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

Proceeding	92045778
Party	Defendant GOOGLE INC. GOOGLE INC. Google 1600 Amphitheatre Parkway Building 41 Mountain View, CA 94043
Correspondence Address	GOOGLE INC. Google 1600 Amphitheatre Parkway Bldg 41 Mountain View, CA 94043
Submission	Other Motions/Papers
Filer's Name	Michael T. Zeller
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Signature	/Michael T. Zeller/
Date	07/24/2006
Attachments	Motion to Dismiss Cancellation.pdf (79 pages)(2325818 bytes)

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

In the Matter of:

Registration No. 2806075
For the Mark: GOOGLE
Publication Date: December 4, 2001

Cancellation No. 92045778

CENTRAL MFG. CO. (INC.),

Petitioner,

v.

GOOGLE INC.,

Respondent.

REGISTRANT/RESPONDENT
GOOGLE INC.'S MOTION TO
DISMISS BASED UPON
PRECLUSIVE EFFECT OF THE
BOARD'S JULY 14, 2006
SANCTIONS ORDER

Commissioner of Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451

Registrant and Respondent Google Inc. ("Registrant") respectfully moves the Board to dismiss this proceeding based upon the binding factual findings made by the Board's Order of July 14, 2006. In support thereof, Registrant states as follows.

Preliminary Statement

As the Board is aware, it imposed sanctions against Leo Stoller, the principal of the alleged Petitioner here, by Order dated July 14, 2006 (the "Sanctions Order").¹ Among its factual findings, the Sanctions Order concluded that neither Stoller nor his purported entities had a colorable basis for a belief that they would be damaged by registration of any of the marks that were the subject of the some 1800 applications for which they had filed requests for extension of time to oppose between November 2005 and July 2006. The Board further found that their claims to have proprietary rights in the marks that they had asserted in connection with those requests were "baseless" and unsupported by any evidence of use.

Under the doctrine of collateral estoppel (or issue preclusion), those findings apply against Petitioner with equal force in this proceeding and dictate its dismissal. One of Stoller's extensions of time that was the subject of the Board's Sanctions Order was to oppose an application for registration filed by Registrant for the GOOGLE mark. Petitioner subsequently filed a Notice of Opposition against that application. As Petitioner itself has claimed, Petitioner relies in this proceeding on the same alleged common law rights to "Google" that it asserts in the Opposition proceeding. The Board's findings that Petitioner has no colorable claim for a belief of damage and has no basis for claiming any proprietary rights accordingly apply to -- and defeat -- Petitioner's alleged standing here as well. This proceeding should be dismissed as a result.

¹ A copy of the July 14, 2006 Sanctions Order is attached as Exhibit 1 to the Declaration of Michael T. Zeller, dated July 24, 2006 and filed herewith ("Zeller Dec.").

Background

A. The Board's July 14, 2006 Sanctions Order.

The Sanctions Order was the result of a March 28, 2006 Show Cause Order (the "OSC"). The OSC noted that Stoller and purported entities he controls had "filed more than 1100 requests for extension of time to file notices of opposition between November 2005 and March 2006" and also referenced their "pattern of misconduct and abuse of the TTAB's processes" over the course of "many years."² Thus, the OSC directed Stoller to provide "for *each* of the marks for which you requested an extension of time to file an opposition, evidence that supports a claim that you may be damaged by registration of the mark" and to "demonstrate that the extension requests were not filed for improper purposes but, instead, were based on cognizable rights you may have arising under the Trademark Act."³ Even after the OSC was issued, Stoller and his purported companies "filed requests for extension of time to oppose against more than 400 additional applications, bringing the total since November 2005 to over 1800."⁴

As the Sanctions Order found, however, Stoller's response to the OSC did not provide any of the proof that the law required and that the Board had mandated:

"Your submissions do not substantiate your rights in *any* of the claimed marks, let alone support a colorable claim of damage. . . . You submitted no evidence of products or services bearing these alleged marks, no evidence that you have sold any products or services under these marks, and no evidence of your advertising of goods or services with these marks."⁵

Indeed, as the Board observed, the evidence Stoller did submit in response to the OSC only served to "reinforce the conclusion that you are holding up thousands of applications in an

² Id., at pages 1-2.

³ Id., at pages 2-3, 9 (emphasis added).

⁴ Id., at page 5.

⁵ Id., at page 9 (emphasis added).

attempt to coerce applicants to license, i.e., 'rent,' trademarks to which you have not demonstrated any proprietary right."⁶

The Board thus found in the Sanctions Order that Stoller (1) lacked "a colorable claim of damage justifying the extension requests filed during the period in question" and (2) had "filed the extension requests for improper purposes, namely, to harass the applicants to pay you to avoid litigation or to license one of the marks in which you assert a baseless claim of rights."⁷ For those violations, which were deemed to constitute "egregious" misconduct, the Board imposed an array of sanctions.⁸

B. Opposition No. 91170256.

On March 1, 2006, Petitioner filed Opposition No. 91170256 (the "Opposition") against Registrant's Application S/N 76314811 for the GOOGLE mark for various goods and services (the "Application"). The Opposition was the result of a request for an extension of time to oppose the Application that Stoller had filed on November 27, 2005⁹ and that is therefore among the requests that are the subject of the OSC and the Sanctions Order (*i.e.*, the requests for extension of time Petitioner had filed between November 2005 and July 2006).¹⁰

Petitioner's request also was part of its scheme of making claims of right -- claims found to be "baseless" by the Board in the Sanctions Order -- to many hundreds of marks that included

⁶ Id., at pages 9-10.

⁷ Id., at page 11-12.

⁸ Id., at pages 12-13. These sanctions against Stoller included vacating "each request for extension of time to oppose" he had filed between November 2005 and July 2006; prohibiting him or any attorney on his behalf from filing requests for extension of time for two years; and permanently prohibiting him from appearing before the Board for purposes of filing any requests for extension of time.

⁹ Id., Exh. 3.

¹⁰ As shown in Petitioner's Motion to Dismiss dated July 24, 2006 and filed in the Opposition, the Sanctions Order by its terms requires dismissal of the Opposition proceeding. Id., Exh. 2.

GOOGLE. In the instant case, simultaneously with the request for an extension of time, Stoller began threatening legal proceedings unless Registrant either paid him at least \$100,000 or else "surrender[ed]" to him its rights in the GOOGLE mark. As his first communication to Registrant, Stoller sent a November 29, 2005 letter -- on the letterhead of a supposed entity called "GOOGLE BRAND LICENSING AND PRODUCTS" -- that alleged he and his purported entities "hold common law rights" in GOOGLE and "have been using the similar mark GOOGLE for many years prior to" Registrant's use.¹¹ The letter's attachments reiterated this assertion of rights in "Google" and even claimed to own a federal registration for the mark.¹²

Neither Stoller nor his alleged companies owns any such federal registration. Stoller also refused Registrant's requests that he provide evidence (or even explanation) supporting his claim that he or any of his entities owns supposed common law rights in "Google."¹³

C. This Cancellation Proceeding.

Not content with only harassing Registrant with the Opposition in its gambit to extract money, Petitioner brought this Cancellation proceeding, which was instituted on May 8, 2006. The Registration at issue is No. 2806075 for GOOGLE for specified goods and services in International Classes 38 and 42. As its basis for its alleged standing in this Cancellation proceeding, Petitioner has claimed that it owns "Common Law rights in and to the mark GOOGLE."¹⁴ Also according to Petitioner, these purported common law rights to "Google"

¹¹ Id., Exh. 4.

¹² Numerous attachments to that letter Petitioner purported to indicate that its rights were the subject of registrations, including in their titles such as: "Why Obtain A GOOGLE® License...", "GOOGLE® Licensing Program Licensee Requirements," "GOOGLE® Licensing Program," and "Licensing GOOGLE® Enables You To...". Id. (ellipses in original).

¹³ Id., ¶ 6 & Exhs. 5, 6.

¹⁴ Petition for Cancellation, ¶ 4.

which it relies upon in this Cancellation proceeding *are the same rights* it is relying on in the Opposition.¹⁵ Although Petitioner additionally had alleged in its Petition for Cancellation (like it had in its correspondence to Registrant) that it "holds Common Law rights in and to the mark GOOGLE...and offers the mark GOOGLE for trademark license to third parties,"¹⁶ it was later forced to withdraw those obviously false assertions.¹⁷

Argument

THIS CANCELLATION PROCEEDING SHOULD BE DISMISSED ON ISSUE PRECLUSION GROUNDS.

The Sanction Order's factual findings warrant dismissal of this proceeding for lack of standing. The Sanctions Order found that, despite the OSC's mandate that Stoller submit supporting evidence to the Board with respect to "*each* of the marks for which you requested an

¹⁵ Petitioner's Motion to Consolidate, dated May 11, 2006, at page 1 (claiming "the same mark" is involved in both the Opposition and this Cancellation proceeding); see also Petition for Cancellation, at ¶ 3 (relying on the Opposition for alleged standing in this proceeding).

¹⁶ Petition for Cancellation, at page 5.

¹⁷ After Petitioner filed this proceeding, it became even more evident -- and has now been confirmed by the Sanctions Order -- that Petitioner's assertion of common law rights was false as well. In an apparent recognition that those claims of common law rights would indeed be revealed as fabricated and in an effort to drag out this proceeding longer for its harassment value, Petitioner then filed an ITU application for GOOGLE for a multitude of goods. However, the application cannot cure Petitioner's lack of standing as established by the factual findings set forth in the Sanctions Order. Among other things, it is elementary that a party must have standing *at the time of the commencement of a proceeding*. Friends of the Earth, Inc. v. Laidlaw Env. Servs. (TOC), Inc., 528 U.S. 167, 170 (2000) (standing "must exist at the commencement of the litigation."); Aspex Eyewear Inc. v. Miracle Optics Inc., 77 U.S.P.Q.2d 1456, 1458 (Fed. Cir. 2006) ("a party's standing to sue must exist at the time an original complaint is filed"); Perry v. Village of Arlington Heights, 186 F.3d 826, 830 (7th Cir. 1999) ("It is not enough for [plaintiff] to attempt to satisfy the requirements of standing as the case progresses. The requirements of standing must be satisfied from the outset[.]"). Because its supposed ITU application was filed more than a month after commencement of this Cancellation proceeding, Petitioner cannot evade the findings in the Sanctions Order or concoct standing based on its belated ITU application.

extension of time," Stoller and his purported entities had no proof to substantiate "rights in any of the claimed marks, let alone support a colorable claim of damage." Indeed, Stoller supplied to the Board "no evidence of products or services bearing these alleged marks, no evidence that you have sold any products or services under these marks, and no evidence of your advertising of goods or services with these marks." (Emphasis added.) The Board deemed entirely "baseless" Stoller and his entities' claims of proprietary rights in the purported marks underlying the extensions of time to oppose -- a finding which indisputably includes their claims with respect to the GOOGLE mark at issue in the Opposition.

Under the doctrine of issue preclusion (collateral estoppel), these factual findings that Stoller and Petitioner have no reasonable belief of damage and no proprietary rights are binding on them in this proceeding. 15 U.S.C. § 1069; Jet, Inc. v. Sewage Aeration Sys., 223 F.3d 1360, 1366 (Fed. Cir. 2000) (setting forth elements for application of issue preclusion); Larami Corp. v. Talk To Me Programs, Inc., 36 U.S.P.Q.2d 1840, 1843-1844 (T.T.A.B. 1995) (same); see also Montana v. United States, 440 U.S. 147, 153-154 (1979) ("To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.").¹⁸ Here, the

¹⁸ In an attempt to delay the dismissal based upon the Sanction Order's findings, Petitioner might seek to argue that the Order of June 15, 2006 suspending this proceeding bars the filing of this motion. Such a contention would be unavailing. Indeed, it would constitute little more than a further effort by Petitioner to buy more time in its on-going campaign to harass Registrant to extort settlement money -- the very misconduct that the Sanctions Order condemned. Clearly, the purpose of the June 16 Order was not to hinder or countermand effectuation of the findings made in the subsequent Sanctions Order, but instead ultimately to preserve the resources of the Board and the parties. Because a dismissal would render moot no fewer than six motions that are currently pending in this litigation (and that are mostly the result of Petitioner's piecemeal,

issues were actually litigated in the prior sanctions proceeding, the parties against which the decision is asserted -- namely, Stoller and Petitioner -- had a full and fair opportunity to litigate them in the prior proceeding, and the determinations were necessary to the Board's Sanctions Order. See Jet, 223 F.3d at 1366.¹⁹

The issues in the sanctions proceeding are also the same as in this Cancellation proceeding. As the Board has determined, Stoller and Petitioner had no colorable basis for a belief that they would be damaged by registration of *any* of the involved marks. That finding encompasses the GOOGLE mark that is the subject of the Application in the Opposition proceeding and thus of the Registration in this proceeding. This alone defeats Petitioner's standing to maintain this proceeding. E.g., 15 U.S.C. § 1063(a) (requiring opposer have reasonable belief of damage); Ritchie v. Simpson, 170 F.3d 1092, 1095 (Fed. Cir. 1999) (to have standing, opposer "must have a 'real interest' in the proceedings and must have a 'reasonable' basis for his belief of damage.").

