IN THE U. S. COURT OF APPEALS – NINTH CIRCUIT

MAGICAL PARK CORPORATION:

Petitioner

v.

No. 2157 N.D. 2014

FAMILY FANTASY, INC:

Respondent

**MAIN BRIEF OF**

**PETITIONER, MAGICAL PARK CORPORATION**

Respectfully submitted,

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**Statement of Jurisdiction**

The U. S. District Court of Appeals has jurisdiction over this matter pursuant to 42 Ne. C.S. §917 and 52 MS. Code §29.512 as this matter regards a trademark infringement by Family Fantasy, Inc.

**Scope and Standard of Review**

The Ninth Circuit U. S. District Court’s scope of review is whether the respondent has infringed on the trademark of the petitioner. *See, SkiWorld Network v. Extreme Snow*, 701 A.3d 859 (9th Cir. 2007); *Smith’s Landing v. McCallister,* 492 Ca. 611, 427 A.4d 198 (Sup. 2010).

The standard of review of the District Court is whether the findings of fact by the administrative agency are supported by substantial evidence. 42 Ne. C.S. §917

**Statement of Questions**

1. Whether the name Magikal Park is a trademark infringement as set forth in 42 Ne. C.S. §917 on the part of Family Fantasy, Inc.?

Suggested Answer: Yes

1. Whether to permit the operation of a theme park with the name Magikal Park?

Suggested Answer: No

**Introduction**

On May 4, 2014, Family Fantasy, Inc. (“Respondent”) opened a theme park under the name *Magikal Park*. The respondent operates numerous theme parks throughout the United States, including Magikal Park, which is located in Castle Rock, Colorado. Magical Park Corporation considers this to be a trademark infringement. 42 Ne. C.S. §917 has been in effect since January 21, 1997.

**Statement of the Case**

A regulation regarding trademark infringement under 42 Ne. C.S. §917 includes the provision:

Using a confusingly similar name is a form of unfair competition. No company shall create a new entity that uses a variation of a name of a competitor (in the same business).

In addition, 42 Ne. C.S. §917 states:

A party found guilty of infringing on the trademark of another entity must cease and desist use of the slightly changed business name immediately, recall all advertising, and pay damages.