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

Proceeding	91171046
Party	Defendant Kansas City Live, LLC Kansas City Live, LLC 601 East Pratt Street, Sixth Floor Baltimore, MD 21202
Correspondence Address	NED T. HIMMELRICH GORDON, FEINBLATT, ROTHMAN, HOFFBERGER 233 EAST REDWOOD STREET BALTIMORE, MD 21202
Submission	Motion to Suspend for Civil Action
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Date	06/30/2006
Attachments	GAILOYD v KANSAS CITY MOTION WITH EXHIBITS.pdf ( 18 pages )(637679 bytes )

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

GAILOYD ENTERPRISES CORP.            )  
  )  
  )  
  Opposer,            )            Opposition No. 91,171,046  
v.    )  
  )  
  )  
KANSAS CITY LIVE, LLC                )  
  )  
  Applicant.         )

**MOTION TO SUSPEND**

Kansas City Live, LLC (“Kansas City Live”), by its respective counsel, hereby moves, pursuant to Rule 510.02(a) of the Trademark Trial And Appeal Board Manual of Procedure (TBMP) and 37 CFR § 2.117, that this Trademark Trial and Appeal Board (“Board”) suspend this opposition proceeding pending the conclusion of the federal action *Gailoyd Enterprises Corp. v. Kansas City Live, LLC*, Case No. 06-0455-CB-W-DW, filed in the United States District Court for the Western District of Missouri (“Federal Action”). In the event that this Board denies Kansas City Live’s Motion, Kansas City Live also requests that this Board reset all deadlines in this opposition proceeding for an additional ninety days. In support of this Motion, Kansas City Live states as follows:

1. On May 23, 2006, Gailoyd Enterprises Corp. (“Gailoyd”) filed a Notice of Opposition (“Opposition”) against Kansas City Live’s trademark application for the trademark POWER & LIGHT DISTRICT, Serial No. 76/570,628 (“This Mark”). Gailoyd alleges that it will be damaged by the registration of This Mark because This Mark is similar to Gailoyd’s common law trademark POWER & LIGHT BUILDING and consumer confusion would occur.

Gailoyd also alleges that registration of This Mark will dilute Gailoyd's common law trademark POWER & LIGHT BUILDING.

2. On June 6, 2006, Gailoyd initiated the Federal Action by filing a complaint alleging unfair competition and trademark infringement. In the Federal Action, Gailoyd alleges that "it is the owner of a family of trademarks incorporating the term POWER AND LIGHT, namely, POWER AND LIGHT, POWER AND LIGHT BUILDING and POWER AND LIGHT CONDOS." See Complaint, ¶7. Gailoyd further asserts in the Federal Action that various trademarks owned by Kansas City Live, including This Mark, infringe upon trademarks owned by Gailoyd. A copy of Gailoyd's Complaint is attached hereto as **Exhibit A**. In particular, Gailoyd specifically mentions the application at issue in this Opposition, asserting that Kansas City Live "attempted to assume for itself ownership and use of Plaintiff's POWER AND LIGHT Marks by filing with the Trademark Office U.S. Trademark Application No. 76/570,628 for the mark POWER AND LIGHT DISTRICT based upon intent to use the mark for, *inter alia*, real estate services." See Complaint ¶15.

3. Gailoyd also asserts in the Federal Action that This Mark is "so similar to Gailoyd's POWER AND LIGHT Marks as to cause confusion among relevant consumers...". See Complaint ¶17.

4. The Code of Federal Regulations sets forth parameters for granting a suspension. 37 CFR § 2.117(a) provides:

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.

*See also* TBMP Rule 510.02(a).

5. The TBMP elaborates on the CFR. TBMP Rule 510.02(a) further provides:

Most commonly, a request to suspend pending the outcome of another proceeding seeks suspension because of a civil action pending between the parties in a Federal district court. To the extent that a civil action in a Federal district court involves issues in common with those in a proceeding before the Board, the decision of the Federal district court is often binding upon the Board, while the decision of the Board is not binding upon the court.

6. It is clear that the Federal Action involves “issues in common” with those in this Opposition Proceeding. Both actions revolve around the use of the term “POWER & LIGHT” in general and This Mark in particular. Issues of first use, likely confusion and possible defenses will be the same in the Federal Action and in this Opposition Proceeding. As such, the decision of the Federal Action respecting these issues will be binding upon the Board.

