

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
03/19/2007	<u>51</u>	5	SUPPLEMENTAL NOTICE of appeal by Leo Stoller regarding orders <u>46</u> , <u>34</u> ;(Fee Due) (dj, ) (Entered: 03/20/2007)
03/19/2007	<u>52</u>	10	DESIGNATION by Leo Stoller of the content of the record on appeal : USCA Case No. 07-1569 (dj, ) (Entered: 03/20/2007)
03/19/2007	<u>56</u>	59	MINUTE entry before Judge Virginia M. Kendall :Motion hearing held on 3/19/2007. For the reasons stated on the record in open court, movant Stoller's motion for permission to appeal in forma pauperis <u>41</u> is granted.Mailed notice (eav, ) (Entered: 03/20/2007)
03/19/2007	<u>60</u>	60	REPLY by Movant Leo Stoller to Google's opposition to motion for permission to appeal in forma pauperis (eav, ) Modified on 5/17/2007 (vcf, ). (Entered: 03/22/2007)
03/21/2007	<u>63</u>	75	SUPPLEMENTAL NOTICE of appeal by Leo Stoller regarding orders <u>58</u> , <u>57</u> ; (Fee Due) (dj, ). (Entered: 03/23/2007)
03/27/2007	<u>67</u>	84	DESIGNATION of the content by Leo Stoller of record on appeal : USCA Case No. 07-1651 (dj, ) (Entered: 03/28/2007)
03/28/2007	<u>69</u>	101	DESIGNATION by Leo Stoller of Additional Content of the Record on Appeal. (rp, ) (Entered: 03/30/2007)
04/10/2007	<u>70</u>	110	DESIGNATION by Leo Stoller of additional content of the record on appeal <u>46</u> : USCA Case No. 07-1651 (hp, ) (Entered: 04/12/2007)
05/10/2007	<u>75</u>	112	MOTION by Movant Leo Stoller for leave to file designation of supplemental content of record on appeal. (smm) (Entered: 05/11/2007)
05/10/2007	<u>79</u>	120	DESIGNATION of supplemental content of record on appeal by Leo Stoller; Notice. (smm) (Entered: 05/16/2007)
05/11/2007	<u>77</u>	114	

			RESPONSE by Google Incin Opposition to MOTION by Movant Leo Stoller for leave to file <u>75</u> (Barrett, William) (Entered: 05/11/2007)
05/14/2007	<u>78</u>	119	MINUTE entry before Judge Virginia M. Kendall :Motion for leave to file designation of supplemental content of record on appeal <u>75</u> is denied as moot.Mailed notice (gmr, ) (Entered: 05/14/2007)
05/16/2007	<u>80</u>	123	DESIGNATION of additional content of the record on appeal by Leo Stoller (Exhibit); Notice. (smm) (Entered: 05/18/2007)
05/16/2007	<u>81</u>	151	DESIGNATION of supplemental content of record on appeal by Leo Stoller (Exhibits); Notice. (smm) (Entered: 05/18/2007)
05/12/2008	<u>88</u>	271	MOTION to withdraw as attorney <i>for Plaintiff, Google, Inc.</i> (Barrett, William) (Entered: 05/12/2008)
05/14/2008	<u>91</u>	272	MOTION by Plaintiff Google Inc to substitute attorney, MOTION by counsel for Plaintiff Google Inc to withdraw as attorney (Cyrluk, Jonathan) (Entered: 05/14/2008)
05/15/2008	<u>93</u>	274	MINUTE entry before the Honorable Virginia M. Kendall: Status hearing held. Plaintiff's Motion to Withdraw Attorney William J. Barrett <u>88</u> and to Substitute Jonathan M. Cyrluk as Local Counsel <u>91</u> are granted. The Motion to Intervene is reinstated. Plaintiff to supplement the Motion by 6/9/2008; response due 6/30/2008; reply due 7/7/2008. Defendant must pay the fine as ordered by the 7th Circuit by 6/9/2008 or this case will be dismissed. Mailed notice. (kw, ) Modified on 5/23/2008 (kw, ). (Entered: 05/16/2008)
05/16/2008	<u>94</u>	275	MINUTE entry before the Honorable Virginia M. Kendall: Minute entry <u>93</u> is amended to reflect that the Defendant must pay his fine prior to the filing of any papers in this case. In all other respects the minute entry stands. Mailed notice. (kw, ) (Entered: 05/16/2008)
05/23/2008	<u>95</u>	276	MINUTE entry before the Honorable Virginia M. Kendall: It has been brought to the Court's attention that electronic notice of minute entry <u>93</u> was not distributed. The Court hereby brings notice to all parties of the filing of minute order <u>93</u> . Paper copies of minute entries <u>93</u> and <u>94</u> will be mailed to all parties. Mailed notice. (kw, ) (Entered: 05/23/2008)
06/03/2008	<u>97</u>	277	MOTION by Movant Leo Stoller to Suspend; Notice.(Exhibits)(Poor Quality Original – Paper Document on File)(vcf, ) (Entered: 06/09/2008)
06/18/2008	<u>98</u>	295	MINUTE entry before the Honorable Virginia M. Kendall: Mr. Stoller is advised that all motions shall be presented to the court pursuant to Local Rule 5.3(a and b). Failure to comply with this rule may result in the striking of the motion. A copy of Local Rule 5.3 (a and b) was mailed to Mr. Stoller along with a copy of this order by the court's clerk.Mailed notice (jms, ) (Entered: 06/18/2008)

			06/18/2008)
06/25/2008	<u>99</u>	296	MOTION by Movant Leo Stoller to suspend. (vcf, ) (Entered: 06/26/2008)
06/30/2008	<u>101</u>	301	MINUTE entry before the Honorable Virginia M. Kendall:Motion hearing held. Plaintiff's motion to suspend <u>99</u> is entered and continued pending ruling on the pending motion.Advised in open court (jms, ) (Entered: 06/30/2008)
06/30/2008	<u>102</u>	302	RESPONSE by Plaintiff Google Inc to motion to intervene <u>16</u> (Attachments: # <u>1</u> Declaration Michael T. Zeller, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2, # <u>4</u> Exhibit 3)(Cyrluk, Jonathan) (Entered: 06/30/2008)
07/11/2008	<u>103</u>	368	MOTION by Movant Leo Stoller to file reply instanter. (Attachments: # <u>1</u> Response)(vcf, ) (Entered: 07/14/2008)
07/14/2008	<u>105</u>	373	MINUTE entry before the Honorable Virginia M. Kendall:Mr. Stoller's motion to file reply instanter <u>103</u> is granted. Mailed notice (jms, ) (Entered: 07/14/2008)
07/14/2008	<u>106</u>	374	REPLY by Leo Stoller to Google's response to supplement to motion to intervene <u>16</u> . (vcf, ) (Entered: 07/15/2008)
03/31/2009	<u>107</u>	378	MINUTE entry before the Honorable Virginia M. Kendall:Stollers Motion to Suspend [97, <u>99</u> is denied without prejudice. For further details see attached minute order.Mailed notice (tlf, ) (Entered: 03/31/2009)
06/30/2009	<u>108</u>	380	MINUTE entry before the Honorable Virginia M. Kendall:Movant Stollers motion to suspend is denied without prejudice. Movant Stoller may refile the motion if this Court allows him to intervene on remand.Mailed notice (jms, ) (Entered: 06/30/2009)
08/17/2009	<u>109</u>	382	MINUTE entry before the Honorable Virginia M. Kendall: Stollers motion to Iniervene is denied. The parties are directed to submit position papers regarding the extent to which Stollers corporations are subject to suit and when this case arose and as such the propriety of the involvement of the bankruptcy estate. The parties must submit such position papers by 9/9/2009.Mailed notice (jms, ) (Entered: 08/17/2009)
08/17/2009	<u>110</u>	383	MEMORANDUM Opinion and Order Signed by the Honorable Virginia M. Kendall on 8/17/2009:Mailed notice(jms, ) (Entered: 08/17/2009)
08/24/2009	<u>111</u>	392	MOTION by Movant Leo Stoller for reconsideration regarding its opinion dated August 17, 2009 <u>109</u> (Exhibit) (hp, ) (Entered: 08/24/2009)
08/25/2009	<u>113</u>	405	MINUTE entry before the Honorable Virginia M. Kendall:Mr. Stoller's motion for reconsideration <u>111</u> is taken under advisement. Response is to be filed by 9/9/2009. Reply is to be filed by 9/16/2009. Mr. Stoller's motion for an extension of time

			to file his position brief pursuant to this court's order of 8/17/2009 <u>111</u> is granted in part. The parties are given to 9/30/2009 to file their position briefs on the extent to which Stollers corporations are subject to suit and when this case arose and as such the propriety of the involvement of the bankruptcy estate. Mailed notice (jms, ) (Entered: 08/25/2009)
09/09/2009	<u>114</u>	406	RESPONSE by Google Incin Opposition to MOTION by Movant Leo Stoller for reconsideration regarding terminate motions, <u>109</u> <u>111</u> <i>Google Inc.'s Response to Motion for Reconsideration</i> (Zeller, Michael) (Entered: 09/09/2009)



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

**FILED**

MAR 19 2007

03-19-07

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Appeal No: 07-1569

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. )

Case No: 07-CV-385

Hon. Virginia M. Kendall

Magistrate Judge Cole

Appeal from the U.S. District  
Court for the Northern District  
Eastern Division

Orders by Virginia M. Kendall  
dated March 5, 2007 & March 16, 2007

**SUPPLEMENTAL NOTICE OF APPEAL OF ORDERS ISSUED BY  
JUDGE VIRGINIA M. KENDALL ON MARCH 5, 2007 AND MARCH 16, 2007**

Leo Stoller, Appellant, filed a Notice of Appeal on March 15, 2007 of Judge Kendall's order dated March 12, 2007 denying Leo Stoller's Motion to Intervene, Motion To Interplead and Motions to Suspend.

Stoller is moving to supplement its Notice of Appeal with the order by Virginia M. Kendall dated March 5, 2007 denying Leo Stoller's Motion To Dismiss; and Judge Kendall's order dated March 16, 2007 denying Leo Stoller's Motion Under FRCP 59 And/Or 60.

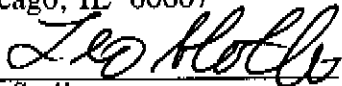
Leo Stoller, *pro se*  
7115 W. North Avenue  
Oak Park, Illinois 60302  
(312) 545-4554  
Email: ldms4@hotmail.com

Date: March 19, 2007

**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: March 19, 2007

**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.  
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Wolfson & Towbin LLC.*  
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Michael T. Zeller  
Quinn, Emanuel, Urquhart,  
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865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606



Leo Stoller

Date: 3-19-07

UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.0  
Eastern Division

Google Inc

Plaintiff,

v.

Case No.: 1:07-cv-00385

Honorable Virginia M. Kendall

Central Mfg. Inc., et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, March 5, 2007:

MINUTE entry before Judge Virginia M. Kendall :On March 2, 2007, Leo Stoller ("Stoller") filed a Motion to Dismiss for failure to join a party — himself — pursuant to Fed. R. Civ. P. 19. Stoller previously filed a motion to intervene in this action on February 6, 2007. The Court has not yet ruled upon that motion. As such, Stoller remains a non-party and lacks standing to file a motion pursuant to Rule 19. See *Arrow v. Gambler's Supply, Inc.*, 55 F.3d 407, 409 (8th Cir. 1995) ("only a party may make a Rule 19 motion") (citing *Thompson v. Boggs*, 33 F.3d 847, 858 n. 10 (7th Cir. 1994) (noting lack of any precedent for granting a non-party's motion for joinder)). Accordingly, Stoller's Motion to Dismiss [32] is stricken and the parties need not appear on March 7, 2007. 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 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.

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## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Virginia M. Kendall	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	07 C 385	DATE	3/16/2007
CASE TITLE	Google, Inc. vs. Central Mfg. Inc., et al.		

## DOCKET ENTRY TEXT

For the reasons stated below, Movant Stoller's motion to reconsider [43] is denied. The presentment date of 3/19/2007 for said motion is hereby stricken.

■ [ For further details see text below.]

Notices mailed by Judicial staff.

## STATEMENT

On March 12, 2007, this Court issued a Memorandum Opinion and Order denying Leo Stoller's ("Stoller") motions to: (1) intervene; (2) interplead; (3) suspend the proceedings for sixty days to retain counsel for defendants; (4) suspend the proceedings pending an appeal of the decision of the bankruptcy court to permit plaintiff Google Inc. ("Google") to initiate this action; and (5) to suspend the proceedings pending the Trademark Trial and Appeal Board's decision on a motion for summary judgment in the proceedings related to the Google trademark.

On March 15, 2007, Stoller filed a motion asking this Court to reconsider its decision to deny Stoller's motion to intervene. Stoller's motion to reconsider reads, in its entirety:

NOW COMES Leo Stoller and submits to the Court transcripts of proceedings before Judge Schmetterer dated December 12, 2006 and February 15, 2007.

Leo Stoller requests that the Court reconsider its decision denying Stoller the right to intervene based upon the attached transcripts.

"Motions to reconsider are rarely granted -- they serve a narrow function and must be supported by a showing of extraordinary circumstances." *Trading Techs. Int'l, Inc. v. eSpeed Inc.*, No. 04 C 5312, 2007 U.S. Dist. LEXIS 12965, \*10 (N.D. Ill. Feb. 21, 2007) (citing *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1269 (7th Cir. 1996)). In order to succeed on a motion to reconsider, the movant "must clearly establish either a manifest error of law or fact or must present newly discovered evidence." *LB Credit Corp. v. Resolution Trust Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1995) (citing *FDIC v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986)). Stoller's motion presents no newly discovered evidence, nor does he attempt to identify any manifest error of law or fact. Instead he has simply submitted nearly 60 pages of transcripts from bankruptcy proceedings before Judge Schmetterer without making any effort whatsoever to direct the Court to the portions thereof that he deems relevant to his motion to reconsider.

Having reviewed the aforementioned transcripts in search of potential bases for Stoller's motion to

**STATEMENT**

reconsider, this Court has identified only one potential area and assumes that Stoller relies primarily upon the following passage:

MR. STOLLER: The problem is not that they withdraw their monetary claims. It's a civil RICO action where I'm mentioned 15 times in a complaint in which I am deprived of defending myself. I'm not even listed in it.

THE COURT: You have a right, I suppose, to seek to intervene in that case and to defend any interest of yours personally, but I see no reason why I should authorize you to hire lawyers on behalf of the companies.

MR. STOLLER: Because if - -

THE COURT: If you feel that the action indirectly impinges on your rights, nothing stops you from doing that.

(Transcript of Proceedings before the Honorable Jack B. Schmetterer, Feb. 15, 2007 at p. 10:12-20).

Setting to one side the fact that Stoller's motion to intervene was before this Court and not before Judge Schmetterer, this Court does not read Judge Schmetterer's comments above as any indication that Stoller has a right to intervene in this case. Judge Schmetterer correctly advised Stoller that he had a right to *seek* to intervene in this action. Stoller did seek intervention as of right in this action but, because he was not able to identify any significant, legally protectible interest in these proceedings, that motion was denied. Stoller also sought permissive intervention but, because the Court found that permitting Stoller to intervene in this action would frustrate the parties' efforts to resolve this matter by settlement, that request was denied as well.

Stoller's Motion to Reconsider does not establish any manifest error of law or fact associated with this Court's denial of his motion to intervene. Accordingly, Stoller's motion to reconsider is denied.

**LAL FILED**  
MAR 19 2007  
03-19-07  
MICHAEL W. DOMBINS  
CLERK, U.S. DISTRICT COURT

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

Appeal No: 07-1569

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. )

Case No: 07-CV-385  
Hon. Virginia M. Kendall  
Magistrate Judge Cole  
Appeal from the U.S. District  
Court for the Northern District  
Eastern Division  
Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007,  
and 3/16/2007

**DESIGNATION OF THE CONTENT OF THE RECORD ON APPEAL**

NOW COMES Leo Stoller and identifies the record for appeal which consists of the transcript of the hearing on March 12, 2007. The transcript was ordered on March 9, 2007. The record for appeal also consists of the following motions, docket report and transcript:

- 1) Motion To Suspend (Docket No. 11).
- 2) Motion To Intervene (Docket No. 16).
- 3) Motion To Interplead (Docket No. 8).
- 4) Motion To Suspend Pending The Appeal To Lift The Automatic Stay For Google Inc. To Sue The Debtor Leo Stoller (Docket No. 9).
- 5) Motion To Suspend Pending The Trademark Trial And Appeal Board's Decision On The Defendant's Motion For Summary Judgment (Docket No. 10).
- 6) All documents listed on the attached U.S. District Court Docket Report
- 7) Transcript of Proceedings Before Judge Virginia Kendall Dated February 20, 2007



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

Date: March 19, 2007

**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 South Dearborn  
Chicago, IL 60607



Leo Stoller  
Date: March 19, 2007

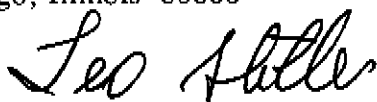
**Certificate of Service**

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

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Chicago, Illinois 60606



Leo Stoller  
Date: 3-19-07

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.0  
Eastern Division**

Google Inc

Plaintiff,

v.

Case No.: 1:07-cv-00385

Honorable Virginia M. Kendall

Central Mfg. Inc., et al.

Defendant.

---

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## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Virginia M. Kendall	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 385	DATE	3/16/2007
CASE TITLE	Google, Inc. vs. Central Mfg. Inc., et al.		

## DOCKET ENTRY TEXT

For the reasons stated below, Movant Stoller's motion to reconsider [43] is denied. The presentment date of 3/19/2007 for said motion is hereby stricken.

■ [ For further details see text below.]

Notices mailed by Judicial

## STATEMENT

On March 12, 2007, this Court issued a Memorandum Opinion and Order denying Leo Stoller ("Stoller") motions to: (1) intervene; (2) interplead; (3) suspend the proceedings for sixty days to retain counsel for defendants; (4) suspend the proceedings pending an appeal of the decision of the bankruptcy court to permit plaintiff Google Inc. ("Google") to initiate this action; and (5) to suspend the proceedings pending the Trademark Trial and Appeal Board's decision on a motion for summary judgment in the proceedings related to the Google trademark.

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"Motions to reconsider are rarely granted -- they serve a narrow function and must be supported by showing of extraordinary circumstances." *Trading Techs. Int'l, Inc. v. eSpeed Inc.*, No. 04 C 5312, 2007 U.S. Dist. LEXIS 12965, \*10 (N.D. Ill. Feb. 21, 2007) (citing *Caisse Nationale de Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1269 (7th Cir. 1996)). In order to succeed on a motion to reconsider, the movant "must clearly establish either a manifest error of law or fact or must present newly discovered evidence." *LB Credit Corp. Resolution Trust Corp.*, 49 F.3d 1263, 1267 (7th Cir. 1995) (citing *FDIC v. Meyer*, 781 F.2d 1260, 1268 (7th Cir. 1986)). Stoller's motion presents no newly discovered evidence, nor does he attempt to identify any manifest error of law or fact. Instead he has simply submitted nearly 60 pages of transcripts from bankruptcy proceedings before Judge Schmetterer without making any effort whatsoever to direct the Court to the portions thereof that he deems relevant to his motion to reconsider.

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**STATEMENT**

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THE COURT: You have a right, I suppose, to seek to intervene in that case and to defend any interest of yours personally, but I see no reason why I should authorize you to hire lawyers on behalf of the companies.

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THE COURT: If you feel that the action indirectly impinges on your rights, nothing stops you from doing that.

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Stoller's Motion to Reconsider does not establish any manifest error of law or fact associated with the Court's denial of his motion to intervene. Accordingly, Stoller's motion to reconsider is denied.

Name of Assigned Judge or Magistrate Judge	Virginia M. Kendall	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 0385	DATE	3/12/2007
CASE TITLE	Google, Inc. Vs. Central Mfg. Inc., et al.		

DOCKET ENTRY TEXT

For the reasons set out in the Memorandum Opinion and Order, Motion to intervene [16] is denied; Motion to interplead [8] is denied; and Motions to suspend [9][10][11] are denied.

Docketing to mail notices

[ For further detail see separate order(s).]

Courtroom Deputy Initials:	GR
----------------------------	----

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

GOOGLE, INC.,	)	
	)	
Plaintiff,	)	
v.	)	Case No: 07 C 385
	)	
CENTRAL MFG. INC. a/k/a CENTRAL MFG.	)	Judge Virginia M. Kendall
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.	)	
	)	

**MEMORANDUM OPINION AND ORDER**

Plaintiff Google Inc. (“Google”) has filed this civil RICO action against Defendants Central Mfg. Inc. (“Central”) a/k/a Central Mfg. Co. a/k/a Central Mfg. Co.(Inc.) a/k/a Central Manufacturing Company Inc. a/k/a Central Mfg. Co. of Illinois and Stealth Industries, Inc. (“Rentamark”) a/k/a Rentamark a/k/a Rentamark.com (collectively, “Defendants”) alleging, among other things, that Defendants and their purported principal, Leo Stoller (“Stoller”), are engaged in a scheme of falsely claiming trademark rights for the purpose of attempting to extort money out of legitimate commercial actors. More specifically, Google alleges that Defendants aimed their continuing scheme in its direction by first seeking to oppose Google’s application for registration of the “Google” trademark based upon a fraudulent claim of common law rights in or to that mark and then sending settlement communications to Google that offered to resolve the “registerability controversy” if Google would, among other things, agree to: (1) abandon its trademark application;

(2) pay a 5% royalty for use of the "Google" mark; and (3) pay \$100,000.00 to Rentamark.com and acknowledge Rentamark.com's exclusive ownership of the "Google" mark.

On December 20, 2005, Stoller filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code (the "Code"). On motion of one of Stoller's creditors, Stoller's bankruptcy case, styled *In re Stoller*, No. 05-64075 in the United States Bankruptcy Court for the Northern District of Illinois, was converted to a case under Chapter 7 of the Code on September 1, 2006. The property of Stoller's estate in bankruptcy includes, among other things, the stock and interests of incorporated and unincorporated businesses, including Stoller's wholly-owned interest in the Defendants. On September 6, 2006, the United States Trustee for Region 11 appointed Richard M. Fogel ("Trustee") as trustee to administer Stoller's estate in bankruptcy. Stoller's bankruptcy case remains pending before Bankruptcy Judge Jack B. Schmetterer.

Now before this Court is Stoller's motion to intervene in this action pursuant to Fed. R. Civ. P. 24. In addition to the motion to intervene, Stoller, who is not (and never has been) a party to this action, has also filed motions: (1) to interplead; (2) to suspend these proceedings for sixty days to retain counsel for defendants; (3) to suspend these proceedings pending an appeal of the decision of the bankruptcy court to permit Google to initiate this action; and (4) to suspend these proceedings pending the Trademark Trial and Appeal Board's decision on Defendants' motion for summary judgment in the proceedings related to the "Google" mark. For the reasons set forth below, each of Stoller's motions is denied.

### DISCUSSION

#### **I. Intervention as of Right Under Rule 24(a).**

Under Rule 24, intervention may be as of right or it may be permissive. *Heartwood v. U.S. Forest Service, Inc.*, 316 F.3d 694, 7000 (7th Cir. 2003). A party seeking to intervene as of right

must satisfy four requirements: (1) the motion to intervene must be timely; (2) the party seeking to intervene must claim an interest related to the property or transaction which is the subject of the action; (3) the party seeking to intervene must be so situated that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) the existing parties must not be adequate representatives of the applicant's interest. Fed. R. Civ. P. 24(a); *see also Skokaogon Chippewa Community v. Babbitt*, 214 F.3d 941, 945-46 (7th Cir. 2000). Failure to satisfy any one of the four requirements for intervention as of right is sufficient grounds to deny a motion to intervene. *United States v. BDO Seidman*, 337 F.3d 802, 808 (7th Cir. 2003).

A party seeking to intervene in a case must assert an interest in the action that is a "direct, significant legally protectible" one. *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 322 (7th Cir. 1995) (quoting *Am. Nat'l Bank v. City of Chicago*, 865 F.2d 144, 146 (7th Cir. 1989)). In the Seventh Circuit, this inquiry focuses "on the issues to be resolved by the litigation and whether the potential intervenor has an interest in those issues." *Id.* (citing *Am. Nat'l Bank*, 865 F.2d at 147).

In this case, Stoller has not identified any direct, significant legally protectible interests in these proceedings that would provide him with a right to intervene. Stoller argues that he has such an interest in this action because: (1) he was the sole shareholder of Defendants; (2) he was the party that filed a petition for cancellation of the Google trademark registration; (3) he was the party that communicated with Google's counsel regarding the registerability controversy; (4) he was the party that claimed rights in and to the Google trademark; and (5) absent his involvement in this case, the corporate defendants will not be adequately represented. Each of these arguments fails.

First, Stoller's concern that the corporate defendants will not receive adequate representation without his involvement does not suffice to provide him with a right to intervene because it is based upon the *Defendants'* rights, not upon his own. *Reich*, 64 F.3d at 322. True, Stoller asserts that he

was once the sole shareholder of the corporate defendants, but that is no longer the case.<sup>1</sup> The Defendants are now part of Stoller's Chapter 7 bankruptcy estate. Accordingly, Stoller no longer holds any interest in the Defendants. *See Spenlinhauer v. O'Donnell*, 261 F.3d 113, 118 (1<sup>st</sup> Cir. 2001) ("The advent of the chapter 7 estate and the appointment of the chapter 7 trustee divest the chapter 7 debtor of all right, title and interest in nonexempt property of the estate at the commencement of the case."). At this juncture, it is the Trustee, and not Stoller, that has the authority to administer all aspects of Defendants' business, including this lawsuit. *See Cable v. Ivy Tech State College*, 200 F.3d 467, 472 (7<sup>th</sup> Cir. 1999) (in Chapter 7 bankruptcy proceedings, "only the trustee has standing to prosecute or defend a claim belonging to the estate.") (emphasis in original) (citing *In re New Era, Inc.*, 135 F.3d 1206, 1209 (7<sup>th</sup> Cir. 1998) for the proposition that "Chapter 7 trustee has exclusive right to represent debtor in court").

Stoller also argues that he has an interest in this action because: he was the party that filed a petition for cancellation of the Google trademark registration; he was the party that communicated with Google's counsel regarding the registerability controversy; and he was the party that claimed rights in and to the Google trademark. Each of these assertions is contradicted by the record. The record demonstrates that it was defendant Central, and not Stoller, that filed a petition for cancellation of the Google trademark registration and that claimed rights in and to the Google trademark. (Zeller Declaration, Exhs. 8-10.) Nor did Stoller communicate in his individual capacity

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<sup>1</sup>Indeed, it may never have been the case. On October 20, 2006, during proceedings before the Chapter 7 Trustee, Stoller asserted Fifth Amendment rights and refused to answer the question whether he had any proof of ownership of Defendants. Stoller's refusal to answer that question may give rise to an inference that no such proof exists. *See Harris v. City of Chicago*, 266 F.3d 750, 753 (7<sup>th</sup> Cir. 2001) (citing *LaSalle Bank Lake View v. Sequan*, 54 F.3d 387, 389-91 (7<sup>th</sup> Cir. 1995) for the proposition that "[t]he rule that adverse inferences may be drawn from Fifth Amendment silence in civil proceedings has been widely recognized by the circuit courts of appeals, including our own..").

with Google regarding the purported registerability controversy - he did so in his capacity as president of one or both of the defendants. *See* Cplt., Exhs. O, R & S.

Stoller's failure to assert a significant, legally protectible interest in these proceedings is fatal to his motion to intervene as of right under Rule 24(a). *BDO Seidman*, 337 F.3d at 808. Accordingly, there is no need for this Court to consider whether Stoller can satisfy the other requirements for intervention as of right.

## II. Permissive Intervention Under Rule 24(b).

Permissive intervention is allowed under Rule 24(b) upon a timely application demonstrating that the "applicant's claim or defense and the main action have a question of law or fact in common." *Skokaogon Chippewa Community*, 214 F.3d at 949. "Permissive intervention under Rule 24(b) is wholly discretionary." *Id.* (citing *Keith v. Daley*, 764 F.2d 1265, 1272 (7<sup>th</sup> Cir. 1985)). In exercising its discretion to grant or deny permissive intervention, a district court "shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24(b); *Heartwood*, 316 F.3d at 701.

As a party to or participant in various lawsuits in this district, Stoller "has earned a reputation for initiating spurious and vexatious federal litigation" and has demonstrated "an appalling lack of regard for [courts in this district] and a lack of respect for the judicial process." *Central Mfg. Co. v. Pure Fishing, Inc.*, No. 05 C 725, 2005 U.S. Dist. LEXIS 28280, \*2-4, 17-18 (N.D. Ill. Nov. 16, 2005) (citing *Central Mfg. Co. et al. v. Brett*, No. 04 C 3049, 2005 U.S. Dist. LEXIS 23379, \*2 (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, 798 (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.")).

Stoller has given this Court no reason to believe that he would behave differently than he has in the past were he to be granted permission to intervene in this action. To the contrary, as noted above, several of the bases for Stoller's motion to intervene -- including that Stoller "was the party that filed a petition for cancellation of the said Google registration" and that "Leo Stoller is the party who claimed rights in and to the Google trademark" -- are squarely contradicted by the record, including pleadings filed by Stoller on Central's behalf with the Trademark Trial and Appeal Board. Moreover, in his reply brief in support of his several pending motions, Stoller claims -- without providing any evidence -- that the Trustee and counsel for Google have conspired to defraud this Court and Stoller. Stoller further claims -- also without providing any evidentiary support -- that the Trustee has engaged in a scheme to defraud Stoller's estate in bankruptcy, Stoller himself, this Court, and the "U.S. Bankruptcy System."<sup>2</sup> This behavior is also, unfortunately, not unprecedented for Stoller. *See Pure Fishing, Inc.*, 2005 U.S. Dist. LEXIS 28280 at \*18 ("Mr. Stoller accused this Court and opposing counsel of participating in a scheme to defraud the federal courts and others and of engaging in unprofessional and unethical conduct.").

The parties to this action have negotiated a settlement agreement that contemplates a release of Google's monetary claims against Defendants and against Stoller's estate in bankruptcy.<sup>3</sup> (Zeller Declaration, Exh. 7.) That release is contingent upon the entry, in this case, of a stipulated

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<sup>2</sup>In an apparent attempt to intimidate Google and the Trustee, Stoller sent a copy of his reply brief and the unsupported allegations contained therein to the office of the United States Attorney for the Northern District of Illinois. Mr. Stoller would do well to recall that *pro se* litigants are subject to Fed. R. Civ. P. 11 and that making claims not warranted by existing law or making allegations without evidentiary support may subject him to sanctions.

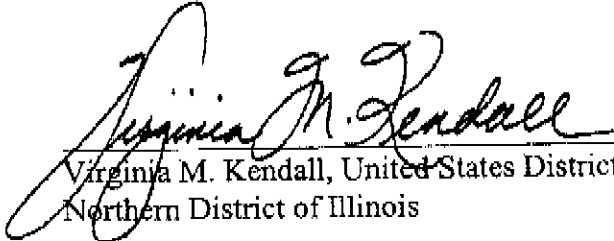
<sup>3</sup>The settlement agreement has been approved by the bankruptcy court. (Zeller Declaration, Exh. 6.)

permanent injunction and final judgment. *Id.* Working toward that end, the parties filed, on February 12, 2007, a joint motion for entry of stipulated permanent injunction and final judgment. The Court has no doubt that permitting Stoller to intervene in this action would frustrate the parties' efforts to resolve this matter by settlement. Accordingly, Stoller's motion to intervene under Rule 24(b) is denied.

**III. Stoller's Motions to Interplead and to Suspend these Proceedings.**

Stoller has not identified - and this Court is not aware of - any procedural mechanism by which a non-party may file a motion to suspend ongoing proceedings without intervening therein. Accordingly, Stoller's motions to suspend these proceedings are denied. The Court finds that Stoller's motion to "interplead as a necessary party" amounts to nothing more than a motion to intervene. As such, it is duplicative of Stoller's Rule 24 motion and, for the reasons stated above, that motion is also denied.

So ordered.

  
Virginia M. Kendall, United States District Judge  
Northern District of Illinois

Date: March 12, 2007

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

RECEIVED

JAN 30 2007

MICHAEL W. DOUGLAS  
CLERK, U.S. DISTRICT COURT

GOOGLE, INC. )  
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Plaintiff, )  
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vs. )  
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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. )

Case No: 07-cv-385  
Judge Kendall  
Magistrate Judge Cole

MOTION TO SUSPEND

NOW COMES Leo Stoller and requests that this Court suspend this proceeding for sixty (60) days to give Stoller the opportunity to retain counsel to represent the corporations.



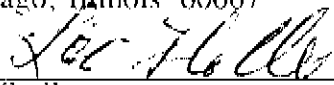
Leo Stoller, *pro se*  
7115 W. North Avenue #272  
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Email: ldms4@hotmail.com

Date: January 30, 2007

**Certificate of Mailing**

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

Clerk of the Court  
United States District Court  
219 S. Dearborn  
Chicago, Illinois 60607

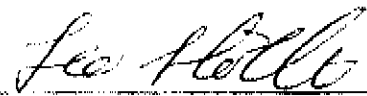
  
\_\_\_\_\_  
Leo Stoller  
Date: January 30, 2007

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333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606

  
\_\_\_\_\_  
Leo Stoller  
Date: 1/30/07

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

RECEIVED

FEB 06 2007

GOOGLE, INC. )  
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 Plaintiff, )  
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 vs. )  
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 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. )

MICHAEL W. DOUGLAS  
CLERK, U.S. DISTRICT COURT

Case No: 07-cv-385  
Judge Kendall  
Magistrate Judge Cole

**MOTION TO INTERVENE**

NOW COMES Leo Stoller and moves this Court for intervention as of right pursuant to Rule 24(a)(2), Fed. R. Civ. P and/or pursuant to Rule 24(b), Fed. R. Civ. P. See Rule 24, Fed. R. Civ. P.; *Grutter v. Bollinger*, 188 F.3d 394 (6th Cir. 1999); *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240 (6th Cir. 1997).

**BACKGROUND**

Leo Stoller was the sole shareholder and sole employee of Central Mfg. Co., Inc., a Delaware corporation, and Stealth Industries, Inc., a Delaware corporation. The two named defendants in this case. Leo Stoller, on behalf of Central Mfg. Co., brought a petition to cancel Google Inc.'s Federal Trademark Registration, Google, on the grounds that it has become generic and/or descriptive of the services that are covered under Google, Inc.'s Federal Trademark Registration.

Leo Stoller engaged Google, Inc., pursuant to Federal Rules of Evidence 408, in an attempt to settle the registerability controversy that existed as between the parties. The email correspondence that was submitted to Google, Inc. in settlement negotiations, which was

clearly marked non-discoverable, submitted under Federal Rules of Evidence 408, is being used by the Plaintiffs as the predicate act for the civil RICO violations alleged in Google, Inc.'s Complaint.

In December of 2005, Leo Stoller filed a Chapter 13 bankruptcy which was converted to a Chapter 7 on August 31, 2006. Leo Stoller's corporations, Central Mfg. Co., Inc. and Stealth Industries, Inc.; the shares of which became part of Stoller's bankruptcy when the said bankruptcy was converted to a Chapter 7.

Google, Inc. had petitioned the Bankruptcy Court Judge Jack Schmetterer to Lift the Automatic Stay in order to sue Leo Stoller and Central Mfg. Co., Inc. and Stealth Industries, Inc. Judge Schmetterer issued an Order releasing the stay so that Google, Inc. could sue Leo Stoller. See attached true and correct copy of Judge Schmetterer's January 18, 2007 Order.

Google, Inc. considered Stoller an indispensable party<sup>1</sup>, however, when Google filed its District Court action, it only sued Central Mfg. Co., Inc. and Stealth Industries, Inc.

Judge Schmetterer found in his September 1, 2006, converting Leo Stoller Chapter 13 to a Chapter 7 that Leo Stoller's corporate entities were so intertwined with Stoller as to be indistinguishable.

Movant, Leo Stoller, seeks to intervene pursuant to Rule 24, Fed. R. Civ. P.

### ARGUMENT

Rule 24(a)(2), Fed. R. Civ. P. provides that upon timely application, anyone shall be permitted to intervene in an action as of right when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

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1. In the following hearings that took place in Case No. 05-6047 before Judge Schmetterer 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, et al., Google, Inc.'s lawyers argued that Stoller was an indispensable party and that the stay of his bankruptcy had to be lifted in order to sue Stoller and his corporate entities.

Persons seeking to intervene as a matter of right under Rule 24(a)(2) must establish the following four elements: (1) that the motion to intervene was timely; (2) that they have a substantial legal interest in the subject matter of the case; (3) that their ability to protect that interest may be impaired in the absence of intervention; and (4) that the parties already before the court may not adequately represent their interest. *Grutter v. Bollinger*, 188 F.3d 394, 397-98 (6th Cir. 1999). Movants here can meet each of those four elements.

#### **TIMELINESS**

The Movant has met the timely standard, in that he moved for intervention within a few days after the filing of the Complaint. There has been no prejudice to the other parties.

#### **SUBSTANTIAL INTEREST**

Leo Stoller was the sole shareholder and was the party that Google, Inc. has alleged is responsible for all of the acts committed in Google's federal lawsuit. Stoller was the party that filed a petition for cancellation of the said Google registration. Leo Stoller was the party that communicated with Michael Zeller, lead counsel for Google, Inc. in an attempt to negotiate the settlement of the registerability issue. Leo Stoller is the party who claimed rights in and to the Google trademark.

There is no question that Leo Stoller has a specific legal or equitable interest, or the interest needed to establish standing in federal court. See generally, *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997).

#### **IMPAIRMENT**

To satisfy the "impairment" element, a would-be intervenor must show only that it is possible that his interest will be impaired if intervention is denied. *Grutter*, 188 F.3d at 399. This element is easily met here because without Leo Stoller as a party defendant, the corporate defendants will be unable to properly make their defense because Leo Stoller, who is the sole employee, is the corporate defendant's only witness. Judge Schmetterer stated that Leo Stoller and his two corporate entities are so intertwined as to be one.

#### **ADEQUATE REPRESENTATION**

To satisfy the element of inadequate representation, proposed intervenors need not show that the representation of their interests will be inadequate, only that there is a potential

for inadequate representation and/or that the existing parties will not make the same arguments as the proposed interveners. *Grutter*, 188 F.3d at 400. The showing required is minimal. *Id.* Again, this element is easily met here. The corporate defendants, Central Mfg. Co., Inc. and Stealth Industries, Inc., cannot receive any adequate representation without Leo Stoller, the prime actor in this case. Again, Judge Schmetterer found that Leo Stoller and his corporations are intertwined.

**ALTERNATIVELY, THIS COURT SHOULD GRANT PERMISSIVE INTERVENTION UNDER RULE 24(b)**

Rule 24(b) states that upon timely application, anyone may be permitted to intervene in an action "when an applicant's claim or defense and the main action have a question of law or fact in common." As shown above, this motion is timely. Moreover, Movant's defense is that it does not violate any provision of the United States Constitution or federal law.

In a motion pursuant to Rule 24(b), the court may consider other equitable factors like undue delay, prejudice to the original parties, and other relevant factors. *Miller*, 103 F.3d at 1248. Here, this litigation is in an early stage, and the inclusion of those whose interests are in the law being upheld to its fullest extent will only sharpen and clarify the issues for the court. Accordingly, permissive intervention should be granted.

**CONCLUSION**

For the foregoing reasons, the Motion to Intervene should be granted.



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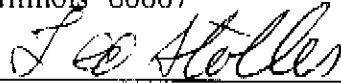
Date: February 6, 2007



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Clerk of the Court  
United States District Court  
219 S. Dearborn  
Chicago, Illinois 60607



Leo Stoller

Date: February 6, 2007

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333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606



Leo Stoller

Date: 02-06-07

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

GOOGLE, INC. )  
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 Plaintiff, )  
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 vs. )  
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 CENTRAL MFG. INC. a/k/a )  
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 COMPANY, INC. and a/k/a )  
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 and STEALTH INDUSTRIES, INC. )  
 a/k/a RENTAMARK and a/k/a )  
 RENTAMARK.COM, )  
 )  
 Defendants. )

Case No: 07-cv-385  
Judge Kendall  
Magistrate Judge Cole

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JAN 30 2007

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

MOTION TO INTERPLEAD

NOW COMES Leo Stoller, the President of the Defendants in this case, and moves to interplead as a necessary party. The Defendants and Leo Stoller are intertwined and it is necessary that Leo Stoller become a party as a defendant in this case. See Plaintiff's Complaint, paragraph numbers 1, 2, 10, 14, 15, 16, 18, 20, 21, 22, 30, 39, 44, 52, 54, including sub-parts. Leo Stoller is an integral party and should be given an opportunity to interplead and to defend himself in this proceeding. Leo Stoller is the sole employee of the Defendant business entities.

The Plaintiff has moved before Judge Jack Schmetterer in Stoller's Chapter 7 bankruptcy, Case No. 05-64075, to lift the automatic stay and allow Stoller and his entities to be sued. Plaintiff has acknowledged that Stoller is a necessary party. See attached true and correct copy of Judge Schmetterer's order dated January 18, 2007.

WHEREFORE, Leo Stoller prays that this Court grant Stoller's motion to interplead in this case as a necessary party Defendant.

*Leo Stoller*

Leo Stoller  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
312/ 545-4554  
Email: ldms4@hotmail.com

Date: January 30, 2007

**Certificate of Mailing**

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Clerk of the Court  
United States District Court  
219 S. Dearborn  
Chicago, Illinois 60607

*Leo Stoller*

Leo Stoller  
Date: January 30, 2007

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Los Angeles, California 90017

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606

*Leo Stoller*

Leo Stoller  
Date: 1/30/07

**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,

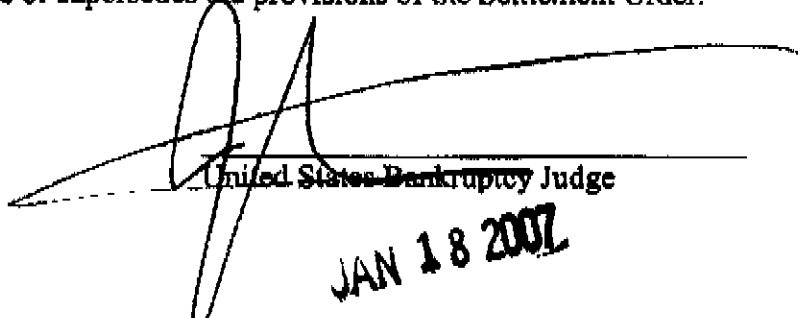
IT IS HEREBY ORDERED that Google is granted relief from the automatic stay so that it may take the actions, including filing an action against the Debtor in the United States District

Court, described in the Motion and any ancillary, necessary, or appropriate actions in connection therewith.

*is that fact as is the Third Circuit Appeal board on 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

**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

**NOTICE OF APPEAL**

NOW COMES the Debtor and files a Notice of Appeal of the attached orders:

- 1) Motion to Dismiss A Case Under Chapter 7 (246)
- 2) Motion to Stay Court's Order Lifting Stay for Google, Inc. to Sue The Debtor (245)
- 3) Motion for Leave to Object to Claims (237)

deared

*Leo Stoller*


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

Date: January 5, 2007

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

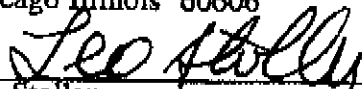
Date: January 5, 2007

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: January 5, 2007

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

**RECEIVED**

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. )

JAN 30 2007

MICHAEL W DOBINS  
CLERK, U.S. DISTRICT COURT

Case No: 07-cv-385

Judge Kendall

Magistrate Judge Cole

**MOTION TO SUSPEND PENDING THE APPEAL  
TO LIFT THE AUTOMATIC STAY FOR GOOGLE TO  
SUE THE DEBTOR, LEO STOLLER**

NOW COMES Leo Stoller and requests that this Court stay this proceeding pending Stoller's Appeal of Judge Schmetterer's order lifting the automatic stay in Stoller's Chapter 7 bankruptcy, Case No. 05-64075, for Google to sue the Debtor, Leo Stoller, and his companies.

See attached true and correct copies of Judge Schmetterer's order dated January 18, 2007 and Stoller's Notice of Appeal dated January 5, 2007.

WHEREFORE, Leo Stoller prays that this Court stay this proceeding pending the final outcome of Stoller's Appeal of Judge Schmetterer's order lifting the automatic stay of Stoller's bankruptcy, allowing the Debtor and his businesses to be sued by Google.



Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
312/ 545-4554  
Email: ldms4@hotmail.com


Date: January 30, 2007



**Certificate of Mailing**

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

Clerk of the Court  
United States District Court  
219 S. Dearborn  
Chicago, Illinois 60607


  
\_\_\_\_\_  
Leo Stoller  
Date: January 30, 2007

**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:

Michael T. Zeller  
Quinn, Emanuel, Urquhart,  
Oliver & Hedges, LLP.  
865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606

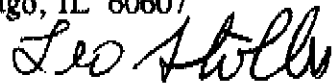
  
\_\_\_\_\_  
Leo Stoller  
Date: 1/30/07



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United States Bankruptcy Court  
219 S. Dearborn  
Chicago, IL 60607



Leo Stoller

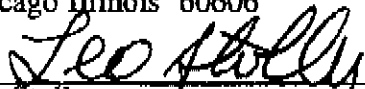
Date: January 5, 2007

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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: January 5, 2007

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

RECEIVED

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. )

JAN 30 2007

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Case No: 07-cv-385

Judge Kendall

Magistrate Judge Cole

**MOTION TO SUSPEND PENDING THE TRADEMARK  
TRIAL AND APPEAL BOARD'S DECISION ON THE  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES Leo Stoller and requests that this Court suspend this proceeding pending the resolution of the Defendant's Motion for Summary Judgment which has been filed in the Trademark Trial & Appeal Board and has been pending for over a year and a half. The Plaintiff's entire case is predicated on its alleged rights in a Federal Trademark Registration for the trademark Google.

The District Court proceeding (Complaint) currently filed by the Plaintiff 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 registrations. As the U.S. Supreme Court has stated:

[T]he declaratory judgment procedure will not be used to preempt and preclude 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 Congress has

placed it to the courts<sup>1</sup>.

Since Congress has granted the power to register trademarks to the United States Patent and Trademark Office (PTO), federal courts have no jurisdiction over administrative registration proceedings except the appellate jurisdiction expressly granted by statute. So an applicant whose mark is opposed before the Trademark Board, or a registrant whose mark is attacked for cancellation before the Trademark Board, cannot short-circuit the administrative process by filing suit for declaratory judgment in the federal courts. Where an administrative proceeding is already under way, the courts should not short-cut the proceeding by way of entertaining a suit for declaratory judgment. As the Second Circuit said, "The Declaratory Judgment Act may not be used simply to remove a controversy from a forum where it properly belongs." Under this rule, it has been said: "The Court will not, by declaratory judgment, intercede gratuitously in the unfinished and pending administrative proceedings<sup>2</sup>."

Judge Schmetterer in the last hearing provided that Google must answer Stoller's motion for summary judgment at the Trademark Trial & Appeal Board by including in the order, attached hereto, the following language upon the request of Leo Stoller in open court,

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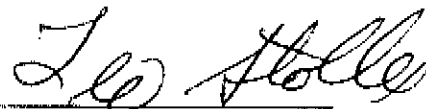
1. Public Service Comm'n v. Wycoff Co., 344 U.S. 237, 97 L. Ed. 291, 73 W. Ct. 236 (1952). See *Englishtown Sportswear Ltd. v. Tuttle*, 547 F. Supp. 700, 216 U.S.P.Q. 486 (S.D.N.Y. 1982) (a court that bypasses the administrative system of the PTO impairs expeditious resolution and forfeits administrative expertise.)

2. *Goya Foods, Inc. v. Tropicana Products, Inc.*, 666 F. Supp. 585, 4 U.S.P.Q.2d 1893 (S.D.N.Y. 1987), modified, LEXIS slip op. (S.D.N.Y. 1987), rev'd on other grounds, 846 F.2d 848, 6 U.S.P.Q.2d 1950 (2d cir. 1988) (Applicant-defendant in previously-filed TTAB opposition proceeding in the PTO filed a declaratory judgment suit in federal court seeking a declaratory of non-infringement. Suit must be dismissed or stayed pending resolution of the PTO opposition. Citing treatise, held that: (1) filing of an opposition does not per se create a reasonable apprehension of being sued for trademark infringement; (2) the Declaratory Judgment Act cannot be used to unnecessarily disrupt administrative proceedings pending in the PTO. The court of appeals reversed the denial of a motion to amend the complaint to state other acts giving rise to a reasonable apprehension of suit. The court of appeals held that if the amended complaint was sufficient, the suit should go forward and not be automatically dismissed because of deference to the pending opposition in the PTO.).

"that Google must take the necessary and appropriate action in the Trademark Trial and Appeal Board" referring to Google having to respond to Stoller's motion for summary judgment.

Google's entire District Court case is predicated on its trademark rights in and to the mark Google. When the TTAB cancels Google's trademark, this case before this Court collapses. It is for that reason that the Supreme Court has provided that District Court proceedings cannot short-circuit pending administrative remedies.

WHEREFORE, Leo Stoller prays that this Court suspend this case pending the resolution of Stoller's Motion for Summary Judgment pending at the Trademark Trial & Appeal Board.



Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
312/ 545-4554  
Email: ldms4@hotmail.com

Date: January 30, 2007

**Certificate of Mailing**

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

Clerk of the Court  
United States District Court  
219 S. Dearborn  
Chicago, Illinois 60607



Leo Stoller

Date: January 30, 2007

**Certificate of Service**

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Michael T. Zeller  
Quinn, Emanuel, Urquhart,  
Oliver & Hedges, LLP  
865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606



Leo Stoller

Date: 1/30/07

*also known as*  
 Rentamark  
*also known as*  
 Rentamark.Com

**Defendant**

**Central Mfg. Inc. and Stealth  
 Industries, by and through Richard  
 M. Fogel, not individually but as  
 Chapter 7 Trustee**

**Movant**

**Leo Stoller**

represented by **Leo Stoller**  
 7115 W. North Avenue  
 Oak Park, IL 60302  
 PRO SE

V.

**Trustee**

**Richard M. Fogel, not individually,  
 but as chapter 7 trustee of the  
 bankruptcy estate of Leo Stoller**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
03/12/2007	<u>38</u>	MEMORANDUM Opinion and Order Signed by Judge Virginia M. Kendall on 3/12/2007:Mailed notice(eav, ) (Entered: 03/13/2007)
03/12/2007	37	MINUTE entry before Judge Virginia M. Kendall :For the reasons set out in the Memorandum Opinion and Order, Motion to intervene 16 is denied; Motion to interplead 8 is denied; and Motions to suspend 9, 10, 11 are denied.Mailed notice (eav, ) (Entered: 03/13/2007)
03/05/2007	34	MINUTE entry before Judge Virginia M. Kendall :On March 2, 2007, Leo Stoller ("Stoller") filed a Motion to Dismiss for failure to join a party -- himself -- pursuant to Fed. R. Civ. P. 19. Stoller previously filed a motion to intervene in this action on February 6, 2007. The Court has not yet ruled upon that motion. As such, Stoller remains a non-party and lacks standing to file a motion pursuant to Rule 19. See Arrow v. Gambler's Supply, Inc., 55 F.3d 407, 409 (8th Cir. 1995) ("only a party may make a Rule 19 motion") (citing Thompson v. Boggs, 33 F.3d 847, 858 n. 10 (7th Cir. 1994) (noting lack of any precedent for granting a non-party's motion for joinder)). Accordingly, Stoller's Motion to Dismiss 32 is stricken and the parties need not appear on March 7, 2007.Mailed notice (gmr, ) (Entered: 03/05/2007)
03/02/2007	36	REPLY by Movant Leo Stoller to Google Inc.'s opposition to debtor Leo Stoller's motion to suspcnd pending the trademark trial and appeal board's decision on defendant's motion for summary judgment 21



		(Exhibits); Notice. (smm) (Entered: 03/08/2007)
03/02/2007	35	REPLY by Defendant Leo Stolla to Google Inc.'s combined opposition to debtor Leo Stoller's motions (1) to intervene, (2) to interplead, (3) to suspend for sixty days to retain counsel for defendants and (4) to suspend pending appeal to lift automatic stay for Google to sue the debtor : Notice of filing (eav, ) (Entered: 03/06/2007)
03/02/2007	33	NOTICE of Motion by Leo Stolla for presentment of motion to dismiss <sup>32</sup> before Honorable Virginia M. Kendall on 3/7/2007 at 09:00 AM. (eav, ) (Entered: 03/05/2007)
03/02/2007	32	MOTION by Defendant Leo Stolla to dismiss for failure to join a party under Rule F.R.C.P. 19 (eav, ) (Entered: 03/05/2007)
02/22/2007	31	REPLY by Defendant Leo Stolla to Trustee's Ominibus response in opposition to motions of debtor Leo Stoller to: (I) Intevene; (II) Interplead; (III) Suspend proceeding for sixty days to retain counsel, for defendants; (IV) Suspend pending appeal to lift automactic stay for Google to sue the debtor; and (V) Suspend pending trademark trial and appeal Board's decision for defendants' motion for summary judgment and joinder of responses by Google, Inc.; Notice of filing (eav, ) (Entered: 02/26/2007)
02/20/2007	29	MINUTE entry before Judge Virginia M. Kendall :Motion hearing held. All pending motions are taken under advisement, with a ruling by mail. Status hearing set for 3/13/2007 at 09:00 AM.Mailed notice (gmr, ) (Entered: 02/20/2007)
02/16/2007	30	OBJECTION by Leo Stoller to Joint Moiton for Entry of Stipulated Permanent Inj8junction and Final Judgment; Notice of filing (Exhibits) (eav, ) (Entered: 02/21/2007)
02/15/2007	28	Notice of Filing Supplemental Authority by Leo Stolla ; Notice of filing (eav, ) (Entered: 02/20/2007)
02/13/2007	27	MEMORANDUM by Google Inc in support of motion for permanent injunction, motion for judgment <sup>23</sup> <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)
02/13/2007	26	CERTIFICATE by Google Inc of Service of the Permanent Injunction and Final Judgment as to Defendants Central Mfg. Inc. and Stealth Industries, Inc.(Proposed Order) (Barrett, William) (Entered: 02/13/2007)
02/13/2007	25	SUPPLEMENT by Google Inc to declaration,, <sup>22</sup> <i>Supplemental Declaration of Michael T. Zeller</i> (Barrett, William) (Entered: 02/13/2007)
02/12/2007	24	NOTICE of Motion by William John Barrett for presentment of motion for permanent injunction, motion for judgment <sup>23</sup> before Honorable Virginia M. Kendall on 2/20/2007 at 09:00 AM. (Barrett, William) (Entered: 02/12/2007)

02/12/2007	<u>23</u>	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)
02/12/2007	<u>22</u>	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>21</u>	RESPONSE by Google Inc in Opposition to MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend <u>10</u> (Barrett, William) (Entered: 02/12/2007)
02/12/2007	<u>20</u>	RESPONSE by Google Inc in Opposition to MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to interplead <u>8</u> , MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend <u>9</u> , MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend <u>11</u> , MOTION by Plaintiff Leo Stolla to intervene <u>16</u> (Barrett, William) (Entered: 02/12/2007)
02/12/2007	<u>19</u>	RESPONSE by Richard M. Fogel, not individually, but as chapter 7 trustee of the bankruptcy estate of Leo Stoller in Opposition to MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend <u>10</u> , MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to interplead <u>8</u> , MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend <u>9</u> , MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend <u>11</u> , MOTION by Plaintiff Leo Stolla to intervene <u>16</u> and Joinder to Responses of Google Inc. (Alwin, Janice) (Entered: 02/12/2007)
02/07/2007	<u>18</u>	MINUTE entry before Judge Virginia M. Kendall :Motion to intervene <u>16</u> is entered and continued to 2/20/2007 at 09:00 AM. Any response shall be filed by 2/12/2007. No reply is necessary. The presentment date of 2/12/2007 for said motion is hereby stricken. Mailed notice (gmr. ) (Entered: 02/07/2007)
02/06/2007	<u>17</u>	NOTICE of Motion by Leo Stolla for motion to intervene <u>16</u> before Honorable Virginia M. Kendall on 2/12/2007 at 9:00 AM. (eav, ) (Entered: 02/07/2007)
02/06/2007	<u>16</u>	MOTION by Leo Stolla to intervene (eav, ) (Entered: 02/07/2007)
02/06/2007	<u>14</u>	SUMMONS Returned Executed by Google Inc as to Stealth Industries, Inc. on 1/23/2007, answer due 2/12/2007; Central Mfg. Inc. on 1/23/2007, answer due 2/12/2007. (Barrett, William) (Entered: 02/06/2007)
02/05/2007	<u>15</u>	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, ) (Entered: 02/06/2007)
01/30/2007	13	PRO SE Appearance by Leo Stolla (eav, ) (Entered: 02/01/2007)
01/30/2007	12	NOTICE of Motion by Stealth Industries, Inc., Central Mfg. Inc. for presentment of motion to Interplead 9, motion to Suspend 10, motion to Suspend pending Appeal to lift automatic stay for Google to sue the Debtor, Leo Stoller, and 11, motion to suspend pending the Trademark Trial and Appeal Board's Decision on the defendant's motion for summary judgment 8 before Honorable Virginia M. Kendall on 2/5/2007 at 9:00 AM. (eav, ) (Entered: 01/31/2007)
01/30/2007	11	MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend (eav, ) (Entered: 01/31/2007)
01/30/2007	10	MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend pending the Trademark trial and Appeal Board's decision on the defendant's motion for summary judgment (eav, ) (Entered: 01/31/2007)
01/30/2007	9	MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend pending the Appeal to lift the automatic stay for Google to sue the debtor Leo Stoller (Exhibits) (eav, ) (Entered: 01/31/2007)
01/30/2007	8	MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to interplead (Exhibits) (eav, ) Additional attachment(s) added on 1/31/2007 (eav, ). (Entered: 01/31/2007)
01/19/2007	7	SUMMONS Issued as to Defendant Central Mfg. Inc. (eav, ) (Entered: 01/22/2007)
01/19/2007	5	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by Google Inc (eav, ) (Entered: 01/22/2007)
01/19/2007	4	ATTORNEY Appearance for Plaintiff Google Inc by William John Barrett (eav, ) (Entered: 01/22/2007)
01/19/2007	3	ATTORNEY Appearance for Plaintiff Google Inc by Michael Thomas Zeller (eav, ) (Entered: 01/22/2007)
01/19/2007	2	CIVIL Cover Sheet (eav, ) (Entered: 01/22/2007)
01/19/2007	1	COMPLAINT filed by Google Inc; (eav, ) (Entered: 01/22/2007)

<b>PACER Service Center</b>
<b>Transaction Receipt</b>

03/14/2007 16:05:41

<b>PACER Login:</b>	ls2729	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:07-cv-00385
<b>Billable Pages:</b>	3	<b>Cost:</b>	0.24

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

GOOGLE, INC., ) Docket No. 07 C 385  
 )  
Plaintiff, )  
 )  
v. ) Chicago, Illinois  
 ) February 20, 2007  
CENTRAL MFG. INC., et al., ) 9:00 o'clock a.m.  
 )  
Defendants. )

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE VIRGINIA M. KENDALL

APPEARANCES:

For the Plaintiff: QUINN EMANUEL URQUHARDT &  
OLIVER, by  
MR. MICHAEL THOMAS ZELLER  
865 South Figueroa Street  
10th Floor  
Los Angeles, California 90017

For the Defendant: MR. LEO STOLLER, pro se  
7115 West North Avenue  
Oak Park, Illinois 60604

For the Bankruptcy Trustee: SHAW, GUSSIS, FISHMAN, GLANTZ  
WOLFSON & TOWBIN, BY  
MS. JANICE A. ALWIN  
321 North Clark Street  
Suite 800  
Chicago, Illinois 60610

ALEXANDRA ROTH, CSR, RPR  
Official Court Reporter  
219 South Dearborn Street  
Room 1224  
Chicago, Illinois 60604  
(312) 294-0134

EXH 5

1 (Proceedings had in open court:)

2 THE CLERK: 07 C 385, Google versus Central  
3 Manufacturing. Motion hearing.

4 MR. STOLLER: Good morning, your Honor. Leo Stoll  
5 S-t-o-l-l-e-r.

6 THE COURT: Good morning.

7 MS. ALWIN: Good morning, your Honor. Janice Alwin  
8 A-l-w-i-n, on behalf of Richard Fogel, Chapter 7 trustee for  
9 the bankruptcy estate of Leo Stoller.

10 THE COURT: Good morning.

11 MR. ZELLER: Good morning, your Honor. Mike Zeller  
12 behalf of Google, Inc. That's Z-e-l-l-e-r.

13 THE COURT: Good morning.

14 Well, we have a number of motions that have hit the  
15 Court regarding Mr. Stoller's attempt to interplead or  
16 intervene in this matter and to suspend the appeal in order  
17 become a part of this particular action. And of course, we  
18 have a stipulated judgment with everybody else without Mr.  
19 Stoller.

20 Now, have I completed all the briefing on the  
21 intervention? You were going to respond to that, correct?

22 MS. ALWIN: Both the trustee and Google responded  
23 respect to jurisdiction and standing. I believe that Google  
24 thoroughly briefed the issues, the substantive issues, of all  
25 motions, and the trustee joined in that --

1 THE COURT: Okay.

2 MS. ALWIN: -- response.

3 THE COURT: And the ball is really in my court to  
4 finish up those motions and make a determination as to whether  
5 Mr. Stoller has any standing here. It was my initial  
6 understanding that you would not have standing based upon the  
7 trustee's role. But I did give everyone a chance to brief on that  
8 issue.

9 MR. STOLLER: Judge Schmetterer said on our last  
10 hearing -- asked me if I intervened on the record and indicated  
11 that I have standing in his mind. Furthermore, the motion that  
12 was filed on behalf of Google to set aside the stay, which  
13 have here and you may not have seen yet, they plead in there  
14 at least 20 different spots to lift the stay, move against  
15 Stoller in this particular action. This is the primary motion.

16 In the order lifting the stay, Judge Schmetterer  
17 which you have -- indicates that they can move against Leo  
18 Stoller as a necessary party. They are judicially estopped  
19 from now arguing that Leo Stoller is not a necessary party  
20 that their primary motion indicates in about 15 different  
21 paragraphs that I am a necessary party.

22 Furthermore, it's important for the Court to know  
23 the trustee has made numerous arguments in front of Judge  
24 Schmetterer because the corporations that they are moving  
25 against are my corporations. I am the only person in those

1 corporations. That's it. Just Leo Stoller. They have made  
2 numerous representations that these corporations are merely  
3 alter ego of Leo Stoller, that they don't exist.

4           When it's convenient for the trustee to argue that  
5 corporations aren't valid corporations, they make that argument  
6 before Judge Schmetterer. Now when it's convenient for the  
7 trustee to say, oh, no, these are valid corporations and,  
8 therefore, we are going to enter an agreement which will  
9 irreparably damage my corporations because having a civil  
10 RICO -- and there is no Judge that I know of more qualified  
11 than your Honor that knows something about RICO in this  
12 building -- and have a civil RICO default judgment entered  
13 against my corporations permanently tainting my ability to  
14 police my trademarks for the rest of my life by default, is  
15 in the best interest of my corporations.

16           I have moved to replace the trustee. There is a  
17 pending -- there is a pending appeal to replace the trustee  
18 front of Judge Hibbler. And if that for any reason is denied  
19 I'll take it up to the Seventh Circuit. And it should further  
20 be noted that when I came into this Chapter 13 -- this is  
21 important for the Court to recognize -- back in August of  
22 I only owed \$65,000 worth of claims, which I consider for  
23 purposes of the record valid claims.

24           The reason why I brought the 13, because I had six  
25 trademark infringement actions against me. I am a very sma



1 businessman. I couldn't handle all the litigation. Pure  
2 Fishing moved to convert to a 7. Okay. I am converted to  
3 I moved to appeal that.

4 Now directly because of the trustee's actions, they  
5 have added \$2.3 million in debt to my corporations by making  
6 these frivolous settlements, which are not in the best interest  
7 of my creditors, not in the best interest of my estate. I  
8 offered them to pay \$100,000 to pay my legitimate creditors  
9 to pay my administrative costs of the estate. But because  
10 actions --

11 THE COURT: You have offered that to whom?

12 MR. STOLLER: The trustee, so I could settle. I  
13 was -- I am not looking for a discharge. This is not a  
14 bankrupt individual. I filed to get a break and a breather  
15 from all this Seventh District Court proceedings that I could  
16 not handle simultaneously as a small entity.

17 Now, because of the irresponsible breaches of their  
18 fiduciary duties to my estate and to my business entities,  
19 have -- they have accrued debt in excess of \$2.3 million by  
20 these kinds of frivolous settlements.

21 This Google action that you're looking at is nothing  
22 more than a frivolous action constructed to deter the Trade  
23 Trial and Appeal Board from ruling on a petition to cancel  
24 proceeding, which they're pending a motion for summary  
25 judgment. They can't touch that, so they come to you and they

1 say, let's charge Stoller with civil RICO. Let's distract  
2 Court. Let's suspend the action to avoid a motion for summary  
3 judgment, which is now pending before the Trademark Trial and  
4 Appeal Board, in which their mark will be canceled if it goes  
5 forward because it's now in the dictionary. It's a generic  
6 term, Google. Everyone thinks of Google no matter what search  
7 engine you use.

