

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
09/09/2009	<u>115</u>	2	AFFIDAVIT by Plaintiff Google Inc in Opposition to MOTION by Movant Leo Stoller for reconsideration regarding terminate motions, <u>109 111 Declaration of Michael T. Zeller In Support of Google's Response to Motion for Reconsideration</u> (Attachments: # <u>1 Exhibit Exhibit 1</u>)(Zeller, Michael) (Entered: 09/09/2009)
09/14/2009	<u>116</u>	51	REPLY by Leo Stoller to Google's response to motion for reconsideration <u>114</u> (Exhibits); Notice. (smm) (Entered: 09/16/2009)
09/14/2009	<u>117</u>	80	EXHIBIT C by Movant Leo Stoller regarding reply to Google's response to motion for reconsideration <u>116</u> , (Attachment(s): #(1) Continuation of Exhibit C) <u>114</u> . (smm) Modified on 9/16/2009 (smm). (Entered: 09/16/2009)
09/14/2009	<u>118</u>	260	EXHIBIT D by Movant Leo Stoller regarding reply to Google's response to motion for reconsideration <u>116</u> , <u>114</u> . (smm) (Entered: 09/16/2009)

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

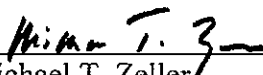
I, Michael T. Zeller, declare as follows:

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. Google is currently in settlement discussions to resolve this litigation with The Society for the Prevention of Trademark Abuse, LLC (the "SPTA"), which Google understands has acquired all of the stock and assets of the corporate entity Defendants, Central Mfg. Inc. and Stealth Industries, Inc. Attached as Exhibit 1 is a true and correct copy of the Assignment of all of the stock and assets in the corporate entity Defendants to the SPTA in the bankruptcy proceeding *In re Leo Stoller*, Case No. 5 B 64075 (N.D. Ill.).

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

Executed on September 9, 2008, at Los Angeles, California.



Michael T. Zeller

EXHIBIT 1

ASSIGNMENT

This Assignment ("Assignment") is made effective as of August 20, 2007 from Richard M. Fogel ("**Assignor**" or "**Trustee**"), not individually, but solely as the trustee of the chapter 7 bankruptcy estate (the "**Estate**") of Leo D. Stoller ("**Debtor**"), to The Society for the Prevention of Trademark Abuse, LLC ("**Assignee**"), a limited liability company organized under the laws of Delaware and having an office at 10560 Main Street, Suite 220, Fairfax, VA 22030:

WHEREAS, the Debtor filed a voluntary petition under title 11, United States Code (the "**Bankruptcy Code**") on December 22, 2005 (the "**Petition Date**") and Debtor's bankruptcy case is currently pending as Case No. 05 B 64075 before the United States Bankruptcy Court for the Northern District of Illinois (the "**Court**").

WHEREAS as of the Petition Date, the Debtor owned or claimed an interest in certain intellectual property, including but not limited to, registered and unregistered trademarks and service marks along with the underlying goodwill of whatever business or arrangement may use such marks (the "**Marks**") and licenses for certain Marks (the "**Licenses**"), and claims asserted by the Debtor in connection with the Marks and/or the Licenses through lawsuits for alleged damages and/or infringement, trademark oppositions, and cancellation proceedings before the U.S. Trademark Trial and Appeals Board (the "**Claims**"); which interests and ownership the Debtor claimed either directly or through one or more proprietorships, including, but not limited to, Central Mfg. Co. (whether or not designated as a Delaware corporation, stock holding company, or assumed name for Central Mfg. Inc.), Central Manufacturing Company Inc., Rentamark, Stealth, and Stealth Licensing;

WHEREAS as of the Petition Date, the Debtor owned all of the stock (the "**Stock**") of the following incorporated entities: Central Mfg. Inc. ("**Central**"), Stealth Industries Inc. ("**Stealth**"), Sentra Industries Inc. ("**Sentra**"), S Industries Inc. ("**S**") and USA Sports Co. Inc. ("**USA**") and, collectively with Central, Stealth, Sentra and S (the "**Corporations**") which own or claim an interest in certain intellectual property in addition to the Marks and the Licenses and have asserted certain claims for alleged damages and/or infringements in addition to the Claims;

WHEREAS because there is a question as to whether the Debtor has fully disclosed to the Court the extent and nature of his interests in the Marks, Licenses, Claims and Stock (collectively, whether known or unknown, disclosed by the Debtor or undisclosed by the Debtor, the "**Assets**"), there exists the possibility that the scope and nature of Assets known to the Trustee is incomplete;

WHEREAS the Court has held that, pursuant to the provisions of section 541(a) of the Bankruptcy Code, the Assets are property of the Estate and are subject to the exclusive jurisdiction of the Court pursuant to 28 U.S.C. § 1334(e);

WHEREAS, Assignor desires to convey, transfer, assign, deliver, and contribute to Assignee all of the Estate's right, title, and interest in and to the Assets, whether known or unknown to the Trustee, in "as is" and "where is" condition without claim or warranty of validity, enforceability or factual support associated with either; and Assignee's desires to receive the Assets under said conditions;

WHEREAS, on or about August 8, 2007, the Court entered an order (the "Sale Order") that approved the Trustee's sale of the Assets to Assignee and approved his entry into the transaction contemplated and evidenced herein and as of the date of this Assignment, no order of the Court, or any applicable appellate court has been entered prohibiting or otherwise staying the effect of the Sale Order, the Trustee's execution of this Assignment or the transfer of the Estate's right, title and interest in the Assets to the Assignee;

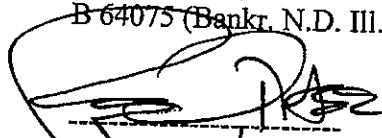
NOW, THEREFORE, in consideration of the payment of seven thousand five hundred dollars (\$7500.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby conveys, transfers, assigns, delivers, and contributes to Assignee all of the Estate's right, title, and interest of whatever kind in and to the Assets. Without limiting the extent of the Assets as defined in the recitals set forth above, the Assets include the following:

- a) the registrations and unregistered common law rights associated with the known Marks listed in Exhibit A, attached hereto and incorporated by reference herein, together with the goodwill of any business symbolized thereby in connection with the goods on which the Marks may have been, are, may be, or will be used and, whether known or unknown to the trustee;
- (b) all Marks or Claims, whether known or unknown to the Trustee
- (b) the goodwill of any business relating to the products or services upon which the Marks may have been, are, may be, or will be used and for which they are registered;
- (c) all income royalties and damages hereafter due or payable to the Estate with respect to the Marks, including but not limited to any damages or other payments for past infringements and misappropriation of the Marks and all rights to sue on account of such infringements or misappropriations;
- (d) all Licenses, whether known or unknown to the Trustee, that were granted to or taken by the Debtor from any third parties associated with any claim of a Mark, including the right to receive any royalties associated therewith or benefit of use that would otherwise inure to any licensor of any such Mark right (known licenses are listed in Exhibit B);
- (e) the right to recover past damages for any infringement of any Mark for any of the Marks conveyed herein;
- (f) all Claims that involve or relate to any pending proceeding before a U.S. federal court or the U.S. Patent and Trademark Office Trademark Trial and Appeals Board; and
- (g) all of the Estate's right, title and interest in the Stock.

Assignor further covenants that it will execute all documents, papers, forms and authorizations and take all other actions that may be necessary for securing, completing, or vesting in Assignee all of the Estate's right, title, and interest in the Assets.

IN WITNESS WHEREOF, ASSIGNOR has duly executed under seal and delivered this Assignment, as of the day and year first above written.

Richard M. Fogel, not individually but as trustee for
the bankruptcy estate of Leo D. Stoller, case no. 05
B 64075 (Bankr. N.D. Ill.)



By Richard M. Fogel, trustee

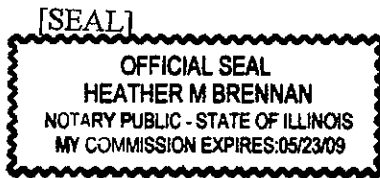
ACKNOWLEDGEMENT

State Of Illinois)
County of Cook)

On August 20, 2007 before me, ~~Heather M Brennan~~ Notary Public, personally appeared RICHARD M. FOGEL, proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Heather M Brennan
Signature of Notary Public



SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word/Mark	Current Owner (Date of Assign)	Class	Goods
73398142	1270016 (3/13/84)	SENTRA	CENTRAL MFG. CO. (3/30/98)	28	IC 028. US 022. G & S: Tennis Rackets. FIRST USE: 19820901. FIRST USE IN COMMERCE: 19820901
73399116	1323733 (3/5/85)	CREATIVE TRAVEL	CENTRAL MFG. CO. (7/22/96)	39	IC 039. US 105. G & S: Travel Agency and Tour Operation. FIRST USE: 19630301. FIRST USE IN COMMERCE: 19630301
73481745	1326765 (3/5/84)	SENTRA	CENTRAL MFG CO. (4/9/98)	9	IC 009. US 026. G & S: Calculators, Photographic Apparatus-Namely, Cameras and Lenses, Optical Apparatus-Namely, Binoculars and Telescopes. FIRST USE: 19820901. FIRST USE IN COMMERCE: 19820901
73496994	1332378 (4/23/85)	STEALTH	CENTRAL MFG. CO. (12/29/97)	28	IC 028. US 022. G & S: Sporting Goods, Specifically, Tennis Rackets, Golf Clubs, Tennis Balls, Basketballs, Baseballs, Soccer Balls, Golf Balls, Cross Bows, Tennis Racket Strings and Shuttlecocks. FIRST USE: 19810115. FIRST USE IN COMMERCE: 19810115
73478410	1361523 (9/24/85)	SENTRA	CENTRAL MFG CO. (4/9/98)	26	(CANCELLED) IC 009. US 028. G & S: SPORTS GOGGLES. FIRST USE: 19820901. FIRST USE IN COMMERCE: 19820901. IC 026. US 022. G & S: SPORTING GOODS, NAMELY, TENNIS RACQUETS, GOLF CLUBS, GOLF BALLS, TENNIS BALLS, BASKETBALLS, BASEBALLS, SOCCER BALLS, CROSS BOWS, TENNIS RACQUET STRINGS, AND SHUTTLECOCKS. FIRST USE: 19820901. FIRST USE IN COMMERCE: 19820901



SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg Number (Date of Reg)	Word Mark	Current Owner (Date of Assign)	Class	Goods
73552024	1384193 (2/25/86)	SENTRA	CENTRAL MFG. CO. (3/30/98)	12	IC 012. US 019. G & S: BOATS AND BICYCLES. FIRST USE: 19810400. FIRST USE IN COMMERCE: 19810400
73554850	1424951 (1/13/87)	PLAY THE ANGLE	CENTRAL MFG. CO. (1/6/06)	28	IC 028. US 022. G & S: SPORTING GOODS, NAMELY, TENNIS RACKETS, GOLF CLUBS, TENNIS BALLS, BASKETBALLS, BASEBALLS, SOCCER BALLS, GOLF BALLS, CROSS BOWS, TENNIS RACKET STRINGS AND SHUTTLE COCKS. FIRST USE: 19790200. FIRST USE IN COMMERCE: 19790200
73553786	1438152 (4/28/87)	FIRE POWER	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022. G & S: SPORTING GOODS - NAMELY, TENNIS RACKETS, GOLF CLUBS, TENNIS BALLS, BASKETBALLS, BASEBALLS, SOCCER BALLS, GOLF BALLS, CROSS BOWS, TENNIS RACKET STRINGS AND SHUTTLE COCKS. FIRST USE: 19810000. FIRST USE IN COMMERCE: 19810000
73621586	1450972 (8/4/87)	CHESTNUT	CENTRAL MFG CO. (4/7/98)	28	IC 025. US 039. G & S: CLOTHING, NAMELY, MEN'S, WOMEN'S, BOYS' AND GIRLS' PANTS, SHIRTS, SHORTS, LEGWARMERS, BRAS, PANTIES, SOCKS, HOSIERY, JACKETS, COATS, DRESSES, BATHING SUITS, WARM-UP SUITS, T-SHIRTS, BLOUSES, SHIRTS, UNDERWEAR, HATS, HEADBANDS,
73621174	1496826 (7/19/88)	SENTRA	CENTRAL MFG CO. (4/9/98)	25	

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word/Mark	Current Owner (Date of Assign.)	Class	Goods
73679230	1516448 (12/13/88)	STEALTH WEAR	CENTRAL MFG. CO. (7/25/06)	25	IC 025. US 022 039. G & S: CAMOUFLAGE CLOTHING, NAMELY, TROUSERS, SUITS, BLOUSES, JACKETS, HATS. FIRST USE: 19860803. FIRST USE IN COMMERCE: 19860926
73771241	1584851 (2/27/90)	AQUILA	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022. G & S: SPORTS RACQUETS, NAMELY TENNIS RACQUETS, RACQUETBALL RACQUETS, SQUASH RACQUETS, BADMINTON RACQUETS; GOLF CLUBS, GOLF BALLS, TENNIS BALLS, SPORTS BALLS, NAMELY, BASKETBALLS, BASEBALLS, FOOTBALLS, SOCCERBALLS, VOLLEY BALLS; CROSSBOWS, TENNIS RACQUET STRING, AND SHUTTLECOCKS. FIRST USE: 19880110. FIRST USE IN COMMERCE: 19880110
73778747	1589092 (3/27/90)	24 KARAT	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022 023 038 050. G & S: SPORT RACQUETS, NAMELY TENNIS RACQUETS, RACKET BALL RACQUETS, SQUASH RACQUETS AND BADMINTON RACQUETS; SPORTS BALLS NAMELY BASKETBALLS, BASEBALLS, FOOTBALLS, SOCCERBALLS, VOLLEYBALLS, TENNIS BALLS AND GOLF BALLS; GOLF CLUBS; CROSS BOWS; TENNIS RACQUETS STRING AND SHUTTLECOCKS. FIRST USE: 19850118. FIRST USE IN COMMERCE: 19850118

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
73771242	1593157 (4/24/90)	HYPERSONIC	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022. G & S: SPORTS RACQUETS, NAMELY TENNIS RACQUETS, RACQUETBALL RACQUETS, SQUASH RACQUETS, BADMINTON RACQUETS; GOLF CLUBS, GOLF BALLS, TENNIS BALLS, SPORTS BALLS, NAMELY BASKETBALLS, BASEBALLS, FOOTBALLS, SOCCERBALLS, VOLLEYBALLS; CROSSBOWS, TENNIS RACQUET STRING AND SHUTTLECOCKS. FIRST USE: 19880110. FIRST USE IN COMMERCE: 19880110
73772953	1596600 (5/15/90)	NIGHT STALKER	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022. G & S: SPORTING GOODS FOR ACTIVE SPORTS, NAMELY TENNIS RACQUETS, RACQUETBALL RACQUETS, SQUASH RACQUETS, GOLF BALLS, GOLF CLUBS, TENNIS BALLS, TENNIS STRINGS AND SHUTTLECOCKS. FIRST USE: 19810110. FIRST USE IN COMMERCE: 19810110
73778748	1602482 (6/19/90)	ANNIHILATOR	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022. G & S: SPORTS RACQUETS, NAMELY TENNIS, RACKET BALL, SQUASH AND BADMINTON RACQUETS; GOLF CLUBS, GOLF BALLS, TENNIS BALLS, BASKETBALLS, BASEBALLS, FOOTBALLS, SOCCER BALLS AND VOLLEY BALLS; CROSSBOWS; AND TENNIS RACQUET STRING AND SHUTTLECOCKS. FIRST USE: 19830110. FIRST USE IN COMMERCE: 19830110
73793505	1608361 (7/31/90)	S	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022. G & S: SPORTING GOODS, NAMELY, SPORT RACQUETS, INCLUDING TENNIS, SQUASH AND BADMINTON; GOLF CLUBS; GOLF BALLS,

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
					TENNIS BALLS, BASKETBALLS, BASEBALLS, SOCCER BALLS; CROSS BOWS; TENNIS RACQUET STRINGS; SPORTS BALLS AND SHUTTLECOCKS. FIRST USE: 19880400. FIRST USE IN COMMERCE: 19880400
73771877	1621365 (11/6/90)	COLLIDER	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022. G & S: SPORTS RACQUETS - NAMELY, TENNIS, RACQUETBALL, SQUASH, AND BADMINTON; GOLF CLUBS; GOLF BALLS; TENNIS BALLS; SPORTS BALLS - NAMELY, BASKETBALL, BASEBALL, FOOTBALL, SOCCERBALL AND VOLLEYBALL; CROSSBOWS; TENNIS RACQUET STRING; AND SHUTTLECOCKS. FIRST USE: 19880111. FIRST USE IN COMMERCE: 19880111
73778875	1623790 (11/20/90)	HAVOC	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022. G & S: SPORTS RACQUETS, INCLUDING TENNIS RACKETS, RACQUETBALLS, BALLRACQUET, SQUASH, BADMINTON, GOLF BALLS, TENNIS BALLS, SPORTS BALLS, INCLUDING BASKETBALL, BASEBALL, FOOTBALL, SOCCERBALL, VOLLEYBALLS, CROSSBOWS, TENNIS RACQUET STRING, AND SHUTTLECOCKS. FIRST USE: 19850110. FIRST USE IN COMMERCE: 19850110
74427158	1903753 (2/4/95)	DARK STAR LAGER	LBO STOLLER (11/2/01)	32	IC 032. US 048. G & S: beer. FIRST USE: 19930929. FIRST USE IN COMMERCE: 19930929
74724048	1984329 (7/2/96)	SENTRA	CENTRAL MFG. CO. (4/9/98)	14	IC 014. US 002 027 028 050. G & S: clocks and watches. FIRST USE: 19820200. FIRST USE IN COMMERCE:

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word/Mark	Current Owner (Date of Assign)	Class	Goods
75154345	2057613 (4/29/97)	DARK STAR	CENTRAL MFG. CO. (7/29/98)	9	19820200 IC 009. US 021 023 026 036 038. G & S: audiocassettes, audio tapes, audio discs, and phonograph records all featuring science fiction matter; video discs, motion picture films, and prerecorded videotapes, all featuring animated works about science fiction matter; binoculars, calculators; blank audio cassettes; blank video cassettes; blank discs for computers; air tanks for use in scuba diving; computer disc drivers; computer fax modem cards; electric irons; electronic flying insect light traps, electronic garage door locks; eyeglasses and sunglasses and frames therefor; cases for eyeglasses and sunglasses; keyboards for computers; laser printers; life jackets; lifebelts; life nets; decorative refrigerator magnets; slide projectors; photographic slide transparencies; photographic video cameras and lenses therefor; radios; safety goggles; telephones; telescopes; electronic calendars, namely, handheld personal electronic devices for scheduling appointments. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
75154344	2061586 (5/13/97)	DARK STAR	CENTRAL MFG. CO. (7/29/98)	14	IC 014. US 002 027 028 050. G & S: clocks; watches; gold jewelry; ornamental lapel pins. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
75006422	2064576 (5/27/97)	SENTRA	CENTRAL MFG. CO. (4/9/98)	36	IC 036. US 100 101 102. G & S: investment management and insurance consultation. FIRST USE: 19931000. FIRST USE IN COMMERCE: 19931000

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75129210	2071763 (6/17/96)	DARK STAR	CENTRAL MFG. CO. (7/29/98)	16	IC 016. US 002 005 022 023 029 037 038 050. G & S: postcards, posters, campus maps, greeting cards, stationery, message and memo pads, checkbook covers, calendars, book marks, notebooks, letter openers, pencils, pens, desk sets, bumper stickers, decals, iron-on heat transfers, bank checks, dictionaries, wrapping paper, comic magazines and books, photographic albums, pen and pencil cases, paper folders, game books, coloring books, sheets of music, playing cards, printed invitations, scribble pads, diaries, diary covers, paperweights, syndicated newspaper and magazine cartoon features, drawing rulers, ungraduated rulers, looseleaf binders, erasers, pencil sharpeners, paper coasters, paper hats, paper party hats, bulletin boards, highlighter pens, water globe paperweights, pocket secretaries, agenda books, staplers, book covers, paintings, joke books, autograph books, paper tablecloths, announcement cards, bookends, ring binders, report covers, series of fictional books, children's fictional storybooks. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100
75154346	2077635 (7/8/97)	DARK STAR	CENTRAL MFG. CO. (7/29/98)	41	IC 041. US 100 101 107. G & S: series of television and radio programs about science fiction; musical entertainment services by a vocal group; arcade service for video amusement games; organizing and conducting sporting events for tennis and golf; amusement park services in the nature of children's bouncing ride; conducting aerobic

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign.)	Class	Goods
					competitions; educational services, namely, providing workshops, lectures, courses and group instruction in trademark licensing. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
75129214	2081347 (7/22/97)	DARK STAR	CENTRAL MFG. CO. (7/29/98)	18	IC 018. US 001 002 003 022 041. G & S: tote bags, book bags, all purpose sport bags, duffel bags, beach bags, backpacks, umbrellas, handbags, purses, wallets, luggage, leather key fobs, suitcases, walking sticks, riding whips, leather traveling bags, leather key cases, briefcase-type portfolios, attache cases, business card cases, toiletry cases sold empty, credit card cases, passport cases, travel bags, shaving bags sold empty, billfolds, cosmetic cases sold empty, garment bags for travel, luggage tags, knapsacks, clutch bags, stadium tote bags, coin purses, vanity cases sold empty. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100
75152224	2081565 (7/22/97)	DARK STAR	CENTRAL MFG. CO. (7/29/98)	12	IC 012. US 019 021 023 031 035 044. G & S: motorcycles, bicycles, boats, tires. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100
75203742	2097863 (9/16/97)	FIRE POWER	CENTRAL MFG. CO. (4/7/98)	28	IC 028. US 022 023 038 050. G & S: pool cues, pool tables, darts, billiard balls, cue cases, cue racks, billiard gloves. FIRST USE: 19810100. FIRST USE IN COMMERCE: 19810100

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75124411	2119118 (12/9/97)	LOVE YOUR BODY	Stoller, Leo D. DBA Sentra Sporting Goods USA Co.	25	IC 025. US 022 039. G & S: clothing, namely, men's, women's, boy's and girl's pants, shirts, shorts, legwarmers, bras, panties, socks, hosiery, jackets, coats, dresses, bathing suits, warm-up suits, T-shirts, blouses, shirts, underwear, hats, headbands, lingerie, body suits, and shoes. FIRST USE: 19831001. FIRST USE IN COMMERCE: 19831001
75219634	2127199 (1/6/98)	DARK STAR	CENTRAL MFG. CO. (7/27/98)	3	IC 003. US 001 004 006 050 051 052. G & S: laundry bleach; laundry detergent; all-purpose cleaning preparations; floor polish; furniture polish; chrome polish; scouring liquids; general purpose scouring powder; skin abrasive preparations; skin soap; perfume; cologne; essential oils for personal use; hair lotion; dentifrices; suntan lotion and oil; shaving cream; after-shave lotion; cosmetics, namely, lipstick, eye shadow, toner, makeup, blush, rouge, lip gloss. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
75219633	2128798 (1/13/98)	DARK STAR	CENTRAL MFG. CO. (7/27/98)	2	IC 002. US 006 011 016. G & S: mordants for use in the area of pipelines; varnish; colorants for use in the manufacture of paint; colorants for use in the manufacture of cosmetics; corrosion inhibiting paint type coatings for commercial marine use; house paint; exterior paint; interior paint; paint primers; paint for use in the manufacture of furniture; paint for artists; paint for concrete floors; paint for industrial equipment and machinery; paint for model airplanes, model cars and the like; wood preservatives; rust preservatives in the nature of a coating; natural resins for

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
					use in the manufacture of adhesives; shellac and lacquers for use as a surface coating; metals in foil and powder for painters, decorators, printers and artists. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
75230338	2137059 (2/17/98)	AIR FRAME	CENTRAL MFG. CO. (4/7/98)	41	IC 041. US 100 101 107. G & S: series of television and radio programs about science fiction; musical entertainment services [in the nature of live performances] by a vocal group; arcade service for video amusement games; organizing and conducting sporting events for tennis and golf; amusement park services in the nature of children's bouncing ride; conducting aerobic competitions; educational services, namely, providing workshops, lectures, courses and group instruction in trademark licensing. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
75242656	2137218 (2/17/98)	AIR FRAME	CENTRAL MFG. CO. (4/7/98)	25	IC 025. US 022 039. G & S: athletic shoes; cloth baby bibs; bandannas; baseball caps; baseball shirts; blouses; baby bunnings; caps; casual pants; casual shoes; children's wear, namely, [pants, shirts, pajamas, stockings, underwear, hats, shoes;] collars, cover-alls; dress shirts; dresses; garter belts; gloves; golf shirts; gym shirts; hats; hosiery; jackets; jeans; jumpers; knit shirts; leg warmers; lingerie; mittens; neckties; negligees; painter's caps; pajamas; parkas; polo-type shirts; ponchos; robes; running shoes; running shorts; scarves; shirts; shawls; shoes; shorts; ski jackets; skirts; slacks; sleepwear; slippers; [non-protective] snowmobile

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75228497	2138609 (2/24/98)	AIR FRAME	CENTRAL MFG. CO. (4/7/98)	9	suits; socks; sport shoes; sunsuits; sun visors; suspenders; sweatbands; sweat pants; sweat shirts; sweat shorts; sweaters; swimwear; swimsuits; T-shirts; tank tops; tennis shirts; ties; tights; tracksuits; underwear; vests; walking shorts; wind resistant jackets; workpants; wrist bands. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
					IC 009. US 021 023 026 036 038. G & S: audio cassettes, audio tapes, audio discs, and phonograph records all featuring science fiction matter; video discs, motion picture films, and prerecorded videotapes, all featuring animated works about science fiction matter; binoculars, calculators; blank audio cassettes; blank video cassettes; air tanks for use in scuba diving; electric irons; electronic flying insect light traps, electronic garage door locks; eyeglasses and sunglasses and frames there for; cases for eyeglasses and sunglasses; life jackets; life belts; life nets; decorative refrigerator magnets; slide projectors; photographic slide transparencies; photographic video cameras and lenses there for; radios; safety goggles; telephones; telescopes; electronic calendars, namely, handheld personal electronic devices for scheduling appointments. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75242655	2138806 (2/24/98)	AIR FRAME	CENTRAL MFG. CO. (4/7/98)	28	IC 028. US 022 023 038 050. G & S: toys and sporting goods, namely, tennis rackets, golf clubs, tennis balls, basketballs, baseballs, soccer balls, golf balls, cross bows, tennis racket strings and [badminton] shuttlecocks, toy airplanes, hobby craft kits [for building toy airplanes,] toy building structures, and toy bicycles [not intended for riding,] pool cues, pool tables, darts, billiard balls, [billiard] cue cases, [billiard] cue racks, billiard gloves, fishing rods, hockey sticks, hockey pucks, ping pong paddles, ping pong balls. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
75228010	2140524 (3/3/98)	SENTRA	CENTRAL MFG. CO. (4/9/98)	2	IC 002. US 006 011 016. G & S: mordants for use in the area of construction; varnish; colorants for use in the manufacture of paint; colorants for use in the manufacture of cosmetics; corrosion inhibiting paint coatings for commercial marine use; house paint; exterior paint; interior paint; paint primers; paint for use in the manufacture of furniture; paint for artists; paint for concrete floors; paint for industrial equipment and machinery; paint for model airplanes, model cars and the like; wood preservatives; rust preservatives in the nature of a coating; natural resins for use in the manufacture of adhesives; shellac and lacquer for use as a surface coating; metals in foil and powder for painters, decorators, printers and artists. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75787559	2371075 (7/25/00)	RENTAMARK	CENTRAL MFG. CO.	42	IC 042. US 100 101. G & S: Licensing of Intellectually Property. FIRST USE: 19940100. FIRST USE IN COMMERCE: 19940100
76053720	2603567 (8/6/02)	IGLOO STEALTH	Igloo Products Corp.	21	IC 021. US 002 013 023 029 030 033 040 050. G & S: Thermally insulated tote bags for food and beverages and thermally insulated portable beverages dispensers, distributed in food service channels of trade to food service distributors. FIRST USE: 19991014. FIRST USE IN COMMERCE: 19991014
76215378	2847148 (6/1/04)	HAVOC RACING	CENTRAL MFG. CO. (10/3/03)	25	IC 025. US 022 039. G & S: Motorists clothing, consisting of shirts, jerseys and hats. FIRST USE: 20001103. FIRST USE IN COMMERCE: 20001103
78114518	2859897 (7/6/04)	BP STEALTH	CENTRAL MFG. CO. (12/1/03)	12	IC 012. US 019 021 023 031 035 044. G & S: Bicycle parts, namely, brakes, chains, handle bars, tubes and connectors for bicycle frames, change speed gears. FIRST USE: 19990101. FIRST USE IN COMMERCE: 19991201
73551893	1381612 (2/04/86)	STRADIVARIUS	CENTRAL MFG. CO. (4/7/98)	28	IC 028. US 022. G & S: TENNIS RACQUETS, GOLF BALLS, GOLF CLUBS, TENNIS BALLS, BASKETBALLS, BASEBALLS, SOCCER BALLS, CROSS BOWS, TENNIS RACQUET STRINGS AND SHUTTLECOCKS. FIRST USE: 19800218. FIRST USE IN COMMERCE: 19800218
73552023	1382504 (2/11/86)	TIRADE	CENTRAL MFG CO. (1/11/06)	22	IC 028. US 022. G & S: TENNIS RACQUETS, GOLF BALLS, GOLF CLUBS, TENNIS BALLS, BASKETBALLS, BASEBALLS, SOCCER BALLS, CROSS BOWS, TENNIS RACQUET STRINGS AND

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
73552025	1389167 (4/8/86)	WHITE LINE FEVER	CENTRAL MFG CO. (9/1/97)	25	SHUTTLECOCKS. FIRST USE: 19810400. FIRST USE IN COMMERCE: 19810400 IC 025. US 039. G & S: CLOTHING--NAMELY, MEN'S, WOMEN'S, BOYS AND GIRLS', PANTS, SHIRTS, SHORTS, LEGWARMERS, BRAS, PANTIES, SOCKS, HOSIERY, JACKETS, COATS, DRESSES, BATHING SUITS, WARM-UP SUITS, T-SHIRTS, BLOUSES, SHIRTS, UNDERWEAR, HATS, HEADBANDS, LINGERIE, BODY SUITS AND SHOES. FIRST USE: 19810310. FIRST USE IN COMMERCE: 19810310
73618743	1434642 (3/31/87)	STEALTH	CENTRAL MFG CO. (4/7/98)	12	IC 012. US 019. G & S: BICYCLES, MOTORCYCLES AND BOATS. FIRST USE: 19820100. FIRST USE IN COMMERCE: 19820100
73776184	1553032 (8/22/89)	TRILLIUM	CENTRAL MFG. CO. (9/1/97)	28	IC 028. US 022. G & S: SPORTING GOODS, NAMELY, RACQUETS FOR TENNIS, SQUASH AND BADMINTON, GOLF CLUBS, GOLF BALLS, TENNIS BALLS, BASKETBALLS, BASEBALLS, SOCCER BALLS; CROSS BOWS; TENNIS RACQUET STRINGS, SPORTS BALLS AND SHUTTLECOCKS. FIRST USE: 19880400. FIRST USE IN COMMERCE: 19880400
73771240	1564755 (11/7/89)	PHALANX	CENTRAL MFG. CO. (9/1/97)	28	IC 028. US 022. G & S: SPORTS RACQUETS, NAMELY TENNIS RACQUETS, RACQUETBALL RACQUETS, SQUASH RACQUETS, BADMINTON RACQUETS; GOLF CLUBS, GOLF BALLS, TENNIS BALLS, SPORTS BALLS, NAMELY BASKETBALLS,

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Serial No.	Reg. Number (Date of Reg.)	Word/Mark	Current Owner (Date of Assign)	Class	Goods
					BASEBALLS, FOOTBALLS, SOCCERBALLS, VOLLEYBALLS; CROSSBOWS, TENNIS RACQUET STRING AND SHUTTLECOCKS. FIRST USE: 19880110. FIRST USE IN COMMERCE: 19880110
73773213	1564756 (11/7/89)	TURBOJET	CENTRAL MFG CO. (9/1/97)	28	IC 028. US 022. G & S: SPORTS RACQUETS, NAMELY TENNIS RACQUETS, RACQUETBALL RACQUET, SQUASH, BADMINTON, GOLF CLUBS, GOLF BALLS, TENNIS BALLS, SPORTS BALLS, NAMELY BASKETBALL, BASEBALL, FOOTBALL, SOCCERBALL, VOLLEYBALLS, CROSSBOWS, TENNIS RACQUET STRING, AND SHUTTLECOCKS. FIRST USE: 19880111. FIRST USE IN COMMERCE: 19880111
73767454	1581051 (2/06/90)	TRILLIUM	CENTRAL MFG CO. (4/7/98)	6	IC 006. US 014. G & S: METAL ALLOYS FOR USE IN THE SPORTING AND TRANSPORTATION INDUSTRIES. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
73778877	1615004 (9/25/90)	TERMINATOR	CENTRAL MFG CO. (Cewtral MFC CO) (4/7/98)	28	IC 028. US 022. G & S: SPORTS RACQUETS, INCLUDING TENNIS RACKETS, RACQUETBALL RACQUET, SQUASH, BADMINTON, GOLF CLUBS, GOLF BALLS, TENNIS BALLS, SPORTS BALLS, INCLUDING BASKETBALL, BASEBALL, FOOTBALL, SOCCERBALL, VOLLEYBALLS, TENNIS RACQUET STRING, AND SHUTTLECOCKS. FIRST USE: 19840308. FIRST USE IN COMMERCE: 19840308

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign.)	Class	Goods
74004936	1717010 (9/15/92)	STEALTH	CENTRAL MFG CO. (4/7/98)	2	IC 002. US 006 011 016. G & S: MICROWAVE ABSORBING AUTOMOBILE PAINT. FIRST USE: 19920526. FIRST USE IN COMMERCE: 19920526
74063127	1766806 (4/20/93)	STEALTH	CENTRAL MFG CO. (4/7/98)	28	IC 028. US 022 023 038 050. G & S: fishing tackle floats (bobbers). FIRST USE: 19920710. FIRST USE IN COMMERCE: 19920710
74162239	1846182 (7/19/94)	STEALTH	CENTRAL MFG. CO. (10/1/01)	12	IC 012. US 019 035. G & S: automotive tires. FIRST USE: 19931221. FIRST USE IN COMMERCE: 19931221
74415569	1867087 (12/13/94)	STEALTH	CENTRAL MFG. CO. (4/7/98)	28	IC 028. US 022. G & S: pool cue, pool tables, darts, billiard balls, cue cases, cue rack; billiard gloves. FIRST USE: 19861117. FIRST USE IN COMMERCE: 19861117
74340300	1947145 (1/9/96)	STEALTH TECHNOLOGY	CENTRAL MFG. CO. (2/04/02)	9	IC 009. US 021 023 026 036 038. G & S: computer hardware and computer utility software and operating manuals. FIRST USE: 19930101. FIRST USE IN COMMERCE: 19930101
74476028	2007348 (6/15/96)	STEALTH SQUAD	CENTRAL MFG. CO. (4/7/98)	16	IC 016. US 038. G & S: comic book. FIRST USE: 19930702. FIRST USE IN COMMERCE: 19930910
74630176	2024889 (12/24/94)	THE STEALTH	CENTRAL MFG. CO. (4/7/98)	21	IC 021. US 002 013 023 029 030 033 040 050. G & S: lawn sprinklers. FIRST USE: 19950125. FIRST USE IN COMMERCE: 19950125
74724047	2025156 (12/24/96)	STEALTH	CENTRAL MFG. CO. (4/7/98)	6	IC 006. US 002 012 013 014 023 025 050. G & S: metal alloys for use in sporting goods and transportation and window locks. FIRST USE: 19880400. FIRST USE IN COMMERCE: 19880400

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Serial No.	Reg Number (Date of Reg)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75121252	2063283 (5/20/97)	STRADIVARIUS	CENTRAL MFG. CO. (4/7/98)	9	IC 009. US 021 023 026 036 038. G & S: computers, calculators, radios and photographic apparatus, namely, cameras and lenses; optical apparatus, namely, binoculars and telescopes. FIRST USE: 19821200. FIRST USE IN COMMERCE: 19821200
74125070	2074780 (7/1/97)	STEALTH	COBRA ELECTRONICS CORPORATION	9	IC 009. US 026. G & S: automobile-mounted radar detectors sold only in the consumer channel of trade. FIRST USE: 19901031. FIRST USE IN COMMERCE: 19901031 IC 025. US 022 039. G & S: athletic shoes, cloth baby bibs, bandannas, baseball caps, baseball shirts, blouses, baby burnings, caps, casual pants, casual shoes, swaddling clothes, collars, cover-alls, dress shirts, dresses, garter belts, gloves, golf shirts, gym shirts, handkerchiefs, hats, hosiery, jackets, jeans, jumpers, knit shirts, leg warmers, lingerie, mittens, neckties, negligees, painter's caps, pajamas, parkas, polo-type shirts, ponchos, robes, running shoes, running shorts, scarves, shirts, shawls, shoes, shorts, ski jackets, skirts, slacks, sleepwear, slippers, snowmobile suits, slacks, sports shoes, sunsuits, sun visors, suspenders, sweatbands, sweat pants, sweat shirts, sweat shorts, sweaters, swimwear, swimsuits, T-shirts, tank tops, tennis shirts, ties, tights, tracksuits, underwear, vests, walking shorts, wind resistant jackets, workpants, wrist bands. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100
75130222	2083721 (7/29/97)	DARK STAR	CENTRAL MFG. CO. (7/27/98)	25	
75218045	2110838 (11/4/97)	DARK STAR	CENTRAL MFG. CO. (7/27/98)	36	IC 036. US 100 101 102. G & S: financial planning; investment management; insurance consultation. FIRST

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Serial No.	Reg Number (Date of Reg)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75180414	2126933 (1/6/98)	STAR LITE	CENTRAL MFG. CO. (9/1/97)	6	USE: 19880100. FIRST USE IN COMMERCE: 19880100 IC 006. US 002 012 013 014 023 025 050. G & S: metal goods, namely, metal alloys for use in sporting goods and transportation and window locks. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100
75228505	2128940 (1/13/98)	AIR FRAME	CENTRAL MFG. CO. (3/23/98)	12	IC 012. US 019 021 023 031 035 044. G & S: motorcycles, bicycles, boats, tires. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
75206799	2227069 (3/2/99)	STEALTH	CEWRAL MFG CO (10/30/01)	36	IC 036. US 100 101 102. G & S: financial planning; investment management; insurance consultation. FIRST USE: 19861000. FIRST USE IN COMMERCE: 19861000 IC 041. US 100 101 107. G & S: Entertainment in the nature of a series of television and radio programs about science fiction; Entertainment, namely, live performances by a musical vocal group; Amusement video arcades; Organizing and conducting exhibition sporting events for tennis and golf; Amusement park services in the nature of children's bouncing ride; Entertainment in the nature of competitions in the field of aerobatics; Educational services, namely, providing workshops, lectures, courses and group instruction in trademark licensing. FIRST USE: 19870600. FIRST USE IN COMMERCE: 19870600
75469776	2264631 (7/27/99)	TRIANA	CENTRAL MFG. CO.	41	IC 012. US 019 021 023 031 035 044. G & S: Motorcycles, bicycles, boats and tires. FIRST USE: 19870600. FIRST USE IN COMMERCE: 19870600
75470988	2264642 (7/27/97)	TRIANA	CENTRAL MFG. CO.	12	IC 012. US 019 021 023 031 035 044. G & S: Motorcycles, bicycles, boats and tires. FIRST USE: 19870600. FIRST USE IN COMMERCE: 19870600

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75469775	2266783 (8/3/99)	TRIANA	CENTRAL MFG. CO.	41	IC 041. US 100 101 107. G & S: Entertainment in the nature of a series of television and radio programs about science fiction; Entertainment, namely, live performances by a musical vocal group; Amusement video arcades; Organizing and conducting exhibition sporting events for tennis and golf; Amusement park services in the nature of children's bouncing ride; Entertainment in the nature of competitions in the field of aerobatics; Educational services, namely, providing workshops, lectures, courses and group instruction in trademark licensing. FIRST USE: 19870600. FIRST USE IN COMMERCE: 19870600
75338586	2272891 (8/24/99)	STEALTH	CENTRAL MFG CO (11/28/01)	14	IC 014. US 002 027 028 050. G & S: tie fasteners. FIRST USE: 19981031. FIRST USE IN COMMERCE: 19981031
75143090	2273229 (8/31/99)	SENTRA	CENTRAL MFG CO. (3/30/98)	14	IC 014. US 002 027 028 050. G & S: tie fasteners. FIRST USE: 19981031. FIRST USE IN COMMERCE: 19981031
75469777	2287397 (10/19/99)	TRIANA	CENTRAL MFG. CO.	28	IC 028. US 022 023 038 050. G & S: toys and sporting goods, namely, tennis rackets, golf clubs, tennis balls, basketballs, baseballs, soccer balls, billiard balls, golf balls, footballs, cross bows, tennis racket strings, Badminton shuttlecocks, pool cue, pool tables, darts, pool cue cases, pool cue rack, billiard gloves, toy airplanes, toy BB guns, roller skates, hobby craft kits comprised of parts for assembly of toy airplanes and space craft, board games, toy building structures, toy bicycles, action figures, fishing rods, fishing reels, fishing line bobbers. FIRST USE: 19870600. FIRST USE IN COMMERCE: 19870600

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75469860	2320324 (2/22/00)	TRIANA	CENTRAL MFG. CO.	9	IC 009. US 021 023 026 036 038. G & S: Pre-recorded Audiocassettes, prerecorded audio tapes, audio discs, and phonograph records all featuring science fiction stories; Video discs, motion picture films, and prerecorded videotapes, all featuring animated works about science fiction subjects; binoculars, calculators; blank audio cassettes; blank video cassettes; blank computer discs; air tanks for use in scuba diving; computer disc drivers; computer monitors; computer fax modem cards; electric irons; electronic flying insect light traps, electronic garage door locks; eyeglasses and sunglasses and frames therefor; cases for eyeglasses and sunglasses; electronic metal locks; electric laundry irons; computers; computer goods, namely, printers, disc drives, keyboards, and floppy disk storage cases; computer software for use in database management; motion picture films in the nature of science fiction; Laser printers; life jackets; lifebelts; life nets; decorative refrigerator magnets; slide projectors; photographic slide transparencies; photographic video cameras and lenses therefor; radios; safety goggles; telephones; telescopes; electronic calendars, namely, handheld personal electronic devices for scheduling appointments. FIRST USE: 19870600. FIRST USE IN COMMERCE: 19870600
74735867	2325053 (3/7/00)	STEALTH 9MM	CENTRAL MFG. CO. (8/13/98)	40	IC 040. US 100 103 106. G & S: manufacture and assembly of firearms to the order and the specification of others. FIRST USE: 19950801. FIRST USE IN COMMERCE:

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
74735868	2325054 (3/7/00)	STEALTH 9MM SHADOW	CENTRAL MFG. CO. (8/13/98)	40	IC 040. US 100 103 106. G & S: manufacture and assembly of firearms to the order and the specification of others. FIRST USE: 19950801. FIRST USE IN COMMERCE: 19950800
75000280	2330467 (3/1/00)	STEALTH	CENTRAL MFG. CO. (8/13/98)	18	IC 018. US 001 002 003 022 041. G & S: leather wallets, leather handbags, and leather attache cases. FIRST USE: 19850100. FIRST USE IN COMMERCE: 19850100
75755602	2403775 (11/14/00)	STEALTH	CENTRAL MFG. CO.	8	IC 008. US 023 028 044. G & S: Pocket Knives; Non-Electric Can Openers; Cutlery, Namely, Forks, Knives, and Spoons; Nail Clippers; Tweezers; Scissors; and Eyelash Cutters. FIRST USE: 19810600. FIRST USE IN COMMERCE: 19810600
75885658	2433330 (3/6/01)	STEALTH	CENTRAL MFG CO (11/9/01)	8, 10	IC 008. US 023 028 044. G & S: specialized hand tools for use in the fabrication and assembly of prosthetic limbs and prosthetic limb components; namely, thermoplastic tooling, thermoset tooling and foam extraction tooling. FIRST USE: 19971210. FIRST USE IN COMMERCE: 19971210 IC 010. US 026 039 044. G & S: prosthetic limb components; namely, shuttle locks, pyramids, pyramid receivers, sach foot adaptors, pylons, tube clamps, suction seals, adaptor plates, attachment plates, prosthetic knee systems, prosthetic knee chassis, and prosthetic feet. FIRST USE: 19971229. FIRST USE IN COMMERCE: 19971229

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75203741	2439735 (4/3/01)	STEALTH	CENTRAL MFG. CO. (8/13/98)	9	IC 009. US 021 023 026 036 038. G & S: radios and speakers for automobiles, stereo speaker boxes, tape recorders, tape players and portable stereos. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100
75019143	2478742 (8/21/01)	STEALTH	CENTRAL MFG. CO. (8/13/98)	9	IC 009. US 021 023 026 036 038. G & S: computer application software for creating databases, blank video film and video tapes, safety goggles, radios, photographic and video cameras. FIRST USE: 19850100. FIRST USE IN COMMERCE: 19850100
75932731	2497857 (10/16/01)	STEALTH SPRAY	CENTRAL MFG CO (8/14/01)	28	IC 028. US 022 023 038 050. G & S: hunters' scent camouflage. FIRST USE: 19990201. FIRST USE IN COMMERCE: 19990201
75932736	2497858 (10/16/01)	STEALTH SOAP	CENTRAL MFG CO (8/14/01)	28	IC 028. US 022 023 038 050. G & S: hunters' scent camouflage. FIRST USE: 19990201. FIRST USE IN COMMERCE: 19990201
75010278	2505698 (11/13/08)	STEALTH	CENTRAL MFG CO (11/9/01; 9/23/03)	11	IC 011. US 013 021 023 031 034. G & S: motion activated electric lighting fixtures. FIRST USE: 19950715. FIRST USE IN COMMERCE: 19950715
74734680	2523745 (1/1/02)	STEALTH	CENTRAL MFG. CO. (8/13/98)	26	IC 026. US 037 039 040 042 050. G & S: plastic buckles and fasteners for use in connection with backpacks, tote bags, sporting goods and foul weather gear and apparel and other similar articles. FIRST USE: 19960825. FIRST USE IN COMMERCE: 19960825
74726073	2551385 (3/26/02)	STEALTH	CENTRAL MFG. CO. (8/13/98)	9	IC 009. US 021 023 026 036 038. G & S: electric locks for garage doors. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100

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Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75157566	2576910 (6/11/02)	DARK STAR	CENTRAL MFG. CO. (7/27/98)	11	IC 011. US 013 021 023 031 034. G & S: electric lighting fixtures; refrigerators; refrigerated shipping containers; refrigerated merchandise display cases; refrigerated beverage dispensing units; ventilating fans for commercial use; ventilating fans for industrial use; ventilating louvers; oven ventilator hoods; charcoal burning barbecue grills. FIRST USE: 19880100. FIRST USE IN COMMERCE: 19880100
75499347	2627054 (10/01/02)	TRIANA	CENTRAL MFG. CO.	25	IC 025. US 022 039. G & S: Athletic Shoes, Baby Cloth Bibs, Bandannas, Baseball Caps, Baseball Shirts, Blouses, Baby Buntings, Caps, Casual Pants, Casual Shoes, Collarettes, Cover-alls, Dress Shirts, Dresses, Garters Belts, Gloves, Golf Shirts, Gym Shirts, Hats, Hosiery, Jackets, Jams, Jeans, Jumpers, Knit Shirts, Leg Warmers, Lingerie, Mittens, Neckties, Negligees, Painter's Caps, Pajamas, Parkas, Polo-Type Shirts, Ponchos, Pram Suits, Robes, Running Shoes, Running Shorts, Scarves, Shirts, Shawls, Shoes, Shorts, Ski Jackets, Skirts, Slacks, Sleepwear, Slippers, Snowmobile Suits, Socks, Sports Shoes, Sun Swimsuits, Sun Visors, Suspenders, Sweatbands, Sweat Pants, Sweat Shirts, Sweat Shorts, Sweaters, Swinwear, Swimsuits, T-Shirts, Tank Tops, Tennis Shirts, Ties, Tights, Training suits, Underwear, Vests, Walking Shorts, Wind resistant jackets, Workpants, Wrist Bands. FIRST USE: 19870100. FIRST USE IN COMMERCE: 19870100

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
75499332	2629600 (10/08/00)	TRIANA	CENTRAL MFG. CO.	18	IC 018. US 001 002 003 022 041. G & S: Tote Bags, Book Bags, All Purpose Sport Bags, Duffel Bags, Beach Bags, Backpacks, Umbrellas, Handbags, Purses, Wallets, Luggage, Leather Key Fobs, Suitcases, Walking Sticks, Riding Whips, Leather Traveling Bags, Leather Key Cases, Briefcase-Type Portfolios, Attache Cases, Business Card Cases, Toiletry Cases sold empty, Credit Card Cases, Travel Bags, Shaving Bags sold empty, Billfolds, Cosmetic Cases sold empty, Garment Bags for Travel, Luggage Tags, Knapsacks, Clutch Bags, Coin Purses, Vanity Cases sold empty. FIRST USE: 19870500. FIRST USE IN COMMERCE: 19870500
75826623	2636049 (10/15/02)	STEALTH	Lingual Orthodontics, Ltd.	10	IC 010. US 026 039 044. G & S: Orthodontic appliances, namely, orthodontic brackets, arch wires, lingual holding arches and hooks. FIRST USE: 20020328. FIRST USE IN COMMERCE: 20020328
75849316	2641546 (10/29/02)	STEALTH	CENTRAL MFG CO (6/4/02)	7	IC 007. US 013 019 021 023 031 034 035. G & S: Baling machines for use in material recycling and waste material disposal. FIRST USE: 19990205. FIRST USE IN COMMERCE: 19990205
74343994	2657452 (12/10/02)	STEALTH	CENTRAL MFG. CO. (8/10/98)	28	IC 028. US 022 023 038 050. G & S: toys and sporting goods, namely, model airplane kits, toy boats, toy guns, toy robots, and toy soldiers. FIRST USE: 19850100. FIRST USE IN COMMERCE: 19850100

