

HYPERSONIC

ttab

HYPERSONIC BRAND PRODUCTS AND SERVICES SINCE 1981

Post Office Box 35189

Chicago, Illinois 60707-0189

VOICE 773/283-3880 * FAX 708/453-0083 * WEB PAGE: www.rentamark.com



02-17-2004

U.S. Patent & TMOfo/TM Mail RcptDt. #22

February 13, 2004

Andrew Baxley
Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

In Re: **Central Mfg. Co. v. Paramount Parks, Inc.**
Opposition No: 123,765

Dear Mr. Baxley:

As per our telephone conversation, enclosed please find a duplicate copy of Opposer's Verified Motion for Summary with exhibits.

Most cordially,

Leo Stoller

Leo Stoller, President

Certificate of Mailing

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

Andrew Baxley
Trademark Trial & Appeal Board
2900 Crystal Drive
Arlington, VA 22202-3513

Leo Stoller

Leo Stoller

Dated: February 13, 2004

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

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

Opposer,

vs.

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

Applicant

Opposition No: 123,765

Trademark: HYPERSONIC

Application SN: 76-103,447 and
76-103,448

Int. Class No: 16 & 25



Box TTAB/NO FEE

02-17-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

**VERIFIED MOTION FOR SUMMARY JUDGMENT¹
WITH SUPPORTING MEMORANDUM AND REQUEST FOR
AN ORAL HEARING ON THE SAID MOTION §502.04²**

NOW COMES the Opposer, and hereby moves for Summary Judgment pursuant to F.R.C.P. 56 of the Federal Rules of Civil Procedure and §2.116 of the Trademark Rules of Practice in its favor, sustaining its Notice of Opposition and denying Applicant's alleged Trademark Application SN: 76-103,447 and 76-103,448, for the mark **HYPERSONIC**.

1. Opposer also requests that the Board grant the Opposer's Motion to Extend the Page Limit for Motion for Summary Judgment. The Opposer states that it was necessary to have additional pages to its Motion for Summary Judgment in order to fully inform the Board of the issues and facts in this case. Opposer requests that the Board grant Opposer's Motion to Extend the Page Limit under the Rules for filing motions for summary judgment and/or grant Opposer leave to file a Motion for Summary Judgment within the prescribed page limit.

2. Opposer requests an oral hearing for this motion which is completely dispositive of the case and the oral hearing is necessary to clarify the issues to be decided. Although the Board rarely grants a request for an oral hearing on a motion, the Opposer asserts in this instant, it would help serve to resolve the entire dispute as between the parties, a controversy which has been pending at the Board for over two years, and promises to go on for many more years unless the Board grants Opposer's request for an oral hearing. Since both parties reside in Chicago, Illinois, the Opposer is requesting that the Board set an afternoon hearing on any given Wednesday which may be convenient for the Board. The Opposer's Fall and Spring schedule precludes his availability on all days but Wednesdays.

1. This motion is made on the numerous grounds including that Application SN: 76-103,447 and 76-103,448 consist of or comprise of a mark HYPERSONIC, which is confusingly similar to Opposer's mark *HYPERSONIC* or tradename previously used in the United States and not abandoned, as to be likely when applied to the goods of the Applicant, *t-shirts, sweatshirts, hats, jackets, pajamas, masquerade costumes, tank tops, footwear, sweatpants and shorts*, in International Class 25, and for *paper goods and printed matter, namely, calendars, fiction magazines, comic books, greeting cards, posters, a series of fiction books, trading cards, stickers, notepads, notebooks, postcards, gift wrapping, bumper stickers, and rubber stamps*, in International Class 16, to cause confusion or mistake or deception.

2. The Opposer moves for the Board to sustain Opposer's opposition because the Applicant is not the owner of the marks applied for.

3. The Opposer moves for the Board to sustain Opposer's opposition because the Applicant had no valid intent to use in commerce.

4. The Opposer moves for the Board to sustain Opposer's opposition because the Applicant has not established a valid first use date.

5. The Board should sustain Opposer's opposition because Applicant's specimens of use were for a design mark and not for the mark, as illustrated in the drawing, and as applied for in the said applications.

6. The Opposer moves for the Board to sustain Opposer's opposition because of Applicant's unlawful or improper use in commerce.

7. The Board should sustain Opposer's opposition because Applicant's marks were not applied for in their correct type.

8. The Board should sustain Opposer's opposition because the Applicant's statement of use is a misrepresentation on the Board, because the Applicant had never used its marks on the goods in question on its alleged Intent to Use use dates.

9. The Board should sustain Opposer's opposition because the Applicant's amendments to allege use are a misrepresentation on the Board, because the Applicant had never used its marks on the goods in question on its alleged first use dates.

10. The Board should sustain Opposer's opposition because the Applicant, PARA-

MOUNT PARKS, INC. failed to disclose the relationship that exists between VIACOM, INC., that owns the said mark HYPERSONIC, and the subsidiary, PARAMOUNT PARKS, INC. Such failure to disclose, under TMEP §1201.03(c), is fatal to Applicant's said application. The Board must, as a matter of law, deny registration to the Applicant, for failing to disclose under §1201.03(c) TMEP. See also §802.01 TMEP.

11. The Board should sustain Opposer's opposition based upon the facts revealed in the Applicant's responses to Opposer's discovery.

12. The Opposer also lays out additional grounds in the foregoing motion which support all of the central allegations contained in Opposer's Notice of Opposition which support the denial of Applicant's said applications.

13. In the matter of Intent to Use Application SN: 76-103,447; Filed: August 2, 2000; Published Date: May 22, 2001, for the mark HYPERSONIC, Int. Cl. 25 for namely, *t-shirts, sweatshirts, hats, jackets, pajamas, masquerade costumes, tank tops, footwear, sweatpants and shorts*; and First Use Application SN: 76-103,448; Filed: August 2, 2000; Published Date: April 24, 2001, for the mark HYPERSONIC, Int. Cl. 16 for namely, *paper goods and printed matter, namely, calendars, fiction magazines, comic books, greeting cards, posters, a series of fiction books, trading cards, stickers, notepads, notebooks, postcards, gift wrapping, bumper stickers, and rubber stamps*.

14. The Opposer, hereinafter referred to as ("*HYPERSONIC*") like McDonald's Corporation, uses it's well known *HYPERSONIC* mark as a trade name, corporate name, service mark and trademark¹ since at least as early as 1988 as a Predecessor-in-Interest, and is

1. **§16.13 McCARTHY ON TRADEMARKS, II. Ownership. Who Is Owner Of Trademark, [I] Introduction**, Trademarks have often been held to be a kind of "property." In discussing "ownership" of a trademark, we must recognize that we are dealing with intangible, intellectual property. "Ownership" means that one possesses a right which will be recognized and upheld in the courts: To say one has a "trademark" implies ownership and ownership implies the right to exclude others. If the law will not protect one's claim of right to exclude others from using an alleged trademark, then he does not own a "trademark", for that which all are free to use cannot be a trademark. Application of Deister Concentrator Co., 48 CCPA 952, 289 F.2d 496, 129 USPQ 314 (1961). Trademark ownership inures to the legal entity who is in fact using the mark as a symbol of origin. The Federal Trademark Register can be rectified in order to correct the ownership of a registered mark or a pending application. *Chapman v. Mill Valley Cotton*, 17 USPQ2d 1414 (TTAB 1990) (Opposer Alpha alleged that she, not applicant, owned the mark. Applicant was a joint venture composed of parties Alpha and Beta. After

15. The Opposer also holds common law rights in the mark *HYPERSONIC* on numerous goods, including *sports racquets, namely tennis racquets, racquetball racquets, golf clubs, golf balls, tennis balls, sports balls, namely, basketballs, baseballs, footballs, soccerballs, volleyballs, crossbows, tennis racquet string and shuttlecocks*, and has priority of use on similar, competitive and related goods, See Registration No: 1,593,157, and therefore opposes registration of the confusingly similar mark *HYPERSONIC*, Intent to Use Application SN 76-103,447 in Int. Cl. 25 and Application SN 76-103,448 in Int. Cl. 16.

16. Opposer has used the mark *HYPERSONIC* itself, through its predecessor in interest, on a broad range of goods and services and holds rights, *inter alia*.

17. The Opposer's mark *HYPERSONIC* is well-known and is associated with the Opposer. Applicant's said Applications for the mark *HYPERSONIC* will dilute Opposer's famous *HYPERSONIC* trademark.

18. If the Board factors in the case doctrine of *Sands, Taylor & Wood*¹ that generally a Trademark holder is not only entitled to the rights held on the goods that its registration covers, but is also entitled to hold rights on goods that are closely related and if the Board were to factor in the Opposer's equation of rights held in its *HYPERSONIC* mark enumerated by *Sands, Taylor*, the Board must conclude that the Applicant's use of the identical mark *HYPERSONIC* is likely to be confused with Opposer's use of its *HYPERSONIC* marks, on the goods listed in the said Registration, as well as on the common law rights held by Opposer. As such, the Board, as a matter of law, must deny Applicant registration of the mark sought to be registered.

...Continued...

some litigation in state court, the parties filed an assignment from party Beta to party Alpha amounting to a concession that Alpha was indeed the owner of the mark. The Board viewed the TLRA 1989 amended version of §18, which permits rectifying the "register" as broad enough to include changing the name of the owner of an application, as well as of an issued registration.

1. *Sand, Taylor & Wood v. Quaker Oats Co.*, 978 F.2d 947, 24 USPQ2d 1001, 1010 (7th Cir. 1992) A "closely related product is one which would reasonably be thought by the buying public to come from the same source, or though to be affiliated with, connected with, or sponsored by, the trademark owner."

FACTUAL BACKGROUND:

19. The Applicant has filed a total of seven (7) trademark applications containing the mark HYPERSONIC. Two (2) of the seven applications, which are the subject of this Opposition, Application SN: 76-103,447 and 76-103,448, were for the solo word mark HYPERSONIC, in a block letter format, as indicated on the drawing pages of the said trademark applications marked as **Exhibits¹ 1 and 2**, respectively.

The other five (5) HYPERSONIC formative trademark applications are as follows:

20. The Applicant filed Application SN: 76-138,150 in International Class 21, for the mark HYPERSONIC XLC XTREME LAUNCHER COASTER & Design for *plastic cups, mugs and beverage glassware*. Applicant's said Application is attached hereto and marked as **Exhibit 3**.

21. The Applicant filed Application SN: 76-138,156 in International Class 28, for the mark HYPERSONIC XLC XTREME LAUNCHER COASTER & Design for *coin-operated pinball games machines, board games, poseable play figures, dolls, toy model hobby craft kits composed of plastic, vinyl and resin molds, jigsaw and manipulative puzzles, toy action figures, toy vehicles, kites, yo-yos, balloons, toy banks, costume masks, hand puppets, crib mobiles, mobiles for children, and plush toys*. Applicant's said Application is attached hereto and marked as **Exhibit 4**.

22. The Applicant filed Application SN: 76-138,159 in International Class 41, for the mark HYPERSONIC XLC XTREME LAUNCHER COASTER & Design for *entertainment services, namely, an amusement park ride and attraction*. Applicant's said Application is attached hereto and marked as **Exhibit 5**.

23. The Applicant filed Application SN: 76-138,161 in International Class 16, for the mark HYPERSONIC XLC XTREME LAUNCHER COASTER & Design for *paper goods and printed matter, namely calendars, fiction magazines, comic books, greeting cards, posters, trading cards, stickers, notepads, notebooks, postcards, gift wrapping paper, bumper stickers,*

1. The Applicant has tendered to the Opposer, true and correct copies of Applicant's said applications and attached amendments to alleged use with attached declarations.

rubber stamps. Applicant's said Application is attached hereto and marked as **Exhibit 6**.

24. The Applicant filed Application SN: 76-138,160 in International Class 25, for the mark **HYPERSONIC XLC XTREME LAUNCHER COASTER & Design** for *sweatshirts, hats, jackets, pajamas, masquerade costumes, tank tops, footwear, sweatpants, ,shorts*. Applicant's said Application is attached hereto and marked as **Exhibit 7**.

25. The Applicant in Application SN: 76-103,447 and 76-103,448, submitted a drawing showing the mark applied for as the solo word mark **HYPERSONIC**. There was no design component, as indicated in Applicant's other said applications.

APPLICANT IS NOT THE OWNER OF THE MARK

26. Applicant's application is void because the wrong party was identified as the Applicant. See §1201.02(b).

27. The proper party to apply for the registration of the said mark was **VIACOM, INC.**. The only party to apply for registration of a mark is the party who owns the mark. 15 U.S.C. §1051. While it is common for any party involved in a related-company relationship to be referred to as a "related company," use of the mark inures, for ownership purposes, to the benefit of the party which does the controlling, **VIACOM, INC.**. This party is the owner of the mark and, therefore, is the only party that should have applied to register the said mark. See §1201.01. And §1201(b) - Application Void if Wrong Party Identified as the Applicant. The Applicant must be the owner of the mark for which registration is requested. If the applicant does not own the mark on the application filing date, the application is void. See *Huang v. Tzu Wei Chen Food Co. Ltd.*, 849 F.2d 1458, u USPQ2d 1335 (Fed. Cir. 1988). An application filed by a party other than the owner of a mark is invalid, and this defect cannot be cured by amendment or assignment because the applicant did not have the right to apply on the assigned filing date. See TMEP §§706.01 and 802.06.

1201.03(a)(i) Disclosure of Related-Company Use in §1(a) Application [R-1]

28. In a related-company situation, the party, **VIACOM, INC.**, who controls the nature and quality of the goods or service with which the mark is used, and who is thereby the

owner of the mark, should have been set out in the said application as the applicant. This was not done in the case at bar. The said application is fatally flawed because the said application is void *ab initio*, as it identifies the wrong party as the owner of the said Application, PARAMOUNT PARKS, INC., when the real owner of interest is VIACOM, INC.

29. The following is an example of a non-correctable error in identifying the applicant. See TMEP §1201.02(b)(3): If an application is filed in the name of corporation A when in fact a sister corporation, corporation B, owns the mark, the application is void as filed because the applicant is not the owner of the mark, as is in the case at bar. The Board must sustain Opposer's opposition because in the said application, the Applicant was the wrong Applicant. The mark should have been applied for in the correct name, VIACOM, INC..

30. Applicant PARAMOUNT PARKS, INC. failed to disclose the relationship that exists between VIACOM, INC., the owner of the said mark HYPERSONIC, and the subsidiary, PARAMOUNT PARKS, INC. Such failure to disclose, under TMEP §1201.03(c), is fatal to Applicant's said application. The Board must, as a matter of law, deny registration to the Applicant, for failing to disclose under §12.01.03(c) TMEP.

31. Applicant's said statement of use, under the Declaration, contains a statement verifying that the Applicant, (PARAMOUNT PARKS, INC.) is the owner of the said trademark when it is clear from the record that the actual owner and creator of the HYPERSONIC trademark, and the entity that designed and controls the quality of the product sold under the said HYPERSONIC trademark, is VIACOM, INC.

APPLICANT HAD NO VALID INTENT TO USE IN COMMERCE

32. "In an intent to use application, under §1(b), 15 U.S.C. §1051(b), the applicant must assert a bona fide intention to use the mark in commerce on or in connection with the identified goods or services.

Prior to registration, the applicant must file an allegation of use, either an amendment to allege use under 37 C.F.R. §2.76 or a statement of use under 37 C.F.R. §2.88, which includes the applicant's assertion of use of the mark in commerce on or in connection with the goods or specimens specified, noting the type of commerce, and, for each class, the dates of

first use, three specimens evidencing such use and an indication of the mode or manner of use. Allegations of use must be timely, must include the required fee and must be supported by an affidavit or by a declaration in accordance with 37 C.F.R. §2.20. See TMEP §§902 and 903." See TMEP, §202.03(b), at page 200-4.

33. The Applicant had no bona fide intent to use the marks in commerce, which are the subject of this Opposition.

Use In Commerce:

"The power of the federal government to register trademarks comes from the commerce clause of the Constitution. Section 1 of the Trademark Act, 15 U.S.C. §1051, permits application for registration of 'trademark used in commerce' (15 U.S.C. §1051(a)) or of a trademark which a person has a bona fide intention to use in commerce (15 U.S.C. §1051(b)). Regarding issues relating specifically to applications under §1 of the Act, see TMEP Chapter 900.

Section 45 of the Act, 15 U.S.C. §1127, defines "commerce" as follows:

The word "commerce" means all commerce which may lawfully be regulated by Congress.

Thus, the scope of federal trademark jurisdiction is all commerce which the United States Congress may lawfully regulate. Types of commerce encompassed in this definition are interstate, territorial, and between the United States and a foreign country. A purely intrastate use is considered insufficient to establish a federal jurisdictional basis for registration of a mark." See TMEP, §1202.01, at page 1200-26.

APPLICANT HAS NOT ESTABLISHED A VALID FIRST USE DATE

34. The Opposer's alleges that the Applicant's first use date amounted to a misrepresentation on the Patent and Trademark Office in order to obtain a trademark application. Applicant has provided this Board with no corroborating evidence and/or persuasive evidence that Applicant's alleged first use date of March 17, 2001, was anything more than a fabrication on the PTO in order to obtain a trademark registration and/or a mere attempt at a pre-

marketing tactic that attempted to "reserve" the HYPERSONIC mark. See Zazu Designs v. L'Oreal, 979 F. 2d at 503, 505 "Only active use allows consumers to associate a mark with particular goods and notifies other firms that the mark is so associated; reserving a mark is forbidden" dispensing a few sample products is a "pre-marketing maneuver" that is insufficient to confer trademark rights".

