done anything with this
24 case since that date.

25 I was notified that they came into the case, I

1 received some pleadings, but I have not been active in the
2 case since then.

3 THE COURT: Okay. But you don't intend to withdraw?

4 MR. WOOD: Your Honor, I have to talk to Mr. Stoller
5 about that.

6 THE COURT: Okay. At least you haven't filed a
7 motion to?

8 MR. WOOD: I have not, your Honor.

9 THE COURT: Well, let's pass that for a moment and
10 let me discuss the agreed motion to dismiss. Is that correct,
11 Lindy-Little Joe has apparently agreed to dismiss the case as
12 to --

13 MR. JOHNSON: Yes, your Honor, as to all defendants
14 and all counterclaims by -- against Lindy-Little Joe as
15 counterclaim defendant have also been dismissed. We have
16 reached a settlement.

17 MR. BENJAMIN: And that was with Lindy-Little Joe's
18 counsel in Minnesota, I believe?

19 MR. JOHNSON: Correct, their regular outside IP
20 counsel. And they are signed by Mr. Tagasaki (phonetic) as
21 president of --

22 THE COURT: Now, did you receive a minute order on
23 that?

24 MR. JOHNSON: Yes, we did, your Honor. As far as we
25 understand it, Lindy-Little Joe is now out of the case

1 altogether.

2 THE COURT: Okay.

3 MR. JOHNSON: I also understand, your Honor, in view
4 of the prior order dismissing the complaint without prejudice,
5 there are no longer any allegations in the complaint that
6 remain in this case and it's merely the counterclaims made by
7 my clients and the counterclaim defendants who remain.

8 MS. BERNEMAN: Judge, as of this morning we filed a
9 motion for leave to file an amended complaint. There was an
10 order denying our first motion. We brought a second motion,
11 and we believe that the new complaint will address not only
12 the issues raised in your order but also takes out
13 Lindy-Little Joe as a plaintiff.

14 THE COURT: You represent who?

15 MR. BENJAMIN: We are co-counsel for plaintiff,
16 Judge.

17 THE COURT: Central?

18 MR. BENJAMIN: Yes.

19 MS. BERNEMAN: Central, yes.

20 MR. BENJAMIN: And, Judge, may I be heard on response
21 to Mr. Stoller's comments?

22 THE COURT: Sure, go ahead.

23 MR. BENJAMIN: First of all, the dates he mentioned
24 are off. First, you have given us until mid-November to file
25 motions for summary judgment. The trial is not set in this

1 case until February. We understand that's a firm date, but
2 it's still far enough along that he can bring in additional
3 counsel in addition to Mr. Wood, if he so chooses.

4 But we have other issues, as we have set forth in our
5 reply in support of our motion. We believe our continued
6 representation will violate the Professional Code of
7 Responsibility and we just cannot stay with that matter.

8 And, as we point out in there, we have a contract
9 with Mr. Stoller and the plaintiffs and he's violating that
10 contract. The contract provides -- permits us to withdraw.

11 MR. STOLLER: Your Honor, if I may say, I've spent
12 over 20,000 with this firm to date. I've not refused to
13 continue to pay them at all. I am, unfortunately, in the
14 process -- my wife filed divorce against me during this
15 litigation, and this has affected my particular situation as
16 of this date.

17 There are no disagreements with this particular firm
18 as to how they are running the case, which was their essential
19 argument in their original brief. They came back in a reply
20 brief and they raised separate issues.

21 And furthermore, this firm represents me in another
22 case before Judge Hart with Columbia Pictures, who sued me,
23 and they are not moving to withdraw from that case.

24 And fourthly, even though trial is set for later, the
25 issues in this case are so clearly drawn that more than likely

1 you will resolve the matter on our motions that will be filed
2 for summary judgment in three weeks.

3 And it is absolutely impossible, because of the
4 complex issues in this case which deal with trademark
5 infringement issues, with a counterclaim that requires
6 bankruptcy lawyers -- Mr. Wood is not a bankruptcy lawyer, he
7 doesn't know anything about the bankruptcy issues. And the
8 bankruptcy issues in this case involve the discharge -- not
9 the discharge, but a debt that was acquired in this Court as a
10 fee award, that I filed a Chapter 7 on a bankruptcy in
11 Delaware, and then the defendants' counsel went out for one
12 dollar and purchased that fee award and they are assessing it
13 against me in a counterclaim. And for that one dollar fee
14 award that they purchased, they are asking me to pay them
15 150,000 and turn over all my trademarks.

16 Now, I stand at the precipice of losing a business
17 that I've been involved in for 31 years without having proper
18 representation. And in this town, as you know, I'm well known
19 and I have interviewed 19 law firms prior to hiring Benjamin,
20 Berneman, and once they decided they may want to get out, I
21 called another 20. Nobody would step into their shoes at this
22 late stage. We really only have until the motion for summary
23 judgment is filed.

24 There won't be any trial in this case, your Honor,
25 because of the issues that will be satisfied in the motion for

1 summary judgment.

2 I'm merely asking the Court not to allow them out and
3 not to have my rights irreversibly prejudiced by allowing them
4 out. And I don't disagree with the way they are handling the
5 case, and I have the highest respect for Beverly Berneman and
6 Bob Benjamin.

7 MR. BENJAMIN: Three quick comments, Judge.

8 First of all, I met Mr. Wood today for the first time
9 and we kibitzed about the fact that we both do bankruptcy
10 work. He does do bankruptcy, and I assume he has been
11 certified electronically for bankruptcy filings. So that's
12 one issue.

13 Yes, we did receive 20,000 in fees. We believe it
14 will be 250,000, 500,000, to go to trial on this case, so it's
15 a nominal amount that has been paid thus far.

16 And after yesterday's deposition of Mr. Stoller's
17 wife, there are new issues that have been raised that just
18 really -- raises the issue of professional responsibility that
19 we just cannot stay in the case any longer.

20 THE COURT: So that deposition went forward?

21 MR. BENJAMIN: It went forward, Judge. Our motion --
22 emergency motion for sanctions, I understand -- or, pardon me,
23 emergency motion to stay that deposition, I believe, is on
24 this morning's call?

25 MR. JOHNSON: It was denied as moot.

1 MR. BENJAMIN: It was denied, pardon me, as moot.
2 Right.

3 THE COURT: Just hold on for a minute.

4 (Brief pause.)

5 THE COURT: So with regard to counterclaim 4, that's
6 fully briefed?

7 MR. JOHNSON: Yes, your Honor. It's pending before
8 you, slated for a decision by October 28th.

9 THE COURT: Yes. And let me ask about whether or not
10 1, 2 and 3 could be moot because the plaintiffs' complaint has
11 been dismissed?

12 MR. JOHNSON: It was dismissed without prejudice,
13 your Honor, so it -- and as you have identified, they have
14 attempted to refile it. So we believe the issue --

15 THE COURT: Is that the second amended complaint
16 you're talking about?

17 MS. BERNEMAN: Yes.

18 MR. JOHNSON: We believe the issues of infringement
19 and validity should go forward on a declaratory judgment
20 basis.

21 THE COURT: How about the defendants' motion to
22 compel? I don't recall whether you addressed that or not,
23 whether or not it's still necessary.

24 MR. JOHNSON: Well, your Honor, yes, it will. As a
25 matter of fact, yesterday we -- or Monday we received

1 supplemental responses to the outstanding issues on the
2 written discovery. Those were inadequate in several respects.
3 And I would be happy to hand up a copy of the privilege
4 document log that was produced that we believe to be
5 inadequate.

6 Moreover, the documents that were scheduled and
7 ordered to be produced over the weekend of September 30th to
8 October 2nd were not produced. The categories of documents
9 that were not produced were identified in my motion, your
10 Honor. Many of those are key issues associated with the
11 trademark case, including any evidence of likelihood of
12 confusion, damages, channels of trade, marketing, demographics
13 and profiles of the average angler.

14 In addition, your Honor, we have not received the tax
15 records and financial records that were requested in our
16 discovery requests. So all of the issues we previously raised
17 are still outstanding, your Honor.

18 MR. BENJAMIN: Judge, it's our position, and
19 Mr. Stoller has advised us that he's produced all the
20 documents he has. He, unfortunately, has not been able to
21 produce his own Social Security number or the tax ID numbers
22 of the various corporations involved here. He needs
23 additional time for that.

24 MR. STOLLER: But I have produced over 20,000
25 documents to the defendants, your Honor, and I have produced

1 all of the documents in my possession that I have that I could
2 locate that are responsive to their request. I have no other
3 documents that I can locate that are responsive.

4 They have 20,000 documents. They were returned to my
5 office yesterday by their copy service and they verified the
6 count. And they received documents responsive that came from
7 my licensee, Lindy-Little, showing the sales of fishing
8 equipment for over seven years. They received samples, they
9 received Lindy-Little's evidence.

10 And in this case, your Honor, I'm relying on the
11 evidence that is being produced by my licensee, who's been
12 selling fishing equipment for many years and Stealth branded
13 equipment for seven to eight years. So their motion to compel
14 those documents which I do not have should be denied.

15 THE COURT: Let me ask -- you may have answered this
16 but I missed it -- did the plaintiffs ever execute the
17 disputed tax authorization forms?

18 MR. BENJAMIN: We don't have Mr. Stoller's Social
19 Security number, Judge. He doesn't have it.

20 MR. STOLLER: Your Honor, I've been removed from my
21 primary house where I live because of my divorce, and I don't
22 have any access to my home office because there's an order of
23 protection against me.

24 I did inform my counsel that I am attempting to
25 locate the tax ID numbers, and I have applied for a new Social

1 Security card and I will provide that information to them.
2 I'm not refusing to provide that information; I just don't
3 have access to it.

4 THE COURT: Do you have a driver's license?

5 MR. STOLLER: Yes, I do, but it's not on the driver's
6 license. You know, there's a rule for the driver's license --
7 you know, the Secretary of State --

8 THE COURT: Yes, I guess that's right.

9 MR. STOLLER: -- doesn't want Social Security numbers
10 on the driver's license.

11 MR. JOHNSON: Your Honor, may I speak to those
12 issues?

13 THE COURT: Yes.

14 MR. JOHNSON: First, if it's a matter of getting Mr.
15 Stoller's Social Security number, I can provide that to him.
16 I have that.

17 Second, as to the number and amount of documents that
18 were produced, we received roughly 16 boxes of documents at a
19 conference room out in Rosemont. Many of those were from the
20 '80s. There were some responsive documents, yes.

21 I did speak with counsel who had gone through a
22 document discovery with Mr. Stoller previously and it was
23 reported to me that they were -- roughly 50 to 60 boxes of
24 documents were produced.

25 And in view of the complaints lodged in this Court

1 previously about the scope of volume, I anticipated somewhere
2 on the order of 70 to 80 boxes of documents be produced. I
3 didn't get those.

4 Also, in conversations with counsel for Lindy-Little
5 Joe, I asked them why we only got samples of catalogs and
6 royalty reports from them; where were the rest of the
7 documents? I was informed by Mr. Thomas Vitt, a partner of
8 the firm of Dorsey & Whitney, who represents Lindy-Little Joe,
9 that in fact Mr. Tagasaki assembled the documents requested
10 and was instructed by Mr. Stoller not to forward those for
11 production to us. He has made those documents available to me
12 for inspection and review in Minnesota at my leisure.

13 MR. STOLLER: Your Honor, for the record, I did not
14 instruct Lindy-Little not to produce any documents. They sent
15 me documents which they said were responsive to their
16 requests. I put them -- they were in a box and I handed those
17 over to these people. I have never instructed them not to
18 produce any documents.

19 It's only in my best interest that my fishing
20 licensee produce whatever documents they have in their
21 possession that are responsive to their request because this
22 whole case is based upon Lindy-Little's use of the mark
23 Stealth Hunter Fishing Equipment.

24 MR. BENJAMIN: Back on our motion to withdraw, Judge,
25 you're seeing today examples of uncooperativeness from the

1 client.

2 THE COURT: Okay. Give me a few minutes on this one.

3 Let me have you folks stand aside for a few minutes
4 and let's --

5 MR. JOHNSON: Would your Honor like a copy of the
6 privilege document log that we received in the supplemental
7 response?

8 THE COURT: We'll take that. Fine.

9 (Document tendered.)

10 MR. JOHNSON: Thank you, your Honor.

11 (Brief recess was taken.)

12 THE CLERK: 05 C 725, Central Manufacturing versus
13 Pure Fishing.

14 MR. BENJAMIN: Good morning again, Judge. Robert
15 Benjamin, Beverly Berneman and John Brom --

16 THE COURT: I don't think you have to go through your
17 introductions again. We'll just resume the hearing.

18 The Court is going to grant the motion to withdraw of
19 the attorneys for Querrey & Harrow.

20 Let me ask, Mr. Wood, you're still on the case as far
21 as the Court's records are concerned. It's my intention to
22 give -- in light of the motion being granted with regard to
23 Querrey & Harrow, it would be the intention of the Court to
24 give some additional time now to either get supplemental
25 counsel or --

1 MR. WOOD: Thank you, your Honor.

2 THE COURT: -- or new counsel, as the case may be,
3 but it's not going to be a vacation by any means. I'm going
4 to limit it to two weeks.

5 So you're going to have to make a decision with
6 regard to -- between Mr. Wood, your present counsel, as to
7 what you intend to do. But we are going to move forward and
8 try to -- well, we're going to maintain the schedule, the
9 ultimate schedule for trial, whatever it is.

10 MR. JOHNSON: February 9th, I believe, your Honor.

11 THE COURT: Yes. So we will be going to trial on the
12 9th.

13 So two weeks, Sandra, is what, the 27th?

14 THE CLERK: Yes, the 27th.

15 THE COURT: Thursday, the 27th.

16 And, Mr. Stoller, you're well aware that you have to
17 be -- corporations have to be represented by counsel, not by
18 individuals.

19 MR. STOLLER: Yes, sir.

20 THE COURT: Of course, you're entitled to represent
21 yourself as counter-defendant, presumably, since you're being
22 sued as a -- the counterclaim is against you as an individual.

23 MR. STOLLER: Could we have an orderly turn-over from
24 Querrey & Harrow to Mr. Wood of all the discovery? I don't
25 have --

1 THE COURT: I presume there's no problem with that.

2 MR. BENJAMIN: If the Court orders us, we'll do that,
3 Judge. We do have a lien on the substantial amount of time we
4 have spent in the case already, but to not stop this case,
5 we'll, of course, turn over --

6 THE COURT: All right. Well, that will be the order
7 of the Court.

8 MR. BENJAMIN: All right, Judge.

9 THE COURT: And we will see you back here as we
10 indicated, October 27th at 9:30, with new counsel, or Mr. Wood
11 and/or new counsel.

12 MR. WOOD: Your Honor, could we make that the 26th of
13 October rather than the 27th?

14 THE COURT: No, because you would be here by
15 yourself. I'm only here on the 27th.

16 MR. WOOD: I see.

17 THE COURT: What time is your engagement?

18 MR. WOOD: It's all day, Judge. I'm a hearing
19 officer for the state and I work from 8:30 until 4:30 in the
20 evening.

21 THE COURT: Could you do it 9:00 o'clock here?

22 MR. WOOD: Yes, Judge.

23 THE COURT: Would that help?

24 MR. WOOD: Yes.

25 THE COURT: Set it for 9:00, Sandra.

1 Okay. I think that's all we are going to do at this
2 time. But, Mr. Stoller, I have to tell you, I'm somewhat
3 suspicious on the Social Security number. I think that ought
4 to be available.

5 MR. STOLLER: He said he had it and I will get it
6 from him.

7 THE COURT: So if you will turn over what you have.

8 MR. JOHNSON: I will provide that, your Honor.

9 THE COURT: That's all we will do now.

10 MR. BENJAMIN: Thank you, your Honor.

11 MR. JOHNSON: Thank you, your Honor.

12 MR. MEECE: Your Honor, just one quick question.

13 With respect to the motion to compel and motion for
14 sanctions, are you just going to continue that until the --

15 THE COURT: Yes, we will enter and continue that, and
16 we will work on that once counsel has been arranged.

17 MR. BENJAMIN: All right. Thank you, your Honor.

18 MR. MEECE: Thank you, your Honor.

19 MR. STOLLER: Thank you, your Honor.

20 THE COURT: Okay.

21 (Which were all the proceedings had at the hearing of the
22 within cause on the day and date hereof.)
23
24
25

CERTIFICATE

I HEREBY CERTIFY that the foregoing is a true, correct and complete transcript of the proceedings had at the hearing of the aforementioned cause on the day and date hereof.

Marye Hacker

Official Court Reporter
U.S. District Court
Northern District of Illinois
Eastern Division

11-14-05
Date

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EXHIBIT 21

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re
LEO STOLLER,

Debtor.

Chapter 7

Case No. 05-64075

Hon. Jack B. Schmetterer

Hearing Date: January 18, 2007

Hearing Time: 11:00 a.m.

**ORDER GRANTING MOTION FOR ORDER DECLARING PROPOSED SUIT TO BE
OUTSIDE SCOPE OF STAY OR, IN THE ALTERNATIVE, MODIFYING STAY
[DOCKET NO. 113]**

Google Inc. ("Google") having filed its Motion for Order Declaring Proposed Suit to be Outside Scope of Stay or, In the Alternative, Modifying Stay (the "Motion") on August 18, 2006, and hearings having been held on the Motion on August 23, 2006, August 31, 2006, September 14, 2006, October 5, 2006, October 19, 2006, November 9, 2006, December 5, 2006, December 12, 2006, December 19, 2006, and January 4, 2007 and Google having entered into a compromise with the Chapter 7 trustee appointed in this case concerning the relief sought in the Motion as to the estate and entities owned or controlled by the estate, which compromise has been approved by a separate Order of this Court entered on December 5, 2006 (such Order and the Settlement Agreement it approved being the "Settlement Order"), and the Debtor having objected to the Motion which objection the Court overruled in open court on January 4, 2007, and the Court having made, on the record at the January 4, 2007 hearing, findings of fact and conclusions of law, and the Court having found that there is cause to grant Google relief from the automatic stay,

IT IS HEREBY ORDERED that Google is granted relief from the automatic stay so that it may take the actions, including filing an action against the Debtor in the United States District

Court, described in the Motion and any ancillary, necessary, or appropriate actions in connection therewith.

in that fact as is the Trustee Third Party board or both.

IT IS FURTHER ORDERED that Google shall take no action to collect a monetary judgment against Leo Stoller personally without obtaining prior leave of this Court; provided however that if this case is dismissed or if Leo Stoller has been denied a discharge under 11 U.S.C. §727 then Google shall not have to obtain leave before collecting any judgment it obtains against Leo Stoller.

IT IS FURTHER ORDERED that the relief granted herein pertains only to Leo Stoller personally and nothing herein amends or supersedes the provisions of the Settlement Order.

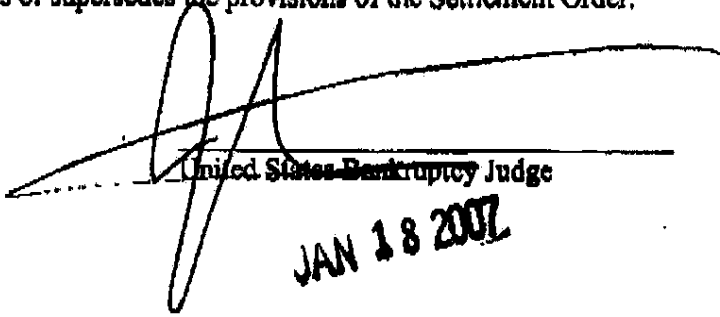

United States Bankruptcy Judge
JAN 18 2007

EXHIBIT 22

Trademark Trial and Appeal Board Electronic Filing System. <http://esfta.uspto.gov>ESTTA Tracking number: **ESTTA85893**Filing date: **06/16/2006**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045778
Party	Defendant GOOGLE INC. GOOGLE INC. Google 1600 Amphitheatre Parkway Building 41 Mountain View, CA 94043
Correspondence Address	GOOGLE INC. Google 1600 Amphitheatre Parkway Bldg 41 Mountain View, CA 94043
Submission	Motion to Suspend for Civil Action
Filer's Name	Michael T. Zeller
Filer's e-mail	michaelzeller@quinnemanuel.com
Signature	/Michael T. Zeller/
Date	06/16/2006
Attachments	MOTION TO STRIKE AND SUSPEND.pdf (304 pages)(7588999 bytes)

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

In the Matter of:

Registration No. 2806075
For the Mark: GOOGLE
Publication Date: December 4, 2001

Cancellation No. 92045778

CENTRAL MFG. CO. (INC.),

Petitioner,

v.

GOOGLE INC.,

Respondent.

REGISTRANT/RESPONDENT
GOOGLE INC.'S MOTION (1) TO
STRIKE PETITIONER'S MOTION
FOR SUMMARY JUDGMENT FOR
VIOLATION OF RULE 56(A), (2) TO
SUSPEND PROCEEDING PENDING
FINAL DISPOSITION OF CIVIL
ACTIONS, AND (3) IN THE
ALTERNATIVE FOR EXTENSION
OF TIME RE OPPOSITION TO
PETITIONER'S MOTION

Commissioner of Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451

Registrant and Respondent Google Inc. ("Registrant") respectfully moves the Board to strike Petitioner's Motion for Summary Judgment on the grounds that it was filed in violation of Federal Rule of Civil Procedure 56(a) and furthermore to suspend this proceeding pending the final disposition of two ongoing civil actions that may have a bearing on these proceedings. In the alternative, in the event that the Board denies its requests under Rule 56(a) and to suspend, Registrant requests that the Board extend the time for Registrant's substantive response to Petitioner's Motion for Summary Judgment up to and including fourteen days from the time of any such denial. In support thereof, Registrant states as follows.

Introduction

Although Registrant has not yet been afforded the opportunity to obtain discovery from the alleged Petitioner in this proceeding, there already is considerable reason to believe that Petitioner does not even exist, let alone conduct bona fide business operations. There also is already ample basis to conclude that Leo Stoller -- a non-lawyer with a long history of fraudulent conduct and who purports to represent Petitioner -- is not authorized to do so under the Board's rules. Undoubtedly it was in the misguided hope that Petitioner could keep these fatal defects concealed from the Board that Petitioner chose to violate Federal Rule of Civil Procedure 56(a) by hastily filing a premature summary judgment motion only a week after this cancellation proceeding was commenced.¹

The caption of the Petition for Cancellation names a purported entity called "Central Mfg. Co. (Inc.)" as Petitioner. In a declaration dated May 15, 2006 filed in support of

¹ The Board initiated this cancellation proceeding on May 8, 2006. Federal Rule 56(a) prohibits a claimant from bringing a summary judgment motion for 20 days from the commencement of an action. Petitioner nevertheless filed a summary judgment motion on May 15, 2006 -- a mere seven days after the commencement of these proceedings.

Petitioner's summary judgment motion. Mr. Stoller attests that "CENTRAL MFG. CO. (INC)" is a "Delaware Corporation." (Capitalization in original.) In that same declaration, and as Petitioner's alleged evidence of standing, Mr. Stoller claims that an ostensible entity called "Central Mfg. Co. hold[s] common law rights in an[d] to the mark Google" that are relied upon by Petitioner here. (Emphasis added.)²

However, Central Mfg. Co. -- the claimed owner of the common law rights asserted in this proceeding -- does not exist and is not a juristic person capable of instituting legal proceedings. The United States District Court for the Northern District of Illinois has already so held in a pending case entitled *Central Mfg. Co. v. Pure Fishing, Inc., et al.* to which "Central Mfg. Co." and its alleged principal, Mr. Stoller, are parties. As the District Court ruled, Central Mfg. Co. "is not an independent corporate entity," but rather a "false name" used by Mr. Stoller to both perpetrate and conceal his fraudulent assertion of rights in legal proceedings. Nor, contrary to Mr. Stoller's sworn May 15, 2006 declaration here, is there any record of a "Central Mfg. Co." or a "Central Mfg. Co. (Inc.," as having been incorporated in Delaware.³ In fact, as evidenced below, and further belying the conclusory claims of ownership in his declaration, Mr. Stoller has made a series of conflicting representations that alleged entities of his *other* than Petitioner were the ones ostensibly using "Google" as a mark "for many years" or otherwise

² The Petition for Cancellation and the Motion for Summary Judgment also purport to state on their face elsewhere that they have been brought by "CENTRAL MFG. CO." (Emphasis added; capitalization in original.)

³ While it appears that there may be a company named "Central Mfg. Inc." incorporated in Delaware, that alleged entity is not identified in Mr. Stoller's declaration in support of Petitioner's summary judgment motion as being the entity allegedly using the asserted mark. Moreover, as discussed further below, the *Pure Fishing* District Court rejected the contention that Central Mfg. Co. -- the alleged rights holder referenced in Mr. Stoller's summary judgment declaration -- was or could be a lawful designation for Central Mfg. Inc.

"own" it, including based upon the alleged ownership of non-existent federal registrations for "Google."

Mr. Stoller's ongoing bankruptcy case further calls into serious doubt whether the entities claimed by Mr. Stoller exist and, even if Petitioner does exist, whether Mr. Stoller is entitled to represent it in these proceedings. Mr. Stoller filed for Chapter 13 bankruptcy in the Northern District of Illinois on December 20, 2005. He filed sworn financial disclosures with the Bankruptcy Court identifying each business of which he claimed to be an owner, officer or director. None of those disclosures by Mr. Stoller lists any company named Central Mfg. Co. (Inc.), the supposed Petitioner here. The *only* entity that Mr. Stoller advised the Bankruptcy Court that he has an interest in was the very one that the *Pure Fishing* Court held was non-existent. Indeed, parties from the *Pure Fishing* civil action have intervened in Mr. Stoller's bankruptcy and are seeking relief from the Bankruptcy Court based upon allegations that Mr. Stoller's filings with the Court are fraudulent, including with respect to his sworn disclosures regarding the entities which he purports to control and his deliberate misidentification of those entities. The motion, which is scheduled for an evidentiary hearing in July 2006, remains pending before the Bankruptcy Court.

Another issue in the bankruptcy proceeding pertains to whether Mr. Stoller's purported companies are conducting business at all. In an effort to avoid having to pay creditors, and in attempting to justify the lack of sales records and other documentation for his supposed companies, Mr. Stoller has asserted in the bankruptcy case that *none* of his alleged businesses makes or sells any products and, in fact, that none of them has sold goods since the late 1980s. That position is contrary to Petitioner's claims here, including the Petition's allegations of use of

the claimed "Google" mark; the Summary Judgment Motion's assertions that Petitioner has been using it "on a broad range of goods and services;" Mr. Stoller's declaration that "Central Mfg. Co." has been selling "sporting goods including tennis rackets" using "Google;" and Mr. Stoller's correspondence claiming that any number of other alleged Stoller-related entities have been using "Google" for "many years." Thus, there can be no question that the bankruptcy case involves matters that may be pertinent to this proceeding as well.

In short, both of the ongoing civil actions may have a bearing on, among other issues, whether Petitioner has standing or capacity to maintain this proceeding, on Petitioner's claims to have used the common law mark asserted here and on whether Mr. Stoller is entitled to represent Petitioner. To avoid the potential for duplication of judicial effort, and to avoid the possibility of the Board and the Courts reaching inconsistent findings and conclusions, Registrant respectfully submits that this proceeding should be stayed by the Board pending the final disposition of the *Pure Fishing* civil action and Mr. Stoller's bankruptcy action.

Facts

A. The *Pure Fishing* Civil Action.

Currently pending in the United States District Court for the Northern District of Illinois is a civil action entitled *Central Mfg. Co. v. Pure Fishing, Inc., et al.*, CV 05 C 725. That suit for trademark infringement and related claims was instituted by an entity ostensibly named "Central Mfg. Co.," of which Leo Stoller claims to be a principal. Mr. Stoller also is personally named as a counter-defendant in that action.

By Order dated November 16, 2005, the Court dismissed the claims of "Central Mfg. Co." and entered default against the counter-defendants, including Mr. Stoller.⁴ The basis of the ruling was the abuses of the legal process perpetrated by Mr. Stoller and his alleged company, "Central Mfg. Co." In doing so, the Court observed that Mr. Stoller "has earned a reputation for initiating spurious and vexatious federal litigation."⁵ The Court found that, in the case before it, Mr. Stoller, his alleged company and their counsel had engaged in "gross misconduct" and "unethical conduct" which included forging signatures on pleadings; bringing motions "that lacked any evidentiary support" and were otherwise "baseless;" and engaging in conduct that evinced "flagrant contempt for this Court" and "an appalling lack of regard" for the judicial process.⁶

In particular, the Court ruled that "Central Mfg. Co." was not a legal entity at all. As the Court found:

In response to the amended complaint, defendants filed a number of counterclaims, naming Mr. Stoller and various of his wholly-owned corporate entities as counter-defendants. Defendants also filed a motion to dismiss, challenging the legitimacy and corporate status of Central Mfg. Co. In response to defendant's motion to dismiss, *Central Mfg. Co. admitted that*, contrary to the statements in its initial and amended complaints, *it was not a Delaware*

⁴ Declaration of Michael T. Zeller, dated June 16, 2006 and filed herewith ("Zeller Dec."), Exh. 1, at pages 1, 3, 4, 5.

