

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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

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

FILED

MAY 16 2007
MAY 16 2007

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

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

NOTICE OF FILING

TO: Michael T. Zeller
Quinn, Emanuel, Urquhart,
Oliver & Hedges, LLP.
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
William J. Barrett
Barack, Ferrazzano, Kirschbaum,
Perlman & Nagelberg, LLP.
333 W. Wacker Drive, Suite 2700
Chicago, Illinois 60606

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

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

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

Leo Stoller

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



**Certificate of Mailing**

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

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

*Leo Stoller*

Leo Stoller

Date: May 16, 2007

**Certificate of Service**

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

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

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

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

*Leo Stoller*

Leo Stoller

Date: 5-16-07



### CERTIFICATE OF SERVICE

I, William J. Barrett, certify that on August 18, 2006, I caused to be served on the parties on the following Service List, via messenger or overnight courier, as indicated, a copy of the foregoing Notice of Motion and Motion of Google Inc. for Order Declaring Proposed Suit to be Outside Scope of Stay or, in the Alternative, Modifying Stay.

/s/ William J. Barrett

William J. Barrett

### SERVICE LIST

Richard N. Golding, Esq.  
Weinberg Richmond LLP  
333 West Wacker Drive  
Suite 1800  
Chicago, IL 60606  
Counsel for Debtor  
*Via Messenger*

Mr. Leo Stoller  
7300 West Fullerton  
Elmwood Park, IL 60707  
*Via UPS Overnight Courier*  
*Saturday Delivery*

Lance G. Johnson, Esq.  
Roystone, Abrams, Berdo & Goodman LLP  
1300 19<sup>th</sup> Street, NW  
Suite 600  
Washington, DC 20036  
Counsel for Pure Fishing, Inc.  
*Via UPS Overnight Courier*  
*Saturday Delivery*

James Griffith, Esq.  
McDermott Will & Emery  
227 West Monroe  
Chicago, IL 60606  
*Via Messenger*

Melvin J. Kaplan, Esq.  
Melvin J. Kaplan & Associates  
14 East Jackson Boulevard  
Suite 1200  
Chicago, IL 60604  
*Via Messenger*

Sara E. Lorber, Esq.  
Seyfarth Shaw LLP  
55 East Monroe Street  
Suite 4200  
Chicago, IL 60603  
Counsel for Pure Fishing, Inc.  
*Via Messenger*

Tom Vaughn  
Attn: Mark Wheeler, Esq.  
200 South Michigan Avenue  
Suite 1300  
Chicago, IL 60604  
Chapter 13 Trustee  
*Via Messenger*

Mr. William Neary  
Office of the U.S. Trustee  
227 West Monroe Street  
Suite 3350  
Chicago, IL 60606  
*Via Messenger*

**Mailing Information for Case 05-64075**

**Electronic Mail Notice List**

The following is the list of attorneys who are currently on the list to receive e-mail notices for this case:

- **William J Factor**  
wfactor@seyfarth.com
  
- **Richard N Golding**  
rgolding@wr-llp.com
  
- **Melvin J Kaplan**  
grodriguez@financialrelief.com
  
- **Sara E Lorber**  
slorber@seyfarth.com
  
- **Wendy R. Morgan**  
wrm@lawyer.com

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

In re: ) Case No. 05 B 64075  
) Chapter 13  
LEO STOLLER, )  
)  
Debtor. ) Hon. Jack B. Schmetterer  
)  
) Presentment Date: August 23, 2006  
) Presentment Time: 9:30 a.m.

**MOTION OF GOOGLE INC. FOR ORDER DECLARING PROPOSED SUIT  
TO BE OUTSIDE SCOPE OF STAY OR, IN THE ALTERNATIVE, MODIFYING STAY**

Google Inc. ("Google") respectfully requests that the Court declare that its anticipated lawsuit (the "Proposed Action") against Leo Stoller ("Stoller" or "Debtor"), Central Mfg. Inc. ("Central Mfg.") and Stealth Industries, Inc. ("Stealth") is outside the scope of the automatic stay under Section 362(d) of the United States Bankruptcy Code (11 U.S.C. § 362(d)) or, in the alternative, that the Court modify the stay for cause to allow Google to proceed with its Proposed Action. In support of its requested relief, Google states and alleges as follows.

**Preliminary Statement**

1. As explained in Google's Complaint for the Proposed Action,<sup>1</sup> Debtor, Central Mfg. and Stealth are engaged in a pattern of illegal conduct that targets Google. Google has no alternative but to file suit to put a stop to it. Among other things, Debtor, Central Mfg. and Stealth have been fraudulently holding themselves out as variously named "Google" entities, including through the use of fabricated commercial documents such as company letterhead. They also continue to falsely claim in advertising materials that they own rights to, and offer for license to third parties, the GOOGLE mark and falsely assert that they indeed have even cancelled Google's federal trademark registration for the GOOGLE mark. This is despite the fact that not only have Google's federal registrations for GOOGLE not been cancelled, but the Trademark Trial and Appeal Board ("TTAB") has found Debtor's and his companies' claims of ownership to the GOOGLE mark to be wholly groundless and to have been made for the

<sup>1</sup> A copy of the Complaint for the Proposed Action (the "Complaint") is attached as Exhibit 1 to the Declaration of Michael T. Zeller, dated August 17, 2006 and filed concurrently herewith ("Zeller Dec. ").

"improper purpos[e]" of seeking to "harass" Google as well as many others "to pay [Debtor] to avoid litigation or to license one of the marks in which [Debtor] assert[s] a baseless claim of rights."<sup>2</sup> The ongoing acts by Debtor, Central Mfg. and Stealth constitute false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.*, and unfair competition. It is for this conduct, as set forth in the Complaint, that Google proposes to sue Debtor, Central Mfg. and Stealth for injunctive and monetary relief.

2. Google respectfully asks the Court to declare that the automatic stay is not applicable to its Proposed Action under Section 362(a) because the Proposed Action was not and could not have been commenced before the Petition Date. Debtor filed in this Court a voluntary petition for relief under Chapter 13 of the Bankruptcy Code (the "Petition") on December 20, 2005 (the "Petition Date"). The acts alleged in the Proposed Action to constitute false advertising occurred entirely after the Petition Date and thus could not have been the subject of a claim by Google prior to that time. Likewise, Google could not have brought its RICO claim before the Petition Date since it did not arise until later for the independent reasons that (1) Google did not begin suffering damage until after the Petition Date and (2) the second predicate act necessary to establish a RICO claim occurred post-Petition. Under these circumstances, Google's claims are considered post-Petition and thus not subject to the automatic stay.<sup>3</sup> Furthermore, even apart from the post-Petition accrual of Google's claims, Debtor, Central Mfg. and Stealth all have taken the position that Section 362's automatic stay does not apply to entities such as Central Mfg. and Stealth. Thus, there could be no dispute here that the Proposed Action can commence against Central Mfg. and Stealth notwithstanding the automatic stay.

3. In the alternative, in the event that the Court believes the automatic stay applies to the Proposed Action in whole or in part, there is "cause" under Section 362(d)(1) to modify any such stay so that Google can proceed. Neither fairness nor law justify allowing Debtor to continue to damage Google with impunity. The purpose of the Bankruptcy Code is to protect the innocent, yet unfortunate, debtor. Debtor in this case is neither, and clearly the automatic stay is not designed to provide Debtor with a safe haven for his continuing fraudulent conduct and

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<sup>2</sup> For this reason, as discussed below, TTAB recently dismissed outright a sham legal proceeding that Debtor and Central Mfg. had brought against Google.

<sup>3</sup> The Complaint for the Proposed Action does discuss certain pre-Petition acts, but as explained further below that does not mean Google's claims accrued then.



racketeering activities. Indeed, as the Court is aware, such misdeeds by Debtor, Central Mfg. and Stealth are unfortunately not an isolated episode, but an extension of their extortion racket that numerous judges in this Circuit and District have condemned. In short, because Google will continue to be irreparably damaged if the Proposed Action is delayed, whereas Debtor will not suffer any cognizable harm if he is forced to account for and cease his unlawful activities against Google, the equities strongly favor allowing Google to proceed with its Proposed Action. Debtor also brought his Petition in bad faith, which further supports any necessary modification of the stay.

#### Jurisdiction and Venue

4. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1334(a) and (b) and 157(a). This motion is a "core proceeding" in which the Court is entitled to enter a final order under 28 U.S.C. §§ 1334 and 157(b)(2)(G), 11 U.S.C. § 362(d) and Bankruptcy Rules 4001 and 9014. *In re Benalcazar*, 283 B.R. 514, 521-22 (Bankr. N.D. Ill. 2002).

5. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1408 and 1409.

#### Argument

### I. THE PROPOSED ACTION IS NOT SUBJECT TO THE AUTOMATIC STAY.

#### A. Because Google's Claims Accrued After The Petition Date, They Could Not Have Been Brought Pre-Petition And Are Not Within The Scope Of The Automatic Stay.

6. 11 U.S.C. § 362 defines the scope of the automatic stay. By its terms, Section 362(a)(1) states in relevant part that it prohibits "the commencement . . . of a judicial . . . action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." Accordingly, claims that arise after the filing of a bankruptcy petition are not subject to this automatic stay provision. *E.g.*, *In re Anderson*, 23 B.R. 174, 175 (Bankr. N.D. Ill. 1982) ("The automatic stay provisions of Section 362(a)(1), (5), (6) and (7) have been held to be inapplicable to proceedings commenced after the filing of the Chapter 13 proceedings."); *see also Bellini Imports, Ltd v. The Mason & Dixon Lines, Inc.*, 944 F.2d 199, 201 (4th Cir. 1991); *In re Gull Air, Inc.*, 890 F.2d 1255, 1263 (1st Cir. 1989) ("proceedings or claims arising post-petition are not subject to the automatic stay."); *In re M. Frenville Co.*, 744 F.2d 332, 335 (3d Cir. 1984) ("[o]nly proceedings that could have been

commenced or claims that arose before the filing of the bankruptcy petitions are automatically stayed"); *In re Koop*, 2002 WL 1046700, at \*3 (Bankr. N.D. Ill. May 23, 2002).

7. Google's claims in the Proposed Action accrued after the Petition Date and thus are not within the scope of the automatic stay. Each claim is discussed in turn below.

1. **Google's False Advertising Claim Arose Post-Petition.**

8. Count I of the Complaint asserts against Debtor, Central Mfg. and Stealth a claim for false advertising under the Lanham Act. As 15 U.S.C. § 1125(a)(1)(B) states in pertinent part that "[a]ny person" who "in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."

9. As set forth in the Complaint for the Proposed Action, Debtor, Central Mfg. and Stealth have made such false and misleading representations in their advertising and promotional materials. Each of those operative acts also occurred after the Petition Date. More specifically, the unlawful acts of false advertising alleged in the Proposed Action are:

(a) Beginning on or about April 20, 2006 and continuing through the present, Debtor, Central Mfg. and Stealth have falsely represented on the commercial rentmark.blogspot.com web site that "STOLLER CANCELS THE GOOGLE TRADEMARK." (Complaint, ¶ 42(c) & Exh. P thereto).

(b) This was followed shortly, beginning on or about April 28, 2006 and continuing through the present, by the dissemination of false advertisements by Debtor and Stealth on the commercial rentamark.com web site that "GOOGLE" was, and remains, among the marks that they purport to "own and control" and purport to offer for licensing to third parties. (*Id.*, ¶ 40 & Exh. M thereto).

(c) Also beginning on or about April 20, 2006 and through the present, Debtor, Central Mfg. and Stealth have falsely represented on the commercial rentmark.blogspot.com web site that "Stoller has thus far prevailed in over 90% of its [*sic*] police actions against third party infringers. Companies like Wal-Mart, K-Mart and hundreds of other well known American companies have acknowledged Stoller's superior rights to its [*sic*] marks as a result of trademark litigation." (*Id.*, ¶ 42(b) & Exh. P thereto). Beginning on or about June 16, 2006 and continuing through the present, Debtor, Central Mfg. and Stealth also have been falsely representing on the

commercial [www.rentmark.blogspot.com](http://www.rentmark.blogspot.com) web site that "Leo Stoller has participated in over 200 inter party [*sic*] proceedings over 25 years prevailing in [*sic*] over 95% of the time and over 60 district court trademark cases." (*Id.*, ¶ 42(d) & Exh. Q thereto).

10. Because Google could not have sued for false advertising until Debtor, Central Mfg. and Stealth began disseminating these false representations in or after April 2006 in a manner that was calculated to damage Google -- well after the Petition Date -- there can be no question that Google's claim in Count I is not subject to the automatic stay of Section 362(a)(1). *See Keller Medical Specialties Products v. Armstrong Medical Indus., Inc.*, 1992 WL 390733, at \*3-4 (N.D. Ill. 1992) (Lanham Act cause of action arises when plaintiff discovers injury from act of defendant).

**2. Google's RICO Claim Accrued Post-Petition.**

11. Count II of the Complaint for the Proposed Action alleges RICO violations by Debtor, Central Mfg. and Stealth. RICO makes unlawful the operation of an "enterprise" by means of a "pattern" of racketeering activity. 18 U.S.C. § 1962(a)-(d). As the Seventh Circuit has held, the elements of a civil RICO claim are "1) a violation of the RICO statute, including proof that the defendant has participated in a pattern of racketeering, and 2) an injury to business or property." *McCool v. Strata Oil Co.*, 972 F.2d 1452, 1464 (7th Cir. 1992). Accordingly, a RICO claim accrues "when the plaintiff discovers her injury, even if she has not yet discovered the pattern of racketeering." *Id.* at 1465. Moreover, "[t]here must, of course, be a pattern of racketeering before the plaintiff's RICO claim accrues, and this requirement might delay accrual until after the plaintiff discovers her injury." *Id.* "Racketeering" activity is any of a number of "predicate" offenses specified in 18 U.S.C. § 1961(a), which pertinent here include mail fraud, wire fraud and violation of state extortion laws. "A 'pattern' is (loosely) defined as 'at least two acts of racketeering activity . . . the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity.'" *McCool*, 972 F.2d at 1464 (quoting 18 U.S.C. § 1961(5)).

12. The Complaint for the Proposed Action asserts the following predicate racketeering acts by Debtor, Central Mfg. and Stealth:

(a) Acts And Threats Involving Extortion. The Complaint alleges as predicate acts that Debtor, Central Mfg. and Stealth engaged in extortion which is chargeable under State law and punishable by imprisonment for more than one year as set forth in 18 U.S.C. § 1961(1).

These include: (i) their November 29, 2005 letter from a bogus entity called "GOOGLE BRAND PRODUCTS & SERVICES" that contained threats to bring sham legal proceedings and to otherwise harass Google unless it paid them \$100,000 or else ceased use of the GOOGLE mark in connection with Google's business (Complaint, ¶ 44(a) & Exh. I thereto);<sup>4</sup> (ii) their subsequent initiation, on March 1, 2006, of sham legal proceedings against Google in TTAB, which TTAB subsequently dismissed because it was predicated on a claim of right to the "Google" mark by Debtor and Central Mfg. that was "baseless" (*id.*, ¶¶ 28(a), 41(b) & Exhs. E, N thereto); (iii) their February 9, 2006 email threatening to publicize their groundless allegations, which they claimed would mean "Google's stock won't be worth \$5.00 a share" and would result in "the total destruction" of Google (*id.*, ¶ 44(c) & Exh. R thereto); (iv) their March 2, 2006 email again threatening to publicize their allegations with the avowed intention of "driv[ing] down Google stock price" (*id.*, ¶ 44(d) & Exh. S thereto); and (v) their email of March 31, 2006 which threatened to "refe[r]" Plaintiff's executives "to the US Attorney for a perjury charge should they lie under oath." (*Id.*, ¶ 44(b) & Exh. O thereto).

(b) Acts Involving Wire And Mail Fraud. The Complaint also alleges predicate acts of wire and mail fraud by Debtor, Central Mfg. and Stealth. *See* 18 U.S.C. §§ 2, 1341 & 1343. These include: (i) their November 29, 2005 letter described above and its attachments (*id.*, ¶ 40 & Exh. I thereto); (ii) their sham legal proceedings in TTAB described above (*id.*, ¶¶ 28(a), 41(b) & Exhs. E, N thereto); (iii) the March 31, 2006 email from Debtor touting its supposed litigation success statistics (*id.*, ¶ 44(b) & Exh. O thereto); (iii) their multiple fraudulent mail and wire communications in or about April 2006 purporting to be from a bogus business entity variously called "GOOGLE LICENSING [*sic*]" and "GOOGLE™ BRAND TRADEMARK LICENSING" (*id.*, ¶¶ 38-39 & Exhs. J-L thereto); and (iv) their fraudulent statements beginning on or about April 28, 2006 and through the present that Debtor and Stealth "own and control," and license to third parties, the "GOOGLE" mark (*id.*, ¶ 40 & Exh. M thereto).

13. As is evident from these dates and the law cited above, Google's RICO claim did not arise until after the December 20, 2005 Petition Date. Although the proposed defendants' letter dated November 29, 2005 does qualify as their first predicate act, Google plainly could not have sued for their violation of RICO at that time for at least two, separate reasons.

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<sup>4</sup> Also according to the letter, this purported company had been operating "SINCE 1981." *See* Exh. I to Complaint (capitalization in original).

14. First, merely because the first RICO predicate act targeting Google occurred by letter dated November 29, 2005 -- shortly before the Petition Date -- does not in itself render the RICO claim pre-petition. See *Anderson*, 23 B.R. at 175 (post-petition breach of contract deemed to be outside scope of automatic stay even though contract was executed pre-petition; "[t]he fact that a contract was executed among the parties" pre-petition "is not sufficient basis to hold that the claim arose prior to the filing."); see also *In re M. Frenville Co.*, 744 F.2d at 335 ("Pre-petition acts by a debtor, by themselves, are not sufficient to cause the automatic stay to apply."). Under the law, Google's RICO claim did not accrue until it had discovered its injury. *McCool*, 972 F.2d at 1465. In this case, that did not occur until the very earliest (even as to the first predicate act consisting of the November 29, 2005 letter) until approximately January 12, 2006 when Google was forced to begin incurring out-of-pocket fees and costs in order to initially investigate the representations set forth in the letter and when Google subsequently ascertained they were false by approximately January 26, 2006. Because Google's discovery of its injury was after the Petition Date, Google's RICO claim could not have been brought before then and is not subject to the automatic stay.

15. Second, and independently, Google's RICO claim could not have accrued before the Petition Date because "[t]here must, of course, be a pattern of racketeering before the plaintiff's RICO claim accrues, and this requirement might delay accrual until after the plaintiff discovers her injury." *McCool*, 972 F.2d at 1465. Put differently, Google could not have sued on its RICO claim until (at a minimum) the second predicate act occurred. See *id.*; see also *Bygrave v. Van Reken*, 238 F.3d 419, 2000 WL 1769587, at \*4 (6th Cir. 2000) (unpublished disposition) (plaintiff "had no viable RICO claim at that time, because no second predicate act had yet occurred."); *Matthews v. Kidder, Peabody & Company, Inc.*, 2000 WL 33726916, at \*13 (W.D. Pa. Aug. 18, 2000) ("Since the pattern requirement of a RICO claim depends on the commission of two or more predicate acts, a cause of action in that case would not accrue until the occurrence of the second act"); *Foling v. K. Hovnanian Enterprises*, 99 F. Supp. 2d 502, 510-11 (D.N.J. 2000) (same, and noting that second predicate act is "necessary to establish the pattern"). As such, because the second predicate act did not occur until the February 9, 2006 email, Google again could not have commenced suit on its RICO claim before the Petition Date

and the automatic stay does not apply to Google's RICO claim for this further, dispositive reason.<sup>5</sup>

3. **Google's Unfair Competition Claim Arose Post-Petition.**

16. Count III of the Complaint for the Proposed Action is an unfair competition claim against Debtor, Central Mfg. and Stealth. The acts of unfair competition alleged in the Complaint are those previously described above. (*See* Complaint, ¶¶ 59-60.)

