

ESTTA Tracking number: **ESTTA79906**

Filing date: **05/08/2006**

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

Proceeding	91170256
Party	Defendant GOOGLE INC. GOOGLE INC. 1600 Amphitheatre Parkway Building 41 Mountain View, CA 94043
Correspondence Address	MICHAEL T. ZELLER QUINN EMANUEL URQUHART OLIVER & HEDGES 865 SOUTH FIGUEROA ST., 10TH FL LOS ANGELES, CA 90017
Submission	Other Motions/Papers
Filer's Name	Michael T. Zeller
Filer's e-mail	michaelzeller@quinnemanuel.com
Signature	/Michael T. Zeller/
Date	05/08/2006
Attachments	Motion for Protective Order.pdf (61 pages)(1803445 bytes)

**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 COMBINED (1)
MOTION FOR PROTECTIVE
ORDER RE OPPOSER'S SERVICE;
AND (2) PRELIMINARY RESPONSE
TO OPPOSER'S MOTION TO
CONSOLIDATE**

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

Applicant Google Inc. ("Applicant") respectfully moves the Board for a protective order requiring Opposer to file papers via ESTTA and to serve all further papers in this proceeding either by (a) obtaining a postmark from the U.S. Postal Service, or (b) using U.S. Postal Service Express Mail. In addition, Applicant seeks an order from the Board setting an appropriate response date to Opposer's Motion to Consolidate this proceeding with a cancellation proceeding which was instituted only just today. In support thereof, Applicant states as follows.

I. The Board Should Issue A Protective Order To Avoid Further Improprieties By Opposer In The Service And Filing Of Papers In These Proceedings.

A. The Board Has Warned Opposer Against Improper Service And Filing Tactics.

Opposer is on ample notice that its backdating of certificates of service and its omission of the mailing date from its postage meter stamps are unlawful and constitute bad faith conduct in Board proceedings. In S. Indus. Inc. v. Lamb-Weston Inc., 45 U.S.P.Q.2d 1293, 1295 (T.T.A.B. 1997), the Board found that the principal of Opposer here, Leo Stoller, had used "fraudulent and incorrect" dates on certificates of service and mailing. That misconduct was revealed by the discrepancy between the certificates' date and the metered date-stamp on Stoller's mailing, as well as from Board's receipt of the papers some two weeks after they were purportedly mailed. The purpose of the false certificates was to backdate the alleged service of papers that Mr. Stoller had sent through first class mail. As a sanction, the Board "prohibited" Stoller from using the certificate of mailing procedure under Trademark Rule 1.8 and required him instead to serve papers by the "Express Mail" procedure specified by Trademark Rule 1.10.

In the aftermath of that decision, Stoller and Opposer then "found a new way to circumvent" the Board's ability to verify the date on which papers were mailed. Central Mfg.

Co. v. Premium Prods., Inc., No. 91159950, Order of Sept. 29, 2004, at 6 (T.T.A.B.) (Exhibit 6 to Declaration of Michael T. Zeller, dated May 8, 2006 ("Zeller Dec.")). This was through their expedient of "simply omitting the postage meter stamp date and avoiding the postage cancellation date." Id. The Board advised Opposer that omitting the mailing date from its postage meter stamp constituted "bad faith" conduct, both because it violated U.S. Postal Service regulations and prejudiced the judicial process by making "it impossible to verify" the date of mailing. Id. at 6-7. Under its authority to grant protective orders and to control the conduct of parties, the Board ordered Opposer "to obtain a postmark from a postal official at a U.S. Post Office for all further correspondence to applicant and to the Board in this proceeding." Id. at 7.¹

B. Opposer's Certificates Of Service And Mailing For The Motion To Consolidate In This Proceeding Are Not Consistent With The Facts.

Regrettably, it appears that Opposer is resorting to the same improper service tactics in this proceeding, despite being previously sanctioned by the Board for it. Opposer has sought to

¹ Other Board and Court decisions have likewise found instances of fraud and irregularities in the service and filing of papers by Stoller or his companies, including Opposer here. E.g., Central Mfg. Co. v. Pure Fishing, Inc., No. 05 C 725, Order of November 16, 2005, at 1, 3, 4 (N.D. Ill.) (entering judgment against Opposer as a sanction for its abuse of the legal process that included "gross misconduct" such as forging attorney signatures to court papers) (copy attached as Exh. 7 to Zeller Dec.); S Indus., Inc. v. Stone Age Equip., Inc., 12 F. Supp. 2d 796, 798-99, 819 (N.D. Ill. 1998) (awarding fees against a Stoller entity for its "continuing pattern of bad faith litigation" and noting that Stoller's documents were "highly questionable" and "perhaps fabricated"); Central Mfg. Co. v. Dreamworks L.L.C., No. 91156858, Order of April 6, 2005 (T.T.A.B.) (noting dubious nature of Opposer's claims about service and ordering Opposer to file all papers through ESTTA); Stoller v. Northern Telepresence Corp., No. 91162195, Order of Feb. 11, 2005 (stating that it will consider only papers filed by Stoller via ESTTA); S Indus., Inc. and Central Mfg. Co. v. Casablanca Indus., Inc., Cancellation No. 92024330, Order of Oct. 3, 2002 (T.T.A.B.) (Opposer's "litigation strategy of delay, harassment, and falsifying documents in other cases is well documented."); Central Mfg. Inc. v. Third Millennium Tech. Inc., 61 U.S.P.Q.2d 1210, 1214-15 (T.T.A.B. 2001) (finding Opposer had "engaged in a pattern" of "bad faith" conduct by submitting papers based on "false statements," including in requests for extensions of time which relied on fabricated claims of ongoing settlement negotiations).

consolidate this Opposition with a cancellation proceeding involving Applicant's Registration No. 2,806,075. Opposer's certificate of mailing with the Motion to Consolidate claims that the Motion to Consolidate in this proceeding was served by first class U.S. mail on April 18, 2006. The facts, however, contradict that claim.

Applicant received the Motion to Consolidate by mail on or about May 2, 2006.² Not only did Applicant receive the papers some two weeks after they were supposedly mailed, but even then Applicant received only an incomplete copy. Opposer's terse Motion to Consolidate relies entirely on a Petition for Cancellation of Registration No. 2,806,075 and purports to attach the Petition as an exhibit to the Motion. Yet, all Applicant received in the mail from Opposer was the face page of the Petition for Cancellation; none of the remaining pages of the Petition was included.³ Further, the envelope containing the service copy from Opposer bore no U.S. Postal Service postmark, but only a preprinted -- and undated -- postage meter stamp.⁴

On May 3, 2006, Applicant faxed Opposer a letter requesting a complete copy of the Motion to Consolidate and all of its attachments.⁵ As the letter also pointed out, TTABVUE did not, as of that time, reflect that any Motion to Consolidate had been filed with the Board. Opposer never responded to Applicant's request or provided a complete copy.⁶

Subsequent to Applicant's May 3 letter, Opposer's Motion to Consolidate appeared on TTABVUE. The filing with the Board indicates that the Board did not receive the Motion until

² Zeller Dec., ¶ 2 and Exh. 1.

³ Id.

⁴ Id., Exh. 2.

⁵ Id., ¶ 3 and Exh. 3.

⁶ Id.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.