8 They want to prevent that. They have constructed this  
9 scheme to bring this action before you and have me held  
10 responsible for civil RICO. I don't know if you know who I am,  
11 but for 30 years I have been in this building. And I have brought  
12 more than 60 trademark infringement actions, more than anybody else.  
13 They have made allegations before you, and I'll just finish my  
14 speech in a minute, that I am a vexatious litigator. Judge  
15 Kocoras has issued an executive order from the Executive  
16 Judicial Committee in this building a year ago, having a rule  
17 to show cause why I shouldn't be suspended from initiating  
18 litigation.

19 After an extensive review by the Executive Judicial  
20 Committee of this court in this building, they issued a  
21 decision saying Stoller's -- after reviewing all of my history  
22 25 years, I'm okay. You can continue policing your marks.

23 They on the other hand have made the argument that  
24 I am unworthy because I am a vexatious litigator, because I have  
25 150 trademarks. I need to police those brands all over the

1 country and I have to. I am unworthy to be before you.

2 The important consideration for the Court is first  
3 all, and I'll conclude now, is that they are judicially  
4 estopped from arguing that I am not a necessary party in the  
5 the motion here that they presented before Judge Schmetterer  
6 order to lift the stay in 20 different paragraphs mentioned  
7 Stoller and mentions the two entities as necessary parties  
8 their motion.

9 Now, Mr. Zeller comes from California today, and he  
10 filed an affidavit where I am not a necessary party. What  
11 are attempting to do, they are attempting to get a default  
12 judgment against my corporations, possibly sue me later, and  
13 permanently destroy my ability to police marks after this  
14 proceeding has been over, and thirdly, to avoid the  
15 consequences of a petition to cancel proceedings before the  
16 Trademark Trial and Appeal Board. They argue that --

17 THE COURT: I understand your position. Okay.

18 Since you came all the way from California, sir, do  
19 you want to put something on the record today?

20 MR. ZELLER: Yes, thank you, your Honor. I won't,  
21 course, respond to most of those because it's not here nor  
22 there.

23 Mr. Stoller makes the representation that we took  
24 position that he was a necessary party and that's not corre  
25 He doesn't point to anything specific, doesn't put anything

1 from our statements in front of the bankruptcy court, because  
2 we did not say he was a necessary party to this action.

3 Moreover, based on the authorities that we've cited in  
4 our brief, even if we had said that, it would be of no  
5 consequence because standing is subject matter jurisdiction.  
6 It can't be waived, can't be stipulated to. So there is simply  
7 no basis for him to be asserting standing in order to interfere  
8 in this case.

9 THE COURT: Is there anything going on in the  
10 bankruptcy court that would divest me of jurisdiction over  
11 handling your joint motion for entry of stipulated agreement?

12 MR. ZELLER: No, your Honor, and to the contrary.  
13 Judge Schmetterer specifically approved this settlement as  
14 being in the best interest of the estate, which includes the  
15 defendants, the corporate entities who are the defendants here.  
16 So this was done -- and I believe we submitted all the papers  
17 to your Honor, which shows quite clearly that Judge Schmetterer  
18 saw this, made that determination. And that is in fact why  
19 we are here today.

20 And in particular, the reason why we are here is  
21 because, of course, the kind of permanent injunction that we are  
22 looking for, to bring a complete resolution to this and put  
23 end to the effects to Google, can only be entered by the  
24 district court. Obviously the bankruptcy court is not a place  
25 where that can be done.

1 MR. STOLLER: That's on appeal. Just so --

2 THE COURT: I understand.

3 MR. STOLLER: -- appealed that decision, and my  
4 argument is the Court doesn't have jurisdiction.

5 I would like to submit for your -- I don't think  
6 have a copy of their motion to -- that they submitted to Judge  
7 Schmetterer. You don't have this.

8 THE COURT: Okay. I understand.

9 MR. STOLLER: I think you should have a copy of the  
10 which refutes exactly what Mr. Zeller has said, that I am not a  
11 necessary party. And if you read that, I am the prime mover in  
12 this particular RICO action, Leo Stoller.

13 THE COURT: Okay. Just for the record, Mr. Stoller  
14 has provided the Court with a 15-page motion of Google, Inc.  
15 for order declaring proposed suit to be outside the scope of  
16 stay or in the alternative modifying stay. And it is a Michael  
17 Zeller document, just so you know which one it is when you  
18 looking on the record.

19 Okay. Thank you, and I understand.

20 Now, I cannot enter the motion for entry of judgment  
21 until I resolve the other matter regarding his intervention.  
22 And so I will deal with that first and then deal with your  
23 motion second. And I will rule by mail. I will put you on  
24 status call for three weeks out just so that something doesn't  
25 slip through the cracks.

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So if you can get a new date for this?

THE CLERK: March 13 at 9:00 a.m.

MR. STOLLER: March 13?

THE COURT: Anything else, counsel or Mr. Stoller?

MR. STOLLER: I appreciate your --

THE COURT: Thank you very much.

MR. STOLLER: Thank you, Judge.

MR. ZELLER: Thank you, your Honor.

MS. ALWIN: Thank you, your Honor.

(Which were all the proceedings had at the hearing of the  
within cause on the day and date hereof.)

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.



Official Court Reporter  
U.S. District Court  
Northern District of Illinois  
Eastern Division

2-23-07

Date

**United States District Court, Northern District of Illinois**

<b>Name of Assigned Judge or Magistrate Judge</b>	Virginia M. Kendall	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	07 C 385	<b>DATE</b>	3/19/2007
<b>CASE TITLE</b>	Google Inc. Vs. Central Mfg. Inc., et al.		

**DOCKET ENTRY TEXT**

Motion hearing held. For the reasons stated on the record in open court, Movant Stoller's motion for permission to appeal in forma pauperis [41] is granted.

Docketing to mail notices.

00:07

<b>Courtroom Deputy Initials:</b>	GR
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Appeal No: 07-1569

**KC FILED**  
MAR 19 2007  
M.A.P.  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

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.

Case No: 07-CV-385

Hon. Virginia M. Kendall

Magistrate Judge Cole

Appeal from the U.S. District  
Court for the Northern District  
Eastern Division  
Order by Virginia M. Kendall  
Dated March 12, 2007

**REPLY TO GOOGLE'S OPPOSITION TO MOTION FOR PERMISSION TO APPEAL  
IN FORMA PAUPERIS**

NOW COMES Leo Stoller, who is currently in Chapter 7 bankruptcy, Case No:  
05-B-64075 and states as follows.

Leo Stoller asserts that Google's Opposition is specious and without merit. Google  
attempts to influence this court by asserting evidence of Stoller financial situation as of August  
31, 2006.

It is a matter of public record that Stoller has 2.3 million dollars of bankruptcy claims  
against Stoller. See a true and correct copy of Stoller's claim register. In August of 2006  
Stoller has only \$65,000 in claims see a true and correct copy of the Chapter 13 Register.  
Stoller is not employed and has no source of income. In addition Stoller, is going through a  
divorce and his wife has recently filed a claim of \$50,000 for back child support. See attached  
true and correct copy of the said claim. Stoller financial situation does not permit him to even  
be able to make his child support payments and has only thus been able to see his three  
children ages 11, 13 and 15 once since November of 2006.



If Stoller cannot even make his child support payments because he has no funds to make them that clearly establishes Stoller's Pauperis status.

Stoller has asserted that his due process and equal protection rights under the Fifth and Fourteen Amendments of the US Constitution will be violated if this court denies Stoller Pauperis Petition is denied.

If Stoller who is in a Chapter 7 Bankruptcy proceeding, where the Trustee has seized all of his assets and has over 2.3 million dollars of debt, has no source of income, has child support claims of \$50,000 and does not even have any funds to pay child support payments, does not qualify under the law as a "pauper" no one can qualify as a "pauper" and no one should be allowed to Appeal in Forma Pauperis.

WHEREFORE, Stoller prays that this court grant Stoller Motion for Permission to Appeal In Forma Pauperis.



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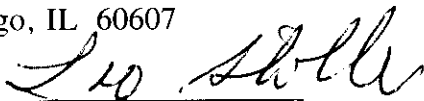
Leo Stoller  
7115 W. North Avenue  
Oak Park, Illinois 60302  
(312) 545-4554  
Email: ldms4@hotmail.com

Date: March 18, 2007

**Certificate of Mailing**

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

Clerk of the Court  
United States District Court  
219 S. Dearborn  
Chicago, IL 60607



Leo Stoller  
Date: March 19, 2007

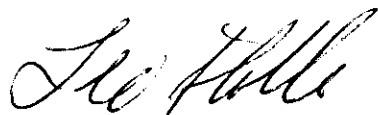
**Certificate of Service**

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

Michael T. Zeller  
Quinn, Emanuel, Urquhart,  
Oliver & Hedges, LLP.  
865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606



Leo Stoller  
Date: 3-19-07

**DECLARATION OF LEO STOLLER**

The undersigned, Leo Stoller, declares is authorized to execute this document on its behalf, that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code. Central Mfg. Co. hold rights and relies upon the attached Federal Trademark Registration numbers herein in support of this Notice of Opposition.

Dated: March 18, 2007

By: \_\_\_\_\_

Leo Stoller

C:\MARKS42\

## Northern District of Illinois Claims Register

### 05-64075 Leo Stoller CASE CONVERTED on 09/01/2006

**Honorable Judge:** Jack B. Schmetterer      **Chapter:** 7  
**Office:** Chicago      **Last Date to file claims:** 12/20/2006  
**Trustee:** Richard M Fogel      **Last Date to file (Govt):** 12/20/2006

<i>Creditor:</i> # 10561302 Portfolio Recovery Associates, LLC PO Box 41067 Norfolk, Va 23541	<b>Claim No: 1</b> <i>Filed:</i> 01/13/2006 <i>Entered:</i> 01/13/2006	<i>Status:</i> <i>Filed by:</i> CR <i>Entered by:</i> Garcia, Dolores <i>Modified:</i>
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Unsecured claimed: \$400.00

**Total claimed: \$400.00**

*History:*

1-1 01/13/2006 Claim #1 filed by Portfolio Recovery Associates, LLC , total amount claimed: \$400 (Garcia, Dolores)

*Description:*

*Remarks:*

<i>Creditor:</i> # 10543184 Counsel Press C/O Teller, Levit, et al 11 E. Adams, 8th Floor Chicago, IL 60603	<b>Claim No: 2</b> <i>Filed:</i> 01/19/2006 <i>Entered:</i> 01/19/2006	<i>Status:</i> <i>Filed by:</i> AT <i>Entered by:</i> Posen, Kevin <i>Modified:</i>
---	--	--

Unsecured claimed: \$11439.57

**Total claimed: \$11439.57**

*History:*

2-1 01/19/2006 Claim #2 filed by Counsel Press , total amount claimed: \$11439.57 (Posen, Kevin)

*Description:*

*Remarks:*

<i>Creditor:</i> # 10601427 Benjamin, Berneman and Brom, LLC 175 W. Jackson, Ste. 1600 Chicago, IL 60604	<b>Claim No: 3</b> <i>Filed:</i> 02/16/2006 <i>Entered:</i> 02/16/2006	<i>Status:</i> <i>Filed by:</i> CR <i>Entered by:</i> Berneman, Beverly <i>Modified:</i>
---	--	---

Unsecured claimed: \$20826.40

**Total claimed: \$20826.40**

*History:*

3-1 02/16/2006 Claim #3 filed by Benjamin, Berneman and Brom, LLC , total amount claimed: \$20826.4 (Berneman, Beverly)

*Description:*

*Remarks:*

*Creditor:* # 10601452

Querrey & Harrow, Ltd.  
175 W. Jackson, Ste. 1600  
Chicago, IL 60604

**Claim No: 4**

*Filed:* 02/16/2006  
*Entered:* 02/16/2006

*Status:*

*Filed by:* CR  
*Entered by:* Benjamin, Robert  
*Modified:*

Unsecured claimed: \$25382.40

**Total claimed: \$25382.40**

*History:*

4-1 02/16/2006 Claim #4 filed by Querrey & Harrow, Ltd. , total amount claimed: \$25382.4 (Benjamin, Robert)

*Description:*

*Remarks:*

*Creditor:* # 10610239

ASSET ACCEPTANCE LLC  
PROVIDIAN  
PO BOX 2036  
WARREN MI 48090

**Claim No: 5**

*Filed:* 02/23/2006  
*Entered:* 02/23/2006

*Status:*

*Filed by:* CR  
*Entered by:* Elliott, Christina  
*Modified:*

Unsecured claimed: \$1296.04

**Total claimed: \$1296.04**

*History:*

5-1 02/23/2006 Claim #5 filed by ASSET ACCEPTANCE LLC , total amount claimed: \$1296.04 (Elliott, Christina)

*Description:*

*Remarks:*

*Creditor:* # 10647980

Illinois Department of Revenue  
Bankruptcy Section  
100 W Randolph St., Level 7-400

**Claim No: 6**

*Filed:* 03/17/2006  
*Entered:* 03/17/2006

*Status:*

*Filed by:* CR  
*Entered by:* Horton, Patience  
*Modified:*

Chicago IL 60601

Priority claimed: \$317.91

**Total claimed: \$317.91**

*History:*

6-1 03/17/2006 Claim #6 filed by Illinois Department of Revenue , total amount claimed: \$317.91 (Horton, Patience)

*Description:*

*Remarks:*

*Creditor:* # 10659981  
LVNV Funding LLC its successors and assigns  
as assignee of Citibank NA  
c/o Resurgent Capital Services  
PO Box 10587  
Greenville, SC 29603-0587

**Claim No: 7**  
*Filed:* 03/24/2006  
*Entered:* 03/24/2006

*Status:*  
*Filed by:* CR  
*Entered by:* Gaines, Susan  
*Modified:*

Unsecured claimed: \$2070.02

**Total claimed: \$2070.02**

*History:*

7-1 03/24/2006 Claim #7 filed by LVNV Funding LLC its successors and assigns , total amount claimed: \$2070.02 (Gaines, Susan)

*Description:*

*Remarks:*

*Creditor:* # 10669986  
Pure Fishing, Inc.  
c/o Lance Johnson  
Roynance, Abrams, Berdo & Goodman,  
LLP  
1300 19th Street, N.W. Suite 600  
Washington, D.C. 20036

**Claim No: 8**  
*Filed:* 03/30/2006  
*Entered:* 03/30/2006

*Status:*  
*Filed by:* CR  
*Entered by:* Lauter, Richard  
*Modified:*

Unsecured claimed: \$740315.36

**Total claimed: \$740315.36**

*History:*

8-1 03/30/2006 Claim #8 filed by Pure Fishing, Inc. , total amount claimed: \$740315.36 (Lauter, Richard)

*Description:*

*Remarks:*

*Creditor:* # 10605699  
Lance Construction Co., Inc.  
Lance Johnson  
323 Hillcrest Drive

**Claim No: 9**  
*Filed:* 03/30/2006  
*Entered:* 03/31/2006

*Status:*  
*Filed by:* CR  
*Entered by:* Henley, Mary  
*Modified:*

Algonquin, IL 60102

Unsecured claimed: \$3275.00

**Total claimed: \$3275.00**

*History:*

9-1 03/30/2006 Claim #9 filed by Lance Construction Co., Inc. , total amount claimed: \$3275 (Henley, Mary)

*Description:*

*Remarks:*

*Creditor:* # 10688087

B-Real, LLC/Chase Bank USA, N.A.

Mail Stop 550

2101 Fourth Ave., Suite 1030

Seattle, WA, 98121

**Claim No: 10**

*Filed:* 04/10/2006

*Entered:* 04/10/2006

*Status:*

*Filed by:* CR

*Entered by:* Kane, Steven

*Modified:*

Unsecured claimed: \$215.48

**Total claimed: \$215.48**

*History:*

10-1 04/10/2006 Claim #10 filed by B-Real, LLC/Chase Bank USA, N.A. , total amount claimed: \$215.48 (Kane, Steven)

*Description:*

*Remarks:*

*Creditor:* # 11050675

Google Inc.

c/o Michael Zeller

Quinn Emanuel et al

865 South Figueroa St, 10th Fl

Los Angeles, CA 90017

**Claim No: 11**

*Filed:* 12/07/2006

*Entered:* 12/07/2006

*Amended By Claim No:* 11

*Status:*

*Filed by:* CR

*Entered by:* Barrett, William

*Modified:*

Priority claimed: \$250000.00

**Total claimed: \$250000.00**

*History:*

① 11-1 12/07/2006 Claim #11 filed by Google Inc. , total amount claimed: \$250000 (Barrett, William)

① 11-2 12/20/2006 Amended Claim #11 filed by Google Inc. , total amount claimed: \$250000 (Barrett, William)

*Description:*

*Remarks:*

*Creditor:* # 10669986  
Pure Fishing, Inc.  
c/o Lance Johnson  
Roylance, Abrams, Berdo & Goodman,  
LLP  
1300 19th Street, N.W. Suite 600  
Washington, D.C. 20036

**Claim No: 12**  
*Filed:* 12/19/2006  
*Entered:* 12/19/2006

*Status:*  
*Filed by:* CR  
*Entered by:* Factor, William  
*Modified:*

Unsecured claimed: \$969751.81

**Total claimed: \$969751.81**

*History:*

- 12-1 12/19/2006 Claim #12 filed by Pure Fishing, Inc. , total amount claimed: \$969751.81 (Factor, William)

*Description:*

*Remarks:*

*Creditor:* # 11071324  
Wendy Morgan  
Law Offices of Wendy R. Morgan  
1845 East Rand Rd  
Arlington Heights, Il. 60004-4356

**Claim No: 13**  
*Filed:* 12/19/2006  
*Entered:* 12/19/2006

*Status:*  
*Filed by:* AT  
*Entered by:* Mosberg, Clay  
*Modified:*

Unsecured claimed: \$150000.00

**Total claimed: \$150000.00**

*History:*

- 13-1 12/19/2006 Claim #13 filed by Wendy Morgan , total amount claimed: \$150000 (Mosberg, Clay)

*Description:*

*Remarks:*

*Creditor:* # 11071324  
Wendy Morgan  
Law Offices of Wendy R. Morgan  
1845 East Rand Rd  
Arlington Heights, Il. 60004-4356

**Claim No: 14**  
*Filed:* 12/19/2006  
*Entered:* 12/19/2006

*Status:*  
*Filed by:* AT  
*Entered by:* Mosberg, Clay  
*Modified:*

Unsecured claimed: \$30000.00

**Total claimed: \$30000.00**

*History:*

- 14-1 12/19/2006 Claim #14 filed by Wendy Morgan , total amount claimed: \$30000 (Mosberg, Clay)

*Description:*

*Remarks:*

*Creditor:* # 11071324  
Wendy Morgan  
Law Offices of Wendy R. Morgan  
1845 East Rand Rd

**Claim No: 15**  
*Filed:* 12/19/2006  
*Entered:* 12/19/2006

*Status:*  
*Filed by:* CR  
*Entered by:* Mosberg, Clay  
*Modified:*



Arlington Heights, Il. 60004-4356

Unknown claimed: \$50000.00

**Total claimed: \$50000.00**

*History:*

- 15-1 12/19/2006 Claim #15 filed by Wendy Morgan , total amount claimed: \$50000 (Mosberg, Clay)

*Description:*

*Remarks:*

*Creditor:* # 11074648

Lancope, Inc. *History*

Bryan G Harrison, ESQ

1600 Atlanta Financial Center

3343 Peachtree Road NE

Atlanta, GA 30326-1044

*Claim No:* 16

*Filed:* 12/20/2006

*Entered:* 12/20/2006

*Status:*

*Filed by:* CR

*Entered by:* Nylen, Sven

*Modified:*

**Total claimed:**

*History:*

- 16-1 12/20/2006 Claim #16 filed by Lancope, Inc. , total amount claimed: \$0 (Nylen, Sven)

*Description:*

*Remarks:* (16-1) SEE EXHIBIT A

*Creditor:* # 11073980

Pure Fishing, Inc. (ADMINISTRATIVE)

c/o Lance Johnson

Roylance, Abrams, Berdo & Goodman

1300 19th St., NW Suite 600

Washington, D.C. 20036

*Claim No:* 17

*Filed:* 12/20/2006

*Entered:* 12/20/2006

*Status:*

*Filed by:* AT

*Entered by:* Lorber, Sara

*Modified:*

Admin claimed: \$131760.00

**Total claimed: \$131760.00**

*History:*

- 17-1 12/20/2006 Claim #17 filed by Pure Fishing, Inc. , total amount claimed: \$131760 (Lorber, Sara)

*Description:*

*Remarks:*

*Creditor:* # 11076084

GoDaddy Software, Inc

Gallagher & Kennedy, P.A.

Attn: Joseph E Cotterman

*Claim No:* 18

*Filed:* 12/21/2006

*Entered:* 12/22/2006

*Status:*

*Filed by:* CR

*Entered by:* Henley, Mary

*Modified:*

2575 East Camelback Road,  
 Phoenix, AZ 85016

**Total claimed:**

*History:*

- 18-1 12/21/2006 Claim #18 filed by GoDaddy Software, Inc , total amount claimed: \$0 (Henley, Mary)

*Description:* (18-1) Unliquidated

*Remarks:*

*Creditor:* # 11082709  
 C. William Michaels  
 1579 Dellsway Road  
 Baltimore, MD 21286

**Claim No: 19**  
*Filed:* 12/27/2006  
*Entered:* 12/28/2006

*Status:*  
*Filed by:* CR  
*Entered by:* Henley, Mary  
*Modified:*

Unsecured claimed: \$2065.00

**Total claimed: \$2065.00**

*History:*

- 19-1 12/27/2006 Claim #19 filed by C. William Michaels , total amount claimed: \$2065 (Henley, Mary)

*Description:*

*Remarks:*

**Claims Register Summary**

**Case Name:** Leo Stoller  
**Case Number:** 05-64075  
**Chapter:** 7  
**Date Filed:** 12/20/2005  
**Total Number Of Claims:** 19

	<b>Total Amount Claimed</b>	<b>Total Amount Allowed:</b>
<b>Unsecured</b>	\$1957037.08	
<b>Secured</b>		
<b>Priority</b>	\$250317.91	
<b>Unknown</b>	\$50000.00	
<b>Administrative</b>	\$131760.00	
<b>Total</b>	<b>\$2389114.99</b>	<b>\$0.00</b>

**PACER Service Center**

**Transaction Receipt**

01/05/2007 11:47:23

<b>PACER Login:</b>	it0085	<b>Client Code:</b>	
<b>Description:</b>	Claims Register	<b>Search Criteria:</b>	05-64075 Filed or Entered From: 9/7/2005 Filed or Entered To: 1/5/2007
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.16

UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

IN RE:  
LEO STOLLER

CASE NO. 05 B 64075

CHAPTER 13

JUDGE: JACK B SCHMETTERER

Debtor  
SSN XXX-XX-7972-----  
TRUSTEE'S FINAL REPORT AND ACCOUNT  
-----

The case was filed on 12/20/2005 and was not confirmed.

The case was converted to chapter 7 without confirmation 09/01/2006.  
-----

CREDITOR NAME	CLASS	CLAIM AMOUNT	INTEREST PAID	PRINCIPAL PAID
BRETT BROTHERS INC	NOTICE ONLY	NOT FILED	.00	.00
COUNSEL PRESS	UNSECURED	11439.57	.00	.00
HI TEC SPORTS USA	NOTICE ONLY	NOT FILED	.00	.00
QUERREY & HARROW	UNSECURED	25382.40	.00	.00
NEWDEA INC	NOTICE ONLY	NOT FILED	.00	.00
PURE FISHING	UNSECURED	.00	.00	.00
PORTFOLIO RECOVERY ASSOC	UNSECURED	400.00	.00	.00
BENJAMIN BERNEMAN & BROM	UNSECURED	20826.40	.00	.00
LANCE JOHNSON	UNSECURED	3275.00	.00	.00
ASSET ACCEPTANCE LLC	UNSECURED	1296.04	.00	.00
ILLINOIS DEPT OF REVENUE	PRIORITY	317.91	.00	.00
RESURGENT CAPITAL SERVIC	UNSECURED	2070.02	.00	.00
WEINBERG RICHMOND LLP	ATTORNEY	.00	.00	.00
B-LINE	UNSECURED	215.48	.00	.00
RICHARD M FOGEL	ADMINISTRATIV	NOT FILED	.00	.00
MELVIN J KAPLAN	DEBTOR ATTY	.00		.00
TOM VAUGHN	TRUSTEE			.00
DEBTOR REFUND	REFUND			.00

Summary of Receipts and Disbursements:  
-----

	RECEIPTS	DISBURSEMENTS
TRUSTEE	.00	
PRIORITY		.00
SECURED		.00
UNSECURED		.00
ADMINISTRATIVE		.00
TRUSTEE COMPENSATION		.00
DEBTOR REFUND		.00
TOTALS	.00	.00

Based on the above information, the Trustee requests the court enter an order discharging the Trustee, releasing the Trustee's surety from any further liability related to the above proceedings.

Dated: 02/08/07

/s/ Tom Vaughn

---

TOM VAUGHN  
CHAPTER 13 TRUSTEE

FORM 10 (Official Form 10) (10/05)

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS

PROOF OF CLAIM

Name of Debtor Leo Stoller Case Number 05-64075

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):  
Nancy Reich

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and address where notices should be sent:  
Nancy Reich  
7815 Westwood Dr.

Check box if you have never received any notices from the bankruptcy court in this case.

Telephone number:  
708-442-5343

Check box if the address differs from the address on the envelope sent to you by the court.

Last four digits of account or other number by which creditor identifies debtor:

Check here  replaces a previously filed claim, dated December 19, 2006  
 amends Claim #15

THIS SPACE IS FOR COURT USE ONLY

1. Basis for Claim

- Goods sold
- Services performed
- Money loaned
- Personal injury/wrongful death
- Taxes

- Retiree benefits as defined in 11 U.S.C. § 1114(a)
- Wages, salaries, and compensation (fill out below)  
 Last four digits of your SS #: \_\_\_\_\_  
 Unpaid compensation for services performed

Other Child Support

from \_\_\_\_\_ to \_\_\_\_\_  
 (date) (date)

2. Date debt was incurred:

Various

3. If court judgment, date obtained:

4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed. See reverse side for important explanations.

**Unsecured Nonpriority Claim**  
 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 (c) none or only part of your claim is entitled to priority.

**Secured Claim**  
 Check this box if your claim is secured by collateral (including a right of setoff).

Brief Description of Collateral:  
 Real Estate  Motor Vehicle  Other \_\_\_\_\_

Value of Collateral: \$ \_\_\_\_\_

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ \_\_\_\_\_

**Unsecured Priority Claim**

Check this box if you have an unsecured claim, all or part of which is entitled to priority.

Amount entitled to priority \$ 50,000.00

Specify the priority of the claim:

- Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).
- Wages, salaries, or commissions (up to \$10,000)\* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4).
- Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).

- 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)(7).
- Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).
- Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(\_\_\_\_).

\*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.

5. Total Amount of Claim at Time Case Filed:

\$ \_\_\_\_\_ (unsecured) \_\_\_\_\_ (secured) \$50,000.00 (priority) \_\_\_\_\_ (total)

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

7. Supporting Documents: Attach copies of supporting documents, 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.

8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date 1/26/07 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):  
Nancy Reich, Nancy Reich

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.

*MD*

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

**Appeal No: 07-1569**

**FILED**

**MAR 21 2007** *10*

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

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. )

Case No: 07-CV-385  
 Judge Kendall  
 Magistrate Judge Cole

**NOTICE OF FILING**

TO: Michael T. Zeller  
 Quinn, Emanuel, Urquhart,  
 Oliver & Hedges, LLP.  
 865 S. Figueroa Street, 10th Floor  
 Los Angeles, California 90017

William J. Barrett  
 Barack, Ferrazzano, Kirschbaum,  
 Perlman & Nagelberg, LLP.  
 333 W. Wacker Drive, Suite 2700  
 Chicago, Illinois 60606

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

PLEASE TAKE NOTICE that on the **21st day of March, 2007**, there was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, **Supplemental Notice of Appeal Of Order Issued By Judge Virginia M. Kendall On March 15, 2007**, a copy of which is attached hereto.

I certify that I served this Notice mailing a copy to each person to whom it is directed at the address above indicated by depositing it in the U.S. Mail on this *21<sup>st</sup>* day of March, 2007, with proper postage prepaid.

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

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

Appeal No: 07-1569

**FILED**

MAR 21 2007 *10*

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

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.	)

Case No: 07-CV-385  
Hon. Virginia M. Kendall  
Magistrate Judge Cole  
Appeal from the U.S. District  
Court for the Northern District  
Eastern Division  
Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007,  
and 3/16/2007

**SUPPLEMENTAL NOTICE OF APPEAL OF ORDER ISSUED BY  
JUDGE VIRGINIA M. KENDALL ON MARCH 15, 2007**

Leo Stoller, Appellant, filed a Notice of Appeal on March 15, 2007 of Judge Kendall's order dated March 12, 2007 denying Leo Stoller's Motion to Intervene, Motion To Interplead and Motions to Suspend.

Stoller is moving to supplement its Notice of Appeal with the Permanent Injunction And Final Judgment As To Defendants Central Mfg. Inc. and Stealth Industries, Inc. issued by Virginia M. Kendall on March 15, 2007, attached hereto.




---

Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
312/ 545-4554  
Email: ldms4@hotmail.com

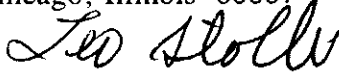
Date: March 21, 2007



**Certificate of Mailing**

I hereby certify that this motion is being hand-delivered in an envelope addressed to:

Clerk of the Court  
United States District Court  
219 S. Dearborn  
Chicago, Illinois 60607



Leo Stoller

Date: March 21, 2007

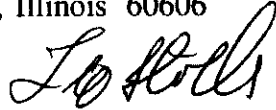
**Certificate of Service**

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 T. Zeller  
Quinn, Emanuel, Urquhart,  
Oliver & Hedges, LLP.  
865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606



Leo Stoller

Date: 3-21-07

2

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.	)	

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

This 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 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 to or dilutes 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 is, 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 GOOGLE, whether in whole or in part and regardless of what other terms may be included;

(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



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: Feb. 13, 2007

GOOGLE INC.

By: Michael T. Zeller  
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: 2/13 2007

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: [Signature]  
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: 3-15, 2007

[Signature]  
Hon. Virginia M. Kendall  
United States District Judge

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

**LAL FILED**  
MAR 27 2007  
MICHAEL W. DOBBINS  
CLERK U.S. DISTRICT COURT

Appeal No: 07-1651

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.

Case No: 07-CV-385

Hon. Virginia M. Kendall

Magistrate Judge Cole

Appeal from the U.S. District  
Court for the Northern District  
Eastern Division

Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007  
and 3/16/2007

**DESIGNATION OF THE CONTENT OF THE RECORD ON APPEAL**

NOW COMES Leo Stoller and identifies the record for appeal which consists of the transcripts of the hearings on March 13 and March 19, 2007. Copies of the transcripts are attached hereto. The record for appeal also consists of the following motions, docket report and transcript:

- 1) Motion To Suspend (Docket No. 11).
- 2) Motion To Intervene (Docket No. 16).
- 3) Motion To Interplead (Docket No. 8).
- 4) Motion To Suspend Pending The Appeal To Lift The Automatic Stay For Google Inc. To Sue The Debtor Leo Stoller (Docket No. 9).
- 5) Motion To Suspend Pending The Trademark Trial And Appeal Board's Decision On The Defendant's Motion For Summary Judgment (Docket No. 10).
- 6) All documents listed on the attached U.S. District Court Docket Report
- 7) Transcript of Proceedings Before The Honorable Virginia M. Kendall Dated February 20, 2007





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

Date: March 27, 2007

**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 South Dearborn  
Chicago, IL 60607



Leo Stoller  
Date: March 27, 2007

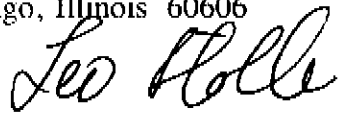
**Certificate of Service**

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

Michael T. Zeller  
Quinn, Emanuel, Urquhart,  
Oliver & Hedges, LLP.  
865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606



Leo Stoller  
Date: 3-27-07

09:14:24 1

2 UNITED STATES DISTRICT COURT  
3 NORTHERN DISTRICT OF ILLINOIS  
4 EASTERN DIVISION

4 GOOGLE, INC., Case No. 1:07-cv-385  
5 Plaintiff, Chicago, Illinois  
6 v. March 13, 2007  
7 CENTRAL MANUFACTURING, INC., Status Conference  
8 et al.,  
9 Defendants.

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10 TRANSCRIPT OF STATUS CONFERENCE  
11 BEFORE THE HONORABLE VIRGINIA M. KENDALL  
12 UNITED STATES DISTRICT JUDGE

12 APPEARANCES:

13 For the Plaintiff: Quinn, Emanuel, Urquhart &  
14 Oliver, LLP  
15 By: Michael T. Zeller  
16 865 S. Figueroa St., 10th Floor  
17 Los Angeles, CA 90017  
18 (213) 443-3000

19 Also Present:  
20 Chapter 7 Trustee, Shaw, Gussis, Fishman, Glantz,  
21 Richard M. Fogel Wolfson & Towbin, LLC  
22 By: Janice A. Alwin  
23 321 N. Clark St., Ste. 800  
24 Chicago, IL 60610  
25 (312) 541-0151

Leo Stoller  
7115 W. North Avenue  
Oak Park, IL 60604  
(312) 545-4554

23 Court Reporter: April M. Metzler, RPR, CRR  
24 219 South Dearborn St., Rm. 2318-A  
25 Chicago, IL 60604  
(312) 408-5154

25 Proceedings recorded by mechanical stenography;  
transcript produced by notereading.

(Commenced at 9:14 a.m.)

THE CLERK: 07C0385, Google versus Central Manufacturing, status hearing.

MR. STOLLER: Good morning, your Honor. Leo Stoller.

THE COURT: Good morning, Mr. Stoller.

MS. ALWIN: Good morning, your Honor.

Janice Alwin on behalf of the Chapter 7 Trustee, A-l-w-i-n.

THE COURT: Good morning.

MR. ZELLER: Good morning, your Honor. Mike Zeller on behalf of Google, Inc.

THE COURT: Good morning. Well, I think you've all received my opinion and order today, so I am finding, Mr. Stoller, that you don't have standing to intervene. And that leaves us then with the issue of the settlement agreement.

And if the settlement agreement is executed and agreed to, what is the next step for me as far as

09:15:22 1 THE COURT: Okay. I'm not going to exercise  
09:15:24 2 my discretion to do so.

09:15:26 3 MR. STOLLER: Thank you, Judge.

09:15:26 4 THE COURT: And so at this point, where do  
09:15:28 5 we stand as far as the settlement agreement is  
09:15:30 6 concerned?

09:15:30 7 MS. ALWIN: There is a joint motion before  
09:15:32 8 your Honor to enter the permanent injunction. The  
09:15:34 9 settlement agreement has been executed by all parties.

09:15:38 10 THE COURT: Okay. And I have reviewed that,  
09:15:38 11 and I'll grant your motion then, the joint motion which  
09:15:42 12 I know is opposed by Mr. Stoller and wanted to  
09:15:44 13 intervene. I denied his motion to intervene, and so I  
09:15:48 14 will grant the preliminary injunction -- or the  
09:15:50 15 permanent injunction, rather.

09:15:52 16 Anything else?

09:15:52 17 MR. ZELLER: No, your Honor. This should  
09:15:54 18 conclude, I think, the proceedings with the entry of the  
09:15:56 19 permanent injunction.

09:15:56 20 THE COURT: Okay. Good luck, Mr. Stoller.  
09:16:00 21 Thank you.

09:16:00 22 MR. STOLLER: Thank you very much.

09:16:00 23 MS. ALWIN: Thank you, your Honor.

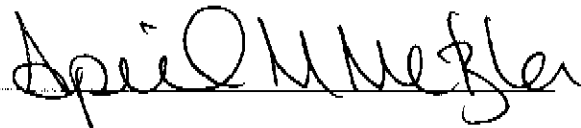
09:16:02 24 MR. ZELLER: Thank you.

25 (Concluded at 9:16 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. Metzler, RPR, CRR

03-13-07  
Date

09:06:58

1

2

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

3

4

GOOGLE, INC.,

Case No. 1:07-cv-385

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Plaintiff,

Chicago, Illinois

6

v.

March 19, 2007

Motion Hearing

7

CENTRAL MANUFACTURING, INC.,

et al.,

8

Defendants.

9

10

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE VIRGINIA M. KENDALL  
UNITED STATES DISTRICT JUDGE

11

12

APPEARANCES:

13

For the Plaintiff:

Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg

14

By: William J. Barrett  
333 W. Wacker Dr., Ste. 2700  
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15

16

Also Present:

17

Chapter 7 Trustee,  
Richard M. Fogel

Shaw, Gussis, Fishman, Glantz,  
Wolfson & Towbin, LLC

18

By: Janice A. Alwin  
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Court Reporter:

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219 South Dearborn St., Rm. 2318-A  
Chicago, IL 60604  
(312) 408-5154

24

25

Proceedings recorded by mechanical stenography;  
transcript produced by notereading.

09:07:02 1 (Commenced at 9:07 a.m.)

09:07:02 2 THE CLERK: 07C0385, Google versus Central  
09:07:08 3 Manufacturing, motion hearing.

09:07:10 4 MR. STOLLER: Good morning, Judge. Leo  
09:07:12 5 Stoller, S-t-o-l-l-e-r.

09:07:14 6 THE COURT: Good morning, Mr. Stoller.

09:07:16 7 MR. STOLLER: Good to see you.

09:07:16 8 THE COURT: Good to see you too.

09:07:18 9 MR. BARRETT: Good morning, your Honor.

09:07:18 10 William Barrett for Google. That's Barrett,

09:07:22 11 B-a-r-r-e-t-t.

09:07:22 12 THE COURT: Good morning.

09:07:24 13 MS. ALWIN: Good morning. Janice Alwin on  
09:07:26 14 behalf of Rick Fogel, trustee for the Chapter 7  
09:07:30 15 bankruptcy. A-l-w-i-n.

09:07:32 16 THE COURT: Good morning.

09:07:32 17 Well, I rarely get an opposition to a motion  
09:07:36 18 to proceed in forma pauperis, and so we are all here. I  
09:07:42 19 have received a response, and it looks like I've also  
09:07:44 20 received a reply that was filed today, correct?

09:07:48 21 MR. STOLLER: Yes, Judge.

09:07:50 22 THE COURT: All right. And I have not had a  
09:07:50 23 chance to look at the reply, so why don't I listen to  
09:07:54 24 you orally. I know what your motion is, to proceed  
09:07:58 25 in forma pauperis, so let me hear the opposition to

09:08:00 1 that, first.

09:08:02 2 MR. BARRETT: Your Honor, the opposition is  
09:08:02 3 several points. First, the affidavit that Mr. Stoller  
09:08:04 4 attached to his motion is nearly identical to the one  
09:08:06 5 that Judge Lindberg rejected in a very similar motion in  
09:08:10 6 the Pure Fishing case. He found that the affidavit did  
09:08:12 7 not comply with requirements of the Seventh Circuit,  
09:08:14 8 which has an application for this purpose. I also note  
09:08:16 9 that the affidavit submitted here is not sworn.

09:08:18 10 Second, as we note in our paper, the general  
09:08:22 11 statement of the affidavit, which is that Mr. Stoller is  
09:08:24 12 not financially able to pay the fee, is contradicted by  
09:08:26 13 a filing he made last month in the bankruptcy court. He  
09:08:30 14 filed a motion for leave or for permission to retain  
09:08:34 15 counsel to represent the two corporate entities, which  
09:08:36 16 are now part of his bankruptcy estate.

09:08:38 17 In that motion he made statements that --  
09:08:40 18 first implying that because -- that no estate funds  
09:08:44 19 would be needed to retain those lawyers or this lawyer,  
09:08:46 20 implying that he had the money to pay counsel.

09:08:48 21 Second, he makes statements saying that he's  
09:08:52 22 trying to settle his bankruptcy case for a payment of  
09:08:54 23 \$100,000. If he has \$100,000 to settle his bankruptcy  
09:08:58 24 case, he can certainly afford the fee here.

09:09:00 25 Finally, your Honor, the -- I note that in



09:09:02 1 the bankruptcy case Mr. Stoller has taken the Fifth  
09:09:06 2 Amendment with respect to questions on his assets. I  
09:09:08 3 think in that case that this sort of relief here is not  
09:09:10 4 appropriate.

09:09:10 5 THE COURT: Okay.

09:09:10 6 MR. STOLLER: Your Honor, I'd like to  
09:09:12 7 address the fact that the circumstances -- my economic  
09:09:16 8 circumstances have changed since I was in front of Judge  
09:09:18 9 Lindberg. In terms of the attorney that he talked about  
09:09:22 10 that I was retaining was on a barter system. He's with  
09:09:26 11 Illinois Trade. And one of my family members, who has a  
09:09:30 12 business that's with Illinois Trade contacted Illinois  
09:09:32 13 Trade on my behalf. And had I had the right to  
09:09:36 14 represent Judge Schmetterer, my corporations, I would  
09:09:40 15 have been able to use this attorney not with money, but  
09:09:42 16 with barter, because Illinois Trade is a barter  
09:09:46 17 association. A lot of lawyers are in it.

09:09:48 18 In terms of the hundred-thousand-dollar  
09:09:50 19 settlement, the trustee is holding \$345,000 in my  
09:09:56 20 daughter's home, which is -- he has seized and it was  
09:10:00 21 sold. It was a home my mother left to her, and it was  
09:10:02 22 in my name for one day and my mother was -- willed it to  
09:10:06 23 my daughter. So the hundred thousand would have come  
09:10:08 24 out. My daughter would have borrowed that to me. Right  
09:10:10 25 now I don't have access to it, but that's what I offered

09:10:12 1 to settle my debt with --

09:10:14 2 THE COURT: Wait, Mr. Stoller. What I think  
09:10:16 3 I'll do is what I do with all IFPs, when they come in  
09:10:20 4 like this.

09:10:20 5 Ms. Rosegay, will you put Mr. Stoller under  
09:10:24 6 oath, since we don't have a sworn affidavit? And I'll  
09:10:26 7 ask you some questions about your financial status.

09:10:32 8 (The witness was sworn by the clerk.)

09:10:32 9 THE COURT: Okay. Sir, first of all, do you  
09:10:36 10 have any income coming into your house now --

09:10:38 11 MR. STOLLER: No, Judge.

09:10:38 12 THE COURT: -- as your household?

09:10:40 13 And who do you live with?

09:10:40 14 MR. STOLLER: I live with my brother.

09:10:42 15 THE COURT: And is it his house or your --  
09:10:44 16 his house or your house?

09:10:44 17 MR. STOLLER: His house.

09:10:46 18 THE COURT: Does he own the house?

09:10:46 19 MR. STOLLER: No.

09:10:48 20 THE COURT: All right. Do you pay rent to  
09:10:50 21 him?

09:10:50 22 MR. STOLLER: No.

09:10:50 23 THE COURT: Who owns the house?

09:10:52 24 MR. STOLLER: The house is owned by his  
09:10:52 25 daughter.

09:10:52 1 THE COURT: Okay.

09:10:54 2 MR. STOLLER: And my brother's on Social  
09:10:56 3 Security Disability.

09:10:56 4 THE COURT: Okay. How are you paying for,  
09:10:58 5 say, food and getting around here to court today?

09:11:00 6 MR. STOLLER: My brother, out of his Social  
09:11:02 7 Security disability payments that he receives from  
09:11:04 8 Social Security, gives me some money.

09:11:06 9 THE COURT: Okay. And do you have any other  
09:11:08 10 assets that you can access? For example -- let me go  
09:11:12 11 through the list. Do you have any savings accounts?

09:11:12 12 MR. STOLLER: No, no, Judge.

09:11:14 13 THE COURT: Do you have any money in a  
09:11:16 14 checking account?

09:11:16 15 MR. STOLLER: No, Judge.

09:11:16 16 THE COURT: Do you have any stocks or bonds?

09:11:18 17 MR. STOLLER: No, Judge.

09:11:20 18 THE COURT: Do you have any money invested  
09:11:20 19 in any companies that you have access to?

09:11:22 20 MR. STOLLER: No, Judge.

09:11:24 21 THE COURT: Do you have any dependents that  
09:11:26 22 can support you, such as children?

09:11:30 23 MR. STOLLER: I have a daughter who's 39,  
09:11:34 24 but she is in Arizona and has -- I have two  
09:11:36 25 grandchildren. And she is not in a position where she

09:11:40 1 can support her father.

09:11:40 2 THE COURT: Okay. And regarding where  
09:11:44 3 you're living right now, who's paying the mortgage on  
09:11:48 4 that house?

09:11:50 5 MR. STOLLER: My daughter -- my son's -- my  
09:11:54 6 son's -- not my son -- my brother's daughter's paying  
09:11:58 7 the mortgage on the house.

09:12:00 8 THE COURT: Okay. Who pays for the  
09:12:00 9 groceries?

09:12:02 10 MR. STOLLER: His wife is working.  
09:12:04 11 Christopher -- my brother's wife does work.

09:12:06 12 THE COURT: All right. Do you have a  
09:12:06 13 vehicle, a car of any kind?

09:12:08 14 MR. STOLLER: I have a 1988 Honda -- a 1988  
09:12:16 15 Honda.

09:12:16 16 THE COURT: All right. Do you make any  
09:12:16 17 payments on that?

09:12:18 18 MR. STOLLER: No. I've had it for fifteen  
09:12:20 19 years.

09:12:20 20 THE COURT: Okay. And other than the income  
09:12:22 21 that I just discussed, do you have any liabilities that  
09:12:24 22 you're paying out? Do you have any loans or mortgages  
09:12:26 23 or rents or anything that you're paying out?

09:12:30 24 MR. STOLLER: The only thing that I'm  
09:12:32 25 paying -- and I have claims of \$2.3 million against me

09:12:34 1 in my bankruptcy estate, and I'm not making any  
09:12:38 2 payments. I don't have any money to make any payments.  
09:12:40 3 And the most embarrassing thing is I can't even make my  
09:12:44 4 child support payments, and as a result I'm unable to  
09:12:48 5 see my children. Because in order to see my three  
09:12:50 6 children -- I'm going through a divorce right now -- I  
09:12:52 7 have to participate in what's called supervised  
09:12:54 8 visitation. \$150 a week to pay a doctor to be present  
09:13:00 9 to see my children.

09:13:02 10 I don't have the funds to do that. I  
09:13:04 11 haven't been able to see my children -- and this is very  
09:13:06 12 embarrassing, because I love them very much -- once  
09:13:08 13 since November, early November.

09:13:10 14 THE COURT: Because you don't have the  
09:13:12 15 money --

09:13:12 16 MR. STOLLER: I don't have the money.

09:13:14 17 THE COURT: -- to pay for that supervision,  
09:13:14 18 that \$150 supervision?

09:13:16 19 MR. STOLLER: Right, exactly. Otherwise, I  
09:13:18 20 would see them. And prior to my divorce -- being in a  
09:13:20 21 divorce, I was Mr. Mom and took care of them and raised  
09:13:24 22 them. My wife was a nurse and worked weekends and I  
09:13:28 23 took care of them during the week, so it's extremely  
09:13:30 24 stressful not to be able to be with them at all.

09:13:32 25 THE COURT: Okay. Now, Counsel, you've

09:13:34 1 objected saying that he has assets. You've heard his  
09:13:36 2 statement under oath. What do you believe the assets  
09:13:38 3 are that he has that he can access to pay for his filing  
09:13:42 4 fee upstairs?

09:13:44 5 MR. BARRETT: Your Honor, our position is  
09:13:44 6 not that we know that he has assets, but he hasn't been  
09:13:48 7 forthcoming in the bankruptcy case to describe his  
09:13:50 8 assets. I think this may be the first time under oath  
09:13:52 9 that he has described any assets that he has.

09:13:54 10 MS. ALWIN: It is, actually, your Honor, the  
09:13:56 11 first time under oath.

09:13:58 12 THE COURT: Well, I didn't realize I had  
09:13:58 13 done anything so groundbreaking, but simply when someone  
09:14:02 14 seeks to proceed before me or to go upstairs, I always  
09:14:06 15 ask under oath what your assets are.

09:14:10 16 I have no reason, based upon the statements  
09:14:12 17 here that Mr. Stoller made or your objection to it, to  
09:14:16 18 not believe him, that he doesn't have any assets. So  
09:14:18 19 I'm going to grant your motion --

09:14:20 20 MR. STOLLER: Thank you, Judge.

09:14:22 21 THE COURT: -- to proceed in forma  
09:14:24 22 pauperis --

09:14:24 23 MR. STOLLER: Thank you.

09:14:24 24 THE COURT: -- and we have nothing further,  
09:14:26 25 I think, before this Court. All right. Thank you.

09:14:26

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MR. STOLLER: Thank you.

09:14:29

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MR. BARRETT: Thank you.

09:14:28

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MS. ALWIN: Thank you.

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(Concluded at 9:14 a.m.)

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C E R T I F I C A T E

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

14

15

16

17

April M. Metzler

03.19.07

18

April M. Metzler, RPR, CRR

Date

19

20

21

22

23

24

25

**United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge	Virginia M. Kendall	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 385	DATE	3/19/2007
CASE TITLE	Google Inc. Vs. Central Mfg. Inc., et al.		

**DOCKET ENTRY TEXT**

Motion hearing held. For the reasons stated on the record in open court, Movant Stoller's motion for permission to appeal in forma pauperis [41] is granted.

Docketing to mail notices

00:07

Courtroom Deputy  
Initials.

GR



*WR*

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

**FILED**

**MAR 28 2007**

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

**Appeal No: 07-1651**

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.	)

Case No: 07-CV-385

Hon. Virginia M. Kendall

Magistrate Judge Cole

Appeal from the U.S. District  
Court for the Northern District  
Eastern Division

Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007  
and 3/16/2007

**DESIGNATION OF ADDITIONAL CONTENT OF THE RECORD ON APPEAL**

NOW COMES Leo Stoller and identifies the record for appeal which consists of the transcripts of the hearings on March 13 and March 19, 2007. Copies of the transcripts are attached hereto. The record for appeal also consists of the following motions, docket report and transcript:

- 1) Motion To Suspend (Docket No. 11).
- 2) Motion To Intervene (Docket No. 16).
- 3) Motion To Interplead (Docket No. 8).
- 4) Motion To Suspend Pending The Appeal To Lift The Automatic Stay For Google Inc. To Sue The Debtor Leo Stoller (Docket No. 9).
- 5) Motion To Suspend Pending The Trademark Trial And Appeal Board's Decision On The Defendant's Motion For Summary Judgment (Docket No. 10).
- 6) All documents listed on the attached U.S. District Court Docket Report
- 7) Transcript of Proceedings Before The Honorable Virginia M. Kendall Dated February 20, 2007



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

Date: March 28, 2007

**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 South Dearborn  
Chicago, IL 60607



Leo Stoller  
Date: March 28, 2007

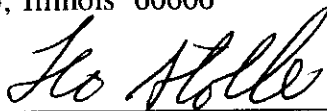
**Certificate of Service**

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.  
*Shaw, Gussis, Fishman, Glantz,  
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Chicago, Illinois 60606



Leo Stoller  
Date: 3-28-07

APPEAL, COLE, TERMED

**United States District Court  
Northern District of Illinois - CM/ECF LIVE, Ver 3.0 (Chicago)  
CIVIL DOCKET FOR CASE #: 1:07-cv-00385**

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

Date Filed: 01/19/2007  
Date Terminated: 03/15/2007  
Jury Demand: None  
Nature of Suit: 470 Racketeer/Corrupt  
Organization  
Jurisdiction: Federal Question

**Plaintiff**

**Google Inc**

represented by **Michael Thomas Zeller**  
Quinn Emanuel Urquhart & Oliver,  
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865 South Figueroa Street  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**William John Barrett**  
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Email: [william.barrett@bfkpn.com](mailto:william.barrett@bfkpn.com)  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**Central Mfg. Inc.**

*also known as*

Central Mfg Co

*also known as*

Central Mfg Co. (Inc.)

*also known as*

Central Manufacturing Company, Inc.

*also known as*

Central Mfg. Co. of Illinois

**Defendant**

**Stealth Industries, Inc.**

*also known as*  
 Rentamark  
*also known as*  
 Rentamark.Com

**Defendant**

**Central Mfg. Inc. and Stealth Industries, by and through Richard M. Fogel, not individually but as Chapter 7 Trustee**

**Movant**

**Leo Stoller**

represented by **Leo Stoller**  
 7115 W. North Avenue  
 Oak Park, IL 60302  
 PRO SE

V.

**Trustee**

**Richard M. Fogel, not individually, but as chapter 7 trustee of the bankruptcy estate of Leo Stoller**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
01/19/2007	1	COMPLAINT filed by Google Inc; (eav, ) (Entered: 01/22/2007)
01/19/2007	2	CIVIL Cover Sheet (eav, ) (Entered: 01/22/2007)
01/19/2007	3	ATTORNEY Appearance for Plaintiff Google Inc by Michael Thomas Zeller (eav, ) (Entered: 01/22/2007)
01/19/2007	4	ATTORNEY Appearance for Plaintiff Google Inc by William John Barrett (eav, ) (Entered: 01/22/2007)
01/19/2007	5	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by Google Inc (eav, ) (Entered: 01/22/2007)
01/19/2007	7	SUMMONS Issued as to Defendant Central Mfg. Inc. (eav, ) (Entered: 01/22/2007)
01/30/2007	8	MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to interplead (Exhibits) (eav, ) Additional attachment(s) added on 1/31/2007 (eav, ). (Entered: 01/31/2007)
01/30/2007	9	MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend pending the Appeal to lift the automatic stay for Google to sue the debtor Leo Stoller (Exhibits) (eav, ) (Entered: 01/31/2007)

01/30/2007	10	MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend pending the Trademark trial and Appeal Board's decision on the defendant's motion for summary judgment (eav, ) (Entered: 01/31/2007)
01/30/2007	11	MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc. to suspend (eav, ) (Entered: 01/31/2007)
01/30/2007	12	NOTICE of Motion by Stealth Industries, Inc., Central Mfg. Inc. for presentment of motion to Interplead 9, motion to Suspend 10, motion to Suspend pending Appeal to lift automatic stay for Google to sue the Debtor, Leo Stoller, and 11, motion to suspend pending the Trademark Trial and Appeal Board's Decision on the defendant's motion for summary judgment 8 before Honorable Virginia M. Kendall on 2/5/2007 at 9:00 AM. (eav, ) (Entered: 01/31/2007)
01/30/2007	13	PRO SE Appearance by Leo Stolla (eav, ) (Entered: 02/01/2007)
02/05/2007	15	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, ) (Entered: 02/06/2007)
02/06/2007	14	SUMMONS Returned Executed by Google Inc as to Stealth Industries, Inc. on 1/23/2007, answer due 2/12/2007; Central Mfg. Inc. on 1/23/2007, answer due 2/12/2007. (Barrett, William) (Entered: 02/06/2007)
02/06/2007	16	MOTION by Leo Stolla to intervene (eav, ) (Entered: 02/07/2007)
02/06/2007	17	NOTICE of Motion by Leo Stolla for motion to intervene 16 before Honorable Virginia M. Kendall on 2/12/2007 at 9:00 AM. (eav, ) (Entered: 02/07/2007)
02/07/2007	18	MINUTE entry before Judge Virginia M. Kendall :Motion to intervene 16 is entered and continued to 2/20/2007 at 09:00 AM. Any response shall be filed by 2/12/2007. No reply is necessary. The presentment date of 2/12/2007 for said motion is hereby stricken.Mailed notice (gmr, ) (Entered: 02/07/2007)
02/12/2007	19	RESPONSE by Richard M. Fogel, not individually, but as chapter 7 trustee of the bankruptcy estate of Leo Stollerin Opposition to MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc.suspend10, MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc.interplead8, MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc.to suspend9, MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc.to suspend11, MOTION by Plaintiff Leo Stolla to intervene16 and Joinder to Responses of Google Inc. (Alwin, Janice) (Entered: 02/12/2007)

02/12/2007	20	RESPONSE by Google Incin Opposition to MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc.interplead <sup>8</sup> , MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc.to suspend <sup>9</sup> , MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc.to suspend <sup>11</sup> , MOTION by Plaintiff Leo Stolla to intervene <sup>16</sup> (Barrett, William) (Entered: 02/12/2007)
02/12/2007	21	RESPONSE by Google Incin Opposition to MOTION by Defendants Stealth Industries, Inc., Central Mfg. Inc.suspend <sup>10</sup> (Barrett, William) (Entered: 02/12/2007)
02/12/2007	22	DECLARATION of Michael T. Zeller regarding response in opposition to motion <sup>21</sup> , response in opposition to motion, 20 by Google Inc (Attachments: # 1 Exhibit 1# 2 Exhibit 2# 3 Exhibit 3# 4 Exhibit 4# 5 Exhibit 5# 6 Exhibit 6# 7 Exhibit 7# 8 Exhibit 8# 9 Exhibit 9# 10 Exhibit 10# 11 Exhibit 11# 12 Exhibit 12# 13 Exhibit 13# 14 Exhibit 14# 15 Exhibit 15# 16 Exhibit 16# 17 Exhibit 17# 18 Exhibit 18# 19 Exhibit 19# 20 Exhibit 20# 21 Exhibit 21# 22 Exhibit 22# 23 Exhibit 23# 24 Exhibit 24# 25 Exhibit 25# 26 Exhibit 26# 27 Exhibit 27# 28 Exhibit 28# 29 Exhibit 29# 30 Exhibit 30)(Barrett, William) (Entered: 02/12/2007)
02/12/2007	23	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)
02/12/2007	24	NOTICE of Motion by William John Barrett for presentment of motion for permanent injunction, motion for judgment <sup>23</sup> before Honorable Virginia M. Kendall on 2/20/2007 at 09:00 AM. (Barrett, William) (Entered: 02/12/2007)
02/13/2007	25	SUPPLEMENT by Google Inc to declaration,, <sup>22</sup> <i>Supplemental Declaration of Michael T. Zeller</i> (Barrett, William) (Entered: 02/13/2007)
02/13/2007	26	CERTIFICATE by Google Inc of Service of the Permanent Injunction and Final Judgment as to Defendants Central Mfg. Inc. and Stealth Industries, Inc.(Proposed Order) (Barrett, William) (Entered: 02/13/2007)
02/13/2007	27	MEMORANDUM by Google Inc in support of motion for permanent injunction, motion for judgment <sup>23</sup> <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)
02/15/2007	28	Notice of Filing Supplemental Authority by Leo Stolla ; Notice of filing (eav, ) (Entered: 02/20/2007)
02/16/2007	30	OBJECTION by Leo Stoller to Joint Moiton for Entry of Stipulated Permanent Inj <sup>8</sup> unction and Final Judgment; Notice of filing (Exhibits) (eav, ) (Entered: 02/21/2007)
02/20/2007	29	MINUTE entry before Judge Virginia M. Kendall :Motion hearing held. All pending motions are taken under advisement, with a ruling by mail. Status hearing set for 3/13/2007 at 09:00 AM.Mailed notice (gmr. )

		(Entered: 02/20/2007)
02/22/2007	31	REPLY by Defendant Leo Stolla to Trustee's Ominibus response in opposition to motions of debtor Leo Stoller to: (I) Intevene; (II) Interplead; (III) Suspend proceeding for sixty days to retain counsel, for defendants; (IV) Suspend pending appeal to lift automactic stay for Google to sue the debtor; and (V) Suspend pending trademark trial and appeal Board's decision for defendants' motion for summary judgment and joinder of responses by Google, Inc.; Notice of filing (eav, ) (Entered: 02/26/2007)
03/02/2007	32	MOTION by Defendant Leo Stolla to dismiss for failure to join a party under Rule F.R.C.P. 19 (eav, ) (Entered: 03/05/2007)
03/02/2007	33	NOTICE of Motion by Leo Stolla for presentment of motion to dismiss32 before Honorable Virginia M. Kendall on 3/7/2007 at 09:00 AM. (eav, ) (Entered: 03/05/2007)
03/02/2007	35	REPLY by Defendant Leo Stolla to Google Inc.'s combined opposition to debtor Leo Stoller's motions (1) to intervene, (2) to interplead, (3) to suspend for sixty days to retain counsel for defendants and (4) to suspend pending appeal to lift automatic stay for Google to sue the debtor : Notice of filing (eav, ) (Entered: 03/06/2007)
03/02/2007	36	REPLY by Movant Leo Stoller to Google Inc.'s opposition to debtor Leo Stoller's motion to suspend pending the trademark trial and appeal board's decision on defendant's motion for summary judgment 21 (Exhibits); Notice. (smm) (Entered: 03/08/2007)
03/05/2007	34	MINUTE entry before Judge Virginia M. Kendall :On March 2, 2007, Leo Stoller ("Stoller") filed a Motion to Dismiss for failure to join a party -- himself -- pursuant to Fed. R. Civ. P. 19. Stoller previously filed a motion to intervene in this action on February 6, 2007. The Court has not yet ruled upon that motion. As such, Stoller remains a non-party and lacks standing to file a motion pursuant to Rule 19. See Arrow v. Gambler's Supply, Inc., 55 F.3d 407, 409 (8th Cir. 1995) ("only a party may make a Rule 19 motion") (citing Thompson v. Boggs, 33 F.3d 847, 858 n. 10 (7th Cir. 1994) (noting lack of any precedent for granting a non-party's motion for joinder)). Accordingly, Stoller's Motion to Dismiss 32 is stricken and the parties need not appear on March 7, 2007.Mailed notice (gmr, ) (Entered: 03/05/2007)
03/12/2007	37	MINUTE entry before Judge Virginia M. Kendall :For the reasons set out in the Memorandum Opinion and Order, Motion to intervene 16 is denied; Motion to interplead 8 is denied; and Motions to suspend 9, 10, 11 are denied.Mailed notice (eav, ) (Entered: 03/13/2007)
03/12/2007	38	MEMORANDUM Opinion and Order Signed by Judge Virginia M. Kendall on 3/12/2007:Mailed notice(eav, ) (Entered: 03/13/2007)
03/13/2007	39	NOTICE of appeal by Leo Stoller regarding orders 37, 38 ; Notice of Filing (Fee Due) (dj, ) (Entered: 03/15/2007)



03/15/2007	40	TRANSMITTED to the 7th Circuit the short record on 3/15/07 notice of appeal <sup>39</sup> . Notified counsel (dj, ) (Entered: 03/15/2007)
03/15/2007	41	MOTION by Movant Leo Stoller for leave to appeal in forma pauperis (eav, ) (Entered: 03/16/2007)
03/15/2007	42	NOTICE of Motion by Leo Stoller for presentment of motion for leave to appeal in forma pauperis <sup>41</sup> before Honorable Virginia M. Kendall on 3/19/2007 at 09:00 AM. (eav, ) (Entered: 03/16/2007)
03/15/2007	43	MOTION by Movant Leo Stoller under FRCP 59 and/or 60 (Exhibits) (eav, ) (Entered: 03/16/2007)
03/15/2007	44	NOTICE of Motion by Leo Stoller for presentment of under FRCP 59 and/or 60 <sup>43</sup> before Honorable Virginia M. Kendall on 3/19/2007 at 09:00 AM. (eav, ) (Entered: 03/16/2007)
03/15/2007	45	NOTICE by Leo Stoller of filing motion for leave to appeal in forma pauperis <sup>41</sup> (eav, ) (Entered: 03/16/2007)
03/15/2007	54	ACKNOWLEDGEMENT of receipt of short record on appeal regarding notice of appeal <sup>39</sup> ; USCA Case No. 07-1569. (smm) (Entered: 03/20/2007)
03/15/2007	55	CIRCUIT Rule 3(b) Notice. (smm) (Entered: 03/20/2007)
03/15/2007	57	MINUTE entry before Judge Virginia M. Kendall :Joint motion for entry of stipulated permanent injunction and final judgment <sup>23</sup> is granted. Enter permanent injunction and final judgment as to defendants Central Mfg., Inc. and Stealth Industries, Inc.Mailed notice Civil case terminated (eav, ) (Entered: 03/20/2007)
03/15/2007	58	PERMANENT INJUNCTION and Final Judgment as to defendants Central Mfg., Inc. and Stealth Industries, Inc. Signed by Judge Virginia M. Kendall on 3/15/2007:Mailed notice(eav, ) (Entered: 03/20/2007)
03/16/2007	46	MINUTE entry before Judge Virginia M. Kendall :For the reasons stated below, Movant Stoller's motion to reconsider <sup>43</sup> is denied. The presentment date of 3/19/2007 for said motion is hereby stricken.Mailed notice (gmr, ) Additional attachment(s) added on 3/16/2007 (gmr, ). (Entered: 03/16/2007)
03/16/2007	47	RESPONSE by Google Incin Opposition to MOTION by Movant Leo Stoller for leave to appeal in forma pauperis <sup>41</sup> (Barrett, William) (Entered: 03/16/2007)
03/16/2007	48	NOTICE by Google Inc re response in opposition to motion <sup>47</sup> <i>Notice of Filing</i> (Barrett, William) (Entered: 03/16/2007)
03/16/2007	49	DECLARATION of Michael T. Zeller regarding response in opposition to motion <sup>47</sup> by Google Inc (Attachments: # 1 Exhibit A-G# 2 Exhibit H-J)(Barrett, William) (Entered: 03/16/2007)
03/16/2007	50	NOTICE by Google Inc re declaration <sup>49</sup> <i>Notice of Filing</i> (Barrett, William) (Entered: 03/16/2007)



03/19/2007	51	SUPPLEMENTAL NOTICE of appeal by Leo Stoller regarding orders 46, 34 ;(Fee Due) (dj, ) (Entered: 03/20/2007)
03/19/2007	52	DESIGNATION by Leo Stoller of the content of the record on appeal : USCA Case No. 07-1569 (dj, ) (Entered: 03/20/2007)
03/19/2007	56	MINUTE entry before Judge Virginia M. Kendall :Motion hearing held on 3/19/2007. For the reasons stated on the record in open court, movant Stoller's motion for permission to appeal in forma pauperis 41 is granted.Mailed notice (eav, ) (Entered: 03/20/2007)
03/19/2007	60	REPLY by Movant Leo Stoller to Google's opposition to motion for permission to appeal in forma pauperis (eav, ) (Entered: 03/22/2007)
03/20/2007	53	TRANSMITTED to the 7th Circuit the short record on 3/20/07 notice of appeal51. Notified counsel (dj, ) (Entered: 03/20/2007)
03/20/2007	61	ACKNOWLEDGEMENT of receipt of short record on appeal regarding notice of appeal39 ; USCA Case No. 07-1612. (rp, ) (Entered: 03/23/2007)
03/20/2007	62	CIRCUIT Rule 3(b) Notice. (rp, ) (Entered: 03/23/2007)
03/21/2007	60	TRANSCRIPT of proceedings for the following dates: 2/5/07, 3/13/07 and 3/19/07; Before the Honorable Virginia M. Kendall (3 volumes) (eav, ) (Entered: 03/22/2007)
03/21/2007	63	SUPPLEMENTAL NOTICE of appeal by Leo Stoller regarding orders 58, 57 ; (Fee Due) (dj, ). (Entered: 03/23/2007)
03/23/2007	64	TRANSMITTED to the 7th Circuit the short record on 3/23/07 notice of appeal63. Notified counsel (dj, ) (Entered: 03/23/2007)
03/23/2007	65	ACKNOWLEDGEMENT of receipt of short record on appeal regarding notice of appeal63 ; USCA Case No. 07-1651. (smm) (Entered: 03/27/2007)
03/23/2007	66	CIRCUIT Rule 3(b) Notice. (smm) (Entered: 03/27/2007)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
03/28/2007 10:23:36			
<b>PACER Login:</b>	ls2729	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:07-cv-00385
<b>Billable Pages:</b>	4	<b>Cost:</b>	0.32

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

**FILED**

APR 10 2007 10

**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT**

Appeal No: 07-1612

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.	)

Case No: 07-CV-385

Hon. Virginia M. Kendall

Magistrate Judge Cole

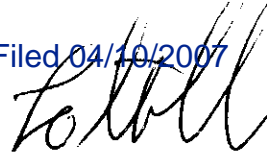
Appeal from the U.S. District  
Court for the Northern District  
Eastern Division

Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007  
and 3/16/2007

**DESIGNATION OF ADDITIONAL CONTENT OF THE RECORD ON APPEAL**

NOW COMES Leo Stoller and identifies the record for appeal which consists of the transcripts of the hearings on March 13 and March 19, 2007. The record for appeal also consists of the following motions, docket report and transcript:

- 1) Motion To Suspend (Docket No. 11).
- 2) Motion To Intervene (Docket No. 16).
- 3) Motion To Interplead (Docket No. 8).
- 4) Motion To Suspend Pending The Appeal To Lift The Automatic Stay For Google Inc. To Sue The Debtor Leo Stoller (Docket No. 9).
- 5) Motion To Suspend Pending The Trademark Trial And Appeal Board's Decision On The Defendant's Motion For Summary Judgment (Docket No. 10).
- 6) All documents listed on the attached U.S. District Court Docket Report
- 7) Transcript of Proceedings Before The Honorable Virginia M. Kendall Dated February 20, 2007




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

Date: April 10, 2007

**Certificate of Mailing**

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

Clerk of the Court  
United States Court of Appeals  
219 South Dearborn  
Chicago, IL 60607

  
\_\_\_\_\_  
Leo Stoller  
Date: April 10, 2007

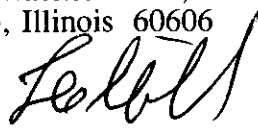
**Certificate of Service**

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.  
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333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606

  
\_\_\_\_\_  
Leo Stoller  
Date: 4-10-07

*ee*

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

Consolidated Appeal Nos: 07-1569, 07-1612 and 07-1616

**FILED**

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. )

MAY 10 2007 *ym*

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT.