SCHEDULE A – TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg)	Word Mark	Current Owner (Date of Assign)	Class	Goods
76236749	2737991 (7/15/03)	STEALTH	Braid, Dennis	28	IC 028. US 022 023 038 050. G & S: Fishing back support belts and harnesses; fishing belts, namely, back support belts as part of a fishing pole support harness; fishing belts, namely, back support belts for support of fishing poles with gimbal or uni-butt receiver; fishing belts, namely, back support belts for use on deep sea fishing vessels; fishing belts, namely, back support belts with quick release hook and loop shoulder straps; fishing belts, namely, adjustable shape back support belts. FIRST USE: 20030215. FIRST USE IN COMMERCE: 20030215
76379296	2744536 (7/29/03)	STEALTH DUST	EBSCO Industries, Inc.	28	IC 028. US 022 023 038 050. G & S: Hunters' scent camouflage and neutralizer. FIRST USE: 20030101. FIRST USE IN COMMERCE: 20030101
78103723	2761682 (9/09/03)	STEALTHPOD	International Electronics San Diego, Inc.	9	IC 009. US 021 023 026 036 038. G & S: CAMERA TRIPODS. FIRST USE: 20010700. FIRST USE IN COMMERCE: 20010700
76470920	2784049 (11/18/03)	STEALTHLITERACY	Big Guy Books, Inc.	16	IC 016. US 002 005 022 023 029 037 038 050. G & S: Series of Children's Books. FIRST USE: 20021001. FIRST USE IN COMMERCE: 20021010

SCHEDULE A – TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
76534200	2847015 (5/25/05)	TRAVEL NURSE	CENTRAL MFG. CO.	35	<p>IC 035. US 100 101 102. G & S: Association services, namely, promoting the interests of medical professionals; career placement; arranging and conducting business conferences, accounting services; administration of cultural and educational exchange programs; advertising agencies, namely, promoting the services of medical professionals, investigations, creating corporate logos for others, creating corporate and brand identity; agencies for advertising time and space; business appraisals, consultation, information management for medical professionals, management and consultation, marketing and direct mail consulting services, meeting planning, networking, organizational consultation, planning; providing computer databases featuring trade information regarding medical professions, commercial information in the field of medical professionals; computer services, namely, address change notification services; computerized database management, on-line retail services in the field of general merchandise, word processing; conducting business and market research surveys, employee incentive award programs to promote employee performance, marketing studies, trade shows in the field of medicine and general merchandise; copyright management consultation; creating trademarks for others; credit card registration; data processing services; demographic consultation; direct marketing advertising for others; displaying advertisements for others; dissemination of</p>

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
					advertising for others via the Internet, dissemination of advertising matter; doctor referrals; document reproduction; electronic billboard advertising; electronic catalog services featuring general merchandise, electronic retailing services via computer featuring general merchandise; employee relations information services; relocation and information, counseling and recruiting; employment verification; executive search and placement services; health care cost review; hospital management; mail order catalog services featuring general merchandise; mailing list preparation; management assistance, management of health care clinics for others; market analysis, research, research services; medical cost management, referrals, modeling for advertising or sales promotion; news clipping services; on-line ordering services featuring general merchandise, on-line posting of rewards for information, on-line retail store services featuring general merchandise; operating on-line marketplaces for sellers of goods and/or services; organizing and conducting job fairs; personnel management consultation, placement and recruitment, relocation; preparing advertisements for others, preparing and placing advertisements for others, preparing mailing lists; providing a web site at which users can offers goods for sale, providing a web site which features advertisements for the goods, providing a web site whereby buyers of goods or services locate and receive quotations from multiple

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word/Mark	Current Owner (Date of Assign)	Class	Goods
76625764	3026260 (12/13/05)	STEALTH	CENTRAL MFG CO. (6/1/05)	11	competitive sources and sellers of goods or services identify and bid on multiple news sales opportunities, providing business marketing information, providing career information via the Internet, providing information about the goods and services of others via the Internet, providing trade information; rating of accommodations; referrals in the field of medical professionals; rental of advertising space. FIRST USE: 19890000. FIRST USE IN COMMERCE: 19890000
76233194	3051961 (1/31/06)	24 KARAT	CENTRAL MFG CO. (4/4/06)		IC 003. US 001 004 006 050 051 052. G & S: Perfume. FIRST USE: 20021201. FIRST USE IN COMMERCE: 20021201
78427432		STEALTH FEEDERS	Stealth Blinds, LLC	7	IC 007. US 013 019 021 023 031 034 035. G & S: mechanized solar-powered wildlife feeders
75016560		STEALTH	CENTRAL MFG. CO. (8/13/98)	11	IC 011. US 013 021 023 031 034. G & S: flashlights, pen lights, electric lamps, floor fans, wall fans, desk fans, portable fans. FIRST USE: 19850100. FIRST USE IN COMMERCE: 19850100
76071233		STEALTH	CENTRAL MFG. CO.	11	IC 011. US 013 021 023 031 034. G & S: HOUSEHOLD AIR CLEANERS, HOUSEHOLD AIR CLEANERS WITH IONIZER, DOMESTIC AND COMMERCIAL AIR PURIFIERS, AIR CONDITIONERS. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860100

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assignment)	Class	Goods
75565743		STEALTH	STEALTH MOTORSPORTS, L.L.C.	12	IC 012. US 019 021 023 031 035 044. G & S: RACING AUTOMOBILES AND STRUCTURAL PARTS THEREFOR. FIRST USE: 19920801. FIRST USE IN COMMERCE: 19920801
79002422		STEALTH	SUPERSPROX, a.s.	12	IC 012. US 019 021 023 031 035 044. G & S: Sprocket wheels and transmission systems for land vehicles, particularly sprocket wheels for motorcycle chains
74327774		STEALTH	CENTRAL MFG. CO. (8/13/98)	16	IC 016. US 037. G & S: pens, pencils, drawing rulers, paper clips, rubber bands, memopads, adhesive tape for stationery or household use, non-electric erasers, snap-off blade cutter for cutting paper, pencil sharpener, fountain pens, ball point pens, stationery; namely, writing paper and envelopes, playing cards and comic books. FIRST USE: 19860100. FIRST USE IN COMMERCE: 19860110
78214406		HAVOC		25	IC 025. US 022 039. G & S: camouflage clothing; namely, shirts, jackets, pants, coveralls, hats, gloves, boots, face nets in the nature of a camouflage veil, coats and raincoats.
73394754		SENTRASONY	STOLLER, LEO D. SENTRA SPORTING GOODS USA CO.	28	(ABANDONED) IC 028. US 022. G & S: TENNIS RACKETS. FIRST USE: 19820901. FIRST USE IN COMMERCE: 19820901
78069285		TERMINATOR	CENTRAL MFG. CO.	28	IC 028. US 022 023 038 050. G & S: Billiard Balls, cross bows, pool cue, pool tables, billard gloves, toy airplanes, toy bb guns, roller skates; hobby craft kits comprised of parts for assembly of toy airplanes, space craft, board

SCHEDULE A - TRADEMARKS AND SERVICE MARKS

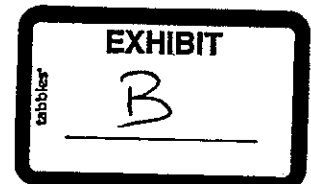
Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
78286127		STEALTH	CENTRAL MFG. CO.	41	<p>IC 041. US 100 101 107. G & S: Special event planning, training services in the field of trademark law, litigation and trademark licensing; amusement arcades, amusement parks featuring amusement rides and attractions, animal training, arranging and conducting education conferences, arranging ticket reservations for athletic competitions, shows and other entertainment events, educational testing, modeling for artists, motion picture theatres, movie studios, multi-media entertainment software for production services; music production services; news analysis and features distribution; news reporting services; officiating at sports contests; organizing community sporting and cultural events; photography services, physical fitness consultation, planetariums, portrait photography; preparing subtitles for movies and live theatrical events; production and distribution radio, television commercials and motion pictures, production of radio and television programs and film studies; providing a computer game that may be accessed network wide by network users, providing continuing legal education courses and fitness and exercise facilities; providing information on-line relating to computer games and computer enhancements for games,</p>

SCHEDULE A – TRADEMARKS AND SERVICE MARKS

Serial No.	Reg. Number (Date of Reg.)	Word Mark	Current Owner (Date of Assign)	Class	Goods
78276411		NET-STEALTH	Blickensderfer, Laura L.	42	providing news in the nature of current events reporting and information in the field of employment training; providing recognition and incentives by the way of awards to demonstrate excellence in the fields of law, medicine, sports, computer hardware, accounting, nursing and secretaries; publication of journals; rental of artwork, rental of computer game programs, rental of films, rental of golf equipment, rental of photographic equipment, rental of video games and rolling skating rinks IC 042. US 100 101. G & S: Computer software development, computer software development, and computer programming for others, all in the field of digital encryption and decryption; computer consultation in the field of Internet cyber security. FIRST USE: 20030707. FIRST USE IN COMMERCE: 20030707
		CENTRAL MFG. CO.			Licensing of intellectual property.
		EMARK			Licensing of intellectual property

SCHEDULE B – LICENSES

Licensor	Licensee	Goods
Stealth Industries, Inc., S Industries, Inc., and Leo Stoller	Puma USA, Inc.	Footwear
Rentamark.com and Central Mfg. Co.	Bard Wyers Sports, Inc. and Impact Products, Inc.	Bicycle Carrier Models, Present and in the Future, including, but not limited to Hitch Carrier Designs, etc.
Leo Stoller and S Industries, Inc.	Victor Stanzel Co.	Jet Toy Airplanes
Rent-A-Mark	Raven Golf	Putters and Component Golf Clubs
S Industries, Inc.	Great American Tool Company, Inc.	Cutlery and Cutlery Related Accessories Including Without Limitation, Knives and Knife Cleaning, Sharpening and Maintenance Devices
Rent-A-Mark	TALICOR	Interactive Computer Game
Stealth, Stealth Industries, Inc., S Industries, Inc., Central Mfg. Co., and all other related companies either owned or operated by Leo Stoller	Northrop Grumman Corporation	Paper Goods and Printed Matter, Namely, Non-Fiction Books, Posters, Lecture Pointers, Playing Cards, Book Covers, Binders, Paper Party Decorations, Envelopes, Greeting Cards, Paper Napkins, Paper Pads, Pencils, Pens, Postcards, Stationery, Writing Tablets and Gift Wrapping Paper; Toys and Sporting Goods, Namely, Airplane Models and Assembly Kits Therefore, Balloons, Beach Balls, Inflatable Ride-On Toys, Board Games, Pinball Machines, Poker Playing Chips, Playing Chips for Video Game Machines, Video Game Machines, Bathtub Toys and Play Wading Pools; Clothing, Namely, T-Shirts, Caps, Sweat Shirts, Sweat Pants, Sweat Suits, Jerseys, Blouses, Pants, Visors, Jackets, Tank Tops, Bathing Suits, Coats, Hats, Kerchiefs, Neck Ties, Polo Shirts, Scarves, Ski Wear, Suspenders and Sweaters
Rentamark.com	Paul Kane	Anti-Glare Visor Stops Glare by



SCHEDULE B – LICENSES		
Licenser	Licensee	Goods
		Sunlight or Back Lighting on Computer Monitors, Lap Tops and Other Electrical Displays
S Industries, Inc., Leo D. Stoller d/b/a Sentra Sporting Goods Co., and Stealth Industries, Inc.	Bard Wyers Sports, Inc., Midwest Bicycle Company, Buffalo Grove Cycling and Fitness, Inc. d/b/a Buffalo Grove Schwinn and Riteway Products d/b/a Riteway North Central	Motor Vehicle Mount Bicycle Carrier Systems
S Industries, Inc.	Fit Bearings d/b/a Stealth Precision Speed Products d/b/a Stealth Products d/b/a Stealth Precision Products	In-Line Roller-Skate and Skateboard Bearings, In-Line Roller-Skate and Skateboard Wheels, In-Line Roller-Skate and Skateboard Axles and Axle Kits, In-Line Roller-Skate and Skateboard Lubrication, In-Line Roller-Skate and Skateboard Tools, In-Line Roller-Skate and Skateboard Carrying Sacks, In-Line Roller-Skate and Skateboard Grind Plates, In-Line and Skateboard Helmets, and Related Shirts and Hats
S Industries, Inc.	NAAN Irrigation Systems	Sprinkler Irrigation Products
S Industries, Inc.	Mitsubisha International Inc.	Golf Clubs, Golf Bags, Golf Carts, Golf Shoes, Golf Gloves, Golf Apparel, and Golf Balls
S Industries, Inc.	Wonderwand Inc. and Tom Olmstead	Tennis Rackets and Thermal Racket Covers
S Industries, Inc.	National Molding Corporation	Plastic Buckles and Fasteners for Use in Connection with Backpacks, Tote Bags, Sporting Goods and Foul Weather Gear and Apparel and Other Similar Articles
S Industries, Inc.	Stealth Hunter, Inc.	Tree Stands and Safety Harnesses for Deer Hunting
S Industries, Inc.	HHA Sports, Inc., Beaver Dam Outfitters, GAT Guns, Little John's Archery and Altra Products, Inc.	Archery Sights
S Industries, Inc.	Heritage Manufacturing, Inc.	Manufacture and Assembly of Firearms to the order and

SCHEDULE B – LICENSES		
Licensor	Licensee	Goods
		specification of others
Central Mfg. Inc.	RAB Electric Manufacturing, Inc.	Motion Activated Electric Lighting Fixtures, Security Lighting, Security Sensors, and Security Video Equipment
Rentamark.com	Stealth Corporation	Construction Services and Consulting
Rentamark.com	Stealth Networking	Computers, Computer Sales and Related Services
Rentamark.com	Stealth Demolition, LLC	Demolition Services
S Industries, Inc.	Charles S. Hayes	Microwave Absorbing Automobile Paint
S Industries, Inc.	Netti Export Corporate Pty Ltd., Netti North America, Kemco Group Ltd., Raleigh USA Bicycle Co., Avitar Sports International, Island Cycle Supply Company, CTEL, and THE HAWLEY COMPANY, Inc.	Bicycle Helmets
S Industries, Inc.	Philip C. Lane d/b/a Petra Comics	Comic Books
Leo Stoller d/b/a Sentra Sporting Goods, USA and S Industries, Inc.	STR Industries Illinois	Bicycles and Boats
Rentamark.com, and Central Mfg. Co.	Igloo Products Corp.	insulated food transport and dispensing containers sold in the food service industry
RENT-A-MARK	TALICOR, Inc.	Board & Electronic Games
Rentamark.com d/b/a Central Mfg. Co.	Conservation Technology, LLC	Track Lighting
Rentamark.com	Charles M. Gyenes d/b/a HI-Q- Antennas	manufacturing the Stealth II series HF Mobile Antennas
Leo D. Stoller, Stealth Industries, Inc., and S Industries, Inc.	Victor Stanzel Co.	jet toy air planes
Stealth Industries, Inc.	Cabela's Inc.	boats, fishing rods, clothing, archery and footwear
Rentamark.com	Stealth Production Support, Inc., and Stealth Technical Services, Inc.	performing event coordinating services for shows including renting rigging for industrial trade shows,

SCHEDULE B – LICENSES

Licensor	Licensee	Goods
		renting rigging equipment, lighting equipment, specialty event equipment, providing labor, labor management, computer services, computer aided drafting for special events and shows and to provide billing services
Rentamark.com	Alnu Innovations	tie fasteners and tie lifters
Rentamark.com	American Orthodontics	Orthodontic brackets, arch wires, lingual holding arches and hooks
Rentamark.com	Lucifer Lighting Company	Interior and Exterior Lighting Fixtures Excluding Security Lighting
rentamark and Central Mfg. Co.	Prosthetic Design, Inc.	specialized hand tools for use in the fabrication and assembly of prosthetic limbs and prosthetic limb components; namely, thermoplastic tooling, thermoset tooling and foam extraction tooling, in Int. Class 008 and prosthetic limb components; namely, shuttle locks, pyramids, pyramid receivers, sach foot adaptors, pylons, tube clamps, suction seals, adaptor plates, attachment plates, prosthetic knee systems, prosthetic knee chassis, and prosthetic feet in Int. Class 010
Rentamark.com	Big Guy Books, Inc.	Series of Children's Books
Rentamark.com	Tony Smith dba Stealth Racing	Racing Cars, Racing Car Services, Carburetors, Carbureter Repair Services, Car Parts, T-Shirts and Hats
Rentamark.com	Marathon Equipment Company	Baling Machines For Use in Material Recycling and Waste Material Disposal
Rentamark.com	Jas. D. Easton, Inc. and Easton Sports, Inc.	Hockey Sticks, Ice Hockey Skates, Hockey Shafts, Hockey Blades, Baseball Bats and Softball Bats
Rentamark.com	International Electronics San Diego, Inc.	Camera Tripods
Rentamark.com	Scott Vestal d/b/a Scott Vestal's 5 String Banjos	Musical Instruments, Namely, Banjos

SCHEDULE B – LICENSES		
Licenser	Licensee	Goods
	Acutab Publications, Inc.	
Rentamark.com	John Graham Compton, individually and d/b/a Stealth Blinds, LLC and Stealth Feeders	Observation and Hunting Blinds and Manufacture Wildlife Feeders
Rentamark.com	Scott Vestal d/b/a Scott Vestal's 5 String Banjos Acutab Publications, Inc.	Musical Instruments, Namely, Banjos
Rentamark.com	Jas. D. Easton, Inc. Corporation and its subsidiary Easton Sports, Inc.	Field Hockey Sticks and Protective Equipment for Use in the Sport of Lacrosse
Rentamark.com	Eric Cone	Mobile Disc Jockey Services
Rentamark.com	Penley Sports, LLC	Golf Club Shafts
S Industries, Inc.	Interactive Industries, Inc.	Mouse Pads for Computers
S Industries, Inc.	Lindy Little Joe, Inc.	Various fishing products

SCHEDULE C – PROCEEDINGS		
Opposition	Adversely Party	Mark
91092085	The Southern New England Telephone Corp Company	CENTRALINK 2100
91093601	George C. Kasboske	STEALTH
91108924	Sentry Chemical Company	SENTRY
91115719	Deck America, Inc.	DECK STAR
91117366	Stealth Laboratories, Llc	STEALTH LABORATORIES
91117894	Sutech U.S.A., Inc.	STEALTH
91118105	Unex Corporation	STEALTH
91118421	James J. Feuling	TERMINATOR
91118538	Spaceage Synthetics, Inc.	STEALTH BOARD
91118797	Fujitsu Personal Systems, Inc.	PENCENTRA
91118888	Freeman Manufacturing Co.	TRILLIUM
91119206	Tenryu America Inc	STEALTH
91119245	Troyal, Inc.	TERMINATOR
91119348	Syntra Ltd.	SYNTRA
91119802	Alza Corporation	CONCENTRA
91119975	Tiger Electronics, Ltd.	HAVOC
91120073	Novitron International, Inc.	SENTRA
91120170	The Email Channel Inc.	CENTRAQ
91120202	Nissan Jidosha Kabushiki Kaishya Db a Nis	SENTRA CA
91120339	Karen Ponce	STEALTH SHELF
91121420	York International Corporation	STEALTH
91121605	Sterling/Winters Company	LOVE YOUR BODY
91121795	American International Marketing	STEALTH
91124917	Marathon Equipment Company	STEALTH
91125566	Stealth Air Courier, Inc.	STEALTH AIR COURIER
91125818	Board Of The Regents, The University Of	STEALTH GERONTOLOGY
91150463	Menasha Corporation	STEALTH GOLD
91150624	Radiant Labs, LLC	STEALTH GUARD
91151836	Coffee Works, Inc.	DARK STAR
91152014	Reonegro, Antonio And Tom	HAVOC MEDIA



SCHEDULE C – PROCEEDINGS		
Opposition	Adverse Party	Mark
	Lynch	DESIGN
91152243	HEPA Corporation	STEALTH 100
91154372	Pentech International Inc.	STEALTH
91154472	Evox, Inc.	STEALTHWARE
91154585	Medtronic Sofamor Danek Inc.	STEALTHMERGE
91154617	Medtronic Sofamor Danek Inc.	STEALTHDRIVE
91155814	WFJM Enterprises, Inc.	STEALTHTEX
91156858	Dreamworks L.L.C. & Dreamworks Animation	REX HAVOC
91157012	Hyperstealth Biotechnology Corp.	HYPERSTEALTH
91157434	Purina Mills, Llc	STEALTH
91158263	Stealth, Ltd.	STEALTH LTD.
91158582	Market America, Inc.	STEALTH RADAR SHIELD
91159950	Premium Products, Inc.	GROUND ZERO STEALTH
91160234	Airframe Business Software, Inc.	AIRFRAME BUSINESS SOFTWARE, INC.
91160234	Airframe Business Software, Inc.	AIRFRAME BUSINESS SOFTWARE, INC.
91161513	Darkstar Design, Inc.	DARKSTAR DESIGN
91161552	Heiman, Donald F.	STEALTH-A-SCOPE
91161651	Roux Laboratories, Inc.	AIRFRAME
91161651	Roux Laboratories, Inc.	AIRFRAME
91161740	Silicon Defense, Inc.	COUNTERSTEALTH
91161831	Ratledge, Douglas W.	AIRFRAMEPOWERPLANT
91162195	Northern Telepresence Corporation	DARKSTAR
91162592	Stephens, Edwin K.	STEALTH ACQUISITIONS
91162928	Titan America Llc	CENTRA
91163156	Titan America Llc	CENTRA
91163722	Macronix Inc.	MX STEALTH
91164047	U-Haul International, Inc.	STEALTH
91164582	Pocckovic, Jovan	STEALTH VODKA
91165221	Marcus, Randy Lee	HYPNOSTEALTH

SCHEDULE C – PROCEEDINGS		
Opposition	Adversely Party	Mark
91166562	General Cigar Co., Inc.	STRADIVARIUS
91167086	Fairchild Semiconductor Corporation	
91167152	International Surfacing, Inc.	STEALTHSHOE
91167475	Digital Recorders, Inc.	STEALTHMIC
91167557	E-Merging Technologies Group	MANAGED STEALTHCARE
91167602	Sierra Corporate Design	STEALTHNEWS
91167658	Surgical Navigation Technologies, Inc.	STEALTHNAVIGATOR
91167706	Invitrogen Corporation	STELTH RNAI
91168673	Ebert, Kenneth R	AIRFRAME
91168888	Dreamworks Animation L.L.C.	REX HAVOC
91169270	Ceradyne, Inc.	STEALTH
91169382	Swedish Match Lighters B.V.	FIREPOWER
91169502	Loveland Products, Inc.	STEALTH
91169502	Loveland Products, Inc.	STEALTH
91170016	Midwest Motorcycle Supply Distributors C Orp.	FIRE POWER
91170256	Google Inc.	GOOGLE
91170274	Target Brands, Inc.	(Target design mark)
91170424	Cafe Belmondo, Llc	STRADIVARIUS BLEND
91170575	Summit Environmental Corporation Inc.	FIREPOWER
91170636	Indy Stealth Incorporated	INDY STEALTH
91170710	Stealth Dump Trucks, Inc.	STEALTH DUMP TRUCKS
91170819	Medtronic, Inc.	STEALTHLINK
91170820	John Edward Sweat	SENTRACARE
91170951	Two Guys Publications, Inc.	WHITE LINE FEVER
91170957	HEPA Corporation	STEALTH
91171222	Raysat Cyprus Ltd.	STEALTHRAY
91172150	Montoya, Matthew; Ahern, John; Liscano, José; Saldivar, Hector; Garcia, Adrian	CRY HAVOC
92024940	Intelligence Quotient International Limited	STEALTH TECHNOLOGY

SCHEDULE C – PROCEEDINGS		
Opposition	Adverse Party	Mark
92025162	Cardiotronics	STEALTH-TRODE
92030433	Skateboard World Industries, Inc. And Mr. Chet Thomas	DARKSTAR MASTER URETHANE
92030944	Nissan Jidosha Kabushiki Kaishya Db a Nissan Motor Co., Ltd.	SENTRA
92031211	Centra Software, Inc.	CENTRA
92042735	Daymen Photo Marketing, Ltd.	STEALTH
92043125	Burrows Golf, Inc.	TRILLIUM
92043666	Northern Telepresence Corporation	DARK STAR
92045336	Target Brands, Inc.	STEALTH
92045659	Riverside Manufacturing Company	AIR FRAME
92045671	Ponce, Karen	STEALTH SHELF
92045778	Google Inc.	GOOGLE

SCHEDULE C – COURT PROCEEDINGS
<i>Central Mfg. Co. v. Pure Fishing, Inc.</i> , No. 05 C 00725 (N.D. Ill.)
<i>Columbia Pictures Industries, Inc. v. Stoller</i> , No. 05 C 2052 (N.D. Ill.)
<i>Stealth Industries, Inc. v. George Brett</i> , No. 04 C 3049 (N.D. Ill.)
<i>Central Mfg. v. HEPA Corporation</i> , Appeal No. 2005-1566 (Fed. Cir.)

CERTIFICATE OF SERVICE

I, James D. Stein, certify that I caused copies of the forgoing Declaration of Michael T. Zeller to be served on all counsel via the Court's CM/ECF online filing system and on:

<p><u>Via U.S. Mail and Email</u> Leo Stoller 7115 W. North Avenue, #272 Oak Park, IL 60302 E-Mail: ldms4@hotmail.com</p>	<p><u>Via U.S. Mail</u> Richard M. Fogel, Trustee Shaw, Gussis, Fishman, Glantz, Wolfson & Towbin, LLC 321 North Clark Street, Suite 800 Chicago, IL 60610 E-Mail: rfogel@shawgussis.com and rfogel@ecf.epiqsystems.com</p>
<p><u>Via U.S. Mail</u> Janice A. Alwin Shaw, Gussis, Fishman, Glantz, Wolfson & Towbin, LLC 321 North Clark Street, Suite 800 Chicago, IL 60610 E-Mail: jalwin@shawgussis.com</p>	<p><u>Via U.S. Mail</u> Lance G. Johnson The Society For The Prevention Of Trademark Abuse, LLC 10560 Main Street, Suite 220 Fairfax, Virginia 22030 E-Mail: ljohnson@roylance.com</p>

via U.S. Mail and email where indicated this 9th day of September, 2009.

/s/ James D. Stein

MHN

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

FILED
9-14-2009
SEP 14 2009 PH

GOOGLE, INC.,)
)
Plaintiff)
)
v.)
)
CENTRAL MFG. INC., et al.,)
)
Defendants.)

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

Case No: 1:07-cv-00385
Honorable Virginia J. Kendall

NOTICE OF FILING

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

PLEASE TAKE NOTICE that on the 14th day of September, 2009, there was filed with the Clerk of the United States District Court the attached 1) **Reply to Google's Response to Motion For Reconsideration.**

I certify that the foregoing was mailed via first class mail on the 17th day of September, 2009 to the parties listed, with the U.S. Postal Service with proper postage prepaid.



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

GOOGLE, INC.,)	
)	
Plaintiff)	
	)	Case No: 1:07-cv-00385
v.)	
	)	Honorable Virginia J. Kendall
CENTRAL MFG. INC., et al.,)	
)	
Defendants.)	
)	
Leo Stoller, Intervener)	

REPLY TO GOOGLE'S RESPONSE TO MOTION FOR RECONSIDERATION

NOW COMES LEO STOLLER, *Intervener*, in reply to Google's Response to Motion For Reconsideration, Plaintiff has raised "new" issues which must be addressed by Stoller in order for the court to issue a just decision and states as follows:

Stoller has carried his burden of satisfying the required elements for intervention as a matter of right and/or 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 (9th Cir. 1999).

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 (9th Cir. 2006) (quoting United States v. Alisal Water Corp., 370 F.3d 915, 919 (9th Cir. 2994)).

Stoller's protectible interest in this case has been already adjudicated by District Court **Judge William J. Hibbler** in a decision (Case No. 06 C 6950) issued on **June 20, 2007**, in an appeal from Stoller's bankruptcy proceeding, Case No. 05 B 64075. **Judge Hibbler's** decision involves the same parties and the same issues:

*"Here, two of the bankruptcy court's orders approve the trustee's agreement with **Google** and **Lanard Toys, Inc, 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." See attached decision dated June 20, 2007, marked as **Exhibit A**.*

Stoller has established the requirements for intervention as a matter of right or permissive intervention which will be sustained on appeal.

In addition, Stoller has a demonstrated 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). Stoller holds common law rights to the Google trademark. Rights that were not extinguished in the Stoller's bankruptcy proceeding as well known to Michael T. Zeller, as the following brief will explain.

On page one, paragraph four of Google's response motion, **Michael T. Zeller**, attorney for Google, Inc., makes the following **false statement**.

"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 action¹ under the auspices of the Bankruptcy Court, and Google is currently in discussions with the SPTA to resolve this case."

Mr. Zeller includes a Declaration of Michael T. Zeller in support of Google's response motion. Attached to the Declaration is a United States Patent and Trademark office Notice of Recordation of Assignment Document, an Assignment from Trustee **Richard M. Fogel** to the SPTA, and a list of trademarks that are alleged to have been sold to the SPTA at a bankruptcy auction of Stoller's assets. The alleged sale of Stoller's assets, trademarks was invalid on its face, which a plain reading of the **August 20, 2007** alleged assignment, which is a "naked" license and/or "license" in gross. No trademark assets were "lawfully" assigned to SPTA through the alleged August 20, 2007 Assignment as well known to trademark attorney Michael T. Zeller. In fact his reliance on a "naked" trademark Assignment to establish that Stoller's trademark assets were lawfully assigned to SPTA represents a "clear" fraud on this court as this brief will demonstrate .

Mr. Zeller has now placed squarely before this Court the **NEW** issue of the validity of the Assignment of trademark rights that the Illinois Bankruptcy Trustee Richard M. Fogel has alleged to have assigned to the SPTA on **August 20, 2007**. Although Mr. Zeller, a well-known trademark attorney, demeans Stoller's 41 year reputation as a trademark expert, Stoller will concede that Mr. Zeller is also a trademark expert. As such, Mr. Zeller² knows or should know that the SPTA received "no" valid trademark rights from the "**naked**" Assignment dated August 20, 2007.

¹ It is interesting to note that Mr. Zeller did not have to include the "naked" license Assignment dated August 20, 2009 in his response brief, but Mr. Zeller could not resist contaminating his response brief with clear misstatements of material fact and/or law in violation of ARDC Rule 3.3(a), as this brief establishes. For over 35 years Stoller has been a national known expert on attorney misconduct issues founding the **Americans for the Enforcement of Attorney Ethics (AEAE)** www.rentamark.net an attorney ethics "watch dog" group in 1974.

² STOLLER suggests that the court ask Mr. Zeller, the trademark attorney to explain just what is a Naked License and/or "license" in gross. Mr. Zeller attempts to defraud this court by knowingly and willfully relying on a "naked" license to establish that SPTA has been lawfully assigned Stoller's trademarks when SPTA has "**no**" valid trademark

Stoller must now address and request that this Court evaluate the new documents that Mr. Zeller has presented to this Court, consisting of the **August 20, 2007** trademark Assignment, which Stoller contends is a "naked license" and/or "license in gross," as well known to Mr. Zeller.

Justice cannot be rendered to either side if the Court does not have an in-depth understanding of the nature of the "naked" Assignment that was issued by Illinois Bankruptcy Trustee Richard M. Fogel to the SPTA on **August 20, 2007** which purports to assign Stoller's trademark rights to the SPTA, but in fact was a "naked" license resulting in an abandonment of all trademark rights as a matter of law as well known to Mr. Zeller the well known trademark attorney.

The new issue that Google has raised through Michael Zeller by including in his response brief the trademark Assignment and list of trademarks, along with the notice of recordation, forces Stoller now to address the invalidity of the bankruptcy assignment for the following reason. If the bankruptcy assignment is invalid, a license in gross or a naked license, that would mean that there were no trademark rights, or any other rights, transferred to SPTA by the Illinois Bankruptcy Trustee. A license in gross and/or naked license which Stoller asserts Richard M. Fogel entered into with Lance Johnson and the SPTA, represents a clear abandonment of Stoller's assets. Under bankruptcy law, when a trustee abandons the assets, they revert to the debtor. This issue also relates to Stoller's standing before this Court and his right to intervene as a matter of right and/or under permissive intervention.

Trustee Fogel's August 20, 2007 Assignment to SPTA was a Naked Assignment Leaving SPTA Without Standing in this Proceeding

On August 20, 2007, Leo Stoller asserts that there was an unlawful, invalid **naked** Assignment of Stoller's trademark rights to SPTA through a bankruptcy auction, attached and marked as **Exhibit B**, which conferred "no" valid trademark rights to SPTA. This transaction

rights from the "naked" trademark assignment dated **August 20, 2007** by Trustee **Richard M. Fogel** as well known

involved a scheme by Illinois Bankruptcy Trustee **Richard M. Fogel**, and **Lance Johnson**, the *sole* member of SPTA, to "destroy" Stoller's trademark assets. SPTA is a *sham* entity formed by **Lance Johnson** in June of 2007 for an unlawful purpose to destroy the Stoller's business and trademarks admitted by **Lance Johnson**." The purpose behind the acquisition was the dismantling of Stoller's decade of abuse". SPTA engaged in a fraudulent scheme to obtain Stoller's trademarks through an "assignment in gross" merely for the unlawful purpose of "dismantling" Stoller's trademark rights. That is why neither Illinois Bankruptcy Trustee **Richard M. Fogel** nor **Lance G. Johnson** cared one "hoot" about a legitimate trademark assignment as evidenced by the Bankruptcy Transcripts attached hereto and made a part hereof. Fogel and Johnson's trademark scam is completely documented under oath in the attached official bankruptcy transcripts. It is rare if not impossible to catch attorneys engaged in a "scam" to acquire trademark rights, but in this case Stoller has provided this court with a complete record of the trademark scam unfolding with the testimony of Lance G. Johnson and Richard M. Fogel in three bankruptcy transcripts dated May 29, 2007, July 24, 2007 **Exhibit C** and the August 7, 2009 Official Transcript in Case No. 05 B 64075 **Exhibit D**

As well known to Michael T. Zeller, Richard M. Fogel and Lance G. Johnson, SPTA did **not** receive any valid trademark rights as a result of the "shame" bankruptcy auction and naked trademark assignment dated **August 20, 2009, the critical language used by the Illinois Bankruptcy Trustee Richard M. Fogel, which vitiates a valid trademark assignment**, stated in paragraph 7 to transfer to SPTA the trademark rights of Stoller:

"WHEREAS, Assignor desires to convey, transfer, assign, deliver and contribute to Assignee (SPTA) all of the Estate's (Stoller's) rights title, and interest in and to the Assets (trademarks),

to Mr. Michael T. Zeller Esq.

whether known or unknown³ to the Trustee, in "as is" and "where is" condition without claim or warranty of validity, enforceability or factual support associated with either, and Assignee's desires to receive the (Trademark) Assets under said conditions...all marks or claims, whether known or unknown to the trustee..." **Federal Trademarks rights**, unlike consumer products, real estate, and homes, cannot be sold or transferred to third parties based upon an "as is" and "where is" **condition without claim or warranty of validity, enforceability or factual support associated with either**". In order to sell a valid trademark, **McCarthy On Trademarks** in his chapter on Assignments, at page 18-5 (3/03), "one must start with the premise that a trademark is merely a symbol of goodwill. Goodwill and its trademark symbol are as inseparable as Siamese Twins who cannot be separated with death to both. A trademark has **no** independent significance apart from the goodwill it symbolizes. As **Justice Holmes** states, "A trademark only gives the right to prohibit the use of it so far as to protect the owner's goodwill" Prestonettes, Inc., v. Coty, 264 U.S. 359, 69 L. Ed. 731, 454 S. Ct 350 (1924). It is thus impossible to assign a trademark on an "as is" and "where is" **condition without claim or warranty of validity, enforceability or factual support associated with either**" as well known to **Michael T. Zeller, Lance G. Johnson and Richard M. Fogel**. It is also impossible under the law to have an valid assignment to assign "all marks or claims, whether known or unknown "to SPTA. No one can assign an "unknown" trademark to anyone, as well known to **Michael T. Zeller, Lance G. Johnson and Richard M. Fogel**. Thirdly, it is impossible under the law to assign the alleged goodwill associated with a trademark on an "as is" and "where is" **condition without claim or warranty of validity, enforceability or factual support associated with either**. In addition, even if an assignment states that the "registrations and unregistered common law rights associated with the known marks

³ Under the Lanham Act as well known to Michael T. Zeller, Richard M. Fogel and Lance G. Johnson is not lawful to transfer "unknown" trademarks to any party. Richard M. Fogel's assignment dated August 20, 2009 to the Society

listed in an attached exhibit and incorporated by reference herein together with the goodwill of any business symbolized thereby in connection with the goods on which the Marks *may* have been, are may be or *will be* used and, *whether known or unknown* to the trustee", is **not** sufficient under the law to transfer any **valid** goodwill. Illinois Bankruptcy Trustee Richard M. Fogel made the disclaimer that the assets (trademarks) were being sold in "as is" and "where is" condition **without** claim or warranty of validity, enforceability or factual support associated with either, and the Assignee (SPTA) "DESIRES TO RECEIVE THE assets (Trademarks) under said conditions. Further, SPTA's acknowledgement that it would receive gross assignment of trademarks represents an acknowledgement of a abandonment of those said trademarks upon signature of the assignment in gross. Therefore, SPTA abandoned any interest in any of Stoller's trademarks upon agreeing to the terms of the Trustee's Assignment.

Under the Trustee's Assignment, Stoller's trademarks were severed from the goodwill of the business, and the bankruptcy trademark assignment was clearly not valid. Johanna Farm Inc., v. Citrus Bowl, Inc., 468 F. Supp. 866, 879 (E.C. N.Y. 1978). Thus, what SPTA received from the bankruptcy Assignment was a clear assignment in gross and "no" trademark rights whatsoever. SPTA, meddling in the TTAB, masquerading as if they had standing by holding valid trademarks, was nothing more than a "scheme" to defraud the TTAB. Lance Johnson, a trademark attorney and owner of SPTA, knows that a sale of a trademark divorced from its goodwill is invalid on its face. Green River bottling Co v. Green River Corp., 997 F.2d 359, 27 U.S.P.Q.2d 1304, 1306 (7th Cir. 1993) "A trademark cannot be sold in gross."

Both the Illinois Bankruptcy Trustee Richard M. Fogel and the buyer Lance Johnson's SPTA were not concerned about the "goodwill" because Lance Johnson has admitted that his sole intent of purchasing Stoller's marks was to put "Stoller out of business".

for the Prevention of Trademark Abuse is a "sham" agreement and transaction that is not enforceable in any court.

The assignment of trademark rights from the Illinois bankruptcy trustee Richard M. Fogel to SPTA was a license in gross and/or a naked license and did not confer valid trademark rights to SPTA. As a result, SPTA has no standing before this Court as well known to Michael T. Zeller.

The Bankruptcy Trustee, Richard M. Fogel, on August 7, 2007, attempted to transfer the assets of Leo Stoller to SPTA. The trademark assignment was a license in gross and/or a naked license, and is void *ab initio*. As a result, the assignment of trademark rights to SPTA is void. Under the bankruptcy law, Richard M. Fogel's assignment of trademark rights to SPTA and all of the assets of Leo Stoller represents an abandonment of Stoller's assets. Under bankruptcy law, when a trustee abandons the assets of a Chapter 7 debtor, the assets will default back to the debtor giving the debtor standing in this case to intervene as a matter of right and/or through premise intervention.

In December of 2005, Leo Stoller filed a Chapter 13 bankruptcy. On August 31, 2006, the bankruptcy was converted to a Chapter 7. On September 6, 2006, Richard M. Fogel, was appointed the Bankruptcy Trustee of Leo Stoller's estate. Leo Stoller's estate was believed to consist of primarily trademarks.

In August of 2007, Trustee Richard M. Fogel ("Trustee") moved to sell the assets of the estate of Leo Stoller to attorney Lance Johnson ("Johnson") who represented a creditor Pure Fishing, Inc. that was a clear "conflict". On August 24, 2007, the Trustee conducted a "set up" auction where there was only Johnson bidding \$7,500.00 for all of the assets of Leo Stoller. Trustee Fogel did not allow the higher bidder to bid on the trademark assets of Stoller. The Trustee would not even let the highest bidder make a bid. Stoller opposed the auction as a "sham" and the approval of the sale of Stoller's assets to Johnson as an inside "deal" and a license in gross.

On July 24, 2007, the Trustee moved to auction off the assets of Stoller's estate, which alleged to consist of over 100 federal trademark registrations and several Delaware corporations,

Central Mfg. Inc., Stealth Industries, Inc., S Industries, Inc., USA Sports Co., Inc., and Sentra Industries, Inc.

Stoller alleges that Johnson and his phony SPTA did not, in fact, exist as a viable business capable of holding federal trademark rights and did not hold any lawful rights to any federal trademarks. SPTA did not buy or sell any goods in 2007 or as of this date.. As a matter of law, such an entity is not entitled to hold rights to any federal trademark registrations.

SCHEME TO DEFRAUD THE PATENT AND TRADEMARK OFFICE

Stoller asserts that Johnson, David Abrams ("Abrams") and Alfred Goodman ("Goodman") created SPTA as an essential part of their scheme to acquire the federal trademarks of the estate of Leo Stoller, and to perpetrate a fraud on the Patent and Trademark Office ("PTO") in the procurement of, or attempt to procure and sell, to third parties and have those third parties register "invalid" assignments with the Office of Recordation of the PTO in order to acquire valid trademark rights from "invalid" trademark assignments. David Abrams and Alfred Goodman are partners in the law firm of Roylance, Abrams, Berdo & Goodman LLP.

Stoller asserts that although he was in bankruptcy, the Trustee fully cooperated, aided and abetted Johnson in order for Johnson to perpetrate a fraud on the PTO in the procurement of or attempt to procure Leo Stoller's trademarks through a bankruptcy auction scheme.

Trustee Fogel conducted a "fake" trademark auction on **August 7, 2007**, selling Stoller's trademarks and corporations to his friend Lance G. Johnson creator of SPTA for a mere **\$7,500.00**. Johnson was "not" the highest bidder. Trustee Fogel rejected a bid from a higher bidder of **\$9,100.00**. Stoller asserts that the assignment of Stoller's trademarks, corporations and assets represents a fraud on the bankruptcy court, the PTO and this Court, and is "void", "voidable" or "unenforceable."

The bankruptcy assignment does **not** assign any "valid" trademark rights to SPTA. Quite the contrary. The said assignment is a "naked" assignment. "When a trademark is assigned without the goodwill of the business, the assignment is invalid. Kidd v. Johnson, 100 U.S. 617 (1879). Courts characterize the effect of such an invalid assignment (also known as a "naked" assignment or assignment in gross) as abandonment. See Intellectual Property: Valuation, Exploitation and Infringement Damages by Gordon v. Smith, Russell L. Par. At 43. 3.3 Trademark - The Legal underpinnings.

On July 24, 2007, under cross-examination by Stoller, Lance Johnson admitted that "if the goodwill was **not** transferred with the registration, it would be considered what is called a "naked license" and would render the registration invalid. See page 66 of the July 24, 2007 transcript at Line 14, attached and marked as **Exhibit C**. See also the transcript dated May 29

, 2007, attached to **Exhibit C**.

SPTA's *naked assignment* of a trademark without the goodwill of the business associated therewith invalidates the trademark (this is referred to as an "assignment in gross"). At page 947 - Handling Intellectual Property Issues in Business Transactions 2004 by Steven L. Weisburd, Practising Law Institute. Siegrund D. Kane in the Third Edition of Trademark Law a Practitioner's Guide § 20:4 - Consequences of Invalid Assignment - "Where goodwill does not accompany the mark, the assignment may be called an assignment in gross or a naked assignment. Whatever it is called, an assignment without goodwill is *invalid* and the assignee cannot rely on the assignor's rights."

§ 20:83 Assignments in Bankruptcy

"Trademarks may be assigned as part of a bankrupt business -- just as they may be assigned as part of a growing concern. Once again, the *sine qua non* is the *transfer of goodwill*"

at page 20-10 *id.* In the case at bar, no "valid" goodwill was ever transferred to SPTA as a result of the assignment of assets through Stoller's bankruptcy sale. Leaving SPTA without any "valid" trademark rights to defend before the TTAB and before this court.

§ 18:2 - Trademark cannot be assigned apart from the goodwill it symbolizes⁴

"... a trademark cannot be sold or assigned apart from the goodwill it symbolizes. As the *Ninth Circuit* stated: "The law is well settled that there are no rights in a trademark alone and that no rights can be transferred apart from the business with which the mark has been associated." *Mister Donut of America, Inc. v. Mr. Donut, Inc.*, 418 F.2d 838, 164 USPQ 67 (9th Cir. 1969), overruled in part on other grounds by *Golden Door, Inc. v. Odisho*, 646 F.2d 347, 208 USPQ 638 (9th Cir. 1980). Also the Second Circuit restated the traditional rule:

A trade name or mark is merely a symbol of goodwill; it has no independent significance apart from the goodwill it symbolizes ... A trademark **cannot** be sold or assigned apart from the goodwill it symbolizes.⁵

The assignment conceived in fraud has no legal existence and is void *ab initio*. In addition, the vague, indefinite, ambiguous and imprecise language of the said assignment establishes that the said assignment is a "naked" assignment for the following reasons:

- a) Paragraph 3 is so vague to make the said assignment nothing more than an *assignment in gross*. "Whereas, as of the petition date, the Debtor owned or claimed an interest in certain intellectual property, including but not limited to registered and

⁴ McCarthy on Trademarks (2001) at page 18-5 and the cases cited therein on pages 18-5 and 18-6 incorporated herein by reference as if fully copied and attached.

⁵ *Marshak v. Green*, 746 F.2d 927, 233 USPQ 1099 (2d Cir. 1984) (attachment and auction of a trademark apart from its associated goodwill was set aside and reversed). Likewise, Trustee Fogel's auction of Stoller's trademark to SPTA is void *ab initio*. Stoller's fraud claim against SPTA alleges that the Trustee engaged in a "scheme" with Johnson, the sole member of SPTA and SPTA to perpetrate a fraud on the PTO in the procurement of, or attempt to procure, trademark registrations.

unregistered trademarks and service marks along with the underlying goodwill of 'whatever' business or arrangement may use such marks ..." This language is so vague as to make it impossible for any party who reads this assignment to ascertain what marks, if any, are being assigned from what companies, on what goods so as to render this assignment "void", "voidable", or "*unenforceable*". Trustee Fogel's language in paragraph 3 is so vague, imprecise, ambiguous and indefinite as to render the said assignment of any trademarks to SPTA "*unenforceable*" and "*void*" on its face.

- b) Paragraph 4 is equally, imprecise, ambiguous and indefinite as to render the said assignment is gross "*null and void*". It states that Stealth Industries, Inc., Sentra Industries, Inc., S Industries, Inc., and USA Sports Co. Inc., and collectively with Central, Stealth, Sentra, and S Industries, own or claim an interest in "certain intellectual property".⁶
- c) In paragraph five, Trustee Fogel now starts to compete with *Barnum & Bailey* when the Trustee attempts the "impossible" to assign trademarks to SPTA "whether known or unknown", disclosed by the Debtor or undisclosed by the Debtor." There is no trademark assignment that has never been held to be valid in the history of U.S. Trademark Law from 1776 to the current date, that contains the assignment language assigning trademarks "whether known or unknown" to a third party.
- d) The trustee assignment is clearly void as paragraph 7 states that "*Assignor desires to convey, transfer, assign, deliver and contribute to Assignee (SPTA) all of the estate's right, title, and interest in and to the assets (trademarks) whether, known or unknown to the*

⁶ What is intellectual property? What specific companies own what marks, on what goods? For Trustee Fogel to state in an assignment that various companies "own or claim an interest in certain intellectual property" without naming that said intellectual property, federal trademark registration numbers, and listing the goods that the said marks are use for, by which specific companies, such a "indefinite" language does not qualify as anything other than on "assignment in gross".

Trustee, in 'as is and 'where is' condition without claim or warranty of validity, enforceability or factual support associated with either, and Assignee's (SPTA)⁷ desires to revive the trademark assets under said conditions".

SPTA is a sham entity set up for an Improper Purpose

Stoller asserts that attorney Johnson's "sham" entity does not sell goods or services with any trademark on them and Johnson said that SPTA does **not** intend to sell any goods either. SPTA'S sole purpose was to acquire Stoller's trademarks⁸ was to put Stoller out of business. Lance G. Johnson wrote, "The purpose behind the acquisition (of Stoller Trademarks) was the dismantling of Stoller's decade of abuse."