⁵ *Id.*, at page 1.

⁶ *Id.*, at pages 1, 3, 4, 5.

*corporation. In fact, Central Mfg. Co. was not an independent corporate entity.*⁷

Thus, the Court ruled that "Central Mfg. Co., through Mr. Stoller," and their counsel violated Federal Rule of Civil Procedure 11(b) "by maintaining that Central Mfg. Co. was a Delaware corporation," even though it was not. As it further explained:

Contrary to the statements in Central Mfg. Co.'s initial and amended complaints, *it is not an independent legal entity and is not incorporated under the laws of Delaware.* Central Mfg. Co. filed an amended complaint with this Court on May 26, 2005 stating that it was a Delaware corporation, while almost simultaneously filing a motion before Judge Hart stating that Central Mfg. Co. was a d/b/a for Central Mfg. Inc. *See Columbia Pictures Industries, Inc. v. Stoller, et al.*, 05 C 2052. Plaintiff, through Mr. Stoller, filed this case *under a false name*. Since the inception of this case, and unquestionably prior to filing the amended complaint, Mr. Stoller knew that he had not incorporated Central Mfg. Co. However, Mr. Stoller likely attempted to conceal this fact from the Court because the trademark registrations that are the basis for the infringement claims, state that Central Mfg. Co., not Central Mfg. Inc., owns sole title to the disputed marks. The conduct of Central Mfg. Co., through Mr. Stoller, is akin to the conduct in *Dotson*. 321 F.3d 663. In *Dotson*, the Seventh Circuit upheld dismissal of a plaintiff's case with prejudice as a sanction for filing suit under a false name. *Id.* at 668. Accordingly,

⁷ *Id.*, at page 2 (emphasis added).

Central Mfg. Co. and Mr. Stoller deserve the same sanction for filing suit on [be]half of *a false corporation*.⁸

The *Pure Fishing* case remains pending before the District Court and is not yet resolved. As Petitioner itself stated in another proceeding that it filed with the Board, the "district court's November 16, 2005 order was not a final order, but rather interlocutory in nature."⁹ Furthermore, in suspending that Board proceeding pending final disposition of the *Pure Fishing* case because that civil action may have a bearing on Petitioner's standing, the Board observed that "final judgment under Rule 58 of the Federal Rules of Civil Procedure has yet to be entered in the aforementioned district court action. Indeed, in an order dated December 19, 2005, the district court denied defendant's motion to enforce judgment and impose sanctions since judgment pursuant to Rule 58 has yet to be entered in the case."¹⁰

B. Petitioner's Claims In This Proceeding Rest On The Same Issue Being Litigated In The *Pure Fishing* Civil Action, And Indeed Petitioner Here Appears To Be Non-Existent.

In this cancellation proceeding, Petitioner originally alleged that it owns a "large family of GOOGLE registrations and applications,"¹¹ but was forced to withdraw those obviously fabricated assertions.¹² Thus, the basis for Petitioner's alleged standing is a claim in Mr. Stoller's

⁸ Id. at 5 (bolded italics added).

⁹ *Central Mfg. Co. v. Surgical Navigation Technologies, Inc.*, No. 91167658, Order of January 31, 2006, at 2 (copy attached as Exhibit 2 to the Zeller Declaration).

¹⁰ Id., at 2-3.

¹¹ Petition for Cancellation, at page 5.

¹² Zeller Dec., Exh. 3. Nor was this the first or only time Petitioner's principal, Leo Stoller, falsely claimed that some entity of his owned federal registrations for GOOGLE. See, e.g., id., Exh. 4 (November 29, 2005 letter from Stoller with attachments repeatedly using the statutory federal registration notice "®" in connection with the claimed mark, including in the attachments

May 15, 2006 declaration that "*Central Mfg. Co.* hold [*sic*] common law rights in an [*sic*] to the mark Google."¹³

As the Court ruled in *Pure Fishing*, however, the very entity claimed to hold the purported rights in "Google" that are asserted in this proceeding -- Central Mfg. Co. -- is in fact "*not an independent corporate entity*," but a "false name" misused by Mr. Stoller to both facilitate and conceal his fraudulent assertion of rights in legal proceedings. Moreover, nowhere has Petitioner introduced any actual evidence to substantiate that "*Central Mfg. Co.*" and/or the named Petitioner "*Central Mfg. Co. (Inc.)*" even exist.¹⁴

Not only does the *Pure Fishing* decision and other evidence thus show that the Petition rests on the supposed rights of a non-existent entity and was not brought in the name of the correct party (even assuming one exists), but Mr. Stoller has offered a litany of inconsistent claims that *other* supposed "business" of his were using "Google." For example:

- A November 29, 2005 letter to Registrant was on the letterhead of an alleged business called "GOOGLE BRAND PRODUCTS AND SERVICES," which claimed to have

entitled "Why Obtain A GOOGLE® License. . .," "GOOGLE® Licensing Program Licensee Requirements," "GOOGLE® Licensing Program," and "Licensing GOOGLE® Enables You To. . .").

¹³ Declaration of Leo Stoller, dated May 15, 2006 and attached to Petitioner's Motion for Summary Judgment.

¹⁴ Nor are these the only reasons to doubt that "*Central Mfg. Co. (Inc.)*" exists or that Mr. Stoller is lawfully authorized to act on its behalf even if it does exist. In a sworn Disclosure Statement dated December 8, 2005 submitted in court proceedings, Mr. Stoller was required to identify all of his "[c]orporations, [p]artnerships [and] sole proprietorships," including by "[p]rovid[ing] percentage interest and number of shares, name of business, type of entity, current accounts receivable, current bank account balances [and] current inventory value." *Id.*, Exh. 16 at page 6. The entirety of Mr. Stoller's answer to that question, made under oath, read: "Rentamark Co., Licensing," along with its bank account balance. *Id.*

been in business "SINCE 1981."¹⁵ It was signed "Leo Stoller GOOGLE." That letter claimed: "We hold common law rights" in the mark GOOGLE and "have been using the similar mark GOOGLE for many years."¹⁶

- In a proposed "Agreement to Discontinue Use" attached to the November 29, 2005 letter, another purported business called "Rentamark.com" was defined as "GOOGLE" in its preamble. Paragraph 3 of that document alleged "**GOOGLE'S exclusive ownership** of the mark GOOGLE" and referred to "*its* GOOGLE mark(s)."¹⁷ The signature block to that proposed agreement was signed by Mr. Stoller for "GOOGLE" and as a "[r]epresentative of GOOGLE."

- Similarly, the proposed "Settlement Agreement (Consent to Register)" attached to Mr. Stoller's November 29, 2005 letter defined "Rentamark.com" as "GOOGLE" in the preamble. Then, in paragraph 4, it asserted again "**GOOGLE'S exclusive ownership** of the mark GOOGLE" and referred to "*it's* [*sic*] GOOGLE mark(s)."¹⁸ Mr. Stoller's signature on the document was stated to be for "Rentamark.com" and as a "[r]epresentative of GOOGLE."

- Another attachment to Mr. Stoller's November 29, 2006 letter, entitled "GOOGLE® LICENSING PROGRAM," referred to the supposed mark as being among the "**Rentamark** famous brands available for licensing at www.rentamark.com."¹⁹

- At the time, however, the Rentamark.com web site made no reference to "GOOGLE" as being one of its alleged marks. It was only later, beginning on or about April 30,

¹⁵ Zeller Dec., Exh. 4 (capitalization in original).

¹⁶ *Id.* (emphasis added).

¹⁷ *Id.* (emphasis added).

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.* (emphasis added). Of course, the representations in those materials -- as well as in pleadings filed by Stoller with the Board -- asserting ownership of a federal registration were, and remain, wholly false. As is undisputed, neither Stoller nor any of his purported companies own any registration for the mark GOOGLE.

2006, that Rentamark's web site represented -- and still represents to this day -- that "GOOGLE" is one of the marks that it purports to "own and control."²⁰

- Notably, Mr. Stoller has testified under oath that "Rentamark" -- which now publicly claims to "own and control" the mark asserted in the Petition -- is not an independent entity either, but a d/b/a for yet another alleged entity called Stealth Industries, Inc.²¹ Stealth Industries is not named as Petitioner in this proceeding either.

- Further belying Petitioner's claims of standing and capacity in this proceeding, Petitioner has offered inconsistent assertions about the *source* of its alleged rights as well. Not only did Mr. Stoller's attachments to his November 29, 2005 letter falsely claim that Rentamark had a registration for GOOGLE, but the Petition for Cancellation initially alleged -- equally falsely -- that "Petitioner" owned "a large family of GOOGLE registrations and applications."²²

- In April 2006, Registrant received faxes from Mr. Stoller that were ostensibly from yet another entity, this one allegedly called "GOOGLE™ BRAND TRADEMARK LICENSING."²³

- In May 2006, another claimed entity surfaced. This one, identified as the return addressee for papers sent by Mr. Stoller, was allegedly called "GOOGLE LICENSING [sic]."²⁴

²⁰ Id., Exhs. 5, 6. These web pages not only evidence inconsistent claims made by Mr. Stoller as to the ownership of the alleged common law rights asserted here, but also show that these assertions of right -- far from dating back to "1981" or otherwise subsisting "for many years" as represented in Mr. Stoller's November 29, 2005 letter -- are newly minted fabrications. Compare id., Exh. 6 (Rentamark.com web site from April 30, 2006 listing "Google" as supposed mark "own[ed] and controll[ed]" by Rentamark) with id., Exh. 7 (no listing for "Google" as supposed mark as of March 3, 2006).

²¹ Id., Exh. 8.

²² Petition for Cancellation, at page 5.

²³ Zeller Dec., Exh. 9.

²⁴ Id., Exh. 10.

• Then, tellingly after Registrant had pointed out the substantial evidence indicating that Petitioner here lacks standing and capacity to maintain an Opposition proceeding,²⁵ Petitioner implicitly conceded the falsity of its prior grounds for purported standing by attempting to contrive yet another one. Thus, on June 11, 2006, Petitioner claimed that the source of its supposed standing was its filing of "trademark Application SN 78-905,472 a bona fide intent to use the same mark GOOGLE."²⁶

These inconsistent claims, made through Mr. Stoller, that a variety of supposed entities other than Petitioner use or otherwise "own" the ostensible mark asserted in this proceeding (and that their supposed rights are grounded in a variety of conflicting sources) further confirms that the *Pure Fishing* court's determination was correct: "Central Mfg. Co." is not a subsisting corporation capable of suing or owning rights, but a false name for a non-existent entity employed by Mr. Stoller as part of his fraudulent assertions of trademark rights.

C. Stoller's Pending Bankruptcy Action Also May Have A Bearing On This Proceeding, Including In That It Further Establishes The Alleged Petitioner And/Or The Purported Rights Holder Do Not Exist.

On December 20, 2005, Mr. Stoller filed for personal bankruptcy under Chapter 13 in the Northern District of Illinois. The matter is pending as *In re: Leo Stoller, Debtor*, No. 05 B 64075. Mr. Stoller submitted sworn filings to the Bankruptcy Court that had required him to identify each entity of which he is an "officer, director, partner, or managing executive."²⁷

²⁵ Id., Exhs. 17 and 18.

²⁶ Petitioner's Request for Judicial Notice, dated June 11, 2006, at page 1 (errors in original). As discussed further below, Petitioner's latest efforts to concoct standing do not affect the propriety of suspending this proceeding.

²⁷ Zeller Dec., Exh. 11, at page 6 (question 18).

Although Mr. Stoller listed five such alleged entities, he did not identify Petitioner "Central Mfg. Co. (Inc.)" as being among them. The only ostensible entity with the term "Central" in its name that Mr. Stoller claimed he was an officer, director or managing executive of was "Central Manufacturing Co."²⁸ – which the *Pure Fishing* District Court has found is "not an independent corporate entity" at all, but a "false name" used by Mr. Stoller for fraudulent purposes.

On or about March 15, 2006, the claimants in the *Pure Fishing* civil action filed in Mr. Stoller's bankruptcy action a Motion to Convert Chapter 13 Case to Chapter 7 and for Immediate Appointment of Trustee (hereinafter, the "Motion to Convert").²⁹ The Motion to Convert asserts that Mr. Stoller engaged in fraud in the bankruptcy proceeding. Specific matters put at issue in the Motion to Convert include Mr. Stoller's claims that "Central Mfg. Co." is an existing entity in which he has an interest,³⁰ his misrepresentations regarding his relationship to numerous other purported businesses,³¹ and his commingling of assets in a bank account for yet another, unincorporated business named "Central Manufacturing Company, Inc." that Mr. Stoller had not disclosed to the Bankruptcy Court.³² The Motion to Convert requests, among other relief, that the Bankruptcy Court appoint a Chapter 7 Trustee to fully investigate Mr. Stoller's business

²⁸ Id.

²⁹ Id., Exh. 12. Chapter 7 "is the 'operative' chapter of the Bankruptcy Code that normally governs liquidation of a debtor." Collier on Bankruptcy § 700.01 (15th Ed. 2006). Thus, a Chapter 7 proceeding may entail the appointment of a "liquidator (the trustee)" to collect the debtor's assets and sell them for distribution of the proceeds to creditors. Thomas J. Salerno & Jordan A. Kroop, Bankruptcy Litigation and Practice § 4.01 (3d Ed. 2006).

³⁰ Zeller Dec., Exh. 12, at page 6 (¶ 14) & n. 4.

³¹ Id.

³² Id., Exh. 12, at pages 7-8 (¶¶ 17, 22).

affairs and to "investigate and bring an action seeking to hold Debtor's wholly-owned corporations liable for the debtor's obligations as the alter egos/continuations of the Debtor."³³

Also at issue in the pending bankruptcy action is whether Mr. Stoller's alleged entities have actually conducted any bona fide business operations at all. In an effort to explain the lack of sales records and other documentation for his purported companies, and in an effort to avoid paying creditors by pleading poverty, Mr. Stoller stated to the current Chapter 13 Trustee and to the *Pure Fishing* claimants that "*neither he nor his business entities makes or sells any product*" and that "*he has not had a real business selling products since the family sporting goods import business closed in the late 1980's.*"³⁴

That position is contrary to core claims made by Petitioner and Mr. Stoller in connection with these proceedings. The Petition alleges use of the claimed common law mark "on sporting goods products."³⁵ The Motion for Summary Judgment asserts that Petitioner has been using the asserted "Google" mark "on a broad range of products and services," and Mr. Stoller's accompanying declaration contends that "Central Mfg. Co." has been selling "sporting goods products including tennis rackets" using it. Also contrary to his claims in the bankruptcy action, Mr. Stoller has repeatedly claimed that one or more supposed Stoller-related entities "have been using the similar mark GOOGLE for many years," ostensibly "SINCE 1981."³⁶

The bankruptcy case remains pending, and the Bankruptcy Court currently has set the Motion to Convert for an evidentiary hearing beginning on July 12, 2006.³⁷

³³ *Id.*, Exh. 12, at pages 15-16 (¶¶ 43- 44).

³⁴ *Id.*, Exh. 13, at page 5 (emphasis added).

³⁵ Petition for Cancellation, ¶ 4.

³⁶ Zeller Dec., Exh. 4 (capitalization in original).

³⁷ *Id.*, Exhs. 14 and 15.

Argument

I. PETITIONER'S MOTION FOR SUMMARY JUDGMENT SHOULD BE STRICKEN FOR VIOLATION OF RULE 56(A).

Petitioner's motion for summary judgment should be stricken because it was filed in violation of the Federal Rules. Federal Rule of Civil Procedure 56(a) provides: "A party seeking to recover upon a claim . . . may, at any time *after the expiration of 20 days* from the commencement of the action . . . move . . . for a summary judgment in the party's favor upon all or any part thereof." (Emphasis added.)

Notwithstanding the Rule's plain language, Petitioner filed a summary judgment motion on May 15, 2006, in an apparent gambit to evade scrutiny of its fatal lack of capacity and lack of standing. Because that was only seven days after the Board had instituted this cancellation proceeding on May 8, 2006, Petitioner's premature filing should be stricken for its violation of the Federal Rules. See, e.g., Local Union No. 490, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO v. Kirkhill Rubber Co., 367 F.2d 956, 958 (9th Cir. 1966) (affirming rejection of summary judgment motion based on *inter alia* Rule 56(a) because motion was prematurely filed less than twenty days after commencement of the action).³⁸

II. THE BOARD SHOULD SUSPEND THIS PROCEEDING UNTIL THE FINAL DISPOSITION OF THE PENDING CIVIL ACTIONS.

The Board also should suspend this cancellation proceeding pending the final resolution of the *Pure Fishing* civil action and Mr. Stoller's bankruptcy case. The Board's usual practice of

³⁸ Even if Federal Rule 56(a)'s twenty-day bar were to be measured from when the Petition was deemed "filed" with the Board on May 1, 2006, the Motion for Summary Judgment still was filed less than twenty days after that time and thus still violates the Federal Rules.

staying its proceedings pending the outcome of a court action that may have a bearing on the issues before the Board, as is the situation here, is codified at 37 C.F.R. § 2.117(u):

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or other Board proceeding.

See also Trademark Trial and Appeal Board Manual of Procedure ("TBMP") § 510.02(a) ("[o]rdinarily, the Board will suspend proceedings in the case before it if the final determination of the other proceeding will have a bearing on the issues before the Board."); accord The Other Telephone Co. v. Connecticut Nat'l Telephone Co., Inc., 181 U.S.P.Q. 779, 781-82 (Comm'r of Patents 1974); Townley Clothes, Inc. v. Goldring, Inc., 100 U.S.P.Q. 57, 58 (Comm'r of Patents 1953) ("it is deemed the sounder practice to suspend the [Trademark] Office proceedings pending termination of the Court action.").

First, the pending *Pure Fishing* civil action, quite clearly, may have a bearing on these proceedings, including as to Petitioner's alleged capacity and standing. Mr. Stoller has claimed here that Central Mfg. Co. is a "Delaware Corporation" and "hold[s] common law rights in an[d] to the mark Google" which Petitioner asserts in this cancellation proceeding. Abundant evidence indicates that Mr. Stoller's representations are false, including by way of the District Court's finding that "Central Mfg. Co." is not a Delaware corporation, does not have capacity to institute legal proceedings and indeed does not even exist. As the District Court stated, "Central Mfg. Co.

was not an independent corporate entity," but instead the "false name" of a non-existent entity devised by Mr. Stoller to enable and conceal his fraudulent assertion of trademark rights.

That ruling is highly material to this cancellation proceeding. In considering the Petition for Cancellation (as well as the summary judgment motion), the Board necessarily will have to determine whether "Central Mfg. Co." even exists, including whether it is a juristic person capable of bringing this proceeding and capable of holding purported rights as claimed in Mr. Stoller's conclusory declaration submitted on summary judgment. Sec 15 U.S.C. § 1127 (juristic person is a "firm, corporation, union, association or other organization capable of suing and being sued in a court of law."); 37 C.F.R. § 2.111; TBMP § 303.02 (allegedly juristic party not meeting definition of "person" under section 1127 "does not have legal standing to own a mark or file . . . a petition for cancellation); see also PB Farradyne, Inc. v. Peterson, 2006 WL 132182, *5 (N.D. Cal. 2006) (dismissing d/b/a on ground that it does not constitute "a separate legal entity capable of being sued"); E.D. Bullard Co. v. Gentex Corp., 168 U.S.P.Q. 602, 603 (T.T.A.B. 1970) (no standing to oppose where the opposing party is only loosely connected with an independent legal entity that owns the mark relied upon by opposer).³⁹ Those issues are inextricably intertwined with the ongoing *Pure Fishing* civil action. If the final determination of the Courts is that no such entity as "Central Mfg. Co." exists as the *Pure Fishing* District Court

³⁹ The Board, more than once, has had to dismiss proceedings instituted by Mr. Stoller and his purported entities because they lacked standing. Stoller v. Ponce, 2004 WL 188197, *6-7 (T.T.A.B. 2004), *aff'd*, 113 Fed. Appx. 403 (Fed. Cir. 2004) (opposition dismissed because opposer did not provide any admissible evidence to demonstrate standing); Central Mfg. Inc. v. Astec Indus., Inc., 2003 WL 22408336, *10 (T.T.A.B. 2003) (opposition dismissed because opposer did not prove ownership of any of the pleaded registrations or common law rights in the mark at issue in order to establish standing); Stoller d/b/a Central Mfg. and Central Mfg. Co. v. Sutech U.S.A., Inc., 2005 WL 2985568, *4 (T.T.A.B. 2005) (opposition dismissed because opposers did not establish "use of the pleaded marks nor ownership of any validly subsisting federal registrations" in order to demonstrate standing).

held, or even if the Courts deem "Central Mfg. Co." to be the d/b/a of another company,⁴⁰ then the Petition for Cancellation fails. In short, whatever the outcome of the civil courts' determination as to the status and capacity of "Central Mfg. Co.," it will have a material bearing on this proceeding.

The Bankruptcy Court proceedings likewise may have a bearing on these issues. As evidenced by the Motion to Convert, potential matters that are before the Bankruptcy Court include the status of various alleged Stoller-related businesses, including the alleged existence of "Central Mfg. Co.," and the nature of Mr. Stoller's relationship to them. The Bankruptcy Court also is hearing a motion seeking the appointment of an independent Trustee to investigate and/or take control of Mr. Stoller's alleged companies. Plainly, the Bankruptcy Court's determinations on such issues also may have a bearing on the existence, capacity and alleged rights of "Central Mfg. Co." -- the claimed mark owner in this proceeding -- and/or "Central Mfg. Co. (Inc.)" -- the claimed Petitioner here.⁴¹

Second, and independently, at issue in the Bankruptcy Court action is whether Mr. Stoller's alleged entities have made any sales or conducted any bona fide business operations. As shown in detail above, because it suits his purposes in the bankruptcy to contend that his

⁴⁰ While another entity called Central Mfg. Inc. perhaps might actually be incorporated and exist in some capacity, it is not named as the Petitioner in this cancellation proceeding, and the *Pure Fishing* Court as quoted above rejected the argument that Central Mfg. Co. was a lawful designation for or d/b/a of Central Mfg. Inc. In any event, as noted above, d/b/a's are not juristic persons capable of owning trademark rights or bringing Board proceedings.

⁴¹ Any protest by Petitioner that it is not named as a party to the bankruptcy case would be unavailing. Indeed, based on the position that Stoller and his alleged companies took in the *Pure Fishing* case, the Court found that "the relationship between Mr. Stoller and his wholly-owned corporate" entities warranted staying the entire *Pure Fishing* case pending the conclusion of the bankruptcy case, even though those entities were not formal parties to the bankruptcy. Zeller Dec., Exh. 20 (Order of Feb. 3, 2006).

companies have no assets whatsoever, Mr. Stoller has been claiming that "neither he nor his business entities makes or sells any product" and that "he has not had a real business selling products since the family sporting goods import business closed in the late 1980's." That issue before the Bankruptcy Court has direct bearing, of course, on Petitioner's allegations here to have been using "Google" as a common law mark. Indeed, Mr. Stoller's position in the bankruptcy is diametrically opposed to the assertions he has made in this proceeding. This includes, at a minimum, the Petition's allegations of use of the asserted mark "on sporting goods products;" the Motion for Summary Judgment's contention that Petitioner has been using it "on a broad range of goods and services;" Mr. Stoller's declaration that "Central Mfg. Co." has been selling "sporting goods including tennis rackets" using "Google;" and Mr. Stoller's allegations that one or more of his other alleged entities "have been using the similar mark GOOGLE for many years."⁴²

Third, and independently, both the *Pure Fishing* suit and Mr. Stoller's bankruptcy action may have a bearing on whether Mr. Stoller is entitled to represent Petitioner in these proceedings. Under 37 C.F.R. § 10.14(e), Mr. Stoller would be entitled to represent Petitioner, Central Mfg. Co. (Inc.), *only* if he "is an officer" of that entity. As noted, however, Petitioner Central Mfg. Co. (Inc.) does not appear to be a lawfully subsisting entity and, most certainly, is

⁴² Nor can Petitioner's recent claims (beginning on June 11, 2006) to have filed an ITU application serve to avoid suspension. As the authorities previously cited in the text make clear, if Petitioner lacks capacity, then it cannot bootstrap any rights based on the filing of an application that it likewise it has no capacity to file or own in the first instance. Furthermore, the issues joined in the Bankruptcy Court – including Mr. Stoller's assertions that none of his companies conduct actual business operations and have not done so since the 1980's – plainly have a bearing in this proceeding on the issue of whether Petitioner's purported intent to use is a *bona fide* one. Plainly, if an applicant lacks a bona fide intention to use the mark in commerce on the goods or services specified in the ITU application, such application is invalid. See Commodore Electronics Ltd. v. CBM Kabushiki Kaisha, 26 U.S.P.Q.2d 1503 (T.T.A.B. 1993); Salacuse v. Ginger Spirits, Inc., 44 U.S.P.Q.2d 1415 (T.T.A.B. 1997).

not a Delaware corporation as claimed by Mr. Stoller. Nor did Mr. Stoller disclosures to the Bankruptcy Court state that he was an officer of Central Mfg. Co. (Inc.). The only entity he so listed with "Central" in its name was the purported entity the *Pure Fishing* Court held was non-existent. Based on the *Pure Fishing* District Court's ruling and other evidence discussed previously, Mr. Stoller does not appear to have any legitimate ground for participating in this proceeding on behalf of either "Central Mfg. Co." or "Central Mfg. Co. (Inc)."⁴³

Both the *Pure Fishing* civil action and the bankruptcy case remain pending. See *Central Mfg. Co. v. Surgical Navigation Technologies, Inc.*, No. 91167658, Order of January 31, 2006 (attached as Exh. 2 to Zeller Dec.), at 2-3 (discussing interlocutory status of *Pure Fishing* case in suspending Board proceeding brought by "Central Mfg. Co." because of civil action's potential bearing on standing issues); see also Zeller Dec., Exh. 19 (*Pure Fishing* docket sheet); *id.*, Exh. 15 (Bankruptcy Court docket sheet). Because those civil actions may have bearing on this cancellation proceeding in multiple respects -- including on the threshold issues of Petitioner's capacity and standing -- the most logical and efficient course of action is for the Board to suspend consideration of the Petition (including Petitioner's premature Motion for Summary Judgment in the event the Board decides not to strike it) until the civil actions are fully resolved.

⁴³ Furthermore, the Bankruptcy Court has been asked to decide whether a Chapter 7 Trustee/liquidator should investigate and potentially take control of Mr. Stoller's companies and financial affairs. In such an event, Mr. Stoller no longer would be "authorized to represent" any entities that do, in fact, turn out to exist unless the Trustee permits it. See 37 C.F.R. § 10.14 (requiring non-lawyer representing a party before the Board to be an "officer" of the corporation and be "authorized to represent" it).

III. IN THE EVENT THAT THE REQUESTS UNDER RULE 56(A) AND TO SUSPEND ARE DENIED, REGISTRANT SHOULD BE GRANTED AN EXTENSION OF TIME FOR ITS SUBSTANTIVE OPPOSITION TO THE SUMMARY JUDGMENT MOTION.

If the Board's denies Registrant's request to strike Petitioner's Motion for Summary Judgment under Rule 56(a) and to suspend this proceeding, Registrant respectfully asks that it be given a period of 14 days from any such disposition to provide a substantive opposition to Petitioner's Motion.

The Board grants requests for extensions of time where there is good cause. Fed. R. Civ. P. 6(b)(1). Good cause exists here because providing an extension of time for Registrant to file a substantive response to Petitioner's Motion will help preserve the resources of, and avoid potentially unnecessarily burdening, the Board and the Registrant. In responding to the substance of the Motion -- including in addressing Petitioner's argument that Registrant's GOOGLE mark has become generic for International Class 42 goods -- Registrant necessarily will be introducing voluminous evidence showing that Petitioner's allegations with respect to the relevant public's perception of the mark GOOGLE are not correct. See generally H. Marvin Ginn Corp. v. Int'l Assoc. of Fire Chiefs, Inc., 228 U.S.P.Q. 528, 530 (Fed. Cir. 1986) (one step in determining whether mark is generic for a genus of goods or services at issue is whether the term is "understood by the relevant public primarily to refer to that genus of goods or services[.]"). Compiling and submitting such evidence to the Board for consideration at this juncture would turn out to be a substantial waste of the time and resources of the Board and the Registrant if the Board grants the requests under Rule 56(a) and/or to suspend this proceeding.

