

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, NC 28217

Applicant

Opposition No: 91123765

Trademark: HYPERSONIC

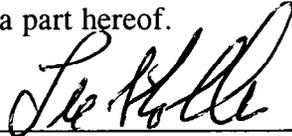
Box TTAB/NO FEE

**MOTION TO AMEND NOTICE OF OPPOSITION**

NOW COMES the Opposer and requests leave to file its Amended Notice of Opposition because justice so requires. See 37 CFR §§2.107, 2.115, and 2.11(a).

The Opposer states that the Applicant would not be prejudiced by the allowing of the proposed amendment in view of the fact that discovery is still open. See generally, *Caron Corp. v. Helena Rubenstein, Inc.*, 193 USPQ 113 (TTAB 1976) (neither party had as yet taken testimony); *Anheuser-Busch, Inc. v. Martinez*, 185 USPQ 434 (TTAB 1975) (since proceeding was still in the pre-trial stage, amendment of the pleadings could not prejudice opposer); *Cool-Ray, Inc. v. Eye Care, Inc.*, 183 USPQ 618 (TTAB 1974) (since, inter alia, the trial period had not yet commenced, no prejudice to applicant); *Mack Trucks, Inc. v. Monroe Auto Equipment Co.*, 182 USPQ 511 (TTAB 1974) (applicant would not be unduly prejudiced by entry of the proposed amendment since no testimony had as yet been taken).

WHEREFORE, the Opposer prays that the Board grant its Motion to Amend its Notice of Opposition which is attached hereto and made a part hereof.

By: 

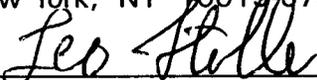
Leo Stoller  
CENTRAL MFG. CO., Opposer  
Trademark & Licensing Dept.  
P.O. Box 35189  
Chicago, Illinois 60707-0189  
773-283-3880 FAX 708 453-0083

Date: April 8, 2004

**Certificate of Service**

I hereby certify that this *Motion to Amend* is being deposited with the U.S. Postal Service by **Express Mail**  
**No: ER 854975740 US** in an express mail envelope addressed to:

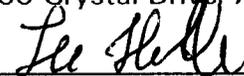
Lacy H. Koonce  
Lance Koonce  
DAVIS WRIGHT TREMAINE LLP.  
1633 Broadway  
New York, NY 10019-6708

  
\_\_\_\_\_  
Leo Stoller  
Date: April 8, 2004

**Certificate of Mailing**

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

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

  
\_\_\_\_\_  
Leo Stoller  
Date: April 8, 2004

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

CENTRAL MFG. CO.  
P.O. Box 35189  
Chicago, IL 60707-0189

Opposer,  
vs.

PARAMOUNT PARKS, INC.  
(a division of Viacom International Inc.)  
8720 Red Oak Boulevard  
Charlotte, NC 28217

Applicant.

Opposition 91123765

Trademark: HYPERSONIC

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

Int. Class No: 25 and 16

Published: May 22, 2001 and  
April 24, 2001

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TTAB/NO FEE  
IN TRIPLICATE

***HYPERSONIC vs. HYPERSONIC***

**AMENDED NOTICE OF OPPOSITION**

1. In the matter of Intent to Use Application SN 76-103,447 for the mark **HYPERSONIC**, Int. Class 25, for **t-shirts, sweatshirts, hats, jackets, pajamas, masquerade costumes, tank tops, footwear, sweatpants and shorts**, and SN 76-103,448, for the mark **HYPERSONIC**, Int. Class 16 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, rubber stamps.**

2. The Opposer, CENTRAL MFG. CO a Delaware Corporation, and/or its predecessor in title, has priority of use of the mark *HYPERSONIC*, in Common Law on similar goods, related goods, and competitive goods; namely, t-shirts, hats, footwear, jackets, postcards, notebooks, bumper stickers, and rubber stamps, sold in similar channels of trade and to the identical customers that applicant's goods are sold in, since at least as early as 1988.

3. The Opposer, has priority of use of the mark *HYPERSONIC* in numerous classes of goods and services including Int. Cl. No. 28 on similar goods as the Applicant, on closely related goods that are listed in Applicant's attached copy of its Registration No: 1,593,157 which it relies upon in support of this Opposition, which are sold in the same channels of trade and to similar

customers as Applicant's since at least as early as 1988 and hereby opposes registration of the confusingly similar mark, Application Serial No. 76-103,447 and 76-103,448. Opposer asserts that there is a likelihood of confusion between the Applicant's mark *HYPERSONIC* and the Opposer's registered *HYPERSONIC* mark under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d).