7. In addition, Gailoyd has stated to the Mayor of Kansas City that its Federal Action is intended to “prohibit Cordish [Kansas City Live’s affiliate] from using Gailoyd’s protected marks, which includes any form of use of the name “Power & Light”. *See* Letter dated June 6, 2006 from Spencer R. Thomson of Blackwell, Sanders, Peper, Martin on behalf of Gailoyd to Mayor Kay Barnes of Kansas City, attached hereto as **Exhibit B**. The registrations at issue in the Opposition Proceeding are certainly a form of the name Power & Light, and thus this Opposition Proceeding has “issues in common” with the Federal Action. Kansas City Live must note that it and its affiliates deny the truth of the disparaging comments made about “Cordish” in the letter.

8. Granting a suspension is prudent because it will eliminate duplicative pleadings, discovery and motions. The parties would waste extensive effort and expense in preparing such

duplicative pleadings, discovery and motions and the Board would needlessly have to give attention to the filings in this proceeding if this Board denies this Motion to Suspend.

9. Kansas City Live asked Gailoyd to consent to suspend this Opposition Proceeding; however, Gailoyd would not consent.

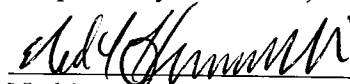
10. Kansas City Live and Gailoyd have consented to a thirty-day extension for Kansas City Live to Answer the Opposition. This extension in turn will extend the remaining deadlines by thirty days. In the event the Board denies Kansas City Live's Motion to Suspend, Kansas City Live requests that this Board reset all deadlines for an additional ninety days.

11. The parties have coordinated with this Board to argue this Motion in a telephone conference on Monday, July 3, 2006 at 2:00 p.m. (local time in Washington, D.C.)

WHEREFORE, Kansas City Live requests that this Honorable Board grant Kansas City Live's Motion to Suspend pending the conclusion of the Federal Action. In the event that this Board denies Kansas City Live's Motion to Suspend, Kansas City Live requests that this Honorable Board reset all outstanding deadlines in this Opposition Proceeding for an additional ninety days.

Dated: June 30, 2006

Respectfully submitted,



Ned T. Himmelrich

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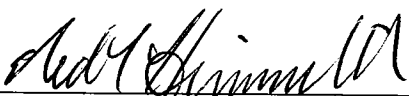
*Attorneys for Applicant, Kansas City Live, LLC*

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

GAILOYD ENTERPRISES CORP.            )  
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  Opposer,            )            Opposition No. 91,171,046  
v.    )  
  )  
  )  
KANSAS CITY LIVE, LLC                )  
  )  
  Applicant.        )

**CERTIFICATE OF SERVICE**


This is to certify that on this 30<sup>th</sup> day of June 2006, a copy of the foregoing Motion to Suspend was served on Opposer via overnight delivery and electronic mail, addressed as follows:  
Richard P. Stitt, Esquire Shugart, Thomson, Kilroy, P.C., 120 West 12<sup>th</sup> Street, Ste. 1800, Kansas City, MO 64502, [rstitt@stklaw.com](mailto:rstitt@stklaw.com), Attorneys for Opposer.

  
\_\_\_\_\_  
Ned T. Himmelrich

**CERTIFICATE OF ELECTRONIC FILING**

This is to certify that a copy of the foregoing paper was filed electronically with the  
Trademark Trial and Appeal Board on June 30, 2006.

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

  
\_\_\_\_\_  
Ned T. Himmelrich

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

GAILOYD ENTERPRISES CORP. )

Plaintiff )

vs. )

Civil Action No. 06-0455-CV-W-DW

KANSAS CITY LIVE, LLC. )

601 East Pratt Street, Sixth Floor )

Baltimore, Maryland 21202 )

Defendant )

**COMPLAINT**

Plaintiff, Gailoyd Enterprises Corp., for its Complaint, alleges the following:

**Parties**

1. Plaintiff Gailoyd Enterprises Corp. ("Gailoyd") is a Delaware corporation with its principal place of business at Rockridge Farm, 961 Route 52, Carmel, New York 10512.

2. Upon information and belief, Defendant Kansas City Live, LLC ("Kansas") is a Maryland limited liability company, having a principal place of business at 601 East Pratt Street, Sixth Floor, Baltimore, Maryland 21202.