Indeed, filing a substantive response to Petitioner's Motion would defeat the purpose of Registrant's instant motion under Rule 56(a) and to suspend this proceeding and reward Petitioner for bringing a motion that was improper in the first instance under the Federal Rules.⁴⁴

Moreover, this alternative request for an enlargement of time is not necessitated by Registrant's own lack of diligence or unreasonable delay in taking the required action during the allotted time. This request is both being made before the time that Registrant's substantive response is due and is being brought reasonably promptly in this proceeding, particularly in light of the investigation into the records of the *Pure Fishing* case and the bankruptcy proceeding that was necessary to present this motion. Nor can Petitioner claim prejudice. Not only did Petitioner articulate none when asked to consent to an extension, but Petitioner recently moved to file an Amended Petition in which Petitioner stated that this proceeding "is in its infancy."⁴⁵

⁴⁴ Not allowing an extension under such circumstances additionally would reward Petitioner for its unreasonable actions in connection with this motion. To avoid burdening the Board with this motion under Rule 56(a) and with the issue regarding scheduling on the summary judgment motion, Registrant wrote Petitioner to determine whether it either would voluntarily withdraw the Motion for Summary Judgment which was filed prematurely in violation of Rule 56(a) or, alternatively, agree to an extension of time until after the request to suspend was decided. Zeller Dec., Exh. 21. Registrant, however, outright refused without discussion or meaningful explanation. *Id.*, Exh. 22. In fact, Registrant's counsel's efforts to obtain Petitioner's cooperation -- sought simply to avoid burdening the Board with motions that should have been unnecessary -- were greeted with a slanderous, abusive Internet posting by Stoller. *Id.*, Exh. 23. As Petitioner's misdescription of Registrant's request in that posting shows, Petitioner made no reasonable effort to understand, let alone consider in good faith, Registrant's requests. It also regrettably evinces the type of unprofessional conduct by Petitioner and Stoller that the Board and the Courts have repeatedly condemned them for. *E.g.*, *S Indus. and Central Mfg. v. JL Audio, Inc.*, 2002 WL 31651761, at *4-5 & n. 11 (T.T.A.B. 2002) (finding that Petitioner and Stoller had violated Board's prior admonitions that they conduct themselves with appropriate "decorum" and refrain from "personal attacks whether it be directed towards counsel, a party, or Board employee.").

⁴⁵ Petitioner's Motion To Amend The Petition for Cancellation, dated June 13, 2006, at page 1.

EXHIBIT 23

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CENTRAL MFG. CO., STEALTH)	
INDUSTRIES, INC., and LEO STOLLER)	
)	
Plaintiffs,)	
	)	No. 04 C 3049
v.)	
GEORGE BRETT & BRETT BROTHERS	)	HONORABLE DAVID H. COAR
SPORTS INTERNATIONAL, INC.)	
)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Before this Court are the parties' cross-motions for summary judgment on Plaintiffs' claims of trademark violation, request for preliminary and permanent injunctions against Defendant, 15 U.S.C. § 1116, Lanham Act violations, 15 U.S.C. § 1125(a), and Illinois Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.* For the reasons set forth below, Plaintiffs' motion for summary judgment is denied; and Defendant's motion for summary judgment is granted. This Court hereby cancels Plaintiffs' '249 Registration.

I. BACKGROUND

Plaintiff Leo Stoller and his stable of corporate entities are no strangers to the legal system and are particularly familiar with the courts in this district. Indeed, as several judges (including this one) have previously noted, Stoller appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation. *See, e.g., S Indus., Inc. v. Stone Age Equip., Inc.*, 49 U.S.P.Q. 2d 1071 (N.D. Ill. 1998) (Castillo, J.) (Stoller spawned

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“litigation lacking in merit and approaching harassment”); *S Indus., Inc. v. Hobbico*, 940 F. Supp. 210, 211 (N.D. Ill. 1996) (Shadur, J.) (Stoller “appears to have entered into a new industry—that of instituting federal litigation”). Unlike a public corporation, which would be accountable to its shareholders, Stoller’s corporate entities appear impervious to Stoller’s repeated losses in federal courts in this district and beyond. A search of the court filing system discloses that Plaintiff and one or more of his corporate entities have been involved in at least 49 cases in this district alone.¹ Of these, at least 47 purport to involve trademark infringement. At least 13 of these cases have been reported in online legal databases such as LEXIS and Westlaw. No court has ever found infringement of any trademark allegedly held by Stoller or his related companies in any reported opinion. In fact, courts in this district have ordered Stoller or his corporate entities to pay defendants’ attorneys’ fees and costs in at least six reported cases. *S Indus., Inc. v. Ecolab Inc.*, 1999 WL 162785 (N.D. Ill. Mar. 16, 1999) (Gottschall, J.); *S Indus., Inc. v. Stone Age Equip., Inc.*, 12 F. Supp. 2d 796, 798-99, 819-20 (N.D. Ill. 1998) (Castillo, J.); *S Indus., Inc. v. Centra 2000, Inc.*, 1998 WL 157067 (N.D. Ill. Mar. 31, 1998) (Lindberg, J.), *aff’d* by 249 F.3d 625, 627-29 (7th Cir. 2001); *S Indus., Inc. v. Diamond Multimedia Sys., Inc.*, 991 F. Supp. 1012 (N.D. Ill. 1998) (Andersen, J.); *S Indus., Inc. v. Diamond Multimedia Sys., Inc.*, 17 F. Supp. 2d 775 (N.D. Ill. 1998) (Andersen, J.); *S Indus., Inc. v. Diamond Multimedia Sys., Inc.*, 1998 U.S. Dist. LEXIS 14470 (N.D. Ill. Sept. 10, 1998) (Andersen, J.); *S Indus., Inc. v. Kimberly-Clark Corp.*, 1996 U.S. Dist. LEXIS 9567, at *3-*4 (N.D. Ill. July 1, 1996) (Shadur, J.); *S Indus., Inc. v. Hobbico, Inc.*, 940 F. Supp. 210, 212 (N.D. Ill. 1996) (Shadur, J.). The present case bears all the hallmarks of a typical Leo Stoller trademark infringement suit.

¹ See Appendix I at the end of this opinion.

Stoller's trademark infringement lawsuits typically arise in the following way. An entity markets a product that bears some version of the name "Stealth" or has a description pertaining to "stealth"-like qualities. Plaintiffs send what Stoller deems a cease-and-desist letter to the alleged infringer, along with an offer to "license" the "Stealth" mark. If the alleged infringer refuses to agree to Plaintiffs' license demands or to cease using "Stealth," then Plaintiffs bring a trademark infringement suit.

The sheer number of cases Plaintiffs have filed in this district raise serious questions about Plaintiffs' and Plaintiffs' counsel's good faith. In fact, several courts in this district have noted explicitly that Plaintiffs deal in meritless claims and bad faith litigation. *See, e.g. Stone Age Equip.*, 12 F. Supp. at 798.

Defendants

Plaintiffs' present dispute is with Brett Bros. Sports International, Inc. and George Brett (collectively "Brett Bros."). Brett Bros. is a Washington corporation with its principal place of business in Spokane, Washington. George Brett, a 1999 Baseball Hall of Fame inductee, has been president of the corporation since June 2001. Since 1997, Brett Bros.² has been manufacturing and selling baseballs, baseball bats, baseball gloves, and other baseball related

² Brett Bros. was started in April 1997 as Tridiamond Sports, Inc., by Joe Sample and several other individuals. Tridiamond began manufacturing and selling three models of wooden baseball bats, the Mirador, the Stealth, and the Bomber. Tridiamond formed a relationship with former Major League baseball player and Baseball Hall of Fame inductee George Brett, and his brothers Ken, John, and Robert Brett, all of whom have played baseball professionally. The Brett brothers purchased a 50% interest in Tridiamond, after which the company changed its name to Brett Brothers Bat Company. Subsequently, in recognition of the fact that company had expanded to a full line of baseball-related products and had customers around the world, the company changed its name again, to Brett Brothers Sports International, Inc. George Brett is currently the president of Brett Bros., and Joe Sample and Robert Brett are the vice-presidents.

accessories throughout North America and overseas. Specifically, Brett Bros. manufactures and sells eight different models of wooden baseball bats that are used from Little League Baseball to Major League Baseball and at all levels in between. One of the Brett Bros. most popular bat models is the Stealth baseball bat. Both the Little League Baseball Association and the National Collegiate Athletic Association have recognized the Brett Bros.' Stealth bat as approved equipment. Brett Bros. currently sells its bats, including the Stealth model bat, through retail outlets and directly to consumers over the internet. Brett Bros. registered the domain name <http://www.brettbats.com> on May 14, 1999, and hosts a website at that domain to advertise and sell its baseball related products, including the Stealth bat. (Def.'s L.R. 56.1(a), Ex. D).

Brett Bros.' first documented sale of its Stealth bat occurred on July 13, 1999, when it sold twelve Stealth bats to Tim Nolan of Pro-Cut in Rockford, Illinois. (Def.'s L.R. 56.1(a), Ex. D; Ex. H). Since 1999, Brett Bros. asserts that it has sold over 25,000 Stealth bats to vendors, distributors, the NCAA, educational institutions, and private individuals through its website, and phone, fax, tradeshow, and third-party sales. (Def.'s L.R. 56.1(a), Ex. D).

Plaintiffs

Plaintiff Central Manufacturing, Inc. (which also does business as Central Manufacturing Co.) is a Delaware corporation with its principal place of business in Chicago, Illinois. Plaintiff Stealth Industries, Inc. is also a Delaware corporation with its principal place of business in Chicago. Plaintiff Leo D. Stoller is the president and sole shareholder of both Central Manufacturing and Stealth Industries, in addition to several other corporate entities including S Industries, Inc., and Sentra Manufacturing. Central is also the owner of Rentamark.com, a service mark used as a licensing agency through which Plaintiffs enter licensing agreements with

third-party entities or corporations for use of their marks on a wide array of products. Plaintiffs assert that Central Manufacturing Company has become the registrant and/or assignee of “33 federally registered Stealth or Stealth formative marks.” (Pls.’ Summ. J. Br., at 2.) In their summary judgment brief, Plaintiffs contend that “Plaintiffs’ use of the mark STEALTH as a trade name, ‘house’ mark, and service mark began in 1981 and has continued until the present.” (Pls.’ Summ. J. Br., at 6.) In addition, they provide 51 alleged licensing or settlement agreements between one of Leo Stoller’s companies and a third-party for use of the word “Stealth” on products ranging from hand tools to make prosthetic limbs to construction consulting services to track lighting.

Present Dispute

In their Amended Complaint, Plaintiffs assert that they are “engaged in the business of marketing, promoting, licensing and selling in interstate commerce a broad range of goods....” (Am. Compl., ¶ 7). In addition, Plaintiffs allege that they have been using the word “Stealth” as a trade name and trademark to identify their products and businesses continuously since at least 1982. (Am. Compl. ¶ 8). On October 5, 2004, pursuant to Rule 34 of the Federal Rules of Civil Procedure, Brett Bros. issued document production requests to Plaintiffs, requiring them to produce “any and all documents showing the volume of sales for goods (including, but not limited to baseball bats, baseballs, or any other sports equipment) bearing Plaintiffs’ alleged mark ‘Stealth’.” Plaintiffs failed to respond. On January 4, 2005, this Court entered an order requiring Plaintiffs to comply with all outstanding discovery requests by January 25, 2005. Plaintiffs again failed to comply and did not produce any documents by the deadline. Plaintiff Leo Stoller appeared for his deposition on February 8, 2005, and stated that he possessed

invoices for baseball bats, but failed to produce any of those documents then or subsequently. Instead, he produced a softball and a piece of paper he alleged was an advertising flyer for a "Stealth baseball." (Stoller Dep., at 34-35). Stoller testified at his deposition that he has sold baseball bats to Montgomery Wards, Venture, Lucky Jemco, Zayre's, Ames, Service Merchandise, Best Products, Sports Mart, Brown's Sporting Goods, Walmart and Sears stores. Further, he stated that he has invoices for baseball bats from these alleged customers, but did not produce them at his deposition or at any other time. In addition, he alleged he has purchase orders from other customers for "Stealth" baseball bats; he has not produced those purchase orders either at any point in this litigation.

On February 11, 2005, Stoller provided Brett Bros.' counsel with documents he characterized as "sales records," purporting to show that Plaintiffs actually sold baseball bats bearing the mark Stealth. The documents included a "Stealth Brand Baseball Sales" document, consisting of a listing of yearly "sales" figures with no itemization or breakdown; a "Sales Quote Sheet" addressed to Best Products and dated January 15, 1988; a "Sales Quote Sheet" addressed to Venture Stores and dated February 11, 1991; a "Sales Quote Sheet" addressed to F.W. Woolworth and dated January 10, 1994; and a "Sales Quote Sheet" addressed to Montgomery Wards and dated December 3, 1997. These alleged records do not reflect any actual sales of any products, nor any orders for any products. In his deposition, Stoller testified that he "[didn't] know the exact quantity of sales to each [customer]" and that he didn't "know the dollar figure" of any sales. He could not remember when he allegedly sold bats, but testified that he sold approximately \$10,000 worth of bats, a figure "that comes from [his] memory." (Stoller Dep., at 197-99, 211-13).

On February 23, 2005, at a document inspection, Stoller produced a printout of a spreadsheet which he claimed showed sales some of Plaintiffs' Stealth-branded products between 1988 and 2003. Stoller contends that the spreadsheet does not reflect the sales of its alleged licensees' "Stealth" products during that time period. The sales spreadsheet shows that baseball bats were not included in the list of sporting goods bearing the mark "Stealth" and purportedly sold by Plaintiffs during the period from 1988 to 2003.

Plaintiffs' Trademark Registrations

On August 29, 1984, Stoller, then doing business as Sentra Sporting Goods U.S.A. Co., filed Registration No. 1,332,378 ("the '378 Registration") with the United States Patent and Trademark Office (the "US PTO") for "Sporting goods, specifically, tennis rackets, golf clubs, tennis balls, basketballs, baseballs, soccer balls, golf balls, cross bows, tennis racket strings and shuttle cocks." The '378 Registration does not include baseball bats. On February 9, 2001, Plaintiff Central Manufacturing filed Registration No. 2,892,249 ("the '249 Registration") with the US PTO for "Baseball, softball, T-ball bats." The '249 Registration lists a first use date of the Stealth mark for baseball bats as January 3, 2001.

Alleged License Agreement With Easton

In their Amended Complaint, Plaintiffs contend that they licensed the '378 Registration to Jas. D. Easton, a wholesaler of sporting equipment, including baseball-related equipment. Plaintiffs produced what they allege is a "Stealth Trademark License Agreement" ("the Easton Agreement"), entered into by RENTAMARK.COM, as the licensor, and Jas. D. Easton, as the licensee, on June 3, 2003. Stoller contends that RENTAMARK.COM is a service mark,

Registration No. 2,371,075, owned by Central Mfg. Co.³ Neither RENTAMARK.COM nor Jas. D. Easton is a Plaintiff in this action. Furthermore, none of the named Plaintiffs in the instant case were included as parties to the Easton Agreement. Stoller, however, maintains that Central Mfg. Co., as the alleged owner of the service mark Rentamark.com, was a party to the Easton Agreement, but has failed to produce evidence that supports his characterization of the relationship between Central Mfg. and Rentamark.com.

Plaintiffs state that they learned of Defendants' allegedly infringing use of the Stealth mark on baseball bats in early 2004 and brought the instant suit. Presently before this Court are both Plaintiffs' and Defendants' motions for summary judgment.

II. STANDARD OF REVIEW

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED.R.CIV.P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Lucas v. Chicago Transit Auth.*, 367 F.3d 714, 720 (7th Cir. 2004). A genuine issue of material fact exists for trial when, in viewing the record and all reasonable inference drawn from it in a light most favorable to the non-movant, a reasonable jury could return a verdict for the non-movant. *Anderson*, 477 U.S. at 248. The movant bears the burden of establishing that there is no genuine issue of material fact remaining in dispute. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Hedberg v. Indiana Bell Tel. Co.*, 47 F.3d 928, 931 (7th Cir. 1995). If the movant meets this burden, the

³ Plaintiffs included a declaration by Leo Stoller in their responsive L.R. 56.1(b) materials, to which a copy of the Rentamark.com registration was allegedly attached. No such attachment was included with the materials filed before this Court.

non-movant then must set forth specific facts that demonstrate the existence of a genuine issue for trial. FED.R.CIV.P. 56(e); *Celotex*, 477 U.S. at 324. Rule 56(c) mandates the entry of summary judgment against a party “who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and in which that party will bear the burden of proof at trial.” *Celotex*, 477 U.S. at 322. A mere scintilla of evidence in support of the non-movant’s position is not sufficient to defeat a summary judgment motion. Rather, the non-movant must provide evidence that would enable a reasonable jury to find in favor of the non-movant. *Anderson*, 477 U.S. at 250.

On cross-motions for summary judgment, the traditional standards for summary judgment apply and each movant must individually satisfy the Rule 56 requirements. *Blum v. Fisher and Fisher, Attys at Law*, 961 F. Supp. 1218, 1222 (N.D. Ill. 1997). Thus the Court will consider the merits of each cross-motion separately and draw all reasonable inferences and resolve all factual uncertainties in favor of the non-movant.

Before analyzing any of the arguments, this Court must remind the parties that statements of fact are exactly what the name suggests: statements of *fact*, not argument. Throughout their Local Rule 56.1 filings of “fact,” both parties engage in extensive and highly improper legal argument. Although strongly tempted to strike all the pleadings and order the parties to submit filings that accord with the rules and the local rules of this District, this Court, in its discretion, will simply disregard all the inappropriate legal arguments raised in the statements of fact. *See Malec v. Sanford*, 191 F.R.D. 581 (N.D. Ill. 2000) (setting forth clearly and concisely the pleading requirements under Rule 56 and Local Rule 56.1).

III. ANALYSIS

A. Defendants' Motion for Summary Judgment

Defendants move for summary judgment because they allege that Plaintiffs⁴ cannot produce evidence to support their claim that they have senior user trademark rights in the world "Stealth" on baseballs or baseball bats. Even if Plaintiffs do have a trademark on "Stealth" for baseball goods, Defendants contend that Plaintiffs abandoned the mark with no intent to resume use or, if this Court does not find the mark abandoned, that there is no likelihood of confusion between Plaintiffs' usage and Defendants' products. Finally, Defendants seek cancellation of Plaintiffs' '249 Registration on the ground that Brett Bros. undisputedly had prior use of the mark "Stealth" for baseball bats.

1. Federal Trademark Claims

In a trademark infringement action, "the plaintiff must demonstrate: (1) the validity of its trademark; and (2) the infringement of that mark." *Platinum Home Mortgage Corp. v. Platinum Fin'l Group, Inc.*, 149 F.3d 722, 726 (7th Cir. 1998).

a. Validity of Plaintiff's Trademark

A trademark registration "is admissible into evidence to establish registrant's rights on a prima facie basis but ... an opposing party may prove any legal or equitable defense ... which might have been asserted if the mark had not been registered." *Union Carbide Corp. v. Ever-Ready, Inc.*, 531 F.2d 366, 378 (7th Cir. 1976). Defendant Brett Bros. claims that Plaintiffs do

⁴ This Court notes that Plaintiffs provide only a conclusory statement of standing for each named Plaintiff. With respect to plaintiff Stealth Industries, Inc., standing is not clearly established. For the purposes of these summary judgment motions only, this Court will assume that the three plaintiffs have standing. This Court makes no finding as to standing at this time, however.

not own the mark “Stealth” for baseball goods because Plaintiffs cannot show actual use of the mark in connection with an established, presently existing, and ongoing business. *Zazú Designs v. L’Oréal, S.A.*, 979 F.2d 499, 503 (7th Cir. 1992) (“By insisting that firms use marks to obtain rights in them, the law prevents entrepreneurs from reserving brand names in order to make their rivals’ marketing more costly.”) Defendants point to Plaintiffs’ unsupported assertions or unauthenticated evidence of small amounts of sales, the lack of invoices or receipts that would evidence business transactions to demonstrate that Plaintiffs do not own “Stealth” for baseball bats or baseballs. *See S Indus., Inc. v. JL Audio, Inc.*, 29 F. Supp. 2d 878, 887 (N.D. Ill. 1998). Plaintiffs, by contrast, offer a copy of an Easton Sports catalog, which it contends demonstrates that its alleged licensee was active in the baseball market. In addition, Plaintiffs provide “Sales Quote Sheets” dating from 1988, 1991, 1994, and 1997. Finally, Plaintiffs provide a baseball and an alleged advertising flyer. The law, however, is clear that “mere advertising and documentary use of a notation apart from the goods do not constitute technical trademark use.” *Powermatics, Inc. v. Globe Roofing Prods. Co.*, 341 F.2d 127, 130 (C.C.P.A. 1965); *see also Avakoff v. S. Pac. Co.*, 765 F.2d 1097, 1098 (Fed. Cir. 1985). Other than testimonial evidence, Plaintiffs have failed entirely to provide admissible evidence that they offered “Stealth” baseball items in the market at any time. Plaintiffs produced a table of “Stealth Brand Baseball Sales” between 1996 and 2003, but could provide absolutely no information to justify the lump sum “sales” figures listed. There is no way for this Court to know that this alleged sales sheet bears any relation to reality and is not simply something Plaintiffs generated on a home computer for the purposes of this litigation. This spreadsheet is conclusory and, in any event, makes no attempt to itemize sales by product description or type. Without documentation to show to whom the alleged sales

were made or whether the goods involved were in fact “Stealth” brand, it is not valid evidence. The alleged “Sales Quote Sheets” Plaintiffs claim they provided to various corporations between 1988 and 1997 are likewise inadmissible. They purport to be a list of various Stealth products with corresponding prices. There is absolutely no evidence that these products ever existed except as lines on a piece of promotional paper or that any of these corporations ordered even one item from Plaintiffs. Moreover, these “Sales Quote Sheets” fail to rise above “mere advertising of a product” and are insufficient to establish continuous use. *Avakoff*, 765 F.2d at 1098. In short, Plaintiffs have failed completely to support their claim that they actually used the “Stealth” mark in connection with an established, presently existing, and ongoing business prior to Brett Bros. use of the word “Stealth” on baseball bats in 1999. This Court therefore finds that Plaintiffs do not own the mark “Stealth” for baseballs or baseball bats.

2. Trademark Abandonment

Defendants allege that even if Plaintiffs once owned “Stealth” for use with baseball related goods, they abandoned the mark after two decades of non-use with no intent to resume use of the mark for any legitimate commercial purpose. Under the Lanham Act, a mark will be deemed abandoned when its use is discontinued with an intent not to resume use. 15 U.S.C. § 1127. When not explicitly stated, the intent not to resume use can be inferred from the circumstances of the case. Specifically, three consecutive years of nonuse serves as prima facie evidence of abandonment. 15 U.S.C. § 1127. The statutory language clarifies that “‘use’ of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.” *Id.* Under the Lanham Act, Plaintiffs would have to be able to show that they did not discontinue use of the mark for three or more consecutive years.

Plaintiffs fail utterly in this regard. In fact, Plaintiffs did not produce any invoices, purchase orders, cancelled checks, bank statements, or any other indicia of a commercial transaction involving the sale of even one “Stealth” baseball-related product.⁵

At his deposition, Plaintiff Leo D. Stoller testified that he had sold baseball bats to at least three retailers⁶ and had purchase orders reflecting those sales. He could not remember the quantity of bats sold, the dollar amount of the sales, or when the sales occurred, but stated that he sold about \$10,000 worth of bats between 1989 and 2003. He did not produce the alleged purchase orders at any time in this litigation.⁷ After his deposition, Stoller produced four “Sales Quote Sheets” which purport to show “quotes” for various “Stealth” products to Best, Venture, Woolworth, and Montgomery Ward for approximately \$900 each. But as previously noted, “quotes” do not suffice as evidence of sales or “bona fide use of [a] mark made in the ordinary course of trade.” 15 U.S.C. § 1127. Moreover, these quote sheets contradict Stoller’s deposition

⁵ Plaintiffs contend that Defendants’ failure to oppose Plaintiffs’ prior similar registrations of the word “Stealth” for other purposes—a practice of dubious validity in itself—means that Plaintiff should prevail even if Defendants establish abandonment. Plaintiffs attempt to base this argument on *Morehouse Manufacturing Corp. v. J. Strickland & Co.*, 407 F.2d 881 (C.C.P.A. 1969). The prior registration or *Morehouse* defense is inapplicable here, as Defendants note, because it is an equitable defense “to the effect that if the opposer can not be further injured because there already exists an injurious registration, [then] the opposer can not object to an additional registration that does not add to the injury.” *O-M Bread, Inc. v. U.S. Olympic Comm.*, 65 F.3d 933, 938 (Fed. Cir. 1995). Here, Plaintiffs do not seek to register a mark nor Defendants to oppose a registration. Instead, Defendants seek to demonstrate that Plaintiffs have abandoned.

⁶ The retailers Stoller identified were Montgomery Wards, Venture, and Best Products, all of which have subsequently ceased operations.

⁷ The failure to produce documents comes as little surprise. In his deposition testimony, Stoller recounted that when he has no set practice for handling purchase orders or invoices. Sometimes he generates them, sometimes he does not. Stoller also testified that he had no record maintenance policy. He stated that he maintained records in banker boxes in his office but did not know how many years’ worth of records he had. Stoller Dep. at 174-79.

testimony. The quoted amounts only amount to \$3,321.60 worth of bat sales, instead of the \$10,000 claimed in Stoller's deposition. Plaintiffs' quote sheets also reflect \$376.49 in baseball sales between 1988 and 2003, but the "baseball sales sheets" claim \$101,489 worth of "Stealth" baseball sales in the same time period. Finally, the "baseball sales sheet" makes absolutely no mention of baseball *bat* sales. In fact, given the near total dearth of documentary evidence supporting Plaintiffs' contentions of mark usage, it is far more reasonable to find that Plaintiffs' actions amount to, at best, an attempt "merely to reserve a right in the mark" for baseless, harassing litigation such as this. This Court finds that Plaintiffs abandoned the "Stealth" mark with respect to baseballs before Defendants began to use it on baseball bats in 1999.

3. Likelihood of Confusion

Defendants assert that even if Plaintiffs own a "Stealth" mark for use with baseball bats, there is no likelihood of confusion between Defendants' products and Plaintiffs' products. Thus, Defendants contend that judgment should be entered in their favor.

B. Plaintiffs' Motion for Summary Judgment

1. Trademark Infringement

Plaintiffs assert that because they registered the '378 Registration⁸ on April 23, 1985, and re-registered it on March 18, 1993, they have priority of use of the mark "Stealth" for sporting goods, including baseballs and baseball bats. Specifically, Plaintiffs contend they are the senior user of the mark for all baseball related products. Further, Plaintiffs claim that "nine of the 33 STEALTH trademarks [Stoller] owns cover sporting goods products that closely relate to

⁸ The '378 Registration encompasses "sporting goods, specifically, tennis rackets, golf clubs, tennis balls, basketballs, baseballs, soccer balls, golf balls, cross bows, tennis racket strings and shuttlecocks."

Defendants' use of STEALTH with baseball bats." (Pls.' Summ. J. br., at 7). Plaintiffs filed an application for a trademark on baseball bats on February 9, 2001, providing a date of first use of January 3, 2001. The US PTO granted that application as the '249 Registration, which Plaintiffs registered on October 12, 2004, well after Plaintiffs filed the instant case. The Lanham Act permits the registration of trademarks and the enforcement of registered marks. 15 U.S.C. § 1051 *et seq.* To show infringement, Plaintiffs must show that they (1) registered a trademark; (2) which Defendants used in commerce without Plaintiffs' consent; and (3) which created a likelihood of confusion as a result. *See S Indus., Inc. v. GMI Holdings, Inc.*, 1998 WL 67627, * 3 (N.D. Ill. Jan. 30, 1998).

It is undisputed that Plaintiffs acquired a registration for the use of the word "Stealth" with respect to baseballs in 1985 through the '378 Registration. It is equally clear that Plaintiffs did not acquire a registration for the use of the word "Stealth" with respect to baseball *bats* until October 2004. In addition, Plaintiffs have registered the word "Stealth" for use with a virtual cornucopia of unrelated items, including microwave absorbing automobile paint, lawn sprinklers, window locks, automotive tires, comic books, leather wallets and handbags, hunters' scent camouflage, and orthodontic devices. (Pls.' Summ. J. Br., at 1; Ex. CL1.)

