

# NEVADA CENTRAL RAILROAD

BASE OF OPERATIONS: 2741 - Pinewood Avenue, Henderson, Nevada 89074  
(702) 914-7796

ROBERT ALAN KEMP, D/B/A: 229896

# NEVADA CENTRAL RAILROAD

VIA - IMMEDIATE FAX FILING

(Thursday), June 9, 2011

Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 - E. Street, S. W., Room: 100  
Washington, D.C. 20423-0001

BY EMERGENCY FAX FILING: 202-245-0461 - 0464

RE: Docket No. AB-33 (SUB-NO. 297X)

## MOTION FOR EXTENSION OF TIME TO FILE MOTIONS TO STRIKE

ENTERED  
Office of Proceedings  
JUN - 9 2011  
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Public Record

### Union Pacific Railroad Company -- ABANDONMENT EXEMPTION --

Ms. Brown:

Today, I have enclosed the instant original and three copies of: ROBERT ALAN KEMP, D/B/A; NEVADA CENTRAL RAILROAD's (MOTION FOR EXTENSION OF TIME TO FILE MOTIONS TO STRIKE), both of the carefully manufactured intentional filings by UP to the Board of: [May 18<sup>th</sup>, 2011] and [May 26<sup>th</sup>, 2011], in which UP premeditatively presents both false and misleading information to the Board as a carefully designed and proximate means to permanently damage: [Robert Alan Kemp, D/B/A; NEVADA CENTRAL RAILROAD]. Due to scheduling conflicts beyond Petitioners control relating to the contemporaneous requirements to execute mandatory reply's to the United States Patent Office, (please see example of one of the reply's to USPS attached and identified hereto as MOTION EXHIBIT - M13), as well as critical motion practice relating to ongoing litigation within the state of Nevada directly related to damages caused directly by (UNION PACIFIC RAILROAD COMPANY and US-BANCORP), Petitioner requests that Board TOLL TIME for which Petitioner is required to file his MOTIONS TO STRIKE as more specifically identified above by (8-FA.) Working Days, or alternatively on (Friday) June 17<sup>th</sup>, 2011.

Please be advised that the instant executed Cover Sheet constitutes legal service of the instant motion in its entirety to the Board by Petitioner.

Very truly yours,

Robert Alan Kemp (702) 914-7796

Sole Proprietor D/B/A; NEVADA CENTRAL RAILROAD, Henderson, NV 89074

Enclosures: Motion for Extension of Time, MOTION EXHIBIT - M13, Certification of Service

cc: Mr. John T. Diglio, Jr., Vice Chairman - Director/President, IITLS  
Mr. Joseph Anthony McNally, III - Director/Vice President, IITLS

**CERTIFICATE OF SERVICE**

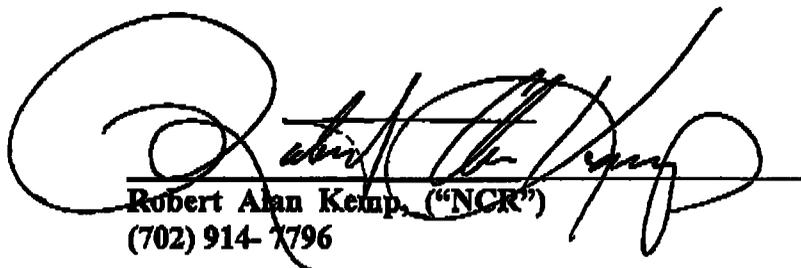
I, **Robert Alan Kemp**, hereby certify that (3-EA.) copies of the instant (1 -Page): **MOTION FOR EXTENSION OF TIME**, along with the enclosed Proof of Service Sheet filed by Robert Alan Kemp to the **SURFACE TRANSPORTATION BOARD**, was personally mailed by the undersigned this 9<sup>th</sup>, day of June, 2011, via First Class US-Mail, as well as a single copy of same to:

**UNION PACIFIC RAILROAD COMPANY C/O:**

**Mack H. Shumate, Jr., Senior General Attorney**  
101 - North Wacker Drive, Room: 1920  
Chicago, Illinois 60606  
(312) 777-2055 Voice  
(312) 777-2065 Fax

**CITY OF LEXINGTON, MO.**

**Honorable Mayor of Lexington**  
**Col. Jerry Brown**  
919 - Franklin Avenue,  
Lexington, MO 64067  
(660) 259- 4633 Voice  
(660) 259- 4093 Fax

  
Robert Alan Kemp, ("NCR")  
(702) 914- 7796

**MOTION EXHIBIT - M13**

The examining attorney has refused registration on the alleged basis that applicants proposed mark merely describes the specified goods. Applicant respectfully traverses the refusal as follows.