**Jurisdiction and Venue**

3. This is an action for unfair competition under the federal laws provided for by the Lanham Act, 15 U.S.C. §§1114 through 1125 and for trademark infringement and unfair competition under the laws of Missouri.

4. This Court has subject matter jurisdiction of the Lanham Act claims under the provisions of 15 U.S.C. §1121 and 28 U.S.C. §§1331. This Court has subject matter jurisdiction



of the common law trademark and unfair competition claims under 28 U.S.C. §1367(a), because the common law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts. This Court also has subject matter jurisdiction under 28 U.S.C. §1332 because this Complaint asserts a cause of action in which the matter in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs, and the Plaintiff and Defendant are citizens of different states.

5. This Court has personal jurisdiction over the Defendant because it purposefully availed itself of the privilege of doing business in Missouri by engaging in commercial property development activities. Defendant is also subject to service of process pursuant to the Missouri long-arm statute, Mo. Rev. Stat. §506.500.

6. Venue is proper in this district under 28 U.S.C. §1391(b).

#### **Facts**

7. Gailoyd is the owner of a family of trademarks incorporating the term POWER AND LIGHT, namely, POWER AND LIGHT, POWER AND LIGHT BUILDING and POWER AND LIGHT CONDOS and the goodwill associated with those marks (hereinafter the "POWER AND LIGHT Marks" or "Plaintiff's Marks").

8. Since at least as early as 1931, Gailoyd, on its own or through its predecessor in interest, Kansas City Power and Light Company, has continually used one or more of its POWER AND LIGHT Marks in connection with real estate services, namely, listing, leasing, and managing real property (Use of "Plaintiff" or "Gailoyd" herein includes predecessors in interest)(Exhibits A, B and C).

9. Since commencing use of its POWER AND LIGHT Marks, Gailoyd has leased millions of dollars worth of real estate. Tens of thousands of customers have used its realty services.

10. On the basis of extensive advertising and sales of its realty services under the POWER AND LIGHT Marks over many decades, Plaintiff's Marks have become distinctive as an indication of the source or origin of realty services offered by Gailoyd.

11. Gailoyd advertises and offers its POWER AND LIGHT realty services throughout the greater Kansas City area encompassing the states of Kansas and Missouri and the Marks are widely known throughout the Midwest. The POWER AND LIGHT Building and its identity have long been a geographic landmark of the Midwest. A copy of a magazine article describing the POWER AND LIGHT Building is attached as Exhibit D.

12. Gailoyd has spent considerable amounts of time, effort and money in establishing goodwill in its POWER AND LIGHT Marks.

13. On December 15, 1995, without Plaintiff's knowledge and after Plaintiff's marks had become distinctive for realty services, Defendant's predecessor in interest, Centertainment, Inc., attempted to assume for itself ownership and use of Plaintiff's POWER AND LIGHT Marks by filing with the United States Patent and Trademark Office ("Trademark Office") U.S. Trademark Application Nos. 75/033,243 and 75/033,209 for the marks POWER AND LIGHT DISTRICT and POWER & LIGHT DISTRICT respectively for, *inter alia*, real estate services.

14. In order to obtain trademark registrations based on the 75/033,243 and 75/033,209 applications, on December 15, 1999 and December 17, 1999, respectively, Defendant submitted to the Trademark Office false evidence of actual use of these marks for "management of retail shops for others in retail shopping malls and centers; street vendor services featuring food and

memorabilia; leasing of retail space in retail shopping malls and centers; entertainment services, namely, operating motion picture theaters, live performance theaters, dinner theaters, night clubs, amusement arcades, virtual reality facilities, family recreation facilities, museums, galleries and health club facilities; and hotel and restaurant services."

15. On January 9, 2004, again without Plaintiff's knowledge and after Plaintiff's marks had become distinctive for realty services, Defendant, attempted to assume for itself ownership and use of Plaintiff's POWER AND LIGHT Marks by filing with the Trademark Office U.S. Trademark Application No. 76/570,628 for the mark POWER AND LIGHT DISTRICT based upon intent to use the mark for, *inter alia*, real estate services.

16. On March 29, 2006, again without Plaintiff's knowledge and after Plaintiff's marks had become distinctive for realty services, Defendant, attempted to assume for itself ownership and use of Plaintiff's POWER AND LIGHT Marks by filing with the Trademark Office U.S. Trademark Application Nos. 76/657,473 and 76/657,474 for the marks POWER AND LIGHT and POWER & LIGHT respectively, based upon intent to use the marks for, *inter alia*, real estate services.