This Court cannot find that Defendants' use of the word "Stealth" with respect to baseball bats violates section 1114 of the Lanham Act. 15 U.S.C. § 1114. Defendants began selling bats through their website in 1999. Plaintiffs did not register the "Stealth" mark for use on baseball bats until October 2004, after more than four years had elapsed. Thus, Defendants' use of "Stealth" on its baseball bats in 1999 could not infringe Plaintiffs' mark under § 1114.

Plaintiffs contend that baseball bats are so “closely related” to baseballs that Defendants’ use of the word “Stealth” on bats infringes Plaintiffs’ mark for baseballs. “Modern trademark law prohibits use of a senior user’s mark not only on products that are in direct competition with those of the senior use but also on products that are considered ‘closely related’ to the senior user’s.” *Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 958 (7th Cir. 1992), *cert. denied*, 507 U.S. 1042 (1993). A “closely related” product is one which could “reasonably be thought by the buying public” to come from the same source or an affiliated source with the owner of the trademark. *Id.* Plaintiffs assert that baseballs and baseball bats are closely related under this definition. The problem with Plaintiffs’ argument is that it assumes that they are the senior user for baseballs. This Court finds otherwise.

In addition, Plaintiffs have provided no evidence that the public believes that the Defendants’ products are manufactured by or otherwise affiliated with the Plaintiffs. The only evidence Plaintiffs offer is unsupported testimony by Leo D. Stoller, president of Central Manufacturing Co., that he has received queries from unidentified members of the public who thought Defendants’ baseball products were affiliated with Plaintiffs. As with previous Stoller lawsuits, Plaintiffs provide no documentary evidence to support these assertions or even to demonstrate that such queries took place. *See S Indus., Inc. v. GMI Holdings, Inc.*, No. 96 C 2232, 1998 WL 67627, at * 4 (N.D. Ill. Jan. 30, 1998). Plaintiffs fail to produce any sworn testimony from consumers confused about the origin of Defendants’ baseball products. Defendants, by contrast, produced sworn statements from several people with longstanding involvement in the sport of baseball as coaches, former players, trainers, and baseball goods

representatives, all of whom state that they had never heard of Plaintiffs or Plaintiffs' alleged products. (Nolan Decl., Hostetler Decl., Brett Decl.; Rice Decl.)

Ownership of a trademark is not based solely on registration. Goods also must be used in commerce, meaning that the mark must be affixed to goods, containers, or documents associated with the good, and when the goods are sold or transported in commerce. 15 U.S.C. § 1127. None of Plaintiffs "evidence" establishes that any goods were actually sold or transported in commerce. In fact, it is unclear whether Plaintiffs make any products. It is not clear whether the baseball featured in Plaintiffs flyer is even for sale by Plaintiffs or whether any baseballs were ever sold.

2. False Designation of Origin and Unfair Competition

Plaintiffs also allege that Defendants violated Section 1125(a) of the Lanham Act by using the "Stealth" mark in false designation of their origin. 15 U.S.C. § 1125(a). Section 1125(a) sweeps more broadly than § 1114, which applies only to registered marks. Under Section 1125(a), Plaintiffs who believe that another person's use of the same mark will cause a likelihood of confusion about the origin of the good may bring a civil action against that person. 15 U.S.C. § 1125(a)(1). To prevail, Plaintiffs must show that they have (1) prior ownership rights in the mark; and (2) that Defendants' use of the mark creates a likelihood of confusion, deception or mistake. *Dunn v. Gull*, 990 F.2d 348, 351 (7th Cir. 1993).

a. Ownership Rights

A party acquires a protectable right in a trademark only through the use of that mark in connection with its product. *Zazú Designs v. L'Oréal S.A.*, 979 F.2d 499, 503 (7th Cir. 1992). The law insists "that firms use marks to obtain rights in them," thereby preventing "entrepreneurs" or

scam artists “from reserving brand names in order to make their rivals’ marketing more costly.” *Zazú Designs*, 979 F.2d at 503 (citing *Blue Bell, Inc. v. Farah Mfg. Co.*, 508 F.2d 1260, 1264-65 (5th Cir. 1975)). Plaintiffs supply a copy of the 2004/2005 Easton Sports catalog to show that they—or their licensee—used the mark in commerce. The only date on the catalog, however, is 2004-2005, which is *after* Defendants admit they began selling Stealth baseball bats. In addition, the Easton catalog is not admissible for multiple reasons, not the least of which are that there is no evidence showing that it was ever sent out to potential customers or that it ever resulted in the sales of even a single bat. Marketing and promotional materials alone are insufficient to constitute trademark use. *Powermatics, Inc.*, 341 F.2d at 130. Plaintiffs also provide an advertising flyer for a STEALTH baseball. This flyer likewise fails to support Plaintiffs’ contentions. The flyer provides information on how to contact Plaintiffs for licensing opportunities but does not list sales information like price. The flyer is dated 2003, well after Defendants began selling their products. Like the Easton catalog, the flyer completely lacks any indication about how many baseballs were sold or, indeed, if any were sold at all. Although registration, coupled with slight sales, establishes an exclusive right in the mark against junior users, *S Indus., Inc. v. Space Age Technologies*, 1999 WL 495484, at *5 (N.D. Ill. June 30, 1999) (citing *Zazú Designs*, 979 F.2d at 503), Plaintiffs have provided absolutely no credible evidence of baseball product sales to establish their exclusive right in the Stealth mark for baseballs, much less for baseball bats. Thus, Plaintiffs cannot rely on their trademark registrations to establish ownership of the mark with respect to baseball related products.

At the common law, “use” means sales to members of the public of a product with the mark in question affixed or attached. *Zazú Designs*, 979 F.2d at 503. Plaintiffs provide a flyer

that purports to advertise a Stealth baseball. The flyer indicates how an interested customer could contact Plaintiffs to obtain additional information. There is nothing on the flyer to indicate how to obtain the product or where to see the entire product line (if any); rather the flyer tells consumers how they can learn about Stealth licensing opportunities if they use the contact information. Plaintiffs claim they began selling baseball related products “since at least as early as 1981.” (Pls.’ Summ. J. Br., at 1.) Yet Plaintiffs provide no documentary evidence of their use of the mark in commerce at any time. Instead, they provide a list of 33 alleged Stealth federal trademark registrations and an assertion that “Plaintiffs’ use of the mark STEALTH as a trade name, ‘house’ mark, and service mark began in 1981 and has continued until the present.” (Pls.’ Summ. J. Br., at 6.) In addition, they provide 51 alleged licensing or settlement agreements between one of Leo Stoller’s companies and a third-party for use of the word “Stealth” on products ranging from hand tools to make prosthetic limbs to construction consulting services to track lighting. Only one of these licensing agreements deals with baseball related products; it purports to be a licensing agreement between Rentamark.com and Jas. D. Easton, Inc. for use of “Stealth” on hockey sticks, hockey shafts, hockey blades, baseball bats, and softball bats, dated May 28, 2003. In support of their motion for summary judgment, Plaintiffs fail utterly to provide any evidence of sales of baseball bats or of any other product. Minimal marketing targeted at a small audience is insufficient to “link the [] mark with [the] product in the minds of consumers” or to put other producers on notice of the mark. *Id.* Plaintiffs’ flyer does not provide any information about what makes their baseball unique or why a consumer should associate it with Central Manufacturing Co. In fact, Central Manufacturing is not even mentioned on the flyer.

3. Likelihood of Confusion

To prevail on a claim of trademark infringement, Plaintiffs must demonstrate a likelihood, not merely a possibility of confusion. *August Storck K.G. v. Nabisco, Inc.*, 59 F.3d 616, 619 (7th Cir. 1995). The Seventh Circuit uses a seven-factor test for analyzing likelihood of confusion: (1) similarity between the marks; (2) similarity of the products; (3) the area and manner of concurrent use; (4) the degree of care likely to be exercised by consumers; (5) the strength of the plaintiff's mark; (6) actual confusion, if any; and (7) the defendant's intent to "palm-off" its product as originating from or being affiliated with plaintiff. *Rust Env't & Infrastructure, Inc. v. Teunissen*, 131 F.3d 1210, 1216 (7th Cir. 1997). No single factor is dispositive.

Plaintiffs urge this Court to grant summary judgment in their favor because the '378 Registration, which does not include baseball bats, is a "strong" mark and is sufficiently related to baseball bats to cause a likelihood of confusion. Defendants contend that Plaintiffs have produced no evidence of continuous and bona fide use of the "Stealth" mark prior to Defendants' use or any facts that support the likelihood of confusion argument. But the law does not go so far. "[A firm's] right to use [a mark] only extends as far as the goods noted in the registration." *S Indus., Inc. v. GMI, Inc.*, 1998 WL 67627, at *3 (N.D. Ill. Jan. 30, 1998) (citing *Quill Nat'l Spring Water, Ltd. v. Quill Corp.*, 1994 WL 559237, at *2 (N.D. Ill. Oct. 7, 1994). Plaintiffs allege three different types of confusion: source confusion; sponsorship confusion; and reverse confusion.⁹

⁹ As in previous cases involving Stoller, the reverse confusion and sponsorship confusion claims appear as conclusory statements in Plaintiffs' pleadings and lack any support. They merit no discussion apart from the likelihood of confusion analysis relating to source confusion. *See S*

“Because a trademark is an identifier rather than a property ‘right,’ the use of a competitor’s mark that does not cause confusion as to source is permissible.” *Knaack Mfg Co. v. Rally Accessories, Inc.*, 955 F. Supp. 991, 999 (N.D. Ill. Mar. 3, 1997) (citing *Libman Co. v. Vining Indus., Inc.*, 69 F.3d 1360, 1362 (7th Cir. 1995)). Although likelihood of confusion is normally a question of fact, it is appropriate to dispose of it at the summary judgment stage if no reasonable fact finder could find in favor of Plaintiffs. *Door Sys., Inc. v. Pro-Line Door Sys., Inc.*, 83 F.3d 169, 173 (7th Cir. 1996); see also *S Indus., Inc. v. Stone Age Equip., Inc.*, 12 F. Supp. 2d 796, 813 (N.D. Ill. 1998).

a. Similarity of Marks

Similarity of marks is determined by looking at similarity in sound, appearance, meaning, and connotation between the name in question and the trademark. *Knaack Mfg. Co.*, 955 F. Supp. at 1000. Here, both parties undisputedly use the mark “Stealth.” Thus, sound similarity is met. With respect to appearance, Plaintiffs provided a specimen of a “Stealth” bat sold by their alleged licensee, Easton Sports; Defendants provided printouts from their website with photographs of their “Stealth” bats. Based on this evidence, the marks appear different in several ways. The Easton product features “Easton” in large capital block letters on one side of the bat and “Stealth” in large capital block letters on the other side. The words appear in white, with black and gray outlines creating a shadow or three-dimensional effect. The design conveys equally the words “Easton” and “Stealth.” By contrast, the Brett Bros. bat has “Brett” printed in large font on both sides of the bat; the “B” of “Brett” has three horizontal lines along its left side, just as the “B” in the company name on the website does. The word “Stealth” appears in

Indus., Inc., 12 F. Supp. 2d at 813 & n.28.

significantly smaller letters and a different font. The emphasis is on the word “Brett,” conveying that this is a Brett Bros. bat. In addition, George Brett’s signature appears directly beneath the name “Stealth,” furthering differentiating the mark from the Easton product. The marks also have different connotations. Brett Bros. sells not simply its baseball bats but also its association with George Brett, a Baseball Hall of Fame member. Easton, by contrast, simply uses the mark on a number of products like any one of several other model names, including baseball, t-ball, and softball bats, shoes, pads, mitts, and gloves. Brett Bros. uses it only on bats. These factors militate against finding likelihood of confusion. *See S Indus., Inc.*, 12 F. Supp. 2d at 814.

b. Similarity of Products and Area and Manner of Concurrent Use

Goods are related if consumers would use them in conjunction with each other. *Knaack*, 955 F. Supp. at 1000. The test for similarity of products asks “whether the products are the kind the public attributes to a single source.” *Id.* (citation omitted). Courts examine competitiveness and relatedness in making this determination.

Unlike most of Plaintiffs’ previous lawsuits, the products at issue in this case are competitive and related. As Plaintiffs note in their pleadings, baseballs and baseball bats are intimately related in the public mind. But closer examination reveals some key differences in the products. The Easton bat is a metal alloy, as are many of the Easton products. Defendants’ bat, however, is wood. Moreover, Defendants’ emphasize the fact that they make wood bats as a key factor in their success and a crucial element of their business strategy. Although the difference between a metal alloy bat and a wood bat might not be widely known to the general population, baseball players know the characteristics of each type. Furthermore, only wooden bats are used

in Major League Baseball. On balance, the similarity of products analysis favors Plaintiffs only slightly, if at all.

The Court must also consider the area and manner of concurrent use. If the products are sold in the same place and next to one another, or in the same department, then there may be a likelihood of confusion. *Packman v. Chicago Tribune Co.*, 267 F.3d 628, 646 (7th Cir. 2001). Defendants market their products directly to the consumer through their website; they also have a network of retailers in 48 states across the country who sell their products. Plaintiffs provided an excerpt from an Easton catalog, which contains no order form for direct purchase, but rather provides a list of "Easton Representatives" and their geographic sales areas. Plaintiffs produced no evidence of other sales avenues. The Defendants' website gives price information for their products; specifically, the Stealth bat retails for \$49 directly from Brett Bros. There is no information about the price of Plaintiffs' products before this Court. There is almost no likelihood that a customer purchasing a bat through the Brett Bros. website would think that he or she was purchasing a bat from Easton or from Plaintiffs. *Knaack Mfg Co.*, 955 F. Supp. at 1001 ("Knaack has failed to prove that even one of its distributors carried any Rally car covers.... The clear inference from this proof is that there is no overlap in distribution, which also minimizes any possibility of confusion."). Plaintiffs provide no evidence that any retailer sells both parties' goods. Further, neither party has encountered the other in promoting and marketing their products at trade shows or through specialty publications. The evidence suggests that the parties use different venues for their marketing and publicity: Defendants attend specialty baseball trade shows and have retail relationships with sporting good and baseball supply retailers, whereas Plaintiffs simply refer in conclusory fashion to "trade shows." In sum, the

evidence before this Court shows no overlapping distribution channels or evidence of direct competition between Plaintiffs and Defendants.

c. Degree of Care Exercised by Consumers

“[W]here consumers are sophisticated, deliberative buyers, confusion is less likely.” *Rust Env’t*, 131 F.3d at 1217. There are multiple baseball bats available to consumers. Defendants are well-known in the baseball equipment field. George Brett, as a member of the Baseball Hall of Fame, was a highly-accomplished baseball player. Other baseball players are likely to accord his product significant deference. Defendants’ “Stealth” bat has a suggested retail price of \$49, which is sufficiently costly that consumers will exercise care in making a purchase. *See Nike, Inc. v. Just Did It Enters.*, 6 F.3d 12225, 1230 (7th Cir. 1993). Plaintiffs fail to provide valid pricing information about their bats or about the price of the allegedly-licensed Easton bats.

d. Strength of Plaintiffs’ Mark

Plaintiffs contend that they have a “strong” mark and that this should support a finding of likelihood of confusion. Trademark “strength” measures the likelihood that a consumer will view a mark as identifying the source of that good. *Knaack Mfg.*, 955 F. Supp. at 1001. “Only strong marks are entitled to protection against infringement by non-competing goods.” *Telemed Corp. v. Tel-Med Inc.*, 588 F.2d 213, 219 (7th Cir. 1978). A strong mark has fame, uniqueness, and volume of usage that give it an edge in the marketplace. *Id.* Plaintiffs bear the burden of demonstrating the strength of their mark. *Knaack*, 955 F. Supp. at 1001. Plaintiffs contend that their mark is strong because it is arbitrary (as opposed to generic), available to be licensed on “virtually any product,” and protected by Plaintiffs’ “strong policing policy.” (Pls.’ Summ. J. Br., at 11.) Plaintiffs have used this argument in prior cases and courts have declined repeatedly

to find that Plaintiffs' mark is strong. *See, e.g., S Indus., Inc. v. JL Audio, Inc.*, 29 F. Supp. 2d 878 (N.D. Ill. 1998); *S Indus., Inc. v. GMI Holdings, Inc.*, No. 96 C 2232, 1998 WL 67627 (N.D. Ill. Jan. 30, 1998). In the absence of credible evidence showing the strength of Plaintiffs' mark, this Court also finds that the mark is weak.

e. Actual Confusion

Although proof of actual confusion is not required to demonstrate likelihood of confusion, "courts often view evidence of actual confusion as the best evidence of actual confusion." *JL Audio, Inc.*, 29 F. Supp. 2d at 893 (citing *Union Carbide Corp. v. Ever-Ready Inc.*, 531 F.2d 366, 383 (7th Cir. 1976). *But see Nike*, 6 F.3d at 1231 (stating that "it is certainly proper for the trial judge to infer from the absence of actual confusion that there was also no likelihood of confusion"). "Isolated instances" of actual confusion "have been held insufficient to sustain a finding of likelihood of confusion." *Union Carbide*, 531 F.2d at 383. Plaintiffs do not provide evidence of any instances of actual confusion. This Court concludes that the alleged concurrent use of the mark by the parties since at least 1999 without any incidents of actual confusion strongly weighs against finding any likelihood of confusion. *Stone Age Equip., Inc.*, 12 F. Supp. 2d at 818.

f. Intent to "Palm-Off"

The intent to "palm off" is defined as "trying to get sales from a competitor by making consumers think that they are dealing with that competitor, when actually they are buying from the passer off." *Stone Age Equip., Inc.*, 12 F. Supp. 2d at 819 (citation omitted); *see also Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 959 (7th Cir. 1992). There is no evidence

that Defendants intended to “palm off” their baseball bats as those of Plaintiffs or their licensees. To suggest otherwise is patently frivolous.

The application of the seven factor test for the likelihood of confusion weighs overwhelmingly in Defendants’ favor. This is, therefore, a case in which “the evidence is so one-side that there can be no doubt about how the question should be answered.” *Door Sys.*, 83 F.3d at 171. Because all of Plaintiffs’ Lanham Act claims require a likelihood of confusion, this Court denies summary judgment to Plaintiffs. Summary judgment is granted to Defendants on all Lanham Act claims instead.

C. Illinois Law Deceptive Trade Practices Claim

Claims brought under the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 *et seq.*, are resolved in the same manner as Lanham Act claims. *D 56, Inc. v. Berry's Inc.*, 955 F. Supp. 908, 920 (N.D. Ill. 1997). To prevail, Plaintiffs would have to be able to show that they had a protectable mark and that Defendants’ use thereof was likely to cause confusion. *Thompson v. Spring-Green Lawn Care Corp.*, 466 N.E.2d 1004, 1010 (Ill. App. Ct. 1984). For the reasons stated above, this Court denies summary judgment to Plaintiffs on Count III and grants summary judgment to Defendants.

D. Defendants Entitled to Attorneys’ Fees and Costs

Under both the Lanham Act and the Illinois Consumer Fraud and Deceptive Business Practice Act, the court may award attorneys’ fees to “prevailing parties.” *See* 15 U.S.C. § 1117(a); 815 ILCS 505/10a(c); *see also Tri-G, Inc. v. Burke, Bosselman and Weaver*, 817 N.E.2d 1230, 1256-57 (Ill. 2004). Under the Lanham Act, the case must be “exceptional,” while Illinois courts and the Seventh Circuit have construed the Illinois Consumer Act to allow fees when

“special circumstances” exist. *See Door Sys., Inc. v. Pro-Line Door Sys.*, 126 F.3d 1028, 1030-32 (7th Cir. 1997). Under *Door Systems*, a prevailing defendant must show that plaintiff’s suit was “oppressive,” meaning that it had elements of abuse of process. *Id.* at 1031-32. As an example, the *Door Systems* court stated that “a suit can be oppressive because of lack of merit and cost of defending even though the plaintiff honestly though mistakenly believes that he has a good case and is not trying merely to extract a settlement based on the suit’s nuisance value.” *Id.* at 1032 (citations omitted). The standard is “malicious, fraudulent, deliberate or willful conduct.” *Id.* at 1031 (internal quotations and citations omitted). Here, Plaintiffs’ conduct clearly rises to the level of “oppressive.” Plaintiffs offered irrelevant, questionable, and seemingly fantastical documents; inconsistent, uncorroborated, or arguably false testimony from Leo Stoller; and a cascade of so-called license or settlement agreements for unrelated products and unrelated marks. In fact, Plaintiffs failed to produce evidence that Plaintiffs or any of their related companies made a single Stealth baseball bat at any time. Further, the enormous range in license fees listed in the alleged license agreements (from \$10 to \$25,000) strongly suggests what several courts in this district have suspected: that Plaintiffs engage in a pattern and practice of harassing legitimate actors for the purpose of extracting a settlement amount. The judicial system is not to be used as a aid in such deliberate, malicious, and fraudulent conduct.

In addition, Plaintiffs brought the instant suit before they acquired a federal trademark registration for baseball bats. In what can be at best described as artless and more likely as deliberately obfuscatory tactics, Plaintiffs repeatedly attempted to misdirect the court to federal marks or registrations not at issue in this case and so-called license agreements totally unrelated to Defendants’ products. Quantity of filings in cases before this Court rarely equate to quality; it

is far more common that the reverse is true. Leo Stoller and his companies present paradigmatic examples of litigants in the business of bringing oppressive litigation designed to extract settlement. As such, this Court awards Defendants' attorneys' fees and defense costs under both the Lanham Act and the Illinois Consumer Fraud and Deceptive Business Practices Act.

E. Cancellation of Plaintiffs' '249 Trademark Registration

Courts have the authority to order the cancellation of a trademark registration when warranted pursuant to Section 37 of the Lanham Act. 15 U.S.C. § 1119 ("In any action involving a registered mark the court may ... order the cancelation (*sic*) of registrations..."). The net effect of Section 37 is to give federal courts concurrent power with the U.S. PTO to conduct cancellation proceedings. 5 MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 30:109 (4th ed. 2005) (collecting cases). The court may cancel a trademark in an action where the mark's validity is placed in issue. *See Dymo Indus., Inc. v. Tapeprinter, Inc.*, 326 F.2d 141 (9th Cir. 1964). Although parties are encouraged to act quickly to protect their valid rights, courts have permitted defendants in trademark infringement suits to seek cancellation despite their failure first to petition the U.S. PTO to cancel. *See, e.g., Informix Software, Inc. v. Oracle Corp.*, 927 F. Supp. 1283 (N.D. Cal. 1996).

Defendants argue that the '249 registration is ripe for cancellation because it is less than five years old, 15 U.S.C. § 1064(1), and because it "[c]onsists of or comprises a mark which so resembles ... a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d). Here, it is undisputed that Brett Bros. has been using "Stealth" on its baseball bats for approximately six years, which

predates any claimed use by Stoller or his predecessor-in-interest by two years. In addition, the '249 Registration claims "baseball, softball, and t-ball bats," which are identical to the goods Brett Bros. manufactures and sells under the mark. Plaintiffs, predictably, disagree vehemently with Defendants. In support of their registration, Plaintiffs raise the *Morehouse* equitable defense and argue, in disjointed fashion, that Defendants acquiesced to the '249 Registration by not opposing it before the U.S. PTO. But this misstates the law. *See Informix*, 927 F. Supp. 1283. Defendants' failure to oppose Plaintiffs' application for registration of "Stealth" mark for baseball bats does not preclude Defendants' from petitioning for cancellation of the '249 Registration. *See Keebler Co. v. Rovira Biscuit Corp.*, 624 F.2d 366 (1st Cir. 1980). This Court finds that Defendants have demonstrated sufficient likelihood of confusion to justify cancelling the '249 Registration.

Conclusion

For the foregoing reasons, this Court DENIES Plaintiffs' motion for summary judgment in its entirety and GRANTS Defendants' motion for summary judgment. Defendants are ordered to submit a petition for attorneys' fees and a bill of costs by October 31, 2005. Defendants' request that this Court cancel Plaintiffs' Trademark Registration No. 2,892,249 is GRANTED. The Clerk shall certify this order to the Commissioner for entry upon the records of the United States Patent and Trademark Office. All other pending motions are moot and hereby terminated. This case is closed.

Enter:

/s/ David H. Coar

David H. Coar
United States District Judge

Dated: September 30, 2005

**Appendix I
 Northern District of Illinois Cases Involving Leo Stoller and the "Stealth" Mark**

Case Number	Case Name	Subject Matter
88-C-3722	Slazengers Ltd. v. Stoller et al.	Trademark Infringement
88-C-7215	Skierkewiecz, et al. v. Gonzalez, et al.	Non-Trademark Infringement
92-C-5622	Stoller v. Carbaugh et al.	Trademark Infringement
95-C-1634	Stealth Indus. Inc. v. Victor Stanzel Co., et al.	Trademark Infringement
95-C-2650	Stealth Indus. Inc. v. Grace Childrens Prods. et al.	Trademark Infringement
95-C-2651	Stealth Indus. Inc. v. Zebco Inc., et al.	Trademark Infringement
95-C-4509	Stealth Indus. Inc. v. All Amer. Prod. Inc., et al.	Trademark Infringement
95-C-5788	Stealth Indus. Inc. v. Oceanic USA	Trademark Infringement
96-C-1035	S Indus. Inc. v. Amer Soccer Co., Inc.	Trademark Infringement
96-C-1138	S Indus. Inc. v. Netti Export Corp., et al.	Trademark Infringement
96-C-1218	S Indus. Inc. v. Bard Wyers Sports, et al.	Trademark Infringement
96-C-1264	S Indus. Inc. v. HHA Sports, et al.	Trademark Infringement
96-C-1325	S Indus. Inc. v. ERO Indus. Inc., et al.	Trademark Infringement
96-C-1776	S Indus. Inc. v. Fit Bearings, et al.	Trademark Infringement
96-C-2037	S Indus. Inc. v. World of Weapons, et al.	Trademark Infringement
96-C-2038	S Indus. Inc. v. Pelican Pro Inc., et al.	Trademark Infringement
96-C-2166	S Indus. Inc. v. Wonderwand, et al.	Trademark Infringement
96-C-2231	S Indus. Inc. v. Lane, et al.	Trademark Infringement
96-C-2232	S Indus. Inc. v. GMI Prof. Access Syst., et al.	Trademark Infringement
96-C-3389	S Indus. Inc. v. Diamond Multimedia, et al.	Trademark Infringement
96-C-3524	S Indus. Inc. v. Centra 2000 Inc., et al.	Trademark Infringement

Case Number	Case Name	Subject Matter
96-C-3525	S Indus. Inc. v. NAAN Irrigation Syst., et al.	Trademark Infringement
96-C-3592	S Indus. Inc. v. Nat'l Baseball Hall of Fame	Trademark Infringement
96-C-3593	S Indus. Inc. v. Funline Mdse Co., Inc., et al.	Trademark Infringement
96-C-3916	S Indus. Inc. v. Kimberly-Clark Corp., et al.	Trademark Infringement
96-C-4140	S Indus. Inc. v. Ecolab Inc.	Trademark Infringement
96-C-4141	S Indus. Inc. v. Tru-Fit Mkg. Corp.	Trademark Infringement
96-C-4149	S Indus. Inc. v. Mitsubishi Int'l Inc., et al.	Trademark Infringement
96-C-4434	S Indus. Inc. v. Brodix Inc., et al.	Trademark Infringement
96-C-4659	S Indus. Inc. v. JL Audio Inc., et al.	Trademark Infringement
96-C-4951	S Indus. Inc. v. Stone Age Equip. Inc., et al.	Trademark Infringement
96-C-6047	S Indus. Inc. v. Tournament Grade, et al.	Trademark Infringement
96-C-6507	S Indus. Inc. v. Photostealth Fabric	Trademark Infringement
96-C-6509	S Indus. Inc. v. Hobbico Inc., et al.	Trademark Infringement
96-C-6538	S Indus. Inc. v. E-Force Sports, et al.	Trademark Infringement
97-C-1817	S Indus. Inc. v. Hobbico Inc., et al.	Trademark Infringement
97-C-2787	S Indus. Inc. v. Space-Age Tech, et al.	Trademark Infringement
97-C-3702	S Indus. Inc. v. Sunshine Golf	Trademark Infringement
97-C-3703	S Indus. Inc. v. Tour Advanced Int'l	Trademark Infringement
97-C-3704	S Indus. Inc. v. NGA Disc Golf	Trademark Infringement
97-C-3705	S Indus. Inc. v. S E Golf	Trademark Infringement
97-C-3706	S Indus. Inc. v. Proclub Golfing Co.	Trademark Infringement
97-C-3707	S Indus. Inc. v. M & M Golf Inc.	Trademark Infringement
99-C-1401	Hartford Ins. Co. v. Diamond Computer, et al.	Non-Trademark Infringement

00-C-6586	Stealth Indus. Inc. v. Stealth Sec. Syst., Inc., et al.	Trademark Infringement
Case Number	Case Name	Subject Matter
00-C-7867	Centra Software Inc. v. Stoller, et al.	Trademark Infringement
04-C-3049	Stealth Indus. Inc. v. George Brett & Brett Bros. Sports Int'l, Inc.	Trademark Infringement
05-C-725	Central Mfg. Co., et al. v. Pure Fishing, Inc., et al.	Trademark Infringement
05-C-2052	Columbia Pictures Indus., Inc. v. Stoller et al.	Trademark Infringement

Total Number of Cases: 49

EXHIBIT 24

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	David Coar	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 3049	DATE	7/31/2006
CASE TITLE	Central Mfg. Co., Stealth Indus., Inc. & Leo Stoller vs. George Brett & Brett Bros. Sports Int'l, Inc.		