17. An unfair competition claim does not arise until, *inter alia*, the plaintiff discovers its injury. *E.g., Highsmith v. Chrysler Credit Corp.*, 18 F.3d 434, 441 (7th Cir. 1994) (unfair competition claim "accrues when the plaintiff 'knows or reasonably should know of his injury and also knows or reasonably should know that it was wrongfully caused.'" (quoting and citing *Knox College v. Celotex Corp.*, 88 Ill.2d 407, 415, 430 N.E.2d 976, 980 (1981) and *Midland Management Corp. v. Computer Consoles Inc.*, 837 F. Supp. 886 (N.D. Ill. 1993) (Posner, J., sitting by designation))).

18. As discussed above, Google discovered that it had been injured after the Petition Date. Thus, Google's unfair competition claim likewise arose after the Petition Date and is not subject to the automatic bankruptcy stay.

B. **Debtor Himself Has Asserted In Other Litigation That The Automatic Stay Does Not Apply To Central Mfg. Or Stealth.**

19. Debtor cannot dispute that the Proposed Action should be allowed to proceed against Central Mfg. and Stealth. He himself, along with Central Mfg. and Stealth, asserted in the *Pure Fishing* action earlier this year that the automatic bankruptcy stay did not apply at all to either Central Mfg. or Stealth:

[I]t is clear from a plain reading of § 362(a) that the automatic stay applies only to the bankrupt party. 11 U.S.C. § 362(a)(1); *see also, Lee v. RCN Corp.*, 2004 U.S. Dist. LEXIS 18941 (N.D. Ill. 2004) (citing *Fox Valley Constr. Workers v. Pride of the Fox Masonry*, 140 F.3d 61, 666 [*sic*] (7th Cir. 1998)). This comports with the overall purpose

<sup>5</sup> As the discussion above makes clear, even though the Complaint does allege various other pre-Petition Date acts by Debtor and others (including some as early as the 1990 time period), those allegations do not transmogrify Google's claims into pre-petition ones. They are included to prove such matters as the proposed defendants' fraudulent intent and lack of mistake and, furthermore, to establish such matters as continuity and relationship as part of the later pattern of RICO predicate acts that targeted Google. To state the obvious, Google could not have sued Debtor, Central Mfg. and Stealth under any plausible scenario for RICO violations until it was injured by their misconduct and then discovered its injury beginning in January 2006 and until they committed their second predicate act in February 2006.

of the statute since that particular section was not designed to afford collateral benefits to non-bankrupt parties involved in litigation with the debtor as party defendants or as co-defendants. *Id.* In fact, the overwhelming majority of courts have held that the lawsuit is only stayed as to the bankrupt party and not as to the non-bankrupt co-defendants. *In re Richard B. Vance & Co.*, 289 B.R. 692, 696-97 (citing, *inter alia*, *Pitts v. Unarco Industries*, 698 F.2d 313 (7th Cir. 1983); *Sav-a-Trip, Inc. v. Belfort*, 164 F.3d 1137 (8th Cir. 1999); *In re Miller*, 262 B.R. 499 (9th Cir. BAP 2001); *Lukas, Nace, Gutierrez & Sachs, Chartered v. Havens*, 245 B.R. 180 (D.D.C. 2000)).<sup>6</sup>

20. Having persuaded Judge Lindenberg that the automatic stay did not apply to Central Mfg. or Stealth,<sup>7</sup> Debtor cannot take a contrary tact here without running afoul of the doctrine of judicial estoppel. *Johnson v. ExxonMobil Corp.*, 426 F.3d 887, 891 (7th Cir. 2005) ("The doctrine of judicial estoppel prevents a party from adopting a position in a legal proceeding contrary to a position successfully argued in an earlier legal proceeding."); *see also Cannon-Stokes v. Potter*, -- F.3d --, 2006 WL 1816010, at \*1-2 (7th Cir. July 5, 2006) (applying judicial estoppel to bar inconsistent claim).

**II. IN THE ALTERNATIVE, THERE IS CAUSE FOR MODIFYING THE STAY TO ALLOW GOOGLE TO PROCEED WITH THE PROPOSED ACTION.**

21. In the alternative, should the Court decide that the automatic stay applies to the Proposed Action in whole or in part, Google respectfully submits that the Court should modify any such stay for cause so as to allow it to file and proceed with the Proposed Action.

22. Section 362(d)(1) permits the Court to modify the Bankruptcy Code's automatic stay provisions for "cause." Whether cause exists so as to permit a lawsuit to commence or proceed in another court involves balancing the costs and benefits of maintaining a stay, and discretionary relief from the stay "is determined on a case-by-case basis." *In re Fernstrom Storage & Van Co.*, 938 F.2d 731, 735 (7th Cir. 1991); *see also In re Benalcazar*, 283 B.R. at 535-36. The Seventh Circuit has adopted a three-prong "balancing of the equities" analysis to guide this determination: (1) whether any great prejudice will result to the debtor or the bankruptcy estate if the stay is modified; (2) whether the hardship to the movant if the stay is not

<sup>6</sup> Counter-Defendants' Response in Opposition to Counter-Plaintiffs' Brief Captioned as "Response to December 20, 2005 Order," at page 2, attached as Exhibit 2 to the Zeller Dec.

<sup>7</sup> Zeller Dec., Exh. 3. As the Order shows, Judge Lindenberg agreed the automatic stay did not apply to parties other than Debtor, but decided to stay the civil action as against the entity co-defendants as a discretionary matter. *Id.*

lifted considerably outweighs the hardship of the debtor; and (3) whether the movant has a likelihood of prevailing on the merits. *Fernstrom*, 938 F.2d at 735.

23. These factors heavily favor allowing Google to proceed with its Proposed Action. Given the position he took in the *Pure Fishing* case, Debtor cannot argue that Central Mfg. or Stealth are subject to the automatic stay and thus cannot rely on any alleged prejudice to those entities if the Proposed Action were to proceed.<sup>8</sup> Nor can Debtor plausibly claim that he will suffer any cognizable prejudice or that the Proposed Action would interfere with this proceeding. While he undoubtedly will have to defend himself in the Proposed Action, that burden cannot be seriously regarded as prejudicial, particularly for someone who touts himself as a professional, full-time litigant and has been responsible for filing dozens of lawsuits in this District alone. *E.g., In re A Partners, LLC*, -- B.R. --, 2006 WL 1593954, at \* 10 (Bankr. E.D. Cal. June 5, 2006) (in Chapter 11 case, noting that while lifting stay for cause to allow foreclosure would "interfere with" debtor's "financial affairs, that does not mean that the granting of relief [from the stay to the movant] will interfere with this bankruptcy in any way that the court could find to be inappropriate."). Furthermore, since Debtor is the one who chose to intentionally target Google for extortion and fraud -- as TTAB already has found as discussed below -- Debtor should not be allowed to escape the consequences of his actions. The purpose of the Bankruptcy Code is to protect the innocent, yet unfortunate, debtor. Debtor here is neither. Fairness and equity in no way would justify allowing Debtor to continue to damage Google and its shareholders with impunity, and the automatic stay clearly is not designed to provide him with a safe haven for his continuing fraudulent conduct and racketeering activities. Permitting Google to seek judicial relief to put an end to Debtor's on-going misconduct would not result in prejudice, but in justice.

24. Conversely, if forced to delay securing relief and vindicating its rights, Google would suffer hardship that far outweighs any legitimate interest Debtor could invoke. Debtor's deliberate, on-going false advertising alone constitutes irreparable harm because his misrepresentations damage Google's reputation, just as Debtor has indicated is his avowed intent. *Castrol, Inc. v. Quaker State Corp.*, 977 F.2d 57, 62 (2d Cir. 1992) (irreparable harm presumed where literally false advertisement mentions plaintiff or its product by name); *Abbott Laboratories v. Mead Johnson & Co.*, 971 F.2d 6, 16 (7th Cir. 1992) (noting in false advertising

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<sup>8</sup> Moreover, there could be no equitable considerations favoring delay in proceeding against Central Mfg. or Stealth since "the 'fresh start' concept does not apply to corporate debtors." *In re Pettibone Corp.*, 151 B.R. 166, 174 (Bankr. N.D. Ill. 1993).



case the "well-established presumption that injuries arising from Lanham Act violations are irreparable, even absent a showing of business loss."). Debtor's continuing dissemination of false statements about his alleged ownership of the GOOGLE mark and his claims to be operating various bogus "Google" entities threatens to deceive the unsuspecting public as well.

25. Similarly, the "congressional objective" in enacting RICO was to "encourag[e] civil litigation to supplement Government efforts to deter and penalize . . . prohibited practices. The object of civil RICO is thus not merely to compensate victims but to turn them into prosecutors, 'private attorneys general,' dedicated to eliminating racketeering activity." *Rotella v. Wood*, 528 U.S. 549, 557 (2000). The longer Google is delayed in bringing its RICO claim, the longer this interest is thwarted and the greater Google is damaged. In this regard, Debtor has threatened, in violation of state criminal extortion laws, to "drive down Google stock price" and bring about the "total destruction" of Google unless he is paid his protection money. Having made those dire threats, Debtor can scarcely contest that Google would potentially suffer significant prejudice and hardship if it is precluded from bringing its Proposed Action.

26. Google's likelihood of success also weighs in favor of finding that "cause" exists to modify any applicable automatic stay. The Complaint sets forth in detail the facts -- supported by documentary evidence -- giving rise to Google's claims. Many of those facts are beyond dispute. As one example, the claims by the proposed defendants that they own rights to the "Google" mark, and the materials fabricated by Debtor, Central Mfg. and Stealth to misrepresent themselves as variously named "Google" entities, are unquestionably fraudulent. Indeed, while there is abundant evidence to establish this, suffice it to say that TTAB already has so found. Thus, in its Order dated July 14, 2006, TTAB deemed the proposed defendants' assertions of rights to some 1800 marks that they had claimed in legal proceedings before TTAB -- which include their claim of right to the "Google" mark -- to be groundless and made "for improper purposes, namely, to harass the applicants to pay you to avoid litigation or to license one of the marks in which you assert a baseless claim of rights."<sup>9</sup> For those violations -- which TTAB stated rose to the level of "egregious" misconduct -- TTAB imposed an array of sanctions, including the subsequent dismissal of an opposition proceeding that Debtor and Central Mfg. had brought against Google in TTAB.<sup>10</sup> And, further eliminating any doubt that the proposed

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<sup>9</sup> A copy of TTAB's July 14, 2006 Order is attached as Exhibit E to the Complaint.

<sup>10</sup> A copy of the TTAB's dismissal Order is attached as Exhibit N to the Complaint.

defendants' claims of right are false, Debtor's own filings in this Chapter 13 proceeding and in his 1998 bankruptcy case conspicuously fail to disclose any interest in any entity called "Google," even though Debtor has claimed that this purported business entity has been in operation "SINCE 1981." To cite another example, Debtor's own advertising materials assert that "STOLLER CANCELS THE GOOGLE TRADEMARK." Not only is this an unambiguously false statement, but it is no coincidence that he publicly disseminated it starting on April 20, 2006, only days before announcing -- also falsely -- that Debtor and Stealth "own and control" the "GOOGLE" mark and proclaiming that they have the right to license it to third parties for a fee. And, as for Debtor's representations that it has prevailed in "over 90%" or "over 95%" of its legal actions or obtained settlements from "99%" of those companies and individuals Defendants have targeted, one Court recently has pointed out their falsity in blunt terms: "[n]o Court has ever found infringement of any trademark allegedly held by Stoller or his related companies in any reported opinion."<sup>11</sup>

27. Further confirming the likelihood of Google's success on the merits is the long, irrefutable string of Court decisions condemning the pattern of similar misdeeds perpetrated by Debtor, Central Mfg. and Stealth. Although the Complaint identifies additional instances of the numerous Court and TTAB decisions against the proposed defendants for their false claims of right to trademarks they do not own, their use of bogus corporate identities and their efforts at extortion, the following are particularly pertinent here:

(a) In *S Industries, Inc. v. Centra 2000, Inc.*, 249 F.3d 625, 627-29 (7th Cir. 2001), the Seventh Circuit found that Debtor and his company's assertion of trademark rights was legally groundless and affirmed an award of attorneys' fees against them for filing "meritless claims" and engaging in other litigation misconduct, which the Seventh Circuit found was part of a "pattern of abusive and improper litigation with which the company and Lee Stoller, its sole shareholder, have burdened the courts of this circuit."

(b) Even more recently, in *Central Mfg. Co. v. Brett*, No. 04 C 3049 (N.D. Ill) (Coar, J.), the Court ruled that Central Mfg. and Debtor lacked the trademark rights they had claimed.<sup>12</sup> It further observed that "Stoller appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation" and recited the findings by "several courts in this

<sup>11</sup> See Order of September 30, 2005, *Central Mfg. Co. v. Brett*, No. 04 C 3049 (N.D. Ill) (Coar, J.), at page 2, copy attached as Exhibit 4 to the Zeller Dec.

<sup>12</sup> A copy of the Court's Order is attached as Exhibit 4 to the Zeller Dec.

district" that Debtor and Central Mfg. are "engage[d] in a pattern and practice of harassing legitimate actors for the purpose extracting a settlement amount." In this regard, the Court noted that "[t]he sheer number of cases" that Defendants here "have filed in this district raises serious questions" about the "good faith" of Defendants and their counsel. Further, the Court found that the terms of the "settlement agreements" which Debtor and Central Mfg. alleged evidenced their trademark rights in fact confirmed that they had "engage[d] in a pattern and practice of harassing legitimate actors for the purpose of extracting a settlement amount. The judicial system is not to be used as an aid in such deliberate, malicious, and fraudulent conduct." Finding that "Leo Stoller and his companies present paradigmatic examples of litigants in the business of bringing oppressive litigation designed to extract settlement," and that they also had offered "questionable, and seemingly fantastical documents" and "inconsistent, uncorroborated, or arguably false testimony," the Court ordered them to pay an award of attorneys' fees.

(c) In *Central Mfg. Co. v. Pure Fishing, Inc.*, No. 05 C 725 (N.D. Ill) (Lindenberg, J.), the Court entered judgment against Debtor and Central Mfg. as a sanction for their abuse of the legal process.<sup>13</sup> In doing so, the Court observed that Debtor "has earned a reputation for initiating spurious and vexatious federal litigation." In the particular case before it, the Court found that Debtor, Central Mfg. and their counsel had engaged in "gross misconduct" and "unethical conduct" which included Debtor's forging of signatures on pleadings, had brought "baseless" motions and had evinced "flagrant contempt for this Court" and "an appalling lack of regard" for the judicial process. In particular, the Court ruled that "Central Mfg. Co., through Mr. Stoller," and their counsel had violated Federal Rule of Civil Procedure 11 "by maintaining that Central Mfg. Co. was a Delaware corporation," even though it was in reality a "false corporation" and a "false name" used by Debtor to facilitate and conceal his fraudulent claims to trademark rights.

(d) In *S Industries, Inc. v. Diamond Multimedia Sys., Inc.*, 17 F. Supp. 2d 775, 779 (N.D. Ill. 1998) (Andersen, J.), the Court awarded attorney's fees against a company of Debtor based on findings that its claims in the suit were "patently frivolous" and that it had "apparently taken a legitimate procedure designed to protect trademark rights and turned [it] into a means of judicial extortion."

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<sup>13</sup> A copy of the Court's Order is attached as Exhibit 5 to the Zeller Dec.

28. Thus, the balancing of equities here amply supports allowing Google to proceed with its Proposed Action even if the automatic stay is deemed to apply.

29. Furthermore, "cause" for relief from the automatic stay may be found where the debtor's filing of a bankruptcy petition was in bad faith. *In re Laguna Associates Limited Partnership v. Aetna Cas. & Surety Co.*, 30 F.3d 734, 737 (6th Cir. 1994) ("As a number of our sister circuits have recognized, a debtor's lack of good faith in filing a petition for bankruptcy may be the basis for lifting the automatic stay."); *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986) ("The debtor's lack of good faith in filing a bankruptcy has often been used as cause for removing the automatic stay."); *see also In re Syed*, 238 B.R. 126, 133 (Bankr. N.D. Ill. 1999) (lack of good faith "supports the retroactive annulment of the automatic stay."). Good faith in Chapter 13 filings is determined by the totality of the circumstances, and "the focus of the inquiry is fundamental fairness." *In re Love*, 957 F.2d 1350, 1357 (7th Cir. 1992) (also explaining "both objective evidence of a fundamentally unfair result and subjective evidence that a debtor filed a petition for a fundamentally unfair purpose that was not in line with the spirit of the Bankruptcy Code are relevant to the good faith inquiry").

30. The lack of good faith in Debtor's filing of his Chapter 13 Petition has already been briefed on the Motion to Convert filed by the Pure Fishing entities and is set for an evidentiary hearing before the Court. In the event that the Court finds Debtor's filing was in bad faith on the Motion to Convert, then that finding should equally serve here to establish cause for lifting any applicable automatic stay. Google will not burden the Court by repeating the evidence and legal analysis presented on that motion showing Debtor's lack of good faith, although one additional point mentioned above that bears on Google's claims further tends to underscore Debtor's bad faith in this, as well as his 1998, bankruptcy. None of Debtor's disclosures in those proceedings mentioned the supposed "Google" business that he now claims to have been long operating, allegedly since 1981. Accordingly, if it does exist, Debtor committed fraud by failing to disclose assets in which he has an interest to the Court and the Trustee. If it does not exist, then permitting Google to bring its suit to establish the fraudulent nature of those and related representations by Debtor could not possibly interfere with this proceeding. Either way, having not deigned to identify this alleged "business" in his bankruptcy

disclosures, Debtor should not now be heard to argue that his bankruptcy case should shield him from Google's Proposed Action.<sup>14</sup>

**Waiver of Rule 4001(a)(3)**

31. Google requests that any Order granting relief provide for a waiver of the 10-day period set forth in Bankruptcy Rule 4001(a)(3).

**Prayer for Relief**

WHEREFORE, Google respectfully requests that the Court enter an order declaring that Google's Proposed Action is not subject to the automatic stay or, in the alternative, modifying any such stay to allow Google to file and proceed with the Proposed Action.

DATED: August 18, 2006

Respectfully submitted,  
GOOGLE INC.

By           /s/ William J. Barrett            
William J. Barrett (ARDC No. 6206424)  
BARACK, FERRAZZANO, KIRSCHBAUM,  
PERLMAN & NAGELBERG, LLP  
333 West Wacker Drive, Suite 2700  
Chicago, Illinois 60606  
(312) 629 5170

Michael T. Zeller (ARDC No. 6226433)  
QUINN EMANUEL URQUHART OLIVER  
& HEDGES, LLP  
865 South Figueroa Street, Tenth Floor  
Los Angeles, California 90017  
(213) 443 3000

Attorneys for Google Inc.

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<sup>14</sup> To avoid any argument by Debtor that a granting of the Motion to Convert by the Court would render Google's claims pre-petition and thus subject to the automatic stay, Google respectfully requests that the Court grant Google's motion before entering an order granting the Motion to Convert.

**EXHIBIT 1**

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

GOOGLE INC., )  
 )  
Plaintiff, ) Civil Action No. \_\_\_\_\_  
 )  
vs. )  
 )  
CENTRAL MFG. INC. a/k/a CENTRAL )  
MFG. CO., a/k/a CENTRAL MFG. CO. )  
(INC.), a/k/a CENTRAL )  
MANUFACTURING COMPANY, INC. )  
and a/k/a CENTRAL MFG. CO. OF )  
ILLINOIS; STEALTH INDUSTRIES, )  
INC. a/k/a RENTAMARK and a/k/a )  
RENTAMARK.COM; and )  
LEO D. STOLLER a/k/a LEO REICH, )  
 )  
Defendants. )

**COMPLAINT**

Plaintiff Google Inc. ("Google"), by its attorneys and for its Complaint against Defendants, alleges as follows:

**Nature of This Action**

1. As the Seventh Circuit, Courts in this District and the Trademark Trial and Appeal Board repeatedly have found, Defendants are engaged in a scheme of falsely claiming trademark rights for the purpose of harassing and attempting to extort money out of legitimate commercial actors, both large and small. Indeed, the judicial decisions awarding fees and otherwise imposing sanctions against Defendants for their fraudulent and other illegal conduct, their assertion of rights that they do not own, their pattern of bringing meritless lawsuits and even their fabrication of evidence are legion.