35. At common law, ownership of a trademark is obtained by actual use of a symbol to identify the goods or services of one seller to distinguish them from those offered by another. See McCarthy on Trademarks and Unfair Competition §§ 3.01, 9.01, 16.02 and 16.03. The ownership of a mark between different entities is governed by priority of use. See *Id* at §16.02. The first seller to use the mark in the sale of goods or services is the "senior user" and "owner" of the mark. See *Id* A ...trademark...comes into being as soon as it is affixed and the goods are sold¹...Priority of user alone is controlling"See Blisscraft of Hollywood v. United Plastics Co., 294 F.2d 294,131, USPQ 55 (end Cir. 1981).

36. Applicant's Statement of Use was false. Applicant did not have use on the date that it stated in its Statement of Use. The Applicant had not used its mark in commerce on the date that it stated in its Statement of Use and that the declaration attached to the Statement of Use was false.

37. Applicant's said statement of use, stating that the mark was first used anywhere at least as early as March 17, 2001, and the date of first use in commerce of at least as early as March 17, 2001, is false.

CONFORMITY BETWEEN THE DRAWINGS AND THE SPECIMENS

38. In the said Intent to Use Applications 76-103,447 and 76,103,448, which the subject of this Opposition, "there can be no ambiguity in the application as originally filed, since a specimen is not submitted with the original application. Accordingly, if the mark shown in the specimen filed with the statement of use or amendment to allege use is materially

1. From the evidence that the Registrant has attempted to introduce, they have not attempted to introduce any evidence of actual use of their alleged mark in this record. Not one scintilla of actual evidence of actual use.

different from the mark shown in the drawing, Applicant will not be allowed to conform the drawing to the mark as used in the specimen.¹" See *In re Finlay Fine Jewelry Corp.*, 41 U.S.P.Q.2d 1152, 1154 (TTAB 1996).

"The mark in the drawing must agree with the mark as used on the specimens in an application under §1 of the Trademark Act, 15 U.S.C. §1051, or as applied for or registered in a foreign country in an application under §44, 15 U.S.C. §1126. See 37 C.F.R. §2.51; TMEP §807.

The drawing of the mark must be a substantially exact representation of the mark as intended to be used on or in connection with the goods or services, in a §1(b) application (37 C.F.R. §2.51(a)(2) and 2.51(b)(2), and must be a substantially exact representation of the mark as used on or in connection with the goods or services, in a §1(a) application (C.F.R. §2.51(a)(1) and 2.51(b)(2). Thus, under §1, an applicant may apply to register any element of a composite mark used on the specimens, or intended to be used, as appropriate, if that element presents, or will present, a separate and distinct commercial impression as a mark. See *In re Chemical Dynamics, Inc.*, 839 F.2d 1569, 5 USPQ2d 1828 (Fed. Cir. 1988) (refusal to register medicine dropper and droplet affirmed because this matter did not create a distinct commercial impression as used on the specimens). *In re Raychem Corporation*, 12 USPQ2d 1399 (TTAB 1989) (refusal to register "TINEL-LOCK" based on specimens showing "TRO6AI-TINEL-LOCK-RING" reversed)". See TMEP, §807.14, at page 800-71.

"The situation in which a drawing is an incomplete representation of a mark, because of the omission of essential and integral matter, is sometimes referred to as a 'mutilation' of the mark.

The mere fact that two or more elements form a composite mark does not necessarily mean that those elements are inseparable for registration purposes. The determinative factor is whether or not the subject matter in question projects a separate and distinct commercial impression in relation to the other element(s). See *In re Semans*, 193 USPQ 727 (TTAB 1976)

1. Guide to Register Trademarks by Bazerman & Drangel, Aspen Law & Business, at page 4-97. Copyright 1999.

("KRAZY" held an integral part of the unitary phrase "KRAZY MIXED-UP" and, therefore, not a distinct mark).

As noted in TMEP §807.14, an applicant may not amend a drawing to overcome an objection related to the agreement between the mark in the drawing and the mark as shown on the specimens or foreign certificate, if the amendment would result in a material alteration. For example, if an applicant applies to register distinct elements which do not form a unitary commercial impression, the applicant would be precluded from amending to add matter later if such addition would result in a material alteration. See 37 C.F.R. §2.72(a); TMEP §807.14(a). See TMEP, §807.14(b), at page 800-77.

39. It is critical for the Board to note and examine that Applicant's drawings for the said Application SN: 76-103,447 and 76-103,448 are for the solo word mark HYPERSONIC, with no design component. If the Board examines Opposer's Exhibits 1 and 2, and examines Applicant's specimens of use attached to their said Declaration of Use for the two Applications, the Board will see that the Applicant has submitted a design mark which represents a mutilation or incomplete representation of the solo word mark HYPERSONIC, as shown in Applicant's said applications. Such an error is fatal to Applicant's said applications, and the Board must grant Opposer judgment and sustain its Opposition, on the grounds that Applicant's said specimens of use represent a mutilation or incomplete representation of the said HYPERSONIC marks applied for.

APPLICANT'S UNLAWFUL OR IMPROPER USE IN COMMERCE

40. In order for a use in commerce to be considered for a basis for Federal Registration, it must be lawful use in commerce. Applicant did not have a valid intent to use the mark in commerce when the Applicant filed its applications. Applicant's counsel for VIACOM, INC., Mallory D. Levitt, stated in a letter, dated April 3, 2001, (Applicant's goods) are offered for sale solely within the park's onsite souvenir and gift shop near the ride¹. See a true

1. Applicant was referring to merchandise that is sold or to be sold in a park located within the State of Virginia, in a town called Doswell. "A purely interstate use is considered insufficient to establish a federal jurisdictional basis for registration of a mark." See TMEP, §1202.01, at page 1200-26.

and correct copy of Mallory Levitt's April 3, 2002 letter, attached hereto and marked as **Exhibit 8**. Applicant, in response to Opposer's Interrogatories, Response No. 3, states that "all of the goods bearing the HYPERSONIC marks are sold only at PARAMOUNT'S Kings Dominion Theme Park in Virginia, which opened to the media this year on March 22, 2001, and to the public on March 24, 2001." See a true and correct copy of Applicant's Response to Interrogatory No. 3, marked as **Exhibit 9**.

41. Applicant's said applications are void *ab initio* because the Applicant did not have a bona fide intent to use the mark in commerce when they filed their said applications. The Applicant did not have actual use in commerce when they filed their Statements to Amend Use. Applicant did not have actual use in commerce on the mark HYPERSONIC, sought to be registered, because the specimens of use represented a material alteration of the mark. Thirdly, Applicant had no valid use in commerce, pursuant to the Amendment to Allege Use, attached to Exhibits 1 and 2. Applicant's Amendment to Allege Use, for Application SN: 76-103,447, dated the 24th day of October, 2001, states that "the mark was first used on or in connection with t-shirts, sweatshirts, tank tops and hats at least as early as March 17, 2001, and is now in use on such commerce." Applicant's application SN: 76-103,447 stated that the Applicant had a valid Intent to Use on the following goods: t-shirts, sweatshirts, tank tops and hats, jackets, pajamas, masquerade costumes, footwear, sweatpants and shorts. Applicant, in violation of the Trademark Rules, attempted to amend its application listing its goods during the pendency of an Opposition. This is a clear violation of the Trademark Rules. Applicant's application is fatally defective and the Board must grant Opposer's Motion for Summary Judgment, denying the Applicant registration of its Application SN: 76-103,447. Applicant has established that it did not have a bona fide intent to use the mark in commerce. Applicant did not have a valid bona fide intent to use the mark on all of the goods listed in Application SN: 76,103,447. In fact, Applicant, through its amendment to allege use, for Application SN: 76,103,447, attempted to amend its application during the pendency of an Opposition, in violation of Trademark Rule §2.133(a), by deleting the following goods: jackets, pajamas, masquerade costumes, footwear, sweatpants and shorts from its application. Furthermore, Applicant's alleged specimen of use, attached to its Amendment to Allege Use, is a design mark

which is not the same mark, solo word mark HYPERSONIC in block letters, that the Applicant applied for. Therefore, Applicant had no use contrary to its said Amendment to Allege Use.

In addition, Applicant stated that its First Use date in interstate commerce, and in use, as March 17, 2001. This represents a misrepresentation on the Board, in that Applicant states in its Interrogatories, Response to Interrogatory No. 11: "that such goods have been sold at those outlets since the park opened on March 24, 2001. See a true and correct copy of Applicant's Response to Interrogatory No. 11, attached hereto as **Exhibit 9**. Thus, Applicant's Amendment to Allege Use represents a complete misrepresentation on the Board, which is sufficient for the Board to grant Opposer's its Motion for Summary Judgment.

42. Applicant's said applications are void *ab initio* because the Applicant did not have a bona fide intent to use the mark in commerce when they filed their said applications. The Applicant did not have actual use in commerce when they filed their Statements to Amend Use. Applicant did not have actual use in commerce on the mark HYPERSONIC, sought to be registered, because the specimens of use represented a material alteration of the mark. Thirdly, Applicant had no valid use in commerce, pursuant to the Amendment to Allege Use, attached to Exhibits 1 and 2. Applicant's Amendment to Allege Use, for Application SN: 76-103,448, dated the 24th day of October, 2001, states that "the mark was first used on or in connection with postcards and bumper stickers at least as early as March 17, 2001, and is now in use on such commerce." Applicant's application SN: 76-103,447 stated that the Applicant had a valid Intent to Use on the following goods: calendars, fiction magazines, comic books, greeting cards, posters, a series of fiction books, trading cards, stickers, notepads, notebooks, gift wrapping paper and rubber stamps. Applicant, in violation of the Trademark Rules, attempted to amend its application listing its goods during the pendency of an Opposition. This is a clear violation of the Trademark Rules. Applicant's application is fatally defective and the Board must grant Opposer's Motion for Summary Judgment, denying the Applicant registration of its Application SN: 76-103,448. Applicant has established that it did not have a bona fide intent to use the mark in commerce. Applicant did not have a valid bona fide intent to use the mark on all of the goods listed in Application SN: 76,103,448. In fact, Applicant, through

its amendment to allege use, for Application SN: 76,103,448, attempted to amend its application during the pendency of an Opposition, in violation of Trademark Rule §2.133(a), by deleting the following goods: jackets, pajamas, masquerade costumes, footwear, sweatpants and shorts from its application. Furthermore, Applicant's alleged specimen of use, attached to its Amendment to Allege Use, is a design mark which is not the same mark, solo word mark HYPERSONIC in block letters, that the Applicant applied for. Therefore, Applicant had no use contrary to its said Amendment to Allege Use.

In addition, Applicant stated that its First Use date in interstate commerce, and in use, as March 17, 2001. This represents a misrepresentation on the Board, in that Applicant states in its Interrogatories, Response to Interrogatory No. 11: "that such goods have been sold at those outlets since the park opened on March 24, 2001. See a true and correct copy of Applicant's Response to Interrogatory No. 11, attached hereto as Exhibit 9 Thus, Applicant's Amendment to Allege Use represents a complete misrepresentation on the Board, which is sufficient for the Board to grant Opposer's its Motion for Summary Judgment.

Since the Applicant is not permitted to amend its application without permission during the pendency of its application, and since the Applicant attempted to amend its application without permission, by deleting goods that it otherwise claimed it had a bona fide intent to use, Applicant has voided its own Applications SN: 76,103,447 and 76,103,448, on its own.

SAID APPLICATION WAS NOT APPLIED FOR IN ITS CORRECT TYPE

43. It is critical that a mark be registered according to its correct type for, if it is not, the registration may be subject to cancellation. See National Trailways Bus System v. Trailway Van Lines, Inc., 222 F. Supp. 143, 139 USPQ 54 (E.D.N.Y. 1963), and 269 F. Supp. 352, 155 USPQ 507 (E.D.N.Y.1965). See §109 of the TMEP.

44. Opposer moves to deny Applicant's mark *HYPERSONIC* on numerous grounds¹

1. Opposer, after participating in Applicant's testimony deposition, may have discovered additional grounds for the said Opposition and moves this Honorable Board for leave to amend it's Notice of Opposition conform to the said evidence presented herein.

including priority of use, likelihood of confusion, misrepresentation on the PTO etc.; on the trademark office. Opposer has met it's burden of proof on all of the grounds that it has alleged and is entitled to have the Board deny Applicant's application. The Opposer has established priority of use of the mark *HYPERSONIC*. The Opposer has established priority of use of the mark *HYPERSONIC* on similar, competitive and closely related goods; *namely, sporting goods*, and the Opposer has established that the Applicant has made misrepresentations to the PTO in order to acquire its mark.

STATEMENT OF USE IS A MISREPRESENTATION ON THE PTO

45. The Opposer asserts that the Board should grant its Motion for Summary Judgment based also upon Applicant's said Statement of Use, which is a misrepresentation on the PTO. Said Statement of Use in and of itself, vitiates Applicant's said application for containing the said misrepresentations:

46. The first reason the Board must deny Applicant's said applications is that the specimens of use contain the work mark *HYPERSONIC*. Consequently, the said specimen of use is not for the solo word mark *HYPERSONIC*, but for a design mark *HYPERSONIC*.

47. The alleged specimen of use is inconsistent with the said Trademark Application for the solo word mark *HYPERSONIC* because it does not convey a separate and distinct commercial impression as a mark. *See In Re Chemical Dynamics, Inc.* 839 F.2d 1969, 5 USPQ2d 1828 (Fed. Cir. 1988).

48. The Board must deny registration to the application, based on the undeniable fact from the record before it, that Applicant's specimen of use is not a substantially exact representation of the *HYPERSONIC* mark sought to be registered. The Board need proceed no further than deciding Opposer's Motion for Summary Judgment in favor of the Opposer on this issue alone.

**APPLICANT'S SAID AMENDMENTS TO ALLEGE USE ARE FALSE
AND A MISREPRESENTATION ON THE PTO**

49. Applicant did not use the mark *HYPERSONIC*, pursuant to Trademark Application SN: 76,103,447 on all the said goods (t-shirts, sweatshirts, hats, jackets, pajamas, mas-

querade costumes, tank tops, footwear, sweatpants and shorts) listed in its application, at least as early as March 17, 2001.

50. Applicant did not use the mark HYPERSONIC, pursuant to Trademark Application SN: 76,103,448 on all the said goods (calendars, fiction magazines, comic books, greeting cards, posters, a series of fiction books, trading cards, stickers, notepads, notebooks, gift wrapping paper and rubber stamps) listed in its application, at least as early as March 17, 2001.

51. It was not even possible for the Applicant to have first use of the mark HYPERSONIC, listed in its Application SN: 76-103,447 and 76-103,448 on March 17, 2001. Applicant has admitted that the goods covered under the two said applications are to be sold within the Park's on-site souvenir gift shop in Doswell, Virginia, at the Paramount Kings Dominion Theme Park. According to the Applicant's response to Opposer's Interrogatory No. 3, which confirmed that the said HYPERSONIC marks are only sold at the Paramount Kings Dominion Theme Park in Virginia, which "opened to the media this year on March 22, 2001 and to the public on March 24, 2001." According to Applicant's own admission, Paramount's King Dominion Theme Park was not even open on March 17, 2001. Secondly, Applicant only admits that in App. SN: 76,103,448 that mark was only available on the following goods, "post cards and bumpers stickers". The Applicant further admits that the goods listed in App. SN: 76,103,447 was only available on goods, namely "t-shirts, sweatshirts, tank tops and hats".

52. Therefore, by Applicant's own damning admissions, the Park was not even open on March 17, 2001, nor were all of the said goods listed in the two applications, being used in commerce on the date that the Applicant has stated, as contained in its Amendments to Allege Use, attached as Exhibits 1 and 2.

FAILURE TO DISCLOSE

53. The Applicant PARAMOUNT PARKS, INC. failed to disclose the relationship that exists between VIACOM, INC., the owner of the mark HYPERSONIC, and the subsidi-

ary, PARAMOUNT PARKS, INC. Such failure to disclose, under TMEP §1201.03(c), is fatal to Applicant's said application. The Board must, as a matter of law, deny registration to the Applicant, for failing to disclose under §12.01.03(c) TMEP

WHEREFORE, the Opposer prays that the Board grant it's Motion for Summary Judgment in favor of the Opposer and to deny the Applicant's registration of its said application, with prejudice.

Opposer's motion is supported by:

- (1) Opposer's Memorandum in Support of Its Motion for Summary Judgment;
- (2) Declaration of Leo Stoller;
- (3) Opposer's *HYPERSONIC* Registration;
- (3) Applicant's Applications and Amendments to Allege Use
- (4) Applicant's discovery responses to Opposer's Interrogatories;
- (5) And attached exhibits.

Respectfully submitted,

By: Leo Stoller, President
CENTRAL MFG. CO, Opposer
P.O. Box 35189
Chicago, Illinois 60707-0189
773 283-3880 FAX 708 453-0083

Dated: October 5, 2002

DECLARATION

The undersigned, Leo Stoller, declares that he is the Opposer and President of CENTRAL MFG. CO., that he is authorized to execute this document on its behalf, that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code. All documents that are hereto attached are verified as copies of original documents which purport to be what they are. Opposer declares that he is the owner of all of the said HYPERSONIC registrations that are relied upon in the Notice of Opposition. That although the Registrant of Record is CENTRAL MFG. CO., the Opposer's corporation, the PTO Rules do not require that the Owner of Record must record a notice with the Board. However, when questions of ownership arise, the PTO requires an explanation of ownership. See §502 of the TMEP - Establishing Ownership of Application or Registrations: "While it may be advisable for an applicant or registrant to record an assignment of an application or registration in the Assignment Division of the Patent and Trademark Office in view of the provisions of §10 of the Act, 15 U.S.C., §1060, concerning subsequent purchasers, neither the Act nor the rules require recordation. However, if the party taking the relevant action with respect to an application or registration is different from the applicant or registrant of record and the filing party has not recorded an assignment, the party taking the action must establish that it is the owner of the application or registration through appropriate evidence". The appropriate evidence is this said Declaration from LEO STOLLER, the creator of the mark HYPERSONIC and the Opposer herein.