DOCKET ENTRY TEXT

After reviewing Defendants' Fee Petition and the Parties' Joint Fee Statement, this Court hereby awards \$76,525.00 in attorneys' fees and \$6,041.08 in costs to Defendants.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

In its September 30, 2005 Memorandum Opinion and Order [Doc. No. 96], this Court granted summary judgment on all claims and awarded attorneys' fees and costs to Defendants under the Lanham Act, 15 U.S.C. § 1117(a), and the Illinois Consumer Fraud and Deceptive Business Practices Act, 18 ILCS 505/10a(c). The parties have submitted a Local Rule 54.3(e) Joint Fee Statement [Doc. No. 125]. Plaintiffs disputed \$2,625.00 in fees of Defendants' initial Fee Petition for \$79,150.00. Plaintiffs do not dispute Defendants' Bill of Costs in the amount of \$6,041.08. After meeting to confer, the parties agreed that fees should be awarded in the amount of \$76,525.00. Plaintiffs have appealed the judgment and fee award entered in this matter. After reviewing Defendants' Fee Petition and the Parties' Joint Fee Statement, this Court hereby awards \$76,525.00 in attorneys' fees and \$6,041.08 in costs to Defendants.

ENTER:

/s/ David H. Coar

United States District Judge

Courtroom Deputy
Initials:

mvf/lc

EXHIBIT 25

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>ESTTA Tracking number: **ESTTA118910**Filing date: **01/10/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045778
Party	Plaintiff CENTRAL MFG. CO. (INC.) CENTRAL MFG. CO. (INC.)
Correspondence Address	LEO STOLLER CENTRAL MFG. CO. TRADEMARK & LICENSING DEPT. 7115 W. NORTH AVE., #272 OAK PARK, IL 60302 UNITED STATES
Submission	Reply in Support of Motion
Filer's Name	Leo Stoller
Filer's e-mail	ldms4@hotmail.com
Signature	/Leo Stoller/
Date	01/10/2007
Attachments	googlereply9_10.pdf (3 pages)(10838 bytes)

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

CENTRAL MFG. CO. (INC.)
(Delaware Corporation),

Petitioner,

vs.

Cancellation No. 92045778

GOOGLE, INC.,

Respondent.

**REPLY TO GOOGLE INC.'S RESPONSE TO
NON-PARTY LEO STOLLER'S PURPORTED OPPOSITION
TO AGREED DISMISSAL OF PETITION FOR CANCELLATION**

NOW COMES Leo Stoller, President of Central Mfg. Co., Inc., and states as follows:

Respondent argues that Leo Stoller is a non-party because he happens to be in Chapter 7 bankruptcy. Leo Stoller has filed an Appeal of the conversion of the Chapter 13 to a Chapter 7. That Appeal is pending. Leo Stoller has filed an Appeal of the Order directing Richard Fogel to be Trustee of Leo Stoller's Estate. Leo Stoller has filed a motion requesting the removal of the Trustee of Leo Stoller's Estate, Richard Fogel. All of Leo Stoller's motions are pending.

Consequently, the Board should not grant Google's purported agreed dismissal of petition for cancellation pending the resolution of Stoller's appeals. Secondly, on January 4, 2007, Judge Schmetterer in Case No. 05-B-64075, entered an order from the bench ordering Google to respond to Stoller's motion

for summary judgment which is pending at the Trademark Trial & Appeal Board. Google's attorney, Michael Zeller, was present and concealed from this Board the fact that Judge Schmetterer gave Google the go ahead to respond to Stoller's motion for summary judgment at the TTAB. Stoller has ordered a copy of the transcript and agrees to submit it to the Board when it becomes available.

WHEREFORE, Stoller prays that the Board order Google to respond to Stoller's motion for summary judgment. In the alternative, to maintain the suspension in this proceeding, pending Stoller's appeals.

RESPECTFULLY SUBMITTED,

/Leo Stoller/
Leo Stoller, President
CENTRAL MFG. CO., INC., Petitioner
7115 W. North Avenue #272
Oak Park, Illinois 60302
(773) 589-0340

Date: January 10, 2007

Certificate of On-Line Filing

I hereby certify that on January 10, 2007, this paper is being filed online in this case with the Trademark Trial and Appeal Board.

/Leo Stoller/

Certificate of Service

I hereby certify that on January 10, 2007 a copy of the foregoing was sent by First Class mail with the U.S. Postal Service in an envelope addressed to:

Michael T. Zeller
*Quinn, Emmanuel, Urquhart,
Oliver & Hedges, LLP.*
865 S. Figueroa Street, 10th Floor
Los Angeles Ca 90017

Leo Stoller
Date: January 10, 2007

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>ESTTA Tracking number: **ESTTA119167**Filing date: **01/11/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045778
Party	Plaintiff CENTRAL MFG. CO. (INC.) CENTRAL MFG. CO. (INC.) ,
Correspondence Address	LEO STOLLER CENTRAL MFG. CO. TRADEMARK & LICENSING DEPT. 7115 W. NORTH AVE., #272 OAK PARK, IL 60302 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Leo Stoller
Filer's e-mail	ldms4@hotmail.com
Signature	/Leo Stoller/
Date	01/11/2007
Attachments	noticeof2bankruptcyfraudcompalint.pdf (4 pages)(13387 bytes)

RESPONDENTS et al

Attorneys for Pure Fishing Inc.
WILLIAM J. FACTOR Esq. (6205675)
Sara E. Lorber Esq. (6229740)
SEYFARTH SHAW LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603
312 460-5000
312 460-7000 FAX
wfactor@sevfarth.com
slorber@sevfarth.com

Attorneys for Pure Fishing Inc.
Lance G. Johnson Esq.
Roylance, Abrams, Berdo
& Goodman, L.L.P.
1300 19th Street, N.W. Suite 600
Washington, D.C. 2006
202-659-9076
202-659-9344 FAX
ljohnson@roylance.com/

Michael T. Zeller
Quinn, Emmanuel, Urquhart,
Oliver & Hedges, LLP.
865 South Aifueroa Street, 10th Floor
Los Angeles Ca 90017

Et al.

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

CENTRAL MFG. CO. (INC.),
(a Delaware Corporation)

Opposer/Petitioner,

Opposition No: 91170256

vs.

Cancellation No: 92045778

GOOGLE, INC.,

Applicant/Respondent.

**NOTICE OF FILING A BANKRUPTCY FRAUD COMPLAINT AGAINST
MICHAEL ZELLER, LANCE JOHNSON, WILLIAM FACTOR ET**

LEO STOLLER hereby notifies the Board that Leo Stoller has filed a bankruptcy fraud complaint against the following respondents, **Michael Zeller, Lance Johnson, William Factor et al.**, with the United States Justice Department Criminal Division on January 8, 2007 in Chicago Illinois and with the U.S. Department of Justice Department in Washington D.C. The fact that Stoller has filed a bankruptcy fraud complaint against the said respondents see Exh. 1. The said bankruptcy fraud complaint is not evidence and does not mean that they are guilty of bankruptcy fraud. Under the law they are innocent until proven guilty beyond a reasonable doubt.

RESPECTFULLY SUBMITTED,

/Leo Stoller/
Leo Stoller, President
CENTRAL MFG. CO., Oppose/Petitioner
7115 W. North Avenue #272
Oak Park, Illinois 60302
(773) 589-0340

Date: January 11, 2007

Certificate of On-Line Filing

I hereby certify that on January 11, 2007, this paper is being filed online in this case with the Trademark Trial and Appeal Board.

/Leo Stoller/

Certificate of Service

I hereby certify that on January 11, 2007 a copy of the foregoing was sent by First Class mail with the U.S. Postal Service in an envelope addressed to:

Michael T. Zeller
Quinn, Emmanuel, Urquhart,
Oliver & Hedges, LLP.
865 South Aifueroa Street, 10th Floor
Los Angeles Ca 90017

Leo Stoller

Date: January 11, 2007

EXHIBIT 27

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>ESTTA Tracking number: **ESTTA120438**Filing date: **01/19/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045778
Party	Plaintiff CENTRAL MFG. CO. (INC.) CENTRAL MFG. CO. (INC.) ,
Correspondence Address	LEO STOLLER CENTRAL MFG. CO. TRADEMARK & LICENSING DEPT. 7115 W. NORTH AVE., #272 OAK PARK, IL 60302 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Leo Stoller
Filer's e-mail	ldms4@hotmail.com
Signature	/Leo Stoller/
Date	01/19/2007
Attachments	googlejudicialnotice2.pdf (5 pages)(48769 bytes)

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

CENTRAL MFG. CO. (Inc)
(Delaware Corporation)
Opposer,

Vs.
GOOGLE, INC.,

Cancel No. 92045778

Applicant.

JUDICIAL NOTICE

OPPOSER hereby moves under Fed. R. App. 27 and Fed. Cir. R. 27 for judicial notice of the attached document.

The document presented for judicial notice is publicly available and is highly relevant to Respondent responding to Petitioner's motion for summary judgment. Leo Stoller had filed bankruptcy Case No. 05-64075 in the Northern District of Illinois. And there was an automatic stay which had effected this proceeding. In open court on January 4, 2007 Judge Schmetterer gave Google Inc., the go ahead to respond to Stoller's motion for summary judgment. On Jan. 18, 2007 Judge Schmetterer entered an order lifting the stay. In open court Leo Stoller reminded Judge Schmetterer that he gave Google Inc., the go ahead to respond to Stoller's summary judgment motion. Judge Schmetterer then modified the written motion that Google Inc., prepared adding in Judge Schmetterer's own hand writing that

Google must take the “appropriate actions in connection (with Stoller summary judgment motion) in the Trademark Trial and Appeal Board. See attached true and correct copy of Judge Jack Schmetterer Order dated Jan. 18, 2007.

Federal Rule of Evidence 201-b)(2)(d) provides that the Court may take judicial notice of any facts not subject to reasonable dispute that are “capable of accurate and ready determination by resort to resources whose accuracy cannot be reasonably questioned.”

Judicial notice may be taken at any stage of the proceeding. Fed. R. Evid. 201(f) and *Group One, Ltd. v. Hallmark Gards, Inc.*, 407 F.3d 1297, 1306 (Fed. Cir. 2005).

1

“The most frequent use of judicial notice of ascertainable facts is in noticing the contents of court records.” *GE Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1081 (7th Cir. 1997).

RESPECTFULLY SUBMITTED,

/Leo Stoller/
Leo Stoller, President
CENTRAL MFG. CO., Petitioner
7115 W. North Avenue #272
Oak Park, Illinois 60302
(312) 545-4554

Date January 19, 2007

Certificate of On-Line Filing

I hereby certify that on January 19, 2007, this paper is being filed online in this case with the Trademark Trial and Appeal Board.

/Leo Stoller/

Certificate of Service

I hereby certify that on January 19, 2007 a copy of the foregoing was sent by First Class mail with the U.S. Postal Service in an envelope addressed to:

Michael Zeller
Quinn Emanuel
865 South Aifueroa Street, 10th Floor
Los Angeles Ca 90017

Leo Stoller

Date: January 17, 2007

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<p>In re</p> <p>LEO STOLLER,</p> <p style="text-align: center;">Debtor.</p>	<p>Chapter 7</p> <p>Case No. 05-64075</p> <p>Hon. Jack B. Schmetterer</p> <p>Hearing Date: January 18, 2007 Hearing Time: 11:00 a.m.</p>
--	---

**ORDER GRANTING MOTION FOR ORDER DECLARING PROPOSED SUIT TO BE
OUTSIDE SCOPE OF STAY OR, IN THE ALTERNATIVE, MODIFYING STAY
[DOCKET NO. 113]**

Google Inc. ("Google") having filed its Motion for Order Declaring Proposed Suit to be Outside Scope of Stay or, In the Alternative, Modifying Stay (the "Motion") on August 18, 2006, and hearings having been held on the Motion on August 23, 2006, August 31, 2006, September 14, 2006, October 5, 2006, October 19, 2006, November 9, 2006, December 5, 2006, December 12, 2006, December 19, 2006, and January 4, 2007 and Google having entered into a compromise with the Chapter 7 trustee appointed in this case concerning the relief sought in the Motion as to the estate and entities owned or controlled by the estate, which compromise has been approved by a separate Order of this Court entered on December 5, 2006 (such Order and the Settlement Agreement it approved being the "Settlement Order"), and the Debtor having objected to the Motion which objection the Court overruled in open court on January 4, 2007, and the Court having made, on the record at the January 4, 2007 hearing, findings of fact and conclusions of law, and the Court having found that there is cause to grant Google relief from the automatic stay,

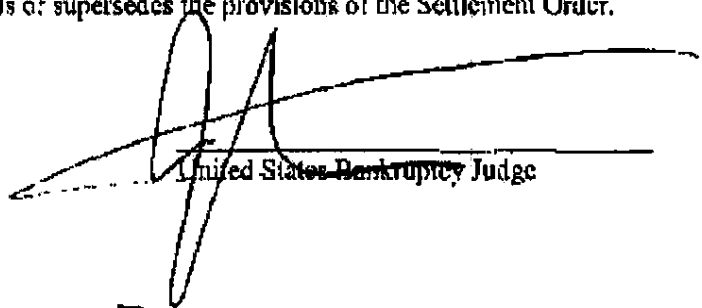
IT IS HEREBY ORDERED that Google is granted relief from the automatic stay so that it may take the actions, including filing an action against the Debtor in the United States District

Court, described in the Motion and any ancillary, necessary, or appropriate actions in connection therewith.

is the fact or is the Trust and Trust Appeal board as well.

IT IS FURTHER ORDERED that Google shall take no action to collect a monetary judgment against Leo Stoller personally without obtaining prior leave of this Court; provided however that if this case is dismissed or if Leo Stoller has been denied a discharge under 11 U.S.C. §727 then Google shall not have to obtain leave before collecting any judgment it obtains against Leo Stoller.

IT IS FURTHER ORDERED that the relief granted herein pertains only to Leo Stoller personally and nothing herein amends or supersedes the provisions of the Settlement Order.


United States Bankruptcy Judge

ENTERED
JAN 18 2007
JACK G. SCHAEFFER BANKRUPTCY JUDGE
UNITED STATES BANKRUPTCY COURT

EXHIBIT 28

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>ESTTA Tracking number: **ESTTA123509**Filing date: **02/06/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045778
Party	Plaintiff CENTRAL MFG. CO. (INC.) CENTRAL MFG. CO. (INC.)
Correspondence Address	LEO STOLLER CENTRAL MFG. CO. TRADEMARK & LICENSING DEPT. 7115 W. NORTH AVE., #272 OAK PARK, IL 60302 UNITED STATES
Submission	Reply in Support of Motion
Filer's Name	Leo Stoller
Filer's e-mail	ldms4@hotmail.com
Signature	/Leo Stoller/
Date	02/06/2007
Attachments	googlereply2_06.pdf (3 pages)(11366 bytes)

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

CENTRAL MFG. CO. (INC.)
(Delaware Corporation),

Petitioner,

vs.

Cancellation No. 92045778

GOOGLE, INC.,

Respondent.

**REPLY TO GOOGLE INC.'S OBJECTION AND RESPONSE TO
NON-PARTY LEO STOLLER'S PURPORTED FILINGS
OF FEBRUARY 6, 2007, JANUARY 11, 2007 AND JANUARY 19, 2007
RE: AGREED DISMISSAL OF PETITION FOR CANCELLATION**

NOW COMES Leo Stoller, President of Central Mfg. Co., Inc., and states as follows:

Respondent's response to Stoller's filings of January 10, January 11, and January 19, 2007, is inappropriate, misleading and violates the Trademark Trial and Appeal Board Rules of Professional Conduct. Mr. Zeller, attorney for the Respondent, hid and concealed from the Board, what transpired in Judge Schmetterer's Courtroom on January 18, 2007. Mr. Zeller was not present, but counsel for Google was present. Leo Stoller asked Judge Schmetterer in open court to modify his order because Judge Schmetterer had previously indicated in the hearing before January 18th, that Google should answer its motion for summary judgment which pends before the Trademark Trial & Appeal Board. At

the request of Leo Stoller on January 18th, Judge Schmetterer provided that Google respond to the Trademark Trial & Appeal Board motion for summary judgment, and Judge Schmetterer made a hand-written notation in the January 18th order which has the Trademark Trial & Appeal Board mentioned. Google was instructed to take necessary or appropriate actions in connection therewith in this Court or in the Trademark Trial and Appeal Board or both.

If the Petitioner is wrong in its interpretation of Judge Schmetterer's Order, why has Google's counsel not gone before Judge Schmetterer for clarification? The answer is simple; Google's counsel, Mr. Zeller, does not want clarification because he is well aware from the previous appearance when he was present before Judge Schmetterer that Google was ordered to respond to the motion for summary judgment that pends before the Trademark Trial and Appeal Board.

RESPECTFULLY SUBMITTED,

/Leo Stoller/
Leo Stoller, President
CENTRAL MFG. CO., INC., Petitioner
7115 W. North Avenue #272
Oak Park, Illinois 60302
(773) 589-0340

Date: February 6, 2007

Certificate of On-Line Filing

I hereby certify that on February 6, 2007, this paper is being filed online in this case with the Trademark Trial and Appeal Board.

/Leo Stoller/

Certificate of Service

I hereby certify that on February 6, 2007 a copy of the foregoing was sent by First Class mail with the U.S. Postal Service in an envelope addressed to:

Michael T. Zeller
*Quinn, Emmanuel, Urquhart,
Oliver & Hedges, LLP.*
865 S. Figueroa Street, 10th Floor
Los Angeles Ca 90017

Leo Stoller
Date: February 6, 2007

EXHIBIT 29

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>ESTTA Tracking number: **ESTTA124015**Filing date: **02/08/2007**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92045778
Party	Plaintiff CENTRAL MFG. CO. (INC.) CENTRAL MFG. CO. (INC.)
Correspondence Address	LEO STOLLER CENTRAL MFG. CO. TRADEMARK & LICENSING DEPT. 7115 W. NORTH AVE., #272 OAK PARK, IL 60302 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Leo Stoller
Filer's e-mail	ldms4@hotmail.com
Signature	/Leo Stoller/
Date	02/08/2007
Attachments	googlenotice2_08.pdf (2 pages)(11445 bytes) GooglevCentralTRANSCRIPTpdf.pdf (13 pages)(258141 bytes)

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

CENTRAL MFG. CO. (INC.)
(Delaware Corporation),

Petitioner,

vs.

Cancellation No. 92045778

GOOGLE, INC.,

Respondent.

NOTICE OF FILING SUPPLEMENTAL AUTHORITY

Michael Zeller, attorney for Google, Inc. has made numerous misrepresentations of material fact and/or law to the Board regarding the fact that the Google Petition to Cancel has been resolved and should be dismissed because of an agreement between the parties. This is a false and misleading statement which Leo Stoller has an obligation under the law to call to the attention of the Board.

Leo Stoller attaches an Order dated February 5, 2007, by the Honorable Virginia M. Kendall in the *Google v. Central* District Court case where Leo Stoller has pending a motion to suspend, pending the TTAB's decision on the motion for summary judgment at the Board. In other words, the Board has the authority to decide Stoller's pending motion for summary judgment. See attached notice of docket entry and transcript of the February 5, 2007 hearing.

RESPECTFULLY SUBMITTED,

/Leo Stoller/
Leo Stoller, President
CENTRAL MFG. CO., INC., Petitioner
7115 W. North Avenue #272
Oak Park, Illinois 60302
(773) 589-0340

Date: February 8, 2007

Certificate of On-Line Filing

I hereby certify that on February 8, 2007, this paper is being filed online in this case with the Trademark Trial and Appeal Board.

/Leo Stoller/

Certificate of Service

I hereby certify that on _____, 2007 a copy of the foregoing was sent by First Class mail with the U.S. Postal Service in an envelope addressed to:

Michael T. Zeller
*Quinn, Emmanuel, Urquhart,
Oliver & Hedges, LLP.*
865 S. Figueroa Street, 10th Floor
Los Angeles Ca 90017

Leo Stoller

Date: _____, 2007

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CENTRAL DIV. Ver 3.0
Eastern Division**

Google Inc, et al.

Plaintiff,

v.

Case No.: 1:07-cv-00385

Honorable Virginia M. Kendall

Central Mfg. Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, February 5, 2007:

MINUTE entry before Judge Virginia M. Kendall :Motion hearing held. Motion to interplead [8]; Motion to suspend pending the Appeal to lift the automatic stay for Google to sue the debtor Leo Stoller [9]; Motion to suspend pending the Trademark trial and Appeal Board's decision on the defendant's motion for summary judgment [10]; and Motion to suspend [11] are entered and continued to 2/20/2007 at 9:00 AM. Responses due by 2/12/2007. No replies are necessary. Mailed notice(gmr,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by C/M/E/C/P, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ild.uscourts.gov.

09:25:59

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GOOGLE, INC., Case No. 1:07-cv-385
Plaintiff, Chicago, Illinois
February 5, 2007
v. Motion Hearing
CENTRAL MANUFACTURING, INC.,
et al.,
Defendants.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE VIRGINIA M. KENDALL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Barack, Ferrazzano, Kirschbaum,
Perlman & Nagelberg
By: Annaliese P. Fleming
333 W. Wacker Dr., Ste. 2700
Chicago, IL 60606
(312) 984-3100
Also Present:
Chapter 7 Trustee, Shaw, Gussis, Fishman, Glantz,
Richard M. Fogel Wolfson & Towbin, LLC
By: Janice A. Alwin
321 N. Clark St., Ste. 800
Chicago, IL 60610
(312) 541-0151
Leo Stoller
7115 W. North Avenue
Oak Park, IL 60604
(312) 545-4554
Court Reporter: April M. Metzler, RPR, CRR
219 South Dearborn St., Rm. 2318-A
Chicago, IL 60634
(312) 408-5154
Proceedings recorded by mechanical stenography;
transcript produced by notereading.

09:26:02 1 (Commenced at 9:26 a.m.)

09:26:02 2 THE CLERK: 07C0385, Google versus Central

09:26:00 3 Manufacturing, motion hearing.

09:26:11 4 MR. STOLLER: Good morning, Judge. I'm

09:26:13 5 Stoller, pro se, on behalf of the defendants.

09:26:15 6 THE COURT: Good morning.

09:26:16 7 MS. FLEMING: Good morning, Judge.

09:26:17 8 Annaliese Fleming on behalf of Google.

09:26:19 9 THE COURT: Good morning.

09:26:20 10 MS. ALWIN: Good morning, your Honor.

09:26:21 11 Janice Alwin, A-l-w-i-n, on behalf of Rick Fogel,

09:26:26 12 Chapter 7 trustee and the bankruptcy estate of Leo

09:26:30 13 Stoller.

09:26:30 14 THE COURT: Good morning.

09:26:31 15 Mr. Stoller, first of all, you can't be on

09:26:32 16 behalf of the defendants, because you're an individual

09:26:36 17 and you haven't been served, which means you don't have

09:26:39 18 standing at this point.

09:26:40 19 But let me just ask some questions about

09:26:43 20 your motion to interplead, your motion to suspend, your

09:26:47 21 motion to suspend pending the appeal, which is your

09:26:51 22 appeal to lift the stay that was entered. Right.

09:26:55 23 You're appealing the lifting of the stay --

09:26:57 24 MR. STOLLER: Yes, Judge.

09:26:58 25 THE COURT: -- by the bankruptcy court, and

09:26:59 1 then your motion to suspend pending the trademark trial.

09:27:03 2 So let me ask first the trustee, because you
09:27:06 3 can fill me in on the status of the bankruptcy.

09:27:08 4 MS. ALWIN: Chapter 7 bankruptcy is
09:27:10 5 proceeding, your Honor. There have been attempts to
09:27:13 6 enter into settlements with Mr. Stoller to resolve his
09:27:16 7 bankruptcy matter. But the fact of the matter right now
09:27:20 8 is that Mr. Fogel, the trustee, stands in the shoes of
09:27:24 9 Mr. Stoller with respect to his ownership of stock of
09:27:28 10 Central Manufacturing.

09:27:32 11 Mr. Fogel has accepted service of this
09:27:36 12 complaint and has previously entered into a settlement
09:27:39 13 agreement with Google. I understand that Google will be
09:27:43 14 filing a motion to enter certain orders that we had
09:27:46 15 agreed to as part of our settlement --

09:27:48 16 THE COURT: So Mr. Fogel is whom? He's
09:27:50 17 standing in as the trustee?

09:27:52 18 MS. ALWIN: He is the appointed Chapter 7
09:27:54 19 trustee --

09:27:54 20 THE COURT: Okay.

09:27:56 21 MS. ALWIN: -- with respect to Mr. Stoller's
09:27:57 22 bankruptcy.

09:27:57 23 THE COURT: Okay.

09:27:58 24 MS. ALWIN: I understand this complaint does
09:27:59 25 not address Mr. Stoller at all.

09:28:01 1 THE COURT: Right.

09:28:01 2 MS. ALWIN: It addresses only the entities
09:28:04 3 and my client --

09:28:04 4 THE COURT: Right.

09:28:05 5 MS. ALWIN: -- Mr. Fogel owns the stock of
09:28:08 6 those entities --

09:28:08 7 THE COURT: Okay.

09:28:09 8 MS. ALWIN: -- and he's the trustee.

09:28:10 9 MR. STOLLER: Your Honor --

09:28:10 10 THE COURT: No, not yet, Mr. Stoller. Hold
09:28:13 11 on.

09:28:13 12 MS. FLEMING: Your Honor, next week we're
09:28:15 13 planning to bring a motion for entry of the final
09:28:18 14 judgment and permanent injunction, which is part of the
09:28:21 15 settlement that we've entered into with the trustee.

09:28:23 16 My suggestion is that we set over these
09:28:27 17 motions until next week when we can present our motion
09:28:31 18 and sort of resolve them all at once. Because if you
09:28:34 19 grant our motion, that's going to moot these motions,
09:28:37 20 and we won't --

09:28:38 21 THE COURT: Well, what is the trustee's
09:28:40 22 position and your position regarding Mr. Stoller's
09:28:43 23 standing here today is -- well, seeking to interplead as
09:28:48 24 a necessary party on behalf of various entities?

09:28:52 25 MS. ALWIN: He has no such standing, your

09:28:52 1 Honor.

09:28:54 2 MS. FLEMING: And we're in agreement with
09:28:55 3 that, and we oppose all of the motions that have been
09:28:57 4 brought. If necessary, we'll file responses in writing.

09:28:59 5 THE COURT: Okay.

09:29:00 6 MS. ALWIN: The bankruptcy judge did enter
09:29:02 7 an order providing the trustee has authority to act on
09:29:04 8 behalf these entities. I understand that there may be
09:29:06 9 one of many orders that Mr. Stoller has appealed, but
09:29:12 10 that order -- or that appeal is still pending, so that
09:29:15 11 order is binding.

09:29:17 12 THE COURT: And the status of an appeal --
09:29:19 13 or the impact of an appeal for the lifting of a stay,
09:29:24 14 does that -- does that divest me of jurisdiction, do you
09:29:28 15 know?

09:29:28 16 MS. ALWIN: It would be my position that it
09:29:30 17 would not, your Honor. The appeals that are proceeding
09:29:34 18 there are, I believe, four appeals of multiple orders,
09:29:38 19 so they're bundled appeals, an appeal of, I think, five
09:29:42 20 orders at one point. We believe all the appeals are
09:29:45 21 improper. In fact, District Court Judge Hibbler has
09:29:50 22 admonished Mr. Stoller for filing such appeals and has
09:29:53 23 asked that he not file any further appeals. Judge
09:29:57 24 Schmetterer, the bankruptcy judge, has also admonished
09:30:00 25 Mr. Stoller and indicated that he should mind the

09:30:07 1 procedural rules in both courts.

