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

In the Matter of Application Serial No.: 76/295,515  
Published in the Official Gazette of June 18, 2002

<p>UNIVERSAL CITY STUDIOS, INC.,</p> <p style="text-align: center;">Opposer,</p> <p style="text-align: center;">VS.</p> <p>VALEN BROST,</p> <p style="text-align: center;">Applicant.</p>	<p style="text-align: center;">Opposition No. 153,683</p> <p style="text-align: center;">CERTIFICATE OF MAILING</p> <p>I hereby certify that on April 14, 2003, this paper is being deposited with the U. S. Postal Service by "Express Mail Post Office to Addressee" service with Express Mail Label No. EL 557578381US for delivery to the Commissioner for Trademarks, Box TTAB, NO FEE, 2900 Crystal Drive, Arlington, VA 22202-3513</p> <p style="text-align: center;"><i>Kathy Mercado</i> Kathy Mercado</p>
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U.S. Patent & TMOrc/TM Mail Rcpt Dt. #39

**OPPOSITION TO MOTION FOR ORDER SUBSTITUTING UNIVERSAL CITY STUDIOS, LLLP, AS SUCCESSOR-IN-INTEREST TO UNIVERSAL STUDIOS INC. BY CONVERSION AND CHANGE OF NAME, AS PLAINTIFF**

Universal City Studios, Inc.'s ("Universal") request to substitute Universal City Studios, LLLP ("Universal, LLLP") as the party Plaintiff in this action is not proper pursuant to Rule 25(c) of the Federal Rules of Civil Procedure. A substitution under these circumstances is not justified since the transfer of interest from Universal to Universal, LLLP occurred prior to the commencement of this Opposition and the extension of time upon which it is based.

A successor-in-interest may be substituted when a transfer of interest occurs during the pendency of litigation. Fed.R.Civ.Pr. 25(c). However, a substitution may not occur when the transfer of interest arose prior to the initiation of the proceeding. *SDT, Inc. v. Patterson Dental Co.*, 30 USPQ2d 1707 (1994 TTAB); *Horphag Research Ltd. v. Consac Industries, Inc.*, 116 F.3d 1450, 1453 (Fed. Cir. 1997); *Andrews v. Lakeshore Rehabilitation Hosp.*, 140 F.3d 1405, 1407 (11<sup>th</sup> Cir. 1998); *Mizukami v. Buras*, 419 F.2d 1319, 1320 (5<sup>th</sup> Cir. 1969).

The execution of the transfer of interests from Universal to Universal, LLLP apparently occurred on May 2, 2002 as noted on the endorsed certificates of conversion, which was well before the Opposer filed its request for an extension of time to oppose on July 25, 2002. Since this

Opposition was commenced on December 12, 2002, seven months after the certificates of conversion were executed, a substitution would be inappropriate since the transfer of interest took place prior to both filings.

In addition, included with the attachments to Opposer's Motion are single pages entitled "Continuation of Information" that reflect undated conveyances involving other entities not parties to this proceeding. These pages, without authentication, are inadmissible as evidence. *See Standard Oil Corp. v. Somers Construction*, 715 F.Supp. 121, 122 (E.D. Pa. 1980). Moreover, they bring into question what transfer(s) of interest may have occurred, which parties were involved in the transfer(s), and whether trademark rights were included as part of the transfers reflected therein. These matters will have to be the subject of some discovery

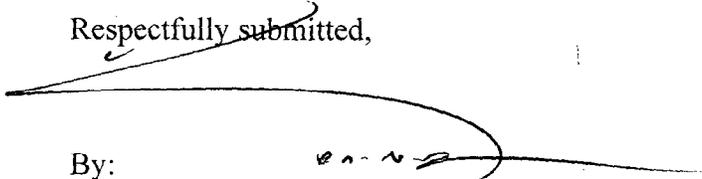
Since both Universal and Universal, LLLP obviously had knowledge of the transfer of interests prior to requesting the extension and the filing of the Opposition, it would be inappropriate pursuant to Rule 25(c) of the Federal Rules of Civil Procedure to now permit a substitution of the party, or at the very least an extension of time to conduct discovery into these issues.

### CONCLUSION

Applicant respectfully requests a denial of Universal's Motion for substitution of the Opposer since the transfer of interests occurred prior to a request for an extension of time and the initiation of the Opposition, or at the very least an extension of time to conduct discovery into these issues.

Dated: April 14<sup>th</sup>, 2003

Respectfully submitted,

By: 

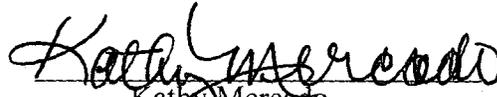
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2003, I served the foregoing **Opposition for Order Substituting Universal City Studios, LLLP. as Successor-in-Interest to Universal Studios Inc. by Conversion and Change of Name, as Plaintiff**, on the applicant by mailing a true copy thereof by first class mail, postage prepaid, addressed to Opposer's counsel as follows:

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Dated this 14 day of April, 2003.

  
Kathy Mercado