Furthermore, the Board concluded in the Sanctions Order that the assertions by Stoller and his supposed entities to hold proprietary rights in any of the involved marks were "baseless" and wholly unsupported by evidence of use. Because that finding necessarily includes the supposed common law "Google" mark which Petitioner relies on in this proceeding (as well as in the Opposition), it too requires dismissal of this proceeding for lack of standing. Indeed, as part

satellite motion practice), considering and disposing of this motion first would conserve the resources of the Board and thus be consistent with the purposes of that Order and the Sanctions Order and with the policies animating issue preclusion discussed in the text above.

¹⁹ Registrant need not have been a party to the sanctions proceeding, since a non-party may invoke issue preclusion offensively where the party against whom it is asserted had a full and fair opportunity to litigate the issue in the prior proceeding, as was the case here. Parklane Hosiery Co. v. Shore, 439 U.S. 322, 332-33 (1979); Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 332-33 (1971).

and parcel of Stoller's history of instituting abusive proceedings for the purpose of attempting "to harass the applicants to pay [him] to avoid litigation or to license one of the marks in which [he] assert[s] a baseless claim of rights" as he did here,²⁰ previous proceedings filed by Stoller and Petitioner also have been dismissed by the Board for lack of standing for precisely this same inability to prove any cognizable rights in their asserted marks. E.g., Stoller v. Ponce, 2004 WL 188197, at *6-7 (T.T.A.B. 2004) (citing Ritchie, 170 F.3d 1092), aff'd, 113 Fed. Appx. 403 (Fed. Cir. 2004) (opposition dismissed because opposer did not provide any admissible evidence to demonstrate standing); Central Mfg. Inc. v. Astec Indus., Inc., 2003 WL 22408336, at *10 (T.T.A.B. 2003) (opposition dismissed because opposer did not prove ownership of any of the pleaded registrations or common law rights in the mark at issue in order to establish standing); Stoller d/b/a Central Mfg. and Central Mfg. Co. v. Sutech U.S.A., Inc., 2005 WL 2985568, at *4 (T.T.A.B. 2005) (opposition dismissed because opposers did not establish "use of the pleaded marks nor ownership of any validly subsisting federal registrations" in order to demonstrate standing).

²⁰ See Zeller Dec., Exh. 1, at pages 11-12. As is beyond dispute and as detailed in the Sanctions Order, Petitioner here has a long rap sheet of misconduct and of threatening and pursuing frivolous legal proceedings based on false claims of trademark rights for the purpose of attempting to extract settlement money. See id., Exh. 1 at pages 1-2 & n.2, 12 n.10 (collecting cases); see also id. at pages 1-2 (referring to Stoller's "pattern of misconduct and abuse" in TTAB proceedings), page 10 (finding "a pattern of harassing behavior" by Stoller), page 12 (noting Stoller's "well-documented pattern of misconduct during many years of litigation before the TTAB and the courts"), & page 14 (referring to Stoller's "improper" and "bad faith conduct" in Board proceedings).

Conclusion

Accordingly, for each of the reasons set forth above, Registrant respectfully requests that the Board dismiss this cancellation proceeding with prejudice.

Respectfully submitted,

Dated: July 24, 2006

By: _____

Michael T. Zeller

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Los Angeles, California 90017

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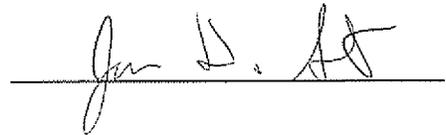
Facsimile: (213) 443-3100

*Attorneys for Registrant/Respondent
Google Inc.*

Proof of Service

I hereby certify that a true and complete copy of the foregoing Registrant/Respondent Google Inc.'s Motion to Dismiss Based Upon Preclusive Effect of the Board's July 14, 2006 Sanctions Order has been served on Petitioner Central Mfg. Co., (Inc.) by mailing said copy on July 24, 2006, via First Class Mail, postage prepaid to:

Leo Stoller
CENTRAL MFG. CO., (INC.)
7115 W. North Avenue #272
Oak Park, Illinois 60302

A handwritten signature in cursive script, appearing to read "Leo Stoller", is written over a horizontal line.

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

In the Matter of:

Registration No. 2806075
For the Mark: GOOGLE
Publication Date: December 4, 2001

Cancellation No. 92045778

CENTRAL MFG. CO. (INC.),

Petitioner,

v.

GOOGLE INC.,

Respondent.

**DECLARATION OF MICHAEL T.
ZELLER IN SUPPORT OF
REGISTRANT/RESPONDENT'S
REPLY IN FURTHER SUPPORT OF
ITS MOTION TO DISMISS BASED
UPON PRECLUSIVE EFFECT OF
THE BOARD'S JULY 14, 2006
SANCTIONS ORDER**

Commissioner of Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451

I, Michael T. Zeller, do hereby declare and state as follows:

1. I am a member of the State Bar of California, and am counsel for Google Inc. in these proceedings. I have personal knowledge of the facts stated herein and, if sworn as a witness, could and would testify competently thereto.

2. A true and correct copy of the Board's July 14, 2006 Order is attached hereto as Exhibit 1.

3. A true and correct copy of Google Inc.'s Motion to Dismiss Opposition Pursuant to the Board's Sanctions Order of July 14, 2006 in Opposition No. 91170256 is attached hereto as Exhibit 2.

4. A true and correct copy of Petitioner's Request for Extension of Time to Oppose Application Serial No. 76314811 is attached hereto as Exhibit 3.

5. True and correct copies of a letter from Leo Stoller to Registrant dated November 29, 2005, and its enclosures, are attached hereto as Exhibit 4.

6. Leo Stoller has refused Google Inc.'s requests that he provide evidence supporting his claim that he or any of his entities owns supposed common law rights in "Google." A true and correct copy of a letter sent to Leo Stoller dated January 26, 2006 is attached hereto as Exhibit 5.

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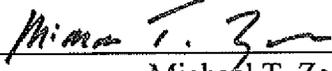
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7. A true and correct copy of a letter sent to Leo Stoller dated January 27, 2006 is attached hereto as Exhibit 6.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 24th day of July, 2006, at Los Angeles, California.



Michael T. Zeller

Proof of Service

I hereby certify that a true and complete copy of the foregoing Declaration of Michael T. Zeller in support of Registrant/Respondent Google Inc.'s Motion to Dismiss Based Upon Preclusive Effect of the Board's July 14, 2006 Sanctions Order has been served on Petitioner Central Mfg. Co., (Inc.) by mailing said copy on July 24, 2006, via First Class Mail, postage prepaid to:

Leo Stoller
CENTRAL MFG. CO., (INC.)
7115 W. North Avenue #272
Oak Park, Illinois 60302

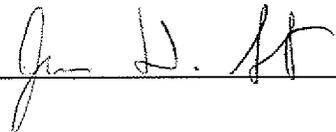


EXHIBIT 1

**UNITED STATES PATENT AND TRADEMARK
OFFICE**

Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

July 14, 2006

Leo Stoller
7115 W. North Avenue #272
Oak Park, Illinois 60302

Dear Mr. Stoller:

By order dated March 28, 2006, you were informed that the United States Patent and Trademark Office (USPTO) was considering imposing sanctions against you under 37 C.F.R. §10.18(c),¹ and you were allowed thirty days in which to show cause why sanctions should not be imposed. On April 26, 2006, after an extension of time to respond was granted, you filed your response to the order to show cause.

BACKGROUND

Summary of the March 28, 2006 show cause order

The show cause order noted that you and entities you control filed more than 1100 requests for extension of time to file notices of opposition between November 2005 and March 2006. The order noted, further, that the sheer number of such filings by one person is unprecedented and raises serious questions about whether the filings were undertaken for an improper purpose in violation of 37 C.F.R. § 10.18(b)(2), such as for harassment or unnecessary delay of the targeted applications.

The show cause order made reference to the numerous sanctions imposed on you, over many years, in past TTAB proceedings as evidence of your pattern of misconduct and abuse of the TTAB's

¹ The authority to impose sanctions under 37 C.F.R. §10.18(c) has been delegated to the Chief Administrative Trademark Judge from the General Counsel under authority delegated to him by the Under Secretary of Commerce and Director of the United States Patent and Trademark Office.

processes.² The show cause order alluded also to your conduct in Federal court proceedings that resulted in negative comment, chastisement, and the imposition of sanctions. In light of your well-documented history, it was concluded that you most likely had an improper purpose in filing such an extraordinary number of extensions of time to oppose.

You were instructed specifically that your response to the show cause order include, for each of the marks for which you requested an extension of time to file an opposition, evidence

² In particular, the following cases were cited in the show cause order: *S. Indus. v. Lamb-Weston, Inc.*, 45 USPQ2d 1293 (TTAB 1997) (submission of fraudulent certificate of mailing and certificate of service); *S Indus. v. S&W Sign Co.*, Opp. No. 91102907 (Dec. 16, 1999) (fraudulent allegations of ongoing settlement negotiations; allegations of non-receipt of papers found not credible); *Central Mfg. Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210 (TTAB 2001) (submission of false statements in order to secure extension of time to oppose); *S Indus., Inc. v. Casablanca Indus., Inc.*, Canc. No. 92024330 (Oct. 3, 2000) (dilatory tactics throughout proceeding); *Central Mfg., Inc. v. Flex-Coil Ltd.*, Opp. No. 91117069 (Feb. 19, 2002) ("opposer's representative has filed ... numerous papers [for] the sole purpose of harassing applicant, apparently until it capitulates"); *Bacu USA Safety, Inc. v. Central Mfg. Co.*, Canc. No. 92032631 (Jul 24, 2003) ("respondent has ... failed to show cause why sanctions should not be imposed on it for filing the groundless Rule 11 motion, [and] has ... compounded its wrong by filing a groundless motion for reconsideration"); *S Indus. v. JL Audio, Inc.*, Opp. No. 91110672 (May 13, 2003) (finding opposers' claim "without exception, completely devoid of merit"; opposers engaged in "a pattern of voluminous and piece-meal motion practice against which [they] were warned"); *Central Mfg. Co. V. Astec Indus., Inc.*, Opp. No. 91116821 (Sept. 3, 2003) (judgment entered against opposer for filing abusive Rule 11 motions); *Central Mfg. Co. V. Medtronic Sofamor Danek, Inc.*, Opp. Nos. 91154585, 91154617 (Feb. 19, 2004) (sanctions imposed for filing meritless motions for the purpose of harassment and delay); *Central Mfg. Co. v. Premium Prods. Co.*, Opp. No. 91159950 (Sep. 29, 2004) (sanctions granted for opposer's bad faith omission of date from metered mail); *Leo Stoller v. Northern Telepresence Corp.*, Opp. No. 91162195 (Feb. 11, 2005) (Board found that opposer had submitted untimely extensions of time to oppose notwithstanding use of certificates of mailing and declarations to the contrary; opposition dismissed); *Bacu USA Safety, Inc. v. S Indus., Inc.*, Opp. No. 91108769 (Aug. 14, 2002) ("applicant's pattern of behavior ... reveals a deliberate strategy of delay, evasion and harassment ..., implied threats to the Commissioner, and ... a direct violation of a Board order").

that supports a claim that you may be damaged by registration of the mark.

Finally, you were informed that the sanctions being considered included terminating or vacating any extension of time to oppose found to have been filed in violation of the applicable rules, restriction of your right to appear before the USPTO on your own behalf or as an officer, director, or partner of any entity you control, and/or restriction of your right to request extensions of time to oppose on behalf of yourself or any entity you control.

Summary of Response

Your four-page response, to which you attached many pages of exhibits, consists of quotations from the show cause order, citation to certain cases to which you were a party and in which no sanctions were imposed on you, coupled with a request that the USPTO not impose any sanctions based on your past practices before the TTAB and other tribunals, and general comments concerning your basis for filing the numerous requests for extensions of time to oppose, without mention of any particular request.

References to Other Proceedings

In asking that the USPTO not sanction you for your past conduct in TTAB cases and the cases in other tribunals, you point out that the Executive Committee for the federal judicial district of the Northern District of Illinois issued you a citation on December 15, 2005, allowing you time to show cause why "reasonable and necessary restraints" should not be imposed upon you in view of your activities in the lawsuits brought by you or your wholly-owned companies, before the Court. The Executive Committee quoted Judge Coar in *Central Mfg. Co. v. Brett*,³ 78 USPQ2d 1662, 1664 (N.D. Ill. 2005) as follows:

Indeed, as several judges (including this one) have previously noted, Stoller appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation ... Plaintiff and one or more of his corporate entities have been involved in at least 49 cases

³ The Executive Committee referenced the case as: Case No. 04 C 3049, *Stealth Ind. Inc. v. George Brett & Brett*.

in this district alone. Of these, at least 47 purport to involve trademark infringement ... No court has ever found infringement in any trademark allegedly held by Stoller or his related companies in any reported opinion.