09:30:07 2 We believe that Google is proceeding as
09:30:08 3 agreed as part of the settlement that we've been --
09:30:11 4 entered into and that the bankruptcy court has
09:30:14 5 approved --

09:30:14 6 THE COURT: Okay.

09:30:15 7 MS. ALWIN: -- so all motions, we believe,
09:30:16 8 are improper.

09:30:17 9 THE COURT: Okay.

09:30:18 10 MR. STOLLER: Okay, your Honor. Google has
09:30:20 11 made several motions before Judge Schmeidler to lift
09:30:23 12 the stay and to be able to sue me and my corporate
09:30:27 13 entities in this RICO -- civil RICO action.

09:30:31 14 The fact is that if you read this complaint,
09:30:35 15 I am the sole shareholder or was of these two
09:30:39 16 corporations. They're seeking some pretty severe relief
09:30:44 17 in terms of having my entities adjudicated guilty of
09:30:49 18 some sort of civil RICO action, when this entire case
09:30:54 19 involves a registerability issue where I brought a
09:30:57 20 petition to cancel before the Trademark Trial and Appeal
09:31:00 21 Board because, in my opinion, the Google mark has become
09:31:03 22 generic. It's in the dictionary. And I sent several
09:31:07 23 settlement proposals to Google under Federal Rules of
09:31:11 24 Evidence 408. I've been in this business for over
09:31:14 25 30 years. I sent them several settlement proposals to

09:31:17 1 resolve the registerability issue.

09:31:19 2 They retaliated with this civil RTCO action.

09:31:23 3 Now, I'm in the process of resolving the controversy of
09:31:27 4 the bankruptcy with the Chapter 7 trustee. The
09:31:30 5 Chapter 7 trustee has permitted me on two other cases --
09:31:34 6 federal cases that bring in counsel for my corporations.

09:31:39 7 If you are to grant a judgment -- an
09:31:42 8 ex parte -- what amounts to an ex parte judgment against
09:31:46 9 those two corporations, it affects me because if you
09:31:49 10 read this pleading, they talk about Stoller. On page 4
09:31:53 11 it says: On information and belief, Stoller was the
09:31:57 12 COE. The judgment is going to materially affect me, and
09:32:01 13 it's going to damage my corporations and affect my
09:32:04 14 ability to settle with my trustee. Because the whole
09:32:08 15 point of settling is to get my corporations back in the
09:32:12 16 place they were prior to the Chapter 7, not with a civil
09:32:16 17 RTCO judgment against them, especially a default
09:32:19 18 judgment if the trustee fails to defend them. He's --
09:32:22 19 you're talking about a default judgment here.

09:32:24 20 And here's another important point, really
09:32:27 21 important. The Google people are attempting to use this
09:32:32 22 proceeding to circumvent a motion that is presently
09:32:36 23 pending before the Trademark Trial and Appeal Board for
09:32:39 24 summary judgment on the issue of registerability. If
09:32:43 25 the Trademark Trial and Appeal Board should, as I

09:32:46 1 believe they will, cancel Google's registration, this
09:32:49 2 entire complaint falls, because it's based merely on
09:32:53 3 their alleged rights of the trademark, which only hasn't
09:32:57 4 been canceled yet.

09:32:59 5 THE COURT: Okay. Well, of course, all of
09:33:01 6 what you say substantively is an issue either for a
09:33:06 7 court at a later date. The most important concern of
09:33:09 8 this Court is do I have jurisdiction over you,
09:33:12 9 Mr. Stoller, right now.

09:33:14 10 And when there is a trustee for those
09:33:18 11 companies, Central Manufacturing, et cetera, which you
09:33:22 12 define as your companies, companies that you say you're
09:33:25 13 the sole shareholder for, which I noticed there was some
09:33:29 14 nodding in the negative on the other side.

09:33:32 15 MS. ALWIN: Only to the extent that
09:33:34 16 Mr. Stoller represented that we've -- the trustee's
09:33:36 17 allowed him to get counsel to represent him in other
09:33:39 18 matters --

09:33:39 19 THE COURT: Okay.

09:33:39 20 MS. ALWIN: -- that has not been the case.

09:33:40 21 THE COURT: Okay.

09:33:41 22 MS. ALWIN: It's been discussed, but it
09:33:42 23 hasn't --

09:33:43 24 MR. STOLLER: That has been the case, and I
09:33:45 25 have obtained counsel on behalf of the trustee because

09:33:47 1 we're settling the case. I got two District Court
 09:33:49 2 cases, and I can't allow ex parte -- what amounts to an
 09:33:52 3 ex parte judgment against my corporate entities,
 09:33:54 4 especially at the severity of what this is going to say,
 09:33:59 5 so that I can't prosecute further petitions to cancel
 09:34:01 6 because they are going to say they got a RICO -- civil
 09:34:04 7 RICO default, because here's the trustee not wanting to
 09:34:09 8 defend the case.

09:34:09 9 THE COURT: Right. Okay.

09:34:10 10 MR. STOLLER: The case has no merit.

09:34:12 11 MS. FLEMING: Your Honor, can we set them
 09:34:13 12 other for a week, so that we can bring our motion and
 09:34:16 13 deal with this entire situation?

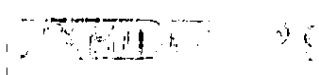
09:34:18 14 THE COURT: Yes, you can.

09:34:18 15 What I'd like to do rather is I'm going to
 09:34:20 16 set it over for two weeks. And I'd like you each to
 09:34:23 17 give me a very, very brief response to these motions
 09:34:26 18 regarding his standing and my jurisdiction. And then in
 09:34:29 19 two weeks when you come back with whatever proposal
 09:34:33 20 there is seeking -- we can hear all of that together at
 09:34:36 21 the same time. So two weeks from today.

09:34:38 22 MR. STOLLER: One last --

09:34:39 23 THE COURT: And I don't need a reply, sir,
 09:34:41 24 for your motions. I'll just get a response from them.

09:34:43 25 MR. STOLLER: Okay. One last point. Judge



09:34:46 - Schmetterer in his order gave Google the go-ahead to
09:34:48 2 respond to the motion for summary judgment at the
09:34:51 3 Trademark Trial and Appeal Board. He wrote that
09:34:54 4 language into his order. And what they're trying to do
09:34:58 5 is they're trying to say here that they don't have to
09:35:02 6 respond my motion that's been pending for a year and a
09:35:05 7 half for summary judgment at the Trademark Trial and
09:35:07 8 Appeal Board.

09:35:07 9 The U.S. Supreme Court said that you cannot
09:35:11 10 use proceedings like this to circumvent administrative
09:35:14 11 proceedings involving issues of registerability. Judge
09:35:19 12 Schmetterer recognized that. She was in court at the
09:35:21 13 time, when he wrote in the language that they should be
09:35:24 14 able to respond.

09:35:25 15 Now, what they're trying to do is circumvent
09:35:28 16 their ability -- their responsibility of responding to
09:35:32 17 that motion for summary judgment. And as I said, Judge,
09:35:34 18 if the Board, as terms of registerability, grants my
09:35:35 19 motion, this alleviates this whole issue before you
09:35:42 20 because their rights to bring this case are only
09:35:44 21 predicated on their trademark rights claiming they have
09:35:49 22 a registration, which the only reason why they don't, it
09:35:51 23 hasn't been adjudicated generic like escalator and
09:35:55 24 aspirin.

09:35:55 25 THE COURT: Okay. I understand your

09:35:56 1 position.

09:35:56 2 And in the meantime what I need to do is
09:35:58 3 just understand my jurisdiction and the position of the
09:36:02 4 bankruptcy trustee as well. So we'll set it over for
09:36:05 5 two weeks. I've got your papers and they'll give me a
09:36:08 6 quick response, and then I'll review whatever proposal
09:36:11 7 you have that you're going to present. If you do have
09:36:13 8 it within a week, Counsel, that gives me time to review
09:36:16 9 it as well. Thank you. Thank you, Mr. Stoller.

09:36:17 10 MS. ALWIN: Okay. Thank you, your Honor.

09:36:19 11 MR. STOLLER: What date would that be, your
09:36:21 12 Honor?

09:36:21 13 THE CLERK: February 20th at 9:00 a.m.

09:36:23 14 MS. ALWIN: Thank you, your Honor.

09:36:24 15 MS. FLEMING: Thank you.

09:36:25 16 THE COURT: Thank you.

09:36:26 17 MR. STOLLER: Thank you, Judge.

09:36:28 18 THE COURT: You're welcome. Have a nice
09:36:30 19 day.

20 (Concluded at 9:36 a.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

April M. Melzier

02-05-07

April M. Melzier, RPR, CRR

Date

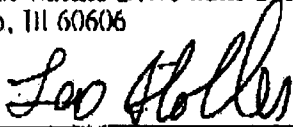
EXHIBIT 30

Certificate of Service

I hereby certify that the foregoing is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to:

Richard M. Fogel, Trustee
Janice A. Alwin, Esq.
Counsel for Trustee
Shaw, Cussis, Fishman, Glantz,
Wolfson & Tow
321 N. Clark Street, Suite 800
Chicago, Illinois 60610

William J. Barrett
Barack, Ferrazzano, Kirschbaum
333 West Wacker Drive Suite 2700
Chicago, Ill 60606



Leo Stoiler

Date: December 24, 2006

C:\MARKS\STOILER\EXE.NOM

directly or indirectly.¹ The threat or actual filing of an opposition or cancellation proceeding against plaintiff's trademark registration in the Patent and Trademark Office is not, per se, regarded as sufficient to create an "actual controversy". *Merrick v. Sharp & Dohme, Inc.*, 185 F.2d 713, 88 U.S.P.Q. 145 (7th. Cir. 1950), cert. denied. See also §32:52 Threat of filing of PTO inter partes challenge McCarthy on Trademarks 3/03 at page 32-104 and cases cited therein and relied upon as if fully copied and attached. Further, when in negotiations, as was the case at bar, when the Debtor directed several confidential Rule 408 letters to Google's counsel Mr. Zeller which are the predicate acts for Google's Civil Rico allegation. The case law supports the premise that when in negotiations, an adversary does not threaten directly or indirectly, to sue for trademark infringement, there is no reasonable apprehension of being sued and no basis for a declaratory judgment (and/or Rico action). This is so even though the adversary threatened to and did file a petition to cancel with the Trademark Board. See *American Pioneer Tours Inc., v. Suntek Tours Ltd.*, 46 U.S.P.Q.2d 1779, 1998 WL 60944 (S.D.N.Y. 1998). Furthermore, Google's Civil Rico action is an unlawful attempt to "short-circuit administrative remedies before the Trademark Board. See McCarthy on Trademarks page 32-106 3/2003.

Google's Civil Rico/declaratory judgment procedure cannot be used to short-circuit established administrative procedures, such as those set up in the Patent and Trademark Office to determine the validity of federal trademark registration. Remember Google is facing a Motion for Summary Judgment at the Patent and Trademark Office. Google has no valid defense to ward off the cancellation of its "generic" and/or "descriptive" google trademark. The U.S. Supreme Court has stated:

The declaratory judgment procedure will not be used to preempt and prejudice issues that are committed for initial decision to an administrative body or special tribunal any more than it will be used as a substitute for statutory methods of review...Responsibility for effective functioning of the administrative process cannot be thus transferred from the bodies in which

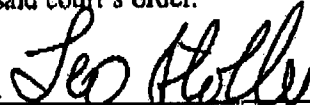
1. See Section §32:51 "Actual controversy" requirement --reasonable apprehension of being sued McCarthy on Trademarks at pages 32-99 3/03

Congress has placed it to the courts. Public Service Comm'n v. Wycoff Co., 344 U.S. 237, 97 L.Ed 291, 73 S. Ct. 236 (1952). See pages 32-106 McCarthy on Trademarks §32:52 (3/2003).

SUMMARY

The Debtor is requesting for the reasons stated that the court stay its order allowing Google Inc., to bring a Civil Rico Action against the Debtor in District Court pending the Debtor's appeal of this court's order setting aside the automatic stay permitting Google Inc., to sue the debtor.

WHEREFORE, the Debtor prays that the Court grant its motion to stay the court's order setting aside the Automatic Stay permitting Google Inc., to sue the debtor in District Court pending resolution of the Debtor's appeal of the said court's order.



Leo Stoller, pro se
7115 W. North Avenue
Oak Park, Illinois 60302
(312) 545-4554
Email: ldms4@hotmail.com

Date: December 24, 2006

Certificate of Mailing

I hereby certify that the foregoing is being mailed first class mail to the following address:

Clerk of the Court
United States Bankruptcy Court
219 N. Dearborn
Chicago, IL 60607




Leo Stoller
Date: December 24, 2006

Certificate of Service

I hereby certify that the foregoing is being deposited with the U.S. Postal Service as First Class mail in an envelope addressed to:

Richard M. Fogel, Trustee
Janice A. Alwin, Esq.
Counsel for Trustee
Shaw, Cussis, Fishman, Glantz,
Wolfson & Tow
321 N. Clark Street, Suite 800
Chicago, Illinois 60610

William J. Barrett
Barack, Ferrazzano, Kirschbaum
333 West Wacker Drive Suite 2700
Chicago, Ill 60606



Leo Stoller

Date: December 24, 2006

C:\MARKS\40\STOLLER4.MOT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GOOGLE INC.,)	
	)	Civil Action No. 07 CV 385
Plaintiff,)	
	)	Hon. Virginia M. Kendall
vs.)	
	)	Hearing Date: February 20, 2007
CENTRAL MFG. INC. a/k/a CENTRAL	)	Hearing Time: 9 a.m.
MFG. CO., a/k/a CENTRAL MFG. CO.)	
(INC.), a/k/a CENTRAL)	
MANUFACTURING COMPANY, INC.)	
and a/k/a CENTRAL MFG. CO. OF)	
ILLINOIS; and STEALTH INDUSTRIES,)	
INC. a/k/a RENTAMARK and a/k/a)	
RENTAMARK.COM,)	
)	
Defendants.)	

**JOINT MOTION FOR ENTRY
OF STIPULATED PERMANENT INJUNCTION AND FINAL JUDGMENT**

Plaintiff Google Inc. ("Google"), by its attorneys, and defendants Central Mfg. Inc. and Stealth Industries, by and through Richard M. Fogel, not individually but as Chapter 7 Trustee (the "Trustee") for the bankruptcy estate of Leo Stoller, respectfully request that the Court enter the Stipulated Permanent Injunction and Final Judgment (the "Injunction and Final Judgment") agreed to by the parties in complete and final resolution of this action and approved by the United States Bankruptcy Court for the Northern District of Illinois.

Background of Settlement

Defendants to this action are two corporate entities, Central Mfg. Inc. ("Central Mfg.") and Stealth Industries, Inc. ("Stealth"). (Central Mfg. and Stealth are, collectively, "Defendants"). Defendants' former principal, Leo Stoller ("Debtor"), filed Chapter 13 bankruptcy proceedings on December 20, 2005.¹ Subsequently, on August 31, 2006, the Bankruptcy Court converted Debtor's bankruptcy proceedings to ones under Chapter 7 for, among other reasons, Debtor's failure to maintain any books or records (including for the

¹ Declaration of Michael T. Zeller, dated February 12, 2007 and filed concurrently herewith ("Zeller Dec."), Exh. 3.

Defendants and other entities in which he claimed an interest) and his failures to disclose assets.² By Order dated October 5, 2006, the Bankruptcy Court duly authorized the Trustee to act on behalf of the Defendants.³ Moreover, since the time of the Chapter 7 conversion, the Bankruptcy Court specifically has rejected, twice, Debtor's requests to represent Defendants in legal proceedings.⁴

As set forth in its Complaint and discussed in Google's separate Memorandum in Support of the Joint Motion, this action stems from these corporate Defendants' pattern of fraudulent acts that targeted Google for extortion and, in the process, cost Google hundreds of thousands of dollars in damage -- damage that continues to this day. Google and the Trustee negotiated a Settlement Agreement that, if implemented as described below, resolves Google's claims against the Defendants (the "Settlement Agreement").⁵ The Bankruptcy Court approved the parties' Settlement Agreement by Order dated December 5, 2006 (the "Settlement Order").⁶ The Bankruptcy Court thus authorized the Trustee to enter into the Settlement Agreement, which includes the Injunction and Final Judgment, and found that the Settlement Agreement was in the best interests of the estate.⁷ Moreover, in so ruling, the Bankruptcy Court also rejected Debtor's belated objections to the Settlement Agreement.⁸

The Settlement Agreement is contingent upon, among other things, the discontinuance of various proceedings that Defendant Central Mfg. had brought against Google, including through entry of the Injunction and Final Judgment in this action.⁹ If the Injunction and Final Judgment is entered so as to ensure a complete termination of the proceedings that Defendant Central Mfg. brought against Google and to ensure that Google is protected against further repetition of

² Zeller Dec., Exh. 2.

³ Zeller Dec., Exh. 1.

⁴ Zeller Dec., Exhs. 4, 5, 16, 17.

⁵ A copy of the Settlement Agreement is Exhibit 7 to the Zeller Dec.

⁶ Zeller Dec., Exh. 6.

⁷ Zeller Dec., Exh. 7.

⁸ Zeller Dec., Exhs. 6, 18.

⁹ The Stipulated Permanent Injunction and Final Judgment is being lodged concurrently herewith. A copy of the Stipulated Permanent Injunction and Final Judgment is also Exhibit A to the Settlement Agreement. The agreed-upon discontinuances of the proceedings before the Trademark Office are attached as Exhibits B - D of the Settlement Agreement.

Defendants' misconduct, Google has agreed to release its monetary claims against the Defendants and the Debtor's bankruptcy estate.¹⁰

Grounds For This Motion

"There is no question that fostering settlement is an important Article III function" of the federal courts. United States v. Glens Falls Newspapers, Inc., 160 F.3d 853, 856 (2d Cir. 1998). See also Uhl v. Thoroughbred Technology and Telecommunications, Inc., 309 F.3d 978, 986 (7th Cir. 2002) (applying principle that "[f]ederal courts favor settlement" to limit scope of review of class action settlements); Goodman v. Epstein, 582 F.2d 388, 403 (7th Cir. 1978) (settlement of claims "is recognized as essential to the continued functioning of our judicial system."); Clarion Corp. v. American Home Products Corp., 494 F.2d 860, 861 (7th Cir. 1974) ("Compromises of disputed claims are favored by the courts."); Porsche Cars North America, Inc. v. Manny's Porshop, Inc., 972 F. Supp. 1128, 1132 (N.D. Ill. 1997) ("there is a strong public policy in favor of voluntary settlements."); B.H. v. Ryder, 856 F.Supp. 1285, 1290 (N.D. Ill. 1994) ("There is a strong public policy in favor of settlements, and the efforts of judges to promote settlement are among the most important functions they perform."); United States v. Bliss, 133 F.R.D. 559, 567 (E.D. Mo. 1990) ("The courts have long recognized that public policy favors settlements as a cost-efficient and convenient means of resolving disputes and conserving judicial resources.").

This policy favoring settlement extends to the entry of consent decrees and injunctions in furtherance of the parties' voluntary agreements. As the Supreme Court has stated, District Courts may properly enter a consent decree where it (1) "spring[s] from and serve[s] to resolve a dispute within the courts' subject-matter jurisdiction"; (2) "come[s] within the general scope of the case made by the pleadings"; and (3) furthers the objectives upon which the complaint was based. Local No. 93, Int'l Ass'n of Firefighters v. Cleveland, 478 U.S. 501, 525-26, 106 S. Ct. 3063, 3077 (1986). "However, in addition to the law which forms the basis of the claim, the parties' consent animates the legal force of a consent decree. Therefore, a federal court is not necessarily barred from entering a consent decree merely because the decree provides broader relief than the court could have awarded after a trial." Id. As one Court of Appeals has stated, "the parties enjoy wide latitude in terms of what they may agree to by consent decree and have sanctioned by a court." Conservation Law Foundation of New England, Inc. v. Franklin, 989

¹⁰ Zeller Dec., Exh. 7 at pp. 6-7 (Article 3).

F.2d 54, 59 (1st Cir. 1993); see also Bliss, 133 F.R.D. at 567 ("Unless a consent decree is unfair, inadequate, or unreasonable, it ought to be approved.").

Both the Trustee and Google respectfully submit that the Injunction and Final Judgment amply meets these standards. As noted, an essential condition for the effectiveness of the Settlement Agreement, including Google's releases of its monetary claims against Defendants, is entry of the Injunction and Final Judgment. Unless and until that condition is satisfied, Google's claims against these corporate Defendants will remain. If not resolved, and regardless of where they would have to be litigated, these claims will constitute a burden to the bankruptcy estate in the hands of the Trustee; will inevitably diminish the funds available to other creditors for disbursement by the Trustee; and will require the expenditure of scarce judicial resources, either in this Court, the Bankruptcy Court or both. These are, of course, among the reasons the Bankruptcy Court approved the Trustee's settlement with Google as being in the best interests of the estate. Entry of the Injunction and Final Judgment will result in a resolution, and complete release, of Google's monetary claims against Defendants in accordance with the Settlement Agreement's terms while also providing Google with the injunctive relief that it needs to bring a full resolution to the proceedings that Defendants brought against Google and to avoid further, protracted litigation that will burden Google and the judicial system. Thus, the Injunction and Final Judgment comes within the general scope of the case as reflected by the pleadings, and its entry would further the objectives upon which the complaint was based. Because the Complaint alleges federal claims within the Court's federal question jurisdiction and a pendent state law claim within the Court's supplemental jurisdiction, the Injunction and Final Judgment springs from and serves to resolve a dispute within its subject matter jurisdiction. Finally, the resolution here is fair and reasonable, as both Google and the Trustee jointly submit and as the Bankruptcy Court found.

Google and the Trustee respectfully request that the Court enter the Injunction and Final Judgment.

Entry Of The Injunction And Final Judgment Need Not, And Should Not, Await Adjudication of Debtor's Alleged Appeal Of The Settlement Order

Although Debtor has purported to appeal the Bankruptcy Court's Settlement Order, Google and the Trustee respectfully submit that neither that appeal, nor any other appeal by

Debtor, warrants delay of the entry of the Injunction and Final Judgment here. Both the law and practical considerations support this.

First, as shown in the Oppositions to Debtor's pending Motions submitted by Google and the Trustee, Debtor here is not the lawful representative of Defendants. To the contrary, the Bankruptcy Court vested the Trustee with authority over the Defendants and has specifically *rejected* Debtor's requests that he be allowed to act on behalf of these Defendants in legal proceedings. He also lacks standing to intervene or otherwise participate in these proceedings as an individual because he has not shown, and cannot show, a direct, legally protectible interest in this case. Under these circumstances, Debtor's separate appeal of the Settlement Order should not be afforded consideration here.

Second, even if he had standing in this litigation (which he does not), Debtor did not obtain an order staying the Bankruptcy Court's Settlement Order pending appeal or post a supersedeas bond.¹¹ The Trustee and Google therefore are entitled to proceed to implement the Settlement Agreement, including the Injunction and Final Judgment that is part of it, pursuant to the Bankruptcy Court's Settlement Order. "[T]he filing of a petition to review an order of a bankruptcy judge . . . does not stay the effect or operation of the order unless a supersedeas bond is filed or the order itself provides for a stay." Country Fairways, Inc. v. Mottaz, 539 F.2d 637, 641 (7th Cir. 1976).¹² This rule equally applies to Bankruptcy Court Orders approving settlement agreements. "Absent a stay of the bankruptcy court's order [approving settlement], the parties [are] free to effectuate the settlement." In re Fraidin, 124 Fed. Appx. 212, 213 (4th Cir. 2005). Indeed, a bankruptcy Trustee "is expected and encouraged to proceed with

¹¹ Zeller Dec., Exh. 6. In fact, Debtor has not obtained a stay of any Order entered by the Bankruptcy Court. Id., Exhs. 6, 17.

¹² In particular, the Settlement Agreement, if implemented by entry of the Injunction and Final Judgment, will result not only in a release by Google running to Defendants, but also terminate proceedings instituted by Defendant Central Mfg. and resolve any future claims that Defendants might assert. E.g., Zeller Dec., Exh. 7 at § 2.5. Because "the settlement of a cause of action held by the estate is plainly the equivalent of a sale of that claim" under 11 U.S.C. § 363(b) (In re Telesphere Communication, Inc., 179 B.R. 554, 552 n. 7 (N.D. Ill. 1994), a stay pending appeal must be obtained to challenge the transaction on appeal. 11 U.S.C. § 363(m); In re Sax, 796 F.2d 994, 997-98 (7th Cir. 1986) ("§ 363(m) and the cases interpreting it have clearly held that a stay [of an order pending appeal] is necessary to challenge a bankruptcy sale under § 363(b)."); see also In re Commercial Loan Corp., 316 B.R. 690, 697 n.5 (Bkrcty. N.D.Ill. 2004) (settlement of claim is equivalent to sale for purposes of 11 U.S.C. § 363(b)); In re Bridge Information Systems, Inc., 293 B.R. 479, 486 (Bkrcty. E.D. Mo. 2003 (same)).

administration of the estate after the entry and during the appeal of an order of adjudication" where no stay pending appeal has been obtained. In re Christian & Porter Aluminum Co., 584 F.2d 326, 334 (9th Cir. 1978). See also In re Monson, 87 B.R. 577, 587 (Bankr. W.D. Mo. 1988) (same).

Independently, the Bankruptcy Court's Settlement Order lifted the automatic stay under 11 U.S.C. § 362(d). As a result, as to Defendants here, "[t]o the extent the stay is terminated by the [bankruptcy] court as to a particular creditor, that creditor may proceed to collect on his or her debt. Even if an appeal is filed, the creditor may proceed. . . . The only way the debtor can avoid this situation is by obtaining a stay pending appeal. F.R.B.P. 8005." In re Strawberry Square Associates, 152 B.R. 699, 701 (E.D.N.Y. 1993). Or, as one Court of Appeals put it, where a party merely appeals a Bankruptcy Court order lifting the automatic stay without also obtaining a stay of that order pending appeal, the Bankruptcy Court's order becomes "final" and "returns the parties to the legal relationships that existed before the stay became operative." In re Kahihikolo, 807 F.2d 1540, 1543 (11th Cir. 1987) (quoting In re Winslow, 39 B.R. 869, 871 (Bankr. N.D. Ga. 1984)).

Debtor's purported appeal from the Settlement Agreement therefore does not, under the law, justify delaying entry of the Injunction and Final Judgment here. To the contrary, doing so would run counter to established legal principles. Waiting until resolution of the appeal also would effectively grant a *de facto* stay of the Bankruptcy Court's Settlement Order without Debtor's having satisfied the requirements for a stay pending appeal. In order to obtain a stay of a Bankruptcy Court order pending appeal, the moving party must demonstrate: (1) a "substantial showing of likelihood of success" on the merits of the appeal (and "not merely the possibility of success"); (2) irreparable harm if the stay is denied; (3) no substantial harm will be suffered by others if the stay is granted; and (4) there will be no harm to the public interest by granting the stay. In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300-01 (7th Cir. 1997).

Debtor here failed to seek any stay from the Bankruptcy Court in the first instance and has proffered no basis for why he failed to do so, which alone would deny him any entitlement to a stay of the Settlement Order pending appeal. Fed. R. Bankr. P. 8005 (requiring motion for stay pending appeal be made in the first instance to Bankruptcy Court; motion may be made to District Court upon showing of why the relief was not obtained from Bankruptcy Court). Debtor here also has submitted no evidence to meet any of the substantive requirements for a stay

pending appeal, let alone all of them. Most tellingly, far from making a "substantial showing" of likelihood of success on the merits of his alleged appeal, Debtor has made no showing at all on this score. Nor could he, especially in light of the wide latitude afforded Bankruptcy Courts in approving settlements. "Because the bankruptcy judge is 'uniquely positioned to consider the equities and reasonableness of a particular compromise,' [this court on appellate review] will not reverse that determination unless the bankruptcy judge abused his discretion." In re Energy Cooperative Inc., 886 F.2d 921, 926 (7th Cir. 1989) (quoting In re American Reserve Corp., 841 F.2d 159 (7th Cir. 1987) (quotation marks and other citations omitted) and In re Patel, 43 B.R. 500, 505 N.D. Ill. 1984)). Debtor's inability to prove a substantial showing of likelihood of success on his ostensible appeal in itself would bar a stay of the Settlement Order pending appeal. See In re Forty-Eight Insulations, Inc., 115 F.3d at 1304 (affirming denial of stay pending appeal on this ground alone); In re Uvaydov, 354 B.R. 620, 624 (E.D.N.Y. 2006) ("Failure to satisfy any one of these criteria for a stay pending appeal dooms the request.") (citing EPlus, Inc. v. Katz (In re Metiom, Inc.), 318 B.R. 263, 271 (S.D.N.Y. 2004)).

