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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91167237
Party	Plaintiff Venture Out Properties LLC  Venture Out Properties LLC 177 Post Street Suite 910 San Francisco, CA 94108 UNITED STATES
Correspondence Address	Martin E. Hsia, 32,471 Cades Schutte LLLP 1000 Bishop Street 12th floor Honolulu, HI 96813 UNITED STATES mhsia@cades.com, glf@ventureout.com, skaneshiro@cades.com
Submission	Motion for Summary Judgment
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Signature	/Martin E. Hsia/
Date	07/17/2006
Attachments	Motion for Summary Judgment-Declarations-COS.PDF ( 20 pages )(166165 bytes ) ExhibitsA-F.PDF ( 55 pages )(885414 bytes ) ExhibitsG-Q.PDF ( 35 pages )(690184 bytes )

IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VENTURE OUT PROPERTIES LLC, )  
)  
  Opposer, )  
)    Opposition No. 91167237  
  v.    Serial No.: 78/475,098  
)  
WYNN RESORTS HOLDINGS, LLC        )  
)  
  Applicant.    )  
\_\_\_\_\_ )

**OPPOSER’S MOTION FOR SUMMARY JUDGMENT**

Opposer VENTURE OUT PROPERTIES LLC, a California limited liability company (“Opposer”), by and through its undersigned attorney, hereby moves for summary judgment pursuant to Rule 56, Fed. R. Civ. P., and Trademark Rule 2.127(e), sustaining this opposition against U.S. Trademark Application Serial No. 78/475,098 filed by Applicant WYNN RESORTS HOLDINGS, LLC, a Nevada limited liability company (“Applicant” or “Wynn Resorts”) for the mark “CABANA BAR & CASINO” (in a design).<sup>1</sup>

As set forth in the attached memorandum and exhibits, this Motion is made on the grounds that: (i) Opposer has priority of use; and (ii) Applicant’s mark is confusingly similar to Opposer’s “CABANA” mark and is intended to be used in connection with closely related goods or services, and there thus exists a likelihood of confusion precluding registration of Applicant’s mark under Section 2(d) of the Lanham Act. Accordingly, Opposer respectfully submits that this opposition against Application Serial No. 78/475,098 must be sustained pursuant to this Motion as a trial on the matter would entail unnecessary fees and waste of the Board’s scarce resources.

<sup>1</sup> There are four opposition proceedings that involve Opposer’s pending application 76/630,391 and Wynn Resorts’ applications to register marks containing “CABANA” – Opposition Nos. 91167237, 91167238, 91167252, and 91168647. Opposer is filing concurrently motions for summary judgment in each of the four proceedings. The basis for the four motions is essentially the same.

DATED: Honolulu, Hawaii, July 17, 2006.



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Attorney for Opposer  
VENTURE OUT PROPERTIES LLC



Opposer and its predecessors have, for many years, advertised, sold, and provided hotel services under the service mark “CABANA” (the “Cabana Mark”) in the United States. Id. at ¶ 3. For example, attached hereto as Exhibit “A” is a true and correct copy of an advertisement in the classified section of the May 25, 1999 issue of the Bay Area Reporter, advertising Opposer’s Cabana at Waikiki hotel. Also attached hereto as Exhibit “B” is a true and correct copy of another advertisement – this one from the August 12, 1999 issue of the Bay Area Reporter – advertising Opposer’s hotel services under the Cabana Mark. Since at least as early as 1999, Opposer, through its predecessor-in-interest, has had extensive, exclusive, and continued use of “CABANA” in connection with hotel services. See FitzGerald Dec. at ¶ 6.

On February 7, 2005, Opposer filed application 76/630,391 with the U.S. Patent and Trademark Office (the “Office”) to register “CABANA” for “hotel services” in International Class 43. Id. at ¶ 7. However, on information and belief, on or about August 27, 2004, Applicant Wynn Resorts filed the subject Application Serial No. 78/475,098 (“Wynn Resorts’ Application”) for the mark “CABANA BAR & CASINO” in a design (“Applicant’s Mark”), in connection with “casino services” in International Class 41 (“Applicant’s Services”). See Declaration of Counsel (“Counsel’s Dec.”) at ¶ 2, and Exhibit “C” attached hereto. The Wynn Resorts’ Application was filed on an intent-to-use basis as Applicant’s Mark was selected for use in conjunction with a swimming pool, which was to be located within the Wynn Las Vegas hotel, then still under construction. See Counsel’s Dec. and Applicant’s Objections And Responses To Opposer’s First Set of Interrogatories dated January 31, 2006 (“Applicant’s Responses”), Responses to Interrogatories Nos. 1, 2, and 4 attached hereto as Exhibit “D”.

Interrogatory No. 1:

With respect to Applicant’s Mark: . . .

B. set forth all facts known to Applicant and identify all documents relating or referring to its (i) creation and (ii) earliest selection for use.

Answer: . . .

B. A pool area was to be included in the concept for the development of Wynn Las Vegas. The pool area was to include various services that would be available outside near the pool for the convenience of the adult guest of the hotel using the pool area. Those services included opportunities to gamble, to drink and to purchase pre-prepared food and snacks.

\* \* \*

Interrogatory No. 2:

Identify in detail each and every product and service with which Applicant has used Applicant's Mark, "CABANA BAR & CASINO" in a design, and as to each such product or service, state in detail the manner of such use . . .