Stoller respectfully asserts that Johnson's *trademark acquisition fraud* on the PTO relieves him and/or SPTA of any lawful standing before this Court. Stoller respectfully asserts that the Washington IP law firm of Roylance, Abrams, Berdo & Goodman LLP., in conjunction with Johnson, created the name SPTA in a massive fraud on the PTO, the Bankruptcy Court and this Court. Stoller is requesting this Court be made aware of Johnson, Abram, Goodman, and Trustee Fogel's scheme and to take the appropriate action to name Stoller whole and to enter serious sanctions against SPTA.

⁷ It is important for this Court to note that Trustee Fogel stated that SPTA/Lance Johnson "desires to receive the (Trademarks) assets under said conditions." This is an important element, which this Court will see constitutes part of Johnson's "scheme". Because Johnson then enters into 8 contingent agreements to sell and assign Stoller's federal trademarks to third parties. It is important to note that Johnson's contingent agreement to sell and assign was a "secret" agreement until Judge Schmetterer ordered Johnson to turn over all the documents in response to a court sale procedure order. There can be no question by this Court that Johnson engaged in a "scheme" to perpetrate a fraud on the Patent and Trademark Office in the procurement of, or attempt to procure, a trademark registration. There is no question that this fraud by Johnson is generally cognizable. This Court cannot close its eyes to such an egregious fraud on the PTO, the Illinois bankruptcy court, the PTO and this Court.

⁸ This Court has the discretion and obligation to review herein Stoller's serious fraud claim against Johnson and Trustee Fogel and the law firm of Roylance, Abrams, Berdo & Goodman because their

The August 7, 2007⁹ auction of Stoller's trademarks and assets Johnson was a fraud on the PTO, the Illinois Bankruptcy Court and this Court, as well known to Trustee Fogel. See attached transcript marked as **Exhibit D**.

Bankruptcy Judge Jack Schmetterer, in Case No. 05-B-64075, in open court on July 24, 2007, during the auction of Stoller's assets to Johnson said, "*Are you asking me to approve a fraud on an Administrative Agency?*" Although the question was directed to Trustee **Richard Fogel**... and Stoller replied, "**Yes**". **That is what Johnson and Trustee Fogel is asking the court to do.** And that is exactly what **Judge Jack Schmetter** did, **he approved a fraud on the PTO by approving the "sham" action of Stoller trademark assets without the valid assignment of "goodwill" by permitting the sale of trademarks to SPTA to proceed with a "naked license and/or assignment in gross" in which "no" valid trademark rights were ever transferred to SPTA and permitting Richard M. Fogel and Lance G. Johnson's scheme to proceed.**

WHY WOULD A FEDERAL BANKRUPTCY TRUSTEE RICHARD M. FOGEL AND A WELL KNOWN TRADEMARK ATTORNEY LANCE G. JOHNSON ENGAGE IN A SCHEME TO DEFRAUD AN ADMINISTRATIVE AGENCY (PTO) AND THIS COURT

Illinois Bankruptcy Trustee and Lance G. Johnson have just one goal in mind and that was to put Stoller "out of the trademark licensing business." Leo Stoller is a well-known trademark licensor for over 30 years. Stoller has engaged in over 60 Trademark Infringement Actions in the Northern District of Illinois, Illinois Bankruptcy Trustee Richard M. Fogel and Washington D.C. Trademark Attorney has one goal and only one goal in mind and that was to "get Stoller out of the Trademark Business." In order to do that they devised a scheme where Stoller's trademarks would

fraud is part of an ongoing scheme to defraud the Federal Circuit, the PTO and the Illinois Bankruptcy Court.

⁹ The auction of Stoller's assets took place before Illinois Bankruptcy Judge Jack Schmetterer over two days on July 24, 2007 and August 7, 2007.

be auctioned off not to the highest bidder, but to "their" bidder Lance G. Johnson. The Illinois Bankruptcy Trustee Richard M. Fogel declined to accept a higher bidder's offer, who happened to be Stoller's daughter, for the trademarks because they reasoned that "they would just end up with Stoller and he would continue to sue third parties to protect those rights." In a previous trademark infringement case in the Northern District of Illinois, one attorney once complained of Stoller's propensity for 20 years to sue third party infringers who infringed his trademarks and the Federal District Judge stated, "You may not like Stoller's business, you may even find Stoller's business to be repugnant, but Stoller's business is **"legal"**. Well Illinois Bankruptcy Judge Jack Schmetter knowingly approved an agreement between Illinois Bankruptcy Trustee and Lance G. Johnson, the sole member of his "sham" entity called the Society for the Prevention of Trademark Abuse, which was a *"fraud on an Administrative Agency (the PTO)."* The evidence contained in this reply brief is irrefutable evidence that Illinois Bankruptcy Trustee Richard M. Fogel and Lance G. Johnson with the knowledge and approval engage in what amounts to a scheme to the bankruptcy court, the PTO, the Federal Circuit, Leo Stoller's estate, Leo Stoller out of his Trademarks for the sole purpose of "putting Stoller out of business." Johnson has even admitted forming SPTA for the sole purpose of "putting Stoller out of business".

This Court, who has a clear understanding of just what a *trademark license in gross* and/or a *naked trademark license* is, is well aware of the trademark law which establishes that a *"license in gross"* and/ or *"naked"* license does **not** confer any valid trademark rights on any party. Most courts in the land cannot even distinguish a Patent from a Trademark or Copyright. Further, there is **"no"** bankruptcy exception to the Lanham Act as it relates to a valid trademark assignment as well known to Judge Jack Schmetter, Illinois Bankruptcy Trustee Richard M. Fogel and Trademark Attorney Lance G. Johnson.

Trademarks, in order to be properly assigned must be valid in use, not abandoned and the valid "goodwill" must be assigned to the assignee in order to have a valid trademark assignment, as well known to each member of the U.S. Patent and Trademark Board. Thus, a careful review of these pleadings will reveal, irrefutably, the very serious charges of fraud that the Illinois Bankruptcy Trustee Richard M. Fogel, and Trademark Attorney Lance G. Johnson engaged in and are continuing to engage in, to now use SPTA's "invalid" trademark rights to assert "standing" before this Court. Therefore this Court is being asked to carefully review the attached exhibits and to issue a decision acknowledging the fraud and to issue an appropriate sanction *sue sponte* to deter this conduct. This court is also being requested to make Stoller whole when ruling in the Stoller's favor.

OED Attorney Misconduct Complaint interplead in Board Proceedings

Stoller respectfully asserts that the Trustee, by approving the sale of all of the assets/trademarks to Johnson, the attorney who was represented Pure Fishing in the Northern District of Illinois Case No. 05-725 for over two years against Stoller, committed a fraud on the Illinois Bankruptcy Court in Case No. 05-64075 and the PTO in the procurement of or attempt to procure trademark registrations and now this court. See attached OED complaint attached and marked as **Exhibit E.**

Johnson aided and abetted by his law partners, Abrams and Goodman, set up a sham entity called SPTA, to attempt to purchase the federal trademarks and corporate stock of Leo Stoller. Johnson bid **\$7,500.00**. Julie Bishop, Stoller's daughter, bid **\$9,100.00**, but Judge Schmetterer and Trustee Fogel would **not** allow the bidding process to be reopened and did **not** want to see Stoller's daughter buy her dad's trademarks. **Illinois Bankruptcy Trustee Richard M. Fogel and Lance G. Johnson stated their intent was "to put Stoller out of business"** and as a result it was **not** to do

what was in the best interests of Stoller's creditors and his Estate and it resulted in a clear "fraud" being committed on the bankruptcy court, the PTO and now this court.

Judge Schmetterer ordered SPTA to respond to a court order to produce the Sale Procedures Order on July 24, 2007. Johnson identified the said response and admitted drafting it when Stoller cross-examined him on July 24, 2007 (**Exh. C**). SPTA's response stated that SPTA intended to re-sell "most, if not all of the assets" ... "which might be acquired with a winning bid." Johnson admitted drafting the said response to the *fraudulent* Sale Procedures Order. William Factor, Johnson's attorney, had knowledge of the fraudulent "Sales Procedure Order" and admitted to filing the said SPTA response and signed the certificate of service. At the hearing on July 24, 2007, Trustee Fogel admitted to approving the fraudulent sale of the trademark assets of the estate.

SPTA'S response to the Sales Procedure Order consists of the said response and two agreements. The first agreement is a sample Contingent Agreement to Sell and Assign, attached and marked as **Exhibit F**, which Lance Johnson had admitted under oath during cross-examination by Leo Stoller as having drafted it. The second agreement is a sample Assignment (**Exh. A**) that was attached to the sample Contingent Agreement to Sell and Assign and Assignment.

Lance Johnson admitted under oath that he has entered into seven (7) contingent fee agreements to sell Stoller's trademarks to third parties absent any "valid" goodwill with the following parties¹⁰ who Johnson had induced into signing the said contingent fee agreements in order to

¹⁰ Lance Johnson and Trustee Fogel's scheme was quite extensive in that Johnson had entered into 7 to 8 executed contingent fee agreements. Johnson, with the Trustee aiding and abetting, induced at least 8 parties into their "scheme" to defraud the PTO by agreeing to purchase "invalid" and "unenforceable" trademarks and then to submit an assignment document drafted by Johnson that the said marks were valid in order to record them at the PTO and to procure a valid trademark assignments of an "agreed" invalid trademark. Trustee Fogel, on the record in open court on August 24, 2007, stated that the PTO recorder's office will accept and record any document submitted to it whether the assignment was valid or not.

purchase Stoller's trademarks. Johnson provided the fraudulent agreements to the court listing the following parties and the dollar amounts of the agreed purchase price of Stoller's trademarks:

Medtronic Navigation	Medical Goods	\$500.00
Pure Fishing, Inc.	Fishing Products	1,000.00
Dark Star Orchestra	Performances and Recordings	1,000.00
Lancope, Inc.	Software	1,000.00
Bud K World Wide, Inc.	Knives	1,000.00
IP Holdings, Inc.	Software	1,000.00
Hepa Corporation	Air Filters and Fans	1,000.00

An email from the Trustee to Stoller, with an attachment of the said agreements, confirmed that the Trustee was aware of each agreement that Johnson induced into his "fraud".

Fogel and Johnson's Fraudulent Scheme

Stoller alleges and asserts that the Trustee, SPTA, and Johnson, were engaged in a fraudulent scheme which disqualified Johnson as a bidder of Stoller's trademarks and that the bankruptcy judge, as a matter of law, could not sanction the Trustee and SPTA'S fraudulent scheme by permitting SPTA and/or Johnson to bid on the assets and trademarks of Stoller's estate. The Trustee's contract to sell Johnson Stoller's trademarks was conceived in a fraud on the PTO and had no legal existence.

Johnson and SPTA have no standing have not purchased any valid trademark rights from the Trustee. The Trustee made no representation that any of the alleged trademarks he was assigning to SPTA were valid.

"WHEREAS, Assignor desires to convey, transfer, assigned, deliver and contribute to Assignee all of the Estate's right, title and interest in

and to the Assets, whether known or unknown to the Trustee, in "as is" and "where is" condition without claim or warranty of validity, enforceability or factual support associated with either, and Assignee's desire to receive the Assets under said conditions."

In order to have lawful assignment of valid trademarks, the owner must assign the "goodwill" associated with the said trademarks. No valid assignment can be made by stating the language, which the Trustee used in paragraph 7 of his assignments. Such language, i.e., "as is" and "where is" condition without claim or warranty of (trademark) validity, enforceability or factual support associated with either, and Assignee's desire to receive the Assets under said conditions is a textbook example of an assignment in gross. No valid trademark rights were ever assigned to SPTA under the Trustee's trademark assignments, as well known to expert trademark attorney Johnson.

Fraud in Obtaining Stoller's Registration(s) of Said Mark(s)

Fraud in obtaining registration of a mark consists of knowingly false representation to the PTO regarding a material fact made with the intent to induce reliance's, followed by reasonable reliance resulting in a registration or other similar benefit that would not have been granted but for the misrepresentation. San Juan Products, Inc. v. San Juan Pools, Inc., 849 F.2d 468, 473, 7 UPSA2d 1230, 1234 (8th Cir. 1988).

McCarthy's Desk Encyclopedia of Intellectual Property by J. Thomas McCarthy.

The Trustee, SPTA, and Johnson, were well aware that an abandoned mark could not be federally registered because proof of use is a predicate to registration. See McCarthy on Trademarks, §§ 19:1, 19:22-19:24 (no registration without use). In Johnson's contingent agreements to sell at paragraph four states:

"SPTA makes no representation, warranty, or guarantee regarding

**the validity, enforceability, intrinsic value or supporting evidence
(Documentary or otherwise) of any asset or claim acquired by BUYER
under this agreement."**

Indeed, SPTA expected that all trademark registrations, alleged common law rights, and trademark licenses that are associated with the Estate of Stoller, were invalid and enforceable. Nonetheless, BUYER agrees to take title to the assets "as is" and "where is".

Since an abandonment of a trademark results in a forfeiture of rights, as well known to the Trustee, the parties that Johnson had sign the contingent agreements **abandoned their rights to the trademarks upon signing the said agreements.**

McCarthy on Trademarks

"Sale of trademark rights apart from goodwill symbolized by the Trademark is known as an 'assignment in gross'." See §§ 18:1 - 18:9.

Johnson, with the permission of Trustee Fogel, set up a "scheme" in which Johnson formed a "sham" company called The Society For The Prevention of Trademark Abuse to acquire the trademarks of Stoller. Johnson provided assignment documents, which were to be filed with the Trademark Office alleging that the same trademarks were valid. Such a scheme represents a clear fraud on the PTO. Judge Schmetterer stated that he was approving the contingent agreement to sell and assign, not the assignment document. It was for the Office of Enrollment and Discipline to determine if Johnson was attempting to perpetrate a fraud on the PTO. The OED was requested to review Johnson's Response to Sale Procedure Order, the Contingent Agreement to Sell and Assign, and all of the said documents combined which established that Johnson, Abrams, Goodman, along with Trustee Fogel, and William Factor had engaged in a scheme to perpetrate a fraud on the PTO.

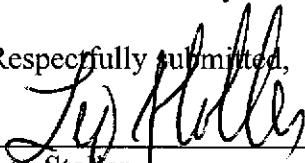
SUMMARY

The bankruptcy Assignment dated August 20, 2007, at issue, is a license in gross and/or a naked license and conferred no rights on the SPTA. SPTA has clearly perpetrated on the Patent and Trademark Office by attempting to sell and register trademarks which have been abandoned, as per the evidence presented herein. Mr. Zeller is well aware that he presented a naked license to this Court for its imprimatur of the fact that Stoller has no cognizable right to protect and thus no right to intervene as a matter of right and/or as permissive intervention.

This Court, upon review of the bankruptcy assignment, when the Court applies the trademark law to the assignment, the Court will come to the undeniable conclusion that the assignment was a naked license and/or license in gross conferring no rights on the SPTA, as well-known to Mr. Zeller.

WHEREFORE, Stoller requests an "order" from this court declaring the attached August 20, 2009 Assignment a "naked" assignment and/or an "Assignment" in gross transferring "no" Stoller trademark rights to SPTA resulting in an abandonment by the trustee of Stoller's assets which have been lawfully re-acquired by Stoller as a result of the Trustee's abandonment, through a naked assignment dated **August 20, 2009**. Stoller prays that this Court grant him the right to intervene as a matter of right and/or as permissive intervention. Stoller further requests that the Court grant Stoller the right to increase the page limit of his reply brief, in view of the fact that Google has raised new issues which had to be dealt with in order for this Court to have in-depth understanding of the facts of this case. To grant Stoller what other relief that this court may feel is just and proper.

Respectfully submitted,



Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302
(312) 545-4554
www.rentamark.net

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

GOOGLE, INC.,)	
)	
Plaintiff)	
	)	Case No: 1:07-cv-00385
v.)	
	)	Honorable Virginia J. Kendall
CENTRAL MFG. INC., et al.,)	
)	
Defendants.)	

**REPLY TO GOOGLE'S RESPONSE TO
MOTION FOR RECONSIDERATION**

EXHIBIT A

(U.S. District Court decision dated June 20, 2007)

Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302
(312) 545-4554

Order Form (01/2005)

Case 1:06-cv-06950 Document 22 Filed 06/20/2007 Page 1 of 2

United States District Court, Northern District of Illinois

VR

Name of Assigned Judge or Magistrate Judge	William J. Hibbler	Sitting Judge If Other than Assigned Judge	
CASE NUMBER	06 C 6950	DATE	June 20, 2007
CASE TITLE	In re Leo Stoller		

DOCKET ENTRY TEXT

For the reasons set forth below, this Court dismisses Stoller's appeal of the bankruptcy court's order granting Pure Fishing, Inc. an extension and his motion requesting permission to appear *pro se* before the Trademark Trial and Appeal Board. In addition, this Court finds that the remaining three orders are final and appealable. Stoller is instructed to fully comply with Bankruptcy Rules and procedures regarding these appeals by July 13, 2007 or this appeal will be dismissed. All relevant parties are instructed to respond to the appeal within 21 days by August 3, 2007. The parties are instructed to schedule a status hearing within 14 days of July 13, 2007.

■ [For further details see text below.]

William J. Hibbler

Docketing to mail notices

STATEMENT

The present matter before the Court presents a short, albeit complicated, history. On December 20, 2005, Appellant Leo D. Stoller ("Stoller") filed a voluntary petition for relief, styled *In re Stoller*, No. 05 BK 64075, under Chapter 13 of the United States Bankruptcy Code, 11 U.S.C. §§101 *et seq.* On September 1, 2006, the Bankruptcy Court entered an Order converting Stoller's Chapter 13 petition to a Chapter 7 Bankruptcy case. Stoller appealed this conversion order with the district court which was assigned case number 06 C 6100. Next, on November 14, 2006, Stoller filed a second notice of appeal with the district court with respect to an October 31, 2006 order issued by the Bankruptcy Court. This appeal was assigned case number 06 C 6599. Additionally, on December 14, 2006, Stoller filed the instant notice of appeal from a series of orders issued by the bankruptcy court in December 2006. This appeal was assigned the present case number 06 C 6950. In particular, the instant appeal pertains to bankruptcy court orders: (1) approving the agreement 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); (2) granting a motion extending deadlines for Pure Fishing, Inc. to file a complaint objecting to Debtor's general discharge and to dischargeability of any debts owed to Pure Fishing, Inc.; (3) authorizing compromise with Lanard Toys, Ltd. and Lanard Toys, Inc. and related relief; and (4) denying debtor's request to disqualify Richard Fogel as Trustee. Additionally, Stoller included in the instant appeal a motion for permission to represent himself and his corporate entities before the Trademark Trial & Appeal Board.

Creditor Pure Fishing, Inc. brings the present motion to dismiss arguing that Stoller failed to follow the bankruptcy rules of procedure, that Stoller included four separate orders in a single appeal, and that some of the orders are interlocutory. Alternatively, Pure Fishing argues that this Court clarify the appellate procedure. In response, Stoller requests that this Court grants Pure Fishing's motion to clarify the appellate procedures and set applicable deadlines.

Courtroom Deputy Initials: jhc

1800 JUN 20 2007
 10 15 AM 07 JUN 2007

STATEMENT

This Court has jurisdiction in bankruptcy cases over appeals from "final judgments, orders, and decrees," "interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing" the period of exclusivity and "with leave of court, from other interlocutory orders and decrees." 28 U.S.C. § 158(a). Accordingly, the Court must first determine whether any of the challenged orders is final. The concept of finality is broader in the bankruptcy context than it is in the context of an ordinary civil suit. *In re Forty-Eight Insulations, Inc.*, 115 F.3d 1294, 1298-99 (7th Cir. 1997). The Seventh Circuit has held that orders of the bankruptcy court are final and appealable if they resolve discrete issues, where they may determine and seriously affect substantive rights and cause irreparable harm to the losing party. *In re Technical Knockout Graphics, Inc.*, 833 F.2d 797, 800 (7th Cir. 1987). Therefore, in the bankruptcy context, final orders include those that: (1) "ultimately determine a creditor's position in the bankruptcy proceeding," *In re Forty-Eight Insulations* at 1299; (2) "resolve[] all contested issues on the merits and leave[] only the distribution of the estate assets to be completed," *In re Wade*, 991 F.2d 402, 406 (7th Cir. 1993); or (3) "terminate[] what, but for bankruptcy, would be a stand-alone suit by or against the trustee," *In re Szekely*, 936 F.2d 897, 899-900 (7th Cir. 1991). Among others, the Seventh Circuit deems final "orders allowing or denying claims; orders denying relief from a stay; decisions involving property ownership; exemptions; sanctions; appointments of trustees; judicial sales orders; and confirmation[s] of bankruptcy plan[s]." *In re Wade*, 991 F.2d at 406.

At the onset, the Court notes that the order granting Pure Fishing, Inc. an extension to file a complaint objecting to Stoller's general discharge and to the dischargeability of any debts to Pure Fishing is clearly interlocutory. This order did not in any way determine Pure Fishing's position in the bankruptcy; it merely permitted Pure Fishing more time to file its complaint. Stoller failed to seek leave to file an interlocutory appeal of this order. Accordingly, the appeal for this order is dismissed for lack of jurisdiction.

Next, 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 1299. 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. 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. Stoller is instructed to fully comply with the Bankruptcy Rules regarding the appellate procedures to the District Court. Additionally, in the interest of judicial economy and to deter the numerous filings from Stoller, this Court will issue a ruling on the final and appealable orders upon the conclusion of Stoller's bankruptcy proceedings in 05 BK 64075.

Lastly, Stoller's self-styled appeal contains a motion for permission to represent himself and his corporate entities before the Trademark Trial & Appeal Board. This Court is not the proper venue for Stoller's motion. Accordingly, this request is dismissed.

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

GOOGLE, INC.,)	
)	
Plaintiff)	
	)	Case No: 1:07-cv-00385
v.)	
	)	Honorable Virginia J. Kendall
CENTRAL MFG. INC., et al.,)	
)	
Defendants.)	

**REPLY TO GOOGLE'S RESPONSE TO
MOTION FOR RECONSIDERATION**

EXHIBIT B

(Trademark Assignment)

Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302
(312) 545-4554

ASSIGNMENT

This Assignment ("Assignment") is made effective as of August 20, 2007 from Richard M. Fogel ("Assignor" or "Trustee"), not individually, but solely as the trustee of the chapter 7 bankruptcy estate (the "Estate") of Leo D. Stoller ("Debtor"), to The Society for the Prevention of Trademark Abuse, LLC ("Assignee"), a limited liability company organized under the laws of Delaware and having an office at 10560 Main Street, Suite 220, Fairfax, VA 22030:

WHEREAS, the Debtor filed a voluntary petition under title 11, United States Code (the "Bankruptcy Code") on December 22, 2005 (the "Petition Date") and Debtor's bankruptcy case is currently pending as Case No. 05 B 64075 before the United States Bankruptcy Court for the Northern District of Illinois (the "Court").

WHEREAS as of the Petition Date, the Debtor owned or claimed an interest in certain intellectual property, including but not limited to, registered and unregistered trademarks and service marks along with the underlying goodwill of whatever business or arrangement may use such marks (the "Marks") and licenses for certain Marks (the "Licenses"), and claims asserted by the Debtor in connection with the Marks and/or the Licenses through lawsuits for alleged damages and/or infringement, trademark oppositions, and cancellation proceedings before the U.S. Trademark Trial and Appeals Board (the "Claims"); which interests and ownership the Debtor claimed either directly or through one or more proprietorships, including, but not limited to, Central Mfg. Co. (whether or not designated as a Delaware corporation, stock holding company, or assumed name for Central Mfg. Inc.), Central Manufacturing Company Inc., Rentamark, Stealth, and Stealth Licensing;

WHEREAS as of the Petition Date, the Debtor owned all of the stock (the "Stock") of the following incorporated entities: Central Mfg. Inc. ("Central"), Stealth Industries Inc. ("Stealth"), Sentra Industries Inc. ("Sentra"), S Industries Inc. ("S") and USA Sports Co. Inc. ("USA" and, collectively with Central, Stealth, Sentra and S (the "Corporations") which own or claim an interest in certain intellectual property in addition to the Marks and the Licenses and have asserted certain claims for alleged damages and/or infringements in addition to the Claims;

WHEREAS because there is a question as to whether the Debtor has fully disclosed to the Court the extent and nature of his interests in the Marks, Licenses, Claims and Stock (collectively, whether known or unknown, disclosed by the Debtor or undisclosed by the Debtor, the "Assets"), there exists the possibility that the scope and nature of Assets known to the Trustee is incomplete;

WHEREAS the Court has held that, pursuant to the provisions of section 541(a) of the Bankruptcy Code, the Assets are property of the Estate and are subject to the exclusive jurisdiction of the Court pursuant to 28 U.S.C. § 1334(e);

WHEREAS, Assignor desires to convey, transfer, assign, deliver, and contribute to Assignee all of the Estate's right, title, and interest in and to the Assets, whether known or unknown to the Trustee, in "as is" and "where is" condition without claim or warranty of validity, enforceability or factual support associated with either; and Assignee's desires to receive the Assets under said conditions;

WHEREAS, on or about August 8, 2007, the Court entered an order (the "Sale Order") that approved the Trustee's sale of the Assets to Assignee and approved his entry into the transaction contemplated and evidenced herein and as of the date of this Assignment, no order of the Court, or any applicable appellate court has been entered prohibiting or otherwise staying the effect of the Sale Order, the Trustee's execution of this Assignment or the transfer of the Estate's right, title and interest in the Assets to the Assignee;

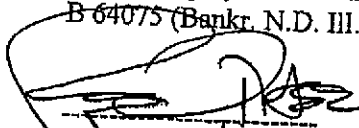
NOW, THEREFORE, in consideration of the payment of seven thousand five hundred dollars (\$7500.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby conveys, transfers, assigns, delivers, and contributes to Assignee all of the Estate's right, title, and interest of whatever kind in and to the Assets. Without limiting the extent of the Assets as defined in the recitals set forth above, the Assets include the following:

- a) the registrations and unregistered common law rights associated with the known Marks listed in Exhibit A, attached hereto and incorporated by reference herein, together with the goodwill of any business symbolized thereby in connection with the goods on which the Marks may have been, are, may be, or will be used and, whether known or unknown to the trustee;
- (b) all Marks or Claims, whether known or unknown to the Trustee
- (b) the goodwill of any business relating to the products or services upon which the Marks may have been, are, may be, or will be used and for which they are registered;
- (c) all income royalties and damages hereafter due or payable to the Estate with respect to the Marks, including but not limited to any damages or other payments for past infringements and misappropriation of the Marks and all rights to sue on account of such infringements or misappropriations;
- (d) all Licenses, whether known or unknown to the Trustee, that were granted to or taken by the Debtor from any third parties associated with any claim of a Mark, including the right to receive any royalties associated therewith or benefit of use that would otherwise inure to any licensor of any such Mark right (known licenses are listed in Exhibit B);
- (e) the right to recover past damages for any infringement of any Mark for any of the Marks conveyed herein;
- (f) all Claims that involve or relate to any pending proceeding before a U.S. federal court or the U.S. Patent and Trademark Office Trademark Trial and Appeals Board; and
- (g) all of the Estate's right, title and interest in the Stock.

Assignor further covenants that it will execute all documents, papers, forms and authorizations and take all other actions that may be necessary for securing, completing, or vesting in Assignee all of the Estate's right, title, and interest in the Assets.

IN WITNESS WHEREOF, ASSIGNOR has duly executed under seal and delivered this Assignment, as of the day and year first above written.

Richard M. Fogel, not individually but as trustee for
the bankruptcy estate of Leo D. Stoller, case no. 05
B 64075 (Bankr. N.D. Ill.)



By Richard M. Fogel, trustee

MHN

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

FILED
9-14-2009
SEP 14 2009 PH

GOOGLE, INC.,)
)
Plaintiff)
)
v.)
)
CENTRAL MFG. INC., et al.,)
)
Defendants.)

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

Case No: 1:07-cv-00385

Honorable Virginia J. Kendall

**REPLY TO GOOGLE'S RESPONSE TO
MOTION FOR RECONSIDERATION**

EXHIBIT C

**(JULY 24, 2007 TRANSCRIPT and
MAY 29, 2007 TRANSCRIPT)**

Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302
(312) 545-4554

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

4 In re:)
5 LEO STOLLER,) No. 05 B 64075
6) Chicago, Illinois
7 Debtor.) July 24, 2007
) 11:30 a.m.
) 2:30 p.m.

8
9 TRANSCRIPT OF PROCEEDINGS BEFORE THE
10 HONORABLE JACK B. SCHMETTERER

11 APPEARANCES:

12 MR. WILLIAM BARRETT
13 MR. MIKE ZELLER
14 on behalf of Google, Inc.;

15 MR. STEPHEN WOLFE
16 on behalf of the United States Trustee;

17 MR. LEO STOLLER
18 pro se, debtor;

19 MR. PATRICK CLISHAM
20 on behalf of Richard Fogel, Chapter 7 trustee;

21 MR. RICHARD FOGEL
22 Chapter 7 trustee;

23 MR. LANCE JOHNSON
24 Society for the Prevention of Trademark Abuse;

25 MR. WILLIAM FACTOR
on behalf of Pure Fishing, Inc.

I N D E X

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<u>WITNESS:</u>	<u>DX</u>	<u>CX</u>	<u>REDX</u>	<u>RECX</u>
LANCE JOHNSON			41	49
RICHARD M. FOGEL			76	85
LEO STOLLER			96	86

1 THE CLERK: Stoller, 05 B 64075.

2 MR. STOLLER: Good morning, Judge. Leo
3 Stoller.

4 THE COURT: Appearances left to right,
5 please.

6 MR. BARRETT: Your Honor, William Barrett
7 on behalf of Google, Inc.

8 MR. ZELLER: Mike Zeller on behalf of
9 Google, Inc.

10 MR. WOLFE: Stephen Wolfe on behalf of
11 the United States Trustee.

12 MR. STOLLER: Leo Stoller, debtor.

13 MR. CLISHAM: Your Honor, Patrick Clisham
14 on behalf of Richard Fogel, Chapter 7 trustee.

15 MR. FOGEL: Richard Fogel. Good morning,
16 Your Honor.

17 MR. JOHNSON: Lance Johnson, Society for
18 the Prevention of Trademark Abuse.

19 MR. FACTOR: William Factor for Pure
20 Fishing, Inc.

21 THE COURT: A few days ago, July 20th,
22 the circuit entered an order, which I'm going to
23 pass around.

24 Mr. Fogel, I'm going to give you one
25 copy and Mr. Stoller one copy. I don't know whether

1 Mr. Stoller has seen it.

2 Have you, sir?

3 MR. STOLLER: Yes, I've seen it.

4 THE COURT: But the gist of it, as I read
5 it, the last paragraph provides that unless
6 Mr. Stoller pays a fine to the clerk of the Court of
7 Appeals within 14 days, they intend to enter an
8 order directing clerks of all the federal courts in
9 this circuit to return unfiled any papers submitted
10 either directly or indirectly by or on behalf of
11 Stoller unless and until he pays the sanction. The
12 date of this order was July 20, so 14 days from now
13 something like that may happen. I don't know. I'm
14 not -- I'm just saying I'm aware of the order. And
15 our clerk will -- undoubtedly if such an order is
16 entered, our clerk will be part of the federal court
17 system who will obey that order. I can assure
18 everyone our clerk will obey an order if the clerk
19 gets an order 14 days from the date of this one.

20 That is somewhat relevant in
21 connection with adversary 07 A 345, Neary versus
22 Stoller. Mr. Stoller presented a motion on
23 June 29th, '07, in which he sought a more definite
24 statement or dismissal of the complaint. I don't
25 believe he showed up that day, but I ruled on his

1 order.

2 Mr. Stoller, I'm going to give you a
3 copy of the order that was entered that day. I take
4 it you did not know that the order was entered.

5 MR. WOLFE: Judge, I believe Mr. Stoller
6 was here. He argued the motion, and Your Honor
7 denied it.

8 THE COURT: Is that right?

9 MR. WOLFE: I don't know what date we're
10 talking about.

11 THE COURT: June 29th.

12 MR. STOLLER: But I was here when we
13 discussed it. I never got your order, though.

14 THE COURT: Okay. Here's the order.

15 MR. STOLLER: Thanks, Judge.

16 THE COURT: Now you're giving me the same
17 motion all over again?

18 MR. STOLLER: I'm not giving you that
19 motion again.

20 THE COURT: It was noticed for today.

21 MR. STOLLER: I don't know why that would
22 have happened. We just -- it wasn't me. I wasn't
23 renoticing a motion that you already --

24 THE COURT: Well, it's pro se. It's, in
25 effect, noticed as a renoticed motion.

1 MR. STOLLER: I didn't renotice it for
2 today.

3 THE COURT: All right.

4 MR. WOLFE: Judge, it may have originally
5 been noticed --

6 THE COURT: Yes?

7 MR. WOLFE: -- for today. We just got
8 into it back on June 29th.

9 THE COURT: Okay. Renoticed motion --
10 this renoticed motion is denied because I previously
11 ruled upon it. So I will deny it under that order
12 which I will sign.

13 Now, I have set the status of
14 pleadings and -- of this adversary for August 7th at
15 10:30, Mr. Stoller. August 7th.

16 MR. STOLLER: August 7th.

17 THE COURT: So if you don't have an
18 answer on file --

19 MR. STOLLER: I did file an answer.

20 THE COURT: Oh. Do you have a copy for
21 me?

22 MR. STOLLER: Yes.

23 THE COURT: May I have a copy?

24 Plaintiff, did you get his answer?

25 MR. WOLFE: Mr. Stoller handed me a copy

1 a few moments ago, Your Honor.

2 (Document tendered.)

3 THE COURT: I am very sorry, folks, to
4 all of you. My regrets that it's so late. We
5 earlier had an episode where some lady had a medical
6 problem, and it took us about half an hour to clear
7 the problem.

8 Okay. I have an answer.

9 Anything you want to say about his
10 answer?

11 MR. WOLFE: Not today, Your Honor, no.

12 THE COURT: Shall I just set this for
13 trial?

14 MR. WOLFE: Judge, we're back for a
15 status on August 7th. I would appreciate just
16 setting the matter over to the 7th.

17 THE COURT: All right. Mr. Stoller and
18 counsel, we will put it over to the 7th, and I will
19 then take up the question of setting this for trial.

20 MR. WOLFE: Thank you, Judge.

21 THE COURT: Are you handling the case or
22 is some other assistant?

23 MR. BARRETT: I'm assigned to the case,
24 Your Honor.

25 MR. STOLLER: Is that at 9:30?

1 THE COURT: Let me have the received
2 stamp, please.

3 MR. WOLFE: The status is set at 10:30
4 already.

5 MR. FACTOR: Can we change it to 11:00
6 o'clock?

7 THE COURT: Is there any problem with
8 that, folks?

9 MR. WOLFE: No, sir.

10 THE COURT: We'll make it 11:00 o'clock
11 for that status.

12 MR. STOLLER: 11:00? Okay.

13 THE COURT: Now, when you say,
14 Mr. Stoller, something you call an "amended
15 cross-complaint," what does that mean? Did you file
16 an original --

17 MR. STOLLER: I thought I did.

18 THE COURT: When was that?

19 MR. STOLLER: On the 12th of July.

20 THE COURT: In this adversary?

21 MR. STOLLER: I thought I did. My
22 records indicated that I did on the 12th of July.

23 THE COURT: You just filed that
24 separately from the answer?

25 MR. STOLLER: No. That was part of my

1 original answer that I believe I filed on July 12th.

2 THE COURT: In the adversary?

3 MR. STOLLER: In the adversary.

4 THE COURT: Check it, please. And try to
5 get up a copy, please, for me.

6 Well, this purports to be a
7 cross-complaint against the U.S. Trustee to recover
8 monies being held by the trustee, Fogel.

9 MR. STOLLER: Yes.

10 THE COURT: You allege that -- for
11 whatever reason, you allege that Trustee Fogel used
12 improper influence to coerce Julia Bishop into
13 signing a settlement agreement.

14 MR. STOLLER: That's correct. And that
15 the --

16 THE COURT: Trustee Fogel is not part of
17 this adversary at the moment. You would probably
18 not be expected to know this, but under our rules
19 the adversary complaint is clearly treated as a
20 separate world related to the bankruptcy. But
21 parties who are in the bankruptcy are not
22 necessarily in the adversary unless they appear or
23 are dragged in. Do you understand?

24 MR. STOLLER: Yes.

25 THE COURT: According to my clerk, she

1 has not found --

2 You did not find the answer that he
3 handed me today?

4 MR. FACTOR: No.

5 THE COURT: Nor any on the prior date?

6 MR. FACTOR: I'm checking the docket in
7 the bankruptcy case. But in the adversary, no.

8 THE COURT: Okay. We cannot file -- have
9 you filed this answer yet?

10 MR. STOLLER: No. I'm going down there
11 today, right now. In fact, after this hearing.

12 THE COURT: Okay. But the prior thing
13 you say you filed --

14 MR. STOLLER: I filed -- I had a --

15 THE COURT: Maybe you filed it in the
16 bankruptcy?

17 MR. STOLLER: I might have. I don't
18 know. I had a --

19 THE COURT: Just for your knowledge, no
20 one --

21 Mr. Fogel is shaking his head he
22 doesn't know about it.

23 In any event, sir, the adversary is
24 a separate world for filing purposes and for parties
25 to appear or be brought in.

1 MR. STOLLER: Yes, Judge.

2 THE COURT: Okay?

3 MR. STOLLER: Okay.

4 THE COURT: Okay. So I'll see you on
5 August 7th. But I'm just pointing out that the
6 countercomplaint, I don't understand how it could be
7 at this stage. But I'll wait. We'll see.

8 Now, I have a motion from
9 Mr. Stoller which was presented today for what he
10 calls a directed verdict, but basically it's to
11 vacate a court order, and his motion for dismissal
12 of the bankruptcy.

13 MR. CLISHAM: Your Honor, I --

14 THE COURT: The first --

15 MR. FOGEL: Your Honor, we're not
16 familiar with that motion.

17 THE COURT: I see. You're not? You
18 wouldn't be because the clerk tells me that no
19 notice of motion was filed.

20 MR. FOGEL: That may explain it.

21 THE COURT: Pardon me?

22 MR. FOGEL: That may explain it.

23 THE COURT: Yeah. So I'm certainly going
24 to strike your motion. However, the gist of this
25 motion is that you wish to vacate certain orders on

1 grounds that Mr. Pat Clisham did not file his
2 appearance before he filed a lot of motions.

3 As I told you once, Mr. Stoller,
4 under Bankruptcy Rule 9010(b), an attorney appearing
5 for a party in a case shall file a notice of
6 appearance, quote, "unless the attorney's appearance
7 is otherwise noted on the record," end of quote.

8 And as I told you once before, every time a lawyer
9 files a pleading, that makes his appearance noted on
10 the record. For example, if somebody files a
11 complaint, their address and name and everything
12 is -- office address and telephone number is on
13 their complaint. That notes their appearance on the
14 record.

15 MR. STOLLER: That's inapposite the rules
16 of the Northern District of Illinois that the -- it
17 states that an attorney has to file his appearance
18 with his first pleading. And I respectfully find
19 that the rules say --

20 THE COURT: Are you citing to a district
21 court rule?

22 MR. STOLLER: Pardon me?

23 THE COURT: Are you citing to a district
24 court rule?

25 MR. STOLLER: Yes. The local rules.

1 THE COURT: We have bankruptcy rules on
2 the subject. In any event, the national rule trumps
3 the local rules, even if there were something in our
4 bankruptcy rules on the subject that you might rely
5 on. The attorney's appearance is otherwise noted on
6 the record, and nothing is improper so long as they
7 have given all of the information, which lawyers do
8 give when they file pleadings.

9 So your motion for directed verdict,
10 motion to vacate court order, or motion to dismiss
11 is dismissed on that -- is denied on that
12 substantive ground, and also because you failed to
13 give notice of motion. So for reasons stated from
14 the bench, that's the end of that one.

15 Now, we have two matters on the
16 business today. One is to vacate nunc pro tunc
17 settlement agreement and final order approving
18 settlement agreement with Google. I read that. We
19 also have, of course, answers from Google and Pure
20 Fishing, and a reply from Mr. Stoller.

21 Mr. Stoller, do you have a copy of
22 the final order approving the settlement agreement?
23 I don't find it attached here.

24 MR. STOLLER: I --

25 THE COURT: The one you want me to

1 vacate.

2 MR. STOLLER: Pardon me?

3 THE COURT: The one you want me to
4 vacate.

5 MR. STOLLER: I do have that and --

6 THE COURT: May I see?

7 MR. STOLLER: I don't have it with me,
8 but I do have that.

9 THE COURT: What was the date of it
10 approximately?

11 MR. STOLLER: I don't recall the date
12 right now.

13 THE COURT: What year was it?

14 MR. STOLLER: I think it was in '05. No,
15 in '06. It believe it was in '06.

16 THE COURT: It was last year sometime?

17 MR. STOLLER: I believe so.

18 THE COURT: So the time to appeal it has
19 passed. Have you taken an appeal of it?

20 MR. STOLLER: Yes. And Judge Hibbler has
21 said, and we talked about it last time, that the
22 decision could adversely affect my rights in this
23 case. And he gave me leave to appeal that
24 particular decision of yours, approving the
25 settlement agreement and that particular settlement

1 with Google, because it may have, according to Judge
2 Hibbler, adverse impact on my estate. So I'm
3 appealing that.

4 THE COURT: Okay. Do you know the docket
5 number on the appeal?

6 MR. STOLLER: No, Judge. I don't have
7 that in front of me. But I can provide you with
8 that.

9 THE COURT: Any --

10 MR. STOLLER: But that is on appeal. We
11 read that decision last time. The last time I was
12 in court, I read you Judge Hibbler's reasoning. He
13 also gave me right to appeal the request to
14 disqualify the trustee here as a final order. And
15 Judge Hibbler gave me the right to appeal your
16 settlement that you acknowledged that the trustee
17 worked out with Lanard. And I have a right to
18 appeal that and --

19 THE COURT: Is it one of the appeals that
20 you refer to in your response to the motion of the
21 trustee for authority to sell personal property?

22 MR. STOLLER: Yes.

23 THE COURT: And which one is it?

24 MR. STOLLER: Which one of the -- I don't
25 know which one. I don't have -- I can find that out

1 and I would give that to you. But I did appeal that
2 as well.

3 THE COURT: Okay.

4 MR. STOLLER: And based on Judge
5 Hibbler's reasoning that I could be damaged by the
6 Google -- the underlying Google settlement
7 agreement, the idea that you would sell my assets
8 pending these appeals and appeal the conversion,
9 which is up on the Seventh Circuit, would
10 irreversibly damage my estate. And even if I were
11 to reverse, I would not be able to recover. And no
12 pecuniary damages could compensate me by attempting
13 to sell off my assets prior to allowing my appeals
14 to go forward.

15 THE COURT: Okay. So the order you were
16 trying to get vacated was a -- certainly the time to
17 appeal has long run.

18 MR. STOLLER: No, my time has not run.

19 MR. CLISHAM: Your Honor, the status of
20 that appeal I believe is that there is a briefing
21 schedule set. Judge Hibbler, I believe, entered an
22 order at Mr. Stoller's request extending the time
23 for him to file his brief. And there's a status --

24 THE COURT: All right. So it's on
25 appeal.

1 MR. CLISHAM: It is on appeal.

2 THE COURT: Okay. So why should I pass
3 on this? I'm not clear, Mr. Stoller, of your
4 reasoning why I --

5 MR. STOLLER: Pass on what?

6 THE COURT: Your motion. While it's on
7 appeal -- you have appealed it. You could raise any
8 objection you want on appeal.

9 MR. STOLLER: But which motion are we
10 referring to? We were talking --

11 THE COURT: The motion to vacate nunc pro
12 tunc your settlement agreement --

13 MR. STOLLER: Oh.

14 THE COURT: -- and final order approving
15 settlement with Google.

16 MR. STOLLER: Why should you rule on that
17 now?

18 THE COURT: No. Why should I rule on it
19 ever. You've got an appeal on the subject. Have
20 you raised this issue before Judge Hibbler?

21 MR. STOLLER: I haven't filed my appeal
22 before Judge Hibbler, but I --

23 THE COURT: What?

24 MR. STOLLER: I have my briefing schedule
25 laid out.

1 THE COURT: Well, you could raise
2 it before --

3 MR. STOLLER: Pardon me?

4 THE COURT: You could raise it before
5 Judge Hibbler.

6 MR. STOLLER: That's correct.

7 THE COURT: Maybe. Did you raise it
8 before me?

9 MR. FOGEL: Several times.

10 MR. STOLLER: Several times, right.

11 THE COURT: No. Before I entered this
12 order?

13 MR. STOLLER: Which order was that?

14 THE COURT: The order we're referring to,
15 sir. Your motion to vacate nunc --

16 MR. STOLLER: I objected --

17 THE COURT: -- pro tunc the settlement
18 agreement and final order approving settlement
19 agreement with Google. That's the only order I'm
20 talking about. Did you raise the same subject
21 matter with me at the time?

22 MR. STOLLER: Yes.

23 THE COURT: I overruled you, I take it.

24 MR. STOLLER: Yes. And it went up on
25 appeal.

1 THE COURT: Then why should you raise it
2 now?

3 MR. STOLLER: Pardon me?

4 THE COURT: Why should you raise it now?
5 Why should I hear you raise it now, assuming I
6 should even consider it since it's on appeal?

7 MR. STOLLER: Because you have a right
8 under the rules to vacate any one of your orders at
9 any time in this proceeding that you have issued.
10 You have that right. You could go back and look at
11 any --

12 THE COURT: Once an appeal is taken, do I
13 have jurisdiction?

14 MR. STOLLER: Pardon me?

15 THE COURT: Once an appeal is taken, do I
16 have jurisdiction? That's your view?

17 MR. STOLLER: The rules state that you
18 can reverse your orders at any time in the
19 proceeding.

20 THE COURT: Yes. But I believe I lack
21 jurisdiction once an appeal is taken.

22 MR. STOLLER: Some courts disagree with
23 that.

24 THE COURT: Oh, well, I think that's
25 the --

1 MR. STOLLER: But the point is --

2 THE COURT: -- law of the land.

3 MR. STOLLER: The point is the reason why
4 you could entertain it and should entertain it is
5 the fact that the trustee has entered into a
6 numerous series of settlement agreements with the
7 wrong parties, with parties that don't exist, with
8 parties that you found in your original order
9 converting me back in September of '06 to be my
10 alter egos. And, therefore, these settlement
11 agreements are void ab initio.

12 THE COURT: I understand your theory in
13 that regard. But I'm dealing with a question of why
14 I should touch an issue that I overruled you on once
15 and then you have it on appeal.

16 MR. STOLLER: Because you have -- you
17 have the right to do that.

18 THE COURT: Okay.

19 MR. STOLLER: You could vacate that order
20 if you choose. Even though it's on appeal, you have
21 the right sitting up there under the rules to look
22 back at that order and say, "Wow, I made a mistake
23 there. I could vacate that order." Under the rules
24 you can do that.

25 THE COURT: Okay.

1 MR. STOLLER: You can save me the problem
2 of going up on appeal.

3 THE COURT: Thank you. You're already on
4 appeal, I gather?

5 MR. FOGEL: He is, Your Honor. And he's
6 raised this argument numerous times before you.
7 He's raised this argument numerous times before
8 Judge Kendall. He's raised the argument and could
9 raise the argument in an appeal before Judge
10 Hibbler, if he ever does. Your Honor, we've been
11 here now getting close to a year, and Mr. Stoller
12 keeps talking about if he should ever win an appeal
13 all the wonderful things that could happen. The
14 fact of the matter is Mr. Stoller hasn't prevailed
15 in any litigation in which a judge has ruled on the
16 merits.

17 THE COURT: Well, the circuit has given
18 an inventory. He says that he prevailed with
19 settlements once or twice.

20 MR. FOGEL: Right.

21 THE COURT: And has not prevailed some
22 other times.

23 MR. CLISHAM: Correct, right.

24 THE COURT: That was the last opinion
25 about a month ago.

1 MR. FOGEL: So the short answer is you
2 don't have jurisdiction to deal with it at this
3 time, and you shouldn't exercise any discretionary
4 jurisdiction to do so because it's in another court
5 at this juncture.

6 THE COURT: Comments?

7 MR. FACTOR: Nothing.

8 THE COURT: Comment?

9 MR. JOHNSON: No comments, Your Honor.

10 THE COURT: Comment?

11 MR. CLISHAM: Nothing.

12 THE COURT: Comment?

13 MR. WOLFE: I think Your Honor's thoughts
14 with respect to jurisdiction are correct.

15 THE COURT: Comment?

16 MR. ZELLER: Yes. For Google, we agree
17 with Your Honor's assessment in terms of the
18 jurisdictional issue. In addition, this is clearly
19 an improper motion for reconsideration in the first
20 instance. There's absolutely nothing new that
21 Mr. Stoller is raising here. The court's order
22 approving the settlement was December 5th, 2006.
23 The findings that he is relying upon almost
24 exclusively -- in fact, exclusively in his motion
25 were entered. Those findings of fact and

1 conclusions of law in the conversion were entered at
2 the end of September, September 26th, 2006, two
3 months before he made his objections.

4 So there is nothing in those
5 findings of fact and conclusions of law that is new.
6 And Mr. Stoller raises nothing that is a change in
7 the facts or the law since the court approved the
8 December 5th -- or entered the December 5th, 2006,
9 order approving the Google settlement.

10 MR. STOLLER: But this court still,
11 knowing what it knows now today, can look back at
12 the history and vacate it if you chose.