By: _____
Leo Stoller, individually
CENTRAL MFG. CO., Opposer

By: _____
Leo Stoller, as President of
CENTRAL MFG. CO., Opposer

Dated: October 5, 2002

Certification of Mailing

I hereby certify that this Motion for Summary Judgment is being deposited with the U. S. Postal Service as first class mail in an envelope addressed to:

Box TTAB NO FEE, Assistant Commissioner of Parents and Trademarks
2900 Crystal Drive, Arlington, Virginia 22202-3513

Leo Stoller
October 5, 2002

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing
MOTION FOR SUMMARY JUDGMENT WITH SUPPORTING MEMORANDUM
to be served upon the Applicant by mailing a copy by first class mail,
postage prepaid, addressed to:

Lance H. Koonce, III
KAY & BOOSE
One Dag Hammarskjold
New York, NY 10017

Leo Stoller
October 5, 2002
C:\MARKS27\PARAM.MSJ

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

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

Opposer,

vs.

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

Applicant

Opposition No: 123,765

Trademark: HYPERSONIC

Application SN: 76-103,447 and
76-103,448

Int. Class No: 16 & 25

Box TTAB/NO FEE

HYPERSONIC v. HYPERSONIC

**OPPOSER'S VERIFIED MEMORANDUM
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

1. In the matter of Intent to Use Application SN: 76-103,447; Filed: August 2, 2000; Published Date: May 22, 2001, for the mark HYPERSONIC, Int. Cl. 25 for namely, *t-shirts, sweatshirts, hats, jackets, pajamas, masquerade costumes, tank tops, footwear, sweatpants and shorts*; and Intent to Use Application SN: 76-103,447; Filed: August 2, 2000; Published Date: April 24, 2001, for the mark HYPERSONIC, Int. Cl. 16 for namely, *paper goods and printed matter, namely, calendars, fiction magazines, comic books, greeting cards, posters, a series of fiction books, trading cards, stickers, notepads, notebooks, postcards, gift wrapping, bumper stickers, and rubber stamps.*

2. The Opposer, hereinafter referred to as ("*HYPERSONIC*") like McDonald's Corporation, uses it's well known *HYPERSONIC* mark as a trade name, corporate name, service mark and trademark since at least as early as 1988 as a Predecessor-in-Interest, and is engaged in an aggressive *HYPERSONIC* marketing and trademark licensing program. (See attached exhibit.)

3. The Opposer also holds rights in the mark *HYPERSONIC* in Registration No: 1,593,157 and unregistered *HYPERSONIC* marks and has priority of use on similar goods,

namely, sports racquets, namely tennis racquets, racquetball racquets, golf clubs, golf balls, tennis balls, sports balls, namely, basketballs, baseballs, footballs, soccerballs, volleyballs, crossbows, tennis racquet string and shuttlecocks,, with an earlier first use date, as early as 1988 than that of the Applicant's applications, and therefore opposes registration of the confusingly similar mark HYPERSONIC , Intent to Use Application SN 76-103,447 and 76-103,448.

4. The Opposer holds rights ¹ in the following *HYPERSONIC* trademark Registration No: 1,593,157, incorporated herein by reference and notice is hereby given that Opposer relies upon the said *HYPERSONIC* registration.

INTRODUCTION:

5. The Opposer moves, pursuant to Fed. R. Civ. P. 56, based on the material facts as to which there are no genuine issues to be tried, as a matter of law, Opposer is entitled to summary judgment in its favor. In particular, Application SN 76-103,447 and 76-103,448 for the mark **HYPERSONIC**, is confusingly similar to a mark previously and continuously used in the United States and not abandoned, as to be likely, when applied to Applicant's goods, to cause confusion, or to cause mistake, or to deceive. Thus, Applicant is *not entitled* to registration of the mark set forth in Application SN 76-103,447 and 76-103,448.

6. This is an action brought by the Opposer to deny Application SN 76-103,447 and 76-103,448. The mark in question consists of the letters **HYPERSONIC**.

7. Opposer uses it's *HYPERSONIC* mark as a trade name, corporate name, service

1. §16.13 McCARTHY ON TRADEMARKS, II. Ownership. Who Is Owner Of Trademark, [1] Introduction, Trademarks have often been held to be a kind of "property." In discussing "ownership of a trademark, we must recognize that we are dealing with intangible, intellectual property. "Ownership" means that one possesses a right which will be recognized and upheld in the courts: To say one has a "trademark" implies ownership and ownership implies the right to exclude others. If the law will not protect one's claim of right to exclude others from using an alleged trademark, then he does not own a "trademark", for that which all are free to use cannot be a trademark. Application of Deister Concentrator Co., 48 CCPA 952, 289 F.2d 496, 129 USPQ 314 (1961). Trademark ownership inures to the legal entity who is in fact using the mark as a symbol of origin. The Federal Trademark Register can be rectified in order to correct the ownership of a registered mark or a pending application. Chapman v. Mill Valley Cotton, 17 USPQ2d 1414 (TTAB 1990) (Opposer Alpha alleged that she, not applicant, owned the mark. Applicant was a joint venture composed of parties Alpha and Beta. After some litigation in state court, the parties filed an assignment from party Beta to party Alpha amounting to a concession that Alpha was indeed the owner of the mark. The Board viewed the TLRA 1989 amended version of §18, which permits rectifying the "register" as broad enough to include changing the name of the owner of an application, as well as of an issued registration.

mark and trademark and engages in an aggressive licensing and marketing program ¹ of its mark *HYPERSONIC*.

8. Opposer's use of the mark *HYPERSONIC* commenced prior to Applicant's mark *HYPERSONIC* and has been continuous to the present time.

The Opposer's Mark *HYPERSONIC* Is An Arbitrary And Fanciful Mark

9. The Opposer's internationally well-known trademark and tradename *HYPERSONIC* is an arbitrary and fanciful mark. Such marks are the strongest marks and are subject to the broadest scope of protection available under the Lanham Act.² Arbitrary or fanciful marks like *HYPERSONIC* bear no relationship to the product or service with which they are associated (see *Soweco, Inc. v Shell Oil Co.*, 617 F.2d 1178, 1184 (5th Cir. 1980). In addition to the Opposer having the strongest type of mark available under the Lanham Act, *HYPERSONIC* is the only company in the world that licenses the *HYPERSONIC* mark as a member of the International Licensing Industry Merchandisers' Association (LIMA).

Prior Use of a Mark by Another Is Sufficient to Preclude Registration of the Same or a Similar Mark by a Subsequent User

10. The Opposer adopted and began to use the mark *HYPERSONIC* before Applicant's use thereof. It is well established that rights in and to a particular mark are created by use thereof in commerce. Prior use, even in intrastate commerce, is generally sufficient to preclude the

1. Licensing broadens the scope and strength of the legal protection of the corporate trademark. A typical trademark is normally used in a limited number of product classifications. This can sometimes encourage other companies to attempt to take unfair advantage of the value of that trademark by using that particular mark on a product in another class of goods and/or services. Licensing into other categories effectively preempts that type of undesirable adoption of the corporate trademark. In the event litigation takes place, it also establishes stronger ownership through the broader use of the mark. Moreover, it's a very effective legal strategy in that it can effectively discourage infringement rather than requiring a reaction to it after the fact. There, licensing really assures a more extensive recognition of the company's ownership of trademarks and copyrights through the additional uses. *The Benefits of a Corporate Licensing Program* by Glen Konkle Esq., *The Merchandising Reporter*, April 1986.

2. Unfair Competition and the Lanham Act by Doris E. Long 1993 International Standard Book Number: 0-87179-785-2 at page 50 2.3.2.4 Arbitrary Terms.

registration of the same or a similar term by a subsequent user. *Combanks Corp. v. Combank Mortgage Funding, Ltd.*, 197USPQ 296 (TTAB 1977); *Macaulay v. Malt Diatase Co.*, 4 F.2nd 944 (D.C. Cir. 1925); *Joseph H. Meyer Bros. v. Interatlantic Trading Corp.* 89 USPQ 440 (Comr. 1951); *R.J. Moran Co. v. Gordon*, 101 USPQ 206 (Comr. 1954); *Laughner's Drive-In, Inc. v. Steer Inn Systems, Inc.* 151 USPQ 650 (TTAB 1966), aff'd, 160 USPQ 626 (CCPA 1969); *Hess' of Allentown, Inc. v. National Bellas Hess, Inc.* 169 USPQ 673 (TTAB 1971).

11. In view of the established case law, the Opposer's prior use of the *HYPERSONIC* trademark is, in and of itself, sufficient grounds to deny U.S. Application SN 76-103,447 and 76-103,448.

The Present Proceeding Is Ripe for Summary Judgment

12. An issue in dispute is whether or not the contemporaneous use of the mark, *HYPERSONIC* by the Applicant is likely to cause confusion in the marketplace with the goods sold under the Opposer's mark *HYPERSONIC* and the goods listed in Opposer's registration. The issue of likelihood of confusion is an issue of law and is thus properly decided by Summary Judgment. As the court said in *Sweat Fashions, Inc. v. Pannill Knitting Co., Inc.*, 4.U.S.P.Q. ed 1793, 1795 (CAFC 1987):

"The uniform precedent of this Court is that the issue of likelihood of confusion is one of law. Thus, the Board may unquestionably resolve that issue on summary judgment."

13. Summary Judgment is appropriate in a trademark denial proceeding where, as here, there are no genuine issues of material fact to be tried. In the recent case of *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.* 222 USPQ 741 (Fed. Cir. 1984), the TTAB's grant of summary judgment in an opposition proceeding was affirmed. Citing *Exxon Corp. v. National Food Line Corp.* 198 USPQ 407, 408 (CCPA 1978), the Federal Circuit explained that the basic purpose of summary judgment is that of judicial economy. It is against the public interest to conduct useless trials, and where the time and expense of a full trial can be avoided by the summary judgment procedure, such action is favored.

In the present proceeding, the presentation of more evidence than is already available in connection with this motion could not reasonably be expected to change the conclusion that HYPERSONIC is entitled to denial of Trademark Application SN 76-103,447 and 76-103,448.

In Pure Gold, Inc. v. Syntex (U.S.A.), Inc. 222 USPQ at 744, n.2, the Court encouraged the disposition of matters before the TTAB by summary judgment as follows:

The practice of the U.S. Claims Court and of the former U.S. Court of Claims in routinely disposing of numerous cases on the basis of motions for summary judgment has much to commend it. The adoption of similar practice is to be encouraged in inter party cases before the Trademark Trial and Appeal Board, which seem particularly suitable to this type of disposition. Too often we see voluminous records which would be appropriate to an infringement or unfair competition suit but are wholly unnecessary to resolution of the issue of register ability of a mark.

***Summary Judgment Is Appropriate In This Case Because
There Is No Genuine Issue As To Any Material Fact***

14. Summary Judgment for the Opposer *is appropriate in this proceeding because there is no genuine issue as to any material fact and the facts establish that the Opposer is entitled to judgment as a matter of law.*

**OPPOSER'S MOTION FOR SUMMARY JUDGMENT
SHOULD BE GRANTED AS A MATTER OF LAW**

15. The standards applicable under Federal Rule 56 for Summary Judgment are well known. If there is no genuine issue as to any material fact and the moving party is entitled to a judgment, as a matter, of law then Summary Judgment should be granted. Anderson v. Liberty Lobby Inc., 477 U.S. 242, 248 (1986); Sweats Fashions Inc. v. Pannill Knitting Co. Inc., 4 USPQ 2d 1793, 1795, 833 Fed. 1560, 1562 (Fed. Cir. 1987). Summary Judgment is appropriate in proceedings before the Trademark Trial and Appeal Board where the issues of likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d), and priority of use are concerned. Pure Gold Inc. v. Syntex (U.S.A.), Inc.; Keebler Company v. Murray Bakery Products, 866 Fed. 1386, 1388, 9 USPQ 2d 1736 (Fed. Cir. 1989); Sweats Fashions, Inc. v. Pannill Knitting Co., 833 F. 2d 1560, 1562, 4 USPQ 2d 1793, 1795 (Fed. Cir. 1987).

LIKELIHOOD OF CONFUSION

THE GOODS OFFERED BY APPLICANT ARE CONFUSINGLY SIMILAR TO THE GOODS OF THE OPPOSER

16. The Board must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the Board must look at the marks themselves for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the Board must compare the goods to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

17. The mark that the Opposer is requesting to be denied in Application SN 76-103,447 and 76-103,448 is HYPERSONIC. The Opposer's mark is *HYPERSONIC*. When the Applicant's mark is compared to the Opposer's mark, "the points of similarity are of greater importance than the points of difference". *Esso Standard Oil Co. v. Sun Oil Co.*, 229 F.2d 37,108 USPQ 161 (D.C. Cir), *cert. denied*, 351 U.S. 973, 109 USPQ 517 (1956). In this case, both marks contain the term *HYPERSONIC*.

18. The goods of the parties need not be identical or directly competitive to find a likelihood of confusion. They need only be related in some matter, or the conditions surrounding their marketing be such, that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Products Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978). The goods of the parties are related and sold in the same channel of trade.

19. The Applicant's mark *HYPERSONIC* is identical to *HYPERSONIC*'s mark *HYPERSONIC* as to be likely to cause confusion or mistake or to deceive. Under Section 2(d) of the

Lanham Act, if a mark is sufficiently similar to a mark previously used by another "as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. Section 1052. When reviewing the issue of likelihood of confusion, the Board must consider whether the marks are similar in sight, sound or meaning. General Foods Corp. v. Wisconsin Bottling, Inc., 190 U.S.P.Q. 43, 45 (T.T.A.B. 1976). The presence of any one of these types of similarities may be sufficient to establish that confusion is likely. *Id.*; see also in re Lamson Oil 6 U.S.P.Q. 2nd 1041 (T.T.A.B. 1988) (where goods were closely related, the marks TURCOOL and TRUCOOL were held to be so similar in appearance that similarity alone would cause a likelihood of confusion). In the case at bar, the marks of the parties are also identical in both sight, sound, and appearance.¹

20. *HYPERSONIC*, through its predecessor in interest, has used and is using and licensing its mark for a broad range of goods, including *namely, sporting goods* from at least as early as 1988 to the present date.

21. In addition, *HYPERSONIC* uses and licenses its *HYPERSONIC* trademark on goods and/or services. *HYPERSONIC* uses its *HYPERSONIC* trademark and trade name in connection with a variety of consumer goods and/or services which it sells. This broad use has created substantial consumer identification of the trademark *HYPERSONIC* as indicated by *HYPERSONIC*.

22. *HYPERSONIC*'s rights in the *HYPERSONIC* mark are indisputably superior to those of the Applicant in its registration for the *HYPERSONIC* mark. *HYPERSONIC* has use of its *HYPERSONIC* trademark for a long time on goods that are similar to the Applicant in interstate commerce. See Combanks Corp. v. Combank Mortgage Funding Ltd., 197 U.S.P.Q. 296, 299 (T.T.A.B. 1977) (prior use of a mark in interstate commerce is generally

1. Mr. J. David Sams, Chief Administrative Trademark Judge, Trademark Trial and Appeal Board, as the guest speaker of the Tenth Annual Chicago Trademark Seminar and Luncheon, provided the Opposer with the following latest line of TTAB decisions which supports the Opposer's allegation of likelihood of confusion in its Motion for Summary Judgment. See In re Copytele Inc., 31 USPQ2d (TTAB 1994) [likelihood of confusion found in contemporaneous use of SCREEN FAX PHONE for facsimile terminals employing electrophoretic displays and FAXPHONE for electronic communication units featuring multifunctional desk telephones and parts therefore]. In re Smith and Mehaffey, 31 USPQ2d (TTAB 1994) [likelihood of confusion found in contemporaneous use of ROAD KILL CATERING for T-shirts, sweatshirts, and aprons, and ROAD KILL CLUB OF AMERICA (and design) for T-shirts, sweatshirts, and pullovers]. See also Ceccato v. Manifattura Lane Gaetano & Figli, S.p.A. 32 USPQ2d 1192 (TTAB 1994) [likelihood of confusion found in contemporaneous use of DUCA D'AOSTA (and design) for men's clothing and DUCA D'AREZZO (in stylized lettering) for men's suits, jackets and trousers]. In re Sunmarks, Inc., 32 USPQ2d 1470 (TTAB 1994) [likelihood of confusion found in contemporaneous use of ULTRA for gasoline, motor oil, automotive grease, general purpose grease, machine grease, and gear oil and ULTRA LUBE for lubricating oils and greases].

sufficient to preclude registration of a similar term by a subsequent user); Finance Co. of America v. BankAmerica Corp., 205 U.S.P.Q. 1016, 1026 (T.T.A.B. 1980) ("...prior use of a trade name is sufficient to preclude registration by a subsequent user of a mark confusingly similar thereto").

HYPERSONIC IS ENTITLED TO JUDGMENT ON THE PLEADINGS

23. The Trademark Trial and Appeal Board in *Baroid Drilling Fluids Inc. v. Sun Drilling Products*, 24 U.S.P.Q. 2d 1048, 1049 has enunciated the applicable standard:

"A Motion for judgment on the pleadings, which is provided for under Fed. R.Civ.P.12(c), will be granted only if the moving party clearly establishes that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. For purposes of the motion, all well pleaded factual allegations of the non-moving party are assumed to be true and the inference drawn therefrom are to be viewed in a light most favorable to the non-moving party." *Id.* 1049

24. Through the Applicant's own application, the record at the PTO contained in it's application in comparison to the published date contained in the said application conclusively demonstrate that HYPERSONIC possessing priority of use is not an issue, *HYPERSONIC* has established priority. In accordance with the TTAB decision in *Baroid Drilling Fluids Inc.*, denial of a proceeding denotes that the remaining issue is whether the Applicant and Opposer's marks are confusingly similar. As such, there now exists no material issue of fact to be resolved and *HYPERSONIC* is entitled to judgment as a matter of law. See: *Baroid Drilling Fluids Inc. v. Sun Drilling Products*, 24USPQ 2d 1048, 1053 (TTAB 1992).

