

TTAB

LAWYERS



# Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

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April 6, 2005

## Via Fax and U.S. Postal Express Mail

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

**Re: Central Mfg. Co. v. Paramount Parks Inc.,  
Trademark Trial and Appeal Board Opposition No. 91123765**

Dear Mr. Stoller:

I have received your letter of March 30, 2005 and the attached "covenant not to sue," as well as the recent motion to compel filed with the TTAB. I find the letter and attachment, as well as the motion, somewhat perplexing given our last conversation. As you know, I placed a call to you last week after Central served three deposition notices on Paramount. The purpose of my call was to determine whether you intend to press forward with litigation, or to continue the settlement discussions that you initiated last November.

During our telephone conversation, you agreed to respond to Paramount Parks' settlement proposal with language to address a specific concern you indicated was problematic for Central. Instead, you forwarded a "covenant not to sue" that differs substantially from the last settlement agreement draft that has been in your possession for five months. It also contains a provision for payment of \$25,000 by Paramount Parks, which is quite remarkable in light of the fact that it was Central that sought this settlement, and proposed it as a walk-away. Paramount Parks categorically will *not* make any payment as part of a settlement of this matter. Please let me know as soon as possible whether this term was added in error or whether Central insists on its inclusion. If the former, I will then forward a counter-proposal; if the latter, we can consider settlement discussions terminated.



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W

With respect to the notices of deposition, both your letter and motion papers seriously mischaracterize our conversation, as I am sure you aware. Rather than address those mischaracterizations here, I attach a copy of Paramount's response to Central's motion to compel, which we are filing with the Board today and serving on Central by Express Mail.

Very truly yours,



Lance Koonce

LK/lp

cc: Mallory D. Levitt, Esq. (via fax)

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

**In The Matter of Application Serial Nos. 76/103,447 and 76/103448  
Published In The Official Gazette of May 22, 2001  
and April 24, 2001, Respectively**

**Mark: HYPERSONIC**

-----X

**Central Mfg. Co.,** :

**Opposer,** : **Opposition No. 123,765**

**- against-** :

**Paramount Parks Inc.,** :

**Applicant.** :

-----X

**OPPOSITION TO MOTION TO COMPEL AND  
REQUEST FOR TELEPHONIC CONFERENCE**

Applicant Paramount Parks Inc. ("Paramount") hereby submits its opposition to the Motion of Opposer Central Mfg. Co. ("Central") to compel the deposition of witnesses identified in deposition notices served by Central on March 25, 2005,<sup>1</sup> noticing discovery depositions for April 28, 2005 (the "Notices").

Opposer's motion is both unfounded and moot. Contrary to the recitation in Opposer's motion papers, Paramount's counsel and Leo Stoller did not conduct a telephone conference on

March 30, 2005 to resolve a discovery dispute. *See* Affidavit of Lacy H. Koonce, III, sworn to April 6, 2005, ¶ 3-4. Rather, after receiving the Notices, counsel for Paramount contacted Stoller to inquire as to the status of a settlement proposal that had been forwarded to Central, at Central's request, in November 2004. *Id.*, ¶ 3. During that conversation, counsel for Paramount did not state that Paramount refused to produce the requested witnesses, but rather indicated that Paramount would provide a response and/or objections to Central as to those Notices within a few days. *Id.*, ¶ 4. Before Paramount's counsel could investigate, consult with his client, and provide a response, Central brought the instant motion.

Paramount can now confirm the following. Neither the President/Chief Executive Officer nor the Chief Financial Officer of Paramount have any relevant knowledge or information with respect to the trademark applications or trademark use at issue in this litigation. *See* Affidavit of Al Weber, Jr., sworn to April 6, 2005, ¶ 3 (President and Chief Executive Officer); Affidavit of P. Michael Koontz, sworn to April 6, 2005, ¶ 3 (Chief Financial Officer). However, Paramount will make available for deposition a corporate representative with knowledge of these facts, on the date and at the location requested by Central.