You also noted that, after filing your response, the Executive Committee ruled, without further explanation, as follows:

The Executive Committee of the Northern District of Illinois has considered your response to the citation issued to you on December 15, 2005. After discussion, the Committee will take no further action in this matter.

You then referred to an order in *Leo Stoller d/b/a Central Mfg. Co. v. WFJM Enterprises, Inc.*, Opposition No. 91155814 (TTAB May 5, 2004), in which the TTAB denied, as premature, a motion to impose sanctions on you.

Finally, in asking that the USPTO not sanction you for your past conduct, you refer to the "*S Industries v. Genie Door*"⁴ case wherein the now Chief Judge of the Northern District of Illinois declined, eight years ago, to impose sanctions stating, in part, "the court, however, cannot base its decision to award fees on the plaintiff's conduct in other cases with other defendants."⁵

Comments Regarding Current Extension Requests

You assert that none of the extensions that you have filed on your own behalf or on behalf of entities you control was made for any improper purpose or for harassment or delay. The show cause order specifically required you to provide, for each of the marks for which you have requested an extension of time to oppose, evidence supporting a claim that you may be damaged by registration of the mark. In response, you assert that you have met the standard for filing an extension of time to oppose, because all such extension requests "are not based upon the potential opposer being damaged by a registration, but are based upon the potential opposer merely having an opportunity to

⁴ The copy of the order provided with your response did not include the caption of the case. It appears that the correct designation of the case is *S Industries, Inc. v. GMI Holdings, Inc.*, Case No. 96 C 2232 (N.D. Ill. 1998).

⁵ While the Court did not award fees to defendant (GMI), the Court did award costs to defendant.

investigate the facts, obtain documentation, and to enable the potential opposer to consider its position with regard to potential opposition of an application." You did not provide information regarding any specific steps you have taken with regard to any application for which you have obtained an extension of time to conduct such an investigation.

With respect to the requirement that you support your claim of damage, you state that, through entities which you control, you "hold rights to over 100 Federal Trademark Registrations" and hold "Common Law rights to several thousand trademarks and slogans which can be found at www.rentamark.com." You submitted, as exhibits, excerpts from the referenced website, including a "list of emarks" to which you claim rights. You state that, for each extension filed, you relied on common law rights to a trademark that was, in your opinion, confusingly similar to the applicant's mark.⁶

In requesting that you not be sanctioned, you ask that the USPTO merely give you "... some direction to keep Leo Stoller on a proper course..."

Activities Since Issuance of the Show Cause Order

Since the date of the show cause order, you have filed requests for extension of time to oppose against more than 400 additional applications, bringing the total since November 2005 to over 1800, as compared to only six you filed in the five-month period between June and October 2005. In particular, USPTO records show that during the past year you have filed requests for extension of time to oppose as follows:

June 2005	1
September 2005	3
October 2005	2
November 2005	47
December 2005	238

⁶ "For each of the extensions that Leo Stoller filed, Leo Stoller held Common Law rights to a trademark that was in Leo Stoller's opinion, confusingly similar to the potential opposer's mark." (Emphasis added.) It is assumed that your reference to "potential opposer's mark" was intended, rather, as a reference to the marks against which you filed the extension requests.

January 2006	188
February 2006	151
March 2006	717
April 2006	423
May 2006	63
Total	1,833

In your response to the show cause order, you stated that you had ceased filing extensions of time to oppose in those cases in which you would have relied on your alleged common law rights. It appears that you have done so.

Since the issuance of the order to show cause, you have contacted directly at least some of the applicants whose applications are the subjects of your requests to extend time to oppose. The TTAB has received informal complaints, formal requests for reconsideration of certain, specific extension requests, and at least one objection to the granting of any more extension requests. The nature of your contact, according to the applicant for application Serial No. 76616350, was "a large package of materials requesting money" in exchange for settlement.⁷ Apart from their substantive content, your contact letters request that the receiving applicant consent to an additional 90-day extension of time to oppose, further informing the addressee that such consent will be assumed if you do not hear from the applicant by a date certain and that you will file a "stipulated" request for an additional 90-day extension.⁸

APPLICABLE RULES

⁷ Contacting your potential adversary is not *per se* prohibited conduct. Indeed, many potential opposers do so in order to explore the possibility of initiating good faith, bilateral settlement discussion. Inasmuch as the substance of your contact is being addressed separately in connection with the requests being filed by the applicants who have taken formal steps to seek redress, the USPTO will not discuss in detail the "large package of materials" and other features of the contact letter.

⁸ Under TTAB rules, you would not be permitted an additional 90-day extension after receiving a first 90-day extension. "After receiving one or two extensions of time totaling ninety days, a person may file one final request for an extension of time for an additional sixty days....No further extensions of time to file an opposition will be granted under any circumstances." Trademark Rule 2.102(c)(3); 37 C.F.R. §2.102(c)(3).

Trademark Rule 2.102 provides, in relevant part, for the filing of requests to extend the time to oppose as follows:

(a) Any person who believes that ... it would be damaged by the registration of a mark on the Principal Register may file ... a written request ... to extend the time for filing an opposition. ... Electronic signatures pursuant to § 2.193(c)(1)(iii) are required for electronically filed extension requests.

(c) ... Requests to extend the time for filing an opposition must be filed as follows:

(1) A person may file a first request for either a thirty-day extension of time, which will be granted upon request, or a ninety-day extension of time, which will be granted only for good cause shown.

Trademark Rule 2.193(c)(2) provides in relevant part as follows:

The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any document by a party, whether a practitioner or non-practitioner, constitutes a certification under § 10.18(b) of this chapter. Violations of § 10.18(b)(2) of this chapter by a party, whether a practitioner or non-practitioner, may result in the imposition of sanctions under § 10.18(c) of this chapter.

Patent and Trademark Office Rule 10.18 provides as follows:

(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that-

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that- (i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office; (ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal

of existing law or the establishment of new law; (iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of-

- (1) Holding certain facts to have been established;
- (2) Returning papers;
- (3) Precluding a party from filing a paper, or presenting or contesting an issue;
- (4) Imposing a monetary sanction;
- ...
- (6) Terminating the proceedings in the Patent and Trademark Office.

DISCUSSION

Your assertion that you have met the standard for filing requests for extension of time to oppose and that you need not submit evidence supporting a claim that you may be damaged by registration of the marks in the subject applications amounts to a failure to respond meaningfully to the show cause order. While an unchallenged request for extension of time to oppose, when accompanied by a minimal statement of good cause, is rarely

denied,⁹ your filing of more than 1100 requests for extension of time to oppose within the few months preceding the date of the show cause order suggested a serious violation of your responsibilities as a party before the USPTO. The show cause order thus required you to demonstrate more than what might have been required in the ordinary case to support a single request for extension of time. In particular, you were required to demonstrate that the extension requests were not filed for improper purposes but, instead, were based on cognizable rights you may have arising under the Trademark Act.

Addressing directly the issue of your belief that you will be damaged, you indicate that you own over 100 federal registrations for trademarks and that you have common law rights in several thousand trademarks and slogans, referring to your website and attaching pages from your website to your response. Your submissions do not substantiate your rights in any of the claimed marks, let alone support a colorable claim of damage. For example, you did not submit copies of the registration certificates of the registered trademarks you claim to own. Nor did you even clearly identify your registered trademarks and the goods and services for which they are registered.

In support of your claim of damage to your purported common law trademarks, you provided a listing of your claimed trademarks, running to almost 150 pages (50 terms listed on each page). The listing was derived from your website and includes nothing more than the listing of the marks themselves. You submitted no evidence of products or services bearing these alleged marks, no evidence that you have sold any products or services under these marks, and no evidence of your advertising of goods or services with these marks.

At your website, you offer to "RENT-A-FAMOUS slogan" and offer "Famous Trademarks for Rent On-Line." Your website states that you "control over 10,000 famous trademarks..." Nonetheless, the exhibits from your website do not demonstrate your offering for sale any goods or services, other than the "rental" of the marks themselves, nor do the website exhibits demonstrate the use of any of the asserted terms as trademarks. These excerpts from your website, rather than evidencing support of any purported claim for damage, reinforce the conclusion that you are holding up thousands of applications in an attempt to coerce applicants

⁹ But see, TBMP § 210, 211 (2d ed. rev. 2004) (regarding requests by applicants that the TTAB reconsider granted requests for extensions of time to oppose or deny subsequent requests).

to license, i.e., "rent," trademarks to which you have not demonstrated any proprietary right. Cf. *Central Mfg. Co. v. Brett*, 78 USPQ2d 1662, 1675 (N.D. Ill. 2005) ("Leo Stoller and his companies present paradigmatic examples of litigants in the business of bringing oppressive litigation designed to extract settlement.")

Finally, in requesting that the USPTO not sanction you for your past conduct, you reference in your response two court cases and a single TTAB case in which sanctions were not imposed on you. Although these other tribunals have for various reasons declined to impose sanctions, their decisions also contain findings supporting the conclusion that your recent activities in the TTAB are not isolated or anomalous, but rather reflect a pattern of harassing behavior. The rationales used by those other tribunals for declining to impose sanctions do not apply here, where the behavior is of such a systematic nature as to raise the potential cost of seeking a trademark for the public generally.

DETERMINATION

Your filing of an extraordinary number of requests for extension of time to oppose, particularly in light of your past behavior before the TTAB and the courts, constitutes a violation of your responsibilities under Patent and Trademark Rule 10.18(b). That rule provides that, by filing a paper (including the extension requests at issue here), you represent, among other things, that "[t]he paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office" and that "[t]he claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Patent and Trademark Rule 10.18(b)(2).

Extensions of time to oppose are granted *ex parte*, typically upon a minimal showing of good cause. Nonetheless, the requirements for an extension of time to oppose are clear: "Any person *who believes that he, she or it would be damaged by the registration of a mark ... may file in the Office a written request ... to extend the time for filing an opposition.*" Trademark Rule 2.102(a) (emphasis added). Thus, while the potential opposer's showing

need not be extensive and the TTAB's examination of extension requests is usually cursory, Trademark Rule 2.102 and Patent and Trademark Rule 10.18 require that all requests for extension of time be based on a good faith belief that the potential opposer would be damaged by the potential registration.

The show cause order invited you to demonstrate that your filing of each of the extraordinary number of requests for extension of time to oppose was not improper. ("Any such showing should include evidence that supports a claim that you may be damaged by the registration of each of the marks for which an extension of time to oppose has been filed.") While extensions of time to investigate potential claims are common, the potential opposer must still hold some reasonable belief that it would be damaged by registration of the mark in question. Notwithstanding the opportunity offered to you to demonstrate such a belief, you have declined to make any such showing.

Any impropriety with respect to the letters you have sent to applicants against whose applications you have filed requests to extend time to oppose is not now under review. Nonetheless, the manner in which you request "consent" for prospective further requests to extend time to oppose, such consent being necessary under Trademark Rule 2.102(c)(3), is indicative of your motivation in filing the requests to extend time to oppose that are now under scrutiny. Specifically, your intimation that the individual applicant's consent is presumed if you do not receive an objection is in contradiction of your actual knowledge that any such consent must be explicit. See *Central Manufacturing, Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210 (TTAB 2001) (misrepresenting that applicant has "agreed" to the third and fourth requests to extend time to oppose). Thus, your contact letters, providing misinformation as to the requirements for the final extension request permitted under Trademark Rule 2.102(c)(3), support the finding that the extension requests at issue here were filed for improper purposes, specifically "...to obtain additional time to harass applicant, to obtain unwarranted extensions of the opposition period, and to waste resources of applicant and the Board." *Id.* at 1216.

In view thereof, it is determined that you have not made a showing that you have a colorable claim of damage justifying the extension requests filed during the period in question and have failed to establish good cause for filing such requests. It is determined, further, that you filed the extension requests for improper purposes, namely, to harass the applicants to pay you to

avoid litigation or to license one of the marks in which you assert a baseless claim of rights. Your misuse of the TTAB's procedures dictates that the USPTO impose on you an appropriate sanction.

Sanctions Imposed

In deciding what sanctions to impose, the USPTO considered the egregious nature and extent of your recent misconduct, including the impact of the misconduct on TTAB proceedings. You have been granted 90-day extensions of time to oppose more than 1800 applications. The effect has been to delay by at least three months the issuance of trademark registrations for each of those applications. In addition, the TTAB has had to divert significant resources to answering telephone inquiries from applicants or their representatives concerning your numerous filings. And the applicants against whom you have filed requests for extension of time to oppose have begun to submit formal objections that the TTAB must decide.