CONSTITUTIONAL PROVISION INVOLVED

25. *HYPERSONIC* asserts, under the circumstances at Bar, that for this Board to deny the relief sought herein would be a violation of the Opposer's rights under the due process and equal protection clause of the Fifth and Fourteenth Amendments to the United States Constitution.

26. Since Applicant's First Use Applications filed August 2, 2000, is after the date of

HYPERSONIC's first use¹ date, January 10, 1988, of the mark *HYPERSONIC* in the United States, *HYPERSONIC* is entitled to summary judgment in its favor.

CONCLUSION:

HYPERSONIC v. HYPERSONIC

27. The present memorandum sets forth the uncontroverted facts which require a holding that *HYPERSONIC* is entitled to summary judgment denying Application SN 76-103,447 and 76-103,448. The facts are simple, clear, and fit squarely within the cited statutes and case law. There are no genuine issues of material fact to be tried, and in view of *HYPERSONIC*'s clear prior use of the mark *HYPERSONIC* in the United States, summary judgment is particularly appropriate.

28. *HYPERSONIC* respectfully requests that Summary Judgment be granted in its favor, denying Applicant's Application SN 76-103,447 and 76-103,448 of the mark *HYPERSONIC*, with prejudice. There are no genuine issues of material fact in this case. *HYPERSONIC*'s priority of rights in its mark *HYPERSONIC* are as is the identity of the parties's goods. Further, there can be no dispute that the marks of the parties are confusingly similar as to be likely to cause confusion, mistake or deception. Under these circumstances, *HYPERSONIC* is entitled to judgment as a matter of law.

WHEREFORE, Opposer respectfully requests that the Board grant the present Motion for Summary Judgment in its favor sustaining its Notice of Opposition and denying Applicant's alleged trademark *HYPERSONIC*, Application SN 76-103,447 and 76-103,448.

To grant to the Opposer whatever other relief that this Board shall deem reasonable and proper.

Respectfully submitted,

1. In the Southern District of New York of March 26, 1996, District Judge Harold Baer Jr. ruled that prior to registration, a prior intention-to-use applicant has "no enforceable trademark rights" offensively or defensively *vis-a-vis* one having first actual use of a confusingly similar mark. *WarnerVision Entertainment Inc. v. Empire of Carolina Inc., et al*, 95 Civ. 9386, slip opinion (S.D. N.Y.)



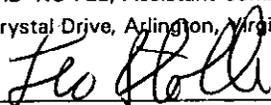
By: Leo Stoller, President
CENTRAL MFG. CO, Opposer
Trademark and Licensing Dept.
P.O. Box 35189
Chicago, Illinois 60641-7120
312 283-3880 FAX 708 453-0083

Date: October 5, 2002

Certification of Mailing

I hereby certify that this Verified Memorandum is being deposited with the U. S. Postal Service as first class mail in an envelope addressed to:

Box TTAB NO FEE, Assistant Commissioner of Patents and Trademarks
2900 Crystal Drive, Arlington, Virginia 22202-3513

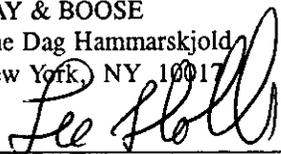


Leo Stoller
October 5, 2002

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Verified Memorandum to be served upon the Applicant by mailing a copy by first class mail, postage prepaid, addressed to:

Lance H. Koonce, III
KAY & BOOSE
One Dag Hammarskjold
New York, NY 10017



Leo Stoller
October 5, 2002
C:\MARKS27\PARAM.MSJ

Int: Cl.: 28

Prior U.S. Cl.: 22

United States Patent and Trademark Office

Reg. No. 1,593,157

Registered Apr. 24, 1990

**TRADEMARK
PRINCIPAL REGISTER**

HYPERSONIC

**S INDUSTRIES, INC. (DELAWARE CORPORATION)
P.O. BOX 348-370
CHICAGO, IL 606348370**

**FOR: SPORTS RACQUETS, NAMELY
TENNIS RACQUETS, RACQUETBALL RACQUETS,
SQUASH RACQUETS, BADMINTON RACQUETS;
GOLF CLUBS, GOLF BALLS, TENNIS BALLS,
SPORTS BALLS, NAMELY**

**BASKETBALLS, BASEBALLS, FOOTBALLS,
SOCCERBALLS, VOLLEYBALLS; CROSSBOWS,
TENNIS RACQUET STRING AND SHUTTLECOCKS,
IN CLASS 28 (U.S. CL. 22).
FIRST USE 1-10-1988; IN COMMERCE
1-10-1988.**

SER. NO. 73-771,242, FILED 12-23-1988.

DAVID A. JONES, EXAMINING ATTORNEY



UNITED STATES DEPARTMENT OF COMMERCE
 Patent and Trademark Office
 OFFICE OF ASSISTANT COMMISSIONER FOR TRADEMARKS
 2900 Crystal Drive
 Arlington, Virginia 22202-3513

REGISTRATION NO: 1593157 SERIAL NO: 73771242 MAILING DATE: 02/22/2001
 REGISTRATION DATE: 04/24/1990
 MARK: HYPERSONIC
 REGISTRATION OWNER: CENTRAL MFG CO
 CORRESPONDENCE ADDRESS:

LEO D STOLLER
 PO BOX 35189
 CHICAGO IL 60707-0189

NOTICE OF ACCEPTANCE

15 U.S.C. Sec. 1058(a)(3)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 8 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE SECTION 8 AFFIDAVIT IS ACCEPTED.

NOTICE OF RENEWAL

15 U.S.C. Sec. 1059(a)

THE COMBINED AFFIDAVIT AND RENEWAL APPLICATION FILED FOR THE ABOVE-IDENTIFIED REGISTRATION MEETS THE REQUIREMENTS OF SECTION 9 OF THE TRADEMARK ACT, 15 U.S.C. Sec. 1058.

ACCORDINGLY, THE REGISTRATION IS RENEWED.

THE REGISTRATION WILL REMAIN IN FORCE FOR CLASS(ES):
 028.

CLINKSCALES, ARLENE L
 PARALEGAL SPECIALIST
 POST-REGISTRATION DIVISION
 (703)308-9500

PLEASE SEE THE REVERSE SIDE OF THIS NOTICE FOR INFORMATION CONCERNING REQUIREMENTS FOR MAINTAINING THIS REGISTRATION

Paramount Picture

Motion Picture Group

5555 Melrose Avenue
Hollywood, CA 90038-3107
323-056-1388
Fax 323-862-1026
pepper_starobin@paramount.com

Pepper Starobin
Trademark Catalog

August 2, 2000

Express Mail No. EL522230596US

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Paramount Parks Inc.
New Intent to Use Trademark Application
for the Mark HYPERSONIC
In Class 25 in the United States

Dear Sir:

Enclosed please find the following:

1. Application to register based on intent to use
2. Drawing page
3. Declaration

Kindly acknowledge receipt of the enclosed documents by returning the attached postcard. Please charge all fees to our Deposit Account No. 16-0259.

Please address all communication, either by mail or telephone, to the undersigned.

Respectfully submitted,


Pepper Starobin

Enclosures: ITU Application
Drawing Page
Declaration
Mail Certification
Postcard

cc: Tracy Bombard (with enclosures)
Michelena Hallie (without enclosures)
Watch

NOV - 6



EXH. 1

A V I A C O M C O M P A N Y

From-VIACOM LEGAL DEPT 61TH FLOOR +2128461428 T-545 P. 10/55 F-511

FILING RECEIPT FOR TRADEMARK APPLICATION

Pat. Form 1-01

Aug 31, 2000

the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING can upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 90 days from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME and MARK.

MALLORY D. LEVITT
C/O PEPPER STAROBIN
PARAMOUNT PICTURES
5555 MELROSE AVENUE
LOS ANGELES, CALIFORNIA 90038

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

For correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER POP PARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Patent File Receipt Section. Or fax a request to 703-308-4006. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/103447 ✓
FILING DATE: Aug 2, 2000 ✓
REGISTER: Principal
CLASS OFFICE: 109
MARK: HYPERSONIC ✓
MARK TYPE(S): Trademark
DRAWING TYPE: Words, letters, or numbers in typed form
FILING BASIS: Sect. 1(b) (Intent to Use)

ATTORNEY: Mallory D. Levitt

OWNER: Paramount Parks Inc. (DELAWARE, Corporation) ✓
8720 Red Oak Boulevard
Charlotte, NORTH CAROLINA 28217

GOODS: T-SHIRTS, SWEATSHIRTS, HATS, JACKETS, PAJAMAS, MASQUERADE COSTUMES, TANK TOPS, ✓
FOOTWEAR, SWEATPANTS, SHORTS
INT. CLASS: 025

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

NOV - 6 2000

RECEIVED
SEP 05 2000

PEPPER STAROBIN

ADDITIONAL INFORMATION MAY BE PRESENT IN THE PTO RECORDS

1-545 P.08/55 F-511 +21284681428

FROM-VIACOM LEGAL DEPT 51TH FLOOR

PP 000535

EXPRESS MAIL NO. E15222305910US

TRADEMARK - ITU

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: HYPERSONIC

Class No.: 25

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Paramount Parks Inc.
a Delaware Corporation
8720 Red Oak Boulevard
Charlotte, North Carolina 28217

Applicant requests registration of the above-identified trade mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) in connection with the following goods:

T-SHIRTS, SWEATSHIRTS, HATS, JACKETS, PAJAMAS, MASQUERADE COSTUMES, TANK TOPS, FOOTWEAR, SWEATPANTS, SHORTS

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods by applying it directly to the goods and to the advertising and promotion of the goods.

Please address all correspondence on this matter to Mallory D. Levitt, Esquire at 212-258-6784 c/o Pepper Starobin at Paramount Pictures, 5555 Melrose Avenue, Los Angeles, California 90038. Pepper can be reached by phone at 323-956-1388.

EXPRESS MAIL NO. ~~852223089105~~

APPLICANT:

PARAMOUNT PARKS INC.
a Delaware Corporation

ADDRESS:

8720 Red Oak Boulevard
Charlotte, North Carolina 28217

FIRST USE:

Intent to Use

GOODS:

T-SHIRTS, SWEATSHIRTS, HATS, JACKETS,
PAJAMAS, MASQUERADE COSTUMES, TANK
TOPS, FOOTWEAR, SWEATPANTS, SHORTS

HYPERSONIC

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application of any resulting registration declares: That she is Vice President of the applicant corporation and is properly authorized to execute the application on behalf of said applicant; that she believes the applicant to be the owner of the trademark/service mark sought to be registered, or if the application is being filed under 15 U.S.C. 1051 (b), she believes applicant to be entitled to use of such mark in commerce; to the best of her knowledge and belief no other person, firm, corporation or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion; or to cause mistake, or to deceive; and that all statements made of her knowledge are true and all statements made on information and belief are believed to be true.

PARAMOUNT PARKS INC.

By: 
Name: Michelena Hallie
Title: Vice President

Dated: July 20, 2000

New York, New York

"EXPRESS MAIL" MAILING LABEL NUMBER: EL522230596US

DATE OF DEPOSIT: August 2, 2000

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Pepper Starobin

(Typed name of person mailing paper)



(Signature of person mailing paper)

Hon. Commissioner.
Please acknowledge receipt of the following:

08-02-2000

U.S. Patent & Trade/™ Mark Prot. Dt. #37

Applicant/Registrant: Paramount
Parks Inc.

Mark: HYPERSONIC (25)

Ser No./Reg. No.: via

Express Mail No.: 95222305905

- ITU Application
- Use Based Application
- Statement of Use
- Extension of Time to File Statement of Use (No.)
- Response to Office Action
- Section 8 & 15
- Renewal
- Request for Extension of Time to Oppose
- Other:

Respectfully yours,
Pepper Starobin

Viacom Inc.
1515 Broadway
New York, NY 10036-5794

Mallory D. Levitt
Counsel

Tel 212 258 6784
Fax 212 846 1729

October 25, 2001

VIA EXPRESS MAIL No. EL719838461 US
Assistant Commissioner for Trademarks
Box ITU FEE
2900 Crystal Drive
Arlington, Virginia 22202

VIACOM

Paramount Paramount Parks Inc,
Mark: **HYPERSONIC**
Class: 25
Serial No.: 76/103447
Filing Date: 08/02/2000

Dear Sir or Madam:

Applicant herewith submits the following in connection with the above referenced application:

- Amendment to Allege Use with Declaration
- Specimens

The filing fee should be charged to the Deposit Account #16-0259.

Please address all communication, either by mail or telephone to Mallory Levitt c/o Amy Chuman at Paramount Pictures Corporation, 5555 Melrose Avenue, Los Angeles, California 90038-3197. Amy Chuman can also be reached at 323-956-1388.

Respectfully Submitted,

Mallory Levitt
Mallory Levitt

Encl.

Cc: Amy Chuman (w/encl.)

PP 000592

CERTIFICATE OF EXPRESS MAIL
EXPRESS LABEL MAIL NO. EL719838461US

I hereby certify that this document and accompanying fee is being deposited with the United States Postal Service by Express Mail, postage pre-paid, addressed to the Commissioner for Trademarks, Box Responses (FEE), 2900 Crystal Drive, Arlington, VA 22202, this 25TH day of October.

Debra Artim

(Typed name of person mailing paper)

Debra Artim

(Signature of person mailing paper)

Express Mail No. EL 71983846145

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: HYPERSONIC

Serial No.: 76/103447

Filing Date: August 2, 2000

Class: 25

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS

Paramount Parks Inc.
8720 Red Oak Boulevard
Charlotte, North Carolina 28217

**AMENDMENT TO ALLEGE USE
UNDER 37 CFR 2.76 WITH DECLARATION**

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended). Applicant is the owner of the mark sought to be registered and is using the mark in commerce on or in connection with t-shirts, sweatshirts, tank tops and hats, as evidenced by the attached specimens showing the mark as used in commerce. Applicant respectfully requests that the remaining goods listed in the application, namely, jackets, pajamas, masquerade costumes, footwear, sweatpants and shorts, be deleted.

The mark was first used on the goods set forth herein at least as early as March 17, 2001; and was first used on the goods set forth herein in interstate commerce at least as early as March 17, 2001; and is now in use in such commerce.

The mark is used on or in connection with the goods in commerce by applying it directly to the goods and to the advertising and promotion of the goods.

Please direct all correspondence on this matter to Mallory D. Levitt, Esquire c/o Amy Chuman at Paramount Pictures Corporation, 5555 Melrose Avenue, Los Angeles, California 90038-3197. Amy Chuman can also be reached at 323-956-1388.

PP 000594

Express Mail No. EL 719838461 US

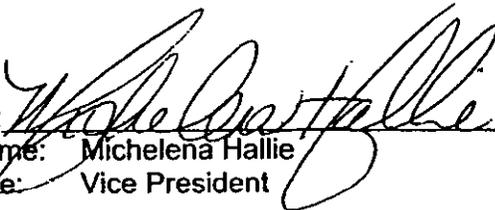
Trademark: HYPERSONIC

Serial No. 76/103447

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this Statement of Use on behalf of the applicant; he/she believes the applicant to be the owner of the trade/service mark sought to be registered; the trade/service mark is now in use in commerce; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

PARAMOUNT PARKS INC.

By: 
Name: Michelena Hallie
Title: Vice President

Dated: October 24, 2001
New York, New York

THE GREAT ESCAPE
THE GREAT ESCAPE

THE GREAT ESCAPE
THE GREAT ESCAPE

PARAMOUNT
KING OF KINGS

1

HYPERJUMP
KING OF THE HILL CENTER
"PARADISE KINGDOM DOMINIC"

THE GREAT
SMITH SHEPARD

PARAMOUNT'S
KINGDOM

LYMPERSON



HYPERSONIC
XTRONIC LAUNCH COASTER
BERKSHIRE KINGDOMS

ALL RIGHTS RESERVED
HARVEST MOON

PAPA MOUNT'S
KINGDOM

WYPERSONIC

HYPERSONIC
THE BRUNCH COASTER
BY PARADISE KINGS DOMINIC

Viacom Inc.
1515 Broadway
New York, NY 10036-5794

Mallory D. Levitt
Counsel

Tel 212 258 6784
Fax 212 846 1729

October 25, 2001

VIACOM

VIA EXPRESS MAIL No. EL719838461 US
Assistant Commissioner for Trademarks
Box ITU FEE
2900 Crystal Drive
Arlington, Virginia 22202

Paramount Paramount Parks Inc,
Mark: **HYPERSONIC**
Class: 16
Serial No.: 76/103448
Filing Date: 08/02/2000

Dear Sir or Madam:

Applicant herewith submits the following in connection with the above-referenced application:

- Amendment to Allege Use with Declaration
- Specimens

The filing fee should be charged to the Deposit Account #16-0259.

Please address all communication, either by mail or telephone to Mallory Levitt c/o Amy Chuman at Paramount Pictures Corporation, 5555 Melrose Avenue, Los Angeles, California 90038-3197. Amy Chuman can also be reached at 323-956-1388.

Respectfully Submitted,

Mallory Levitt

Mallory Levitt

Encl.

Cc: Amy Chuman (w/encl.)

EXH. 2

PP 000582

CERTIFICATE OF EXPRESS MAIL
EXPRESS LABEL MAIL NO. EL719838461US

I hereby certify that this document and accompanying fee is being deposited with the United States Postal Service by Express Mail, postage pre-paid, addressed to the Commissioner for Trademarks, Box Responses (FEE), 2900 Crystal Drive, Arlington, VA 22202, this 25TH day of October.