4. The Opposer, CENTRAL MFG., (hereinafter referred to as *HYPERSONIC*), like the McDonald's Corporation uses its well-known *HYPERSONIC* mark as a trade name, corporate name, service mark and trademark since at least as early as 1988 and is engaged in an aggressive *HYPERSONIC* licensing and marketing program. The Opposer holds rights, in the following *HYPERSONIC* trademark registrations (attached herewith).

5. The Opposer, hereinafter referred to as ("*HYPERSONIC*"), located in Chicago, Illinois, who believes that it will be damaged by registration of the mark *HYPERSONIC* shown in Application SN 76-103,447 and 76-103,448 and hereby opposes same. *HYPERSONIC*, like the McDonald's Corporation, uses its *HYPERSONIC* mark as a trade name, corporate name, service mark and trademark and engages in an aggressive licensing program <sup>1</sup>.

6. *HYPERSONIC* has used the trademark and trade name *HYPERSONIC* in interstate commerce, as a predecessor-in-interest, since at least as early as 1988, long prior to Applicant's submission of its Application for Federal Registration of the mark *HYPERSONIC*.

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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. 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 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 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.

7. The Opposer holds rights <sup>1</sup>, in the following well-known *HYPERSONIC* trademark Registration No: 1,593,157, which is incorporated herein and attached and notice is hereby given that Opposer relies upon this *HYPERSONIC* Registration.

8. The Opposer has priority of use, as early as 1988, on similar, related and competitive goods.

9. The use of the Applicant's mark *HYPERSONIC* sought to be registered in the aforesaid application is likely to blur the distinctiveness of the Opposer's famous *HYPERSONIC* trademarks and cause dilution of Opposer famous mark.

10. The use of the Applicant's mark *HYPERSONIC* sought to be registered in the aforesaid application is likely to cause confusion, mistake or deception in the buying public or cause the public to believe that there is a connection between the parties, or a sponsorship of Applicant's goods by Opposer.

11. *HYPERSONIC* has used the designation *HYPERSONIC* as a corporate and trade name to identify its business continuously since long prior to Applicant's submission of its Application for registration to use the mark *HYPERSONIC* and has an aggressive licensing program for its valuable *HYPERSONIC* mark as well known to the Applicant, creating a national BRAND name.

12. In the U.S.A., the Opposer, as well known to the Applicant, licensees its famous *HYPERSONIC* mark for a wide variety of collateral merchandise. Opposer's mark became famous in 1990.

13. Opposer, as well known to the Applicant, expends substantial sums of money on  
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**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.

policing the use of its popular and/or famous trademark see attach true and correct copy of HYPERSONIC and HYPERSONIC formative applications and trademarks that the Opposer has successfully opposed.

14. Since at least as early as 1981, *HYPERSONIC* has been, and *HYPERSONIC* is now, using the mark *HYPERSONIC* in connection with the sale of goods and/or services in numerous classes. Said use has been valid and continuous since said date of first use and has **not** been abandoned.

15. If the Applicant is permitted to register the mark that Opposer is opposing, and thereby, the *prima facie* exclusive right to use in commerce the mark HYPERSONIC on the goods licensed and sold by the Opposer, confusion is likely to result from any concurrent use of Opposer's mark *HYPERSONIC* and that of the Applicant's alleged mark HYPERSONIC all to the great detriment of Opposer, who has expended considerable sums and effort in promoting its mark.

16. Purchasers are likely to consider the goods of the Applicant sold under the mark HYPERSONIC as emanating from *HYPERSONIC*, and purchase such products as those of the Opposer, resulting in loss of sales to Opposer.

17. Said applications were obtained fraudulently in that the formal application papers filed by Applicant, under notice of §1001 of Title 18 of the United States Code stated that Applicant had a valid intent to use. Said statement was false. Said false statement was made with the knowledge and belief that it was false, with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration.

18. Said applications were obtained fraudulently in that the formal application papers filed by Applicant, under notice of §1001 of Title 18 of the United States Code stated that Applicant had a valid intent to use when Applicant filed its Trademark applications on August 2, 2000. Said statement was false. Applicant does not qualify for a valid Intent to Use application in that Applicant's applications do not qualify because Applicant's right to use in commerce must exist before a trademark may be registered. Applicant has no valid intent to use its mark in commerce and has no right to register the mark.