Case No: 07-CV-385

Hon. Virginia M. Kendall

Magistrate Judge Cole

Appeal from the U.S. District  
Court for the Northern District  
Eastern Division  
Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007,  
and 3/16/2007

**MOTION FOR LEAVE TO FILE DESIGNATION  
OF SUPPLEMENTAL CONTENT OF RECORD ON APPEAL**

NOW COMES Leo Stoller and moves for leave to file the Designation of Supplemental Content of Record on Appeal. Stoller moves to supplement the record as follows:

- 1) *In re Leo Stoller, Debtor*, Bankruptcy Case No. 05 B 64075  
Motion of Google, Inc. For Order Declaring Proposed Suit to  
Be Outside Scope Of Stay Or, In The Alternative, Modifying Stay (Docket 113)
- 2) *In re Leo Stoller, Debtor*, Bankruptcy Case No. 05 B 64075  
Transript dated December 12, 2006
- 3) *In re Leo Stoller, Debtor*, Bankruptcy Case No. 05 B 64075  
Transcript dated February 15, 2007

*Leo Stoller*

Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
312/ 545-4554  
Email: ldms4@hotmail.com

Date: May 10, 2007

**Certificate of Mailing**

I hereby certify that this motion is being mailed by First Class Mail with the U.S. Postal Service in an envelope addressed to:

Clerk of the Court  
United States District Court  
219 S. Dearborn  
Chicago, Illinois 60607



Leo Stoller  
Date: May 10, 2007

**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.  
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*Shaw, Gussis, Fishman, Glantz,  
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William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606



Leo Stoller  
Date: 5-10-07

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: May 14, 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 RESPONSE TO NON-PARTY  
LEO STOLLER'S MOTION FOR LEAVE TO FILE DESIGNATION OF  
SUPPLEMENTAL CONTENT OF RECORD ON APPEAL**

Non-party Leo Stoller has filed, but not served, a motion styled as a request for "leave to file designation of supplemental content of record on appeal." Without any explanation or citation to authority, the motion itself states that Stoller "moves to supplement" the appeal record and then lists three documents.

Although far from clear, Stoller's motion appears to be potentially making two starkly different requests. To the extent that Stoller is merely asking that he be permitted to designate these three documents pursuant to Circuit Rule 10(a) beyond the deadline so that they can be transmitted to the Court of Appeals if they have not already been transmitted,<sup>1</sup> then Google does

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<sup>1</sup> Circuit Rule 10(a), entitled "Record Preparation Duties," provides in material part: "The clerk of the district court shall prepare within 14 days of filing the notice of appeal the original papers, transcripts filed in the district court, and exhibits received or offered in evidence (with the exceptions listed below). The transcript of a deposition is "filed" within the meaning of this rule, and an exhibit is "received or offered," to the extent that it is tendered to the district court in support of a brief or motion, whether or not the rules of the district court treat deposition transcripts or exhibits as part of the record. These materials may be designated as part of the record on appeal without the need for a motion under Fed. R. App. P. 10(e). Counsel must ensure that exhibits and transcripts to be included in the record which are not in the possession of the district court clerk are furnished to the clerk within ten days after the filing of the notice of appeal. The following items will not be included in a record unless specifically requested by

not necessarily oppose that request (subject to further clarification at the hearing as to what Stoller contends the issue is).

On the other hand, if Stoller is asking to *alter* the state of the record by "supplementing" it with the documents so that they may be considered in connection with the Court's March 12, 2007 Order denying his motion to intervene (the "Order"), the request is inappropriate and should be denied. It is important to note that two of the documents that are the subject of Stoller's request here -- the December 12, 2006 and February 15, 2007 transcripts of hearing before the Bankruptcy Court -- were submitted by Stoller for the first time on, and only in connection with, his motion for reconsideration of this Court's Order.<sup>2</sup> Thus, those transcripts may *not* properly be considered on appellate review of the Court's Order, since appellate review of that Order is limited to the record that was presented to the District Court as of the time it issued the Order. *E.g., Snodgrass v. Lanphere Enterprises, Inc.*, 62 Fed.Appx. 148, 149 n.2 (9th Cir. 2003) ("The plaintiffs base their October 1999 argument on an excerpt from a deposition that was first presented to the district court in plaintiffs' motion for reconsideration. Appellate review, however, 'is limited to the record presented to the district court at the time of summary judgment.'" (quoting *Nat'l Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d 496, 500 (9th Cir. 1997)); *see also Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1078 (7th Cir. 1988) ("Papers submitted to the district court *after* the ruling that is challenged on appeal should be stricken from the record on appeal." (emphasis in original)); *Martin v. U.S.*, 833 F.2d 655, 662 (7th Cir. 1987) ("Generally, we should not consider facts that the district court did not have an opportunity to consider.").

Stoller may not evade this rule through a request to "supplement" the record to the extent that he is seeking to have these transcripts -- submitted only after-the-fact on reconsideration -- deemed part of the record for purposes of appellate review of the Court's Order or any other Order entered prior to his submission of those transcripts. Federal Rule of Appellate Procedure 10, which governs supplementation of the appellate record, allows a district court to *correct* the record "if anything material to either party is omitted from or misstated in the record by error or accident...." F.R.A.P. (e)(2). Its purpose is "to ensure that the court on appeal has a complete

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a party by item and date of filing within ten days after the notice of appeal is filed or unless specifically ordered by this court: briefs and memoranda, notices of filings, subpoenas, summonses, motions to extend time, affidavits and admissions of service and mailing, notices of settings, depositions and notices, and jury lists."

<sup>2</sup> *See* Stoller Motion for Reconsideration, filed March 15, 2007 [Docket No. 43].

record of the proceedings leading to the ruling appealed from, not to facilitate collateral attacks on the verdict" (United States v. Hillsberg, 812 F.2d 328, 336 (7th Cir. 1987)), and it does not allow a litigant to expand on the record as it existed in the District Court. Shasteen v. Saver, 252 F.3d 929 (7th Cir. 2001).<sup>3</sup> As this also makes clear, supplementation cannot be used to alter the record that existed as of the time of the ruling appealed from:

[A] district court is correct in denying a motion under Rule 10(e) when an appellant simply wishes to add further support for his theories on appeal by *adding material which was not before the district court when the district court reached its substantive ruling*. United States v. Elizalde-Adame, 262 F.3d 637 (7th Cir. 2001). The job of an appellate court is to evaluate the soundness of the trial court's decision based on the evidence that was considered by the trial court. Id. at 641. An accurate record of the evidence that was before the trial court, and only the evidence which was before the trial court, is critical to enable the appellate court to make this evaluation. Id.

Little v. Mitsubishi Motor Mfg. of America, Inc., 2007 WL 1232097, at \*1 (C.D. Ill. 2007) (emphasis added).

Stoller's motion here discloses no argument or evidence that there was any error or inaccuracy in record keeping with respect to any of the three documents he identifies. He therefore is not entitled to any supplementation of the record. Id. at \*2 ("Since Plaintiff has not pointed to any error in record keeping or other error from mistakenly relying upon a document which was not in the record, Plaintiff's numerous motions seeking to supplement the record on appeal are denied."); see also Inland Bulk Transfer Co. v. Cummins Engine Co., 332 F.3d 1007, 1012 (6th Cir. 2003) (denying Rule 10(e) motion to supplement the record because the motion was "not aimed towards correcting some misstatement or omission in the district court's record"); Wegner v. Barnhart, 2004 WL 1490414, at \* 1 (W.D. Wis. 2004) ("Rule 10(e) exists to allow a party to correct differences that might exist between the record that is forwarded to the court of appeals and the actual record in the district court"; denying motion to supplement where movant "does not contend that the record as submitted to the court of appeals does not truly disclose

<sup>3</sup> Accord U.S. v. Rivera-Rosario, 300 F.3d 1, 9 (1st Cir. 2002) ("A 10(e) motion is designed to only supplement the record on appeal so that it accurately reflects what occurred before the district court. It is not a procedure for putting additional evidence, no matter how relevant, before the court of appeals that was not before the district court." (quotation marks and citation omitted)); Wright, Miller & Cooper, 16A Federal Practice and Procedure § 3956.4 ("Rule 10(e)'s purpose is not to provide a means for the court of appeals to consider evidence that was not submitted to the district court. Rather, Rule 10(e)'s purpose is to provide a means to ensure that the record before the court of appeals accurately reflects what occurred before the district court.").



what occurred in this court"); Jones v. Berge, 2003 WL 23208957, at \*1 (W.D. Wis. 2003) ("The record on appeal should include only those matters that were before the trial court. Supplementing the record to add something that was not before the trial court would be a misstatement of the record."); Taylor v. Dube, 2003 WL 23162307, at \*2 (W.D. Wis. 2003) (denying motion to supplement appellate record where document at issue had "not been omitted from the appeal record erroneously.").

Accordingly, Google respectfully submits that, at a minimum, Stoller's motion must be denied to the extent it is seeking to supplement the appellate record in this case.

DATED: May 11, 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  
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(312) 984-3150 (fax)

**CERTIFICATE OF SERVICE**

I, William J. Barrett, certify that on May 11, 2007, I caused to be served on the parties on the following Service List, via email transmission, a copy of the foregoing **GOOGLE INC.'S RESPONSE TO NON-PARTY LEO STOLLER'S MOTION FOR LEAVE TO FILE DESIGNATION OF SUPPLEMENTAL CONTENT OF RECORD ON APPEAL.**

/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](mailto:ldms4@hotmail.com)*

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](mailto:jalwin@shawgussis.com) and [rfogel@shawgussis.com](mailto:rfogel@shawgussis.com), [rfogel@ecf.epiqsystems.com](mailto:rfogel@ecf.epiqsystems.com)*

UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – **CM/ECF LIVE, Ver 3.0**  
Eastern Division

Google Inc

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, May 14, 2007:

MINUTE entry before Judge Virginia M. Kendall :Motion for leave to file designation of supplemental content of record on appeal [75] is denied as moot.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 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](http://www.ilnd.uscourts.gov).

WR

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

Consolidated Appeal Nos: 07-1569, 07-1612 and 07-1651

**FILED**

MAY 10 2007

YJM

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT.

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. )

Case No: 07-CV-385  
Hon. Virginia M. Kendall  
Magistrate Judge Cole  
Appeal from the U.S. District  
Court for the Northern District  
Eastern Division  
Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007,  
and 3/16/2007

NOTICE OF FILING

TO: Michael T. Zeller  
Quinn, Emanuel, Urquhart,  
Oliver & Hedges, LLP.  
865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

Richard M. Fogel, Trustee  
Shaw, Gussis, Fishman, Glantz,  
Wolfson & Towbin, LLC.  
321 N. Clark Street, Suite 800  
Chicago, Illinois 60610

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606

PLEASE TAKE NOTICE that on the **10th day of May, 2007**, there was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, **1) Designation of Supplemental Content of Record on Appeal**; a copy of which is attached hereto.

I certify that I served this Notice mailing a copy to each person to whom it is directed at the address above indicated by depositing it in the U.S. Mail on this 10th day of May, 2007, with proper postage prepaid.

*Leo Stoller*

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

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

FILED

Consolidated Appeal Nos: 07-1569, 07-1612 and 07-1651

MAY 10 2007 *YM*

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. )

Case No: 07-CV-385 MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT.  
Hon. Virginia M. Kendall  
Magistrate Judge Cole  
Appeal from the U.S. District  
Court for the Northern District  
Eastern Division  
Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007  
and 3/16/2007

**DESIGNATION OF SUPPLEMENTAL CONTENT OF RECORD ON APPEAL**

NOW COMES Leo Stoller and identifies the supplemental content of record on appeal  
as follows:

- 1) *In re Leo Stoller, Debtor*, Bankruptcy Case No. 05 B 64075 (Docket 113)  
Motion of Google, Inc. For Order Declaring Proposed Suit to  
Be Outside Scope Of Stay Or, In The Alternative, Modifying Stay
- 2) *In re Leo Stoller, Debtor*, Bankruptcy Case No. 05 B 64075  
Transript dated December 12, 2006
- 3) *In re Leo Stoller, Debtor*, Bankruptcy Case No. 05 B 64075  
Transcript dated February 15, 2007

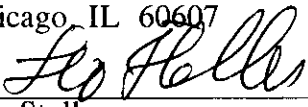
*Leo Stoller*  
\_\_\_\_\_  
Leo Stoller  
7115 W. North Avenue  
Oak Park, Illinois 60302  
(312) 545-4554  
Email: ldms4@hotmail.com

Date: May 10, 2007

**Certificate of Mailing**

I hereby certify that the foregoing is being mailed with the U.S. Postal Service by First Class Mail in an envelope addressed to:

Clerk of the Court  
United States District Court  
219 South Dearborn  
Chicago, IL 60607

  
\_\_\_\_\_  
Leo Stoller  
Date: May 10, 2007


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

Michael T. Zeller  
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Oliver & Hedges, LLP.  
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Los Angeles, California 90017

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606

  
\_\_\_\_\_  
Leo Stoller  
Date: 5-10-07

VK

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

Consolidated Appeal Nos: 07-1569, 07-1612 and 07-1651

FILED

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. )

MAY 16 2007  
MAY 16 2007  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Case No: 07-CV-385  
Hon. Virginia M. Kendall  
Magistrate Judge Cole  
Appeal from the U.S. District  
Court for the Northern District  
Eastern Division  
Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007,  
and 3/16/2007

NOTICE OF FILING

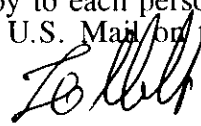
TO: Michael T. Zeller  
Quinn, Emanuel, Urquhart,  
Oliver & Hedges, LLP.  
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Los Angeles, California 90017

Richard M. Fogel, Trustee  
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321 N. Clark Street, Suite 800  
Chicago, Illinois 60610

William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606

PLEASE TAKE NOTICE that on the **16th day of May, 2007**, there was filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, **1) Designation of Additional Content of Record on Appeal**; a copy of which is attached hereto.

I certify that I served this Notice mailing a copy to each person to whom it is directed at the address above indicated by depositing it in the U.S. Mail on this 16 day of May, 2007, with proper postage prepaid.



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

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

**FILED**

Consolidated Appeal Nos: 07-1569, 07-1612 and 07-1651

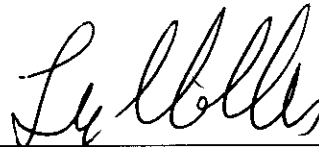
MAY 16 2007

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. )

Case No: 07-CV-385 **MICHAEL W. DOBBINS**  
**CLERK, U.S. DISTRICT COURT.**  
 Hon. Virginia M. Kendall  
 Magistrate Judge Cole  
 Appeal from the U.S. District  
 Court for the Northern District  
 Eastern Division  
 Orders by Virginia M. Kendall  
 Dated 3/5/2007, 3/12/2007  
 and 3/16/2007

**DESIGNATION OF ADDITIONAL CONTENT OF THE RECORD ON APPEAL**

NOW COMES Leo Stoller and identifies additional content of the record on appeal which consists of the transcript of the hearing on March 1, 2007, a copy of which is attached hereto.




---

Leo Stoller  
 7115 W. North Avenue  
 Oak Park, Illinois 60302  
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 Email: ldms4@hotmail.com

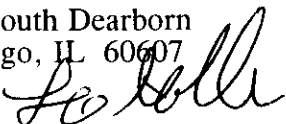
Date: May 16, 2007



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I hereby certify that the foregoing is being mailed via First Class Mail with the U.S. Postal Service in an envelope to the following address:

Clerk of the Court  
United States District Court  
219 South Dearborn  
Chicago, IL 60607



Leo Stoller

Date: May 16, 2007

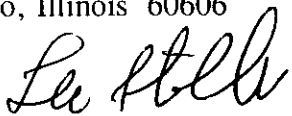
**Certificate of Service**

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

Michael T. Zeller  
Quinn, Emanuel, Urquhart,  
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William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606



Leo Stoller

Date: 5-16-07

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

In re: )  
LEO STOLLER, ) No. 05 B 64075  
Debtor. ) Chicago, Illinois  
          ) March 1, 2007  
          ) 10:30 a.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
HONORABLE JACK B. SCHMETTERER

APPEARANCES:

MR. RICHARD FOGEL  
trustee;  
  
MR. RICHARD SALDINGER  
on behalf of the trustee;  
  
MR. WILLIAM FACTOR  
on behalf of Pure Fishing;

ALSO PRESENT:

MR. LEO STOLLER  
debtor.

1 THE CLERK: Stoller, 05 B 64075.

2 THE COURT: Someone is on the line?

3 THE CLERK: Yes.

4 MR. FOGEL: Good morning, Your Honor.

5 Richard Fogel, trustee.

6 THE COURT: Just a moment. Hang on a  
7 second, please.

8 MR. FOGEL: I'm sorry.

9 THE COURT: Is someone on the phone?

10 Hello? Anyone on the phone?

11 THE CLERK: I'll go check.

12 THE COURT: What should we do?

13 THE CLERK: I see it blinking.

14 THE COURT: Well, it doesn't matter.

15 Hello? Anyone on the phone?

16 What should I do? Should I push this  
17 again?

18 THE CLERK: Yes, push this because it's  
19 blinking.

20 THE COURT: Anyone on the phone? Hello?

21 Hello?

22 THE CLERK: No, it's off. It's gone.

23 THE COURT: Are we able to get these folks  
24 back, do you think?

25 THE CLERK: Yes, um-hmm.

1 THE COURT: Should I try again?

2 THE CLERK: Hold on, wait, wait, wait.

3 It's not blinking here, but it's blinking in there.

4 Okay. It's still not blinking.

5 THE COURT: Okay. Is there a service  
6 operator that we're in touch with?

7 THE CLERK: Yes, there is.

8 THE COURT: Would you tell the service  
9 operator that we'll give him five minutes to make  
10 contact with us. After that, we won't be able to.  
11 Do we have phone numbers for these people?

12 THE CLERK: It's not working.

13 THE COURT: Is our equipment not working?

14 THE CLERK: It's our equipment. It's not  
15 working.

16 THE COURT: Our equipment is not working?  
17 This phone is not working? Do we have phone numbers  
18 for anybody?

19 MS. CLAY: There are two attorneys. Do  
20 you want to get both of them on?

21 THE COURT: Yeah. We have here a system  
22 that's supposed to put them on.

23 MS. CLAY: Right. They're on my line.

24 THE COURT: You can't transfer? Our phone  
25 isn't working?

1 THE CLERK: That's right.

2 MS. CLAY: Hello?

3 UNIDENTIFIED SPEAKER: Yes.

4 MS. CLAY: Okay.

5 THE COURT: Okay. This is the judge in  
6 the Stoller case. Who is on the phone, please?

7 MR. LAFEBER: Judge, Michael Lafeber on  
8 behalf of the Northern Star Counsel, Boy Scouts of  
9 America.

10 MR. LACORTE: Good morning, Your Honor.  
11 Brian Lacorte of Gallagher & Kennedy on behalf of Go  
12 Daddy.

13 THE COURT: Go Daddy, hmm?

14 All right, folks.

15 MR. FOGEL: Your Honor, if I might?

16 THE COURT: We have here first the motion  
17 of the trustee to vacate an order scheduling the  
18 debtor's deposition. Do you have an order for that?

19 MR. FOGEL: Yes, I do, Your Honor.

20 THE COURT: May I have the order for that?

21 MR. FOGEL: It should be attached to the  
22 motion.

23 THE COURT: Do you have any objection to  
24 the order, sir?

25 MR. STOLLER: Yes, I do, Your Honor.

1 THE COURT: Do you have an objection to my  
2 vacating the order?

3 MR. STOLLER: I have no objection to your  
4 vacating the order.

5 THE COURT: Do you have any objection to  
6 this order draft --

7 MR. STOLLER: Can I take a look at it?

8 THE COURT: -- that you just said you have  
9 an objection to?

10 MR. STOLLER: Can I take one quick look at  
11 it?

12 THE COURT: I expect you to look at it and  
13 then tell me whether you object to it.

14 MR. STOLLER: Thank you, Judge.

15 I don't have an objection.

16 THE COURT: What?

17 MR. STOLLER: I don't have an objection,  
18 Your Honor.

19 (Document tendered.)

20 THE COURT: Is there anybody that has an  
21 objection? I can't imagine anybody has any standing  
22 to object to it. But at any rate, I hear none.  
23 That order is vacated without objection.

24 MR. FOGEL: Thank you, Judge.

25 THE COURT: Now --

1 MR. STOLLER: Thank you, Judge.

2 THE COURT: -- do you wish to take his  
3 deposition?

4 MR. FOGEL: Your Honor, if I may, I wish  
5 to address the court with a brief status report on  
6 some developments in the case that have taken place  
7 that may affect and resolve other matters both on  
8 the call today and in general in the case, if you  
9 could bear with me for a moment.

10 First let me tell Your Honor that I  
11 missed the last couple of hearings in this matter  
12 because my father died last week.

13 THE COURT: I'm so sorry to hear that.

14 MR. FOGEL: And I spent time with my  
15 family rather than appear in court at these  
16 hearings. But I was --

17 THE COURT: That's where you should have  
18 been.

19 MR. FOGEL: -- represented by counsel.  
20 And I --

21 THE COURT: Your counsel did very well.

22 MR. FOGEL: -- take the defamatory  
23 aspersions that Mr. Stoller has placed on his  
24 website about my presence or absence very  
25 personally.

1                   While I was away and since I've been  
2 back --

3                   THE COURT: Are you -- you put some  
4 comments about his absence on your website, sir?

5                   MR. STOLLER: All I said was he was  
6 conspicuous by his absence. I didn't --

7                   THE COURT: Do you wish to apologize to  
8 him for --

9                   MR. STOLLER: Under the circumstances --

10                  THE COURT: -- your extraordinarily rude  
11 remarks?

12                  MR. STOLLER: I do apologize to him for  
13 his -- for those remarks.

14                  THE COURT: Let's go ahead.

15                  MR. FOGEL: Your Honor, I received  
16 yesterday an offer to purchase the intellectual  
17 property of the bankruptcy estate from a corporation  
18 that has been formed by some of Mr. Stoller's  
19 creditors. The offer has some conditions to it.  
20 One of the conditions is the entry of an order  
21 substantively consolidating the nondebtor corporate  
22 shells that Mr. Stoller owns with the individual  
23 bankruptcy estate. Based on findings of fact that  
24 Your Honor has made in this case, and based on  
25 pleadings that Mr. Stoller has subsequently filed in



1 other cases, I believe that there may very well be a  
2 basis for you to do so.

3 THE COURT: What are they offering?

4 MR. FOGEL: They've offered \$10,000 in  
5 cash. Now, it is not a significant amount of money,  
6 but it is a starting point. And the creditors and  
7 Mr. Stoller in my opinion are the only parties that  
8 have or would place value on the portfolio. The  
9 creditors have nuance value attached to it,  
10 Mr. Stoller would have intrinsic value to attach to  
11 it.

12 If I were to get in a position to sell  
13 the intellectual property portfolio at a sale in  
14 this courtroom to which Mr. Stoller or his brother  
15 or his daughter or his friends or whoever and he  
16 want to pony up some money and participate --

17 THE COURT: At an auction?

18 MR. FOGEL: -- we'll have an auction sale.  
19 I would have the auction sale in this courtroom.  
20 And if Mr. Stoller thinks that might be a good idea,  
21 perhaps he might not oppose substantive  
22 consolidation so that we can get to a sale more  
23 quickly rather than less quickly. If there is a  
24 sale, the perpetual motions to compel me to abandon  
25 or for a declaration that I've abandoned will all be

1 unnecessary because, as I've been telling you all  
2 along, I'm administering the assets. Now, that's  
3 one development.

4 Another development is I've had  
5 discussions with Go Daddy. And I understand at the  
6 most recent hearing Go Daddy was a big issue as to  
7 whether or not I should be abandoning my interest in  
8 various things or what value there is, what value  
9 there isn't.

10 THE COURT: Because there may be some  
11 deadline that's going to be based --

12 MR. FOGEL: Yes, sir. And here is where  
13 we're at: In that matter, the evidence on both  
14 sides, Mr. Stoller's evidence and Go Daddy's  
15 evidence, has already been submitted. There is a  
16 motion for summary judgment pending by Go Daddy.

17 THE COURT: I thought there was a briefing  
18 schedule.

19 MR. FOGEL: Go Daddy is willing and I am  
20 willing, subject to Your Honor's approval and  
21 Mr. Stoller's willingness to do so, we're all  
22 willing to give him an opportunity to file a  
23 response to the motion for summary judgment and a  
24 brief in support of it.

25 THE COURT: Who file?

1 MR. FOGEL: Mr. Stoller.

2 THE COURT: On your behalf?

3 MR. FOGEL: On behalf of Central  
4 Manufacturing Company, the opposer.

5 THE COURT: And the opposer is a  
6 corporation?

7 MR. FOGEL: The opposer is not a  
8 corporation. The opposer is an entity that you  
9 found to be a sole proprietorship of Mr. Stoller.

10 THE COURT: Yes. And you want --

11 MR. FOGEL: And the thinking --

12 THE COURT: You would -- you're saying you  
13 would give him special leave to actually file a  
14 brief.

15 MR. FOGEL: He could file a brief.

16 THE COURT: Is that something you're bound  
17 by?

18 MR. FOGEL: That is something that I would  
19 be bound by.

20 THE COURT: And would not have to approve?

21 MR. FOGEL: I would ask him to let me read  
22 it before it's filed. Then we would ask TTAB to  
23 rule on the papers. And we also would suggest that  
24 Mr. Stoller would have the right to file any  
25 additional papers that TTAB might request in

1 connection with this matter in order to rule. Stay  
2 with me, please.

3 THE COURT: I'm staying.

4 MR. FOGEL: That way --

5 THE COURT: TTAB? Who is TTAB?

6 MR. FOGEL: That's the Trademark Trial and  
7 Appeal Board --

8 THE COURT: Oh, yes.

9 MR. FOGEL: -- before whom --

10 THE COURT: Right, right.

11 MR. FOGEL: -- the Go Daddy matter is  
12 pending.

13 THE COURT: Thank you.

14 MR. FOGEL: No one would agree to allow  
15 him to appeal in the event of an adverse ruling, but  
16 I will have sold the mark that is underlying this  
17 matter, and the new owner of the mark, be it the  
18 entity, be it Mr. Stoller or someone --

19 THE COURT: The mark involving the Go  
20 Daddy matter?

21 MR. FOGEL: The mark involving the Go  
22 Daddy matter.

23 THE COURT: Why don't you offer it for  
24 sale now?

25 MR. FOGEL: Independently one mark doesn't

1 mean anything. I have to put the portfolio up for  
2 sale.

3 THE COURT: Well, I don't know.

4 MR. FOGEL: Yes, sir, I do. And --

5 THE COURT: Portfolio? You mean the Go  
6 Daddy portfolio?

7 MR. FOGEL: No, no, no. The --

8 THE COURT: His own portfolio?

9 MR. FOGEL: Mr. Stoller and his entities'  
10 portfolio of marks. That's what someone wants to  
11 buy. That's what Mr. Stoller wants me to abandon  
12 back to him. It needs to be put for sale before  
13 Your Honor. And if it's sold by allowing  
14 Mr. Stoller to file his response to Go Daddy's  
15 motion for summary judgment, we'll preserve the  
16 interests. There will be no harm to him by me  
17 denying him the right to speak, and it will be dealt  
18 with in that fashion.

19 Similarly, the Boy Scouts counsel, who  
20 have this motion up today for leave to proceed with  
21 an action that they filed pre-petition seeking  
22 certain declaratory relief, they and I have had a  
23 discussion, and they've agreed to put their motion  
24 over for a period of time and give me some time to  
25 respond because they ultimately want to fight with

1 the owner of the mark. They don't want to fight  
2 with me, they don't want to fight with the estate.  
3 Again, either the entity or, for lack of a better  
4 term, I'll say Mr. Stoller, will own the mark at the  
5 end of the sale process and they'll deal with him.

6 THE COURT: Appearance.

7 MR. FACTOR: Good morning, Your Honor.  
8 Bill Factor for Pure Fishing. Sorry I'm late.

9 MR. FOGEL: Last but not least --

10 THE COURT: Have you given any briefing to  
11 counsel who just appeared of what you have just told  
12 me?

13 MR. FOGEL: Yes, sir.

14 THE COURT: Go ahead.

15 MR. FOGEL: Last but not least, I was not  
16 here on Monday, but I do want to address the motion  
17 to vacate the order that you granted. And in my  
18 opinion, Mr. Stoller has made much ado about  
19 nothing. We took steps -- upon knowing after hours  
20 that Mr. Stoller did not like the order, therefore  
21 we took steps -- I contacted chambers to try to  
22 prevent the entry of it. When it --

23 THE COURT: It had already been entered.

24 MR. FOGEL: -- was entered, we moved to  
25 vacate it. I want --

1 THE COURT: Counsel, I started off --

2 MR. FOGEL: -- to answer your question.

3 You said do I want to depose Mr. Stoller.

4 THE COURT: I asked you whether you want  
5 to depose him.

6 MR. FOGEL: Yes. And I wanted to give you  
7 this narrative to explain why I probably do, but I  
8 don't necessarily need to do it on Wednesday under  
9 rush circumstances.

10 THE COURT: I understand.

11 MR. FOGEL: I also don't need to do it if  
12 Mr. Stoller is going to try to limit it, as his  
13 proposed order says, to one narrow matter where he  
14 gets to reserve the right to assert the Fifth.

15 THE COURT: You're entitled --

16 MR. FOGEL: I don't want him to do that.

17 THE COURT: You're entitled to depose him  
18 and I am entitled to order him to come --

19 MR. FOGEL: Sure.

20 THE COURT: -- and be sworn. And what  
21 happens after that, I do not know.

22 MR. FOGEL: I understand.

23 THE COURT: Do you want me to order him to  
24 appear on some date, whatever that date might be?

25 MR. FOGEL: Not today I don't want you to

1 because I think it would be in the best interest,  
2 and maybe even Mr. Stoller will agree that it be in  
3 the best interest, to proceed to sale of assets.  
4 And I'm not sure that I need his deposition in order  
5 to properly set up an asset sale. And regardless of  
6 what he says about any of these items, the causes of  
7 action, the claims, the counterclaims, the licenses,  
8 the marks --

9 THE COURT: Or the value.

10 MR. FOGEL: -- the market will speak. Two  
11 people will be in a room bidding for it, and whoever  
12 bids the most money tells me what it's worth.

13 THE COURT: Okay.

14 Mr. Stoller, what is your view on all  
15 of this?

16 MR. STOLLER: My view is I have appealed  
17 your decision to convert me to a 7, to a 13, from a  
18 13 to a 7. That's up now in front of Judge Hibler.  
19 I have appealed seven or eight other of your  
20 decisions. I don't feel it is appropriate to rule  
21 based on what the trustee is requesting to have an  
22 asset sale. To suggest that after 37 years of my  
23 business career in acquiring trademarks that they  
24 would be sold for \$10,000, all of them, when this --  
25 Mr. Factor represents Pure Fishing, and they



1 invested 950,000, which he consented to in what I  
2 feel is an unlawful settlement, but be that as it  
3 may, contesting one mark, \$950,000. I offered them  
4 the mark for \$5,000.

5 THE COURT: Can I you cut --

6 MR. STOLLER: The point is --

7 THE COURT: -- you short? I think you  
8 just indicated that you don't like the idea.

9 MR. STOLLER: The point is the marks are  
10 worth millions of dollars.

11 MR. FOGEL: So let him buy them for  
12 \$11,000 and make a bundle.

13 THE COURT: I understand.

14 Now, unless you have some new point to  
15 make --

16 MR. STOLLER: I have --

17 THE COURT: -- I take it you're against  
18 what the trustee has said.

19 MR. STOLLER: Absolutely. I've offered  
20 100,000 to pay my debts and to get out of this.

21 MR. FOGEL: That's not how it's going to  
22 work.

23 THE COURT: Would you take this form, each  
24 of you, please. It's a possible order for  
25 deposition. Will you pass it out, please.

1 Now, I have authority over the debtor.  
2 I can order him to appear for a deposition. I can  
3 order him to be sworn. We can do it in a couple of  
4 phases. Phase one might be for some earlier subject  
5 matter, and phase two might be for some later  
6 subject matter, or we could do it at any time as it  
7 might be convenient to you folks. Do you wish me to  
8 do it today or not?

9 MR. FOGEL: No, sir, I do not.

10 THE COURT: Okay. What do you wish me to  
11 do today?

12 MR. FOGEL: Today I would like you to  
13 continue the Northern Star, Boy Scouts counsel's  
14 motion until April 2nd, 30 days from today. I'd  
15 like 28 days to respond to it.

16 THE COURT: What date do you want me to  
17 set it?

18 MR. FOGEL: April 2. And pursuant to  
19 conversation with counsel, Mr. Lafeber, who is on  
20 the phone, I believe that date is acceptable to him.

21 THE CLERK: Judge, can we get it to 11:30  
22 instead of 10:30?

23 THE COURT: Yeah.

24 MR. FOGEL: That's all I want you to do  
25 today.

1 THE COURT: And what --

2 MR. LACORTE: Your Honor, this is Brian  
3 Lacorte. If I may be heard for a moment?

4 THE COURT: What's that date, please?

5 THE CLERK: April 2nd at 11:30.

6 THE COURT: Yes, counsel?

7 MR. LACORTE: Yes, thank you. Go Daddy  
8 would request that the court entertain an order  
9 stipulated with the trustee to allow Mr. Stoller to  
10 make a -- and have a limited participation in the  
11 pending opposition with Go Daddy and the Trademark  
12 Trial and Appeal Board to respond to the summary  
13 judgment motion. That proceeding has been pending  
14 for four years. And as the trustee indicated to the  
15 court, the evidence stage and trial is closed and  
16 has been for several months. And the only remaining  
17 issue for the Trademark Trial and Appeal Board to  
18 rule or decide the case is the pending summary  
19 judgment motion. While there is no briefing  
20 schedule, the Trademark Trial and Appeal Board judge  
21 is awaiting, I believe, the outcome of the  
22 development in the bankruptcy court to determine who  
23 will respond to the motion, whether it's the  
24 trustee, an attorney, Mr. Stoller, somebody. And  
25 our hope is that with this proceeding today, we

1 could at least have an opportunity to present the  
2 court an order that would permit Mr. Stoller this  
3 limited participation that has been discussed.

4 THE COURT: Mr. Stoller, is there anything  
5 you wish to say on that subject?

6 MR. STOLLER: Yes. I'm not in a  
7 position -- I want to file my response. But because  
8 of --

9 THE COURT: Nothing has been filed for you  
10 to respond to. But I just want --

11 MR. STOLLER: They filed a motion for  
12 summary judgment.

13 THE COURT: Oh, that's a different  
14 subject.

15 MR. STOLLER: Okay. What is it that  
16 you're referring to?

17 THE COURT: You're not listening to what  
18 he suggested?

19 MR. STOLLER: I think --

20 THE COURT: All right.

21 In that case, are you going to be  
22 filing some motion, Mr. Trustee? And Mr. Stoller  
23 will focus on it when it's filed.

24 MR. FOGEL: Yes, yes. We will bring  
25 pleadings before the court to deal with the matters

1 that are now presently up on today's call, yes, sir.

2 THE COURT: And when are you going to file  
3 a motion for him to have permission to file what you  
4 call a brief?

5 MR. FOGEL: I believe I will try to get  
6 that filed next week. I'm going to be out of town  
7 for two days from --

8 THE COURT: What day do you want to set  
9 it?

10 MR. FOGEL: I don't know yet, Judge.  
11 There are some other matters coming up between now  
12 and April 2nd, I believe. I would attempt to notice  
13 it for a matter that something else is already up  
14 for.

15 THE COURT: All right.

16 Mr. Stoller, will you promise me to  
17 read the proposed order he sends you so that you can  
18 tell me whether or not you oppose when you come into  
19 court that day, whatever that day is?

20 MR. STOLLER: I will read whatever order  
21 he sends to me. But in terms of the Go Daddy  
22 matter, I think that that should be --

23 THE COURT: They apparently want to give  
24 you a chance to file a brief.

25 MR. STOLLER: But I can't file a brief --

1 I can file a brief, but I need -- because of all of  
2 these pending other cases which are interwound, I  
3 need additional time to resolve some of these  
4 matters because we're in a disadvantaged situation  
5 right now.

6 THE COURT: Now, with regard to this  
7 matter where they want to propose that you be given  
8 a chance to file a brief, will you be opposing being  
9 given a chance to file a brief?

10 MR. STOLLER: No. I want to file a brief.  
11 I will file a brief. But basically I need more time  
12 because there are appeals pending. There are a lot  
13 of interwound actions that are taking place that I  
14 can't --

15 THE COURT: Perhaps you can talk to these  
16 folks and to the agency as to how much time you can  
17 get before we come up. At any rate, there is no  
18 motion before me. Nothing is requested. I'm  
19 setting the matter of deposition for status on  
20 April 2 at 11:30 to see what happens.

21 MR. FOGEL: Thank you, sir.

22 THE COURT: I do believe that the Boy  
23 Scouts' motion --

24 Is Boy Scout counsel on the phone?

25 MR. LAFEBER: I am, Your Honor.

1 THE COURT: Yes. According to this  
2 complaint which I have read, many events on which it  
3 is based occurred pre-bankruptcy, and therefore it  
4 seems to me we'd have to consider this under the  
5 stay. So you'll have to pursue your alternative  
6 motion to -- alternative motion to modify stay. Do  
7 you hear what I said?

8 MR. LAFEVER: I did, Your Honor.

9 THE COURT: But you've not paid the fee  
10 for modifying stay. Somewhere along here I got  
11 something -- yes. The clerk tells me you haven't  
12 paid that fee. If you want me to consider that  
13 alternative motion, you'll have to pay your 150  
14 bucks to the clerk's office like everybody else.

15 MR. LAFEVER: We will definitely do that,  
16 Your Honor.

17 THE COURT: And you do not notice the  
18 Chapter 7 trustee.

19 I gather, however, you've received a  
20 copy of this?

21 MR. FOGEL: Yes, sir. I don't want to say  
22 how, but I definitely was served.

23 THE COURT: Okay. Now, who is James Long  
24 of Briggs & Morgan?

25 MR. LAFEVER: Mr. Long is my partner, Your

1 Honor. We're kind of in the middle of a big snow  
2 storm here in Minneapolis, and he's stuck at home  
3 today.

4 THE COURT: All right. If you file any  
5 more motions, you should serve copies in this  
6 bankruptcy on all persons who are on the notice list  
7 and certainly upon the Chapter 7 trustee.

8 Are you folks here representing other  
9 parties?

10 MR. SALDINGER: Richard Saldinger on  
11 behalf of Mr. Fogle, Your Honor.

12 THE COURT: Yes.

13 MR. FACTOR: Pure Fishing, Your Honor.  
14 Bill Factor.

15 THE COURT: Pure Fishing, I don't know  
16 whether you have an interest in this, but you're  
17 entitled to get notice of it. I want you to  
18 communicate with counsel if you want a copy. I  
19 suppose you could also pull it off the web.

20 MR. FACTOR: I will, Your Honor. Thank  
21 you.

22 THE COURT: And how much time does the  
23 trustee want to respond to this?

24 MR. FOGEL: We've agreed to 28 days, which  
25 would be two days before the status hearing on



1 April 2.

2 THE COURT: Okay. Mr. Stoller has already  
3 filed something, but I'll give you the same 28 days.

4 MR. STOLLER: Thank you very much.

5 THE COURT: Trustee and Stoller may  
6 respond to this motion treated as motion to modify  
7 stay within 28 days hereof.

8 How much time to respond -- to reply,  
9 counsel on the phone?

10 MR. LAFEBER: Well, obviously, I would  
11 like to have at least a week, Your Honor.

12 THE COURT: Seven days to reply. Set for  
13 status --

14 MR. FOGEL: April 2, 11:30.

15 THE COURT: -- and argument what date?

16 MR. FOGEL: April 2, 11:30.

17 THE COURT: Status and argument, not  
18 evidence. Now, is that five weeks out? March --

19 MR. LAFEBER: I don't think that gives us  
20 enough -- I don't think that gives us any time to  
21 reply, Your Honor. I'm doing the math here, and  
22 it's the --

23 THE COURT: Trustee, can I give you 21  
24 days?

25 MR. FOGEL: Yes, sir.

1 THE COURT: Is that enough time?

2 MR. FOGEL: Yes, sir.

3 THE COURT: Twenty-one and seven. That  
4 gives us enough time.

5 Anything else, folks?

6 MR. FOGEL: Not today. Thank you very  
7 much for your time, Judge.

8 MR. STOLLER: Thank you, Judge.

9 MR. FACTOR: Thank you.

10 THE COURT: Thank you.

11

12 (Which were all the proceedings  
13 had in the above-entitled cause,  
14 March 1, 2007.)

14

15 I, GARY SCHNEIDER, CSR, RPR, DO HEREBY CERTIFY THAT  
16 THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF  
17 PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.

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25

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Consolidated Appeal Nos: 07-1569, 07-1612 and 07-1651

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.

FILED

MAY 16 2007  
MAY 16 2007

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT.

Case No: 07-CV-385

Hon. Virginia M. Kendall

Magistrate Judge Cole

Appeal from the U.S. District  
Court for the Northern District  
Eastern Division

Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007,  
and 3/16/2007

NOTICE OF FILING

TO: Michael T. Zeller  
Quinn, Emanuel, Urquhart,  
Oliver & Hedges, LLP.  
865 S. Figueroa Street, 10th Floor  
Los Angeles, California 90017

Richard M. Fogel, Trustee  
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321 N. Clark Street, Suite 800  
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William J. Barrett  
Barack, Ferrazzano, Kirschbaum,  
Perlman & Nagelberg, LLP.  
333 W. Wacker Drive, Suite 2700  
Chicago, Illinois 60606

PLEASE TAKE NOTICE that on the 16th day of May, 2007, there was filed with the  
Clerk of the United States Court of Appeals for the Seventh Circuit 1) ~~Supplemental Designation of Content of Record on Appeal~~  
2) Supplemental Designation of Content of Record on Appeal, a copy of which is attached  
hereto.

I certify that I served this Notice mailing a copy to each person to whom it is directed  
at the address above indicated by depositing it in the U.S. Mail on this 16th day of  
May, 2007, with proper postage prepaid.



Leo Stoller, pro se  
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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Consolidated Appeal Nos: 07-1569, 07-1612 and 07-1651

**FILED**

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. )

MAY 16 2007 *lym*

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Case No: 07-CV-385

Hon. Virginia M. Kendall

Magistrate Judge Cole

Appeal from the U.S. District  
Court for the Northern District  
Eastern Division

Orders by Virginia M. Kendall  
Dated 3/5/2007, 3/12/2007,  
and 3/16/2007

~~REDACTED~~ DESIGNATION  
OF SUPPLEMENTAL CONTENT OF RECORD ON APPEAL

NOW COMES Leo Stoller and moves for leave to file the Designation of Supplemental Content of Record on Appcal. Stoller moves to supplement the record as follows:

- 1) *In re Leo Stoller, Debtor*, Bankruptcy Case No. 05 B 64075  
Motion of Google, Inc. For Order Declaring Proposed Suit to  
Be Outside Scope Of Stay Or, In The Alternative, Modifying Stay (Docket 113)
- 2) *In re Leo Stoller, Debtor*, Bankruptcy Case No. 05 B 64075  
Transript dated December 12, 2006
- 3) *In re Leo Stoller, Debtor*, Bankruptcy Case No. 05 B 64075  
Transcript dated February 15, 2007



Leo Stoller, *pro se*  
7115 W. North Avenue #272  
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Date: May 16, 2007

**Certificate of Mailing**

I hereby certify that this motion is being mailed by First Class Mail with the U.S. Postal Service in an envelope addressed to:

Clerk of the Court  
United States Court of Appeals  
219 S. Dearborn  
Chicago, Illinois 60607

*Leo Stoller*

\_\_\_\_\_  
Leo Stoller

Date: May 16, 2007

**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:

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Chicago, Illinois 60606

*Leo Stoller*

\_\_\_\_\_  
Leo Stoller

Date: 5-16-07



**CERTIFICATE OF SERVICE**

I, William J. Barrett, certify that on August 18, 2006, I caused to be served on the parties on the following Service List, via messenger or overnight courier, as indicated, a copy of the foregoing Notice of Motion and Motion of Google Inc. for Order Declaring Proposed Suit to be Outside Scope of Stay or, in the Alternative, Modifying Stay.

/s/ William J. Barrett

William J. Barrett

**SERVICE LIST**

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*Via Messenger*

**Mailing Information for Case 05-64075**

**Electronic Mail Notice List**

The following is the list of attorneys who are currently on the list to receive e-mail notices for this case:

- **William J Factor**  
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- **Sara E Lorber**  
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- **Wendy R. Morgan**  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	Case No. 05 B 64075
	)	Chapter 13
LEO STOLLER,	)	
	)	Hon. Jack B. Schmetterer
Debtor.	)	
	)	Presentment Date: August 23, 2006
	)	Presentment Time: 9:30 a.m.

**MOTION OF GOOGLE INC. FOR ORDER DECLARING PROPOSED SUIT  
TO BE OUTSIDE SCOPE OF STAY OR, IN THE ALTERNATIVE, MODIFYING STAY**

Google Inc. ("Google") respectfully requests that the Court declare that its anticipated lawsuit (the "Proposed Action") against Leo Stoller ("Stoller" or "Debtor"), Central Mfg. Inc. ("Central Mfg.") and Stealth Industries, Inc. ("Stealth") 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 Proposed Action. In support of its requested relief, Google states and alleges as follows.

**Preliminary Statement**

1. As explained in Google's Complaint for the Proposed Action,<sup>1</sup> Debtor, Central Mfg. and Stealth are engaged in a pattern of illegal conduct that targets Google. Google has no alternative but to file suit to put a stop to it. Among other things, Debtor, Central Mfg. and Stealth have been fraudulently holding themselves out as variously named "Google" entities, including through the use of fabricated commercial documents such as company letterhead. They also continue to falsely claim in advertising materials that they own rights to, and offer for license to third parties, the GOOGLE mark and falsely assert that they indeed have even cancelled Google's federal trademark registration for the GOOGLE mark. This is despite the fact that not only have Google's federal registrations for GOOGLE not been cancelled, but the Trademark Trial and Appeal Board ("TTAB") has found Debtor's and his companies' claims of ownership to the GOOGLE mark to be wholly groundless and to have been made for the

<sup>1</sup> A copy of the Complaint for the Proposed Action (the "Complaint") is attached as Exhibit 1 to the Declaration of Michael T. Zeller, dated August 17, 2006 and filed concurrently herewith ("Zeller Dec. ").

"improper purpos[e]" of seeking to "harass" Google as well as many others "to pay [Debtor] to avoid litigation or to license one of the marks in which [Debtor] assert[s] a baseless claim of rights."<sup>2</sup> The ongoing acts by Debtor, Central Mfg. and Stealth constitute false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, and unfair competition. It is for this conduct, as set forth in the Complaint, that Google proposes to sue Debtor, Central Mfg. and Stealth for injunctive and monetary relief.

2. Google respectfully asks the Court to declare that the automatic stay is not applicable to its Proposed Action under Section 362(a) because the Proposed Action was not and could not have been commenced before the Petition Date. Debtor filed in this Court a voluntary petition for relief under Chapter 13 of the Bankruptcy Code (the "Petition") on December 20, 2005 (the "Petition Date"). The acts alleged in the Proposed Action to constitute false advertising occurred entirely after the Petition Date and thus could not have been the subject of a claim by Google prior to that time. Likewise, Google could not have brought its RICO claim before the Petition Date since it did not arise until later for the independent reasons that (1) Google did not begin suffering damage until after the Petition Date and (2) the second predicate act necessary to establish a RICO claim occurred post-Petition. Under these circumstances, Google's claims are considered post-Petition and thus not subject to the automatic stay.<sup>3</sup> Furthermore, even apart from the post-Petition accrual of Google's claims, Debtor, Central Mfg. and Stealth all have taken the position that Section 362's automatic stay does not apply to entities such as Central Mfg. and Stealth. Thus, there could be no dispute here that the Proposed Action can commence against Central Mfg. and Stealth notwithstanding the automatic stay.

3. In the alternative, in the event that the Court believes the automatic stay applies to the Proposed Action in whole or in part, there is "cause" under Section 362(d)(1) to modify any such stay so that Google can proceed. Neither fairness nor law justify allowing Debtor to continue to damage Google with impunity. The purpose of the Bankruptcy Code is to protect the innocent, yet unfortunate, debtor. Debtor in this case is neither, and clearly the automatic stay is not designed to provide Debtor with a safe haven for his continuing fraudulent conduct and

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<sup>2</sup> For this reason, as discussed below, TTAB recently dismissed outright a sham legal proceeding that Debtor and Central Mfg. had brought against Google.

<sup>3</sup> The Complaint for the Proposed Action does discuss certain pre-Petition acts, but as explained further below that does not mean Google's claims accrued then.

racketeering activities. Indeed, as the Court is aware, such misdeeds by Debtor, Central Mfg. and Stealth are unfortunately not an isolated episode, but an extension of their extortion racket that numerous judges in this Circuit and District have condemned. In short, because Google will continue to be irreparably damaged if the Proposed Action is delayed, whereas Debtor will not suffer any cognizable harm if he is forced to account for and cease his unlawful activities against Google, the equities strongly favor allowing Google to proceed with its Proposed Action. Debtor also brought his Petition in bad faith, which further supports any necessary modification of the stay.

#### Jurisdiction and Venue

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1334(a) and (b) and 157(a). This motion is a "core proceeding" in which the Court is entitled to enter a final order under 28 U.S.C. §§ 1334 and 157(b)(2)(G), 11 U.S.C. § 362(d) and Bankruptcy Rules 4001 and 9014. *In re Benalcazar*, 283 B.R. 514, 521-22 (Bankr. N.D. Ill. 2002).

5. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1408 and 1409.

#### Argument

#### **I. THE PROPOSED ACTION IS NOT SUBJECT TO THE AUTOMATIC STAY.**

##### **A. Because Google's Claims Accrued After The Petition Date, They Could Not Have Been Brought Pre-Petition And Are Not Within The Scope Of The Automatic Stay.**

6. 11 U.S.C. § 362 defines the scope of the automatic stay. By its terms, Section 362(a)(1) states in relevant part that it prohibits "the commencement . . . of a judicial . . . action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." Accordingly, claims that arise after the filing of a bankruptcy petition are not subject to this automatic stay provision. *E.g.*, *In re Anderson*, 23 B.R. 174, 175 (Bankr. N.D. Ill. 1982) ("The automatic stay provisions of Section 362(a)(1), (5), (6) and (7) have been held to be inapplicable to proceedings commenced after the filing of the Chapter 13 proceedings."); *see also Bellini Imports, Ltd v. The Mason & Dixon Lines, Inc.*, 944 F.2d 199, 201 (4th Cir. 1991); *In re Gull Air, Inc.*, 890 F.2d 1255, 1263 (1st Cir. 1989) ("proceedings or claims arising post-petition are not subject to the automatic stay."); *In re M. Frenville Co.*, 744 F.2d 332, 335 (3d Cir. 1984) ("[o]nly proceedings that could have been

commenced or claims that arose before the filing of the bankruptcy petitions are automatically stayed"); *In re Koop*, 2002 WL 1046700, at \*3 (Bankr. N.D. Ill. May 23, 2002).

7. Google's claims in the Proposed Action accrued after the Petition Date and thus are not within the scope of the automatic stay. Each claim is discussed in turn below.

1. **Google's False Advertising Claim Arose Post-Petition.**

8. Count I of the Complaint asserts against Debtor, Central Mfg. and Stealth a claim for false advertising under the Lanham Act. As 15 U.S.C. § 1125(a)(1)(B) states in pertinent part that "[a]ny person" who "in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."

9. As set forth in the Complaint for the Proposed Action, Debtor, Central Mfg. and Stealth have made such false and misleading representations in their advertising and promotional materials. Each of those operative acts also occurred after the Petition Date. More specifically, the unlawful acts of false advertising alleged in the Proposed Action are:

(a) Beginning on or about April 20, 2006 and continuing through the present, Debtor, Central Mfg. and Stealth have falsely represented on the commercial rentmark.blogspot.com web site that "STOLLER CANCELS THE GOOGLE TRADEMARK." (Complaint, ¶ 42(c) & Exh. P thereto).

(b) This was followed shortly, beginning on or about April 28, 2006 and continuing through the present, by the dissemination of false advertisements by Debtor and Stealth on the commercial rentamark.com web site that "GOOGLE" was, and remains, among the marks that they purport to "own and control" and purport to offer for licensing to third parties. (*Id.*, ¶ 40 & Exh. M thereto).

(c) Also beginning on or about April 20, 2006 and through the present, Debtor, Central Mfg. and Stealth have falsely represented on the commercial rentmark.blogspot.com web site that "Stoller has thus far prevailed in over 90% of its [*sic*] police actions against third party infringers. Companies like Wal-Mart, K-Mart and hundreds of other well known American companies have acknowledged Stoller's superior rights to its [*sic*] marks as a result of trademark litigation." (*Id.*, ¶ 42(b) & Exh. P thereto). Beginning on or about June 16, 2006 and continuing through the present, Debtor, Central Mfg. and Stealth also have been falsely representing on the

commercial [www.rentmark.blogspot.com](http://www.rentmark.blogspot.com) web site that "Leo Stoller has participated in over 200 inter party [*sic*] proceedings over 25 years prevailing in [*sic*] over 95% of the time and over 60 district court trademark cases." (*Id.*, ¶ 42(d) & Exh. Q thereto).

10. Because Google could not have sued for false advertising until Debtor, Central Mfg. and Stealth began disseminating these false representations in or after April 2006 in a manner that was calculated to damage Google -- well after the Petition Date -- there can be no question that Google's claim in Count I is not subject to the automatic stay of Section 362(a)(1). *See Keller Medical Specialties Products v. Armstrong Medical Indus., Inc.*, 1992 WL 390733, at \*3-4 (N.D. Ill. 1992) (Lanham Act cause of action arises when plaintiff discovers injury from act of defendant).

**2. Google's RICO Claim Accrued Post-Petition.**

11. Count II of the Complaint for the Proposed Action alleges RICO violations by Debtor, Central Mfg. and Stealth. RICO makes unlawful the operation of an "enterprise" by means of a "pattern" of racketeering activity. 18 U.S.C. § 1962(a)-(d). As the Seventh Circuit has held, the elements of a civil RICO claim are "1) a violation of the RICO statute, including proof that the defendant has participated in a pattern of racketeering, and 2) an injury to business or property." *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1464 (7th Cir. 1992). Accordingly, a RICO claim accrues "when the plaintiff discovers her injury, even if she has not yet discovered the pattern of racketeering." *Id.* at 1465. Moreover, "[t]here must, of course, be a pattern of racketeering before the plaintiff's RICO claim accrues, and this requirement might delay accrual until after the plaintiff discovers her injury." *Id.* "Racketeering" activity is any of a number of "predicate" offenses specified in 18 U.S.C. § 1961(a), which pertinent here include mail fraud, wire fraud and violation of state extortion laws. "A 'pattern' is (loosely) defined as 'at least two acts of racketeering activity . . . the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity.'" *McCool*, 972 F.2d at 1464 (quoting 18 U.S.C. § 1961(5)).

12. The Complaint for the Proposed Action asserts the following predicate racketeering acts by Debtor, Central Mfg. and Stealth:

(a) Acts And Threats Involving Extortion. The Complaint alleges as predicate acts that Debtor, Central Mfg. and Stealth engaged in extortion which is chargeable under State law and punishable by imprisonment for more than one year as set forth in 18 U.S.C. § 1961(1).

These include: (i) their November 29, 2005 letter from a bogus entity called "GOOGLE BRAND PRODUCTS & SERVICES" that contained threats to bring sham legal proceedings and to otherwise harass Google unless it paid them \$100,000 or else ceased use of the GOOGLE mark in connection with Google's business (Complaint, ¶ 44(a) & Exh. I thereto);<sup>4</sup> (ii) their subsequent initiation, on March 1, 2006, of sham legal proceedings against Google in TTAB, which TTAB subsequently dismissed because it was predicated on a claim of right to the "Google" mark by Debtor and Central Mfg. that was "baseless" (*id.*, ¶¶ 28(a), 41(b) & Exhs. E, N thereto); (iii) their February 9, 2006 email threatening to publicize their groundless 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 (*id.*, ¶ 44(c) & Exh. R thereto); (iv) their March 2, 2006 email again threatening to publicize their allegations with the avowed intention of "driv[ing] down Google stock price" (*id.*, ¶ 44(d) & Exh. S thereto); and (v) their email of March 31, 2006 which threatened to "refe[r]" Plaintiff's executives "to the US Attorney for a perjury charge should they lie under oath." (*Id.*, ¶ 44(b) & Exh. O thereto).

(b) Acts Involving Wire And Mail Fraud. The Complaint also alleges predicate acts of wire and mail fraud by Debtor, Central Mfg. and Stealth. *See* 18 U.S.C. §§ 2, 1341 & 1343. These include: (i) their November 29, 2005 letter described above and its attachments (*id.*, ¶ 40 & Exh. I thereto); (ii) their sham legal proceedings in TTAB described above (*id.*, ¶¶ 28(a), 41(b) & Exhs. E, N thereto); (ii) the March 31, 2006 email from Debtor touting its supposed litigation success statistics (*id.*, ¶ 44(b) & Exh. O thereto); (iii) their multiple fraudulent mail and wire communications in or about April 2006 purporting to be from a bogus business entity variously called "GOOGLE LICENSING [sic]" and "GOOGLE™ BRAND TRADEMARK LICENSING" (*id.*, ¶¶ 38-39 & Exhs. J-L thereto); and (iv) their fraudulent statements beginning on or about April 28, 2006 and through the present that Debtor and Stealth "own and control," and license to third parties, the "GOOGLE" mark (*id.*, ¶ 40 & Exh. M thereto).

13. As is evident from these dates and the law cited above, Google's RICO claim did not arise until after the December 20, 2005 Petition Date. Although the proposed defendants' letter dated November 29, 2005 does qualify as their first predicate act, Google plainly could not have sued for their violation of RICO at that time for at least two, separate reasons.

<sup>4</sup> Also according to the letter, this purported company had been operating "SINCE 1981." *See* Exh. I to Complaint (capitalization in original).

14. First, merely because the first RICO predicate act targeting Google occurred by letter dated November 29, 2005 -- shortly before the Petition Date -- does not in itself render the RICO claim pre-petition. See *Anderson*, 23 B.R. at 175 (post-petition breach of contract deemed to be outside scope of automatic stay even though contract was executed pre-petition; "[t]he fact that a contract was executed among the parties" pre-petition "is not sufficient basis to hold that the claim arose prior to the filing."); see also *In re M. Frenville Co.*, 744 F.2d at 335 ("Pre-petition acts by a debtor, by themselves, are not sufficient to cause the automatic stay to apply."). Under the law, Google's RICO claim did not accrue until it had discovered its injury. *McCool*, 972 F.2d at 1465. In this case, that did not occur until the very earliest (even as to the first predicate act consisting of the November 29, 2005 letter) until approximately January 12, 2006 when Google was forced to begin incurring out-of-pocket fees and costs in order to initially investigate the representations set forth in the letter and when Google subsequently ascertained they were false by approximately January 26, 2006. Because Google's discovery of its injury was after the Petition Date, Google's RICO claim could not have been brought before then and is not subject to the automatic stay.

15. Second, and independently, Google's RICO claim could not have accrued before the Petition Date because "[t]here must, of course, be a pattern of racketeering before the plaintiff's RICO claim accrues, and this requirement might delay accrual until after the plaintiff discovers her injury." *McCool*, 972 F.2d at 1465. Put differently, Google could not have sued on its RICO claim until (at a minimum) the second predicate act occurred. See *id.*; see also *Bygrave v. Van Reken*, 238 F.3d 419, 2000 WL 1769587, at \*4 (6th Cir. 2000) (unpublished disposition) (plaintiff "had no viable RICO claim at that time, because no second predicate act had yet occurred."); *Matthews v. Kidder, Peabody & Company, Inc.*, 2000 WL 33726916, at \*13 (W.D. Pa. Aug. 18, 2000) ("Since the pattern requirement of a RICO claim depends on the commission of two or more predicate acts, a cause of action in that case would not accrue until the occurrence of the second act"); *Foling v. K. Hovnanian Enterprises*, 99 F. Supp. 2d 502, 510-11 (D.N.J. 2000) (same, and noting that second predicate act is "necessary to establish the pattern"). As such, because the second predicate act did not occur until the February 9, 2006 email, Google again could not have commenced suit on its RICO claim before the Petition Date



and the automatic stay does not apply to Google's RICO claim for this further, dispositive reason.<sup>5</sup>

3. **Google's Unfair Competition Claim Arose Post-Petition.**

16. Count III of the Complaint for the Proposed Action is an unfair competition claim against Debtor, Central Mfg. and Stealth. The acts of unfair competition alleged in the Complaint are those previously described above. (*See* Complaint, ¶¶ 59-60.)