17. The POWER AND LIGHT, POWER & LIGHT and POWER AND LIGHT DISTRICT and POWER & LIGHT DISTRICT trademarks are so similar to the POWER AND LIGHT Marks of Gailoyd as to cause confusion among relevant consumers as to the source or origin of the realty services offered under the respective marks.

18. In order to maintain the registration for the 75/033,209 application, on March 23, 2006 Defendant submitted to the Trademark Office false evidence of actual and continuing use of the mark POWER & LIGHT DISTRICT for leasing of retail space in retail shopping malls and centers.

19. Defendant has further attempted to convert Gailoyd's trademark property to Defendant's own use by filing with the U.S. Trademark Trial and Appeal Board an opposition to registration of Plaintiff's U.S. Trademark Application No. 78/605,154 for the mark POWER AND LIGHT CONDOS, a variation on Plaintiffs POWER AND LIGHT trademark.

20. In defense of its trademark rights in the aforementioned trademark opposition proceeding, Plaintiff has filed with the U.S. Trademark Trial and Appeal Board petitions to cancel Defendant's trademark registration numbers 2,471,781 and 2,338,912 for POWER AND LIGHT DISTRICT POWER & LIGHT DISTRICT, respectively. Copies of the Applicant's Answer and Counterclaim Petition for Trademark Cancellation and the Defendant's certificates of registration are attached as Exhibits E, F and G.

21. Defendant continues its infringing activities. The U.S. Trademark Trial and Appeal Board proceedings identified in the preceding paragraphs will not act to settle the dispute between Plaintiff and Defendant regarding the right to own and use the trademark POWER AND LIGHT and related trademarks for realty services.

22. Upon information and belief, Defendant has benefited from the wrongful use of Plaintiff's trademark and such wrongful use has enabled Defendant to unfairly compete with Plaintiff in the marketplace.

### Count I

#### Unfair Competition Under 15 U.S.C. §1125(a)

23. Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 22 as if fully set forth.

24. The use by Defendant of the marks POWER AND LIGHT, POWER & LIGHT, POWER AND LIGHT DISTRICT and POWER & LIGHT DISTRICT for realty and real estate

development services and management of retail shops for others in retail shopping malls and centers; street vendor services featuring food and memorabilia; leasing of retail space in retail shopping malls and centers; entertainment services, namely, operating motion picture theaters, live performance theaters, dinner theaters, night clubs, amusement arcades, virtual reality facilities, family recreation facilities, museums, galleries and health club facilities; and hotel and restaurant services is likely to cause confusion or to cause mistake or to deceive as to the affiliation, connection, or association of Kansas City Live with Gailoyd, or as to the origin, sponsorship, or approval of Kansas City Live's goods, services, or commercial activities by Gailoyd.

25. The terms POWER AND LIGHT, POWER & LIGHT, POWER AND LIGHT DISTRICT and POWER & LIGHT DISTRICT are confusingly similar to Gailoyd's POWER AND LIGHT trademarks.

26. Purchasers are likely to purchase Defendant's products and services based on the false association with Gailoyd's products and services, thereby resulting in the loss of sales to Gailoyd.

27. Gailoyd has no control over the quality of services offered by Defendant and, because of the confusion as to source engendered by Defendant, Gailoyd's valuable goodwill in its trademarks is damaged by the actions of Defendant.

28. Defendant's actions constitute unfair competition and false representation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §§1125(a) and (d).

29. Defendant's unfair competition and false representation has been willful, deliberate and designed specifically to trade upon the goodwill associated with Gailoyd's services and trademarks.

30. These wrongful acts have caused and will continue to cause Gailoyd substantial injury, including loss of customers, damage to its goodwill, confusion of existing and potential customers, injury to its reputation, and diminution of the value of its trademarks and products.

31. The harm these wrongful acts will cause to Gailoyd is both imminent and irreparable, and the amount of damage sustained by Gailoyd will be difficult to ascertain if these acts continue.

32. Gailoyd has sustained irreparable harm due to the danger of injury to its reputation and goodwill in the realty industry caused by Defendant's infringement of Plaintiff's trademarks.