Debra Artim

(Typed name of person mailing paper)

Debra Artim

(Signature of person mailing paper)

Express Mail No. EL 719 838461 US

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: HYPERSONIC

Serial No.: 76/103448

Filing Date: August 2, 2000

Class: 16

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS

Paramount Parks Inc.
8720 Red Oak Boulevard
Charlotte, North Carolina 28217

**AMENDMENT TO ALLEGE USE
UNDER 37 CFR 2.76 WITH DECLARATION**

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended). Applicant is the owner of the mark sought to be registered and is using the mark in commerce on or in connection with postcards and bumper stickers, as evidenced by the attached specimens showing the mark as used in commerce. Applicant respectfully requests that the remaining goods listed in the application, namely, calendars, fiction magazines, comic books, greeting cards, posters, a series of fiction books, trading cards, stickers, notepads, notebooks, gift wrapping paper and rubber stamps, be deleted.

The mark was first used on the goods set forth herein at least as early as March 17, 2001; and was first used on the goods set forth herein in interstate commerce at least as early as March 17, 2001; and is now in use in such commerce.

The mark is used on or in connection with the goods/services in commerce by applying it directly to the goods/services and to the advertising and promotion of the goods/services.

Please direct all correspondence on this matter to Mallory D. Levitt, Esquire c/o Amy Chuman at Paramount Pictures Corporation, 5555 Melrose Avenue, Los Angeles, California 90038-3197. Amy Chuman can also be reached at 323-956-1388.

PP 0005216

Express Mail No. EL 719 838 4614S

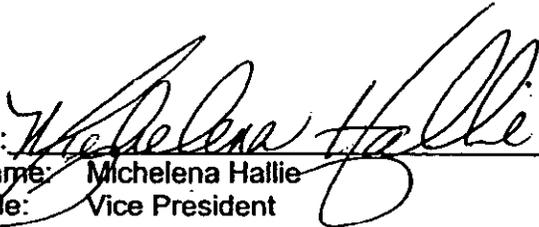
Trademark: HYPERSONIC

Serial No. 76/103448

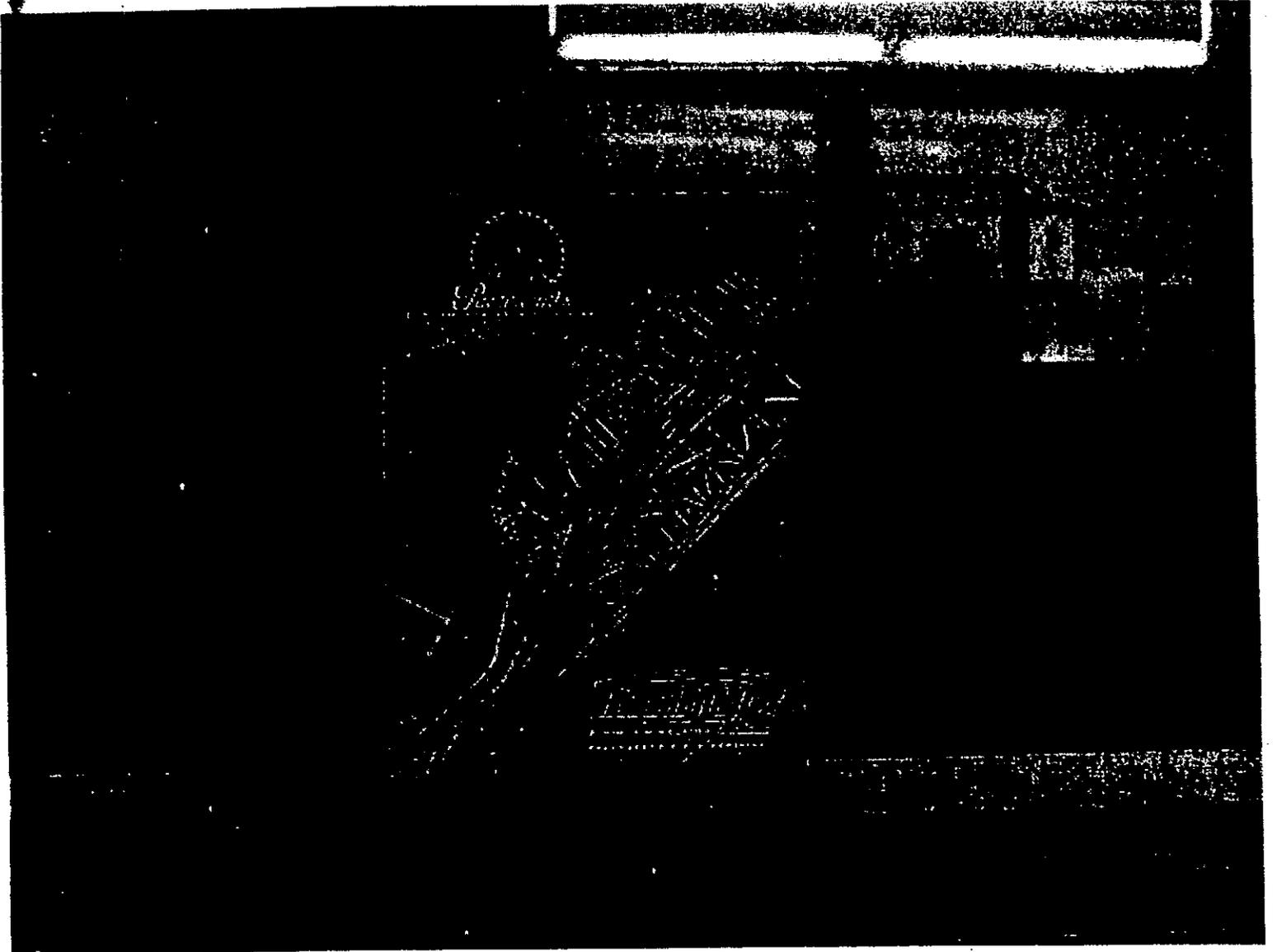
DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this Statement of Use on behalf of the applicant; he/she believes the applicant to be the owner of the trade/service mark sought to be registered; the trade/service mark is now in use in commerce; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

PARAMOUNT PARKS INC.

By: 
Name: Michelena Hallie
Title: Vice President

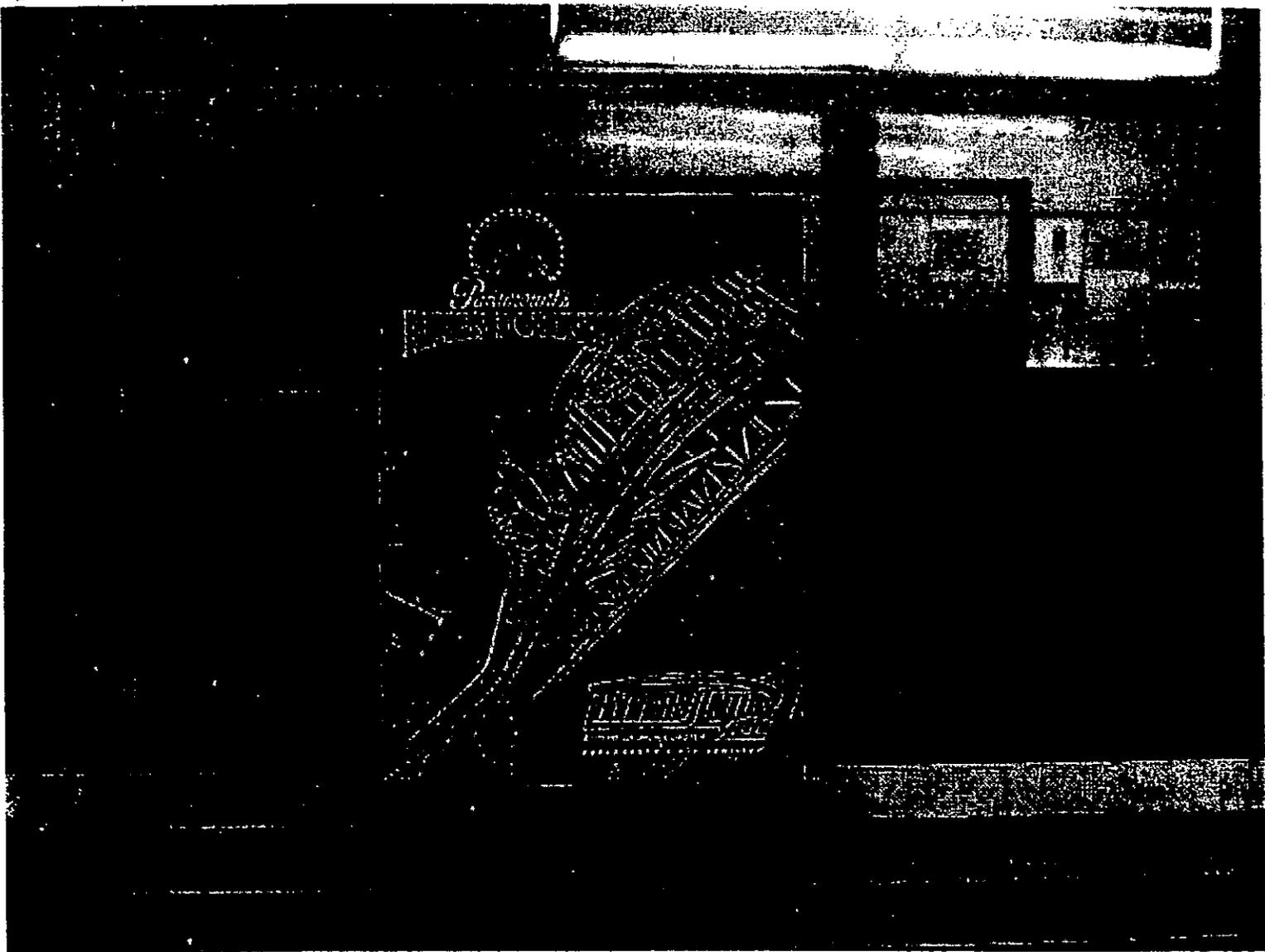
Dated: October 24, 2001
New York, New York



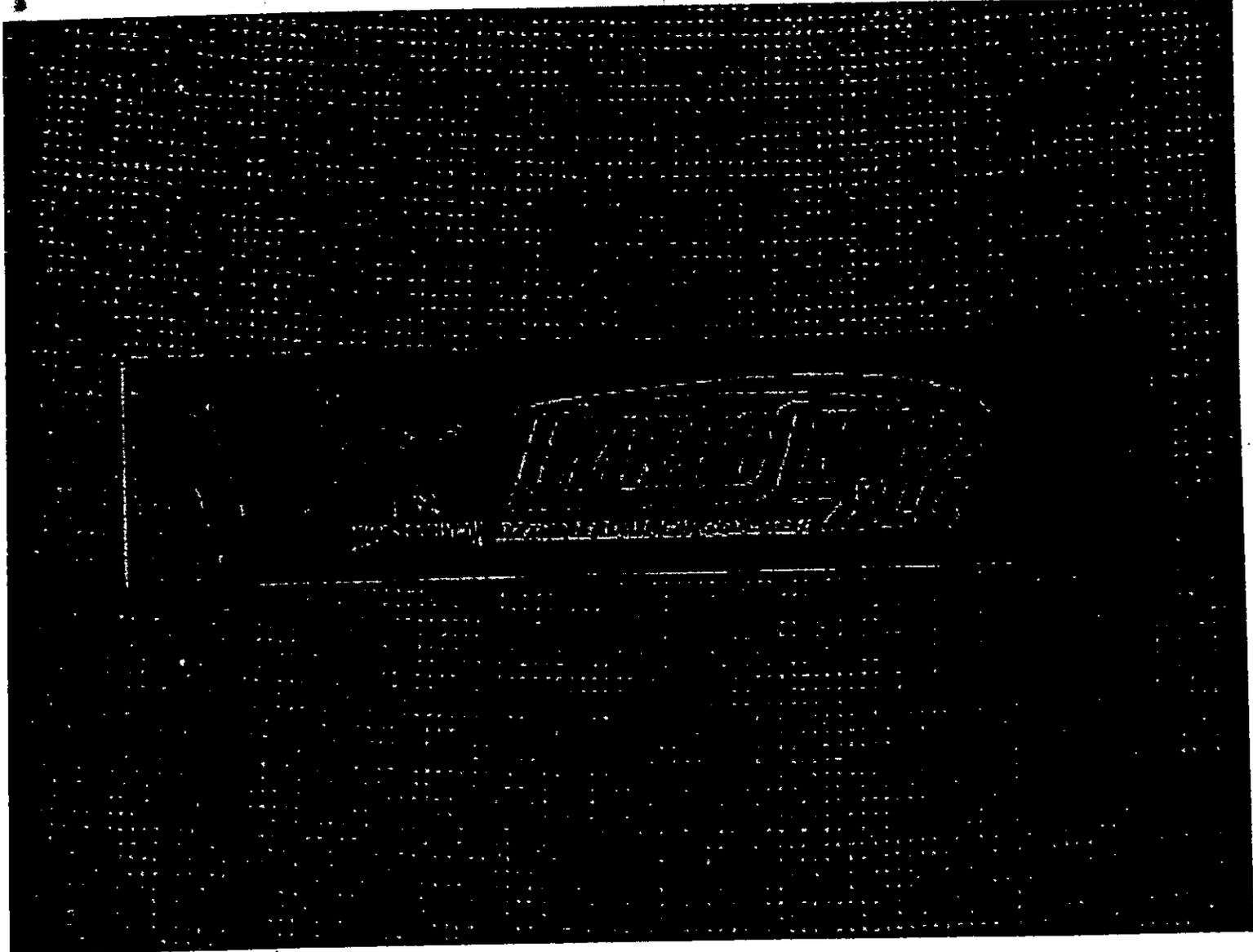




SECRET



PP 000590



Paramount Pictures

Motion Picture Group
5555 Melrose Avenue
Hollywood, CA 90028-3197
323-956-1388
Fax 323-862-1026
pepper_starobin@paramount.com

Pepper Starobin
Trademark Paralegal

August 2, 2000

Express Mail No. EL522230596US

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Paramount Parks Inc.
New Intent to Use Trademark Application
for the Mark HYPERSONIC
In Class 16 in the United States

Dear Sir:

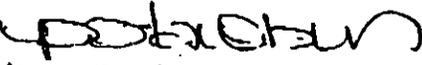
Enclosed please find the following:

1. Application to register based on intent to use
2. Drawing page
3. Declaration

Kindly acknowledge receipt of the enclosed documents by returning the attached postcard. Please charge all fees to our Deposit Account No. 16-0259.

Please address all communication, either by mail or telephone, to the undersigned.

Respectfully submitted,


Pepper Starobin

Enclosures: ITU Application
Drawing Page
Declaration
Mail Certification
Postcard

cc: Tracy Bonifata (with enclosures)
Michelenia Hallie (without enclosures)
Watch



FILING RECEIPT FOR TRADEMARK APPLICATION

Pat. 01 01 01

Aug 31, 2000

Upon the DATE OF FILING of the application for registration and filing fee is acknowledged for the mark identified below. The DATE OF FILING is subject upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME and MARK.

RECEIVED
SEP 05 2000

MALLORY D. LEVITT
C/O PEPPER STAROBIN
PARAMOUNT PICTURES
5555 MELROSE AVENUE
LOS ANGELES, CALIFORNIA 90038

ATTORNEY
PEPPER STAROBIN REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

Request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2000 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Examination File Receipt Section. Or fax a request to 703-308-0096. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/103448 ✓
FILING DATE: Aug 2, 2000
REGISTER: Principal
LAW OFFICE: 107
MARK: HYPERSONIC ✓
MARK TYPE(S): Trademark
DRAWING TYPE: Words, letters, or numbers in typed form
FILING BASIS: Sect. 1(b) (Intent to Use)

ATTORNEY: Mallory D. Levitt

OWNER: Paramount Parks Inc. (DELAWARE Corporation) ✓
8720 Red Oak Boulevard
Charlotte, NORTH CAROLINA 28217

FOR: PAPER GOODS AND PRINTED MATTER, NAMELY CALENDARS, FICTION MAGAZINES, COMIC BOOKS, ✓
GREETING CARDS, POSTERS, A SERIES OF FICTION BOOKS, TRACING CARDS, STICKERS,
NOTEPADS, NOTEBOOKS, POSTCARDS, GIFT WRAPPING PAPER, BUMPER STICKERS, RUBBER STAMPS
INT. CLASS: 016

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

NOV - 3

ADDITIONAL INFORMATION MAY BE PRESENT IN THE PTO RECORDS

F-511

P.02 T-545

+2128461428

FROM-VIACOM LEGAL DEPT 51TH FLOOR

PP 000528

EXPRESS MAIL NO. E152223059115

TRADEMARK - ITU

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: HYPERSONIC

Class No.: 16

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Paramount Parks Inc.
a Delaware Corporation
8720 Red Oak Boulevard
Charlotte, North Carolina 28217

Applicant requests registration of the above-identified trade mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) in connection with the following goods:

PAPER GOODS AND PRINTED MATTER, NAMELY CALENDARS, FICTION MAGAZINES, COMIC BOOKS, GREETING CARDS, POSTERS, A SERIES OF FICTION BOOKS, TRADING CARDS, STICKERS, NOTEPADS, NOTEBOOKS, POSTCARDS, GIFT WRAPPING PAPER, BUMPER STICKERS, RUBBER STAMPS

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods by applying it directly to the goods and to the advertising and promotion of the goods.

Please address all correspondence on this matter to Mallory D. Levitt, Esquire at 212-258-6784 c/o Pepper Starobin at Paramount Pictures, 5555 Melrose Avenue, Los Angeles, California 90038. Pepper can be reached by phone at 323-956-1388.