Answer:

Applicant responds that casino services and restaurant, bar and cocktail services are offered in the manner described in response to Interrogatory No. 1. . . . The identified services have been offered from the date the hotel opened until the present.

The Wynn Las Vegas hotel did not open until April 28, 2005, and therefore

Applicant first began using Applicant's Mark at the hotel on that date. See Applicant's

Responses to Interrogatory No. 4 attached hereto as Exhibit "D".

Interrogatory No. 4:

For each and every product and service with which Applicant has used or is using Applicant's Mark, "CABANA BAR & CASINO" in a design, state the date of first use of each mark with that product or service, and state the date of first use of each mark with that product or service in interstate commerce.

Answer:

Applicant began using Applicant's Mark for each and every product and service identified from at least April 28, 2005, the date the Wynn Las Vegas hotel opened.

On or about September 7, 2005, the Office issued a non-final action in Opposer's application serial no. 76/630,391 (the "Office Action"), which notified Opposer that registration

may be refused in view of, among other things, the pending applications of Wynn Resorts including the subject Application. See Counsel’s Dec. at ¶ 5, and Exhibit “E” attached hereto. On or about March 28, 2006, the Office issued a Notice of Suspension, suspending further action on Opposer’s application pending disposition of Wynn Resorts’ Application, among other things. See Counsel’s Dec. at ¶7, and Exhibit “F” attached hereto.

The 30-day testimony period for Opposer has not opened, as it is scheduled to close on August 19, 2006, pursuant to the Notice of Filing of Opposition mailed by TTAB on November 2, 2005. Applicant contends that the services identified in Wynn Resorts’ subject Application (“casino services”) are not related to the services identified in Opposer’s application (“hotel services”). As shown below, however, it is beyond dispute that casino services are related to hotel services. Moreover, the dominant portions of the marks are identical. Opposer’s date of first use of “CABANA” precedes both Applicant’s first use of “CABANA BAR & CASINO” and the filing date of the subject Application. Thus, there is no material issue of fact left for trial, and this Opposition must be sustained as a likelihood of confusion exists under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

### **III. ARGUMENT.**

#### **A. The Applicable Standard For Summary Judgment.**

Summary judgment is an appropriate method for disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(c). The purpose of summary judgment is to avoid an unnecessary trial where additional evidence would not reasonably be expected to change the outcome. See Pure Gold, Inc. v. Syntex (U.S.A.), Inc., 739 F.2d 624, 222 USPQ 741 (Fed. Cir. 1984). Opposer, as the party moving for summary judgment, has the burden of demonstrating the absence of any genuine issue of material fact and that it is entitled to summary judgment as a

matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986); and Sweats Fashions Inc. v. Pannill Knitting Co. Inc., 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). However, the nonmoving party may not rest on mere denials or conclusory assertions, but rather must proffer countering evidence, by affidavit or as otherwise provided in Fed. R. Civ. P. 56, showing that there is a genuine factual dispute for trial. See TBMP § 528.01 at 500-341 (2d ed. Rev. 3/12/04).

**B. Opposer Has Standing To Oppose Wynn Resorts' Application.**

“Standing is a threshold inquiry directed solely to establishing a plaintiff’s interest in the proceeding. The purpose in requiring standing is to prevent litigation where there is no real controversy between the parties, i.e. where a plaintiff is no more than a mere intermeddler.” Harjo v. Pro Football Inc., 30 USPQ 2d 1828, 1830 (TTAB 1994).

The continuing pronouncements of the Federal Circuit leave us with the understanding that there is a low threshold for a plaintiff to go from being a mere intermeddler to one with an interest in the proceeding. The Court has stated that an opposer need only show “a personal interest in the outcome of the case beyond that of the general public.” [Citations omitted.] Once this threshold has been crossed, the opposer may rely on any ground that negates applicant's right to the registration sought.

Estate of Biro v. Bic Corp., 18 USPQ 2d 1382 (T.T.A.B. 1991).

Clearly, Opposer has standing to oppose Wynn Resorts’ Application because Opposer is being damaged and will likely continue to be damaged by Wynn Resorts’ Application. In particular, Opposer has been damaged because action on Opposer’s Application has been suspended pending the disposition of Wynn Resorts’ Application. See Exhibits “E” and “F” attached hereto. Additionally, Opposer has been and may continue to be precluded from registering “CABANA” in connection with Opposer’s other goods or services because of Wynn Resorts’ Application.

As alleged at paragraphs 3 and 4 of the Notice of Opposition, Opposer has been advertising, selling, and providing hotel services under its service mark “CABANA” since at

least as early as May 1999. See also FitzGerald Dec., Exhibits “A” and “B” attached hereto. Applicant’s Answer denies those and related allegations only on the basis that it is without knowledge. Opposer’s Application would be refused if Wynn Resorts’ Application issues as a registration (to the extent that the marks are confusingly similar and the services are related, which the Trademark Examining Attorney has already determined may be the case). Opposer clearly has standing in this proceeding.