### **Count II**

#### **Missouri Common Law Trademark Infringement and Unfair Competition**

33. Gailoyd realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 32 as if fully set forth.

34. Gailoyd has the exclusive right to use the POWER AND LIGHT Marks under Missouri common law.

35. By reason of the actions set forth above, Defendant, with knowledge that it was violating Gailoyd's rights in its POWER AND LIGHT Marks, has committed trademark infringement, unfair competition and conversion of the mark in violation of Missouri common law.

### **Count III**

#### **Procurement of Trademark Registration by False or Fraudulent Representation Under 15 U.S.C. § 1120**

36. Gailoyd realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 35 as if fully set forth.

37. Defendant procured U.S. Trademark Registration Nos. 2,471,781 for POWER AND LIGHT DISTRICT and 2,338,912 for POWER & LIGHT DISTRICT by submitting false or fraudulent Statements of Use under 37 CFR § 2.88 filed respectively on December 15, 1999 and December 17, 1999 alleging use of the marks in connection with the services of "management of retail shops for others in retail shopping malls and centers; street vendor services featuring food and memorabilia; leasing of retail space in retail shopping malls and centers; entertainment services, namely, operating motion picture theaters, live performance theaters, dinner theaters, night clubs, amusement arcades, virtual reality facilities, family recreation facilities, museums, galleries and health club facilities; and hotel and restaurant services." (Exhibit H).

38. Defendant maintained U.S. Trademark Registration No. 2,338,912 for POWER & LIGHT DISTRICT by submitting false or fraudulent Declarations of Use and Incontestability under Sections 8 and 15 of the Trademark Act, such Declarations being filed on August 25, 2005 and alleging continuous use of the mark in connection with the services of "management of retail shops for others in retail shopping malls and centers; street vendor services featuring food and memorabilia; leasing of retail space in retail shopping malls and centers; entertainment services, namely, operating motion picture theaters, live performance theaters, dinner theaters, night clubs, amusement arcades, virtual reality facilities, family recreation facilities, museums, galleries and health club facilities; and hotel and restaurant services." (Exhibit I).

39. Defendant's actions constitute wrongful trademark registration in violation of Section 38 of the Lanham Act, 15 U.S.C. § 1120.

40. By reason of the actions set forth above, Defendant, with knowledge that it had not used either the POWER AND LIGHT DISTRICT mark or the POWER & LIGHT

DISTRICT mark in association with any of the services recited in each of the Notices of Allowance, has falsely and wrongfully procured and maintained federal trademark registrations since Defendant has merely published and distributed publicity brochures regarding its potential future activities and has never actually offered or actually been capable of offering to the public the services identified in each of the Notices of Allowance or the Statements of Use because no such services have ever existed.

41. Defendant's wrongful trademark registrations have caused Gailoyd substantial injury, including hinderance and delay in obtaining registration of its POWER AND LIGHT CONDOS trademark and have served to deprive Gailoyd of its rightful and full ownership of its trademark property and have caused Gailoyd substantial damages, including attorney's fees and costs expended in litigating the fraudulently obtained registrations, loss of customers, damage to its goodwill, confusion of existing and potential customers, injury to its reputation and diminution of the value of its trademarks and services and delay and additional expense in pursuing its additional realty developments.

**Prayer for Relief**

**WHEREFORE**, Gailoyd prays for an order and Judgment as follows:

A. Preliminarily and permanently enjoining Defendant, its agents, servants, employees, successors, assigns, and all persons in active concert or participation with any of them from using the POWER AND LIGHT mark or any colorable variation thereof in connection with realty and property development services or other related goods or services, or otherwise infringing Gailoyd's POWER AND LIGHT trademarks, unfairly competing with Plaintiff and from in any way associating Defendant's goods and services with Plaintiff in accordance with 15 U.S.C. §1116;



B. Confiscating all materials bearing the POWER AND LIGHT mark and delivering them up for destruction in accordance with 15 U.S.C. §1118.

C. Ordering forfeiture, cancellation or transfer to Gailoyd of the Defendant's trademark applications and registrations incorporating the mark POWER AND LIGHT and/or any colorable variations

D. Ordering an accounting of Defendants' profits from their infringing and unfair acts;

E. Awarding Gailoyd compensatory damages, the costs of this action and reasonable attorneys' fees incurred by Gailoyd in bringing this action in accordance with 15 U.S.C. § 1117(a);

F. Awarding Gailoyd punitive damages against Defendants in view of Defendants' willful conduct as alleged herein; and

G. Awarding Gailoyd such additional and further relief as the Court deems just and proper.

**JURY CLAIM**

PLAINTIFF CLAIMS A TRIAL BY JURY OF ALL ISSUES SO TRIABLE.