EXPRESS MAIL NO. ~~155000303~~ 155000303

APPLICANT: PARAMOUNT PARKS INC.
a Delaware Corporation

ADDRESS: 8720 Red Oak Boulevard
Charlotte, North Carolina 28217

FIRST USE: Intent to Use

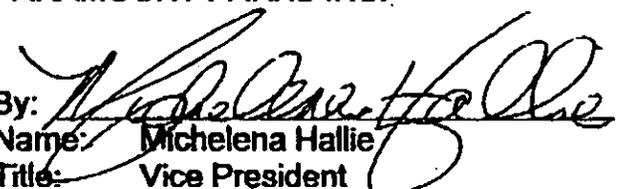
GOODS: PAPER GOODS AND PRINTED MATTER,
NAMELY CALENDARS, FICTION MAGAZINES,
COMIC BOOKS, GREETING CARDS, POSTERS,
A SERIES OF FICTION BOOKS, TRADING
CARDS, STICKERS, NOTEPADS, NOTEBOOKS,
POSTCARDS, GIFT WRAPPING PAPER,
BUMPER STICKERS, RUBBER STAMPS

HYPERSONIC

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application of any resulting registration declares: That she is Vice President of the applicant corporation and is properly authorized to execute the application on behalf of said applicant; that she believes the applicant to be the owner of the trademark/service mark sought to be registered, or if the application is being filed under 15 U.S.C. 1051 (b), she believes applicant to be entitled to use of such mark in commerce; to the best of her knowledge and belief no other person, firm, corporation or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of her knowledge are true and all statements made on information and belief are believed to be true.

PARAMOUNT PARKS INC.

By: 
Name: Michelena Hallie
Title: Vice President

Dated: July 20, 2000

New York, New York

"EXPRESS MAIL" MAILING LABEL NUMBER: EL522230596US

DATE OF DEPOSIT: August 2, 2000

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Pepper Starobin

(Typed name of person mailing paper)



(Signature of person mailing paper)

Hon. Commissioner:
Please acknowledge receipt of the following:

Applicant/Registrant: Paramount
Parks
Mark: HyperSonic (110)
Ser. No./Reg. No.: n/a
Express Mail No.: EL522283039105

Document:
 ITU Application
 Use Based Application
 Statement of Use
 Extension of Time to File Statement of Use (No.)
 Response to Office Action
 Section 8 & 15
 Renewal
 -

Respectfully yours,
Pepper Starobin

08-02-2000
U.S. DEPT. OF COMMERCE
U.S. DEPT. & TRADE/INTL. MAIL REG. DL. 021

Paramount Pictures

Motion Picture Group

5555 Melrose Avenue
Hollywood, CA 90038-5197
323-956-1388
Fax 323-862-1026
pepper_starobin@paramount.com

Pepper Starobin
Trademark Paralegal

September 28, 2000

Express Mail No. EL522230905US

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Paramount Parks Inc.
New Intent to Use Trademark Application
for the Mark HYPERSONIC XLC XTREME LAUNCH
COASTER & Design
In Class 21 in the United States

Dear Sir:

Enclosed please find the following:

1. Application to register based on intent to use
2. Drawing page
3. Declaration

Kindly acknowledge receipt of the enclosed documents by returning the attached postcard. Please charge all fees to our Deposit Account No. 16-0259.

Please address all communication, either by mail or telephone, to the undersigned.

Respectfully submitted,

Amy Chuman

Amy Chuman for Pepper Starobin

Enclosures: ITU Application
Drawing Page
Declaration
Mail Certification
Postcard

cc: Tracy Bombata (with enclosures)
Watch

NOV - 6

EXH. 3



A V I A C O M P A N Y

F-511 P-25/55 T-545

+2128461428

FROM-VIACOM LEGAL DEPT 51TH FLOOR

FILING RECEIPT FOR TRADEMARK APPLICATION

Page 01 of 01

Oct 19, 2000

On the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is contingent upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

MALLORY D. LEVITT
PEPPER STAROBIN AT PARAMOUNT PICTURES
5555 MELROSE AVE
LOS ANGELES CA 90038-3112

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

A request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Examination File Receipt Section. Or fax a request to 703-308-9096. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/138150
FILING DATE: Sep 28, 2000
REGISTER: Principal
LAW OFFICE: 101
MARK: HYPERSONIC XLC XTREME LAUNCH COASTER
MARK TYPE(S): Trademark
DRAWING TYPE: Words, letters, or numbers and design
FILING BASIS: Sect. 1(b) (Intent to Use)

RECEIVED
OCT 23 2000

ATTORNEY: Mallory D. Levitt

PEPPER STAROBIN

OWNER: Paramount Parks Inc. (DELAWARE, Corporation)
8720 Red Oak Boulevard
Charlotte, NORTH CAROLINA 28217

FOR: PLASTIC CUPS, MUGS AND BEVERAGE GLASSWARE
INT. CLASS: 021

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

NOV 21 2000

ADDITIONAL INFORMATION MAY BE PRESENT IN THE PTO RECORDS

119-F 24/55 P-511

+2128461428

FROM-VIACOM LEGAL DEPT 51TH FLOOR

PP 000550

EXPRESS MAIL NO.

TRADEMARK - ITU

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: HYPERSONIC XLC XTREME LAUNCH COASTER & Design

Class No.: 21

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Paramount Parks Inc.
a Delaware Corporation
8720 Red Oak Boulevard
Charlotte, North Carolina 28217

Applicant requests registration of the above-identified trade mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) in connection with the following goods:

PLASTIC CUPS, MUGS AND BEVERAGE GLASSWARE

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods by applying it directly to the goods and to the advertising and promotion of the goods.

Please address all correspondence on this matter to Mallory D. Levitt, Esquire at 212-258-6784 c/o Pepper Starobin at Paramount Pictures, 5555 Melrose Avenue, Los Angeles, California 90038. Pepper can be reached by phone at 323-956-1388.

EXPRESS MAIL NO.

APPLICANT: PARAMOUNT PARKS INC.
a Delaware Corporation

ADDRESS: 8720 Red Oak Boulevard
Charlotte, North Carolina 28217

FIRST USE: Intent to Use

GOODS: PLASTIC CUPS, MUGS AND BEVERAGE
GLASSWARE



DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application of any resulting registration declares: That she is Vice President of the applicant corporation and is properly authorized to execute the application on behalf of said applicant; that she believes the applicant to be the owner of the trademark/service mark sought to be registered, or if the application is being filed under 15 U.S.C. 1051 (b), she believes applicant to be entitled to use of such mark in commerce; to the best of her knowledge and belief no other person, firm, corporation or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of her knowledge are true and all statements made on information and belief are believed to be true.

PARAMOUNT PARKS INC.

By: 
Name: Michélena Hallie
Title: Vice President

Dated: September 26, 2000
Los Angeles, California

"EXPRESS MAIL" MAILING LABEL NUMBER: EL522230905US

DATE OF DEPOSIT: September 28, 2000

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Amy Chuman

(Typed name of person mailing paper)



(Signature of person mailing paper)

Hon. Commissioner:

Please acknowledge receipt of the following:

Applicant/Registrant: Paramount

Parks Inc.

Mark: Hypersonic XLC Xtreme
Launch Coaster Design

Class: 21

Ser. No./Reg. No.: _____

Express Mail No.: EL522230905US

Document:

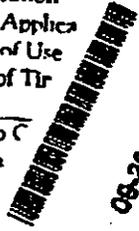
- ITU Application
- Use Based Application
- Statement of Use
- Extension of Time to File Statement of Use (No. _____)
- Response to Office Action (No. _____)
- Section 8 & 15
- Renewal
- Request for Extension of Time to Oppose
- Specimen(s)
- Other:

Respectfully yours,
Pepper Starobin

Hon. Commissioner: _____
Please acknowledge receipt of the following:

Applicant/Registrant: Paramount
Parks Inc.
Mark: HyperSonic XLC Xtreme
Launch Consider Design
Class: 21
Ser. No./Reg. No.: _____
Express Mail No.: EL522230905US

- Document:
- ITU Application
 - Use Based Applica
 - Statement of Use
 - Extension of Tir
 - Use (No. _____)
 - Response to C
 - Section 8 &
 - Renewal
 - Request fr
 - Spt
 - Other:



08-28-2000
U.S. Patent & Trademark Office

Respectfully yours,
Pepper Starobin

Paramount Picture

Motion Picture Group
5555 Melrose Avenue
Hollywood, CA 90038-3197
323-956-1388
Fax 323-862-1026
pepper_starobin@paramount.com

Pepper Starobin
Trademark (Parolego)

September 28, 2000

Express Mail No. EL522230905US

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Paramount Parks Inc.
New Intent to Use Trademark Application
for the Mark HYPERSONIC XLC XTREME LAUNCH
COASTER & Design
In Class 28 in the United States

Dear Sir:

Enclosed please find the following:

1. Application to register based on intent to use
2. Drawing page
3. Declaration

Kindly acknowledge receipt of the enclosed documents by returning the attached postcard. Please charge all fees to our Deposit Account No. 16-0259.

Please address all communication, either by mail or telephone, to the undersigned.

Respectfully submitted,



Amy Chuman for Pepper Starobin

Enclosures: ITU Application
Drawing Page
Declaration
Mail Certification
Postcard

cc: Tracy Bombata (with enclosures)
Watch

EXH-4



FILING RECEIPT FOR TRADEMARK APPLICATION

Oct 19, 2000

On the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING statement upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

MALLORY D. LEVITT
PEPPER STAROBIN PARAMOUNT PICTURES
5555 MELROSE AVE
LOS ANGELES CA 90038-3112

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

Request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Examination File Receipt Section. Or fax a request to 703-308-9096. The Patent and Trademark Office will review the request and make a determination when appropriate.

SERIAL NUMBER: 76/138156
FILING DATE: Sep 28, 2000
REGISTER: Principal
LAW OFFICE: 107
MARK: HYPERSONIC XLC XTREME LAUNCH COASTER
MARK TYPE(S): Trademark
DRAWING TYPE: Words, letters, or numbers and design
FILING BASIS: Sect. 1(b) (Intent to Use)

RECEIVED
OCT 28 2000
PEPPER STAROBIN

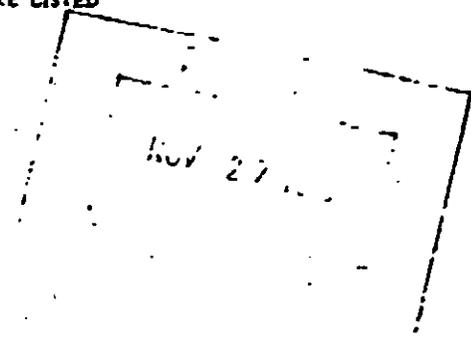
ATTORNEY: Mallory D. Levitt

OWNER: Paramount Parks Inc. (DELAWARE, Corporation)
8720 Red Oak Boulevard
Charlotte, NORTH CAROLINA 28217

FOR: COIN-OPERATED PINBALL GAME MACHINES, BOARD GAMES, POSEABLE PLAY FIGURES, DOLLS, TOY MODEL HOBBY CRAFT KITS COMPOSED OF PLASTIC, VINYL AND RESIN MOLDS, JIGSAW AND MANIPULATIVE PUZZLES, TOY ACTION FIGURES, TOY VEHICLES, KITES, YO-YOS, BALLOONS, TOY BANKS, COSTUME MASKS, HAND PUPPETS, CRIB MOBILES, MOBILES FOR CHILDREN, AND PLUSH TOYS

INT. CLASS: 028

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED



ADDITIONAL INFORMATION MAY BE PRESENT IN THE PTO RECORDS

From-VIA/COM LEGAL DEPT 51TH FLOOR +2128461428 T-545 P.40/55 F-511

pp 000566

EXPRESS MAIL NO.

TRADEMARK - ITU

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: HYPERSONIC XLC XTREME LAUNCH COASTER & Design

Class No.: 28

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Paramount Parks Inc.
a Delaware Corporation
8720 Red Oak Boulevard
Charlotte, North Carolina 28217

Applicant requests registration of the above-identified trade mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) in connection with the following goods:

COIN-OPERATED PINBALL GAME MACHINES, BOARD GAMES, POSEABLE PLAY FIGURES, DOLLS, TOY MODEL HOBBY CRAFT KITS COMPOSED OF PLASTIC, VINYL AND RESIN MOLDS, JIGSAW AND MANIPULATIVE PUZZLES, TOY ACTION FIGURES, TOY VEHICLES, KITES, YO-YOS, BALLOONS, TOY BANKS, COSTUME MASKS, HAND PUPPETS, CRIB MOBILES, MOBILES FOR CHILDREN, AND PLUSH TOYS

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods by applying it directly to the goods and to the packaging for the goods.

Please address all communications on this matter to Mallory D. Levitt, Esquire at 212-258-6784 c/o Pepper Starobin, Paramount Pictures, 5555 Melrose Avenue, Los Angeles, California 90038. Pepper can be reached by phone at 323-956-1388.

EXPRESS MAIL NO.

APPLICANT:

Paramount Parks Inc.
a Delaware Corporation

ADDRESS:

8720 Red Oak Boulevard
Charlotte, North Carolina 28217

FIRST USE:

Intent to Use

GOODS:

COIN-OPERATED PINBALL GAME MACHINES,
BOARD GAMES, POSEABLE PLAY FIGURES,
DOLLS, TOY MODEL HOBBY CRAFT KITS
COMPOSED OF PLASTIC, VINYL AND RESIN
MOLDS, JIGSAW AND MANIPULATIVE PUZZLES,
TOY ACTION FIGURES, TOY VEHICLES, KITES,
YO-YOS, BALLOONS, TOY BANKS, COSTUME
MASKS, HAND PUPPETS, CRIB MOBILES,
MOBILES FOR CHILDREN, AND PLUSH TOYS.



DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares: That she is Vice President of the applicant corporation and is properly authorized to execute the application on behalf of said applicant; that she believes the applicant to be the owner of the trademark/service mark sought to be registered, or if the application is being filed under 15 U.S.C. 1051 (b), she believes applicant to be entitled to use of such mark in commerce; to the best of her knowledge and belief no other person, firm, corporation or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of her knowledge are true and all statements made on information and belief are believed to be true.

PARAMOUNT PARKS INC.

By: 
Name: Michelena Hallie
Title: Vice President

Dated: September *26*, 2000
Los Angeles, California

"EXPRESS MAIL" MAILING LABEL NUMBER: EL522230905US

DATE OF DEPOSIT: September 28, 2000

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Amy Chuman

(Typed name of person mailing paper)



(Signature of person mailing paper)

Hon. Commissioner:

Please acknowledge receipt of the following:

Applicant/Registrant: Paramount

Parks Inc.

Mark: Hypersonic XLC Xtreme
Launch Coaster & Design

Class 28

Ser No./Reg No.: _____

Express Mail No.: EL522230905US

Document:

- ITU Application
- Use Based Application
- Statement of Use
- Extension of Time to File Statement of Use (No. _____)
- Response to Office Action (No. _____)
- Section 8 & 15
- Renewal
- Request for Extension of Time to Oppose
- _____ Specimen(s)
- Other

Respectfully yours,

Pepper Starobin

Hon. Commissioner: _____
Please acknowledge receipt of the following:



Applicant/Registrant: Paramount

Parks Inc.
Mark: Hypersonic XLC Xtreme
Launch Coaster Design

Class. 28

Ser. No./Reg. No.: _____

Express Mail No. EL522230905US

- Docum 09-28-2000
U.S. Patent & TM Office Mail Post Dk 670
- ITU
 - Use
 - Statement of Use
 - Extension of Time to File Statement of Use (No. _____)
 - Response to Office Action (No. _____)
 - Section 8 & 15
 - Renewal
 - Request for Extension of Time to Oppose
 - _____ Specimen(s)
 - Other:

Respectfully yours,
Pepper Starobin

Paramount Pictures

Motion Picture Group

3535 Melrose Avenue
Hollywood, CA 90038-3197
Tel: 323-862-1388
Fax: 323-862-1026
pepper_starobin@paramount.com

Pepper Starobin
Trademark Paralegal

September 28, 2000

Express Mail No. EL522230905US

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Paramount Parks Inc.
New Intent to Use Trademark Application
for the Mark HYPERSONIC XLC XTREME LAUNCH
COASTER & Design
In Class 41 in the United States

Dear Sir:

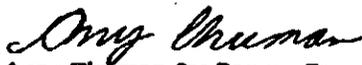
Enclosed please find the following:

1. Application to register based on intent to use
2. Drawing page
3. Declaration

Kindly acknowledge receipt of the enclosed documents by returning the attached postcard. Please charge all fees to our Deposit Account No. 16-0259.

Please address all communication, either by mail or telephone, to the undersigned.

Respectfully submitted,



Amy Chlman for Pepper Starobin

Enclosures: ITU Application
Drawing Page
Declaration
Mail Certification
Postcard

cc: Tracy Bombata (with enclosures)
Watch

EXH-5



A V I A C O M C O M P A N Y

1-545 P. 49/55 F-511

82128461428

FROM-VIACOM LEGAL DEPT 51TH FLOOR

PP 000575

FILING RECEIPT FOR TRADEMARK APPLICATION

Oct 19, 2000

On the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is contingent upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and you will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

MALLORY D. LEVITT
C/O PEPPER STAROBIN
PARAMOUNT PICTURES CORPORATION
5555 MELROSE AVE
LOS ANGELES CA 90038-3112

ATTORNEY
REFERENCE NUMBER

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

Request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Examination File Receipt Section. Or fax a request to 703-308-9096. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/138159
FILING DATE: Sep 28, 2000
REGISTER: Principal
LAW OFFICE: 108
MARK: HYPERSONIC XLC XTREME LAUNCH COASTER
MARK TYPE(S): Service Mark
DRAWING TYPE: Words, letters, or numbers and design
FILING BASIS: Sect. 1(b) (Intent to Use)

RECEIVED
OCT 28 2000
PEPPER STAROBIN

ATTORNEY: Mallory D. Levitt

OWNER: Paramount Parks Inc. (DELAWARE, Corporation)
8720 Red Oak Boulevard
Charlotte, NORTH CAROLINA 28217

FOR: ENTERTAINMENT SERVICES, NAMELY, AN AMUSEMENT PARK RIDE AND ATTRACTION
INT. CLASS: 041

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

NOV 27

Express Mail. No. EL56 230905US

TRADEMARK - ITU

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: HYPERSONIC XLC XTREME LAUNCH COASTER & Design

Class No. 41

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS

Paramount Parks Inc.
a Delaware Corporation
8720 Red Oak Boulevard
Charlotte, North Carolina 28217

Applicant requests registration of the above-identified service mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051, et. Seq., as amended) in connection with the following services:

ENTERTAINMENT SERVICES. NAMELY, AN AMUSEMENT PARK RIDE AND ATTRACTION

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified services by applying it directly to the services and to the advertising and promotion of the services.