2. Despite the admonitions of Courts and others, Defendants have not only continued with, but expanded the scope of, their fraudulent scheme. Among other things, Defendants have fabricated, and threaten to continue to fabricate, non-existent entities that Defendants falsely represent to unsuspecting victims are actual business entities. Defendants

further falsely claim that these non-existent entities have been using a wide array of trademarks on goods or services and otherwise have ownership and licensing rights to thousands of trademarks -- when in reality they have no such rights -- for the purposes of extracting money and obtaining the transfer of property to which Defendants are not entitled. To create an aura of legitimacy for their deceptive enterprise, Defendants have engaged in a widespread pattern of fraudulent acts that have included (i) preparing and circulating fabricated letterhead and other commercial documents supposedly evidencing the existence of their phony entities; (ii) repeatedly publishing advertisements and promotional materials which falsely claim rights to, and the ability to license, marks in which Defendants have no lawful interest and which falsely represent that Courts or others have upheld their alleged rights; (iii) disseminating false statements which represent that Defendants own federal registrations for marks when no such registration exists; (iv) asserting the ownership of fraudulently procured or fraudulently maintained federal registrations; (v) soliciting and employing perjured testimony and other materially false statements made under oath; and (vi) filing materially false documents with U.S. government agencies. Defendants employ these and other unlawful devices as described below to deceive, induce and coerce innocent parties into paying them money or else surrendering to Defendants property rights which Defendants then, in turn, use to defraud others. To date, Defendants have made hundreds of such misrepresentations to hundreds of legitimate companies.

3. Unfortunately, Plaintiff Google's widely-publicized success has attracted the attention of Defendants. As part of their scheme to defraud, Defendants have falsely represented that they own a federal registration for the GOOGLE mark, that they are owners of common law rights in the GOOGLE mark and that they have the right to license the GOOGLE mark to third parties. In order to effectuate their fraud, Defendants further have prepared and circulated, and continue to circulate, bogus letterhead and other corporate documents supposedly evidencing an entity they variously call "GOOGLE™ BRAND TRADEMARK LICENSING," "GOOGLE LICENSING [sic]" and "GOOGLE BRAND PRODUCTS AND SERVICES," even though by all indications no such entity exists. Defendants also have published, and continue to publish, promotional materials that falsely and deceptively represent that Defendants have rights to license the GOOGLE mark, that falsely claim that Defendants have successfully cancelled one or more of Plaintiff's federal trademark registrations for GOOGLE, and that otherwise misrepresent the nature of Defendant's goods, services and commercial activities.



4. Defendants' scheme is and has been with the intent to deceive. Defendants targeted Plaintiff Google, as well as hundreds of other legitimate companies, despite Defendants' knowledge that Defendants have no rights to the marks that they claim and no rights to license them to third parties. Defendants have falsely asserted, and continue to falsely assert, that they have such rights in order to defraud and extort their intended victims. After Plaintiff Google investigated Defendants' allegations of rights and refused Defendants' demands for money, Defendants not only persisted in their spurious demands for a pay-off, but also threatened to publicize their allegations which, they claimed, would bring about "the total destruction" of Plaintiff as a business.

5. Accordingly, Defendants have engaged in, and threaten in the future to engage in, acts of false advertising in violation of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), as well as acts of unfair competition. Furthermore, because Defendants constitute an enterprise engaged in a pattern of racketeering activity that has caused injury and damage to Plaintiff Google, they are liable under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.* As a consequence of the foregoing, Google is entitled to monetary and injunctive relief against Defendants.

#### The Parties

6. Plaintiff Google Inc. is a Delaware corporation with its principal place of business in Mountain View, California. Plaintiff Google offers a variety of services and products, including a web site that provides the world's most popular Internet search engine and that is visited by more than 380 million users each month.

7. On information and belief, Defendant Central Mfg. Inc. is a Delaware corporation with its principal place of business in Oak Park, Illinois and operates under one or more aliases, including without limitation as Central Mfg. Co., Central Mfg. Co. (Inc.), Central Manufacturing Company, Inc. and/or Central Mfg. Co. of Illinois (collectively, "Central Mfg."). Defendant Central Mfg. has at all times relevant hereto conducted activities in interstate commerce.

8. On information and belief, Defendant Stealth Industries, Inc. ("Stealth") is a Delaware corporation with its principal place of business in Oak Park, Illinois. Defendant Stealth has at all times relevant hereto conducted activities in interstate commerce.

9. On information and belief, Rentamark, which is also known as Rentamark.com, is an unincorporated business entity with its principal place of business in Oak Park, Illinois.

According to sworn testimony by Defendant Stoller, Rentamark is operated by and a part of Defendant Stealth.

10. On information and belief, Defendant Leo Stoller ("Stoller") is a citizen and resident of Illinois who is the CEO and shareholder of Defendant Central Mfg. and Defendant Stealth. Leo Stoller is also known by aliases that include Leo Reich. Defendant Stoller has at all times relevant hereto conducted the activities complained of herein in interstate commerce.

11. Defendant Stealth and Defendant Central Mfg. purport to be successors-in-interest of a defunct business named S Industries, Inc. Defendant Stoller was at all relevant times the President and a shareholder of S Industries, Inc.

#### **Jurisdiction And Venue**

12. This action arises under the Trademark Act of 1946, Title 15, United States Code, the Racketeer Influenced and Corrupt Organizations Act, Title 18, United States Code and the law of Illinois and other states. The Court therefore has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338, 18 U.S.C. § 1964(c) and principles of supplemental jurisdiction under 28 U.S.C. § 1367(a).

13. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and 1391(c) and 18 U.S.C. §§ 1965(b) and 1965(d). Defendants reside in, are found in, transact affairs in and are subject to personal jurisdiction in this District, and a substantial part of the events giving rise to the claims herein occurred in this District.

#### **Facts**

##### **Defendants' Fraudulent Conduct Using SI**

14. S Industries, Inc. ("SI"), the claimed predecessor of Defendant Central Mfg. and Defendant Stealth, was incorporated in or about 1985. Defendant Stoller acted as SI's principal. During that time in the 1980s, according to Defendant Stoller, SI engaged in the business of importing sporting goods such as tennis rackets from manufacturers in Taiwan and other Asian countries.

15. In or about January 1990, Defendant Stoller was evicted from the business premises of SI. By that point, while SI nominally moved to Defendant Stoller's house, it was defunct as a business. As Defendant Stoller subsequently admitted during a 2001 deposition, and contrary to his prior sworn statements otherwise to the Courts and the U.S. Trademark Office, SI had at best only "very nominal, or de minimis" sales by and throughout the 1990s.

16. No longer conducting legitimate operations by or in about 1990, SI and Defendant Stoller focused their energies on a new "business" model. This included, in particular, the implementation of a widespread scheme of asserting rights to trademarks, including by way of purported federal registrations, that SI and Defendant Stoller knew they had no rights to in order to fraudulently extract money from businesses and individuals.

17. Among other things, Defendant Stoller was well aware that common law trademark rights are acquired only through sufficient bona fide use in commerce and that such use is also required for the legitimate acquisition and maintenance of use-based federal trademark registrations. Even though SI was effectively dissolved and thus not using any marks in commerce in a manner and to an extent necessary for trademark rights, SI and Defendant Stoller nevertheless represented that they owned non-existent trademark rights and sought to assert them by demanding the payment of license fees and by threatening and filing sham litigation for the purpose of extorting money or property from their victims. Between 1995 and 1997 alone, SI and Defendant Stoller filed no fewer than 35 trademark lawsuits in the United States District Court for the Northern District of Illinois alone. A list of those cases is attached as Exhibit A hereto and is incorporated herein by this reference.

18. The Seventh Circuit and this Court found that the suits filed and prosecuted by SI and Defendant Stoller were part of a pattern of vexatious litigation that falsely claimed rights to marks they did not own and had no lawful right to assert. Those rulings included the following:

(a) In *S Industries, Inc. v. Centra 2000, Inc.*, 249 F.3d 625, 627-29 (7th Cir. 2001), the Seventh Circuit found that SI and Defendant Stoller's assertion of trademark rights was groundless and affirmed an award of attorneys' fees against SI for filing "meritless claims" and engaging in other litigation misconduct, which the Seventh Circuit found was part of a "pattern of abusive and improper litigation with which the company and Lee Stoller, its sole shareholder, have burdened the courts of this circuit." Although this suit resulted in a fee award against SI and/or Defendant Stoller, upon information and belief such award has not been paid.

(b) In *S Indus., Inc. v. Stone Age Equip., Inc.*, 12 F. Supp. 2d 796, 798-99, 819 (N.D. Ill. 1998) (Castillo, J.), the Court awarded attorney's fees against SI for its "continuing pattern of bad faith litigation." The Court also found that the documentary evidence submitted by SI and Defendant Stoller was "highly questionable" and "perhaps fabricated" and that

Defendant Stoller's sworn testimony was "inconsistent, uncorroborated, and in some cases, demonstrably false."

(c) In *S Industries, Inc. v. Diamond Multimedia Sys., Inc.*, 17 F. Supp. 2d 775, 779 (N.D. Ill. 1998) (Andersen, J.), the Court awarded fees against SI based on findings that its claims were "patently frivolous" and that it had "apparently taken a legitimate procedure designed to protect trademark rights and turned [it] into a means of judicial extortion."

19. In addition to filing and prosecuting numerous sham lawsuits in the Courts, SI and Defendant Stoller instituted and prosecuted a flurry of sham proceedings before the United States Trademark Trial and Appeal Board ("TTAB" or the "Board") based on their fraudulent claims of trademark rights. Those proceedings resulted in decisions that included the following findings by TTAB:

(a) In *S Indus., Inc. and Central Mfg. Co. v. JL Audio, Inc.*, Opposition No. 110,672, Order of May 13, 2003 (TTAB), the Board stated that "Mr. Stoller's and opposers' litigation strategy of delay, harassment and even falsifying documents in other cases is well documented" and further noted Defendant Stoller's history of being "sanctioned, individually, for making material misrepresentations."

(b) In *S Indus., Inc. and Central Mfg. Co. v. Casablanca Indus., Inc.*, Cancellation No. 92024330, Order of Oct. 3, 2002 (TTAB), the Board likewise observed that Defendants Central Mfg. and Stoller's "litigation strategy of delay, harassment, and falsifying documents in other cases is well documented."

(c) In *S Indus., Inc. v. S&W Sign Co., Inc.*, Opposition No. 91102907 (Dec. 16, 1999), the Board noted that "[t]he lack of credibility of Mr. Stoller is a matter of public record."

(d) In *S. Indus. Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293, 1295 (TTAB 1997), the Board found that SI and Defendant Stoller had made "fraudulent" statements under oath in order to backdate pleadings filed with the Board.

#### **Defendants' Fraudulent Acquisition Of Federal Registrations From SI**

20. SI, through Defendant Stoller, purported to assign several federal trademark registrations and applications to Defendant Central Mfg. Many of the alleged assignments were dated on or about June 5, 1994, but were not recorded with the U.S. Trademark Office until various times in or after 1998. The registrations and applications allegedly assigned by SI to

Defendant Central Mfg. include those that are listed in Exhibit B hereto and are incorporated herein by this reference.

21. The assignments from SI to Defendant Central Mfg. for the registrations and applications listed in Exhibit B hereto were knowingly and deliberately fraudulent on the part of Defendant Stoller and Defendant Central Mfg. Defendant Stoller, Defendant Central Mfg. and Defendant Stealth also utilized these purported registrations as vehicles to perpetrate an intentional pattern of fraud on a significant number of persons and companies, as well as on the Courts and TTAB. Among other things:

(a) SI had ceased operating as an actual business years before the alleged assignments. Not only had SI's rights in the marks accordingly been abandoned (assuming they ever existed), but the subsequent purported assignments were not accompanied by any assets or existing, on-going business. Nor did the assignment agreements, which recited that the transfers of the registrations were only for nominal consideration, reflect any such transfer of any assets or existing, on-going business. As such, and as has been known to Defendants at all material times, because no existing good will accompanied them, the ostensible transfers were assignments-in-gross that rendered invalid both the registrations and any subsisting common law rights, even assuming any such rights ever once existed.

(b) According to sworn testimony by Defendant Stoller, SI had allegedly transferred ownership of most or all of the registrations and applications set forth in Exhibit B to Defendant Central Mfg. in or about 1994. Nevertheless, after the alleged assignments, SI and Defendant Stoller continued to fraudulently hold out SI as the owner of intellectual property and to fraudulently file and prosecute, in the name of SI, lawsuits in the Courts and proceedings before TTAB. In the United States District Court for the Northern District of Illinois during the years 1996 and 1997, SI and Defendant Stoller initiated at least 35 suits in SI's name that misrepresented that SI was the owner of the registrations and applications asserted in those cases and that SI was the owner of the common law trademark rights asserted in those cases. See Exhibit A hereto.

(c) Likewise, in TTAB, SI and Defendant Stoller initiated numerous proceedings in SI's name that alleged SI was the owner of the registrations, both after SI had ceased to effectively exist and after SI had purportedly transferred the registrations to Defendant

Central Mfg. Examples of such fraudulently commenced and prosecuted proceedings in TTAB include without limitation each of the following:

<b>Proceeding No.</b>	<b>Registration No.</b>	<b>Filing Date of Proceeding by SI and Stoller</b>	<b>Date of Alleged Assignment of Registration to Central Mfg.</b>	<b>Other Party to Proceeding</b>
91110672	1717010	05/29/1998	12/29/1997	JL AUDIO, INC.
91110659	2140524	03/23/1998	06/05/1997	ENTRA TECHNOLOGIES COMPANY
92027323	2057613	01/23/1998	11/01/1997	ROSE'S RESTAURANT'S INC.
91108615	1326765	11/17/1997	06/05/1997	INTRACO FOODS PTE LTD.
91107902	1623790	09/12/1997	06/05/1996	REALITY BYTES, INC.
91107648	2064576	09/03/1997	06/05/1997	GLOBAL UPHOLSTERY COMPANY
91107040	1326765	07/10/1997	06/05/1997	ST. JOSEPH LIGHT & POWER CO.
91106515	1326765	06/06/1997	06/05/1997	SENTRACHEM LIMITED
91110350	1615004	05/01/1998	09/01/1997	KAYDON CORPORATION
91109973	1615004	03/25/1998	09/01/1997	MANCO PRODUCTS, INC.
91108480	1615004	11/05/1997	09/01/1997	TERMINATOR TURTLE, LP

(d) Defendant Stoller and SI also filed knowingly fraudulent papers with the U.S. Trademark Office in order to unlawfully maintain the registrations that had allegedly been transferred to Defendant Central Mfg. For example, SI, through Defendant Stoller, purported to assign Registration No. 1,564,751 for AEROSPACE to Central Mfg. on or about June 5, 1994. Nevertheless, on or about November 11, 1994, SI, through Defendant Stoller, filed a sworn statement with the U.S. Trademark Office to obtain supposed incontestability status for the registration that averred SI had continuously been using the mark on the goods listed in the registration, that it was still doing so and that SI was the owner of the purported registration. Even to this day, SI holds itself out as the purported owner of Registration No. 1,564,751.

(e) The registrations and applications listed in Exhibit B attached hereto were, and are, invalid and fraudulent for the further, independent reason that the alleged assignments from SI were to a non-existent entity. The assignee named by SI and Defendant Stoller in their transfer documents and in their filings with the Courts and TTAB is listed as "Central Mfg. Co." Although a company named Central Mfg. Inc. apparently is a legal entity under the laws of Delaware, Central Mfg. Co. does not exist and never has existed. Nor was Defendant Stoller's misidentification inadvertent. Rather, as the Court found in *Central Mfg. Co. v. Pure Fishing, Inc.*, No. 05 C 725 (N.D. Ill) (Lindenberg, J.) as discussed further below, Defendant Stoller's misrepresentations about the corporate status of "Central Mfg. Co." were intentional so as to mislead and defraud those who dealt with the non-existent "Central Mfg. Co." and to perpetrate a fraud on the Courts by enabling and concealing Defendants' false assertions of trademark rights.

(f) In addition, Defendant Stoller has obtained, through baseless assertions of rights and threats of sham litigation, the transfer of trademark applications and registrations previously held by third parties to Defendant Stealth and Defendant Central Mfg. These include without limitation U.S. Trademark Application Nos. 74-735,867, 74-735,868, 74-493,718, 74-475,481, 74-340,300, 74-476,028, 74-630,176, 74-734,680, and 74-534,766 as well as U.S. Trademark Registration Nos. 1,717,010, 1,766,806 and 2,269,113. Upon information and belief, these transfers were also invalid assignments-in-gross, including without limitation in that they were not accompanied by any assets or existing, on-going business, and furthermore were not validly maintained, including without limitation in that the alleged marks were not used in commerce in connection with the goods or services set forth in the applications and registrations. Nevertheless, Defendants have misused these applications and registrations to claim rights they

do not own, to fraudulently demand licensing fees and to threaten sham lawsuits against others, despite Defendants' knowledge that such applications and registrations are not, and were not, valid.

**Defendants Continue, And Expand, Their Pattern Of Fraud**

22. Since the time of the alleged assignment of the registrations and applications from SI, Defendant Central Mfg., Defendant Stealth and Defendant Stoller have engaged in, and continue to engage in, numerous fraudulent business practices as part of a scheme to extort money and property from innocent individuals and innocent companies, both large and small. As described further below, these practices include:

(a) false claims, including through the creation and circulation of fraudulent commercial documents, that non-existent entities are actual, legitimate businesses and that such non-existent entities have ownership and/or licensing rights to trademarks;

(b) false claims of right to intellectual property that Defendants know they do not own and have no colorable right to;

(c) false claims to own federal trademark registrations that Defendants know they do not own and in some instances do not even exist;

(d) the filing of fraudulent documents with U.S. government agencies;

(e) representations that Defendants offer or have offered goods or services that they have not, and in some cases never have, supplied;

(f) false representations that they provide legal services, even though they are not admitted in any State to practice law;

(g) unlawful threats to disseminate, and the unlawful dissemination of, false representations about targeted companies or individuals in the media or to the public if they do not pay money or surrender rights as demanded by Defendants; and

(h) threatening and instituting sham trademark lawsuits and other frivolous legal proceedings.

23. This and other Courts repeatedly have confirmed that Defendants continue to engage in a pattern of falsely claiming rights to marks they do not own, including by the fabrication of evidence and the provision of false testimony, and continue to attempt to enforce those non-existent rights by threatening and filing frivolous litigation, including in some



instances by the use of false names. In addition to the decisions involving Defendant Stoller, Defendant Central Mfg. and SI that are discussed above, such decisions include the following:

(a) In *Central Mfg. Co. v. Brett*, No. 04 C 3049 (N.D. Ill) (Coar, J.), the Court ruled that Defendant Central Mfg. and Defendant Stoller lacked the trademark rights they had claimed and on that basis, among others, entered judgment against them. It further observed that "Stoller appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation" and recited the findings by "several courts in this district" that Defendant Stoller and Defendant Central Mfg. are "engage[d] in a pattern and practice of harassing legitimate actors for the purpose extracting a settlement amount." The Court ordered them to pay an award of attorneys' fees based on findings that "Leo Stoller and his companies present paradigmatic examples of litigants in the business of bringing oppressive litigation designed to extract settlement" and that they had offered "questionable, and seemingly fantastical documents" and "inconsistent, uncorroborated, or arguably false testimony." As a further part of that decision, the Court reviewed and summarized the terms of the "settlement agreements" that Defendant Stoller and Defendant Central Mfg. alleged evidence their trademark rights and found that they, in fact, confirmed such Defendants had "engage[d] in a pattern and practice of harassing legitimate actors for the purpose of extracting a settlement amount. The judicial system is not to be used as an aid in such deliberate, malicious, and fraudulent conduct."