**C. Opposer Has Clear Priority of Use.**

Opposer (through its predecessor-in-interest) first used its “CABANA” Mark at least as early as May 1999. See FitzGerald Dec. at ¶ 2, and Exhibits “A” and “B” attached hereto. Applicant first began using its “CABANA BAR & CASINO” Mark (in a design) in connection with the swimming pool at the Wynn Las Vegas hotel, which opened on April 28, 2005. See Applicant’s Responses to Interrogatories Nos. 1, 2, and 4 attached hereto as Exhibit “D”. Applicant filed its Application on August 27, 2004. See Applicant’s Responses to Opposer’s First Set of Request for Admissions dated January 27, 2006 (“Applicant’s Admissions”), Response No. 1, attached hereto as Exhibit “G”. Opposer’s 1999 actual use of the “CABANA” Mark precedes the August 27, 2004 filing date of Wynn Resorts’ Application and Wynn Resorts’ April 28, 2005 actual use. See FitzGerald Dec. at ¶ 8. Thus, it is indisputable that Opposer has priority of use.

**D. The Dominant Parts of The Marks Are Identical.**

The opposition must be sustained under Section 2(d) of the Lanham Act because Applicant seeks registration of a mark that so resembles Opposer’s “CABANA” Mark, that it is likely to cause confusion when applied to its services. See Safety-Kleen Corp. v. Dresser Indus., Inc., 518 F.2d 1399, 1404, 186 USPQ 476, 480 (C.C.P.A. 1975). An analysis of the factors to consider in determining whether there is a likelihood of confusion, as enunciated in In Re E.I.

DuPont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), weighs heavily in favor of a finding that registration of Applicant's Mark presents a likelihood of confusion.

In testing for likelihood of confusion under Sec. 2(d), therefore, the following, when of record, must be considered:

- (1) The similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.
- (2) The similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use.
- (3) The similarity or dissimilarity of established, likely-to-continue trade channels.
- (4) The conditions under which and buyers to whom sales are made, i. e. "impulse" vs. careful, sophisticated purchasing.
- (5) The fame of the prior mark (sales, advertising, length of use).
- (6) The number and nature of similar marks in use on similar goods.
- (7) The nature and extent of any actual confusion.
- (8) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion.
- (9) The variety of goods on which a mark is or is not used (house mark, "family" mark, product mark).
- (10) The market interface between applicant and the owner of a prior mark:
  - (a) a mere "consent" to register or use.
  - (b) agreement provisions designed to preclude confusion, i. e. limitations on continued use of the marks by each party.
  - (c) assignment of mark, application, registration and good will of the related business.
  - (d) laches and estoppel attributable to owner of prior mark and indicative of lack of confusion.
- (11) The extent to which applicant has a right to exclude others from use of its mark on its goods.
- (12) The extent of potential confusion, i. e., whether *de minimis* or substantial.
- (13) Any other established fact probative of the effect of use. Where the Patent Office follows such process, it is not abandoning its duty under Sec. 2(d) or allowing individuals to take the law into their own hands. Consideration of evidence emanating from the only place where confusion can occur, i. e. the marketplace, is not related to *who* decides but to the *process* of deciding.

See DuPont, 476 F.2d at 1361

There is no genuine issue with regard to the similarity of the marks, based on a comparison of the marks in terms of similarities as to appearance, source, connotation and commercial impression. TMEP § 1207.01(b) (4<sup>th</sup> Ed. Rev. 4/05). It is indisputable that Opposer's Mark and Applicant's Mark are confusingly similar.

Applicant's Mark in the subject Application appears in a stylized form (see Exhibit "C" attached hereto), with the emphasis on "CABANA" because it is much larger and appears on top of the stylized words "BAR & CASINO". Applicant admits that the words "BAR & CASINO" are smaller than "CABANA" in Applicant's Mark. See Applicant's Admission No. 5 attached hereto as Exhibit "G". Thus, "CABANA" is the dominant portion of the mark in appearance.

The stylized version of "CABANA" in Applicant's Mark does not distinguish it from Opposer's Mark. Opposer's "CABANA" Mark is presented in standard characters. See FitzGerald Dec. at ¶ 9. "The rights associated with a mark in standard characters reside in the wording . . . and not in any particular display . . . [and] Therefore, an applicant cannot, by presenting its mark in special form, avoid likelihood of confusion with a mark that is registered in standard characters because the registered marks reasonably could be used in the same manner of display." TMEP § 1207.01(c)(iii). See e.g. In Re Melville Corp., 18 USPQ2d 1386, 1388 (TTAB 1991).

While Opposer's Mark consists of the term "CABANA" alone, Applicant's Mark consists of multiple words – "CABANA BAR & CASINO" (in a design). However, "BAR & CASINO" are disclaimed in the subject Application (see Admission No. 4, Exhibit "G" attached hereto), and thus are admittedly not distinctive and do not distinguish Applicant's Mark. Indeed, "BAR" and "CASINO" are generic for Applicant's services, which are closely related to

Opposer's services (see below). Thus, "CABANA" is the dominant part of Applicant's Mark in meaning, connotation and commercial impression.

In view of the above, the dominant portion of Applicant's Mark is "CABANA", which is effectively identical to Opposer's "CABANA" Mark, even though Applicant's "CABANA BAR & CASINO" is in a stylized form.

**E. The Channels of Trade Are Identical.**

Applicant admits that its Application does not contain any restrictions as to channels of trade or purchasers. See Applicant's Admission No. 2 attached hereto as Exhibit "G". Opposer's application also does not contain any such restrictions. See FitzGerald Dec. at ¶ 10. Thus, the trade channels must be deemed to be those normal for the trade. See Kangol Ltd. v. Kanga ROOS U.S.A., 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992).