19. Said applications were obtained fraudulently in that the formal application papers filed by Applicant, under notice of §1(b), 15 U.S.C. §1051(b) of the United States Code, Applicant must assert a bona fide intent to use the mark in commerce, on or in connection with the goods identified. Applicant's said assertion of a bona fide intent to use the mark in commerce was false. Applicant *never* had a valid intent to use its trademark in *commerce*. Thus, Applicant said's applications are void *ab initio* stated that Applicant had a valid intent to use when Applicant filed its Trademark applications on August 2, 2000,. as well known to **Mallory Levitt**, Esq., in house counsel for Viacom and Paramount, and to **Lance Koonce** Esq., and **Marcia B. Paul**, Esq., of Applicant's law firm of Kay, Collyer & Boose, LLP, in violation of 37 CFR §10.23(a)(4).

a. Applicant's said counsel upon information and belief conspired to defraud the PTO by filing and maintaining the said trademark applications wherein it was well known to **Mallory Levitt**, Esq., in house counsel for Viacom and Paramount, and to **Lance Koonce** Esq., and **Marcia B. Paul**, that the applicant had no valid intent to use application because the applicant had no valid intent to use the said marks in commerce in violation of 37 CFR §10.23(a)(4).

b. Upon information and belief **Mallory Levitt**, Esq., in house counsel for Viacom/Paramount, and counsel for the applicant **Lance Koonce** Esq., and **Marcia B. Paul** knew or should have known that, Paramount/Viacom had been using the said mark on some or all of the goods listed in the said Applicant's prior to Applicant filing its *intent to use* Application, in violation of 37 CFR §10.23(a)(4).

20. Applicant had been using the mark listed in Application SN: 76,103,448 prior to filing its *intent to use* application on August 2, 2000, on the goods listed in its said application.

21. Said applications were obtained fraudulently in that the formal application papers filed by Applicant, under notice of §1001 of Title 18 of the United States Code stated that Applicant had a valid intent to use when Applicant filed its Trademark applications on August 2, 2000. Said statement was false

22. Said applications were obtained fraudulently in that the formal application papers filed by Applicant, under notice of §1001 of Title 18 of the United States Code stated that Applicant had a valid intent to use when Applicant filed its Trademark application on December 7, 1998. Said statement was false. Applicant had been using the said mark on all or some of the goods

listed in its applications long prior to the filing of its applications on August 2, 2000. Applicant's intent to use applications were a fraud in that Applicant had use on some or all of the said goods listed therein bearing the mark *HYPERSONIC* long prior to the filing date of August 2, 2000. Said intent to use statement was a false statement and was made with the knowledge and belief that it was false, with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration.

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 said trademark application which was fatal to Applicant's said application.

25. Concurrent use of the mark *HYPERSONIC* by the Applicant and *HYPERSONIC* by the Opposer may result in irreparable damage to Opposer's national *HYPERSONIC BRAND*, its Trademark Licensing Program, its marketing program, reputation and goodwill.

26. Applicant's use of the *HYPERSONIC* mark as its company name, trade name and trademark is an obvious attempt by the Applicant to trade off the goodwill of the Opposer's mark *HYPERSONIC*, which the Opposer has built up for over 20 years, in direct violation of the Lanham Act. The Board should deny Applicant registration of its confusingly similar mark.

27. If the Applicant is permitted to obtain a registration of the mark *STEALTH*, a cloud will be placed on Opposer's title in and to its trademark, *HYPERSONIC*, and on its right to enjoy the free and exclusive use thereof in connection with the sale of its services and/or goods, and on its Trademark Licensing Program, all to the great injury of the Opposer.

28. Upon information and belief, Applicant's Intent to Use Application were signed with the knowledge that another party had a right to use the mark in commerce.

29. The registration to Applicant of the mark *HYPERSONIC* shown in the aforesaid applications are likely to and will result in financial and other injury and damage to *HYPERSONIC* in its business and in its enjoyment of its established rights in and to its said mark *HYPERSONIC* and damage Opposer's famous family of *HYPERSONIC* marks promoted and licensed in concert.

30. Applicant's mark *HYPERSONIC*, when used on or in connection with the goods of the Applicant, are merely descriptive or deceptively misdescriptive of the goods.

31. Applicant's mark HYPERSONIC, as used on the goods defined in its applications, or, intended to be used, is not a substantially exact representation of the mark intended to be used in connection with the goods.

32. Applicant's mark HYPERSONIC was not applied for according to its correct type, as shown in its said applications.

33. Upon information and belief, said statement of *intent to use* of the mark HYPERSONIC on the goods in question, was made by an authorized agent of Applicant with the knowledge and belief that said statements was false. Said false statements were made with the intent to induce authorized agents of the U.S. Patent and Trademark Office to grant said registration.