(b) In *Central Mfg. Co. v. Pure Fishing, Inc.*, No. 05 C 725 (N.D. Ill) (Lindenberg, J.), the Court entered judgment against Defendant Central Mfg. as a sanction for Defendant Stoller and Defendant Central Mfg.'s abuse of the legal process. In doing so, the Court found that Defendant Stoller "has earned a reputation for initiating spurious and vexatious federal litigation." In the case before it, the Court found that Defendant Stoller, Defendant Central Mfg. Co. and their counsel had engaged in "gross misconduct" and "unethical conduct" which included Defendant Stoller's signing of pleadings with counsel's name even though Defendant Stoller is not a lawyer; had brought motions "that lacked any evidentiary support" and were otherwise "baseless"; and had evinced "flagrant contempt for this Court" and "an appalling lack of regard" for the judicial process. In particular, the Court ruled that "Central Mfg. Co., through Mr. Stoller," and their counsel violated Federal Rule of Civil Procedure 11(b) "by maintaining that Central Mfg. Co. was a Delaware corporation," even though it was not. As it explained:

Contrary to the statements in Central Mfg. Co.'s initial and amended complaints, it is not an independent legal entity and is not incorporated under the laws of Delaware. Central Mfg. Co. filed an amended complaint with this Court on May 26, 2005 stating that it was a Delaware corporation, while almost simultaneously filing a motion before Judge Hart stating that Central Mfg. Co. was a d/b/a for Central Mfg. Inc. See *Columbia Pictures Industries, Inc. v. Stoller, et al.*, 05 C 2052. Plaintiff, through Mr. Stoller, filed this case under a false name. Since the inception of this case, and unquestionably prior to filing the amended complaint, Mr. Stoller knew that he had not incorporated Central Mfg. Co. However, Mr. Stoller likely attempted to conceal this fact from the Court because the trademark registrations that are the basis for the infringement claims, state that Central Mfg. Co., not Central Mfg. Inc., owns sole title to the disputed marks. The conduct of Central Mfg. Co., through Mr. Stoller, is akin to the conduct in *Dotson*. 321 F.3d 663. In *Dotson*, the Seventh Circuit upheld dismissal of a plaintiff's case with prejudice as a sanction for filing suit under a false name. *Id.* at 668. Accordingly, Central Mfg. Co. and Mr. Stoller deserve the same sanction for filing suit on [be]half of a false corporation.

(c) In *Central Mfg. Co. v. Medtronic Sofamor Danek Inc.*, Opposition Nos. 9115485 and 91154617 (TTAB Feb. 19, 2004), the Board imposed Rule 11 sanctions against Defendant Central Mfg. for filing motions that were "without merit, constitute harassment, and can only be assumed to have been brought for purposes of delay."

(d) In *Central Mfg. Inc. v. Third Millenium Tech. Inc.*, 61 U.S.P.Q. 1210, 1214-15 (TTAB 2001), the Board found that Defendant Stoller and Defendant Central Mfg. had "engaged in a pattern" of submitting papers that were based on "false statements and material misrepresentations." It ruled, in particular, that Defendant Stoller and Defendant Central Mfg. had filed requests for extensions of time on the basis of non-existent settlement negotiations and had "acted in bad faith and for improper purposes, i.e., to obtain additional time to harass the applicant, to obtain unwarranted extension of the opposition period, and to waste resources of applicant and the Board."

24. Undeterred by these and similar rulings, Defendants to this day have continued, and even expanded, their fraudulent scheme by now falsely claiming that they own rights in, and have the right and ability to license, many thousands of trademarks. As described below, Defendants have repeatedly made these misrepresentations in commercial advertising and to hundreds of companies and individuals, including Plaintiff, targeted by Defendants for extortion.

25. Since November 2005 alone, Defendants filed more than 1800 requests for extensions of time to oppose applications for trademark registrations that had been published by the United States Trademark Office. Simultaneous with this proliferation of filings, Defendants have sought to extract money or property out of at least many hundreds of applicants by asserting that Defendants purportedly own rights to all of these many hundreds of marks which have been the subject of those applications.

26. Many of these extortionate demands and false representations directed to applicants for registration are evidenced in Defendants' sham filings with the Trademark Office itself. For example, Defendant Stoller's April 12, 2006 request for an extension of time to oppose Application Serial No. 78192386 for "VP VENTURES" includes the following:

Please contact (773-589-0915 FAX) VENTURE BRAND LICENSING to resolve this trademark controversy VENTURE v VP VENTURES and/or merely file an Express Abandonment! See rentamark.com, the nationally renowned trademark licensing and enforcement firm since 1974 for all of your VENTURE BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, i.e., brief writing, trademark searches, legal research, appeals, etc.

A true and correct copy of the April 12, 2006 request is attached hereto as Exhibit C.

27. Many of Defendants' more than 1800 filings included virtually identical language, except that they substitute a different alleged licensing entity that purports to have a name supposedly similar to the mark which was the subject of the application -- such as "ELLA BRAND LICENSING," "FINGO BRAND LICENSING," "SKILL BRAND LICENSING," "MERMAID BRAND LICENSING," "DIAMOND BRAND LICENSING," "STRA BRAND LICENSING," "WORKOUT BRAND LICENSING," "FRIENDS NETWORK BRAND LICENSING," "SIFI BRAND LICENSING," "PM BRAND LICENSING," "NANO BRAND LICENSING," "HAPPY BRAND LICENSING," "LAKE BRAND LICENSING" and

"RUNNER BRAND LICENSING." True and correct copies of examples of these additional requests are attached hereto as Exhibit D.

28. The representations contained in Defendants' more than 1800 filings described above as well as their associated communications were, and are, knowingly false.

(a) The multitude of licensing companies claimed by Defendants do not exist, nor did they own the purported rights to the marks claimed. Not only did Defendant Stoller's bankruptcy filing in December 2005 make no mention that he has ownership interests in any of these hundreds of supposed entities, but by an Order dated July 14, 2006 TTAB ruled that neither Defendant Stoller nor his supposed entities owned the rights they proclaimed to have. In its July 14, 2006 Order, TTAB initially referenced the "pattern of misconduct and abuse of the TTAB's processes" over the course of "many years" by Defendant Stoller and the purported entities associated with him. Although TTAB had ordered Defendants to provide "for each of the marks for which you requested an extension of time to file an opposition, evidence that supports a claim that you may be damaged by registration of the mark" and to "demonstrate that the extension requests were not filed for improper purposes but, instead, were based on cognizable rights you may have arising under the Trademark Act," Defendants provided no such proof: "Your submissions do not substantiate your rights in any of the claimed marks, let alone support a colorable claim of damage. . . . You submitted no evidence of products or services bearing these alleged marks, no evidence that you have sold any products or services under these marks, and no evidence of your advertising of goods or services with these marks." As TTAB observed, the evidence Defendants did submit only served to "reinforce the conclusion that you are holding up thousands of applications in an attempt to coerce applicants to license, i.e., 'rent,' trademarks to which you have not demonstrated any proprietary right." TTAB thus found that Defendants had "filed the extension requests for improper purposes, namely, to harass the applicants to pay you to avoid litigation or to license one of the marks in which you assert a baseless claim of rights." For those violations, which were deemed to constitute "egregious" misconduct, the Board imposed an array of sanctions, including dismissal of the TTAB proceedings filed by Defendants which were the result of their frivolous requests for extension of time. A true and correct copy of TTAB's July 14, 2006 Order is attached hereto as Exhibit E.

(b) Furthermore, Defendants are not qualified to practice law in any state and are not entitled to engage in the practice of law. Nevertheless, in their abusive filings described

above, Defendants have solicited payment for the provision of legal services such as "brief writing," "drafting pleadings" and "legal research." Not only do such acts constitute the unauthorized practice of law by Defendants, but Defendants tout these false representations in order to cause targeted victims to erroneously believe that Defendants are authorized to engage in the practice of law, including for its *in terrorrum* effect and to deceive victims into capitulating to their extortionate demands.

29. Defendants also have made fraudulent representations in advertising and promotions through commercial web sites that they have published and displayed, and continue to publish and display.

30. Defendant Stealth and Defendant Stoller have represented on the site located at [www.rentamark.com](http://www.rentamark.com), and continue to represent, that "RENTAMARK.COM is an independent, full service, international licensing and merchandising agency. RENTAMARK.COM owns and controls over 10,000 famous trademarks specializing in the trademark licensing business." Elsewhere on that site, Defendant Stealth and Defendant Stoller represent: "RENTAMARK.COM is able to license your company with any one of our famous trademarks that will allow your business to sell its products and services worldwide. Below are our Licensed Word Marks. To view our e-Marks, simply click on the button in the control panel." That page then links to other pages that list many thousands of terms that Defendants claim to own and have the right to license. True and correct hard copy excerpts from Defendants' web site pages are attached hereto as Exhibits F and G.

31. The foregoing representations contained on Defendants' site are false. As to all or virtually all of the marks to which Defendants claim rights, Defendants do not have, and never have had, subsisting federal registrations for such marks and have not used such terms as marks or trade names in interstate commerce. Furthermore, Defendant Stoller's bankruptcy filing in December 2005 made no mention that he has purported ownership interests in any of the thousands of marks listed on the [rentamark.com](http://rentamark.com) web site.

32. Confirming the bad faith and extortionate purpose behind Defendants' ever-proliferating, false claims of right, Defendants' latest campaign also came on the heels of recent Court actions that raise the prospect of imposing substantial monetary liability for Defendants' frivolous legal proceedings and other misconduct. The *Central Mfg. Co. v. Brett* decision quoted above was issued on September 30, 2005. This was soon followed by the decision quoted above

in *Central Mfg. Co. v. Pure Fishing, Inc.* on November 16, 2005. In both cases, the Court ruled that Defendant Central Mfg. and Defendant Stoller are liable to pay attorneys' fees and costs, and the parties in those cases are seeking more than \$700,000 in reimbursement from Defendant Central Mfg. and Defendant Stoller.

**Defendants' Scheme To Defraud Targeting Plaintiff Google**

33. It is in the context of Defendants' expanded scheme of making spurious claims of right to many thousands of marks, and their continuing pattern of unlawfully demanding licensing fees and threatening and filing sham legal proceedings, that Defendants targeted Plaintiff Google.

34. As one of the some 1800 requests for extension of time filed by Defendants with TTAB since November 2005, Defendant Central Mfg. and Defendant Stoller sought on November 27, 2005 a request for an extension of time to oppose an application for registration filed by Plaintiff Google. A true and correct copy of Defendants' November 27, 2005 request, which was sent by means of the U.S. mail and interstate wires on or about November 27, 2005 and at times thereafter, is attached hereto as Exhibit H.

35. On or about November 29, 2005, by means of the U.S. mail and interstate wires, Defendants sent a letter that purported to be on the letterhead of an entity called "GOOGLE BRAND PRODUCTS & SERVICES," which claimed to have been in business "SINCE 1981." In it, Defendants alleged to "hold common law rights" in the mark GOOGLE and to "have been using the similar mark GOOGLE for many years." The letter was signed "Leo Stoller GOOGLE." A true and correct copy of Defendants' November 29, 2005 letter and its attachments is annexed hereto as Exhibit I.

36. The attachments to the November 29, 2005 letter were also sent by means of U.S. mail and the interstate wires. In the proposed "Agreement To Discontinue Use (Covenant Not To Sue)" and the proposed "Settlement Agreement" attached to the letter, Defendant Stoller and Defendant Stealth proclaimed their "ownership of the mark GOOGLE," and the signature block to the proposed agreement was signed by Stoller for "GOOGLE" and as a "[r]epresentative of GOOGLE." Furthermore, both documents purported to identify Defendant Stealth (under the alias "Rentamark") as "Google." Elsewhere in the attachments, Defendants purported to identify the entity preparing the attachments as an entity named "GOOGLE" and included an alleged notice that the materials were "© GOOGLE 2000."

37. In the attachments to the November 29, 2005 letter sent by U.S. mail and interstate wires, Defendants also repeatedly represented that they owned a federal trademark registration for "Google" by use of the "®" symbol, including in the attachments entitled: "Why Obtain A GOOGLE® License . . .," "GOOGLE® Licensing Program Licensee Requirements," "GOOGLE® Licensing Program," and "Licensing GOOGLE® Enables You To . . .".

38. In or about April or May 2006, Defendant Stoller sent by U.S. mail to Plaintiff correspondence with a return address label which falsely represented that it had been sent by an entity called "GOOGLE LICENSING [sic]" and which reflected Defendants' address in Oak Park, Illinois. (The exact day of this fraudulent mailing cannot be ascertained because, in violation of U.S. Postal Service Regulations, Defendants omitted the date from their postage meter stamp.) A true and correct copy of this mailing label is attached hereto as Exhibit J.

39. On April 10, 2006, Defendant Stoller and Defendant Stealth transmitted to Plaintiff by the interstate wires two documents that purported to be from an entity called "GOOGLE™ BRAND TRADEMARK LICENSING." True and correct copies of these faxes from Defendants are attached hereto as Exhibits K and L.

40. Beginning on or about April 28, 2006 and through the present, Defendant Stoller and Defendant Stealth also represented on the Rentamark.com web site that that "GOOGLE" was, and is, among the marks that they purport to "own and control" and that they offer for licensing to third parties. True and correct copies of the relevant web pages are attached hereto as Exhibit M.

41. Each of the foregoing representations of fact by Defendants recited above in paragraphs 35 through 40 above were, and are, false and made by Defendants with the intent to deceive. As Defendants have known at all relevant times, those statements were false in at least each of the following respects:

(a) Defendants knowingly misrepresented the existence of an entity or entities variously called by Defendants as "GOOGLE BRAND LICENSING AND PRODUCTS," "GOOGLE LICENSING [sic]" and "GOOGLE™ BRAND TRADEMARK LICENSING." No such entity exists, but is a fabrication by Defendants, and the commercial letterhead, fax cover sheets, labels and other commercial documents allegedly evidencing their existence are fraudulent.

(b) Defendants' representations to have common law rights in or to "Google" as a mark or trade name are fraudulent. Defendants own no right, title or interest of any kind in "Google" as a mark, trade name or designation of origin. Defendants have not used "Google" as a mark or trade name, whether directly or through any licensee, in connection with bona fide sale of goods or services. No segment of the consuming public associates "Google" with Defendants or with any goods or services originating from or associated with Defendants. Defendants have no right to license "Google" as a mark or trade name to any person or entity. Indeed, because Defendants' claim of right to "Google" was part and parcel of their more than 1800 filings with TTAB since November 2005, TTAB already has found pursuant to the July 14, 2006 Order that Defendants' assertion of rights to the "Google" mark was "baseless" and made for the unlawful purpose of seeking to extort money from Plaintiff. For those reasons, TTAB dismissed outright Defendant Central Mfg.'s sham opposition proceeding against Plaintiff. A true and correct copy of TTAB's dismissal Order is attached hereto as Exhibit N. Nevertheless, to this day and as shown above, Defendants continue to hold themselves out as the owner of rights to the "Google" mark and offer to license "Google" as a mark to third parties.

(c) Defendants' further claims that they have a federal trademark registration for "Google," made through their repeated uses of the statutory federal registration notice "®" and elsewhere, are false. Defendants have no federal registration for "Google."

42. Defendants also have made materially false representations of fact regarding Defendants' purported success in litigation and in TTAB proceedings for the purpose of deceiving and coercing their victims into paying money and bolstering their false claims of right to trademarks, including as to "Google." Examples of such misrepresentations include:

(a) In a March 31, 2006 email to Plaintiff sent by means of the interstate wires, Defendant Stoller asserted, falsely, that "99% of my opponents opt to settle" and that "Google is in the 1% category that refused to pay any deference to my early on trays [*sic*] for a quick settlement." A true and correct copy of the March 31, 2006 email is attached hereto as Exhibit O.

(b) According to claims on Defendant's rentmark.blogspot.com web site beginning on or about April 20, 2006 and continuing through the present: "Stoller has thus far prevailed in over 90% of its [*sic*] police actions against third party infringers. Companies like Wal-Mart, K-Mart and hundreds of other well known American companies have acknowledged



Stoller's superior rights to its [*sic*] marks as a result of trademark litigation." A true and correct hard copy printout of Defendants' relevant web pages is attached hereto as Exhibit P.

(c) Beginning on or about April 20, 2006 and continuing through the present, Defendants claimed on the [www.rentmark.blogspot.com](http://www.rentmark.blogspot.com) web site that "STOLLER CANCELS THE GOOGLE TRADEMARK." See Exhibit P attached hereto.

(d) Beginning on or about June 16, 2004 and continuing through the present, Defendants claimed on the [www.rcntmark.blogspot.com](http://www.rcntmark.blogspot.com) web site that "Leo Stoller has participated in over 200 inter party [*sic*] proceedings over 25 years prevailing in [*sic*] over 95% of the time and over 60 district court trademark cases." A true and correct hard copy printout of Defendants' relevant web pages is attached hereto as Exhibit Q.

43. The foregoing representations of fact by Defendants set forth in paragraph 42 above were, and are, false. Defendant Stoller has not cancelled any registration owned by Plaintiff. Moreover, Defendants' representations as to its "success" in litigation are fictional. Defendants have not prevailed in "over 90%" or "over 95%" of its legal actions or obtained settlements from "99%" of those companies and individuals Defendants have targeted. To the contrary, as the Court observed in the *Brett* decision discussed above: "no Court has ever found infringement of any trademark allegedly held by Stoller or his related companies in any reported opinion." Indeed, as described above, Courts have repeatedly found Defendants' lawsuits to be part of a pattern of sham litigation and have repeatedly sanctioned them for their groundless claims of trademark rights, their fabrication of evidence, their provision of false testimony and their other abuses of the judicial system.

44. In addition to their repeated assertion and dissemination of materially false statements, Defendants also made repeated unlawful threats against Plaintiff. These include without limitation:

(a) Defendants' November 29, 2005 letter attached as Exhibit I hereto contained threats to bring sham legal proceedings and to harass, including by threatening to conduct "extensive discovery" which included depositions of Applicant's "executive officers," and referenced the fact that the mere filing of a legal proceeding, regardless of its lack of merit, would cost Plaintiff at least \$150,000. In exchange for refraining from inflicting such damage, Defendants demanded that Plaintiff either pay them money in the amount of \$100,000 or else cease all use of GOOGLE in connection with Plaintiff's business.

(b) Defendants' March 31, 2006 email attached as Exhibit O hereto threatened to "refe[r]" Plaintiff's executives "to the US Attorney for a perjury charge should they lie under oath."

(c) In a February 9, 2006 email, Defendant Stoller and Defendant Stealth threatened to publicize their allegations, which they claimed would mean "Google's stock won't be worth \$5.00 a share" and would result in "the total destruction" of Applicant. A true and correct copy of the February 9, 2006 email is attached hereto as Exhibit R.

(d) In a March 2, 2006 email, Defendant Stoller and Defendant Central Mfg. again threatened to publicize their allegations with the intention of "driv[ing] down Google stock price" and then concluded with the statement that "I would not be surprisid [sic] if Google goes out of business by the conclusion of this proceeding." A true and correct copy of the March 2, 2006 email is attached hereto as Exhibit S.

### COUNT I

(15 U.S.C. § 1125(a)(1)(B) -- Against All Defendants)

45. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 43 above, as though fully set forth at length.

46. Defendants have made and disseminated, and continue to make and disseminate, false statements of fact in commercial promotions and advertisements about their goods, services and commercial activities. Such misrepresentations by Defendants include without limitation those set forth in paragraphs 26(a) through 31, 40, 42(b)-(d) and 43 above. Such statements are literally false and have a tendency to deceive a substantial segment of their audience.

47. Defendants have caused and continue to cause their false and misleading statements to enter interstate commerce, including by means of the Internet.

48. By reason of the acts alleged herein, Defendants have misrepresented, in commercial advertising and promotion, the nature, characteristics and qualities of their goods, services and commercial activities in violation of 15 U.S.C. § 1125(a)(1)(B).

49. Defendants' acts complained of herein have damaged and will continue to damage Plaintiff irreparably. Plaintiff has no adequate remedy at law for these wrongs and injuries. The damage to Plaintiff includes harm to its reputation that money cannot compensate. Plaintiff is, therefore, entitled to an injunction restraining and enjoining Defendants and their agents,

servants and employees, and all persons acting thereunder, in concert with, or on their behalf, from engaging in false advertising and from otherwise making or utilizing false and misleading statements in connection with the promotion, advertisement or sale of goods, services and commercial activities.

50. Plaintiff has been and is likely in the future to be injured as result of Defendants' false statements. Plaintiff is entitled to recover three times its damages, to an accounting of Defendants' profits and to disgorgement of Defendants' ill-gotten gains, together with Plaintiff's attorneys' fees and costs, pursuant to 15 U.S.C. § 1117.

## COUNT II

(18 U.S.C. §§ 1962(c) and 1964(c) -- Against All Defendants)

51. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 44 above, as though fully set forth at length.