13 THE COURT: Thank you.

14 Comments?

15 MR. BARRETT: Nothing, Your Honor.

16 THE COURT: Because I think I lack
17 jurisdiction, the appeal having been taken from my
18 order -- because the appeal is from an order which
19 was entered over the objections of Mr. Stoller which
20 raised these very grounds, and for other reasons set
21 forth in the objections by Google and Pure Fishing,
22 this motion is denied.

23 MR. STOLLER: But what about -- you're
24 denying it as to Google. We have other parties in
25 this motion that just isn't related to Google. We

1 have Pure Fishing. We have every settlement
2 agreement that the trustee has entered into. So you
3 cannot deny my entire motion. You may want to deny
4 the portion that relates to Google. But we still --

5 THE COURT: Well, what is the other
6 portion?

7 MR. STOLLER: Well, we're not only --
8 we're objecting -- I'm objecting and asking you to
9 set aside the settlement agreements that the trustee
10 entered into not only with Google, but you've
11 already denied that. We're talking about the Pure
12 Fishing settlement agreement.

13 THE COURT: That's a separate settlement?

14 MR. STOLLER: It's a separate settlement
15 agreement.

16 THE COURT: What's the date of that one?

17 MR. STOLLER: That was dated in October
18 of...

19 THE COURT: Last year?

20 MR. STOLLER: I think so, yes.

21 THE COURT: Is that on appeal?

22 MR. STOLLER: No, not right now.

23 MR. FACTOR: Your Honor, it was appealed,
24 and --

25 MR. FOGEL: Yes.

1 MR. FACTOR: -- the appeal was denied.
2 And I believe it was on further appeal to the
3 Seventh Circuit. My understanding is they...

4 MR. JOHNSON: There's a briefing schedule
5 set in the Seventh Circuit on a Rule 60 motion
6 before Judge Lindberg that was denied.
7 Mr. Stoller's brief is due July 30th.

8 MR. STOLLER: My Rule 60 motion has not
9 been denied.

10 MR. FOGEL: Your Honor, there's no
11 settlement. There was an order entered by Judge
12 Lindberg making a determination of a sanction award.

13 THE COURT: I understand. I don't
14 understand what order I entered.

15 MR. FOGEL: You didn't enter an order.
16 You have nothing to vacate.

17 MR. STOLLER: But you do.

18 THE COURT: Do you have a copy of an
19 order that I entered that you want me to vacate?

20 MR. STOLLER: It's not the order, it's
21 the -- you have jurisdiction over the trustee and
22 any agreements he enters into as the bankruptcy
23 judge.

24 THE COURT: Are you talking about that
25 statement filed in the district court?

1 MR. STOLLER: No.

2 MR. FOGEL: Yes, Your Honor.

3 MR. JOHNSON: Yes.

4 MR. FOGEL: Yes.

5 MR. STOLLER: What I'm talking about is
6 there's a joint statement in the Pure Fishing.

7 We're not --

8 THE COURT: That was filed in the
9 district court, wasn't it?

10 MR. STOLLER: He entered into it prior to
11 it being filed to the district court. You have a
12 right as the bankruptcy judge to set aside any
13 agreement he enters into. I'm not asking you to set
14 aside any order that Judge Lindberg entered or
15 interfering with the district court.

16 THE COURT: Are you asking me to strike
17 the document which was filed in the district court?

18 MR. STOLLER: I'm asking you to strike
19 the trustee's local 54.3 joint statement in the Pure
20 Fishing case that he entered into with Pure Fishing,
21 that agreement and that agreement alone, because it
22 doesn't involve the proper parties. It's an
23 improper agreement. He didn't draft it. It's void
24 ab initio.

25 THE COURT: I don't have any authority

1 over the cases or the matters filed in the district
2 court.

3 MR. STOLLER: No, but you have authority
4 over the agreement which the trustee enters into.
5 That's what you have authority of. He enters into
6 an agreement that's a bad agreement, you as a judge
7 have a right to set it aside. This is a bad
8 agreement.

9 THE COURT: What -- how -- what was
10 the -- what was the nature of the pleading or issue
11 before the district court? In other words, what was
12 before the district court?

13 MR. FOGEL: The amount of attorneys' fees
14 to be awarded to Pure Fishing --

15 THE COURT: And --

16 MR. FOGEL: -- on account of
17 Mr. Stoller's conduct.

18 THE COURT: Okay. Mr. Stoller had filed
19 a case against Pure Fishing.

20 MR. FOGEL: Mr. Stoller --

21 THE COURT: Had filed a case.

22 MR. FOGEL: -- filed a case against Pure
23 Fishing.

24 THE COURT: And the question was a
25 sanction for the filing of the case.

1 MR. FOGEL: For the conduct within the
2 case. The means of litigation, the merits of the
3 case.

4 THE COURT: Was this award entered -- it
5 was entered post-bankruptcy?

6 MR. FOGEL: It was entered
7 post-bankruptcy. It was entered -- you had lifted
8 the automatic stay to allow Pure Fishing and the
9 debtor to litigate the issues.

10 THE COURT: Is that -- is that a -- is
11 that a pre-bankruptcy claim?

12 MR. FOGEL: It's a pre-bankruptcy claim.

13 THE COURT: Which was entered
14 post-bankruptcy?

15 MR. FOGEL: Which was determined by the
16 district court post-bankruptcy pursuant to a lift
17 stay order on notice to the debtor's counsel of
18 record entered by Judge Lindberg.

19 THE COURT: Did the district court define
20 that this was entirely for post-bankruptcy conduct?

21 MR. JOHNSON: No, Your Honor. The
22 conduct was pre-bankruptcy conduct --

23 THE COURT: Then how could it be a
24 pre-bankruptcy -- oh, I see. The --

25 MR. FOGEL: It's not an administrative

1 claim.

2 THE COURT: -- conduct was
3 pre-bankruptcy?

4 MR. JOHNSON: The lawsuit, the district
5 court lawsuit was --

6 THE COURT: Pre-bankruptcy.

7 MR. JOHNSON: -- pre-bankruptcy.

8 THE COURT: Okay. I'm with you.

9 MR. JOHNSON: The case was found to be
10 exceptional under the Lanham Act --

11 THE COURT: All right. Now --

12 MR. JOHNSON: -- and attorneys' fees were
13 awarded.

14 THE COURT: Anything else you want to
15 say, Mr. Stoller, on this?

16 MR. STOLLER: Yes. The only thing I'm
17 asking you to vacate nunc pro tunc is the joint
18 statement that the trustee entered into with Pure
19 Fishing which involves the wrong parties. It's an
20 invalid agreement on its face. And only the 54.38
21 joint statement is what you should vacate, the
22 agreement that he entered into with --

23 THE COURT: Well, I don't see how I have
24 any authority whatsoever to order anything with
25 regard to a document filed before the district

1 court. It seems to me you have to go before the
2 district court to seek any relief in that regard.

3 MR. STOLLER: That's not true.

4 THE COURT: Well --

5 MR. STOLLER: Because you have authority
6 to enter -- to govern -- you're the judge in this
7 case. You have authority over any agreement that
8 the trustees enter into. I don't have to go before
9 Judge Lindberg on --

10 THE COURT: Let's assume --

11 MR. STOLLER: -- agreements that took
12 place in this court between this trustee prior to
13 being entered in another court. You have that
14 authority, and you shouldn't shirk that authority.

15 THE COURT: When it comes to shirking, I
16 usually don't. Usually I go the other way. But I
17 don't think I should -- if I have discretion over
18 it, I don't think I should exercise it. And I
19 really don't think I have any authority over it, so
20 that will be an additional reason for denying your
21 entire motion for reasons stated on the record, sir.

22 Next, definitely not least, we have
23 a motion for authority to sell. We have an
24 objection, which I've gone back over, and are -- Mr.
25 Stoller's objection. On the appeals that you listed

1 as pending, 06-CV-6100 is the first. Your appeal
2 was dismissed, and apparently you then took an
3 appeal to the Seventh Circuit.

4 MR. STOLLER: Correct.

5 THE COURT: 06-CV-6950, an order was
6 entered dismissing your appeal. That was by Judge
7 Hibbler. I don't know what happened after that.

8 MR. STOLLER: That's appealed to the
9 Seventh Circuit.

10 THE COURT: And 07-CV-92, that was
11 appealed -- was dismissed by Hibbler and you
12 appealed to the Seventh Circuit. And I lost track
13 of the fourth one. On the appeals of the Seventh
14 Circuit, were any of them dismissed by the Seventh
15 Circuit?

16 MR. STOLLER: No, Judge.

17 THE COURT: Okay. Now we go forward with
18 the question of what we should do here. I indicated
19 earlier when you sought, I think, to get a
20 preliminary injunction against the holding of this
21 procedure --

22 MR. STOLLER: That's on appeal.

23 THE COURT: I understand. I believe I
24 said that my intent was to go through the procedure
25 and find out what happened. So we are here.

1 MR. STOLLER: But you're divested of that
2 jurisdiction as well. If you're divested of the
3 jurisdiction to hear these other motions because
4 they're up on appeal, you are divested under that
5 same line of reasoning to proceed with the
6 sale under --

7 THE COURT: I am divested -- what I am
8 divested of is jurisdiction to amend my order or to
9 change it, even to vacate it in my opinion. I'm not
10 divested of authority to carry it out. You cannot
11 prevent a judge from carrying out an order by filing
12 an appeal unless you get a supersedeas and a stay
13 pending appeal. So we will proceed.

14 Mr. Fogel, are you -- do you wish to
15 proceed with some sort of an auction process?

16 MR. FOGEL: Your Honor, I wish to make a
17 report to the court. In connection with the auction
18 process pursuant to the sale procedures order that
19 you entered on June 1st, we served notice of today's
20 hearing on all of the creditors, and I advertised on
21 bankruptcsales.com, the bankruptcy trustee sales
22 website associated with the National Association of
23 Bankruptcy Trustees, the terms of sale of assets.

24 One of the provisions of your sale
25 procedures order required interested parties to

1 qualify by yesterday morning as to an interest in
2 bidding at the sale. No one has qualified as an
3 overbidder.

4 Your order also contained a
5 provision requiring Society for the Prevention of
6 Trademark Abuse to file a disclosure of its
7 ownership, which they did.

8 In the absence of any other offers,
9 and in the absence of any qualifying bidders, I
10 would ask Your Honor for authority to sell the
11 assets described in the motion to Society in the sum
12 of \$7,500. I would suggest to Your Honor that all
13 of the arguments that Mr. Stoller is making have
14 been made several times in this court, in the
15 district court, in the Seventh Circuit Court of
16 Appeals. They have been rejected by all the judges
17 that he has made the arguments to. He has not ever
18 obtained a stay pending any of the appeals. And I
19 do not think that a bankruptcy trustee's
20 administration can be held up indefinitely simply
21 because a debtor knows how to write the words
22 "notice of appeal" on a piece of paper and file it
23 with a court of higher review.

24 MR. STOLLER: But it should also be
25 pointed out that the sale that is proposed is

1 through an attorney that represents Pure Fishing,
2 who is an alleged creditor in this proceeding, that
3 there is a conflict that exists between Lance
4 Johnson and his representation of Pure Fishing.
5 It's not an arm's-length transaction that the
6 trustee is proposing. We have a severe conflict
7 which should avoid any settlement -- any agreement
8 that would be proposed by an attorney who has
9 benefited from representing his client to the tune
10 of half a million dollars, then comes before you
11 and -- with a conflict representing a party, then
12 decides to buy the assets of the debtor. There's a
13 severe conflict, and it's not an arm's-length
14 transaction, and that should be voided. And I
15 believe if it isn't, it's a reversible error.

16 THE COURT: Well, we will -- is Mr. Lance
17 Johnson here?

18 MR. JOHNSON: Yes, I am, Your Honor.

19 THE COURT: Are you an attorney?

20 MR. JOHNSON: Yes, I am, sir.

21 THE COURT: So you filed this as an
22 attorney representing -- did you file this response
23 as an attorney representing the Society for the
24 Prevention of Trademark Abuse?

25 MR. JOHNSON: Actually, Mr. Factor filed

1 it on behalf of the entity. I am the director of
2 that entity, and I signed the document.

3 THE COURT: You signed the document.

4 MR. JOHNSON: I signed the response of
5 sale procedure order, and it was filed because there
6 were averments of fact associated with that
7 representation.

8 MR. STOLLER: And it's a sham entity.

9 THE COURT: Who is your lawyer?

10 MR. JOHNSON: Mr. Factor.

11 THE COURT: He's your lawyer today, but
12 he didn't file this document, right?

13 MR. JOHNSON: He did file that document,
14 yes. He signed the certificate of service and he
15 uploaded it by ECF.

16 THE COURT: Oh, I see. The certificate
17 of service.

18 Well, Mr. Factor, that's what
19 happened, is it?

20 MR. FACTOR: Yes, Your Honor.

21 THE COURT: Why didn't you sign the
22 document?

23 MR. FACTOR: Your Honor, the document --

24 THE COURT: Actually, lawyers who file
25 documents normally sign them and don't have their

1 clients sign them.

2 MR. FACTOR: Your Honor, the document is
3 on behalf of the Society. Mr. Johnson is making
4 those -- or making those statements on behalf of the
5 Society.

6 MR. STOLLER: Your Honor, the Society
7 doesn't exist. It's a mere sham entity set up by --

8 THE COURT: Would you wait now until I
9 finish --

10 MR. JOHNSON: Yes, sir.

11 THE COURT: -- talking to this lawyer,
12 please?

13 We're going to have to find out
14 something about that. So Mr. Johnson will have to
15 find out something about this entity. I'm prepared
16 to proceed today. We'll take a little recess and
17 come back.

18 MR. FACTOR: We have another copy, if
19 you'd like.

20 THE COURT: Sorry? What?

21 MR. FACTOR: If you're looking for the
22 notice.

23 THE COURT: No, I've got it.

24 MR. FACTOR: Okay.

25 THE COURT: I'm looking for something

1 else.

2 Okay. So I have a hearing starting
3 at 1:30. It's now 1:00 o'clock.

4 What type of hearing do we have at
5 1:30?

6 MR. FACTOR: It's GCSI.

7 THE COURT: GCSI Liquidation. Oh, that's
8 going to be short, I have it on good authority.
9 That's return of citations, and the lawyer for the
10 cited parties announced last time he didn't think
11 his clients would come in. So that will be a short
12 hearing. So I'm thinking of holding this hearing at
13 2:00 o'clock.

14 MR. STOLLER: Thank you, Judge.

15 THE COURT: What do you folks think?

16 MR. STOLLER: That's fine.

17 MR. JOHNSON: That's fine, Your Honor.

18 And if you would prefer that Mr. Factor sign and
19 refile his document, if you're concerned about a
20 defect --

21 THE COURT: No, I'm wondering why he
22 didn't.

23 So, Mr. Johnson, you're going to
24 testify --

25 MR. JOHNSON: That's fine, sir.

1 THE COURT: -- since you signed it,
2 right? And you're going to tell us about the
3 trustee had earlier precluded a sale procedure with
4 individuals when he declined offers to buy
5 individual registrations, alleged trademark claims
6 in pending proceedings, and existing licenses.
7 You're going to tell us what you know about that
8 sentence in the proceeding that you signed. And
9 everything else in your thing will be open to
10 questions by parties here or Mr. Stoller. And also
11 we want to learn about who you want to -- are
12 intending to resell these rights to.

13 MR. JOHNSON: I have a list, Your Honor.

14 THE COURT: Have you got it ready for us?

15 MR. JOHNSON: It's not typed up. I can
16 have it typed up by the time --

17 THE COURT: Have some extra copies made
18 so that it can be distributed --

19 MR. JOHNSON: Yes.

20 THE COURT: -- prior to the hearing, if
21 you'd be good enough to pass it out to anybody here
22 who has an interest. Make up a few copies.

23 MR. JOHNSON: Yes, Your Honor.

24 THE COURT: And one for the court.

25 2:30.

1 Is GGSI at 2:00?

2 MR. FACTOR: No. It's at 1:30, but you
3 still need a break.

4 THE COURT: But what?

5 MR. FACTOR: We need to take a break.

6 THE COURT: We're going to have to take a
7 break until 2:00. Is that the idea, folks?

8 MR. FACTOR: Exactly.

9 THE COURT: All right. Our hearing here
10 will be at 2:30. See you folks then.

11 MR. STOLLER: 2:30?

12 THE COURT: Yes.

13 MR. STOLLER: Thank you, Judge.

14 MR. ZELLER: Your Honor, do you have any
15 issue as to whether or not counsel for Google excuse
16 themselves from that portion of the proceeding?

17 THE COURT: If nobody wants to appear,
18 that's your business. I don't see any reason -- I'd
19 like the U.S. Trustee here.

20 MR. WOLFE: Very good, Judge.

21 THE COURT: That okay with you?

22 MR. WOLFE: Certainly.

23 MR. ZELLER: Thank you.

24 THE COURT: Have you seen this SPTA
25 response?

1 MR. WOLFE: Yes, I have.

2 THE COURT: All right.

3 Thank you, folks. See you at 2:30.

4 (Proceedings recessed to 2:30.)

5 THE CLERK: Recalling Stoller, 05

6 B 64075.

7 MR. STOLLER: Good afternoon, Judge. Leo
8 Stoller.

9 THE COURT: Appearances again, please.

10 MR. WOLFE: Stephen Wolfe on behalf of
11 the United States Trustee. Good afternoon, Your
12 Honor.

13 THE COURT: Good afternoon.

14 MR. STOLLER: Leo Stoller.

15 MR. CLISHAM: Patrick Clisham on behalf
16 of Richard Fogel, Chapter 7 trustee.

17 MR. FOGEL: Richard Fogel, trustee. Good
18 afternoon.

19 MR. FACTOR: William Factor for Pure
20 Fishing.

21 MR. JOHNSON: Lance Johnson, Society for
22 the Prevention of Trademark Abuse.

23 THE COURT: And, Mr. Johnson, would you
24 take the stand.

25 MR. JOHNSON: Sure.

1 THE COURT: Folks, I'm very sorry it took
2 me so long to get to you.

3 MR. WOLFE: May I be seated, Your Honor?

4 THE COURT: We seem to be behind today.
5 Have a seat, folks, everybody.

6 Mr. Johnson will take the stand,
7 please, and be sworn.

8 (Witness sworn.)

9 THE CLERK: Please state your name for
10 the record.

11 THE WITNESS: Lance Johnson.

12 THE CLERK: You may be seated.

13 THE COURT: Mr. Stoller, do you want to
14 take Mr. Johnson's testimony?

15 MR. STOLLER: Yes, I do.

16 THE COURT: I don't mean Stoller. I'm
17 sorry. Mr. Fogel. I beg your pardon.

18 I'll allow you to question him, Mr.
19 Stoller, a little later.

20 MR. FOGEL: Your Honor, my counsel, Mr.
21 Clisham --

22 THE COURT: Right.

23 MR. CLISHAM: Good afternoon.

24

25

1 LANCE JOHNSON, WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. CLISHAM:

4 Q Please state your name and spell your
5 name for the record.

6 A My name is Lance Johnson, J-o-h-n-s-o-n.

7 Q And can you describe for me your role
8 with the Society for the Prevention of Trademark
9 Abuse.

10 A I'm its director and sole member.

11 Q And can you describe for me the purpose
12 for which the Society was formed.

13 A The Society was formed to purchase the
14 assets, the trademark and intellectual property
15 assets, from the estate of Mr. Stoller, and from any
16 other estates or circumstances in which it becomes
17 apparent that the intellectual property is being
18 misused or abused for purposes for which the
19 intellectual property laws were not intended.

20 THE COURT: Mr. Johnson, you say you're
21 the only member. You mean you're the only member of
22 the LLC?

23 THE WITNESS: That's correct, Your Honor.

24 THE COURT: A limited liability
25 corporation, right?

1 THE WITNESS: Yes, sir.

2 THE COURT: Go ahead.

3 BY MR. CLISHAM:

4 Q You have filed with the court a notice --
5 or a response, I should say, to the sale procedures
6 order where the court asked that you identify the
7 members and the officers of the Society; is that
8 correct?

9 A That's correct.

10 Q And in that, you disclosed that you
11 were -- that you had a group of contingent
12 purchasers that's defined in the response that are
13 interested in purchasing specific trademarks that
14 are subject of the sale today; is that correct?

15 A That's correct, trademarks, claims,
16 common law rights, and licenses that we know to
17 exist within the estate.

18 Q Can you identify each of those parties.

19 A Yes.

20 THE COURT: Each of those what? Parties?

21 MR. CLISHAM: Yes.

22 THE WITNESS: Yes.

23 THE COURT: The parties referred to in
24 his statement.

25 MR. CLISHAM: Yes, the contingent

1 purchasers.

2 MR. STOLLER: We were -- I was going to
3 get a copy of it.

4 THE COURT: And we were told there would
5 be a list.

6 Do we have a list?

7 THE WITNESS: I have a list, Your Honor.

8 THE COURT: Can you pass out copies,
9 please. And, counsel, maybe you can mark it as an
10 exhibit and see if he can identify it as the list of
11 those persons, parties.

12 Don't forget the judge, Mr. Johnson,
13 if you have one.

14 THE WITNESS: I thought he was going to
15 hand it up as an exhibit. He has an extra copy.

16 THE COURT: Oh, okay. That's fine. That
17 will be fine.

18 MR. CLISHAM: Actually, I need an extra
19 copy.

20 (Document tendered.)

21 THE COURT: Movant's Exhibit A.

22 THE WITNESS: Yes. As noted on the list,
23 I have two, four, six, seven contingent agreements
24 that have been signed with -- first is with
25 Medtronic Navigation; the second is with Pure

1 Fishing; third is with Dark Star Orchestra; the
2 fourth is with Lancope, Incorporated; the fifth is
3 with Bud K World Wide; the sixth is IP Holdings,
4 Inc.; and the seventh is with HEPA Corporation.

5 THE COURT: What are these amounts,
6 dollar amounts on Exhibit A? What do they
7 represent?

8 THE WITNESS: These dollar amounts
9 represent the amount that the other party would be
10 willing to pay for the assets listed in the
11 agreement.

12 THE COURT: Pay who?

13 THE WITNESS: They would pay the Society.

14 THE COURT: The what?

15 THE WITNESS: The Society for the
16 Prevention of Trademark Abuse.

17 THE COURT: Go ahead, counsel.

18 BY MR. CLISHAM:

19 Q With respect to the first part --

20 THE COURT: Pardon me.

21 Do you have written agreements
22 signed with these parties?

23 THE WITNESS: Yeah. I have a sample
24 agreement attached.

25 THE COURT: No. I mean with each of them

1 do you have --

2 THE WITNESS: Yes.

3 THE COURT: They've each given you
4 written undertakings to pay these amounts? Is that
5 what you're saying?

6 THE WITNESS: Yes. And they have
7 executed the contingent agreement to sell and
8 assign.

9 THE COURT: Do you have all of the
10 agreements with you?

11 THE WITNESS: I did not bring them with
12 me. This is a sample of them. I can --

13 THE COURT: Okay.

14 THE WITNESS: -- have this faxed over.

15 THE COURT: Go ahead, counsel.

16 BY MR. CLISHAM:

17 Q With respect to the first party on the
18 list, Medtronic Navigation, do you know if they are
19 a creditor in this bankruptcy, Mr. Stoller's
20 bankruptcy?

21 A They are not listed on the creditor
22 matrix, so I do not believe that they are.

23 Q And Pure Fishing?

24 A Pure Fishing is on the creditor matrix
25 and is a creditor in this case.

1 Q Dark Star Orchestra?

2 A Dark Star is not a creditor listed in the
3 matrix.

4 Q Lancope, Inc.?

5 A Lancope, Inc., has filed a claim as
6 listed on the creditor matrix.

7 Q Bud K World Wide, Inc.?

8 A They are not listed in the creditor
9 matrix.

10 Q IP Holdings, Inc.?

11 A They are not also listed on the creditor
12 matrix.

13 Q And HEPA Corporation?

14 A They are not listed on the creditor
15 matrix.

16 Q Do any of those parties that are not a
17 creditor in this case have any other relationship
18 with Mr. Stoller that you're aware of?

19 A I believe they are all involved in
20 proceedings with Mr. Stoller before the U.S. Patent
21 and Trademark Office or a court of appeal, but I
22 don't know the specific status for each of them.

23 Q And the total, if I add these correctly,
24 is \$6,500 that you are going to be recouping on
25 account of today's purchase --

1 A That's correct.

2 Q -- should it be approved by the court?

3 I take from that that there is no
4 profit involved in this endeavor by the SPTA?

5 A No, there is not.

6 MR. CLISHAM: Your Honor, I have no
7 further questions for Mr. Johnson.

8 THE COURT: Do you have any questions?

9 MR. FACTOR: No, Your Honor.

10 THE COURT: Mr. Stoller, your questions.

11 MR. STOLLER: I have questions.

12 THE COURT: Proceed.

13 MR. STOLLER: I'd like to ask the court
14 before you grant any motion or grant the sale that
15 we see copies. I'd like to see copies of these
16 agreements that he's reached with these people.
17 These are very critical. He says he has signed
18 documents on this. And I'll explain why in a few
19 minutes it's so critical.

20 THE COURT: Well, go ahead, Mr. Stoller,
21 and ask what questions you can at this point.

22 MR. STOLLER: Okay.

23 THE COURT: And I understand what your
24 request is.

25 MR. STOLLER: Okay.

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CROSS-EXAMINATION

BY MR. STOLLER:

Q Mr. Johnson, what's the law firm that you work for, your general business? What firm do you work for in Washington?

A I am a partner at the firm of Roylance, Abrams, Berdo & Goodman.

Q And isn't it a fact you represent Pure Fishing?

A That's correct.

Q And isn't it a fact that Pure Fishing, in prosecuting the case, my cases, you've billed -- you've received payments of over half a million dollars?

MR. FACTOR: Objection, Your Honor.

MR. STOLLER: I think this is important, Judge, to show --

THE COURT: First I want to hear the objection, then I'll hear your response.

MR. STOLLER: Okay.

MR. FACTOR: Your Honor, number one, it exceeds -- it goes beyond the scope of the direct. Number two, I don't see how this is relevant.

MR. STOLLER: I'm going to explain why it's relevant.

1 THE COURT: It's possible he may inquire
2 into matters that go into personal interests. I
3 don't know whether that's --

4 Are you trying to show that his
5 testimony is colored by that relationship?

6 MR. STOLLER: Yes.

7 THE COURT: Is there anything else you're
8 trying to show?

9 MR. STOLLER: Yes. There is a conflict
10 of interest here.

11 THE COURT: Conflict in what way?

12 MR. STOLLER: There is a conflict in that
13 he represents a creditor.

14 THE COURT: He represents a creditor
15 who -- and that interest is in conflict with what?

16 MR. STOLLER: And that's an interest in
17 conflict with what he is doing in his representation
18 for that creditor.

19 THE COURT: Well --

20 MR. STOLLER: And I think it's relevant.

21 THE COURT: -- I'm not sure about the
22 second reason. But as to the first, he may inquire
23 in matters that might affect or influence the
24 testimony of the witness.

25 BY MR. STOLLER:

1 Q Isn't it a fact that Pure Fishing --

2 THE COURT: So I'm going to overrule the
3 objection.

4 So the pending question is what?

5 BY MR. STOLLER:

6 Q My question is, isn't it a fact that Pure
7 Fishing has paid you over a half million dollars in
8 the prosecution of the Pure Fishing case and in your
9 representation of them against me in various
10 matters?

11 A They've paid my firm over that amount,
12 yes, that's correct.

13 Q But I'm talking about your individual
14 billings.

15 THE COURT: You're talking about what?

16 MR. STOLLER: His billings.

17 THE COURT: His personal billings?

18 MR. STOLLER: Yes, his billings, his time
19 sheet billings. We were just talking about time
20 sheets with this other counsel that was up here.

21 THE COURT: Well, forget the other case,
22 sir.

23 MR. STOLLER: I'm merely saying, Judge,
24 that his individual billings exceeded a half a
25 million dollars.

1 Isn't that correct?

2 THE WITNESS: That's correct.

3 MR. STOLLER: Okay.

4 BY MR. STOLLER:

5 Q And Dark -- and then you reached an
6 agreement with HEPA Corporation. Can you tell the
7 judge -- isn't it a fact that you represent HEPA
8 Corporation?

9 A Yes, I represent -- I was asked to
10 represent them in connection with the appeal to the
11 court of appeals for the federal circuit following
12 an adverse decision at the Board of Patent and
13 Appeals, or the TTAB, the Trademark Trial and
14 Appeals Board.

15 THE COURT: What adverse decision about
16 what subject?

17 THE WITNESS: It was adverse to
18 Mr. Stoller, favorable for HEPA Corporation. It
19 dismissed Mr. Stoller's opposition to HEPA
20 Corporation's pending trademark application.

21 THE COURT: So you defended the appeal?
22 Is that what you're saying?

23 THE WITNESS: I am defending the appeal,
24 yes.

25 THE COURT: Okay.

1 Go ahead.

2 BY MR. STOLLER:

3 Q And then in your defense of the appeal,
4 now you've come before this court and you have --
5 attempting to sell them, your own client, the
6 rights -- the alleged rights of my trademarks to
7 your own client as a result of your formation of
8 this Society; isn't that correct?

9 A They are buying it from the Society, yes.

10 Q Right. And when was this Society formed,
11 this LLC?

12 A It was formed on June 5th, 2007.

13 THE COURT: Was it formed specifically to
14 enter into -- to make this offer in this bankruptcy?

15 THE WITNESS: Yes, it was, Your Honor. I
16 have a copy of the operating agreement, if you'd
17 like to see a copy.

18 MR. STOLLER: I'd like to see that. Can
19 I see that?

20 THE COURT: Operating agreement? What do
21 you mean by "operating agreement"?

22 THE WITNESS: A limited liability company
23 has to have an operating agreement to identify the
24 rights and responsibilities of the entity relative
25 to the members under Delaware law, and this is that

1 operating agreement.

2 THE COURT: Well, do you have it in here
3 in the courtroom?

4 THE WITNESS: Yes, I do, Your Honor.

5 THE COURT: And do you feel that when --
6 do you feel there are any other matters you were
7 about to volunteer for no question being asked, sir?

8 THE WITNESS: No, I don't think so, Your
9 Honor.

10 THE COURT: All right. But if
11 Mr. Stoller wants to see it, you just mark -- let's
12 mark it as an exhibit, Johnson Exhibit 1.

13 MR. FACTOR: Your Honor, just for
14 housekeeping, would that be Exhibit 1 or Exhibit 2?

15 THE COURT: Exhibit B, pardon me. B.
16 Exhibit B.

17 MR. FACTOR: Thank you.

18 THE COURT: So now the exhibit that no
19 one requested has been passed out.

20 MR. STOLLER: Well, I have it right here.
21 I haven't passed it out yet.

22 THE COURT: Well, didn't you get a copy?

23 MR. STOLLER: I just got a copy right
24 here.

25 THE COURT: Okay.

1 MR. STOLLER: I haven't looked at it yet.

2 BY MR. STOLLER:

3 Q This SBC response to sales procedure
4 order, who drafted that?

5 A I did.

6 Q You drafted that.

7 And you testified or stated
8 earlier --

9 MR. STOLLER: Oh, by the way, was he put
10 under oath, Judge?

11 THE COURT: Yes.

12 MR. STOLLER: Okay.

13 BY MR. STOLLER:

14 Q You stated earlier that -- who is your
15 attorney in this? Who represents you in this?

16 A I am my own attorney. I had Mr. -- I am
17 representing the entity.

18 Q Who?

19 A I am representing the SPTA. Mr. Factor
20 filed this on my behalf.

21 Q Okay. And did Mr. Factor see this before
22 he filed it?

23 A Yes, he did.

24 MR. STOLLER: Could we mark this as an
25 exhibit, this SPCA as Johnson Exhibit 2? This is a

1 response to sales procedure. I'd like to mark it as
2 Exhibit 2. He's identified it. Is that okay,
3 Judge?

4 THE COURT: It's in the record.

5 MR. STOLLER: I know.

6 THE COURT: It's been filed.

7 MR. STOLLER: But I want it in this
8 record in here.

9 THE COURT: All right. Do you want to
10 make it Exhibit C?

11 MR. STOLLER: Okay. Johnson Exhibit C.

12 THE COURT: Johnson Exhibit C.

13 BY MR. STOLLER:

14 Q Now, Mr. Johnson, did you present this to
15 Mr. Fogel, this SBC response to sales procedure
16 order? Was this presented to Mr. Fogel? Did he see
17 this and approve of this?

18 A He saw it when it was served. I don't
19 know that he --

20 Q Did he have an objection to this?

21 A None was expressed to me.

22 Q Okay. And then attached to that service
23 list you have Exhibit 1, which is called a
24 "contingent agreement to sell and assign." Is that
25 correct?

1 A Yes.

2 Q And who drafted -- could you tell Judge
3 Schmetterer who drafted this agreement?

4 A I did.

5 Q Okay. You drafted this agreement.

6 And what is your specialty in law?
7 What would you classify yourself as? What type of
8 an attorney are you? What's, you know, your
9 specialty?

10 A My practice is in patent and trademark
11 law.

12 Q Patent and trademark. You're a trademark
13 attorney; isn't that correct?

14 A I practice, as I said, in trademark law
15 as well.

16 Q Okay. And this contingent agreement to
17 sell and assign, who drafted that?

18 A I think I just answered that question. I
19 did.

20 Q You did.

21 And your attorney, William Factor,
22 did he see this contingent agreement to sell and
23 assign?

24 MR. FACTOR: Objection, Your Honor.
25 There's been no testimony that I'm his attorney.

1 I'm the attorney for Pure Fishing.

2 THE COURT: Sustained.

3 BY MR. STOLLER:

4 Q Mr. Johnson, did William Factor see this
5 contingent agreement to sell and assign?

6 A No.

7 Q He never saw it?

8 A No.

9 Q And earlier I thought you testified on
10 the SBCA response to sales procedure order, which
11 was served by, according to the service sheet,
12 William J. Factor, but somehow which was attached,
13 he didn't see this contingent agreement, right?

14 A If you were asking did he see this as
15 Exhibit 1, yes, it was forwarded to him.

16 Q Okay.

17 A If you were asking did he participate in
18 its preparation, which is the context in which you
19 were asking your questions, no, he did not.

20 Q Okay. And the third agreement, which
21 is -- we're going to call this Group Exhibit Johnson
22 Exhibit 3 because there's three agreements, is an
23 Appendix A assignment; isn't that correct?

24 THE COURT: Wait a minute. I don't know
25 what you're referring to. It says "contingent

1 agreement."

2 MR. STOLLER: We have a --

3 THE COURT: What is your -- Appendix A is
4 attached to it.

5 MR. STOLLER: Yes, in Appendix A. I'm
6 talking about --

7 THE COURT: Mr. Johnson, is this Appendix
8 A part of the contingent agreement or not?

9 THE WITNESS: Yes, it is, Your Honor.

10 THE COURT: All right. It's all part of
11 it.

12 All right.

13 BY MR. STOLLER:

14 Q Now, did you -- you testified a little
15 bit earlier in this list, Medtronic Navigation, Pure
16 Fishing, Dark Star Orchestra, Lancope, Bud K World
17 Wide, IP Holding, Inc., and HEPA, that they all have
18 signed this consent agreement to sell and assign; is
19 that correct?

20 THE COURT: Contingent agreement.

21 MR. STOLLER: The contingent agreement.

22 THE WITNESS: To have signed a version
23 that has been modified to include the particular
24 assets that they're interested in.

25 BY MR. STOLLER:

1 Q Other than the assets that they are
2 interested in, the specific trademark or
3 registration, they all signed the same agreement, a
4 contingent agreement to sell and assign; is that
5 correct?

6 A Yeah. The terms were substantially the
7 same, yes.

8 Q And you're going to provide us with
9 copies of those agreements, aren't you?

10 A I believe that's what the court --

11 Q Okay.

12 A If the court orders that.

13 MR. STOLLER: Okay. And now I'd like
14 to -- this is called Johnson Exhibit C. The list,
15 which is important, I need in the record as
16 Johnson --

17 THE COURT: It's Exhibit A.

18 MR. STOLLER: Exhibit 8?

19 THE COURT: A.

20 MR. STOLLER: Okay. A. Good. Thank
21 you.

22 THE COURT: As in --

23 BY MR. STOLLER:

24 Q Now, we have as part of Group Exhibit --
25 I'm calling it Group Exhibit Johnson Exhibit C, we

1 have the Appendix A, assignment. What is that
2 document?

3 THE COURT: What is which?

4 MR. STOLLER: Appendix A, the
5 assignment --

6 THE COURT: Okay.

7 MR. STOLLER: -- which is attached to
8 the -- which is attached to the contingent agreement
9 to sell and assign.

10 THE COURT: Yes.

11 MR. STOLLER: It's called Appendix A,
12 assignment.

13 THE COURT: Sir, do you understand the
14 question?

15 THE WITNESS: I think I do.

16 BY MR. STOLLER:

17 Q What is this agreement? Can you explain
18 it to the court?

19 A As noted in the SPTA response, this is a
20 sample form of a contingent sales agreement that was
21 used in order to identify and express interest in
22 particular assets of your estate. And this was done
23 primarily for the purpose of making sure that I
24 wasn't selling the same thing to two different
25 people.

1 Q Fine. I'm only referring now to Appendix
2 A, the assignment. This one document, the
3 assignment, what is the purpose of the assignment?

4 A This will be a document that's recorded
5 at the U.S. Patent and Trademark Office.

6 Q Okay. So now we have it clear to the
7 court that everybody has signed and -- although he
8 will furnish it to us, he will sign a contingent
9 agreement to sell and assign -- that's a separate
10 agreement, right? You had all of those parties sign
11 a separate agreement called the "contingent
12 agreement to sell and assign;" is that correct?

13 A Those two documents represent a unified
14 agreement because the Appendix A is referenced in
15 the contingent agreement, and consequently they are
16 considered to be one document. One is an appendix
17 to the other.

18 Q Okay. Are they going to record -- was
19 the purpose of the contingent agreement to sell and
20 assign, the purpose of that agreement to have that
21 recorded with the Patent and Trademark Office?

22 A Yes.

23 Q So they're going to record the contingent
24 agreement to sell and assign along with the Appendix
25 A, the assignment?

1 A No. As I said, they would record the
2 Appendix A assignment.

3 Q Okay. They would record the Appendix A
4 assignment and -- but they would sign and have
5 signed, you said, the contingent agreement to sell
6 and assign, correct.

7 A That's correct.

8 Q Now, let's go to page 2 of the contingent
9 agreement to sell and assign. It's a two-page
10 document. Okay. Let's go to paragraph 4. I'd like
11 you to read into the record paragraph 4.

12 A "The SPTA makes no representation,
13 warranty, or guarantee regarding the validity,
14 enforceability, intrinsic value, or supporting
15 evidence," parens, "documentary or otherwise," close
16 parens, "of any asset or claim acquired by buyer
17 under this agreement. Indeed the SPTA expects that
18 all trademarks registration, alleged common law
19 rights, and trademark licenses that are associated
20 with the estate of Leo Stoller are invalid and
21 unenforceable. Nonetheless, buyer agrees to take
22 title to the assets as is and where is."

23 Q So that the judge clearly understands and
24 we all understand, you're saying by having them all
25 sign this document, that the trademark licenses, the

1 trademark registrations, the alleged common law
2 rights that are associated with the estate of Leo
3 Stoller are invalid and unenforceable; is that
4 correct?

5 A That's what the document states, yes.

6 Q And that's what everybody signed that you
7 had sign, right?

8 A Yes, that's in there.

9 Q Okay. Everybody signed. Medtronic
10 Navigation, Pure Fishing, Dark Star Orchestra,
11 Lancope, Inc., Bud K World Wide, Inc., IP Holdings,
12 Inc., and HEPA, right? They signed that agreement?

13 A Yes.

14 Q Okay. Now I'd like you to read for the
15 court on the assignment, Appendix A, assignment
16 under the "now therefore" provision. I'd like you
17 to read that paragraph into the record, please.

18 THE COURT: I'm going to admit into
19 evidence, if there is no objection, Exhibit C. Does
20 anybody have any objection?

21 MR. CLISHAM: No objection.

22 MR. FACTOR: No objection.

23 MR. STOLLER: This is important.

24 THE COURT: In that case, I've read it.
25 You don't have to read it aloud. Go ahead with your

1 next question. You can argue it later, sir.

2 MR. STOLLER: Okay.

3 BY MR. STOLLER:

4 Q So the bottom line in the "now therefore"
5 provision, "The assignor hereby conveys, transfers,
6 assigns, delivers to assignee all of the assignor's
7 rights, titles, interest to the marks in the
8 property together with the goodwill of the business
9 relating to the products --"

10 THE COURT: I said I've read it. Ask him
11 the next question, please.

12 BY MR. STOLLER:

13 Q "-- in respect upon which the marks are
14 used." Isn't that what the assignment says?

15 MR. FOGEL: Objection, Your Honor. The
16 document speaks for itself.

17 THE COURT: What's the question?

18 BY MR. STOLLER:

19 Q The question is, Mr. Johnson, as a
20 trademark attorney, in order to record a valid
21 registration, isn't it a fact that the recording
22 document must state that the goodwill of the
23 business relating to the products must be assigned
24 in order to register the trademark with the Patent
25 and Trademark Office and recorder? Isn't that a

1 fact?

2 A In order to transfer -- in order to
3 assign a trademark right, you must also assign the
4 goodwill associated with the mark because that's
5 what the market embodies.

6 Q Okay. And if you were to provide a
7 document, or your clients were, for these one, two,
8 three, four, five, six, seven parties that you have
9 already entered into agreements, and you were
10 to provide a document with the Patent and Trademark
11 Office which did not state the goodwill of the
12 business relating to the trademark was assigned to
13 them, wouldn't that assignment be invalid?

14 A If the goodwill was not transferred with
15 the registration, it would be considered what's
16 called a "naked license" and would render the
17 registration invalid.

18 Q Okay. But maybe you could then explain
19 to the court the fact that you have two agreements.
20 You have a contingent agreement to sell and assign.
21 And in that contingent agreement, which you have
22 admitted on the record is not going to be registered
23 and could not be registered --

24 MR. CLISHAM: Your Honor --

25 MR. STOLLER: -- with the Patent and

1 Trademark Office --

2 This is very important.

3 MR. CLISHAM: I'd like to object.

4 THE COURT: I want to hear the question
5 before you object to it.

6 BY MR. STOLLER:

7 Q Isn't it a fact that you're entering into
8 a scheme with these seven different parties, and you
9 have two separate agreements, one of which could
10 never be recorded with the Patent and Trademark
11 Office called the "contingent agreement to sell and
12 assign," because you acknowledge in that agreement
13 that the properties and the trademarks associated
14 with Leo Stoller are invalid and unenforceable?
15 Isn't it a fact that if you recorded that with the
16 trademark office, that would be a naked license and
17 none of these trademarks would be registerable?

18 THE COURT: Your objection?

19 MR. CLISHAM: Your Honor, first of all,
20 it's argumentative. Second of all, there is
21 absolutely no relevance to the contract that
22 Mr. Johnson entered into with his other parties and
23 whether or not it's enforceable at the Patent and
24 Trademark Office. There's no relevance to whether
25 or not -- to the ongoing proceeding related to the

1 sale today.

2 THE COURT: Would it have relevance, I
3 suppose, to the purchasers, the repurchasers?

4 MR. CLISHAM: It may, Your Honor. But it
5 has absolutely no relevance to the proceedings.

6 THE COURT: But that's not relevant here;
7 is that your argument?

8 MR. CLISHAM: It is, Your Honor.

9 THE COURT: It is argument, sir. As to
10 whether it was a scheme, I won't let you ask the
11 question that way. But you can try to bring out any
12 materials as to anything you view as something
13 that's improper. So I'm going to sustain the
14 objection to that question.

15 MR. STOLLER: Okay. Let me ask Mr. --
16 one question to Mr. Johnson.

17 BY MR. STOLLER:

18 Q And that is, why did you prepare two
19 separate agreements, a contingent agreement to sell
20 and assign, which has entirely different language?
21 Why wouldn't you have just made a pure, simple
22 assignment and carry the language -- the goodwill
23 associated with my marks? Why would you prepare two
24 separate, one secret agreement never to be --

25 THE COURT: All right. You've asked the

1 question twice. Now, let him answer, please.

2 MR. STOLLER: Okay.

3 THE WITNESS: I could not execute and
4 sign an assignment document for rights that the
5 Society did not yet own.

6 BY MR. STOLLER:

7 Q Now, you ran these two agreements and
8 this set of -- the contingent fee agreement to sell
9 and assign. This was approved by Patrick here, who
10 represents the trustee, and by the trustee; is that
11 correct?

12 A No.

13 Q They didn't approve those agreements?

14 A No.

15 Q And the assignment, the Appendix A, the
16 assignment which you drafted and attached to it,
17 that's not -- they're not in approval with it; is
18 that correct?

19 A I don't know whether they currently
20 approve of it, but they did not -- I did not seek
21 their advance approval before they were prepared.

22 Q Now, if your -- if you were to have
23 your -- these parties that you sold attach the
24 contingent agreement to sell and assign along with
25 the assignment in an attempt to register the

1 trademarks that you're attempting to purchase today,
2 would the Patent and Trademark Office register those
3 marks?

4 MR. CLISHAM: Objection, Your Honor.
5 There is no relevance --

6 MR. STOLLER: There is relevance because
7 I will tie it in in my argument, what is going on
8 here.

9 BY MR. STOLLER:

10 Q Would the Patent and Trademark Office, if
11 you attached these seven parties, attach this
12 contingent fee agreement to sell and assign your
13 secret agreement --

14 THE COURT: I'm going to sustain the
15 objection because the point has been made,
16 Mr. Stoller. And I understand, and the witness has
17 acknowledged, what's important to --

18 MR. STOLLER: But this court cannot
19 condone --

20 THE COURT: Just a moment. Hang on.

21 MR. STOLLER: Judge, this court -- no
22 bankruptcy judge can condone a fraudulent
23 transaction. No bankruptcy --

24 THE COURT: This is not the time for
25 argument. Ask the next question. Do you have any

1 more questions?

2 BY MR. STOLLER:

3 Q You formed the SBCA, this LLC, in June.
4 If it was not for the purchase of my trademarks,
5 would you have formed this company?

6 A Probably not.

7 Q So the sole purpose was to buy these
8 trademarks, correct?

9 A It was the genesis of the formation, but
10 it was not the sole purpose.

11 Q Were members of your law firm -- Roylance
12 in Washington, are they partners with you in this
13 SPTA?

14 A No.

15 Q Are they aware of it?

16 A Yes.

17 Q Are they aware of you being here today
18 and you presenting the response to sale procedure
19 order along with the -- these three documents to the
20 court here today? Are they aware of that, the
21 response of sales procedure order marked as Johnson
22 Exhibit C, the Appendix A, and your secret
23 document --

24 MR. FACTOR: Objection, Your Honor, with
25 regard to "secret document."

1 MR. STOLLER: It's a secret document.

2 BY MR. STOLLER:

3 Q Contingent agreement to sell and assign,
4 are they aware of that?

5 THE COURT: I'll sustain the objection to
6 the phrase "secret document."

7 MR. STOLLER: Okay.

8 BY MR. STOLLER:

9 Q Contingent agreement to sell and assign,
10 are they aware of that?

11 A I did not specifically notify them and
12 provide them a detail of my plans here. They know
13 that I am out of the office and that I'm in Chicago.
14 But I do not know the extent to which they're
15 familiar with the details of this case.

16 Q Okay. So, in other words, you did not
17 run any of this by your partners over at your patent
18 and trademark firm then? You did this all on your
19 own; is that correct?

20 A That's correct.

21 THE COURT: Sir, was there any particular
22 way in which you -- did you negotiate the amounts
23 that these companies would pay?

24 THE WITNESS: I asked them -- I asked
25 them how much they would be willing to pay, given

1 the trustee's minimum bid offer.

2 THE COURT: And what was that?

3 THE WITNESS: That was \$7,500.

4 THE COURT: Yes.

5 THE WITNESS: And I asked them would they
6 be willing to pay 500 or a thousand dollars to do
7 so. And through a series of communications, these
8 seven indicated that that's what they would be
9 willing to pay to get --

10 THE COURT: Did you negotiate that? In
11 other words, did you try to get them to pay more?

12 THE WITNESS: I asked for more. I asked
13 for a higher commitment in the event that another
14 bidder came forward in order to bid against the
15 estate. I asked if they would be willing to
16 increase their bids, and none of them was.

17 THE COURT: Have any of them ever made
18 any offers to Mr. Stoller to buy out Mr. Stoller's
19 interest before the bankruptcy was filed?

20 THE WITNESS: Pure Fishing -- no, I
21 don't -- the answer is no. Pure Fishing offered a
22 settlement agreement which was rejected. And I
23 don't know what the others may or may not have done.

24 THE COURT: Subject to an objection,
25 which they may raise now if they wish, do you know

1 how much Pure Fishing offered in settlement?

2 THE WITNESS: Yes.

3 THE COURT: How much?

4 THE WITNESS: It offered to allow
5 Mr. Stoller to -- they would terminate its case
6 against him for the payment by Mr. Stoller of
7 \$150,000.

8 THE COURT: For him to pay them?

9 THE WITNESS: For him to pay Pure
10 Fishing.

11 THE COURT: Okay.

12 THE WITNESS: And the transfer of his
13 Stealth trademarks related to, I believe it was the
14 Stealth portfolio.

15 THE COURT: All right. Are you familiar
16 with any of the seven companies offering money to
17 Mr. Stoller before bankruptcy?

