

November 26, 2003

JSL01 6218

**BY HAND**

Cathy Catterson, Clerk  
United States Court of Appeals  
For the Ninth Circuit  
PO Box 193939  
San Francisco, CA 94119-3939

Re: Visa International Services Ass'n v. JSL Corp.,  
Consolidated Case Nos. 02-17353, 03-15420  
To Be Argued: December 3, 2003

Dear Ms. Catterson:

Pursuant to Fed.R.App.P. 28(j), this letter provides additional citations to authority relevant to the issues presented for consideration by the above-referenced matter. Appellant directs the panel's attention to the following citations:

- 1) Kellogg Co. v. Toucan Golf, Inc., 337 F.3d 616, 626 (6<sup>th</sup> Cir. 2003) ("As opposed to a fanciful mark, an arbitrary mark is distinctive only within its product market and entitled to little or no protection outside of that area."). This supports the argument in Appellant's Brief p. 19-20. See also, 337 F.3d at 628 (plaintiff did not meet "likelihood of dilution" standard much less "actual dilution" standard when its studies failed to show that any segment of the population blurred plaintiff's "Toucan Sam" mark with defendant's "toucan" mark). This supports the argument in Appellant's Reply Brief p. 10-12.
- 2) Nitro Leisure Products L.L.C. v. Acushnet Co., 341 F.3d 1814, 1822 (Fed. Cir. 2003) ("[C]onclusory statements, with little more" insufficient to show actual dilution). This further supports the argument in Appellant's Reply Brief p. 10-12.

- 3) Savin Corp. v. The Savin Group, 2003 WL 22451731 (S.D.N.Y. Oct. 24, 2003) (granting summary judgment against the allegedly famous trademark holder because it failed to present evidence of actual dilution **in addition to** the fact that the marks were identical). This supports the argument in Appellant's Reply Brief p. 6-7.

Very truly yours,

Thomas E. Moore III,  
Attorney for Appellant  
JSL Corporation

TEM:mil

cc: Michael J. McCue, Esq. (*via* fax and mail)  
Jenna F. Karadbil, Esq. (*via* fax and mail)  
Beth M. Goldman, Esq. (*via* fax and mail)  
M. Patricia Thayer, Esq. (*via* fax and mail)  
United States District Court - District of Nevada (*via* mail)