Third, significant practical considerations counsel against delaying the entry of the Injunction and Final Judgment until resolution of Debtor's appeal from the Settlement Order. Google has filed claims in excess of \$250,000 against Defendants that still pend in the Bankruptcy Court.¹³ Google's release of such monetary claims against Defendants will be effective only upon full implementation of the Settlement Agreement that was approved by the Bankruptcy Court's Settlement Order, including the entry of the Injunction and Final Judgment here. Meanwhile, the timing of a resolution of the appeal from the Settlement Order currently before the District Court is uncertain, and the timing of any resolution of Debtor's inevitable appeal to the Seventh Circuit is even more uncertain. Waiting until the appeal on the Settlement Order is decided would, as a practical matter, likely require Google to pursue its monetary claims in the Bankruptcy Court in the meantime -- a result that would deny both the Trustee and Google the benefit of their bargain in the Settlement Agreement, would diminish any money available for distribution to other creditors in the Bankruptcy Court proceedings and impose otherwise unnecessary burden on the Bankruptcy Court, the Trustee and Google alike. Indeed, these are the types of practical difficulties that the law seeks to avoid by, as shown above, permitting free

¹³ Zeller Dec., Exh. 19.

implementation of Bankruptcy Court Orders pending appeal unless a stay is obtained or a bond is posted.

Furthermore, a delay in entry of the Injunction and Final Judgment would create increased monetary exposure to Defendants and greater damage to Google. The Injunction and Final Judgment is an indispensable component of the Settlement Agreement's mechanisms for bringing a conclusive end to the various spurious proceedings that Defendants brought against Google and for ensuring against the repetition of such misconduct. For example, as shown in Google's separate Memorandum, Debtor falsely and without authorization continues to purportedly represent Defendant Central Mfg. in cancellation proceedings that it had instituted in the Trademark Trial and Appeal Board ("TTAB") against Google. (Unlike in the Courts, in TTAB proceedings one need not be a lawyer in order to represent an entity.¹⁴) Debtor's filings in the TTAB proceedings, unlawfully made on behalf of Defendants here, continue unabated even now and thus continue to impose expense and burden on Google. The clarity of the Injunction and Final Judgment -- which will be conclusively binding in TTAB proceedings on Defendants¹⁵ -- is therefore necessary to ensure a full and complete termination of those proceedings, and delay in entry of the Injunction and Final Judgment would allow further damage to Google through the expense and burden of continued litigation. Worse yet, delaying entry of the Injunction and Final Judgment would effectively give Debtor the benefit of a stay of the Bankruptcy Court's Settlement Order pending appeal without having to post a bond that would protect Google in the event that the stay was erroneously permitted and that would give Google recourse for further harm caused by any such delay.

Conclusion

For each of the foregoing reasons, plaintiff Google and defendants Central Mfg. Inc. and Stealth Industries, by and through Richard M. Fogel, not individually but as Chapter 7 Trustee, respectfully request that the Court enter the Stipulated Permanent Injunction and Final Judgment.

¹⁴ Trademark Trial and Appeal Board Manual of Procedure, § 114.01, at 100-39, 100-41.

¹⁵ E.g., The Other Telephone Co. v. Connecticut Nat'l Telephone Co., 181 U.S.P.Q. 779, 781-82 (Comm'r of Patents 1974) (noting that District Court adjudications are "binding" on TTAB, whereas TTAB decisions are not binding on District Courts). Further authorities and discussion on this subject are set forth in Google's Opposition to Stoller's Motion to Suspend Pending the Trademark Trial and Appeal Board's Decision on Defendant's Motion for Summary Judgment.

DATED: February 12, 2007

Respectfully submitted,
GOOGLE INC.

By: s/ William J. Barrett
One of Its Attorneys

Michael T. Zeller (ARDC No. 6226433)
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
(213) 443-3000
(213) 443-3100 (fax)

William J. Barrett (ARDC No. 6206424)
BARACK, FERRAZZANO, KIRSCHBAUM,
PERLMAN & NAGELBERG, LLP
333 West Wacker Drive, Suite 2700
Chicago, Illinois 60606
(312) 629 5170
(312) 984-3150 (fax)

CENTRAL MFG. INC. AND STEALTH
INDUSTRIES

By: s/ Janice Alwin
By and For The Trustee

Richard M. Fogel, Esq. (ARDC No. 3127114)
SHAW GUSSIS FISHMAN GLANTZ WOLFSON
& TOWBIN LLC
321 North Clark Street, Ste. 800
Chicago, Illinois 60610

Not Individually but as Chapter 7 Trustee

Janice Alwin, Esq. (ARDC No. 6277043)
SHAW GUSSIS FISHMAN GLANTZ WOLFSON
& TOWBIN LLC
321 N. Clark Street, Suite 800
Chicago, Illinois 60610

Counsel for Trustee

CERTIFICATE OF SERVICE

I, William J. Barrett, certify that I caused to be served on the parties on the following Service List, manner of service and date as indicated below, a copy of the foregoing: **(1) NOTICE OF JOINT MOTION FOR ENTRY OF STIPULATED PERMANENT INJUNCTION AND FINAL JUDGMENT and (2) JOINT MOTION FOR ENTRY OF STIPULATED PERMANENT INJUNCTION AND FINAL JUDGMENT.**

s/ William J. Barrett

William J. Barrett

SERVICE LIST

Leo Stoller

7115 W. North Avene

Oak Park, Illinois 60302

Via e-mail to ldms4@hotmail.com

(Served via email transmission on February 12, 2007 and overnight delivery on February 13, 2007)

Richard M. Fogel, Esq.

Janice Alwin

SHAW GUSSIS FISHMAN GLANTZ WOLFSON & TOWBIN LLC

321 North Clark Street, Ste. 800

Chicago, Illinois 60610

(Served via messenger delivery on February 13, 2007)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GOOGLE INC.,

Plaintiff,

vs.

CENTRAL MFG. INC. a/k/a CENTRAL
MFG. CO., a/k/a CENTRAL MFG. CO.
(INC.), a/k/a CENTRAL
MANUFACTURING COMPANY, INC.
and a/k/a CENTRAL MFG. CO. OF
ILLINOIS; and STEALTH INDUSTRIES,
INC. a/k/a RENTAMARK and a/k/a
RENTAMARK.COM,

Defendants.

Civil Action No. 07 CV 385

Hon. Virginia M. Kendall

Presentment Date: February 20, 2007

Presentment Time: 9 a.m.

SUPPLEMENTAL DECLARATION OF MICHAEL T. ZELLER


I, Michael T. Zeller, declare as follows:

1. I am a member of the bar of the State of Illinois, New York and California and a partner of Quinn Emanuel Urquhart Oliver & Hedges, LLP, attorneys for plaintiff Google Inc. ("Google"). I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.

2. Attached as Exhibit 1 is a true and correct copy of the Order and Statement dated November 16, 2005 issued by this Court, the Honorable George W. Lindberg presiding, in *Central Mfg. Co., et al. v. Pure Fishing Inc., et al.*, No. 05 C 00725.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 13, 2007, at Los Angeles, California.



Michael T. Zeller

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 2.5
Eastern Division**

Central Mfg. Co., et al.

Plaintiff,

v.

Case No.: 1:05-cv-00725
Honorable George W. Lindberg

Pure Fishing, Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, November 16, 2005:

MINUTE entry before Judge George W. Lindberg : Plaintiff's case is dismissed with prejudice and a default judgment is entered against each of the counter-defendants Mailed notice(slb,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	George W. Lindberg	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 725	DATE	11/16/2005
CASE TITLE	Central Mfg. Co. vs. Pure Fishing, Inc., et al		

DOCKET ENTRY TEXT:

Plaintiff's case is dismissed with prejudice and a default judgment is entered against each of the counter-defendants.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

This case is a striking example of gross misconduct by counter-defendant and plaintiff's principle, Leo Stoller, and his counsel, Peter Woods. Their conduct constitutes a flagrant contempt for this Court and mandates the harsh sanctions of dismissal of this case with prejudice as to plaintiff and entry of default judgment as to each counter-defendant.

I. Factual Background

Leo Stoller, a counter-defendant and purported sole shareholder of plaintiff Central Mfg. Co. and each of the counter-defendants, is a frequent litigant within this district.¹ Mr. Stoller, a non-lawyer, has earned a reputation for initiating spurious and vexatious federal litigation. *See e.g. Central Mfg. Co. et al. v. Brett*, 2005 WL 2445898 (N.D. Ill. Sept. 30, 2005) (Coar, J.) ("Stoller appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation."); *S. Indus. Inc. v. Stone Age Equip., Inc.*, 12 F. Supp. 2d 796 (N.D. Ill. 1998) (Castillo, J.) (Stoller initiates "litigation lacking in merit and approaching harassment."); *S. Indus. Inc. v. Hobbico, Inc.*, 940 F. Supp. 210, 211 (N.D. Ill. 1996) (Shadur, J.) (Stoller "appears to have entered into a new industry – that of instituting federal litigation."). Additionally, Mr. Stoller or his entities have been ordered to pay their opponent's attorneys' fees in at least seven reported cases. *See e.g. Central Mfg. Co. et al. v. Brett*, 2005 WL 2445898 (N.D. Ill. Sept. 30, 2005) (Coar, J.); *S Indus., Inc. v. Ecolab Inc.*, 1999 WL 162785 (N.D. Ill. Mar.16, 1999) (Gottschall, J.); *S Indus., Inc. v. Stone Age Equip., Inc.*, 12 F. Supp. 2d 796, 798-99, 819-20 (N.D. Ill.1998) (Castillo, J.); *S Indus., Inc. v. Centra 2000, Inc.*, 1998 WL 157067 (N.D. Ill. Mar.31, 1998) (Lindberg, J.), *aff'd by* 249 F.3d 625, 627-29 (7th Cir. 2001); *S Indus., Inc. v. Diamond Multimedia Sys., Inc.*, 991 F.Supp. 1012 (N.D. Ill.1998) (Andersen, J.);

1. Since 1988, Leo Stoller, individually or through one of his many wholly-owned corporate entities, has been involved in at least 49 cases in the Northern District of Illinois.

STATEMENT

S Indus., Inc. v. Diamond Multimedia Sys., Inc., 17 F.Supp.2d 775 (N.D. Ill.1998) (Andersen, J.); *S Indus., Inc. v. Diamond Multimedia Sys., Inc.*, 1998 WL 641347 (N.D. Ill. Sept. 10, 1998) (Andersen, J.); *S Indus., Inc. v. Kimberly-Clark Corp.*, 1996 WL 388427 (N.D. Ill. July 9, 1996) (Shadur, J.); *S Indus., Inc. v. Hobbico, Inc.*, 940 F.Supp. 210, 212 (N.D.Ill.1996) (Shadur, J.).

In keeping with Mr. Stoller's reputation, his actions in the instant litigation have been vexatious and sanctionable. As background, a brief explanation of Mr. Stoller's "business" is necessary. For more than a decade, Mr. Stoller has been creating and operating various wholly-owned corporate entities including, *inter alia*, S. Industries, Inc., Central Manufacturing Co., Central Manufacturing Inc., Sentra Industries, Inc., Stealth Industries, Inc., and Rentamark.com. Mr. Stoller admits that he is the chief operating officer, president, and where applicable, sole shareholder for each of these corporate entities. Individually and through these wholly-owned entities, Mr. Stoller applies for and has obtained trademark registrations for hundreds of words and phrases including the term "Stealth," which is at issue in the instant case. As part of his "business," Mr. Stoller issues cease and desist letters to companies that market products bearing some version of the names and terms he has purportedly trademarked. In those letters, Mr. Stoller threatens to file an infringement action unless the targeted companies pay him a licensing fees for the use of the allegedly trademarked terms.

In the mid and late 1990s, Mr. Stoller initiated a number of infringement lawsuits on behalf of S. Industries, Inc., stating that he and/or S. Industries Inc. owned the exclusive rights to various trademarks, including ones for the term "Stealth." As discussed above, many of those suits were unsuccessful and resulted in the imposition of sanctions against S. Industries, Inc. and Mr. Stoller. Seemingly to avoid possible forfeiture of one or more of the trademark registrations to judgments creditors of S. Industries, Inc., Mr. Stoller purportedly transferred S. Industries Inc.'s rights in those marks to Central Mfg. Co.

Thereafter, Mr. Stoller began a new round of infringement lawsuits on behalf of Central Mfg. Co., the new alleged owner of exclusive title for various "Stealth" marks. *See e.g. Central Mfg. Co. et al. v. Brett*, 2005 WL 2445898 (N.D. Ill. Sept. 30, 2005) (Coar, J.). Mr. Stoller and Central Mfg. Co. initiated the instant trademark infringement action on February 4, 2005. Throughout the initial complaint, Central Mfg. Co. maintained that it was a Delaware Corporation. Mr. Stoller and Central Mfg. Co. also stated that they held the rights to the federal trademark registrations for the term "Stealth," which served as the sole basis for their complaint. Plaintiffs also included, as exhibits to the complaint, copies of trademark registration forms indicating that Central Mfg. Co. held sole title to the disputed "Stealth" trademarks.

Subsequently, Central Mfg. Co. and Mr. Stoller retained additional counsel who filed their appearances on May 19, 2005 and filed an amended complaint on May 24, 2005. Therein, Mr. Stoller removed himself as a named plaintiff and Central Mfg. Co. continued to maintain that it was a Delaware corporation and held sole title to the disputed "Stealth" trademarks. During that same week, Mr. Stoller and his additional attorneys filed a motion with Judge Hart stating that Central Mfg. Co. was a d/b/a of Central Mfg. Inc. *See Columbia Pictures Industries, Inc. v. Stoller et al.*, 05 C 2052. In response to the amended complaint, defendants filed a number of counterclaims, naming Mr. Stoller and various of his wholly-owned corporate entities as counter-defendants. Defendants also filed a motion to dismiss, challenging the legitimacy and corporate status of Central Mfg. Co. In response to defendant's motion to dismiss, Central Mfg. Co. admitted that, contrary to the statements in its initial and amended complaints, it was not a Delaware corporation. In fact, Central Mfg. Co. was not an independent corporate entity. Instead, for the first time in this litigation, Central Mfg. Co. stated that it was a d/b/a/ for Central Mfg. Inc., a Delaware corporation, that was not named in the instant lawsuit. On September 27, 2005, this Court dismissed plaintiff's amended complaint without prejudice.

Prior to a ruling on the motion to dismiss, plaintiff's additional counsel moved to withdraw as counsel for Central Mfg. Co., Mr. Stoller and a number of the corporate counter-defendants, stating that they were no longer being paid and that their continued representation of those parties would violate Illinois Rules of

STATEMENT

Professional Conduct 3.1, 3.2 and 3.3(a)(1) and (a)(12).² Mr. Woods did not move to withdraw his appearance on behalf of Central Mfg. Co. The Court scheduled an October 12, 2005 hearing on the motion to withdraw. A few hours before the hearing, plaintiff's additional counsel filed a motion for leave to file a second amended complaint. In light of the allegations in plaintiff's additional counsel's motion to withdraw and because Mr. Woods had an appearance on file for Central Mfg. Co., the Court granted the motion to withdraw on October 12, 2005, and gave the corporate counter-defendants until November 2, 2005 to obtain new counsel. The Court reserved ruling on plaintiff's motion for leave to file a second amended complaint and ordered Mr. Woods to either certify that the allegations in the proposed second amended complaint complied with Federal Rule of Civil Procedure ("Rule") 11, or withdraw the proposed second amended complaint by October 21, 2005.

Thereafter, the Court began to uncover some of the egregious conduct of Mr. Stoller, individually and on behalf of his corporate entities, and Mr. Woods. The Court held a hearing on November 9, 2005. At the hearing, Mr. Woods admitted to the following conduct:

- (1) providing Mr. Stoller with oral authorization to sign his name to pleadings filed with the Court;
- (2) authorizing Mr. Stoller to sign his name to a motion to compel that lacked any evidentiary support and accused this Court of "being an integral part of [a scheme] to defraud the Federal Court and to defraud Leo Stoller out of his valuable trademarks," and accused defense counsel of "concocting [a] scheme in order to defraud the counter-defendants out of \$100,000 and 30 Federal Trademarks," "tortiously interfer[ing] with Leo Stoller's business banking relationship," and designing "a scheme to purchases a fee award merely for the purpose of asserting a non-meritorious counterclaim;"
- (3) authorizing Mr. Stoller to sign his name to the February 4, 2005 attorney appearance form on behalf of Central Mfg. Co. that failed to include his ARDC number;
- (4) authorizing Mr. Stoller to sign his name to the February 4, 2005 complaint that repeatedly stated that Central Mfg. Co. is a Delaware corporation, when reasonable inquires as required by Rule 11 would have disclosed that Central Mfg. Co. was not an independent legal entity;
- (5) authorizing Mr. Stoller to sign his name to an October 28, 2005 attorney appearance form that failed to include his ARDC number and purported to be on behalf of Central Mfg. Co., after all parties to the case had previously agreed that Central Mfg. Co. was not an independent legal entity;
- (6) authorizing Mr. Stoller to sign his name to an October 28, 2005 attorney appearance form on behalf of various corporate counter-defendants without verifying whether those counter-defendants were independent legal entities; and
- (7) authorizing Mr. Stoller to sign his name to a Rule 11 Certification, dated October 21, 2005, certifying that the proposed second amended complaint complied with Rule 11.

At the hearing, Mr. Woods also stated that the allegations and information in the above referenced filings came directly from Mr. Stoller. Mr. Stoller provided Mr. Woods with the information included in the above referenced motion to compel and erroneously represented that each of the counter-defendants listed on Mr. Woods' October 28, 2005 appearance form were independent legal entities. Additionally, although not

2. Rule 3.1 provides, in pertinent part, that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good-faith argument for an extension, modification or reversal of existing law." Rule 3.2 provides that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." Rule 3.3(a)(1) provides that a lawyer shall not "make a statement of material fact or law to a tribunal which the later knows or reasonably should know is false." Rule 3.3(a)(12) provides that a lawyer shall not "fail to use reasonable efforts to restrain and prevent a client from doing those things that the lawyer ought not to do."

STATEMENT

specifically confirmed on the record, it appears that Mr. Stoller may have drafted a number of the pleadings to which he affixed Mr. Woods' name. Furthermore, Mr. Stoller also filed baseless *pro se* motions in his capacity as a counter-defendant. Most notably, Mr. Stoller filed meritless motions to disqualify this Court and defense counsel. Despite repeated admonishments by this Court that he was not an attorney and could not represent his corporate entities, Mr. Stoller also filed a pleading on behalf of his corporate counter-defendants.

II. Legal Analysis

A. Conduct of the Corporate Counter-defendants

It is well settled that corporate entities cannot appear before the court *pro se*. See *Scandia Down Corp. v. Euroquilt, Inc.*, 772 F.2d 1423, 1427 (7th Cir.1985). On October 27, 2005, the Court ordered that any corporate counter-defendant that did not have an attorney appearance on file by November 2, 2005 would be defaulted. The next day, Mr. Woods authorized Mr. Stoller to sign his name to and file an attorney appearance on behalf of all of the corporate counter-defendant. That appearance form clearly violates Rule 11(a). Rule 11(a) requires that "[e]very pleading, written motion, and other paper **shall be signed by at least one attorney.**" *Fed.R.Civ.P. 11* (emphasis added). In order to comply with Rule 11, Mr. Woods must personally sign each paper filed with the Court and cannot authorize Mr. Stoller to sign his name to pleadings submitted on behalf of the corporate counter-defendant. See *Dillard v. Washington*, 1996 WL 616664 (N.D. Ill. Oct. 21, 1996) (dismissing a complaint pursuant to Rule 11 because the plaintiff failed to personally sign it).

The appearance form also fails to comply with Rule 11(b). Mr Woods admitted that he did not verify that each of the counter-defendants listed on the appearance form were independent legal entities. In fact, a number of those entities, most notable Central Mfg. Co., are not legal entities. Further, authorizing the filing on an attorney appearance form on behalf of non-existent corporate entities clearly prejudiced defendants by needlessly increasing the cost of discovery and hampering defendants' ability to identify the true parties in interest in Counterclaim IV. Therefore, because the attorney appearance form filed on behalf of the corporate counter-defendants violates Rule 11(a) and (b), it is stricken. Additionally, the corporate counter-defendants will not be allowed leave to file an additional attorney appearance form. Based on the admissions of Mr. Woods, he is not qualified to represent the corporate counter-defendants in this litigation, and the counter-defendants cannot represent themselves. Accordingly, default judgment is entered as to each of the corporate counter-defendants for failure to obtain competent representation, despite ample opportunity to do so.

B. The Conduct of Mr. Woods and Mr. Stoller, Individually and on Behalf of Central Mfg. Co.

Next, the Court addresses the conduct of Mr. Woods and Mr. Stoller, individually and on behalf of Central Mfg. Co. The Court has the inherent authority to dismissed plaintiff's complaint with prejudice and enter a default judgment against Mr. Stoller to rectify abuses to the judicial process. *Dotson v. Bravo*, 321 F.3d 663, 667 (7th Cir. 2003). This power is governed by the necessary control a court must have over its docket and includes the imposition of the sanction of dismissal with prejudice. *Id.* As the Seventh Circuit has recognized, "there are species of misconduct that place too high a burden . . . for a court to allow a case to continue." *Barnhill v. United States*, 11 F.3d 1360, 1368 (7th Cir. 1993). Dismissal with prejudice is a harsh sanction, however "the most severe sanction in the spectrum of sanctions provided by statute or rule must be available . . . not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." *Nat'l Hockey League v. Metro Hockey Club, Inc.*, 427 U.S. 639, 643 (1976). Additionally, the Court need not explore the appropriateness of a lesser sanction if the circumstances justify dismissal of the action with prejudice.

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Dotson, 321 F.3d at 667.

In deciding what measure of sanction to impose, this court must consider the “egregiousness of the conduct in question in relation to all aspects of the judicial process.” *Barnhill*, 11 F.3d at 1368. Further, “[m]isconduct may exhibit such flagrant contempt for the court and its processes that to allow the offending party to continue to invoke the judicial mechanism for its own benefit would raise concerns about the integrity and credibility of the civil justice system that transcend the interests of the parties immediately before the court.” *Dotson*, 321 F.3d at 668.

Since the inception of this case, Mr. Woods and Mr. Stoller, individually and on behalf of Central Mfg. Co, have repeatedly violated the Federal Rules of Evidence. For example, Mr. Woods stated that he did not personally sign the original attorney appearance or complaint filed on behalf of Central Mfg. Co. Rather, in violation of Rule 11, Mr. Woods authorized Mr. Stoller to sign his name to those documents, without provided any indication to the Court or opposing counsel that Mr. Woods had not personally signed them. Mr. Woods also did not personally sign the Rule 11 certification ordered by the Court, within the deadline for doing so.

Next, Mr. Woods and Central Mfg. Co., through Mr. Stoller, violated Rule 11(b) by maintaining that Central Mfg. Co. was a Delaware corporation. Contrary to the statements in Central Mfg. Co.’s initial and amended complaints, it is not an independent legal entity and is not incorporated under the laws of Delaware. Central Mfg. Co. filed an amended complaint with this Court on May 26, 2005 stating that it was a Delaware corporation, while almost simultaneously filing a motion before Judge Hart stating that Central Mfg. Co. was a d/b/a for Central Mfg. Inc. *See Columbia Pictures Industries, Inc. v. Stoller et al.*, 05 C 2052. Plaintiff, through Mr. Stoller, filed this case under a false name. Since the inception of this case, and unquestionably prior to filing the amended complaint, Mr. Stoller knew that he had not incorporated Central Mfg. Co. However, Mr. Stoller likely attempted to conceal this fact from the Court because the trademark registrations that are the basis for the infringement claims, state that Central Mfg. Co., not Central Mfg. Inc., owns sole title to the disputed marks. The conduct of Central Mfg. Co., through Mr. Stoller, is akin to the conduct in *Dotson*. 321 F.3d 663. In *Dotson*, the Seventh Circuit upheld the dismissal of a plaintiff’s case with prejudice as a sanction for filing suit under a false name. *Id.* at 668. Accordingly, Central Mfg. Co. and Mr. Stoller deserve the same sanction for filing suit on half of a false corporation.

Mr. Stoller and Mr. Woods have also displayed an appalling lack of regard for this court and a lack of respect for the judicial process. As stated above, Mr. Stoller likely engaged in the unauthorized practice of law by indiscriminately placing his signature and that of Mr. Woods on meritless and untrue pleadings. Specifically, Mr. Stoller accused this Court and opposing counsel of participated in a scheme to defraud the federal courts and others and of engaging in unprofessional and unethical conduct. To the contrary, Mr. Stoller and Mr. Woods are the only ones who have engaged in unprofessional and unethical conduct in this case. Additionally, despite more than ample time, Mr. Woods and Mr. Stoller failed to remedy inconsistencies between the proposed second amended complaint and Exhibit 2 attached thereto. Specifically, Mr. Woods and Mr. Stoller failed to reconcile the statements in the proposed second amended complaint that Central Mfg. Inc. owns title to the disputed marks, and the trademark registrations in Exhibit 2, which clearly state that title lies solely with Central Mfg. Co.

Mr. Stoller appears to believe that this Court exists to serve his selfish interests and to promote his questionable business, rather than to serve the interests of justice. Mr. Stoller is wrong and must be sanctioned in the only manner that will deprive him of the very process he has sought to manipulate and pervert. In light of the above mentioned egregious conduct and flagrant contempt of court, to allow Mr. Stoller and his wholly owned entities to continue to “invoke the judicial mechanism for [their] own benefit would raise concerns about the integrity and credibility of the civil justice system that transcend the interests of the parties immediately before the court.” *Dotson*, 321 F.3d at 668. Accordingly, under the Court’s inherent power, plaintiff’s case is dismissed with prejudice and a default judgment is entered against Mr.

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Stoller in his capacity as a counter-defendant.

III. Conclusion

For the foregoing reasons and pursuant to the Court's inherent power, plaintiff's case is dismissed with prejudice and a default judgment is entered against each of the counter-defendants. All other pending motions are moot. Any sanction motions pursuant to Rule 11 for conduct addressed in this order must be filed by November 30, 2005. It is so ordered.

CERTIFICATE OF SERVICE

I, William J. Barrett, certify that I caused to be served on the parties on the following Service List, manner of service and date as indicated below, a copy of the foregoing **SUPPLEMENTAL DECLARATION OF MICHAEL T. ZELLER.**

/s/ William J. Barrett

William J. Barrett

SERVICE LIST

Mr. Leo Stoller
7115 W. North Ave., #272
Oak Park, IL 6030
Via email to ldms4@hotmail.com
(Served via email transmission and overnight delivery on February 13, 2007)

Richard M. Fogel
Janice Alwin
Shaw Gussis Fishman Glantz Wolfson & Towbin LLC
321 N. Clark St., Suite 800
Chicago, IL 60610
(Served via messenger delivery on February 13, 2007)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GOOGLE INC.,)	
	)	Civil Action No. 07 CV 385
Plaintiff,)	
	)	Hon. Virginia M. Kendall
vs.)	
	)	Hearing Date: February 20, 2007
CENTRAL MFG. INC. a/k/a CENTRAL	)	Hearing Time: 9 a.m.
MFG. CO., a/k/a CENTRAL MFG. CO.)	
(INC.), a/k/a CENTRAL)	
MANUFACTURING COMPANY, INC.)	
and a/k/a CENTRAL MFG. CO. OF)	
ILLINOIS; and STEALTH INDUSTRIES,)	
INC. a/k/a RENTAMARK and a/k/a)	
RENTAMARK.COM,)	
)	
Defendants.)	

GOOGLE INC.'S SEPARATE MEMORANDUM
IN SUPPORT OF JOINT MOTION FOR
ENTRY OF STIPULATED PERMANENT INJUNCTION AND FINAL JUDGMENT

The parties to this suit, Plaintiff Google Inc. ("Google") and Defendants (by and through the Trustee duly appointed by the United States Bankruptcy Court), have separately filed a Joint Motion for Entry of Stipulated Permanent Injunction and Final Judgment. Google respectfully submits this Memorandum to provide the Court with a summary of the facts that led to this action and that establish why Google still needs, and is entitled to, relief in the form of an injunction to ensure that the misconduct against Google is not repeated and that the continuing effects to Google from that misconduct are ameliorated.

