

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Lykos

Mailed: April 14, 2004

Opposition No. 91123765

Central Mfg. Co.

v.

Paramount Parks, Inc.

Angela Lykos, Interlocutory Attorney

On April 13, 2004, the undersigned, as the Board attorney responsible for interlocutory decisions in this case, conducted a telephone conference between Leo Stoller, representative of opposer, and Lance Koonce, counsel for applicant, to consider opposer's motion (filed April 8, 2004) to compel the attendance of the following witnesses for discovery depositions: Mr. Mel Karmazin, President of Viacom, Inc.; Mr. Sumner M. Redstone, Chairman of Viacom, Inc.; and Richard J. Bressler, Chief Financial Officer of Viacom, Inc..¹ The depositions were scheduled to take place

¹ Opposer's objection that applicant failed to file a written request for a telephone conference is not well-taken. A party may request by telephone that a motion be resolved by telephone conference. Furthermore, there is no prerequisite that a motion be fully briefed in writing. Indeed, the purpose of a telephone conference is to obviate the need for written a response brief and reply when time is of the essence.

on April 21, 2004.

Counsel for applicant objected to the notices of depositions on the grounds that the notices were improperly served, that the individuals noticed are not employees of applicant, and that the individuals noticed do not have knowledge relevant to any of the claims or defenses asserted by any party in this proceeding.²

Opposer's motion to compel the attendance of Mr. Karmazin, Mr. Redstone, and Mr. Bressler for discovery depositions is denied. The aforementioned proposed deponents are not employees of applicant, and therefore are not parties to this proceeding. The Board has no authority to compel the attendance of a nonparty to a discovery deposition. Rather, the deposing party has the sole responsibility. See Trademark Rule 2.120(b). If the proposed nonparty deponent is unwilling to appear voluntarily, the deposing party must secure the deponent's attendance by subpoena pursuant to 35 U.S.C. § 24 and Fed. R. Civ. P. 45. The subpoena must be issued from the United States District Court in the federal judicial district where the proposed nonparty deponent resides or is regularly

² Opposer's motion (filed April 13, 2004) to withdraw its motion to compel is denied. The purported basis for the motion was that applicant objected to the notices of depositions on the ground that the scheduled date was unacceptable. The record evidence indicates that, to the contrary, applicant's objections pertain to the merits of the notices of depositions.

Opposition No. 91123765

employed. See TBMP § 404.03(a)(2) (2nd ed. June 2003) and authorities cited therein.

Trial dates remain as set in the Board's March 9, 2004 order.

The Board is forwarding this order by facsimile transmission and by first class mail.