Also, the USPTO found it reasonable and proper to consider your recent misconduct in the context of your well-documented pattern of misconduct during many years of litigation before the TTAB and the courts as set out in the show cause order, which included the sampling of TTAB cases in which sanctions were imposed against you¹⁰ and the case in the Northern District of Illinois.¹¹ Cf. C.

¹⁰ Indeed, irregularities with respect to your filing of requests to extend time to oppose have been considered previously. See, for example, *Stoller v. Northern Telepresence Corp.*, 152 Fed. Appx. 923, 2005 WL 2813750 (Fed. Cir. 2005), affirming the TTAB's decision denying as untimely your request(s). See also *Central Manufacturing, Inc. v. Third Millennium Technology, Inc.*, 61 USPQ2d 1210 (TTAB 2001), imposing a sanction, for a period of one year, which required the actual signature of the adverse party for any request to extend time to oppose filed by you in which it was alleged that such request was being sought on consent, or had been agreed to, or in which there was any allegation of any type of settlement discussion. This sanction was imposed because the TTAB found that the applicant had not "agreed" to the extension requests, that the parties were not engaged in bilateral settlement discussions, and that applicant had not invited opposer to proffer a settlement agreement, all determinations being contrary to your proffered reasons for seeking the extensions at issue therein. The TTAB further found that you "filed papers based on false statements and material misrepresentations and, moreover, ... engaged in a pattern of submitting such filings to this Board."

Wright & A. Miller, 5A Fed. Prac. & Pro. Civ.3d § 1336.1 (2006) (appropriate to consider prior behavior in other cases when exercising a court's inherent authority); Fed. R. Civ. P. 11, Advisory Committee's Note (1993) (same consideration appropriate under Rule 11). While the USPTO has considered findings made by other tribunals, the pattern of activities in the TTAB alone justify the sanctions imposed below.

The following sanctions are, therefore, hereby imposed:

Grant of Extension Requests Vacated

The approval of each request for extension of time to oppose that you have filed since November 2005 is hereby vacated.¹²

Two-Year Prohibition On Filing Extension Requests

You are hereby prohibited for a period of TWO YEARS from the date of this order from filing, on your own behalf or as an officer, director, or partner of any entity you control, any request for extension of time to oppose under Trademark Rule 2.102. This two-year prohibition applies whether or not you are represented by an attorney.

Requirement Of Attorney Representation For Any Future Extension Requests

You are PERMANENTLY prohibited from appearing before the USPTO on your own behalf or as an officer, director, or partner of any

¹¹ In contrast to the two cited orders of the Northern District of Illinois in which the Executive Committee and the Court declined to impose sanctions, that court has chastised and sanctioned you numerous times. See, e.g., *S Industries, Inc. v. JL Audio, Inc.*, 29 F. Supp.2d 878 (N.D. Ill. 1998) ("This has not been a good year for Plaintiff in the Northern District of Illinois, but, then again, Plaintiff has not been a good litigant."), referencing several other cases before the Court that had been decided against you. See also *Central Mfg. Co. v. Pure Fishing, Inc.*, 2005 WL 3090998 (N.D. Ill. 2005) (and cases cited therein), in which the court imposed the sanction of dismissing plaintiff's claim and granting defendant's counterclaims to cancel registrations you own and for declaratory and injunctive relief. (The *Pure Fishing* case is suspended pending resolution of your petition in bankruptcy.)

¹² Extension requests granted more than 90 days ago have now expired. This sanction is, thus, moot with respect to such requests. But, if you have filed a notice of opposition against any of the involved marks, such notice of opposition is rendered untimely by this sanction, and any such opposition shall be dismissed.

entity you control for the purpose of filing any request to extend time to file a notice of opposition or any paper associated therewith. Any such future request must be filed by an attorney, who will be bound to act in accordance with USPTO Rule 10.18(b).

Request For "Direction"

Finally, you requested "direction" in how to proceed before the TTAB. As a frequent party to proceedings before the TTAB during the past ten years, you have been informed repeatedly about how the TTAB expects proceedings to be conducted. In the past, you have often ignored the direction given you by the TTAB, in the form of information or reprimand, or have found a way to side step such direction with improper or bad faith conduct.

The USPTO provides information to parties and the public electronically in a user-friendly format. The Trademark Act, the rules of practice in matters before the TTAB, The Trademark Trial and Appeal Board Manual of Procedure (2d ed. rev. 2004), and answers to frequently asked questions are all available for viewing and downloading at www.uspto.gov. While an individual may represent himself or herself (or a business in which he or she is an officer or partner) before the USPTO, see Patent and Trademark Rule 10.14(e), the TTAB "strongly recommend[s]" that a party be represented by an "attorney familiar with trademark law." TBMP §114.01 (2d ed. rev. 2004). Those who choose to represent themselves occasionally call the TTAB with questions and are provided procedural information. Overall, after being directed to the TBMP, they abide by the rules. Thus, there is no reason for the USPTO to conclude that the explanations provided in the TBMP are too complicated for *pro se* litigants, particularly for ones with an extensive history of practice before the TTAB.

Consequently, the TTAB's "direction" to you will remain the same that it has been for many years and the same as that given to other litigants representing themselves: engage an experienced trademark lawyer. Failing that, read and follow the applicable statute, rules, and cases and consult the TBMP for guidance.

Potential for Imposition of Broader Sanctions

The applicable rules permit broader sanctions. For instance, the USPTO considered whether to bar you permanently from filing

extension requests or to require that you be represented by an attorney with respect to any future Board matter, not just requests for extensions of time to oppose. At this time, the USPTO has restricted the sanctions imposed herein to those closely related to your recent misconduct and, it believes, the minimum necessary to prevent such misconduct in the future. Nonetheless, the question of broader sanctions will be revisited if you commit further improprieties in proceedings before the TTAB.

So ordered.

/signed/

J. David Sams
Chief Administrative Trademark Judge
Trademark Trial and Appeal Board
United States Patent and Trademark Office

EXHIBIT 2

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

In the Matter of:

Application Serial No. 76314811
For the Mark: GOOGLE
Publication Date: November 1, 2005

Opposition No. 91170256

CENTRAL MFG. CO. (INC.),

Opposer,

v.

GOOGLE INC.,

Applicant.

**APPLICANT'S MOTION TO
DISMISS OPPOSITION PURSUANT
TO THE BOARD'S SANCTIONS
ORDER OF JULY 14, 2006**

Commissioner of Trademarks
P.O. Box 1451
Arlington, Virginia 22313-1451

Applicant Google Inc. ("Applicant") respectfully moves the Board for an order dismissing this Opposition proceeding with prejudice pursuant to the Board's Order of July 14, 2006. In support of its Motion, Applicant states as follows.

The Board's July 14, 2006 Order

The Board imposed sanctions against Leo Stoller, the principal of the alleged Opposer here, by Order dated July 14, 2006 (the "Sanctions Order").¹ The Sanctions Order was the result of a March 28, 2006 Show Cause Order (the "OSC"), which noted that Stoller and purported entities he controls had "filed more than 1100 requests for extension of time to file notices of opposition between November 2005 and March 2006" and also cited their "pattern of misconduct and abuse of the TTAB's processes" over the course of "many years."² Thus, the OSC directed Stoller to provide "for *each* of the marks for which you requested an extension of time to file an opposition, evidence that supports a claim that you may be damaged by registration of the mark" and to "demonstrate that the extension requests were not filed for improper purposes but, instead, were based on cognizable rights you may have arising under the Trademark Act."³ After the OSC was issued, Stoller and his purported companies then "filed requests for extension of time to oppose against more than 400 additional applications, bringing the total since November 2005 to over 1800."⁴

As the Sanctions Order found, however, Stoller's response to the OSC did not provide any of the proof necessary under the law and that the Board had mandated:

¹ A copy of the July 14, 2006 Sanctions Order is attached as Exhibit 1 to the Declaration of Michael T. Zeller, dated July 24, 2006 and filed herewith.

² *Id.*, at pages 1-2.

³ *Id.*, at pages 2-3, 9 (emphasis added).

⁴ *Id.*, at page 5.

"Your submissions do not substantiate your rights in *any* of the claimed marks, let alone support a colorable claim of damage. . . . You submitted no evidence of products or services bearing these alleged marks, no evidence that you have sold any products or services under these marks, and no evidence of your advertising of goods or services with these marks."⁵

Indeed, as the Board observed, the evidence Stoller did submit in response to the OSC only served to "reinforce the conclusion that you are holding up thousands of applications in an attempt to coerce applicants to license, i.e., 'rent,' trademarks to which you have not demonstrated any proprietary right."⁶

The Board therefore found in the Sanctions Order that Stoller (1) lacked "a colorable claim of damage justifying the extension requests filed during the period in question"⁷ and (2) had "filed the extension requests for improper purposes, namely, to harass the applicants to pay you to avoid litigation or to license one of the marks in which you assert a baseless claim of rights."⁸ For those violations -- which the Board stated rose to the level of "egregious" misconduct -- the Board imposed an array of sanctions.⁹ Most pertinent to this proceeding, the Board ruled that "[t]he approval of each request for extension of time to oppose that you have filed since November 2005 is hereby vacated."¹⁰ In this regard, the Sanctions Order additionally provided that "if you have filed a notice of opposition against any of the involved marks, such notice of opposition is rendered untimely by this sanction, and any such opposition shall be dismissed."¹¹

⁵ Id., at page 9 (emphasis added).

⁶ Id., at pages 9-10.

⁷ Id., at page 11.

⁸ Id., at pages 11-12.

⁹ Id., at page 12.

¹⁰ Id., at page 13.

¹¹ Id., at page 13 n. 12.

This Opposition Proceeding Should Be Dismissed

This Opposition is among the proceedings that the Board's Sanctions Order, by its terms, mandates be dismissed. In the instant case, Applicant's Application Serial No. 76314811 for the mark GOOGLE for various goods and services (the "Application") was published for opposition on November 1, 2005. On November 27, 2005, Stoller filed a request for an extension of time to oppose the Application up through March 1, 2006.¹² That request for an extension of time by Stoller in this proceeding is thus among the requests -- namely, the "more than 1100 requests for extension of time to file notices of opposition [filed] between November 2005 and March 2006" and the more than 1800 requests filed between November 2005 and July 2006 -- that are expressly subject to the sanctions imposed by the Board. Because the Sanctions Order has vacated the extension of time that Opposer had obtained in this proceeding, the Notice of Opposition has been rendered "untimely" and "shall be dismissed."¹³

¹² The request for extension of time to oppose the Application was docketed as No. 76314811 on TTABVUE. A copy of the request is attached as Exhibit 2 to the Zeller Declaration.

¹³ Zeller Dec., Exh. 1 at page 13 n. 12. This result of dismissal is dictated not only by the terms of the Sanctions Order, but also follows by law from the Sanction Order's directive vacating the extension of time which Opposer had obtained here. Because the Notice of Opposition was filed on March 1, 2006 -- only after the (unextended) opposition period for the Application had expired on December 1, 2005 -- and because there was no operative extension of time beyond that, the Opposition was necessary late and must be dismissed. 15 U.S.C. § 1063(a) (requiring opposition be filed within thirty days of publication of application being opposed or within period of time of extension); 37 C.F.R. § 2.101(c) (same); TBMP § 306.01 (opposition "must" be filed within time limits); TBMP § 306.04 (time limits on filing opposition "are statutory" and "cannot be waived" by the parties or Director; "[a]ccordingly, an opposition filed after the expiration of the would-be opposer's time for opposing must be denied by the Board as late.").

Conclusion

Accordingly, Applicant respectfully requests that the Board dismiss this Opposition proceeding with prejudice.¹⁴

Respectfully submitted,

Dated: July 24, 2006

By: Michael T. Zeller

QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP
Michael T. Zeller
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

*Attorneys for Applicant
Google Inc.*

¹⁴ Opposer may attempt to delay implementation of the Sanctions Order and avoid prompt dismissal by arguing that the Order of June 16, 2006 suspending this proceeding bars the filing of this motion. Such a contention would be unavailing. Indeed, it would represent little more than a further effort by Opposer to buy more time in its on-going campaign to harass Applicant through this proceeding to extort settlement money -- the very misconduct that the Sanctions Order is designed to remedy. Clearly, the purpose of the June 16 Order was not to hinder or countermand effectuation of the subsequent Sanctions Order, but instead ultimately to preserve the resources of the Board and the parties. Because a dismissal would render moot the some dozen motions that are currently pending in this litigation (and that are mostly the result of Opposer's habit of engaging in piecemeal, satellite motion practice), considering and disposing of this motion first would significantly conserve the resources of the Board and thus would be consistent with the purposes of the June 16 Order and the Sanctions Order.