17. An unfair competition claim does not arise until, *inter alia*, the plaintiff discovers its injury. *E.g., Highsmith v. Chrysler Credit Corp.*, 18 F.3d 434, 441 (7th Cir. 1994) (unfair competition claim "accrues when the plaintiff 'knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused.'" (quoting and citing *Knox College v. Celotex Corp.*, 88 Ill.2d 407, 415, 430 N.E.2d 976, 980 (1981) and *Midland Management Corp. v. Computer Consoles Inc.*, 837 F. Supp. 886 (N.D. Ill. 1993) (Posner, J., sitting by designation)).

18. As discussed above, Google discovered that it had been injured after the Petition Date. Thus, Google's unfair competition claim likewise arose after the Petition Date and is not subject to the automatic bankruptcy stay.

B. **Debtor Himself Has Asserted In Other Litigation That The Automatic Stay Does Not Apply To Central Mfg. Or Stealth.**

19. Debtor cannot dispute that the Proposed Action should be allowed to proceed against Central Mfg. and Stealth. He himself, along with Central Mfg. and Stealth, asserted in the *Pure Fishing* action earlier this year that the automatic bankruptcy stay did not apply at all to either Central Mfg. or Stealth:

[I]t is clear from a plain reading of § 362(a) that the automatic stay applies only to the bankrupt party. 11 U.S.C. § 362(a)(1); *see also, Lee v. RCN Corp.*, 2004 U.S. Dist. LEXIS 18941 (N.D. Ill. 2004) (citing *Fox Valley Constr. Workers v. Pride of the Fox Masonry*, 140 F.3d 61, 666 [*sic*] (7th Cir. 1998)). This comports with the overall purpose

<sup>5</sup> As the discussion above makes clear, even though the Complaint does allege various other pre-Petition Date acts by Debtor and others (including some as early as the 1990 time period), those allegations do not transmogrify Google's claims into pre-petition ones. They are included to prove such matters as the proposed defendants' fraudulent intent and lack of mistake and, furthermore, to establish such matters as continuity and relationship as part of the later pattern of RICO predicate acts that targeted Google. To state the obvious, Google could not have sued Debtor, Central Mfg. and Stealth under any plausible scenario for RICO violations until it was injured by their misconduct and then discovered its injury beginning in January 2006 and until they committed their second predicate act in February 2006.



of the statute since that particular section was not designed to afford collateral benefits to non-bankrupt parties involved in litigation with the debtor as party defendants or as co-defendants. *Id.* In fact, the overwhelming majority of courts have held that the lawsuit is only stayed as to the bankrupt party and not as to the non-bankrupt co-defendants. *In re Richard B. Vance & Co.*, 289 B.R. 692, 696-97 (citing, *inter alia*, *Pitts v. Unarco Industries*, 698 F.2d 313 (7th Cir. 1983); *Sav-a-Trip, Inc. v. Belfort*, 164 F.3d 1137 (8th Cir. 1999); *In re Miller*, 262 B.R. 499 (9th Cir. BAP 2001); *Lukas, Nace, Gutierrez & Sachs, Chartered v. Havens*, 245 B.R. 180 (D.D.C. 2000)).<sup>6</sup>

20. Having persuaded Judge Lindenberg that the automatic stay did not apply to Central Mfg. or Stealth,<sup>7</sup> Debtor cannot take a contrary tact here without running afoul of the doctrine of judicial estoppel. *Johnson v. ExxonMobil Corp.*, 426 F.3d 887, 891 (7th Cir. 2005) ("The doctrine of judicial estoppel prevents a party from adopting a position in a legal proceeding contrary to a position successfully argued in an earlier legal proceeding."); *see also Cannon-Stokes v. Potter*, -- F.3d --, 2006 WL 1816010, at \*1-2 (7th Cir. July 5, 2006) (applying judicial estoppel to bar inconsistent claim).

**II. IN THE ALTERNATIVE, THERE IS CAUSE FOR MODIFYING THE STAY TO ALLOW GOOGLE TO PROCEED WITH THE PROPOSED ACTION.**

21. In the alternative, should the Court decide that the automatic stay applies to the Proposed Action in whole or in part, Google respectfully submits that the Court should modify any such stay for cause so as to allow it to file and proceed with the Proposed Action.

22. Section 362(d)(1) permits the Court to modify the Bankruptcy Code's automatic stay provisions for "cause." Whether cause exists so as to permit a lawsuit to commence or proceed in another court involves balancing the costs and benefits of maintaining a stay, and discretionary relief from the stay "is determined on a case-by-case basis." *In re Fernstrom Storage & Van Co.*, 938 F.2d 731, 735 (7th Cir. 1991); *see also In re Benalcazar*, 283 B.R. at 535-36. The Seventh Circuit has adopted a three-prong "balancing of the equities" analysis to guide this determination: (1) whether any great prejudice will result to the debtor or the bankruptcy estate if the stay is modified; (2) whether the hardship to the movant if the stay is not

<sup>6</sup> Counter-Defendants' Response in Opposition to Counter-Plaintiffs' Brief Captioned as "Response to December 20, 2005 Order," at page 2, attached as Exhibit 2 to the Zeller Dec.

<sup>7</sup> Zeller Dec., Exh. 3. As the Order shows, Judge Lindenberg agreed the automatic stay did not apply to parties other than Debtor, but decided to stay the civil action as against the entity co-defendants as a discretionary matter. *Id.*

lifted considerably outweighs the hardship of the debtor; and (3) whether the movant has a likelihood of prevailing on the merits. *Fernstrom*, 938 F.2d at 735.

23. These factors heavily favor allowing Google to proceed with its Proposed Action. Given the position he took in the *Pure Fishing* case, Debtor cannot argue that Central Mfg. or Stealth are subject to the automatic stay and thus cannot rely on any alleged prejudice to those entities if the Proposed Action were to proceed.<sup>8</sup> Nor can Debtor plausibly claim that he will suffer any cognizable prejudice or that the Proposed Action would interfere with this proceeding. While he undoubtedly will have to defend himself in the Proposed Action, that burden cannot be seriously regarded as prejudicial, particularly for someone who touts himself as a professional, full-time litigant and has been responsible for filing dozens of lawsuits in this District alone. *E.g., In re A Partners, LLC*, -- B.R. --, 2006 WL 1593954, at \* 10 (Bankr. E.D. Cal. June 5, 2006) (in Chapter 11 case, noting that while lifting stay for cause to allow foreclosure would "interfere with" debtor's "financial affairs, that does not mean that the granting of relief [from the stay to the movant] will interfere with this bankruptcy in any way that the court could find to be inappropriate."). Furthermore, since Debtor is the one who chose to intentionally target Google for extortion and fraud -- as TTAB already has found as discussed below -- Debtor should not be allowed to escape the consequences of his actions. The purpose of the Bankruptcy Code is to protect the innocent, yet unfortunate, debtor. Debtor here is neither. Fairness and equity in no way would justify allowing Debtor to continue to damage Google and its shareholders with impunity, and the automatic stay clearly is not designed to provide him with a safe haven for his continuing fraudulent conduct and racketeering activities. Permitting Google to seek judicial relief to put an end to Debtor's on-going misconduct would not result in prejudice, but in justice.

24. Conversely, if forced to delay securing relief and vindicating its rights, Google would suffer hardship that far outweighs any legitimate interest Debtor could invoke. Debtor's deliberate, on-going false advertising alone constitutes irreparable harm because his misrepresentations damage Google's reputation, just as Debtor has indicated is his avowed intent. *Castrol, Inc. v. Quaker State Corp.*, 977 F.2d 57, 62 (2d Cir. 1992) (irreparable harm presumed where literally false advertisement mentions plaintiff or its product by name); *Abbott Laboratories v. Mead Johnson & Co.*, 971 F.2d 6, 16 (7th Cir. 1992) (noting in false advertising

<sup>8</sup> Moreover, there could be no equitable considerations favoring delay in proceeding against Central Mfg. or Stealth since "the 'fresh start' concept does not apply to corporate debtors." *In re Pettibone Corp.*, 151 B.R. 166, 174 (Bankr. N.D. Ill. 1993).

case the "well-established presumption that injuries arising from Lanham Act violations are irreparable, even absent a showing of business loss."). Debtor's continuing dissemination of false statements about his alleged ownership of the GOOGLE mark and his claims to be operating various bogus "Google" entities threatens to deceive the unsuspecting public as well.

25. Similarly, the "congressional objective" in enacting RICO was to "encourag[e] civil litigation to supplement Government efforts to deter and penalize . . . prohibited practices. The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity." *Rotella v. Wood*, 528 U.S. 549, 557 (2000). The longer Google is delayed in bringing its RICO claim, the longer this interest is thwarted and the greater Google is damaged. In this regard, Debtor has threatened, in violation of state criminal extortion laws, to "drive down Google stock price" and bring about the "total destruction" of Google unless he is paid his protection money. Having made those dire threats, Debtor can scarcely contest that Google would potentially suffer significant prejudice and hardship if it is precluded from bringing its Proposed Action.

26. Google's likelihood of success also weighs in favor of finding that "cause" exists to modify any applicable automatic stay. The Complaint sets forth in detail the facts -- supported by documentary evidence -- giving rise to Google's claims. Many of those facts are beyond dispute. As one example, the claims by the proposed defendants that they own rights to the "Google" mark, and the materials fabricated by Debtor, Central Mfg. and Stealth to misrepresent themselves as variously named "Google" entities, are unquestionably fraudulent. Indeed, while there is abundant evidence to establish this, suffice it to say that TTAB already has so found. Thus, in its Order dated July 14, 2006, TTAB deemed the proposed defendants' assertions of rights to some 1800 marks that they had claimed in legal proceedings before TTAB -- which include their claim of right to the "Google" mark -- to be groundless and made "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."<sup>9</sup> For those violations -- which TTAB stated rose to the level of "egregious" misconduct -- TTAB imposed an array of sanctions, including the subsequent dismissal of an opposition proceeding that Debtor and Central Mfg. had brought against Google in TTAB.<sup>10</sup> And, further eliminating any doubt that the proposed

<sup>9</sup> A copy of TTAB's July 14, 2006 Order is attached as Exhibit E to the Complaint.

<sup>10</sup> A copy of the TTAB's dismissal Order is attached as Exhibit N to the Complaint.

defendants' claims of right are false, Debtor's own filings in this Chapter 13 proceeding and in his 1998 bankruptcy case conspicuously fail to disclose any interest in any entity called "Google," even though Debtor has claimed that this purported business entity has been in operation "SINCE 1981." To cite another example, Debtor's own advertising materials assert that "STOLLER CANCELS THE GOOGLE TRADEMARK." Not only is this an unambiguously false statement, but it is no coincidence that he publicly disseminated it starting on April 20, 2006, only days before announcing -- also falsely -- that Debtor and Stealth "own and control" the "GOOGLE" mark and proclaiming that they have the right to license it to third parties for a fee. And, as for Debtor's representations that it has prevailed in "over 90%" or "over 95%" of its legal actions or obtained settlements from "99%" of those companies and individuals Defendants have targeted, one Court recently has pointed out their falsity in blunt terms: "[n]o Court has ever found infringement of any trademark allegedly held by Stoller or his related companies in any reported opinion."<sup>11</sup>

27. Further confirming the likelihood of Google's success on the merits is the long, irrefutable string of Court decisions condemning the pattern of similar misdeeds perpetrated by Debtor, Central Mfg. and Stealth. Although the Complaint identifies additional instances of the numerous Court and TTAB decisions against the proposed defendants for their false claims of right to trademarks they do not own, their use of bogus corporate identities and their efforts at extortion, the following are particularly pertinent here:

(a) In *S Industries, Inc. v. Centra 2000, Inc.*, 249 F.3d 625, 627-29 (7th Cir. 2001), the Seventh Circuit found that Debtor and his company's assertion of trademark rights was legally groundless and affirmed an award of attorneys' fees against them 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."

(b) Even more recently, in *Central Mfg. Co. v. Brett*, No. 04 C 3049 (N.D. Ill) (Coar, J.), the Court ruled that Central Mfg. and Debtor lacked the trademark rights they had claimed.<sup>12</sup> 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

<sup>11</sup> See Order of September 30, 2005, *Central Mfg. Co. v. Brett*, No. 04 C 3049 (N.D. Ill) (Coar, J.), at page 2, copy attached as Exhibit 4 to the Zeller Dec.

<sup>12</sup> A copy of the Court's Order is attached as Exhibit 4 to the Zeller Dec.

district" that Debtor and Central Mfg. are "engage[d] in a pattern and practice of harassing legitimate actors for the purpose extracting a settlement amount." In this regard, the Court noted that "[t]he sheer number of cases" that Defendants here "have filed in this district raises serious questions" about the "good faith" of Defendants and their counsel. Further, the Court found that the terms of the "settlement agreements" which Debtor and Central Mfg. alleged evidenced their trademark rights in fact confirmed that they 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." Finding 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 also had offered "questionable, and seemingly fantastical documents" and "inconsistent, uncorroborated, or arguably false testimony," the Court ordered them to pay an award of attorneys' fees.

(c) In *Central Mfg. Co. v. Pure Fishing, Inc.*, No. 05 C 725 (N.D. Ill) (Lindenberg, J.), the Court entered judgment against Debtor and Central Mfg. as a sanction for their abuse of the legal process.<sup>13</sup> In doing so, 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 that Debtor, Central Mfg. and their counsel had engaged in "gross misconduct" and "unethical conduct" which included Debtor's forging of signatures on pleadings, had brought "baseless" motions 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 had violated Federal Rule of Civil Procedure 11 "by maintaining that Central Mfg. Co. was a Delaware corporation," even though it was in reality a "false corporation" and a "false name" used by Debtor to facilitate and conceal his fraudulent claims to trademark rights.

(d) In *S Industries, Inc. v. Diamond Multimedia Sys., Inc.*, 17 F. Supp. 2d 775, 779 (N.D. Ill. 1998) (Andersen, J.), the Court awarded attorney's fees against a company of Debtor based on findings that its claims in the suit 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."

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<sup>13</sup> A copy of the Court's Order is attached as Exhibit 5 to the Zeller Dec.

28. Thus, the balancing of equities here amply supports allowing Google to proceed with its Proposed Action even if the automatic stay is deemed to apply.

29. Furthermore, "cause" for relief from the automatic stay may be found where the debtor's filing of a bankruptcy petition was in bad faith. *In re Laguna Associates Limited Partnership v. Aetna Cas. & Surety Co.*, 30 F.3d 734, 737 (6th Cir. 1994) ("As a number of our sister circuits have recognized, a debtor's lack of good faith in filing a petition for bankruptcy may be the basis for lifting the automatic stay."); *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986) ("The debtor's lack of good faith in filing a bankruptcy has often been used as cause for removing the automatic stay."); *see also In re Syed*, 238 B.R. 126, 133 (Bankr. N.D. Ill. 1999) (lack of good faith "supports the retroactive annulment of the automatic stay."). Good faith in Chapter 13 filings is determined by the totality of the circumstances, and "the focus of the inquiry is fundamental fairness." *In re Love*, 957 F.2d 1350, 1357 (7th Cir. 1992) (also explaining "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").

30. The lack of good faith in Debtor's filing of his Chapter 13 Petition has already been briefed on the Motion to Convert filed by the Pure Fishing entities and is set for an evidentiary hearing before the Court. In the event that the Court finds Debtor's filing was in bad faith on the Motion to Convert, then that finding should equally serve here to establish cause for lifting any applicable automatic stay. Google will not burden the Court by repeating the evidence and legal analysis presented on that motion showing Debtor's lack of good faith, although one additional point mentioned above that bears on Google's claims further tends to underscore Debtor's bad faith in this, as well as his 1998, bankruptcy. None of Debtor's disclosures in those proceedings mentioned the supposed "Google" business that he now claims to have been long operating, allegedly since 1981. Accordingly, if it does exist, Debtor committed fraud by failing to disclose assets in which he has an interest to the Court and the Trustee. If it does not exist, then permitting Google to bring its suit to establish the fraudulent nature of those and related representations by Debtor could not possibly interfere with this proceeding. Either way, having not deigned to identify this alleged "business" in his bankruptcy

disclosures, Debtor should not now be heard to argue that his bankruptcy case should shield him from Google's Proposed Action.<sup>14</sup>

**Waiver of Rule 4001(a)(3)**

31. Google requests that any Order granting relief provide for a waiver of the 10-day period set forth in Bankruptcy Rule 4001(a)(3).

**Prayer for Relief**

WHEREFORE, Google respectfully requests that the Court enter an order declaring that Google's Proposed Action is not subject to the automatic stay or, in the alternative, modifying any such stay to allow Google to file and proceed with the Proposed Action.

DATED: August 18, 2006

Respectfully submitted,  
GOOGLE INC.

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<sup>14</sup> To avoid any argument by Debtor that a granting of the Motion to Convert by the Court would render Google's claims pre-petition and thus subject to the automatic stay, Google respectfully requests that the Court grant Google's motion before entering an order granting the Motion to Convert.

# **EXHIBIT 1**



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

GOOGLE INC.,	)	
	)	Civil Action No. _____
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; STEALTH INDUSTRIES,	)	
INC. a/k/a RENTAMARK and a/k/a	)	
RENTAMARK.COM; and	)	
LEO D. STOLLER a/k/a LEO REICH,	)	
	)	
Defendants.	)	

**COMPLAINT**

Plaintiff Google Inc. ("Google"), by its attorneys and for its Complaint against Defendants, alleges as follows:

**Nature of This Action**

1. As the Seventh Circuit, Courts in this District and the Trademark Trial and Appeal Board repeatedly have found, Defendants are engaged in a scheme of falsely claiming trademark rights for the purpose of harassing and attempting to extort money out of legitimate commercial actors, both large and small. Indeed, the judicial decisions awarding fees and otherwise imposing sanctions against Defendants 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.

2. Despite the admonitions of Courts and others, Defendants have not only continued with, but expanded the scope of, their fraudulent scheme. Among other things, Defendants have fabricated, and threaten to continue to fabricate, non-existent entities that Defendants falsely represent to unsuspecting victims are actual business entities. Defendants

further falsely claim that these non-existent entities have been using a wide array of trademarks on goods or services and otherwise have ownership and licensing rights to thousands of trademarks -- when in reality they have no such rights -- for the purposes of extracting money and obtaining the transfer of property to which Defendants are not entitled. To create an aura of legitimacy for their deceptive enterprise, Defendants have engaged in a widespread pattern of fraudulent acts that have included (i) preparing and circulating fabricated letterhead and other commercial documents supposedly evidencing the existence of their phony entities; (ii) repeatedly publishing advertisements and promotional materials which falsely claim rights to, and the ability to license, marks in which Defendants have no lawful interest and which falsely represent that Courts or others have upheld their alleged rights; (iii) disseminating false statements which represent that Defendants own federal registrations for marks when no such registration exists; (iv) asserting the ownership of fraudulently procured or fraudulently maintained federal registrations; (v) soliciting and employing perjured testimony and other materially false statements made under oath; and (vi) filing materially false documents with U.S. government agencies. Defendants employ these and other unlawful devices as described below to deceive, induce and coerce innocent parties into paying them money or else surrendering to Defendants property rights which Defendants then, in turn, use to defraud others. To date, Defendants have made hundreds of such misrepresentations to hundreds of legitimate companies.

3. Unfortunately, Plaintiff Google's widely-publicized success has attracted the attention of Defendants. As part of their scheme to defraud, Defendants have falsely represented that they own a federal registration for the GOOGLE mark, that they are owners of common law rights in the GOOGLE mark and that they have the right to license the GOOGLE mark to third parties. In order to effectuate their fraud, Defendants further have prepared and circulated, and continue to circulate, bogus letterhead and other corporate documents supposedly evidencing an entity they variously call "GOOGLE™ BRAND TRADEMARK LICENSING," "GOOGLE LICENSING [sic]" and "GOOGLE BRAND PRODUCTS AND SERVICES," even though by all indications no such entity exists. Defendants also have published, and continue to publish, promotional materials that falsely and deceptively represent that Defendants have rights to license the GOOGLE mark, that falsely claim that Defendants have successfully cancelled one or more of Plaintiff's federal trademark registrations for GOOGLE, and that otherwise misrepresent the nature of Defendant's goods, services and commercial activities.

4. Defendants' scheme is and has been with the intent to deceive. Defendants targeted Plaintiff Google, as well as hundreds of other legitimate companies, despite Defendants' knowledge that Defendants have no rights to the marks that they claim and no rights to license them to third parties. Defendants have falsely asserted, and continue to falsely assert, that they have such rights in order to defraud and extort their intended victims. After Plaintiff Google investigated Defendants' allegations of rights and refused Defendants' demands for money, Defendants not only persisted in their spurious demands for a pay-off, but also threatened to publicize their allegations which, they claimed, would bring about "the total destruction" of Plaintiff as a business.

5. Accordingly, Defendants have engaged in, and threaten in the future to engage in, acts of false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), as well as acts of unfair competition. Furthermore, because Defendants constitute an enterprise engaged in a pattern of racketeering activity that has caused injury and damage to Plaintiff Google, they are liable under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* As a consequence of the foregoing, Google is entitled to monetary and injunctive relief against Defendants.

#### **The Parties**

6. Plaintiff Google Inc. is a Delaware corporation with its principal place of business in Mountain View, California. Plaintiff Google offers a variety of services and products, including a web site that provides the world's most popular Internet search engine and that is visited by more than 380 million users each month.

7. On information and belief, Defendant Central Mfg. Inc. is a Delaware corporation with its principal place of business in Oak Park, Illinois and operates under one or more aliases, including without limitation as Central Mfg. Co., Central Mfg. Co. (Inc.), Central Manufacturing Company, Inc. and/or Central Mfg. Co. of Illinois (collectively, "Central Mfg."). Defendant Central Mfg. has at all times relevant hereto conducted activities in interstate commerce.

8. On information and belief, Defendant Stealth Industries, Inc. ("Stealth") is a Delaware corporation with its principal place of business in Oak Park, Illinois. Defendant Stealth has at all times relevant hereto conducted activities in interstate commerce.

9. On information and belief, Rentamark, which is also known as Rentamark.com, is an unincorporated business entity with its principal place of business in Oak Park, Illinois.

According to sworn testimony by Defendant Stoller, Rentamark is operated by and a part of Defendant Stealth.

10. On information and belief, Defendant Leo Stoller ("Stoller") is a citizen and resident of Illinois who is the CEO and shareholder of Defendant Central Mfg. and Defendant Stealth. Leo Stoller is also known by aliases that include Leo Reich. Defendant Stoller has at all times relevant hereto conducted the activities complained of herein in interstate commerce.

11. Defendant Stealth and Defendant Central Mfg. purport to be successors-in-interest of a defunct business named S Industries, Inc. Defendant Stoller was at all relevant times the President and a shareholder of S Industries, Inc.

#### **Jurisdiction And Venue**

12. This action arises under the Trademark Act of 1946, Title 15, United States Code, the Racketeer Influenced and Corrupt Organizations Act, Title 18, United States Code and the law of Illinois and other states. The Court therefore has jurisdiction over the subject matter of 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).

13. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) and 18 U.S.C. §§ 1965(b) and 1965(d). Defendants reside in, are found in, transact affairs in and are subject to personal jurisdiction in this District, and a substantial part of the events giving rise to the claims herein occurred in this District.

#### **Facts**

##### **Defendants' Fraudulent Conduct Using SI**

14. S Industries, Inc. ("SI"), the claimed predecessor of Defendant Central Mfg. and Defendant Stealth, was incorporated in or about 1985. Defendant Stoller acted as SI's principal. During that time in the 1980s, according to Defendant Stoller, SI engaged in the business of importing sporting goods such as tennis rackets from manufacturers in Taiwan and other Asian countries.

15. In or about January 1990, Defendant Stoller was evicted from the business premises of SI. By that point, while SI nominally moved to Defendant Stoller's house, it was defunct as a business. As Defendant Stoller subsequently admitted during a 2001 deposition, and contrary to his prior sworn statements otherwise to the Courts and the U.S. Trademark Office, SI had at best only "very nominal, or de minimis" sales by and throughout the 1990s.

16. No longer conducting legitimate operations by or in about 1990, SI and Defendant Stoller focused their energies on a new "business" model. This included, in particular, the implementation of a widespread scheme of asserting rights to trademarks, including by way of purported federal registrations, that SI and Defendant Stoller knew they had no rights to in order to fraudulently extract money from businesses and individuals.

17. Among other things, Defendant Stoller was well aware that common law trademark rights are acquired only through sufficient bona fide use in commerce and that such use is also required for the legitimate acquisition and maintenance of use-based federal trademark registrations. Even though SI was effectively dissolved and thus not using any marks in commerce in a manner and to an extent necessary for trademark rights, SI and Defendant Stoller nevertheless represented that they owned non-existent trademark rights and sought to assert them by demanding the payment of license fees and by threatening and filing sham litigation for the purpose of extorting money or property from their victims. Between 1995 and 1997 alone, SI and Defendant Stoller filed no fewer than 35 trademark lawsuits in the United States District Court for the Northern District of Illinois alone. A list of those cases is attached as Exhibit A hereto and is incorporated herein by this reference.

18. The Seventh Circuit and this Court found that the suits filed and prosecuted by SI and Defendant Stoller were part of a pattern of vexatious litigation that falsely claimed rights to marks they did not own and had no lawful right to assert. Those rulings included the following:

(a) In *S Industries, Inc. v. Centra 2000, Inc.*, 249 F.3d 625, 627-29 (7th Cir. 2001), the Seventh Circuit found that SI and Defendant Stoller'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 Defendant Stoller, upon information and belief such award has not been paid.

(b) 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 Defendant Stoller was "highly questionable" and "perhaps fabricated" and that

Defendant Stoller's sworn testimony was "inconsistent, uncorroborated, and in some cases, demonstrably false."

(c) 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."

19. In addition to filing and prosecuting numerous sham lawsuits in the Courts, SI and Defendant Stoller instituted and prosecuted a flurry of sham proceedings before the United States Trademark Trial and Appeal Board ("TTAB" or the "Board") based on their fraudulent claims of trademark rights. Those proceedings resulted in decisions that included the following findings by TTAB:

(a) 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 Defendant Stoller's history of being "sanctioned, individually, for making material misrepresentations."

(b) 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 Defendants Central Mfg. and Stoller's "litigation strategy of delay, harassment, and falsifying documents in other cases is well documented."

(c) 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."

(d) In *S. Indus. Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293, 1295 (TTAB 1997), the Board found that SI and Defendant Stoller had made "fraudulent" statements under oath in order to backdate pleadings filed with the Board.

**Defendants' Fraudulent Acquisition Of Federal Registrations From SI**

20. SI, through Defendant Stoller, purported to assign several federal trademark registrations and applications to Defendant Central Mfg. Many of the alleged assignments were dated on or about June 5, 1994, but were not recorded with the U.S. Trademark Office until various times in or after 1998. The registrations and applications allegedly assigned by SI to

Defendant Central Mfg. include those that are listed in Exhibit B hereto and are incorporated herein by this reference.

21. The assignments from SI to Defendant Central Mfg. for the registrations and applications listed in Exhibit B hereto were knowingly and deliberately fraudulent on the part of Defendant Stoller and Defendant Central Mfg. Defendant Stoller, Defendant Central Mfg. and Defendant Stealth also utilized these purported registrations as vehicles to perpetrate an intentional pattern of fraud on a significant number of persons and companies, as well as on the Courts and TTAB. Among other things:

(a) SI had ceased operating as an actual business years before the alleged assignments. Not only had SI's rights in the marks accordingly been abandoned (assuming they ever existed), but the subsequent purported assignments were not accompanied by any assets or existing, on-going business. Nor did the assignment agreements, which recited that the transfers of the registrations were only for nominal consideration, reflect any such transfer of any assets or existing, on-going business. As such, and as has been known to Defendants at all material times, because no existing good will accompanied them, the ostensible transfers were assignments-in-gross that rendered invalid both the registrations and any subsisting common law rights, even assuming any such rights ever once existed.

(b) According to sworn testimony by Defendant Stoller, SI had allegedly transferred ownership of most or all of the registrations and applications set forth in Exhibit B to Defendant Central Mfg. in or about 1994. Nevertheless, after the alleged assignments, SI and Defendant Stoller continued to fraudulently hold out SI as the owner of intellectual property and to fraudulently file and prosecute, in the name of SI, lawsuits in the Courts and proceedings before TTAB. In the United States District Court for the Northern District of Illinois during the years 1996 and 1997, SI and Defendant Stoller initiated at least 35 suits in SI's name that misrepresented that SI was the owner of the registrations and applications asserted in those cases and that SI was the owner of the common law trademark rights asserted in those cases. See Exhibit A hereto.

(c) Likewise, in TTAB, SI and Defendant Stoller initiated numerous proceedings in SI's name that alleged SI was the owner of the registrations, both after SI had ceased to effectively exist and after SI had purportedly transferred the registrations to Defendant

Central Mfg. Examples of such fraudulently commenced and prosecuted proceedings in TTAB include without limitation each of the following:

<b>Proceeding No.</b>	<b>Registration No.</b>	<b>Filing Date of Proceeding by SI and Stoller</b>	<b>Date of Alleged Assignment of Registration to Central Mfg.</b>	<b>Other Party to Proceeding</b>
91110672	1717010	05/29/1998	12/29/1997	JL AUDIO, INC.
91110659	2140524	03/23/1998	06/05/1997	ENTRA TECHNOLOGIES COMPANY
92027323	2057613	01/23/1998	11/01/1997	ROSE'S RESTAURANT'S INC.
91108615	1326765	11/17/1997	06/05/1997	INTRACO FOODS PTE LTD.
91107902	1623790	09/12/1997	06/05/1996	REALITY BYTES, INC.
91107648	2064576	09/03/1997	06/05/1997	GLOBAL UPHOLSTERY COMPANY
91107040	1326765	07/10/1997	06/05/1997	ST. JOSEPH LIGHT & POWER CO.
91106515	1326765	06/06/1997	06/05/1997	SENTRACHEM LIMITED
91110350	1615004	05/01/1998	09/01/1997	KAYDON CORPORATION
91109973	1615004	03/25/1998	09/01/1997	MANCO PRODUCTS, INC.
91108480	1615004	11/05/1997	09/01/1997	TERMINATOR TURTLE, LP



(d) Defendant Stoller and SI also filed knowingly fraudulent papers with the U.S. Trademark Office in order to unlawfully maintain the registrations that had allegedly been transferred to Defendant Central Mfg. For example, SI, through Defendant Stoller, purported to assign Registration No. 1,564,751 for AEROSPACE to Central Mfg. on or about June 5, 1994. Nevertheless, on or about November 11, 1994, SI, through Defendant Stoller, filed a sworn statement with the U.S. Trademark Office to obtain supposed incontestability status for the registration that averred SI had continuously been using the mark on the goods listed in the registration, that it was still doing so and that SI was the owner of the purported registration. Even to this day, SI holds itself out as the purported owner of Registration No. 1,564,751.

(e) The registrations and applications listed in Exhibit B attached hereto were, and are, invalid and fraudulent for the further, independent reason that the alleged assignments from SI were to a non-existent entity. The assignee named by SI and Defendant Stoller in their transfer documents and in their filings with the Courts and TTAB is listed as "Central Mfg. Co." Although a company named Central Mfg. Inc. apparently is a legal entity under the laws of Delaware, Central Mfg. Co. does not exist and never has existed. Nor was Defendant Stoller's misidentification inadvertent. Rather, as the Court found in *Central Mfg. Co. v. Pure Fishing, Inc.*, No. 05 C 725 (N.D. Ill) (Lindenberg, J.) as discussed further below, Defendant Stoller's misrepresentations about the corporate status of "Central Mfg. Co." were intentional so as to mislead and defraud those who dealt with the non-existent "Central Mfg. Co." and to perpetrate a fraud on the Courts by enabling and concealing Defendants' false assertions of trademark rights.

(f) In addition, Defendant Stoller has obtained, through baseless assertions of rights and threats of sham litigation, the transfer of trademark applications and registrations previously held by third parties to Defendant Stealth and Defendant Central Mfg. These include without limitation U.S. Trademark Application Nos. 74-735,867, 74-735,868, 74-493,718, 74-475,481, 74-340,300, 74-476,028, 74-630,176, 74-734,680, and 74-534,766 as well as U.S. Trademark Registration Nos. 1,717,010, 1,766,806 and 2,269,113. Upon information and belief, these transfers were also invalid assignments-in-gross, including without limitation in that they were not accompanied by any assets or existing, on-going business, and furthermore were not validly maintained, including without limitation in that the alleged marks were not used in commerce in connection with the goods or services set forth in the applications and registrations. Nevertheless, Defendants have misused these applications and registrations to claim rights they

do not own, to fraudulently demand licensing fees and to threaten sham lawsuits against others, despite Defendants' knowledge that such applications and registrations are not, and were not, valid.

**Defendants Continue, And Expand, Their Pattern Of Fraud**

22. Since the time of the alleged assignment of the registrations and applications from SI, Defendant Central Mfg., Defendant Stealth and Defendant Stoller have engaged in, and continue to engage in, numerous fraudulent business practices as part of a scheme to extort money and property from innocent individuals and innocent companies, both large and small. As described further below, these practices include:

(a) false claims, including through the creation and circulation of fraudulent commercial documents, that non-existent entities are actual, legitimate businesses and that such non-existent entities have ownership and/or licensing rights to trademarks;

(b) false claims of right to intellectual property that Defendants know they do not own and have no colorable right to;

(c) false claims to own federal trademark registrations that Defendants know they do not own and in some instances do not even exist;

(d) the filing of fraudulent documents with U.S. government agencies;

(e) representations that Defendants offer or have offered goods or services that they have not, and in some cases never have, supplied;

(f) false representations that they provide legal services, even though they are not admitted in any State to practice law;

(g) unlawful threats to disseminate, and the unlawful dissemination of, false representations about targeted companies or individuals in the media or to the public if they do not pay money or surrender rights as demanded by Defendants; and

(h) threatening and instituting sham trademark lawsuits and other frivolous legal proceedings.

23. This and other Courts repeatedly have confirmed that Defendants continue to engage in a pattern of falsely claiming rights to marks they do not own, including by the fabrication of evidence and the provision of false testimony, and continue to attempt to enforce those non-existent rights by threatening and filing frivolous litigation, including in some

instances by the use of false names. In addition to the decisions involving Defendant Stoller, Defendant Central Mfg. and SI that are discussed above, such decisions include the following:

(a) In *Central Mfg. Co. v. Brett*, No. 04 C 3049 (N.D. Ill) (Coar, J.), the Court ruled that Defendant Central Mfg. and Defendant Stoller 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 Defendant Stoller 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 Defendant Stoller 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."

(b) In *Central Mfg. Co. v. Pure Fishing, Inc.*, No. 05 C 725 (N.D. Ill) (Lindenberg, J.), the Court entered judgment against Defendant Central Mfg. as a sanction for Defendant Stoller and Defendant Central Mfg.'s abuse of the legal process. In doing so, the Court found that Defendant Stoller "has earned a reputation for initiating spurious and vexatious federal litigation." In the case before it, the Court found that Defendant Stoller, Defendant Central Mfg. Co. and their counsel had engaged in "gross misconduct" and "unethical conduct" which included Defendant Stoller's signing of pleadings with counsel's name even though Defendant Stoller 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.

(c) 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."

(d) In *Central Mfg. Inc. v. Third Millenium Tech. Inc.*, 61 U.S.P.Q. 1210, 1214-15 (TTAB 2001), the Board found that Defendant Stoller 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 Defendant Stoller 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."

24. Undeterred by these and similar rulings, Defendants to this day have continued, and even expanded, their fraudulent scheme by now falsely claiming that they own rights in, and have the right and ability to license, many thousands of trademarks. As described below, Defendants have repeatedly made these misrepresentations in commercial advertising and to hundreds of companies and individuals, including Plaintiff, targeted by Defendants for extortion.

25. Since November 2005 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. Simultaneous with this proliferation of filings, Defendants have sought to extract money or property out of at least many hundreds of applicants by asserting that Defendants purportedly own rights to all of these many hundreds of marks which have been the subject of those applications.

26. 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, Defendant Stoller's April 12, 2006 request for an extension of time to oppose Application Serial No. 78192386 for "VP VENTURES" includes 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.

A true and correct copy of the April 12, 2006 request is attached hereto as Exhibit C.

27. Many of Defendants' more than 1800 filings included virtually identical language, except that they substitute a different alleged licensing entity that purports 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." True and correct copies of examples of these additional requests are attached hereto as Exhibit D.

28. The representations contained in Defendants' more than 1800 filings described above as well as their associated communications were, and are, knowingly false.

(a) The multitude of licensing companies claimed by Defendants do not exist, nor did they own the purported rights to the marks claimed. Not only did Defendant Stoller's bankruptcy filing in December 2005 make no mention that he has ownership interests in any of these hundreds of supposed entities, but by an Order dated July 14, 2006 TTAB ruled that neither Defendant Stoller nor his supposed entities owned the rights they proclaimed to have. In its July 14, 2006 Order, TTAB initially referenced the "pattern of misconduct and abuse of the TTAB's processes" over the course of "many years" by Defendant Stoller and the purported entities associated with him. Although TTAB had ordered 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," Defendants provided no such proof: "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." As TTAB observed, the evidence Defendants did submit 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." TTAB thus found that Defendants 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." For those violations, which were deemed to constitute "egregious" misconduct, the Board imposed an array of sanctions, including dismissal of the TTAB proceedings filed by Defendants which were the result of their frivolous requests for extension of time. A true and correct copy of TTAB's July 14, 2006 Order is attached hereto as Exhibit E.

(b) Furthermore, Defendants are not qualified to practice law in any state and are not entitled to engage in the practice of law. Nevertheless, in their abusive filings described

above, Defendants have solicited payment for the provision of legal services such as "brief writing," "drafting pleadings" and "legal research." Not only do such acts constitute the unauthorized practice of law by Defendants, but Defendants tout these false representations in order to cause targeted victims to erroneously believe that Defendants are authorized to engage in the practice of law, including for its *in terrorrum* effect and to deceive victims into capitulating to their extortionate demands.

29. Defendants also have made fraudulent representations in advertising and promotions through commercial web sites that they have published and displayed, and continue to publish and display.

30. Defendant Stealth and Defendant Stoller have represented on the site located at [www.rentamark.com](http://www.rentamark.com), and continue to represent, that "RENTAMARK.COM is an independent, full service, international licensing and merchandising agency. RENTAMARK.COM owns and controls over 10,000 famous trademarks specializing in the trademark licensing business." Elsewhere on that site, Defendant Stealth and Defendant Stoller represent: "RENTAMARK.COM is able to license your company with any one of our famous trademarks that will allow your business to sell its products and services worldwide. Below are our Licensed Word Marks. To view our e-Marks, simply click on the button in the control panel." That page then links to other pages that list many thousands of terms that Defendants claim to own and have the right to license. True and correct hard copy excerpts from Defendants' web site pages are attached hereto as Exhibits F and G.

31. The foregoing representations contained on Defendants' site are false. As to all or virtually all of the marks to which Defendants claim rights, Defendants do not have, and never have had, subsisting federal registrations for such marks and have not used such terms as marks or trade names in interstate commerce. Furthermore, Defendant Stoller's bankruptcy filing in December 2005 made no mention that he has purported ownership interests in any of the thousands of marks listed on the [rentamark.com](http://rentamark.com) web site.

32. Confirming the bad faith and extortionate purpose behind Defendants' ever-proliferating, false claims of right, Defendants' latest campaign also came on the heels of recent Court actions that raise the prospect of imposing substantial monetary liability for Defendants' frivolous legal proceedings and other misconduct. The *Central Mfg. Co. v. Brett* decision quoted above was issued on September 30, 2005. This was soon followed by the decision quoted above



in *Central Mfg. Co. v. Pure Fishing, Inc.* on November 16, 2005. In both cases, the Court ruled that Defendant Central Mfg. and Defendant Stoller are liable to pay attorneys' fees and costs, and the parties in those cases are seeking more than \$700,000 in reimbursement from Defendant Central Mfg. and Defendant Stoller.

**Defendants' Scheme To Defraud Targeting Plaintiff Google**

33. It is in the context of Defendants' expanded scheme of making spurious claims of right to many thousands of marks, and their continuing pattern of unlawfully demanding licensing fees and threatening and filing sham legal proceedings, that Defendants targeted Plaintiff Google.

34. As one of the some 1800 requests for extension of time filed by Defendants with TTAB since November 2005, Defendant Central Mfg. and Defendant Stoller sought on November 27, 2005 a request for an extension of time to oppose an application for registration filed by Plaintiff Google. A true and correct copy of Defendants' November 27, 2005 request, which was sent by means of the U.S. mail and interstate wires on or about November 27, 2005 and at times thereafter, is attached hereto as Exhibit H.

35. On or about November 29, 2005, by means of the U.S. mail and interstate wires, Defendants sent 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." 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 letter was signed "Leo Stoller GOOGLE." A true and correct copy of Defendants' November 29, 2005 letter and its attachments is annexed hereto as Exhibit I.

36. The attachments to the November 29, 2005 letter were also sent by means of U.S. mail and the interstate wires. In the proposed "Agreement To Discontinue Use (Covenant Not To Sue)" and the proposed "Settlement Agreement" attached to the letter, Defendant Stoller and Defendant Stealth proclaimed their "ownership of the mark GOOGLE," and the signature block to the proposed agreement was signed by Stoller for "GOOGLE" and as a "[r]epresentative of GOOGLE." Furthermore, both documents purported to identify Defendant Stealth (under the alias "Rentamark") as "Google." Elsewhere in the attachments, Defendants purported to identify the entity preparing the attachments as an entity named "GOOGLE" and included an alleged notice that the materials were "© GOOGLE 2000."



37. In the attachments to the November 29, 2005 letter sent by U.S. mail and interstate wires, Defendants also repeatedly represented that they owned a federal trademark registration for "Google" by use of the "®" symbol, including in the attachments entitled: "Why Obtain A GOOGLE® License . . .," "GOOGLE® Licensing Program Licensee Requirements," "GOOGLE® Licensing Program," and "Licensing GOOGLE® Enables You To . . .".

38. In or about April or May 2006, Defendant Stoller sent by U.S. mail to Plaintiff correspondence with a return address label which falsely represented that it had been sent by an entity called "GOOGLE LICENSING [sic]" and which reflected Defendants' address in Oak Park, Illinois. (The exact day of this fraudulent mailing cannot be ascertained because, in violation of U.S. Postal Service Regulations, Defendants omitted the date from their postage meter stamp.) A true and correct copy of this mailing label is attached hereto as Exhibit J.

39. On April 10, 2006, Defendant Stoller and Defendant Stealth transmitted to Plaintiff by the interstate wires two documents that purported to be from an entity called "GOOGLE™ BRAND TRADEMARK LICENSING." True and correct copies of these faxes from Defendants are attached hereto as Exhibits K and L.

40. Beginning on or about April 28, 2006 and through the present, Defendant Stoller and Defendant Stealth also represented on the Rentamark.com web site that that "GOOGLE" was, and is, among the marks that they purport to "own and control" and that they offer for licensing to third parties. True and correct copies of the relevant web pages are attached hereto as Exhibit M.

41. Each of the foregoing representations of fact by Defendants recited above in paragraphs 35 through 40 above were, and are, false and made by Defendants with the intent to deceive. As Defendants have known at all relevant times, those statements were false in at least each of the following respects:

(a) Defendants knowingly misrepresented the existence of an entity or entities variously called by Defendants as "GOOGLE BRAND LICENSING AND PRODUCTS," "GOOGLE LICENSING [sic]" and "GOOGLE™ BRAND TRADEMARK LICENSING." No such entity exists, but is a fabrication by Defendants, and the commercial letterhead, fax cover sheets, labels and other commercial documents allegedly evidencing their existence are fraudulent.

(b) Defendants' representations to have common law rights in or to "Google" as a mark or trade name are fraudulent. Defendants own no right, title or interest of any kind in "Google" as a mark, trade name or designation of origin. Defendants have not used "Google" as a mark or trade name, whether directly or through any licensee, in connection with bona fide sale of goods or services. No segment of the consuming public associates "Google" with Defendants or with any goods or services originating from or associated with Defendants. Defendants have no right to license "Google" as a mark or trade name to any person or entity. Indeed, because Defendants' claim of right to "Google" was part and parcel of their more than 1800 filings with TTAB since November 2005, TTAB already has found pursuant to the July 14, 2006 Order that Defendants' assertion of rights to the "Google" mark was "baseless" and made for the unlawful purpose of seeking to extort money from Plaintiff. For those reasons, TTAB dismissed outright Defendant Central Mfg.'s sham opposition proceeding against Plaintiff. A true and correct copy of TTAB's dismissal Order is attached hereto as Exhibit N. Nevertheless, to this day and as shown above, Defendants continue to hold themselves out as the owner of rights to the "Google" mark and offer to license "Google" as a mark to third parties.

(c) Defendants' further claims that they have a federal trademark registration for "Google," made through their repeated uses of the statutory federal registration notice "®" and elsewhere, are false. Defendants have no federal registration for "Google."

42. Defendants also have made materially false representations of fact regarding Defendants' purported success in litigation and in TTAB proceedings for the purpose of deceiving and coercing their victims into paying money and bolstering their false claims of right to trademarks, including as to "Google." Examples of such misrepresentations include:

(a) In a March 31, 2006 email to Plaintiff sent by means of the interstate wires, Defendant Stoller asserted, falsely, that "99% of my opponents opt to settle" and that "Google is in the 1% category that refused to pay any deference to my early on trays [*sic*] for a quick settlement." A true and correct copy of the March 31, 2006 email is attached hereto as Exhibit O.

(b) According to claims on Defendant's rentmark.blogspot.com web site beginning on or about April 20, 2006 and continuing through the present: "Stoller has thus far prevailed in over 90% of its [*sic*] police actions against third party infringers. Companies like Wal-Mart, K-Mart and hundreds of other well known American companies have acknowledged

Stoller's superior rights to its [*sic*] marks as a result of trademark litigation." A true and correct hard copy printout of Defendants' relevant web pages is attached hereto as Exhibit P.

(c) Beginning on or about April 20, 2006 and continuing through the present, Defendants claimed on the [www.rentmark.blogspot.com](http://www.rentmark.blogspot.com) web site that "STOLLER CANCELS THE GOOGLE TRADEMARK." See Exhibit P attached hereto.

(d) Beginning on or about June 16, 2004 and continuing through the present, Defendants claimed on the [www.rcntmark.blogspot.com](http://www.rcntmark.blogspot.com) web site that "Leo Stoller has participated in over 200 inter party [*sic*] proceedings over 25 years prevailing in [*sic*] over 95% of the time and over 60 district court trademark cases." A true and correct hard copy printout of Defendants' relevant web pages is attached hereto as Exhibit Q.

43. The foregoing representations of fact by Defendants set forth in paragraph 42 above were, and are, false. Defendant Stoller has not cancelled any registration owned by Plaintiff. Moreover, Defendants' representations as to its "success" in litigation are fictional. Defendants have not prevailed in "over 90%" or "over 95%" of its legal actions or obtained settlements from "99%" of those companies and individuals Defendants have targeted. To the contrary, as the Court observed in the *Brett* decision discussed above: "no Court has ever found infringement of any trademark allegedly held by Stoller or his related companies in any reported opinion." Indeed, as described above, Courts have repeatedly found Defendants' lawsuits to be part of a pattern of sham litigation and have repeatedly sanctioned them for their groundless claims of trademark rights, their fabrication of evidence, their provision of false testimony and their other abuses of the judicial system.

44. In addition to their repeated assertion and dissemination of materially false statements, Defendants also made repeated unlawful threats against Plaintiff. These include without limitation:

(a) Defendants' November 29, 2005 letter attached as Exhibit I hereto contained threats to bring sham legal proceedings and to harass, including by threatening to conduct "extensive discovery" which 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 Plaintiff at least \$150,000. In exchange for refraining from inflicting such damage, Defendants demanded that Plaintiff either pay them money in the amount of \$100,000 or else cease all use of GOOGLE in connection with Plaintiff's business.

(b) Defendants' March 31, 2006 email attached as Exhibit O hereto threatened to "refe[r]" Plaintiff's executives "to the US Attorney for a perjury charge should they lie under oath."

(c) In a February 9, 2006 email, Defendant Stoller and Defendant Stealth threatened to publicize their 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 Applicant. A true and correct copy of the February 9, 2006 email is attached hereto as Exhibit R.

(d) In a March 2, 2006 email, Defendant Stoller and Defendant Central Mfg. again threatened to publicize their allegations with the intention of "driv[ing] down Google stock price" and then concluded with the statement that "I would not be surprisid [sic] if Google goes out of business by the conclusion of this proceeding." A true and correct copy of the March 2, 2006 email is attached hereto as Exhibit S.

### COUNT I

(15 U.S.C. § 1125(a)(1)(B) -- Against All Defendants)

45. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 43 above, as though fully set forth at length.

46. Defendants have made and disseminated, and continue to make and disseminate, false statements of fact in commercial promotions and advertisements about their goods, services and commercial activities. Such misrepresentations by Defendants include without limitation those set forth in paragraphs 26(a) through 31, 40, 42(b)-(d) and 43 above. Such statements are literally false and have a tendency to deceive a substantial segment of their audience.

47. Defendants have caused and continue to cause their false and misleading statements to enter interstate commerce, including by means of the Internet.

48. By reason of the acts alleged herein, Defendants have misrepresented, in commercial advertising and promotion, the nature, characteristics and qualities of their goods, services and commercial activities in violation of 15 U.S.C. § 1125(a)(1)(B).

49. Defendants' acts complained of herein have damaged and will continue to damage Plaintiff irreparably. Plaintiff has no adequate remedy at law for these wrongs and injuries. The damage to Plaintiff includes harm to its reputation that money cannot compensate. Plaintiff is, therefore, entitled to an injunction restraining and enjoining Defendants and their agents,

servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from engaging in false advertising and from otherwise making or utilizing false and misleading statements in connection with the promotion, advertisement or sale of goods, services and commercial activities.

50. Plaintiff has been and is likely in the future to be injured as result of Defendants' false statements. Plaintiff is entitled to recover three times its damages, to an accounting of Defendants' profits and to disgorgement of Defendants' ill-gotten gains, together with Plaintiff's attorneys' fees and costs, pursuant to 15 U.S.C. § 1117.

## COUNT II

(18 U.S.C. §§ 1962(c) and 1964(c) -- Against All Defendants)

51. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 44 above, as though fully set forth at length.

52. Defendant Stoller is a "person" within the meaning of 18 U.S.C. § 1961(3). Defendant Stoller, Defendant Central Mfg. and Defendant Stealth constitute an enterprise within the meaning of 18 U.S.C. § 1961(4) in that they constitute a union and group of individuals and entities associated in fact although not a legal entity. Said enterprise evinces a hierarchy and structure separate and apart from the pattern of racketeering alleged herein, including without limitation in that Defendant Central Mfg. and Defendant Stealth purport to engage in legitimate activities in addition to the unlawful activities alleged in this Complaint.

53. Defendant Stoller, Defendant Central Mfg. and Defendant Stealth, directly and indirectly as stated in 18 U.S.C. § 1962(c), execute an enterprise in and affecting interstate commerce by fraudulent, deceitful and extortionate practices as the term "enterprise" is defined in 18 U.S.C. § 1961(4), including through without limitation the predicate acts of mail fraud and wire fraud and the predicate acts of extortion. In particular, these racketeering activities include:

(a) Acts And Threats Involving Extortion: On or about the date indicated in and as described in paragraph 44(b) above, Defendant Stoller, without lawful authority and with an intent to cause another to perform or to omit the performance of any act, communicated a threat to accuse a person of an offense, in violation of 720 ILCS 5/12-6 and 720 ILCS 5/15-5, and furthermore to harm the business repute of another, in violation of 720 ILCS 5/15-5, all of which accordingly constitute acts and threats involving extortion which are chargeable under

State law and punishable by a term of imprisonment of more than one year as set forth in 18 U.S.C. § 1961(1). In addition, on or about the dates indicated in and as described in paragraph 44 above, Defendant Stoller, with an intent to extort money and other property from Plaintiff, sent and delivered letters and other writings that expressly and impliedly threatened to inflict unlawful injuries to property in violation of California Penal Code §§ 519 and 523, which pursuant to California Penal Code §§ 520 and 523 constitute acts and threats involving extortion which are chargeable under State law and punishable by a term of imprisonment of more than one year as set forth in 18 U.S.C. § 1961(1).

(b) Mail Fraud: On or about the dates indicated in and as described in paragraphs 35 through 38 above, Defendants, having devised a scheme or artifice to defraud Plaintiff by false representations, did for the purpose of furthering and executing such scheme or artifice to defraud, transmit and cause to be transmitted by means of mail communications in interstate commerce, writing, signs, signals, pictures or sound, in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 2.

(c) Wire Fraud: On or about the dates indicated in and as described in paragraphs 35 through 43 above, Defendants, having devised a scheme or artifice to defraud Plaintiff by false representations, did for the purpose of furthering and executing such scheme or artifice to defraud, transmit and cause to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures or sound, in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 2.

54. Defendant Stoller, Defendant Central Mfg. and Defendant Stealth have executed within the past six years, and continue to execute, a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(1). The pattern of racketeering activity, as defined by 18 U.S.C. §§ 1961(1) and (5), presents both a history of unlawful conduct and a distinct threat of continuing unlawful activity in the future. Such activity consists of multiple acts of racketeering, is interrelated, not isolated, and is perpetrated for the same or similar purposes. Such activity extends over a substantial period of time, up to and beyond the date of this Complaint, and threatens to continue and to project itself into the future, including without limitation in that the predicate acts and offenses alleged herein are part of an ongoing entity's regular way of doing business. Such activities occurred after the effective date of 18 U.S.C. §§ 1961 *et seq.*, and the last such act occurred within 10 years after the commission of a prior act of racketeering activity.

Defendants have done so by performing the acts set forth above, including but not limited to the acts specifically set forth in paragraphs 35 through 43 above, which constitute repeated violations of 18 U.S.C. § 1342 relating to wire fraud and 18 U.S.C. § 1341 relating to mail fraud, and the acts specifically set forth in paragraph 44 above, which constitute repeated violations of State laws prohibiting extortion within the meaning of 18 U.S.C. § 1961(1).

55. The enterprise as described herein is at all relevant times a continuing enterprise because, among obvious reasons, it is designed to unlawfully extract and has damaged legitimate businesses including Plaintiff based upon fraudulent statements and threats of extortion as alleged herein.

56. As a direct and proximate result of the racketeering activity of Defendants, including by reason of the predicate acts constituting such pattern of racketeering activity by said Defendants, Plaintiff has suffered, and will in the future suffer, injury in its business or property.

57. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to recover damages, to be trebled in accordance with statute, plus interest, costs and attorneys' fees, by reason of Defendants' pattern of racketeering activity and violations of 18 U.S.C. § 1962(c).

### COUNT III

#### (Unfair Competition -- Against All Defendants)

58. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 44 above, as though fully set forth at length.

59. Defendants are, and at all relevant times have been, perpetrating a scheme of fraudulently claiming trademark and other rights, including without limitation by means of false marketing materials, by the use and circulation of fraudulent letterhead and other documents, by threatening and filing of sham legal proceedings and by other illegal means as described herein, for the purpose of extorting money and property from others, including Plaintiff.

60. Defendants' statements, misrepresentations, threats and conduct alleged herein were made not for the purpose of protecting or enforcing any legitimate, or even colorable, rights, but instead for the bad faith purpose of unlawfully extracting money from Plaintiff Google. Said statements, misrepresentations, threats and conduct by Defendants, made for such illegitimate reason, constitute unfair competition under the laws of this State and other jurisdictions.



61. Defendants' acts complained of herein have damaged and will in the future continue to damage Plaintiff Google irreparably. Plaintiff has no adequate remedy at law for these actual and threatened wrongs and injuries. The damage to Plaintiff includes harm to its good will and reputation in the marketplace that money cannot compensate. Plaintiff is therefore entitled to injunctive relief restraining Defendants and their agents, servants, and employees, and all persons acting thereunder, in concert with them, or on their behalf, from further engaging in acts of unfair competition as against Plaintiff.

62. As consequence of the foregoing acts of unfair competition by Defendants, Plaintiff is also entitled to an award of its actual damages, together with its costs and attorney's fees, and to the disgorgement of Defendants' ill-gotten gains.

63. Defendants' acts were in bad faith, in conscious disregard of Plaintiff's rights and were performed with the intention of depriving Plaintiff of its rights. Accordingly, Defendants' conduct merits, and Plaintiff seeks, an award of punitive damages in an amount sufficient to punish Defendants and deter such conduct in the future.

#### **Prayer for Relief**

WHEREFORE, Plaintiff Google prays that this Court enter judgment as follows:

A. Enter an injunction prohibiting Defendants from engaging in further acts of false advertising, further acts of racketeering activity and further acts of unfair competition as to Plaintiff, pursuant to 15 U.S.C. § 1116, 18 U.S.C. § 1964(a) and state law;

B. Enter an order requiring the dissolution and/or reorganization of the enterprise and requiring Defendant Stoller to divest himself of any interest, direct or indirect, therein, pursuant to 18 U.S.C. § 1964(a);

C. Award Plaintiff three times its damages and Defendants' profits, together with Plaintiff's reasonable attorney's fees and costs, pursuant to 15 U.S.C. § 1117 and state law;

D. Award Plaintiff treble damages and costs of suit, including reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117 and 18 U.S.C. § 1964(c);

E. Award Plaintiff punitive damages in an amount sufficient to punish Defendants and deter such misconduct in the future;

F. Award Plaintiff prejudgment interest, as appropriate; and

G. Grant Plaintiff such other and further relief as this Court deems just and proper.



DATED: August 17, 2006

Respectfully submitted,

GOOGLE INC.

By: Michael T. Zeller  
One of Its Attorneys

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EXHIBIT A

**Exhibit 1****Cases Filed In Name of S Industries, Inc. in N.D. Ill. in 1996 and 1997**

1.	1:96-cv-01035	S Industries, Inc. v. Amer Soccer Co. Inc.	filed 02/23/96
2.	1:96-cv-01138	S Industries, Inc. v. Netti Export Corp., et al.	filed 02/27/96
3.	1:96-cv-01218	S Industries, Inc. v. Bard Wyers Sports, et al	filed 03/01/96
4.	1:96-cv-01264	S Industries, Inc. v. HHA Sports, et al	filed 03/04/96
5.	1:96-cv-01325	S Industries, Inc. v. ERO Ind Inc., et al	filed 03/06/96
6.	1:96-cv-01776	S Industries, Inc. v. Fit Bearings, et al	filed 03/27/96
7.	1:96-cv-02037	S Industries, Inc. v. World of Weapons, et al	filed 04/08/96
8.	1:96-cv-02038	S Industries, Inc. v. Pelican Pro Inc., et al	filed 04/08/96
9.	1:96-cv-02166	S Industries, Inc. v. Wonderwand, et al	filed 04/12/96
10.	1:96-cv-02231	S Industries, Inc. v. Lane, et al filed	filed 04/16/96
11.	1:96-cv-02232	S Industries, Inc. v. GMI Prof. Access Sys., et al	filed 04/16/96
12.	1:96-cv-03389	S Industries, Inc. v. Diamond Multimedia, et al	filed 06/05/96
13.	1:96-cv-03524	S Industries, Inc. v. Centra 2000 Inc., et al	filed 06/11/96
14.	1:96-cv-03525	S Industries, Inc. v. NAAN Irrigation Sys., et al	filed 06/11/96
15.	1:96-cv-03592	S Industries, Inc. v. Nat'l Baseball Hall	filed 06/13/96
16.	1:96-cv-03593	S Industries, Inc. v. Funline Mdsc Co. Inc., et al	filed 06/13/96
17.	1:96-cv-03916	S Industries, Inc. v. Kimberly-Clark Corp, et al	filed 06/27/96
18.	1:96-cv-04140	S Industries, Inc. v. Ecolab Inc.	filed 07/09/96
19.	1:96-cv-04141	S Industries, Inc. v. Tru-Fit Mkg Corp.	filed 07/09/96
20.	1:96-cv-04149	S Industries, Inc v. Mitsubishi Int'l Inc., et al	filed 07/09/96
21.	1:96-cv-04434	S Industries, Inc. v. Brodix Inc., et al	filed 07/19/96

22.	1:96-cv-04659	S Industries, Inc. v. JL Audio Inc., et al	filed 07/29/96
23.	1:96-cv-04951	S Industries, Inc. v. Stone Age Equip. Inc., et al	filed 08/12/96
24.	1:96-cv-06047	S Industries, Inc. v. Tournament Grade, et al	filed 09/19/96
25.	1:96-cv-06507	S Industries, Inc. v. Photostealth Fabric	filed 10/04/96
26.	1:96-cv-06509	S Industries, Inc. v. Hobbico Inc., et al	filed 10/04/96
27.	1:96-cv-06538	S Industries, Inc. v. E-Force Sports, et al	filed 10/07/96
28.	1:97-cv-01817	S Industries, Inc. v. Hobbico Inc., et al	filed 03/17/97
29.	1:97-cv-02787	S Industries, Inc. v. Space-Age Tech, et al	filed 04/21/97
30.	1:97-cv-03702	S Industries, Inc. v. Sunshine Golf	filed 05/20/97
31.	1:97-cv-03703	S Industries, Inc. v. Tour Advanced Int'l	filed 05/20/97
32.	1:97-cv-03704	S Industries, Inc. v. N GA Disc Golf	filed 05/20/97
33.	1:97-cv-03705	S Industries, Inc. v. S E Golf	filed 05/20/97
34.	1:97-cv-03706	S Industries, Inc. v. Proclub Golfing Co.	filed 05/20/97
35.	1:97-cv-03707	S Industries, Inc. v. M & M Golf Inc.	filed 05/20/97

EXHIBIT B

Exhibit 2SI Registrations and Applications Purportedly Transferred to Defendant Central Mfg.

<u>Serial Number</u>	<u>Registration Number</u>	<u>Mark</u>
75016560	N/A	STEALTH
75242656	2137218	AIR FRAME
75242655	2138806	AIR FRAME
75230338	2137059	AIR FRAME
75228505	2128940	AIR FRAME
75228497	2138609	AIR FRAME
75228010	2140524	SENTRA
75218045	2110838	DARK STAR
75203742	2097863	FIRE POWER
75203741	2439735	STEALTH
75180414	2126933	STAR LITE
75154346	2077635	DARK STAR
75154345	2057613	DARK STAR
75154344	2061586	DARK STAR
75152224	2081565	DARK STAR
75143090	2273229	SENTRA
75130222	2083721	DARK STAR
75129214	2081347	DARK STAR
75129210	2071763	DARK STAR
75121252	2063283	STRADIVARIUS
75036382	3038587	STEALTH
75019143	2478742	STEALTH
75006422	2064576	SENTRA
75000280	2330467	STEALTH
74327774	N/A	STEALTH
74415569	1867087	STEALTH

74735868	2325054	STEALTH 9MM SHADOW
74735867	2325053	STEALTH 9MM
74734680	2523745	STEALTH
74726073	2551385	STEALTH
74724048	1984329	SENTRA
74724047	2025156	STEALTH
74630176	2024889	THE STEALTH
74476028	2657452	STEALTH
74063127	1766806	STEALTH
74004936	1717010	STEALTH
73778877	1615004	TERMINATOR
73793505	1608361	S
73778875	1623790	HAVOC
73771877	1621365	COLLIDER
73778748	1602482	ANNIHILATOR
73778747	1589092	24 KARAT
73771242	1593157	HYPERSONIC
73771241	1584851	AQUILLA
73767454	1581051	TRILLIUM
73772953	1596600	NIGHT STALKER
73771240	1564755	PHALANX
73768507	1564751	AEROSPACE
73621586	1450972	CHESTNUT
73553786	1438152	FIRE POWER
73554850	1424951	PLAY THE ANGLE
73552025	1389167	WHITE LINE FEVER
73552024	1384193	SENTRA
73552023	1382504	TIRADE
73551893	1381612	STRADIVARIUS

73496994	1332378	STEALTH
73481745	1326765	SENTRA
73478410	1361523	SENTRA
73399116	1323733	CREATIVE TRAVEL



EXHIBIT C

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>

ESTTA Tracking number: **ESTTA76008**

Filing date: **04/12/2006**

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

Applicant: **V.P. Holding S.p.A.**  
Application Serial Number: **78192386**  
Application Filing Date: **12/09/2002**  
Mark: **VP VENTURES**  
Date of Publication: **03/14/2006**

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

Pursuant to 37 C.F.R. Section 2.102, Stealth Industries, Inc., 7115 W. North Ave., #272, Oak Park, IL 60302, 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 causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *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](http://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, ie., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 04/13/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 07/12/2006.