Please address all correspondence in this matter to Mallory D. Levitt, c/o Pepper Starobin at Paramount Pictures Corporation, 5555 Melrose Avenue, Los Angeles, California 90038. Pepper can be reached by phone at (323) 956-1388.

Express Mail No. EL52-30905US

APPLICANT:

Paramount Parks Inc.

ADDRESS:

a Delaware Corporation
8720 Red Oak Boulevard
Charlotte, North Carolina 28217

FIRST USE:

Intent to Use

GOODS/SERVICES:

Entertainment services, namely, an
amusement park ride and attraction



DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration declares: that she is Vice President of the applicant corporation and is properly authorized to execute the application on behalf of said applicant; that she believes the applicant to be the owner of the trademark/service mark sought to be registered, or if the application is being filed under 15 U.S.C. 1051(b), she believes applicant to be entitled to use of such mark in commerce; to the best of her knowledge and belief no other person, firm, corporation or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of her knowledge are true and all statements made on information and belief are believed to be true.

PARAMOUNT PARKS INC.

By: 
Name: Michelena Hallie
Title: Vice President

Dated: September 26, 2000
Los Angeles, California

"EXPRESS MAIL" MAILING LABEL NUMBER: EL522230905US

DATE OF DEPOSIT: September 28, 2000

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Amy Chuman

(Typed name of person mailing paper)

Amy Chuman

(Signature of person mailing paper)

Hon. Commissioner:

Please acknowledge receipt of the following:

Applicant/Registrant. Paramount

Parks Inc.

Mark: Hypersonic XLC Xtreme
Launch Coaster Design

Class. 41

Ser. No./Reg. No.: _____

Express Mail No.: EL522230905US

Document

- ITU Application
- Use Based Application
- Statement of Use
- Extension of Time to File Statement of Use (No. _____)
- Response to Office Action (No. _____)
- Section 8 & 15
- Renewal
- Request for Extension of Time to Oppose
- _____ Specimen(s)
- Other

Respectfully yours,
Pepper Starobin

Hon. Commissioner: _____
Please acknowledge receipt of the following:

Applicant/Registrant: Paramount Parks Inc.

Mark: Hypersonic XLC Xtreme Launch Coaster Design

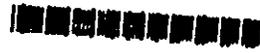
Class: 41

Ser. No./Reg. No. _____

Express Mail No.: EL522230905US

Respectfully yours,
Pepper Starobin

- Document:
- ITU Application
 - Use Based Application
 - Statement of Use
 - Extension of Time to File Statement of Use (No. _____)
 - Response to Office Action (No. _____)
 - Section 8 & 15



POSE

09-28-2000

U.S. Patent & TM Office Form PTO DL 870

Paramount Picture

Motion Picture Group
5555 Melrose Avenue
Hollywood, CA 90038-5197
323-956-1388
Fax 323-952-1026
pepper_starobin@paramount.com

Pepper Starobin
Trademark Paralegal

September 28, 2000

Express Mail No. EL522230905US

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Paramount Parks Inc.
New Intent to Use Trademark Application
for the Mark HYPERSONIC XLC XTREME LAUNCH
COASTER & Design
In Class 16 in the United States

Dear Sir:

Enclosed please find the following:

1. Application to register based on intent to use
2. Drawing page
3. Declaration

Kindly acknowledge receipt of the enclosed documents by returning the attached postcard. Please charge all fees to our Deposit Account No. 16-0259.

Please address all communication, either by mail or telephone, to the undersigned.

Respectfully submitted,



Amy Chuman for Pepper Starobin

Enclosures: ITU Application
Drawing Page
Declaration
Mail Certification
Postcard

cc: Tracy Bombata (with enclosures)
Watch

EXH. 6



V I A C O M C O M P A N Y

1-545 P. 17/55 F-511

+2128461428

FROM-VIACOM LEGAL DEPT 51TH FLOOR

PP 000543

FILING RECEIPT FOR TRADEMARK APPLICATION

Page 01 of 01

Oct 19, 2000

On the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is subject upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and you will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

MALLORY D. LEVITT
C/O PEPPER STAROBIN AT PARAMOUNT PICTURE
5555 MELROSE AVE
LOS ANGELES CA 90038-3112

**ATTORNEY
REFERENCE NUMBER**

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

Request for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Assistant File Receipt Section. Or fax a request to 703-308-0096. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/138161
FILING DATE: Sep 28, 2000
REGISTER: Principal
LAW OFFICE: 107
MARK: HYPERSONIC XLC XTREME LAUNCH COASTER
MARK TYPE(S): Trademark
DRAWING TYPE: Words, letters, or numbers and design
FILING BASIS: Sect. 1(b) (Intent to Use)

RECEIVED
OCT 23 2000
PEPPER STAROBIN

ATTORNEY: Mallory D. Levitt

OWNER: Paramount Parks Inc. (DELAWARE, Corporation)
2700 ...

EXPRESS MAIL NO.

APPLICANT: PARAMOUNT PARKS INC.
a Delaware Corporation

ADDRESS: 8720 Red Oak Boulevard
Charlotte, North Carolina 28217

FIRST USE: Intent to Use

GOODS: PAPER GOODS AND PRINTED MATTER,
NAMELY CALENDARS, FICTION MAGAZINES,
COMIC BOOKS, GREETING CARDS, POSTERS,
A SERIES OF FICTION BOOKS, TRADING
CARDS, STICKERS, NOTEPADS, NOTEBOOKS,
POSTCARDS, GIFT WRAPPING PAPER,
BUMPER STICKERS, RUBBER STAMPS



DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application of any resulting registration declares: That she is Vice President of the applicant corporation and is properly authorized to execute the application on behalf of said applicant; that she believes the applicant to be the owner of the trademark/service mark sought to be registered, or if the application is being filed under 15 U.S.C. 1051 (b), she believes applicant to be entitled to use of such mark in commerce; to the best of her knowledge and belief no other person, firm, corporation or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of her knowledge are true and all statements made on information and belief are believed to be true.

PARAMOUNT PARKS INC.

By: 
Name: Michelena Hallie
Title: Vice President

Dated: September 26, 2000
Los Angeles, California

"EXPRESS MAIL" MAILING LABEL NUMBER: EL522230905US

DATE OF DEPOSIT: September 28, 2000

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Amy Chuman

(Typed name of person mailing paper)



(Signature of person mailing paper)

Hon. Commissioner:

Please acknowledge receipt of the following:

Applicant/Registrant: Paramount

Parks Inc.

Mark: Hypersonic XLC Xtreme
Launch Coaster & Design

Class: 16

Ser. No./Reg. No.: _____

Express Mail No.: E1572230905US

Document:

- ITU Application
- Use Based Application
- Statement of Use
- Extension of Time to File Statement of Use (No. _____)
- Response to Office Action (No. _____)
- Section 8 & 15
- Renewal
- Request for Extension of Time to Oppose
- _____ Specimen(s)
- Other:

Respectfully yours,

Pepper Starobin

Hon. Commissioner:
Please acknowledge receipt of the following:

Applicant/Registrant: Paramount Parks Inc.

Mark: Hyper Sonic XLC Xtreme Launch Coaster w/ Design

Class: 16

Sec. No / Reg. No.: _____

Express Mail No.: EL5722309105US

Respectfully yours,
Pepper Starobin

- Document.
- ITU Application
 - Use Based Application
 - Statement of Use
 - Extension of Time to File Statement of Use (No. _____)
 - Response to Office Action (No. _____)
 - Section 8 & 15



POST

08-28-2000

U.S. Patent & Trademark Mail Receipt #70

Paramount Picture

Paramount Picture Group
5555 Melrose Avenue
Hollywood, CA 90038-3197
323-956-1388
Fax 323-862-1026
pepper_starobin@paramount.com

Pepper Starobin
Trademark Paralegal

September 28, 2000

Express Mail No. EL522230905US

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Paramount Parks Inc.
New Intent to Use Trademark Application
for the Mark HYPERSONIC XLC XTREME LAUNCH
COASTER & Design
In Class 25 in the United States

Dear Sir:

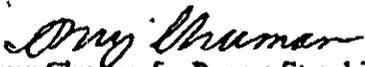
Enclosed please find the following:

1. Application to register based on intent to use
2. Drawing page
3. Declaration

Kindly acknowledge receipt of the enclosed documents by returning the attached postcard. Please charge all fees to our Deposit Account No. 16-0259.

Please address all communication, either by mail or telephone, to the undersigned.

Respectfully submitted,


Amy Chuman for Pepper Starobin

Enclosures: ITU Application
Drawing Page
Declaration
Mail Certification
Postcard

cc: Tracy Bombata (with enclosures)
Watch

NOV - 6



EXH. 7

A V I A C O M C O M P A N Y

111 F-511 P 33/55 T-545

+2128461428

FROM-VIACOM LEGAL DEPT 51TH FLOOR

pp 000559

FILING RECEIPT FOR TRADEMARK APPLICATION

Oct 19, 2000

Receipt on the DATE OF FILING of the application for registration and filing fees is acknowledged for the mark identified below. The DATE OF FILING is contingent upon the collection of any payment made by check or draft. Your application will be considered in the order in which it was received and you will be notified as to the examination thereof. Action on the merits should be expected from the Patent and Trademark Office in approximately 06 months from the filing date. When inquiring about this application, include the SERIAL NUMBER, DATE OF FILING, OWNER NAME, and MARK.

MALLORY D. LEVITT
C/O PEPPER STAROBIN
PARAMOUNT PICTURES
5555 MELROSE AVE
LOS ANGELES CA 90038-3112

RECEIVED
OCT 29 2000

ATTORNEY
REFERENCE NUMBER

PEPPER STAROBIN

PLEASE REVIEW THE ACCURACY OF THE FILING RECEIPT DATA.

Queries for correction to the filing receipt should be submitted within 30 days to the following address: ASSISTANT COMMISSIONER FOR TRADEMARKS, 2000 CRYSTAL DRIVE, ARLINGTON, VIRGINIA 22202-3513. The correspondence should be marked to the attention of the Registration File Receipt Section. Or fax a request to 703-308-9096. The Patent and Trademark Office will review the request and make corrections when appropriate.

SERIAL NUMBER: 76/138160
FILING DATE: Sep 28, 2000
REGISTER: Principal
LAW OFFICE: 109
MARK: HYPERSONIC XLC XTREME LAUNCH COASTER
MARK TYPE(S): Trademark
DRAWING TYPE: Words, letters, or numbers and design
FILING BASIS: Sect. 1(b) (Intent to Use)

ATTORNEY: Mallory D. Levitt

OWNER: Paramount Parks Inc. (DELAWARE, Corporation)
8720 Red Oak Boulevard
Charlotte, NORTH CAROLINA 28217

FOR: T-SHIRTS, SWEATSHIRTS, HATS, JACKETS, PAJAMAS, MASQUERADE COSTUMES, TANK TOPS,
FOOTWEAR, SWEATPANTS, SHORTS
INT. CLASS: 025

ALL OF THE GOODS/SERVICES IN EACH CLASS ARE LISTED

ADDITIONAL INFORMATION MAY BE PRESENT IN THE PTO RECORDS

115-J 95/32 P-545 F-511

827461428

800R-VIACOM LEGAL DEPT 51TH FLOOR

00 000 558

EXPRESS MAIL NO.

TRADEMARK - ITU

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: HYPERSONIC XLC XTREME LAUNCH COASTER & Design

Class No.: 25

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Paramount Parks Inc.
a Delaware Corporation
8720 Red Oak Boulevard
Charlotte, North Carolina 28217

Applicant requests registration of the above-identified trade mark shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) in connection with the following goods:

T-SHIRTS, SWEATSHIRTS, HATS, JACKETS, PAJAMAS, MASQUERADE COSTUMES, TANK TOPS, FOOTWEAR, SWEATPANTS, SHORTS

Applicant has a bona fide intention to use the mark in commerce on or in connection with the above identified goods by applying it directly to the goods and to the advertising and promotion of the goods.

Please address all correspondence on this matter to Mallory D. Levitt, Esquire at 212-258-6784 c/o Pepper Starobin at Paramount Pictures, 5555 Melrose Avenue, Los Angeles, California 90038. Pepper can be reached by phone at 323-956-1388.

EXPRESS MAIL NO.

APPLICANT: PARAMOUNT PARKS INC.
a Delaware Corporation

ADDRESS: 8720 Red Oak Boulevard
Charlotte, North Carolina 28217

FIRST USE: Intent to Use

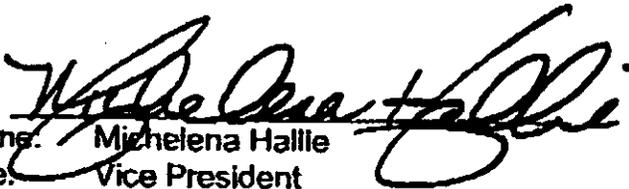
GOODS: T-SHIRTS, SWEATSHIRTS, HATS, JACKETS,
PAJAMAS, MASQUERADE COSTUMES, TANK
TOPS, FOOTWEAR, SWEATPANTS, SHORTS



DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application of any resulting registration declares: That she is Vice President of the applicant corporation and is properly authorized to execute the application on behalf of said applicant; that she believes the applicant to be the owner of the trademark/service mark sought to be registered, or if the application is being filed under 15 U.S.C. 1051 (b), she believes applicant to be entitled to use of such mark in commerce; to the best of her knowledge and belief no other person, firm, corporation or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of her knowledge are true and all statements made on information and belief are believed to be true.

PARAMOUNT PARKS INC.

By: 
Name: Michelena Hallie
Title: Vice President

Dated: September 26 2000
Los Angeles, California

"EXPRESS MAIL" MAILING LABEL NUMBER: EL522230905US

DATE OF DEPOSIT: September 28, 2000

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Amy Chuman

(Typed name of person mailing paper)



(Signature of person mailing paper)

Hon. Commissioner:

Please acknowledge receipt of the following:

Applicant/Registrant: Paramount

Parks Inc.

Mark. Hypersonic XLC Xtreme
Launch Coaster - Design

Class: 25

Set. No./Reg. No.: _____

Express Mail No.: EL52230905US

Document:

- ITU Application
- Use Based Application
- Statement of Use
- Extension of Time to File Statement of Use (No. _____)
- Response to Office Action (No. _____)
- Section 8 & 15
- Renewal
- Request for Extension of Time to Oppose
- _____ Specimen(s)
- Other.

Respectfully yours,
Pepper Starobin

Hon. Commissioner:
Please acknowledge receipt of the following:

Applicant/Registrant: Paramount
Parks Inc.
Mark: Hyper-sonic XLC Xtreme
Launch Coaster + Design
Class: 25
Ser. No./Reg. No.: _____
Express Mail No.: EL522230905US

- Document:
- ITU Application
 - Use Based App
 - Statement of I
 - Extension of T
 - Use (No. _____)
 - Response to (
 - Section 8 &
 - Renewal
 - Request for L
 - _____ Specimen(s)
 - Other:

RECEIVED
U.S. PATENT & TRADEMARK OFFICE
MAY 10 1999

06-28-2000
U.S. PATENT & TRADEMARK OFFICE
MAY 10 1999
nt of
Oppose

Respectfully yours,
Pepper Starobin

Viacom Inc.
1515 Broadway
New York, NY 10036-5794

Mallory D. Levitt
Counsel

Tel 212 258 6784
Fax 212 846 1729

April 3, 2001

Via Express Mail

Leo Stoller
Hypersonic Brand Products and Services
P.O. Box 35189
Chicago, IL 60707-0189

VIACOM

Re: Your Letter of March 13, 2001

Dear Mr. Stoller:

I am in receipt of your letter of March 13, 2001 addressed to Paramount Parks Inc. ("Paramount"). I have reviewed your claims, and for the reasons set forth below, disagree with your conclusion that Paramount's use of "Hypersonic," "Hypersonic XLC" or "Hypersonic XLC Xtreme Launch Coaster" (collectively, the "Name") constitutes an infringement of your rights in and to the mark HYPERSONIC.

First and foremost, there is no conceivable likelihood that any consumers would be confused by Paramount's use of the Name, and thus that use does not infringe any rights your company may have. As your trademark registration bears out, our clients' uses of the term HYPERSONIC and channels of trade are different, and thus not at all likely to lead to confusion. We understand that your company is using HYPERSONIC in connection with sports equipment including a variety of racquets, clubs and balls. In contrast, my client uses the Name in connection with a roller coaster ride (the "Ride") and tie-in merchandise at its amusement park, PARAMOUNT'S KINGS DOMINION located in Doswell, Virginia (the "Park"). The Ride is the world's first compressed air-launch roller coaster featuring unique acceleration, zero gravity airtime and free-fall sensations. Related merchandise featuring the Name includes apparel, mugs and glasses, key chains, bumper stickers and pennants, all of which are clearly tie-ins to the Ride: They are offered for sale solely within the Park's on-site souvenir and gift shops near the Ride. Thus, consumers will not be confused as to the source of such merchandise. See Hormel Foods Corp. v. Jim Henson Productions, Inc., 26 U.S.P.Q.2d 1812 (S.D.N.Y. 1995)(no likelihood of confusion where use of character name and likeness on merchandise tied to movie). These products are not and will not be available at commercial retail establishments where your sporting equipment is sold. As such, the likelihood of confusion is virtually nonexistent. See Federated Foods, Inc. v. Fort Howard Paper Company, 544 F.2d 1098 (C.C.P.A. 1976); Sun-Maid Raisin Growers of Cal. v. Sunaid Food Products, Inc., 356 F.2d 467 (5th Cir. 1966).