52. Defendant Stoller is a "person" within the meaning of 18 U.S.C. § 1961(3). Defendant Stoller, Defendant Central Mfg. and Defendant Stealth constitute an enterprise within the meaning of 18 U.S.C. § 1961(4) in that they constitute a union and group of individuals and entities associated in fact although not a legal entity. Said enterprise evinces a hierarchy and structure separate and apart from the pattern of racketeering alleged herein, including without limitation in that Defendant Central Mfg. and Defendant Stealth purport to engage in legitimate activities in addition to the unlawful activities alleged in this Complaint.

53. Defendant Stoller, Defendant Central Mfg. and Defendant Stealth, directly and indirectly as stated in 18 U.S.C. § 1962(c), execute an enterprise in and affecting interstate commerce by fraudulent, deceitful and extortionate practices as the term "enterprise" is defined in 18 U.S.C. § 1961(4), including through without limitation the predicate acts of mail fraud and wire fraud and the predicate acts of extortion. In particular, these racketeering activities include:

(a) Acts And Threats Involving Extortion: On or about the date indicated in and as described in paragraph 44(b) above, Defendant Stoller, without lawful authority and with an intent to cause another to perform or to omit the performance of any act, communicated a threat to accuse a person of an offense, in violation of 720 ILCS 5/12-6 and 720 ILCS 5/15-5, and furthermore to harm the business repute of another, in violation of 720 ILCS 5/15-5, all of which accordingly constitute acts and threats involving extortion which are chargeable under

State law and punishable by a term of imprisonment of more than one year as set forth in 18 U.S.C. § 1961(1). In addition, on or about the dates indicated in and as described in paragraph 44 above, Defendant Stoller, with an intent to extort money and other property from Plaintiff, sent and delivered letters and other writings that expressly and impliedly threatened to inflict unlawful injuries to property in violation of California Penal Code §§ 519 and 523, which pursuant to California Penal Code §§ 520 and 523 constitute acts and threats involving extortion which are chargeable under State law and punishable by a term of imprisonment of more than one year as set forth in 18 U.S.C. § 1961(1).

(b) Mail Fraud: On or about the dates indicated in and as described in paragraphs 35 through 38 above, Defendants, having devised a scheme or artifice to defraud Plaintiff by false representations, did for the purpose of furthering and executing such scheme or artifice to defraud, transmit and cause to be transmitted by means of mail communications in interstate commerce, writing, signs, signals, pictures or sound, in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 2.

(c) Wire Fraud: On or about the dates indicated in and as described in paragraphs 35 through 43 above, Defendants, having devised a scheme or artifice to defraud Plaintiff by false representations, did for the purpose of furthering and executing such scheme or artifice to defraud, transmit and cause to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures or sound, in violation of 18 U.S.C. § 1343 and 18 U.S.C. § 2.

54. Defendant Stoller, Defendant Central Mfg. and Defendant Stealth have executed within the past six years, and continue to execute, a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(1). The pattern of racketeering activity, as defined by 18 U.S.C. §§ 1961(1) and (5), presents both a history of unlawful conduct and a distinct threat of continuing unlawful activity in the future. Such activity consists of multiple acts of racketeering, is interrelated, not isolated, and is perpetrated for the same or similar purposes. Such activity extends over a substantial period of time, up to and beyond the date of this Complaint, and threatens to continue and to project itself into the future, including without limitation in that the predicate acts and offenses alleged herein are part of an ongoing entity's regular way of doing business. Such activities occurred after the effective date of 18 U.S.C. §§ 1961 *et seq.*, and the last such act occurred within 10 years after the commission of a prior act of racketeering activity.

Defendants have done so by performing the acts set forth above, including but not limited to the acts specifically set forth in paragraphs 35 through 43 above, which constitute repeated violations of 18 U.S.C. § 1342 relating to wire fraud and 18 U.S.C. § 1341 relating to mail fraud, and the acts specifically set forth in paragraph 44 above, which constitute repeated violations of State laws prohibiting extortion within the meaning of 18 U.S.C. § 1961(1).

55. The enterprise as described herein is at all relevant times a continuing enterprise because, among obvious reasons, it is designed to unlawfully extract and has damaged legitimate businesses including Plaintiff based upon fraudulent statements and threats of extortion as alleged herein.

56. As a direct and proximate result of the racketeering activity of Defendants, including by reason of the predicate acts constituting such pattern of racketeering activity by said Defendants, Plaintiff has suffered, and will in the future suffer, injury in its business or property.

57. Pursuant to 18 U.S.C. § 1964(c), Plaintiff is entitled to recover damages, to be trebled in accordance with statute, plus interest, costs and attorneys' fees, by reason of Defendants' pattern of racketeering activity and violations of 18 U.S.C. § 1962(c).

### COUNT III

#### (Unfair Competition -- Against All Defendants)

58. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 44 above, as though fully set forth at length.

59. Defendants are, and at all relevant times have been, perpetrating a scheme of fraudulently claiming trademark and other rights, including without limitation by means of false marketing materials, by the use and circulation of fraudulent letterhead and other documents, by threatening and filing of sham legal proceedings and by other illegal means as described herein, for the purpose of extorting money and property from others, including Plaintiff.

60. Defendants' statements, misrepresentations, threats and conduct alleged herein were made not for the purpose of protecting or enforcing any legitimate, or even colorable, rights, but instead for the bad faith purpose of unlawfully extracting money from Plaintiff Google. Said statements, misrepresentations, threats and conduct by Defendants, made for such illegitimate reason, constitute unfair competition under the laws of this State and other jurisdictions.

61. Defendants' acts complained of herein have damaged and will in the future continue to damage Plaintiff Google irreparably. Plaintiff has no adequate remedy at law for these actual and threatened wrongs and injuries. The damage to Plaintiff includes harm to its good will and reputation in the marketplace that money cannot compensate. Plaintiff is therefore entitled to injunctive relief restraining Defendants and their agents, servants, and employees, and all persons acting thereunder, in concert with them, or on their behalf, from further engaging in acts of unfair competition as against Plaintiff.

62. As consequence of the foregoing acts of unfair competition by Defendants, Plaintiff is also entitled to an award of its actual damages, together with its costs and attorney's fees, and to the disgorgement of Defendants' ill-gotten gains.

63. Defendants' acts were in bad faith, in conscious disregard of Plaintiff's rights and were performed with the intention of depriving Plaintiff of its rights. Accordingly, Defendants' conduct merits, and Plaintiff seeks, an award of punitive damages in an amount sufficient to punish Defendants and deter such conduct in the future.

#### **Prayer for Relief**

WHEREFORE, Plaintiff Google prays that this Court enter judgment as follows:

A. Enter an injunction prohibiting Defendants from engaging in further acts of false advertising, further acts of racketeering activity and further acts of unfair competition as to Plaintiff, pursuant to 15 U.S.C. § 1116, 18 U.S.C. § 1964(a) and state law;

B. Enter an order requiring the dissolution and/or reorganization of the enterprise and requiring Defendant Stoller to divest himself of any interest, direct or indirect, therein, pursuant to 18 U.S.C. § 1964(a);

C. Award Plaintiff three times its damages and Defendants' profits, together with Plaintiff's reasonable attorney's fees and costs, pursuant to 15 U.S.C. § 1117 and state law;

D. Award Plaintiff treble damages and costs of suit, including reasonable attorneys' fees, pursuant to 15 U.S.C. § 1117 and 18 U.S.C. § 1964(c);

E. Award Plaintiff punitive damages in an amount sufficient to punish Defendants and deter such misconduct in the future;

F. Award Plaintiff prejudgment interest, as appropriate; and

G. Grant Plaintiff such other and further relief as this Court deems just and proper.

DATED: August 17, 2006

Respectfully submitted,

GOOGLE INC.

By: Michael T. Zeller  
One of Its Attorneys

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

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

EXHIBIT A



**Exhibit 1**

**Cases Filed In Name of S Industries, Inc. in N.D. Ill. in 1996 and 1997**

1.	1:96-cv-01035	S Industries, Inc. v. Amer Soccer Co. Inc.	filed 02/23/96
2.	1:96-cv-01138	S Industries, Inc. v. Netti Export Corp., et al.	filed 02/27/96
3.	1:96-cv-01218	S Industries, Inc. v. Bard Wyers Sports, et al	filed 03/01/96
4.	1:96-cv-01264	S Industries, Inc. v. HHA Sports, et al	filed 03/04/96
5.	1:96-cv-01325	S Industries, Inc. v. ERO Ind Inc., et al	filed 03/06/96
6.	1:96-cv-01776	S Industries, Inc. v. Fit Bearings, et al	filed 03/27/96
7.	1:96-cv-02037	S Industries, Inc. v. World of Weapons, et al	filed 04/08/96
8.	1:96-cv-02038	S Industries, Inc. v. Pelican Pro Inc., et al	filed 04/08/96
9.	1:96-cv-02166	S Industries, Inc. v. Wonderwand, et al	filed 04/12/96
10.	1:96-cv-02231	S Industries, Inc. v. Lane, et al filed	filed 04/16/96
11.	1:96-cv-02232	S Industries, Inc. v. GMI Prof. Access Sys., et al	filed 04/16/96
12.	1:96-cv-03389	S Industries, Inc. v. Diamond Multimedia, et al	filed 06/05/96
13.	1:96-cv-03524	S Industries, Inc. v. Centra 2000 Inc., et al	filed 06/11/96
14.	1:96-cv-03525	S Industries, Inc. v. NAAN Irrigation Sys., et al	filed 06/11/96
15.	1:96-cv-03592	S Industries, Inc. v. Nat'l Baseball Hall	filed 06/13/96
16.	1:96-cv-03593	S Industries, Inc. v. Funline Mdsc Co. Inc., et al	filed 06/13/96
17.	1:96-cv-03916	S Industries, Inc. v. Kimberly-Clark Corp, et al	filed 06/27/96
18.	1:96-cv-04140	S Industries, Inc. v. Ecolab Inc.	filed 07/09/96
19.	1:96-cv-04141	S Industries, Inc. v. Tru-Fit Mkg Corp.	filed 07/09/96
20.	1:96-cv-04149	S Industries, Inc v. Mitsubishi Int'l Inc., et al	filed 07/09/96
21.	1:96-cv-04434	S Industries, Inc. v. Brodix Inc., et al	filed 07/19/96

22.	1:96-cv-04659	S Industries, Inc. v. JL Audio Inc., et al	filed 07/29/96
23.	1:96-cv-04951	S Industries, Inc. v. Stone Age Equip. Inc., et al	filed 08/12/96
24.	1:96-cv-06047	S Industries, Inc. v. Tournament Grade, et al	filed 09/19/96
25.	1:96-cv-06507	S Industries, Inc. v. Photostealth Fabric	filed 10/04/96
26.	1:96-cv-06509	S Industries, Inc. v. Hobbico Inc., et al	filed 10/04/96
27.	1:96-cv-06538	S Industries, Inc. v. E-Force Sports, et al	filed 10/07/96
28.	1:97-cv-01817	S Industries, Inc. v. Hobbico Inc., et al	filed 03/17/97
29.	1:97-cv-02787	S Industries, Inc. v. Space-Age Tech, et al	filed 04/21/97
30.	1:97-cv-03702	S Industries, Inc. v. Sunshine Golf	filed 05/20/97
31.	1:97-cv-03703	S Industries, Inc. v. Tour Advanced Int'l	filed 05/20/97
32.	1:97-cv-03704	S Industries, Inc. v. N GA Disc Golf	filed 05/20/97
33.	1:97-cv-03705	S Industries, Inc. v. S E Golf	filed 05/20/97
34.	1:97-cv-03706	S Industries, Inc. v. Proclub Golfing Co.	filed 05/20/97
35.	1:97-cv-03707	S Industries, Inc. v. M & M Golf Inc.	filed 05/20/97

EXHIBIT B

Exhibit 2

SI Registrations and Applications Purportedly Transferred to Defendant Central Mfg.

<u>Serial Number</u>	<u>Registration Number</u>	<u>Mark</u>
75016560	N/A	STEALTH
75242656	2137218	AIR FRAME
75242655	2138806	AIR FRAME
75230338	2137059	AIR FRAME
75228505	2128940	AIR FRAME
75228497	2138609	AIR FRAME
75228010	2140524	SENTRA
75218045	2110838	DARK STAR
75203742	2097863	FIRE POWER
75203741	2439735	STEALTH
75180414	2126933	STAR LITE
75154346	2077635	DARK STAR
75154345	2057613	DARK STAR
75154344	2061586	DARK STAR
75152224	2081565	DARK STAR
75143090	2273229	SENTRA
75130222	2083721	DARK STAR
75129214	2081347	DARK STAR
75129210	2071763	DARK STAR
75121252	2063283	STRADIVARIUS
75036382	3038587	STEALTH
75019143	2478742	STEALTH
75006422	2064576	SENTRA
75000280	2330467	STEALTH
74327774	N/A	STEALTH
74415569	1867087	STEALTH

74735868	2325054	STEALTH 9MM SHADOW
74735867	2325053	STEALTH 9MM
74734680	2523745	STEALTH
74726073	2551385	STEALTH
74724048	1984329	SENTRA
74724047	2025156	STEALTH
74630176	2024889	THE STEALTH
74476028	2657452	STEALTH
74063127	1766806	STEALTH
74004936	1717010	STEALTH
73778877	1615004	TERMINATOR
73793505	1608361	S
73778875	1623790	HAVOC
73771877	1621365	COLLIDER
73778748	1602482	ANNIHILATOR
73778747	1589092	24 KARAT
73771242	1593157	HYPERSONIC
73771241	1584851	AQUILLA
73767454	1581051	TRILLIUM
73772953	1596600	NIGHT STALKER
73771240	1564755	PHALANX
73768507	1564751	AEROSPACE
73621586	1450972	CHESTNUT
73553786	1438152	FIRE POWER
73554850	1424951	PLAY THE ANGLE
73552025	1389167	WHITE LINE FEVER
73552024	1384193	SENTRA
73552023	1382504	TIRADE
73551893	1381612	STRADIVARIUS

73496994	1332378	STEALTH
73481745	1326765	SENTRA
73478410	1361523	SENTRA
73399116	1323733	CREATIVE TRAVEL

EXHIBIT C

ESTTA Tracking number: **ESTTA76008**

Filing date: **04/12/2006**

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

Applicant: **V.P. Holding S.p.A.**  
Application Serial Number: **78192386**  
Application Filing Date: **12/09/2002**  
Mark: **VP VENTURES**  
Date of Publication: **03/14/2006**

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

Pursuant to 37 C.F.R. Section 2.102, Stealth Industries, Inc., 7115 W. North Ave., #272, Oak Park, IL 60302, UNITED STATES, a corporation organized under the laws of Delaware, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *Please contact (773-589-0915 FAX) VENTURE BRAND LICENSING to resolve this trademark controversy VENTURE v VP VENTURES and/or merely file an Express Abandonment! See [rentamark.com](http://rentamark.com), the nationally renowned trademark licensing and enforcement firm since 1974 for all of your VENTURE BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, ie., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 04/13/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 07/12/2006.

Respectfully submitted,

/Leo Stoller/

04/12/2006

Leo Stoller

President

Stealth Industries, Inc.

7115 W. North Ave., #272

Oak Park, IL 60302

UNITED STATES

[ldms4@hotmail.com](mailto:ldms4@hotmail.com)

773-589-0340



EXHIBIT D

ESTTA Tracking number: **ESTTA76007**

Filing date: **04/12/2006**

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

Applicant: **XELLA INTERNATIONAL GMBH**  
Application Serial Number: **78190546**  
Application Filing Date: **12/03/2002**  
Mark: **XELLA**  
Date of Publication: **03/14/2006**

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

Pursuant to 37 C.F.R. Section 2.102, Stealth Industries, Inc., 7115 W. North Ave., #272, Oak Park, IL 60302, UNITED STATES, a corporation organized under the laws of Delaware, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *Please contact (773-589-0915 FAX) ELLA BRAND LICENSING to resolve this trademark controversy ELLA v XELLA and/or merely file an Express Abandonment! See [rentamark.com](http://rentamark.com), the nationally renowned trademark licensing and enforcement firm since 1974 for all of your ELLA BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, ie., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 04/13/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 07/12/2006.

Respectfully submitted,

/Leo Stoller/

04/12/2006

Leo Stoller

President

Stealth Industries, Inc.

7115 W. North Ave., #272

Oak Park, IL 60302

UNITED STATES

[ldms4@hotmail.com](mailto:ldms4@hotmail.com)

773-589-0340

ESTTA Tracking number: **ESTTA76009**

Filing date: **04/12/2006**

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

Applicant: **INFINGO, LLC**  
Application Serial Number: **78195155**  
Application Filing Date: **12/17/2002**  
Mark: **INFINGO**  
Date of Publication: **03/14/2006**

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

Pursuant to 37 C.F.R. Section 2.102, Stealth Industries, Inc., 7115 W. North Ave., #272, Oak Park, IL 60302, UNITED STATES, a corporation organized under the laws of Delaware, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *Please contact (773-589-0915 FAX) FINGO BRAND LICENSING to resolve this trademark controversy FINGO v INFINGO and/or merely file an Express Abandonment! See rentamark.com, the nationally renowned trademark licensing and enforcement firm since 1974 for all of your FINGO BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, i.e., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 04/13/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 07/12/2006.

Respectfully submitted,  
/Leo Stoller/  
04/12/2006

Leo Stoller

President

Stealth Industries, Inc.  
7115 W. North Ave., #272  
Oak Park, IL 60302  
UNITED STATES  
ldms4@hotmail.com  
773-589-0340

ESTTA Tracking number: **ESTTA75758**

Filing date: **04/12/2006**

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

Applicant: **SKILLJAM TECHNOLOGIES CORPORATION**  
Application Serial Number: **76633965**  
Application Filing Date: **03/22/2005**  
Mark: **\$KILLJAM**  
Date of Publication: **03/14/2006**

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

Pursuant to 37 C.F.R. Section 2.102, Stealth Industries, Inc., 7115 W. North Ave., #272, Oak Park, IL 60302, UNITED STATES, a corporation organized under the laws of Delaware, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *Please contact (773-589-0915 FAX) SKILL BRAND LICENSING to resolve this trademark controversy SKILL v SKILLJAM and/or merely file an Express Abandonment! See rentamark.com, the nationally renowned trademark licensing and enforcement firm since 1974 for all of your SKILL BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, i.e., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 04/13/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 07/12/2006.

Respectfully submitted,

/Leo Stoller/

04/12/2006

Leo Stoller

President

Stealth Industries, Inc.

7115 W. North Ave., #272

Oak Park, IL 60302

UNITED STATES

ldms4@hotmail.com

773-589-0340

ESTTA Tracking number:

**ESTTA72955**

Filing date:

**03/27/2006**

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

Applicant: **MATTEL, INC.**  
Application Serial Number: **76641311**  
Application Filing Date: **06/21/2005**  
Mark: **MERMAIDIA**  
Date of Publication: **02/28/2006**

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

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

Potential opposer believes that good causes are established for this request by:

- The potential opposer needs additional time to investigate the claim
- *Please contact (773-589-0915 FAX) MERMAID BRAND LICENSING to resolve this trademark controversy MERMAID v MERMAIDIA and/or merely file an Express Abandonment! See [rentamark.com](http://rentamark.com), the nationally renowned trademark licensing and enforcement firm since 1974 for all of your MERMAID BRAND LICENSING, trademark valuations, expert witness testimony and trademark litigation support services, ie., brief writing, trademark searches, legal research, appeals, etc.*

The time within which to file a notice of opposition is set to expire on 03/30/2006. Stealth Industries, Inc. respectfully requests that the time period within which to file an opposition be extended until 06/28/2006.

Respectfully submitted,

/Leo Stoller/

03/27/2006

Leo Stoller

President

Stealth Industries, Inc.

P.O. Box 35189

Chicago, IL 60707-0189

UNITED STATES

[ldms4@hotmail.com](mailto:ldms4@hotmail.com)

773-589-0340

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

LEO STOLLER, )  
 ) No. 05B64075  
 ) Chicago, Illinois  
 ) December 12, 2006  
 Debtor. ) 10:30 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JACK B. SCHMETTERER

APPEARANCES:

Trustee: Mr. Richard Fogel;  
For the Trustee: Ms. Janice Alwin;  
For Google, Inc.: Mr. William Barrett;  
For Pure Fishing: Mr. William Factor;  
Mr. Lance Johnson;

ALSO PRESENT:

Mr. Leo Stoller,  
Pro Se.