Respectfully submitted,

/Leo Stoller/

04/12/2006

Leo Stoller

President

Stealth Industries, Inc.

7115 W. North Ave., #272

Oak Park, IL 60302

UNITED STATES

[ldms4@hotmail.com](mailto:ldms4@hotmail.com)

773-589-0340

EXHIBIT D

Trademark Trial and Appeal Board Electronic Filing System: <http://esta.uspto.gov>

ESTTA Tracking number: **ESTTA76007**

Filing date: **04/12/2006**

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

Applicant: **XELLA INTERNATIONAL GMBH**  
Application Serial Number: **78190546**  
Application Filing Date: **12/03/2002**  
Mark: **XELLA**  
Date of Publication: **03/14/2006**

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

Pursuant to 37 C.F.R. Section 2.102, Stealth Industries, Inc., 7115 W. North Ave., #272, Oak Park, IL 60302, 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 causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *Please contact (773-589-0915 FAX) ELLA BRAND LICENSING to resolve this trademark controversy ELLA v XELLA and/or merely file an Express Abandonment! See [rentamark.com](http://rentamark.com), the nationally renowned trademark licensing and enforcement firm since 1974 for all of your ELLA BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, ie., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 04/13/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 07/12/2006.

Respectfully submitted,

/Leo Stoller/

04/12/2006

Leo Stoller

President

Stealth Industries, Inc.

7115 W. North Ave., #272

Oak Park, IL 60302

UNITED STATES

[ldms4@hotmail.com](mailto:ldms4@hotmail.com)

773-589-0340

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: **ESTTA76009**

Filing date: **04/12/2006**

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

Applicant: **INFINGO, LLC**  
Application Serial Number: **78195155**  
Application Filing Date: **12/17/2002**  
Mark: **INFINGO**  
Date of Publication: **03/14/2006**

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

Pursuant to 37 C.F.R. Section 2.102, Stealth Industries, Inc., 7115 W. North Ave., #272, Oak Park, IL 60302, 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 causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *Please contact (773-589-0915 FAX) FINGO BRAND LICENSING to resolve this trademark controversy FINGO v INFINGO and/or merely file an Express Abandonment! See rentamark.com, the nationally renowned trademark licensing and enforcement firm since 1974 for all of your FINGO BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, i.e., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 04/13/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 07/12/2006.

Respectfully submitted,  
/Leo Stoller/  
04/12/2006

Leo Stoller

President

Stealth Industries, Inc.  
7115 W. North Ave., #272  
Oak Park, IL 60302  
UNITED STATES  
ldms4@hotmail.com  
773-589-0340

Trademark Trial and Appeal Board Electronic Filing System. <http://esta.uspto.gov>

ESTTA Tracking number: **ESTTA75758**

Filing date: **04/12/2006**

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

Applicant: **SKILLJAM TECHNOLOGIES CORPORATION**  
Application Serial Number: **76633965**  
Application Filing Date: **03/22/2005**  
Mark: **\$KILLJAM**  
Date of Publication: **03/14/2006**

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

Pursuant to 37 C.F.R. Section 2.102, Stealth Industries, Inc., 7115 W. North Ave., #272, Oak Park, IL 60302, 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 causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *Please contact (773-589-0915 FAX) SKILL BRAND LICENSING to resolve this trademark controversy SKILL v SKILLJAM and/or merely file an Express Abandonment! See rentamark.com, the nationally renowned trademark licensing and enforcement firm since 1974 for all of your SKILL BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, i.e., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 04/13/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 07/12/2006.

Respectfully submitted,

/Leo Stoller/

04/12/2006

Leo Stoller

President

Stealth Industries, Inc.

7115 W. North Ave., #272

Oak Park, IL 60302

UNITED STATES

ldms4@hotmail.com

773-589-0340

Trademark Trial and Appeal Board Electronic Filing System. <http://estia.uspto.gov>

ESTTA Tracking number: **ESTTA72955**

Filing date: **03/27/2006**

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

Applicant: **MATTEL, INC.**  
Application Serial Number: **76641311**  
Application Filing Date: **06/21/2005**  
Mark: **MERMAIDIA**  
Date of Publication **02/28/2006**

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

Pursuant to 37 C.F.R. Section 2.102, Stealth Industries, 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 causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *Please contact (773-589-0915 FAX) MERMAID BRAND LICENSING to resolve this trademark controversy MERMAID v MERMAIDIA and/or merely file an Express Abandonment! See [rentamark.com](http://rentamark.com), the nationally renowned trademark licensing and enforcement firm since 1974 for all of your MERMAID BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, ie., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 03/30/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 06/28/2006.

Respectfully submitted,

/Leo Stoller/

03/27/2006

Leo Stoller

President

Stealth Industries, Inc.

P.O. Box 35189

Chicago, IL 60707-0189

UNITED STATES

[ldms4@hotmail.com](mailto:ldms4@hotmail.com)

773-589-0340

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

LEO STOLLER, )  
 ) No. 05B64075  
 ) Chicago, Illinois  
 ) December 12, 2006  
 Debtor. ) 10:30 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JACK B. SCHMETTERER

APPEARANCES:

Trustee: Mr. Richard Fogel;  
For the Trustee: Ms. Janice Alwin;  
For Google, Inc.: Mr. William Barrett;  
For Pure Fishing: Mr. William Factor;  
Mr. Lance Johnson;

ALSO PRESENT:

Mr. Leo Stoller,  
Pro Se.



1 THE CLERK: Stoller, 05-64075.

2 MR. STOLLER: Good morning, Judge. Leo  
3 Stoller, debtor, pro se.

4 MS. ALWIN: Good morning, Your Honor. Janice  
5 Alwin on behalf of the trustee.

6 MR. FOGEL: Good morning, Your Honor.  
7 Richard Fogel, the trustee.

8 MR. BARRETT: Your Honor, William Barrett for  
9 Google, Inc.

10 MR. FACTOR: Good morning, Your Honor.  
11 William Factor and Lance Johnson for Pure Fishing.

12 THE COURT: As for Google, there is a motion  
13 of Google, this is old business, for an order declaring  
14 the proposed suit to be outside the scope of the stay.  
15 Didn't I deal with that?

16 MS. ALWIN: Draft order to follow, Your  
17 Honor.

18 MR. FOGEL: Draft order to follow for today.

19 THE COURT: Oh, is this the order here?

20 MR. BARRETT: Your Honor, if I --

21 THE COURT: Do you have an order?

22 MR. BARRETT: Yes. Google has the order.

23 MR. STOLLER: Your Honor, if I may say, this  
24 is the motion that Google filed. I didn't receive this  
25 until about two days ago and I filed --

1 THE COURT: This motion?

2 MR. STOLLER: This was a motion, the motion  
3 we're talking about here, and it's about 300 pages. And  
4 I didn't receive it until two days ago. And I filed an  
5 objection.

6 THE COURT: I have not received any 300-page  
7 motion, so I'm not passing on what you're talking about.

8 MR. STOLLER: This is the motion --

9 THE COURT: I can't help it. That is not  
10 what I'm ruling --

11 MR. STOLLER: -- that you're ruling on today.

12 THE COURT: No, it isn't. The motion we're  
13 talking about was presented here August 25th.

14 MR. STOLLER: That's this one.

15 THE COURT: And it's not 300 pages.

16 MR. BARRETT: Your Honor, if I may, the  
17 motion with all the exhibits is a binder, motion --  
18 document that the court has before it right now. I know  
19 when we were here in August we had this complete binder  
20 and it was offered to the court. The court at that time  
21 had the complete set.

22 THE COURT: I see.

23 MR. BARRETT: We did serve -- we're very  
24 careful, last August, about serving -- we had multiple  
25 addresses for Mr. Stoller. I have one return package

1 here.

2 THE COURT: You have what and what?  
3 According to the service list, it was addressed to  
4 Mr. Stoller at 7300 West Fullerton, Elmwood Park.

5 Was that your home?

6 MR. STOLLER: No. That was a post office  
7 mailing address which I have not used and discontinued.  
8 And I've just first been notified of this motion, and I  
9 filed a proper response to it with the court. And I  
10 would like to be able to make an objection to the entry  
11 of any order regarding the motion because I never had  
12 it.

13 THE COURT: You're representing yourself.

14 MR. STOLLER: Yes.

15 THE COURT: I understand that. Now have you  
16 filed a response to this?

17 MR. STOLLER: Yes, I have filed a response.

18 THE COURT: Have you served it?

19 MR. STOLLER: Yes, and I served it.

20 THE COURT: Did you get it?

21 MR. BARRETT: I saw it this morning in court.

22 THE COURT: You did not get it?

23 MR. BARRETT: Not before this morning.

24 THE COURT: Have you served it?

25 MR. STOLLER: Yes.

1 THE COURT: -- means delivered and how?

2 MR. STOLLER: I mailed it by first class  
3 mail.

4 THE COURT: When?

5 MR. STOLLER: On the 9th of --

6 THE COURT: Three days ago?

7 MR. STOLLER: Three days ago.

8 THE COURT: Obviously nobody has received it.

9 MR. STOLLER: And I handed him a copy of it,  
10 as he's handed me a copy of his response.

11 THE COURT: Counsel, did you receive it?

12 MR. BARRETT: Your Honor, I just saw it this  
13 morning in court.

14 THE COURT: Yes or no to received it.

15 MR. BARRETT: I received it in the courtroom  
16 this morning, yes.

17 THE COURT: Thank you. May I have a copy,  
18 please.

19 MR. STOLLER: Yes.

20 MR. BARRETT: Your Honor, also at the time  
21 that the motion was filed the debtor was represented by  
22 Mr. Golding, who did receive a copy of this package.

23 THE COURT: I know, but Mr. Stoller has  
24 listed on his bankruptcy schedules a certain address --

25 MR. BARRETT: I believe --

1 THE COURT: And that's the address that  
2 you're entitled then to serve notice on unless and until  
3 a change of address is filed.

4 Have you ever filed a change of  
5 address?

6 MR. STOLLER: Yes, I have, Judge.

7 THE COURT: And when did you file that  
8 address -- time, rather?

9 MR. STOLLER: Probably within the last 30  
10 days.

11 THE COURT: Okay.

12 MS. ALWIN: Your Honor, there's no change of  
13 address on the docket that I'm aware of.

14 THE COURT: Do you have a copy of your change  
15 of address?

16 MS. ALWIN: And we have not received one.

17 MR. STOLLER: Yes. I don't have it with me,  
18 but I did file it.

19 THE CLERK: I will check the docket.

20 THE COURT: Did you find it?

21 THE CLERK: I am checking it now.

22 THE COURT: We'll check the docket.

23 Trustee, have you looked at this order?

24 MS. ALWIN: Yes. The motion -- we have, Your  
25 Honor. The order? Proposed order?

1 THE COURT: Order. Have you looked at this  
2 order?

3 MS. ALWIN: I've looked at the proposed order  
4 by -- yes, Your Honor. We have no objection.

5 THE COURT: You think that the claims that he  
6 wishes to file arose after commencement of the  
7 bankruptcy case?

8 MS. ALWIN: Yes, Your Honor.

9 MR. FOGEL: We had a hearing on this matter  
10 last week and there was an objection to the settlement  
11 motion raised by Mr. Stoller, which you overruled and  
12 had it today for draft order to follow in connection  
13 with that ruling.

14 THE COURT: Was this the case in which I said  
15 that I'll reserve --

16 MR. FOGEL: Yes.

17 THE COURT: -- I was going to reserve  
18 jurisdiction?

19 MR. FOGEL: You were reserving jurisdiction.  
20 You were reserving the right to modify the order --

21 THE COURT: This order does not say -- this  
22 proposed order doesn't say that.

23 MR. FOGEL: The order approving the  
24 settlement --

25 MS. ALWIN: I have a copy if Your Honor needs

1 one.

2 MR. FOGEL: -- does say that. This order  
3 is -- this is the order to modify the stay as a result  
4 of the approval of that settlement.

5 MR. BARRETT: If I may eliminate some --

6 THE COURT: I see, to let them go forward.  
7 All right, now I recall. The idea was I could withdraw  
8 that which, in effect, wiped out his rights permanently  
9 if this case gets dismissed. But in the meantime the  
10 stay would be modified --

11 MR. FOGEL: Yes.

12 THE COURT: -- so that the suit could go  
13 forward. I think that's what you're talking about.

14 MR. STOLLER: I would like to make an  
15 argument to the contrary, which I have never, as far as  
16 removing the stay.

17 THE COURT: Well, hang on a second, sir. All  
18 right. What was that last thing you said?

19 MR. STOLLER: I would like to make an  
20 argument against removing the stay and allowing them to  
21 file a district court case against me.

22 THE COURT: Just a moment, please. Let me  
23 have your big black book binder with all those exhibits.

24 Is there a proposed lawsuit attached to  
25 this?

1 MR. BARRETT: Yes, Your Honor. The lawsuit  
2 is Exhibit 1.

3 THE COURT: All right. Just for the record,  
4 my clerk informs me that she finds no change of address  
5 form filed by you, Mr. Stoller. If you wish to file  
6 one, everybody is going to be bound by it. If you file  
7 one and serve it on everybody, they'll be bound to give  
8 you notice at your address. But right now your only  
9 address on the record is 7300 West Fullerton.

10 MR. STOLLER: Okay, Judge.

11 THE COURT: Now what exhibit would I find  
12 your proposed complaint, sir?

13 MR. BARRETT: Exhibit 1.

14 THE COURT: I'm on page two and it appears  
15 you have a suit that refers to activity that took place  
16 prior to the filing of the bankruptcy. Am I right?

17 MR. BARRETT: Your Honor, the suit does refer  
18 to activity that took place prior to the filing, that's  
19 right. That is necessary in order to state a claim  
20 under the RICO statute.

21 THE COURT: Right. But, therefore, the order  
22 I have been handed is not right.

23 MR. BARRETT: Well, Your Honor, to make a  
24 claim under the RICO statute you need to allege two  
25 things. You need to allege two predicate acts, that the



1 claims arise under two predicate acts. Those acts, at  
2 least the second act occurred post-petition.

3 THE COURT: I'm not questioning what's right  
4 to plead under that act. What I'm questioning is the  
5 order you want me to approve. You say the claims of  
6 Google first arose after the commencement of this case.  
7 Evidently they did not.

8 MR. BARRETT: Your Honor, I have a time line.

9 THE COURT: There may be a good reason to  
10 modify the stay, but since the activities you complain  
11 of started before the case began, it seems to me that I  
12 cannot use that reason.

13 MR. BARRETT: If I can just address that a  
14 second, the claim that -- and I use the word activities,  
15 the activities that gave rise to the claim, the actual  
16 claim, occurred post-petition. The complaint does refer  
17 to activities that occurred pre-petition as part of the  
18 allegations about pattern racketeering activity. The  
19 claim Google has, though, is not based on that historic  
20 pattern. It must allege and plead that pattern to state  
21 a RICO claim. I have a time line here if the court  
22 would like to see it of the acts that relate to Google's  
23 actual claim and how it fits in with the filing of the  
24 case.

25 THE COURT: You have a history here. Like so

1 many people that come here you want to fire a shotgun  
2 and give a huge history and then you give me a  
3 pinpointed order that pretends as though the history  
4 prior to the filing of the bankruptcy is not alleged.

5 MR. STOLLER: Are you addressing that to me,  
6 Judge?

7 THE COURT: No.

8 MR. BARRETT: Your Honor, it is alleged. You  
9 could never state a RICO claim in these circumstances  
10 against the debtor.

11 THE COURT: All right. I have to have a  
12 basis for modifying the stay because part of the  
13 activity that you wish to sue on occurred  
14 pre-bankruptcy.

15 MR. BARRETT: And, Your Honor, I could  
16 address the alternative relief in the motion, which is  
17 relief Google is seeking, which is injunctive relief for  
18 false advertising; wrongful competition; and violation  
19 of the RICO statute, which the predicate offense is mail  
20 fraud, wire fraud, and extortion. That is the type of  
21 relief most appropriately entered by the district court.

22 MR. STOLLER: I'd like to be able to --

23 THE COURT: You are arguing there is cause to  
24 modify the stay.

25 MR. BARRETT: As an alternative, yes.

1 THE COURT: Okay. I'll entertain that  
2 motion. Now I have already approved the settlement.

3 MS. ALWIN: Yes, Your Honor. An order has  
4 been entered. Would you like a copy?

5 MR. BARRETT: And if I could just maybe  
6 address some confusion. The settlement addresses claims  
7 of Google against the estate and the assets administered  
8 by the trustee. Today we are dealing with Mr. Stoller  
9 as the individual debtor.

10 THE COURT: I understand. If we permit this  
11 to go forward, of course, he can find some way, if he  
12 can, to defend himself.

13 MR. BARRETT: That's right.

14 THE COURT: What this does is take it out of  
15 the bankruptcy. The suits are also against Central  
16 Manufacturing and Stealth.

17 MS. ALWIN: That has been resolved as part of  
18 the settlement order.

19 THE COURT: As part of the settlement?

20 MS. ALWIN: Yes, Your Honor.

21 THE COURT: Mr. Stoller, I've read your  
22 response. Is there anything you want to add to it?

23 MR. STOLLER: Yes, I do, Judge, is the fact  
24 that all of the acts of which they're complaining of,  
25 and I need at least two minutes for you to indulge me

1 because this is a very serious issue, what they're  
2 complaining of is I wrote three settlement letters under  
3 408 to try to resolve a registerability issue and I  
4 brought a petition to cancel against Google's  
5 registration based on the fact that it's generic or  
6 descriptive. From those three acts, which all occurred  
7 prior to the filing of the bankruptcy, they have  
8 construed and concocted this very serious charge, the  
9 RICO charge.

10 Under the trademark law, there is no  
11 statutory reason why when we're dealing with just a  
12 registerability issue, I didn't threaten their  
13 customers, I didn't threaten -- only the cancelation of  
14 their mark --

15 THE COURT: I've got to interrupt you and  
16 tell you I'm not here to decide the merits of that.

17 MR. STOLLER: Okay, but I just want to point  
18 that out. The other thing that's --

19 THE COURT: The only question is whether I  
20 should modify the stay --

21 MR. STOLLER: Right.

22 THE COURT: -- so they can litigate against  
23 you.

24 MR. STOLLER: And here's why I'm going to  
25 suggest you shouldn't. The purpose of the stay is to

1 give a creditor a respite from litigation. We're trying  
2 to resolve this bankruptcy issue. And I had a meeting  
3 yesterday with the trustee and I think it's possible  
4 that we'll be able to resolve the bankruptcy issue.

5 THE COURT: In the event the bankruptcy issue  
6 were resolved, what would happen to the bankruptcy do  
7 you think?

8 MR. STOLLER: What would happen would depend  
9 on the ultimate resolution.

10 THE COURT: Yes.

11 MR. STOLLER: My hope is --

12 THE COURT: Might the bankruptcy be  
13 dismissed?

14 MR. STOLLER: That it might be dismissed,  
15 yes, and my creditors could be paid.

16 THE COURT: Well, but this particular  
17 creditor, if the bankruptcy is dismissed, would be free  
18 to sue you anyway, right?

19 MR. STOLLER: If the bankruptcy were to be  
20 dismissed and I was able to regain control of my  
21 corporations and be in business again, they could sue  
22 me. However, the predicate acts of which they're  
23 complaining about are no longer taking place because I'm  
24 not in control of my business. For them to bring these  
25 charges against me now when I am not pursuing the

1 petition to cancel, I'm not writing letters to them, the  
2 trustee is in charge of the corporations --

3 THE COURT: Let me pause for that. Is one of  
4 the corporations Central Manufacturing?

5 MR. STOLLER: Yes.

6 THE COURT: Which has some other names.

7 MR. STOLLER: Stealth Industries, Inc.

8 THE COURT: Stealth Industries, also  
9 Rentamark.

10 MR. STOLLER: Correct.

11 THE COURT: Right?

12 MR. STOLLER: Right. In other words, what  
13 relief they're seeking, Judge --

14 THE COURT: I understand. Let me ask the  
15 trustee something. He wants to -- if we modify the stay  
16 then, of course, Stoller can be sued but also these  
17 corporations. Do you take the view that he has no right  
18 to represent the corporations or hire a lawyer to  
19 represent the corporations?

20 MR. FOGEL: I take that view, yes, because as  
21 part of the settlement there is no relief being sought  
22 against the estate or the entities. There is no  
23 monetary relief being sought against them. And getting  
24 back to whether we've talked many times, the entities  
25 all appear to be Mr. Stoller, so that we're talking

1 about claims against the bankruptcy estate on the one  
2 hand, we're talking about claims against Mr. Stoller as  
3 an individual post-conversion living the rest of his  
4 life, on the other hand. The second --

5 THE COURT: Yeah, but --

6 MR. FOGEL: -- part is what Google is going  
7 after.

8 THE COURT: Central Manufacturing is a  
9 corporate entity?

10 MR. STOLLER: Yes, in Delaware. Yes, Judge,  
11 it is.

12 THE COURT: What do you think, Google?

13 MR. BARRETT: Your Honor, I understand the  
14 court made a finding of fact at the conversion trial  
15 finding that these entities were inseparable from  
16 Mr. Stoller himself.

17 THE COURT: Well, they may be maybe  
18 inseparable.

19 MS. ALWIN: The debtor has also failed to  
20 produce --

21 THE COURT: In a piercing corporate veil  
22 sense, but I was just asking whether or not it was  
23 corporate entities.

24 MR. STOLLER: They are. I paid the franchise  
25 fee for 20 years for each one of those corporations in

1 Delaware. They exist. All you have to do is go on the  
2 computer and pull them up.

3 MS. ALWIN: Your Honor, as we've noted at  
4 the --

5 MR. FOGEL: Your Honor, there is an entity in  
6 Delaware called Central M-f-g, I want to say comma, Inc.  
7 that is in good standing. I've not seen a document that  
8 in any way, shape, or form connects Mr. Stoller to that  
9 entity. He is not listed as the registered agent. The  
10 State of Delaware does not identify corporate officers.  
11 I have not seen a stock certificate. I've not seen a  
12 record book.

13 THE COURT: Counsel --

14 MR. FOGEL: I've not seen a tax return. I've  
15 not seen anything.

16 THE COURT: Are you abandoning or not  
17 abandoning your claims by reason -- against these  
18 entities, whatever they are, by reason of his stock  
19 ownership therein, if he has any stock ownership or any  
20 other interest? Are you abandoning the interest --

21 MR. FOGEL: No.

22 THE COURT: -- by reason of his relationship.

23 MR. FOGEL: No. I am holding onto all  
24 property of the estate at the moment while I continue --

25 THE COURT: Why are you not abandoning, if



1 you think it is valueless for the estate --

2 MR. FOGEL: No. I'm not asserting a claim  
3 against Google, which I think is valueless for the  
4 estate.

5 THE COURT: Why are you not abandoning these  
6 corporate --

7 MR. FOGEL: They may, in turn -- they may, in  
8 fact, turn out to be companies. They may, in turn, turn  
9 out to have assets.

10 THE COURT: If they are, are you going to be  
11 defending them in the Google lawsuit that they proposed  
12 to file?

13 MR. FOGEL: Not if they're not seeking any  
14 monetary relief. I can't --

15 THE COURT: They seek relief against the  
16 companies or with -- companies. They do.

17 MR. STOLLER: See, that's the rub, Your  
18 Honor. I can't have attorneys represent my  
19 corporations. They're going to consent to judgments  
20 against my corporations. Then they're going to throw me  
21 to the wolves, and I'm going to have to defend myself in  
22 a RICO action for what I think is basically not RICOish.

23 On the other hand, I don't have an  
24 attorney and I can't afford an attorney to represent  
25 myself. So this is putting the debtor, in prejudicing

1 the debtor beyond what should be allowed under the law.  
2 I can't represent my corporations with attorneys to  
3 protect them and, therefore, I can't even represent  
4 myself.

5 THE COURT: I understand. I'm perfectly  
6 clear as to why you wanted the settlement which -- but  
7 you're also, through this device, exposing the  
8 corporations in which you claim an interest to damages  
9 undefended. And I don't understand that unless you want  
10 to abandon your interests in --

11 MR. STOLLER: And he's done that in every  
12 case where I'm in litigation, Your Honor.

13 THE COURT: Mr. Stoller, wait please. Bear  
14 with me one second.

15 MS. ALWIN: Your Honor, part of the  
16 settlement was a release of claims.

17 THE COURT: Against who?

18 MS. ALWIN: Google and the estate and the  
19 entities, so we've resolved it.

20 THE COURT: You mean, Google has released its  
21 claims against the entities?

22 MS. ALWIN: That's my understanding, Your  
23 Honor.

24 THE COURT: Counsel for Google, please?

25 MR. BARRETT: Your Honor, I'm looking at the

1 relevant language right now in the agreement. The  
2 language is Google hereby releases and discharges  
3 Stoller's bankruptcy estate and the trustee, as  
4 representative of Stoller's bankruptcy estate, from any  
5 and all claims.

6 THE COURT: Not the entities.

7 MR. BARRETT: It does not appear to  
8 specifically include the entities.

9 MS. ALWIN: There are no claims against the  
10 entities.

11 THE COURT: Counsel?

12 MS. ALWIN: If I misspoke, Your Honor, my  
13 apologies, but my understanding is --

14 THE COURT: If it included the entities --

15 MS. ALWIN: -- there are no claims then.

16 THE COURT: -- then there's no reason for him  
17 to file this shotgun suit.

18 MR. FOGEL: The suit was drafted before the  
19 settlement was reached.

20 THE COURT: I know, but from what I just  
21 heard, the entities are still liable and you want them  
22 to go undefended even though you think that potentially  
23 you may find out they had a value.

24 MR. STOLLER: That's correct, Your Honor.

25 MR. BARRETT: The relief sought by Google

1 against the entities in the settlement agreement is  
2 injunctive relief.

3 THE COURT: I'm sorry. I was just looking at  
4 this complaint. I always take these requests for relief  
5 kind of seriously. You want treble damages. You want  
6 punitive damages. You don't want -- you want much more  
7 than an injunction against an entity that the trustee  
8 wants to hold onto in case he can find some value there.  
9 And yet the trustee does not intend to defend this,  
10 defend the entities. I don't understand that. I'm not  
11 sure I should modify the stay to permit -- to go after  
12 the entities since the entities are part of the estate.

13 MR. FOGEL: I don't see how entry of  
14 injunctive relief against the entities would affect  
15 their value.

16 THE COURT: I assure you that punitive  
17 damages would and treble damages would.

18 MR. FOGEL: It's my understanding that Google  
19 was not going to be seeking monetary relief against the  
20 entities and was only going to pursue Mr. Stoller. And  
21 if I misunderstood the settlement then --

22 THE COURT: Counsel, is all you want to do is  
23 to get the injunction against the entities?

24 MR. BARRETT: Your Honor, my understanding --  
25 we're dealing with an issue I think that wasn't really

1 fully fleshed out in the settlement talks with the  
2 trustee.

3 THE COURT: I know. And I know this draft  
4 was prepared a long time ago.

5 MS. ALWIN: Yes.

6 THE COURT: I guess you had better think it  
7 through; also me. I'm prepared -- I've approved that  
8 settlement and it makes sense for the estate, but now  
9 I've got to see whether the form of the order here makes  
10 sense and the extent to which I permit him to go forward  
11 with litigation makes sense.

12 MR. FOGEL: May we put this over so that  
13 Mr. Barrett can confer with his lead counsel? And  
14 perhaps the fix is to have a revised proposed  
15 complaint --

16 THE COURT: Yes.

17 MR. FOGEL: -- that will not be seeking the  
18 type of relief that we're talking about.

19 THE COURT: I think that may very well be.  
20 Now, Mr. Stoller, based on your objection, it's going to  
21 be overruled. I'll tell you why. There is good cause  
22 here for allowing Google to go forward and sue you. As  
23 to whether he should be allowed to sue the entities, I'm  
24 not so sure, but there is good cause to allow him to sue  
25 you because that has nothing to do with this estate and

1 suing you won't hurt the estate and, therefore, I should  
2 not in any way bar him from going forward. There is  
3 good cause. He has certainly got an issue that ought to  
4 be resolved somewhere, and I don't see why it should be  
5 resolved in bankruptcy court at all.

6 MR. STOLLER: Well, none of the predicate  
7 acts of which he's trying to seeking relief, or  
8 allegedly seeking relief and, of course, I deny all the  
9 allegations in the complaint, you know, it's like taking  
10 the captain of a ship and saying -- I'm not doing  
11 anything. You know, in other words, there is an  
12 injunction by virtue --

13 THE COURT: Well, you can argue that to  
14 whatever court this is before.

15 MR. STOLLER: But I'm just merely saying it  
16 doesn't make any sense to shove me into an environment  
17 when I'm in a bankruptcy proceeding, I'm trying to  
18 resolve the bankruptcy, pay my creditors, and then I  
19 would say, Judge, if I get out of this bankruptcy and I  
20 pay my creditors and regain my corporations, I would  
21 relish having the opportunity to defend it.

22 THE COURT: At least you should understand  
23 that there is good cause to show why they should go  
24 ahead and be able to sue you on a matter not affecting  
25 the bankruptcy to get injunctions. Now as to how much

1 beyond that should I allow is the question that's still  
2 open. Okay?

3 So when can we have you folks back  
4 here?

5 MR. FOGEL: Your Honor, we have a pending  
6 date in January, I think on the 11th, for some matters.  
7 I don't know if there is a time between now and then  
8 that we can get back before you. I'm going to be out of  
9 town.

10 THE COURT: Well, I can find some time if you  
11 tell me when you want to come back here.

12 MR. FOGEL: Wait, January 11th is the 341.

13 THE COURT: I can find some time. I will  
14 just pick a date a week from now or 10 days from now.

15 MR. FOGEL: A week from now would work.

16 THE COURT: Okay. Date please?

17 THE CLERK: January 19th at 10:30.

18 THE COURT: January?

19 THE CLERK: I'm sorry, December.

20 THE COURT: December 19th at what, 10:30?

21 THE CLERK: 10:30.

22 THE COURT: For hearing on order and possible  
23 limits to litigation -- to suit.

24 May I continue to borrow your big black  
25 book, please?

1 MR. BARRETT: You you may, Your Honor.

2 THE COURT: I don't know what happened to my  
3 copy.

4 Now did you, Mr. Stoller, get a full  
5 set of this big black binder?

6 MR. STOLLER: I just received it, yes.

7 THE COURT: All right. There was a motion on  
8 today, a trustee's motion to approve compromise of  
9 Lanard Toys.

10 MS. ALWIN: Yes. I have a draft order to  
11 follow, Your Honor.

12 THE COURT: May I have it please?

13 MS. ALWIN: Yes.

14 THE COURT: I've overruled the debtor's  
15 objection.

16 MR. FOGEL: We've changed the language to  
17 make it clear that the reference in that paragraph is  
18 only to me on behalf of the estate and the related  
19 entities and it's not applicable to Mr. Stoller.

20 THE COURT: Which paragraph are you talking  
21 about?

22 MR. FOGEL: It's paragraph four of the --

23 THE COURT: The language in the agreement you  
24 mean?

25 MR. FOGEL: Yes.



1 MS. ALWIN: Yes.

2 MR. FOGEL: Paragraph four of the agreement  
3 is what Mr. Stoller's objecting to.

4 THE COURT: Okay.

5 MR. FOGEL: -- and make clear that I'm the  
6 someone.

7 THE COURT: So we -- get a copy of this order  
8 to Mr. Stoller, please.

9 MR. FOGEL: Yes, sir.

10 THE COURT: Now I also have Mr. Stoller's  
11 motion for permission to allow him to represent himself  
12 and his corporate entities before the Trademark Trial  
13 and Appeal Board. What is the status of that?

14 MR. FOGEL: Your Honor, the status of the  
15 matters before the -- they are, I guess the word is they  
16 are frozen pending further determinations in the  
17 bankruptcy case as to what ultimately happens. There  
18 are, as you may recall Mr. Stoller said last week, you  
19 know, over a thousand matters were filed to possibly  
20 investigate whether or not there was a reason for him to  
21 fight with any of the people that he was filing against.

22 I would say this motion is similar to  
23 the motion that he filed a couple of weeks ago that you  
24 denied where he sought a declaration either that I had  
25 abandoned my interest in the portfolio or that he should

1 be allowed to join the entities and the estate in the  
2 appeal of the Pure Fishing case. And I resisted the  
3 motion. I resisted that motion at that time --

4 THE COURT: Is that procedure before the  
5 Trademark Trial and Appeal Board --

6 MR. FOGEL: No.

7 THE COURT: -- Pure Fishing?

8 MR. FOGEL: Pure Fishing is pending in the  
9 district court before Judge Lindberg. It has been  
10 appealed to the Seventh Circuit by Mr. Stoller.

11 The matters before the Patent Trademark  
12 Board involve a variety of other parties and, again,  
13 until I have either reached some type of settlement with  
14 Mr. Stoller or proceeded without settlement with  
15 Mr. Stoller to deal with the intellectual property  
16 portfolio, I am opposed to him being authorized to act  
17 on behalf of the estate or on behalf of the entities.

18 THE COURT: What I can do is to keep this  
19 alive and see what happens.

20 MR. FOGEL: I have no problem with entering  
21 and continuance of this motion.

22 THE COURT: Because your view is that the  
23 proceeding is frozen.

24 MR. FOGEL: Yes.

25 MR. STOLLER: Your Honor, the last time we

1 were here one of the attorneys presented an action. At  
2 the Trademark Trial and Appeal Board -- and the last  
3 time we were here you made your order in the Google case  
4 predicated upon the fact that I may get my companies  
5 back.

6 THE COURT: Mr. Stoller, the trademark  
7 procedure, is it going forward now or is it frozen  
8 temporarily?

9 MR. STOLLER: No. They're going to be  
10 dismissed and that's the urgency. All my actions at the  
11 Trademark Trial and Appeal Board of which there are 30  
12 cases many of which I have been involved in for 10 years  
13 or more, Judge, are now all destined to be dismissed.

14 THE COURT: Mr. Stoller, do you have anything  
15 to back up your contention that they're about to be --

16 MR. STOLLER: Yes.

17 THE COURT: I don't mean Stoller. Trustee,  
18 do you have anything that shows that they're frozen as  
19 opposed to actively considering dismissal?

20 MS. ALWIN: I believe it's the order attached  
21 to Google's response.

22 MR. JOHNSON: Your Honor, if I may interject  
23 a moment on the Trademark Trial and Appeal Board  
24 procedure. An opposition is filed by a party who  
25 believes they will be harmed by the granting of a

1 trademark registration. There is an alternative  
2 proceeding available. If that registration has already  
3 been granted, the one aggrieved can seek to have the mar  
4 canceled. The two are procedurally identical, merely a  
5 difference in posture as to whether the application has  
6 been registered or whether the registration will be  
7 canceled.

8 MR. STOLLER: What happened the last time we  
9 were here, the board issued an order which was tendered  
10 to you. In that order the Trademark Trial and Appeal  
11 Board dismissed a case which the trustee entered into an  
12 agreement to dismiss the case with and I merely filed a  
13 notice before the Trademark Trial and Appeal Board,  
14 Judge, to advise them that the case was on appeal and  
15 not to -- to put them in the stay position.

16 The board issued a decision saying,  
17 "Stoller has no authority to respond," and then  
18 dismissed the action. That single decision which was  
19 tendered to you last time is now being used by all my  
20 opponents so that all of my decisions, all of the 30  
21 pending oppositions will be dismissed based on that  
22 board decision. I need to go back to the TTAB. I went  
23 in good faith and tried to contact Mr. Fogel and asked  
24 him if he would give me authority so I could go back to  
25 the board and say, "No, I do have the authority."

1 I'm not looking to litigate the cases  
2 over there. I'm merely looking to advise the board that  
3 we are -- that these decisions are on appeal and they  
4 should be stayed pending my appeal.

5 THE COURT: What decisions are on appeal?

6 MR. STOLLER: Pardon me?

7 THE COURT: What was handed to me now is a  
8 letter from the Patent Trademark office to you dated  
9 July 14, '06.

10 MR. STOLLER: That's just a sanction order.  
11 That has nothing to do --

12 THE COURT: It determines that you have not  
13 made a showing that you have a colorable claim of  
14 damages justifying the extension request that you filed.

15 MR. STOLLER: You're being -- there is an  
16 attempt to confuse the court. That decision, that was a  
17 sanction order based on my filing a series of requests  
18 to -- requests for extensions of time to file in  
19 opposition. That does absolutely nothing with the 30  
20 pending initiated opposition proceedings. The  
21 criticality of it is if I'm going to get my companies  
22 back, I want my oppositions in the same position they  
23 were at the time this proceeding began.

24 Mr. Lance Johnson's allegation to you  
25 that I could then now go back and refile 30 or 40 cases,

1 pay those filing fees, and then litigate under the  
2 theory that a petition to cancel is the same as an  
3 opposition is not the case. There is a different  
4 standard.

5 All I want is that the board suspend  
6 everything, like the trustee said, pending the  
7 resolution of these issues so that if we can reach an  
8 amicable resolution, I pay my creditors, I get my  
9 companies back, everything is stayed. Right now the  
10 board has said, "Stoller has no authority." I've  
11 received letters from other counsel using that last  
12 decision by the board and they're going to dismiss all  
13 30 of them which would never allow me to be made whole  
14 again.

15 THE COURT: Trustee, have you filed anything  
16 in that proceeding?

17 MR. FOGEL: Yes, and let me clarify it there.  
18 I think maybe what Mr. Stoller is looking for may, in  
19 fact, be available to him. After Judge Lindberg entered  
20 his opinion in the Pure Fishing case in the district  
21 court dealing with the Stealth marks that Mr. Stoller  
22 has the fights with before the Patent Trademark Board, I  
23 entered into a joint motion to dismiss in opposition  
24 without prejudice.

25 THE COURT: Pertaining to Pure?

1 MR. FOGEL: Pertaining to another entity.

2 THE COURT: Just one?

3 MR. FOGEL: I believe one.

4 MR. STOLLER: He entered three of them. He  
5 dismissed three of my cases.

6 MR. FOGEL: I thought only one of them had  
7 actually been --

8 THE COURT: Has it been dismissed?

9 MR. STOLLER: Three.

10 MR. FOGEL: I believe one of them has. And  
11 as soon as Mr. Stoller filed his notice of appeal of the  
12 Pure Fishing action, I decided to stand still and take  
13 no actions before the Patent and Trademark Board.

14 THE COURT: Mr. Stoller, let me ask, are  
15 these cases where you claim some interest in what other  
16 people say are their trademarks or patents?

17 MR. STOLLER: It's a claim where my company  
18 held rights and does the 35 Stealth federal trademark  
19 registrations. We have 35.

20 THE COURT: Mr. Stoller, are these  
21 proceedings where you claim an interest in certain  
22 trademarks that other companies are using?

23 MR. STOLLER: I claim an interest in the  
24 trademarks that I own, 35. A company will file an  
25 application for a trademark.

1 THE COURT: You don't want to answer my  
2 question.

3 MR. STOLLER: I am answering it.

4 THE COURT: No, you're not. I asked you  
5 whether you're claiming rights in trademarks that other  
6 companies are using.

7 MR. STOLLER: Yes, I am.

8 THE COURT: And do you contend that you used  
9 the -- that you obtained the trademarks first?

10 MR. STOLLER: I have 35 that I've obtained  
11 since 1981.

12 THE COURT: First, before they started to use  
13 them?

14 MR. STOLLER: Yes. And these cases are not  
15 being dismissed by the board summarily. They're motions  
16 to dismiss. They're being litigated. And I need to be  
17 able to defend my trademarks.

18 Now the only thing I'm looking for,  
19 Judge, the only thing here is to go back to the board  
20 and say, "No, they should be stayed." I should have the  
21 right to write them a letter and say they should be



1 very well be that Mr. Stoller is misusing his rights  
2 under the patent system. It may very well be that it  
3 would be a better world if he were stopped. I am not  
4 here to make that decision. It may very well be that  
5 some other court or agency ought to make that decision.  
6 I just don't think that if the trustee is not claiming  
7 any property rights that the bankruptcy should be used  
8 to prevent Mr. Stoller from litigating whatever he  
9 thinks his rights are. So I'm a little troubled by --

10 MR. FOGEL: I'm a little troubled, too. But  
11 if he would show me any documents, if he would give me  
12 any cooperation along the lines that would enable me to  
13 make intelligent decisions --

14 THE COURT: He has this problem because he's  
15 asserted the Fifth Amendment. He's not cooperated with  
16 you and he complains that you're moving slowly and are  
17 not proceeding to take some dispositive action that will  
18 allow him to get back control of his business. And, of  
19 course, I understand that once a trustee is faced by a  
20 proper assertion of a Fifth Amendment, if it be proper,  
21 that does slow the trustee down. I understand that on  
22 the other side as well. But, generally speaking, one  
23 may punish themselves by asserting the Fifth Amendment,  
24 but one may not be punished for asserting the Fifth  
25 Amendment properly.

1 MR. FOGEL: Your Honor, I --

2 THE COURT: Now where are we here? What I'd  
3 like to see happen is that whatever you do and whatever  
4 I do freezes the proceedings.

5 MR. FOGEL: That's what I'm trying to do.  
6 I'm trying to maintain the status quo. I am not seeking  
7 dismissal of any matters, and I will be happy to  
8 notify --

9 THE COURT: I want you to think about that as  
10 to how we can arrive at that as opposed to allowing him  
11 to represent his agencies or himself in matters.

12 MR. FOGEL: I can't stop him from  
13 representing himself.

14 THE COURT: Yes, you can, because the claim  
15 is a claim of the estate.

16 MR. FOGEL: Well, if it's a claim of the  
17 estate, then it's mine to assert.

18 THE COURT: Yes, it is. And you could  
19 abandon it, or you could assert it, or you could try to  
20 freeze it while you evaluate it.

21 MR. FOGEL: That's what I'm pretty much doing  
22 I believe. I'm not doing things with any prejudice.  
23 Anything I've done to date has been without prejudice.

24 THE COURT: Until you abandon it.

25 MR. FOGEL: And I'm not going to do anything

1 else before the Patent Trademark Board until either I  
2 reach settlement with Mr. Stoller or until the appeal  
3 before Judge Lindberg is litigated out.

4 THE COURT: Okay. But basically on his  
5 motion I think you ought to take the view you're either  
6 going to prosecute those claims, or abandon them, or ask  
7 that they be frozen.

8 MR. FOGEL: That's what I'm telling you. I  
9 want them to be frozen for now.

10 THE COURT: If they are frozen, then I'm  
11 certainly not going to let him represent an asset of the  
12 estate that you have not been able to evaluate yet.

13 MR. FOGEL: I'm happy to notify the general  
14 counsel of the patent --

15 THE COURT: I'm fully aware also of a dilemma  
16 that it seems to me you probably have. If you suspect  
17 that a lot of these claims that he has made are phony,  
18 you probably don't want to be asserting them if that's  
19 your belief.

20 MR. FOGEL: Thank you, Judge.

21 THE COURT: And so you have a dilemma because  
22 you can't evaluate. So you're reluctant to abandon and  
23 you're reluctant to prosecute.

24 MR. FOGEL: I will say that I did have a good  
25 conversation with Mr. Stoller yesterday. And I don't

1 know where it will go, but I'm going to talk to him  
2 again. So I'd like to maybe put this over and I will  
3 represent to Mr. Stoller and to the court --

4 THE COURT: -- the 19th to see if we can  
5 approach this problem that way.

6 MR. FOGEL: Fine.

7 MR. STOLLER: Your Honor, could I make one  
8 suggestion? In this one case we only have about 20  
9 days. I would like to talk to Mr. Fogel.

10 THE COURT: Well, 7 days is shorter than 20.

11 MR. STOLLER: I'm saying in terms of  
12 notifying the board that this one action shouldn't be  
13 dismissed, I'd like to be able to --

14 THE COURT: You say you have 20 days, but  
15 I'll be back here on the 19th with you and let's see  
16 what we can do.

17 MR. STOLLER: Okay.

18 THE COURT: The debtor's response to a motion  
19 of Pure Fishing to extend the date, this was filed  
20 December 5. Haven't I --

21 MR. FOGEL: You ruled on it.

22 THE COURT: -- ordered -- I ruled on that.

23 MR. FOGEL: You entered that order. There is  
24 one last matter for today. As part of the objection  
25 that Mr. Stoller filed to one of the settlement motions,

1 he asked that I be disqualified as trustee.

2 THE COURT: I thought I ruled on that.

3 MR. FOGEL: You did.

4 THE COURT: I thought I orally ruled on that.

5 MR. FOGEL: It was draft order to follow so  
6 that we could draft an order that I believe reflects  
7 what you said that he didn't show cause to remove me.

8 THE COURT: Right.

9 MR. STOLLER: I would like to have a copy of  
10 that, too.

11 THE COURT: Yes, please. Get him a copy of  
12 that. I've signed that. I'll see you folks on the  
13 19th.

14 MR. FOGEL: Thank you very much.

15 MR. STOLLER: Thank you, Judge.

16 (Which were all the proceedings  
17 had in the above-entitled cause  
18 as of December 12, 2006.)  
19  
20

21 I, Barbara A. Casey, do hereby  
22 certify that the foregoing is  
23 a true and accurate transcript  
24 of proceedings had in the  
25 above-entitled cause.

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

4	In re:	)
5	LEO STOLLER,	) No. 05 B 64075
6		) Chicago, Illinois
7	Debtor.	) February 15, 2007
		) 10:00 A.M.

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
HONORABLE JACK B. SCHMETTERER

APPEARANCES:

MS. JANICE ALWIN  
on behalf of the trustee;

MR. RICHARD FOGEL  
trustee;

MS. KIM ROBINSON  
on behalf of Google;

MR. BILL FACTOR  
on behalf of Pure Fishing.

ALSO PRESENT:

MR. LEO STOLLER  
debtor.

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1 THE CLERK: Stoller, 05 64075.

2 MR. STOLLER: Good morning, Judge. Leo  
3 Stoller, debtor.

4 THE COURT: Good morning, sir.

5 MS. ALWIN: Good morning, Your Honor.  
6 Janice Alwin on behalf of the trustee.

7 MR. FOGEL: Good morning, Your Honor.  
8 Richard Fogel, the trustee.

9 MS. ROBINSON: Good morning, Your Honor.  
10 Kim Robinson on behalf of Google.

11 MR. FACTOR: Good morning, Your Honor.  
12 Bill Factor on behalf of Pure Fishing.

13 THE COURT: Good morning. First I have --  
14 we have only one thing up this morning that I'm  
15 aware of. Mr. Stoller moves for permission to  
16 retain counsel for corporations that the -- and  
17 Google has filed an objection to it. Let me ask  
18 some questions.

19 Mr. Stoller, what lawyer do you want  
20 to hire?

21 MR. STOLLER: First of all -- I will  
22 answer that. But first of all, you gave them  
23 permission to sue me, Leo Stoller. They came in ten  
24 times before you to lift --

25 THE COURT: I've read --

1 MR. STOLLER: -- the stay.

2 THE COURT: -- your motion.

3 MR. STOLLER: I'm not in this. I'm not --  
4 they didn't sue Leo Stoller. They just sued --

5 THE COURT: I read your motion.

6 MR. STOLLER: Okay. They just sued my --

7 THE COURT: I read --

8 MR. STOLLER: -- corporations.

9 THE COURT: -- their answer.

10 MR. STOLLER: Right.

11 THE COURT: I want to ask you what lawyer  
12 you wish to hire.

13 MR. STOLLER: I have a lawyer that I have  
14 talked with on this that -- I haven't confirmed it  
15 yet because I haven't gotten your permission, but  
16 his first name is Marty. And I have discussed it  
17 with him, if he would take the case. But I don't  
18 know yet because I can't --

19 THE COURT: Does he have a last name that  
20 you can share with us, please?

21 MR. STOLLER: I'm looking for his card.  
22 I'll provide that this afternoon for you.

23 THE COURT: You're unwilling or unable to  
24 tell me the lawyer you wish to hire?

25 MR. STOLLER: I'm not unwilling. I am



1 willing. His name is Marty. He's handling another  
2 matter for me and --

3 THE COURT: Did you respond at all to the  
4 trustee's invitation to have that lawyer contact  
5 him?

6 MR. STOLLER: At this particular point, he  
7 hasn't said yes or no to the case because I don't  
8 have permission.

9 THE COURT: In the event --

10 MR. STOLLER: I will have --

11 THE COURT: -- you should hire Marty --

12 MR. STOLLER: Pardon me?

13 THE COURT: In the event you should hire  
14 Marty, last name unknown, out of what source would  
15 you pay him?

16 MR. STOLLER: He would be paid out of  
17 Illinois trade. He's a lawyer that's on barter, a  
18 barter system, and he would take barter points, he  
19 said. And he would take -- 25 percent of his hourly  
20 wage would be paid by cash, 75 percent by barter.  
21 And my brother who -- has agreed to borrow me the  
22 funds to pay him the 25 percent of his hourly wage  
23 for cash.

24 The critical point here is that  
25 they're seeking a civil RICO action. This is the

1 most serious type of action --

2 THE COURT: I read --

3 MR. STOLLER: -- against a --

4 THE COURT: -- your motion, I read their  
5 answer. I understand what they're doing and I  
6 understand what you're doing.

7 Have you yet turned over any documents  
8 relating to the corporations involved in this  
9 lawsuit you're talking about? Have you turned over  
10 any documents relating to those corporations to the  
11 trustee?

12 MR. STOLLER: No, I haven't.

13 THE COURT: Why not?

14 MR. STOLLER: Because under the advice of  
15 my counsel when I took the Fifth, he advised me to  
16 take the Fifth. But in terms of whatever documents  
17 I have in my possession regarding those corporations  
18 which are their corporate -- you know, the book from  
19 Delaware, I would be more than happy to turn those  
20 over to Mr. Fogel.

21 THE COURT: Sir, do you have documents  
22 relating to what you think would be your defense in  
23 that case?

24 MR. STOLLER: In the Google case?

25 THE COURT: That's the case we're talking

1 about.

2 MR. STOLLER: In the Google case, there  
3 are --

4 THE COURT: That's the one you want to  
5 hire lawyers to defend.

6 MR. STOLLER: Yes, right. I have  
7 documents --

8 THE COURT: That's the subject of this  
9 discussion.

10 MR. STOLLER: I have documents --

11 THE COURT: Do you have documents?

12 MR. STOLLER: Yes, I do, that are --

13 THE COURT: Have you turned those over to  
14 the trustee?

15 MR. STOLLER: No. But I haven't been  
16 asked specifically for that, but I will.

17 THE COURT: What's the answer to my  
18 question?

19 MR. STOLLER: Yes, I have documents. I  
20 haven't --

21 THE COURT: And the --

22 MR. STOLLER: -- turned them over --

23 THE COURT: And the question is --

24 MR. STOLLER: -- but I will turn them  
25 over.

1 THE COURT: You have not turned them over  
2 yet?

3 MR. STOLLER: As of this second, I was not  
4 required to give my defense for this RICO action,  
5 which was just filed, to the trustee. I didn't know  
6 that was -- I had to do that.

7 THE COURT: Did you appear at a meeting of  
8 creditors?

9 MR. STOLLER: We had one meeting of  
10 creditors.

11 THE COURT: Did you appear at a --

12 MS. ALWIN: Yes.

13 THE COURT: -- meeting of creditors?

14 MR. STOLLER: Yes.

15 THE COURT: Did you testify?

16 MR. STOLLER: I took the Fifth at --

17 THE COURT: Did you --

18 MR. STOLLER: -- the advice of my --

19 THE COURT: -- turn over any documents at  
20 the meeting of creditors?

21 MR. STOLLER: No, I did not. But I am  
22 willing to turn over documents in the defense of  
23 this case because it is so critical to the trustee  
24 what is my defense in this case. I was not asked  
25 for that specific defense.

1 THE COURT: Sir, the corporations that are  
2 named in this case that you want to defend --

3 MR. STOLLER: Yes.

4 THE COURT: -- those corporations, do you  
5 own stock in those corporations?

6 MR. STOLLER: Yes, I do, Judge.

7 THE COURT: Do you own all the stock,  
8 in --

9 MR. STOLLER: Yes, I --

10 THE COURT: -- those corporations?

11 MR. STOLLER: -- do, Judge.

12 THE COURT: Does anybody else own stock in  
13 those --

14 MR. STOLLER: No --

15 THE COURT: -- corporations?

16 MR. STOLLER: -- Judge.

17 THE COURT: Are you an officer in --

18 MR. STOLLER: Yes.

19 THE COURT: -- each of those companies?

20 Is there any reason you want to tell  
21 me why you don't think the trustee has the right to  
22 control those corporations and responsible for any  
23 assets of them?

24 MR. STOLLER: Yes, I do.

25 THE COURT: What's that?

1 MR. STOLLER: When the Chapter 13 trustee  
2 just filed his final report on February 7th in this  
3 case, they showed I owed \$65,000 in debt. That's  
4 when we came before you when Golding was here on the  
5 conversion. Prior to the conversion and the  
6 appointment of this trustee, I only owed in this  
7 court in my bankruptcy claims of 65,000. Since the  
8 trustee has taken over, those claims have been  
9 elevated to \$2.3 million.

10 THE COURT: Mostly Google?

11 MR. STOLLER: No. Pure Fishing, which he  
12 agreed to. He has refused to defend any of my  
13 corporations, resulting in the ballooning of the  
14 debt which has been leveled on me.

15 THE COURT: Mr. Stoller, when, as, and if  
16 the trustee ever collects any assets, he wishes to  
17 pass them out to your creditors. I understand that  
18 Stoller -- pardon me, that Google has agreed to  
19 withdraw any claims because of the settlement with  
20 the trustee; is that right?

21 MR. FOGEL: Yes, sir.

22 MS. ROBINSON: That's correct, Your Honor.

23 THE COURT: That's the one on settlement  
24 that I approved.

25 MR. FOGEL: Yes, sir.

1 MR. STOLLER: But the problem --

2 THE COURT: So other creditors will get  
3 the money.

4 MR. STOLLER: The problem --

5 THE COURT: It doesn't matter how much  
6 Google is claiming.

7 MR. STOLLER: The problem is not that they  
8 withdraw their monetary claims. It's a civil RICO  
9 action where I'm mentioned 15 times in a complaint  
10 in which I am deprived of defending myself. I'm not  
11 even listed in it.

12 THE COURT: You have a right, I suppose,  
13 to seek to intervene in that case and to defend any  
14 interest of yours personally, but I see no reason  
15 why I should authorize you to hire lawyers on behalf  
16 of the companies.

17 MR. STOLLER: Because if --

18 THE COURT: If you feel that the action  
19 indirectly impinges on your rights, nothing stops  
20 you from doing that.

21 MS. ROBINSON: Your Honor, if, in fact,  
22 the settlement is approved by the district court  
23 next week, the case is going to go away.

24 THE COURT: I understand.

25 MS. ROBINSON: The case is going --

1 THE COURT: I don't know --

2 MS. ROBINSON: -- to completely go away.

3 THE COURT: -- what he means by the --

4 MR. STOLLER: It's not going to go away.

5 It's going to live with me forever, and I'm going to  
6 be held responsible for a civil RICO action. The  
7 complaint here is a heinous complaint. It's  
8 frivolous on its face. There aren't -- and I can't  
9 defend my corporations, and that's like telling me  
10 to cut my legs off, go in front of another court,  
11 and I already got --

12 THE COURT: Do you have the --

13 MR. STOLLER: -- a judgment against me.

14 THE COURT: -- motion -- do you have the  
15 order modifying stay that I allowed Google to go  
16 after, please? Nobody has that order?

17 MS. ROBINSON: Yes, we have it, Your  
18 Honor.

19 MR. FOGEL: Yes, sir.

20 MR. STOLLER: And the other thing, you  
21 asked --

22 MS. ROBINSON: Your Honor --

23 MR. STOLLER: -- Judge, to file the answer  
24 to the motion. It is pending at the Trademark Trial  
25 and Appeal Board. You modified your order and you



1 wrote that language in. They have -- Google has  
2 refused to respond to my motion for summary  
3 judgment.

4 THE COURT: Nobody has the order I  
5 entered.

6 MS. ROBINSON: Yes, we have it, Your  
7 Honor.

8 THE COURT: Okay. See if you can pull up  
9 the docket in the Stoller case.

10 Do you remember the approximate date  
11 of the entry of the order?

12 MS. ROBINSON: Your Honor, are you looking  
13 for the order against Mr. Stoller individually --

14 THE COURT: No.

15 MS. ROBINSON: -- or the order that was --

16 THE COURT: The order that allowed you to  
17 proceed, counsel. The order modifying stay.

18 MS. ALWIN: That was in January.

19 THE COURT: Okay. Do we know the  
20 approximate date of the order?

21 MS. ALWIN: January.

22 MS. ROBINSON: January 5th or 4th, Your  
23 Honor.

24 THE COURT: Okay.

25 Let's pull it up and see if you can

1 find the order modifying stay.

2 MR. STOLLER: It's important to note that  
3 in their motion before you they had asked Google if  
4 they had me, Leo Stoller, a necessary party. That  
5 was in their motion to lift the stay. When they  
6 come to filing the suit, they don't have Stoller in  
7 there.

8 THE COURT: So nobody -- this whole issue  
9 turns largely on this order which I signed  
10 permitting stay, and I believe I tailored it a  
11 little bit. But nobody has it, so we're going to --

12 MS. ROBINSON: We do have it, Your Honor.  
13 We do have it, Your Honor.

14 THE CLERK: February 8th.

15 THE COURT: I can't hear you. Well...

16 MS. ROBINSON: It is Exhibit 5 to our  
17 response -- or our objection, Your Honor. I'm happy  
18 to give a copy to you right now.

19 THE COURT: Just a second. Exhibit 5 I  
20 ought to be able to find. Exhibit 5, order  
21 approving trustee's agreement with Google to modify  
22 stay and compromise certain claims; is that it?

23 MS. ROBINSON: That's it, Your Honor.

24 THE COURT: Got it.

25 MR. STOLLER: And they have not filed

1 their answer to the motion expending that the  
2 Trademark Trial and Appeal Board which you wrote the  
3 language in there yourself, handwrote it, and  
4 they --

5 THE COURT: What subject are you on?

6 MR. STOLLER: I'm on the subject of your  
7 order right there.

8 THE COURT: This order does not contain  
9 that subject. Do you have an order that contains  
10 that subject?

11 MR. STOLLER: You wrote the Trademark  
12 Trial and Appeal Board, I thought, on that  
13 particular order.

14 MS. ROBINSON: That's not correct, Your  
15 Honor.

16 THE COURT: That's a different order  
17 you're thinking about.

18 MR. STOLLER: Oh, a different order? Oh,  
19 sorry.

20 MS. ROBINSON: I think the handwritten  
21 language that you included on this order, Your  
22 Honor, was that there would be ability to reconsider  
23 or vacate or modify the order --

24 THE COURT: -- case gets dismissed -- if  
25 the bankruptcy gets dismissed.

1 MS. ROBINSON: That's correct, Your Honor.

2 THE COURT: Now, let's see.

3 MS. ROBINSON: This order approved the  
4 settlement --

5 THE COURT: Do you have a copy of the  
6 agreement here somewhere?

7 MS. ROBINSON: The settlement agreement,  
8 Your Honor, that you approved?

9 THE COURT: Yes.

10 MS. ROBINSON: Yes. That, I believe --

11 THE COURT: Which exhibit is that, please?

12 MS. ROBINSON: I believe it is Exhibit 3,  
13 Your Honor. Yes, it's Exhibit 3, Your Honor.

14 THE COURT: I don't think so. Exhibit E?  
15 No.

16 MS. ROBINSON: Exhibit 3.

17 THE COURT: Well -- oh, I see. Exhibit 3  
18 starts way back in here.

19 MS. ROBINSON: Yeah, there are a lot of  
20 attachments to that exhibit, Your Honor.

21 THE COURT: Now, this deal which the  
22 trustee made said they wouldn't oppose a permanent  
23 injunction and final judgment as to certain  
24 defendants, Central Manufacturing and Stealth  
25 Industries, right?

1 MS. ROBINSON: That's correct. And that  
2 permanent injunction, Your Honor, is set for  
3 motion --

4 THE COURT: Now, is --

5 MS. ROBINSON: -- before the --

6 THE COURT: -- there anything --

7 MS. ROBINSON: -- district court on  
8 Tuesday.

9 THE COURT: -- in here which indicated you  
10 were going to sue under RICO?

11 MS. ROBINSON: Your Honor, the draft  
12 complaint was attached to the stay motion that was  
13 filed back in, I believe, August. The draft  
14 complaint, virtually identical except for the fact  
15 that Mr. Stoller is not included, was attached to  
16 the stay motion that's been a subject of these  
17 proceedings for several months. The fact that  
18 Google decided not to include Mr. Stoller, I would  
19 think he would be happy about that. I've never seen  
20 somebody upset about the fact that they were not  
21 sued.

22 THE COURT: Does the complaint to which  
23 the trustee is about to agree to with a consent  
24 judgment affect Mr. Stoller personally?

25 MR. STOLLER: Yes, it does. Here it is,

1 Judge.

2 THE COURT: Would you hold on for a  
3 second?

4 MS. ROBINSON: It does not, Your Honor.  
5 It is against the two corporations --

6 THE COURT: Does a --

7 MS. ROBINSON: -- that are --

8 THE COURT: -- verdict --

9 MS. ROBINSON: -- no longer --

10 THE COURT: -- against his company that  
11 says they violated the stay, RICO, affect him  
12 indirectly?

13 MS. ROBINSON: I don't believe so, Your  
14 Honor. I believe there is an permanent injunction  
15 stopping the companies from doing the activities  
16 that they've been doing throughout. Google is going  
17 to withdraw --

18 THE COURT: May I --

19 MS. ROBINSON: -- their claims --

20 THE COURT: -- see it?

21 MR. STOLLER: I have --

22 MS. ROBINSON: -- against the --

23 MR. STOLLER: -- the complaint --

24 MS. ROBINSON: -- estate.

25 MR. STOLLER: -- here.

1 THE COURT: Let's have it. If you'd come  
2 around this way, it's the --

3 MR. STOLLER: I'm sorry.

4 THE COURT: -- way to come around.  
5 Otherwise --

6 MR. STOLLER: This --

7 THE COURT: -- you step all --

8 MR. STOLLER: This materially --

9 THE COURT: -- over the --

10 MR. STOLLER: -- affects me --

11 THE COURT: -- court reporter.

12 MR. STOLLER: -- in at least ten different  
13 areas where they're calling me an extortionist,  
14 where they're calling -- engaging a fraudulent  
15 activity. You wanted me, Judge, to have an  
16 opportunity, not in this court, to defend my  
17 business practices. In this I've marked the  
18 sections where they mentioned my name. I will be  
19 permanently branded for the rest of my career as an  
20 extortionist if I'm not allowed to defend this  
21 action, which is frivolous on its face. There is no  
22 merit to it. But I need to have my due process and  
23 equal protection rights protected. You have to give  
24 me that opportunity.

25 THE COURT: Can I get back -- I think I

1 have an understanding of what's going on. When is  
2 this coming up before the --

3 MR. STOLLER: The 20th --

4 THE COURT: -- district judge?

5 MR. STOLLER: -- we're in --

6 MS. ROBINSON: On Tuesday.

7 MR. STOLLER: -- front of Judge Kendall.

8 THE COURT: If you think you are injured  
9 in some way, why didn't you seek to intervene?

10 MR. STOLLER: I have. I filed to  
11 intervene. But the point --

12 THE COURT: What happened when you did?

13 MR. STOLLER: Well, that's up on the 20th.

14 THE COURT: Oh, really?

15 MR. STOLLER: Um-hmm, the motion to  
16 intervene. But the point is I can't --

17 THE COURT: Then do it.

18 MR. STOLLER: I am.

19 THE COURT: Don't come here --

20 MR. STOLLER: But this is --

21 THE COURT: -- sir.

22 MR. STOLLER: I need --

23 THE COURT: This is --

24 MR. STOLLER: -- my corporations  
25 represented --



1 THE COURT: Sir, would --

2 MR. STOLLER: -- too.

3 THE COURT: -- you please take this back.

4 MR. STOLLER: It's not a question of just  
5 myself. I need the corporations. They're going to  
6 brand the corporations as extortionists.

7 THE COURT: Well...

8 MR. STOLLER: And by default.

9 MS. ROBINSON: Your Honor --

10 THE COURT: Sir --

11 MR. STOLLER: And you wanted me --

12 THE COURT: Sir, let --

13 MR. STOLLER: -- to have --

14 THE COURT: -- me say something. You're  
15 in bankruptcy. You've not cooperated with the  
16 trustee. You've not given any information to the  
17 trustee or documents intending to help the trustee  
18 defend these actions. The trustee is trying to do  
19 his best for the sake of creditors and get rid of  
20 this Google claim against the estate. It made sense  
21 to me. It still makes sense to me. You are in the  
22 position of having given no cooperation of this  
23 bankruptcy, and yet you want something, you want an  
24 extraordinary right to represent a company. We have  
25 no idea at this point, and I don't think the trustee

1 does, I certainly don't, whether these companies  
2 have assets other than whatever claims you think  
3 they have, which the trustee is unwilling to take  
4 responsibility for asserting for good reason, I  
5 think.