18 THE WITNESS: No.

19 BY MR. STOLLER:

20 Q Are you aware that Dark Star Orchestra
21 was offering a hundred thousand so they could use
22 the name "Dark Star" and "Orchestra" to our company
23 before the bankruptcy filing? Are you aware of
24 that?

25 A No.

1 Q Are you aware what Lancope offered us to
2 settle the controversy?

3 A No.

4 Q Are you aware what HEPA offered? We were
5 in litigation with them for about five years. Are
6 you aware of what they offered us?

7 A No.

8 Q How about Medtronic? Were you aware how
9 much money they offered our company?

10 A No.

11 MR. STOLLER: I get to make my final
12 argument --

13 THE COURT: After we finish. Have you
14 finished?

15 MR. STOLLER: I have no further
16 questions.

17 THE COURT: U.S. Trustee, do you have
18 some questions?

19 MR. WOLFE: No, Your Honor, I don't.

20 THE COURT: Counsel for the trustee, do
21 you have any redirect?

22 MR. CLISHAM: I don't, Your Honor.

23 THE COURT: All right.

24 Sir, you may step down. Thank you
25 very much.

1 (Witness excused.)

2 THE COURT: Do you have any more evidence
3 to offer, Mr. Fogel?

4 MR. STOLLER: Pardon me?

5 THE COURT: Mr. Fogel?

6 MR. FOGEL: Yes, sir.

7 MR. CLISHAM: I'd like to call Mr. Fogel.

8 THE COURT: Yes, sir. Mr. Fogel will be
9 sworn.

10 (Witness sworn.)

11 THE CLERK: Please state your name again
12 for record.

13 THE WITNESS: Richard M. Fogel,
14 F-o-g-e-l.

15 THE CLERK: You may be seated.

16 RICHARD M. FOGEL, WITNESS, SWORN

17 DIRECT EXAMINATION

18 BY MR. CLISHAM:

19 Q Mr. Fogel, can you describe your role in
20 Mr. Stoller's bankruptcy case.

21 A I am the acting Chapter 7 trustee for the
22 estate upon its conversion from Chapter 13 to
23 Chapter 7.

24 Q I take it you're an appointed Chapter 7
25 panel trustee; is that correct?

1 A Yes, I am.

2 Q How many years have you been serving as a
3 Chapter 7 panel trustee?

4 A Since 1981.

5 Q And during that time, can you guesstimate
6 the number of cases that you have administered with
7 assets?

8 A With assets, I would -- about 150 cases I
9 would estimate I administered with assets over that
10 period of time.

11 Q And the number of those cases that
12 involved sales of assets?

13 A A very high percentage of those cases
14 involved sales of assets.

15 Q Can you describe for us the efforts that
16 you undertook to discover the value of the assets
17 that are subject to today's sale?

18 A Yes. I shared information regarding the
19 portfolio of marks, the information regarding the
20 licenses, and information regarding the causes of
21 action to two firms that handled sales of
22 intellectual property. One was a firm named Ocean
23 Tomo, and the other is a firm called Trendwith.
24 Both of them advised me that there was no meaningful
25 value to any of the assets because Mr. Stoller did

1 not maintain any books or records relating to the
2 purported businesses that were operated in
3 connection with the trademarks, and because he had
4 not been able to demonstrate to any court's
5 satisfaction that he had any enforceable rights in
6 those trademarks. So they advised me that any type
7 of public sale of the intellectual property would
8 not result in any type of meaningful bids.

9 Sometime thereafter I was contacted
10 by Mr. Johnson, acting on behalf of the Society for
11 the Prevention of Trademark Abuse, and he expressed
12 an interest in acquiring those assets.

13 Q And how did you determine that you would
14 sell the assets in the form in which you're selling
15 them now?

16 A Well, we originally discussed selling
17 assets in a piecemeal fashion, meaning the
18 individual trademarks one by one, the licenses as
19 part of the trademarks. And I did not think that
20 would be a wise way to proceed because there was
21 such limited interest in the critical mass of the
22 trademarks. I thought that I would wind up with
23 nominal offers for a few items of intellectual
24 property and would be left with a large number of
25 unsold items. And I thought that selling the

1 portfolio of the intellectual properties similar to
2 selling an inventory or selling a portfolio of
3 mortgages or selling a mass of furniture, fixtures,
4 and equipment would be in the best interest and
5 would be likely to result in a sale.

6 The first proposal from the Society
7 contemplated only buying the intellectual property,
8 and some of that intellectual property is owned by
9 one or more corporations that Mr. Stoller is the
10 sole shareholder of.

11 Plan A was to seek substantive
12 consolidation of those entities with the bankruptcy
13 estate so that it would be strictly an asset sale.
14 Pure Fishing filed a motion seeking to consolidate
15 the estates, and ultimately withdrew the motion
16 because it became apparent that an adversary
17 proceeding bringing the corporations into the case
18 through summons would be the only way to accomplish
19 that ultimate outcome. And the cost and time of
20 proceeding in that fashion was not something that
21 Pure Fishing wanted to do at the time.

22 So plan B became the current offer.
23 Plan B became an offer for the intellectual property
24 owned by Mr. Stoller and offers for each of the five
25 corporations that Mr. Stoller is the shareholder of.

1 We then filed a motion seeking to approve sale
2 procedures and to serve notice and to advertise and
3 to seek higher and better bids, which I expected to
4 receive if the offer on the table was too low. And
5 having received no qualifying overbidders or any
6 other parties interested in buying the assets, I'm
7 of the opinion that the offer is fair and
8 reasonable.

9 THE COURT: And was the original offer
10 you received for \$7,500, or was it higher?

11 THE WITNESS: It was higher.

12 THE COURT: How much was it? 10,000, was
13 it? What was the figure?

14 THE WITNESS: It wasn't much more than
15 \$10,000. I don't recall exactly.

16 THE COURT: Okay. And why did it drop?

17 THE WITNESS: Because the current
18 transaction involves sale of stock of companies for
19 which limited, if any, information has been made
20 available to the buyer. And they now are assuming
21 some risk by becoming the shareholders of these
22 entities as opposed to becoming just the owner of
23 the intellectual property the entities own.

24 THE COURT: The total on Exhibit A is
25 6500.

1 THE WITNESS: Yes, sir.

2 THE COURT: Has the offer now dropped to
3 6500?

4 THE WITNESS: No. The offer is \$7500. I
5 am surmising that Mr. Johnson out of pocket is
6 contributing the additional funds necessary -- well,
7 I shouldn't say -- I believe Mr. Johnson on behalf
8 of the entity is paying the full amount of the
9 purchase price. And if he is successful in
10 acquiring the assets and closing the transaction, he
11 will then get, in effect, reimbursed by these
12 parties who are standing in the wings under the
13 contingent agreement to take an assignment of
14 certain particular assets and --

15 THE COURT: In the event the trustee were
16 to abandon this property to Mr. Stoller --

17 THE WITNESS: Yes.

18 THE COURT: -- would the claims be worth
19 more to these individual companies? In other words,
20 would it be worth more to them to pay more to
21 dispose of the claims?

22 THE WITNESS: No, I don't think so. They
23 would then be forced to defend themselves in the
24 types of litigation that Mr. Stoller has
25 historically brought.

1 THE COURT: Well, many people offer cost
2 of litigation, or something at least, something at
3 least approaching cost of litigation. Why do you
4 assume -- what is your reasoning for assuming that
5 they would not want to do that and thus pay more if
6 you abandon this?

7 THE WITNESS: Well, if I abandoned them,
8 then it's too late for them to offer more. The cat
9 is kind of out of the bag at that point. So if what
10 you're telling me is that they're not interested or
11 likely to approve this sale at this purchase price,
12 then I would withdraw, I imagine ultimately, the
13 motion and try to get them to pay more money if they
14 want to go down this road. I would, in effect,
15 become Mr. Stoller.

16 THE COURT: Hmm.

17 THE WITNESS: I didn't want to do that.

18 THE COURT: Your possibility of
19 withdrawing, in effect, could be viewed as an
20 economic pressure on them?

21 THE WITNESS: Absolutely, Your Honor. If
22 a buyer makes an offer to participate in an auction
23 process that invites anyone in the world to
24 participate and has very, very minimal requirements
25 in order to participate, if they then come to the

1 sale and no one is qualified to bid and they are --
2 then said, oh, because the debtor has some arguments
3 about why you're doing something wrong, the deal
4 should not be approved and you should come back and
5 offer more money to bid against yourself, that I
6 think would have a very chilling effect on trustee
7 sales in the marketplace. We have approved a
8 procedure here, we have complied with it, and no one
9 has stepped up to make a higher and better offer.

10 THE COURT: Thank you. I'm not going
11 through the formality of taking the offer and
12 finding out if anybody is here to make a higher
13 offer. We'll do that in a few minutes.

14 THE WITNESS: All right. I mean, we have
15 procedures --

16 THE COURT: Next question, please.

17 BY MR. CLISHAM:

18 Q Have you been contacted by any potential
19 bidder, as that term is defined in the sales
20 procedure order?

21 A No.

22 Q So there are no qualified bidders other
23 than the SBTA?

24 A Correct.

25 Q Is there anything preventing Mr. Stoller

1 or an affiliate or an associate of him from coming
2 forward and qualifying as a bidder and bidding at
3 today's auction?

4 A Yes. Qualification was due yesterday at
5 11:30 a.m.

6 Q But prior to yesterday at 11:30 a.m.,
7 there was no -- nothing preventing Mr. Stoller from
8 bidding on these assets at auction?

9 A The only qualification was that the
10 person wanting be to a bidder had to demonstrate the
11 financial wherewithal to close the transaction and
12 had to give me an earnest money check of \$2500, as
13 the Society has done. Nobody did that.

14 Q In your experience as a trustee, is it
15 unusual for interested parties to form a new entity
16 for the purpose of purchasing assets through a
17 bankrupt sale?

18 A No. It's very common in my experience
19 for special purpose entities to be formed to acquire
20 distressed assets in bankruptcy sales.

21 Q Is it common in your experience then for
22 such an entity to be formed with the intention of
23 subsequently selling the assets piecemeal?

24 A It happens sometimes.

25 MR. CLISHAM: Your Honor, I have no

1 further questions.

2 THE COURT: Cross-examination from this
3 side of the room? Mr. Wolfe?

4 MR. WOLFE: Judge, I have just a few
5 questions that I'd like to ask Mr. Fogel.

6 Good afternoon, Mr. Fogel.

7 CROSS-EXAMINATION

8 BY MR. WOLFE:

9 Q Mr. Fogel, in the context of asking
10 questions of Mr. Johnson, Mr. Stoller alluded to an
11 offer from Dark Star to settle litigation for a
12 hundred thousand dollars. Do you recall hearing
13 that?

14 A I heard him say that, yes.

15 Q Has Mr. Stoller ever provided you any
16 books or records or any documents that document that
17 offer?

18 A No, sir.

19 Q And have you tried to get books and
20 records from him?

21 A From day one.

22 Q And how about with respect to the other
23 contingent purchasers? Has he provided you with any
24 books or records or written offers to settle any
25 litigation against them?

1 A No.

2 Q And have you tried to get such
3 information from him?

4 A Yes.

5 Q And have you been able to?

6 A No. He's refused to produce books and
7 records.

8 MR. WOLFE: Thank you. I have no further
9 questions, Judge.

10 THE COURT: Mr. Stoller?

11 MR. STOLLER: Now, in terms of this
12 particular transaction, I just have a few questions.
13 This is the SBC -- let the record show that I'm
14 tendering the SBC response to sales procedure.

15 CROSS-EXAMINATION

16 BY MR. STOLLER:

17 Q Have you read that?

18 A I read it yesterday.

19 Q And do you approve of it?

20 A I'm not sure that my approval of it is
21 appropriate or necessary. I've read it.

22 Q Okay. But do you disprove of it?

23 A I don't find anything in it that's not
24 true.

25 Q Okay. And this proposal that

1 Mr. Johnson, Lance G. Johnson, acknowledged he
2 drafted, the contingent agreement to sell and
3 assign, could you take a look at that. That's, for
4 the record, Exhibit C.

5 A I've seen it.

6 Q Have you read it?

7 A I've read through it, yes.

8 Q And you're the trustee. You approve of
9 this particular contingent agreement to sell and
10 assign?

11 A I'm not in a position to approve or
12 disapprove of what the Society would do.

13 Q It doesn't matter to you what they do,
14 right?

15 A Well, what matters to me is whether or
16 not they were going to somehow profit at the
17 estate's expense or do something that would
18 interfere with the sale process. And once I was
19 assured that the dollars involved were defrayment of
20 the purchase price as opposed to any type of profit
21 on the part of the buyer, I was comfortable with
22 what he was suggesting he would do if he was the
23 successful purchaser of the assets.

24 Q You're not against people making a
25 profit, though, are you?

1 A No, I'm not against people making a
2 profit under the appropriate circumstances in which
3 they're entitled to make a profit.

4 Q Okay. Now, showing you Appendix A, the
5 assignment which was attached to Johnson Group
6 Exhibit C, did you read that?

7 A Yes, I did read that.

8 Q And do you disapprove or do you approve
9 of this particular document?

10 A I think disclaimers are very important
11 and appropriate in transactional documents, and that
12 particular disclaimer is a very good one.

13 Q Now, in terms of trademarks, you are
14 selling -- about how many are you going to sell to
15 Mr. Johnson? How many, do you know?

16 A I don't know. If you would show me the
17 asset purchase agreement, I'd look at the schedule
18 and I would count them up. I don't know, about 40
19 pages worth of --

20 Q Well over a hundred.

21 A Okay.

22 Q And are you aware of what the filing fee
23 is for just one trademark today?

24 A The filing fee? No, sir.

25 Q You don't know anything about trademarks.

1 You admitted that last time.

2 A No --

3 Q The filing --

4 A -- that's --

5 Q -- fee is \$325.

6 So at a hundred filing fees -- or a
7 hundred filing fees at \$325 would be -- just to
8 file, not to -- not the years in getting, what would
9 be the value of, say, a hundred trademarks at the
10 filing fee of 325? You can figure that out.

11 A Sir, the filing fee --

12 Q \$32,000, right?

13 A The filing fee isn't an indication --

14 THE COURT: You're running into argument.

15 MR. STOLLER: Okay.

16 THE COURT: Just a moment, please.

17 THE WITNESS: I'm sorry.

18 THE COURT: You're just arguing with him
19 now.

20 MR. STOLLER: Okay. It's 32,000.

21 THE COURT: You can argue --

22 MR. STOLLER: I won't argue with him,
23 Judge.

24 BY MR. STOLLER:

25 Q When you came into the case back in

1 September, there was a lot of pending -- because
2 we're talking about the assets of this estate here
3 and your disposing of them -- we had a lot of
4 pending litigation with Google, with Pure Fishing,
5 with Go Daddy. When you settled with Google, did
6 you ask them for any money?

7 A No.

8 Q You didn't ask them for any money, right?

9 A I got a withdrawal of their claim against
10 you.

11 Q Okay. You got a withdrawal of their
12 claim which was based upon the fact that they
13 alleged to have acquired fees in a petition to
14 cancel in an opposition where they're not entitled
15 to fees.

16 THE COURT: Sir, would you please ask a
17 question.

18 BY MR. STOLLER:

19 Q Pure Fishing, did you ask -- any money to
20 settle the Pure Fishing case?

21 A Well, since Pure Fishing had gotten a
22 judgment against you resulting in an award of over
23 three quarters of a million dollars --

24 Q Which you consented to?

25 A -- which I thought was -- no, no, I

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07cv385

ATTACHMENT #

1

EXHIBIT

C-continuation

TAB (DESCRIPTION)

1 didn't consent to anything. An order was entered by
2 Judge Lindberg so finding. I was not in any kind of
3 a position to ask them to pay me anything.

4 Q Let's get the record straight.

5 A Okay.

6 Q Prior to Judge Lindberg entering the
7 order, you signed an agreement with --

8 THE COURT: We're not going to rehash the
9 whole history this.

10 MR. STOLLER: I just want to get the
11 record straight.

12 BY MR. STOLLER:

13 Q Prior to --

14 THE COURT: Well, get your record
15 straight in some other way. I wish only questions
16 pertinent --

17 MR. STOLLER: Okay.

18 THE COURT: -- to this particular --

19 BY MR. STOLLER:

20 Q Prior to --

21 THE COURT: -- exercise.

22 BY MR. STOLLER:

23 Q -- before Judge Lindberg entered the
24 order of any kind, you agreed to a \$960,000
25 judgment; isn't that correct?

1 MR. FACTOR: Objection, Your Honor. I'm
2 not sure how this is relevant.

3 BY MR. STOLLER:

4 Q Isn't that correct?

5 THE COURT: I don't understand why it's
6 relevant.

7 MR. STOLLER: It's relevant because we're
8 talking about what the estate was and the condition
9 that it was and --

10 THE COURT: No, we're not.

11 MR. FACTOR: We're not.

12 THE COURT: No, we are definitely not.

13 MR. STOLLER: Okay.

14 THE COURT: We're talking about whether
15 or not we should approve or not approve this
16 proposal that's before me.

17 MR. STOLLER: Okay.

18 THE COURT: And maybe we're talking about
19 whether these particular rights that are being
20 offered for sale are worth more or less than they're
21 being sold for, if I approve the sale.

22 BY MR. STOLLER:

23 Q Do you have -- Mr. Trustee, do you have
24 any idea what a federally registered trademark to an
25 average business might be worth if you were asked, a

1 company using a mark in commerce that's federally
2 registered? This is a very --

3 A You mean a real company that really does
4 business and sells products or provides services?

5 Q However you want to characterize it.
6 What do you think a registered trademark to that
7 company might -- the minimum, one trademark might be
8 worth to one company?

9 A I don't know. According to an article I
10 just read in the paper the other day, the consensus
11 is that for most businesses they are money losers
12 and that the cost of acquiring them and enforcing
13 them isn't particularly economically beneficial
14 to --

15 THE COURT: I hope we don't go astray
16 into what we read in the paper last Tuesday. I
17 would like to know something about the value of
18 these particular rights that are being sold here.
19 If anybody can bring me any elaboration on that, I'd
20 be glad --

21 MR. STOLLER: The average trademark --

22 THE COURT: And I do not wish to have you
23 testify now, sir.

24 MR. STOLLER: Okay.

25 THE COURT: I'll give you the opportunity

1 later today. So do you have any more questions of
2 the witness?

3 MR. STOLLER: Let me just think.

4 BY MR. STOLLER:

5 Q When you signed the Pure Fishing
6 agreement and Judge --

7 MR. CLISHAM: Objection, Your Honor.

8 MR. STOLLER: Let me finish the question
9 and you can object.

10 BY MR. STOLLER:

11 Q -- Judge Lindberg canceled the
12 thirty-five Stealth registrations, because they're
13 canceled now, would you not say that was an act of
14 abandoning the rights in those marks, Mr. Trustee?

15 THE COURT: Sustained.

16 THE WITNESS: No.

17 MR. CLISHAM: Thank you, Your Honor.

18 MR. STOLLER: No further questions.

19 THE COURT: Any redirect?

20 MR. CLISHAM: None, Your Honor.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 THE COURT: We're going to take a
25 ten-minute recess. Does anybody have --

1 Do you have any more evidence? Do
2 you rest?

3 MR. FOGEL: We rest, Your Honor.

4 THE COURT: I should ask -- well,
5 Mr. Stoller, I'm going to give you an opportunity to
6 testify. You want that opportunity --

7 MR. STOLLER: Yes --

8 THE COURT: -- I trust?

9 MR. STOLLER: -- I do want that
10 opportunity.

11 THE COURT: And I should ask before we
12 take that testimony whether anybody is in the
13 courtroom ready to make a bid other than the Society
14 for the Prevention of Trademark Abuse.

15 (No response.)

16 THE COURT: Hearing none, I will turn to
17 Mr. Johnson and ask you whether you're still
18 prepared to make the bid of \$7500.

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: The repurchase agreements
21 only totals \$6500. You're still prepared to come up
22 with \$7500 one way or another? Is that the idea?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: All right. We will now hear
25 Mr. Stoller tell us after the recess whatever he

1 wants to say in opposition.

2 THE CLERK: All rise.

3 THE COURT: Ten minutes, folks.

4 THE CLERK: Court is in recess until
5 4:15.

6 (Brief recess.)

7 THE CLERK: Recalling Stoller.

8 THE COURT: The same parties are here.

9 Mr. Stoller, we'll take your
10 testimony under oath if you'll take the stand,
11 please.

12 (Witness sworn.)

13 THE CLERK: Please state your name for
14 the record.

15 THE WITNESS: Leo Stoller.

16 THE CLERK: You may be seated.

17 THE COURT: Testify in narrative,
18 Mr. Stoller. Proceed.

19 LEO STOLLER, WITNESS, SWORN

20 DIRECT EXAMINATION

21 THE WITNESS: The trademark value at the
22 filing fee cost of 30 -- of over a hundred
23 trademarks would be over \$32,000 if you just had to
24 file them. So, in other words, what Mr. Fogel is
25 selling for 7500, the filing fees, if --

1 notwithstanding the legal work to do it, but just to
2 file.

3 And then to process a trademark
4 through the Patent and Trademark Office, Judge, took
5 anywhere from one to ten years to get the trademark.
6 It took me over 37 years to acquire these
7 trademarks. It takes an average of six months to
8 ten years to acquire a trademark at the cost of
9 thousands of dollars. But I'm putting that aside.
10 I'm saying that the filing fees for these trademarks
11 are about 32 to \$35,000.

12 My position is that I have on appeal
13 your decision to convert to the 7 -- the 13, as you
14 know. I probably have eight appeals pending. If
15 you allow the sale to go through, first of all, it
16 vitiates my appeals because if I am to prevail, even
17 if it's one in a hundred chance, I'm entitled to my
18 constitutional rights. And I have won appeals in
19 the federal circuit and I've won appeals in the
20 Seventh Circuit here. I have done that in the past.
21 I've spent 30 years in the courts.

22 I'm entitled to have my property
23 back if I prevail in your -- in reversing the
24 decisions that you have rendered. I have at least
25 eight appeals. So far Judge Hibbler has said in the

1 Google case and in the Lanard case, and even in the
2 case to disqualify this trustee, that I have rights
3 to appeal. He said in his decision that I could be
4 substantially damaged, and will be, could be,
5 sufficient enough to render me the right to appeal
6 the Google decision that you settled that you signed
7 on to with this trustee in the Lanard decision.

8 Now, if two settlement discussions
9 which you approved of in conjunction with the
10 trustee can cause me potential damage sufficient
11 enough so the district court can allow me to appeal,
12 you selling -- allowing my assets to be sold off for
13 this token amount and destroying my -- the equity
14 that I built up over 30 years would be a crime. It
15 would be an absolute crime.

16 Notwithstanding that fact, as a
17 trademark expert, having testified in numerous cases
18 over 30 years, and having my advice being sought out
19 by The Wall Street Journal, The New York Times, CBS,
20 and Fox TV, the portfolio that you're allowing or
21 would consider allowed to be sold for \$7500 would
22 not be replaceable for less than seven figures.

23 In other words, if someone were to
24 replace a hundred trademarks, which is more -- the
25 portfolio you would allow to be sold today is more

1 than what the Ford Motor Company has in their
2 possession, and they're the seventh or eighth
3 largest industrial corporation in the United States.
4 Their portfolio of trademarks is not as large as the
5 one you would allow to be sold.

6 But the most important thing about
7 what's going on here today, and the reason why you
8 cannot allow it to be sold under the terms and
9 conditions presented by this fraudulent association,
10 is that this is a --

11 THE COURT: I've cautioned you before
12 about using these extravagant words to --

13 THE WITNESS: Okay. Let me explain. Let
14 me just --

15 THE COURT: Now, let me tell you what
16 you're doing here. I want to have your testimony
17 about factual information --

18 THE WITNESS: This --

19 THE COURT: -- which you believe might
20 militate against my approving this sale.

21 THE WITNESS: And this is what I'm going
22 to say.

23 THE COURT: This is not argument for you
24 to give your fiery rhetoric.

25 THE WITNESS: Okay. This is --

1 THE COURT: I'll hear --

2 THE WITNESS: -- what mitigates --

3 THE COURT: -- you a little --

4 THE WITNESS: -- against.

5 THE COURT: -- bit later --

6 THE WITNESS: -- the sale.

7 THE COURT: -- on that.

8 THE WITNESS: This is the bottom line.

9 If I could tell you the marks are worth a million,
10 5 million, 50,000, 10,000, I should be entitled not
11 to have my marks taken from me, I should be given my
12 day in court. All those nice due process things
13 that we all grow up and think until we come into
14 this building that we're going to experience in
15 life, if I were to tell you those things, you may or
16 may not agree.

17 But this is what is happening here.
18 Mr. Johnson has prepared -- and you can approve
19 this. There's no way under the law this agreement
20 as it's contained in here could ever be approved by
21 you and be sustained because I'm reporting it to the
22 OED. Ask Mr. Johnson who the OED is. That's the
23 Office of Enrollment and Discipline.

24 THE COURT: Keep in mind I'm not being
25 asked to approve the contract you've referred to.

1 THE WITNESS: This is what --

2 THE COURT: I'm being asked only to
3 approve the sale by the trustee.

4 THE WITNESS: Okay. But this is what the
5 scheme is, because they have seven signed
6 agreements, why this fails to be even considered by
7 this court under the law, you can't approve unlawful
8 agreements, and why this is an unlawful agreement,
9 Judge, is he cleverly -- he's a trademark attorney.
10 He prepared two agreements. One that they assigned,
11 and you said he would produce those seven
12 agreements, and one to file with the recorder's
13 office at the Patent and Trademark Office.

14 He never could assign -- and I am
15 going to report him to the OED. And I'm going to
16 report Mr. Johnson to the recorder's office, the
17 contract which he doesn't want them to -- he doesn't
18 want to file. He can't file. And that is the
19 contingent agreement to sell and assign which he
20 testified they signed.

21 Now, I have dealt with -- my
22 expertise in this is dealing with trademark,
23 intellectual properties, that come out of
24 bankruptcies and are not properly prepared
25 documentation. That's my expertise.

1 once. Now, go on to another point, please.

2 THE WITNESS: Okay. I will.

3 THE COURT: And try to give me some
4 evidence or information that you think should
5 militate against approving this, going on to a new
6 point, please.

7 THE WITNESS: I'll just sum up this last
8 point and I'll go on. This is a fraudulent scheme.
9 Now, if you approve it, you're approving a
10 fraudulent scheme.

11 THE COURT: You mean a fraud on the
12 purchasers?

13 THE WITNESS: A fraud on the purchaser, a
14 fraud on the bankruptcy court, a fraud on the Patent
15 and Trademark Office, a fraud on ARDC, a fraud on
16 the DC bar, a fraud on the Code of Judicial Conduct.
17 Any regulatory agency that deals with judicial
18 ethics and attorney ethics, this is a fraud on
19 because of the way he's drafted it.

20 THE COURT: Is there any evidence you can
21 give me as to why this -- these rights have more
22 value than -- that are being offered?

23 THE WITNESS: Because in 37 years of
24 experience, a trademark is worth an average of a
25 million dollars to a company.

1 THE COURT: You testified -- pardon me.
2 You -- when you were asking questions of
3 Mr. Johnson, you inferred that there had been dollar
4 offers from some of these seven parties.

5 THE WITNESS: Right. Substantial dollar
6 offers.

7 THE COURT: Do you have any documents
8 substantiating that any of them ever made you an
9 offer to buy out their rights?

10 THE WITNESS: In the negotiations that I
11 had with these parties that he has listed, they have
12 made numerous offers.

13 THE COURT: Have you any documents
14 substantiating that any of them made any offers to
15 you to buy out any of your rights?

16 THE WITNESS: I don't have any documents
17 in my possession.

18 THE COURT: In your possession?

19 THE WITNESS: Right.

20 THE COURT: What do you mean in your
21 possession?

22 THE WITNESS: I don't have any documents
23 in my possession.

24 THE COURT: Well, are there any documents
25 not in your possession?

1 THE WITNESS: I don't have any documents
2 that I can establish that they made the offers which
3 they made to me because we -- I had 150
4 controversies when I came into this court.

5 THE COURT: Whoa.

6 THE WITNESS: And they were in various
7 stages.

8 THE COURT: Are you saying that whatever
9 you're talking about is oral conversation?

10 THE WITNESS: With the principals of
11 these various entities in negotiating settlements,
12 oral conversations we had on the phone prior to the
13 conversion to the Chapter 7 --

14 THE COURT: Did you ever have any
15 communications --

16 THE WITNESS: Pardon me?

17 THE COURT: -- where -- you know,
18 communications, letters back and forth, e-mails,
19 whatever --

20 THE WITNESS: Look, Judge --

21 THE COURT: -- which referred to any
22 offers?

23 THE WITNESS: Judge, I'm not going to --
24 I'm not going to get hung up on those issues.
25 They're not going to pay me --

1 THE COURT: Just ask me -- answer my
2 question.

3 THE WITNESS: What's that? Do I have
4 any -- I have no --

5 THE COURT: Do you have any letters
6 referring to offers --

7 THE WITNESS: No, I don't. I don't --

8 THE COURT: -- or communications
9 referring --

10 THE WITNESS: -- have them in --

11 THE COURT: -- to offers --

12 THE WITNESS: -- my possession.

13 THE COURT: -- do you?

14 THE WITNESS: When I moved out --

15 THE COURT: Do you?

16 THE WITNESS: No, sir. When I moved out
17 of my office back in -- forced -- moved out of my
18 office on Belmont Avenue, I can't take a lot of the
19 correspondence back then.

20 THE COURT: I have some recollection that
21 we heard something about some member of your family
22 taking custody of some of your records.

23 THE WITNESS: I don't have any documents
24 that are responsive to what you have said regarding
25 these settlements. I had 150 potential settlements

1 in various stages of settling, but I don't have any.
2 But to suggest --

3 THE COURT: When you say you have them in
4 various stages --

5 THE WITNESS: I'm saying --

6 THE COURT: -- do any of them relate to
7 any of these seven repurchases?

8 THE WITNESS: I have litigation with
9 about six of these particular --

10 THE COURT: No. Settlement discussions
11 or --

12 THE WITNESS: Yes, I had --

13 THE COURT: -- communications --

14 THE WITNESS: -- settlement
15 discussions --

16 THE COURT: Communications --

17 THE WITNESS: -- with about seven of
18 these parties.

19 THE COURT: Anything in writing --

20 THE WITNESS: No, I don't. I don't have
21 any --

22 THE COURT: -- with any of the seven?

23 THE WITNESS: No, I don't. I don't have
24 anything now in writing. I may have -- that's two
25 years ago. I haven't been litigating with these

1 people since 1995. We're already through '07.

2 THE COURT: All right. Go ahead with
3 your testimony.

4 THE WITNESS: Okay. The bottom line is
5 the trademarks have a value if you were to -- a
6 replacement value because, like in real estate,
7 there's a replacement value. If you knock down a
8 house, what does it cost to reconstruct a house. A
9 hundred trademarks, federal registrations, by any
10 stretch of the imagination would not be acquirable
11 for less than seven figures.

12 THE COURT: Were your trademarks in
13 connection with these particular parties related to
14 any actual business uses by you?

15 THE WITNESS: Exactly, yeah.

16 THE COURT: Yes?

17 THE WITNESS: They all were.

18 THE COURT: Is that a yes?

19 THE WITNESS: Yes. Yes, Judge. Every
20 one of them.

21 THE COURT: Do you have any records for
22 any business use of any of the trademarks that are
23 affected by this proposed sale?

24 THE WITNESS: In terms of Medtronic,
25 Medtronic dealt with medical goods.

1 THE COURT: Did you have any business
2 usage of the names that were --

3 THE WITNESS: Yes.

4 THE COURT: -- in the --

5 THE WITNESS: Yes.

6 THE COURT: Do you have any records as to
7 those --

8 THE WITNESS: Yes --

9 THE COURT: -- business usages?

10 THE WITNESS: -- I do.

11 THE COURT: And have --

12 THE WITNESS: I do have --

13 THE COURT: -- you turned those over to
14 the trustee?

15 THE WITNESS: He was made aware
16 through --

17 THE COURT: Have you --

18 THE WITNESS: -- Lance Johnson --

19 THE COURT: -- turned those over to the
20 trustee?

21 THE WITNESS: I didn't turn any documents
22 over to the trustee. But he had access to the
23 license agreements that relate to every one of these
24 particular -- that gave us rights to litigate with
25 every one of these.

1 You know, this thing about me
2 turning records over, Pure Fishing, I turned over
3 10,000 documents. They gave them -- he had access
4 to every document that I turned over to Pure
5 Fishing. You keep asking me for two years have I
6 turned over documents. Pure Fishing had 10,000
7 documents. They had copies of them. They gave them
8 to Mr. Fogel. Mr. Fogel doesn't lack for documents
9 from me. He has every document that I had in my
10 possession from Pure Fishing. He had access to
11 them.

12 MR. FOGEL: Your Honor, I've got to
13 object to that testimony. That's not true.

14 THE WITNESS: Didn't Lance Johnson give
15 you the documents?

16 THE COURT: All right, sir. You're --
17 I'm hearing your testimony.

18 THE WITNESS: Okay. Let me give you my
19 oral testimony. For Medtronic Navigation, we
20 licensed the medical company that gave us rights to
21 litigate against them.

22 THE COURT: You licensed a medical
23 company?

24 THE WITNESS: Yes. There was a medical
25 company I had under license, two medical companies

1 to license the mark Stealth for --

2 THE COURT: Do you have any records of
3 that license arrangement?

4 THE WITNESS: I might have copies, yes.
5 I could find maybe.

6 THE COURT: Have you turned --

7 THE WITNESS: -- copies of the licenses.

8 THE COURT: -- those over to the trustee?

9 THE WITNESS: He has already had them.
10 But if you wanted me to turn those licenses over in
11 relationship to these, I could locate those.

12 THE COURT: Have you brought any
13 documents with you today?

14 THE WITNESS: I didn't know what to bring
15 today. I brought just -- I was just in court
16 over --

17 THE COURT: If I were to continue this
18 matter to tomorrow or Monday, could you bring in
19 documents demonstrating any basis for your claim --

20 THE WITNESS: Yes.

21 THE COURT: -- that these --

22 THE WITNESS: If you --

23 THE COURT: -- rights --

24 THE WITNESS: -- would do that --

25 THE COURT: -- have value?

1 THE WITNESS: If you would do that, I
2 would show you the license agreements that give them
3 substantial value.

4 THE COURT: In connection with Medtronic?

5 THE WITNESS: In connection with
6 Medtronics, in connection with Pure Fishing, in
7 connection with Dark Star Orchestra, in connection
8 with Lancope, in connection with the knife company,
9 Bud K, in connection with the software company, and
10 in connection with HEPA.

11 THE COURT: And why didn't you turn those
12 over to the trustee earlier?

13 THE WITNESS: Because he had -- all the
14 documents I had were given to Pure Fishing in two
15 years of litigation. There was no -- I had no --
16 because we were in litigation and Golding told me
17 under his advice what we were going to do in the
18 beginning and what he told me. But if you continued
19 it, I'll bring in the licenses that establish our
20 rights at each one of these categories.

21 THE COURT: You mean because you're in
22 litigation with Pure Fishing, you wouldn't turn over
23 records regarding these seven companies?

24 THE WITNESS: No. I was -- in Pure
25 Fishing litigation, we gave them 10,000 documents on

1 all our licenses.

2 THE COURT: Okay.

3 MR. JOHNSON: Your Honor, I have to
4 object.

5 THE COURT: You're not a party to this
6 proceeding. Have a seat, sir. Thank you very much.
7 You may whisper to Mr. Fogel or his lawyer what you
8 think you want to tell him, okay?

9 MR. JOHNSON: Okay.

10 THE WITNESS: But I could give -- I could
11 come up with the licenses, the same things --

12 MR. FOGEL: Your Honor --

13 THE WITNESS: -- I gave --

14 THE COURT: Do you have an objection?

15 MR. FOGEL: Yes, Your Honor.

16 THE COURT: What's the objection? That
17 I --

18 MR. FOGEL: The objection --

19 THE COURT: My question or his answer?

20 MR. FOGEL: The objection is that --
21 multiple-fold. He has been ordered by Your Honor
22 previously to turn over to me all books and records
23 relating to his intellectual property, his alleged
24 operation of businesses, books and records relating
25 to those businesses. He affirmatively advised you

1 in open court that he does not have any such thing.

2 THE WITNESS: This is different.

3 MR. FOGEL: Then every time we come to
4 court, he starts telling you about all these things
5 he has and all these documents that I've got which I
6 don't have.

7 And, Your Honor, if you have read
8 any of the written opinions by any of the judges in
9 our district or circuit that deal with Mr. Stoller's
10 arguments about how he has used any one of these
11 trademarks, you will read to the conclusion --

12 THE COURT: I read them --

13 MR. FOGEL: -- that every judge has found
14 that he has no evidence of any of that, and they
15 have generally --

16 THE COURT: Yeah.

17 MR. FOGEL: -- dismissed his cases and
18 sanctioned him.

19 THE COURT: Well, Mr. Stoller, for one
20 thing, you have a very fine lawyer here and --

21 MR. FOGEL: I'm not Mr. Stoller.

22 THE COURT: I'm sorry, Mr. Fogel. You
23 have a very fine lawyer here. And he has rose to
24 make an argument, so I want to hear what he has to
25 say.

1 MR. FOGEL: Okay.

2 MR. CLISHAM: Your Honor --

3 THE COURT: I'm sorry for misnaming you.

4 MR. FOGEL: That's okay.

5 MR. CLISHAM: To the extent Mr. Stoller
6 now has evidence that he would like to produce that
7 is relevant to these proceedings, I would object to
8 its admission on the basis that he has been
9 compelled to produce documents earlier and he's not
10 done so. I believe it's Rule 37 of the Federal
11 Rules of Civil Procedure that would allow you to
12 preclude him from introducing any evidence that he's
13 been previously compelled to produce.

14 THE WITNESS: The documents were --

15 THE COURT: Thank you very much for the
16 objection. But he's not brought them in, so there's
17 no point in objecting to my hearing them or seeing
18 them.

19 MR. CLISHAM: Well, I would object, Your
20 Honor, I suppose, to the continuance of the hearing
21 so that he could produce --

22 THE COURT: Well, we --

23 MR. CLISHAM: -- something that --

24 THE COURT: -- still have to --

25 MR. CLISHAM: -- he's been previously --

1 THE COURT: We have to bring in --

2 MR. CLISHAM: -- ordered to produce.

3 THE COURT: We have to bring in the seven
4 contracts, which I think everybody ought to have a
5 chance to see. And I was thinking of doing that
6 tomorrow, Monday latest. So would --

7 MR. FACTOR: Your Honor --

8 THE COURT: -- you be --

9 MR. FACTOR: -- excuse me. If I may on
10 that issue? I don't mean to interrupt.

11 THE COURT: Yes.

12 MR. FACTOR: Mr. Stoller has argued that
13 he produced these seven contracts to Pure Fishing in
14 litigation.

15 THE COURT: What?

16 MR. FACTOR: Mr. Stoller has indicated on
17 the stand that these contracts that he alleges he
18 has were produced to Pure Fishing in litigation.
19 And I would like to provide testimony -- present
20 testimony that that is indeed not the case.

21 THE COURT: Sir, thank you very much for
22 your offer. I want to get to the end of his
23 testimony, and then we'll hear some argument about
24 what I ought to do.

25 Anything more to say?

1 THE WITNESS: Lastly, I would strongly
2 encourage the court that at this particular time
3 there is no prejudice. I'm 61. I have had this
4 business since I was 25. It took me 30 years, 35
5 years to acquire this family of rights. And to
6 deprive me of my trademarks for a nominal amount
7 when there is a probability that my constitutional
8 rights may be violated, and let me have an
9 opportunity to allow my appeals to go through,
10 because if you take them from me now and if one or
11 two or three of the appeals is -- I prevail, how are
12 we ever going to put Humpty Dumpty back together?
13 It never would be possible.

14 Are they prejudiced? Is anybody
15 being prejudiced by the fact that this sale doesn't
16 go through today? These little diminutive \$500 for
17 a billion dollar -- this Medtronic is a billion
18 dollar company. They're willing to pay \$500, they'd
19 spend a half a million dollars litigation. Are they
20 prejudiced? Is anybody stopping them from using
21 their mark in the field? Nobody.

22 All I'm asking you, Judge, is to
23 give me an opportunity, not to liquidate my entire
24 life's work for pennies on the dollar while we have
25 these pending appeals. Nobody is prejudiced by

1 them. If you prevail -- if I lose and you prevail,
2 and you said it the other day, hey, then the game's
3 over for me. But if you take my marks away from me
4 and I don't even have a right to finish my appeals,
5 because even if I win they're gone because once he
6 assigns them out, then what I have to do and what I
7 will do is a kamikaze effort. I send these
8 documents off to the Patent and Trademark Office and
9 they're all destroyed because of his
10 representations.

11 And the way he structured the deal,
12 I could never get my marks back. You sell them in
13 bankruptcy like this, you are giving away marks in
14 what's called a "naked license," and they're dead on
15 arrival. The moment you do that, they're dead. And
16 I'll tell you I won a case on a bankruptcy with
17 Caraco (phonetic) Films when they sold the mark
18 "Terminator" that Arnold Schwarzenegger made famous
19 to Kanell (phonetic) Plus, hundred million dollar
20 deal.

21 A bankruptcy judge just like you in
22 California did exactly what you did, sold the mark
23 to Kanell Plus, hundred million bucks. The moment
24 they signed the agreement, it was a dead duck. It's
25 an abandoned mark. And I got the mark because I

1 read the paperwork, like the guy like Fogel who's
2 done it 25 years, knows nothing about trademarks.
3 We got the sharp Lance Johnson there with this
4 fraudulent deal. Anybody -- any trademark guy who
5 reads this, this is a scam. It's dead. By you
6 selling my marks to him -- here's what happens, I'm
7 an expert, the marks are canceled. They're dead.
8 Once you sell my marks to him, every mark you sell
9 to him under this provision is canceled.

10 THE COURT: This is the fourth or fifth
11 time you've made the point.

12 THE WITNESS: Well, that's critical.

13 THE COURT: I understand.

14 THE WITNESS: Because what you're doing
15 is throwing them in a paper shredder.

16 THE COURT: But I want to know if there
17 is any more matters that you wish to talk about. Or
18 have you finished?

19 THE WITNESS: Give me until Monday and
20 I'll bring in the contracts on each one of them.
21 I'll bring in the seven contracts I have. I'll be
22 able to establish that there was more value to those
23 marks than what he is attempting to sell them for.

24 THE COURT: When you say "contracts,"
25 what contracts?

1 THE WITNESS: The license agreements I
2 had and the settlement agreements that were drafted
3 between the parties on these deals.

4 THE COURT: Which parties?

5 THE WITNESS: The ones that he has, the
6 ones he's trying to sell these to.

7 THE COURT: You mean you had agreements
8 with those parties?

9 THE WITNESS: Settlement agreements
10 exchanged hands. Before the bankruptcy took place,
11 they were willing to settle with me. I was --

12 THE COURT: I asked you a little while
13 ago whether they offered you any settlements --

14 THE WITNESS: Yes.

15 THE COURT: -- in writing.

16 THE WITNESS: I have settlements that
17 I'll bring in to show you on these cases on Monday,
18 which you said you would give me that opportunity,
19 and I'll establish that for you.

20 THE COURT: Okay. Have you anything more
21 to testify to?

22 THE WITNESS: Other than I urge you not
23 to dispose of my assets.

24 THE COURT: Anybody have any
25 cross-examination for this witness?

1 MR. CLISHAM: No, Your Honor.

2 THE COURT: All right.

3 You may step down as a witness, sir.

4 (Witness excused.)

5 THE COURT: Do you have any more evidence
6 to offer, Mr. Stoller?

7 MR. STOLLER: No, Judge.

8 THE COURT: No. Is there any rebuttal
9 anybody wishes to offer?

10 (No response.)

11 THE COURT: I am reminded I'm not sitting
12 on Monday or Tuesday, but -- nor Thursday or Friday
13 of this week, for that matter.

14 So does anybody wish to offer any
15 rebuttal? No?

16 (No response.)

17 THE COURT: Sir, you're not a participant
18 here. You don't have any rights to address me, and
19 I don't think you have any standing. You're a
20 potential purchaser. But I -- and at the same time,
21 I think I ought to let you say whatever you want to
22 say as a lawyer representing this party. I think
23 you're a lawyer --

24 MR. JOHNSON: Yes, Your Honor, I am.

25 THE COURT: -- representing this party.

1 So what is it you want to say?

2 MR. JOHNSON: What I wanted to say, Your
3 Honor, is that I represented Pure Fishing in
4 connection with the district court litigation. In
5 that litigation we had a number of discovery
6 disputes with Mr. Stoller and filed three motions --

7 THE COURT: Are you rehashing something
8 that has nothing to do with the value of this?

9 MR. JOHNSON: No. I am rebutting his
10 assertion that he produced the license agreements to
11 us --

12 THE COURT: Oh.

13 MR. JOHNSON: -- in district court.

14 THE COURT: Okay. But no one wishes to
15 use you as a witness, so...

16 MR. JOHNSON: That was what I wanted to
17 say. And --

18 THE COURT: I understand.

19 MR. JOHNSON: -- if that is improper, I
20 will withdraw it and sit down.

21 THE COURT: Well, it's not evidence, but
22 I thank you for saying it.

23 All right. I will take argument.

24 Mr. Wolfe, would you like to speak
25 first?

1 MR. WOLFE: Yes, Judge, very briefly.
2 The testimony that we've had here today is that
3 notice of the proposed sale has gone out to all of
4 the creditors. It's been advertised on the
5 internet. I asked a few questions of Mr. Fogel when
6 he was on the stand really based on this statement
7 that Mr. Stoller made in the context of a question
8 that he had an offer for \$100,000 to settle the Dark
9 Star litigation. Hearing something like that gives
10 me pause, and I suspect it gives the court pause as
11 well.

12 Having said that, we are here
13 without one shred of evidence documenting that.
14 Mr. Stoller's statements have been, I would say,
15 inconsistent. I thought he testified that he didn't
16 have written settlement agreements, and now
17 apparently he says that he does.

18 I've worked with Mr. Fogel for many
19 years. I think if there is any way to get more
20 money for an asset, he would do it. It's in his own
21 best interest. His fee is based on how much he can
22 accumulate and pay to creditors.

23 This business about no books and
24 records has been a problem throughout the case, as
25 Your Honor is very, very well aware. However, it's

1 a problem that the objector has created. It's not a
2 problem that Mr. Fogel has caused.

3 Apparently there are also some oral
4 conversations about the principals of the seven
5 contingent purchasers in connection with settlement
6 agreements, according to Mr. Stoller. But there are
7 no witnesses here to verify that, so I would just
8 comment that that testimony is most likely hearsay
9 and should not be given great weight.

10 All Mr. Fogel is doing in this case
11 is all he does in any case, is he's trying to
12 assemble an estate and reduce assets to cash and pay
13 creditors. That's all it is. And we do not object
14 to the sale, Your Honor.

15 THE COURT: Let's assume for whatever
16 reason Mr. Stoller has been hiding documents which,
17 lo and behold, do exist and could be produced
18 tending to show perhaps that there is more value to
19 these assets than is indicated by the fact that
20 nobody is in here bidding. Would you think I should
21 consider those now?

22 MR. WOLFE: I would be hard-pressed to
23 suggest the court should ignore them. I know the
24 parties are anxious to get this done. However,
25 again, we've kind of got this matter of inconsistent

1 testimony.

2 THE COURT: Oh, I heard it. First there
3 is nothing, and suddenly he's going to bring them
4 in --

5 MR. WOLFE: Something.

6 THE COURT: -- in a couple of days. I
7 understand.

8 Okay. So what do you think I should
9 do at the moment?

10 MR. WOLFE: Well, let's hear closing
11 argument from other parties. And I guess if the
12 court wanted to give Mr. Stoller a day or two to
13 produce these documents, I would not object to that,
14 Judge.

15 THE COURT: Counsel for Mr. Fogel?

16 MR. CLISHAM: Your Honor, am I to address
17 the question of Mr. Stoller returning with
18 documents, or am I to --

19 THE COURT: Any question you want.

20 MR. CLISHAM: Your Honor, as I expressed
21 when I was up here before, we would be opposed to
22 continuing this further to give Mr. Stoller yet
23 another opportunity to produce documents which the
24 court and Mr. Fogel have asked for numerous times
25 and which he has been compelled to produce under

1 court order and failed to do so.

2 To continue to extend this and to
3 continue to force the estate to expend money,
4 sending myself over to court with Mr. Fogel, and to
5 continue to have the other parties and creditors
6 incur additional expenses at Mr. Stoller's whim to
7 decide to produce documents whenever he feels it's
8 most convenient to him, would be an unfair outcome
9 at this point.

10 I think that Your Honor has the
11 ability to preclude evidence that Mr. Stoller would
12 like to produce at this point, and I think Your
13 Honor should exercise his judicial authority to do
14 so.

15 THE COURT: Anything else on the subject
16 matter?

17 MR. CLISHAM: No, Your Honor.

18 THE COURT: Counsel? Who do you
19 represent again, please?

20 MR. FACTOR: Pure Fishing.

21 THE COURT: Right.

22 MR. FACTOR: A creditor.

23 THE COURT: Do they have a stake in this
24 motion?

25 MR. FACTOR: Certainly, Your Honor.

1 We're a party in interest.

2 THE COURT: In what regard?

3 MR. FACTOR: We're a creditor.

4 THE COURT: Oh, Pure Fishing?

5 MR. FACTOR: Yes.

6 THE COURT: You're one of the parties
7 here.

8 MR. FACTOR: Well, no, Your Honor. We're
9 also the largest creditor of the estate. So --

10 THE COURT: Right.

11 MR. FACTOR: -- we certainly have --

12 THE COURT: Still?

13 MR. FACTOR: Yes. My only comment, Your
14 Honor, is --

15 THE COURT: There was a settlement,
16 wasn't there?

17 MR. FACTOR: Yes. And as part of that
18 settlement, we have a claim against the estate.

19 THE COURT: Okay.

20 MR. FACTOR: You're thinking of Google.

21 MR. FOGEL: There has been no settlement,
22 Your Honor. There was an order entered by Judge
23 Lindberg awarding Pure Fishing fees against
24 Mr. Stoller.