Applicant cannot argue that the channels of trade for casino, restaurant, bar and cocktail lounge services are different from the channels of trade for hotel services, because Applicant offers all such services in the same hotel (see below). In this case, therefore, the services of Opposer and Applicant share the same channels of trade, further supporting a finding of a likelihood of confusion.

**F. The Services of Opposer And Applicant Are Sufficiently Related to Support a Finding of Likelihood of Confusion.**

Opposer seeks registration of "CABANA" in connection with "hotel services" in International Class 43. Applicant seeks registration of "CABANA BAR & CASINO" (in a design) in connection with "casino services" in International Class 41. Although the services are not identical, that is not dispositive of the issue of likelihood of confusion.

The inquiry is whether the goods [or services] are related, not identical. The issue is not whether the goods [or services] will be confused with each other, but rather whether the public will be confused about their source. It is sufficient that the goods or services of the applicant and the

registrant are so related that the circumstances surrounding their marketing are such that they are likely to be encountered by the same persons under circumstances that would give rise to the mistaken belief that they originate from the same source.

TMEP § 1207.01(a)(i) (4<sup>th</sup> Ed. Rev. 4/05) (emphasis added; citations omitted).

Third-party registrations have probative value to the extent that they may serve to suggest that goods or services are of a type that may emanate from a single source. TMEP § 1207.01(d)(iii) (4<sup>th</sup> Ed. Rev. 4/05). See also In Re Infinity Broadcasting Corp., 60 USPQ2d 1214, 1217-18 (TTAB 2001). In this case, there are numerous third-party registrations for marks in connection with both hotel services and casino services. See e.g. Reg. No. 907,693 for “CAESARS PALACE” for “hotel and restaurant services” and “casino services” (Exhibit “H”); Reg. No. 1,851,743 for “4 QUEENS” for “casino services” and “hotel services” (Exhibit “I”); Reg. No. 2,015,176 for “FLAMINGO PLAYERS CLUB” for “casino services” and “hotel services” (Exhibit “J”); Reg. No. 2,121,189 for “TAJ MAHAL” for “casino services” and “hotel services” (Exhibit “K”); Reg. No. 2,771,155 for “BELLAGIO” in a design for “casino services” and “resort hotel, restaurant, bar and lounge services” (Exhibit “L”); Reg. No. 2,789,028 for “HARD ROCK CASINO” for “casino services” and “restaurant, bar and take-out food services and hotel services” (Exhibit “M”); Reg. No. 2,843,123 for “HARRAHS” in a design for “casino entertainment services” and “hotel and restaurant services” (Exhibit “N”); Reg. No. 3,021,734 for “CAESARS ENTERTAINMENT” for “casino services” and “resort hotel, bar, and restaurant services” (Exhibit “O”); and Reg. No. 3,034,766 for “GLORY OF ROME” for “casinos” and “resort, hotel, bar, restaurant and cocktail lounge services” (Exhibit “P”). The combination of hotel and casino services in these registrations suggests that consumers believe such services originate from the same source and are thus related to one another.

In fact, Applicant itself has filed another application in connection with various services including both “casino services” and “resort hotel, restaurant, bar and lounge services”. On or about July 26, 2005, Applicant filed U.S. Trademark Application Serial No. 78/679,036 for “WYNN” (in a design), in connection with “casino services” in International Class 41 and “resort hotel, restaurant, bar and lounge services” in International Class 43. See Exhibit “Q” attached hereto. That application is based on Applicant’s actual use since April 28, 2005. Id. By filing this application, Applicant effectively admits that hotel, casino, restaurant, bar, and lounge services are related, and is estopped from arguing to the contrary.

The identity of the dominant portions of the marks, the common channels of trade, and the relatedness of the services, compel a finding under Section 2(d) of a likelihood of confusion. In In re J.M. Originals Inc., 6 USPQ2d 1393 (TTAB 1987), the Trademark Trial and Appeal Board held that “if two marks for related goods or services share the same dominant feature and the marks, when viewed in their entireties, create similar overall commercial impressions, then confusion is likely.” Therefore, and because Opposer has clear priority of use, the opposition must be sustained.

#### **IV. CONCLUSION.**

For the foregoing reasons, Opposer requests that its Motion be granted and that summary judgment be entered, sustaining this opposition against Wynn Resorts’ Application, Serial No. 78/475,098 for the mark “CABANA BAR & CASINO” (in a design).

DATED: Honolulu, Hawaii, July 17, 2006.

Respectfully submitted,



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Martin E. Hsia, Reg. No. 32,471  
CADES SCHUTTE LLP  
A Limited Liability Law Partnership  
P.O. Box 939  
Honolulu, Hawaii 96808  
Tel: (808) 521-9200  
  
Attorney for Opposer  
VENTURE OUT PROPERTIES, LLC



6. Since at least as early as 1999, Opposer, through its predecessor-in-interest, has had extensive, exclusive, and continued use of "CABANA" in connection with hotel services.

7. On February 7, 2005, Opposer filed application 76/630,391 with the U.S. Patent and Trademark Office (the "Office") to register "CABANA" for "hotel services" in International Class 43.

8. Opposer's 1999 actual use of the "CABANA" Mark precedes the August 27, 2004 filing date of Wynn Resorts' Application and Wynn Resorts' April 28, 2005 actual use.

9. Opposer's "CABANA" Mark is presented in standard characters.

10. Opposer's application does not contain any restrictions as to channels of trade or purchasers.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

DATED: Honolulu, Hawaii, July 14, 2006.