34. Applicant's mark HYPERSONIC sought to be registered herein is identical to Opposer's mark *HYPERSONIC*.

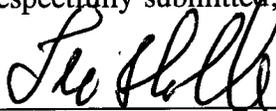
35. Applicant's mark HYPERSONIC, if permitted to register, will cause dilution of Opposer's famous mark *HYPERSONIC*.

36. During the pendency of this opposition, the Applicant attempted to amend its said application without the permission of the Opposer, and without permission of the Board.

**WHEREFORE**, Opposer prays that said the said Application for the trademark HYPERSONIC be denied, that no registration be issued thereon to Applicant, and that this **Amended Notice of Opposition** be sustained in favor of Opposer and that Opposer is entitled to judgment.

Opposer prays for such other and further relief as may be deemed by the Commissioner of Patents and Trademarks to be just and proper.

Respectfully submitted,



Leo Stoller, President  
Central Mfg. Inc.  
Trademark & Licensing Dept.  
P.O. Box 35189  
Chicago, Illinois 60707-0189  
773 283-3880 FAX 708 453-0083

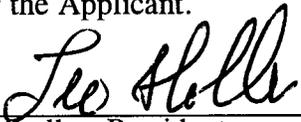
Dated: April 8, 2004

**DECLARATION**

The undersigned, Leo Stoller, declares: that he is President of CENTRAL MFG. INC., and as such, 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.

Opposer states that CENTRAL MFG. CO. is the owner of the HYPERSONIC mark.

The Opposer submits true and accurate copies of the registration No. 1,593,157 of its HYPERSONIC mark, herein relied upon in support of its Opposition, issued by the Patent and Trademark Office. Attached hereto is a true and correct copy of an April 3, 2001 letter from Mallory Levitt, Esq., counsel for Viacom and Paramount, as well as a true and correct copy of an August 6, 2001 letter by Lance Koonce Esq counsel for the Applicant.

By:   
Leo Stoller, President  
CENTRAL MFG. INC., Opposer  
a/k/a CENTRAL MFG. CO.  
P.O. Box 35189  
Chicago, Illinois 60707  
(708) 453-0080

Date: April 8, 2004

**Certificate of Service**

I hereby certify that this *Amended Notice of Opposition* is being deposited with the U.S. Postal Service by **Express Mail**  
**No: ER 854975740 US** in an express mail envelope addressed to:

Lacy H. Koonce  
Lance Koonce  
DAVIS WRIGHT TREMAINE LLP.  
1633 Broadway  
New York, NY 10019-6708

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Leo Stoller  
Date: April 8, 2004

**Certificate of Mailing**

I hereby certify that this *Amended Notice of Opposition* is being deposited with the U S Postal Service as First Class Mail in an envelope addressed to:

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

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Leo Stoller, Pres.,  
Dated: April 8, 2004

D:\MARKS32\PARAM.OPP



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

Int. Cl.: 28

Prior U.S. Cl.: 22

**United States Patent and Trademark Office** **Reg. No. 1,593,157**  
Registered Apr. 24, 1990

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**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

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).

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.

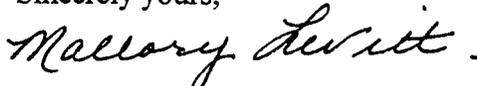
A brief domestic search confirms the limited nature of protection. That search uncovered third party registrations and applications incorporating HYPERSONIC including: a registration for HYPERSONIC owned by VR-1, Inc. in Class 41 for website gaming services; a registration for HYPERSONIC owned by American 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.