1 THE CLERK: Stoller, 05-64075.

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

4 MS. ALWIN: Good morning, Your Honor. Janice  
5 Alwin on behalf of the trustee.

6 MR. FOGEL: Good morning, Your Honor.  
7 Richard Fogel, the trustee.

8 MR. BARRETT: Your Honor, William Barrett for  
9 Google, Inc.

10 MR. FACTOR: Good morning, Your Honor.  
11 William Factor and Lance Johnson for Pure Fishing.

12 THE COURT: As for Google, there is a motion  
13 of Google, this is old business, for an order declaring  
14 the proposed suit to be outside the scope of the stay.  
15 Didn't I deal with that?

16 MS. ALWIN: Draft order to follow, Your  
17 Honor.

18 MR. FOGEL: Draft order to follow for today.

19 THE COURT: Oh, is this the order here?

20 MR. BARRETT: Your Honor, if I --

21 THE COURT: Do you have an order?

22 MR. BARRETT: Yes. Google has the order.

23 MR. STOLLER: Your Honor, if I may say, this  
24 is the motion that Google filed. I didn't receive this  
25 until about two days ago and I filed --

1 THE COURT: This motion?

2 MR. STOLLER: This was a motion, the motion  
3 we're talking about here, and it's about 300 pages. And  
4 I didn't receive it until two days ago. And I filed an  
5 objection.

6 THE COURT: I have not received any 300-page  
7 motion, so I'm not passing on what you're talking about.

8 MR. STOLLER: This is the motion --

9 THE COURT: I can't help it. That is not  
10 what I'm ruling --

11 MR. STOLLER: -- that you're ruling on today.

12 THE COURT: No, it isn't. The motion we're  
13 talking about was presented here August 25th.

14 MR. STOLLER: That's this one.

15 THE COURT: And it's not 300 pages.

16 MR. BARRETT: Your Honor, if I may, the  
17 motion with all the exhibits is a binder, motion --  
18 document that the court has before it right now. I know  
19 when we were here in August we had this complete binder  
20 and it was offered to the court. The court at that time  
21 had the complete set.

22 THE COURT: I see.

23 MR. BARRETT: We did serve -- we're very  
24 careful, last August, about serving -- we had multiple  
25 addresses for Mr. Stoller. I have one return package



1 here.

2 THE COURT: You have what and what?  
3 According to the service list, it was addressed to  
4 Mr. Stoller at 7300 West Fullerton, Elmwood Park.

5 Was that your home?

6 MR. STOLLER: No. That was a post office  
7 mailing address which I have not used and discontinued.  
8 And I've just first been notified of this motion, and I  
9 filed a proper response to it with the court. And I  
10 would like to be able to make an objection to the entry  
11 of any order regarding the motion because I never had  
12 it.

13 THE COURT: You're representing yourself.

14 MR. STOLLER: Yes.

15 THE COURT: I understand that. Now have you  
16 filed a response to this?

17 MR. STOLLER: Yes, I have filed a response.

18 THE COURT: Have you served it?

19 MR. STOLLER: Yes, and I served it.

20 THE COURT: Did you get it?

21 MR. BARRETT: I saw it this morning in court.

22 THE COURT: You did not get it?

23 MR. BARRETT: Not before this morning.

24 THE COURT: Have you served it?

25 MR. STOLLER: Yes.

1 THE COURT: -- means delivered and how?

2 MR. STOLLER: I mailed it by first class  
3 mail.

4 THE COURT: When?

5 MR. STOLLER: On the 9th of --

6 THE COURT: Three days ago?

7 MR. STOLLER: Three days ago.

8 THE COURT: Obviously nobody has received it.

9 MR. STOLLER: And I handed him a copy of it,  
10 as he's handed me a copy of his response.

11 THE COURT: Counsel, did you receive it?

12 MR. BARRETT: Your Honor, I just saw it this  
13 morning in court.

14 THE COURT: Yes or no to received it.

15 MR. BARRETT: I received it in the courtroom  
16 this morning, yes.

17 THE COURT: Thank you. May I have a copy,  
18 please.

19 MR. STOLLER: Yes.

20 MR. BARRETT: Your Honor, also at the time  
21 that the motion was filed the debtor was represented by  
22 Mr. Golding, who did receive a copy of this package.

23 THE COURT: I know, but Mr. Stoller has  
24 listed on his bankruptcy schedules a certain address --

25 MR. BARRETT: I believe --

1 THE COURT: And that's the address that  
2 you're entitled then to serve notice on unless and until  
3 a change of address is filed.

4 Have you ever filed a change of  
5 address?

6 MR. STOLLER: Yes, I have, Judge.

7 THE COURT: And when did you file that  
8 address -- time, rather?

9 MR. STOLLER: Probably within the last 30  
10 days.

11 THE COURT: Okay.

12 MS. ALWIN: Your Honor, there's no change of  
13 address on the docket that I'm aware of.

14 THE COURT: Do you have a copy of your change  
15 of address?

16 MS. ALWIN: And we have not received one.

17 MR. STOLLER: Yes. I don't have it with me,  
18 but I did file it.

19 THE CLERK: I will check the docket.

20 THE COURT: Did you find it?

21 THE CLERK: I am checking it now.

22 THE COURT: We'll check the docket.

23 Trustee, have you looked at this order?

24 MS. ALWIN: Yes. The motion -- we have, Your  
25 Honor. The order? Proposed order?

1 THE COURT: Order. Have you looked at this  
2 order?

3 MS. ALWIN: I've looked at the proposed order  
4 by -- yes, Your Honor. We have no objection.

5 THE COURT: You think that the claims that he  
6 wishes to file arose after commencement of the  
7 bankruptcy case?

8 MS. ALWIN: Yes, Your Honor.

9 MR. FOGEL: We had a hearing on this matter  
10 last week and there was an objection to the settlement  
11 motion raised by Mr. Stoller, which you overruled and  
12 had it today for draft order to follow in connection  
13 with that ruling.

14 THE COURT: Was this the case in which I said  
15 that I'll reserve --

16 MR. FOGEL: Yes.

17 THE COURT: -- I was going to reserve  
18 jurisdiction?

19 MR. FOGEL: You were reserving jurisdiction.  
20 You were reserving the right to modify the order --

21 THE COURT: This order does not say -- this  
22 proposed order doesn't say that.

23 MR. FOGEL: The order approving the  
24 settlement --

25 MS. ALWIN: I have a copy if Your Honor needs

1 one.

2 MR. FOGEL: -- does say that. This order  
3 is -- this is the order to modify the stay as a result  
4 of the approval of that settlement.

5 MR. BARRETT: If I may eliminate some --

6 THE COURT: I see, to let them go forward.  
7 All right, now I recall. The idea was I could withdraw  
8 that which, in effect, wiped out his rights permanently  
9 if this case gets dismissed. But in the meantime the  
10 stay would be modified --

11 MR. FOGEL: Yes.

12 THE COURT: -- so that the suit could go  
13 forward. I think that's what you're talking about.

14 MR. STOLLER: I would like to make an  
15 argument to the contrary, which I have never, as far as  
16 removing the stay.

17 THE COURT: Well, hang on a second, sir. All  
18 right. What was that last thing you said?

19 MR. STOLLER: I would like to make an  
20 argument against removing the stay and allowing them to  
21 file a district court case against me.

22 THE COURT: Just a moment, please. Let me  
23 have your big black book binder with all those exhibits.

24 Is there a proposed lawsuit attached to  
25 this?

1 MR. BARRETT: Yes, Your Honor. The lawsuit  
2 is Exhibit 1.

3 THE COURT: All right. Just for the record,  
4 my clerk informs me that she finds no change of address  
5 form filed by you, Mr. Stoller. If you wish to file  
6 one, everybody is going to be bound by it. If you file  
7 one and serve it on everybody, they'll be bound to give  
8 you notice at your address. But right now your only  
9 address on the record is 7300 West Fullerton.

10 MR. STOLLER: Okay, Judge.

11 THE COURT: Now what exhibit would I find  
12 your proposed complaint, sir?

13 MR. BARRETT: Exhibit 1.

14 THE COURT: I'm on page two and it appears  
15 you have a suit that refers to activity that took place  
16 prior to the filing of the bankruptcy. Am I right?

17 MR. BARRETT: Your Honor, the suit does refer  
18 to activity that took place prior to the filing, that's  
19 right. That is necessary in order to state a claim  
20 under the RICO statute.

21 THE COURT: Right. But, therefore, the order  
22 I have been handed is not right.

23 MR. BARRETT: Well, Your Honor, to make a  
24 claim under the RICO statute you need to allege two  
25 things. You need to allege two predicate acts, that the

1 claims arise under two predicate acts. Those acts, at  
2 least the second act occurred post-petition.

3 THE COURT: I'm not questioning what's right  
4 to plead under that act. What I'm questioning is the  
5 order you want me to approve. You say the claims of  
6 Google first arose after the commencement of this case.  
7 Evidently they did not.

8 MR. BARRETT: Your Honor, I have a time line.

9 THE COURT: There may be a good reason to  
10 modify the stay, but since the activities you complain  
11 of started before the case began, it seems to me that I  
12 cannot use that reason.

13 MR. BARRETT: If I can just address that a  
14 second, the claim that -- and I use the word activities,  
15 the activities that gave rise to the claim, the actual  
16 claim, occurred post-petition. The complaint does refer  
17 to activities that occurred pre-petition as part of the  
18 allegations about pattern racketeering activity. The  
19 claim Google has, though, is not based on that historic  
20 pattern. It must allege and plead that pattern to state  
21 a RICO claim. I have a time line here if the court  
22 would like to see it of the acts that relate to Google's  
23 actual claim and how it fits in with the filing of the  
24 case.

25 THE COURT: You have a history here. Like so

1 many people that come here you want to fire a shotgun  
2 and give a huge history and then you give me a  
3 pinpointed order that pretends as though the history  
4 prior to the filing of the bankruptcy is not alleged.

5 MR. STOLLER: Are you addressing that to me,  
6 Judge?

7 THE COURT: No.

8 MR. BARRETT: Your Honor, it is alleged. You  
9 could never state a RICO claim in these circumstances  
10 against the debtor.

11 THE COURT: All right. I have to have a  
12 basis for modifying the stay because part of the  
13 activity that you wish to sue on occurred  
14 pre-bankruptcy.

15 MR. BARRETT: And, Your Honor, I could  
16 address the alternative relief in the motion, which is  
17 relief Google is seeking, which is injunctive relief for  
18 false advertising; wrongful competition; and violation  
19 of the RICO statute, which the predicate offense is mail  
20 fraud, wire fraud, and extortion. That is the type of  
21 relief most appropriately entered by the district court.

22 MR. STOLLER: I'd like to be able to --

23 THE COURT: You are arguing there is cause to  
24 modify the stay.

25 MR. BARRETT: As an alternative, yes.



1 THE COURT: Okay. I'll entertain that  
2 motion. Now I have already approved the settlement.

3 MS. ALWIN: Yes, Your Honor. An order has  
4 been entered. Would you like a copy?

5 MR. BARRETT: And if I could just maybe  
6 address some confusion. The settlement addresses claims  
7 of Google against the estate and the assets administered  
8 by the trustee. Today we are dealing with Mr. Stoller  
9 as the individual debtor.

10 THE COURT: I understand. If we permit this  
11 to go forward, of course, he can find some way, if he  
12 can, to defend himself.

13 MR. BARRETT: That's right.

14 THE COURT: What this does is take it out of  
15 the bankruptcy. The suits are also against Central  
16 Manufacturing and Stealth.

17 MS. ALWIN: That has been resolved as part of  
18 the settlement order.

19 THE COURT: As part of the settlement?

20 MS. ALWIN: Yes, Your Honor.

21 THE COURT: Mr. Stoller, I've read your  
22 response. Is there anything you want to add to it?

23 MR. STOLLER: Yes, I do, Judge, is the fact  
24 that all of the acts of which they're complaining of,  
25 and I need at least two minutes for you to indulge me

1 because this is a very serious issue, what they're  
2 complaining of is I wrote three settlement letters under  
3 408 to try to resolve a registerability issue and I  
4 brought a petition to cancel against Google's  
5 registration based on the fact that it's generic or  
6 descriptive. From those three acts, which all occurred  
7 prior to the filing of the bankruptcy, they have  
8 construed and concocted this very serious charge, the  
9 RICO charge.

10 Under the trademark law, there is no  
11 statutory reason why when we're dealing with just a  
12 registerability issue, I didn't threaten their  
13 customers, I didn't threaten -- only the cancelation of  
14 their mark --

15 THE COURT: I've got to interrupt you and  
16 tell you I'm not here to decide the merits of that.

17 MR. STOLLER: Okay, but I just want to point  
18 that out. The other thing that's --

19 THE COURT: The only question is whether I  
20 should modify the stay --

21 MR. STOLLER: Right.

22 THE COURT: -- so they can litigate against  
23 you.

24 MR. STOLLER: And here's why I'm going to  
25 suggest you shouldn't. The purpose of the stay is to

1 give a creditor a respite from litigation. We're trying  
2 to resolve this bankruptcy issue. And I had a meeting  
3 yesterday with the trustee and I think it's possible  
4 that we'll be able to resolve the bankruptcy issue.

5 THE COURT: In the event the bankruptcy issue  
6 were resolved, what would happen to the bankruptcy do  
7 you think?

8 MR. STOLLER: What would happen would depend  
9 on the ultimate resolution.

10 THE COURT: Yes.

11 MR. STOLLER: My hope is --

12 THE COURT: Might the bankruptcy be  
13 dismissed?

14 MR. STOLLER: That it might be dismissed,  
15 yes, and my creditors could be paid.

16 THE COURT: Well, but this particular  
17 creditor, if the bankruptcy is dismissed, would be free  
18 to sue you anyway, right?

19 MR. STOLLER: If the bankruptcy were to be  
20 dismissed and I was able to regain control of my  
21 corporations and be in business again, they could sue  
22 me. However, the predicate acts of which they're  
23 complaining about are no longer taking place because I'm  
24 not in control of my business. For them to bring these  
25 charges against me now when I am not pursuing the

1 petition to cancel, I'm not writing letters to them, the  
2 trustee is in charge of the corporations --

3 THE COURT: Let me pause for that. Is one of  
4 the corporations Central Manufacturing?

5 MR. STOLLER: Yes.

6 THE COURT: Which has some other names.

7 MR. STOLLER: Stealth Industries, Inc.

8 THE COURT: Stealth Industries, also  
9 Rentamark.

10 MR. STOLLER: Correct.

11 THE COURT: Right?

12 MR. STOLLER: Right. In other words, what  
13 relief they're seeking, Judge --

14 THE COURT: I understand. Let me ask the  
15 trustee something. He wants to -- if we modify the stay  
16 then, of course, Stoller can be sued but also these  
17 corporations. Do you take the view that he has no right  
18 to represent the corporations or hire a lawyer to  
19 represent the corporations?

20 MR. FOGEL: I take that view, yes, because as  
21 part of the settlement there is no relief being sought  
22 against the estate or the entities. There is no  
23 monetary relief being sought against them. And getting  
24 back to whether we've talked many times, the entities  
25 all appear to be Mr. Stoller, so that we're talking

1 about claims against the bankruptcy estate on the one  
2 hand, we're talking about claims against Mr. Stoller as  
3 an individual post-conversion living the rest of his  
4 life, on the other hand. The second --

5 THE COURT: Yeah, but --

6 MR. FOGEL: -- part is what Google is going  
7 after.

8 THE COURT: Central Manufacturing is a  
9 corporate entity?

10 MR. STOLLER: Yes, in Delaware. Yes, Judge,  
11 it is.

12 THE COURT: What do you think, Google?

13 MR. BARRETT: Your Honor, I understand the  
14 court made a finding of fact at the conversion trial  
15 finding that these entities were inseparable from  
16 Mr. Stoller himself.

17 THE COURT: Well, they may be maybe  
18 inseparable.

19 MS. ALWIN: The debtor has also failed to  
20 produce --

21 THE COURT: In a piercing corporate veil  
22 sense, but I was just asking whether or not it was  
23 corporate entities.

24 MR. STOLLER: They are. I paid the franchise  
25 fee for 20 years for each one of those corporations in

1 Delaware. They exist. All you have to do is go on the  
2 computer and pull them up.

3 MS. ALWIN: Your Honor, as we've noted at  
4 the --

5 MR. FOGEL: Your Honor, there is an entity in  
6 Delaware called Central M-f-g, I want to say comma, Inc.  
7 that is in good standing. I've not seen a document that  
8 in any way, shape, or form connects Mr. Stoller to that  
9 entity. He is not listed as the registered agent. The  
10 State of Delaware does not identify corporate officers.  
11 I have not seen a stock certificate. I've not seen a  
12 record book.

13 THE COURT: Counsel --

14 MR. FOGEL: I've not seen a tax return. I've  
15 not seen anything.

16 THE COURT: Are you abandoning or not  
17 abandoning your claims by reason -- against these  
18 entities, whatever they are, by reason of his stock  
19 ownership therein, if he has any stock ownership or any  
20 other interest? Are you abandoning the interest --

21 MR. FOGEL: No.

22 THE COURT: -- by reason of his relationship.

23 MR. FOGEL: No. I am holding onto all  
24 property of the estate at the moment while I continue --

25 THE COURT: Why are you not abandoning, if

1 you think it is valueless for the estate --

2 MR. FOGEL: No. I'm not asserting a claim  
3 against Google, which I think is valueless for the  
4 estate.

5 THE COURT: Why are you not abandoning these  
6 corporate --

7 MR. FOGEL: They may, in turn -- they may, in  
8 fact, turn out to be companies. They may, in turn, turn  
9 out to have assets.

10 THE COURT: If they are, are you going to be  
11 defending them in the Google lawsuit that they proposed  
12 to file?

13 MR. FOGEL: Not if they're not seeking any  
14 monetary relief. I can't --

15 THE COURT: They seek relief against the  
16 companies or with -- companies. They do.

17 MR. STOLLER: See, that's the rub, Your  
18 Honor. I can't have attorneys represent my  
19 corporations. They're going to consent to judgments  
20 against my corporations. Then they're going to throw me  
21 to the wolves, and I'm going to have to defend myself in  
22 a RICO action for what I think is basically not RICOish.

23 On the other hand, I don't have an  
24 attorney and I can't afford an attorney to represent  
25 myself. So this is putting the debtor, in prejudicing

1 the debtor beyond what should be allowed under the law.  
2 I can't represent my corporations with attorneys to  
3 protect them and, therefore, I can't even represent  
4 myself.

5 THE COURT: I understand. I'm perfectly  
6 clear as to why you wanted the settlement which -- but  
7 you're also, through this device, exposing the  
8 corporations in which you claim an interest to damages  
9 undefended. And I don't understand that unless you want  
10 to abandon your interests in --

11 MR. STOLLER: And he's done that in every  
12 case where I'm in litigation, Your Honor.

13 THE COURT: Mr. Stoller, wait please. Bear  
14 with me one second.

15 MS. ALWIN: Your Honor, part of the  
16 settlement was a release of claims.

17 THE COURT: Against who?

18 MS. ALWIN: Google and the estate and the  
19 entities, so we've resolved it.

20 THE COURT: You mean, Google has released its  
21 claims against the entities?

22 MS. ALWIN: That's my understanding, Your  
23 Honor.

24 THE COURT: Counsel for Google, please?

25 MR. BARRETT: Your Honor, I'm looking at the



1 relevant language right now in the agreement. The  
2 language is Google hereby releases and discharges  
3 Stoller's bankruptcy estate and the trustee, as  
4 representative of Stoller's bankruptcy estate, from any  
5 and all claims.

6 THE COURT: Not the entities.

7 MR. BARRETT: It does not appear to  
8 specifically include the entities.

9 MS. ALWIN: There are no claims against the  
10 entities.

11 THE COURT: Counsel?

12 MS. ALWIN: If I misspoke, Your Honor, my  
13 apologies, but my understanding is --

14 THE COURT: If it included the entities --

15 MS. ALWIN: -- there are no claims then.

16 THE COURT: -- then there's no reason for him  
17 to file this shotgun suit.

18 MR. FOGEL: The suit was drafted before the  
19 settlement was reached.

20 THE COURT: I know, but from what I just  
21 heard, the entities are still liable and you want them  
22 to go undefended even though you think that potentially  
23 you may find out they had a value.