Central's current blunderbuss deposition requests also appear to be but a tactic. In 2004, Central contacted Paramount with barely a week remaining before the close of discovery in 2004 to present a settlement proposal. Koonce Aff't, ¶ 3. Paramount agreed to engage in settlement discussions in good faith on the basis of this proposal, and also agreed, at Central's request, to briefly suspend the proceedings during the pendency of those discussions. *Id.*, ¶ 3. On December 6, 2004, the parties entered a stipulated request for suspension of the proceedings for one week

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until December 13, 2004, with a corresponding extension of the discovery deadline until December 20, 2004 (to reflect the very brief window for discovery still available when the parties entered into settlement discussions). The Board then suspended the proceedings for six months, subject to the right of either party to request resumption at any time. On December 30, 2004, in light of a long delay in settlement discussions without a response from Central, Paramount requested that the Board resume these proceedings. Koonce Aff't, ¶ 3. On March 15, 2005 the Board resumed the proceedings, but set new deadlines, effectively extending the discovery period for two additional months. Particularly given the blatant tactical nature of Opposer's notices of deposition of its President/Chief Executive Officer and Chief Financial Officer, Applicant also objects on the grounds that those notices constitute sheer harassment.

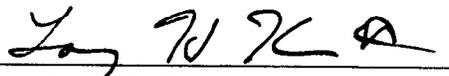
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Koonce Aff't, ¶ 3); the Board has ordered that such documents must be served by Express Mail in this proceeding.

To the extent any discovery dispute still exists, Paramount requests a telephonic conference with the Interlocutory Attorney to timely resolve the dispute, and respectfully requests that the Board not suspend proceedings again in response to any further motions by Central.

Dated: New York, New York  
April 6, 2005

DAVIS WRIGHT TREMAINE LLP



By: Lacy H. Koonce, III  
Attorney for Applicant Paramount Parks Inc.  
1633 Broadway  
New York, New York 10019  
(212) 489-8230

Attorneys for Applicant Paramount Parks, Inc.

TO:

Leo Stoller  
Central Manufacturing Co.  
P.O. Box 35189  
Chicago, IL 60707-0189

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	:	<b>Opposer,</b>
	:	<b>Opposition No. 123,765</b>
<b>- against-</b>	:	
<b>Paramount Parks Inc.,</b>	:	<b><u>AFFIDAVIT</u></b>
	:	<b>Applicant.</b>

-----X

**STATE OF NEW YORK            )**  
**): SS.:**  
**COUNTY OF NEW YORK        )**

LACY H. KOONCE, III, being duly sworn, deposes and says:

1. I am associated with the firm of Davis Wright Tremaine LLP, counsel to Paramount Parks Inc. ("Paramount"), Applicant in the above-captioned opposition. I have personal knowledge of the matters set forth herein.

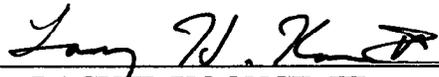
2. I submit this affidavit in opposition to Opposer Central Mfg. Co.'s ("Central") motion to compel dated April 5, 2005.

3. On March 29, 2005, after receiving notices of deposition served by Central by First Class U.S. Mail, I placed a telephone call to Central's President Leo Stoller. The purpose of this call was to confirm that Central was moving forward with this opposition proceeding, which was somewhat surprising, given that Central made a settlement proposal to Paramount in November 2004, shortly before the close of discovery in this proceeding. At that time, the parties agreed to a suspension of the proceedings during the pendency of settlement discussions and agreed to request that the Board allow one additional week for discovery should those negotiations fail, as that was the time remaining for discovery when Mr. Stoller made his request.

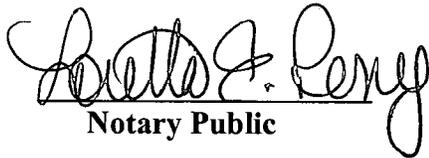
4. Despite receiving a prompt counterproposal from Paramount regarding settlement and promising to respond, Central never did so. Therefore, Paramount requested resumption of these proceedings.

5. During our conversation on March 29, 2005, Mr. Stoller and I also discussed the deposition notices he had just served. Although I indicated that I believed a corporate representative with knowledge of the relevant facts might be a more appropriate deponent than the corporate officers noticed by Central, I advised Mr. Stoller that I would consult with our client and get back to him within a few days as to whether and who Paramount would produce for deposition. I did not at any time indicate that Paramount refused to produce the requested witnesses. Since that conversation, Paramount has confirmed that its President/Chief Executive Officer and its Chief Financial Officer in fact possess no relevant knowledge, as set forth in the accompanying affidavits of

Al Weber, Jr. and P. Michael Koontz.