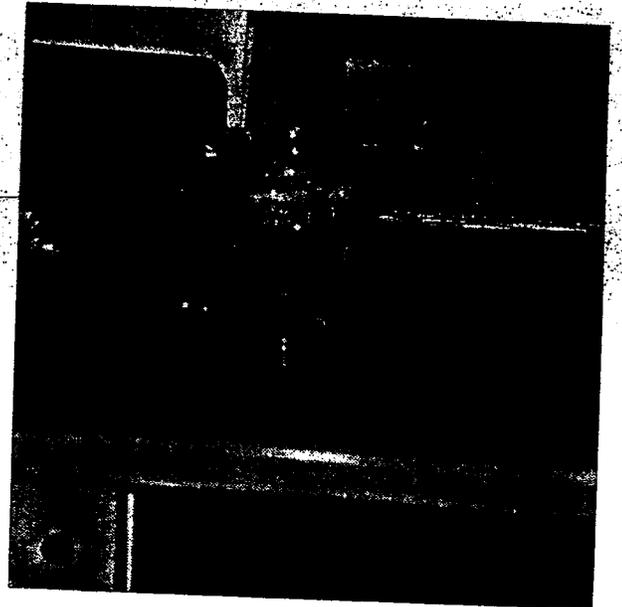
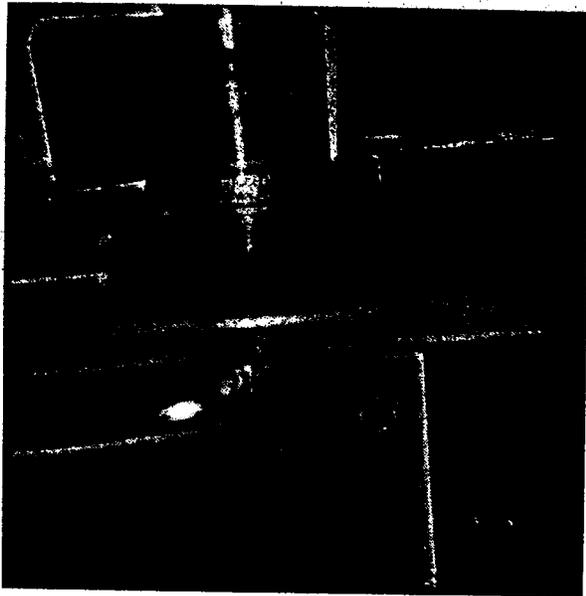
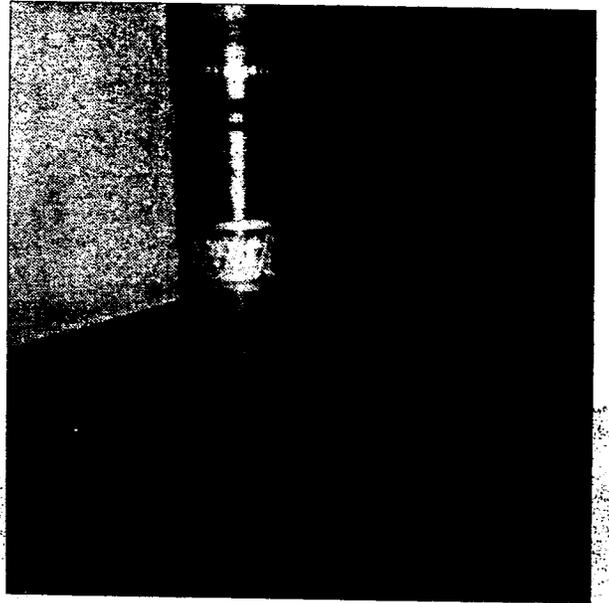
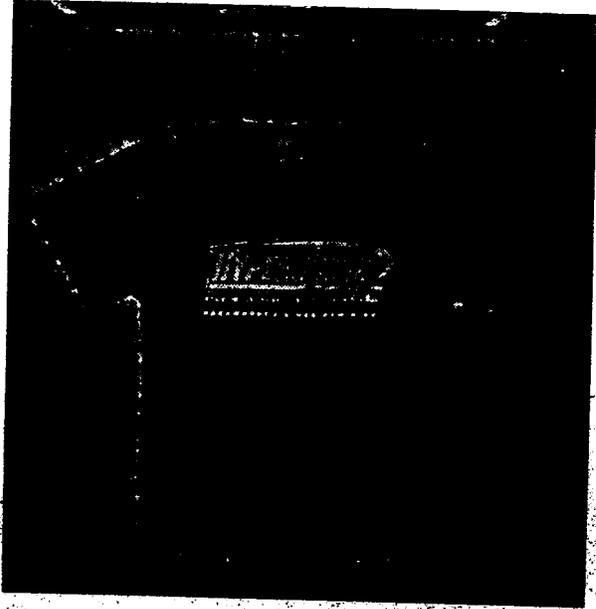
Nothing contained herein shall be deemed a waiver of any and all rights of Paramount Parks Inc., all of which are expressly reserved herein.

Sincerely yours,

A handwritten signature in cursive script that reads "Mallory Levitt".