24 MR. STOLLER: That's correct, Your Honor.

25 MR. BARRETT: The relief sought by Google

1 against the entities in the settlement agreement is  
2 injunctive relief.

3 THE COURT: I'm sorry. I was just looking at  
4 this complaint. I always take these requests for relief  
5 kind of seriously. You want treble damages. You want  
6 punitive damages. You don't want -- you want much more  
7 than an injunction against an entity that the trustee  
8 wants to hold onto in case he can find some value there.  
9 And yet the trustee does not intend to defend this,  
10 defend the entities. I don't understand that. I'm not  
11 sure I should modify the stay to permit -- to go after  
12 the entities since the entities are part of the estate.

13 MR. FOGEL: I don't see how entry of  
14 injunctive relief against the entities would affect  
15 their value.

16 THE COURT: I assure you that punitive  
17 damages would and treble damages would.

18 MR. FOGEL: It's my understanding that Google  
19 was not going to be seeking monetary relief against the  
20 entities and was only going to pursue Mr. Stoller. And  
21 if I misunderstood the settlement then --

22 THE COURT: Counsel, is all you want to do is  
23 to get the injunction against the entities?

24 MR. BARRETT: Your Honor, my understanding --  
25 we're dealing with an issue I think that wasn't really

1 fully fleshed out in the settlement talks with the  
2 trustee.

3 THE COURT: I know. And I know this draft  
4 was prepared a long time ago.

5 MS. ALWIN: Yes.

6 THE COURT: I guess you had better think it  
7 through; also me. I'm prepared -- I've approved that  
8 settlement and it makes sense for the estate, but now  
9 I've got to see whether the form of the order here makes  
10 sense and the extent to which I permit him to go forward  
11 with litigation makes sense.

12 MR. FOGEL: May we put this over so that  
13 Mr. Barrett can confer with his lead counsel? And  
14 perhaps the fix is to have a revised proposed  
15 complaint --

16 THE COURT: Yes.

17 MR. FOGEL: -- that will not be seeking the  
18 type of relief that we're talking about.

19 THE COURT: I think that may very well be.  
20 Now, Mr. Stoller, based on your objection, it's going to  
21 be overruled. I'll tell you why. There is good cause  
22 here for allowing Google to go forward and sue you. As  
23 to whether he should be allowed to sue the entities, I'm  
24 not so sure, but there is good cause to allow him to sue  
25 you because that has nothing to do with this estate and

1 suing you won't hurt the estate and, therefore, I should  
2 not in any way bar him from going forward. There is  
3 good cause. He has certainly got an issue that ought to  
4 be resolved somewhere, and I don't see why it should be  
5 resolved in bankruptcy court at all.

6 MR. STOLLER: Well, none of the predicate  
7 acts of which he's trying to seeking relief, or  
8 allegedly seeking relief and, of course, I deny all the  
9 allegations in the complaint, you know, it's like taking  
10 the captain of a ship and saying -- I'm not doing  
11 anything. You know, in other words, there is an  
12 injunction by virtue --

13 THE COURT: Well, you can argue that to  
14 whatever court this is before.

15 MR. STOLLER: But I'm just merely saying it  
16 doesn't make any sense to shove me into an environment  
17 when I'm in a bankruptcy proceeding, I'm trying to  
18 resolve the bankruptcy, pay my creditors, and then I  
19 would say, Judge, if I get out of this bankruptcy and I  
20 pay my creditors and regain my corporations, I would  
21 relish having the opportunity to defend it.

22 THE COURT: At least you should understand  
23 that there is good cause to show why they should go  
24 ahead and be able to sue you on a matter not affecting  
25 the bankruptcy to get injunctions. Now as to how much

1 beyond that should I allow is the question that's still  
2 open. Okay?

3 So when can we have you folks back  
4 here?

5 MR. FOGEL: Your Honor, we have a pending  
6 date in January, I think on the 11th, for some matters.  
7 I don't know if there is a time between now and then  
8 that we can get back before you. I'm going to be out of  
9 town.

10 THE COURT: Well, I can find some time if you  
11 tell me when you want to come back here.

12 MR. FOGEL: Wait, January 11th is the 341.

13 THE COURT: I can find some time. I will  
14 just pick a date a week from now or 10 days from now.

15 MR. FOGEL: A week from now would work.

16 THE COURT: Okay. Date please?

17 THE CLERK: January 19th at 10:30.

18 THE COURT: January?

19 THE CLERK: I'm sorry, December.

20 THE COURT: December 19th at what, 10:30?

21 THE CLERK: 10:30.

22 THE COURT: For hearing on order and possible  
23 limits to litigation -- to suit.

24 May I continue to borrow your big black  
25 book, please?

1 MR. BARRETT: You you may, Your Honor.

2 THE COURT: I don't know what happened to my  
3 copy.

4 Now did you, Mr. Stoller, get a full  
5 set of this big black binder?

6 MR. STOLLER: I just received it, yes.

7 THE COURT: All right. There was a motion on  
8 today, a trustee's motion to approve compromise of  
9 Lanard Toys.

10 MS. ALWIN: Yes. I have a draft order to  
11 follow, Your Honor.

12 THE COURT: May I have it please?

13 MS. ALWIN: Yes.

14 THE COURT: I've overruled the debtor's  
15 objection.

16 MR. FOGEL: We've changed the language to  
17 make it clear that the reference in that paragraph is  
18 only to me on behalf of the estate and the related  
19 entities and it's not applicable to Mr. Stoller.

20 THE COURT: Which paragraph are you talking  
21 about?

22 MR. FOGEL: It's paragraph four of the --

23 THE COURT: The language in the agreement you  
24 mean?

25 MR. FOGEL: Yes.

1 MS. ALWIN: Yes.

2 MR. FOGEL: Paragraph four of the agreement  
3 is what Mr. Stoller's objecting to.

4 THE COURT: Okay.

5 MR. FOGEL: -- and make clear that I'm the  
6 someone.

7 THE COURT: So we -- get a copy of this order  
8 to Mr. Stoller, please.

9 MR. FOGEL: Yes, sir.

10 THE COURT: Now I also have Mr. Stoller's  
11 motion for permission to allow him to represent himself  
12 and his corporate entities before the Trademark Trial  
13 and Appeal Board. What is the status of that?

14 MR. FOGEL: Your Honor, the status of the  
15 matters before the -- they are, I guess the word is they  
16 are frozen pending further determinations in the  
17 bankruptcy case as to what ultimately happens. There  
18 are, as you may recall Mr. Stoller said last week, you  
19 know, over a thousand matters were filed to possibly  
20 investigate whether or not there was a reason for him to  
21 fight with any of the people that he was filing against.

22 I would say this motion is similar to  
23 the motion that he filed a couple of weeks ago that you  
24 denied where he sought a declaration either that I had  
25 abandoned my interest in the portfolio or that he should

1 be allowed to join the entities and the estate in the  
2 appeal of the Pure Fishing case. And I resisted the  
3 motion. I resisted that motion at that time --

4 THE COURT: Is that procedure before the  
5 Trademark Trial and Appeal Board --

6 MR. FOGEL: No.

7 THE COURT: -- Pure Fishing?

8 MR. FOGEL: Pure Fishing is pending in the  
9 district court before Judge Lindberg. It has been  
10 appealed to the Seventh Circuit by Mr. Stoller.

11 The matters before the Patent Trademark  
12 Board involve a variety of other parties and, again,  
13 until I have either reached some type of settlement with  
14 Mr. Stoller or proceeded without settlement with  
15 Mr. Stoller to deal with the intellectual property  
16 portfolio, I am opposed to him being authorized to act  
17 on behalf of the estate or on behalf of the entities.

18 THE COURT: What I can do is to keep this  
19 alive and see what happens.

20 MR. FOGEL: I have no problem with entering  
21 and continuance of this motion.

22 THE COURT: Because your view is that the  
23 proceeding is frozen.

24 MR. FOGEL: Yes.

25 MR. STOLLER: Your Honor, the last time we



1 were here one of the attorneys presented an action. At  
2 the Trademark Trial and Appeal Board -- and the last  
3 time we were here you made your order in the Google case  
4 predicated upon the fact that I may get my companies  
5 back.

6 THE COURT: Mr. Stoller, the trademark  
7 procedure, is it going forward now or is it frozen  
8 temporarily?

9 MR. STOLLER: No. They're going to be  
10 dismissed and that's the urgency. All my actions at the  
11 Trademark Trial and Appeal Board of which there are 30  
12 cases many of which I have been involved in for 10 years  
13 or more, Judge, are now all destined to be dismissed.

14 THE COURT: Mr. Stoller, do you have anything  
15 to back up your contention that they're about to be --

16 MR. STOLLER: Yes.

17 THE COURT: I don't mean Stoller. Trustee,  
18 do you have anything that shows that they're frozen as  
19 opposed to actively considering dismissal?

20 MS. ALWIN: I believe it's the order attached  
21 to Google's response.

22 MR. JOHNSON: Your Honor, if I may interject  
23 a moment on the Trademark Trial and Appeal Board  
24 procedure. An opposition is filed by a party who  
25 believes they will be harmed by the granting of a

1 trademark registration. There is an alternative  
2 proceeding available. If that registration has already  
3 been granted, the one aggrieved can seek to have the mar  
4 canceled. The two are procedurally identical, merely a  
5 difference in posture as to whether the application has  
6 been registered or whether the registration will be  
7 canceled.

8 MR. STOLLER: What happened the last time we  
9 were here, the board issued an order which was tendered  
10 to you. In that order the Trademark Trial and Appeal  
11 Board dismissed a case which the trustee entered into an  
12 agreement to dismiss the case with and I merely filed a  
13 notice before the Trademark Trial and Appeal Board,  
14 Judge, to advise them that the case was on appeal and  
15 not to -- to put them in the stay position.

16 The board issued a decision saying,  
17 "Stoller has no authority to respond," and then  
18 dismissed the action. That single decision which was  
19 tendered to you last time is now being used by all my  
20 opponents so that all of my decisions, all of the 30  
21 pending oppositions will be dismissed based on that  
22 board decision. I need to go back to the TTAB. I went  
23 in good faith and tried to contact Mr. Fogel and asked  
24 him if he would give me authority so I could go back to  
25 the board and say, "No, I do have the authority."

1 I'm not looking to litigate the cases  
2 over there. I'm merely looking to advise the board that  
3 we are -- that these decisions are on appeal and they  
4 should be stayed pending my appeal.

5 THE COURT: What decisions are on appeal?

6 MR. STOLLER: Pardon me?

7 THE COURT: What was handed to me now is a  
8 letter from the Patent Trademark office to you dated  
9 July 14, '06.

10 MR. STOLLER: That's just a sanction order.  
11 That has nothing to do --

12 THE COURT: It determines that you have not  
13 made a showing that you have a colorable claim of  
14 damages justifying the extension request that you filed.

15 MR. STOLLER: You're being -- there is an  
16 attempt to confuse the court. That decision, that was a  
17 sanction order based on my filing a series of requests  
18 to -- requests for extensions of time to file in  
19 opposition. That does absolutely nothing with the 30  
20 pending initiated opposition proceedings. The  
21 criticality of it is if I'm going to get my companies  
22 back, I want my oppositions in the same position they  
23 were at the time this proceeding began.

24 Mr. Lance Johnson's allegation to you  
25 that I could then now go back and refile 30 or 40 cases,

1 pay those filing fees, and then litigate under the  
2 theory that a petition to cancel is the same as an  
3 opposition is not the case. There is a different  
4 standard.

5 All I want is that the board suspend  
6 everything, like the trustee said, pending the  
7 resolution of these issues so that if we can reach an  
8 amicable resolution, I pay my creditors, I get my  
9 companies back, everything is stayed. Right now the  
10 board has said, "Stoller has no authority." I've  
11 received letters from other counsel using that last  
12 decision by the board and they're going to dismiss all  
13 30 of them which would never allow me to be made whole  
14 again.

15 THE COURT: Trustee, have you filed anything  
16 in that proceeding?

17 MR. FOGEL: Yes, and let me clarify it there.  
18 I think maybe what Mr. Stoller is looking for may, in  
19 fact, be available to him. After Judge Lindberg entered  
20 his opinion in the Pure Fishing case in the district  
21 court dealing with the Stealth marks that Mr. Stoller  
22 has the fights with before the Patent Trademark Board, I  
23 entered into a joint motion to dismiss in opposition  
24 without prejudice.

25 THE COURT: Pertaining to Pure?

1 MR. FOGEL: Pertaining to another entity.

2 THE COURT: Just one?

3 MR. FOGEL: I believe one.

4 MR. STOLLER: He entered three of them. He  
5 dismissed three of my cases.

6 MR. FOGEL: I thought only one of them had  
7 actually been --

8 THE COURT: Has it been dismissed?

9 MR. STOLLER: Three.

10 MR. FOGEL: I believe one of them has. And  
11 as soon as Mr. Stoller filed his notice of appeal of the  
12 Pure Fishing action, I decided to stand still and take  
13 no actions before the Patent and Trademark Board.

14 THE COURT: Mr. Stoller, let me ask, are  
15 these cases where you claim some interest in what other  
16 people say are their trademarks or patents?

17 MR. STOLLER: It's a claim where my company  
18 held rights and does the 35 Stealth federal trademark  
19 registrations. We have 35.

20 THE COURT: Mr. Stoller, are these  
21 proceedings where you claim an interest in certain  
22 trademarks that other companies are using?

23 MR. STOLLER: I claim an interest in the  
24 trademarks that I own, 35. A company will file an  
25 application for a trademark.

1 THE COURT: You don't want to answer my  
2 question.

3 MR. STOLLER: I am answering it.

4 THE COURT: No, you're not. I asked you  
5 whether you're claiming rights in trademarks that other  
6 companies are using.

7 MR. STOLLER: Yes, I am.

8 THE COURT: And do you contend that you used  
9 the -- that you obtained the trademarks first?

10 MR. STOLLER: I have 35 that I've obtained  
11 since 1981.

12 THE COURT: First, before they started to use  
13 them?

14 MR. STOLLER: Yes. And these cases are not  
15 being dismissed by the board summarily. They're motions  
16 to dismiss. They're being litigated. And I need to be  
17 able to defend my trademarks.

18 Now the only thing I'm looking for,  
19 Judge, the only thing here is to go back to the board  
20 and say, "No, they should be stayed." I should have the  
21 right to write them a letter and say they should be

1 very well be that Mr. Stoller is misusing his rights  
2 under the patent system. It may very well be that it  
3 would be a better world if he were stopped. I am not  
4 here to make that decision. It may very well be that  
5 some other court or agency ought to make that decision.  
6 I just don't think that if the trustee is not claiming  
7 any property rights that the bankruptcy should be used  
8 to prevent Mr. Stoller from litigating whatever he  
9 thinks his rights are. So I'm a little troubled by --

10 MR. FOGEL: I'm a little troubled, too. But  
11 if he would show me any documents, if he would give me  
12 any cooperation along the lines that would enable me to  
13 make intelligent decisions --

14 THE COURT: He has this problem because he's  
15 asserted the Fifth Amendment. He's not cooperated with  
16 you and he complains that you're moving slowly and are  
17 not proceeding to take some dispositive action that will  
18 allow him to get back control of his business. And, of  
19 course, I understand that once a trustee is faced by a  
20 proper assertion of a Fifth Amendment, if it be proper,  
21 that does slow the trustee down. I understand that on  
22 the other side as well. But, generally speaking, one  
23 may punish themselves by asserting the Fifth Amendment,  
24 but one may not be punished for asserting the Fifth  
25 Amendment properly.

1 MR. FOGEL: Your Honor, I --

2 THE COURT: Now where are we here? What I'd  
3 like to see happen is that whatever you do and whatever  
4 I do freezes the proceedings.

5 MR. FOGEL: That's what I'm trying to do.  
6 I'm trying to maintain the status quo. I am not seeking  
7 dismissal of any matters, and I will be happy to  
8 notify --

9 THE COURT: I want you to think about that as  
10 to how we can arrive at that as opposed to allowing him  
11 to represent his agencies or himself in matters.

12 MR. FOGEL: I can't stop him from  
13 representing himself.

14 THE COURT: Yes, you can, because the claim  
15 is a claim of the estate.

16 MR. FOGEL: Well, if it's a claim of the  
17 estate, then it's mine to assert.

18 THE COURT: Yes, it is. And you could  
19 abandon it, or you could assert it, or you could try to  
20 freeze it while you evaluate it.

21 MR. FOGEL: That's what I'm pretty much doing  
22 I believe. I'm not doing things with any prejudice.  
23 Anything I've done to date has been without prejudice.

24 THE COURT: Until you abandon it.

25 MR. FOGEL: And I'm not going to do anything



1 else before the Patent Trademark Board until either I  
2 reach settlement with Mr. Stoller or until the appeal  
3 before Judge Lindberg is litigated out.

4 THE COURT: Okay. But basically on his  
5 motion I think you ought to take the view you're either  
6 going to prosecute those claims, or abandon them, or ask  
7 that they be frozen.

8 MR. FOGEL: That's what I'm telling you. I  
9 want them to be frozen for now.

10 THE COURT: If they are frozen, then I'm  
11 certainly not going to let him represent an asset of the  
12 estate that you have not been able to evaluate yet.

13 MR. FOGEL: I'm happy to notify the general  
14 counsel of the patent --

15 THE COURT: I'm fully aware also of a dilemma  
16 that it seems to me you probably have. If you suspect  
17 that a lot of these claims that he has made are phony,  
18 you probably don't want to be asserting them if that's  
19 your belief.

20 MR. FOGEL: Thank you, Judge.

21 THE COURT: And so you have a dilemma because  
22 you can't evaluate. So you're reluctant to abandon and  
23 you're reluctant to prosecute.

24 MR. FOGEL: I will say that I did have a good  
25 conversation with Mr. Stoller yesterday. And I don't

1 know where it will go, but I'm going to talk to him  
2 again. So I'd like to maybe put this over and I will  
3 represent to Mr. Stoller and to the court --

4 THE COURT: -- the 19th to see if we can  
5 approach this problem that way.

6 MR. FOGEL: Fine.

7 MR. STOLLER: Your Honor, could I make one  
8 suggestion? In this one case we only have about 20  
9 days. I would like to talk to Mr. Fogel.

10 THE COURT: Well, 7 days is shorter than 20.

11 MR. STOLLER: I'm saying in terms of  
12 notifying the board that this one action shouldn't be  
13 dismissed, I'd like to be able to --

14 THE COURT: You say you have 20 days, but  
15 I'll be back here on the 19th with you and let's see  
16 what we can do.

17 MR. STOLLER: Okay.

18 THE COURT: The debtor's response to a motion  
19 of Pure Fishing to extend the date, this was filed  
20 December 5. Haven't I --

21 MR. FOGEL: You ruled on it.

22 THE COURT: -- ordered -- I ruled on that.

23 MR. FOGEL: You entered that order. There is  
24 one last matter for today. As part of the objection  
25 that Mr. Stoller filed to one of the settlement motions,

1 he asked that I be disqualified as trustee.

2 THE COURT: I thought I ruled on that.

3 MR. FOGEL: You did.

4 THE COURT: I thought I orally ruled on that.

5 MR. FOGEL: It was draft order to follow so  
6 that we could draft an order that I believe reflects  
7 what you said that he didn't show cause to remove me.

8 THE COURT: Right.

9 MR. STOLLER: I would like to have a copy of  
10 that, too.

11 THE COURT: Yes, please. Get him a copy of  
12 that. I've signed that. I'll see you folks on the  
13 19th.

14 MR. FOGEL: Thank you very much.

15 MR. STOLLER: Thank you, Judge.

16 (Which were all the proceedings  
17 had in the above-entitled cause  
18 as of December 12, 2006.)  
19  
20

21 I, Barbara A. Casey, do hereby  
22 certify that the foregoing is  
23 a true and accurate transcript  
24 of proceedings had in the  
25 above-entitled cause.

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

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In re: )  
LEO STOLLER, ) No. 05 B 64075  
 )  
 ) Chicago, Illinois  
Debtor. ) February 15, 2007  
 ) 10:00 A.M.