EXH. 8

THE OXFORD AMERICAN DICTIONARY 431 (1979) defines the term HYPERSONIC as "1. relating to speeds more that about five times that of sound. 2. relating to sound frequencies above about a billion hertz." As you are no doubt aware, the U.S. Navy developed hypersonic technologies including equipment and missiles using hypersonic aerodynamics. Paramount chose the term HYPERSONIC to exploit this association of the term with speed. Your company cannot claim exclusive rights to use the term in this context.

A brief domestic search confirms the limited nature of protection. That search uncovered third party registrations and applications incorporating HYPERSONIC including: a registration for HYPERSONIC owned by VR-1, Inc. in Class 41 for website gaming services; a registration for HYPERSONIC owned by American Technologies Corporation in Class 9 for sound reproduction equipment; a registration for HYPER SONIC owned by Blitz Manufacturing Company, Inc. in Class 9 for ultrasonic cleaners; an application for HIPERSONIC owned by Systemonic AG in Classes in Classes 9, 16 and 42 for computer programs, publications and consulting/advisory services, respectively; and an application for HYPERSONIC BINGO owned by GLC Limited in Class 41 for online casino games. In addition, there are numerous third party domain name registrations featuring the term HYPERSONIC. This third party use further diminishes any likelihood that a consumer would associate your company's products with Paramount's Ride and related goods.

Finally, Paramount consistently uses the Name with other distinguishing elements such as its stylized logo: all merchandise bearing the Name displays "PARAMOUNT'S KINGS DOMINION" with the Name. Furthermore, all clothing hangtags feature the "house" marks PARAMOUNT with its world-famous Mountain & Stars logo, and PARAMOUNT PARKS. Samples of such use are enclosed for your reference. These clear ties of the Name to the Ride and the Park render it virtually impossible that a consumer would associate Paramount's use of the Name with anyone other than Paramount. Thus, there is no possibility let alone likelihood that any consumer would mistakenly believe that there is any association whatsoever between Paramount's use of the Name and your company's. See Worthington Foods, Inc. v. Kellogg Co., 732 F. Supp. 1417, 14 U.S.P.Q.2d 1577 (S.D. Ohio 1990) (display of company's own familiar mark on product reduces likelihood of confusion which might stem from simultaneous use of another's mark); see also King Research, Inc. v. Shulton, Inc. 324 F. Supp. 631, 169 U.S.P.Q.2d 396 (S.D.N.Y. 1971), aff'd 454 F.2d 66, 172 U.S.P.Q.2d 321 (2d Cir. 1971)(no likely confusion where mark SHIP SHAPE appeared on defendant's products along with OLD SPICE mark and drawing of sailing ship); Pristine Industries, Inc. v. Hallmark Cards, Inc., 753 F. Supp. 140 (S.D.N.Y. 1990)(use of defendant's house mark, HALLMARK, in connection with disputed mark is strong factor pointing to no likelihood of confusion).

We trust the foregoing will eliminate your concerns.

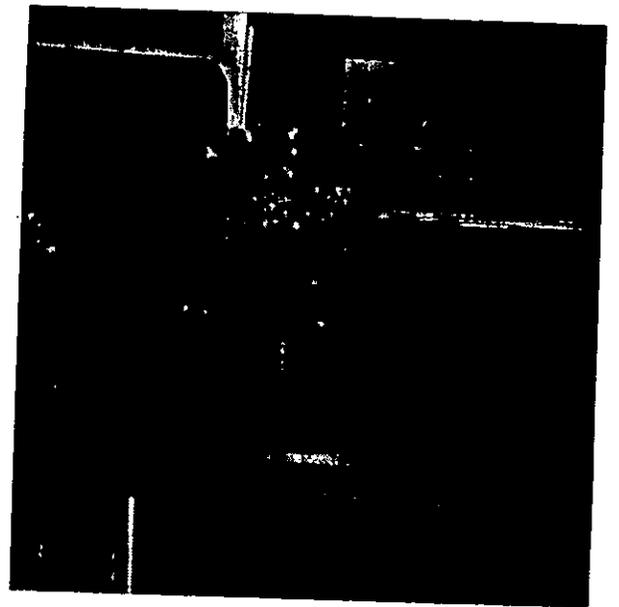
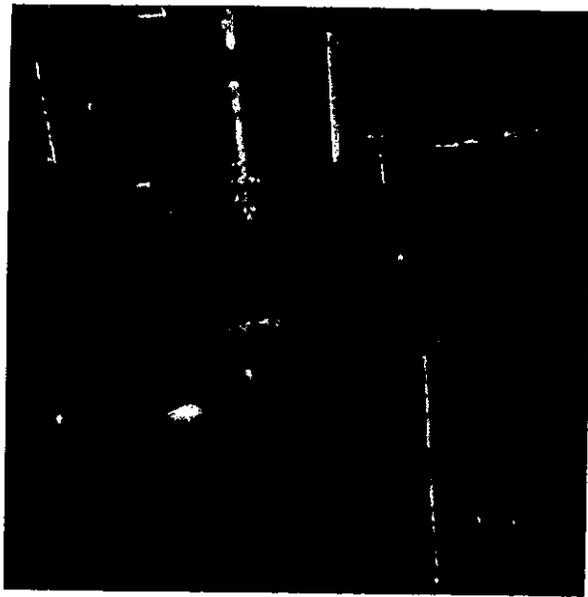
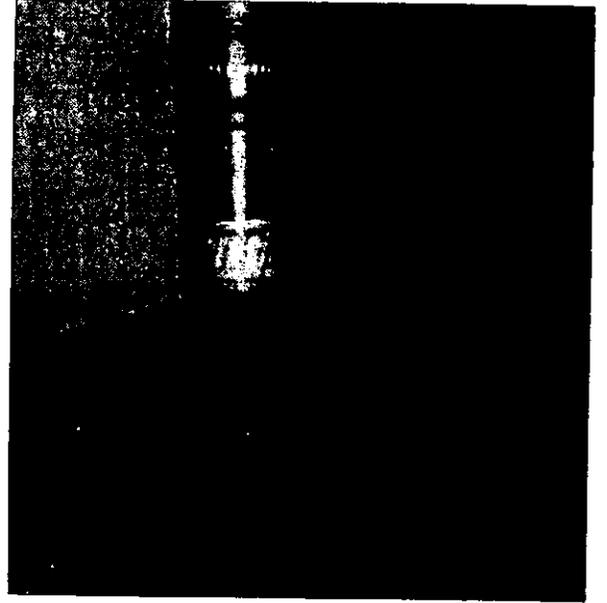
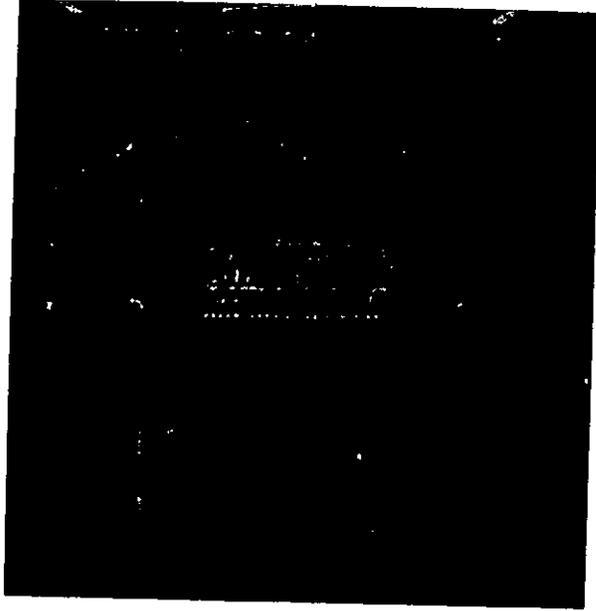
Nothing contained herein shall be deemed a waiver of any and all rights of Paramount Parks Inc., all of which are expressly reserved herein.

Sincerely yours,

Mallory Levitt

Mallory Levitt

Encl.



MOUNT'S KINGS DOMINI

HYPERSONIC
LAUNCH COASTER **XLC**





ERSOMING CH COASTER XLE

'S KINGS DOMINION

Applicant will produce a sales report for Paramount's King's Dominion theme park listing each product sold under Applicant's HYPERSONIC marks.

INTERROGATORY NO. 3

With respect to Applicant's claimed date of first use in commerce (anywhere in the world), identify each party to the commercial transaction and the goods on which the Applicant's claimed marks were used in transaction or intended to be used.

RESPONSE TO INTERROGATORY NO. 3

Applicant objects to Interrogatory No. 3 on the ground that it is overbroad and unduly burdensome, and to the extent that it calls for the production of foreign records and other foreign information that is irrelevant and not material and necessary to the prosecution or defense of this proceeding. Without waiver of the foregoing objections and subject to the General Objections, Applicant affirmatively states that it first used the mark "HYPERSONIC" in advertising and promotional materials for its "Hypersonic Xtreme Launch Coaster", a thrill ride located in its Kings Dominion theme park, in August of 2000. Subsequently, Applicant first used the HYPERSONIC mark that is listed in Application Serial No. 76/103,448 on postcards and bumper stickers no earlier than March 17, 2001; and first used its HYPERSONIC mark that is listed in Application Serial No. 76/103,447 on t-shirts, sweatshirts, tank tops and hats no earlier than March 17, 2001. All of the goods bearing the HYPERSONIC marks are sold only at Paramount's Kings Dominion theme park in Virginia, which opened to

the media this year on March 22, 2001, and to the public on March 24, 2001..

INTERROGATORY NO. 4

Identify the annual sales and/or the total sales in dollars of the Applicant's identified goods under the mark in the United States and any other country in the world.

RESPONSE TO INTERROGATORY NO. 4

Applicant objects to Interrogatory No. 4 on the grounds that it is overbroad and unduly burdensome, and to the extent that it calls for the production of foreign records and other foreign information that is irrelevant and not material and necessary to the prosecution or defense of this proceeding. Without waiver of the foregoing objection and subject to the General Objections, and subject to the entry of an appropriate protective order, Applicant will produce documents in response to Document Request No. 8 from which the answer can be derived or ascertained.

INTERROGATORY NO. 5

With respect to the adoption or "use" of the subject mark:

a. Identify all persons who participated in or approved the Applicant's selection, adoption and/or "use" of the subject mark, specifically including the person or persons who made the final decision on behalf of the Applicant to adopt and/or "use" the subject mark and the person or persons who first suggested use and/or "use" by the Applicant of the subject mark.

RESPONSE TO INTERROGATORY NO. 5

Applicant objects to Interrogatory No. 5 on the grounds that it is overbroad and unduly burdensome, and on the grounds that

INTERROGATORY NO. 10

State whether Applicant or any entity the Applicant has worked with or has knowledge of, has ever published or printed or caused to be published or printed, any press release, publicity release, trade release, new goods release, other notice of trade, catalog, coded or printed, any press release, publicity release, trade release, new goods release, other notice of trade, catalog, catalog sheet, sales literature, reprint or other printed matter concerning the subject mark, identify samples of each such item, the geographic area of distribution of each sample, and the amount spent on each such item and name the bank account upon which checks were drawn to pay the bills.

RESPONSE TO INTERROGATORY NO. 10

Applicant objects to Interrogatory No. 10 on the grounds that it is overbroad and unduly burdensome. Without waiver of the foregoing objections and subject to and without waiver of the General Objections, Applicant states that it has produced various types of promotional and marketing materials, and will produce representative samples in response to Document Request Nos. 3 and 4.

INTERROGATORY NO. 11

If the Applicant has sold its respective goods, give the address of each outlet at which Applicant has sold, drawn to pay the bills.

RESPONSE TO INTERROGATORY NO. 11

Applicant objects to Interrogatory No. 11 on the ground that it is vague and therefore not susceptible of precise response. Without waiver of the foregoing objection and subject to and without waiver of the General Objections, Applicant states that it,

sells goods bearing its HYPERSONIC marks in the Kings Dominion theme park in Virginia, at various outlets throughout that park, and that such goods have been sold at those outlets since the park opened on March 24, 2001. Subject to the entry of an appropriate protective order, Applicant will produce documents in response to Document Request No. 8 which list the outlets within the park in which such goods are sold.

INTERROGATORY NO. 12

If the Applicant has sold its respective goods, give the address of each outlet at which Applicant has sold, intends to sell goods under the subject mark and the time period for such sales at the related address.

RESPONSE TO INTERROGATORY NO. 12

Applicant repeats its response to Interrogatory No. 11.

INTERROGATORY NO. 13

If the Applicant has sold its respective goods or intends to sell goods upon which the subject mark has been used at wholesale, identify by name and geographical location all distributions, dealers, or agents for Applicant's sales at wholesale within the United States.

RESPONSE TO INTERROGATORY NO. 13

Subject to and without waiver of the General Objections, Applicant affirmatively states that it does not sell any products bearing its HYPERSONIC marks at wholesale.

Dated: New York, New York
November 5, 2001

KAY COLLYER & BOOSE LLP

By:


Lacy H. Koonce, III (LHK-8784)
One Dag Hammarskjold Plaza
New York, New York 10017
(212) 940-8200 / 940-8237

Attorneys for Applicant
Paramount Parks Inc.

TO: Leo Stoller, President
Central Mfg. Inc.
Trademark & Licensing Dept.
P.O. Box 35189
Chicago, Illinois 60707-0189
(773) 283-3880

WHY OBTAIN A *HYPERSONIC*® LICENSE...

Americans are brand conscious. More than 95 percent of all products sold in America are branded goods and more than \$120 billion is spent in advertising to create and maintain brand images for those products. The reason: Consumers' buying habits are tied to how they think and feel about a brand.

In today's competitive marketplace, the licensing of brand names for new products - essentially, borrowing an established brand name in order to sell more product - has become increasingly prevalent. Sales of licensed products in the U.S. now total more than \$151 billion a year and over 40% of all goods sold are licensed products.

The reasons are simple. Building a brand image for a new product is extremely costly. And there's no guarantee that an expensive brand image campaign will work. Licensing your products and services under an established trademark brings instant recognition and acceptance with your customers. Licensing endows your products and services with the power of the images carried by the brand name trademark, giving you the opportunity to:

- * Introduce products more easily and enter the market from a position of strength.
- * Achieve instant customer awareness and help increase market share without risking large marketing expenditures.
- * Create instant enthusiasm and interest among your customers.
- * Sell a greater volume of products or services due to your customers' increased interest.
- * Sell your products or services for a greater profit margin.
- * Avoid trademark litigation.

Licensing an established trademark for your products or services just makes good business sense. The enormous power of *HYPERSONIC*® trademarks can mean instant buyer appeal for your products and services. As a *HYPERSONIC*® licensee, you are part of a team company already marketing their products and services using *HYPERSONIC*® trademarks. Their success is proof of what a *HYPERSONIC*® license can do for you.

HYPERSONIC® LICENSING PROGRAM

Licensee Requirements

As a prerequisite for becoming a *HYPERSONIC®* licensee, a distributor, manufacturer or service company should consider the following requirements:

PRODUCT OR SERVICE CATEGORY:

An appropriate product category that would utilize and compliment the *HYPERSONIC®* image.

MARKETING:

A proven track record of marketing.

RESOURCES:

Adequate resources - production, financial and manpower to undertake such an expanded program.

STYLING AND QUALITY:

Ability to ensure good styling and consistent quality products or services.

PRODUCTION:

Efficient manufacturing and/or sourcing to ensure on-time delivery of value packed products.

OBJECTIVES:

Long-term objectives of continued growth in sales and profits.

To an increasing extent, all types of buyers, including buyers for mass market retail outlets, are demanding brand names with image. Their customers want established brand names as a guarantee of quality, value and good styling. More and more manufacturers are being encouraged to provide brand names in order to maintain and expand their market position. Some companies who already have one or more brand names are seeking additional identification programs due to their demonstrated success with branded goods and services. Others, who have no brands or the wrong brands, need a brand to survive.

For companies that qualify, the *HYPERSONIC®* brand could be the answer.

HYPERSONIC® LICENSING PROGRAM

See Rentamark famous brands available for licensing at
www.rentamark.com

The nature of the major terms of the License Agreement are indicated hereunder.

ROYALTY RATE:

Royalty rates are a negotiable percent of the sale price charged by Licensee for each licensed product and/or service sold.

TERM OF AGREEMENT:

Basic life of agreement coordinated with requirements of product development; usually three or more contract years, with the first contract year being long enough to allow "start-up" time.

MINIMUM SALES:

Minimum sales target projections mutually determined.

MINIMUM ROYALTIES:

Annual guaranteed minimum royalty realistically assessed.

ADVANCE PAYMENT:

A reasonable portion of the Minimum Royalties (not an additional fee).

RENEWALS:

Renewal terms based on performance to capitalize upon success of the program.

LICENSING *HYPERSONIC*® ENABLES YOU TO ...

- * DIFFERENTIATE AMONG PARTY PRODUCTS
- * ENJOY EASIER TRADE ACCEPTANCE
- * JUSTIFY A PREMIUM PRICE POINT
- * GENERATE QUICK CONSUMER TRIAL
- * ACHIEVE SIGNIFICANT MARKET SHARE QUICKLY
- * AVOID TRADEMARK LITIGATION

***STEALTH*®, *SENTRA*®, *TERMINATOR*®,
HYPERSONIC® & *DARK STAR*®**

D/B/A

RENTAMARK.COM

P. O. Box 35189

Chicago, IL 60707-5189

Phone: (773) 283-3880 Fax: (708) 453-0083

Email: info@rentamark.com

**See our list of other famous brands available for
licensing at www.rentamark.com
Contact us about representing and licensing your brand**