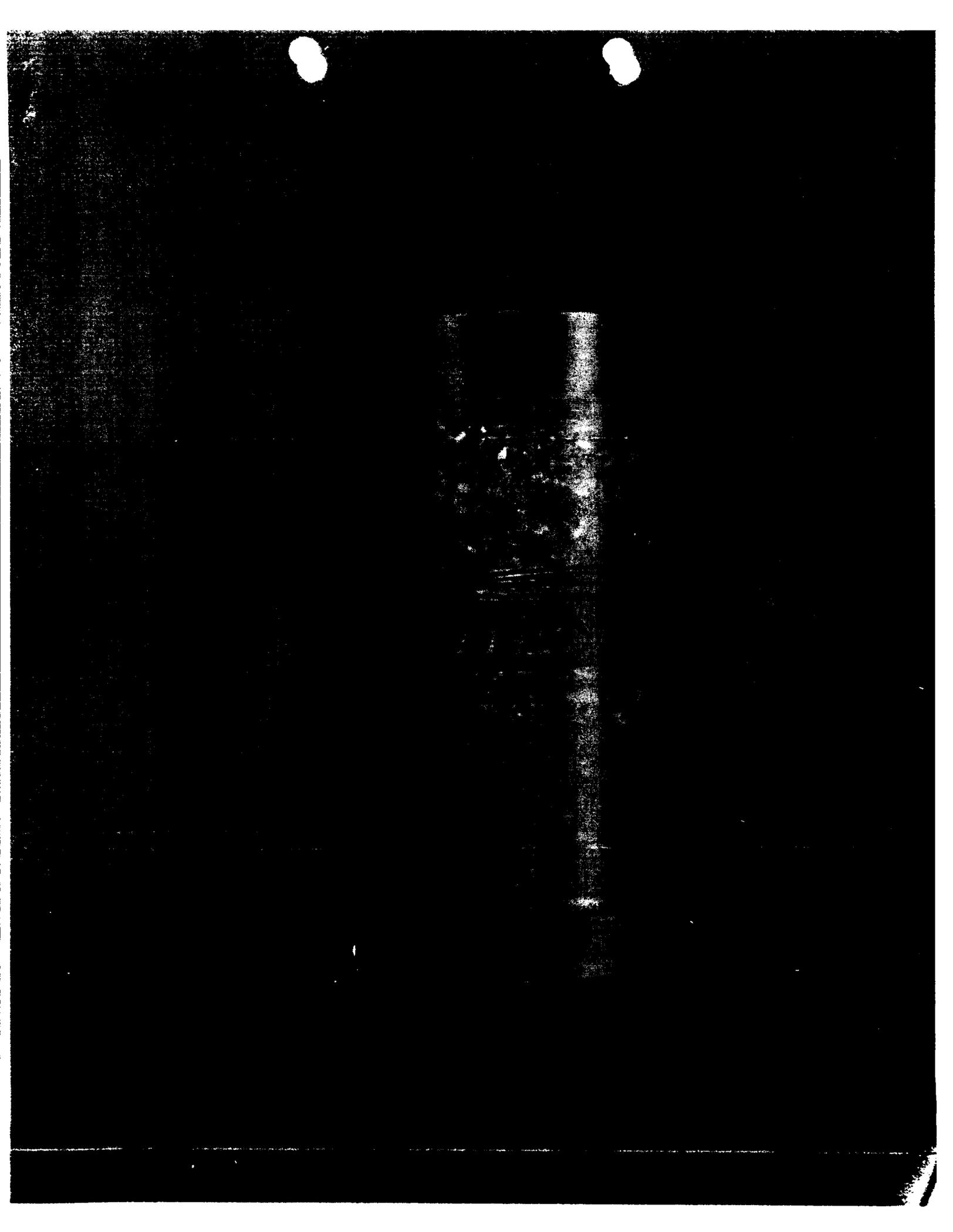
Mallory Levitt

Encl.



AMOUNT'S KINGS DOMINI

**HYPERSONIC**  
LAUNCH COASTER **XL**





# **HYPERSOUNIC**

**XTREME LAUNCH COASTER**

# **XLC**

**PARAMOUNT'S KINGS DOMINION**

# **HYPERSO<sup>TM</sup>IC**

**HYPERSONIC BRAND PRODUCTS & SERVICES SINCE 1981**

P.O. Box 35189

Chicago, IL 60707-0189

773 283-3880 FAX 708/453-0083

Web site [www.rentamark.com](http://www.rentamark.com)

## **THIS IS FOR SETTLEMENT PURPOSES ONLY HAVING NO EVIDENTIARY VALUE**

April 5, 2001

Mallory Levitt  
Viacom  
1515 Broadway  
New York, NY 18036

### **HYPERSONIC v. HYPERSONIC**

Dear Ms. Levitt,

In Re: **SETTLEMENT PROPOSAL:**

Central Mfg. Co. vs. Paramount Park Inc.

