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

MAGICAL PARK CORPORATION:

Petitioner

v.

No. 3268 N.D. 2012

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 92 Ne. C.S. §864 and 129 MS. Code §51.789 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, Port Santa Maria v. Williamson,* 265 Pa. 378, 223 A.5d 641 (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. 129 MS. Code §51.789

**Statement of Questions**

1. Whether the name Imagine Park is a trademark infringement as set forth in 129 MS. Code §51.789 on the part of Family Fantasy, Inc.?

Suggested Answer: Yes

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

Suggested Answer: No

**Introduction**

On May 4, 2014, Family Fantasy, Inc. (“Respondent”) opened a theme park under the name *Imagine Park*. The respondent operates numerous theme parks throughout the United States, including Imagine Park, which is located in Henderson, Colorado. Magical Park Corporation considers this to be a trademark infringement. 129 MS. Code §51.789 has been in effect since January 21, 1997.

**Statement of the Case**

A regulation regarding trademark infringement under 129 MS. Code §51.789 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, 129 MS. Code §51.789 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.