25 THE COURT: Okay. So they are just a

1 pure, large creditor?

2 MR. FOGEL: Yes.

3 MR. FACTOR: The reason I think you're --
4 Google is the one.

5 THE COURT: I'm sorry I got the names
6 mixed.

7 MR. FACTOR: We would love to be Google.

8 THE COURT: Go ahead.

9 MR. FACTOR: My only comment, Your Honor,
10 is --

11 THE COURT: Well, just a moment. Pardon
12 me.

13 What was the -- I have something
14 pending under advisement, a motion to sell.

15 MR. FOGEL: To settle with Go Daddy.

16 THE COURT: Go Daddy. Thank you. Surely
17 I should know these names by now.

18 MR. FOGEL: No, they're --

19 THE COURT: I'm very sorry. Go ahead.

20 MR. FOGEL: There is a lot of names.

21 MR. FACTOR: My only comment, Your Honor,
22 is that there should be consequences for making
23 statements in court that turn out not to be true.

24 THE COURT: Which statement?

25 MR. FACTOR: Well, the statement that

1 Mr. Stoller has documents that at one point in this
2 hearing he said he didn't have, and at another point
3 in the hearing he said he had. One could say that
4 he said that he had them in order to delay. One
5 might also say he said he had them --

6 THE COURT: What way does delay hurt
7 anybody here except -- I recognize there's an
8 expense in coming back if we have to come back. But
9 apart from that, in what way is anybody harmed?

10 MR. FACTOR: I think that's the primary.
11 Mr. Johnson is from out of town.

12 THE COURT: You represent a large
13 creditor?

14 MR. FACTOR: Yes.

15 THE COURT: Let's assume that we would
16 all be amazed if Mr. Stoller would now --
17 demonstrates that he falsified his testimony saying
18 he has no documents and indeed he has documents
19 which show there is value to these things. Let's
20 assume that as a hypothetical. Should I pay
21 attention? Indeed should you as a large creditor
22 pay attention?

23 MR. FACTOR: Your Honor, I think that in
24 theory more money is better. And if you can
25 establish -- well, first of all, I don't think that

1 the syllogism pans out that if documents exist that
2 there's more money to the estate.

3 THE COURT: Oh, I know. I know. We
4 don't know for sure because we have never seen the
5 document.

6 MR. FACTOR: Well, but even if --

7 THE COURT: And we don't even know if
8 they exist.

9 MR. FACTOR: Well, even if they do exist,
10 that doesn't mean people are going to be offering
11 more money for these assets.

12 THE COURT: I understand.

13 MR. FACTOR: But the point I was trying
14 to make, Your Honor, is that if these documents
15 don't exist, there should be a consequence for that,
16 and the court can order there to be a consequence
17 for that. That consequence would be the amount of
18 money that counsel has to spend to come back to
19 court on a frolic and a detour.

20 THE COURT: Well, I understand that's
21 your position. Is there anything else?

22 MR. FACTOR: Well, along those lines, I'm
23 wondering if the court would entertain some type of
24 procedure where if these documents aren't produced,
25 that Mr. Stoller will be held in some type of

1 contempt. If the court enters an order directing
2 him to produce the documents --

3 THE COURT: I've entered orders on him to
4 produce things in the past. Do you want me to enter
5 another other?

6 MR. FACTOR: Yes, Your Honor.

7 THE COURT: Should I say "positively" in
8 this one? Will that make a difference?

9 MR. FACTOR: I think it would in terms of
10 the remedies that would be available if the order is
11 not complied with.

12 THE COURT: I would never say
13 "positively."

14 MR. FACTOR: Well, Mr. Stoller is
15 directed to produce on whatever date Your Honor sets
16 seven agreements with the seven parties establishing
17 that there is --

18 THE COURT: All right. Thank you.

19 MR. FACTOR: Thank you.

20 THE COURT: All right. Mr. Stoller, what
21 would you like to say?

22 MR. STOLLER: I'd like to have an
23 opportunity to do whatever I can to maximize the
24 benefits of the estate, that's all.

25 THE COURT: Yes.

1 MR. STOLLER: And, you know, Judge, one
2 thing, you're a creditor judge. Everybody knows in
3 this building they want to get in front of Judge
4 Schmetterer. Since 1984, you have had a
5 reputation -- you've earned a reputation as a
6 creditor judge. And, look, you got all of these
7 high-priced guys against me for this two-and-a-half
8 years. I'm asking you for an opportunity to
9 establish that the marks are worth much, much more
10 than what they are.

11 THE COURT: Yes. Well, of course, you
12 had that opportunity today, and you could have
13 brought everything today, so...

14 MR. STOLLER: But I didn't know what -- I
15 had no --

16 THE COURT: The hearing was set. You had
17 notice of it like everybody else.

18 MR. STOLLER: Not this. We didn't have
19 this. We didn't know -- he showed this to me when
20 he was on the stand.

21 THE COURT: I understand. Sir, is there
22 any reason -- you've not -- you're now arguing.

23 Would you please be seated, folks.
24 Thank you.

25 You're now arguing. So tell me why

1 if these rights have great value, you could not
2 market them and have investors come in and overbid
3 \$7500.

4 MR. STOLLER: Because it's been my hope
5 through my appeals that I would be able to get my
6 marks back. I don't want to sell my trademarks. I
7 want my marks. They're --

8 THE COURT: No, not sell them. Buy them.

9 MR. STOLLER: Pardon me?

10 THE COURT: Buy them.

11 MR. STOLLER: I shouldn't have to buy my
12 own marks back. I'm entitled to have the legal
13 process --

14 THE COURT: If they have great value,
15 sir, one of your opportunities is to get somebody to
16 invest in them and help you buy them from other
17 parties.

18 MR. STOLLER: I understand that. But on
19 the same token, I still have my due process. Now,
20 that doesn't matter in this court sometimes. I say
21 that with all due respect. I still have due process
22 and equal protection. I still have my appeals. I
23 could win and get my marks back. But if you sell
24 them, where do I go? I go to the Society who is
25 giving them away?

1 THE COURT: Okay. If you have these
2 exhibits, these documents, why didn't you turn them
3 over to the trustee?

4 MR. STOLLER: Because what we're talking
5 about today is a half dozen licenses that we have
6 that give me particular rights, because my rights
7 were based on licensing to third parties. That's
8 what my rights were based on. You asked me what is
9 your rights.

10 THE COURT: Now, do you really have -- do
11 you really have these exhibits somewhere that you
12 can produce?

13 MR. STOLLER: Yes. I think I can
14 possibly locate them. What do I have? I have --

15 THE COURT: Where would you find them?

16 MR. STOLLER: I might ask my brother if
17 he has these exhibits.

18 THE COURT: Do you really have them?

19 MR. STOLLER: Yes.

20 THE COURT: Okay. Do you really have
21 them so that if you don't produce them, I would --
22 it would be appropriate for me to first order you to
23 produce them and then hold you locked up until you
24 produce them?

25 MR. STOLLER: If you want to do that,

1 sure.

2 THE COURT: Well, do you really have
3 them?

4 MR. STOLLER: Yes. I have documents that
5 would establish our rights in these areas and
6 establish that the marks are worth 10 times, 20
7 times more. What are the documents? They're the
8 licenses and the settlement agreements that have
9 transpired between the parties.

10 THE COURT: Is there anything else you'd
11 like to argue? This is final argument.

12 MR. STOLLER: I would like you to give me
13 an opportunity, a last chance. One last chance,
14 Judge. One last chance.

15 THE COURT: Thank you.

16 All right. Anybody else have any
17 comments?

18 MR. FOGEL: I have one comment, Your
19 Honor.

20 THE COURT: Mr. Fogel. Mr. Fogel, you've
21 got a lawyer here.

22 MR. FOGEL: I understand. But I am also
23 a lawyer, and I'm a party in interest. And my only
24 comment, Judge, is that if you're going to grant his
25 request to give him one more opportunity to produce

1 documents and records that would establish value of
2 trademarks, that order should include evidence of
3 the use of the marks, evidence of the operation of a
4 business, all of the type of evidence that the
5 judges on the Seventh Circuit and Judge Coar,
6 Lindberg, Judge Andersen, Judge Castillo, Judge
7 Gottschall, and Judge Shadur asked him to produce
8 and he failed to produce in the past. And then if
9 he doesn't produce them, I'd like you to sanction
10 him for wasting all of our time.

11 THE COURT: Okay.

12 MR. CLISHAM: Your Honor?

13 THE COURT: Another bite at the apple?

14 MR. CLISHAM: Well, I guess I was a
15 little confused earlier. Are you, in fact, taking
16 final argument on this case right now, or do you
17 want to set this over?

18 THE COURT: Yes, I am.

19 MR. CLISHAM: Okay. Then I apologize. I
20 guess there are a few points I'd like to make, Your
21 Honor.

22 THE COURT: Sure.

23 MR. CLISHAM: And the first point, I
24 guess, would be that Your Honor entered this sale
25 procedure order, in fact, Your Honor had a hand in

1 drafting this sales procedure order, for the purpose
2 of preparing the sale of these marks in a fair
3 manner, fair and equitable manner that would
4 maximize the potential recovery for the estate. We
5 have -- the trustee has complied with that sales
6 procedure order. No bidders have come forward to
7 compete. And we're asking Your Honor to enter this
8 order selling these marks pursuant to the sales
9 order which, again, Your Honor I assume drafted with
10 the idea of having a fair and open sale.

11 THE COURT: Okay. Thank you.

12 Look, folks, the sale procedure that
13 I approved has been complied with. The opportunity
14 to market this has been offered to the world. The
15 trustee has disclosed how he attempted to market it.
16 Mr. Stoller, if he felt that this had great value,
17 had every opportunity to find somebody to persuade
18 them to invest. For \$7500, he would -- or a few
19 dollars more, he could outbid this group, which,
20 from our testimony, has only thus far come up with
21 \$6500. And the market often determines what is the
22 value of something in fact. Given the whole history
23 of this case and of other litigation on similar
24 subjects, I'm not sure we could look to any measure
25 of value other than the market. So the market has

1 been exposed and nothing has been offered.

2 On the other hand, in any bankruptcy
3 case if somebody claims they have a bag of gold
4 belonging to the estate and they'd like to bring it
5 in if I gave them a couple of days, I'd probably
6 give them a couple of days. I tend to doubt
7 Mr. Stoller's testimony because only a few minutes
8 before he said he had no such records. But I've
9 been surprised before. We all have, haven't we?

10 I think Mr. Stoller has been very,
11 very unwise in not cooperating with the trustee in
12 not turning over any documents demonstrating value,
13 if indeed he has such documents. In any event, I
14 have been surprised before.

15 I'm going to be ordering him to
16 produce these documents a week from tomorrow, I
17 think.

18 How do we look in the afternoon?

19 THE CLERK: August 6th.

20 THE COURT: What time?

21 THE CLERK: At 11:00 o'clock.

22 THE COURT: 11:30?

23 THE CLERK: 11:30.

24 THE COURT: 11:30 on August 6th. I will
25 ask Mr. Fogel's lawyer to draft the order. It can

1 be as broad as you have requested, Mr. Fogel. And
2 at the same time, there has been a request for a
3 demonstration -- for a production of the seven
4 contracts for these folks. Is there anybody here to
5 object to my asking counsel to produce --
6 Mr. Johnson to produce those?

7 MR. FOGEL: No, sir.

8 THE COURT: So let's have those in the
9 courtroom.

10 Mr. Johnson, are you going back to
11 another city?

12 MR. JOHNSON: Yes, Your Honor. I am
13 based out of Washington.

14 THE COURT: Where are you based?

15 MR. JOHNSON: Washington, D.C.

16 THE COURT: You're welcome to participate
17 by phone. Call in through my chambers so you won't
18 have to make a trip out here. Of course you'd be
19 welcome to be back here. I think we should have the
20 documents in court. I don't mean the originals, I
21 mean copies of them.

22 MR. FOGEL: Your Honor, can we see the
23 document before court, or are we going to walk in
24 and have Mr. Stoller give us some boxes of --

25 THE COURT: Just a moment.

1 MR. FOGEL: -- documents?

2 THE COURT: We're talking about
3 Mr. Johnson's seven contracts, right?

4 MR. JOHNSON: Yes, Your Honor.

5 THE COURT: Could you please send them to
6 Mr. Fogel's lawyer, and I'll ask Mr. Fogel to
7 distribute them to Mr. Stoller in advance. And get
8 a package in to my deputy clerk, okay?

9 MR. JOHNSON: Yes, Your Honor.

10 THE COURT: Do you have any problem doing
11 that, sir?

12 MR. JOHNSON: No, Your Honor.

13 THE COURT: Okay.

14 MR. STOLLER: Thank you, Judge.

15 THE COURT: Then with regard to
16 Mr. Stoller, the order will require that he produce
17 for inspection somewhere, we'll talk about that in a
18 minute, all of these documents that he has testified
19 he now has.

20 MR. FOGEL: Okay.

21 THE COURT: Now, it's entirely possible
22 from what I heard him say that he may only have
23 certain licensing agreements that he thinks would
24 give him rights or values or something. And those
25 might be -- he might claim that those -- but at any

1 rate, I will order him to produce anything he has
2 covering the breadth of what Mr. Fogel has
3 suggested, okay? And to do that by, I suppose,
4 Tuesday. I think he asked me for Tuesday. So he
5 ought to be able to demonstrate them next Tuesday at
6 Mr. Fogel's office.

7 Mr. Stoller, if you were to take
8 these documents you're talking about and pile them
9 on the table here, how many inches, feet, or yards
10 would they come up?

11 MR. STOLLER: Maybe one bankers box.

12 THE COURT: One bankers box?

13 MR. STOLLER: Yeah, one bankers box.

14 THE COURT: Okay. Well, if you get
15 that --

16 MR. STOLLER: I'll bring it over to
17 Fogel's office.

18 THE COURT: Bring it over to Mr. Fogel's
19 office.

20 MR. STOLLER: On Tuesday.

21 THE COURT: And Mr. Fogel is to have the
22 right to --

23 MR. STOLLER: Go through them.

24 THE COURT: -- make copies at the expense
25 of the estate of anything in there that he gets.

1 And then that will be what is going to be produced
2 before me at 11:30.

3 THE CLERK: Tuesday, August 6th.

4 THE COURT: Is that Tuesday?

5 THE CLERK: Monday. I'm sorry. Monday,
6 August 6th.

7 MR. FOGEL: So he produces on July
8 31st --

9 THE COURT: Wait a second.

10 MR. FOGEL: -- to me, and we come back --

11 THE COURT: Wait a second.

12 What day?

13 THE CLERK: August 6th at 11:30. But you
14 already --

15 THE COURT: Not next week.

16 THE CLERK: No. August 6th.

17 MR. FOGEL: You're not here.

18 THE COURT: I'm not here...

19 THE CLERK: Monday or Tuesday.

20 THE COURT: Monday and Tuesday. What
21 about the end of the week? We have Wednesday --

22 MR. FOGEL: I'm not --

23 THE COURT: -- Thursday --

24 MR. FOGEL: -- available.

25 THE COURT: -- and Friday.

1 MR. FOGEL: I'm not available on --

2 THE CLERK: Wednesday.

3 MR. FOGEL: -- the 3rd, Your Honor. The
4 2nd is available. But if the 6th is better for your
5 calendar --

6 THE CLERK: The 6th is not good for your
7 calendar.

8 THE COURT: Why is that? When did you
9 say? 11:30 on what date, did you say?

10 THE CLERK: August 6th.

11 THE COURT: The 6th. That's a Monday.
12 So that's a week from Monday. Okay.

13 MR. WOLFE: Judge, may I interject?
14 There's a status on the U.S. Trustee's complaint
15 objecting to discharge --

16 THE CLERK: On the 7th.

17 MR. WOLFE: -- on the 7th.

18 MR. FOGEL: Let's come back on the 7th.

19 THE COURT: Do you want to do it on the
20 7th?

21 THE CLERK: At 11:00 o'clock.

22 THE COURT: At 11:00 o'clock. All right.
23 The order will be the 7th, and produce them for
24 Mr. Fogel's office by the 3rd or something?

25 MR. FOGEL: The 31st.

1 THE COURT: The 31st?

2 MR. FOGEL: Yeah. He said --

3 MR. STOLLER: The 31st.

4 MR. FOGEL: -- it would take a day or so.

5 THE COURT: All right. Put that in the
6 order.

7 MR. FOGEL: Okay.

8 THE COURT: Docs by 31st. And when is
9 that hearing again?

10 MR. FOGEL: 8/7.

11 THE CLERK: August 7th at 11:00 o'clock.

12 THE COURT: 11:00 a.m. With the order on
13 him to produce them.

14 MR. FOGEL: Yes, sir. We'll draft an
15 order.

16 THE COURT: And you'll serve it on him --

17 MR. FOGEL: We'll serve it on him by
18 e-mail.

19 THE COURT: -- with proof of service.

20 MR. FOGEL: We will do so. We'll fashion
21 an order similar to the order for production that
22 Your Honor previously entered, and we'll see if we
23 get any better results.

24 MR. STOLLER: Thank you, Judge.

25 THE COURT: Mr. Stoller, you're not

1 wasting our time, are you?

2 MR. STOLLER: No, Judge, I'm not wasting
3 your time.

4 THE COURT: Okay.

5 MR. CLISHAM: Thank you, Your Honor.

6 MR. FOGEL: Thank you, Judge.

7 THE COURT: Now, let's see where we are.
8 One of the statuses we have is objection to claims.
9 I've kept that alive. He wants to object to claims.

10 MR. FOGEL: I know.

11 THE COURT: I don't know whether he
12 understands about claims.

13 MR. FOGEL: I don't think so.

14 THE COURT: We'll get to the end of the
15 case, and the trustee will then try to either
16 negotiate or object to claims or do something with
17 them.

18 So stay tuned when that happens,
19 Mr. Stoller. Until then, we're just going to keep
20 your motion alive --

21 MR. STOLLER: Okay, Judge.

22 THE COURT: -- and carry it from time to
23 time.

24 August 7th at 11:00 o'clock.

25 MR. STOLLER: Thank you very much.

1 MR. FACTOR: Thank you.

2 THE COURT: In the event he doesn't
3 produce any documents, my statement today will stand
4 as findings of fact and conclusions of law because
5 as of right now there is no other value to these
6 rights other than the \$7500 that is being offered.

7 MR. FOGEL: Thank you, Judge.

8 (Which were all the proceedings
9 had in the above-entitled cause,
10 July 24, 2007.)

10

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

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

GOOGLE, INC.,)	
)	
Plaintiff)	
	)	Case No: 1:07-cv-00385
v.)	
	)	Honorable Virginia J. Kendall
CENTRAL MFG. INC., et al.,)	
)	
Defendants.)	

**REPLY TO GOOGLE'S RESPONSE TO
MOTION FOR RECONSIDERATION**

EXHIBIT C

**(JULY 24, 2007 TRANSCRIPT and
MAY 29, 2007 TRANSCRIPT)**

Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302
(312) 545-4554

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

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In re:)
LEO STOLLER,) No. 05 B 64075
)
) Chicago, Illinois
Debtor.) May 29, 2007
) 10:00 a.m.

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE JACK B. SCHMETTERER

APPEARANCES:

MS. PATRICK CLISHAM
on behalf of the trustee;

MR. RICHARD FOGEL
trustee;

MR. BILL FACTOR
on behalf of Pure Fishing.

ALSO PRESENT:

MR. LEO STOLLER
debtor.

1 THE CLERK: Stoller, 05 64075.

2 MR. STOLLER: Good morning, Judge. Leo
3 Stoller.

4 MR. CLISHAM: Good morning, Your Honor.
5 Patrick Clisham on behalf of Richard Fogel, the
6 Chapter 7 trustee.

7 MR. FOGEL: Good morning, Your Honor.
8 Richard Fogel, the trustee.

9 MR. FACTOR: Good morning, Your Honor.
10 William Factor for Pure Fishing.

11 THE COURT: Good morning, folks. Let's
12 see. Last time up when the trustee moved for
13 authority to sell personal property at public
14 auction, et cetera, et cetera, Mr. Stoller said that
15 he was talking to a law firm that might come in to
16 represent him. I think I continued it to find out
17 about that.

18 Do you have a lawyer coming in
19 today?

20 MR. STOLLER: I talked with Katten Muchin
21 about taking this particular case, and they haven't
22 made a final determination as to whether they're
23 going to come in now or whether they'll come in
24 on -- for my appeals when my appeals are perfected.
25 So at this particular moment, I don't have an

1 attorney.

2 THE COURT: Okay. They've made a
3 determination not to come in now? Is that --

4 MR. STOLLER: No, they --

5 THE COURT: -- what you're saying?

6 MR. STOLLER: -- didn't make that
7 determination. They didn't -- they made the -- they
8 didn't make the determination whether they're coming
9 in at this point or whether they're going to give
10 assistance in the appeals which I have once they're
11 perfected and take the appeals.

12 THE COURT: Okay. Either way, you don't
13 have them representing you today?

14 MR. STOLLER: That's correct.

15 THE COURT: Okay.

16 Okay. We have the following things:
17 I just have a general status on the case. Then
18 debtor filed objections to various claims. I told
19 him maybe some day it would be appropriate to take
20 those up, but I'm just carrying those along until
21 we -- and the debtor moved for a preliminary
22 injunction, and I told you I was going to deny that
23 without prejudice to --

24 MR. STOLLER: Can't you enter and
25 continue --

1 THE COURT: -- considering all -- without
2 prejudice to considering -- to your objections which
3 you raise in here, and I will consider the
4 objections as objections to the motion to sell
5 personal property.

6 What did you say?

7 MR. STOLLER: Couldn't you enter it and
8 continue it rather than deny it?

9 THE COURT: No. I'm going to deny the
10 preliminary injunction. You're not entitled to
11 preliminary injunction. What you are entitled to do
12 is to object to their motion. I'll try to explain
13 my reasons. I'll probably get out some little
14 opinion on the subject. But I will treat the
15 objections -- I will treat the reasoning as
16 objections to the motion. Remember I told you that,
17 assuming for the sake of discussion that I grant the
18 motion to sell, you can then seek the form of -- a
19 form of injunction which is called "a stay pending
20 appeal" which is -- that's the point at which you
21 could try to seek an order which would prevent them
22 from going forward. But preliminary injunction is
23 not the right tool, not an appropriate order to seek
24 at this point. I'll get up an opinion explaining
25 why.

1 Okay. Now, we have the motion for
2 authority to sell personal property. And as I
3 recall, the trustee wants to get a notice out.

4 MR. FOGEL: Yes, Your Honor. I was
5 seeking authority to conduct an auction sale in open
6 court.

7 THE COURT: When?

8 MR. FOGEL: I would like to conduct the
9 auction sale on June 14th. I had originally --

10 THE COURT: Do you have a notice ready?

11 MR. FOGEL: I beg your pardon?

12 THE COURT: Do you have a notice ready?

13 MR. FOGEL: We do have a notice that --

14 THE COURT: Would you pass it up?

15 MR. CLISHAM: Your Honor, the notice --
16 there's a proposed sales procedures order that sets
17 out the procedures for the auction sale.

18 THE COURT: Have you got copies to give
19 to Mr. Stoller?

20 (Document tendered.)

21 MR. CLISHAM: I do have an extra copy. I
22 believe he was served with one as well. That was
23 attached to the motion. And then attached to
24 that --

25 THE COURT: Have you read this,

1 Mr. Stoller?

2 MR. STOLLER: No, I haven't, Your Honor.
3 And I'm objecting to the sale for numerous reasons.
4 First of all, that the sale that they're attempting
5 to take place is with Lance Johnson, who the trustee
6 has reached an agreement prior to that granting a
7 \$950,000 judgment on behalf of Lance Johnson. Now
8 Mr. Johnson has set up a sham corporation, and he's
9 attempting to buy all of the assets for \$7500. This
10 isn't --

11 THE COURT: Along with other creditors?

12 MR. STOLLER: Pardon me?

13 THE COURT: Along with other creditors?

14 MR. STOLLER: What do you mean with other
15 creditors? There's no other creditors.

16 THE COURT: Just a moment.

17 As I understood, this corporation
18 was a conglomerate of different creditors.

19 MR. FOGEL: Your Honor, I would direct
20 your attention to footnote 3 on page 4 of the
21 motion. Mr. Johnson represented to me that the
22 limited liability company was formed to acquire,
23 distribute, resell, and/or surrender the assets
24 that --

25 THE COURT: Includes creditors of the

1 debtor, counsel for creditors of the debtor.

2 MR. FOGEL: And parties that have no
3 connection to the debtor, his creditors, or other
4 parties in interest.

5 I've been advised by Mr. Johnson
6 that, if you need to, he would make all of the
7 identities available to you in camera, but he will
8 not allow Mr. Stoller to go on the attack against
9 them.

10 MR. STOLLER: In addition, Your Honor, I
11 have appeals pending, at least seven in this case.
12 And if you allow these assets to be sold, and
13 there's absolutely no reason to do it at this
14 particular juncture, there would be no opportunity
15 to recover should I actually prevail in my appeals,
16 none whatsoever.

17 There is no urgency to dispose of
18 these assets at this particular time. For the last
19 year-and-a-half, and you have said it numerous times
20 on the bench, and I have it on the record that Gary
21 has typed in, that he's abandoned my corporations by
22 not defending them. And you said, "Why haven't you
23 abandoned those?" He's abandoned the trademarks.
24 He's abandoned the Stealth trademarks, the very same
25 trademarks he's now attempting to sell. And where

1 is the absolute evidence of his abandonment? He
2 enters into an agreement with Pure Fishing, doesn't
3 defend the corporations, allows Judge Lindberg to
4 cancel the thirty-four Stealth federal registrations
5 by his failure to defend them. That's clear
6 evidence of his abandonment of the Stealth marks.

7 I've asked you for a declaration of
8 abandonment, and they would be defaulted back to me.
9 He has done nothing in the year-and-a-half to
10 police, protect, or do anything for the benefit of
11 the creditors for -- of these assets other than to
12 destroy the assets.

13 THE COURT: Well, in theory at least he's
14 trying to sell to see if he can raise some money by
15 selling these assets. What do you think they're
16 worth?

17 MR. STOLLER: What do I think they're
18 worth?

19 THE COURT: Um-hmm.

20 MR. STOLLER: Pure Fishing invested,
21 based on his settlement --

22 THE COURT: What do you think these
23 rights you claim are worth?

24 MR. STOLLER: They're worth millions of
25 dollars.

1 THE COURT: Well --

2 MR. STOLLER: And how can I say that?

3 THE COURT: -- if they are worth anything
4 like that, can you roust up some people to bid at
5 the sale?

6 MR. STOLLER: I don't believe this is an
7 appropriate time to have an auction at this
8 particular time.

9 THE COURT: Well, let's assume they're
10 worth a lot. You know, we are -- we have a
11 market-run economy, and we do a lot of things by the
12 market in bankruptcy. One of the reasons we hold
13 auctions is to find out if something is worth
14 something more than someone else is willing to pay
15 for it. So if we hold an auction, and we hold it
16 with appropriate notice and time and opportunity to
17 bid, if these properties are worth anything, why
18 wouldn't people come in here to bid?

19 MR. STOLLER: Let me explain.
20 Thirty-seven years I've been in the trademark
21 business. I'm an expert nationwide in appraising
22 trademarks. My trademark appraisals have been
23 approved by the IRS for the purposes of tax
24 deductions. So in this area, this trustee knows
25 nothing, and I respectfully submit that the court in

1 terms of intellectual property and in terms of the
2 valuation of trademarks may not be as well as
3 informed as I am in this unique situation.

4 He's abandoned these marks. He's
5 failed to defend these marks. These marks and these
6 corporations should have been defaulted back to me.
7 I have motions pending and I have appeals pending as
8 to his abandonment of these assets. Now all of a
9 sudden, a year-and-a-half later into this case, he's
10 going to try to liquidate these assets for less than
11 a penny on the dollar.

12 In terms of answering your question
13 in terms of the valuation of trademarks, trademarks
14 are extremely unique in terms of it's a -- it's a
15 right to exclude others from using a mark on
16 specific goods. They are not as liquid as real
17 estate and some other assets, but they are very
18 valuable. And there isn't a trademark that's in
19 use -- it costs 325 to get the mark. But there
20 isn't a trademark in use that isn't worth
21 potentially seven figures to an entity that is using
22 it.

23 Pure Fishing invested \$950,000,
24 actual money out of their pocket, to -- let me just
25 finish -- to take one trademark from me, just one.

1 Stealth Spiderwire, 950,000. He's talking of
2 selling over a hundred trademarks --

3 THE COURT: Sir --

4 MR. STOLLER: -- for less than \$7500.

5 THE COURT: Sir, I'm still trying to
6 figure out if it's worth something, why you can't
7 raise somebody to come in here and bid.

8 MR. STOLLER: I don't believe this is the
9 appropriate time for me to be put in a competition
10 to get my own trademarks which he has abandoned,
11 these trademarks. And the evidence before this
12 court -- and if you allow them to be sold and not
13 allow the reviewing courts to pass on your
14 decisions, and they should decide in my favor, and
15 these marks are disposed of, there will be no
16 pecuniary damages that can compensate me, the
17 debtor, for the loss of these properties which he
18 has clearly abandoned.

19 This isn't the appropriate time. We
20 don't need to dispose of these assets. You should
21 give the debtor -- and I have a motion pending, with
22 all due respect, to disqualify you and to render
23 you -- ask you to recuse yourself. That isn't up,
24 and I have to -- and you had an -- issued an order,
25 and I'm preparing all of the reasons why, which

1 you've given me, why I'm asking you to recuse
2 yourself.

3 THE COURT: Yes. Did I send out an order
4 for you to detail --

5 MR. STOLLER: Yes. And, therefore --

6 THE COURT: That's up on the --

7 MR. STOLLER: -- I think it would be --

8 THE COURT: At the moment I don't know
9 any reason why I should recuse myself.

10 MR. STOLLER: I understand.

11 THE COURT: But we'll pass on that
12 another day.

13 You say there's a motion pending to
14 compel abandonment?

15 MR. STOLLER: Yes.

16 THE COURT: And what motion is that?

17 MR. FOGEL: You denied it, and it's among
18 the many appeals pending before Judge Hibbler.

19 THE COURT: I thought I passed on that.

20 MR. FOGEL: You did.

21 MR. FACTOR: Your Honor, some history --

22 MR. FOGEL: Your Honor also --

23 Excuse me.

24 Mr. Stoller filed schedules in this
25 case where he said the value of the trademarks was

1 all of \$36,000, all right?

2 (Document tendered.)

3 MR. FOGEL: For him to come in here and
4 tell you that they're worth millions of dollars is
5 smoke. And Your Honor made extensive findings of
6 fact and conclusions of law regarding this debtor's
7 credibility and actions in connection with the
8 bankruptcy case and his practices.

9 THE COURT: Well --

10 MR. FOGEL: This is the same man that you
11 ruled upon. And I've not been in this case for a
12 year-and-a-half. I've been in this case for a
13 little over a half a year.

14 THE COURT: Okay.

15 Mr. Stoller, did you sign these
16 under oath, these estimates by you the trademarks
17 are worth \$36,000?

18 MR. STOLLER: I gave an estimate as to
19 what the cost to acquire those trademarks would be.

20 THE COURT: Actually, it was in the
21 column called, quote, "Current value of debtor's
22 interest in property without deducting any secured
23 claim or exemption," end of quote. You said,
24 "Trademarks, \$36,000."

25 MR. STOLLER: There is a -- and that

1 valuation was only predicated on the cost of the
2 filing fees. That wasn't an analysis of what the
3 actual potential market value --

4 THE COURT: Now, you claimed these patent
5 trademarks as exempt, right?

6 MR. STOLLER: Pardon me?

7 THE COURT: You claimed them as exempt?

8 MR. STOLLER: I don't know what you mean
9 by that.

10 THE COURT: Well, you did. Schedule C.

11 MR. FOGEL: \$1,300 of his personal
12 property exemption was applied to --

13 THE COURT: Partially exempt.

14 MR. FOGEL: Partially exempt. And I
15 propose to pay him his exemption out of the proceeds
16 of sale if the assets are sold at auction.

17 MR. STOLLER: I would submit that this is
18 not the time to do that, Judge.

19 MR. CLISHAM: Your Honor --

20 THE COURT: Well, when would be the time?

21 MR. STOLLER: Pardon me?

22 THE COURT: When would be the time?

23 MR. STOLLER: I think the appropriate
24 time for a fair and impartial arbiter to issue a
25 ruling as to whether these assets should be sold is

1 after the appeals that I have pending are ruled on.
2 That would be the only fair and appropriate time
3 because you're putting me -- the same judge that
4 issued the decisions, you are now, if you rule to
5 sell these assets, making all of those appeals moot
6 because there's no possible way -- should I reverse
7 you, with all due respect, and judges do get
8 reversed, if I do reverse you, you put me in a
9 position where -- first of all, what have you done?
10 You've taken my lawyer for me. I've asked for a
11 lawyer. Golding, he was my attorney. In this
12 particular building in federal cases, of which I've
13 been in this building 30 years, many judges will not
14 allow lawyers out when there's nowhere for them to
15 go. So you allowed Golding out of the case, right?
16 So then for all the time that I've been in this
17 particular case --

18 THE COURT: I don't remember you
19 objecting to that.

20 MR. STOLLER: I objected strenuously to
21 Rick Golding being removed. And I stood right
22 here --

23 THE COURT: I didn't remove him.

24 MR. STOLLER: No. He asked to get out
25 and you allowed him out. So now here's a pro se

1 person who is set up in a bankruptcy proceeding of
2 which I'm not familiar with, you allow my attorney
3 out of the case. In many cases -- and I've been in
4 this building 30 years, it was built in '64 -- in
5 district court cases, judges don't allow lawyers
6 out, especially in bankruptcy cases where they don't
7 have the experience.

8 Then we went on a whole case where
9 my rights have been abused, my rights have not been
10 recognized. I'm only a pro se, a particular
11 litigant. And now you have -- granting or
12 considering granting a motion to sell all my assets.
13 I haven't had an attorney in here, haven't been able
14 to afford an attorney. Golding should not have been
15 let out of the case. He should have been kept in
16 the case so that at least I had representation.

17 It's clear that the court has taken
18 advantage of my rights in this case as a pro se
19 litigant. And there's no urgency and there's no
20 rush to judgment as -- to go and sell these assets
21 in the middle of June, or even put them up for sale.
22 You should at least, if you're truly an impartial
23 arbiter -- and you never granted one motion. In 15
24 months that I've been before you, the only motion
25 you've granted in my favor was that pauperis

1 petition.

2 I've never been before a judge --
3 and I've been before -- 60 times in this building,
4 different cases -- where a court has never granted
5 one, not one motion. That's not even possible. I
6 mean, no matter what you think of me personally, and
7 it's not very much I'm sure, you never granted a
8 motion for me, only the pauperis petition. Every
9 other motion you've denied. There's no court in the
10 land that I've ever been in front of, and more than
11 most of these gentlemen, I'm one of the oldest in
12 the room, that I've never had at least one motion
13 granted on my behalf in a year-and-a-half.

14 THE COURT: All right.

15 MR. STOLLER: I would respectfully submit
16 that you withhold granting his motion to sell my
17 assets until the appeals are heard on my particular
18 case.

19 THE COURT: Thank you.

20 MR. FACTOR: Your Honor, may I?

21 THE COURT: Yeah, I'll hear you.

22 MR. FACTOR: Just quickly. Mr. Stoller,
23 when he says "appeals," he's talking about going to
24 the Supreme Court. So I just want you to understand
25 that it's not a question of a couple of months, it's

1 a question of years, maybe decades. I just want to
2 make that point.

3 The other point is Your Honor has
4 given Mr. Stoller innumerable opportunities to
5 establish the value of his property. If you will
6 recall a month or two ago, you set up a procedure
7 whereby Mr. Stoller would provide documents and sit
8 for a deposition, and none of that happened. And
9 Mr. Stoller is a wonderful advocate for his
10 interest, but this is -- it's not something that the
11 court -- these aren't facts. These are just
12 Mr. Stoller trying to, you know, last-ditch effort
13 stall this proceeding. So I hope the court will
14 understand that context.

15 THE COURT: You apprehend some future
16 dispute if these assets are abandoned? You
17 apprehend some future battles with Mr. Stoller?

18 MR. FACTOR: Your Honor, I think that
19 that's a concern that parties have, and that --

20 THE COURT: So isn't that the reason why
21 you favor the trustee selling them, so that somebody
22 else can buy the rights?

23 MR. FACTOR: Your Honor, that would be --
24 yes, that would be one reason, too.

25 THE COURT: Now, the trustee thinks it's

1 proper to sell because you have to liquidate assets.

2 MR. FOGEL: Yes, Judge. One of my
3 duties --

4 THE COURT: Or you could abandon the
5 assets.

6 MR. FOGEL: I could abandon assets. But
7 I have learned over the years that an offer of cash
8 is better than an abandonment to the debtor so long
9 as it is not an inconsequential amount of money.

10 THE COURT: Well, 75 -- what is it? Down
11 from 12 to 75 or something?

12 MR. FOGEL: Yes.

13 MR. CLISHAM: 75.

14 MR. FOGEL: It was a reduction because
15 this is a different type of sale --

16 THE COURT: Originally there was some
17 thought to take the corporate assets and lump them
18 into this, as I recall.

19 MR. FOGEL: Yes, sir.

20 THE COURT: And I said, well, you have to
21 do that with some sort of an adversary, and the
22 parties that made that motion did not wish to pursue
23 that idea. So what we have here is selling just the
24 assets that the trustee controls.

25 MR. FOGEL: Correct, Your Honor.

1 THE COURT: Now, I told you when you
2 first mentioned this, an idea of a conglomerate
3 being formed out of the creditors, I asked you
4 whether that was vulnerable to the...

5 MR. FOGEL: Collusion.

6 THE COURT: To a question of collusion.

7 MR. FOGEL: Yes, sir. And my response
8 then and my response now is that if a creditor or
9 several creditors or counsel joined together to
10 become an opening bid at a public auction sale where
11 there is no restriction on participation in the sale
12 but for the financial ability to consummate the
13 deal, I do not see how an offer to buy assets can in
14 any way be considered collusive --

15 THE COURT: Well, this --

16 MR. FOGEL: -- in contrast to when a sale
17 is pending and two bidders, creditors or whatnot,
18 decide to limit their bidding by partnering up,
19 that's collusive.

20 MR. STOLLER: It is absolutely collusive.

21 MR. FOGEL: An opening offer is just
22 that, an opening offer.

23 THE COURT: Well --

24 MR. FOGEL: And creditors buy assets from
25 me in my cases all the time, and sometimes debtors

1 buy assets.

2 THE COURT: I understand. They don't
3 usually form a new company and want to keep their
4 identity secret.

5 MR. FOGEL: Your Honor, under the
6 circumstances, I think you can understand why people
7 that might be members of the entity would not want
8 their identity disclosed. And, as I said,
9 Mr. Johnson is happy to submit the identity of
10 everybody to you on an in camera proceeding. If you
11 believe it is crucial to --

12 THE COURT: You're saying that a party
13 who has a considerable interest in this whole
14 business should not be able to find out the identity
15 of the people making up this new corporation?

16 MR. STOLLER: It's absolutely collusive,
17 Your Honor.

18 THE COURT: Would you please not
19 interrupt or else I'll have you sit down. Do you
20 understand me?

21 MR. STOLLER: Yes, sir.

22 MR. FOGEL: Your Honor, Lance Johnson is
23 an attorney that represents a creditor that was sued
24 by Mr. Stoller and counterclaimed, causing the
25 bankruptcy to be filed, and then went back before

1 the district court and won a decision prior to my
2 appointment as trustee that resulted in the
3 cancelation of certain marks that Mr. Stoller has.

4 THE COURT: I'm not looking backwards.
5 I'm looking forwards to what you want to do.

6 MR. CLISHAM: Your Honor, if I could make
7 one more point as well? I don't mean to interrupt
8 this conversation. Mr. Stoller has been before you
9 previously and, I believe in his motion for the
10 preliminary injunction, has taken the position that
11 he didn't own any marks. None of the marks that the
12 trustee was going to sell are actually even owned by
13 Mr. Stoller.

14 THE COURT: I understand that idea was
15 floated in his motion.

16 MR. CLISHAM: He stands before you today
17 and tells you, Your Honor, that these are worth
18 millions of dollars and these are assets of his
19 estate that should be protected pending appeal.

20 THE COURT: Well, counsel, is there
21 anything more you want to say?

22 MR. FOGEL: Not on this point, Your
23 Honor.

24 MR. FACTOR: Your Honor, if I could just
25 make a few points. Section 363, I believe the

1 trustee has a lot of discretion as to whether to
2 sell assets of the estate. I think if you look at
3 the statute and case law, the trustee is well within
4 his discretion in agreeing to this. But also
5 doesn't it make sense to enter the order authorizing
6 the procedures for the sale and then -- the court
7 will ultimately have to approve the sale, and that's
8 the point at which objections could be lodged.

9 And --

10 THE COURT: Oh, I know. We're just
11 looking forward a little bit. I understand, and
12 I've made clear that objections will be considered
13 at the time of sale before any sale is approved.
14 But I'm just looking forward a little bit.

15 MR. FACTOR: And I understand all of
16 that, Your Honor. But some these issues can be
17 mooted, you know, in the interim if others come in
18 at higher offers or if --

19 THE COURT: Well, we have apparently for
20 each one of these -- is this -- do I understand
21 the -- properly understand the following: For each
22 one of these items which are being sold there is
23 some company that feels threatened by his assertions
24 of ownership?

25 MR. FOGEL: I would not say that's an

1 accurate blanket statement, Your Honor. There
2 are -- I don't know that Mr. Stoller has litigated
3 against anybody over each mark that either he or
4 Central Mfg. Co. has a registration for. But he has
5 litigated over many of the marks without question.

6 THE COURT: What about the other supposed
7 asset in this estate, the real estate? What's the
8 status of that?

9 MR. FOGEL: You'll be seeing a motion to
10 approve a settlement that I have entered into with
11 Julia Bishop this week. It will be noticed for, I
12 believe, June 21st. We propose to divide the net
13 proceeds of sale according to terms that we've
14 reached. That is not the only other asset of the
15 estate, though. I would advise the court that I
16 believe that the estate has other claims to avoid
17 transfers of assets by the debtor that I have time
18 to investigate and pursue prior to the expiration of
19 the statute of limitations that I intend to
20 investigate and pursue, if appropriate. So we are
21 talking basically about three types of assets, the
22 intellectual property, the transferred real estate,
23 and transferred funds.

24 THE COURT: Well, all right.

25 Back to you, Mr. Stoller. Any final

1 comment?

2 MR. STOLLER: I think you have throughout
3 this proceeding touched on what's going on here.
4 It's collusion between Mr. Fogel and Lance Johnson.
5 Going back to the beginning, Lance Johnson has
6 always attempted to try to get these trademarks, and
7 he is now colluding with the trustee. And there are
8 still various investigations which this court wants
9 to have its blinders on that involve the trustee,
10 going all the way up to the Justice Department,
11 regarding this very same fact. Here's a party --
12 and this has never happened before you, it's never
13 happened in this building, where a trustee comes
14 before a bankruptcy judge, enters into a consent
15 judgment for \$950,000. Now he's going to sell the
16 goods to the same guy that he cut that deal with,
17 Lance Johnson. And he has the temerity to suggest
18 to the court that's a good deal. Never happen.

19 Justice Department, I've talked to
20 those people. They're very much interested in
21 somebody who could enter into a \$950,000 deal, say
22 that's a great deal, not one disputed claim as to
23 the attorney fees. I gave you the case law on it.
24 There is -- it's not possible.

25 Now all of a sudden this full-circle

1 scam that's being perpetrated in front of this court
2 and on this record is that this same trustee with
3 that same party that he entered in the \$950,000 is
4 now going to sell them the property, all of these
5 trademarks for \$7500. It doesn't take blinders to
6 see that scam.

7 You've always touched on it every
8 time we're in front of him. You said that he's
9 abandoned the property half a dozen times. Why
10 didn't you just abandon it throughout this whole
11 proceeding on the record? You see that it's
12 collusion right in front of your face, what's taking
13 place in this courtroom among these guys.

14 You got rid of Golding, so I don't
15 have an attorney representing me. Now you're
16 sitting in judgment of allowing my property to be
17 sold for 7500 in a scam with the trustee and with
18 the very same party in which you just identified
19 they won't even identify who these people are.
20 They're telling you, "We're going to have a scam
21 sale, Judge. We can't tell him because we don't
22 want Stoller to know." And you've already said,
23 "Isn't that collusion?"

24 You've identified each and every
25 time this trustee has breached his fiduciary duty.

1 I'm opposed to it. I don't think this is
2 appropriate at this particular time. There is no
3 reason why it has to take place in June. Why not
4 September? Why not October?

5 THE COURT: Will you just finish now and
6 say anything new that you haven't said, please.

7 MR. STOLLER: I strongly recommend you do
8 not make any decision at least until I present my
9 case as to why you should recuse yourself. And
10 let's let another judge, if you're satisfied that
11 you've made so many prejudicial decisions, if I can
12 convince you of that, that another judge should rule
13 on this issue, not you.

14 THE COURT: All right. Generally
15 speaking, I'm satisfied to not recuse myself. I
16 have a duty to sit unless there is some specific
17 reason why I should not.

18 MR. STOLLER: Well, you haven't heard my
19 reasons.

20 THE COURT: I read your opening shot, and
21 I don't see anything in that tells me today. I
22 gave -- I'm giving you the opportunity to give me
23 more details.

24 MR. STOLLER: And that's what you should
25 wait for.

1 THE COURT: Actually, you can't raise an
2 issue and expect the whole world to wait for you
3 after you've raised an issue --

4 MR. STOLLER: Well, you've --

5 THE COURT: -- just like --

6 MR. STOLLER: -- given me --

7 THE COURT: -- you've raised --

8 MR. STOLLER: -- the opportunity.

9 THE COURT: -- issues attacking the
10 trustee, and you think, therefore, I should delay
11 until all of those issues are resolved.

12 MR. STOLLER: Well, what's a month?
13 What's two weeks? What's the urgency?

14 THE COURT: Is there any final thing you
15 want to say?

16 MR. STOLLER: I would respectfully
17 request that this court suspend making a decision at
18 this particular time for the reasons stated.

19 THE COURT: Okay. Here is what I'm going
20 to do: I'm going to revise this order. I want a
21 chance to read it carefully.

22 MR. FOGEL: All right.

23 THE COURT: And I'm going to get it out.
24 I'm going to set a date about two months out. I'm
25 going to put in the order a requirement that anybody

1 bidding shall be -- shall -- or any group bidding,
2 all members thereof will have to be identified. I
3 will not permit a secret bid.

4 Now, will that -- will that kill
5 this?

6 MR. FOGEL: I have no idea. I'll advise
7 Mr. Johnson of that. If he goes forward, he goes
8 forward. If he withdraws it, then you'll let me
9 abandon everything back to Mr. Stoller for nothing,
10 I would imagine.

11 THE COURT: Well, that's one. And two
12 is I want some sort of a marketing effort. Now --

13 MR. FOGEL: Is my --

14 THE COURT: -- is there any -- is there
15 any part of the world where things like this are
16 marketed other than, of course, the regular markets?

17 MR. FOGEL: Well, I intended to publish
18 notice of the sale on the National Association of
19 Bankruptcy Trustees website, which is a national
20 internet posting that is used by bankruptcy trustees
21 around the country to develop markets for assets. I
22 have previously conferred with an intellectual
23 property consultant at the early stages of this case
24 to see if it could be marketed for more significant
25 sums through a more full-blown procedure, and I was

1 advised no. So my only proposed advertising was on
2 the NABT website, plus notice to creditors, and
3 parties in interest.

4 THE COURT: Okay.

5 All right. I'm going to redraft
6 this order and send out a copy of it. I want to set
7 a date about two months out.

8 THE CLERK: July 24th at 11:30.

9 THE COURT: That will be for the auction.
10 I'm going to change some of the wording. Where was
11 the date set in this order?

12 MR. CLISHAM: I believe it was on the
13 first page, Your Honor, paragraph 2.

14 THE COURT: Oh, okay. July...

15 THE CLERK: 24th at 11:30.

16 THE COURT: All right. Thank you.

17 MR. FOGEL: Thank you, Judge.

18 MR. FACTOR: Thank you.

19 MR. CLISHAM: Thank you, Your Honor.

20 MR. STOLLER: Thank you, Judge.

21

22 (Which were all the proceedings
23 had in the above-entitled cause,
May 29, 2007.)

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

MHN

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

FILED
9-14-2009
SEP 14 2009 PH

GOOGLE, INC.,)
)
 Plaintiff)
)
 v.)
)
 CENTRAL MFG. INC., et al.,)
)
 Defendants.)