6 In any event, for all we know, there  
7 are assets of these companies that are out there  
8 which you've not helped the trustee identify those  
9 or given him documents or given him testimony. You  
10 have a right to assert the Fifth Amendment, and I  
11 have the right to --

12 MR. STOLLER: Not use it against me.

13 THE COURT: -- say that the trustee has  
14 responsibility for this corporation, not you. This  
15 motion is denied for reasons stated from the bench.

16 MS. ROBINSON: Thank you, Your Honor.

17 MR. FOGEL: Thank you, Your Honor.

18 THE COURT: Good morning.

19  
20 (Which were all the proceedings  
21 had in the above-entitled cause,  
February 15, 2007.)

22 I, GARY SCHNEIDER, CSR, RPR, DO HEREBY CERTIFY THAT  
23 THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF  
24 PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.  
25

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.	)	
	)	Date: May 15, 2008
CENTRAL MFG. INC. a/k/a CENTRAL	)	Time: 9:00 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.	)	

**MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF**

The law firm of Barack Ferrazzano Kirschbaum & Nagelberg LLP (“Barack”) and William J. Barrett move to withdraw as counsel in this matter for Plaintiff, Google Inc. Barack has previously given Google notice of Barack’s intention to resign from this matter.

Dated: May 12, 2008  
at Chicago, Illinois.

By /s/ William J. Barrett  
William J. Barrett (ARDC No. 6206424)  
BARACK, FERRAZZANO, KIRSCHBAUM,  
& NAGELBERG, LLP  
200 West Madison Street, Suite 3900  
Chicago, IL 60606  
(312) 629 5170

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

GOOGLE, INC.,	)	
Plaintiff,	)	
	)	
v.	)	No. 07 CV 00385
	)	
CENTRAL MFG., INC., <i>et al.</i>	)	Honorable Virginia M. Kendall
	)	
Defendants.	)	

**MOTION FOR LEAVE TO WITHDRAW AND SUBSTITUTE LOCAL COUNSEL**

Plaintiff, Google, Inc. (“Google”), pursuant to Local Rule 83.17, respectfully requests the Court to grant attorney Jonathan M. Cyrluk leave to file his appearance as new local counsel for Google, Inc, and William Barrett leave to withdraw as local counsel. In support of the instant motion, Google, Inc. respectfully states as follows:

1. Google’s lead counsel in this case is Michael T. Zeller of the Los Angeles office of Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP.
2. Google, Inc. has been represented locally by William John Barrett of Barack Ferrazzano Kirschbaum & Nagelberg LLP.
3. Mr. Barrett seeks to withdraw as local counsel for Google. Google has engaged Jonathan M. Cyrluk, a member of Stetler & Duffy, Ltd., to act as Google’s local counsel.
4. The addition of Mr. Cyrluk as local counsel to Google will not delay this case as Mr. Zeller and Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP will remain as lead counsel.



UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – **CM/ECF LIVE, Ver 3.1.3**  
Eastern Division

Google Inc

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 Thursday, May 15, 2008:

MINUTE entry before the Honorable Virginia M. Kendall: Status hearing held. Plaintiff's Motion to Withdraw Attorney William J. Barrett [88] and to Substitute Jonathan M. Cyrluk as Local Counsel [91] are granted. The Motion to Intervene is reinstated. Plaintiff to supplement the Motion by 6/9/2008; response due 6/30/2008; reply due 7/7/2008. Defendant must pay the fine as ordered by the 7th Circuit by 6/9/2008 or this case will be dismissed. Mailed notice. (kw, )

**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](http://www.ilnd.uscourts.gov).

UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – **CM/ECF LIVE, Ver 3.1.3**  
Eastern Division

Google Inc

Plaintiff,

v.

Case No.: 1:07-cv-00385

Honorable Virginia M. Kendall

Central Mfg. Inc., et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, May 16, 2008:

MINUTE entry before the Honorable Virginia M. Kendall: Minute entry [93] is amended to reflect that the Defendant must pay his fine prior to the filing of any papers in this case. In all other respects the minute entry stands. Mailed notice. (kw, )

**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.

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UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – **CM/ECF LIVE, Ver 3.1.3**  
Eastern Division

Google Inc

Plaintiff,

v.

Case No.: 1:07-cv-00385

Honorable Virginia M. Kendall

Central Mfg. Inc., et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, May 23, 2008:

MINUTE entry before the Honorable Virginia M. Kendall: It has been brought to the Court's attention that electronic notice of minute entry [93] was not distributed. The Court hereby brings notice to all parties of the filing of minute order [93]. Paper copies of minute entries [93] and [94] will be mailed to all parties. Mailed notice. (kw, )

**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](http://www.ilnd.uscourts.gov).



H+K

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

2008 JUN -3 PM 4:38

CLERK  
U.S. DISTRICT COURT

GOOGLE, INC., )  
)  
Plaintiff )  
)  
v. )  
)  
CENTRAL MFG. INC., et al., )  
)  
Defendants. )

Case No: 1:07-cv-00385  
Honorable Virginia J. Kendall

FILED  
6-3-2008  
JUN 03 2008 PH


NOTICE OF FILING

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

TO: Michael T. Zeller, Esq.  
Quinn, Emanuel, Urquhart,  
Oliver & Hedges, L.L.P.  
865 S. Figueroa Street, 10<sup>th</sup> Floor  
Los Angeles, California 90017

PLEASE TAKE NOTICE that on the 3<sup>rd</sup> day of June, 2008, there was filed with the Clerk of the United States District Court 1) MOTION TO SUSPEND, 2) SUPPLEMENT TO MOTION TO INTERVENE, and 3) NOTICE OF SANCTION PAYMENT, copies of which are attached hereto.

I certify that the foregoing was mailed via first class mail on the 3<sup>rd</sup> day of June, 2008 to the parties listed, with the U.S. Postal Service with proper postage prepaid.



Leo Stoller  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
~~TRADEMARKS DIVISION~~

CLERK  
U.S. DISTRICT COURT

GOOGLE, INC., )  
)  
Plaintiff )  
)  
v. )  
)  
CENTRAL MFG. INC., et al., )  
)  
Defendants. )

Case No: 1:07-cv-00385  
Honorable Virginia J. Kendall

**FILED**  
6-3-2008  
JUN 03 2008 PH

MOTION TO SUSPEND

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

NOW COMES LEO STOLLER, *pro se*, and requests that this Court suspend this proceeding pending the resolution of STOLLER'S outstanding Motion for Summary Judgment pending before the Trademark Trial and Appeal Board.

STOLLER threatened to file an opposition and/or petition to cancel the GOOGLE trademark registration. STOLLER attempted under Federal Rules of Evidence, submitted several emails to GOOGLE, INC. in order to resolve the registerability issue. Plaintiff, GOOGLE, INC., retaliated by filing a civil RICO action against STOLLER and/or the Defendants. Notwithstanding the fact that " ... 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.'<sup>1</sup> For example, in a case where the declaratory judgment plaintiff had received a letter from non-competitor defendant who claimed a likelihood of confusion between the

<sup>1</sup> *Merrick v. Sharp & Dohme, Inc.*, 185 F.2d 713, 88 U.S.P.Q. 145 (7<sup>th</sup> Cir. 1950), cert. denied, 340 U.S. 954, 95 L. Ed. 687, 71 S. Ct. 573, 88 U.S.P.Q. 569 (1951) (opposition proceeding filed against plaintiff); *Topp-Cola Co. v. Coca-Cola Co.*, 314 F.2d 124, 136 U.S.P.Q. 610 (2d Cir. 1963) (opposition filed against plaintiff in Puerto Rico).

marks and threatened the filing of an opposition before the TTAB, the court dismissed for lack of jurisdiction, saying 'It is the Court's opinion that these facts, at most, gave the plaintiff's a real and reasonable apprehension of drawn-out warfare in the trenches of the PTO. That, of course, is an insufficient basis for a declaratory judgment.'<sup>2</sup>

Thus, 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. This is so even though the adversary threatened to and did file a petition to cancel with the Trademark Board.<sup>3</sup>

These cases are decided on the principle that the federal courts have no jurisdiction to enter a declaratory judgment with respect to a right to have a trademark registered where there is no question of infringement.<sup>4</sup> However, it appears that the real policy in such cases is not to short-circuit the administrative tribunal that has already achieved jurisdiction over the issues." McCarthy on Trademarks, §32:52 - Threat or filing of PTO inter partes challenge.

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<sup>2</sup> *Circuit City Stores v. Speedy Car-X*, 35 U.S.P.Q.2d 1703, 1995 WL 568818 (E.D. Va. 1995) ("If there is a polestar to this inquiry, it is that a party cannot claim to have acquired a reasonable apprehension of litigation merely because the defendant commenced an opposition proceeding in the Patent and Trademark Office .... The plaintiffs' ongoing use of the CARMAX marks notwithstanding, they cannot reasonably have believed that infringement litigation was imminent.") See *Progressive Apparel Group v. Anheuser-Busch, Inc.*, 38 U.S.P.Q.2d 1057, 1996 WL 50227 (S.D.N.Y. 1996) (defendant, who filed opposition in PTO to plaintiff's application, sent letter to plaintiff saying that 'confusion is inevitable' between the marks; declaratory judgment suit dismissed: 'The present case concerns only the registration of a trademark. There is no threat of an infringement suit ... and there is no reasonable basis on which to conclude that this dispute will eventually develop into an infringement suit').

<sup>3</sup> *American Pioneer Tours, Inc. v. Suntrek Tours, Ltd.*, 46 U.S.P.Q.2d 1779, 1998 WL 60944 (S.D.N.Y. 1998)(American sent a cease and desist letter to Suntrek. In response, Suntrek claimed it has priority and petitioned the PTO cancel American's registration. Held: American had no ground upon which to file a declaratory judgment suit against Suntrek).

<sup>4</sup> *Homemakers, Inc. v. Chicago Home for the Friendless*, 169 U.S.P.Q. 262, 1971 WL 16689 (7<sup>th</sup> Circ. 1971), cert. denied, 404 U.S. 831, 30 L.Ed.2d 60, 92 S. Ct. 70, 171 U.S.P.Q. 321 (1971).

The circuit court " ... 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.<sup>5</sup> As the U.S. Supreme Court has stated:

[T]he declaratory judgment procedure will not be used to preempt and prejudge 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 Congress has placed it to the courts.<sup>6</sup>

Since Congress has granted the power to register trademarks to be United States Patent and Trademark Office (PTO), federal courts have no jurisdiction over administrative registration proceedings except the appellate jurisdiction expressly granted by statute.<sup>7</sup> So an applicant who mark is opposed before the Trademark Board, or a registrant who mark is attacked for cancellation before the Trademark Board, cannot short-circuit the administrative process by filing suit for declaratory judgment in the federal courts.<sup>8</sup> Where an administrative proceeding is already under the way, the courts should not short-cut the proceeding by way of entertaining a suit for declaratory judgment. As the Second Circuit said, "The Declaratory Judgment Act may not be used simply to

<sup>5</sup> *Circuit City Stores v. Speedy Car-X*, 35 U.S.P.Q.2d 1703, 1995 WL 568818 (E.D. Va. 1995)(quoting this sentence from treatise with approval); *Kosmeo Cosmetics Inc. v. Lancome Parfums et Beaute & Cie.*, 44 U.S.P.Q.2d 1472, 1996 WL 929600 (E.D. Tex.)(citing treatise with approval).

<sup>6</sup> *Public Service Comm'n v. Wycoff Co.*, 344 U.S. 237, 97 L. Ed. 291, 73 S. Ct. 236 (1952). See *Englishtown Sportswear Ltd. V. Tuttle*, 547 F. Supp. 700, 216 (U.S.P.Q. 486 (S.D.N.Y. 1982) (a court that bypasses the administrative system of the PTO impairs and expeditious resolution and forfeits administrative expertise).

<sup>7</sup> *Merrick v. Sharp & Dohme, Inc.*, 185 F.2d 713, 88 U.S.P.Q. 145 (7<sup>th</sup> Cir. 1950), cert. denied, 340 U.S. 954, 95 L. Ed. 687, 71 S. Ct. 573, 88 U.S.P.Q. 569 (1951). See § 2:20-21:25; See *Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 48 U.S.P.Q.2d 1385, 1998 WL 766703 (N.D. Ill. 1998), aff'd on other grounds, 188 F.3d 427, 51 U.S.P.Q.2d 1920 (7<sup>th</sup> Cir. 1999) (*Merrick* is still controlling authority).

<sup>8</sup> *Merrick v. Sharp & Dohme, Inc.*, 185 F.2d 713, 88 U.S.P.Q. 145 (7<sup>th</sup> Cir. 1950), cert. denied, 340 U.S. 954, 95 L. Ed. 687, 71 S. Ct. 573, 88 U.S. P.Q. 569 (1951) (opposition proceeding against plaintiff); *Homemakers, Inc. v. Chicago Home for the Friendless*, 169 U.S.P.Q. 262, 1971 WL 16689 (7<sup>th</sup> Cir. 1971) cert. denied, 404 U.S. 831, 30 L. Ed. 2d 60, 92 S. Ct. 70, 171 U.S.P.Q. 321 (1971) (cancellation proceeding against plaintiff).

remove a controversy from a forum where it properly belongs.<sup>9</sup> Under this rule, it has been said: "The Court will not, by declaratory judgment, intercede gratuitously in the unfinished and pending administrative proceedings."<sup>10</sup> McCarthy on Trademarks, §32:53 - Declaratory judgment cannot short-circuit administrative remedies - exhausting administrative remedies before the Trademark Board.

**THE SEVENTH CIRCUIT VOIDED THE SETTLEMENT  
AGREEMENTS WITH GOOGLE, INC.**

In view of the fact that the Trademark Trial and Appeal Board's decision not to proceed on STOLLER'S motion for summary judgment in the said petition to cancel proceeding were predicated on agreements that were entered into with Google, Inc. which have been set aside, the TTAB is free now to reopen the petition for cancellation and opposition proceeding. STOLLER is requesting that this Court order the TTAB to reopen the petition for cancellation proceeding in order to allow the TTAB to issue a ruling on STOLLER'S motion for summary judgment against the GOOGLE trademark registration. The predicate for GOOGLE, INC.'S frivolous RICO action against STOLLER, is that STOLLER had no rights in and to the GOOGLE trademark. If the TTAB, as STOLLER predicts, cancels GOOGLE, INC.'S trademark registration as a result of the fact that the term "Google" has become generic and/or descriptive of the services now covered under its federal trademark registration, it will render the current action moot.

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<sup>9</sup> *Topp-Cola Co. v. Coca-Cola*, 314 F.2d 124, 136 U.S.P.Q. 610 (2d Cir. 1963). *Applied in: American Pioneer Tours, Inc. v. Suntrek Tours, Ltd.*, 46 U.S.P.Q.2d 1779; 1998 WL 60944 (S.D.N.Y. 1998) (Once an inter partes case is proceeding before the Trademark Board, the parties should not deflect that proceeding. "The Declaratory Judgments Act may not be used simply to remove a controversy from a forum where it properly belongs.").

<sup>10</sup> *Goya Foods, Inc. v. Tropicana Products, Inc.*, 666 F. Supp. 585, 4 U.S.P.Q.2d 1893 (S.D.N.Y. 1987), modified, LEXIS slip op. (S.D.N.Y. 1987), rev'd on other grounds, 846 F.2d 848, 6 U.S.P.Q.2d 1950 (2d Cir. 1988) (Applicant-Defendants in previously-filed TTAB opposition proceeding in the PTO filed a declaratory judgment suit in federal court seeking a declaration of non-infringement. Suit must be dismissed or stayed pending resolution of the PTO opposition. Citing treatise, held that: (1) the filing of an opposition does not per se create a reasonable apprehension of being used for trademark infringement; (2) the Declaratory Judgment Act cannot be used to unnecessarily disrupt administrative proceedings pending in the PTO. The court of appeals reversed the denial of a motion to amend in complaint to state other acts giving rise to a reasonable apprehension of suit. The court of

GOOGLE, INC., by filing its civil RICO action, merely attempted to short-circuit established administrative procedures set up at the TTAB by the U.S. Congress. The Court should not allow GOOGLE, INC. to abuse the judicial system by failing to allow the TTAB to do its job. Which is to proceed with the current motion for summary judgment in the Patent and Trademark Office which is dispositive of the GOOGLE, INC. trademark registration issues.

**WHEREFORE**, STOLLER prays that this Court suspend this proceeding pending the resolution of STOLLER'S motion for summary judgment before the Trademark Trial & Appeal Board. STOLLER prays that this Court order the TTAB to reopen its petition for cancellation Case No: 92045778, and allow the TTAB to proceed with the pending motion for summary judgment.



Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

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appeals held that if the amended complaint was sufficient, the suit should go forward and not be automatically dismissed before of deference to the pending opposition in the PTO).

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

CLERK  
U.S. DISTRICT COURT

2008 JUN -3 PM 4:42

GOOGLE, INC., )  
)  
Plaintiff )  
)  
v. )  
)  
CENTRAL MFG. INC., et al., )  
)  
Defendants. )

Case No: 1:07-cv-00385  
Honorable Virginia J. Kendall

**FILED**  
6 - 3 - 2 0 0 8  
JUN 03 2008 PH

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

SUPPLEMENT TO MOTION TO INTERVENE

**NOW COMES** LEO STOLLER, *pro se*, and supplements his motions to intervene and/or interplead, and states as follows:

STOLLER readapts, repleads, and realleges the arguments contained in his previously filed motions to intervene and/or interplead, as if fully copied and attached and made apart hereof.

The Seventh Circuit, in a decision dated April 2, 2008, in this case, stated: "We agree with Stoller that the judgment must be vacated and remanded for further proceedings."

The Seventh Circuit stated on page six that GOOGLE'S "complaint is replete with allegations of what Stoller did under the guise of the named defendants, making it clear that Google really wanted to stop Stoller. This would seem to make Stoller the real defendant in this case."

Furthermore, the Seventh Circuit stated " ... this record shows, Google has taken the position that its claims against Stoller and his 'corporations' did not accrue until after the bankruptcy case commenced."

The Seventh Circuit also indicated "that its suit involves postpetition (bankruptcy) claims against Stoller, not his bankruptcy estate."

It is clear that Stoller should be permitted to intervene and that the claims of GOOGLE, INC. are outside of Stoller's Chapter 7 bankruptcy. See attached April 2, 2008 decision of the Seventh Circuit.

**WHEREFORE**, STOLLER prays that this Court allow STOLLER to intervene and/or interplead as a matter of right, and/or a matter of discretion.

A handwritten signature in cursive script, reading "Leo Stoller", is written over a horizontal line.

Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

Date: June 3, 2008



**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois -  
Eastern Division**

Google Inc

Plaintiff,

v.

Case No.: 1:07-cv-00385

Honorable Virginia M. Kendall

Central Mfg. Inc., et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Thursday, May 15, 2008:

MINUTE entry before the Honorable Virginia M. Kendall: Status hearing held. Plaintiff's Motion to Withdraw Attorney William J. Barrett [88] and to Substitute Jonathan M. Cyrluk as Local Counsel [91] are granted. The Motion to Intervene is reinstated. Plaintiff to supplement the Motion by 6/9/2008; response due 6/30/2008; reply due 7/7/2008. Defendant must pay the fine as ordered by the 7th Circuit by 6/9/2008 or this case will be dismissed. Mailed notice. (kw. )

**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.

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**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with  
Fed. R. App. P. 32.1

**United States Court of Appeals**

For the Seventh Circuit  
Chicago, Illinois 60604

Submitted April 2, 2008<sup>\*</sup>  
Decided April 2, 2008

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

Nos. 07-1569, 07-1612 & 07-1651

GOOGLE INC.,  
*Plaintiff-Appellee,*

Appeals from the United States District  
Court for the Northern District of Illinois,  
Eastern Division.

v.

No. 07 C 0365

CENTRAL MFG. INC. and STEALTH  
INDUSTRIES, INC.,  
*Defendants.*

Virginia M. Kendall,  
*Judge.*

APPEALS OF: LEO D. STOLLER,  
*Applicant in Intervention-Appellant.*

**ORDER**

Leo Stoller is a familiar litigant, to say the least. As we have previously remarked, litigation is central to his business strategy; he claims a superior right to countless

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<sup>\*</sup> After examining the briefs and record, we have concluded that oral argument is unnecessary. Thus the appeals are submitted on the briefs and record. FED. R. APP. P. 34(a)(2).

Nos. 07-1569, 07-1612 &amp; 07-1651

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trademarks and then seeks to thwart genuine users from registering their marks or threatens litigation if he is not paid a "licensing fee." See, e.g., *Central Manufacturing, Incorporated v. Brett*, 492 F.3d 876, 880 (7th Cir. 2007); *S Indus., Inc. v. Space Age Techs.*, 116 Fed. App'x 752 (7th Cir. 2004); *S Indus., Inc. v. Centra 2000, Inc.*, 249 F.3d 625 (7th Cir. 2001). In this case when Stoller targeted big-gun Google, Inc., and tried to lay claim to its GOOGLE mark, the internet giant went on the offensive. Apparently, though, Google thought its odds would be better by suing, not Stoller, but two "corporations" that even Google surmised were nothing but alter egos of Stoller. And when Stoller sought to intervene as a defendant, Google successfully prevailed upon the district court to keep him out. Google now has a final judgment—against whom we cannot say—but we agree with Stoller that the judgment must be vacated and the case remanded for further proceedings.

## I.

After losing several trademark cases and being ordered to pay attorneys' fees and costs, Stoller filed for bankruptcy under Chapter 13 of the Bankruptcy Code in December 2005. In September 2006 the bankruptcy court converted the case to a Chapter 7 liquidation because it found that Stoller had acted in bad faith by not disclosing certain income and real-estate interests. In doing so, the bankruptcy court essentially concluded that "Central Mfg. Inc.," although nominally registered as a Delaware corporation, and "Stealth Industries, Inc." were assumed names for Stoller and "indistinguishable" from him. The court found that neither of these purported corporations maintained corporate books and records, that Stoller's personal funds were commingled with their funds, and that Stoller referred to their assets as his own. Further, the court determined that "Central Manufacturing Company, Inc.," "Central Mfg. Co.," and "Rentamark" were also trade names used by Stoller to conduct individual business.

Meanwhile, just before he filed his Chapter 13 petition, Stoller had begun his quest against Google. We set out an abbreviated version of events as Google recounts them. In November 2005, Stoller asked the Trademark Trial and Appeal Board, a part of the United States Patent and Trademark Office, to extend the deadline for potential opponents to contest Google's pending application to register its GOOGLE mark. See 37 C.F.R. § 2.102. Stoller billed himself as "president and CEO" of "Central Mfg. Co. (Inc.)," a name that Google describes as an "alias" of "Central Mfg. Inc." Two days later, on November 29, Stoller wrote Google on letterhead identifying himself as "Google Brand Products & Services." Stoller claimed that he had been using the GOOGLE mark for many years and threatened to "cloud" Google's registration application with a lawsuit unless the company promptly abandoned its application or else agreed to pay him royalties. After that, from February 2006 through at least January 2007, Stoller sent letters, e-mails, and faxes to Google and its attorneys pressuring them to pay him off and threatening to publicize his claim of a

Nos. 07-1569, 07-1612 &amp; 07-1651

Page 3

superior right to the GOOGLE mark in order to depress Google's stock price. In many of these communications Stoller identified himself as speaking for "Rentamark," which Google describes as an "alias" of "Stealth Industries, Inc." On his website, Rentamark.com, Stoller also posted reports that "Central Mfg. Co.," yet another "alias" of "Central Mfg. Inc.," had initiated action to cancel Google's registration of its mark and touted that he prevails in 90% of his "police actions" against infringers.

In August 2006, with Stoller's harassment continuing unabated, Google approached the bankruptcy judge having jurisdiction over the Chapter 13 case and asked the court to declare that the bankruptcy stay, see 11 U.S.C. § 362, would not preclude its proposed lawsuit against Stoller, "Central Mfg. Inc.," and "Stealth Industries, Inc." Google represented to the bankruptcy court that its proposed claims had not accrued until after the Chapter 13 petition had been filed, and thus, according to Google, were outside the scope of the bankruptcy proceeding. In the alternative, Google proposed that the stay be modified so that it could proceed with its suit. Google's motion was still pending, however, when the case was converted to a Chapter 7 liquidation a few weeks later. The Chapter 7 trustee, who was appointed only after the bankruptcy court had found that "Central Mfg. Inc." and "Stealth Industries, Inc." were nothing but alter egos for Stoller, promptly sought and received approval to act on behalf of these "corporations" in his "capacity as the sole shareholder." Over the next several months, with Google's motion concerning the bankruptcy stay in limbo, Google and the Chapter 7 trustee negotiated an agreement committing "Central Mfg. Inc." and "Stealth Industries, Inc." to admit that they had violated the Lanham Act through false advertising, see 15 U.S.C. § 1125(a)(1)(B); engaged in racketeering, see 18 U.S.C. §§ 1962, 1964(c); and engaged in unfair competition under state law. These two "corporations" would consent to a permanent injunction barring "their officers, directors, principals, agents, servants, employees, successors, assigns, parents, subsidiaries and affiliates and those acting on their behalf or in concert, or participation with them"—for all practical purposes, Stoller—from further harassing Google. Significantly, the trustee, on behalf of "Central Mfg. Inc.," agreed to withdraw two matters concerning Google that Stoller had filed with the PTO or the Trademark Trial and Appeal Board using the names "Central Mfg. Inc." or "Central Mfg. Co. (Inc)." In return Google would release Stoller's bankruptcy estate and the trustee, but not Stoller, from all damages arising from its proposed claims. The trustee and Google apparently encouraged Stoller to join this agreement, but he declined.

In December 2006 the Chapter 7 trustee asked the bankruptcy court for approval to finalize this proposed agreement. The court granted authorization on December 5 and modified the bankruptcy stay, "to the extent applicable," so that the trustee could proceed. Then on January 18, 2007, the bankruptcy court took up Google's motion for relief from the stay, which had been pending since August. The court authorized Google to file the suit

Nos. 07-1569, 07-1612 &amp; 07-1651

Page 4

"described in the Motion" but directed the company to seek leave of court before attempting to collect any monetary judgment obtained against Stoller personally. One day later Google filed suit in the district court against "Central Mfg. Inc." and "Stealth Industries, Inc." but not Stoller or the Chapter 7 trustee. The complaint replicates the suit Google "described in the Motion" for relief from the stay except that Stoller had been dropped as the lead defendant and all references to him throughout the complaint as "Defendant Stoller" had been replaced with "Stoller." On almost every one of its 25 pages the complaint links Stoller with the two "corporate" defendants or what Google identifies as their assumed names: "Central Mfg. Co.," "Central Mfg. Co. (Inc.)," "Central Manufacturing Company, Inc.," "Central Mfg. Co. of Illinois," "Rentamark," and "Rentamark.com."

Stoller moved to intervene, *see* Fed. R. Civ. P. 24(a), (b), arguing that, as the former sole shareholder of the "corporate" defendants and the person Google alleged was responsible for their unlawful conduct, he had a substantial interest in the lawsuit. And, he continued, given the bankruptcy court's finding that individually he was "indistinguishable" from "Central Mfg. Inc." and "Stealth Industries, Inc.," his interest would be impaired and not adequately represented unless he was permitted to intervene.<sup>1</sup> The bankruptcy court, in denying Stoller's objection to approval of the Chapter 7 trustee's agreement with Google, had told him that he should move to intervene when Google filed the lawsuit contemplated by that agreement, but both the trustee and Google opposed his motion.

The district court denied Stoller's motion. The court concluded that Stoller could not intervene as of right because, according to the court, he did not have a "direct, significant legally protectable interest" in the suit. The court reasoned that Stoller was acting as president of the "corporate" defendants when he undertook the actions described in the complaint, and that as a result of the bankruptcy case he no longer held a stake in those businesses. The court also rejected Stoller's alternative argument for permissive intervention, reasoning that allowing him to get involved "would frustrate the parties' efforts to resolve this matter by settlement." Three days later the district court approved the settlement agreed to by Google and the trustee before the suit was filed and entered the permanent injunction contemplated by that agreement.

## II.

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<sup>1</sup> Stoller filed two motions to intervene, but for purposes here we treat them as one.

Nos. 07-1569, 07-1612 &amp; 07-1651

Page 5

We have consolidated Stoller's appeals from the denial of his motion to intervene and from the final judgment in the lawsuit. See *In the Matter of Synthroid Marketing Litigation*, 264 F.3d 712, 715-16 (7th Cir. 2001). On appeal he essentially argues that the district court erred in keeping him out of the lawsuit because he and the "corporate" defendants are indistinguishable and thus he is the real party in interest. He also contends that the Chapter 7 trustee did not have authority to act on behalf of "Central Mfg. Inc." or "Stealth Industries, Inc." Google has filed a brief in defense of its judgment, but the trustee is not participating in these appeals.

Google and the trustee have both taken litigation positions that appear to us internally inconsistent. The premise of Google's lawsuit is that "Central Mfg. Inc." and "Stealth Industries, Inc." are shams that Stoller hides behind to extort legitimate enterprises, yet Google has named only those two "corporations" as defendants and has purposely kept Stoller out of the litigation. Google has not named the trustee as a defendant in Stoller's stead, so the corporate legitimacy of the two names that Google has sued is a significant issue. On the other hand, the trustee entered the bankruptcy case after the bankruptcy court had all but declared that "Central Mfg. Inc." and "Stealth Industries, Inc." never were anything but alter egos of Stoller in his individual capacity, but the trustee has assumed in dealing with Google that they are legal entities distinct from Stoller. So it is far from certain that Google has sued, or "won" a judgment against, anyone.

If the named defendants really are "wholly owned corporations" and not just trade names through which Stoller conducts business as an individual, then the stock became part of his bankruptcy estate. But taking control of a debtor's stock interest in a legitimate corporation typically means that a trustee "stands in the shoes of an ordinary shareholder." *In re Reeves*, 65 F.3d 670, 675 (8th Cir. 1995); see *Fowler v. Shadel*, 400 F.3d 1016, 1019 (7th Cir. 2005); *In re Bruse*, 339 B.R. 708, 713 (Bankr. D. Minn. 2006); *In re Russell*, 121 B.R. 16, 17-18 (Bankr. W.D. Ark. 1990). Here, though, as far as the record shows, the Chapter 7 trustee no more conceptualized "Central Mfg. Inc." and "Stealth Industries, Inc." as real entities than did Stoller.

And presumably that is because the bankruptcy court had found both to be sham corporations that are "indistinguishable" from Stoller in his individual capacity. The absence of a separate identity is why the bankruptcy court authorized the trustee to disregard the "Inc." and deal with assets titled in either name as if they were held by Stoller directly. See *In re Enfaula Enters., Inc.*, 565 F.2d 1157, 1161 (10th Cir. 1977); *In re Mass*, 178 B.R. 626, 630 (M.D. Pa. 1995); *In re Baker*, 68 B.R. 360, 363-64 (Bankr. D. Or. 1986); *In re Crabtree*, 39 B.R. 718, 723-26 (Bankr. E.D. Tenn. 1984). Google, though, did not sue the trustee as the representative of the estate. See 11 U.S.C. § 323(a); *Bellini Imports, Ltd. v. Mason & Dixon Lines, Inc.*, 944 F.2d 199, (4th Cir. 1991). Instead Google sued what the bankruptcy

court had already found were names, not legal entities, which normally renders a suit void *ab initio*. See *Palen v. Dawson Motor Co.*, 832 N.E.2d 173, 185 (Ill. App. Ct. 2005); *Bowers v. Du Page County Reg'l Bd. of Sch. Trs. Dist. No. 4*, 539 N.E.2d 246, 250 (Ill. App. Ct. 1989); *Tyler v. J.C. Penney Co.*, 496 N.E.2d 323, 327 (Ill. App. Ct. 1986). We find it hard to believe that Google actually wanted an injunction against defendants that do not exist unless it was trying to get at Stoller indirectly. The complaint is replete with allegations of what Stoller did under the guise of the named defendants, making it clear that Google really wanted to stop Stoller. This would seem to make Stoller the real defendant in this case.

But that is not all. As far as this record shows, Google has taken the position that its claims against Stoller and his "corporations" did not accrue until after the bankruptcy case commenced. If that is so, then the involvement of the Chapter 7 trustee is questionable. Claims that arise before a debtor files bankruptcy follow the estate. See *In re Witko*, 374 F.3d 1040, 1042 (11th Cir. 2004); *In re Polis*, 217 F.3d 899, 901-02 (7th Cir. 2000); *In re Forbes*, 215 B.R. 183, 190 (B.A.P. 8th Cir. 1997). The bankruptcy trustee, as representative of the estate, has the exclusive power to prosecute or defend them. See 11 U.S.C. § 323(b); *Biesek v. Sun Line R.R. Co.*, 440 F.3d 410, 413 (7th Cir. 2006); *Cable v. Ivy Tech State Coll.*, 200 F.3d 467, 472 (7th Cir. 1999); *In re New Era, Inc.*, 135 F.3d 1206, 1209 (7th Cir. 1998). But a cause of action arising after the bankruptcy estate is created belongs to the debtor, and normally the property of a Chapter 7 estate in a case that was converted from a Chapter 13 is determined by the debtor's interest at the time the Chapter 13 case was filed, not when it was converted. See 11 U.S.C. § 348(f)(1)(A); *In re Alexander*, 236 F.3d 431, 433 (8th Cir. 2000); *In re Stamm*, 222 F.3d 216 (5th Cir. 2000); *In re Rosenberg*, 303 B.R. 172, 176 (B.A.P. 8th Cir. 2004) (holding that Chapter 7 debtor's wrongful-termination claim against employer arose after failed Chapter 13 case was filed and thus was not property of Chapter 7 estate); *Farmer v. Taco Bell Corp.*, 242 B.R. 435, 436, 440 (W.D. Tenn. 1999) (holding that tort claim arising out of slip-and-fall that occurred after failed Chapter 13 case was filed but before conversion to Chapter 7 was not part of Chapter 7 estate and belonged to debtor).

Google alleges that it was November 2005 when Stoller first asked the Trademark Trial and Appeal Board to extend the deadline for receiving oppositions to Google's application to register its GOOGLE mark. And, according to Google, it was two days later when Stoller first communicated with the company about his supposed superior right to that mark. Both actions preceded Stoller's Chapter 13 filing by about a month. But in the motion asking the bankruptcy court to declare its proposed suit to be outside the scope of the stay, and again during a hearing on that motion, Google insisted that all of its claims arose postpetition. Google maintained that its Lanham Act claim, its racketeering claim, and its unfair-competition claim all accrued after December 2005. Indeed, the complaint carefully lays out a time line pointing out each letter, e-mail, and fax Google received from Stoller beginning in February 2006, and messages posted on Stoller's website that Google

Nos. 07-1569, 07-1612 &amp; 07-1651

Page 7

claims are false, beginning in April 2006 and continuing until the complaint was filed in January 2007. So if Google is correct, then it would seem that its suit involves postpetition claims against Stoller, not his bankruptcy estate.

Accordingly, we vacate the final judgment issued on March 15, 2007, and remand for reconsideration of Stoller's motion to intervene. We will leave for the district court to resolve in the first instance whether "Central Mfg. Inc." and "Stealth Industries, Inc." are entities that are subject to suit, whether and under what circumstances Google's suit in its present form can proceed without Stoller if they are not, and whether any of the unlawful conduct Google alleges gave rise to a claim that even involves the Chapter 7 estate. We remind Stoller, however, that he remains subject to the order we entered pursuant to *Support Systems Int'l, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995), directing that all federal courts in this circuit return unfiled any papers he submits directly or indirectly unless and until he pays a \$10,000 fine we imposed against him in August 2007. See *Google, Inc. v. Central Manufacturing, Inc.*, Nos. 07-1569, 07-1612 & 07-1651 (7th Cir. Aug. 23, 2007). At this point Stoller has a motion to intervene, but if on remand this litigation continues and the district court allows Stoller to intervene, he will have to pay the outstanding sanction or, as a practical matter, face certain default.

The rulings on the motions to intervene and the final judgment are VACATED, and the case is REMANDED for further proceedings.



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

2008 JUN -3 PM 4:41

CLERK  
U.S. DISTRICT COURT

GOOGLE, INC., )  
)  
Plaintiff )  
)  
v. )  
)  
CENTRAL MFG. INC., et al., )  
)  
Defendants. )

Case No: 1:07-cv-00385  
Honorable Virginia J. Kendall

**- FILED**

**JUN 03 2008 PH**

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

NOTICE OF SANCTION PAYMENT

NOW COMES LEO STOLLER, *pro se*, and notifies this court that on the 3<sup>rd</sup> day of June, 2008, pursuant to a sanction issued by this Court against LEO STOLLER for \$10,000, and pursuant to an order dated May 15, 2008, in Case No: 1:07-cv-00385, the Appellant paid in full the \$10,000 sanction. See attached copy of the paid receipt.



Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

Date: June 3, 2008

**U.S. Court of Appeals**  
Procurement - Room 2722  
219 S. Dearborn Street  
Chicago, IL 60604

Qty	Description	Extend
1.00	07-1569 sanction	0,000.00
	Sanction or Fine - per Order	
	Subtotal	10,000.00
	Total	\$10,000.00
	Cash	\$10,000.00

Paid \$10,000.00, Change \$0.00

Receipt# 950  
Products: 1.00  
Date: 6/3/2008, 4:30 PM  
Cashier: Rosaria Sansone  
All payments are accepted subject to collection. Full Credit will not be given until the negotiable instrument has been accepted by the financial institution on which it was drawn.

**U.S. Court of Appeals**  
Procurement - Room 2722  
219 S. Dearborn Street  
Chicago, IL 60604

Qty	Description	Extend
1.00	07-1569 sanction	0,000.00
	Sanction or Fine - per Order	
	Subtotal	10,000.00
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	Cash	\$10,000.00

Paid \$10,000.00, Change \$0.00

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**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.2.1  
Eastern Division**

Google Inc

Plaintiff,

v.

Case No.: 1:07-cv-00385

Honorable Virginia M. Kendall

Central Mfg. Inc., et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, June 18, 2008:

MINUTE entry before the Honorable Virginia M. Kendall: Mr. Stoller is advised that all motions shall be presented to the court pursuant to Local Rule 5.3(a and b). Failure to comply with this rule may result in the striking of the motion. A copy of Local Rule 5.3 (a and b) was mailed to Mr. Stoller along with a copy of this order by the court's clerk. Mailed notice(jms, )

**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.

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AMS

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

GOOGLE, INC., )  
)  
Plaintiff )  
)  
v. )  
)  
CENTRAL MFG. INC., et al., )  
)  
Defendants. )

Case No: 1:07-cv-00385  
Honorable Virginia J. Kendall

**FILED**  
JUN 25 2008 TG

MOTION TO SUSPEND

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT.

NOW COMES LEO STOLLER, *pro se*, and requests that this Court suspend this proceeding pending the resolution of STOLLER'S outstanding Motion for Summary Judgment pending before the Trademark Trial and Appeal Board.

STOLLER threatened to file an opposition and/or petition to cancel the GOOGLE trademark registration. STOLLER attempted under Federal Rules of Evidence, submitted several emails to GOOGLE, INC. in order to resolve the registerability issue. Plaintiff, GOOGLE, INC., retaliated by filing a civil RICO action against STOLLER and/or the Defendants. Notwithstanding the fact that " ... 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.'<sup>1</sup> For example, in a case where the declaratory judgment plaintiff had received a letter from non-competitor defendant who claimed a likelihood of confusion between the

<sup>1</sup> *Merrick v. Sharp & Dohme, Inc.*, 185 F.2d 713, 88 U.S.P.Q. 145 (7<sup>th</sup> Cir. 1950), cert. denied, 340 U.S. 954, 95 L. Ed. 687, 71 S. Ct. 573, 88 U.S.P.Q. 569 (1951) (opposition proceeding filed against plaintiff); *Tapp-Cola Co. v. Coca-Cola Co.*, 314 F.2d 124, 136 U.S.P.Q. 610 (2d Cir. 1963) (opposition filed against plaintiff in Puerto Rico).

marks and threatened the filing of an opposition before the TTAB, the court dismissed for lack of jurisdiction, saying 'It is the Court's opinion that these facts, at most, gave the plaintiff's a real and reasonable apprehension of drawn-out warfare in the trenches of the PTO. That, of course, is an insufficient basis for a declaratory judgment."<sup>2</sup>

Thus, 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. This is so even though the adversary threatened to and did file a petition to cancel with the Trademark Board.<sup>3</sup>

These cases are decided on the principle that the federal courts have no jurisdiction to enter a declaratory judgment with respect to a right to have a trademark registered where there is no question of infringement.<sup>4</sup> However, it appears that the real policy in such cases is not to short-circuit the administrative tribunal that has already achieved jurisdiction over the issues." McCarthy on Trademarks, §32:52 - Threat or filing of PTO inter partes challenge.

<sup>2</sup> *Circuit City Stores v. Speedy Car-X*, 35 U.S.P.Q.2d 1703, 1995 WL 568818 (E.D. Va. 1995) ("If there is a polestar to this inquiry, it is that a party cannot claim to have acquired a reasonable apprehension of litigation merely because the defendant commenced an opposition proceeding in the Patent and Trademark Office .... The plaintiffs' ongoing use of the CARMAX marks notwithstanding, they cannot reasonably have believed that infringement litigation was imminent.") See *Progressive Apparel Group v. Anheuser-Busch, Inc.*, 38 U.S.P.Q.2d 1057, 1996 WL 50227 (S.D.N.Y. 1996) (defendant, who filed opposition in PTO to plaintiff's application, sent letter to plaintiff saying that 'confusion is inevitable' between the marks; declaratory judgment suit dismissed: 'The present case concerns only the registration of a trademark. There is no threat of an infringement suit ... and there is no reasonable basis on which to conclude that this dispute will eventually develop into an infringement suit').

<sup>3</sup> *American Pioneer Tours, Inc. v. Suntek Tours, Ltd.*, 46 U.S.P.Q.2d 1779, 1998 WL 60944 (S.D.N.Y. 1998)(American sent a cease and desist letter to Suntek. In response, Suntek claimed it has priority and petitioned the PTO cancel American's registration. Held: American had no ground upon which to file a declaratory judgment suit against Suntek).

<sup>4</sup> *Homemakers, Inc. v. Chicago Home for the Friendless*, 169 U.S.P.Q. 262, 1971 WL 16689 (7<sup>th</sup> Circ. 1971), cert. denied, 404 U.S. 831, 30 L.Ed.2d 60, 92 S. Ct. 70, 171 U.S.P.Q. 321 (1971).

The circuit court " ... 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.<sup>5</sup> As the U.S. Supreme Court has stated:

[T]he declaratory judgment procedure will not be used to preempt and prejudge 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 Congress has placed it to the courts.<sup>6</sup>

Since Congress has granted the power to register trademarks to be United States Patent and Trademark Office (PTO), federal courts have no jurisdiction over administrative registration proceedings except the appellate jurisdiction expressly granted by statute.<sup>7</sup> So an applicant who mark is opposed before the Trademark Board, or a registrant who mark is attacked for cancellation before the Trademark Board, cannot short-circuit the administrative process by filing suit for declaratory judgment in the federal courts.<sup>8</sup> Where an administrative proceeding is already under the way, the courts should not short-cut the proceeding by way of entertaining a suit for declaratory judgment. As the Second Circuit said, "The Declaratory Judgment Act may not be used simply to

<sup>5</sup> *Circuit City Stores v. Speedy Car-X*, 35 U.S.P.Q.2d 1703, 1995 WL 568818 (E.D. Va. 1995)(quoting this sentence from treatise with approval); *Kosmeo Cosmetics Inc. v. Lancome Parfums et Beaute & Cie.*, 44 U.S.P.Q.2d 1472, 1996 WL 929600 (E.D. Tex.)(citing treatise with approval).

<sup>6</sup> *Public Service Comm'n v. Wycoff Co.*, 344 U.S. 237, 97 L. Ed. 291, 73 S. Ct. 236 (1952). See *Englishtown Sportswear Ltd. V. Tuttle*, 547 F. Supp. 700, 216 (U.S.P.Q. 486 (S.D.N.Y. 1982) (a court that bypasses the administrative system of the PTO impairs and expeditious resolution and forfeits administrative expertise).

<sup>7</sup> *Merrick v. Sharp & Dohme, Inc.*, 185 F.2d 713, 88 U.S.P.Q. 145 (7<sup>th</sup> Cir. 1950), cert. denied, 340 U.S. 954, 95 L. Ed. 687, 71 S. Ct. 573, 88 U.S.P.Q. 569 (1951). See § 2:20-21:25; See *Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 48 U.S.P.Q.2d 1385, 1998 WL 766703 (N.D. Ill. 1998), aff'd on other grounds, 188 F.3d 427, 51 U.S.P.Q.2d 1920 (7<sup>th</sup> Cir. 1999) (*Merrick* is still controlling authority).

<sup>8</sup> *Merrick v. Sharp & Dohme, Inc.*, 185 F.2d 713, 88 U.S.P.Q. 145 (7<sup>th</sup> Cir. 1950), cert. denied, 340 U.S. 954, 95 L. Ed. 687, 71 S. Ct. 573, 88 U.S. P.Q. 569 (1951) (opposition proceeding against plaintiff); *Homemakers, Inc. v. Chicago Home for the Friendless*, 169 U.S.P.Q. 262, 1971 WL 16689 (7<sup>th</sup> Cir. 1971) cert. denied, 404 U.S. 831, 30 L. Ed. 2d 60, 92 S. Ct. 70, 171 U.S.P.Q. 321 (1971) (cancellation proceeding against plaintiff).

remove a controversy from a forum where it properly belongs."<sup>9</sup> Under this rule, it has been said: "The Court will not, by declaratory judgment, intercede gratuitously in the unfinished and pending administrative proceedings."<sup>10</sup> McCarthy on Trademarks, §32:53 - Declaratory judgment cannot short-circuit administrative remedies - exhausting administrative remedies before the Trademark Board.

**THE SEVENTH CIRCUIT VOIDED THE SETTLEMENT  
AGREEMENTS WITH GOOGLE, INC.**

In view of the fact that the Trademark Trial and Appeal Board's decision not to proceed on STOLLER'S motion for summary judgment in the said petition to cancel proceeding were predicated on agreements that were entered into with Google, Inc. which have been set aside, the TTAB is free now to reopen the petition for cancellation and opposition proceeding. STOLLER is requesting that this Court order the TTAB to reopen the petition for cancellation proceeding in order to allow the TTAB to issue a ruling on STOLLER'S motion for summary judgment against the GOOGLE trademark registration. The predicate for GOOGLE, INC.'S frivolous RICO action against STOLLER, is that STOLLER had no rights in and to the GOOGLE trademark. If the TTAB, as STOLLER predicts, cancels GOOGLE, INC.'S trademark registration as a result of the fact that the term "Google" has become generic and/or descriptive of the services now covered under its federal trademark registration, it will render the current action moot.

<sup>9</sup> *Topp-Cola Co. v. Coca-Cola*, 314 F.2d 124, 136 U.S.P.Q. 610 (2d Cir. 1963). *Applied in: American Pioneer Tours, Inc. v. Suntek Tours, Ltd.*, 46 U.S.P.Q.2d 1779; 1998 WL 60944 (S.D.N.Y. 1998) (Once an inter partes case is proceeding before the Trademark Board, the parties should not defect that proceeding. "The Declaratory Judgment Act may not be used simply to remove a controversy from a forum where it properly belongs.").

<sup>10</sup> *Goya Foods, Inc. v. Tropicana Products, Inc.*, 666 F. Supp. 585, 4 U.S.P.Q.2d 1893 (S.D.N.Y. 1987), modified, I.F.X.I.S. slip op. (S.D.N.Y. 1987), rev'd on other grounds, 846 F.2d 848, 6 U.S.P.Q.2d 1950 (2d Cir. 1988) (Applicant-Defendants in previously-filed TTAB opposition proceeding in the PTO filed a declaratory judgment suit in federal court seeking a declaration of non-infringement. Suit must be dismissed or stayed pending resolution of the PTO opposition. Citing treatise, held that: (1) the filing of an opposition does not per se create a reasonable apprehension of being used for trademark infringement; (2) the Declaratory Judgment Act cannot be used to unnecessarily disrupt administrative proceedings pending in the PTO. The court of appeals reversed the denial of a motion to amend in complaint to state other acts giving rise to a reasonable apprehension of suit. The court of

GOOGLE, INC., by filing its civil RICO action, merely attempted to short-circuit established administrative procedures set up at the TTAB by the U.S. Congress. The Court should not allow GOOGLE, INC. to abuse the judicial system by failing to allow the TTAB to do its job. Which is to proceed with the current motion for summary judgment in the Patent and Trademark Office which is dispositive of the GOOGLE, INC. trademark registration issues.

**WHEREFORE**, STOLLER prays that this Court suspend this proceeding pending the resolution of STOLLER'S motion for summary judgment before the Trademark Trial & Appeal Board. STOLLER prays that this Court order the TTAB to reopen its petition for cancellation Case No: 92045778, and allow the TTAB to proceed with the pending motion for summary judgment.



Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

Date: June 24, 2008

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appeals held that if the amended complaint was sufficient, the suit should go forward and not be automatically dismissed before of deference to the pending opposition in the PTO).



UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – **CM/ECF LIVE, Ver 3.2.1**  
Eastern Division

Google Inc

Plaintiff,

v.

Case No.: 1:07-cv-00385  
Honorable Virginia M. Kendall

Central Mfg. Inc., et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, June 30, 2008:

MINUTE entry before the Honorable Virginia M. Kendall: Motion hearing held. Plaintiff's motion to suspend [99] is entered and continued pending ruling on the pending motion. Advised in open court (jms, )

**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.

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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.	)	
	)	
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.	)	

**GOOGLE'S RESPONSE TO SUPPLEMENT TO MOTION TO INTERVENE**

Plaintiff Google Inc. ("Google") respectfully submits this Response to Leo Stoller's ("Stoller") Supplement to Motion to Intervene (the "Supplement").

**Preliminary Statement**

Stoller's Motions to (1) Intervene and (2) Interplead (collectively, the "Motions") should be denied because he has failed to produce any evidence demonstrating that he has a cognizable interest necessary to support intervention under the law. In the Supplement, Stoller simply incorporates arguments made in the Motions, quotes the Seventh Circuit's April 2, 2008 Order, and then asserts -- without proof and in conclusory fashion -- that he "should be permitted to intervene". Supplement at 1-2.

Contrary to Stoller's apparent contention, the Seventh Circuit's April 2, 2008 Order does not direct this Court to grant the Motions and allow Stoller to intervene in this suit. Rather, the Seventh Circuit remanded for the Court to resolve, among other things, whether Defendants are sham corporations used by Stoller for his own individual business activities such that Stoller and the corporations are essentially indistinguishable. Now on remand, even though Stoller bears the burden of proving that he has the required interest for intervention, he offers *no* evidence to demonstrate that he and Defendants are so intertwined as to be indistinguishable as he claimed to the Seventh Circuit and that he is a proper intervenor in this suit.

Stoller's lack of demonstrated interest is fatal. Stoller's Motions should be denied.<sup>1</sup>

**Argument**

**I. STOLLER HAS FAILED TO DEMONSTRATE THAT DEFENDANTS ARE INDISTINGUISHABLE FROM STOLLER AND THUS FAILED TO PROVE HE HAS AN INTEREST REQUIRED FOR INTERVENTION**

On appeal to the Seventh Circuit, Stoller argued that this Court erred in denying the Motions because Stoller and Defendants are purportedly indistinguishable and, on that basis, Stoller is the real party in interest. By way of example, Stoller argued in his appeal brief that he "is indistinguishable from the corporate entities, Central Mfg. Inc. and Stealth Industries, Inc." and that "Central Mfg. Inc. and Stealth Industries, Inc., were not being represented at all and were so indistinguishable and inseparable as to be one with Stoller".<sup>2</sup> Stoller continued this argument in his appeal reply brief, including by stating that "the [corporate] defendants in the civil RICO action are the alter-egos of Leo Stoller."<sup>3</sup>

Because these were not questions that had been specifically addressed in the prior District Court proceedings, the Seventh Circuit remanded for further consideration. In doing so, the Seventh Circuit necessarily required Stoller to demonstrate that, as he asserted on appeal, he was the real party in interest because the corporations were just shams through which Stoller conducts business as an individual.<sup>4</sup> The Seventh Circuit made clear that it was not making any such determination, but instead was "leav[ing] for the district court to resolve in the first instance" these and related issues.<sup>5</sup>

Stoller bears the burden of showing that all four criteria for intervention as of right are met, including by proving that he has an interest relating to the property or transaction which is the subject of the action. Reid L. v. Illinois State Bd. of Educ., 289 F.3d 1009, 1017 (7th Cir. 2002). To prevail on the theory he espoused to the Seventh Circuit, Stoller accordingly must

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<sup>1</sup> To avoid burdening the Court with repetition of its prior briefing, Google respectfully incorporates its Combined Opposition to Debtor Leo Stoller's Motions (1) to Intervene, (2) to Interplead, (3) to Suspend for Sixty Days to Retain Counsel for Defendants and (4) to Suspend Pending Appeal to Lift Automatic Stay for Google to Sue the Debtor, dated February 12, 2007; and the February 12, 2007 Declaration of Michael T. Zeller and exhibits attached thereto.

<sup>2</sup> Declaration of Michael T. Zeller, dated June 30, 2008 and filed concurrently herewith ("Zeller Decl."), Exh. 1 at pp. 6, 7.

<sup>3</sup> Zeller Decl., Exh. 2 at p. 1.

<sup>4</sup> Zeller Decl., Exh. 3 at p. 5.

<sup>5</sup> Id. at p. 7.

obtain a Court finding here that Defendants are mere alter egos of Stoller. He nevertheless has failed to make such a factual showing. Stoller's Supplement does nothing more than incorporate the arguments in the Motions and include excerpts from the Seventh's Circuit's April 2, 2008 Order. Supplement at 1-2. As noted, however, Stoller is incorrect in his apparent view that the Seventh Circuit directed that he be allowed to intervene without proof that he and the corporate Defendants are indistinguishable. To the contrary, the Seventh Circuit explicitly stated that the issues concerning Stoller's intervention were for this Court to determine in the first instance. Stoller's original Motions are devoid of any evidence demonstrating that the Defendants are mere sham corporations used for his individual business activities,<sup>6</sup> and his Supplement similarly offers no proof on this subject either.

Stoller thus has failed to demonstrate that he has an "interest relating to the property or transaction which is the subject of the action". Heartwood, Inc. v. U.S. Forest Service, Inc., 316 F.3d 694, 700 (7th Cir. 2003). Because the burden of proof is on Stoller, the Motions should be denied. Reid L. v. Illinois State Bd. of Educ., 289 F.3d at 1017. Moreover, because Stoller has not shown standing, and cannot show independent jurisdiction, permissive intervention should also not be granted. Security Ins. Co. of Hartford v. Schipporeit, Inc., 69 F.3d 1377, 1381 (7th Cir. 1995) (proposed intervener has to demonstrate that there is (1) a common question of law or fact and (2) independent jurisdiction for permissive intervention under Rule 24(b)).

## **II. THE BANKRUPTCY PROCEEDING DID NOT ESTABLISH THAT STOLLER HAS AN INTEREST**

Nor can Stoller evade his burden of proving that he and the corporate Defendants are indistinguishable by asserting the Bankruptcy Court's decision to convert his Chapter 13 bankruptcy to a Chapter 7 as evidence that he has an interest sufficient to allow intervention. He is not entitled to rely on that ruling against him, and Google furthermore is not collaterally estopped by that determination.

First, even assuming that the Bankruptcy Court had ruled that Stoller's failure to abide by corporate formalities meant Defendants were his alter egos for all purposes, Stoller cannot use the decision as a sword or obtain benefits which he is not otherwise entitled to under the law.

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<sup>6</sup> The Motions merely include (1) unsupported claims that Stoller is the sole shareholder and sole employee of Defendants; and (2) claims that the bankruptcy court found Stoller to be "intertwined" with Defendants. See January 30, 2007 Motion to Interplead at p. 1; February 6, 2007 Motion to Intervene at pp. 1, 3, 4.

Because the "rules relating to piercing of the corporate veil are designed to protect those relying on the existence of a distinct corporate entity," courts hold that "[g]enerally, the corporate veil is never pierced for the benefit of the corporation or its stockholders". In re Rehabilitation of Centaur Ins. Co., 158 Ill.2d 166, 173-4, 632 N.E. 2d 1015, 1018 (1994) (internal quotation marks and citations omitted). Or, put differently, a party "cannot assert the equitable doctrine of piercing the corporate veil to disregard the separate corporate existence of a corporation he himself created to gain an advantage". Main Bank of Chicago v. Baker, 86 Ill.2d 188, 206, 427 N.E.2d 94, 102 (1981). Stoller's inappropriate attempt to benefit from the ruling against him should be rejected.

Second, and independently, Google is not collaterally estopped by the Bankruptcy Court's ruling, so Stoller's efforts to rely on it in this proceeding are misplaced for this reason as well. Under Seventh Circuit law, collateral estoppel requires satisfaction of four requirements: (1) the party against whom the doctrine is asserted was a party to the earlier proceeding; (2) the issue was actually litigated and decided on the merits; (3) the resolution of the particular issue was necessary to the result; and (4) the issues are identical. Appley v. West, 832 F.2d 1021, 1025 (7th Cir. 1987); see also Freeman United Coal Mining Co. v. Office of Workers' Compensation Program, 20 F.3d 289, 293-94 (7th Cir. 1994). Stoller bears the burden of proving that collateral estoppel applies. Freeman United Coal Mining Co., 20 F.3d at 294 (party asserting collateral estoppel has burden of establishing its applicability).

Here, Google was not a party to -- and did not even participate in -- the Chapter 7 conversion motion that resulted in the Bankruptcy Court's ruling.<sup>7</sup> Indeed, not only did Google file no papers in connection with the motion, but Google first appeared in the bankruptcy proceeding only after the motion was brought.<sup>8</sup> Google's lack of participation is dispositive. "A person who was not a party to a suit generally has not had a 'full and fair opportunity to litigate' the claims and issues settled in that suit. The application of claim and issue preclusion to nonparties thus runs up against the 'deep-rooted historic tradition that everyone should have his own day in court.'" Taylor v. Sturgell, --- U.S. ---, 2008 WL 2368748, at \*9 (June 12, 2008) (applying federal collateral estoppel law; quoting Richards v. Jefferson County, 517 U.S. 793,

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<sup>7</sup> Zeller Decl., ¶ 5.

<sup>8</sup> Id., ¶ 6.

798 (1996)).<sup>9</sup> Bankruptcy courts follow the same rule. "A federal court's resolution of specific issues may never be used against someone who was not a party to prior litigation" or a privy to a party to prior litigation. In re Teknek, LLC, 354 B.R. 181, 206 n.10 (Bkrcty. N.D. Ill. 2006).<sup>10</sup>

Stoller accordingly cannot rely on the Bankruptcy Court's ruling to evade his burden of establishing, with evidence, the theory that he is indistinguishable from the corporate Defendants as he posited before the Seventh Circuit. Having failed to prove it here in this Court, Stoller's request to intervene fails.

### **Conclusion**

For the foregoing reasons, Google respectfully requests that the Court deny the Motions.

DATED: June 30, 2008

Respectfully submitted,

GOOGLE INC.

By:         /s/ Jonathan M. Cyrluk    
One of Its Attorneys

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<sup>9</sup> See also Via v. Lagrand, 2007 WL 495287, at \*2 (N.D. Ill. Feb. 12, 2007) ("The general rule under Illinois law, however, is that issue preclusion may not be used 'offensively' (i.e., by a party with the burden of proof) against a non-party to the prior suit, unless the non-party is considered to be in privity with the party to the prior suit."); Coles v. City of Chicago, 2005 WL 1785326, at \*4 (N.D. Ill. July 22, 2005) ("It is well-settled that a prior judgment 'will not be given collateral estoppel effect ..., where the party against whom an earlier court decision is asserted did not have a full and fair opportunity to litigate the claim or issue decided by the first court.") (quoting Haring v. Prosise, 462 U.S. 306, 313 (1983); internal quotation marks omitted).

<sup>10</sup> Of course, under the established rule of non-mutuality, the converse is not true. "Nonparties are usually . . . allowed to use collateral estoppel defensively" against one who had litigated an issue and lost in a prior proceeding. Newman v. State of Indiana, 129 F.3d 937, 942 (7th Cir. 1997) (citing Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971)).

**CERTIFICATE OF SERVICE**

I, Jonathan Cyrluk, an attorney, certify that I caused copies of the foregoing **GOOGLE'S RESPONSE TO SUPPLEMENT TO MOTION TO INTERVENE** to be served via the Court's CM/ECF system unless otherwise indicated on the attached service list this 30<sup>th</sup> day of June, 2008.

/s/ Jonathan M. Cyrluk \_\_\_\_\_  
Jonathan M. Cyrluk

**Service List**

Case No.: 07 CV 00385

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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.	)	
	)	
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.	)	

**DECLARATION OF MICHAEL T. ZELLER**

I, Michael T. Zeller, declare as follows:

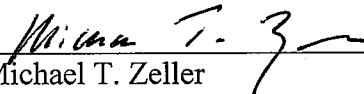
1. I am a member of the bar of the State of Illinois, New York and California and a partner of Quinn Emanuel Urquhart Oliver & Hedges, LLP, attorneys for plaintiff Google Inc. ("Google"). I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently thereto.
2. Attached as Exhibit 1 is a true and correct copy of Leo Stoller's Brief for Leo Stoller as Intervenor in Google, Inc. v. Central Mfg. Inc., et al., Appeal Nos.: 07-1569, 07-1612 & 07-1651 (7th Cir.).
3. Attached as Exhibit 2 is a true and correct copy of the Reply Brief for Leo Stoller As Intervenor in Google, Inc. v. Central Mfg. Inc., et al., Appeal Nos.: 07-1569, 07-1612 & 07-1651 (7th Cir.).
4. Attached as Exhibit 3 is a true and correct copy of the April 2, 2008 Order in Google, Inc. v. Central Mfg. Inc., et al., Appeal Nos.: 07-1569, 07-1612 & 07-1651 (7th Cir.).

5. In the bankruptcy proceeding *In re Leo Stoller*, Case No. 5 B 64075 (N.D. Ill.), the party that filed the motion to convert was Pure Fishing, Inc. ("Pure Fishing"). Pure Fishing filed its Notice of Motion and Motion to Convert Chapter 13 Case to Chapter 7 and for Immediate Appointment of Trustee ("Motion to Convert") on March 15, 2006.

6. Google did not file any papers in connection with Pure Fishing's Motion to Convert. Google first appeared in the bankruptcy proceeding *In re Leo Stoller*, Case No. 5 B 64075 (N.D. Ill.), on August 17, 2006, and it did so for the limited purpose of filing its Notice of Motion and Motion for Order Declaring Proposed Suit to be Outside Scope of Stay or, in the Alternative, Modifying Stay. That was several months after the Motion to Convert had been filed.

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

Executed on June 30, 2008, at Riverside, California.

  
\_\_\_\_\_  
Michael T. Zeller

# EXHIBIT 1

U.S.C.A. – 7th Circuit  
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GINO J. AGNELLO  
CLERK

Nos: 07-1569, 07-1612 and 07-1651

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

GOOGLE, INC.,

Plaintiff-Appellee

v.

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.

LEO STOLLER.,

Applicant in Intervention-Appellant

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

---

BRIEF FOR LEO STOLLER AS INTERVENOR

---

Leo Stoller, *pro se*  
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## JURISDICTIONAL STATEMENT

This Court has jurisdiction over the underlying action pursuant to 28 U.S.C. 1331. The court denied Appellant's motion to intervene, motion to interplead and motion to suspend. (Short Appendix, Order, "SA" 265-271)<sup>1</sup>. The court denied Appellant's motion to dismiss (Order, SA 343). The court denied Appellant's objection to joint motion for entry of stipulated permanent injunction and final judgment (Order, SA 339). The court denied Appellant's motion under FRCP 59 and/or 60, (Order, SA 340-341).

The denial of a motion to intervene as of right is a final appealable order. *Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370, 377 (1987). This Court, therefore, has jurisdiction to hear the appeal on that issue pursuant to 28 U.S.C. 1291.

## STATEMENT OF ISSUES

1. Did the District Court correctly deny Appellant's motion for intervention as a matter of right?
2. Did the District Court correctly deny Appellant's request for permissive intervention?
3. Did the District Court correctly find that the alleged corporate defendants would not receive adequate representation without Leo Stoller's involvement?
4. Did the District Court correctly find the alleged corporate defendants to be valid corporate entities?

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1. "SA" refers to the Short Appendix.

5. Did the District Court err in granting a permanent injunction and final judgment as to defendants Central Mfg. and Stealth Industries, Inc.?
6. Did the District Court err by failing to dismiss the case for failure to join a necessary party, Leo Stoller? (Motion, SA 173-176)
7. Did the Trustee, Richard M. Fogel, have a right to represent Central Mfg. Inc. and Stealth Industries, Inc.?
8. Did the District Court err by failing to dismiss the case for failure to join Leo Stoller as a necessary party, in that the corporate defendants are not valid entities?

