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By Cecily Anne Snyder and Patrick T. O'Regan, Jr.<sup>1</sup>

SIX FLAGS DOES NOT HAVE "CORPORATE PRESENCE" IN FORUM STATE OF NEW YORK BECAUSE ITS INTERACTIVE WEBSITE DOES NOT MEET THE SOLICITATION PLUS STANDARD

[Meteoro Amusement Corp. v. Six Flags, 2003 U.S. Dist. LEXIS 8813 (N.D.N.Y. May 27, 2003)]

Plaintiff, Meteoro Amusement, is a patent holder that sued Six Flags for patent infringement based on two patents for amusement park rides. The suit was brought in the Northern District of New York where Meteoro's business is located. Six Flags filed a motion to dismiss for improper venue or in the alternative a request for transfer of venue.

Meteoro argued that Six Flags was subject to the jurisdiction of the Northern District of NY based on the business activities of its Great Escapes subsidiary. To properly exercise jurisdiction over a subsidiary, Meteoro needed to show that the subsidiary is "either an 'agent' or a 'mere department' of the foreign parent." *Id.* at \*13 (citing *Jazini v. Nissan Motor Co.*, 148 F.3d 181, 184 (2<sup>nd</sup> Cir. 1998)).

In addressing the agency requirement, the court noted that Meteoro would be required to show that the subsidiary Great Escapes was doing all the business that Six Flags would have done if it were in the Northern District of NY. That is, "the parent would have to enter the market directly if the subsidiary were absent because the market is too important to the parent's welfare." *Meteoro* at \*17. Based on the evidence presented, the court concluded that it was unlikely that Six Flags would have entered the market itself to make up for the loss of revenue generated by the Great Escapes subsidiary, if Great Escapes left the market.

Next the court looked at whether Great Escapes was a "mere department" of Six Flags. In determining whether Great Escapes was a mere department, the court

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<sup>1</sup> Cecily Anne Snyder is the Director of Intellectual Property at Imaging Therapeutics, Inc., San Mateo CA. She handles a wide range of intellectual property matters, including developing market focused patent strategies. She can be reached at [cecily@imatx.com](mailto:cecily@imatx.com). Patrick T. O'Regan, Jr., is a principal of O'Regan & O'Regan in Falmouth MA. He works with local Cape Cod businesses handling a wide variety of both litigation and transactional matters. He can be reached at [Patrick@oreganlaw.com](mailto:Patrick@oreganlaw.com).  
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considered: “(1) whether there is common ownership, which is essential, (2) whether the subsidiary is financially dependent on the parent, (3) the extent to which the parent exerts control over selection and assignment of subsidiary personnel and fails to observe corporate formalities, and (4) the extent of parent’s control over marketing and operational policies of subsidiary.” Id. \*20.

In analyzing the mere department factors, the court found that there was common ownership between Six Flags and Great Escapes. However, the fact that Six Flags had guaranteed two loans for its subsidiaries (under prong 2), did not “rise to the level of financial control required by the courts in this circuit.” Id. at \*22. Further, the court noted that while “excessive overlap” between two companies of board members, officers, directors and employees can infer control, in this case Meteoro only alleged that there was one overlapping officer which fell short of evidencing an inference by defendant of selection and assignment of the subsidiaries’ personnel. Id. at \*25.

With respect to the fourth factor, control over marketing and operational policies, the court declined to view the unified marketing image on the Six Flag’s website as evidence that the subsidiary, Great Escapes, was a “mere department” of Six Flags for jurisdictional purposes. The court relied on *Aerote v. Sprint*, 100 F.Supp.2d 189 (S.D.N.Y. 2000), for the proposition that a unified marketing structure is not shown by a company website which presents itself to the marketplace under a common trade name.

Although Six Flags moved for dismissal, the court declined that motion and instead approved its motion for change of venue – transferring the case to the more convenient venue of the Western District of Oklahoma.