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

Case No: 1:07-cv-00385

Honorable Virginia J. Kendall

REPLY TO GOOGLE'S RESPONSE TO
MOTION FOR RECONSIDERATION

EXHIBIT D

(AUGUST 7, 2007 TRANSCRIPT)

Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302
(312) 545-4554

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

LEO STOLLER,)
) No. 05 B 64075
) Chicago, Illinois
) 11:00 a.m.
) 2:00 p.m.
 Debtor.) August 7, 2007

TRANSCRIPT OF PROCEEDINGS BEFORE THE
HONORABLE JACK B. SCHMETTERER

APPEARANCES:

Trustee: Mr. Richard Fogel;
For the Trustee: Mr. Brian Shaw;
Mr. Patrick Clisham;
Pro se: Mr. Leo Stoller;
For Julie Bishop: Mr. Brian Alexander;
For Pure Fishing: Mr. William Factor;
For the U.S. Trustee: Mr. Stephen Wolfe;
For the SPTA: Mr. Lance Johnson;
For Google: Ms. Kim Robinson;
Court Reporter: Amy Doolin, CSR, RPR
U.S. Courthouse
219 South Dearborn
Room 661
Chicago, IL 60604.

I N D E X

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Witness:	DX	CX	REDX	RECX
Richard Fogel	103	113		

1 THE CLERK: Taking up set matters.
2 Stoller, 05 B 64075, with related adversaries; Neary
3 versus Stoller, 07 A 345.

4 MR. STOLLER: Good morning, Judge.
5 Leo Stoller.

6 THE COURT: Your appearances, please.

7 MR. ALEXANDER: Good morning, Your
8 Honor. Brian Alexander on behalf of Julie Bishop.
9 I'm the new kid on the block here.

10 MR. CLISHAM: Good morning, Your
11 Honor. Patrick Clisham on behalf of Richard Fogel,
12 Chapter 7 trustee.

13 MR. FOGEL: Good morning, Your Honor.
14 Richard Fogel.

15 MR. FACTOR: Good morning, Your Honor.
16 William Factor for Pure Fishing.

17 MR. WOLFE: Stephen Wolfe on behalf of
18 the United States Trustee. Good morning, Your Honor.

19 THE COURT: Good morning.

20 MR. JOHNSON: Lance Johnson on behalf
21 of the Society for Prevention of Trademark Abuse.

22

23

24

25

1 THE COURT: Okay. First of all, he is
2 excused as a witness on his own behalf. Now, do you
3 have any evidence you wish to present by way of
4 rebuttal by calling him or anyone else?

5 MR. SHAW: Yes, Your Honor.

6 THE COURT: Who do you want to call?

7 MR. SHAW: I will call Mr. Fogel.

8 (Witness sworn.)

9 THE COURT: Would you have a seat, Mr.
10 Stoller, please.

11 THE CLERK: Please state your name for
12 the record.

13 THE WITNESS: Richard M. Fogel.

14 RICHARD M. FOGEL, WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MR. SHAW:

17 Q Mr. Fogel, you're familiar with Mr.
18 Stoller?

19 A Yes, sir.

20 Q And in what capacity are you familiar with
21 Mr. Stoller?

22 A I am his Chapter 7 trustee.

23 Q By his Chapter 7 trustee you mean?

24 A I am the trustee appointed to administer
25 the estate in the case that Mr. Stoller filed.

1 Q During the last ten days, have you had --
2 have you received any communications from Mr. Stoller
3 other than the documents that are in the egg crate
4 sitting on the table?

5 A Yes.

6 MR. STOLLER: I objection as to
7 relevance, Your Honor.

8 THE COURT: Overruled. I will have to
9 hear the testimony.

10 BY MR. SHAW:

11 Q Mr. Fogel, by what means have those
12 communications been sent to you?

13 A E-mail.

14 Q And, Mr. Fogel, what's the nature of those
15 communications?

16 THE COURT: Are you offering them?

17 MR. SHAW: Your Honor --

18 THE COURT: You want to offer them,
19 mark them, please. Show them to Mr. Stoller, please.

20 MR. SHAW: The first document I am
21 handing over to Mr. Stoller and I handed to the
22 court --

23 THE COURT: Trustee Exhibit F.

24 MR. SHAW: -- is Exhibit F, Trustee's
25 Exhibit F.

1 THE COURT: Mr. Stoller, do you want
2 to identify Exhibit F.

3 MR. SHAW: Mr. Stoller or Mr. Fogel?

4 THE COURT: I'm sorry, Mr. Fogel, do
5 you want to identify Exhibit F.

6 THE WITNESS: Your Honor, this is the
7 print out of an e-mail that was received on my
8 computer early, or excuse me, in the afternoon of
9 Wednesday, August 1st, 2007.

10 BY MR. SHAW:

11 Q Now, Mr. Fogel, do you know who this e-mail
12 is from?

13 A This e-mail is from the debtor, Leo
14 Stoller.

15 Q How do you know that?

16 A The address of LDMS4 at hotmail.com is the
17 e-mail address that Mr. Stoller provided the court
18 for purposes of service of pleadings in this case,
19 because he complained that he was not receiving mail
20 at his post office box.

21 Q And, Mr. Fogel, could you very quickly
22 summarize what this e-mail said.

23 A Yes. I had --

24 THE COURT: We'll find out whether
25 it's going to be admitted.

1 BY MR. SHAW:

2 Q Mr. Fogel, is this a true and accurate copy
3 of the e-mail that you received at your office?

4 A Yes. It was printed out on a printer
5 attached to my computer.

6 MR. STOLLER: Your Honor, I object to
7 this. This has absolutely nothing to do with the
8 hearing. If they want to bring a separate motion and
9 have a separate hearing on this, they are welcome to
10 do it. But to bring it in to this particular hearing
11 as to the valuation, regarding an e-mail that I sent
12 to Mr. Fogel, the contents of which has nothing to do
13 with what's going on here today -- and I object to
14 it. And they are exploiting a pro se debtor. And I
15 recommend that if they want to bring a separate --

16 THE COURT: Exploiting a pro se
17 debtor?

18 MR. STOLLER: I'm a pro se --

19 THE COURT: How are they exploiting
20 you?

21 MR. STOLLER: I'm not represented by
22 counsel here. This doesn't belong in this
23 proceeding. If they want to bring a separate motion
24 and have a separate hearing on this, they should.

25 THE COURT: Well, we do have

1 consequences. I have yet to decide whether this is
2 relevant. But if you sent an e-mail which is
3 relevant, then you can't complain that they use it
4 against you. That's not exploiting.

5 Let's find out why this is relevant,
6 counsel. First of all, you're not contesting that
7 this is authentic, Mr. Stoller?

8 MR. STOLLER: I'm not contesting the
9 authenticity of it.

10 THE COURT: All right. I want to see
11 the relevance. What's the relevance, sir?

12 MR. SHAW: Your Honor, the relevance
13 is that this e-mail and another e-mail, which I would
14 submit as another exhibit, show that Mr. Stoller has
15 taken a systematic approach of threatening both the
16 trustee, all of the attorneys --

17 THE COURT: Therefore, it's relevant
18 because --

19 MR. SHAW: -- and Mr. Johnson
20 regarding the potential purchase of this. And it's
21 relevant because it chills bidding and it has -- as
22 you heard Mr. Stoller testify earlier, he sees the
23 value for the estate in the cost of litigation
24 defense that is going to be incurred by the people
25 that are challenging his ownership of these assets.

1 And by definition that lowers the value of these
2 assets. It's Mr. Stoller's own actions and these
3 threats --

4 THE COURT: You suggest this chills
5 the bidding?

6 MR. SHAW: Yes, that's exactly it,
7 Your Honor. It chills the bidding.

8 THE COURT: How do you know it chills
9 the bidding?

10 MR. SHAW: Your Honor, I can't be
11 certain, but I can take Mr. Stoller's own testimony
12 where he sees the value strictly as the litigation
13 cost and say that it does chill the bidding.

14 THE COURT: Well, I have not yet had
15 any bidders tell me they are chilled.

16 MR. SHAW: I understand, Your Honor.
17 But you asked what is the relevance, and the
18 relevance is that the same -- that Mr. Stoller, who
19 is sitting here objecting to the sale as being
20 unreasonable, is in the somewhat ironic position of
21 being the same party that is threatening anybody who
22 comes in to purchase this with hundreds of thousands
23 of dollars of litigation costs if they purchase it.
24 And I think that is relevant to the value. And it is
25 something that this court should be aware of.

1 Second of all, I think that in light
2 of the relationship between Mr. Stoller and his
3 daughter, it is relevant for the next motion, too --
4 sorry. It's relevant for the motion to reopen the
5 bidding.

6 THE COURT: All right. Are you
7 implying in argument that he has tried to chill
8 others from bidding so that his daughter can bid and
9 be successful?

10 MR. SHAW: Your Honor, he has tried to
11 chill everybody from administering this bankruptcy
12 case, including other purchasers.

13 THE COURT: All right. Now, you want
14 to identify the second e-mail.

15 MR. SHAW: Yes, Your Honor, I do.

16 THE COURT: Let's get both on the
17 table, and then we will hear from other counsel.

18 MR. SHAW: Your Honor, I will hand to
19 the court and a copy to Mr. Stoller, and if I may, to
20 the witness, what I've labeled Trustee Exhibit G.

21 THE COURT: Copy for me. Lay a
22 foundation.

23 MR. SHAW: It's a five-page string of
24 e-mails.

25 BY MR. SHAW:

1 Q Mr. Fogel, do you recognize this e-mail?

2 A I do recognize these e-mails.

3 Q And the one on the top dated August 5,
4 2007, can you identify who that's from.

5 A The one at the top is from the debtor.

6 THE COURT: I don't understand. It
7 says from L. Lee.

8 THE WITNESS: That's the debtor, Your
9 Honor.

10 BY MR. SHAW:

11 Q And how do you know that's the debtor, Mr.
12 Fogel?

13 A Because the e-mail address of LDMS4 at
14 hotmail.com is the e-mail address that Mr. Stoller
15 provided the court with for purposes of serving him
16 pleadings in this case. And it has his name in the
17 body of the e-mail, Leo Stoller.

18 Q And is this a true and accurate copy of the
19 e-mail string you printed off your computer?

20 A Yes, it is.

21 Q And can you identify what -- well, can you
22 identify the general --

23 MR. SHAW: Well, Your Honor, I would
24 move for this to be admitted.

25 THE COURT: And, Mr. Stoller, what do

1 you wish to say? Let me hear from counsel who want
2 to be heard on this.

3 Counsel.

4 MR. FACTOR: I am sorry, Your Honor.
5 Your Honor, I think these e-mails are relevant to
6 value, but from the perspective of establishing that
7 the offer that's on the table is meaningful because
8 any bidder who would come in here has to deal with
9 these types of threats. And the fact that
10 notwithstanding these threats an offer has come
11 forward, I think establishes --

12 THE COURT: You mean the threats drive
13 down the value, is that your argument?

14 MR. FACTOR: The threats to the
15 estate, yes, they do. And that gives the offer
16 that's on the table more value to the estate because
17 notwithstanding this environment, there has been a
18 value submitted. So in terms of evaluating what's on
19 the table, I think that's very relevant.

20 I think that the trustee has done an
21 admirable job in terms of trying to get an offer
22 against great odds, because of the debtor's
23 interference with trying to administer these assets.
24 So I think these e-mails are very relevant to that
25 point, that it's difficult for the trustee to

1 administer these assets, and that the offer that's on
2 the table is an offer that's in the best interest of
3 the estate.

4 THE COURT: Now, this, among other
5 things, makes an accusation against Lance Johnson.

6 MR. JOHNSON, have you read these
7 materials?

8 MR. JOHNSON: Yes, Your Honor, I have.

9 THE COURT: Is there anything you want
10 to say? You're not ordinarily a party in interest
11 here except that you're a bidder, but if you want to
12 say something about this issue, I will hear you, or
13 maybe you don't.

14 MR. JOHNSON: I would --

15 MR. STOLLER: Would you swear him in?

16 THE COURT: No. I am asking him
17 whether he wishes to say anything by way of objecting
18 or not objecting to my considering these e-mail
19 accusations against him.

20 MR. JOHNSON: I will not object to it,
21 Your Honor. And I fully endorse the statements by
22 counsel for the trustee and counsel for Pure Fishing.

23 THE COURT: Okay. Thank you.

24 MR. STOLLER: I would like to have --

25 THE COURT: Thank you very much.

1 MR. STOLLER: Can I cross?

2 THE COURT: Well, I'll let you cross.
3 Have you finished with the direct?

4 MR. SHAW: Yes, Your Honor. I will
5 take up the rest of this on argument.

6 THE COURT: You will what?

7 MR. SHAW: I will take up the rest of
8 this if there is an argument.

9 THE COURT: Yes. Cross.

10 MR. STOLLER: Okay. Did we mark these
11 exhibits? Are they marked?

12 THE COURT: Yes, they are. They are F
13 and G.

14 MR. SHAW: That's F. The two-page
15 exhibit is F. The five-page exhibit is G.

16 CROSS-EXAMINATION

17 BY MR. STOLLER:

18 A Now, you're considering my e-mails as
19 threats. Is the fact that Lance Johnson's asset
20 purchase agreement, the fact that Mr. Johnson has
21 entered into two separate agreements with his parties
22 to sell these particular trademarks of mine, one
23 agreement --

24 THE COURT: Mr. Fogel is familiar with
25 the two documents, sir, and he knows your argument.

1 MR. STOLLER: Okay. Let me --

2 THE COURT: Just ask him what you're
3 getting at.

4 MR. STOLLER: Judge, let me have Mr.
5 Fogel respond. You're not responding for him. Thank
6 you.

7 BY MR. STOLLER:

8 Q He signed a contingent fee agreement to
9 sell and assign?

10 A No, that's not correct. That's not a
11 contingent fee agreement.

12 Q It's a contingent agreement to sell and
13 assign. And isn't it a fact that you provided me
14 with eight of those agreements by e-mail?

15 A It is correct.

16 Q And isn't it a fact that I provided -- I
17 show you what I would like to mark as Exhibit Number
18 27 for identification.

19 MR. SHAW: Your Honor, I object. Mr.
20 Stoller is bringing in new exhibits.

21 MR. STOLLER: This is pertinent to
22 my -- you brought in new exhibits. Your exhibits
23 aren't even part of the case.

24 MR. SHAW: Mr. Stoller -- I would ask
25 the court to instruct him not to yell at me, to show

1 him the respect I'm trying to show him, and that he
2 let me finish my statements.

3 THE COURT: First of all, what
4 documents are you referring to, Mr. Stoller?

5 MR. STOLLER: I am referring to a new
6 exhibit, which I served on his office on August 2nd.

7 THE COURT: Sir, what's it called?

8 MR. STOLLER: It's called memorandum
9 in support of SPTA and Lance Johnson's fraud on the
10 bankruptcy court.

11 THE COURT: And what is your question
12 you want to ask him about?

13 MR. STOLLER: And I want him to
14 identify it. I want him to tell me if he received
15 it.

16 THE COURT: No. Sustained. We are
17 taking that up in a little bit as to whether I let
18 you file it.

19 MR. STOLLER: This is pertinent to the
20 e-mails, Judge.

21 THE COURT: I think it may be, but I'm
22 going to deal with your motion or request that I
23 allow you to file a motion the same as -- at the same
24 time I deal with the e-mail. But I thought you
25 wanted to ask him some questions.

1 MR. STOLLER: I do.

2 BY MR. STOLLER:

3 Q So he signed a contingent agreement to sell
4 and Lance Johnson had eight -- is it not a fact that
5 Lance Johnson had eight contingent agreements to sell
6 and assign that you e-mailed me?

7 A Excuse me. Let me stop to read this.

8 There were seven documents attached to
9 the e-mail that I sent to you on July 27 in
10 compliance with the court's direction.

11 Q And all of those documents that you sent to
12 me were contingent agreements to sell and assign that
13 Lance Johnson provided to you; is that not correct?

14 A That is correct.

15 Q And these are part of the agreements which
16 you approve of, this transaction between Lance
17 Johnson and selling my assets to Lance Johnson, and
18 his contingent agreement to sell and assign those
19 assets to those eight parties; isn't that correct?

20 MR. SHAW: Your Honor, I'm going to
21 object. This line of questioning has nothing to do
22 with the two e-mails.

23 MR. STOLLER: It does. It has
24 everything to do with the e-mails.

25 MR. SHAW: Your Honor, he won't let me

1 finish my statements. Second, second of all, I'm
2 going to object on I'm not sure if it's ambiguity or
3 compound question. But Mr. Stoller is going on and
4 on about his, about his and about his. And I'm
5 confused, because I thought that we are dealing with
6 the bankruptcy estate and assets of the bankruptcy
7 estate. And I just want to --

8 THE COURT: I'm going to sustain
9 objection. Do you have any more questions to ask
10 about the value of the property that he is offering
11 for sale, which is the hearing, sir?

12 MR. STOLLER: We were talking about
13 cross-examining on these e-mails.

14 THE COURT: Yes, sir.

15 MR. STOLLER: Okay. And I have to
16 cross-examine him on these e-mails.

17 BY MR. STOLLER:

18 Q And on the contingent agreement to sell,
19 there were eight signed ones that you sent to me,
20 right?

21 MR. SHAW: Your Honor, same objection.

22 MR. STOLLER: This is relevant because
23 if I sent out e-mails and made false threats, Judge,
24 they have defamation they could sue me for. They
25 could sue me for liable. They have separate causes

1 of action they could bring and not burden this
2 bankruptcy court.

3 THE COURT: No. Sir, I will let you
4 argue about the e-mails in a moment, and I will also
5 let you argue about the motion you want to file, but
6 you're starting out the question wrong. If you have
7 a particular question, don't start by asking the
8 history of the agreements. Just ask him a question.

9 BY MR. STOLLER:

10 Q Okay. The question I have for you, Mr.
11 Fogel, is can a party who has a contingent agreement
12 to sell and assign a trademark sell a trademark that
13 is invalid and not in use, have a party sign that
14 agreement that that trademark is invalid and not in
15 use, and then have a -- prepare a separate assignment
16 agreement where you say that agreement is valid, in
17 use and that's to be filed with the trademark office?
18 Is that a proper way for a bankruptcy trustee to
19 approve of a sale of a trademark?

20 MR. SHAW: Objection. Compound
21 question. Second of all, I would ask that the
22 witness take at least three steps backwards from Mr.
23 Fogel and not be screaming in his face.

24 THE COURT: Well, he's not screaming,
25 but he is getting close. So keep it back.

1 Mr. Fogel.

2 THE WITNESS: Yes, sir.

3 THE COURT: Do the best you can with
4 that question, please.

5 THE WITNESS: Okay.

6 No.

7 THE COURT: All right. Mr. Fogel, he
8 is making an argument that it would be wrong for me
9 to approve a sale if I am approving a document which
10 would be a misrepresentation to a government agency.

11 THE WITNESS: I understand his
12 argument.

13 THE COURT: And it may be you want
14 your counsel to reserve that point for argument, but
15 if there is something you want to say about that, I
16 would appreciate it.

17 THE WITNESS: Your Honor, the
18 assignor/assignee index at the Patent & Trademark
19 office is the equivalent of a grantor/grantee index
20 at the recorder of deeds. It is a ministerial
21 process. They accept papers that are submitted to
22 them. They do not pass on the validity of them.
23 They do not make any representations as to their
24 legitimacy or their illegitimacy.

25 It is frequently done in trademark

1 litigation that one party will assign its rights in a
2 disputed trademark to another who then records the
3 assignment of those rights for whatever they're
4 worth. It is not unusual for people to sell assets
5 disclaiming that they have any particular fitness,
6 merchantability, value, use, purpose or existence.
7 And people can buy them if they enter into it
8 knowingly and informatively.

9 THE COURT: The assignment, though, in
10 this case, is an assignment of goodwill, among other
11 things, right?

12 THE WITNESS: If any exists.

13 THE COURT: Well, it doesn't say "if
14 any exists".

15 THE WITNESS: It's assigned cart
16 blanche.

17 THE COURT: Are you asking me to
18 approve these documents --

19 THE WITNESS: No, sir.

20 THE COURT: -- of sale?

21 THE WITNESS: No, sir. I am asking
22 you to authorize me to sell the trademark portfolio
23 and the licenses that may be associated with it,
24 which have not been produced, as well as the claims
25 and causes of action relating to --

1 THE COURT: Are you asking me to
2 authorize both sets of documents?

3 THE WITNESS: No, sir. I am asking
4 you to approve the asset purchase agreement between
5 me and the Society. What the Society does
6 thereafter, if -- and I emphasize if -- and I don't
7 think there is anything wrong with what they are
8 proposing to do -- parties affected by this would
9 have remedies. The parties affected by it will take
10 whatever action they deem appropriate to take.

11 THE COURT: Okay.

12 THE WITNESS: I'm selling my assets to
13 a buyer pursuant to a court order.

14 THE COURT: Mr. Stoller, do you have
15 any questions to that answer? To that answer,
16 please.

17 MR. STOLLER: To that answer, just
18 what you said, Judge.

19 BY MR. STOLLER:

20 Q Can a trademark assignment be registered
21 with the Patent & Trademark office where there is no
22 goodwill?

23 A I believe anything can be filed, and
24 anything that is filed will be accepted by the Patent
25 & Trademark office.

1 Q That's not true.

2 MR. SHAW: Objection, Your Honor.
3 Argumentative.

4 THE COURT: Sustained.

5 MR. STOLLER: You know, he's a lawyer,
6 Judge. He can't make misstatements of material fact
7 to you and say --

8 THE COURT: All right. I'm
9 terminating the cross-examination. We'll take the
10 rest in argument.

11 You may step down.

12 THE WITNESS: Thank you, Judge.

13 (Witness excused.)

14 THE COURT: Okay. Now, we have these
15 motions for leave to file a motion to disqualify SPTA
16 and Lance Johnson and memorandum in support. And
17 these have not yet been filed?

18 MR. STOLLER: No, Judge. They have --
19 the motion has not been filed.

20 THE COURT: I have here a memorandum
21 on which appears a received stamped by Ken Gardner,
22 clerk.

23 MR. STOLLER: Right. I filed the
24 memorandum, but I did not file the motion. And your
25 ruling told me that I needed permission to file a

1 motion for leave, and I am here asking --

2 THE COURT: Do you think you can
3 stigmatize people without me screening it and do it
4 in the form of a memorandum and not a motion? I'm
5 sorry I didn't get the sanction motion out -- the
6 sanction order out earlier.

7 The clerk is being directed not to
8 accept anything from you, any filing whatsoever of
9 anything, unless I permit it. And I have not
10 permitted this. I think I made that clear. So I am
11 going to strike -- I'm going to strike the memorandum
12 as having been filed with the clerk in violation of
13 my oral instruction to you, which has now been
14 reduced to writing in an order to the clerk which I
15 have just signed a moment ago.

16 So the clerk did not receive that
17 order when you filed this on August 2nd. So this
18 will be stricken. Okay. For the reasons stated from
19 the bench -- not stricken, but dismissed. The
20 memorandum filed by Stoller is dismissed.

21 Now, the motion to disqualify bidder
22 and Lance Johnson, I want to take up your request to
23 file that. It has attached a memorandum in support.
24 And I've looked at it, and I want to see what the
25 answer is from the folks -- the other folks.

1 MR. STOLLER: Can I argue it? Can I
2 argue it?

3 THE COURT: I've read it. You
4 presented it in writing. I will hear you after they
5 speak.

6 Counsel? Anybody?

7 MR. FACTOR: Your Honor, I'm not
8 sure -- William Factor for Pure Fishing. I'm not
9 sure that we have had an adequate opportunity to
10 review the motion. I think we could probably do that
11 in short order.

12 THE COURT: The motion to disqualify
13 SPTA and Lance Johnson, right?

14 MR. FACTOR: Correct, Your Honor. I
15 believe that --

16 THE COURT: When you say in short
17 order, what does that mean? You want a short recess?

18 MR. FACTOR: Yes, Your Honor. Ten or
19 15 minutes.

20 THE COURT: At the same time, we have
21 counsel who has been very patiently waiting to find
22 out whether we allow him to bid on behalf of the
23 daughter. I appreciate -- counsel, I hope you will
24 take my apologies for delaying you so long. We are
25 going to take that recess for about 10 or 15 minutes

1 now. It will be 5:00 o'clock.

2 Would you rather come back next week
3 after I come back from the ABA or you want to keep
4 going?

5 MR. STOLLER: Why don't we come back
6 next week, Judge.

7 MR. FACTOR: Your Honor, Mr. Johnson
8 is here from D.C.

9 THE COURT: I will keep going tonight.
10 I will try to finish this.

11 MR. JOHNSON: I would like to keep
12 going if possible, Your Honor.

13 THE COURT: Thank you, sir.

14 Tomorrow, I could give you an hour
15 tomorrow, I suppose. I have a 2:00 o'clock pretrial
16 conference, but that's probably an hour. But at any
17 rate, I can give you an hour tomorrow. But I will
18 keep going tonight for a little bit.

19 MR. FACTOR: Thank you.

20 THE COURT: Let me say that there is
21 an issue lurking here. Let me take it out of its
22 lurking capacity and put it on the table, because it
23 will have to be dealt with. We have not made a
24 ruling accepting the bid. I have not made such a
25 ruling. And some late bidder has come in and wants

1 to bid. I don't know what kind of authority you
2 folks are going to argue on that. Is anybody going
3 to argue, have authority that says I have no
4 discretion?

5 MR. SHAW: No, Your Honor. We aren't
6 actually.

7 THE COURT: You're going to argue that
8 I should exercise my discretion?

9 MR. SHAW: Your Honor, we are going to
10 argue that you should not exercise the discretion. I
11 think the Seventh Circuit has made it clear that
12 there is some discretion on the part of the court in
13 these matters. But under these circumstances, where
14 you have another party so clearly aligned with Mr.
15 Stoller that so clearly has unclean hand issues
16 regarding this --

17 THE COURT: The other party has
18 unclean hand issues?

19 MR. SHAW: Yes.

20 THE COURT: You mean, the daughter?

21 MR. SHAW: Yes, Mr. Stoller's
22 daughter.

23 THE COURT: Has unclean hand issues?

24 MR. SHAW: Yes.

25 THE COURT: With regard to the

1 transfer that you folks settled?

2 MR. FACTOR: No, no.

3 MR. SHAW: No, no.

4 THE COURT: With regard to what?

5 MR. SHAW: With regard to the sale

6 process. Mr. Stoller and his daughter I believe --

7 THE COURT: You're going to argue that

8 the daughter is -- has to be attributed to these

9 faxes he sent out?

10 MR. SHAW: No, I'm going to argue that

11 his daughter's counsel was retained by Mr. Stoller.

12 And I don't believe counsel will get up here and lie.

13 THE COURT: Well --

14 MR. SHAW: This is all one big effort

15 by Mr. Stoller to derail this sale.

16 THE COURT: Well, I haven't gotten to
17 the end of my sentence, which is that the issue
18 lurking in the horizon is whether or not since I have
19 discretion I should exercise it to try to stimulate a
20 bidding war.

21 MR. SHAW: Well, I think in this
22 instance, Your Honor, as someone representing a
23 trustee, obviously there is an importance to the
24 finality of a sale order. And that issue out --

25 THE COURT: I know, but I have not

1 approved the sale and then had someone come in and
2 ask to reopen it. So I'm at a stage before I have --
3 before the hammer has fallen so to speak. In any
4 event, that's an issue. There's a lot of issues on
5 the table, including the issues of his allegations
6 and the threats. But we will take it up in about 15
7 minutes, at 5:00 o'clock.

8 MR. FACTOR: Thank you.

9 (Brief recess.)

10 THE CLERK: Recalling the Stoller
11 matter.

12 THE COURT: Mr. Stoller, my staff
13 tells me that you were doing some shouting and
14 jumping around. May I tell you that if you do any
15 shouting and jumping around during this argument, I
16 will treat this as a possible direct contempt. I
17 have a marshal here, and we will ask him to haul you
18 off to lock-up overnight.

19 Everything clear?

20 MR. STOLLER: Everything clear, Judge.

21 THE COURT: All right. Now, we have
22 got several things on the table. We have got these
23 two e-mails, we've got Mr. Stoller's request to file
24 this motion to disqualify SPTA and Lance Johnson.
25 They relate in a manner of speaking. I will hear

1 argument.

2 MR. STOLLER: Could I start?

3 THE COURT: I got yours in writing,
4 sir. I will hear the response.

5 Right. Mr. Johnson.

6 MR. JOHNSON: Thank you, Your Honor.
7 As to the motion to disqualify me and the Society for
8 the Prevention of Trademark Abuse from becoming a
9 bidder, I find the motion to be internally
10 inconsistent with the testimony provided here today
11 and the assertions of the debtor. Notably, the
12 debtor has asserted both that there is great value in
13 the --

14 THE COURT: Sorry, sir. Just a
15 moment.

16 Go ahead, sir.

17 MR. JOHNSON: We note that the motion
18 to disqualify seems to be based on an inconsistent --
19 substantial inconsistency between the testimony and
20 the assertions today.

21 THE COURT: He argues in substance,
22 does he not, that you're going to use the resale
23 documents to help perpetrate a fraud on an agency?

24 MR. JOHNSON: That is his argument,
25 Your Honor, but the basis for that alleged fraud is

1 that there is a conveyance of assets that have no
2 value, when in fact the testimony today, in fact
3 today's hearing, was for the purpose of allowing the
4 debtor to assert that the estate and assets do in
5 fact have value.

6 THE COURT: To prove.

7 MR. JOHNSON: To prove that they do,
8 yes. Moreover, as to the substance of the fraud,
9 Your Honor, the purchaser of these marks in fact
10 helped draft this agreement. And this sale
11 proceeding, you know, the sale terms, that are in the
12 model, all were represented by outside trademark
13 counsel and are fully aware of the aspects that the
14 debtor has asserted. So there is no fraud as to the
15 buyers. It is a quitclaim deed. Nothing more.
16 Nothing else.

17 As to the Patent & Trademark Office,
18 the Patent & Trademark Office does not in fact care
19 who owns the registration and it has internal
20 procedures for asserting and policing fraud in
21 continued use of the marks and the registrations.
22 There is no fraud associated, you know, with the
23 Patent & Trademark Office.

24 THE COURT: Anything else?

25 MR. JOHNSON: No, Your Honor.

1 THE COURT: Thank you.

2 Counsel for trustee.

3 MR. SHAW: Your Honor, somewhat
4 ironically the argument seems to be on the one hand
5 the estate is not getting enough money for these
6 items. But then on the other hand, Mr. Johnson's
7 client is then turning around and selling the items
8 that are worthless to these buyers who are being
9 duped because of the sale. Those are two items that
10 Mr. Johnson -- those are two incongruous arguments.

11 THE COURT: Well, no, he is saying
12 that the whole sale is something -- if I approve it I
13 am approving a fraud on an agency. You want to
14 address that.

15 MR. SHAW: Your Honor, I think it goes
16 exactly, I believe, to what Mr. Johnson said. The
17 recording of these documents, first of all, you are
18 only approving the sale from the estate to
19 Mr. Johnson's client. The agreements --

20 THE COURT: There is nothing in any
21 order you're going to tender to me that will ask me
22 to approve a resale order -- resale document?

23 MR. SHAW: No, nothing, Your Honor.
24 That's what I was going to say is that the agreements
25 that Mr. Stoller alleges perpetrate the fraud are

1 documents that are not before this court for
2 approval.

3 THE COURT: The resale documents were
4 produced by my order by way of discovery.

5 MR. SHAW: Yes, but that was because
6 you asked them to be produced, and I think every
7 party sitting at this table is in agreement that full
8 disclosure is absolutely the right thing to do.

9 THE COURT: Is there anything else you
10 want to say?

11 MR. SHAW: Your Honor, with regards to
12 the disqualification motion, no, I don't.

13 THE COURT: Well, there's more to the
14 motion. How do you understand the reasoning of
15 disqualification request?

16 MR. SHAW: At its most base, I think
17 it goes back to -- I think it is very simple. This
18 is -- as long as it is not a sale to Mr. Stoller, Mr.
19 Stoller is going to object to it. That's actually
20 how I understand it. And he is going to object to it
21 in his unique way, which is trying to litigate with
22 everybody until they pay him to go away.

23 THE COURT: Now, let's get to the
24 question I raised when this was first presented. I
25 don't know if anybody can remember back that far. I

1 raised the question of whether it was appropriate for
2 multiple parties to band together.

3 And does this -- speaking of chilling,
4 does this chill bidding if an umbrella group is
5 formed that has made arrangements to resell to
6 individuals who have some interest, an apparent
7 litigation and economic interest? And I raised the
8 question at the time, which we're getting pretty
9 close to, as to whether there is anything improper
10 about that.

11 MR. SHAW: Your Honor, I have always
12 operated under the belief that if parties acting in
13 concert come before the court and make it clear that
14 they are acting in concert, then that's not
15 collusion.

16 There are many, many instances in
17 many, many bankruptcy cases where a buyer comes
18 before the court to purchase all of the assets of an
19 estate with a prior understanding that assets that it
20 may not have any interest in are going to be bought
21 from them through either a participation in the sale
22 price or otherwise are sold to them after the sale.
23 And as long as that party comes before the court and
24 is open and honest and discloses that, that
25 effectively should stop collusion.

1 THE COURT: I wonder if there is
2 another partial answer to my question; namely, that
3 the individuals have no reason to bid against each
4 other, they have their own, individual interests,
5 and, therefore, I am not sure that I was right to
6 feel that this chills the bidding.

7 Any comment on that?

8 MR. SHAW: Your Honor, I am not sure I
9 understand --

10 THE COURT: To put it another way, do
11 any of the individuals that have said they are going
12 to repurchase for small amounts of money, could they
13 have conflicting interests or do they only have their
14 individual interests?

15 MR. SHAW: Your Honor --

16 THE COURT: If we did not allow this
17 broad, single bid, is there anything to indicate that
18 two or more of them would bid against each other?

19 MR. SHAW: Your Honor, I don't --

20 THE COURT: Or are their interests so
21 individual and so distinct that nobody is going to
22 bid for somebody else's interest? Your view on that,
23 please.

24 Sir, I am asking the counsel for the
25 trustee.

1 MR. SHAW: Your Honor, my view --

2 THE COURT: Trustee is a big word
3 around here, and when I ask something of counsel for
4 trustee, I'm looking for a good solid answer from
5 someone who I know and want to be able to rely on.

6 MR. SHAW: Your Honor, I believe that
7 these purchasers' interests is not to take any one of
8 these particular marks and use it individually. I
9 believe that they are so fed up with Mr. Stoller and
10 his behavior over what appears from the documents I
11 have seen to be at least the last 20 years, that they
12 are purchasing these assets to make this go away to
13 try to stop this litigation.

14 THE COURT: That's not quite an answer
15 to my question. Do you know of any of them that have
16 interests in the same mark?

17 MR. SHAW: I do not know the answer to
18 that question.

19 THE COURT: Well, do you know of any
20 who you do know have interests in the same mark?

21 MR. SHAW: Your Honor, I have just
22 been told by Mr. Clisham that none of them have
23 interests in the same mark.

24 THE COURT: Sir, is that correct?

25 MR. CLISHAM: Your Honor, I can

1 represent to the court that our understanding is that
2 they have interests in completely separate marks, and
3 that is the basis for the separate agreements.

4 THE COURT: And what is your factual
5 basis for saying that?

6 MR. CLISHAM: If you look at the
7 individual agreements that were executed by
8 Mr. Johnson on behalf of SPTA, they are for
9 individual marks. And I believe Mr. Johnson also
10 testified when he was before the court that he
11 attempted to maximize the bids by reaching out to
12 each of the individual parties.

13 THE COURT: Okay.

14 MR. FACTOR: And that was the extent
15 of what they were willing to --

16 THE COURT: That's right.

17 Okay. Any other argument, sir?

18 MR. SHAW: Not on this particular
19 motion, no.

20 THE COURT: Is there another motion
21 you had an argument on?

22 MR. SHAW: Well, there's --

23 THE COURT: If I do not disqualify
24 SPTA, if I do not disqualify SPTA, Mr. Johnson, is
25 your bid still on the table?

1 MR. JOHNSON: Yes, Your Honor.

2 THE COURT: Despite the faxes and the
3 threats?

4 MR. JOHNSON: Yes, Your Honor.

5 MR. SHAW: Your Honor, just so the
6 record is clear, the threats -- there were threats
7 that started before August 1st.

8 THE COURT: Let's deal with the
9 record, please.

10 MR. SHAW: That's fine. I just wanted
11 to --

12 THE COURT: Have you finished?

13 MR. SHAW: Yes.

14 THE COURT: Anybody here want to say
15 anything?

16 MR. STOLLER: I would like to.

17 MR. FACTOR: Your Honor --

18 THE COURT: Yes, we will get back to
19 you, Mr. Stoller.

20 MR. FACTOR: If I may, on the motion
21 to disqualify, I'm struggling because I'm not quite
22 grasping the nature of the argument.

23 THE COURT: One argument is that there
24 has been some collusive arrangement, and another
25 argument is that they are going to misuse it on

1 resale.

2 MR. FACTOR: In terms of the
3 collusion, I believe that was addressed through
4 testimony when we were here before. And the court, I
5 believe, was satisfied with that testimony. And the
6 one remaining issue was the value of the trademarks.
7 So I won't deal with that issue. I believe --

8 THE COURT: Disqualification has
9 nothing to do with the value of the trademarks, does
10 it?

11 MR. FACTOR: Well, I believe the
12 disqualification is based upon this argument that
13 somehow there has been a fraud on the PTO.

14 THE COURT: Or will be.

15 MR. FACTOR: Or will be a fraud, and I
16 guess I'm having trouble understanding that because
17 the documentation between the trustee and SPTA -- the
18 trustee is selling whatever interest the estate has
19 to the SPTA and the SPTA is then selling whatever
20 interests it bought to seven buyers who are
21 sophisticated entities with their eyes wide open.

22 In fact, Mr. Johnson advised the court
23 that the documents that the buyers are signing was
24 drafted in part by the buyers themselves and their
25 attorneys. So I don't see any basis there for

1 arguing that there has been some type of
2 misrepresentation. I think what Mr. Stoller is
3 trying to --

4 THE COURT: He is trying to say that
5 there will be a future misrepresentation.

6 MR. FACTOR: And that's where I am
7 sort of missing the piece to the puzzle. The
8 document that the SPTA is going to execute is an
9 assignment document to the buyers. The buyers are
10 being assigned whatever rights that they bought from
11 the bankruptcy estate.

12 THE COURT: What the trustee certifies
13 when he sells is that there's no value; isn't that
14 right? He represents that there is no value.

15 MR. FACTOR: Well, I'm not -- the
16 trustee is representing that he is selling the assets
17 as is.

18 THE COURT: As is. He's not
19 representing -- I should have said he is not
20 representing that there is value.

21 MR. FACTOR: Correct. He is
22 representing -- he is selling as is where is, and the
23 SPTA is selling them as is where is, and the buyers
24 are buying them as is where is. And I think
25 everybody is in agreement that the assets have no

1 value.

2 THE COURT: Okay. Thank you very
3 much.

4 Did I cut you off? I'm sorry.

5 MR. FACTOR: No, no. Thank you.

6 THE COURT: Okay.

7 MR. STOLLER: My turn?

8 THE COURT: Anything on this side of
9 the table?

10 MR. SHAW: Your Honor, only that the
11 PTO is aware of this sale, and if they had any
12 concerns about it, I am quite confident that they
13 could find an attorney to come in and represent their
14 interests.

15 THE COURT: They have not been put on
16 notice of the documents he is talking about so...

17 MR. SHAW: Your Honor, the e-mails
18 that Mr. Stoller has sent have also been sent to --

19 THE COURT: He noticed the world, did
20 he?

21 MR. FOGEL: He noticed the PTO.

22 MR. SHAW: Yes, and many other public
23 agencies.

24 THE COURT: Okay. Thank you.

25 All right. Mr. Stoller, I will hear

1 you.

2 MR. STOLLER: These lawyers,
3 bankruptcy lawyers, don't know anything or confess to
4 know nothing of trademark law, but ignorance is no
5 excuse of the law. What we are dealing with here in
6 my 37 years experience, and the reason why I sent
7 them an e-mail like that, is if I send e-mails out to
8 people and I make a misrepresentation -- and anything
9 I write -- and I write every day on my blog -- every
10 day anybody can sue me for defamation, sue me in any
11 court throughout the whole country if I say something
12 that isn't true.

13 THE COURT: Well, actually, I have
14 just had a terrible, most unpleasant experience
15 sanctioning you for something false you said about
16 Mr. Fogel. And I found that because you are a pauper
17 without assets I could not tag you financially.
18 Maybe I should have tried and seen whether somebody
19 else would pay your debt for you.

20 MR. STOLLER: Well --

21 THE COURT: So you can't be --

22 MR. STOLLER: Let me --

23 THE COURT: -- too glib in suggesting
24 that the law of defamation is a remedy of any
25 defamation you might --

1 MR. STOLLER: Okay, Judge. Let me
2 take the time to just explain to you why they are
3 engaged in a fraud, and why you must -- as a matter
4 of law you can't condone what's going on here. And
5 the reason why, I gave you once an order in Florida,
6 a judge that made a decision not based on these
7 facts, but it was an improper decision, and that
8 decision led to serious consequences because his
9 decision was improper. I'm merely saying --

10 THE COURT: An order in Florida?

11 MR. STOLLER: Well, we don't have to
12 get into that. But here's the reason why. In order
13 to sell a trademark, you must sell a trademark with
14 the goodwill attached. Now, where Mr -- you want a
15 Perry Mason moment, I'll give you a Perry Mason
16 moment right now as to why they committed their
17 fraud, why Lance Johnson committed their fraud on
18 this court.

19 Back about four weeks ago I sent out a
20 notice to all of the creditors that if Fogel was to
21 sell my assets that there would be parties that may
22 come forward and sue them. Now, he can sell the
23 trademarks or sell my assets, and they would have to
24 produce that notice to anybody who has seen this.
25 Lance Johnson knew this. He got that notice. He

1 knew that he had exposure, because everybody knows in
2 this town and in this country that I sue a lot of
3 people. Right? Nobody sues more people than me.

4 So what did he do? Instead of
5 preparing the document, the consignment document but
6 just saying whereas, as is, he put in there specific
7 language -- this is the Perry Mason moment for you,
8 Judge -- he put in specific language to get his
9 co-conspirators to agree that the marks are invalid
10 and of no -- invalid.

11 Now, that language didn't have to be
12 put in there. He could have excluded that language.
13 He could have said you're buying them as is and where
14 is, and not having everyone sign -- we got eight
15 signed contracts saying that every one of those
16 parties sign on there, invalid trademarks. Then what
17 does Lance Johnson do -- he admitted on the stand
18 when I cross-examined him the other day he wrote the
19 assignment document. That's intended to be filed
20 with the trademark office.

21 Now, Mr. Fogel, who has never filed a
22 trademark application in his life, which is okay
23 because he's a bankruptcy lawyer. I have prosecuted
24 over 250 of them successfully and filed assignments.
25 And if I provided an assignment to the recordation

1 office and it didn't have the language which said
2 goodwill, they wouldn't accept it.

3 So what does Lance Johnson do? He
4 prepares a second agreement. And that second
5 agreement says the goodwill of these invalid
6 trademarks is now assignable to you because without
7 goodwill you can't get an assignment. There is the
8 fraud. He's got a secret agreement, which is not to
9 be prepared.

10 Now, here's what happens --

11 THE COURT: Not to be what?

12 MR. STOLLER: Not to be prepared to be
13 sent to the trademark office. Now, here's what
14 happens. Let's say you allow him to go through with
15 this fraud. Let's just say you think, oh, Stoller is
16 out in left field. I don't like Stoller. I'm going
17 to allow him to go through the fraud. All I would
18 have to do to quell any one of these deals that he's
19 committed, is to send that phoney first agreement to
20 the patent office and claim that they abandoned their
21 rights, because here's what happens --

22 THE COURT: Wait a second. Let's
23 assume that happens.

24 MR. STOLLER: Yeah.

25 THE COURT: Why is that my concern?

1 MR. STOLLER: Pardon me?

2 THE COURT: Why is that my concern?

3 MR. STOLLER: Because you can't --

4 THE COURT: Because you're saying what
5 you can do is you could put the kibosh -- I hope I
6 pronounced that correctly -- the kibosh, that means
7 you can affect -- destroy the effect of their effort.

8 MR. STOLLER: Right.

9 THE COURT: By a notice. And you
10 intend to do so you've told me.

11 MR. STOLLER: No, but here's the
12 point --

13 THE COURT: So that, therefore, there
14 will be no deception of that office.

15 MR. STOLLER: No, but the fraud is
16 still there. The fraud, which is said here, fraud in
17 obtaining -- bear with me a second. Fraud in
18 obtaining a trademark registration of a mark consists
19 of knowingly false representations -- this is
20 important.

21 THE COURT: To whom?

22 MR. STOLLER: Pardon me?

23 THE COURT: To whom?

24 MR. STOLLER: To the trademark office.

25 THE COURT: Not to me.

1 MR. STOLLER: -- but you would be
2 approving a fraud on an administrative agency if you
3 allow this to go through.

4 THE COURT: I am being asked only to
5 approve the sale by the trustee. I have learned
6 through discovery of some subsequent events that are
7 contemplated.

8 MR. STOLLER: And since you have,
9 under the code of judicial conduct you can't ignore
10 it. You can't just close your eyes and ears and say
11 that assignment doesn't exist. I am just going to
12 pretend they got the one agreement, and they both are
13 dovetailed together.

14 THE COURT: You've already notified
15 the agency about the assignment, and you're going to
16 do so again.

17 MR. STOLLER: But the point isn't that
18 I notify someone outside of this courtroom. The
19 point is you're the judge that has -- that's standing
20 in judgment here -- let me just finish this and you
21 can make the decision you want. And this is why it's
22 a fraud. They are knowingly making a false
23 representation to the trademark office regarding a
24 material fact made with the intent to induce
25 reliance, followed by a reasonable reliance resulting

1 in a registration or similar benefit. That case is
2 San Juan Products, Inc. v. San Juan Pool, Inc. This
3 court cannot approve of this transaction.

4 THE COURT: Who came out with that
5 decision, please?

6 MR. STOLLER: This was the Eighth
7 Circuit. San Juan --

8 THE COURT: They were talking about
9 events before the Patent & Trademark Office?

10 MR. STOLLER: They are talking about
11 fraud in obtaining a registration.

12 THE COURT: Fraud where?

13 MR. STOLLER: Of a mark before the
14 Patent & Trademark office.

15 THE COURT: That's what I thought. Go
16 ahead.

17 MR. STOLLER: And the fraud that's
18 before your eyes is the assignment that Lance Johnson
19 prepared that has the contradictory language.

20 THE COURT: All right. I've listened
21 to that. You've gone through it several times in
22 your argument. Anything new you want to argue?

23 MR. STOLLER: Okay. The last thing
24 that the kibosh -- is that the word you used -- is
25 the goodwill argument. In other words, in his second

1 assignment agreement, under the law of trademarks,
2 you have to transfer the goodwill of the marks. The
3 fact that he said my marks -- that he had his parties
4 admit that there is no -- that the marks do not exist
5 and they signed that agreement saying they do not
6 exist, the fraud would be -- they have the assignment
7 agreement, and they signed that and filed that with
8 the Patent & Trademark office.

9 You see the scheme. That's the scheme
10 you must as a matter of law disqualify that
11 trustee -- I mean not trustee, but Lance Johnson. It
12 is a fraud on the court.

13 THE COURT: Thank you very much.
14 Thank you very much. I am not going to -- I'm going
15 to deny your motion to file this motion to disqualify
16 SPTA and Lance Johnson. The reason is this: There
17 is no fraud attempted to be perpetrated before this
18 court, no deception of this court. I am not here --
19 if I approve the sale, I will not be approving any
20 documents of resale.

21 I have perfect assurance from you, Mr.
22 Stoller, that you're going to notify the agency about
23 any documents that you think you want to notify them
24 about if I allow this sale. And I am not going to
25 make adjudications as to what would be the

1 consequence of using the two documents you're
2 objecting to because that's not an adjudication
3 within my court or before me.

4 We have obtained disclosure through
5 discovery of all the purported resale documents, and
6 that was to permit any objector to have the
7 information. You have the information. But it is
8 not part of the sale process that the trustee wants
9 me to approve.

10 Second of all, the question I have
11 raised and I have mulled over is as to whether or not
12 the agreement for all these parties to band together
13 and use a single umbrella group to make a bid which
14 then resell to the individuals, whether that was
15 collusive bidding. And I conclude that there has
16 been no argument even that any of these bidders
17 would, if their marks were offered individually, be
18 bidding against each other or have an interest in any
19 marks other than the one they are interested in.

20 Therefore, there is no collusive
21 bidding. Therefore, any suggestion of an argument
22 along that line is overruled. And any other matters
23 you've alleged in here do not justify your filing
24 another accusation of evil doing against people which
25 you are so free to do sometimes.

1 I've allowed you to argue it orally,
2 but I am going to -- I've stricken the memorandum you
3 have filed. And I am going for reasons to -- that
4 your motion to disqualify bidder SPTA and Lance
5 Johnson, that your motion to file the motion to
6 disqualify them is denied for reasons stated from the
7 bench.