G. LEE FITZGERALD

lmanageDB:660047.1

IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VENTURE OUT PROPERTIES LLC, )  
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 v. ) Serial No.: 78/475,098  
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 WYNN RESORTS HOLDINGS, LLC )  
 )  
 Applicant. )  
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**DECLARATION OF COUNSEL; EXHIBITS “C” – “Q”**

I, MARTIN E. HSIA, hereby declare as follows:

1. I am a partner of Cades Schutte A Limited Liability Law Partnership LLP, counsel of record in this proceeding for Opposer VENTURE OUT PROPERTIES LLC, and am duly authorized to make this declaration, which is based upon my personal knowledge and information unless otherwise stated.

2. On information and belief, on or about August 27, 2004, Applicant Wynn Resorts filed Application Serial No. 78/475,098 (“Wynn Resorts’ Application”) for the mark “CABANA BAR & CASINO” in a design (“Applicant’s Mark”), in connection with “casino services” in International Class 41 (“Applicant’s Services”).

3. Attached hereto as Exhibit “C” is a true and correct copy of Trademark Application Serial No. 78/475,098 filed on August 27, 2004, which I downloaded from the TDR website of the U.S. Patent and Trademark Office.

4. Attached hereto as Exhibit “D” is a true and correct copy of Applicant’s Objections And Responses To Opposer’s First Set of Interrogatories dated January 31, 2006.

5. On or about September 7, 2005, the Office issued a non-final action in Opposer's application serial no. 76/630,391 (the "Office Action"), which notified Opposer that registration may be refused in view of, among other things, the pending applications of Wynn Resorts including the subject Application.

6. Attached hereto as Exhibit "E" is a true and correct copy of the Office Action filed in Opposer's application serial no. 76/630,391 dated September 7, 2005.

7. On or about March 28, 2006, the Office issued a Notice of Suspension, suspending further action on Opposer's application pending disposition of Wynn Resorts' Application, among other things.

8. Attached hereto as Exhibit "F" is a true and correct copy of the Notice of Suspension filed in Opposer's application dated March 28, 2006.

9. Attached hereto as Exhibit "G" is a true and correct copy of Applicant's Response to Opposer's First Set of Request of Admissions dated January 27, 2006.

10. Attached hereto as Exhibit "H" is a true and correct copy of Trademark Registration No. 907,693 for "CAESARS PALACE".

11. Attached hereto as Exhibit "I" is a true and correct copy of Trademark Registration No. 1,851,743 for "4 QUEENS".

12. Attached hereto as Exhibit "J" is a true and correct copy of Trademark Registration No. 2,015,176 for "FLAMINGO PLAYERS CLUB".

13. Attached hereto as Exhibit "K" is a true and correct copy of Trademark Registration No. 2,121,189 for "TAJ MAHAL".

14. Attached hereto as Exhibit "L" is a true and correct copy of Trademark Registration No.; 2,771,155 for "BELLAGIO" in a design.

15. Attached hereto as Exhibit "M" is a true and correct copy of Trademark Registration No. 2,789,028 for "HARD ROCK CASINO".

16. Attached hereto as Exhibit "N" is a true and correct copy of Trademark Registration No. 2,843,123 for "HARRAHS" in a design.

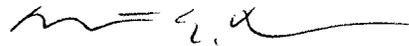
17. Attached hereto as Exhibit "O" is a true and correct copy of Trademark Registration No. 3,021,734 for "CAESARS ENTERTAINMENT".

18. Attached hereto as Exhibit "P" is a true and correct copy of Trademark Registration No. 3,034,766 for "GLORY OF ROME".

19. Attached hereto as Exhibit "Q" is a true and correct copy of Trademark Application Serial No. 78/679,036 filed on July 26, 2005.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

DATED: Honolulu, Hawaii, July 17, 2006.



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MARTIN E. HSIA, Reg. No. 32,471

IN THE UNITED STATES PATENT & TRADEMARK OFFICE  
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 v. ) Serial No.: 78/475,098  
 )  
 WYNN RESORTS HOLDINGS, LLC )  
 )  
 ) Applicant. )  
 \_\_\_\_\_ )

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of OPPOSER'S MOTION FOR SUMMARY JUDGMENT was mailed on July 17, 2006, to: Lauri S. Thompson, Esq., Quirk & Tratos, 3773 Howard Hughes Pkwy, Suite 500 North, Las Vegas, Nevada 89109-0991.

DATED: Honolulu, Hawaii, July 17, 2006.



\_\_\_\_\_  
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Attorney for Opposer  
VENTURE OUT PROPERTIES LLC

# **EXHIBIT “A”**

CLASSIFIEDS

# BAY AREA REPORTER CLASSIFIEDS

## RENTALS


**Rent Tech**  
 Rentals and Roommates  
 63-RENT 7368  
 1805 S. BAYVIEW BLVD.  
 SAN JOSE, CA 95128  
 (408) 255-2051

Serving the Gay Community for over 20 years

## COMMERCIAL RENTALS

**ARTIST WORK SPACE**  
 No live-in. 625sq ft (2 rooms).  
 Skylights & storage. \$850/Mo.  
 Credit ck, references. 550-6764

## RENTALS

3BR 2BA Garden Townhouse apt in  
 renovated Victorian, quiet, DW/Disp,  
 private deck, FP in Master BR Indry  
 \$2200 for 2 prking avail. Fell/Fill-  
 more \* 255-2051

