

TTAB

IN THE UNITED PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

Opp.No. 123,765

CENTRAL MFG.
(a Delaware Corporation)
P O Box 35189
Chicago, IL 60707-0189
Opposer,
vs.

Trademark: HYPERSONIC
Application SN: 76-103,448
Int. Class No: 16



PARAMOUNT PARKS, INC.
8720 Red Oak Blvd.
Charlotte, North Carolina 28217
Applicant

Box TTAB/NO FEE

MOTION TO DISMISS COUNTERCLAIM

The Opposer pursuant to TBMP and FRCP 12(b)(6) moves the Board to dismiss Applicant's counterclaim with prejudice.

The Board in it's order of July 24, 2002 gave the Applicant 30 days to "perfect the counterclaim by submitting a \$300.00 fee."

On August 9, 2002 the Applicant submitted it's check for \$300 fee.

Now the Opposer has moved to dismiss the counterclaim for "failure to state a claim upon which relief can be granted". See §503.02.

Opposer's HYPERSONIC mark has achieved *incontestable* status, the PTO having accepted Opposer Section 8 and 15 and 8 and 9.

Applicant alleges:

AS AND FOR A FIRST COUNTERCLAIM.

38. Upon information and belief, Opposer is in the business of trafficking in trademarks, and makes little or no commercial use of the marks it owns except as a tactic in encouraging trademark applicants to agree to onerous settlements.

The Board must as a matter of law strike Applicant's paragraph 38, for failure to state a claim upon which relief can be granted as a counter claim in this proceeding.

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39. applicant is unaware of any use by Opposer of its HYPERSONIC mark in commerce.

The Board must as a matter of law strike Applicant's paragraph 39, for failure to state a claim upon which relief can be granted as a counter claim in this proceeding.

40. Upon information and belief, Opposer currently makes no use of its HYPERSONIC mark in commerce, has made no use of its HYPERSONIC mark in commerce for many years, and intends not to resume such use.

The Board must as a matter of law strike Applicant's paragraph 40, for failure to state a claim upon which relief can be granted as a counter claim in this proceeding.

41. Upon information and belief, Opposer has abandoned its HYPERSONIC mark.

The Board must as a matter of law strike Applicant's paragraph 41, for failure to state a claim upon which relief can be granted as a counter claim in this proceeding.

42. By reason of the foregoing. Applicant seeks cancellation of the mark HYPERSONIC bearing Registration No. 1,593,157.

The Board must as a matter of law strike Applicant's paragraph 42, for failure to state a claim upon which relief can be granted as a counter claim in this proceeding.

CONCLUSION

The Applicant file a defective affirmative defense, alleging abandonment. The Board gave leave to the Applicant to Amend. The applicant amended counter claim fails to state a claim upon which relief can be granted. For this Board to give the Applicant a chance for leave to amend would evidence a serve prejudice against the Opposer in favor of the Applicant. The Board has already given the Applicant it's opportunity to file a counterclaim. The Board must as a matter of law, as a matter of constitutional fairness to the Opposer, must now dismiss Applicant counter claim for failure to state a claim upon which relief can be granted with prejudice, the Board having already given the Applicant leave to amend.

WHEREFORE, Opposer's prays that the Board dismiss Applicant's counterclaim with prejudice for failure to state a claim upon which relief can be granted. That the Board suspend this proceeding this proceeding pending resolution of Opposer's Motion to Dismiss and for the Board to reset the trial and discovery dates after the Board rules on Opposer's said motion to dismiss.

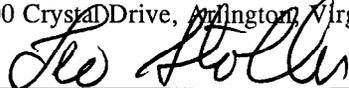
Respectfully submitted,



By: Leo Stoller, Pres.
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Certification of Mailing

I hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to:
Box TTAB/NO FEE, Asst. Commissioner of Patents and Trademarks,
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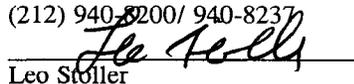
Leo Stoller

Dated: August 21, 2002

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the US Postal Service as first class mail in an envelope addressed to:

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Leo Stoller

Date: August 21, 2002

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