Proof of Service

I hereby certify that a true and complete copy of the foregoing Applicant's Motion to Dismiss Pursuant to the Board's Sanctions Order of July 14, 2006 has been served on Opposer Central Mfg. Co., (Inc.) by mailing said copy on July 24, 2006, via First Class Mail, postage prepaid to:

Leo Stoller
CENTRAL MFG. CO., (INC.)
7115 W. North Avenue #272
Oak Park, Illinois 60302

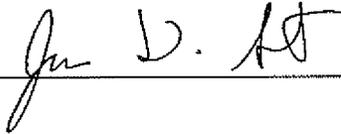


EXHIBIT 3



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Electronic System for Trademark Trials and Appeals

Receipt

Your submission has been received by the USPTO.
The content of your submission is listed below.
You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA55062**

Filing date: **11/27/2005**

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

Applicant: **GOOGLE INC.**
Application Serial Number: **76314811**
Application Filing Date: **09/18/2001**
Mark: **GOOGLE**
Date of Publication **11/01/2005**

First 90 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, Central Mfg. Co. (Inc), P.O. Box 35189, Chicago, IL 60707-0189, UNITED STATES, a Corporation, organized under the laws of Delaware, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 12/01/2005. Central Mfg. Co. (Inc) respectfully requests that the time period within which to file an opposition be extended until 03/01/2006.

Respectfully submitted,
/Leo Stoller/
11/27/2005
Leo Stoller
President/CEO
Central Mfg. Co. (Inc)

P.O. Box 35189
Chicago, IL 60707-0189
UNITED STATES
ldms4@hotmail.com
ldms4@hotmail.com

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EXHIBIT 4

GOOGLE

GOOGLE 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

November 29, 2005

Julia Anne Matheson
ROSE HAGAN
Google, Inc.
Building 41
1600 Amphitheatre Parkway
Mountain View, CA 94043

Re: **FOR SETTLEMENT PURPOSES ONLY – NOT DISCOVERABLE.**
GOOGLE
APP. S/N: 76-314,811

Dear Ms. Matheson:

We are serving notice on you that we have filed a request for an extension of time to oppose your client's pending trademark application SN: 76-314,811.

We hold common law rights have been using the similar mark GOOGLE for many years prior to your clients use of the said mark and we engage in an active, aggressive trademark licensing program. We thus invite your client to become a trademark licensee of ours.

We have standing pursuant to 37 CFR §2.101(b) to oppose your client's said trademark application and to conduct extensive discovery into your clients books and records, including depositions under oath of your client's executive officers.

THE BOARD PROVIDES A PERIOD OF TIME FOR PARTIES TO SETTLE

The Board encourages parties to settle registerability issues prior to filing of a Notice of Opposition. district Courts through out the land encourage parties to settle complex trademark litigation without getting into the actual merits of the claims, on the grounds that parties can will never settle a controversy outside of a court decision if the parties insist that their claims have to settled on the merits. In the case at bar, it will cost the parties at a minimum in excess of **\$150,000.00 (one hundred and fifty thousand dollars an no/100)** in fees and costs, and five years, to litigate this matter through to the Federal Circuit, without any party receiving a guaranteed positive result, not withstanding the merits of either parties claims. In view of the above the Board strongly encourage parties to settle register ability issues as between themselves rather than by TTAB decision. That is why the potential opposer is attempting to reach out to the Applicant in the extension period allowed by the Board to achieve an amicable settlement as between the parties.

It should be noted for the record that the potential opposer in this case has engaged in more oppositions and petitions to cancel over the last 30 years than any other entity currently practicing before the TTAB (over 300).

As well known to the Applicant, an Opposer in any opposition proceeding has the clear distinct procedural advantage in that there is an automatic "cloud" placed over the Applicant's title to its mark, which will not evaporate until the final court, the Federal Circuit speaks. After 4 or 5 new management, which loses interest in the said Application. In addition, the Applicant will not normally invest much of its time and funds promoting a mark which has a dark "cloud" over it. Consequently, an this Applicant would be well advised to merely file an express abandonment of the said application rather than continue to invest in an trademark application that may never register. That is what we encourage the applicant in this case to do. No money has to exchange hands, if the Applicant chooses to file a express abandonment with prejudice of its said application at issue within ten days.

This is an easy case to settle today.

Prior to our filing the Notice of Opposition, the potential opposer is placing on the table three reasonable settlement proposals, that when accepted by your client, will amicably resolve the registerability controversy. Number one is a Covenant Not To Sue where in your client agrees to abandon its trademark Application. The second is a 5% royalty based trademark licensing which will allow your client to use the said mark under license. The third agreement is a Consent To Register Agreement. Any of the said settlement agreements will avoid the need of a long and costly opposition proceeding and will allow the parties to resolve the said controversy registerability controversy amicably.

It should be noted that the potential opposer will not require the applicant, nor should be applicant require the potential Opposer to engage in any pretrial discovery whatsoever, as it has never been proven beneficial to resolving a registerably issue outside of a TTAB decision. The potential opposer will not participate in any pretrial discovery. If the Applicant is interested in settling this matter prior to the filing of a Notice of Opposition, the Opposer has given the Applicant three very easy methods upon which this case can be quickly settled.

The settlement offer(s) are valid until December 20, 2005.

If you have any questions please feel free to call me at 773-589-0340.

Most cordially,



Leo Stoller

GOOGLE

P O Box 35189

Chicago, IL 60707

Tel: 773/283-3880

FAX: 708/453-0083

AGREEMENT TO DISCONTINUE USE

(Covenant Not To Sue)

AGREEMENT, is made and entered into as of this 21st day of NOV, 2005, by and between RENTAMARK.COM, P O Box 35189, Chicago, Illinois 60707-0189 (hereinafter referred to as "GOOGLE "), and GOOGLE INC., CORPORATION DELAWARE; 1600 Amphitheatre Parkway; Building 41; Mountain View, CA 94043 (hereinafter referred to as "GOOGLE INC.").

WHEREAS, GOOGLE and GOOGLE INC. desire to settle this dispute and future disputes regarding GOOGLE INC.'S use of the mark GOOGLE.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties agree to as follows:

1. GOOGLE agrees not to sue GOOGLE INC. for any unauthorized use of selling GOOGLE brand goods in the past and/or present use of the trademark GOOGLE.
- 1.1 GOOGLE INC. agrees to discontinue all use of the mark GOOGLE and any mark confusingly similar to the mark GOOGLE in the opinion of GOOGLE , by April 29, 2007.
2. The parties agree that this Agreement constitutes the entire agreement and understanding between the parties related to the subject matter hereof, superseding all previous communications, and that this Agreement can only be modified in writing signed by both parties.
3. GOOGLE INC. acknowledges GOOGLE's exclusive ownership of the mark GOOGLE and agrees not to oppose GOOGLE's applications or GOOGLE's use of its GOOGLE mark(s).
4. This Agreement shall be valid worldwide.
5. This agreement inures to the benefit of, and is binding upon, GOOGLE and GOOGLE INC., their parents, subsidiaries, sister companies, affiliates, entities which control the foregoing, entities which the foregoing control, and all of their successors and assigns.
6. The parties agree that this agreement will be maintained confidential.
7. This agreement becomes null and void on December 20, 2005 if GOOGLE has not receive an executed copy from GOOGLE INC.
8. GOOGLE and GOOGLE INC. have caused this Agreement to be executed by their duly authorized legal representatives.

ACCEPTED AND AGREED:

GOOGLE

Leo Steller
Representative of GOOGLE

Date: NOV 21, 05

LEO STELLER
Signing Representative of GOOGLE
[PRINTED]

Date: NOV 21, 05

C:\MARKS44\GOOGLE.TRO

GOOGLE INC.

Representative of:
GOOGLE INC.

Date: _____

Signing Representative of:
GOOGLE INC.
[PRINTED]

Date: _____

SETTLEMENT AGREEMENT
(Consent to Register Application No. 76-362,450)

This Agreement, effective NOV 27, 2005, is by and between RENTAMARK.COM, P.O. Box 35189, Chicago, Illinois 60707-0189 (hereinafter referred to as "GOOGLE") and GOOGLE INC., CORPORATION DELAWARE; 1600 Amphitheatre Parkway; Building 41; Mountain View, CA 94043 (hereinafter referred to as "GOOGLE INC.").

WHEREAS, GOOGLE INC. has filed First Use Application Serial No(s). 76-314,811 Int. Cl. No(s). 11, 12, 16, 18, 21, 25, 28, 35, 38 and 42, for **See attachment**.

WHEREAS, GOOGLE and GOOGLE INC. desire to settle this dispute and future disputes regarding GOOGLE INC.'s use of the mark GOOGLE as set forth in the trademark application 76-314,811.

WHEREAS, the parties desire to avoid the cost, expense and delay of litigation by amicably adjusting, compromising and settling any dispute, subject to the terms and conditions of this AGREEMENT.

NOW THEREFORE, in consideration \$100,000.00 (one hundred thousand dollars and no/100 cents) paid to RENTAMARK.COM by GOOGLE INC., for the foregoing promises, and the following mutual understandings, it is agreed as follows:

1. GOOGLE INC. agrees to limit its use of the mark GOOGLE to the goods identified in its Application Serial No. 76-314,811.
 - 1.1 GOOGLE INC. agrees not to file for any other Trademark application containing the word GOOGLE.
2. GOOGLE shall not object to GOOGLE INC.'s use or registration of its mark GOOGLE listed in Application Serial No. 76-314,811.
3. GOOGLE agrees not to sue GOOGLE INC. for any past, or present or future use of the trademark identified in Application Serial No. 76-314,811.
4. GOOGLE INC. acknowledges GOOGLE's exclusive ownership of the mark GOOGLE and agrees not to oppose GOOGLE's applications or GOOGLE marks and agrees not to sue GOOGLE for use of its GOOGLE mark(s).
5. This Agreement shall be valid worldwide.
6. This agreement inures to the benefit of, and is binding upon, GOOGLE and GOOGLE INC., their parents, subsidiaries, sister companies, affiliates, entities which control the foregoing, entities which the foregoing control, and all of their successors and assigns.

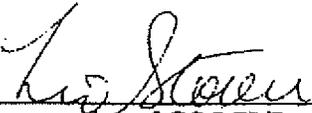
7. Neither party shall disclose the terms or conditions of this Agreement to any third party, nor issue any public statements relating to this Agreement without the written consent of the other party, unless such disclosure or statement is reasonably believed by the party to be compelled by governmental authority. A disclosing party shall furnish reasonable prior notice to the other party before making the statement or disclosure.

8. GOOGLE and GOOGLE INC. have caused this Agreement to be executed by their duly authorized legal representatives.

9. This Agreement can be executed in counterparts. If Rentamark.com, does not receive a signed copy by December 20, 2005 this agreement is null and void.

Rentamark.com

GOOGLE INC.

By 
Representative of GOOGLE

By _____
Representative of: -
GOOGLE INC.

Dated: 11.8.05

Dated: _____

GOOGLE

GOOGLE BRAND PRODUCTS & SERVICES SINCE 1981

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

VOICE 773/283-3880 * FAX 708/453-0083 * WEB PAGE: www.reniamark.com

November 29, 2005

Julia Anne Matheson
ROSE HAGAN
Google, Inc.
Building 41
1600 Amphitheatre Parkway
Mountain View, CA 94043

Re: FOR SETTLEMENT PURPOSES ONLY -- NOT DISCOVERABLE.
GOOGLE
APP. S/N: 76-314,811

Dear Ms. Matheson:

We are serving notice on you that we have filed a request for an extension of time to oppose your client's pending trademark application SN: 76-314,811.

We hold common law rights have been using the similar mark **GOOGLE** for many years prior to your clients use of the said mark and we engage in an active, aggressive trademark licensing program. We thus invite your client to become a trademark licensee of ours.

We have standing pursuant to **37 CFR §2.101(b)** to oppose your client's said trademark application and to conduct extensive discovery into your clients books and records, including depositions under oath of your client's executive officers.

THE BOARD PROVIDES A PERIOD OF TIME FOR PARTIES TO SETTLE

The Board encourages parties to settle registerability issues prior to filing of a Notice of Opposition. district Courts through out the land encourage parties to settle complex trademark litigation without getting into the actual merits of the claims, on the grounds that parties can will never settle a controversy outside of a court decision if the parties insist that their claims have to settled on the merits. In the case at bar, it will cost the parties at a minimum in excess of **\$150,000.00 (one hundred and fifty thousand dollars an no/100)** in fees and costs, and five years, to litigate this matter through to the Federal Circuit, without any party receiving a guaranteed positive result, not withstanding the merits of either parties claims. In view of the above the Board strongly encourage parties to settle register ability issues as between themselves rather than by TTAB decision. That is why the potential opposer is attempting to reach out to the Applicant in the extension period allowed by the Board to achieve an amicable settlement as between the parties.