Application SN: 76-138,159 TM: HYPERSONIC XLC XTREME LAUNCH COASTER  
Application SN: 76-138,156 TM: HYPERSONIC XLC XTREME LAUNCH COASTER  
Application SN: 76-103,447 TM: HYPERSONIC  
Application SN: 76-138,161 TM: HYPERSONIC XLC XTREME LAUNCH COASTER  
Application SN: 76-138,160 TM: HYPERSONIC XLC XTREME LAUNCH COASTER  
Application SN: 76-138,150 TM: HYPERSONIC XLC XTREME LAUNCH COASTER  
Application SN: 76-103,448 TM: HYPERSONIC

Thank you for your quick response to our cease and desist letter. We have read your letter (brief) with considerable interest. You cite a lot of cases and appear to know the trademark law as it relates to likelihood of confusion.

However, as you are well aware, in this the 21st Century, there are no well known trademarks that are available, that have not already been registered or belong to other third parties, as in the case at bar.

Secondly, Ms. Levitt, you are also well aware that if a trademark holder is not willing to step up to the plate to police its property, it will have no intellectual property to police.

It is our position in this case that our mark HYPERSONIC is a well known incontestable

trademark, that has clear *acquired secondary meaning*. It is further our position that we not only claim rights to an incontestable HYPERSONIC trademark Reg. No. 1,593,157, but we also hold common law rights to the mark HYPERSONIC on a broad range of goods and services similar to the type that your client's mark is used for.

Thirdly, it is our position, that the types of goods and services, that we are marketing under our HYPERSONIC trademark our marketed to the same type of customers that will be visiting Paramount Parks, Inc. and purchasing your client's HYPERSONIC goods. Notwithstanding our claims that likelihood of confusion may exist between your client's use of the mark HYPERSONIC and our HYPERSONIC mark, there are good business reasons any District Court Judge will suggest for parties to resolve their trademark controversies amicably.

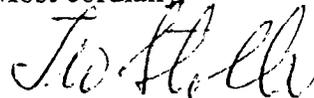
In response to your suggestion that there are other third parties who may be using the mark HYPERSONIC, is no defense against your client's alleged, unauthorized use of the HYPERSONIC mark, as well known to you.

Thus, we are proposing the following three settlement proposals that would settle this matter without the need for Court intervention.

Please advise which of the attached proposals your client may be interested in.

If you have any questions, please call.

Most cordially,



Leo Stoller, President

Attachments

## 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](http://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](mailto:info@rentamark.com)**

**See our list of other famous brands available for  
licensing at [www.rentamark.com](http://www.rentamark.com)  
Contact us about representing and licensing your brand**

## **PROTECT YOUR COMPANY'S ASSETS WITH A RENTAMARK® BRAND TRADEMARK LICENSE**

Pick the wrong name for your new product or service and you stand to LOSE BIG TIME! That's what lots of companies learn when they find themselves on the wrong side of a trademark infringement action. Over \$2 billion was spent last year in litigation and legal expenses due to **misuse of trademarks**. And it's not only the Fortune 500 firms who get hurt. It's the small to mid-size companies with little experience in trademark law, who often don't find out until an attorney sends a warning letter to "cease and desist" or you get served with a Federal Trademark infringement lawsuit.

Any company can pay hundreds of thousands of dollars in legal expenses fighting an infringement suit with no guarantee of success. If you lose, you'll not only have to rename your product, reprint all the sales literature, and redo the advertising, you'll also **suffer a major loss** of credibility with your customers ..... and possibly owe treble damages to the winner and attorneys' fees. For many, the enormous legal expenses of defending a trademark dispute can literally mean the END OF YOUR BUSINESS.

Now you can protect your business with a **RENTAMARK®** famous brand trademark license agreement. Merely choose a **RENTAMARK®** brand famous trademark for use on your product or service and allow **RENTAMARK®** to police and protect the trademark.

Some of our famous brand names include, but are not limited to:

***SENTRA®***  
***STEALTH®***  
***DARK STAR®***  
***TERMINATOR®***  
***AIRFRAME®***  
***HYPERSONIC®***  
***NIGHT STALKER®***  
***STRADIVARIUS®***  
***TRILLIUM®***

Visit our website at: **WWW.RENTAMARK.COM**

# ***HYPERSONIC***

***HYPERSONIC BRAND PRODUCTS & SERVICES SINCE 1981***

P.O. Box 35189, Chicago, IL 60707-0189

VOICE 773/283-3880 \* FAX 708/453-0083 \* WEB PAGE: [www.rentamark.com](http://www.rentamark.com)

## **FOR SETTLEMENT PURPOSES ONLY HAVING NO EVIDENTIARY VALUE**

July 24, 2001

Mallory Levitt  
VIACOM INC.  
1515 Broadway  
New York, NY 10036-5794  
Phone: (212) 258-6784  
Fax: (212) 846-1428

**Re: Paramount Parks, Inc., HYPERSOINIC  
Application Numbers: 76-103,447 and 76-103,448**

Dear Ms. Levitt:

We are writing to inform you that we have filed requests to file a Notice of Extension to Oppose. Paramount Parks trademark applications 76-103,447 and 76-103,448.