  
LACY H. KOONCE, III

Sworn to before me this  
6th day of April, 2005

  
Notary Public

LORETTA E. PERRY  
NOTARY PUBLIC, State of New York  
No. 24-4931617  
Qualified in Kings County  
Commission Expires August 1, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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: SS.:  
COUNTY OF MECKLENBERG )

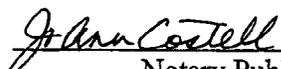
Al Weber, Jr., being duly sworn, deposes and says:

1. I am the President and Chief Executive Officer of Paramount Parks Inc. ("Paramount"), Applicant in the above-captioned opposition. I have personal knowledge of the matters set forth herein.
2. I submit this affidavit in support of Applicant's opposition to the motion to compel discovery depositions, propounded by Opposer Central Mfg. Co., dated April 5, 2005.
3. I understand that Opposer now seeks my deposition in connection with this opposition proceeding; however, I have no knowledge or information of the trademark applications that are the subject of this opposition, or of the trademark use by Paramount of the mark

HYPERSONIC, other than the fact that Paramount operates a theme park ride in Virginia called Hypersonic XLC Xtreme Launch Coaster.

  
Al Weber, Jr

Subscribed and sworn to before me  
this 6<sup>th</sup> day of April, 2005

  
Notary Public

*My commission expires 9/4/2005*



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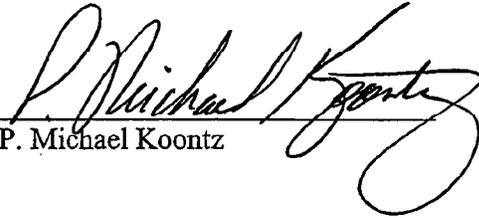
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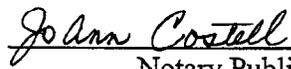
P. Michael Koontz, being duly sworn, deposes and says:

1. I am the Chief Financial Officer of Paramount Parks Inc. ("Paramount"), Applicant in the above-captioned opposition. I have personal knowledge of the matters set forth herein.
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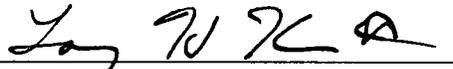
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Dated: New York, New York  
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DAVIS WRIGHT TREMAINE LLP



By: Lacy H. Koonce, III

Attorney for Applicant Paramount Parks Inc.  
1633 Broadway  
New York, New York 10019  
(212) 489-8230

Attorneys for Applicant Paramount Parks, Inc.

TO:

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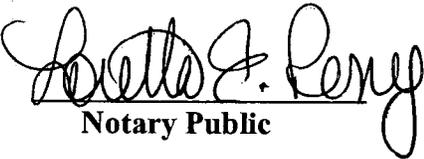
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6th day of April, 2005

  
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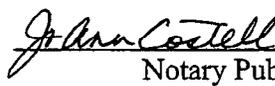
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Notary Public

*My commission expires 9/4/2005*



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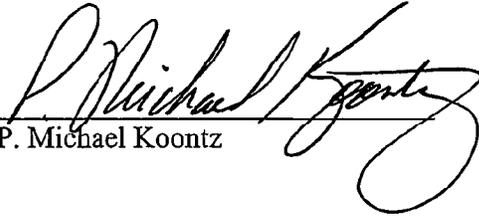
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Notary Public

*my commission expires: 9/4/2005*



AFFIDAVIT OF SERVICE

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

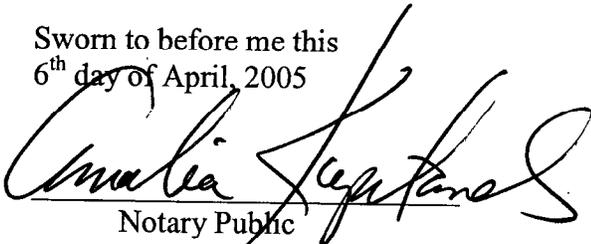
I, LORETTA E. PERRY, being sworn, say: I am not a party to the action, am over 18 years of age and reside in Kings County.

On April 6, 2005 I served the within Opposition To Motion To Compel And Request For Telephonic Conference; Affidavit of Al Weber, Jr.; Affidavit of Lacy H. Koonce, and Affidavit of P. Michael Konntz by depositing a true and complete copy of same enclosed in a pre-paid United States Postal Service Express Mail # EV 418684139 US Next Day Delivery Service wrapper in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to:

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

  
LORETTA E. PERRY

Sworn to before me this  
6<sup>th</sup> day of April, 2005

  
Notary Public

AMALIA KAPITANELIS  
Notary Public, State of New York  
31-4621757  
Qualified in New York County  
Term Expires June 30, 2006