## FOR RENT

House \$2000/mo + Pet OK if  
 add'l\$, negot 3Bd 2BA Lg yd nr

## VACATION RENTALS

**CABANA AT WAIKIKI**  
 OPENING MAY 99 .  
 SUITES AS LOW AS \$99!

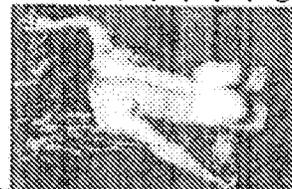
- 15 Newly Remodeled One Bedroom Suites with Entertainment Center
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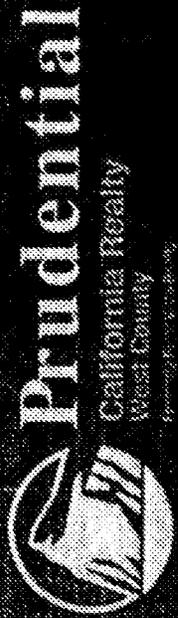
# **EXHIBIT “B”**

CLASSIFIEDS

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The Only Gay Owned Agency  
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 You can afford a home today in a great Gay Community!

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 Adorable 2 bed, beautifully maintained, light & bright with tons of sun, pool, deck, large detached storage/laundry. Wonderful weekend or full time, don't miss it! \$179,000.

**RIVER VIEWS + 3 PARCELS**  
 2-bed home w/new carpeting, 2 outbuildings, decks, Russian River view, lots of potential here! \$141,500.

**FORESTVILLE REIREAL**  
 Sun-drenched approx. 2/3 acre, 3 bed ranch style home, fpic, forced air heat, enclosed patio for year round entertaining, landscaped, rose garden, veggies, gazebo, tons of parking \$314,300

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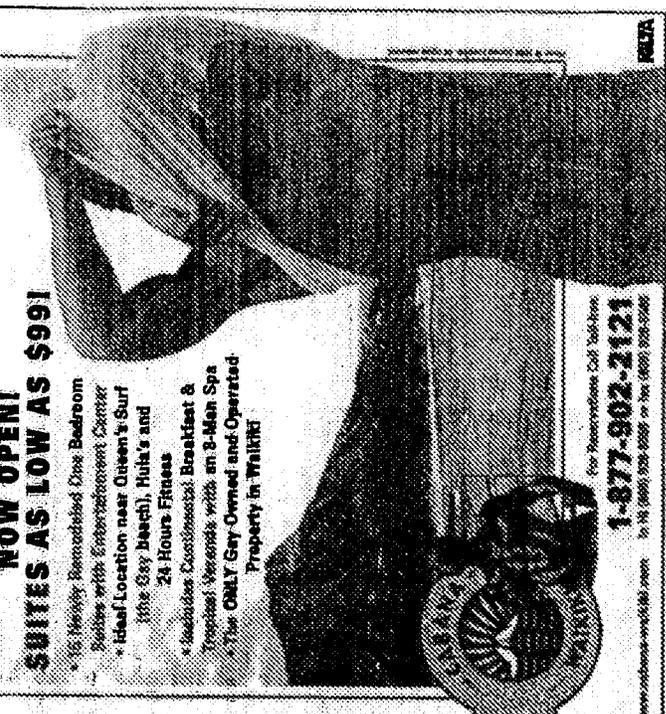
**FOR SALE**  
 2 bed, 2 bath, 1000 sq ft, 1/2 acre lot, 1000 sq ft garage, 1000 sq ft pool, 1000 sq ft deck, 1000 sq ft patio, 1000 sq ft porch, 1000 sq ft pergola, 1000 sq ft gazebo, 1000 sq ft fire pit, 1000 sq ft bbq, 1000 sq ft outdoor kitchen, 1000 sq ft outdoor living area, 1000 sq ft outdoor dining area, 1000 sq ft outdoor seating area, 1000 sq ft outdoor entertainment area, 1000 sq ft outdoor relaxation area, 1000 sq ft outdoor storage area, 1000 sq ft outdoor utility area, 1000 sq ft outdoor laundry area, 1000 sq ft outdoor storage shed, 1000 sq ft outdoor utility shed, 1000 sq ft outdoor laundry shed, 1000 sq ft outdoor storage garage, 1000 sq ft outdoor utility garage, 1000 sq ft outdoor laundry garage, 1000 sq ft outdoor storage house, 1000 sq ft outdoor utility house, 1000 sq ft outdoor laundry house, 1000 sq ft outdoor storage building, 1000 sq ft outdoor utility building, 1000 sq ft outdoor laundry building, 1000 sq ft outdoor storage barn, 1000 sq ft outdoor utility barn, 1000 sq ft outdoor laundry barn, 1000 sq ft outdoor storage shed, 1000 sq ft outdoor utility shed, 1000 sq ft outdoor laundry shed, 1000 sq ft outdoor storage garage, 1000 sq ft outdoor utility garage, 1000 sq ft outdoor laundry garage, 1000 sq ft outdoor storage house, 1000 sq ft outdoor utility house, 1000 sq ft outdoor laundry house, 1000 sq ft outdoor storage building, 1000 sq ft outdoor utility building, 1000 sq ft outdoor laundry building, 1000 sq ft outdoor storage barn, 1000 sq ft outdoor utility barn, 1000 sq ft outdoor laundry barn.