As you are fully aware, we hold rights to the mark HYPERSOINIC, registration no. 1,595,157 for a broad range of closely related goods. We also hold common law rights to the mark HYPERSOINIC on numerous other goods and services which we will rely upon to defeat PARAMOUNT PARK'S applications for the mark HYPERSOINIC at the Trademark Trial & Appeal Board.

Nonetheless, we view the controversy that exists as between the parties as a registerability controversy which will be resolved by the Trademark Trial and Appeal Board. The record in this case should be clear; we are not threatening Viacom or its subsidiary, Paramount Parks, Inc., with any District Court action. We are not threatening any of Viacom or Paramount Parks' customers with any District Court action. Consequently, we are not going to file nor are we threatening to file a District Court case against Viacom and/or Paramount Parks.

We have until August 20, 2001, to file our Notice of Oppositions to the said applications, 76-103,447 and 76-103,448. The Board encourages parties to resolve registerability conflicts in order to avoid long and contentious oppositions proceedings. You will recall that we previously engaged, and successfully opposed another subsidiary of Viacom's seven trademark applications for the mark STEALTH FORCE over a five year period. In order to resolve the

current registerability conflict regarding Viacom's attempt to register the HYPERSONIC mark, we are proposing two settlement proposals which would applicably resolve the registerability controversy as between the parties, avoiding a long and contentious and costly opposition proceeding; please find attached.

On the other hand, if Paramount Parks, Inc. would merely file an Express Abandonment with prejudice of it's applications, bearing the mark HYPERSONIC, we will consider this registerability conflict resolved.

Most Cordially,

A handwritten signature in cursive script, appearing to read "Leo Stoller".

Leo Stoller

KAY COLLYER & BOOSE LLP  
ONE DAG HAMMARSKJOLD PLAZA  
NEW YORK, N.Y. 10017-2299  
(212) 940-8200

TELECOPIER: (212) 755-0921

WRITER'S DIRECT DIAL NUMBER

August 6, 2001

VIA FAX (708) 453-0083  
and CERTIFIED MAIL

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

Re: HYPERSONIC

Dear Mr. Stoller:

We write as counsel to Paramount Parks Inc. ("Paramount"), a division of Viacom International Inc., in response to your letter of July 24, 2001 to Mallory Levitt, regarding Paramount's trademark applications Nos. 76-103447 and 76-103448. As a preliminary matter, we reiterate, as requested in the letter of Marcia B. Paul of this office dated April 25, 2001, that you communicate with our client regarding the above-referenced mark through this firm.

As to the substance of your letter, as we have previously advised, Paramount rejects your frivolous claims and extortionate settlement demands. We find it frankly astonishing that after our very clear statements in this regard, you continue to waste your own time and that of our client by forwarding settlement proposals for Paramount's review. We restate Paramount's position:

Paramount respects the intellectual property rights of others and vigilantly acts to police and protect its own marks. But it will not pay someone whose rights have not and could not be violated, simply to avoid litigation. For this reason, be advised that *Paramount will not entertain any settlement proposals regarding, nor will it negotiate for settlement of any dispute over, the Marks,*

Leo Stoller  
August 6 2001  
Page 2

*unless ordered to do so by a court or other  
legal authority.*

The foregoing is written without prejudice to or waiver  
of all of our client's rights in and to the premises, all of which  
are expressly reserved.

Sincerely yours,



Lance Koonce

MBP/lp

cc: Michelena Hallie, Esq.  
Mallory Levitt, Esq.

TTAB

TTAB

Facsimile Transmittal

Date: SEPT 28 2004  
To: ANGELA LYKOS  
From: LEO STOLLER  
Subject: copy of Motion To Amend  
No. of Pages: opp 91123765

(including this one)

MS LYKOS

PLEASE FIND copy of opposers  
Motion To Amend and Amended  
NOTICE of opposition as per  
Your Request.

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Email: info2rentamark.com



09-30-2004

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