#### **STATEMENT OF THE CASE**

This case arises from a civil RICO action (Complaint, SA 003-027) filed by Google, Inc. against Leo Stoller's corporations, Central Mfg. Inc., Central Mfg. Co., Central Manufacturing Company, Inc., Central Mfg. Co. of Illinois, Stealth Industries, Inc., Rentamark, and Rentamark.com. The District Court refused to allow Leo Stoller, a necessary and indispensable party, to intervene.

#### **STATEMENT OF THE FACTS**

Leo Stoller is 61, is the president and sole-shareholder of Central Mfg. Inc., a/k/a Central Mfg. Co., a/k/a Central Manufacturing Company, Inc., a/k/a Central Mfg. Co. of Illinois, and Stealth Industries, Inc., Rentamark, and Rentamark.com; the defendants in the civil RICO action.

Leo Stoller is an entrepreneur and self-employed businessman in Chicago, Illinois, involved in the trademark licensing business for over 30 years.

In 2005, Leo Stoller, through his companies, brought a trademark a infringement action in the United States District Court, Northern District of



Illinois , *Central Mfg. Co., and Leo Stoller v. Pure Fishing, Inc., et. al.*, Case No. 05 C 725. Judge Lindberg issued a default judgment against Leo Stoller and Central Mfg. Co., forcing Leo Stoller to file for bankruptcy in December of 2005, bankruptcy Case No. 05 B 64075.

Upon motion by Pure Fishing, Inc., Judge Jack B. Schmetterer converted Leo Stoller's Chapter 13 to a Chapter 7 bankruptcy on August 31, 2006.

On September 26, 2006, Judge Schmetterer issued Findings of Fact and Conclusions of Law on Motion of Pure Fishing to Convert to Chapter 7. (Order, SA 348-377). Judge Schmetterer found:

"Debtor (Leo Stoller) And His Businesses Are Indistinguishable.

92. Debtor makes all pertinent decisions for the assumed name entities through which he operates.

93. Debtor testified that he is 'the actual controlling entity of where the marks go, quality and control, what entity -- what I choose to put them in.'

94. All of the business entities owned and operated by Debtor have the same office address.

95. Debtor's corporations do not keep regular corporate books and records of finances.

96. Funds of Debtor's corporations are commingled with funds from other corporations, proprietorships, and with Debtor's personal funds." (Order, SA 361-362)."

On August 18, 2006, the Appellee Google, Inc. filed a motion before Judge Schmetterer entitled Motion of Google, Inc. For Order Declaring Proposed Suit To Be Outside Scope of Stay, In the Alternative, Modifying Stay (Motion, SA 043-100). In order to induce Judge Schmetterer to lift the stay in Leo Stoller's bankruptcy proceeding, Google, Inc. pled that Leo Stoller was a necessary party.

Google's counsel, William J. Barrett, stated in open court:

"MR. BARRETT: Your Honor, I understand the court made a finding of fact at the conversion trial finding that these entities were **inseparable** from Mr. Stoller himself," emphasis added. (Transcript, SA 292).

Google, Inc. filed a civil RICO action against Stoller's businesses, Central Mfg. Inc., a/k/a Central Mfg. Co., a/k/a Central Manufacturing Company, Inc., a/k/a Central Mfg. Co. of Illinois, and Stealth Industries, Inc., Rentamark, and Rentamark.com. Google, Inc. excluded Leo Stoller as a party from the civil RICO action filed before Judge Virginia Kendall in Case No. 07-CV-385.

Leo Stoller filed a motion to interplead, (Motion, SA 001-031). Stoller also filed a motion to intervene, (Motion, SA 032-039). Google moved for a stipulated permanent injunction and final judgment. Leo Stoller filed an objection to Google's stipulated permanent injunction and final judgment, (Motion, SA 101-149). The Court ultimately entered a permanent injunction and final judgment as to defendants Central Mfg. Inc. and Stealth Industries, Inc., (Injunction, SA 333-338).

Stoller replied to the Trustee's objection to motion of Debtor to intervene and interplead, (Motion, SA 150-172), and Stoller replied to Google's objection to Debtor's motion to intervene and interplead, (Motion, SA 177-258). Stoller also replied to Google's opposition to Debtor's motion to suspend pending the trademark trial and appeal board's decision on defendants' motion for summary judgment, (Motion, SA 259-264). Stoller brought a petition for cancellation and a trademark opposition against Google, Inc.'s registration and application for the mark Google at the Trademark Trial and Appeal Board. Google, Inc.'s civil RICO action was filed against Stoller's businesses in retaliation for Stoller's attempt to oppose and cancel Google, Inc.'s federal trademark applications and federal trademark registration.

The Court denied Stoller's motions to interplead, intervene to suspend and to dismiss (Orders SA 343; SA 265-271; SA 333-338; SA 339; SA 340-341); and

granted Appellee's permanent injunction and final judgment as to defendants Central Mfg. Inc. and Stealth Industries, Inc., (Order, SA 333-338).

Stoller filed a motion under FRCP 59 and/or 60, (Motion, SA 274-332).  
The Court denied Stoller's motion for reconsideration, (Order, SA 340).

This appeal followed.

### SUMMARY OF ARGUMENT

Leo Stoller established the criteria required to qualify for intervention as of right. (1) Stoller's motion to intervene was timely; (2) Stoller had a legal interest in the subject matter of the case; (3) Stoller's ability to protect that interest was impaired by the absence of intervention; and (4) the parties already before the Court, Central Mfg. Inc. and Stealth Industries, Inc., were not being represented at all and were so indistinguishable and inseparable as to be one with Stoller.

In addition, Stoller's asserted interests are substantially impaired and irreversibly damaged by the consent decree entered into by the Trustee Richard M. Fogel and Google, Inc., which led to the permanent injunction and final judgment as to defendants Central Mfg. Inc. and Stealth Industries, Inc. Leo Stoller's name and reputation as a trademark licensing entity have been destroyed by the default civil RICO judgment which was entered against Leo Stoller's companies which Judge Schmetterer found to be inseparable from Leo Stoller.

### STANDARD OF REVIEW

"A district court's denial of intervention as of right is reviewed *de novo*, except for the timeliness element which is reviewed for an abuse of discretion." *United States v. Tennessee*, 260 F.3d 587, 592 (6th Cir. 2001).

A district court's denial of permissive intervention is reviewed for clear error. *Purnell v. City of Akron*, 925 F.2d 941, 950-951 (6th Cir. 1991).

### ARGUMENT

The Appellant seeks intervention as a matter of right and permission.

### **THE DISTRICT COURT ERRED WHEN IT DENIED APPELLANT'S MOTION TO INTERVENE AS A MATTER OF RIGHT**

The Federal Rules of Civil Procedure provide that, upon timely

application, an applicant shall be permitted to intervene as of right

when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2). Thus, Rule 24(a)(2) requires "(1) timeliness of the application to intervene, (2) the applicant's substantial legal interest in the case, (3) impairment of the applicant's ability to protect that interest in the absence of intervention, and (4) inadequate representation of that interest by parties already before the court." *United States v. Tennessee*, 260 F.3d 587, 591-592 (6th Cir. 2001).

The district court incorrectly rejected Stoller's motion to intervene as of right because Stoller has satisfied all four of the said requirements. Stoller has articulated a substantial legal interest and has demonstrated that the interest will be adversely affected and made a credible demonstration that its interest will be inadequately represented. See Stoller's motion to interplead, (SA 001-031). Stoller reincorporates and realleges his arguments herein as if made a part hereof. See also Stoller's motion to intervene, (SA 032-039). Stoller reincorporates, realleges and repleads his arguments contained in his motion to intervene herein as if fully copied and attached.

The Appellant, Leo Stoller, is indistinguishable from the corporate entities, Central Mfg. Inc. and Stealth Industries, Inc., (Order, SA 361). In view of the fact that Judge Schmetterer had found that Leo Stoller did not even maintain the proper corporate formalities to maintain valid corporation status, it is clear that Leo Stoller was and is a necessary and indispensable party. In addition, the Appellee's complaint, (Complaint, SA 003-031) mentions Leo Stoller as a defendant in the case individually. See paragraphs 1, 2, 10, 14, 15, 16, 18, 20, 21, 22, 30, 39, 44, 52, and 54.

Leo Stoller asserts intervention as a matter of right pursuant to Rule 24(a)(2), Fed. R. Civ. P and/or pursuant to Rule 24(b), Fed. R. Civ. P. See Rule 24, Fed. R. Civ. P.; *Grutter v. Bollinger*, 188 F.3d 394 (6th Cir. 1999); *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240 (6th Cir. 1997).

Leo Stoller was the president, sole shareholder and sole employee of Central Mfg. Co., Inc., a Delaware corporation, and Stealth Industries, Inc., a Delaware corporation, the two named defendants in this case. Leo Stoller, on behalf of Central Mfg. Co., brought a petition to cancel Google Inc.'s Federal Trademark Registration, Google, on the grounds that it has become generic and/or descriptive of the services that are covered under Google, Inc.'s Federal Trademark Registration.

Leo Stoller, in his individual capacity, sent letters and email correspondence directly to Google, Inc. and Google, Inc.'s attorney, Michael T. Zeller, counsel for Google, pursuant to Federal Rules of Evidence 408, in an attempt to settle the registerability controversy that existed as between the parties. The email correspondence that was submitted to Google, Inc. in settlement negotiations, which was clearly marked non-discoverable, submitted under Federal Rules of Evidence 408. Google, Inc., the Appellee, was using Leo Stoller's correspondence as the predicate act for the civil RICO violations alleged in Google, Inc.'s Complaint.

In December of 2005, Leo Stoller filed a Chapter 13 bankruptcy which was converted to a Chapter 7 on August 31, 2006. Leo Stoller's corporations, Central Mfg. Co., Inc. and Stealth Industries, Inc.; the shares of which became part of Stoller's bankruptcy when the said bankruptcy was converted to a Chapter 7. The Court found Stoller's corporations to be indistinguishable from Leo Stoller.

Google, Inc. had petitioned the Bankruptcy Court Judge Jack Schmetterer to lift the automatic stay in order to sue Leo Stoller and Central Mfg. Co., Inc.

and Stealth Industries, Inc. Judge Schmetterer issued an order releasing the stay so that Google, Inc. could sue Leo Stoller, (Order, SA 037-038).

Google, Inc. considered Stoller an indispensable party<sup>1</sup>, however, when Google filed its District Court action, it only sued Central Mfg. Co., Inc. and Stealth Industries, Inc.

Judge Schmetterer found in his September 1, 2006, converting Leo Stoller Chapter 13 to a Chapter 7 that Leo Stoller's corporate entities were so intertwined with Stoller as to be indistinguishable.

Leo Stoller asserts that he should be allowed to intervene pursuant to Rule 24, Fed. R. Civ. P.

Rule 24(a)(2), Fed. R. Civ. P. provides that upon timely application, anyone shall be permitted to intervene in an action as of right when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Persons seeking to intervene as a matter of right under Rule 24(a)(2) must establish the following four elements: (1) that the motion to intervene was timely; (2) that they have a substantial legal interest in the subject matter of the case; (3) that their ability to protect that interest may be impaired in the absence of intervention; and (4) that the parties already before the court may not adequately represent their interest. *Grutter v. Bollinger*, 188 F.3d 394, 397-98 (6th Cir. 1999). Stoller has met each of those four elements.

Leo Stoller has met the timely standard, in that he moved for intervention  
-----

1. In the following hearings that took place in Case No. 05-6047 before Judge Schmetterer 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, et al., Google, Inc.'s lawyers argued that Stoller was an indispensable party and that the stay of his bankruptcy had to be lifted in order to sue Stoller and his corporate entities.



within a few days after the filing of the Complaint. There was no prejudice to the other parties.

Leo Stoller was the sole shareholder and was the party that Google, Inc. has alleged is responsible for all of the acts committed in Google's federal lawsuit. Stoller was the party that filed a petition for cancellation of the said Google registration. Leo Stoller was the party that communicated with Michael Zeller, lead counsel for Google, Inc. in an attempt to negotiate the settlement of the registerability issue. Leo Stoller is the party who claimed rights in and to the Google trademark. Judge Schmetterer found that the corporations were indistinguishable from Leo Stoller. According to Judge Schmetterer's findings, Leo Stoller's corporations do not exist.

There is no question that Leo Stoller has a specific legal or equitable interest, or the interest needed to establish standing in federal court. See generally, *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997).

Stoller satisfied the "impairment" element, a would-be intervenor must show only that it is possible that his interest will be impaired if intervention is denied. *Grutter*, 188 F.3d at 399. This element was met here because without Leo Stoller as a party defendant, the corporate defendants will be unable to properly make their defense because Leo Stoller, who is the sole employee, is the corporate defendant's only witness.

### **INADEQUATE REPRESENTATION**

To satisfy the element of inadequate representation, proposed intervenors need not show that the representation of their interests will be inadequate, only that there is a potential for inadequate representation and/or that the existing parties will not make the same arguments as the proposed interveners. *Grutter*, 188 F.3d at 400. The showing required is minimal. *Id.* Again, this element was met. The Trustee, Richard M. Fogel's attempt to represent Stoller's



corporations which did not maintain any corporate formalities, was clearly erroneous. The corporate defendants, Central Mfg. Co., Inc. and Stealth Industries, Inc., could not receive any adequate representation without Leo Stoller because according to Judge Schmetterer, the corporations did not exist without Leo Stoller. In addition, the Trustee Richard M. Fogel, who attempted to argue before Judge Schmetterer that Leo Stoller's corporations, Central Mfg. Inc. and Stealth Industries, Inc., were invalid, and then go before Judge Kendall and enter into a settlement agreement on behalf of the said "invalid corporations", voids *ab initio* the settlement agreement entered into between Richard M. Fogel on behalf of Central Mfg. Inc., Stealth Industries, Inc. and Google, Inc. The permanent injunction and final judgment entered as to defendants Central Mfg. Inc. and Stealth Industries, Inc. is invalid on its face, (Injunction, SA 333-338). Judge Kendall relied on an invalid settlement agreement with the Trustee. This Court should issue an order invalidating the said permanent injunction and final judgment as to defendants Central Mfg. Inc. and Stealth Industries, Inc.

**JUDGE KENDALL ABUSED HER DISCRETION BY FAILING TO GRANT PERMISSIVE INTERVENTION UNDER RULE 24(b)**

Rule 24(b) states that upon timely application, anyone may be permitted to intervene in an action "when an applicant's claim or defense and the main action have a question of law or fact in common." Stoller's request was timely. Moreover, Stoller's request for permissive intervention does not violate any provision of the United States Constitution or federal law.

Pursuant to Rule 24(b), Judge Kendall failed to give full consideration to the actual equitable factors like undue delay, prejudice to the original parties, and other relevant factors. *Miller*, 103 F.3d at 1248. Here, this litigation was in an early stage, and the inclusion of those whose interests were in the law being upheld to its fullest extent would have only sharpen and clarify the issues for the court. Accordingly, permissive intervention should have been granted.

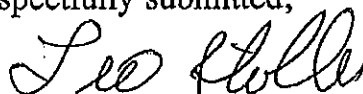
**DID THE TRUSTEE RICHARD FOGEL HAVE A  
PROPER AUTHORITY TO ACT ON BEHALF OF  
CENTRAL MFG. INC. AND STEALTH INDUSTRIES, INC?**

The Appellant asserts that the Trustee did not have any proper authority to act on behalf of Central Mfg. Inc. and Stealth Industries, Inc. based upon the findings contained in Judge Schmetterer's order of September 26, 2006. Judge Schmetterer found that the corporations of Leo Stoller were nothing more than d/b/a for Leo Stoller. Under those circumstances, the Trustee had no right to enter into any agreement in any court on behalf of Stoller's corporations, which according to Judge Schmetterer, were nothing more than d/b/a's of Leo Stoller. As a result, the Trustee, Richard Fogel's representations on behalf of Central Mfg. Inc. and Stealth Industries, Inc. are all void *ab initio* in each and every agreement that Mr. Fogel entered into with any third party on behalf of the estate of Leo Stoller.

**CONCLUSION**

Leo Stoller prays that this Court reverse the trial court and grant Stoller the right to intervene in the District Court case. Secondly, Stoller prays that this Court void *ab initio* the permanent injunction and final judgment as to the defendants Central Mfg. Inc. and Stealth Industries, Inc.

Respectfully submitted,



---

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type of volume limitation pursuant to Fed. R. App. P. 32(a)(7)(B). The brief contains 3374 words of proportionally spaced text. The type face is New Times Roman, 14-point font.

A handwritten signature in cursive script, reading "Leo Stoller", written in black ink. The signature is positioned above a horizontal line.

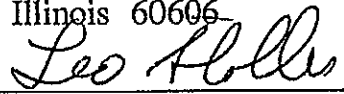
Leo Stoller, *pro se*

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing brief for the United States Court of Appeals as Appellant was served upon counsel of record via the U.S. Postal Service by First Class Mail this 7th day of June, 2007, at the addresses listed below.

Richard M. Fogel, Trustee  
Counsel for Trustee  
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Leo Stoller  
Date: June 7th 07

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## EXHIBIT 2

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

---

Nos. 07-1569, 07-1612 and 07-1651

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**GOOGLE, INC.,**

Plaintiff-Appellee

v.

**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.

**LEO STOLLER.,**

Applicant in Intervention-Appellant

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

---

**REPLY BRIEF FOR LEO STOLLER AS INTERVENOR**

---

U.S.C.A. 7th Circuit  
RECEIVED

JUL 20 2007

GINO J. AGNELLO  
CLERK

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Email: ldms4@hotmail.com



**DISCLOSURE STATEMENT PURSUANT TO FED. R. APP. P. 26.1  
AND 28(A)(1) AND CIRCUIT RULE 26.1(B)**

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; Stealth Industries, Inc., a/k/a Rentamark and a/k/a Rentamark.com are the alter-egos of Leo Stoller. See attached true and correct copy of Bankruptcy Court Judge Schmetterer's decision dated September 26, 2006. SA 348-377.

Judge Schmetterer ruled in Leo Stoller's Chapter 13 conversion to Chapter 7 bankruptcy in Case No. 05 B 64075, at page 14:

"II. Debtor And His Businesses Are Indistinguishable

92. Debtor makes all pertinent decisions for the assumed name entitled through which he operated. (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)."

In the jargon of corporate law, the corporation was not a separate entity from its owners but merely their "alter ego." *Mark I, Inc. v. Gruber*, 38 F.3d 369, 371 (7th Cir. 1994). *In re Kaiser*, 791 F.2d 73, 75 (7th Cir. 1986).

Leo Stoller is appearing *pro se* and the alleged Defendants are all alter-egos of Leo Stoller.

A handwritten signature in cursive script that reads "Leo Stoller".

---

Leo Stoller

Date: July 20, 2007



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### STATEMENT OF ISSUES

1. Did the District Court correctly deny Appellant's motion for intervention as a matter of right?
2. Did the District Court correctly deny Appellant's request for permissive intervention?
3. Did the District Court correctly find that the alleged corporate defendants would not receive adequate representation without Leo Stoller's involvement?
4. Did the District Court correctly find the alleged corporate defendants to be valid corporate entities?
5. Did the District Court err in granting a permanent injunction and final judgment as to defendants Central Mfg. and Stealth Industries, Inc.?
6. Did the District Court err by failing to dismiss the case for failure to join a necessary party, Leo Stoller? (Motion, SA 173-176)
7. Did the Trustee, Richard M. Fogel, have a right to represent Central Mfg. Inc. and Stealth Industries, Inc?
8. Did the District Court err by failing to dismiss the case for failure to join Leo Stoller as a necessary party, in that the corporate defendants are not valid entities?

### STATEMENT OF THE FACTS

Leo Stoller, 61, Central Mfg. Inc., a/k/a Central Mfg. Co., a/k/a Central Manufacturing Company, Inc., a/k/a Central Mfg. Co. of Illinois, and Stealth Industries, Inc., Rentamark, and Rentamark.com; the defendants in the civil RICO action are the alter-egos of Leo Stoller.

Leo Stoller is an entrepreneur and self-employed businessman in Chicago, Illinois, involved in the trademark licensing business for over 30 years.

In 2005, Leo Stoller, through his companies, brought a trademark a infringement action in the United States District Court, Northern District of Illinois, *Central Mfg. Co., and Leo Stoller v. Pure Fishing, Inc., et. al.*, Case No. 05 C 725. Judge Lindberg issued a default judgment as a sanction against Leo Stoller and Central Mfg. Co., forcing Leo Stoller to file for bankruptcy in December of 2005, bankruptcy Case No. 05 B 64075.

Upon motion by Pure Fishing, Inc., Judge Jack B. Schmetterer converted Leo Stoller's Chapter 13 to a Chapter 7 bankruptcy on August 31, 2006.

On September 26, 2006, Judge Schmetterer issued Findings of Fact and Conclusions of Law on Motion of Pure Fishing to Convert to Chapter 7. (Order, SA 348-377).

On August 18, 2006, the Appellee Google, Inc. filed a motion before Judge Schmetterer entitled Motion of Google, Inc. For Order Declaring Proposed Suit To Be Outside Scope of Stay, In the Alternative, Modifying Stay (Motion, SA 043-100). In order to induce Judge Schmetterer to lift the stay in Leo Stoller's bankruptcy proceeding, Google, Inc. pled that Leo Stoller was a necessary party.

Google's counsel, William J. Barrett, stated in open court:

"MR. BARRETT: Your Honor, I understand the court made a finding of fact at the conversion trial finding that these entities were **inseparable** from Mr. Stoller himself," emphasis added. (Transcript, SA 292).

Google, Inc. filed a civil RICO action against Stoller's businesses, Central Mfg. Inc., a/k/a Central Mfg. Co., a/k/a Central Manufacturing Company, Inc., a/k/a Central Mfg. Co. of Illinois, and Stealth Industries, Inc., Rentamark, and Rentamark.com. Google, Inc. excluded Leo Stoller as a party from the civil RICO action filed before Judge Virginia Kendall in Case No. 07-CV-385.

Leo Stoller filed a motion to interplead, (Motion, SA 001-031). Stoller also filed a motion to intervene, (Motion, SA 032-039). Google moved for a



stipulated permanent injunction and final judgment. Leo Stoller filed an objection to Google's stipulated permanent injunction and final judgment. (Motion, SA 101-149). The Court ultimately entered a permanent injunction and final judgment as to defendants Central Mfg. Inc. and Stealth Industries, Inc., (Injunction, SA 333-338).

Stoller replied to the Trustee's objection to motion of Debtor to intervene and interplead, (Motion, SA 150-172), and Stoller replied to Google's objection to Debtor's motion to intervene and interplead, (Motion, SA 177-258). Stoller also replied to Google's opposition to Debtor's motion to suspend pending the trademark trial and appeal board's decision on defendants' motion for summary judgment, (Motion, SA 259-264). Stoller brought a petition for cancellation **Supplemental Short Appendix, (SSA-1)** and a trademark opposition against Google, Inc.'s registration and application for the mark Google at the Trademark Trial and Appeal Board. Google, Inc.'s civil RICO action was filed against Stoller's businesses in retaliation for Stoller's attempt to oppose and cancel Google, Inc.'s federal trademark applications and federal trademark registration.

The Court denied Stoller's motions to interplead, intervene to suspend and to dismiss (Orders SA 343; SA 265-271; SA 333-338; SA 339; SA 340-341); and granted Appellee's permanent injunction and final judgment as to defendants Central Mfg. Inc. and Stealth Industries, Inc., (Order, SA 333-338).

Stoller filed a motion under FRCP 59 and/or 60, (Motion, SA 274-332). The Court denied Stoller's motion for reconsideration, (Order, SA 340).

**I. Appellee's Statement of Facts Are Disputed**

Google, Inc. has falsely alleged that Stoller has been engaged in a scheme that involving targeting companies with threats of legal proceedings based on

false claims to own numerous trademarks<sup>1</sup>. Stoller has engaged in the what McCarthy on Trademarks has characterized as the assertive enforcement of trademark rights.

§11:91 Generally

Trademarks are weak when they are merely one of a similar crowd of marks. How does that happen? The only way a trademark owner can prevent the market from becoming crowded with similar marks is to undertake an assertive program of policing adjacent "territory" and suing those who edge too close. Judge Neaher observed that:

[S]trength is primarily a question of degree, an amorphous concept with little shape or substance when divorced from the mark's commercial context, including an appraisal of the owner's policing efforts to ensure that whatever distinctiveness or exclusivity has been achieved is not lost through neglect, inattention or consent to infringing use<sup>2</sup>.

It has been observed that an active program of prosecution of infringers, resulting in elimination of others' use of similar marks, enhances the distinctiveness and strength of a mark: 'since no one else uses a similar sounding name, plaintiff's name looks and sounds all the more unique.'<sup>3</sup> As the Second Circuit observed, curbing infringers strengthens a mark because 'the successful policing of a mark adds to its strength to the extent that it prevents weakening of the mark's distinctiveness

-----

1. Stoller incorporates herein a brief which is matter of public record that was filed with the Executive Committee, written by the law firm of Fioretti & Lower, on behalf of Stoller in response to the Executive Committee's rule to show cause order issued in December of 2005. Stoller moves this Court to permit the incorporation of his response to the Executive Committee order which addresses the critical new issue raised by Google, Inc. alleging that Stoller has history of vexatious litigation. Such an issue is designed to poison this Court against Stoller. Stoller should be entitled at the very least to have this Court consider the arguments made by the law firm of Fioretti & Lower in response to the Executive Committee's rule to show cause order.

2. *E.I. DuPont de Nemours & Co. v. Yoshida International, Inc.*, 393 F. Supp. 502, 185 U.S.P.Q. 597 (E.D.N.Y.). *Accord* *Bachellerie v. A. Cavaricci, Inc.*, 796 F. Supp. 1070, 20 U.S.P.Q. 2d 1282 (S.D.N.Y. 1991) (failure of plaintiff to enforce its mark against third party users "diminishes the strength of the mark.").

3. *Dictaphone Corp. v. Dictamatic Corp.*, 199 U.S.P.Q. 437 (D. Or. 1978).

in the relevant market.<sup>1</sup>

The Fifth Circuit said that lack of vigilant enforcement of the mark DOMINO for sugar resulted in a narrowing of protection to only the sugar field: 'A trademark owner that strongly believed its customers were being deceived would hardly have remained idle for such an extensive period of time.'<sup>2</sup>

Stoller holds rights to numerous trademarks and is compelled to defend those rights, otherwise Stoller stands to lose those trademarks. Judge Kocoras on April 30, 1998, *Stealth Industries, Inc. v. GMI Holding, Inc., d/b/a The Genie Company* in Case No. 96 C 2232 has addressed the arguments raised by Google and other defendants against Stoller by making the following statements:

"The gist of the defendants' argument is that the plaintiff's suit lacked any evidentiary support and was brought by the plaintiff to extract a settlement from the defendants. Defendants point out that plaintiff has filed countless lawsuits against entities, such as the defendants, that attempt to use the 'Stealth' name on products that are unrelated to the products listed in the plaintiff's trademark registrations. Upon review of the record and our opinion granting the defendant's motion for summary judgment, the court finds that an award of attorneys fees is not warranted in this case. Plaintiff has secured registrations for use of the 'Stealth' name on a wide range of products since 1985. These products range from bicycles and comic strips to window locks and lawn sprinklers. Because of such a wide range of products, the plaintiff has more opportunities to sue for trademark infringement when another entity uses the 'Stealth' name. The court, however, cannot base its decision to award fees on the plaintiff's conduct in other cases with other defendants. In this case, there was some evidence indicating that plaintiff used the 'Stealth' name on garage door locks and could have been infringed upon by defendants' use of the 'Stealth' name on garage door openers. We granted summary judgment for the defendants because S Industries did not provide any credible evidence to establish that consumers were confused by the defendants' use of the name on their garage door openers. While we agree with the defendants that the plaintiff's claims lacked evidentiary support, the court will not award attorneys fees because there is no evidence that the plaintiff's suit was fraudulent or malicious. Accordingly, we deny the defendants' motion for fees."

1. *Morningside Group Ltd. v. Morningside Capital Group, L.L.C.*, 182 F. 3d 133, 51 U.S.P.Q. 2d 1183 (2d Cir. 1999).

2. *Amstar Corp. v. Domino's Pizza, Inc.*, 615 F. 2d 252, 205 U.S.P.Q. 969 (5th Cir. 1980), cert. denied, 449 U.S. 899, 66 L. Ed. 2d 129, 101 S. Ct. 268, 208 U.S.P.Q. 464 (1980). See *LaMaur, Inc. v. Bagwells Enterprises, Inc.*, 199 U.S.P.Q. 601 (TTAB 1978)(lack of enforcement in one field).

Stoller vehemently denies the title vexatious litigant, as Stoller contends pursuant to McCarthy on Trademarks, that he was engaging in the assertive enforcement of his trademark rights. Stoller holds rights over 150 trademarks, more than the Ford Motor Company.

Stoller has been involved in over 60 federal trademark infringement actions and over 300 petition to cancel and opposition proceedings at the Trademark Trial and Appeal Board. Stoller has prevailed in over 90% of these actions.

In the *Leo Stoller, et al. v. Pure Fishing, Inc.*, case no. 05 C 725, the District Court erred in entering a judgment against Stoller as a sanction for signing his attorney's name to a pleading with that attorney's permission. Judge Lindberg, as an excessive sanction, cancelled 35 of Stoller's trademark registrations, and entered a judgment<sup>1</sup> of over \$950,000 against Stoller and his companies. The *Pure Fishing* case is on appeal before this Court and this Court will reverse Judge Lindberg's default judgment and excessive sanction against Stoller for the following reasons:

A default judgment is a sanction for misconduct during the litigation. Appellate review of decisions to impose, or withhold, sanctions is deferential. See e.g., *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 399-400, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990); *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639, 96 S. Ct. 2778, 49 L. Ed. 2d 747 (1976);

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1. The judgment was a consent judgment entered into by the bankruptcy trustee Richard M. Fogel and Pure Fishing, Inc., agreeing to a consent judgment in excess of \$969,000. Stoller has contended that the Illinois bankruptcy Trustee Richard M. Fogel has breached his fiduciary duty to the Estate of Leo Stoller and is unqualified and should be dismissed. Judge William J. Hibbler in Case No. 06 C 06950, In re Leo Stoller, Debtor, in a decision dated June 20, 2007, found "... that the bankruptcy court's order denying the motion to disqualify the trustee is also final." Judge Hibbler has permitted Stoller to appeal the decision denying Stoller's motion to disqualify the Trustee Richard M. Fogel which is now pending. The *Pure Fishing* decision is on appeal before this Court, Case No. 07-1936.

*Pretzel & Stouffer v. Imperial Adjusters, Inc.*, 28 F. 3d 42, 45 (7th Cir. 1994).

Judge Lindberg abused his to enter such a severe default judgment for a wrong that apparently caused no prejudice to the adverse party. See *Mommaerts v. Hartford Life & Accident Ins. Co.*, No. 06-2942, 2007 U.S. App. LEXIS 322 (7th Cir. Jan. 8, 2007). Cf. *United States v. McLaughlin*, 470 F. 3d 698 (7th Cir. 2006).

Judge Lindberg's excessive sanction and default judgment was unconstitutional in that it was disproportionate to the alleged offense; Stoller signing a pleading with the attorney's permission.

Google's allegations that Stoller and the Defendants submitted 1800 spurious filings with the TTAB. Stoller submitted approximately 1800 requests for extensions of time to oppose trademark applications. Stoller had met under the Rules the minimum standards for filing the said extensions. The rules provide that a party can file an extension of time in order to investigate an application filing. Stoller's filings of the said extensions were under the rules. The Trademark Trial & Appeal Board entered a sanction against Stoller on the grounds that the TTAB believed that the amount of extensions Stoller filed was excessive. Stoller appealed the decision of the TTAB to the Federal Circuit. The Federal Circuit denied Stoller's appeal on the grounds that the Federal Circuit did not have jurisdiction over the said issue. Stoller filed a motion for reconsideration with the Federal Circuit. The Federal Circuit has yet to rule on Stoller's motion for reconsideration.

As to Google's assertion that Stoller demanded money from Google to resolve a trademark controversy, Stoller made settlement proposals to Google; some of which included a monetary component and other settlements which did not require any monetary compensation.

However, Google, Inc.'s RICO action, which was filed before Judge Kendall, and is the underlying case before this Court, is frivolous and without

merit.

Google, Inc. never met the "actual controversy" requirement - reasonable apprehension of being sued; § 32:51 - McCarthy of Trademarks.

"In patent and trademark cases, an 'actual controversy' is found if defendant has charged plaintiff with infringement or has threatened plaintiff with infringement litigation, either directly or indirectly.<sup>1</sup> As the First Circuit has remarked: 'The federal declaratory judgment statute aims at resolving potential disputes, often commercial in character, that can reasonably be feared by a potential target in light of the other side's conduct.'<sup>2</sup>

Stoller did not give Google, Inc. any valid grounds for filing a frivolous RICO action before the Federal Court. Stoller only filed an opposition and petition to cancel Google's mark on the grounds that it has become generic. Google, Inc., a hundred billion dollar company with unlimited resources, took umbrage with Stoller filing the opposition and/or cancellation of their generic trademark. The threat of Stoller filing a patent and trademark *inter partes* challenge to Google's alleged trademark does not give them *per se* a sufficient reason for creating an actual controversy. See §32:52 - Threat or filing of PTO *inter partes* challenge:

"Generally, 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

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1. *Manufacturers Hanover Corp. v. Maine Sav. Bank*, 225 U.S.P.Q. 525, 1985 WL 181 (S.D.N.Y. 1985) (letter from defendant to plaintiff referring to "problems" with likely confusion and mentioning defendant's "aggressive" protection policy and willingness to institute formal legal proceedings, coupled with defendant's opposition to plaintiff's application to register, all combined to create a reasonable apprehensive of being sued for infringement sufficient for declaratory judgments suit).

2. *PHC, Inc. v. Pioneer Healthcare*, 75 F. 3d 75, 37 U.S.P.Q. 2d 1651 (1st Cir. 1996) (declaratory judgment jurisdiction was found as result of cease and desist letter that could reasonably be viewed as resulting in a Lanham Act § 43(a) suit if no settlement was reached).



controversy".<sup>1</sup>

## II. Google Inc.'s Misrepresentation On This Court

Google had no actual grounds to file any District Court action against Stoller based upon Stoller's filing of a petition to cancel and notice of opposition. Google's civil RICO action was used merely "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. As the U.S. Supreme Court has stated:

[T]he 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 Congress has placed it to the courts<sup>2</sup>.

What Google is hiding and concealing from this Court is that Stoller had filed a motion for summary judgment (SSA-2) before the Trademark Trial & Appeal Board in the petition for cancellation proceeding involving Google's trademark. Google, Inc. became desperate because Google is aware that the term "google" has become generic and/or descriptive of search engine services and is now in the dictionary. Google, Inc. knows that its mark will be cancelled by the TTAB on the grounds of it becoming generic. Consequently, Google filed a civil RICO action in order to divert Google's obligation from having to respond to

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1. *Merrick v. Sharp & Dohme, Inc.*, 185 F. 2d 713, 88 U.S.P.Q. 145 (7th Cir. 1950), cert. denied, 340 U.S. 954, 95 L. Ed. 687, 71 S. Ct. 573, 88 U.S.P.Q. 569 (1951) (opposition proceeding filed against plaintiff); *Topp-Cola Co. v. Coca-Cola Co.*, 314 F. 2d 124, 136 U.S.P.Q. 610 (2d Cir. 1963) (opposition filed against plaintiff in Puerto Rico).

2. *Public Service Comm'n v. Wycoff Co.*, 344 U.S. 237, 97 L. Ed. 291, 73 S. Ct. 236 (1952). See *Englishtown Sportswear, Ltd., v. Tuttle*, 547 F. Supp. 700, 216 U.S.P.Q. 486 (S.D.N.Y. 1982) (a court that bypasses the administrative system of the PTO impairs expeditious resolution and forfeits administrative expertise).

having to respond to Stoller's motion for summary judgment before the Trademark Trial & Appeal Board.

In other words, Google's civil RICO action filed before Judge Kendall was used merely to short-circuit "established administrative procedures such as those set up by the Patent and Trademark Office to determine the validity of federal trademark registrations."

Then, Google conspired with Richard M. Fogel, the bankruptcy Trustee, to enter into a consent judgment which is on appeal in Case No. 06 C 06950 before Judge William J. Hibbler. Judge Hibbler stated in his June 20, 2007 order:

"Here, two of the bankruptcy court's orders approve the trustee's agreement with Google and Lanard Toys, Ltd. to enter into a compromise. These two orders involve discrete issues, seriously affecting the appellant's substantive rights, and may cause him irreparable harm.

### **III. Stoller's Bankruptcy**

The fact that Stoller is in bankruptcy does not preclude Stoller from having standing to appeal those acts which are harmful to Stoller, Stoller's Estate and Stoller's companies. It is critical for this Court to recognize that Judge William J. Hibbler, the reviewing Judge over Bankruptcy Court Jack Schmetterer, has acknowledged in a decision dated June 20, 2007, in Case No. 06 C 06950, stated that Stoller has standing to intervene and appeal decisions regarding the Bankruptcy Court's orders approving the trustee's agreement with Google and Lanard Toys to enter into a compromise. These two orders involve discrete issues, seriously affecting the appellant's substantive rights, and may cause him irreparable harm. Likewise, the decision by Judge Kendall in the underlying civil RICO action against Stoller's d/b/a's is also causing Stoller irreparable harm and Stoller should have the right to intervene and to defend against the frivolous civil RICO action that Google has filed in order to short-circuit the administrative



proceeding of the Patent and Trademark Office and to avoid filing a response to Stoller's motion for summary judgment.

**IV. Stoller Is A Necessary And Indispensable Party**

Judge Schmetterer, prior to lifting the automatic stay in Stoller's bankruptcy case, stated that Stoller's practice of suing parties for trademark infringement must be stopped and that the Bankruptcy Court is not the place to stop Stoller. With that comment, Judge Schmetterer lifted the automatic stay so that Google could sue Stoller in Federal District Court on a civil RICO action.

**V. Why Wasn't Leo Stoller Sued Individually Or Made A Party To The Underlying Civil RICO Action?**

Leo Stoller was not sued by Google individually because Google would have had to defend against their frivolous civil RICO action if Leo Stoller would have been named a party. Google, Inc. cut an unlawful settlement deal with Richard M. Fogel, Trustee, in order to secure a judgment without Stoller or Stoller's d/b/a's being able to defend against a civil RICO action. The reasons stated by Google and Richard M. Fogel for entering into a settlement agreement was to avoid having to deal with and/or to eliminate Google's frivolous, non-existent and fraudulent bankruptcy claim filed against Leo Stoller's estate. Google made a claim against Leo Stoller's bankruptcy estate based upon legal fees associated with an opposition and/or a petition for cancellation proceeding. The Trademark Trial and Appeal Board is not empowered to award legal fees to a losing party, so even if Stoller would have lost his petition for cancellation and/or opposition proceeding, Google would not have been entitled to any fees whatsoever. Google's claim, therefore, against Stoller's bankruptcy estate is a fraudulent claim. Richard Fogel and Google's assertion that the settlement with Google was good for Stoller's estate is a fraud on the Bankruptcy Court and a fraud on this Court.

Google did not sue Stoller, a necessary party, because they would have had to defend their frivolous civil RICO action and they would have lost that case.

Stoller has challenged Richard Fogel's authority as Trustee of Leo Stoller's bankruptcy estate and has filed three motions to disqualify Richard Fogel for breach of his fiduciary duties. Judge William J. Hibbler has permitted Leo Stoller to proceed on his appeal on Stoller's motion to disqualify Richard M. Fogel. Currently pending before the Attorney Registration and Disciplinary Commission is a request to have Mr. Fogel take a psychiatric evaluation to determine his fitness to practice law. Pursuant to *In re Charles E. Petit* Case No. 06 SH 30. (SSA-3).

Stoller has also moved to intervene in Cancellation No. 92045778. *Central Mfg. Co. (Inc.) v. Google, Inc.*. (SSA-4).

In Judge Virginia M. Kendall's order dated March 16, 2007 in Case No. 07 C 385, Judge Kendall cites to a transcript of Judge Schmetterer which states:

"MR. STOLLER: The problem is not that they withdraw their monetary claims. It's a civil RICO action where I'm mentioned 15 times in a complaint in which I am deprived of defending myself. I'm not even listed in it.

JUDGE SCHMETTERER: You have a right, I suppose, to seek to intervene in that case and to defend any interest of yours personally, but I see no reason why I should authorize you to hire lawyers on behalf of the companies.

MR. STOLLER: Because if --

THE COURT: If you feel that the action directly impinges on your rights, nothing stops you from doing that."

Judge Schmetterer has acknowledged Stoller's right to intervene.

### SUMMARY OF ARGUMENT

The Appellant states that Leo Stoller was not made a party to the civil RICO action. However, the Appellee moved before Judge Schmetterer to lift the automatic stay by arguing that Leo Stoller needs to be sued for a civil RICO action in Federal District Court. Judge Schmetterer, on the record in Bankruptcy Case No. 05 B 64075, stated that Leo Stoller must be stopped from policing his trademarks and although Judge Schmetterer that the Bankruptcy Court is not the proper venue to stop Stoller, the District Court was the proper venue. Judge Schmetterer lifted the automatic stay and allowed Google, Inc. to sue Leo Stoller. However, when it came time to file the suit in District Court, Google excluded Leo Stoller from the civil RICO action and entered into a fraudulent agreement with Trustee Richard M. Fogel in order to exclude Stoller and permit Stoller's d/b/a's to have a default judgment entered against them. This conduct by the Trustee was a clear breach of his fiduciary duty to the Estate of Leo Stoller and amounted to a fraud on the Court.

Leo Stoller has appealed Judge Schmetterer's underlying orders assigned the present Case No. 06 C 06950, approving the settlement with Google, Inc. to Modify Stay and Compromise Certain Claims of debtor's Wholly-owned Corporations and Related Relief pursuant to Fed. R. Bankr. P. 4001(d); and authorizing compromise with Lanard Toys, Ltd., and related relief; and denying Debtor's request to disqualify Richard Fogel as Trustee<sup>1</sup>.

Stoller appealed Judge Schmetterer's order approving the underlying agreement with Google, Inc. to modify stay and compromise certain claims of Debtor's wholly-owned corporations. This is critical to this Court's

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1. District Court Judge William J. Hibbler's decision dated June 20, 2007 in Case No. 06 C 06950, *In re Leo Stoller*.

determination of the current appeal pending before the Court. Without Judge Schmetterer having approved the underlying agreement with Google and to modify the stay, Google would have had no authority to file a District Court RICO action before Judge Kendall in the District Court which led to this current Appeal. Judge William J. Hibbler, in his decision of June 20, 2007, in Case No. 06 C 06950 issued a decision stating:

" ... upon review, it occurs that the three remaining orders - the order approving the agreement with Google, Inc. to Modify Stay and Compromise Certain Claims of Debtor's Wholly-owned corporations; authorizing compromise with Lanard Toys, Ltd. And Lanard Toys, Inc. and related relief; and the order denying debtor's request to disqualify Richard Fogel as Trustee -- are final orders. In *In re Forty-Eight Insulations*, the Seventh Circuit explained '[T]he court has adopted a pragmatic approach to deciding whether a bankruptcy court's order is final, recognizing that 'certain proceedings in a bankruptcy case are so distinct and conclusive either to the rights of individual parties or the ultimate outcome of the case that final decisions as to them should be appealable as of right.' *In re Forty-Eight Insulations* at 1229. Here, two of the bankruptcy court's orders approve the trustee's agreement with Google and Lanard Toys, Ltd. to enter into a compromise. These two orders involved discrete issues, seriously affecting the appellant's substantive rights, and may cause him irreparable harm. In addition, the Court finds that the bankruptcy court's order denying the motion to disqualify the trustee is also final. *In re Wade*, 991 F.2d at 406. Therefore, this Court holds that these orders are final and appealable."

The bottom line here is that District Court William J. Hibbler, contrary to

the Appellee's argument that Stoller has no interest and should not be allowed to intervene in the civil RICO action before Judge Kendall, found that Leo Stoller has a substantial interest and can be damaged and "may cause him (Leo Stoller) irreparable harm."

Furthermore Richard M. Fogel, the alleged Trustee of the Estate of Leo Stoller, has been charged by Stoller with fraud and a breach of fiduciary duty to the Estate of Leo Stoller by entering into contrived and fraudulent settlement agreements with Google, Inc. and others in order to defraud the Estate of Leo Stoller. Stoller had moved to disqualify the Trustee and Judge William J. Hibbler has determined that "the motion to disqualify the Trustee is also final and appealable."

When Stoller filed a Chapter 13, Stoller had claims of \$66,000 against his Estate. After Fogel was appointed the Trustee on September 6, 2006, Fogel proceeded to indebt the Estate of Leo Stoller to over \$2,300,000.00. Never in the history of the Seventh Circuit has a Trustee taken over an Estate and within several months agreed to encumber that bankruptcy estate with debts exceeding \$2,300,000 when the estate had claims of only \$66,000 when the trustee took over.

For example, Trustee Fogel entered into an agreement with Pure Fishing, Inc. approving a judgment of over \$950,000 in October of 2006, \$750,000 of which was an attorney-fee award. Trustee Fogel did not bother to contest even one entry of the attorney fee award when the attorney fee award was based on billings from two different law firms in Illinois, Banner & Witcoff in Chicago, Illinois, and Roylance, Abrams, et. al. in Washington, D.C. Both law firms billed for the identical work, and according to Judge Grady's *Continental* decision, discounts out of state lawyers' billings for the identical work done for in state lawyers. Notwithstanding this fact known to Richard Fogel, Trustee Fogel did not dispute one dollar of the \$750,000 fee award. For the record, that

has never occurred by any lawyer contesting a fee award in the Northern District of Illinois.

In a recent decision by Judge Evans in *Central Mfg. Inc. et al. v. George Brett, et al.*, Case No. 06-2083, July 9, 2007, at page 7, Judge Evans for the benefit of this Court has identified Leo Stoller and his business (which operates under a number of assumed names):

"Leo Stoller is no stranger to trademark litigation. Indeed, one might say it is the essential part of his business strategy. In fact, were there a Hall of Fame for hyperactive trademark litigators, Stoller would be in it. And, like George Brett, he would have gotten in on the first ballot. Acting as a sort of intellectual property entrepreneur, Stoller has federally registered scores of trademarks with the U.S. PTO (Central lists upwards of 50 that are actual or pending for just the 'Stealth' mark), many containing everyday words that regularly pop up in commercial enterprise. When other companies or individuals inevitably make use of these words, Stoller issues ceased-and-desist letters in the hopes that the user will blanch at the prospect of litigation and either agree to pay him a 'licensing fee' or yield to his claims of ownership and stop using the alleged mark altogether. 'Essentially, if an entity markets a product with some version of the name 'Stealth' or otherwise with a 'stealth'-like description, Plaintiff has elected to sue that entity.'

Leo Stoller, as well-known to Trustee Fogel and Google, is the most famous trademark entrepreneur in the United States today. Leo Stoller is listed in the Wikipedia encyclopedia, has appeared on the pages of the New York Times, the Sun-Times, the Wall Street Journal, CBS and FOX news, as an expert on trademarks. The Trustee and Google are trying to defame and permanently

destroy the reputation of Leo Stoller by preventing him from having his day in Court to defend against an absolutely frivolous civil RICO action.

The Appellee claims that Leo Stoller has no interest in the said underlying civil RICO action. If Leo Stoller is barred from defending himself in the said civil RICO action, Leo Stoller's reputation will be irrevocably destroyed as a result of the scheme that the Trustee Fogel and Google entered into to deprive Stoller of his day in Court.

Judge Schmetterer in open court in Stoller's bankruptcy, Case NO. 05 B 64075, that Stoller should be sued for civil RICO and he allowed the stay to be lifted. When the stay was lifted, Trustee Fogel conspired with Google to exclude Stoller from the lawsuit in order for Google to obtain a default judgment, depriving Stoller of his fundamental due process and equal rights protection under the Fifth and Fourteen Amendments.

This Court as a guardian of a party's Constitutional rights, should allow Stoller to intervene in the civil RICO action and to defend his reputation.

Google's lawyer in front of Judge Kendall said who in their right mind would try to intervene in a civil RICO action unless they were named as a party? Stoller respectfully asserts in order to protect his 30 year reputation in the trademark community, must as a matter of right, have the opportunity to intervene because Stoller's reputation will be permanently destroyed otherwise.

Stoller has established that he is entitled to intervene as of right to pursuant to Federal Rules of Civil Procedure 24(a). (1) The application was timely filed; (2) the applicant has a claim of interest relating to the property or transaction which is the subject of the action; (3) Stoller is so situated that the disposition of the action may as a practical matter impair or impede Stoller's ability to protect that interest; and (4) the existing parties cannot be adequately represented of the applicant's interests. *Heartwood, Inc. v. U.S. Forest Service, Inc.*, 316 F. 3d 694, 700 (7th Cir. 2003). Stoller has met the burden of proving all four criteria.



The District Court erred and abused its discretion in denying Stoller permissive intervention. The Appellant has met the standard of permissive intervention as well. Stoller has demonstrated that there is (1) a common question of law or fact that Google has filed a frivolous and fraudulent civil RICO action in violation of FRCP Rule 11 (2) independent jurisdiction. *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F. 3d 1377, 1381 (7th Cir. 1995); *Keith v. Daley*, 764 F.2d 1265, 1271 (7th Cir. 1985).

WHEREFORE, Stoller prays that this Court grant Stoller the right to intervene as a matter of right or to intervene under permissive intervention otherwise in the civil RICO case for the reasons stated above.

Respectfully submitted,



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Leo Stoller, *pro Sue*  
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Date: July 20, 2007



**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the type of volume limitation pursuant to Fed. R. App. P. 32(a)(7)(B). The brief contains 5726 words of proportionally spaced text. The type face is New Times Roman, 14-point font.

A handwritten signature in cursive script that reads "Leo Stoller".

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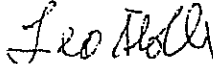
Leo Stoller, *pro se*

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing brief for the United States Court of Appeals as Appellant was served upon counsel of record via the U.S. Postal Service by First Class Mail this 20th day of July, 2007, at the addresses listed below.

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\_\_\_\_\_  
Leo Stoller

Date: 7-20-07

**DISCLOSURE STATEMENT PURSUANT TO FED. R. APP. P. 26.1  
AND 28(A)(1) AND CIRCUIT RULE 26.1(B)**

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; Stealth Industries, Inc., a/k/a Rentamark and a/k/a Rentamark.com are the alter-egos of Leo Stoller. See attached true and correct copy of Bankruptcy Court Judge Schmetterer's decision dated September 26, 2006. SA 348-377.

Judge Schmetterer ruled in Leo Stoller's Chapter 13 conversion to Chapter 7 bankruptcy in Case No. 05 B 64075, at page 14:

"II. Debtor And His Businesses Are Indistinguishable

92. Debtor makes all pertinent decisions for the assumed name entitled through which he operated. (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)."

In the jargon of corporate law, the corporation was not a separate entity from its owners but merely their "alter ego." *Mark I, Inc. v. Gruber*, 38 F.3d 369, 371 (7th Cir. 1994). *In re Kaiser*, 791 F.2d 73, 75 (7th Cir. 1986).

## EXHIBIT 3

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with  
Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

Submitted April 2, 2008  
Decided April 2, 2008

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

Nos. 07-1569, 07-1612 & 07-1651

GOOGLE, INC.,  
*Plaintiff-Appellee,*

*v.*

CENTRAL MFG. INC. and STEALTH  
INDUSTRIES, INC.,  
*Defendants.*

Appeals from the United States District  
Court for the Northern District of Illinois,  
Eastern Division.

No. 07 C 0385

Virginia M. Kendall,  
*Judge.*

APPEALS OF: LEO D. STOLLER,  
*Applicant in Intervention-Appellant.*

ORDER

Leo Stoller is a familiar litigant, to say the least. As we have previously remarked, litigation is central to his business strategy; he claims a superior right to countless

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\* After examining the briefs and record, we have concluded that oral argument is unnecessary. Thus the appeals are submitted on the briefs and record. FED. R. APP. P. 34(a)(2).

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trademarks and then seeks to thwart genuine users from registering their marks or threatens litigation if he is not paid a "licensing fee." See, e.g., *Central Manufacturing, Incorporated v. Brett*, 492 F.3d 876, 880 (7th Cir. 2007); *S Indus., Inc. v. Space-Age Techs.*, 116 Fed. App'x 752 (7th Cir. 2004); *S Indus., Inc. v. Centra 2000, Inc.*, 249 F.3d 625 (7th Cir. 2001). In this case when Stoller targeted big-gun Google, Inc., and tried to lay claim to its GOOGLE mark, the internet giant went on the offensive. Apparently, though, Google thought its odds would be better by suing, not Stoller, but two "corporations" that even Google surmised were nothing but alter egos of Stoller. And when Stoller sought to intervene as a defendant, Google successfully prevailed upon the district court to keep him out. Google now has a final judgment—against whom we cannot say—but we agree with Stoller that the judgment must be vacated and the case remanded for further proceedings.

## I.

After losing several trademark cases and being ordered to pay attorneys' fees and costs, Stoller filed for bankruptcy under Chapter 13 of the Bankruptcy Code in December 2005. In September 2006 the bankruptcy court converted the case to a Chapter 7 liquidation because it found that Stoller had acted in bad faith by not disclosing certain income and real-estate interests. In doing so, the bankruptcy court essentially concluded that "Central Mfg. Inc.," although nominally registered as a Delaware corporation, and "Stealth Industries, Inc." were assumed names for Stoller and "indistinguishable" from him. The court found that neither of these purported corporations maintained corporate books and records, that Stoller's personal funds were commingled with their funds, and that Stoller referred to their assets as his own. Further, the court determined that "Central Manufacturing Company, Inc.," "Central Mfg. Co.," and "Rentamark" were also trade names used by Stoller to conduct individual business.

Meanwhile, just before he filed his Chapter 13 petition, Stoller had begun his quest against Google. We set out an abbreviated version of events as Google recounts them. In November 2005, Stoller asked the Trademark Trial and Appeal Board, a part of the United States Patent and Trademark Office, to extend the deadline for potential opponents to contest Google's pending application to register its GOOGLE mark. See 37 C.F.R. § 2.102. Stoller billed himself as "president and CEO" of "Central Mfg. Co. (Inc.)," a name that Google describes as an "alias" of "Central Mfg. Inc." Two days later, on November 29, Stoller wrote Google on letterhead identifying himself as "Google Brand Products & Services." Stoller claimed that he had been using the GOOGLE mark for many years and threatened to "cloud" Google's registration application with a lawsuit unless the company promptly abandoned its application or else agreed to pay him royalties. After that, from February 2006 through at least January 2007, Stoller sent letters, e-mails, and faxes to Google and its attorneys pressuring them to pay him off and threatening to publicize his claim of a

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superior right to the GOOGLE mark in order to depress Google's stock price. In many of these communications Stoller identified himself as speaking for "Rentamark," which Google describes as an "alias" of "Stealth Industries, Inc." On his website, Rentamark.com, Stoller also posted reports that "Central Mfg. Co.," yet another "alias" of "Central Mfg. Inc.," had initiated action to cancel Google's registration of its mark and touted that he prevails in 90% of his "police actions" against infringers.

In August 2006, with Stoller's harrassment continuing unabated, Google approached the bankruptcy judge having jurisdiction over the Chapter 13 case and asked the court to declare that the bankruptcy stay, *see* 11 U.S.C. § 362, would not preclude its proposed lawsuit against Stoller, "Central Mfg. Inc.," and "Stealth Industries, Inc." Google represented to the bankruptcy court that its proposed claims had not accrued until after the Chapter 13 petition had been filed, and thus, according to Google, were outside the scope of the bankruptcy proceeding. In the alternative, Google proposed that the stay be modified so that it could proceed with its suit. Google's motion was still pending, however, when the case was converted to a Chapter 7 liquidation a few weeks later. The Chapter 7 trustee, who was appointed only after the bankruptcy court had found that "Central Mfg. Inc." and "Stealth Industries, Inc." were nothing but alter egos for Stoller, promptly sought and received approval to act on behalf of these "corporations" in his "capacity as the sole shareholder." Over the next several months, with Google's motion concerning the bankruptcy stay in limbo, Google and the Chapter 7 trustee negotiated an agreement committing "Central Mfg. Inc." and "Stealth Industries, Inc." to admit that they had violated the Lanham Act through false advertising, *see* 15 U.S.C. § 1125(a)(1)(B); engaged in racketeering, *see* 18 U.S.C. §§ 1962, 1964(c); and engaged in unfair competition under state law. These two "corporations" would consent to a permanent injunction barring "their officers, directors, principals, agents, servants, employees, successors, assigns, parents, subsidiaries and affiliates and those acting on their behalf or in concert or participation with them" — for all practical purposes, Stoller — from further harassing Google. Significantly, the trustee, on behalf of "Central Mfg. Inc.," agreed to withdraw two matters concerning Google that Stoller had filed with the PTO or the Trademark Trial and Appeal Board using the names "Central Mfg. Inc." or "Central Mfg. Co. (Inc.)." In return Google would release Stoller's bankruptcy estate and the trustee, but not Stoller, from all damages arising from its proposed claims. The trustee and Google apparently encouraged Stoller to join this agreement, but he declined.

In December 2006 the Chapter 7 trustee asked the bankruptcy court for approval to finalize this proposed agreement. The court granted authorization on December 5 and modified the bankruptcy stay, "to the extent applicable," so that the trustee could proceed. Then on January 18, 2007, the bankruptcy court took up Google's motion for relief from the stay, which had been pending since August. The court authorized Google to file the suit

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"described in the Motion" but directed the company to seek leave of court before attempting to collect any monetary judgment obtained against Stoller personally. One day later Google filed suit in the district court against "Central Mfg. Inc." and "Stealth Industries, Inc." but not Stoller or the Chapter 7 trustee. The complaint replicates the suit Google "described in the Motion" for relief from the stay except that Stoller had been dropped as the lead defendant and all references to him throughout the complaint as "Defendant Stoller" had been replaced with "Stoller." On almost every one of its 25 pages the complaint links Stoller with the two "corporate" defendants or what Google identifies as their assumed names: "Central Mfg. Co.," "Central Mfg. Co. (Inc.)," "Central Manufacturing Company, Inc.," "Central Mfg. Co. of Illinois," "Rentamark," and "Rentamark.com."

Stoller moved to intervene, *see* Fed. R. Civ. P. 24(a), (b), arguing that, as the former sole shareholder of the "corporate" defendants and the person Google alleged was responsible for their unlawful conduct, he had a substantial interest in the lawsuit. And, he continued, given the bankruptcy court's finding that individually he was "indistinguishable" from "Central Mfg. Inc." and "Stealth Industries, Inc.," his interest would be impaired and not adequately represented unless he was permitted to intervene.<sup>1</sup> The bankruptcy court, in denying Stoller's objection to approval of the Chapter 7 trustee's agreement with Google, had told him that he should move to intervene when Google filed the lawsuit contemplated by that agreement, but both the trustee and Google opposed his motion.

The district court denied Stoller's motion. The court concluded that Stoller could not intervene as of right because, according to the court, he did not have a "direct, significant legally protectable interest" in the suit. The court reasoned that Stoller was acting as president of the "corporate" defendants when he undertook the actions described in the complaint, and that as a result of the bankruptcy case he no longer held a stake in those businesses. The court also rejected Stoller's alternative argument for permissive intervention, reasoning that allowing him to get involved "would frustrate the parties' efforts to resolve this matter by settlement." Three days later the district court approved the settlement agreed to by Google and the trustee before the suit was filed and entered the permanent injunction contemplated by that agreement.

## II.

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<sup>1</sup> Stoller filed two motions to intervene, but for purposes here we treat them as one.



Nos. 07-1569, 07-1612 &amp; 07-1651

Page 5

We have consolidated Stoller's appeals from the denial of his motion to intervene and from the final judgment in the lawsuit. See *In the Matter of Synthroid Marketing Litigation*, 264 F.3d 712, 715-16 (7th Cir. 2001). On appeal he essentially argues that the district court erred in keeping him out of the lawsuit because he and the "corporate" defendants are indistinguishable and thus he is the real party in interest. He also contends that the Chapter 7 trustee did not have authority to act on behalf of "Central Mfg. Inc." or "Stealth Industries, Inc." Google has filed a brief in defense of its judgment, but the trustee is not participating in these appeals.

Google and the trustee have both taken litigation positions that appear to us internally inconsistent. The premise of Google's lawsuit is that "Central Mfg. Inc." and "Stealth Industries, Inc." are shams that Stoller hides behind to extort legitimate enterprises, yet Google has named only those two "corporations" as defendants and has purposely kept Stoller out of the litigation. Google has not named the trustee as a defendant in Stoller's stead, so the corporate legitimacy of the two names that Google has sued is a significant issue. On the other hand, the trustee entered the bankruptcy case after the bankruptcy court had all but declared that "Central Mfg. Inc." and "Stealth Industries, Inc." never were anything but alter egos of Stoller in his individual capacity, but the trustee has assumed in dealing with Google that they are legal entities distinct from Stoller. So it is far from certain that Google has sued, or "won" a judgment against, anyone.

If the named defendants really are "wholly owned corporations" and not just trade names through which Stoller conducts business as an individual, then the stock became part of his bankruptcy estate. But taking control of a debtor's stock interest in a legitimate corporation typically means that a trustee "stands in the shoes of an ordinary shareholder." *In re Reeves*, 65 F.3d 670, 675 (8th Cir. 1995); see *Fowler v. Shadel*, 400 F.3d 1016, 1019 (7th Cir. 2005); *In re Brose*, 339 B.R. 708, 713 (Bankr. D. Minn. 2006); *In re Russell*, 121 B.R. 16, 17-18 (Bankr. W.D. Ark. 1990). Here, though, as far as the record shows, the Chapter 7 trustee no more conceptualized "Central Mfg. Inc." and "Stealth Industries, Inc." as real entities than did Stoller.

And presumably that is because the bankruptcy court had found both to be sham corporations that are "indistinguishable" from Stoller in his individual capacity. The absence of a separate identity is why the bankruptcy court authorized the trustee to disregard the "Inc." and deal with assets titled in either name as if they were held by Stoller directly. See *In re Eufaula Enters., Inc.*, 565 F.2d 1157, 1161 (10th Cir. 1977); *In re Mass*, 178 B.R. 626, 630 (M.D. Pa. 1995); *In re Baker*, 68 B.R. 360, 363-64 (Bankr. D. Or. 1986); *In re Crabtree*, 39 B.R. 718, 723-26 (Bankr. E.D. Tenn. 1984). Google, though, did not sue the trustee as the representative of the estate. See 11 U.S.C. § 323(a); *Bellini Imports, Ltd. v. Mason & Dixon Lines, Inc.*, 944 F.2d 199, (4th Cir. 1991). Instead Google sued what the bankruptcy

Nos. 07-1569, 07-1612 &amp; 07-1651

Page 6

court had already found were names, not legal entities, which normally renders a suit void *ab initio*. See *Palen v. Daewoo Motor Co.*, 832 N.E.2d 173, 185 (Ill. App. Ct. 2005); *Bowers v. Du Page County Reg'l Bd. of Sch. Trs. Dist. No. 4*, 539 N.E.2d 246, 250 (Ill. App. Ct. 1989); *Tyler v. J.C. Penney Co.*, 496 N.E.2d 323, 327 (Ill. App. Ct. 1986). We find it hard to believe that Google actually wanted an injunction against defendants that do not exist unless it was trying to get at Stoller indirectly. The complaint is replete with allegations of what Stoller did under the guise of the named defendants, making it clear that Google really wanted to stop Stoller. This would seem to make Stoller the real defendant in this case.

But that is not all. As far as this record shows, Google has taken the position that its claims against Stoller and his "corporations" did not accrue until after the bankruptcy case commenced. If that is so, then the involvement of the Chapter 7 trustee is questionable. Claims that arise before a debtor files bankruptcy follow the estate. See *In re Witko*, 374 F.3d 1040, 1042 (11th Cir. 2004); *In re Polis*, 217 F.3d 899, 901-02 (7th Cir. 2000); *In re Forbes*, 215 B.R. 183, 190 (B.A.P. 8th Cir. 1997). The bankruptcy trustee, as representative of the estate, has the exclusive power to prosecute or defend them. See 11 U.S.C. § 323(b); *Biesek v. Soo Line R.R. Co.*, 440 F.3d 410, 413 (7th Cir. 2006); *Cable v. Ioy Tech State Coll.*, 200 F.3d 467, 472 (7th Cir. 1999); *In re New Era, Inc.*, 135 F.3d 1206, 1209 (7th Cir. 1998). But a cause of action arising after the bankruptcy estate is created belongs to the debtor, and normally the property of a Chapter 7 estate in a case that was converted from a Chapter 13 is determined by the debtor's interest at the time the Chapter 13 case was filed, not when it was converted. See 11 U.S.C. § 348(f)(1)(A); *In re Alexander*, 236 F.3d 431, 433 (8th Cir. 2000); *In re Stamm*, 222 F.3d 216 (5th Cir. 2000); *In re Rosenberg*, 303 B.R. 172, 176 (B.A.P. 8th Cir. 2004) (holding that Chapter 7 debtor's wrongful-termination claim against employer arose after failed Chapter 13 case was filed and thus was not property of Chapter 7 estate); *Farmer v. Taco Bell Corp.*, 242 B.R. 435, 436, 440 (W.D. Tenn. 1999) (holding that tort claim arising out of slip-and-fall that occurred after failed Chapter 13 case was filed but before conversion to Chapter 7 was not part of Chapter 7 estate and belonged to debtor).