TRANSCRIPT OF PROCEEDINGS BEFORE THE  
HONORABLE JACK B. SCHMETTERER

APPEARANCES:

MS. JANICE ALWIN  
on behalf of the trustee;

MR. RICHARD FOGEL  
trustee;

MS. KIM ROBINSON  
on behalf of Google;

MR. BILL FACTOR  
on behalf of Pure Fishing.

ALSO PRESENT:

MR. LEO STOLLER  
debtor.

1 THE CLERK: Stoller, 05 64075.

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

4 THE COURT: Good morning, sir.

5 MS. ALWIN: Good morning, Your Honor.  
6 Janice Alwin on behalf of the trustee.

7 MR. FOGEL: Good morning, Your Honor.  
8 Richard Fogel, the trustee.

9 MS. ROBINSON: Good morning, Your Honor.  
10 Kim Robinson on behalf of Google.

11 MR. FACTOR: Good morning, Your Honor.  
12 Bill Factor on behalf of Pure Fishing.

13 THE COURT: Good morning. First I have --  
14 we have only one thing up this morning that I'm  
15 aware of. Mr. Stoller moves for permission to  
16 retain counsel for corporations that the -- and  
17 Google has filed an objection to it. Let me ask  
18 some questions.

19 Mr. Stoller, what lawyer do you want  
20 to hire?

21 MR. STOLLER: First of all -- I will  
22 answer that. But first of all, you gave them  
23 permission to sue me, Leo Stoller. They came in ten  
24 times before you to lift --

25 THE COURT: I've read --

1 MR. STOLLER: -- the stay.

2 THE COURT: -- your motion.

3 MR. STOLLER: I'm not in this. I'm not --  
4 they didn't sue Leo Stoller. They just sued --

5 THE COURT: I read your motion.

6 MR. STOLLER: Okay. They just sued my --

7 THE COURT: I read --

8 MR. STOLLER: -- corporations.

9 THE COURT: -- their answer.

10 MR. STOLLER: Right.

11 THE COURT: I want to ask you what lawyer  
12 you wish to hire.

13 MR. STOLLER: I have a lawyer that I have  
14 talked with on this that -- I haven't confirmed it  
15 yet because I haven't gotten your permission, but  
16 his first name is Marty. And I have discussed it  
17 with him, if he would take the case. But I don't  
18 know yet because I can't --

19 THE COURT: Does he have a last name that  
20 you can share with us, please?

21 MR. STOLLER: I'm looking for his card.  
22 I'll provide that this afternoon for you.

23 THE COURT: You're unwilling or unable to  
24 tell me the lawyer you wish to hire?

25 MR. STOLLER: I'm not unwilling. I am

1 willing. His name is Marty. He's handling another  
2 matter for me and --

3 THE COURT: Did you respond at all to the  
4 trustee's invitation to have that lawyer contact  
5 him?

6 MR. STOLLER: At this particular point, he  
7 hasn't said yes or no to the case because I don't  
8 have permission.

9 THE COURT: In the event --

10 MR. STOLLER: I will have --

11 THE COURT: -- you should hire Marty --

12 MR. STOLLER: Pardon me?

13 THE COURT: In the event you should hire  
14 Marty, last name unknown, out of what source would  
15 you pay him?

16 MR. STOLLER: He would be paid out of  
17 Illinois trade. He's a lawyer that's on barter, a  
18 barter system, and he would take barter points, he  
19 said. And he would take -- 25 percent of his hourly  
20 wage would be paid by cash, 75 percent by barter.  
21 And my brother who -- has agreed to borrow me the  
22 funds to pay him the 25 percent of his hourly wage  
23 for cash.

24 The critical point here is that  
25 they're seeking a civil RICO action. This is the

1 most serious type of action --

2 THE COURT: I read --

3 MR. STOLLER: -- against a --

4 THE COURT: -- your motion, I read their  
5 answer. I understand what they're doing and I  
6 understand what you're doing.

7 Have you yet turned over any documents  
8 relating to the corporations involved in this  
9 lawsuit you're talking about? Have you turned over  
10 any documents relating to those corporations to the  
11 trustee?

12 MR. STOLLER: No, I haven't.

13 THE COURT: Why not?

14 MR. STOLLER: Because under the advice of  
15 my counsel when I took the Fifth, he advised me to  
16 take the Fifth. But in terms of whatever documents  
17 I have in my possession regarding those corporations  
18 which are their corporate -- you know, the book from  
19 Delaware, I would be more than happy to turn those  
20 over to Mr. Fogel.

21 THE COURT: Sir, do you have documents  
22 relating to what you think would be your defense in  
23 that case?

24 MR. STOLLER: In the Google case?

25 THE COURT: That's the case we're talking



1 about.

2 MR. STOLLER: In the Google case, there  
3 are --

4 THE COURT: That's the one you want to  
5 hire lawyers to defend.

6 MR. STOLLER: Yes, right. I have  
7 documents --

8 THE COURT: That's the subject of this  
9 discussion.

10 MR. STOLLER: I have documents --

11 THE COURT: Do you have documents?

12 MR. STOLLER: Yes, I do, that are --

13 THE COURT: Have you turned those over to  
14 the trustee?

15 MR. STOLLER: No. But I haven't been  
16 asked specifically for that, but I will.

17 THE COURT: What's the answer to my  
18 question?

19 MR. STOLLER: Yes, I have documents. I  
20 haven't --

21 THE COURT: And the --

22 MR. STOLLER: -- turned them over --

23 THE COURT: And the question is --

24 MR. STOLLER: -- but I will turn them  
25 over.

1 THE COURT: You have not turned them over  
2 yet?

3 MR. STOLLER: As of this second, I was not  
4 required to give my defense for this RICO action,  
5 which was just filed, to the trustee. I didn't know  
6 that was -- I had to do that.

7 THE COURT: Did you appear at a meeting of  
8 creditors?

9 MR. STOLLER: We had one meeting of  
10 creditors.

11 THE COURT: Did you appear at a --

12 MS. ALWIN: Yes.

13 THE COURT: -- meeting of creditors?

14 MR. STOLLER: Yes.

15 THE COURT: Did you testify?

16 MR. STOLLER: I took the Fifth at --

17 THE COURT: Did you --

18 MR. STOLLER: -- the advice of my --

19 THE COURT: -- turn over any documents at  
20 the meeting of creditors?

21 MR. STOLLER: No, I did not. But I am  
22 willing to turn over documents in the defense of  
23 this case because it is so critical to the trustee  
24 what is my defense in this case. I was not asked  
25 for that specific defense.

1 THE COURT: Sir, the corporations that are  
2 named in this case that you want to defend --

3 MR. STOLLER: Yes.

4 THE COURT: -- those corporations, do you  
5 own stock in those corporations?

6 MR. STOLLER: Yes, I do, Judge.

7 THE COURT: Do you own all the stock,  
8 in --

9 MR. STOLLER: Yes, I --

10 THE COURT: -- those corporations?

11 MR. STOLLER: -- do, Judge.

12 THE COURT: Does anybody else own stock in  
13 those --

14 MR. STOLLER: No --

15 THE COURT: -- corporations?

16 MR. STOLLER: -- Judge.

17 THE COURT: Are you an officer in --

18 MR. STOLLER: Yes.

19 THE COURT: -- each of those companies?

20 Is there any reason you want to tell  
21 me why you don't think the trustee has the right to  
22 control those corporations and responsible for any  
23 assets of them?

24 MR. STOLLER: Yes, I do.

25 THE COURT: What's that?

1 MR. STOLLER: When the Chapter 13 trustee  
2 just filed his final report on February 7th in this  
3 case, they showed I owed \$65,000 in debt. That's  
4 when we came before you when Golding was here on the  
5 conversion. Prior to the conversion and the  
6 appointment of this trustee, I only owed in this  
7 court in my bankruptcy claims of 65,000. Since the  
8 trustee has taken over, those claims have been  
9 elevated to \$2.3 million.

10 THE COURT: Mostly Google?

11 MR. STOLLER: No. Pure Fishing, which he  
12 agreed to. He has refused to defend any of my  
13 corporations, resulting in the ballooning of the  
14 debt which has been leveled on me.

15 THE COURT: Mr. Stoller, when, as, and if  
16 the trustee ever collects any assets, he wishes to  
17 pass them out to your creditors. I understand that  
18 Stoller -- pardon me, that Google has agreed to  
19 withdraw any claims because of the settlement with  
20 the trustee; is that right?

21 MR. FOGEL: Yes, sir.

22 MS. ROBINSON: That's correct, Your Honor.

23 THE COURT: That's the one on settlement  
24 that I approved.

25 MR. FOGEL: Yes, sir.

1 MR. STOLLER: But the problem --

2 THE COURT: So other creditors will get  
3 the money.

4 MR. STOLLER: The problem --

5 THE COURT: It doesn't matter how much  
6 Google is claiming.

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

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

17 MR. STOLLER: Because if --

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

21 MS. ROBINSON: Your Honor, if, in fact,  
22 the settlement is approved by the district court  
23 next week, the case is going to go away.

24 THE COURT: I understand.

25 MS. ROBINSON: The case is going --

1 THE COURT: I don't know --

2 MS. ROBINSON: -- to completely go away.

3 THE COURT: -- what he means by the --

4 MR. STOLLER: It's not going to go away.

5 It's going to live with me forever, and I'm going to  
6 be held responsible for a civil RICO action. The  
7 complaint here is a heinous complaint. It's  
8 frivolous on its face. There aren't -- and I can't  
9 defend my corporations, and that's like telling me  
10 to cut my legs off, go in front of another court,  
11 and I already got --

12 THE COURT: Do you have the --

13 MR. STOLLER: -- a judgment against me.

14 THE COURT: -- motion -- do you have the  
15 order modifying stay that I allowed Google to go  
16 after, please? Nobody has that order?

17 MS. ROBINSON: Yes, we have it, Your  
18 Honor.

19 MR. FOGEL: Yes, sir.

20 MR. STOLLER: And the other thing, you  
21 asked --

22 MS. ROBINSON: Your Honor --

23 MR. STOLLER: -- Judge, to file the answer  
24 to the motion. It is pending at the Trademark Trial  
25 and Appeal Board. You modified your order and you

1 wrote that language in. They have -- Google has  
2 refused to respond to my motion for summary  
3 judgment.

4 THE COURT: Nobody has the order I  
5 entered.

6 MS. ROBINSON: Yes, we have it, Your  
7 Honor.

8 THE COURT: Okay. See if you can pull up  
9 the docket in the Stoller case.

10 Do you remember the approximate date  
11 of the entry of the order?

12 MS. ROBINSON: Your Honor, are you looking  
13 for the order against Mr. Stoller individually --

14 THE COURT: No.

15 MS. ROBINSON: -- or the order that was --

16 THE COURT: The order that allowed you to  
17 proceed, counsel. The order modifying stay.

18 MS. ALWIN: That was in January.

19 THE COURT: Okay. Do we know the  
20 approximate date of the order?

21 MS. ALWIN: January.

22 MS. ROBINSON: January 5th or 4th, Your  
23 Honor.

24 THE COURT: Okay.

25 Let's pull it up and see if you can

1 find the order modifying stay.

2 MR. STOLLER: It's important to note that  
3 in their motion before you they had asked Google if  
4 they had me, Leo Stoller, a necessary party. That  
5 was in their motion to lift the stay. When they  
6 come to filing the suit, they don't have Stoller in  
7 there.

8 THE COURT: So nobody -- this whole issue  
9 turns largely on this order which I signed  
10 permitting stay, and I believe I tailored it a  
11 little bit. But nobody has it, so we're going to --

12 MS. ROBINSON: We do have it, Your Honor.  
13 We do have it, Your Honor.

14 THE CLERK: February 8th.

15 THE COURT: I can't hear you. Well...

16 MS. ROBINSON: It is Exhibit 5 to our  
17 response -- or our objection, Your Honor. I'm happy  
18 to give a copy to you right now.

19 THE COURT: Just a second. Exhibit 5 I  
20 ought to be able to find. Exhibit 5, order  
21 approving trustee's agreement with Google to modify  
22 stay and compromise certain claims; is that it?

23 MS. ROBINSON: That's it, Your Honor.

24 THE COURT: Got it.

25 MR. STOLLER: And they have not filed



1 their answer to the motion expending that the  
2 Trademark Trial and Appeal Board which you wrote the  
3 language in there yourself, handwrote it, and  
4 they --

5 THE COURT: What subject are you on?

6 MR. STOLLER: I'm on the subject of your  
7 order right there.

8 THE COURT: This order does not contain  
9 that subject. Do you have an order that contains  
10 that subject?

11 MR. STOLLER: You wrote the Trademark  
12 Trial and Appeal Board, I thought, on that  
13 particular order.

14 MS. ROBINSON: That's not correct, Your  
15 Honor.

16 THE COURT: That's a different order  
17 you're thinking about.

18 MR. STOLLER: Oh, a different order? Oh,  
19 sorry.

20 MS. ROBINSON: I think the handwritten  
21 language that you included on this order, Your  
22 Honor, was that there would be ability to reconsider  
23 or vacate or modify the order --

24 THE COURT: -- case gets dismissed -- if  
25 the bankruptcy gets dismissed.

1 MS. ROBINSON: That's correct, Your Honor.

2 THE COURT: Now, let's see.

3 MS. ROBINSON: This order approved the  
4 settlement --

5 THE COURT: Do you have a copy of the  
6 agreement here somewhere?

7 MS. ROBINSON: The settlement agreement,  
8 Your Honor, that you approved?

9 THE COURT: Yes.

10 MS. ROBINSON: Yes. That, I believe --

11 THE COURT: Which exhibit is that, please?

12 MS. ROBINSON: I believe it is Exhibit 3,  
13 Your Honor. Yes, it's Exhibit 3, Your Honor.

14 THE COURT: I don't think so. Exhibit E?  
15 No.

16 MS. ROBINSON: Exhibit 3.

17 THE COURT: Well -- oh, I see. Exhibit 3  
18 starts way back in here.

19 MS. ROBINSON: Yeah, there are a lot of  
20 attachments to that exhibit, Your Honor.

21 THE COURT: Now, this deal which the  
22 trustee made said they wouldn't oppose a permanent  
23 injunction and final judgment as to certain  
24 defendants, Central Manufacturing and Stealth  
25 Industries, right?

1 MS. ROBINSON: That's correct. And that  
2 permanent injunction, Your Honor, is set for  
3 motion --

4 THE COURT: Now, is --

5 MS. ROBINSON: -- before the --

6 THE COURT: -- there anything --

7 MS. ROBINSON: -- district court on  
8 Tuesday.

9 THE COURT: -- in here which indicated you  
10 were going to sue under RICO?

11 MS. ROBINSON: Your Honor, the draft  
12 complaint was attached to the stay motion that was  
13 filed back in, I believe, August. The draft  
14 complaint, virtually identical except for the fact  
15 that Mr. Stoller is not included, was attached to  
16 the stay motion that's been a subject of these  
17 proceedings for several months. The fact that  
18 Google decided not to include Mr. Stoller, I would  
19 think he would be happy about that. I've never seen  
20 somebody upset about the fact that they were not  
21 sued.

22 THE COURT: Does the complaint to which  
23 the trustee is about to agree to with a consent  
24 judgment affect Mr. Stoller personally?

25 MR. STOLLER: Yes, it does. Here it is,

1 Judge.

2 THE COURT: Would you hold on for a  
3 second?

4 MS. ROBINSON: It does not, Your Honor.  
5 It is against the two corporations --

6 THE COURT: Does a --

7 MS. ROBINSON: -- that are --

8 THE COURT: -- verdict --

9 MS. ROBINSON: -- no longer --

10 THE COURT: -- against his company that  
11 says they violated the stay, RICO, affect him  
12 indirectly?

13 MS. ROBINSON: I don't believe so, Your  
14 Honor. I believe there is an permanent injunction  
15 stopping the companies from doing the activities  
16 that they've been doing throughout. Google is going  
17 to withdraw --

18 THE COURT: May I --

19 MS. ROBINSON: -- their claims --

20 THE COURT: -- see it?

21 MR. STOLLER: I have --

22 MS. ROBINSON: -- against the --

23 MR. STOLLER: -- the complaint --

24 MS. ROBINSON: -- estate.

25 MR. STOLLER: -- here.

1 THE COURT: Let's have it. If you'd come  
2 around this way, it's the --

3 MR. STOLLER: I'm sorry.

4 THE COURT: -- way to come around.  
5 Otherwise --

6 MR. STOLLER: This --

7 THE COURT: -- you step all --

8 MR. STOLLER: This materially --

9 THE COURT: -- over the --

10 MR. STOLLER: -- affects me --

11 THE COURT: -- court reporter.

12 MR. STOLLER: -- in at least ten different  
13 areas where they're calling me an extortionist,  
14 where they're calling -- engaging a fraudulent  
15 activity. You wanted me, Judge, to have an  
16 opportunity, not in this court, to defend my  
17 business practices. In this I've marked the  
18 sections where they mentioned my name. I will be  
19 permanently branded for the rest of my career as an  
20 extortionist if I'm not allowed to defend this  
21 action, which is frivolous on its face. There is no  
22 merit to it. But I need to have my due process and  
23 equal protection rights protected. You have to give  
24 me that opportunity.

25 THE COURT: Can I get back -- I think I

1 have an understanding of what's going on. When is  
2 this coming up before the --

3 MR. STOLLER: The 20th --

4 THE COURT: -- district judge?

5 MR. STOLLER: -- we're in --

6 MS. ROBINSON: On Tuesday.

7 MR. STOLLER: -- front of Judge Kendall.

8 THE COURT: If you think you are injured  
9 in some way, why didn't you seek to intervene?

10 MR. STOLLER: I have. I filed to  
11 intervene. But the point --

12 THE COURT: What happened when you did?

13 MR. STOLLER: Well, that's up on the 20th.

14 THE COURT: Oh, really?

15 MR. STOLLER: Um-hmm, the motion to  
16 intervene. But the point is I can't --

17 THE COURT: Then do it.

18 MR. STOLLER: I am.

19 THE COURT: Don't come here --

20 MR. STOLLER: But this is --

21 THE COURT: -- sir.

22 MR. STOLLER: I need --

23 THE COURT: This is --

24 MR. STOLLER: -- my corporations  
25 represented --

1 THE COURT: Sir, would --

2 MR. STOLLER: -- too.

3 THE COURT: -- you please take this back.

4 MR. STOLLER: It's not a question of just  
5 myself. I need the corporations. They're going to  
6 brand the corporations as extortionists.

7 THE COURT: Well...

8 MR. STOLLER: And by default.

9 MS. ROBINSON: Your Honor --

10 THE COURT: Sir --

11 MR. STOLLER: And you wanted me --

12 THE COURT: Sir, let --

13 MR. STOLLER: -- to have --

14 THE COURT: -- me say something. You're  
15 in bankruptcy. You've not cooperated with the  
16 trustee. You've not given any information to the  
17 trustee or documents intending to help the trustee  
18 defend these actions. The trustee is trying to do  
19 his best for the sake of creditors and get rid of  
20 this Google claim against the estate. It made sense  
21 to me. It still makes sense to me. You are in the  
22 position of having given no cooperation of this  
23 bankruptcy, and yet you want something, you want an  
24 extraordinary right to represent a company. We have  
25 no idea at this point, and I don't think the trustee

1 does, I certainly don't, whether these companies  
2 have assets other than whatever claims you think  
3 they have, which the trustee is unwilling to take  
4 responsibility for asserting for good reason, I  
5 think.

6 In any event, for all we know, there  
7 are assets of these companies that are out there  
8 which you've not helped the trustee identify those  
9 or given him documents or given him testimony. You  
10 have a right to assert the Fifth Amendment, and I  
11 have the right to --

12 MR. STOLLER: Not use it against me.

13 THE COURT: -- say that the trustee has  
14 responsibility for this corporation, not you. This  
15 motion is denied for reasons stated from the bench.

16 MS. ROBINSON: Thank you, Your Honor.

17 MR. FOGEL: Thank you, Your Honor.

18 THE COURT: Good morning.

19  
20 (Which were all the proceedings  
21 had in the above-entitled cause,  
February 15, 2007.)

22 I, GARY SCHNEIDER, CSR, RPR, DO HEREBY CERTIFY THAT  
23 THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT OF  
24 PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE.  
25