Respectfully submitted,

SHUGHART, THOMSON & KILROY, P.C.

/s/ Russell S. Jones

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June 6, 2006

Mayor Kay Barnes  
City Manager Wayne Cauthen  
414 E. 12th Street  
29th Floor, City Hall  
Kansas City, Missouri 64106

**Re: Gailoyd Enterprises Corporation Redevelopment of The Power & Light Building**

Dear Mayor Barnes and Manager Cauthen:

As you both know quite well, our client, Gailoyd Enterprises Corporation, has been working tirelessly for approximately four years to redevelop The Power & Light Building and adjoining property pursuant to their approved TIF Plan. Little would be served by rehashing this project's long history (you can refer to prior e-mails and correspondence from Gailoyd and us for that information). Unfortunately, despite our best efforts, it appears that the project is hopelessly stuck in a bureaucratic morass at City Hall.

Gailoyd has made concession after concession in order to move this project forward as reflected in the proposed financing structure submitted to the City several weeks ago. At the time we submitted that proposal, Gailoyd made it clear that the project had reached its financial breaking point and that the City would simply have to make a decision on whether to proceed or not. As has often been the case on this project, several weeks have passed and we have no further input from the City other than being told that the proposed structure was unacceptable and that staff was going to examine other options.

While waiting for the City to act, Gailoyd continues to sit in limbo, unable to enter into any construction contracts, trying to determine when it should cancel dozens of condominium reservations with would-be condo owners and watching helplessly as construction costs continue to skyrocket. At the same time, Gailoyd has had to suffer a barrage of verbal and written attacks by the Cordish Company threatening to withhold approval of any development agreement we might one day enter into with the City, and further demanding that Gailoyd surrenders all rights to their trademarked name "Power & Light" (this despite the fact that we promised the City and Cordish that we would resolve the trademark issue simultaneously with receipt of all City approvals and execution of a development agreement).

KC-1404670-1

KANSAS CITY, MISSOURI • ST. LOUIS, MISSOURI • OMAHA, NEBRASKA • SPRINGFIELD, MISSOURI • LINCOLN, NEBRASKA  
OVERLAND PARK, KANSAS • BELLEVILLE, ILLINOIS • WASHINGTON, D.C. • LONDON, UNITED KINGDOM

AFFILIATES: LEEDS • MANCHESTER  
MEMBER OF THE WORLD SERVICES GROUP

**Exh. B**

LAW FIRM

**BLACKWELL SANDERS PEPPER MARTIN**  
LLP

Mayor Kay Barnes  
June 6, 2006  
Page 2

Suffice it to say, our client has reached it's "breaking point." We've all had enough. The repeated lack of progress at City Hall causes Gailoyd to re-examine its options. After learning of the City's new position on the project's financing in the week before last, Gailoyd made a decision to close on the purchase of the old KCP&L parking lot (the one that Gailoyd spent hundreds of thousands of dollars to secure a "no further action" letter from the MDNR for). We will shortly move to terminate all reservations with prospective condo owners (the condos that the City demanded Gailoyd build and for which it spent millions in soft construction costs only to be told recently that the City has changed it's mind). In addition, given that we must protect what remains of Gailoyd's interests, the company's trademark counsel will be filing later today a Complaint in Federal District Court against Cordish to prohibit Cordish from using Gailoyd's protected marks, which includes any form of the use of the name "Power & Light." As a courtesy, we wanted the City, the Mayor in particular, to know in advance that this Complaint is being filed. We recognize that the filing of the suit may well serve as yet another excuse for the Cordish Company to not close on their land acquisition; however, with all due respect, they clearly don't need this as an excuse not to close.

All of us on this side deeply regret that progress on this important development project has stalled. Until very recently we continued to hold out hope that the City was indeed fully behind preserving this treasured piece of Kansas City heritage. That appearing not to be the case, you will certainly understand our need to proceed at this time to take all actions appropriate to preserve Gailoyd's interests in the landmark that they have owned for over 40 years.

Sincerely,



Spencer R. Thomson

SRT/srg

cc: Councilman John Fairfield  
Robert Langenkamp  
Steve Sparks  
Jeff Kaczmarek  
Missy Wilson  
Steve Brettell