Summary Of Facts Giving Rise To Suit And Supporting An Injunction

A. Defendants' History Of Vexatious Litigation.

Defendants are two putative corporations, Central Mfg. Inc. ("Central Mfg.") and Stealth Industries, Inc. ("Stealth"). Leo Stoller, who is currently in Chapter 7 bankruptcy ("Debtor"), has claimed to be Defendants' former principal and to have employed at least another three others in conducting the affairs of Defendants.¹ The Defendants are currently part of Debtor's Chapter 7 estate, which is under the administration of the Trustee.

As the Seventh Circuit, Courts in this District and the Trademark Trial and Appeal Board repeatedly have found, Defendants' affairs for at least the past decade have included an extensive scheme of fraudulently claiming trademark rights for the purpose of harassing and attempting to extort money out of legitimate commercial actors, both large and small.² Indeed, the judicial decisions awarding fees and otherwise imposing sanctions against Defendants and Debtor for their fraudulent and other illegal conduct, their assertion of rights that they do not own, their pattern of bringing meritless lawsuits and even their fabrication of evidence are legion. Although it has exhibited many facets, Defendants' scheme at its core has involved targeting companies (and sometimes individuals) with threats of litigation that were based on Defendants' false claims to own literally many thousands of trademarks, co-joined with Defendants' offers to "license" their non-existent trademark rights for an amount less than the frivolous litigation would cost the victims. Then, in many instances, if no money was forthcoming, Defendants proceeded to file sham proceedings in the Courts and/or in the Trademark Trial and Appeal Board ("TTAB"). Although Google cannot be sure of the exact number, Defendants instituted in

¹ Declaration of Michael T. Zeller, dated February 12, 2007 and previously filed with the Court ("Zeller Dec."), Exh. B at pp.14-18.

² A summary of examples of these decisions is attached hereto as Appendix 1.

excess of 37 lawsuits in this District alone and filed hundreds of proceedings in TTAB.³ At least seven of those lawsuits resulted in fee awards against Defendants, and none of them resulted in any Court decision on the merits granting Defendants relief. As Judge Coar observed in *Central Mfg. Co. v. Brett*, "no Court has ever found infringement of any trademark allegedly held by Stoller or his related companies in any reported opinion."⁴

B. The Pure Fishing and Brett Decisions.

In late 2005, Defendants were in the process of losing yet two more of the many frivolous lawsuits that they had brought and were facing the prospect of paying significant fee awards. In one, *Central Mfg. Co. v. Brett*,⁵ the Court ruled that Defendant Central Mfg. lacked the trademark rights it had claimed and on that basis, among others, entered judgment against it and ordered Defendant Central Mfg. to pay attorney's fees.⁶ In reviewing the evidence, the Court found that Defendant Central Mfg. had "engage[d] in a pattern and practice of harassing legitimate actors for the purpose of extracting a settlement amount. The judicial system is not to be used as an aid in such deliberate, malicious, and fraudulent conduct."⁷ The Court also found that it had offered "questionable, and seemingly fantastical documents" and "inconsistent, uncorroborated, or arguably false testimony" in the suit.⁸

In the other case, *Central Mfg. Co. v. Pure Fishing, Inc.*,⁹ the Court entered judgment against Defendant Central Mfg. as a sanction for its and Debtor's abuse of the legal process and their violations of Rule 11. The Court observed that Debtor "has earned a reputation for initiating spurious and vexatious federal litigation." In the particular case before it, the Court found Defendant Central Mfg., Debtor and their counsel had engaged in "gross misconduct" and "unethical conduct" that included (1) Debtor's signing of pleadings with counsel's name, even though Debtor is not a lawyer; (2) bringing motions "that lacked any evidentiary support" and

³ A list of these cases is attached as Exhibit A to the Complaint and also included in the *Brett* decision, attached as Exh. 23 to the Zeller Dec.

⁴ Zeller Dec., Exh. 23, at p. 2.

⁵ No. 04 C 3049 (N.D. Ill) (Coar, J.).

⁶ Zeller Dec., Exh. 23, at p. 30.

⁷ *Id.*, at p. 27.

⁸ *Id.*

⁹ No. 05 C 725 (N.D. Ill) (Lindberg, J.). A copy of this decision is Exh. 1 to the Supplemental Declaration of Michael T. Zeller, dated February 13, 2007 and filed concurrently herewith ("Supp. Zeller Dec.").

were otherwise "baseless"; and (3) evincing a "flagrant contempt for this Court" and "an appalling lack of regard" for the judicial process.¹⁰

C. Defendants Target Google And Hundreds Of Others.

Soon after these decisions in *Pure Fishing* and *Brett*, Defendants embarked on an expanded scheme. Between November 2005 and July 2006 alone, Defendants filed more than 1800 requests for extensions of time to oppose applications for trademark registrations that had been published by the United States Trademark Office.¹¹ Such extension requests, by their mere filing, delayed the issuance of each and every trademark registration that was the subject of Defendants' actions.¹² Simultaneous with this proliferation of filings, Defendants sought to extract money or property out of at least many hundreds of applicants by asserting that Defendants purportedly owned rights to all of these many hundreds of marks which were the subject of those applications. Many of these extortionate demands and false representations directed to applicants for registration are evidenced in Defendants' sham filings with the Trademark Office itself. For example, Defendants' April 12, 2006 request for an extension of time to oppose a trademark application for "VP VENTURES" included the following:

Please contact (773-589-0915 FAX) VENTURE BRAND LICENSING to resolve this trademark controversy VENTURE v VP VENTURES and/or merely file an Express Abandonment! See rentamark.com, the nationally renowned trademark licensing and enforcement firm since 1974 for all of your VENTURE BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, i.e., brief writing, trademark searches, legal research, appeals, etc.¹³

¹⁰ Supp. Zeller Dec., Exh. 1. Judge Lindberg subsequently ordered Defendants and Debtor to pay in excess of \$900,000 in fees and damages and declared them to be "vexatious" litigants. Zeller Dec., Exh. 13.

¹¹ Zeller Dec., Exh. 12, at pp. 1, 12.

¹² *Id.*, at p. 12.

¹³ A copy of this filing is Exhibit C to the Complaint. Many of Defendants' more than 1800 filings included virtually identical language, except that Defendants substituted a different bogus "licensing" entity that purported to have a name supposedly similar to the mark which was the subject of the application -- such as "ELLA BRAND LICENSING," "FINGO BRAND LICENSING," "SKILL BRAND LICENSING," "MERMAID BRAND LICENSING," "DIAMOND BRAND LICENSING," "STRA BRAND LICENSING," "WORKOUT BRAND LICENSING," "FRIENDS NETWORK BRAND LICENSING," "SIFI BRAND LICENSING," "PM BRAND LICENSING," "NANO BRAND LICENSING," "HAPPY BRAND LICENSING," "LAKE BRAND LICENSING" and "RUNNER BRAND LICENSING." See Complaint, Exhibit D.

1. Defendants' Falsely Claim Rights To "Google" And Demand Money.

It was in this context of Defendants' expanded scheme of making spurious claims to many thousands of marks, and their pattern of unlawfully demanding licensing fees and threatening and filing sham legal proceedings, that Defendants targeted Plaintiff Google. On November 27, 2005, as one of the some 1800 requests for extension of time eventually filed by Defendants with TTAB, Defendant Central Mfg. sought a request for an extension of time to oppose an application for registration filed by Plaintiff Google for certain goods.¹⁴ Two days later, Defendants sent Google a letter that purported to be on the letterhead of an entity called "GOOGLE BRAND PRODUCTS & SERVICES," which claimed to have been in business "SINCE 1981."¹⁵ In it, Defendants alleged to "hold common law rights" in the mark GOOGLE and to "have been using the similar mark GOOGLE for many years." The attachments to the letter also repeatedly proclaimed Defendants' "ownership of the mark GOOGLE," and contained spurious notices of copyright registration and trademark registration for "Google." In this letter, Defendants threatened to harass Google through legal proceedings -- along with "extensive discovery" that included depositions of Applicant's "executive officers" -- and referenced the fact that the mere filing of a legal proceeding, regardless of its lack of merit, would cost Google at least \$150,000. In exchange for refraining from inflicting such damage, Defendants demanded that Google either (1) pay them at least \$100,000 or a percentage of Google's revenues as a "licensing" fee; or else (2) cease all use of GOOGLE in connection with Google's business.

2. Defendants' TTAB Proceedings Against Google, One Of Which Results In Sanctions Against Defendant Central Mfg.

After Google refused Defendants' demands, Defendant Central Mfg. then instituted proceedings against Google in TTAB and the Trademark Office. Two are most pertinent here. First, on March 1, 2006, Defendant Central Mfg. filed Opposition No. 91170256 (the "Opposition") against Google's Application S/N 76314811 for the GOOGLE mark for various goods and services (the "Application").¹⁶ The Opposition was the result of a request for the extension of time to oppose the Application that Defendant Central Mfg. had filed on November 27, 2005 and thus was among the 1800 requests that Defendants had filed with TTAB beginning in November 2005.

¹⁴ See Complaint, Exhibit H.

¹⁵ Defendants' November 29, 2005 letter and its attachments is Exhibit I to the Complaint.

¹⁶ Zeller Dec., Exh. 8.

In the aftermath of Defendants' barrage of filings in TTAB, TTAB issued a March 28, 2006 Show Cause Order (the "OSC"). The OSC noted that Debtor and the entities he purported to control had engaged in a "pattern of misconduct and abuse of the TTAB's processes" over the course of "many years."¹⁷ It also directed Debtor and Defendants to provide "for *each* of the marks for which you requested an extension of time to file an opposition, evidence that supports a claim that you may be damaged by registration of the mark" and to "demonstrate that the extension requests were not filed for improper purposes but, instead, were based on cognizable rights you may have arising under the Trademark Act."¹⁸

Subsequently, by Order dated July 14, 2006, TTAB found that Defendants' response to the OSC did not provide any of the proof that the law required and that TTAB had mandated: "Your submissions do not substantiate your rights in *any* of the claimed marks, let alone support a colorable claim of damage.... *You submitted no evidence of products or services bearing these alleged marks, no evidence that you have sold any products or services under these marks, and no evidence of your advertising of goods or services with these marks.*"¹⁹ Indeed, as TTAB observed, the evidence Defendants did provide only served to "reinforce the conclusion that you are holding up thousands of applications in an attempt to coerce applicants to license, i.e., 'rent,' trademarks to which you have not demonstrated any proprietary right."²⁰ TTAB accordingly found that Defendants lacked "a colorable claim" and had "filed the extension requests *for improper purposes, namely, to harass the applicants to pay you to avoid litigation or to license one of the marks in which you assert a baseless claim of rights.*"²¹

For those violations, which constituted "egregious" misconduct, TTAB imposed an array of sanctions.²² One sanction included TTAB's outright dismissal of Defendant Central Mfg.'s Opposition proceeding against Google.²³

¹⁷ Id. ¶ 13, Exh. 12, at pp. 1-2 (July 14, 2006 Order).

¹⁸ Id., at pp. 2-3, 9 (emphasis added).

¹⁹ Id., at p. 9 (emphasis added).

²⁰ Id., at pp. 9-10.

²¹ Id., at pp. 11-12 (emphasis added).

²² Id., at pp. 12-13. These sanctions included vacating "each request for extension of time to oppose" Defendants or Debtor had filed between November 2005 and July 2006; prohibiting them or any attorney on their behalf from filing requests for extension of time for two years; and permanently prohibiting Debtor and Defendants from appearing before the Board for purposes of filing any requests for extension of time.

²³ Id. ¶ 13, Exh. 12, at pp. 1-2 (July 30, 2006 Order).

Second, Defendant Central Mfg. also brought a Cancellation proceeding against Google in TTAB, which proceeding was instituted on May 8, 2006 (the "Cancellation Proceeding"). The Registration that Defendant seeks to cancel is No. 2806075 for GOOGLE for specified goods and services in International Classes 38 and 42. In its Petition for Cancellation, Defendant Central Mfg. again claimed that it owns "Common Law rights in and to the mark GOOGLE."²⁴ As discussed further below, in the Cancellation Proceeding, Debtor continues to this day to file papers with TTAB on alleged behalf of Defendant Central Mfg.

3. Examples Of Defendants' Further Misconduct Against Google.

Not content with harassing Google with TTAB proceedings in Defendants' gambit to extract money, Defendant Stealth (under the d/b/a Rentamark) began representing to the public in approximately April 2006 that "GOOGLE" was among the marks it purported to "own and control" and that it was offering for licensing to third parties.²⁵ In addition to the fabricated "Google" documents mentioned above, Defendants also continued to circulate additional bogus commercial documents, including fax sheets and address labels, supposedly evidencing an entity they variously called "GOOGLE™ BRAND TRADEMARK LICENSING" and "GOOGLE LICENSING [sic]."²⁶ Simultaneously with these activities, Defendants engaged in other acts of harassment and extortion, including by threatening to "refe[r]" Google's top-level executives "to the US Attorney" for a spurious "perjury charge."²⁷ Defendants repeatedly threatened to publicize their fabricated allegations, which they claimed would mean "Google's stock won't be worth \$5.00 a share" and would result in "the total destruction" of Google.²⁸ After again threatening to publicize their allegations with the intention of "driv[ing] down Google stock price," one such communication concluded with the statement: "I would not be surprised [sic] if Google goes out of business by the conclusion of this proceeding."²⁹

Injunctive Relief Is Warranted

As shown in the Joint Motion, Google and the Trustee, acting on Defendants' behalf and with the Bankruptcy Court's approval, have reached a Settlement Agreement that is contingent

²⁴ Zeller Dec., Exh. 9 (Petition for Cancellation, ¶ 4).

²⁵ See Complaint, Exhibit M; see also Complaint, Exhibits F and G.

²⁶ Examples of these are attached as Exhibits J, K and L to the Complaint.

²⁷ Complaint, Exhibit O.

²⁸ Complaint, Exhibit R.

²⁹ Complaint, Exhibit S.

upon the entry of a Stipulated Permanent Injunction and Final Judgment in this action. The appropriateness of that requested relief in bringing a resolution to this suit is set forth in the Joint Motion. Google writes separately here to address the two principal reasons why prospective relief in the form of an injunction is warranted, notwithstanding the Trustee's current role as the authorized representative of Defendants.

First, the law has long considered the "[c]ontinuing effects of past illegal conduct" to be "an important factor" in justifying injunctive relief. International Salt Co. v. United States, 332 U.S. 392, 400-01 (1947) (abrogated on other grounds by Illinois Tool Works Inc. v. Independent Ink, Inc., 126 S.Ct. 1281 (2006)). Indeed, even where (unlike here) the challenged conduct has voluntarily ceased, an injunction is still warranted unless "interim relief or events have completely and irrevocably eradicated *the effects* of the alleged violation." Pederson v. Louisiana State University, 213 F.3d 858, 874 (5th Cir. 2000) (emphasis added).

Here, the harm to Google is on-going and can be brought to a final, certain end only by a District Court injunction. For example, although Google and the Trustee sought to bring the Cancellation Proceeding to a close as part of the Settlement Agreement, Debtor nevertheless continues to file papers on the purported behalf of the sole named Petitioner in that proceeding, Defendant Central Mfg. In the past eight weeks alone, there have been no fewer than six of these spurious filings, including one as recently as February 8, 2007.³⁰ These improper filings Debtor continues to make on Defendant Central Mfg.'s supposed behalf have ranged from efforts to mislead others about who may lawfully represent Defendant Central Mfg. to the touting of a frivolous criminal complaint against Google's counsel.³¹ Google thus has had to continue to bear the burden and expense of that on-going proceeding. The clarity and certainty of the Permanent Injunction and Final Judgment is necessary to ensure a final termination of this proceeding that Defendant Central Mfg. frivolously commenced and to ensure that no further misconduct is repeated in the future by these Defendants.³²

As another example, Defendants were the ones who falsely claimed to be the rights holders to GOOGLE. They also disseminated to the public for at least several months false

³⁰ Zeller Dec., Exhs. 25-29.

³¹ Id.

³² This is particularly true since issues that are involved in this litigation, including most importantly a conclusive determination that Defendants own no rights to the GOOGLE mark, are not within the jurisdiction of TTAB to entertain, as discussed in Google's previously filed Opposition to Debtor's Motion to Suspend re: TTAB.

statements that they owned the GOOGLE mark, that they had the right to license it and that they had even cancelled Google's registration. An injunction is needed to eliminate continued confusion and misunderstanding that these falsehoods were intentionally designed to create, especially since at no point did Defendants ever publicly retract or correct them, and to make clear that Defendants have no such rights. In short, only an injunction entered by this Court can rectify the on-going harm to Google and the public that Defendants' conduct deliberately inflicted.

Second, and independently, "[i]t is well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.' '[I]f it did, the courts would be compelled to leave [t]he defendant . . . free to return to his old ways.'" Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs., Inc., 528 U.S. 167, 189 (2000) (quoting City of Mesquite v. Aladdin's Castle, Inc., 455 U.S. 283, 289 (1982), and citing United States v. W.T. Grant Co., 345 U.S. 629, 632 (1953)).³³ To obtain an injunction, a plaintiff therefore need not prove that it is likely the misconduct will be repeated. See Levi Strauss & Co. v. Shilon, 121 F.3d 1309, 1314 (9th Cir. 1997) ("A trademark plaintiff is entitled to effective relief; and in any doubt in respect of the extent thereof must be resolved in the plaintiff's favor as the innocent producer and against the defendant, which has shown by its conduct that it is not to be trusted. [Plaintiff] is not required to produce evidence that [defendant] is likely to infringe again." (citations and quotations omitted)).

As shown above, neither the conduct challenged here nor its effects have ceased. But even apart from this, it is indisputable that Defendants engaged in a wide ranging pattern of illegal activity that spanned over a decade. Where, as here, a violation has been founded upon systematic wrongdoing, rather than on an isolated occurrence, the Seventh Circuit has observed that a court should be more inclined to issue an injunction. Commodity Futures Trading Comm. v. Hunt, 591 F.2d 1211, 1220 (7th Cir. 1979). Furthermore, this activity was not accomplished just by Debtor acting alone. It was also carried out by others who have been employed by, or otherwise represented, Defendants, along with supposed licensees who have likewise colluded

³³ Accordingly, unless a party resisting an injunction can also show that "there is no reasonable expectation...that the alleged violation will recur," then an injunction is justified. Pederson, 213 F.3d at 874. Because "[v]oluntary cessation of allegedly illegal conduct is looked upon with extreme skepticism by courts," however, the burden of substantiating such a contention "is a heavy one." United States v. Realty Multi-List, Inc., 629 F.2d 1351, 1388 (5th Cir. 1980) (quoting W.T. Grant Co., 345 U.S. at 633).

with Defendants in their campaign of unlawful behavior.³⁴ Under these circumstances, Defendants here should not be left free to resume their old ways, and the injunction will help avoid a repetition of Defendants' long-standing pattern of misconduct in the future. This is particularly true since, as one Court put it in finding that an injunction was proper in a trademark infringement case, "if the defendants sincerely intend not to infringe, the injunction harms them little; if they do, it gives [plaintiff] substantial protection". Polo Fashions, Inc. v. Dick Bruhn, Inc., 793 F.2d 1132, 1135-36 (9th Cir. 1986).

Conclusion

For the foregoing reasons, and for the reasons set forth in the Joint Motion, Google respectfully requests that the Court enter the Stipulated Permanent Injunction and Final Judgment.

DATED: February 13, 2007

Respectfully submitted,

GOOGLE INC.

By: s/William J. Barrett
One of Its Attorneys

Michael T. Zeller (ARDC No. 6226433)
QUINN EMANUEL URQUHART OLIVER
& HEDGES, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
(213) 443-3000
(213) 443-3100 (fax)

William J. Barrett (ARDC No. 6206424)
BARACK, FERRAZZANO, KIRSCHBAUM,
PERLMAN & NAGELBERG, LLP
333 West Wacker Drive, Suite 2700
Chicago, Illinois 60606
(312) 629 5170
(312) 984-3150 (fax)

³⁴ As shown above, Debtor has previously testified that Defendants have had at least three other employees. Furthermore, in the *Pure Fishing* case, the claims were also brought by an ostensible licensee who attempted to advance Defendant Central Mfg.'s spurious claims. See Supp. Zeller Dec., Exh. 1, at p. 2.

Appendix Of Examples Of Decisions

1. In *S Industries, Inc. v. Centra 2000, Inc.*, 249 F.3d 625, 627-29 (7th Cir. 2001), the Seventh Circuit found that S Industries, Inc. ("SI")³⁵ and Debtor's assertion of trademark rights was groundless and affirmed an award of attorneys' fees against SI for filing "meritless claims" and engaging in other litigation misconduct, which the Seventh Circuit found was part of a "pattern of abusive and improper litigation with which the company and Lee Stoller, its sole shareholder, have burdened the courts of this circuit." Although this suit resulted in a fee award against SI and/or Debtor, upon information and belief such award has not been paid.

2. In *S Indus., Inc. v. Stone Age Equip., Inc.*, 12 F. Supp. 2d 796, 798-99, 819 (N.D. Ill. 1998) (Castillo, J.), the Court awarded attorney's fees against SI for its "continuing pattern of bad faith litigation." The Court also found that the documentary evidence submitted by SI and Debtor was "highly questionable" and "perhaps fabricated" and that Debtor's sworn testimony was "inconsistent, uncorroborated, and in some cases, demonstrably false."

3. In *S Industries, Inc. v. Diamond Multimedia Sys., Inc.*, 17 F. Supp. 2d 775, 779 (N.D. Ill. 1998) (Andersen, J.), the Court awarded fees against SI based on findings that its claims were "patently frivolous" and that it had "apparently taken a legitimate procedure designed to protect trademark rights and turned [it] into a means of judicial extortion."

4. In *S Indus., Inc. and Central Mfg. Co. v. JL Audio, Inc.*, Opposition No. 110,672, Order of May 13, 2003 (TTAB), the Board stated that "Mr. Stoller's and opposers' litigation strategy of delay, harassment and even falsifying documents in other cases is well documented" and further noted Debtor's history of being "sanctioned, individually, for making material misrepresentations."

5. In *S Indus., Inc. and Central Mfg. Co. v. Casablanca Indus., Inc.*, Cancellation No. 92024330, Order of Oct. 3, 2002 (TTAB), the Board likewise observed that Defendant Central Mfg.'s and Debtor's "litigation strategy of delay, harassment, and falsifying documents in other cases is well documented."

6. In *S Indus., Inc. v. S&W Sign Co., Inc.*, Opposition No. 91102907 (Dec. 16, 1999), the Board noted that "[t]he lack of credibility of Mr. Stoller is a matter of public record."

³⁵ SI was the claimed predecessor of Defendant Central Mfg. and Defendant Stealth and purported to "transfer" its alleged rights to Defendants at various points in the 1990s so that Defendants could claim longer use of the phantom marks and thus assert supposed priority in rights against others. Complaint, ¶¶ 13-21, Exhs. A, B.

7. In *S. Indus. Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293, 1295 (TTAB 1997), the Board found that SI and Debtor had made "fraudulent" statements under oath in order to backdate pleadings filed with the Board.

8. In *Central Mfg. Co. v. Brett*, No. 04 C 3049 (N.D. Ill) (Coar, J.), the Court ruled that Defendant Central Mfg. and Debtor lacked the trademark rights they had claimed and on that basis, among others, entered judgment against them. It further observed that "Stoller appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation" and recited the findings by "several courts in this district" that Debtor and Defendant Central Mfg. are "engage[d] in a pattern and practice of harassing legitimate actors for the purpose extracting a settlement amount." The Court ordered them to pay an award of attorneys' fees based on findings that "Leo Stoller and his companies present paradigmatic examples of litigants in the business of bringing oppressive litigation designed to extract settlement" and that they had offered "questionable, and seemingly fantastical documents" and "inconsistent, uncorroborated, or arguably false testimony." As a further part of that decision, the Court reviewed and summarized the terms of the "settlement agreements" that Debtor and Defendant Central Mfg. alleged evidence their trademark rights and found that they, in fact, confirmed such Defendants had "engage[d] in a pattern and practice of harassing legitimate actors for the purpose of extracting a settlement amount. The judicial system is not to be used as an aid in such deliberate, malicious, and fraudulent conduct."

9. In *Central Mfg. Co. v. Pure Fishing, Inc.*, No. 05 C 725 (N.D. Ill) (Lindberg, J.), the Court entered judgment against Defendant Central Mfg. as a sanction for Defendant Central Mfg.'s and Debtor's abuse of the legal process. In doing so, the Court found that Debtor "has earned a reputation for initiating spurious and vexatious federal litigation." In the case before it, the Court found that Debtor, Defendant Central Mfg. Co. and their counsel had engaged in "gross misconduct" and "unethical conduct" which included Debtor's signing of pleadings with counsel's name even though Debtor is not a lawyer; had brought motions "that lacked any evidentiary support" and were otherwise "baseless"; and had evinced "flagrant contempt for this Court" and "an appalling lack of regard" for the judicial process. In particular, the Court ruled that "Central Mfg. Co., through Mr. Stoller," and their counsel violated Federal Rule of Civil

Procedure 11(b) "by maintaining that Central Mfg. Co. was a Delaware corporation," even though it was not. As it explained:

Contrary to the statements in Central Mfg. Co.'s initial and amended complaints, it is not an independent legal entity and is not incorporated under the laws of Delaware. Central Mfg. Co. filed an amended complaint with this Court on May 26, 2005 stating that it was a Delaware corporation, while almost simultaneously filing a motion before Judge Hart stating that Central Mfg. Co. was a d/b/a for Central Mfg. Inc. See *Columbia Pictures Industries, Inc. v. Stoller, et al.*, 05 C 2052. Plaintiff, through Mr. Stoller, filed this case under a false name. Since the inception of this case, and unquestionably prior to filing the amended complaint, Mr. Stoller knew that he had not incorporated Central Mfg. Co. However, Mr. Stoller likely attempted to conceal this fact from the Court because the trademark registrations that are the basis for the infringement claims, state that Central Mfg. Co., not Central Mfg. Inc., owns sole title to the disputed marks. The conduct of Central Mfg. Co., through Mr. Stoller, is akin to the conduct in *Dotson*. 321 F.3d 663. In *Dotson*, the Seventh Circuit upheld dismissal of a plaintiff's case with prejudice as a sanction for filing suit under a false name. *Id.* at 668. Accordingly, Central Mfg. Co. and Mr. Stoller deserve the same sanction for filing suit on [be]half of a false corporation.

After this decision, Judge Lindberg entered a final judgment against Defendant Central Mfg., Defendant Stealth and Debtor that (1) deemed them to be "vexatious litigants" and thus barred them "from instituting any lawsuit or trademark opposition without prior leave of this Court pursuant to this Court's authority under the All Writs Act"; and (2) awarded Pure Fishing more than \$900,000 in attorney's fees and damages. On February 12, 2007, the Seventh Circuit dismissed Debtor's appeal from that judgment.

10. In *Central Mfg. Co. v. Medtronic Sofamor Danek Inc.*, Opposition Nos. 9115485 and 91154617 (TTAB Feb. 19, 2004), the Board imposed Rule 11 sanctions against Defendant Central Mfg. for filing motions that were "without merit, constitute harassment, and can only be assumed to have been brought for purposes of delay."

11. In *Central Mfg. Inc. v. Third Millenium Tech. Inc.*, 61 U.S.P.Q. 1210, 1214-15 (TTAB 2001), the Board found that Debtor and Defendant Central Mfg. had "engaged in a pattern" of submitting papers that were based on "false statements and material misrepresentations." It ruled, in particular, that Debtor and Defendant Central Mfg. had filed requests for extensions of time on the basis of non-existent settlement negotiations and had "acted in bad faith and for improper purposes, i.e., to obtain additional time to harass the applicant, to obtain unwarranted extension of the opposition period, and to waste resources of applicant and the Board."

CERTIFICATE OF SERVICE

I, William J. Barrett, certify that I caused to be served on the parties on the following Service List, manner of service and date as indicated below, a copy of the foregoing **GOOGLE INC.'S SEPARATE MEMORANDUM IN SUPPORT OF JOINT MOTION FOR ENTRY OF STIPULATED PERMANENT INJUNCTION AND FINAL JUDGMENT.**

/s/ William J. Barrett

William J. Barrett

SERVICE LIST

Mr. Leo Stoller

7115 W. North Ave., #272

Oak Park, IL 6030

Via email to ldms4@hotmail.com

(Served via email transmission on February 13, 2007 and overnight delivery on February 14, 2007)

Richard M. Fogel

Janice Alwin

Shaw Gussis Fishman Glantz Wolfson & Towbin LLC

321 N. Clark St., Suite 800

Chicago, IL 60610

Via email to jalwin@shawgussis.com and rfogel@shawgussis.com, rfogel@ecf.epiqsystems.com

(Served via email transmission on February 13, 2007 and messenger delivery on February 14, 2007)