It should be noted for the record that the potential opposer in this case has engaged in more oppositions and petitions to cancel over the last 30 years than any other entity currently practicing before the TTAB (over 300).

As well known to the Applicant, an Opposer in any opposition proceeding has the clear distinct procedural advantage in that there is an automatic "cloud" placed over the Applicant's title to its mark, which will not evaporate until the final court, the Federal Circuit speaks. After 4 or 5 new management, which loses interest in the said Application. In addition, the Applicant will not normally invest much of its time and funds promoting a mark which has a dark "cloud" over it. Consequently, an this Applicant would be well advised to merely file an express abandonment of the said application rather than continue to invest in an trademark application that may never register. That is what we encourage the applicant in this case to do. No money has to exchange hands, if the Applicant chooses to file an express abandonment with prejudice of its said application at issue within ten days.

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Most cordially,



Leo Stoller

GOOGLE

P O Box 35189

Chicago, IL 60707

Tel: 773/283-3880

FAX: 708/453-0083

What is this Cease and Desist Letter

Success breeds imitation. The more popular and successful a Trademark and/or intellectual property becomes, the more probable the chances that infringing products, services or companies calling themselves the name of the successful trademark will appear.

The opportunity to take for free what others pay a royalty for is a strong incentive to some companies. Contrary to the mistaken notion, that any well known symbol and/or word that may be found in the dictionary is freely available to any company to adopt as their trade name, service mark or trademark, in the 21st Century, is simply false. There are no well known trademarks, service marks, trade names and/or domain names that have not already been adopted by some other company first, as in the case at bar. In the same manner that there are not any real property in the 21st Century that can be acquired for free or homesteaded. There are no free well known intellectual property left in the 21st Century. No free rides! However it is our obligation, as the Trademark owner to police and protect our intellectual property each and every day. Otherwise an intellectual property owner will not own it's property for long. Since there are no well known marks that have not been adopted by some company, there will always be a legal battle by companies to take those finite well known marks from their original owners without compensation.

Thus, once an infringer is identified, it is imperative that the infringer be stopped. However, filing a lawsuit immediately is neither suggested nor viable. The first step that must be taken is to alert the infringer. That you have been identified and it is demanded that you cease and desist from the sale and offering for sale of the infringing products or services or using our well known trademark as your company name, tradename, trademark, service mark and/or domain name. This warning included a recitation of all the actions required by you, the alleged infringer, such as identifying all profits made from the infringing products or services or the use of a confusingly similar corporate name. There can be grave consequences by continuing the alleged infringement. Furthermore, it is good business practice to put you on notice before litigation may be pursued. It always pays to first attempt to resolve trademark controversies outside of Court intervention. Please call us at 773-283-3880 to resolve this controversy.

'Stealth' fighter: Chicago man says movie name belongs to him

Battling Columbia Pictures over title, possible merchandise

BY EMILY NGO
Staff Reporter

On billboards and in movie trailers everywhere, big, bold letters spell out "Stealth," a Columbia Pictures film opening Friday about Navy pilots.

But those same big, bold letters also appear on Leo Stoller's list of federally registered trademarks, and he has hit the courts to make the case that "stealth" belongs to him.

"If a trademark owner doesn't police his trademark, it gets diluted and watered down," said Stoller, a 59-year-old owner of Rentamark.com, a Chicago company that licenses trademarks to others.

The legal battle over whether Columbia Pictures may use "Stealth" as the movie title and as the brand behind any marketed merchandise began with a cease-and-desist letter from Stoller in March, seeking to settle out of court.

Columbia Pictures then asked the federal court here to rule that Stoller did not have a trademark-infringement case. Stoller has responded with a counterclaim.

Even Stoller says he doesn't exclusively own "stealth" as a word.



Leo Stoller has trademarked names such as "TERMINATOR," which he says he didn't police aggressively enough. —BOB BLACK/SUN-TIMES

He owns it only in relation to products he has registered under that name, said Clinton Francis, professor of intellectual property law at Northwestern University. Among these products: toy airplanes. Not among them: movies.

"He has a reduced prospect of bringing infringement action" if Columbia Pictures markets only the movie, Francis said. "But if they try to create derivative toys in the name

EDERT: "Stealth" a cross between "Top Gun" and "2001." Page 45

"Stealth" . . . that's classic infringement, there's going to create consumer confusion, and [Columbia Pictures] would have to obtain a license from [Stoller] to use 'stealth.'"

'All our rights evaporated'

Stoller has licensed the name "STEALTH" for dozens of products and services. They include sporting goods, lawn sprinklers and "hunters' scent" spray. And orthodontic appliances.

Columbia Pictures refused comment because the matter is still in litigation.

Stoller said he wants to prevent the stealth matter from turning out the way "TERMINATOR" — another trademark of his — did in the 1980s.

"We didn't aggressively police our mark, and all the companies thought Carolco Pictures [the producer of the 'Terminator' films] was the primary user," Stoller said. "All our rights evaporated . . . there was a sucking sound from our company to theirs."

In years past, Stoller said, Rentamark has come to agreements with Northrop Grumman, contractor of the military's Stealth bomber, and with Nissan, manufacturer of the Sentra, another Stoller trademark.

Fur flies in Uptown over dog-leash permits

BY LISA DONOVAN
Staff Reporter

They growled about the cost, logic and bureaucracy of the \$35 fee for letting their pooches play in Chicago's dog-friendly spaces.

Those were the sentiments of some of the more than 100 dog owners and enthusiasts gathered Wednesday night in Uptown's Margate Park Fieldhouse to discuss a new permit required for dogs to play off-leash in Chicago Park District dog parks.

While most didn't mind the idea behind the measure — aimed at making sure dogs have checkups

lowed to mingle in such parks — some balked at the fee, which they described as steep.

The \$35 permit required for the first dog in a home and \$15 for each additional pup covers administration fees and maintenance for the park district's 10 lots and beaches where dogs can run off-leash.

'Not in the money business'

Eric Miller, a lawyer and Uptown resident, said he wanted to know who came up with this Cook County mandate that the Park District must now enforce.

"Nobody seems to be taking responsibility for the way this thing

several park district and county representatives, who explained the process and took questions.

Among them was Dan Farmer, an administrator with the Cook County Animal Control Unit. When Miller wasn't satisfied with the answer he got, he said, "It's been presented to us as a . . . requirement, but it looks like a grab for money."

An exasperated Farmer fired back, "I'm not in the money business; I'm not asking to be."

Farmer explained that other cities in the county already require such permits. In Chicago the Park District is making permit applica-

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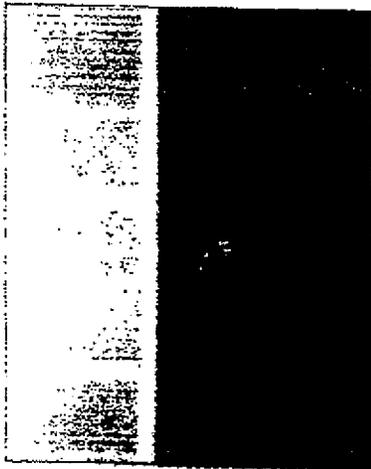
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THE
**PIANO
EXPERTS**

*Savings are off MSRP prices only

▲ Dow 30 Industrials
+ 57.32, 10,837.09▲ S&P 500
+ 8.83, 1,226.78▲ Nasdaq
+ 10.23, 2,188.22▲ Russell 2000
+ 2.98, 870.72

IN BRIEF



He protects 'stealth' with determination

Leo Stoller says he owns the trademark on the word "stealth." And businesses know he's not kidding. **THE INSIDER, 3D**

Trinsic gets extension on Nasdaq delisting

Trinsic Inc. said Wednesday its stock will remain listed on the Nasdaq SmallCap Market because of a temporary exemption it received from Nasdaq listing rules requiring a minimum market capitalization and bid price. To keep its shares listed on Nasdaq, the Tampa phone company must meet certain conditions, including raising its stock price to \$1 a share by Sept. 30 and keeping it that price or above for at least 10 straight trading days. Beginning Friday, Trinsic's stock will trade under the ticker symbol TRINC until it complies with all conditions. Trinsic released the Nasdaq news after its stock closed unchanged Wednesday

Delta CEO:

BANKRUPTCY LOOMS: Employees are told that while aggressive cutting has helped, the airline is in a race to meet its goals.

By **STEVE HUETTEL**
Times Staff Writer

Delta Air Lines must take more steps to return to profitability as the carrier fights to stay out of bankruptcy court, chief executive Gerald Grinstein has warned employees.

While Delta's plan to save \$5-billion annually by the end of 2006 is paying off, high

fuel prices and crushing debt must be done quickly and be done quickly. A memo distributed last week announced a new cost-cutting

Delta's shares fell 26 percent on the closing at \$2.95, a 10-cent drop.

The nation's first 2 at Tampa International Airport reported a \$382-million loss last week, a modest

'EMPLOYEE-DI



Marketing & Technology

Viewing Films, Taking a Call

A new service will play movies, sports and concerts on a cellphone. Oh, and it can still make a phone call. **C8**

Marketing

Private War to Protect a Word

Leo Stoller has spent years defending his trademark to "stealth." The latest fight is with Columbia Pictures. **C8**

Go!
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Business Day

The New York Times

Hands-On Readers

Why Newspapers Are Betting on Audience Participation

By KATHARINE Q. SEELYE

GREENSBORO, N.C. — "Get me rewrite!"

For years those words evoked the romanticism of the newspaper business, back when swashbuckling reporters landed scoops with derring-do. Today they mean something else entirely, at least here where the people at The News & Record, the local daily, are toiling to reinvent their newspaper.

In this world, "Get me rewrite" will in effect be a menu option, a way for unhappy readers to go online and offer their own versions of articles they do not like. Their hope is to convert the paper, through its Web site, www.news-record.com, into a virtual town square, where citizens have a say in the news and where every reader is a reporter.

This feature, part of a planned overhaul of The News & Record's Web site that is to begin next week, is a potent symbol of a transformation taking place across the country, where top-down, voice-of-God journalism is being chal-

lenged by what is called participatory journalism, or civic or citizen journalism.

Under this model, readers contribute to the newspaper. And they are doing so in many forms, including blogs, photos, audio, video and podcasts.

Whether such efforts can revive revenue for newspaper publishers is an open question. But with gloomy financial forecasts and declines in circulation, some papers are starting to see participatory journalism as their hope for reconnecting with their audiences.

In some cases, like Backfence.com, in suburban Virginia, citizens are the only contributors, and the "newspaper" is an unedited Web site. In Bluffton, S.C., Blufftontoday.com is made up largely of reader contributions, but some of the content is also published in a colorful tabloid newspaper and distributed free to residents. In Colorado, The Rocky Moun-

Continued on Page 4

DAVID CARR

Big Media Wants a Piece Of Your Pod

As could probably agree that any time Paris Hilton and General Motors converge on the same thing, a significant cultural moment is under way.

Recently those two remarkably different brands decided it was worth their time and effort to put together a podcast. On a podcast for the movie "House of Wax," Ms. Hilton talks about the onerous responsibilities of being publicity for the film. G.M., meanwhile, used one of its recent podcasts to introduce the 2008 Buick Lucerne, which combines high-level technology and luxury features with a spacious quiet interior. "Notice the carmaker used keywords that might apply equally to the Lucerne or Ms. Hilton: "Its body

BY THE DOZEN
The ACC officially
announced its plans

LIVE 8 CONCERTS

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WHY OBTAIN A *GOOGLE*® 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 *GOOGLE*® trademarks can mean instant buyer appeal for your products and services. As a *GOOGLE*® licensee, you are part of a team company already marketing their products and services using *GOOGLE*® trademarks. Their success is proof of what a *GOOGLE*® license can do for you.

GOOGLE® LICENSING PROGRAM

Licensee Requirements

As a prerequisite for becoming a *GOOGLE®* 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 *GOOGLE®* 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 *GOOGLE®* brand could be the answer.

