

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

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

Opposer,

vs.

PARAMOUNT PARKS, INC.  
8720 Red Oak Blvd.  
Charlotte, NC 28217

Applicant

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Box TTAB/NO FEE

Opposition No: 91123765

Trademark: HYPERSONIC



05-10-2004

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

**OPPOSER'S RESPONSE TO APPLICANT'S  
MEMORANDUM IN OPPOSITION TO OPPOSER'S MOTION TO  
AMEND ITS NOTICE OF OPPOSITION**

NOW COMES the Opposer in response to Applicant's Memorandum in opposition to Opposer's Motion to Amend its Notice of Opposition, and states as follows:

1. The Applicant's argument in opposition centers around the fact that the Opposer has not filed an amendment "in nearly three years." The Board should take note that this proceeding has been suspended for most of that time, based upon Opposer's Motion for Summary Judgment. When the Board ruled on Opposer's Motion for Summary Judgment, the Opposer has attempted to cure some of the defects and misunderstandings contained in Opposer's initial opposition, as enunciated by the Board. For example, the Board questioned what party has standing in this proceeding. It is clear from Opposer's Amended Notice of Opposition, that the party in interest is CENTRAL MFG. CO. CENTRAL MFG. CO. has standing.

2. The Opposer served its amended opposition on the Applicant prior to the Opposer being deposed by the Applicant. Consequently, the Applicant had ample opportunity to conduct discovery directly with the representative of the Opposer, Leo Stoller, at his deposition. Further, the Applicant cannot argue that there was any delay in the Opposer filing its amendment because the proceeding had been suspended as a result of Board action. The Board allows parties to amend when justice so demands at any stage of the proceeding. In addition,

Opposer's argument for adding a new claim in its opposition was not delayed as a result of Opposer's actions. The Board suspended this proceeding and the Opposer was unable to amend its pleadings and/or to do anything else during the suspension. The new claims added to the Amended Notice of Opposition are:

23. At the time the Applicant filed the said Application, it was not the owner of the mark.
24. Applicant failed to disclose its relationship with Viacom International, Inc. at the time it filed its trademark Application which was fatal to Applicant's said application.

The above claims are added and are necessary to Opposer's opposition because they were argued by Opposer in its Motion for Summary Judgment and the Board had stated that since those claims were not contained in the initial opposition, they could not be adjudicated by the Board in any motion for summary judgment. Thus, the Opposer is merely correcting its opposition with these two very important allegations which need to be incorporated into Opposer's opposition, in order for the Board to decide justly on Opposer's Notice of Opposition.

3. The Applicant states at page 3 of its brief:

"With respect to the proposed addition of Paragraph 36, that paragraph reads as follows: 'During the pendency of this opposition, the Applicant attempted to amend its said application without the permission of Opposer, and without permission of the Board,' However, in its Order of March 9, 2004, the Board ruled, in response to Opposer's motion for Rule 11 sanctions on the basis that Applicant filed Amendments to Allege Use during the black-out period, that the filing of Amendments to Allege Use is a part of the *ex parte* examination of the application, and that improper filing of such Amendments is ineffective and results in a return of the Amendments and filing fees to the applicant. Order, p. 12. As such, it cannot possibly serve as a relevant allegation in the notice of opposition."

The Opposer respectfully asserts that the said paragraph 36 is not only a relevant allegation in the notice of opposition but it is the law.

37 CFR §2.133 Amendment of application or registration during proceedings: states

- (a) An application involved in a proceeding may not be amended in substance nor may

a registration be amended or disclaimed in part, except with the consent of the other party or parties and the approval of the Trademark Trial and appeal Board, or except upon motion.

The Applicant in this case attempted to amend its said application during this proceeding in violation of 37 CFR §2.133. The Opposer has a right as a matter of law to amend its said Notice of Opposition and to include the allegation contained in paragraph 36 of Opposer's amended notice of opposition.

Granting the Opposer's Motion to Amend would be in keeping with the FRCP and the Board's policy of allowing parties to amend their complaints at any stage in the proceeding when justice demands it.

WHEREFORE, the Opposer prays that the Board grant Opposer's Motion to Amend its Notice of Opposition.

By: \_\_\_\_\_



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Date: May 4, 2004

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Leo Stoller  
Date: May 7, 2004

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Leo Stoller  
Date: May 7, 2004

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