Google alleges that it was November 2005 when Stoller first asked the Trademark Trial and Appeal Board to extend the deadline for receiving oppositions to Google's application to register its GOOGLE mark. And, according to Google, it was two days later when Stoller first communicated with the company about his supposed superior right to that mark. Both actions preceded Stoller's Chapter 13 filing by about a month. But in the motion asking the bankruptcy court to declare its proposed suit to be outside the scope of the stay, and again during a hearing on that motion, Google insisted that all of its claims arose postpetition. Google maintained that its Lanham Act claim, its racketeering claim, and its unfair-competition claim all accrued after December 2005. Indeed, the complaint carefully lays out a time line pointing out each letter, e-mail, and fax Google received from Stoller beginning in February 2006, and messages posted on Stoller's website that Google

Nos. 07-1569, 07-1612 & 07-1651

Page 7

claims are false, beginning in April 2006 and continuing until the complaint was filed in January 2007. So if Google is correct, then it would seem that its suit involves postpetition claims against Stoller, not his bankruptcy estate.

Accordingly, we vacate the final judgment issued on March 15, 2007, and remand for reconsideration of Stoller's motion to intervene. We will leave for the district court to resolve in the first instance whether "Central Mfg. Inc." and "Stealth Industries, Inc." are entities that are subject to suit, whether and under what circumstances Google's suit in its present form can proceed without Stoller if they are not, and whether any of the unlawful conduct Google alleges gave rise to a claim that even involves the Chapter 7 estate. We remind Stoller, however, that he remains subject to the order we entered pursuant to *Support Systems Int'l, Inc. v. Mack*, 45 F.3d 185, 186 (7th Cir. 1995), directing that all federal courts in this circuit return unfiled any papers he submits directly or indirectly unless and until he pays a \$10,000 fine we imposed against him in August 2007. See *Google, Inc. v. Central Manufacturing, Inc.*, Nos. 07-1569, 07-1612 & 07-1651 (7th Cir. Aug. 23, 2007). At this point Stoller has a motion to intervene, but if on remand this litigation continues and the district court allows Stoller to intervene, he will have to pay the outstanding sanction or, as a practical matter, face certain default.

The rulings on the motions to intervene and the final judgment are VACATED, and the case is REMANDED for further proceedings.

PR

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

**FILED**  
JUL 11 2008  
Jul 11, 2008  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

GOOGLE, INC., )  
)  
Plaintiff )  
)  
v. )  
)  
CENTRAL MFG. INC., et al., )  
)  
Defendants. )

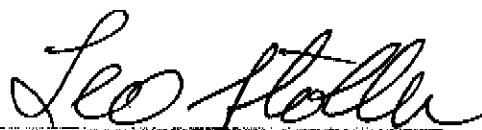
Case No: 1:07-cv-00385  
Honorable Virginia J. Kendall

MOTION TO FILE REPLY INSTANTER

NOW COMES LEO STOLLER, *pro se*, and states as follows:

STOLLER'S reply brief was due on July 7, 2008. Because of the 4<sup>th</sup> of July holiday, STOLLER was unable to file his reply brief on July 7<sup>th</sup>. STOLLER requests leave of Court to file his reply brief *instanter*.

Respectfully submitted,



Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

Date: July 11, 2008

BR

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

RECEIVED

JUL 11 2008  
Michael W. Dobbins  
CLERK, U.S. DISTRICT COURT

GOOGLE, INC., )  
)  
Plaintiff )  
)  
v. )  
)  
CENTRAL MFG. INC., et al., )  
)  
Defendants. )

Case No: 1:07-cv-00385  
Honorable Virginia J. Kendall

REPLY TO GOOGLE'S RESPONSE TO SUPPLEMENT  
TO MOTION TO INTERVENE

NOW COMES LEO STOLLER, *pro se*, and in reply to GOOGLE'S Response to Supplement to Motion to Intervene, states as follows:

The Appellate Court issued a decision on April 2, 2008, remanding this case to Judge Virginia Kendall to decide whether or not LEO STOLLER has a right to intervene. Nowhere in the April 2, 2008 decision does it state that this Court must resolve whether STOLLER'S corporations are "sham corporations". There is no evidence presented before this Court to make any determination as to whether or not CENTRAL MFG. INC. and STEALTH INDUSTRIES, INC. are sham corporations. The franchise fees were paid to the Secretary of State of Delaware for these corporations for over 20 years, and the corporations were valid corporations. It is not uncommon for a one person, small business corporation run by one individual, however, to have the business activities of the corporations indistinguishable from that of the one person running those corporations.

Judge Jack Schmetterer, the bankruptcy Judge, found that STOLLER and his corporations were essentially indistinguishable. Counsel for GOOGLE stated in open court before Judge Schmetterer that STOLLER and his corporations are indistinguishable.

STOLLER has argued that the underlying RICO action filed by GOOGLE, INC. is frivolous on its face. The Appellate Court stated in the April 2, 2008 "Google thought its odds would be better by suing, not Stoller, but two 'corporations' that Google surmised were alter-egos of Stoller." However, the fact that STOLLER'S corporations were alter-egos of STOLLER and/or indistinguishable from the sole person that ran those corporations, does not mean *per se* that the corporations were sham corporations.

Furthermore, the Seventh Circuit found that Google's civil RICO complaint "replicates the suit Google 'described in the Motion' for relief from the stay except that Stoller had been dropped as the lead defendant and all references to him throughout the complaint as 'Defendant Stoller' had been replaced with "Stoller." On almost every one of its 25 pages the complaint links Stoller with the two 'corporate' defendants or what Google identifies as their assumed names: 'Central Mfg. Co.,' "Central Mfg. Co. (Inc.),' 'Central Manufacturing Company, Inc.,' 'Central Mfg. Co. of Illinois,' 'Rentamark,' and 'Rentamark.com.'" ... "The complaint is replete with allegations of what Stoller did under the guise of the named defendants, making it clear that Google really wanted to stop Stoller. This would seem to make Stoller the real defendant in this case."

STOLLER has born the burden of showing all four criteria for intervention as of right, including by proving that he has an interest relating to the property or transaction which is the subject of the action. Reid L. v. Illinois State Bd. Of Educ., 289 F.3d 1009, 1017 (7<sup>th</sup> Cir. 2002).

It is not necessary for an intervenor to prove that corporate defendants are mere alter-egos of the officer of the corporations that is being sued in order to establish a right to intervene. Parties are

routinely permitted to intervene in cases where they can demonstrate that they have an interest relating to the property or transaction which is the subject of the action. Heartwood, Inc. v. U.S. Forest Service, Inc., 316 F.2d 694, 700 (7<sup>th</sup> Cir. 2003).

Moreover, STOLLER has shown standing and can show independent jurisdiction. As a result, in the alternative, justice would be best served if this Court granted STOLLER permissive intervention. Security Inc. Co. v. Hartford v. Schipporict, Inc., 69 F.3d 1377, 1381 (7<sup>th</sup> Cir. 1995) (proposed intervener has to demonstrate that there is (1) common question of law or fact and (2) independent jurisdiction for permissive intervention under Rule 24(b)).

GOOGLE, INC. has waived its right to object to STOLLER'S intervention because GOOGLE'S counsel made a damning admission in open court before Judge Schmetterer where he stated that Stoller and his corporations are indistinguishable. Secondly, Judge Schmetterer, in the same bankruptcy case, stated in open court to Stoller "You have a right, I suppose, to seek to intervene in that case ..." STOLLER incorporates the Seventh Circuit appeal brief herein as if fully copies and attached hereto, which is marked as Exhibit 1, attached to Google's Response to Supplement to Motion to Intervene. As well as Stoller's reply brief, marked as Exhibit 2, attached to Google's Response to Supplement to Motion to Intervene.

#### SUMMARY

STOLLER has established that he has a right to intervene as a matter of right and/or as permissive intervention. It is not necessary, nor is there any sufficient evidence presented before this Court for this Court to rule that STOLLER'S corporations were shams, nor is there any element in any case that has ever been cited which states that a party must establish that the corporate defendants are shams in order to permit a party to intervene. STOLLER has established that he has a

protectable interest in the lawsuit and should be granted the right for intervention and/or permissive intervention.

WHEREFORE, STOLLER prays that this Court grant STOLLER'S motion to intervene.

Respectfully submitted,

A handwritten signature in cursive script that reads "Leo Stoller". The signature is written in black ink and is positioned above a horizontal line.

Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

Date: July 11, 2008



**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.2.1  
Eastern Division**

Google Inc

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, July 14, 2008:

MINUTE entry before the Honorable Virginia M. Kendall:Mr. Stoller's motion to file reply instanter [103] is granted. Mailed notice(jms, )

**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](http://www.ilnd.uscourts.gov).

BR

JULY 14, 2008

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

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

RECEIVED

JUL 11 2008  
MICHAE W. DOBBINS  
CLERK, U.S. DISTRICT COURT

GOOGLE, INC., )  
)  
Plaintiff )  
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v. )  
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CENTRAL MFG. INC., et al., )  
)  
Defendants. )

Case No: 1:07-cv-00385  
Honorable Virginia J. Kendall

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TO MOTION TO INTERVENE

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Judge Jack Schmetterer, the bankruptcy Judge, found that STOLLER and his corporations were essentially indistinguishable. Counsel for GOOGLE stated in open court before Judge Schmetterer that STOLLER and his corporations are indistinguishable.

STOLLER has argued that the underlying RICO action filed by GOOGLE, INC. is frivolous on its face. The Appellate Court stated in the April 2, 2008 "Google thought its odds would be better by suing, not Stoller, but two 'corporations' that Google surmised were alter-egos of Stoller." However, the fact that STOLLER'S corporations were alter-egos of STOLLER and/or indistinguishable from the sole person that ran those corporations, does not mean *per se* that the corporations were sham corporations.

Furthermore, the Seventh Circuit found that Google's civil RICO complaint "replicates the suit Google 'described in the Motion' for relief from the stay except that Stoller had been dropped as the lead defendant and all references to him throughout the complaint as 'Defendant Stoller' had been replaced with "Stoller." On almost every one of its 25 pages the complaint links Stoller with the two 'corporate' defendants or what Google identifies as their assumed names: 'Central Mfg. Co.,' "Central Mfg. Co. (Inc.),' 'Central Manufacturing Company, Inc.,' 'Central Mfg. Co. of Illinois,' 'Rentamark,' and 'Rentamark.com.'" ... "The complaint is replete with allegations of what Stoller did under the guise of the named defendants, making it clear that Google really wanted to stop Stoller. This would seem to make Stoller the real defendant in this case."

STOLLER has born the burden of showing all four criteria for intervention as of right, including by proving that he has an interest relating to the property or transaction which is the subject of the action. Reid L. v. Illinois State Bd. Of Educ., 289 F.3d 1009, 1017 (7<sup>th</sup> Cir. 2002).

It is not necessary for an intervenor to prove that corporate defendants are mere alter-egos of the officer of the corporations that is being sued in order to establish a right to intervene. Parties are

routinely permitted to intervene in cases where they can demonstrate that they have an interest relating to the property or transaction which is the subject of the action. Heartwood, Inc. v. U.S. Forest Service, Inc., 316 F.2d 694, 700 (7<sup>th</sup> Cir. 2003).

Moreover, STOLLER has shown standing and can show independent jurisdiction. As a result, in the alternative, justice would be best served if this Court granted STOLLER permissive intervention. Security Inc. Co. v. Hartford v. Schipporict, Inc., 69 F.3d 1377, 1381 (7<sup>th</sup> Cir. 1995) (proposed intervener has to demonstrate that there is (1) common question of law or fact and (2) independent jurisdiction for permissive intervention under Rule 24(b)).

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#### SUMMARY

STOLLER has established that he has a right to intervene as a matter of right and/or as permissive intervention. It is not necessary, nor is there any sufficient evidence presented before this Court for this Court to rule that STOLLER'S corporations were shams, nor is there any element in any case that has ever been cited which states that a party must establish that the corporate defendants are shams in order to permit a party to intervene. STOLLER has established that he has a

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WHEREFORE, STOLLER prays that this Court grant STOLLER'S motion to intervene.

Respectfully submitted,

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Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

Date: July 11, 2008

**United States District Court, Northern District of Illinois**

<b>Name of Assigned Judge or Magistrate Judge</b>	Virginia M. Kendall	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	07 C 385	<b>DATE</b>	3/31/2009
<b>CASE TITLE</b>	GOOGLE INC. vs. CENTRAL MFG. INC., ET AL		

**DOCKET ENTRY TEXT**

Stoller's Motion to Suspend [97],[99] is denied without prejudice.

■ [ For further details see text below.]

Docketing to mail notices.

**STATEMENT**

Plaintiff Google Inc. ("Google") filed a civil RICO action against Defendants Central Mfg. Inc. a/k/a Central Mfg. Co. a/k/a Central Mfg. Co. (Inc.) a/k/a Central Manufacturing Company Inc. a/k/a Central Mfg. Co. of Illinois and Stealth Industries, Inc. a/k/a Rentamark a/k/a Rentamark.com (collectively, "Defendants") alleging, among other things, that Defendants and their purported principal, Leo Stoller ("Stoller"), were engaged in a scheme of falsely claiming trademark rights for the purpose of attempting to extort money from legitimate commercial actors.

Stoller filed a Motion to Intervene in this action on February 6, 2007, arguing that: (1) he was the sole shareholder of Defendants; (2) he was the party that filed a petition for cancellation of the Google trademark registration; (3) he was the party that communicated with Google's counsel regarding the registerability controversy; (4) he was the party that claimed rights in and to the Google trademark; and (5) absent his involvement in this case, the corporate defendants will not be adequately represented. This Court denied Stoller's Motion, finding that he was entitled to neither intervene as of right nor permissive. Thereafter, this Court entered a permanent injunction and final judgment in the case, and Stoller appealed both the denial of his Motion to Intervene and the Final Judgment. The United States Court of Appeals for the Seventh Circuit vacated the final judgment and remanded Stoller's Motion to Intervene for reconsideration by this Court.

On June 2, 2008, after remand, Stoller filed a Motion to Suspend and on June 25, 2008, he filed a second Motion to Suspend containing identical arguments. Stoller argues that rather than proceeding with this case, this Court should order the TTAB to render a decision on Stoller's proceedings to cancel Google's trademark registration. A TTAB decision in his favor, he argues, would render the action in this Court moot, and a decision by this Court would improperly short circuit the administrative proceeding. Stoller has not identified - and this Court is not aware of - any procedural mechanism by which a non-party may file a motion to suspend ongoing proceedings without successfully intervening therein. Here the Seventh Circuit remanded the issue of whether

**STATEMENT**

Stoller may intervene in this action, but this Court has not yet rendered a decision. Accordingly, Stoller's Motion to Suspend is denied without prejudice. Stoller may refile the motion if this Court allows him to intervene on remand.

**United States District Court, Northern District of Illinois**

<b>Name of Assigned Judge or Magistrate Judge</b>	Virginia M. Kendall	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	07 C 385	<b>DATE</b>	6/30/2009
<b>CASE TITLE</b>	GOOGLE INC vs. CENTRAL MFG. INC et al		

**DOCKET ENTRY TEXT**

Movant Stoller's motion to suspend is denied without prejudice. Movant Stoller may refile the motion if this Court allows him to intervene on remand.

■ [ For further details see text below.]

Notices mailed by Judicial staff.

**STATEMENT**

Plaintiff Google Inc. ("Google") filed a civil RICO action against Defendants Central Mfg. Inc. a/k/a Central Mfg. Co. a/k/a Central Mfg. Co. (Inc.) a/k/a Central Manufacturing Company Inc. a/k/a Central Mfg. Co. of Illinois and Stealth Industries, Inc. a/k/a Rentamark a/k/a Rentamark.com (collectively, "Defendants") alleging, among other things, that Defendants and their purported principal, Leo Stoller ("Stoller"), were engaged in a scheme of falsely claiming trademark rights for the purpose of attempting to extort money from legitimate commercial actors.

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**STATEMENT**

remanded the issue of whether Stoller may intervene in this action, but this Court has not yet rendered a decision. Accordingly, Stoller's Motion to Suspend is denied without prejudice. Stoller may refile the motion if this Court allows him to intervene on remand.

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.2.3  
Eastern Division**

Google Inc

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, August 17, 2009:

MINUTE entry before the Honorable Virginia M. Kendall: Stollers motion to Intervene is denied. The parties are directed to submit position papers regarding the extent to which Stollers corporations are subject to suit and when this case arose and as such the propriety of the involvement of the bankruptcy estate. The parties must submit such position papers by 9/9/2009. Mailed notice(jms, )

**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](http://www.ilnd.uscourts.gov).

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

Google, Inc.,	)	
	)	
	)	
Plaintiff,	)	Case No. 07 C 385
v.	)	
	)	Judge Virginia M. Kendall
Central Mfg. Inc. a/k/a Central Mfg. Co. a/k/a	)	
Central Mfg. Co (Inc.) a/k/a Central	)	
Manufacturing Company Inc. a/k/a Central Mfg.	)	
Co. of Illinois; and Stealth Industries, Inc. a/k/a	)	
Rentamark and a/k/a Rentamark.com,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

Plaintiff Google Inc. (“Google”) has filed this civil RICO action against Defendants Central Mfg. Inc. (“Central”) a/k/a Central Mfg. Co. a/k/a Central Mfg. Co.(Inc.) a/k/a Central Manufacturing Company Inc. a/k/a Central Mfg. Co. of Illinois and Stealth Industries, Inc. (“Rentamark”) a/k/a Rentamark a/k/a Rentamark.com (collectively, “Defendants”) alleging, among other things, that Defendants and their purported principal, Leo Stoller (“Stoller”), are engaged in a scheme of falsely claiming trademark rights for the purpose of attempting to extort money out of legitimate commercial actors. More specifically, Google alleges that Defendants aimed their continuing scheme in its direction by first seeking to oppose Google’s application for registration of the “Google” trademark based upon a fraudulent claim of common law rights in or to that mark and then sending settlement communications to Google that offered to resolve the “registerability controversy” if Google would, among other things, agree to: (1) abandon its trademark application;

(2) pay a 5% royalty for use of the “Google” mark; and (3) pay \$100,000.00 to Rentamark.com and acknowledge Rentamark.com’s exclusive ownership of the “Google” mark.

On December 20, 2005, Stoller filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code (the “Code”). On motion of one of Stoller’s creditors, Stoller’s bankruptcy case, styled *In re Stoller*, No. 05-64075 in the United States Bankruptcy Court for the Northern District of Illinois (the “Bankruptcy Court”), was converted to a case under Chapter 7 of the Code on September 1, 2006. The property of Stoller’s estate in bankruptcy includes, among other things, the stock and interests of incorporated and unincorporated businesses, including Stoller’s wholly-owned interest in the Defendants. On September 6, 2006, the United States Trustee for Region 11 appointed Richard M. Fogel (“Trustee”) as trustee to administer Stoller’s estate in bankruptcy.

Stoller filed a Motion to Intervene in this action on February 6, 2007 arguing that: (1) he was the sole shareholder of Defendants; (2) he was the party that filed a petition for cancellation of the Google trademark registration; (3) he was the party that communicated with Google’s counsel regarding the registerability controversy; (4) he was the party that claimed rights in and to the Google trademark; and (5) absent his involvement in this case, the corporate defendants would not be adequately represented. This Court denied Stoller’s Motion, finding that he could not intervene as of right because he had no direct, significant legal interest in the litigation; first, because Stoller’s companies had become part of his bankruptcy estate and therefore he held no interest in them, and second, because all his other assertions of right were contradicted by the record. In addition, this Court refused Stoller permissive intervention, noting Stoller’s renown as a vexatious litigant and that his intervention would frustrate the parties’ efforts to settle the matter. Thereafter, this Court

approved a settlement agreed to by Google and entered a permanent injunction and final judgment. Stoller appealed both the denial of his Motion to Intervene and the final judgment.

The Seventh Circuit vacated the final judgment and remanded Stoller's Motion to Intervene for reconsideration, noting that Stoller's corporations seemed to be mere alter egos of Stoller. Additionally, it directed this Court to consider: 1) whether Central Manufacturing Inc. and Stealth Industries, Inc. are subject to suit, considering that the Bankruptcy Court found that the bankruptcy court "all but declared" that CFI and Stealth were alter egos of Stoller;" and 2) whether the bankruptcy estate and trustee were properly involved in the case. That is, Google had taken the position in the bankruptcy court that this case arose after the bankruptcy estate was created, and if that was the case, it should go to the debtor, rather than to his bankruptcy estate.

After remand, Stoller filed a supplement to his Motion to Intervene, noting the Seventh Circuit's opinion and taking the position that he should be allowed to intervene because his corporations were his alter egos but still were in no way "sham corporations." For the reasons stated below, this Court again denies Stoller's Motion to Intervene.

#### **STANDARD OF REVIEW**

Under Rule 24 intervention may be as of right or it may be permissive. *See Heartwood v. U.S. Forest Serv., Inc.*, 316 F.3d 694, 7000 (7th Cir. 2003). A party seeking to intervene as of right must satisfy four requirements: (1) the motion to intervene must be timely; (2) the party seeking to intervene must claim an interest related to the property or transaction which is the subject of the action; (3) the party seeking to intervene must be so situated that the disposition of the action may as a practical matter impair or impede the party's ability to protect that interest; and (4) the existing parties must not be adequate representatives of the applicant's interest. *See Fed. R. Civ. P. 24(a)*;

*see also Skokaogon Chippewa Cmty v. Babbitt*, 214 F.3d 941, 945-46 (7th Cir. 2000). Failure to satisfy any one of the four requirements for intervention as of right is sufficient grounds to deny a motion to intervene. *See United States v. BDO Seidman*, 337 F.3d 802, 808 (7th Cir. 2003). Determinations on motions to intervene are highly fact-specific. *See Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995) *citing Shea v. Angulo*, 19 F.3d 343, 349 (7th Cir. 1994). This Court must accept as true all non-conclusory allegations in the motion to intervene. *See Id. citing Lake Investors Dev. Group v. Eglidi Dev. Group*, 715 F.2d 1256, 1258 (7th Cir. 1983). A motion to intervene as of right should not be dismissed unless “it appears to an absolute certainty that the intervener is not entitled to relief under any set of facts which could be proved under the complaint.” *Id.*

A party seeking to intervene in a case must assert an interest in the action that is a “direct, significant legally protectible” one. *Reich*, 64 F.3d at 322 *quoting Am. Nat’l Bank v. City of Chicago*, 865 F.2d 144, 146 (7<sup>th</sup> Cir. 1989). In the Seventh Circuit, this inquiry focuses “on the issues to be resolved by the litigation and whether the potential intervener has an interest in those issues.” *Id. citing Am. Nat’l Bank*, 865 F.2d at 147.

### **STOLLER’S ALLEGATIONS**

Stoller alleges in his Motion to Intervene that he is the sole shareholder and sole employee of the Defendants. *See Mtn. Intervene* at 1, 3. In addition, he alleges that it was he personally on behalf of the Defendants who claimed rights to Google’s trademark and brought the petition to cancel it. *See Id.* He further alleged that Google had previously petitioned the bankruptcy court to lift the automatic stay of litigation so that it could sue Stoller and that Google itself found that Stoller was an indispensable party to the proposed litigation. *See Id.* at 2. In support of this allegation, he

attached an order from the Bankruptcy Court granting Google's motion for order declaring its proposed suit to be outside the scope of stay or in the alternative, modifying the stay. *See Id.* at 6-7.

In his Motion, Stoller directly references and relies on the factual findings of the Bankruptcy Court in its decision converting Stoller's Chapter 13 bankruptcy proceeding to a Chapter 7 proceeding. There the Bankruptcy Court made detailed factual findings regarding the relationship between Stoller and his various corporations and other entities. *See In re Stoller*, 351 B.R. 605, 611-616 (N.D.Ill. 2006). Specifically, the Bankruptcy Court found that: 1) Stoller made all decisions for the entities; 2) Stoller testified that he was the "actual, controlling entity;" 3) all the entities were operated by Stoller at the same address; 4) the entities did not keep corporate books or records of finances; 5) the entities had no record of dividend payments; 6) Stoller owned all stock in the entities; 7) the entities had no officers other than Stoller; 7) Stoller referred to the entities' assets as his personal assets; and 8) Stoller commingled funds from all of the entities as well as his personal funds in a single bank account. *See Id.* at 616-17. Based on these findings, the Bankruptcy Court found that Stoller and his businesses are "indistinguishable." *See Id.* at 616.

In addition, Google's Complaint takes the position that Stoller was Defendants' principal, used the Defendants to harass other companies, and was responsible for the actions taken against Google. Google asserts that Stoller was the CEO and sole shareholder of the Defendants and that "Stoller conducted the activities complained of in interstate commerce." *See* Cmplt. at 10. Many of their statements implicate one defendant "and Stoller" or allege that a Defendant acted "through Stoller." *See, e.g.*, Cmplt. at 21 (c) ("Stoller initiated numerous proceedings in SI's name"); Cmplt. at 21(e) ("Stoller has obtained . . . the transfer of trademark applications . . .to Defendant Stealth and Defendant Central Mfg."); Cmplt. at 34-36 ("Central Mfg. And Stoller" opposed Google's

trademark application and Stoller signed the related letters and purported settlement agreements). Google attached documents such as various letters signed by Stoller on behalf of Stealth Industries, a July 14, 2006 letter from the Trademark Office to Stoller imposing sanctions against him, and letters to Google regarding their trademark and proposed settlement agreements signed by Stoller, as well as multiple articles about Stoller and several emails sent from Stoller to Google's attorney Michael Zeller to its Complaint.

### **DISCUSSION**

Generally, a corporation is a legal entity separate from its shareholders, directors and officers, but the corporate entity may be disregarded and the corporate veil pierced when the corporation is merely the alter ego of a "governing or dominant personality." *Semande v. Estes*, 871 N.E.2d 268, 271 (Ill.App.Ct. 2007) citing *People v. V & M Indus.*, 700 N.E.2d 746, 751 (Ill.App.Ct. 1998). Put differently, the Court can in some circumstances disregard the corporate form because it is merely a "dummy or sham" for another dominating entity. See *Cosgrove Dist., Inc. v. Haff*, 798 N.E.2d 139, 141 (Ill.App.Ct. 2003) citing *Jacobsen v. Buffalo Rock Shooters Supply, Inc.*, 664 N.E.2d 328, 331 (Ill.App.Ct. 1996). This is essentially what Stoller asks the Court to do here. That is, he argues that his corporations have no existence separate from him and therefore he is the true party of interest in this litigation.

The Court looks to a number of factors in determining whether to disregard the corporate form, including: "failure to issue stock; failure to observe corporate formalities; nonpayment of dividends; insolvency of the debtor corporation; nonfunctioning of the other officers or directors; absence of corporate records; commingling of funds; diversion of assets from the corporation by or to a shareholder; failure to maintain arms-length relationships among related entities; and whether



the corporation is a mere facade for the operation of the dominant shareholders.” *Id.* Here, according to Stoller’s allegations, he owns all the stock of the corporations and is their only officer. He commingles funding between corporations and with his own money and treats the commingled funds as his personal assets. He observes no formalities - he keeps no records and makes all decisions for the corporations himself. The allegations here, which this Court must take as true, establish that Stoller’s corporations are his alter egos. They are mere facades for their dominant, and for that matter only, shareholder, Stoller who uses them to carry on his personal business.

Although Stoller’s corporations appear to be shams, Stoller may not intervene as of right. In moving to intervene on the basis that his interests are affected because his alter ego corporations are involved in the suit, Stoller asks this Court to “pierce the corporate veils” to his benefit. This doctrine applies only where an individual uses the corporation as an instrumentality to perpetrate fraud or injustice on a third party. *See In re Rehab. of Centaur Ins. Co.*, 632 N.E.2d 1015, 1018 (Ill. 1994). Piercing the corporate veil is utilized only to protect third parties who have relied on the existence of the separate corporate entity, not for the benefit of the corporation itself or its shareholders. *See Semande*, 871 N.E.2d at 271 *citing Centaur*, 632 N.E.2d at 173; *see also Trossman v. Philipsborn*, 869 N.E.2d 1147, 1174 (Ill.App.Ct. 2007) (*Centaur* not limited to its specific facts but rather rejects the piercing of the corporate veil to benefit shareholders). This is because an individual should not be allowed to adopt the corporate form for his own protection and then disregard it when it is to his advantage to do so. *See Id.* at 271-72 *citing Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946) (corporate form will not be disregarded where those in control have deliberately adopted it to secure its advantages); *see also Main Bank of Chicago v. Baker*, 427 N.E.2d 94, 102 (Ill. 1981) (same).

Here, Stoller asks this Court to allow him to intervene because his corporations, which have been sued, are his alter egos, indistinguishable from him, and he therefore has a direct interest in the suit. According to Google, Stoller used his corporations as a means by which to harass trademark holders and applicants. Stoller now wishes to intervene in this action against his corporations and therefore asks this Court to pierce the veils of his corporations to his advantage. Such a result would go against the policy justifying piercing the corporate veil, and as such, this Court will not find that Stoller has a direct interest in this suit against his corporations simply because they are arguably his alter egos. *See Semande*, 871 N.E.2d at 272 (corporate veil not pierced to benefit of director in part because director did not stand in the position of an innocent third party creditor).

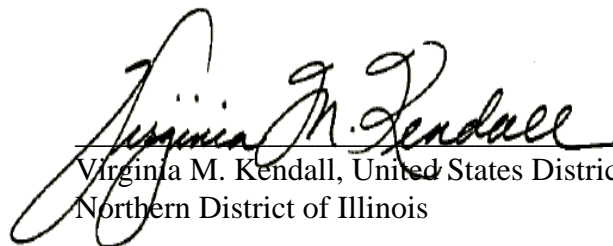
Having found that Stoller has no right to intervene based on his alleged identity with his corporations, this Court returns to its reasoning in its prior opinion. That is, the Defendants are now part of Stoller's Chapter 7 bankruptcy estate. Accordingly, Stoller no longer holds any interest in the Defendants. *See Spenlinhauer v. O'Donnell*, 261 F.3d 113, 118 (1st Cir. 2001) ("The advent of the chapter 7 estate and the appointment of the chapter 7 trustee divest the chapter 7 debtor of all right, title and interest in nonexempt property of the estate at the commencement of the case"). At this juncture, it is the Trustee, and not Stoller, that has the authority to administer all aspects of Defendants' business, including this lawsuit. *See Cable v. Ivy Tech State Coll.*, 200 F.3d 467, 472 (7th Cir. 1999) (in Chapter 7 bankruptcy proceedings, "only the trustee has standing to prosecute or defend a claim belonging to the estate") (emphasis in original) *citing In re New Era, Inc.*, 135 F.3d 1206, 1209 (7th Cir. 1998) (for the proposition that "Chapter 7 trustee has exclusive right to represent debtor in court"). Therefore, because Stoller has no right to intervene by piercing the corporate veil that he himself erected and because his ownership interests passed to his bankruptcy

estate, this Court again finds that Stoller has no direct interest in this litigation and therefore denies his Motion to Intervene.

**CONCLUSION AND ORDER**

For the reasons stated above, Stoller's Motion to Intervene is denied. This does not, however, fully resolve the issues presented to this Court on remand. In its opinion remanding this case, the Seventh Circuit first questioned whether Stoller's corporations are subject to suit absent Stoller's involvement. Second, it noted that causes of action that arise before a debtor files for bankruptcy follow his bankruptcy estate, whereas causes of action that arise after the creation of a bankruptcy estate belong to the debtor, and that despite the fact that Google here has sued the bankruptcy estate and dealt with the Trustee, it has taken the position in the bankruptcy court that this suit arose after Stoller filed for bankruptcy. Some facts, however, indicate that the cause of action actually arose before Stoller filed for bankruptcy. As such, the Seventh Circuit questioned whether the trustee and the bankruptcy estate were properly involved in this case. In order to resolve these issues before the case proceeds further, this Court directs the parties to submit position papers regarding the extent to which Stoller's corporations are subject to suit and when this case arose and as such the propriety of the involvement of the bankruptcy estate. The parties must submit such position papers within 21 days of this order.

So ordered.

  
\_\_\_\_\_  
Virginia M. Kendall, United States District Judge  
Northern District of Illinois

Date: August 17, 2009

CA

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

GOOGLE, INC., )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 CENTRAL MFG. INC., et al., )  
 )  
 Defendants. )

Case No: 1:07-cv-00385

Honorable Virginia J. Kendall

**FILED**  
J.N  
AUG 24 2009  
AUG 24 2009  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

MOTION FOR RECONSIDERATION

NOW COMES LEO STOLLER, and asks the Court to reconsider its opinion dated August 17, 2009, and states as follows:

1. This case went up on appeal to the Seventh Circuit Court of Appeals and the case was remanded to Judge Virginia M. Kendall to determine whether Leo Stoller had a right to intervene in the case, among other things.

2. Judge Kendall, in her decision, found:

"Plaintiff Google Inc. ("Google") has filed his civil RICO action against Defendants Central Mfg. Inc. ("Central") a/k/a Central Mfg. Co. a/k/a Central Mfg. Co. (Inc.) a/k/a Central Manufacturing Company Inc. a/k/a Central Mfg. Co. of Illinois and Stclth Industries, Inc. ("Rentamark") a/k/a Rentamark a/k/a Rentamark.com (collectively, "Defendants") alleging, among other things, that Defendants and their purported principal, Leo Stoller ("Stoller"), are engaged in a scheme of falsely claiming trademark rights for the purpose of attempting to extort money out of

legitimate commercial actors. More specifically, Google alleges that Defendants aimed their continuing scheme in its direction by first seeking to oppose Google's application for registration of the "Google" trademark based upon a fraudulent claim of common law rights in or to that mark and then sending settlement communications to Google that offered to resolve the "registerability controversy" if Google would, among other things, agree to: (1) abandon its trademark application" (2) pay a 5% royalty for use of the "Google" mark; and (3) pay \$100,000 to Rentamark.com and acknowledge Rentamark.com's exclusive ownership of the "Google" mark."

3. Stoller moved to intervene as a matter of right and/or permissive intervention. This Court denied Stoller's right to intervene as a matter of right.

4. A District Court's denial of intervention is automatically appealable to the Appellate Court. There is no question that this case will ultimately be resolved by the Seventh Circuit and/or the U.S. Supreme Court, whether Stoller brings the appeals or the Plaintiff brings the appeals.

5. Rather than filing an immediate appeal, Stoller has opted to give the Court an opportunity to reconsider its decision denying Stoller's right to intervene as a matter of right and to grant Stoller the right of permissive intervention.

#### Permissive Intervention

Federal Rule of Civil Procedure 23(b) sets forth the procedure for permissive intervention. According to that Rule, a court must evaluate a request for permissive intervention by considering "whether the intervention will unduly or prejudice the adjudication of the rights of the original parties". Fed. R. Civ. P. 23(b). A court should also "consider whether the applicant's input is likely to make a significant and useful contribution to the development of the underlying factual and legal

issues." James Wm. Moore, Moore's Federal Practice § 24.10 [2][b] (3d ed. 2006). Deciding whether to grant permissive intervention "is directed to the sound discretion of the district court." San Jose Mercury News, Inc. v. U.S. Dist. Court, 187 F.3d 1096, 1100 (9<sup>th</sup> Cir. 1999).

6. Leo Stoller has a protectable interest in this case which the existing parties may not adequately represent Stoller's interests. Prete v. Bradbury, 438 F.3d 949, 954 (9<sup>th</sup> Cir. 2006) (quoting United States v. Alisal Water Corp., 370 F.3d 915, 919 (9<sup>th</sup> Cir. 2004)). This Court in its first paragraph of its Memorandum Opinion and Order stated:

"Plaintiff Google Inc. ("Google") has filed his civil RICO action against Defendants Central Mfg. Inc. ("Central") a/k/a Central Mfg. Co. a/k/a Central Mfg. Co. (Inc.) a/k/a Central Manufacturing Company Inc. a/k/a Central Mfg. Co. of Illinois and Stealth Industries, Inc. ("Rentamark") a/k/a Rentamark a/k/a Rentamark.com (collectively, "Defendants") alleging, among other things, that Defendants and their purported principal, Leo Stoller ("Stoller"), are engaged in a scheme of falsely claiming trademark rights for the purpose of attempting to extort money out of legitimate commercial actors."

Leo Stoller is a nationally recognized trademark expert and has an interest and a right to protect his reputation independent of allegations raised by the Plaintiff against the corporate entities in this case. See attached true and correct copy of Leo Stoller's curriculum vita.

7. Stating that Leo Stoller is engaged in a scheme of falsely claiming trademark for the purpose of attempting to extort money out of legitimate corporate actors will be permanently damaging to Leo Stoller's 41 year trademark career. In addition, if a judgment is to stand against the corporate entities, it also involves Leo Stoller directly as the purported principal.

8. No matter who would be allowed to defend the existing Defendants, they would not adequately represent the interests of Leo Stoller. *Id.* The Trustee has already abrogated his right or responsibility of defending any of Leo Stoller's corporations in this case, or any other case. In fact, the Trustee, in the opinion of Leo Stoller, has breached his fiduciary duties to Leo Stoller's estate, by in one case conceding a \$950,000.00 judgment and stating that it was good for Stoller's estate.

9. It is clear from this record that a judgment against the corporate entities would have a direct, lasting and destructive impact on Leo Stoller's career, when the allegations made by the Plaintiff in this case are absolutely false, and Leo Stoller would like to have an opportunity to have his day in court which would present the evidence that would not only refute the false allegations, but subject the Plaintiff to counterclaims involving defamation, intentional infliction of emotion stress, conspiracy, aiding and abetting, civil racketeering and violations of § 1983 civil rights.

#### SUMMARY

10. Stoller is requesting that this Court reconsider its decision dated August 17, 2009, and to allow Stoller to intervene under permissive intervention because of the permanently damaging impact against the reputation of Leo Stoller. In the event that the Court should decide against Stoller's motion for reconsideration, Stoller requests that this Court grant Stoller's alternative motion to suspend this proceeding pending an immediate appeal to the Seventh Circuit of this Court's denial order.

11. Stoller is also requesting that this Court grant an extension of time to file the position paper that this Court requested pending the resolution of Stoller's motion for reconsideration and Stoller's appeal, if necessary, thereafter.

WHEREFORE, Stoller prays that this Court reconsider its Memorandum Opinion and Order of August 17, 2009, and grant Stoller the right for permissive intervention or intervention as of right, and or, in the alternative, to suspend this proceedings immediately pending Stoller's appeal to the Seventh Circuit Court of Appeals.



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Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

Date: August 22, 2009



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Print this page



**Mr. Leo Stoller**

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Email: [ldms4@hotmail.com](mailto:ldms4@hotmail.com)

ExpertStatus: NotRecrtable

CreatedDate: 10/3/2006

**Expertise:**

<b>Expert in Trademarks, trademark valuations, trademark litigation support services, trademark testimony</b>	
contributory infringement	Leo Stoller has been involved in over 60 more trademark infringement lawsuits over half of which involved "contributory infringement." Leo Stoller can identify who a contributory infringer is and testify to the same at trial or in a deposition. Likewise, Stoller can identify who is not a "contributory infringer."
conventional licensing	Leo Stoller has been a licensing agent and has drafted and engaged in the "conventional licensing" of products and services for over 30 years.
copyright copyright law	Leo Stoller has been engaged in copyrighting materials for over 30 years and also been involved in copyright infringement cases and has acted as an expert witness in same. He has been engaged with copyright law for over 30 years regarding the protection of works of art, manucripts, drawings etc.
copyright infringement	Leo Stoller has been involved in copyright law and copyright infringement as an expert for over 30 years
direct infringement	Leo Stoller has been engaged in trademark litigation of "direct infringers" for over 30 years. Stoller can identify them in legal proceedings and testify as an expert.
induced infringement	Leo Stoller can identify "induced infringement" claims and act as an expert witness at trial.
intellectual property	Leo Stoller is considered by the media as an expert in intellectual property issues. Stoller has been written up in most of the nations leading News Papers, including the New York Times regarding issues that involve "intellectual property". He is considered the nations leading intellectual property expert.
legal liability expert witness	Leo Stoller is a trademark expert who can identify at trial "legal liability" issues regarding the unauthorized use of intellectual property. Stoller is also the leading Right to Publicity Expert.
license	Leo Stoller is an expert on trademark licensing, drafting trademark licenses and testifying at court on a valid and/or or invalid trademark license. Stoller knows the elements of a valid license.
literal infringement	Leo Stoller has been involved in trademark infringement and intellectual property litigation for over 30 years and can testify to the claim of "literal infringement" in intellectual property cases.
royalty rate	Leo Stoller is an expert for over 30 years in the filed of trademarks, trademark licensing and can testify at trial as an expert as to what standard "royalty rate(s)" are or should be and can testify as to damages regarding the valuation of trademarks as it relates to the payment of "royalty rate(s).
trademark trademark law	Leo Stoller is considered a trademark expert. Stoller has prosecuted over 150 trademark applications. Prosecuted over 150 trademark oppositions and/or petition to cancel proceedings, and has been involved in over 60 trademark

	infringement lawsuits. There is no one in America today that has more knowledge as it relates to trademarks than Stoller according to the 25 year old trademark association American for the Enforcement of Intellectual Property Rights AEIPR. Leo Stoller is considered an expert in trademark law for 30 years. Stoller has been involve in over 60 trademark infringement lawsuits, trademark appeals and over 150 Oppositions and Petitions to Cancel Proceedings at the Trademark Trial and Appeal Board. Stoller has been written up in all of the national newspapers as a trademark expert including the New York Times.
trademark infringement	Leo Stoller has 30 years experience with trademark infingement matters. Stoller has been involved in over 60 trademark infringement district court cases. Stoller has prosecuted over 150 Oppositions and Petition to Cancel Trademarks as the Trademark Trial and Appeal Board and appeals with the Federal Circuit.
trademark survey	Leo Stoller is a nationally known trademark expert with over 30 years experience in trademark law, trademark infringement, and can provide trademark expert testimony, surveys relating to establish or not establish trademark infringement.
brand extension licensing	He has 30 ears experience in brand extension and licensing of brands to enhance the value of intellectual property.
brand extension licensing	He has 30 years experience in brand extension and licensing of brands to enhance the value of intellectual property.
intellectual fraud	He can detect "intellectual fraud" and related trademark, copy and patent fraud. He has been involved 30 years suing parties who have engaged in intellectual property "fraud"!
international licensing	He has been in the licensing of intellectual property in the U.S and in the world for 30 years. He has experience in "international licensing", can draft international license agreements.
legal malpractice	Leo Stoller has sued more lawyers for legal malpractice in Chicago, Illinois than any other party. Stoller can identify the elements necessary to properly plead, prove and win "legal Malpractice" cases.
licensing	Leo Stoller is the nations leading intellectual property licsning expert for over 30 years. Stoller has been written up in every major News Paper in the Country regarding his intellectual property experience.

**Education:**

Year	Degree	Subject	Institution
1967	BS	English, Speech	Mayville State College
1982	MA	Speech	North Dakota State University

**Work History:**

Begin	End	Employer	Department	Title	Responsibilities
1974		Rentamark.com		President	

**Career Accomplishments:**

*Associations/Societies:*

Americans for the Enforcement of Intellectual Property Rights, Americans for the Enforcement of Judicial Ethics and Americans for the Enforcement of Attorney Ethics

*Professional Appointments:*

Executive Director of Americans for the Enforcement of Intellectual Property Rights. Board President of Americans for the Enforcement of Attorney Ethics, Americans for the Enforcement of Judicial Ethics

*Awards/Recognition:*

**Intellectual Property Expert of the Year 2006**

*Publications and Patents:*

Published in the Chicago Law Bulletin

**Publications:**

Author	Year	Title	Publisher	Abstract
Leo Stoller	2008	Manual for the Pro Se Litigant	Dark Star	A manual for the Pro Se Litigant on how to file a local complaint in a state court and to proisecute the complaint thru appeals all the way to the United States Supreme Court. With a special section on How to Draft a Writ of Cert, a U.S. Supreme Court Appeal
Leo Stoller	2008	HOW TO RETAIN THE "RIGHT" ATTORNEY	Dark Star	A book on How to retain the "right" attorney. What questions to ask a prospective attorney to determine if he is the "best" attorney for your case.
Leo Stoller	2008	HOW TO FILE A PATENT	Dark Star	A manual on how to protect a parties intellectual property rights with a patent, trademark and/or copyright

**Consulting Services:**

Trademark consulting, Trademark valuations, Expert witness trademark testimony

Advise lawfirms on procederes for filing trademark infringement lawsuits, trademark oppositions, trademark cancelations

Provide brief writing services for legal professionals, appeal drafting, legal trademark research, testify at trial, provide trademark survey evidence, provide opinions on trademark damages and likelihood of confusion.

Drafting pleadings, complaints, discovery requests, motions for summary judgment, responding to same, drafting appeals to the Federal Court, drafting appeals to the U.S. Supreme Court

**Additional Experience:**

*Expert Witness Experience:*

30 years experience in trademark law, trademark licensing, trademark litigation, expert witness testimony

*Training/Seminars:*

Leo has trained people on trademarks, trademark licensing, trademark litigation, filing trademark applications, drafting trademark complaints at the Trademark Trial and Appeal Board. He has handled over 200 Oppositions and Petition to Cancel Proceedings at the trademark trial and appeal board.

*Vendor Selection:*

He has made numerous trips to Tiawan and China, lining up oem manufactures to produce new patented products, which he owns the patent on.

*Marketing Experience:*

Leo has worked with Sam Walton designing a large line of sporting goods products that were sold through Wal Mart, K-Mart, Sears and all of the leading retailers in the US.

*Other Relevant Experience:*

Leo has sucessfully prosecuted over 150 trademark applications at the Patent and Trademark Office. He has drafted and holds a US Patent on a tennis racket.

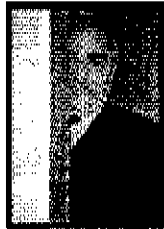
**Hobbies Interests:**

Reading, bike riding, Opera etc



Push-Button Publishin

Photo



[View Full Size](#)

# Leo Stoller

**Gender:** Male  
**Industry:** Law  
**Occupation:** Legal Ethics & Trademark Expert  
**Location:** Chicago : Illinois : United States

## User Stats

On Blogger Since	April 2006
Profile Views	3,648

## About Me

LEGAL ETHICS AND INTELLECTUAL PROPERTY EXPERT, valuations, expert witness testimony, trademark surveys, brief writer. Leo Stoller graduated from Mayville State College with a BS Degree and North Dakota State University, MASTERS DEGREE. Leo Stoller is the nation's most renowned Legal Ethics and Intellectual Property Entrepreneur with many years of experience in the field of brief writing, trademarks, licensing and enforcement, expert witness testimony, trademark valuation Expert and legal ethics expert. Leo Stoller has appeared on FOX NEWS, CBS and in numerous national news papers including the New York Times, Wall Street Journal, Chicago Sun Times etc and on many radio talk shows. Leo Stoller is ready to go to work for you: contact information: Leo Stoller, 7115 W. North Avenue #272, Oak Park, Illinois 60302. Email [ldins4@hotmail.com/](mailto:ldins4@hotmail.com/) Copyright Leo Stoller 2006, all rights reserved. I accept no liability for incorrect or inaccurate information appearing here. Use of this site is subject to our "terms of use" which is published here. Nothing can be duplicated without written permission. See you at the top!

## Interests

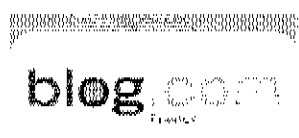
Trademarks etymology the lexicon chess history of war the law and changing the law to make it more equitable by writing legal briefs to convince appellate justices how the lower courts committed reversible error

## Favorite Movies

[30 Seconds over Tokyo](#)

## Favorite Music

Beethoven 5th and 9th Symphonies Ralph Vaughan Williams Fantasia on Greensleeves and favorite operas TOSCA and Madame Butterfly by Puccini



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### LEO STOLLER

**Name** Leo Stoller

**Location** CHICAGO

**Age**

**Interests** THE LAW--The purpose of this Blog is to exalt the law, by holding to the fundamental right of "Equal Justice" for all. It keeps "watch" on attorney and judicial misconduct issues, evolving trademark and constitutional law. It assures all people with the "good news" that in American "right" will prevail especially for those who "never" give-up "fighting" to obtain "justice". This site adheres to the Law and the Constitution as its authority.

**Open Description** Name: Leo Stoller Location: Chicago, Illinois, United States Leo Stoller is a LEGAL ETHICS AND INTELLECTUAL PROPERTY EXPERT who provides, valuations, expert witness testimony, trademark surveys, brief writer. Leo Stoller is The Executive Director of Americans for the Enforcement of Attorney Ethics (AEAE) a not for profit society "working for causes greater than itself since 1974!". Leo Stoller graduated from Mayville State University with a BS Degree and North Dakota State University, MASTERS DEGREE. Leo Stoller is the nation's most renowned Legal Ethics and Intellectual Property Entrepreneur with many years of experience in the field of brief writing, trademarks, licensing and enforcement, expert witness testimony, trademark valuation Expert and legal ethics expert. Leo Stoller has appeared on FOX NEWS, CBS and in numerous national news papers including the New York Times, Wall Street Journal, Chicago Sun Times etc and on many radio talk shows. Leo Stoller is ready to go to work for you: contact information: Leo Stoller, 7115 W. North Avenue #272, Oak Park, Illinois 60302. 312-645-4554 Email [ldms4@hotmail.com](mailto:ldms4@hotmail.com)/ Copyright Leo Stoller 2008, all rights reserved. This Blog has been published since 2008 and is non political. It adheres to the law and the Constitution as its authority. Leo Stoller accepts no liability for incorrect or inaccurate information appearing here. Use of this site is subject to our "terms of use" which is published here. Nothing can be duplicated without written permission. See you at the top! Interests: Trademarks, etymology, the lexicon, chess, history of war the law and changing the law to make it more equitable by writing legal briefs to convince appellate justices how the lower courts committed reversible error. This is not a legal site. Information on these pages is provided on a "best efforts" basis for interest only and does not constitute personal legal advice. Always discuss legal matters with your lawyer. Please read the site terms of use. If you do not like what is written here "don't come here!" This is a "private" legal news and opinion blog dedicated to the concept of "Equal Justice" for all! Litigation is War, Welcome to the Front...

**Blogs** LEO STOLLER

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

GOOGLE, INC.,	)	
	)	
Plaintiff	)	
	)	Case No: 1:07-cv-00385
v.	)	
	)	
CENTRAL MFG. INC., et al.,	)	Honorable Virginia J. Kendall
	)	
Defendants.	)	

**MOTION FOR AN EXTENSION OF TIME**

NOW COMES LEO STOLLER, and requests an extension of time, and states as follows:

1. Stoller filed a Motion for Reconsideration asking this Court to reconsider its decision of August 17, 2009.
2. The Court has also asked the parties to submit a position paper within 21 days.
3. Currently, Stoller is involved in an appeal before the Illinois Supreme Court. See attached August 4, 2009 from the Illinois Supreme Court. Stoller is also involved in six appeals before the Appellate Court, First Judicial District; two appeals before the Illinois Appellate Court, Second Judicial District; two appeals before the Ninth Circuit Court of Appeals; and two appeals before the Arizona State Court of Appeals, Division One; and an appeal before the Federal Circuit in Washington, D.C.
4. Consequently, Stoller is requesting an additional thirty (30) days to file a position paper.

5. In addition, Stoller is requesting that this Court stay the writing of any position paper pending Stoller's Motion for Reconsideration.

WHEREFORE, Stoller prays that this Court stay the writing of any position paper pending Stoller's Motion for Reconsideration, and/or in the alternative, to grant Stoller an additional thirty (30) days to draft a position paper.

---

Leo Stoller, *pro se*  
7115 W. North Avenue #272  
Oak Park, Illinois 60302  
(312) 545-4554

Date: August 22, 2009



SUPREME COURT OF ILLINOIS  
SUPREME COURT BUILDING  
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August 4, 2009

Mr. Leo Stoller  
7115 West North Avenue, # 272  
Oak Park, IL 60302

In Re: Stoller v. Appellate Court, First District  
108915 (1-08-3560, 1-09-0846)

Attn:

This office has received and filed as of August 3, 2009  
the following in the above entitled cause:

- \_\_\_\_\_ Petition for Leave to Appeal.
- \_\_\_\_\_ Motion for Extension of Time to File Petition.
- \_\_\_\_\_ Motion to File Petition Instantly.
- \_\_\_\_\_ Notice of Appeal (docketing statement due within 14 days).
- \_\_\_\_\_ Motion for Direct Appeal (Rule 302(b)).
- ✓ \_\_\_\_\_ Motion for Supervisory Order (Rule 383).
- \_\_\_\_\_ Motion for Mandamus (Rule 381).
- \_\_\_\_\_ Motion for Consolidation (Rule 384).

Please include the Supreme Court case number in all  
correspondence and documents.



UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – **CM/ECF LIVE, Ver 3.2.3**  
Eastern Division

Google Inc

Plaintiff,

v.

Case No.: 1:07-cv-00385

Honorable Virginia M. Kendall

Central Mfg. Inc., et al.

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, August 25, 2009:

MINUTE entry before the Honorable Virginia M. Kendall:Mr. Stoller's motion for reconsideration [111] is taken under advisement. Response is to be filed by 9/9/2009. Reply is to be filed by 9/16/2009. Mr. Stoller's motion for an extension of time to file his position brief pursuant to this court's order of 8/17/2009 [111] is granted in part. The parties are given to 9/30/2009 to file their position briefs on the extent to which Stollers corporations are subject to suit and when this case arose and as such the propriety of the involvement of the bankruptcy estate. Mailed notice(jms, )

**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.

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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.	)	
	)	
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.	)	

**GOOGLE'S RESPONSE TO MOTION FOR RECONSIDERATION**

Plaintiff Google Inc. ("Google") respectfully submits this Response to Leo Stoller's ("Stoller") Motion for Reconsideration (the "Motion").

**Preliminary Statement**

Stoller's Motion should be denied because he has again failed to produce any evidence demonstrating that he has a cognizable interest necessary to support intervention under the law, and allowing Stoller to intervene as a permissive matter would only result in harassment of the parties and thwart the parties' resolution of this case.

In the Motion, Stoller principally argues that adjudication of the allegations asserted against the corporate entity Defendants in this case will damage his alleged "reputation" of being a "nationally recognized trademark expert" and will allegedly damage his "41 year trademark career." Motion at 3-4. However, this argument fails to support a modification of the Court's August 17, 2009 Order (the "Order") denying Stoller's original Motion to Intervene. Even if one were to entertain the strained assumption that Stoller has a positive reputation that could even suffer damage -- although as this Court (like many others) has noted Stoller is "renown as a vexatious litigant" (Order at 2) -- reputational injury is not a cognizable interest that would support intervention of right under the law.

Further, Stoller has not carried his burden of satisfying the required elements for permissive intervention. Permitting Stoller to intervene would only serve to delay the resolution of the lawsuit. The stock and assets of the corporate entity Defendants have been sold to The Society for the Prevention of Trademark Abuse, LLC (the "SPTA") in a bankruptcy auction under the auspices of the Bankruptcy Court, and Google is currently in discussions with the SPTA to resolve this case. Allowing Stoller to intervene would only serve to derail or at least delay these efforts at settlement and prejudice both the Defendants and Google.

Stoller has failed to demonstrate the requirements for intervention of right and permissive intervention, and his Motion has failed to establish any legitimate basis for reconsideration. Stoller's Motion should be denied.<sup>1</sup>

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<sup>1</sup> To avoid burdening the Court with repetition of its prior briefing, Google respectfully incorporates its prior briefing on Stoller's attempts to intervene, including its Combined Opposition to Debtor Leo Stoller's Motions (1) to Intervene, (2) to Interplead, (3) to Suspend for Sixty Days to Retain Counsel for Defendants and (4) to Suspend Pending Appeal to Lift Automatic Stay for Google to Sue the Debtor, dated February 12, 2007; the accompanying February 12, 2007 Declaration of Michael T. Zeller and exhibits attached thereto; and Google's Response to Supplement to Motion to Intervene, dated June 30, 2008.

The Court should also deny Stoller's motion in the alternative to suspend this case pending appeal if this Court denies the Motion. As this Court has previously ruled, however, because Stoller has no right to intervene in this proceeding, he has no right to file any motion, let alone a stay motion, in this proceeding. Nor, in any event, has Stoller provided support for why such a request should be granted. Suspending this action pending appeal would only serve to delay the resolution of this case. The request should be rejected.

### Argument

#### **I. STOLLER HAS FAILED TO DEMONSTRATE HE HAS A LEGALLY COGNIZABLE INTEREST REQUIRED FOR INTERVENTION OF RIGHT**

The only purported interest that Stoller contends supports reconsideration of the Motion to Intervene is his purported "reputation" as a "trademark expert." Even apart from the argument's absurdity in light of this Court's, the Seventh Circuit's and many other Court's decisions repeatedly findings that Stoller's "reputation" is that of a vexatious litigant who has fabricated evidence and committed other acts of fraud and attempted fraud on the judicial system, Stoller's "reputation" -- whatever he imagines it to be -- is not the type of concrete, substantial interest that could support intervention of right.

By Stoller's reasoning, he could interject himself into almost any litigation he chooses by proclaiming some vague impact on his self-declared, and equally vague, claims about his supposed "reputation." As Courts have repeatedly held, however, purported reputational injury is an insufficient interest for intervention of right, including because it is not a direct, legally cognizable interest in the subject matter of the suit of the type necessary to permit intervention of right. People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205, 179 F.R.D. 551, 562 (N.D. Ill. 1998) (effect on "political reputation" not a legally cognizable interest for intervention of right); see also Fifth Third Bank of Western Ohio v. U.S., 52 Fed.Cl. 202, 206 (Ct. Cl. 2002) ("Rather than alleging any interest in these rights, Mr. Miller alleges that the same Government actions also constitute a taking of his employment and reputation. This is not the 'interest' protected by intervention of right under RCFC 24(a)(2) . . ."); Flynn v. Hubbard, 782 F.2d 1084, 1093 (1st Cir. 1986) ("reputation interest has not been found sufficient to require intervention as of right."); Sierra Club v. U.S. Army Corps of Eng'rs, 709 F.2d 175, 176-77 (2d Cir. 1983) (intervention denied because firm's concern that "its professional reputation is under attack" is not an interest relating to the subject of the action, and an adverse judgment would have, at most,

an indirect effect); Edmondson v. State of Nebraska, 383 F.2d 123, 127 (8th Cir. 1967) (mere fact that prison guard's reputation was injured by allegation of fraud was not enough to serve as basis for mandatory intervention by prison guard); Mac Sales Inc. v. E.I. Dupont De Nemours, 1995 WL 581790, at \*3 (E.D. La. 1995) (claimed injury to reputation is insufficient to support intervention as of right; "To hold otherwise would transform every proceeding that involved a determination of a witness's credibility into an invitation to intervene."); Calloway v. Westinghouse Elec. Corp., 115 F.R.D. 73 (M.D. Ga. 1987) (expert witness's reputation is insufficient interest for intervention as a matter of right).

Stoller thus has failed to demonstrate that he has an "interest relating to the property or transaction which is the subject of the action". Heartwood, Inc. v. U.S. Forest Serv., Inc., 316 F.3d 694, 700 (7th Cir. 2003). Because the burden of proof is on Stoller, the Motion should be denied for this reason alone. Reid L. v. Illinois State Bd. of Educ., 289 F.3d 1009, 1017 (7th Cir. 2002). Indeed, Stoller bears the burden of showing that *all* four criteria for intervention of right are met, including by proving that he has an interest relating to the property or transaction which is the subject of the action. Id. Stoller's Motion offers no additional facts or evidence to support the other three criteria for intervention of right. Accordingly, Stoller has failed to meet his burden, and intervention of right was properly denied.

## **II. STOLLER FAILS TO DEMONSTRATE THE REQUIREMENTS FOR PERMISSIVE INTERVENTION**

Stoller's Motion fails to properly address, let alone carry his burden of satisfying, the requirements of permissive intervention under Rule 24(b)<sup>2</sup>, namely, that there is a (1) common question of law or fact and (2) independent jurisdiction. Sec. Ins. Co. of Hartford v. Schipporeit, Inc., 69 F.3d 1377, 1381 (7th Cir. 1995) (listing requirements for permissive intervention). Furthermore, the Court has discretion to refuse Stoller's intervention even if, unlike here, the requirements have been met. Id. Stoller evidently agrees with this premise, arguing in the Motion that the grant of permissive intervention is directed to the discretion of the district court. Motion at 3.

The Seventh Circuit has specifically expressed concerns about the "substantial costs on the parties and the judiciary" that intervention can impose, "not only by making the litigation

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<sup>2</sup> Stoller incorrectly cites Federal Rule of Civil Procedure 23(b) in his discussion of permissive intervention. Motion at 2. Rule 23(b) concerns class actions.

more cumbersome but also (and more important) by blocking settlement." Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Eng'rs, 101 F.3d 503, 507-508 (7th Cir. 1996). Those difficulties would be acutely presented here by Stoller's intervention. All of the corporate entity Defendants' stock and assets have been sold to the SPTA in a bankruptcy auction under the auspices of the Bankruptcy Court.<sup>3</sup> Google is currently working to resolve this lawsuit with the SPTA, and expects a resolution to be reached soon, including the filing of a motion for judgment in this case. Stoller's long, documented history of frivolous litigation, and stated intention in the Motion to bring meritless -- and indeed barred -- counterclaims for "defamation, intentional infliction of emotion [*sic*] stress, conspiracy, aiding and abetting, civil racketeering and violations of § 1983 civil rights" if allowed to intervene, demonstrate that Stoller's intervention will only prolong this case, including by generating rounds of litigation to enforce prior Orders preventing Stoller from bringing such claims without leave of Court,<sup>4</sup> and result in prejudice. Stoller's intervention would threaten to interfere with or delay the resolution of this case and thereby consume additional judicial resources, deny Defendants their release of Google's monetary claims that a settlement agreement will afford them if settlement is implemented, serve to expose Defendants to additional monetary exposure and permit further harassment of Google.

The Court should again reject Stoller's request for permissive intervention.

### **III. STOLLER'S REQUEST FOR SUSPENSION PENDING APPEAL SHOULD BE DENIED**

Stoller asks in the alternative that the Court suspend the action pending appeal if and when the Motion is denied. Having no right to intervene in this proceeding, however, Stoller has no right to file any motion in this proceeding, as this Court has already ruled.<sup>5</sup> His request fails for this reason alone. Even if it were considered, the stay request lacks merit. Stoller fails to

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<sup>3</sup> Declaration of Michael T. Zeller, dated September 9, 2009 and filed concurrently herewith, Exh. 1 (August 20, 2007 Assignment). Google is gathering and will provide additional information regarding the status of the bankruptcy proceeding and the transfer of Defendants' stock and assets to the SPTA in its position paper, currently due to be filed on September 30, 2009 under this Court's Orders.

<sup>4</sup> As the Court is aware and as demonstrated in Google's prior filings, vexatious litigant Orders against Stoller, including one issued by the Executive Committee of this Court, preclude Stoller from initiating any claims without prior approval.

<sup>5</sup> March 12, 2007 Memorandum Opinion and Order at 7 ("Stoller has not identified - and this Court is not aware of - any procedural mechanism by which a non-party may file a motion to suspend ongoing proceedings without intervening therein. Accordingly, Stoller's motions to suspense these proceedings are denied.").



**CERTIFICATE OF SERVICE**

I, James D. Stein, certify that I caused copies of the forgoing Google's Response to Motion for Reconsideration to be served on all counsel via the Court's CM/ECF online filing system and on:

<p><b><u>Via U.S. Mail and Email</u></b>                  Leo Stoller                  7115 W. North Avenue, #272                  Oak Park, IL 60302                  E-Mail: <a href="mailto:ldms4@hotmail.com">ldms4@hotmail.com</a></p>	<p><b><u>Via U.S. Mail</u></b>                  Richard M. Fogel, Trustee                  Shaw, Gussis, Fishman, Glantz, Wolfson &amp; Towbin, LLC                  321 North Clark Street, Suite 800                  Chicago, IL 60610                  E-Mail: <a href="mailto:rfogel@shawgussis.com">rfogel@shawgussis.com</a> and <a href="mailto:rfogel@ecf.epiqsystems.com">rfogel@ecf.epiqsystems.com</a></p>
<p><b><u>Via U.S. Mail</u></b>                  Janice A. Alwin                  Shaw, Gussis, Fishman, Glantz, Wolfson &amp; Towbin, LLC                  321 North Clark Street, Suite 800                  Chicago, IL 60610                  E-Mail: <a href="mailto:jalwin@shawgussis.com">jalwin@shawgussis.com</a></p>	<p><b><u>Via U.S. Mail</u></b>                  Lance G. Johnson                  The Society For The Prevention Of Trademark Abuse, LLC                  10560 Main Street, Suite 220                  Fairfax, Virginia 22030                  E-Mail: <a href="mailto:ljohnson@roylance.com">ljohnson@roylance.com</a></p>

via U.S. Mail and email where indicated this 9th day of September, 2009.

/s/ James D. Stein