GOOGLE® LICENSING PROGRAM

See Rentamark famous brands available for licensing at
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 *GOOGLE*® 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

**See our list of other famous brands available for
licensing at 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®

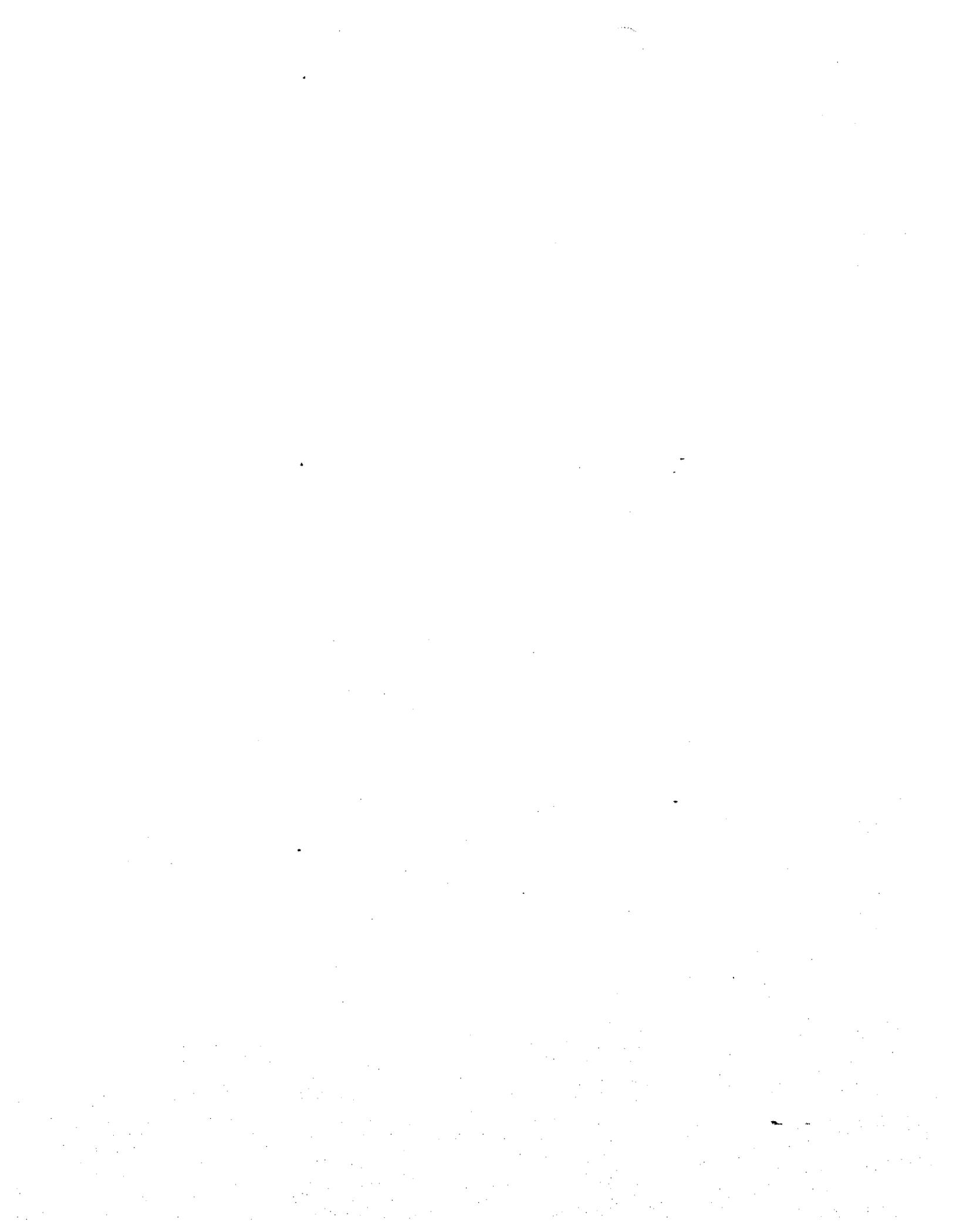
HYPERSONIC®

NIGHT STALKER®

STRADIVARIUS®

TRILLIUM®

Visit our website at: WWW.RENTAMARK.COM



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(Covenant Not To Sue)

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GOOGLE

Leo Stoller

Representative of GOOGLE

Date: NOV 21, 05

LEO STOLLER

Signing Representative of GOOGLE

[PRINTED]

Date: NOV 29, 05

C:\MARKS44\GOOGLE.TRO

GOOGLE INC.

Representative of:
GOOGLE INC.

Date: _____

Signing Representative of:

GOOGLE INC.

[PRINTED]

Date: _____

SETTLEMENT AGREEMENT
(Consent to Register Application No. 76-362,450)

This Agreement, effective NY 27, 2005, is by and between RENTAMARK.COM, P.O. Box 35189, Chicago, Illinois 60707-0189 (hereinafter referred to as "GOOGLE") and GOOGLE INC., CORPORATION DELAWARE; 1600 Amphitheatre Parkway; Building 41; Mountain View, CA 94043 (hereinafter referred to as "GOOGLE INC.").

WHEREAS, GOOGLE INC. has filed First Use Application Serial No(s). 76-314,811 Int. Cl. No(s). 11, 12, 16, 18, 21, 25, 28, 35, 38 and 42, for See attachment.

WHEREAS, GOOGLE and GOOGLE INC. desire to settle this dispute and future disputes regarding GOOGLE INC.'s use of the mark GOOGLE as set forth in the trademark application 76-314,811.

WHEREAS, the parties desire to avoid the cost, expense and delay of litigation by amicably adjusting, compromising and settling any dispute, subject to the terms and conditions of this AGREEMENT.

NOW THEREFORE, in consideration \$100,000.00 (one hundred thousand dollars and no/100 cents) paid to RENTAMARK.COM by GOOGLE INC., for the foregoing promises, and the following mutual understandings, it is agreed as follows:

1. GOOGLE INC. agrees to limit its use of the mark GOOGLE to the goods identified in its Application Serial No. 76-314,811.
 - 1.1 GOOGLE INC. agrees not to file for any other Trademark application containing the word GOOGLE.
2. GOOGLE shall not object to GOOGLE INC.'s use or registration of its mark GOOGLE listed in Application Serial No. 76-314,811.
3. GOOGLE agrees not to sue GOOGLE INC. for any past, or present or future use of the trademark identified in Application Serial No. 76-314,811.
4. GOOGLE INC. acknowledges GOOGLE's exclusive ownership of the mark GOOGLE and agrees not to oppose GOOGLE's applications or GOOGLE marks and agrees not to sue GOOGLE for use of its GOOGLE mark(s).
5. This Agreement shall be valid worldwide.
6. This agreement inures to the benefit of, and is binding upon, GOOGLE and GOOGLE INC., their parents, subsidiaries, sister companies, affiliates, entities which control the foregoing, entities which the foregoing control, and all of their successors and assigns.

7. Neither party shall disclose the terms or conditions of this Agreement to any third party, nor issue any public statements relating to this Agreement without the written consent of the other party, unless such disclosure or statement is reasonably believed by the party to be compelled by governmental authority. A disclosing party shall furnish reasonable prior notice to the other party before making the statement or disclosure.

8. GOOGLE and GOOGLE INC. have caused this Agreement to be executed by their duly authorized legal representatives.

9. This Agreement can be executed in counterparts. If Rentamark.com, does not receive a signed copy by December 20, 2005 this agreement is null and void.

Rentamark.com

GOOGLE INC.

By *Leo Stollen*
Representative of GOOGLE

By _____
Representative of:-
GOOGLE INC.

Dated: NOV 29, 05

Dated: _____



United States Patent and Trademark Office

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Receipt

Your submission has been received by the USPTO.
The content of your submission is listed below.
You may print a copy of this receipt for your records.

ESTTA Tracking number: **ESTTA55062**Filing date: **11/27/2005**

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

Applicant: **GOOGLE INC.**
Application Serial Number: **76314811**
Application Filing Date: **09/18/2001**
Mark: **GOOGLE**
Date of Publication **11/01/2005**

First 90 Day Request for Extension of Time to Oppose for Good Cause

Pursuant to 37 C.F.R. Section 2.102, Central Mfg. Co. (Inc), P.O. Box 35189, Chicago, IL 60707-0189, UNITED STATES, a Corporation, organized under the laws of Delaware, respectfully requests that it be granted a 90-day extension of time to file a notice of opposition against the above-identified mark for cause shown.

Potential opposer believes that good cause is established for this request by:

- The potential opposer needs additional time to investigate the claim

The time within which to file a notice of opposition is set to expire on 12/01/2005. Central Mfg. Co. (Inc) respectfully requests that the time period within which to file an opposition be extended until 03/01/2006.

Respectfully submitted,
/Leo Stoller/
11/27/2005

Leo Stoller

President/CEO

Central Mfg. Co. (Inc)



Trademarks > Trademark Electronic Search System(Tess)

TESS was last updated on Sat Nov 26 04:10:40 EST 2005

TESS HOME NEW USER STRUCTURED FREE FORM BROWSE LIST SEARCH OIG BOTTOM HELP

Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

TARR Status ASSIGN Status TDR TTAB Status (Use the "Back" button on the internet

HOME > SEARCH > TESS



Word Mark GOOGLE

Goods and Services

IC 009. US 021 023 026 036 038. G & S: Computer software for searching, compiling, indexing and organizing information on computer networks; computer hardware, computer software for searching, compiling, indexing, and organizing information within individual workstations and personal computers; computer software for creating indexes of information, indexes of web sites and indexes of other information resources; mouse pads. FIRST USE: 20001100. FIRST USE IN COMMERCE: 20001100

IC 011. US 013 021 023 031 034. G & S: lamps. FIRST USE: 20020600. FIRST USE IN COMMERCE: 20020600

IC 012. US 019 021 023 031 035 044. G & S: License plate frames and holders. FIRST USE: 20020600. FIRST USE IN COMMERCE: 20020600

IC 016. US 002 005 022 023 029 037 038 050. G & S: notebooks, pens, stickers, decals. FIRST USE: 20020600. FIRST USE IN COMMERCE: 20020600

IC 018. US 001 002 003 022 041. G & S: Bags, namely, tote bags, duffie bags, backpacks; umbrellas. FIRST USE: 20020600. FIRST USE IN COMMERCE: 20020600

IC 021. US 002 013 023 029 030 033 040 050. G & S: Mugs, tumblers. FIRST USE: 20020600. FIRST USE IN COMMERCE: 20020600

IC 025. US 022 039. G & S: Clothing, namely, shirts, t-shirts, vests, hats, caps, boxer shorts; children's clothing, namely, t-shirts. FIRST USE: 20010100. FIRST USE IN COMMERCE: 20010100

IC 028. US 022 023 038 050. G & S: Toys and sporting equipment, namely plastic exercise balls.

FIRST USE: 20010100. FIRST USE IN COMMERCE: 20010100

IC 035. US 100 101 102. G & S: Electronic retailing services via computer featuring mouse pads, lamps, license plate frames and holders, notebooks, pens, stickers, decals, tote bags, duffie bags, backpacks, umbrellas, mugs, tumblers, shirts, t-shirts, modem cords, toys, vests, caps, hats, and other clothing items. FIRST USE: 19990731. FIRST USE IN COMMERCE: 19990731

IC 038. US 100 101 104. G & S: providing multiple user access to proprietary collections of information by means of global computer information networks. FIRST USE: 19970900. FIRST USE IN COMMERCE: 19970900

IC 042. US 100 101. G & S: Computer services, namely, providing software interfaces available over a network in order to create personalized on-line information services; extraction and retrieval of information and data mining by means of global computer networks; creating indexes of information, indexes of web sites and indexes of other information sources in connection with global computer network; providing information from searchable indexes and databases of information, including text, electronic documents, databases, graphic and audio visual information, by means of global computer information networks. FIRST USE: 19970900. FIRST USE IN COMMERCE: 19970900

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Design Search Code

Serial Number 76314811

Filing Date September 18, 2001

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition November 1, 2005

Owner (APPLICANT) GOOGLE INC. CORPORATION DELAWARE 1600 Amphitheatre Parkway Building 41 Mountain View CALIFORNIA 94043

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Julia Anne Matheson

Description of Mark The mark consists of The first letter "G" is blue; the second letter "O" is red; the third letter "O" is yellow; the fourth letter "G" is blue; the fifth letter "L" is green; and the sixth letter "E" is red. The drawing is lined for the color(s) red, blue, green and yellow.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[BROWSE LIST](#)
[SEARCH LOG](#)
[TOP](#)
[HELP](#)

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2005-11-29 00:20:05 ET

Serial Number: 76314811 Assignment Information

Registration Number: (NOT AVAILABLE)

Mark

The image shows the word "Google" in its characteristic multi-colored, rounded font. The letters are white with a thin black outline, set against a plain white background.

(words only): GOOGLE

Standard Character claim: No

Current Status: A request for an extension of time to file an opposition has been filed at the Trademark Trial and Appeal Board.

Date of Status: 2005-11-27

Filing Date: 2001-09-18

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 114

Attorney Assigned:
FIRST VIVIAN M Employee Location

Current Location: 650 -Publication And Issue Section

Date In Location: 2005-09-22

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. GOOGLE INC.

Address:
GOOGLE INC.