A term is merely descriptive if it immediately conveys knowledge of a significant quality, characteristic, function, feature or purpose of the goods or services with which it is used, or intended to be used. See *In re Gyulay*, 820 F.2d 1216 (Fed. Cir. 1987). "On the other hand, if one must exercise mature thought or follow a multi-stage reasoning process in order to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive. [Internal citations omitted] . . . Incongruity is a strong indication that a mark is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 U.S.P.Q. 196, 197 (T.T.A.B. 1978). In the instant case, Applicant can confirm that George Pullman, his Shareholders, Heirs and Assignees, historically traded under the names of; PULLMAN COMPANY, PULLMAN PALACE CAR COMPANY, PULLMAN CAR & MANUFACTURING COMPANY, and the PULLMAN - STANDARD CAR MANUFACTURING COMPANY, and did NOT ever trade under the specific and distinct new name: PULLMAN RAILCAR COMPANY, as now intended by Applicant. Further, Applicant asserts that the new mark as indicated in its totality, has never been merely descriptive, and has acquired distinctiveness thru Applicants unique combination and configuration of Terms used therein, and is therefore registerable. Most important, is the fact that the mark PULLMAN RAILCAR COMPANY in the instant case, is more suggestive than descriptive. Applicant has discovered in a world wide search that NO Company in the world has EVER operated under the new unique and therefore distinct trade name of "PULLMAN RAILCAR COMPANY".

When one looks deeper into the goods identified, one will see a company with state of the art technology, never before seen in the worldwide design and manufacture of railcars. The Trade Name PULLMAN RAILCAR COMPANY does not immediately convey the characteristics or subject matter of the goods described simply by the term "pullman" because the term "pullman" can have many meanings, including, *inter alia*, a type of architecture, or a large briefcase or bag. Moreover, Pullman did not invent the sleeper rail car, he in fact most successfully manufactured it nearly 30 years after its invention right along with numerous other manufacturers. Merely defining the noun PULLMAN as a sleeper car, is like saying all airplanes are Boeing Airplanes, when in fact they're not. Pullman was famous for his monumental financial success in the historic manufacture of what is now most commonly known and referred to today as Antique Passenger Rail Cars within the United States. It is the financial success in the manufacturer of Rail Cars and Related Equipment, in this case with which Applicant suggestively wishes to convey with regard to the noun "PULLMAN" as only a single element or term within his Mark when graphically and contextually observed in totality as, PULLMAN RAILCAR COMPANY. Again, the inclusion of the term PULLMAN simply suggests the monumental financial success of the historic manufacture of rail cars, not the quality, characteristic, function, feature, or purpose of the goods. Applicant also qualifies the noun RAILCAR as a specific critical element of his completely unique and distinct Mark under which he will commercially trade. Further, the noun RAILCAR is suggestive of a self propelled rail vehicle that is Not drawn or pushed by a locomotive, rather than and certainly unlike the historic antiquated Pullman Palace Railcars of yesteryear.

The PULLMAN RAILCAR COMPANY has goods identified as: "rail vehicles, namely: [heavy; medium; and light; high speed, very high speed, and ultra high speed]; trains, passenger and freight railcars and structural parts related thereto." Nowhere in the goods identified therein, is the word "sleeper car" mentioned. The PULLMAN RAILCAR COMPANY is distinct as it only refers to the highest speed passenger train railcars that operate at speeds from 125 to 650 miles per hour for which only the PULLMAN RAILCAR COMPANY will manufacture. Only the PULLMAN RAILCAR COMPANY has the proprietary technology, engineering, and design, to normally operate at "ultra - high speeds" of up to 350 miles per hour utilizing steel on steel rail technology, and normally up to 650 miles per hour utilizing hybrid magnetic levitation. The goods identified are very specific, totally unique, and distinct to a highly evolved 5<sup>th</sup>. Generation fully integrated transportation logistics system, specifically designed by the applicant. This is not the 19<sup>th</sup> century archaic 1<sup>st</sup>. Generation railroad and rail car technology developed in the early 1800's thru 1900's associated with George Pullman, nor the 1.92 - to - 2.13 Generation technology developed by the Japanese, the 1.65 - to - 2.03 Generation technology copied/manufactured by the Chinese, nor the 1.75 - to - 2.09 Generation technology developed by the Spanish, Italians, French, and or the 1.89 - to - 2.09 Generation technology developed by the Germans.

For at least these reasons, Applicant respectfully submits that the trade name PULLMAN RAILCAR COMPANY is not merely descriptive of the specified goods for which Applicant will manufacture, but exists in totality as a completely unique distinct Mark under which the world will directly associate with Applicants financially successful manufacturing of fully integrated 5<sup>th</sup>. Generation railroad technology based Rail Cars and Related Equipment.