8 No, the motion -- yes, this is a
9 motion -- what this is -- well, you have not filed a
10 motion, sir?

11 MR. STOLLER: I presented it to you.

12 THE COURT: Sir, have you filed a
13 motion?

14 MR. STOLLER: For leave to file.

15 THE COURT: Have you filed a motion?
16 Has he filed a motion?

17 THE CLERK: No, there was no motion.

18 THE COURT: The motion is not filed.

19 All right. This will be the motion for leave, motion
20 of Stoller for leave to file this thing, okay.

21 THE CLERK: Yes.

22 THE COURT: That is denied for the
23 reasons stated on the record.

24 Now, I feel that there is no reason to
25 clutter the record with Exhibit G, you think? There

1 is no indication that the bidding has been chilled by
2 the present bidder, and no reason for me to take
3 these into evidence. So the objections to G and F
4 are sustained, which brings us at last to the motion
5 of the daughter through counsel.

6 Counsel, come on up, please.

7 Could you state your name again for my
8 benefit.

9 MR. ALEXANDER: Brian Alexander.

10 THE COURT: Thank you for coming, Mr.
11 Alexander. Mr. Alexander, who do you represent?

12 MR. ALEXANDER: Julie Bishop.

13 THE COURT: And who retained you?

14 MR. ALEXANDER: Julie Bishop retained
15 me, but Mr. Stoller and his brother were in my office
16 also, and Julie Bishop I spoke to by telephone.

17 THE COURT: Who is your client?

18 MR. ALEXANDER: Julie Bishop.

19 THE COURT: Okay. You want to get me
20 to reopen the bidding to offer \$9100?

21 MR. ALEXANDER: Yes.

22 THE COURT: Have you any evidence to
23 offer of the value of these things that the trustee
24 wants to sell?

25 MR. ALEXANDER: The only evidence that

1 I would have of the value is the fact that my client
2 is willing to pay more than the trustee's bid which
3 was accepted. And, in fact, I know my client would
4 have been willing to go even higher.

5 THE COURT: Even higher?

6 MR. ALEXANDER: If it came to that,
7 yes. I was told that she was willing to go higher.

8 THE COURT: You mean if a bidding
9 war -- your client is willing to participate in a
10 bidding war, is that what you just told me?

11 MR. ALEXANDER: I am not sure I --

12 THE COURT: Bidding war, I mean where
13 two people bid.

14 MR. ALEXANDER: If the court opened up
15 the bidding to that form of bidding, yes. If the
16 court were asking parties to resubmit bids, then
17 obviously she would have to decide -- you know, if
18 written bids were being refiled by both parties, if
19 you opened up the bidding, then she would have to --

20 THE COURT: Under the procedure which
21 I approved, if she had come in the first day --

22 MR. ALEXANDER: Right. She certainly
23 could have done that.

24 THE COURT: I would have said, fine,
25 let's find out. You have a higher bid. You have a

1 bid. I want to find out what the other side wants to
2 do. I would have said that. It would have all been
3 orally on the record.

4 MR. ALEXANDER: Of course.

5 THE COURT: Okay. Thank you very
6 much.

7 Now, I want to hear what --

8 MR. SHAW: Actually, Your Honor, I
9 have a quick question for you if you could ask Mr.
10 Alexander. He stated a moment ago that he has been
11 told his client would offer more money if she had to.
12 But I would love for the court to ask who told him
13 that, because he's -- that infers that he did not
14 speak to his client and he has not spoken to his
15 client.

16 THE COURT: How do you know he has not
17 spoken to his client?

18 MR. SHAW: I don't, that's why I'm
19 raising the question to the court. He stated
20 clearly --

21 THE COURT: I should ask someone
22 whether he -- what he's talked about with his client?

23 MR. SHAW: Well, if he's talked about
24 it with his client in front of Mr. Stoller and Mr.
25 Stoller's brother, I don't believe there is a

1 fraternal privilege, and there would not be a
2 privilege --

3 THE COURT: Do you want to say
4 anything in response to what counsel just said? I am
5 not directing any questions to you.

6 MR. ALEXANDER: Well, obviously, the
7 content of the conversation I believe would be
8 privileged, but only that I spoke with my client on
9 the telephone, and Misters Stoller and Stoller were
10 nowhere near present. So I don't think that anything
11 I spoke to her -- I have certainly not breached the
12 privilege on it.

13 THE COURT: All right. I'm not going
14 to ask you to divulge privileges. All right. Now,
15 the question is whether I should allow the bidding to
16 be reopened.

17 MR. SHAW: Your Honor --

18 THE COURT: I want to hear first of
19 from the bidder that's still with us.

20 Mr. Johnson and the entity you speak
21 for, what do you want to say?

22 MR. JOHNSON: Your Honor had approved
23 a sales procedure order that required tendering an
24 amount certain and then certain qualifications as to
25 the financial wherewithal of the bidder to be able to

1 place a maximum bid. We complied with those
2 procedures and provided that to the trustee. We did
3 so by the deadline and complied with this court's
4 order in every respect.

5 I do not believe that there would be
6 any reason to assert that Mr. Stoller was unaware
7 that the sale procedure had to be approved or was
8 going to be proceeding. I have yet to hear an
9 adequate explanation of why he did not seek higher
10 and better bidders by the deadline in accordance with
11 the court's procedure so that we would not have to
12 come back to this court two, maybe three times.

13 Indeed, this hearing is only based
14 on -- was a continuation of the last hearing in which
15 the debtor represented that he had documents
16 establishing a much higher value. I have yet to see
17 that such documents, in fact, have been admitted into
18 evidence of current value of the mark that would
19 increase the value above and beyond the bid.

20 Certainly evidence has been admitted,
21 but it is some 15 years old. There is no evidence of
22 current use. There is no evidence of licensees.
23 There is no evidence of a royalty stream or of a
24 continued controlled licensee, as would be required
25 under the trademark laws. Consequently, it's stale,

1 Your Honor.

2 THE COURT: Well, sir, what you're
3 saying now is a question of whether or not I should
4 approve your bid if that's the only bid. That goes
5 to that question. It doesn't go to the question of
6 whether I should allow a higher bid.

7 MR. JOHNSON: No, it doesn't, Your
8 Honor. It's only to the point that there have been
9 continuing delays already, this hearing being one.
10 If we continue to delay beyond today, there will be
11 yet another hearing, thereby increasing the costs to
12 engage in the bidding process.

13 I think, you know, the bidding sale
14 procedures order was fine in the first place.
15 Adequate notice was available to all relevant parties
16 and certainly to Mr. Stoller, who could have
17 contacted his daughter or his brother or any other
18 person. That's all I have, Your Honor.

19 THE COURT: Thank you.

20 Counsel.

21 MR. FACTOR: Your Honor, on behalf of
22 Pure Fishing, we believe this is an issue that should
23 be left to the trustee's discretion. The trustee
24 represents creditors. The trustee understands the
25 environment. The trustee, who is an experienced

1 trustee, understands sort of the broader issues that
2 I think are identified in the Goss case or the
3 Corporate Assets case from the Seventh Circuit.

4 THE COURT: What broader issues?

5 MR. FACTOR: Well, the broader issues
6 about the -- I don't want to use the word sanctity
7 because this isn't -- but, if you will, the sanctity
8 of the auction process, the ability to be able to
9 rely upon --

10 THE COURT: Counsel, I believe in the
11 auction process. I believe that we have to allow
12 trustees to go out and say we've got an auction
13 process, the judge is going to enforce it. I believe
14 that. I know that's important. But we have an
15 auction process that had not ended at the time a new
16 bidder came in. That's why I am asking you folks for
17 your views.

18 MR. FACTOR: Your Honor, I think you
19 do have the discretion. But I think in terms of
20 exercising your discretion, I think there should be a
21 great deal of deference placed in the trustee's views
22 on this because the trustee --

23 THE COURT: What would be the
24 consequence, do you think, if I allowed this bid,
25 this new bid to come in?

1 MR. FACTOR: The consequences would be
2 potentially on one hand a little bit more money for
3 the estate, which perhaps might be offset in terms of
4 the estate by additional litigation that might arise
5 if the court's reopening of bidding were to somehow
6 be challenged.

7 I think that's what happened in the
8 Corporate Assets case where Judge Doyle reopened the
9 bidding prior to entering an order, and the ultimate
10 bidder ultimately did win, but then filed suit to
11 recover a claim for the amount they had to spend to
12 proceed further. And the trustee in that case--

13 THE COURT: And the Seventh Circuit
14 said what?

15 MR. FACTOR: Well --

16 THE COURT: That the judge had
17 discretion to reopen.

18 MR. FACTOR: Exactly, the judge did
19 have discretion to reopen. But in that case -- and
20 we're not -- Your Honor, in no circumstance do we
21 believe you don't have the discretion. What we are
22 suggesting here is that in the exercise of your
23 discretion you should defer to the trustee. Your
24 specific question to me was what will the impact be
25 if you do reopen the bidding? I am talking about it

1 from the perspective of the bankruptcy estate, from
2 the bottom line.

3 THE COURT: What about from the
4 perspective of those people that want to get rid of
5 the problems by buying them out?

6 MR. FACTOR: Well, from the
7 perspective of the potential -- from the bidders,
8 that's the reason they are here. They have a
9 reasonable expectation of getting the property. And
10 they have an expectation. I think the Seventh
11 Circuit did talk about that. And that gets to the
12 broader issues of if it becomes a free for all, then
13 you're going to get -- less likely you will get
14 people with that interest.

15 THE COURT: Why less likely?

16 MR. FACTOR: Well, Your Honor, because
17 they have invested time and money in this process.
18 They have also subjected themselves -- and that's
19 where the e-mails come in. They have subjected
20 themselves to a hostile environment. And the point I
21 was trying to make earlier is notwithstanding the
22 hostile environment, they've still been willing to
23 come forward with these offers. And so if the court
24 basically pulled the rug out from underneath them by
25 opening the bidding after it has been closed

1 according to the sales procedure order, I think this
2 would be frustrating that legitimate and reasonable
3 expectation.

4 So from that perspective as well I
5 think the bidding should remain closed. But I also
6 think from the perspective of the bankruptcy estate
7 dollars and cents, the amount of money that is being
8 offered I don't think will cover any future
9 litigation cost that might arise in the event that we
10 are challenged. So I think from that perspective
11 that's another reason.

12 And, again, the point I wanted to
13 bring out as the representative of the largest
14 creditor is that I believe it is appropriate for the
15 court to defer to the trustee's views in this case.
16 Thank you.

17 THE COURT: You're the largest
18 creditor?

19 MR. FACTOR: Yes, Your Honor.

20 THE COURT: And your claim is how
21 much, roughly?

22 MR. FACTOR: Roughly 950,000.

23 THE COURT: Is your client one of
24 those that is trying to buy out a claim against it by
25 Mr. Stoller?

1 MR. FACTOR: Pure Fishing is one of
2 the seven parties.

3 THE COURT: All right. And your claim
4 is based on what again, please?

5 MR. FACTOR: Our claim is based --

6 THE COURT: A judgment?

7 MR. FACTOR: Yes, we have a judgment
8 from the district court.

9 THE COURT: That's a pre-bankruptcy
10 judgment?

11 MR. FACTOR: The conduct was
12 pre-bankruptcy. The court lifted the automatic stay
13 to allow us to proceed in front of Judge Lindberg.

14 THE COURT: Okay.

15 MR. FACTOR: Thank you.

16 THE COURT: Another counsel for
17 another creditor maybe, or are you for an interested
18 buyer?

19 MS. ROBINSON: No, Your Honor. Kim
20 Robinson on behalf of Google. As you recall, we have
21 been before you quite a few times, Your Honor, on a
22 court approved settlement between the trustee and my
23 client. We strongly oppose --

24 THE COURT: And you're waiting for my
25 opinion on that, are you?

1 MS. ROBINSON: No, no, Your Honor.

2 THE COURT: Or have I approved that
3 settlement? I approved that settlement some time
4 ago.

5 MS. ROBINSON: Some time ago it went
6 up to the district court.

7 THE COURT: That's another case where
8 I'm writing an opinion. Go ahead.

9 THE WITNESS: We strongly oppose the
10 motion to reopen the bidding at this time.

11 THE COURT: Because?

12 MS. ROBINSON: Because, Your Honor, we
13 very vehemently question the bona fides of this offer
14 by Mr. Stoller's daughter. We believe that offer --

15 THE COURT: What do you mean?

16 MS. ROBINSON: We question the good
17 faith, Your Honor. We believe an offer by Ms.
18 Stoller or Ms. Bishop is in fact an offer by Mr.
19 Stoller.

20 THE COURT: Well, it might very well
21 be. We know that -- first of all, I've held a
22 hearing. What I learned convinced me he has no money
23 or assets, at least at the time I held the hearing.
24 Now we know his daughter got some money out of a
25 settlement, did she?

1 MS. ROBINSON: That's correct, Your
2 Honor.

3 THE COURT: So we know she has some
4 money. If she wants to give it to her father, do you
5 consider that bad faith?

6 MS. ROBINSON: I consider putting Mr.
7 Stoller back in control of these assets bad for
8 everybody, Your Honor. And I do consider it bad
9 faith, yes.

10 THE COURT: Bad faith -- well, bad for
11 your client because you have to litigate with Stoller
12 again.

13 MS. ROBINSON: Basically it would undo
14 the whole purpose of our court-approved and our
15 negotiated settlement that we entered into with your
16 approval after hearings before the district court.

17 THE COURT: How would that undo that
18 settlement?

19 MS. ROBINSON: Because it will put him
20 back in control of all of the assets, Your Honor.

21 THE COURT: Did that settlement affect
22 the assets that the trustee is trying to sell now?

23 MS. ROBINSON: It affected certain
24 assets, Your Honor.

25 THE COURT: Well, not these assets.

1 MS. ROBINSON: Well, unfortunately, I
2 don't have all of the details, Your Honor. We're
3 local counsel. We found out about the fact that this
4 matter was now continuing for hearing and that Mr.
5 Stoller's daughter was now placing a bid. We
6 anticipated that the matter was resolved a long time
7 ago, so I don't have all the details. But, Your
8 Honor --

9 THE COURT: Thank you.

10 MS. ROBINSON: -- in fact, we again,
11 would strongly oppose this. We believe there should
12 be some serious questions about good faith. We think
13 if in fact you are at all inclined to reopen it, the
14 daughter should come in and she should be
15 cross-examined as far as her purposes for trying to
16 purchase these assets.

17 THE COURT: Since when do we question
18 buyers at a bankruptcy sale or bidders as to their
19 motives?

20 MS. ROBINSON: They are often in
21 court, Your Honor.

22 THE COURT: They may be in court, but
23 that doesn't mean we question them. I have never --

24 MS. ROBINSON: Are they going to
25 request a good faith finding, Your Honor? I believe

1 in order to exercise your discretion to reopen the
2 bidding --

3 THE COURT: They are going to request
4 a finding that the trustee has sold in good faith.
5 But are you questioning the good faith of the trustee
6 in selling if another bidder were to come in?

7 MS. ROBINSON: I'm questioning the
8 good faith of this purchaser, Your Honor, because I
9 believe in fact the purchaser is Mr. Stoller.

10 THE COURT: Very, very possible. But
11 I'm not sure we are going to grill the daughter on
12 that subject. Thank you.

13 Let me hear from the trustee.

14 Mr. Fogel, do you want to argue pro
15 se?

16 MR. FOGEL: I thought you were asking
17 that you wanted to hear from the trustee.

18 THE COURT: Oh, I mean figuratively.

19 MR. FOGEL: All right.

20 THE COURT: Although, I'll always hear
21 you, you know.

22 MR. SHAW: Your Honor, Mr. Factor used
23 the word sanctity. And I don't think that's the
24 right word. I think the right word is integrity.
25 There's a process here. And the real harm to the

1 estate and the real harm to the process if you go
2 ahead and reopen the bidding under the circumstances
3 before you is the integrity of the process. There is
4 no question that the Seventh Circuit has said that
5 the court has discretion to reopen the process,
6 reopen the auction process.

7 THE COURT: Well, the gist of the use
8 of that discretion would be to get more money for the
9 estate so long as there are no other reasons why you
10 shouldn't be looking in that direction.

11 MR. SHAW: Absolutely, Your Honor, but
12 in this case I think there's many reasons why you
13 shouldn't be looking in that direction. Forget for a
14 moment that we have only been before -- well, several
15 of us, not me, have been before Your Honor on
16 numerous occasions, probably far exceeding the value
17 of the sale price in hourly attorney's fees based on
18 the numerous objections that have been filed by Mr.
19 Stoller.

20 But Mr. Stoller has stood before this
21 court, and for lack of a better word, bragged about
22 his prolific litigation, bragged that people know
23 don't mess with me because I am a litigator. He has
24 filed documents that make accusations left and right.
25 And he's able to do so, quite frankly, because he is

1 not subject to the same rules and regulations and the
2 same threat of disbarment that I am or Mr. Factor is
3 or Ms. Robinson is or Mr. Johnson is. He doesn't
4 have that hanging over him.

5 So he stands before you as an
6 exploited pro se debtor, but the irony is he's
7 exploiting the process because he's not subject to
8 this. If the court goes ahead and reopens the
9 bidding, you've rewarded that behavior. It is an
10 integrity issue.

11 THE COURT: Is there any bid that you
12 would consider I ought to take seriously? For
13 example, if somebody walked in and said I want to
14 offer a million dollars, should I allow the bidding
15 to be reopened?

16 MR. FACTOR: Your Honor, if somebody
17 walked in with a check for a million dollars, we
18 would have to -- somebody, somebody not being Mr.
19 Stoller or Mr. Stoller's daughter, somebody who acted
20 in good faith, had an exceptional reason for not
21 being part of this process on a timely basis, we
22 would have to consider it because that would be such
23 a windfall to the creditors of this estate. But in
24 this instance --

25 THE COURT: There is some jokes that

1 go around which end up with a line, then it's all a
2 question of how much.

3 MR. SHAW: Well, Your Honor, I am not
4 sure it is a question of how much, and I will tell
5 you why. Because Mr. Stoller has stood before you in
6 response to your pointed question, would you object
7 if it was a \$9100 sale to your daughter? No. Would
8 you object if there was a topping bid to somebody
9 else? Yes.

10 It's not about the money. This is
11 about Mr. Stoller wanting to control these assets and
12 to go ahead, and he is doing it through the mechanism
13 of his daughter.

14 THE COURT: Well, is that the business
15 of the trustee or is the business of the trustee to
16 just get the most money?

17 MR. SHAW: The business of the trustee
18 is to be able to act with integrity, preserve the
19 process. He entered into an agreement. He went --

20 THE COURT: It was always subject to
21 the possibility of bidding.

22 MR. SHAW: It's always subject to the
23 possibility of bidding. But the bidding didn't
24 happen. Your Honor, I direct your attention back to
25 what happened before the court when this hearing was

1 adjourned about a week ago, a week and a half ago.
2 The purpose of its adjournment was to have Mr.
3 Stoller --

4 THE COURT: He would bring me in
5 records and agreements that demonstrated the value of
6 the things being sold.

7 MR. SHAW: Actually, I think more
8 specifically he claimed he had offers of money
9 settlement from third parties, and he had license
10 agreements, and those would show how much these
11 assets were truly worth. He didn't produce either of
12 those today. So arguably he perjured himself.

13 MR. STOLLER: Your Honor --

14 MR. SHAW: So we were here under false
15 pretenses today. And, again, it goes back to the
16 integrity of the process. This gentleman has stood
17 before this court. He has managed to get this
18 hearing continued upon very questionable statements.
19 And we're standing now before the court with his
20 daughter, who he said himself doesn't have the
21 ability to act in her own legal capacity, coming here
22 to allegedly buy the assets.

23 He stood here before the court and
24 said he will object to any party topping that bid of
25 \$9100. He wants these assets. He wants them for

1 himself. The trustee cannot be a part of this. He
2 entered into an agreement. He had a sale order
3 approved.

4 Your Honor, if someone came in here
5 and was clearly in here in good faith and had a
6 reasonable explanation why they did not timely bid,
7 we would reconsider it. But you asked are there
8 facts and circumstances other than a higher amount of
9 money which should make you not reopen the bidding,
10 and there are.

11 There are many of them, including the
12 fact that -- and I think this is the most important
13 fact, and I am saying this as a recipient of several
14 weekend e-mails from Mr. Stoller threatening me with
15 disciplinary action because Mr. Fogel won't withdraw
16 the sale motion. I am saying it having associates
17 sent e-mails going who is this man threatening to
18 send me to the disciplinary commission? He has
19 threatened secretaries in our office.

20 This is a man whose sole purpose is to
21 destroy the process. He has testified here today
22 that his MO, his modus operandi, is to litigate. The
23 value of these claims in his eyes is how much he can,
24 for lack of a better word, extort from people. And
25 if we go ahead and reopen the bidding, we've just

1 rewarded this behavior. This man's behavior should
2 not be rewarded.

3 MR. STOLLER: Your Honor, could I say
4 something?

5 THE COURT: Just a moment, please. I
6 will get to you in a moment, Mr. Stoller.

7 Anybody else want to say anything at
8 this end?

9 (No response.)

10 THE COURT: All right. Sir, would you
11 like to say anything?

12 MR. ALEXANDER: Yes, please. Judge, I
13 agree with what the counsel have said that the
14 integrity of the process is very important. And
15 where it can be upheld and where it should be upheld
16 it should be upheld. But the very fact that the
17 appellate court has given you the discretion to
18 reopen bidding means, if nothing else, that the
19 integrity of the court can be served by reopening the
20 bidding, that it's not set in stone, and that your
21 court, this court, has the absolute discretion within
22 rationale and reason to open the bidding if it
23 benefits, obviously, the bankrupt estate.

24 It has been bandied about that my
25 client is not acting in her own, that she is the

1 alter ego of the debtor. I have no doubt that as
2 father and daughter they are working together. I
3 wouldn't stand before the court and presume she's a
4 disinterested third party. But the fact is she is
5 acting in her own capacity.

6 The statement about her having no
7 capacity or alleging the debtor said she had no
8 capacity, I think the debtor told you he has a power
9 of attorney from her, but certainly she has the
10 capacity to act on her own and to hire me to try to
11 purchase the assets.

12 What she does with the assets I don't
13 think is really that significant to the determination
14 of whether or not she should be allowed to bid or
15 whether the bid should be open; no more than I think
16 that Your Honor made a previous determination that
17 what the buyer is that the trustee sell -- sold it
18 to, any side agreements they had are really not
19 within this court's purview.

20 But I think the fact is that if the
21 estate can achieve more money by reopening the
22 bidding, then I think that should be the prime
23 directive for this court. The statements, the
24 presumptions that if you open the bidding we're going
25 to open this up to more litigation -- fortunately,

1 Mr. Stoller is not a client of mine. But his threats
2 of litigation certainly make any argument that if we
3 open the sale we are just going to open new
4 litigation -- because I think he's already made it
5 clear that it seems to be whatever the outcome is
6 somebody is going to be facing litigation.

7 So I think the bottom line is does the
8 estate benefit? Can the estate benefit? And I think
9 based on that I think this court can and should
10 exercise its sound discretion to reopen the bidding.
11 I know my client has a bid prepared to put on the
12 table. I also know my client has some willingness to
13 go higher.

14 As Your Honor has pointed out, she has
15 some independent resources, and if she wants to help
16 her father, I don't think that is an evil or wrongful
17 motive. And I think based on that, the duty of the
18 court and the trustee is to get the best price
19 possible for the estate.

20 THE COURT: What weight should I give
21 to the fact that the largest creditor wants me to
22 stop?

23 MR. ALEXANDER: He also benefits by
24 the cheap sale, as do all the creditors.

25 THE COURT: So he's not merely a

1 creditor, he is an interested party?

2 MR. ALEXANDER: Judge, you've
3 questioned whether there is collusion involved in
4 this, and I don't think we can really establish
5 collusion. But clearly by the creditors banding
6 together, each one only has an interest in one
7 trademark, I gather. I am new to the case, and I
8 have been listening several hours today. And so I
9 can see that they wouldn't be bidding against each
10 other because each one only wants one trademark.

11 Well, the best way to avoid bidding
12 against each other if they are being sold as a
13 package is to agree to sell them as a package and
14 each will buy out their share once the package is
15 purchased. So it may not be illegal collusion,
16 because they are not really competing with each other
17 for the same trademarks, but the way this has been
18 structured they don't have to buy somebody else's
19 trademark in order to get their own trademark.

20 THE COURT: Therefore what?

21 MR. ALEXANDER: And, therefore, there
22 is no incentive -- there was no incentive on them to
23 seek full and open bidding, because they had already
24 decided --

25 THE COURT: Well, this was adequately

1 publicized.

2 MR. ALEXANDER: And I understand that.
3 And I understand. That's why I say, the process is
4 important. But I think --

5 THE COURT: Do you have any
6 explanation to give why your client delayed coming
7 forward with this bid?

8 MR. ALEXANDER: The only explanation
9 that I have been able to ascertain is I think in her
10 conversations or relationship with her father I don't
11 think she was aware of how serious the matter had
12 become before she stepped forward and offered to
13 become I guess the white knight, if you want to use
14 that expression.

15 THE COURT: Okay. Thank you.

16 Mr. Stoller.

17 MR. STOLLER: I appreciate it. Your
18 Honor, two things real quickly. Number one is the
19 U.S. Trustee, Steve Wolfe, he put off the adversary
20 pending the appeal of the conversion appeal of ours
21 from the 13 to the 7, until September. Now -- no,
22 until December. Now, I don't really understand why
23 there is an urgency to dispose of my assets today.

24 THE COURT: I'm not on the subject of
25 closing this. I'm on the subject of whether I should

1 reopen the bidding.

2 MR. STOLLER: Okay.

3 THE COURT: Will you address that.

4 MR. STOLLER: Here's the reason why I
5 believe -- what you said to me when we were in court,
6 and I was sitting over there last time and we had the
7 -- if these marks are worth so much, Stoller, why
8 don't you find somebody to make a bid?

9 THE COURT: So why didn't you find
10 your daughter earlier?

11 MR. STOLLER: Because I was under the
12 belief, and I still am, that this sale should not go
13 through to these people; and, secondly, that the sale
14 shouldn't be even offered until the case is over.
15 And the case -- you know, you're prematurely selling
16 my assets.

17 But when you said to me on the stand,
18 well, if you got a buyer, Stoller, or if someone came
19 into my court with a bag of gold, you said to me and
20 everybody, I would certainly look at it. And that
21 jarred my brain when I was sitting over there. And I
22 called my daughter, and I said, look, Judge
23 Schmetterer said would you -- I said, would you be
24 willing to make an offer? Judge Schmetterer told me
25 that if I could find somebody to make an offer on

1 these -- on my trademarks --

2 THE COURT: I was referring to your
3 what appears to be a false claim that you had some
4 contracts which demonstrated settlements and,
5 therefore, gave me a basis for valuing these
6 products.

7 MR. STOLLER: But you did tell me --

8 THE COURT: I did use the expression
9 bag of gold.

10 MR. STOLLER: Right.

11 THE COURT: But I was not at that
12 point in any way inviting another bid.

13 MR. STOLLER: Well, I got the
14 impression you were. And I went out and asked my
15 daughter if she would make a bid. And it's for more
16 than what Lance Johnson is bidding. And I think it
17 is only fair that you entertain that bid and open up
18 the bidding so she could participate.

19 THE COURT: Thank you.

20 Any rebuttal?

21 MR. SHAW: Your Honor, just two
22 points. Actually, just one point. Mr. Stoller and
23 Mr. Alexander have utterly failed to give you any
24 good reason why Mr. Stoller's daughter, who
25 admittedly through her counsel, has been working in

1 concert with her father on this, could not act timely
2 within the sales procedure order.

3 THE COURT: And you have not given
4 much of a reason as to why the trustee has been
5 harmed by her failure to come in a week ago.

6 MR. SHAW: Your Honor, we have been
7 harmed because I have been sitting here for four
8 hours today at a hearing that should not have taken
9 place. Mr. Fogel and the estate have been harmed for
10 the same reason. These other creditors have been
11 harmed.

12 And Mr. Stoller's stated own reason
13 for his daughter's late appearance is because his
14 other attempts to delay this process and other
15 attempts to stop this sale failed. So when those all
16 failed, then after the fact he put his daughter up to
17 coming in here and purchasing these assets. That is
18 not behavior that should warrant this court
19 exercising its discretion.

20 THE COURT: Going back to the hearing
21 today, I indicated a moment ago he did not bring in
22 the type of documents that he claimed to have had.

23 MR. SHAW: Yes.

24 THE COURT: He did bring in some
25 documents which showed a world of heavy litigation

1 going on over a long time. One of the things I
2 wanted to find out is if his position had value.
3 And, remember, he objected because it had value, and
4 I said prove it.

5 Now, here we have a foot high of paper
6 here of litigation in several areas. How do I
7 determine whether the value you're getting for this
8 is one which I should approve, when I have --
9 particularly when I have another bidder ready to
10 participate in what the market tells us is a way to
11 get value, by letting people bid and the highest
12 bidder wins?

13 MR. SHAW: Well, Your Honor, the --

14 THE COURT: There is no way that I can
15 conceive of that I can value the rights being sold
16 based upon the fact that there has been major
17 litigation going on. But whatever value it has lies
18 in his ability to threaten people with it. How do we
19 value that except by allowing another bidder?

20 MR. SHAW: Your Honor, you have before
21 you two of the largest creditors in this courtroom.

22 THE COURT: They are also interested
23 parties.

24 MR. SHAW: Well, Google is not an
25 interested party. Google is not part of this

1 agreement.

2 THE COURT: That's right.

3 MR. SHAW: So Google is not an
4 interested party.

5 THE COURT: That's right.

6 MR. SHAW: In that sense.

7 THE COURT: Thank you.

8 MR. SHAW: And, second of all, I think
9 it's Judge Schwartz that first said to me that
10 ultimately put up or shut up in terms of bidding and
11 how you really determine the market value of an
12 asset. So I understand your statement.

13 THE COURT: Yes.

14 MR. SHAW: Many years ago he said
15 that. But there does need to --

16 THE COURT: Particularly when there
17 doesn't seem to be any other way of valuing it.

18 MR. SHAW: Well, you know, Mr. Stoller
19 values it based on how much it's going to cost to
20 make him go away. But him is not him anymore. Him
21 is the bankruptcy estate. And these rights are the
22 bankruptcy estate's. And the trustee has exercised
23 his discretion. He has brought an offer before the
24 court. And, yes, although they have not shown the
25 wherewithal to be able to pay this amount, Mr.

1 Stoller's daughter has come here with \$9100 now, late
2 to the game.

3 But under the facts and circumstances,
4 it's not always about the money. And you had asked
5 me a question, what if somebody walked in here with a
6 million dollars? You know what, if that somebody
7 walked in here with a million dollars, quite frankly,
8 if that someone walked in here with a hundred
9 thousand dollars, but that someone didn't walk in
10 here under the facts and circumstances that Mr.
11 Stoller's daughter has walked in here, and that Mr.
12 Stoller has walked in here, we would have very
13 different issues, because none of the reasons that I
14 am arguing to the court right now for denying this
15 motion would exist.

16 All of these reasons have to do with
17 the behavior of Mr. Stoller. They have to do with
18 the behavior of their client. If another person
19 walked in here and said, I didn't know, I didn't
20 know, I didn't have a good reason, I wasn't sitting
21 in court through my father or my father wasn't
22 sitting in court knowing this was going on and
23 knowing these orders were entered, my father didn't
24 fail at blowing up the sale through his other
25 litigious means --

1 THE COURT: Are you trying to say that
2 you believe that the delay was a tactical decision by
3 Mr. Stoller which his daughter has endorsed?

4 MR. SHAW: I think his daughter -- I
5 don't know if his daughter has tacitly endorsed it.
6 I think his daughter is being used as a tool. But
7 that's just my opinion. I do believe and I think it
8 would be -- I have many opinions about Mr. Stoller,
9 but I will not call him stupid. I think that
10 everything that he has done before this court is
11 calculated. And I think everything is done to
12 forestall the inevitable. And everything is done to,
13 as he states, keep the dispute going.

14 There is still a controversy. And as
15 long as he can keep this going and as long as he has
16 balls in the air in his mind he has a controversy
17 going. So, yes, I do think that it was a calculated
18 way for him to say whatever he needed to say to get
19 this hearing continued.

20 THE COURT: Normally in situations
21 like this, if a bidder comes in a few days late and I
22 decided to exercise discretion and allow them to bid,
23 the consequence would be a bidding war and the price
24 to the sale would go up. Are you asking me not to
25 permit that to happen?

1 MR. SHAW: Your Honor, yes, I am.

2 THE COURT: Because?

3 MR. SHAW: Because if this was a fair
4 bidding war under fair facts and circumstances --

5 THE COURT: What do you mean by fair?

6 MR. SHAW: It's not. Mr. Stoller has
7 made it clear that unless his daughter is the winning
8 bidder, he's going to object.

9 THE COURT: And if I approve the \$7500
10 sale, he's going to object, he's going to appeal,
11 he's going to sue.

12 MR. SHAW: Right. And if you approve
13 a \$10,000 sale to somebody besides his daughter, the
14 same is going to happen.

15 THE COURT: Yes, I know. But tell me
16 why you don't want a bidding war.

17 MR. SHAW: Because, Your Honor, it
18 rewards this litigious, bullying behavior. It puts
19 Mr. Fogel in a position where --

20 THE COURT: If his daughter wins it.
21 You're telling me you don't want a bidding war where
22 the present bidders, in effect, are going to up their
23 bid?

24 MR. SHAW: Your Honor, I think it
25 rewards the behavior if his daughter has the

1 opportunity to come in and bid.

2 THE COURT: Say again.

3 MR. SHAW: I think it rewards the
4 behavior if you grant the oral motion to reopen the
5 bidding. At that point the reward happens. And in
6 light of the fact that the beneficiaries -- there is
7 -- the beneficiaries of the higher bid, who are the
8 creditors, they are asking you to --

9 THE COURT: Stop now.

10 MR. SHAW: -- go ahead and approve it.

11 THE COURT: Okay.

12 MR. SHAW: And a trustee does have his
13 own self-interest in bringing more money into the
14 estate. I mean, trustees generally, not Mr. Fogel or
15 any other trustee in particular, but trustees do get
16 paid based on money that is distributed to creditors.
17 In this instance the trustee has made a decision that
18 it is not appropriate to reopen the bidding for many
19 reasons, I think most of which I've articulated to
20 you now.

21 THE COURT: Thank you very much.

22 MR. FACTOR: Your Honor --

23 THE COURT: Yes, sir.

24 MR. FACTOR: In rebuttal, there's a
25 few points that I wanted to make.

1 THE COURT: Rebuttal of who?

2 MR. FACTOR: In closing. Whatever we
3 call it. I would like to address the court.

4 A couple points. Two in particular.
5 One, in the Corporate Assets case I would note for
6 the court that the motion to reopen the bidding was
7 supported by the debtor, by the secured creditor and
8 by the unsecured creditors committee. And I think
9 the only party that opposed it was the frustrated
10 bidder.

11 So in this case we have got the
12 trustee, we have got the largest creditor, we have
13 got another large -- I'm not sure they've got -- I
14 don't know what their claim is, saying we don't want
15 the bidding opened. So I think factually that should
16 inform the exercise of your discretion.

17 The other point I wanted to make,
18 though, Your Honor, is that in that case the Seventh
19 Circuit identified essentially two different points
20 in the process where your discretion changes. One is
21 if the court has entered an order authorizing the
22 sale. And at that point the discretion is different.
23 You have less -- the court has less discretion. More
24 money by itself generally is not sufficient. You
25 have to show that the sale price is grossly

1 inadequate.

2 THE COURT: Authorize. Well, let's
3 assume that would be the point where I granted the
4 trustee's motion, isn't that what you mean?

5 MR. FACTOR: No. Well, what I'm
6 trying to -- the point I'm trying to make here is
7 that --

8 THE COURT: The circuit opinion was
9 talking about the moment when I authorize a sale to
10 be held and bids to be received.

11 MR. FACTOR: I agree with that
12 entirely, Your Honor. But the point I am trying to
13 make is that two weeks ago Your Honor was this close
14 to entering that order but didn't enter it.

15 THE COURT: What I announced is that
16 for reasons I found at the time the only issue
17 remaining was whether or not Mr. Stoller had a bag of
18 gold, which consisted of proof that there was value
19 to these things that --

20 MR. FACTOR: Exactly.

21 THE COURT: -- is that what you mean?

22 MR. FACTOR: Exactly. And if not for
23 Mr. Stoller's misrepresentations at that time, we
24 would have had the sale order entered two weeks ago.
25 So this also dovetails with Mr. Shaw's argument about

1 rewarding that type of conduct. Those were my only
2 two points.

3 THE COURT: Thank you, counsel.

4 MR. FACTOR: Thank you.

5 THE COURT: And counsel.

6 MR. ALEXANDER: As I started out this
7 afternoon saying, Judge, I'm new to this case, and so
8 I don't have the knowledge of what has gone on in the
9 past. But I clearly see from what I saw today that
10 Mr. Stoller has been a bad boy in this case and
11 everybody is mad at him for what he has done and he
12 has done some inappropriate things. But I would not
13 like to see the court making its final decision to
14 keep the bidding closed as somehow punishing Mr.
15 Stoller for the bad things he has done, because it's
16 not -- I mean, it is about Mr. Stoller, but it's
17 really not.

18 It is about the trustee being able to
19 get the best price. It is about my client, who is a
20 latecomer, being able to offer a higher price. The
21 threats of possible litigation I think will make no
22 difference whether we open the bidding or not. I
23 think Mr. Stoller, for better or worse, has made it
24 clear, and the court understands, whatever the
25 outcome is there is going to be more litigation.

1 So I don't think that's the thing that
2 the court needs to fear. I think what the court
3 needs to fear strictly is getting the best price.
4 The court has the discretion to open it. The
5 creditors have -- we have seen today, have no reason
6 to want to reopen because they are put -- they are
7 funding this money. So maybe they will get something
8 back, probably not. I'm sure the administration
9 expenses will take it all. So their best interest is
10 to keep the bidding closed and as low as possible.

11 I think Your Honor has discretion. I
12 think justice would be served by opening up the
13 discretion. I don't think it would foster new or
14 different litigation. I think whatever is out there
15 is already out there. Let's get the best price. As
16 Your Honor has pointed out, the only real value that
17 this trust has is what someone is willing to pay for
18 it. And the only way to find out what someone is
19 willing to pay for it is when you have two bidders
20 willing to bid on it.

21 THE COURT: Thank you.

22 Mr. Stoller, any comments?

23 MR. STOLLER: I would remind the court
24 that you told me to bring in a bag of gold if I had a
25 bag of gold. At least that's the way I understood

1 it. I brought in an offer through my daughter which
2 is more than is on the table. I think that the court
3 should entertain that offer. It would help my
4 creditors. Pure Fishing doesn't want it. You said
5 how much money they owed them. That judgment came in
6 after the bankruptcy, not before. That wasn't
7 pre-bankruptcy. That was an agreement that they
8 agreed to.

9 THE COURT: You said that the events
10 occurred pre-bankruptcy and the judgment was
11 post-bankruptcy.

12 MR. STOLLER: Right. And Pure Fishing
13 stands to benefit. I mean, they are claiming they
14 are the largest creditor, but they want to pay \$500,
15 only \$500 to Lance Johnson for the same trademark
16 they spent supposedly 950,000 to try to take from me
17 in the district court. So even though they're coming
18 in here and saying, oh, we're the biggest creditor,
19 we're willing to pay \$500 bucks -- so they are
20 benefiting from this particular sale by not opening
21 it up.

22 So I would strongly recommend to the
23 court give my daughter an opportunity to make a bid
24 for more than what's on the table, and that's what
25 it's all about in terms of bidding -- you know, you

1 shouldn't punish me because I've found someone who is
2 willing to make a bigger bid that's on the table.
3 And admittedly I'm late, and I apologize for that.
4 Had I to do it over again, I would have talked to
5 her.

6 But she has been, for the court's
7 information, diagnosed and very sick this last summer
8 with a tumor, and I haven't been able to communicate
9 very well with her. She's 1800 miles away from me in
10 Arizona. And there's cancer in my family. And we
11 believe it may be a sarcoma of some kind going into
12 her bone. So I have not been able to have much
13 communication with her in Arizona. And I was finally
14 able to communicate with her.

15 So, therefore, I brought in a better
16 offer, and that's what I thought you had suggested to
17 me to do. And I would certainly appreciate that you
18 entertain that offer.

19 THE COURT: Thank you very much.

20 I have two issues before me. One is
21 shall we let the daughter come in and bid, shall I
22 reopen the bidding, and the other is if I do not let
23 her in, should I approve the sale as recommended by
24 the trustee? The following will -- we have had a
25 number of hearings, and the following will stand as

1 my findings of fact and conclusions of law.

2 First of all, the opinion of the
3 circuit which recognized the discretion of the
4 bankruptcy court under proper conditions to reopen
5 bidding, it was a very useful and cogent opinion. In
6 that particular case parties who wanted the bidding
7 reopened included the creditors and the trustee. And
8 the winning bidder was against it. And no extraneous
9 circumstances existed which would warrant the judge
10 not to exercise discretion to reopen.

11 And the net result was more money
12 received by the estate. It is my disposition in the
13 usual case where there are no extraneous
14 circumstances which would militate against reopening
15 the bid to follow that course which would bring more
16 money into the estate.

17 In this particular case, I finished
18 the hearing on the motion and was intrigued by
19 testimony by Mr. Stoller to the effect that, number
20 one, he lacked any documents supporting his claim
21 that the products that were being sold had value;
22 and, number two, that he changed his testimony and
23 said, well, he really did have those documents.

24 He indicated he had contracts. He
25 indicated, to my understanding, that he had a real

1 basis in document form to indicate the increase in
2 value over and above, significantly over and above,
3 the value being offered by the bidder here.

4 I said at the time, I think in summary
5 form what I will repeat now, that the bidding has
6 been carried out pursuant to the procedures that I
7 authorized up to that time, and that no evidence had
8 been supplied up to that time to show me that -- to
9 justify Mr. Stoller's objection to the effect that
10 these products had great value far and above what was
11 being offered, and that if he could not show me that
12 he had documents that would reflect great value, that
13 I was ready to grant the motion at the time.

14 And I said when people objected to my
15 continuing the case for a week, because he said it
16 would take him a week to gather up the papers, I
17 said, well, if someone came in here and dropped a bag
18 of gold on the table, we would at least be
19 interested. And since he claims that he has this --
20 these documents, I think we ought to give him a few
21 days to bring them in.

22 And I asked him at the time, Mr.
23 Stoller, I said, you really sincere in telling me you
24 have these documents? He said yes. And he had told
25 us that he has contracts of settlement and the like

1 with parties that reflected great value potentially
2 to the estate.

3 I even asked him, well, what if I
4 order you to bring them in and you don't bring them
5 in? Are you so sincere about this that I ought to
6 lock you up until you bring in the documents? And I
7 don't know whether he answered that. He probably
8 wasn't sure what to say.

9 Well, he has brought in his documents,
10 so he's not in contempt of my order. But the
11 documents show two things. One, he has testified
12 falsely when he said he had contracts of settlement.
13 He does not. He has not brought them in. Two, he
14 does have some prior usage in some of these areas,
15 and he's been engaged in heavy litigation with
16 parties over the issues.

17 There is no way that I can evaluate
18 whether or not these products that the trustee wants
19 to sell have great value based upon the litigation
20 documents. We all know as lawyers that if someone
21 has been litigating with somebody over time, there
22 must be a reason why they were litigating. And it's
23 fair to speculate that there is some settlement value
24 to any case that has been litigated over time that
25 you can't swat away like a fly. But putting a dollar

1 value on that is impossible unless you put it out to
2 bid and let the market determine whether or not...

3 In this particular case, this is not a
4 real market. It is not a real market because we do
5 not have products that anybody is likely to have the
6 slightest interest in unless they already have the
7 interest in it. The parties that have the interest
8 are, first, the bidders that have grouped together to
9 make the bid, and, second, the daughter of Mr.
10 Stoller, who was interested in helping her father.

11 So it is not a market in the
12 conventional sense, in the economic sense. And there
13 is no way in which I can look at a pile of litigation
14 documents and put a value on something that has been
15 litigated over. So ordinarily, therefore, I would
16 say I really ought to let a bidder come in and let
17 them bid against each other.

18 There is one serious reason why I am
19 reluctant to do that, and that is, the hearing was
20 finished the last time, a week ago, except for this
21 extraordinary testimony by Mr. Stoller that he had
22 contracts that would reflect settlements. The
23 implication was that he could provide evidence that a
24 revenue stream was in the offing. I mean, that's
25 what I get from a contract of settlement. There is

1 money that somebody has agreed to pay. That was
2 entirely false.

3 It was based on that false
4 representation that I continued the matter one week.
5 And so the process in my court has been perverted by
6 deceptive testimony. For that reason I will not
7 allow a new bidder to come in.

8 Of course, I recognize that a father
9 and a daughter act together sometimes and the
10 daughter wants to help the father. But it is being
11 done at his request clearly, and he bought that week
12 so that he could go to his daughter and then bring in
13 some phoney offers to settle which nobody ever
14 signed, plus the litigation.

15 I have got another comment to make.
16 The parties buying this by their offer to the trustee
17 are buying it very cheap. And one of the things I
18 seriously considered was forcing them into a
19 procedure where they would have to bid more. We
20 could do that in one of two ways. One way is to
21 allow another bidder to come in, and another way
22 would be to turn down the settlement and force the
23 trustee to abandon it, which would force them to
24 rethink their financial offer.

25 The trustee clearly does not want me

1 to do that. There is a certain measure of integrity
2 of the process that the trustee is trying to defend
3 and I am too, which would make that a disturbing way
4 to proceed. But I will tell you that I think that
5 the offerors are buying -- buying out their claims
6 very cheap. I think, therefore, it is inappropriate
7 for me to reopen the bidding.

8 And I go back to the moment when I
9 finished the last hearing a week ago and found that
10 no great value had been proved by Mr. Stoller. And I
11 was prepared to grant the motion because it was the
12 only motion, the only purchase on the table. And
13 because the continuance was granted based upon false
14 testimony, I will not allow the bidding to be
15 reopened by the daughter.

16 So I am going to sign the order of
17 approval. I would like to have it presented
18 tomorrow, if that's possible, in the afternoon,
19 about --

20 MR. FOGEL: Actually, Your Honor --

21 THE COURT: Have you got one ready?

22 MR. FOGEL: -- I could provide for
23 your consideration overnight --

24 THE COURT: Well, that's tomorrow.

25 MR. FOGEL: I understand. I would

1 like to give it to you now.

2 THE COURT: Okay.

3 MR. FOGEL: So I don't have to come
4 back tomorrow.

5 THE COURT: Is it a big order?

6 MR. FOGEL: No, sir.

7 THE COURT: It should be about one
8 page.

9 MR. FOGEL: No, Your Honor. There's
10 findings of fact and conclusions of law in connection
11 with any sale order. There was a proposed order
12 attached to the motion.

13 THE COURT: I understand you want
14 amplified findings and conclusions.

15 MR. FOGEL: No, sir. I want basically
16 the order that was attached to the motion, which
17 because of the delay now has different dates on it.

18 THE COURT: Right.

19 MR. FOGEL: And I have for your
20 consideration a typical sale order in a format that
21 you have entered in other bankruptcy cases.

22 THE COURT: Okay.

23 MR. FOGEL: I have black-lined it so
24 you can see the changes to the original order.

25 THE COURT: How about coming back --

1 MR. FOGEL: If you want to make any
2 changes to it --

3 THE COURT: Do you want me to sit
4 tomorrow about 2:00 o'clock and see if we can put
5 this to bed?

6 MR. FOGEL: Yes, sir.

7 THE COURT: I will read this stuff
8 overnight.

9 MR. FOGEL: Yes, sir.

10 THE COURT: Have you got copies for
11 Mr. Stoller?

12 MR. FOGEL: I can give Mr. Stoller a
13 copy, yes, sir.

14 THE COURT: Thank you.

15 MR. FOGEL: I'm giving him a clean
16 copy and a black-lined copy.

17 THE COURT: Mr. Stoller, please
18 withdraw all your exhibits here, please. Take them
19 away.

20 All right, folks, I will see you about
21 2:00 o'clockish. Let me think --

22 MR. FOGEL: Your Honor, there is a
23 yellow stripe through tomorrow.

24 THE COURT: What did you say?

25 MR. FOGEL: There is a yellow stripe

1 through tomorrow.

2 MR. SHAW: It's Chapter 13 day.

3 THE COURT: That's right. That's a
4 day that you probably want to stay away from, but in
5 the afternoon --

6 MR. FOGEL: I don't want to wait until
7 the 16th.

8 THE COURT: Well, 3:00 o'clock
9 tomorrow. I have got a setting in a non-13 case at
10 2:00 o'clock. I suspect I will be ready at 3:00.

11 MR. FOGEL: I will see you at 3:00.

12 MR. STOLLER: Judge, I want to just
13 put the court on notice I am going to file an appeal
14 of your order.

15 THE COURT: May I suggest you wait
16 filing it until I've signed it, but I expect I will
17 sign it tomorrow.

18 Mr. Stoller. Pardon me, Mr. Fogel, in
19 the findings, you want me in the findings to make
20 reference to the oral findings I just made?

21 MR. SHAW: Yes.

22 MR. FOGEL: Yes. And I did not
23 incorporate findings in this order.

24 THE COURT: Do you want me to? I can
25 do that.

1 MR. FOGEL: Yes. Yes.

2 THE COURT: Okay. What was the last
3 date we were up?

4 MR. FOGEL: We were here on July 24
5 for the original hearing, Judge.

6 THE COURT: Okay. Thank you.

7 Counsel for the daughter, thank you
8 very much for coming. Thank you for your patience.
9 I'm sorry it took so long.

10 MR. ALEXANDER: Thank you.

11 (Which were all the proceedings had in
12 the above-entitled cause, August 7,
13 2007, 11:00 a.m.)

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