1600 Amphitheatre Parkway Building 41
Mountain View, CA 94043
United States
Legal Entity Type: Corporation
State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 009

Computer software for searching, compiling, indexing and organizing information on computer networks; computer hardware, computer software for searching, compiling, indexing, and organizing information within individual workstations and personal computers; computer software for creating indexes of information, indexes of web sites and indexes of other information resources; mouse pads

First Use Date: 2000-11-00

First Use in Commerce Date: 2000-11-00

Basis: 1(a)

International Class: 011

lamps

First Use Date: 2002-06-00

First Use in Commerce Date: 2002-06-00

Basis: 1(a)

International Class: 012

License plate frames and holders

First Use Date: 2002-06-00

First Use in Commerce Date: 2002-06-00

Basis: 1(a)

International Class: 016

notebooks, pens, stickers, decals

First Use Date: 2002-06-00

First Use in Commerce Date: 2002-06-00

Basis: 1(a)

International Class: 018

Bags, namely, tote bags, duffel bags, backpacks; umbrellas

First Use Date: 2002-06-00

First Use in Commerce Date: 2002-06-00

Basis: 1(a)

International Class: 021

Mugs, tumblers

First Use Date: 2002-06-00

First Use in Commerce Date: 2002-06-00

Basis: 1(a)

International Class: 025

Clothing, namely, shirts, t-shirts, vests, hats, caps, boxer shorts; children's clothing, namely, t-shirts

First Use Date: 2001-01-00

First Use in Commerce Date: 2001-01-00

Basis: 1(a)

International Class: 028

Toys and sporting equipment, namely plastic exercise balls

First Use Date: 2001-01-00

First Use in Commerce Date: 2001-01-00

Basis: 1(a)

International Class: 035

Electronic retailing services via computer featuring mouse pads, lamps, license plate frames and holders, notebooks, pens, stickers, decals, tote bags, duffle bags, backpacks, umbrellas, mugs, tumblers, shirts, t-shirts, modem cords, toys, vests, caps, hats, and other clothing items

First Use Date: 1999-07-31

First Use in Commerce Date: 1999-07-31

Basis: 1(a)

International Class: 038

providing multiple user access to proprietary collections of information by means of global computer information networks

First Use Date: 1997-09-00

First Use in Commerce Date: 1997-09-00

Basis: 1(a)

International Class: 042

Computer services, namely, providing software interfaces available over a network in order to create personalized on-line information services; extraction and retrieval of information and data mining by means of global computer networks; creating indexes of information, indexes of web sites and indexes of other information sources in connection with global computer network; providing information from searchable indexes and databases of information, including text, electronic documents, databases, graphic and audio visual information, by means of global computer information networks

First Use Date: 1997-09-00

First Use in Commerce Date: 1997-09-00

Basis: 1(a)

ADDITIONAL INFORMATION

Description of Mark: The mark consists of The first letter "G" is blue; the second letter "O" is red; the third letter "O" is yellow; the fourth letter "G" is blue; the fifth letter "L" is green; and the sixth letter

"E" is red.

Lining and Stippling: The drawing is lined for the color(s) red, blue, green and yellow.

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

- 2005-11-27 - Extension Of Time To Oppose Received
- 2005-11-01 - Published for opposition
- 2005-10-12 - Notice of publication
- 2005-09-06 - Law Office Publication Review Completed
- 2005-09-06 - Assigned To LIE
- 2005-08-26 - Assigned To LIE
- 2005-08-24 - Approved for Pub - Principal Register (Initial exam)
- 2005-08-24 - EXAMINERS AMENDMENT E-MAILED
- 2005-08-24 - Examiners Amendment - Written
- 2005-08-10 - Previous allowance count withdrawn
- 2005-07-29 - Withdrawn Before Publication
- 2005-04-22 - Law Office Publication Review Completed
- 2005-04-18 - Assigned To LIE
- 2005-04-15 - Assigned To LIE
- 2005-04-13 - Approved for Pub - Principal Register (Initial exam)
- 2005-03-22 - Amendment From Applicant Entered
- 2005-02-17 - Communication received from applicant
- 2005-02-17 - TEAS Response to Office Action Received
- 2005-02-17 - Petition To Revive-Granted
- 2005-02-17 - TEAS Petition To Revive Received

EXHIBIT 5

quinn emanuel trial lawyers | los angeles

865 South Figueroa Street, 10th Floor, Los Angeles, California 90017 | TEL 213-624-7707 FAX 213-624-0643

January 26, 2006

VIA FACSIMILE AND U.S. MAIL

Mr. Leo Stoller
P.O. Box 35189
Chicago, IL 60707-0189

Re: Google Inc.

Dear Mr. Stoller:

As you know, this firm represents Google Inc. ("Google"), the owner of all rights to the famous GOOGLE mark.

I am writing further to our telephone call on January 11, 2006. During our conversation, you confirmed that you are the CEO of Central Mfg. Co., which you said is in the business of "trademark licensing and enforcement." You stated that Central Mfg. Co. is using "Google Brands & Services" as a trade name and as a d/b/a and is using the trademark "Google," including through licensees, on consumer goods that include the same types of consumer goods which Google sells. According to you, these uses of "Google" by and through Central Mfg. Co. have occurred not just in the Chicago area, but "all over" the United States. You indicated that you could demonstrate such uses through "catalog sheets," "licensing agreements" with third parties and "invoices."

In addition, you stated that you and Central Mfg. Co. have the "right to continue to use" "Google" as a mark in connection with all consumer goods, whereas Google has no right to use the GOOGLE mark on any consumer goods and has no right to go into what you called "our business." Indeed, you asserted that my client's GOOGLE mark is "generic" in connection with Internet search engines and that you would seek to undo Google's rights in its GOOGLE mark if it did not give in to your demands (described further below). The only alleged basis that you

quinn emanuel urquhart oliver & hedges, llp

NEW YORK | 335 Madison Avenue, 17th Floor, New York, New York 10017 | TEL 212-702-8100 FAX 212-702-8200
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94104 | TEL 415-875-6600 FAX 415-875-6700
SILICON VALLEY | 555 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL 650-620-4500 FAX 650-620-4555
PALM SPRINGS | 45-025 Manitou Drive, Suite 8, Indian Wells, California 92210 | TEL 760-345-4757 FAX 760-345-2414
SAN DIEGO | 4445 Eastgate Mall, Suite 200, San Diego, California 92121 | TEL 858-812-3107 FAX 858-812-3336

Mr. Leo Stoller
January 26, 2006

cited for this contention was that Google has been "so successful" and become "so famous" that its mark has been rendered generic.

During our conversation, you stated more than once that you would not provide us with any evidence to substantiate your claim of purported rights to, or use of, the mark or trade name "Google," although you claimed to have such documentation. You likewise declined to explain to me the origins of your claimed "Google" mark or to state who the licensees were.

You demanded during our conversation that Google either (1) cease using the GOOGLE mark for all consumer goods or (2) pay you money. Otherwise, you claimed that you would become a "nightmare" for Google, including by seeking to depose its top-level executives and demanding all of its financial documents. A decision by Google to fight this "controversy" with you and your company, as you put it, would cost Google hundreds of thousands of dollars and take years, even if the asserted claims are without merit. You additionally claimed that this dispute will put a "cloud on Google's brand" and "tie up its brand," will "defeat" Google's "ability to license" its GOOGLE mark in any field and will hamper Google's "ability to grow" its business.¹ For these reasons, you claimed, it was "less expensive" for Google to simply do as you demand and thereby get you "out of the Google game."

Your refusals to substantiate your alleged ownership of rights, coupled with your avowed intention to embark on a campaign of harassment if Google does not capitulate to your demands, make clear that there is no good faith factual or legal basis for your assertions that you and Central Mfg. Co. own rights of any kind to the mark or trade name "Google." Regrettably, your tactics here are consistent with your pattern of threatening and pursuing frivolous litigation -- including based on fabricated claims -- that is well documented in numerous Court rulings against you and your companies. E.g., S Indus., Inc. v. Centra 2000, Inc., 249 F.3d 625, 627-29 (7th Cir. 2001) (affirming attorneys' fee award against one of your companies because its suit was "indefensible" and "meritless" and stating that your "actions here look to be part of a pattern of abusive and improper litigation"); Central Mfg. Co. v. Pure Fishing, Inc., Order of Nov. 16, 2005 (N.D. Ill., Lindenberg, J.) (noting that you have "earned a reputation for initiating spurious and vexatious federal litigation" and finding that you had engaged in "gross misconduct" and "unethical conduct," evinced "an appalling lack of regard" for the judicial process and brought motions "that lacked any evidentiary support"); Central Mfg. Co. v. Brett, Order of Sept. 30, 2005 (N.D. Ill., Coar, J.) ("Stoller appears to be running an industry that produces often spurious, vexatious, and harassing federal litigation."); S Indus., Inc. v. Stone Age Equip., Inc., 12 F.

¹ To illustrate these points during our telephone call, you informed me that you had pursued many other "high profile" trademark disputes against others. These included, you claimed, an acknowledgment by Microsoft in one case that you owned superior trademark rights and, in another case, an assignment of rights to the mark "Terminator" that Canal Plus paid you money to acquire.

Mr. Leo Stoller
January 26, 2006

Supp. 2d 796, 819 (N.D. Ill. 1998 (Castillo, J.) (awarding attorney's fees against one of your companies, calling your documents "highly questionable" and "perhaps fabricated" and describing your testimony as "inconsistent, uncorroborated, and in some cases, demonstrably false"); S Indus., Inc. and Central Mfg. Co. v. JL Audio, Inc., 2003 WL 21189779, at *5 (TTAB 2003) ("Mr. Stoller's and opposers' litigation strategy of delay, harassment and even falsifying documents in other cases is well documented" and citing numerous cases in support).

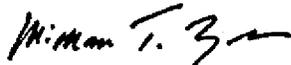
We therefore expect your written acknowledgment, no later than February 2, 2006, that neither you nor any company owned or operated by you, including Central Mfg. Co., has any right, title or interest of any kind in GOOGLE, either as a mark or as a trade name. We further expect your written confirmation that you, your companies and your purported licensees are not using and will not use the mark or trade name "Google" in connection with the sale or offering for sale of goods or services.

Should you fail to do so, Google will take appropriate steps to vindicate its legal rights, which may include seeking reimbursement of its attorneys' fees and an award of sanctions against you and your companies.

I also understand that you called Rose Hagan at Google regarding this matter and left her a voicemail. Please direct any future communications to me, and not to Google.

This is not a complete statement of Google's position, and Google reserves all of its rights in this matter.

Very truly yours,



Michael T. Zeller

20056/1814666.1

EXHIBIT 6

quinn emanuel trial lawyers | los angeles

865 South Figueroa Street, 15th Floor, Los Angeles, California 90017 | TEL 213-624-7700 | FAX 213-624-0643

January 27, 2006

VIA FACSIMILE AND U.S. MAIL

Mr. Leo Stoller
P.O. Box 35189
Chicago, IL 60707-0189

Re: Google Inc.

Dear Mr. Stoller:

This is in response to your letter dated January 26, 2006.

Although your letter asserts I mischaracterized our telephone conversation of January 11, 2006, it fails to specify how. If, contrary to what you stated over the phone, you are now willing to provide us with documents which you claim substantiate your and/or Central's purported rights to use the mark or trade name "Google," please send them to me.

Your letter is incorrect in its assumption that Google has any interest in resolving this dispute by paying money to you or your alleged companies. Google will not do so, and the proposal attached to your letter is rejected.

I presume from your letter that you are refusing the terms set forth in my January 26, 2006 letter, namely, your provision of an unambiguous, written acknowledgment (1) that neither you nor any company owned or operated by you, including Central, has any right, title or interest of any kind in GOOGLE as a mark or as a trade name and (2) that you, your companies and your purported licensees are not using and will not use the mark or trade name "Google" in connection with the sale or offering for sale of goods or services. If I am mistaken on this score, please send me the written confirmation that we have sought. Otherwise, we will proceed on the basis that you and your companies are refusing to provide it.

quinn emanuel urquhart oliver & hedges, llp

NEW YORK | 315 Madison Avenue, 17th Floor, New York, New York 10017 | TEL 212-762-8100 FAX 212-762-8200

SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94104 | TEL 415-875-6600 FAX 415-875-6700

SILICON VALLEY | 355 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL 650-620-3500 FAX 650-620-4555

PORTLAND | 40023 Marine Drive, Suite 500, Indian Wells, California 92714 | TEL 714-444-3333 FAX 714-444-3414

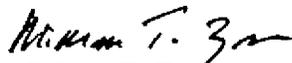
WASHINGTON, D.C. | 1100 Pennsylvania Avenue, N.W., Suite 1000, Washington, D.C. 20004 | TEL 202-462-7000 FAX 202-462-7100

Mr. Leo Stoller
January 27, 2006

Finally, notwithstanding the request in my January 26 letter, it appears that you are continuing to send communications to Google regarding this matter. That must stop, since Google does not want further contact with you directly, but only through counsel. Again, I ask that you please direct any future communications to me, and not to Google.

This is not a complete statement of Google's position, and Google reserves all of its rights in this matter.

Very truly yours,


Michael T. Zeller

20056/1814666.1