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SAN JUAN, PUERTO RICO

# **EXHIBIT “C”**

Trademark/Service Mark Application, Principal Register

Serial Number: 78475098

Filing Date: 08/27/2004

The table below presents the data as entered.

Input Field	Entered
<b>MARK SECTION</b>	
MARK FILE NAME	W:\pics\EXPORT1\IMAGEOUT\1\784750\78475098\xml\A_APP0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	CABANA BAR & CASINO
COLOR MARK	NO
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the stylized word CABANA on top of the stylized words BAR & CASINO.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	940 x 250
<b>OWNER SECTION</b>	
NAME	Wynn Resorts Holdings, LLC
STREET	3131 Las Vegas Blvd. South
CITY	Las Vegas
STATE	NV
ZIP/POSTAL CODE	89109
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
<b>LEGAL ENTITY SECTION</b>	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY UNDER WHICH ORGANIZED	Nevada
NAME OF ALL GENERAL PARTNERS, ACTIVE MEMBERS, INDIVIDUAL, TRUSTEES, OR EXECUTORS, AND CITIZENSHIP/ INCORPORATION	Valvino Lamore, LLC a Nevada limited liability company, sole member; Wynn Resorts, Limited a Nevada corporation, sole member of Valvino Lamore, LLC
<b>GOODS AND/OR SERVICES SECTION</b>	
INTERNATIONAL CLASS	041

DESCRIPTION	casino services
FILING BASIS	Section 1(b)
<b>SIGNATURE SECTION</b>	
SIGNATURE	/Marc H. Rubinstein/
SIGNATORY NAME	Marc H. Rubinstein
SIGNATORY DATE	08/27/2004
SIGNATORY POSITION	Senior Vice President, General Counsel and Secretary of Wynn Resorts, Limited a Nevada corporation
<b>PAYMENT SECTION</b>	
NUMBER OF CLASSES	1
NUMBER OF CLASSES PAID	1
SUBTOTAL AMOUNT	335
TOTAL AMOUNT	335
<b>ATTORNEY</b>	
NAME	Lauri S. Thompson, Esq.
FIRM NAME	QUIRK & TRATOS
INTERNAL ADDRESS	Suite 500N
STREET	3773 Howard Hughes Parkway
CITY	Las Vegas
STATE	NV
ZIP/POSTAL CODE	89109
COUNTRY	United States
PHONE	702-792-3773
FAX	702-792-9002
EMAIL	PTO@quirkandtratos.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	0410 cabana bar & casino cl 41
OTHER APPOINTED ATTORNEY(S)	Mark G. Tratos, Edward J. Quirk, Rob L. Phillips, James R. Boyd, Jason D. Firth, F. Christopher Austin, Lauri S. Thompson, Ronald D. Green, Jr., Carrie E. Peterman, Donald L. Prunty, Laraine M.I. Burrell, and R. Richard Costello
<b>CORRESPONDENCE SECTION</b>	
NAME	Lauri S. Thompson, Esq.
FIRM NAME	QUIRK & TRATOS

INTERNAL ADDRESS	Suite 500N
STREET	3773 Howard Hughes Parkway
CITY	Las Vegas
STATE	NV
ZIP/POSTAL CODE	89109
COUNTRY	United States
PHONE	702-792-3773
FAX	702-792-9002
EMAIL	PTO@quirkandtratos.com
AUTHORIZED EMAIL COMMUNICATION	Yes
<b>FILING INFORMATION</b>	
SUBMIT DATE	Fri Aug 27 17:22:53 EDT 2004
TEAS STAMP	USPTO/BAS-6311023718-2004 0827172253703533-78475098 -200764ee288693a5252f8316 e3e0c0b98c-DA-297-2004082 7172212653350

FIG 1 (Am) (4/28/04) (USPTO)  
 (AMB No 10/1/04) (1/1/04) (USPTO)

## Trademark/Service Mark Application, Principal Register

**Serial Number: 78475098**

**Filing Date: 08/27/2004**

### To the Commissioner for Trademarks:

**MARK:** CABANA BAR & CASINO (stylized and/or with design, see mark)

The literal element of the mark consists of CABANA BAR & CASINO.

The mark consists of the stylized word CABANA on top of the stylized words BAR & CASINO.

The applicant, Wynn Resorts Holdings, LLC, a limited liability company organized under the laws of Nevada, comprising of Valvino Lamore, LLC a Nevada limited liability company, sole member; Wynn Resorts, Limited a Nevada corporation, sole member of Valvino Lamore, LLC, residing at 3131 Las Vegas Blvd. South, Las Vegas, NV, United States, 89109, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

International Class 041: casino services

The applicant hereby appoints Lauri S. Thompson, Esq. and Mark G. Tratos, Edward J. Quirk, Rob L. Phillips, James R. Boyd, Jason D. Firth, F. Christopher Austin, Lauri S. Thompson, Ronald D. Green, Jr., Carrie E. Peterman, Donald L. Prunty, Laraine M.I. Burrell, and R. Richard Costello

of QUIRK & TRATOS, Suite 500N, 3773 Howard Hughes Parkway, Las Vegas, NV, United States, 89109 to submit this application on behalf of the applicant. The attorney docket/reference number is 0410 cabana bar & casino cl 41.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: PTO@quirkandratos.com.

A fee payment in the amount of \$335 will be submitted with the application, representing payment for 1 class(es).

#### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Marc H. Rubinstein/ Date: 08/27/2004

Signatory's Name: Marc H. Rubinstein

Signatory's Position: Senior Vice President, General Counsel and Secretary of Wynn Resorts, Limited a Nevada corporation

Mailing Address:

Lauri S. Thompson, Esq.  
Suite 500N  
3773 Howard Hughes Parkway  
Las Vegas, NV 89109

RAM Sale Number: 297

RAM Accounting Date: 08/30/2004

Serial Number: 78475098

Internet Transmission Date: Fri Aug 27 17:22:53 EDT 2004

TEAS Stamp: USPTO/BAS-6311023718-2004082717225370353

3-78475098-200764ee288693a5252f8316e3e0c

0b98c-DA-297-20040827172212653350

**C A B A N A**  
B A & C A I S N O

# **EXHIBIT “D”**

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

VENTURE OUT PROPERTIES LLC,

Opposer,

v.

WYNN RESORTS HOLDINGS, LLC,

Applicant.

Opposition No. 91167237

**APPLICANT'S OBJECTIONS AND RESPONSES TO  
OPPOSER'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and rule 407 of the Trademark Trial and Appeal Board Manual of Procedure, Applicant hereby objects and responds to Opposer's First Set of Interrogatories.

**GENERAL OBJECTIONS APPLICABLE TO ALL RESPONSES**

1. Applicant objects to each interrogatory to the extent it seeks information protected by the attorney-client privilege or work product doctrine.
2. Applicant objects to each interrogatory to the extent it seeks information not within the possession, custody or control of Applicant.
3. Applicant objects to each interrogatory to the extent it seeks to impose duties on the Applicant beyond the scope of the Federal Rules of Civil Procedure.
4. Applicant objects to each interrogatory to the extent it seeks confidential, proprietary or sensitive business information.
5. Applicant objects generally to Opposer's interrogatories to the extent that they are vague, ambiguous, overly broad or seek to impose upon Applicant an unduly

**EXHIBIT D**

burdensome search for and disclosure of information that is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of information or evidence admissible at trial.

6. Applicant reserves the right to supplement, amend and correct the answers set forth below. Applicant's investigation is ongoing and the information contained in these answers is preliminary.

7. Applicant hereby incorporates by reference these general objections into each specific answer.

8. Applicant has not completed its investigation of the applicable facts and has not yet completed discovery in this action. Applicant's answers herein are without prejudice to its rights to produce evidence of any additional facts.

### **OBJECTIONS AND RESPONSES**

#### **Interrogatory No. 1:**

With respect to Applicant's Mark:

A. identify all persons known to Applicant who took part in or were responsible for its (i) creation and (ii) earliest selection for use; and

B. set forth all facts known to Applicant and identify all documents relating or referring to its (i) creation and (ii) earliest selection for use.

#### **Answer:**

A. Roger Thomas, Executive VP of Design with Wynn Design and Development. Mr. Thomas was the interior designer of the pool area.

B. A pool area was to be included in the concept for the development of Wynn Las Vegas. The pool area was to include various services that would be available outside near the pool for the convenience of the adult guest of the hotel using the pool area. Those services included opportunities to gamble, to drink and to

purchase pre-prepared food and snacks. Areas in which those services could be obtained were also needed. Those areas needed to be distinguishable from other areas within the hotel providing similar services. Names were chosen for the services that suggested the ambiance of the poolside location in which the services were to be offered. Documents Bates Numbered WYN 00214-243, 256-260, 356-398 and previously provided to Opposer relate to the creation and earliest selection of Applicant's Mark for use.

**Interrogatory No. 2:**

Identify in detail each and every product and service with which Applicant has used Applicant's Mark, "CABANA BAR & CASINO" in a design, and as to each such product or service, state in detail the manner of such use (actual sales, advertisements, etc.), and the annual sales revenues in United States dollars for each of the past four (4) calendar years.

**Answer:**

Applicant responds that casino services and restaurant, bar and cocktail services are offered in the manner described in response to Interrogatory No. 1. No products bearing the Mark are offered. The identified services have been offered from the date the hotel opened until the present. The services are only sold or offered for sale on the premises of Wynn Las Vegas, Clark County, Nevada.

Applicant objects to the Interrogatory subpart requesting annual sales revenues on the ground that the Opposer seeks confidential, trade secret or commercially sensitive information. Applicant also objects on the ground that such requests seek to impose duties on Applicant beyond the scope of the Federal Rules of Civil Procedure for this action.

Applicant also objects to the Interrogatory subpart requesting annual sales revenues on the grounds that the requests is overly broad, would impose on Applicant an unduly burdensome search for and disclosure of information that is neither relevant

to the subject matter of this action, nor reasonably calculated to lead to the discovery of information or evidence admissible at trial, as the amount of revenue received is not at issue or an element of any cause or defense of this action.

Applicant will provide, however, relevant and non-objectionable information when an appropriate protective agreement has been negotiated and executed by the parties.

**Interrogatory No. 3:**

Identify in detail each and every product and service with which Applicant is using Applicant's Mark, "CABANA BAR & CASINO" in a design, and as to each such product or service state in detail the manner of such use (actual sales, advertisements, etc.), and the annual sales revenues in United States dollars for each of the past four (4) years.

**Answer:**

Applicant responds that casino services and restaurant, bar and cocktail services are offered in the manner described in response to Interrogatory No. 1. No products bearing the Mark are offered. The identified services have been offered from the date the hotel opened until the present. The services are only sold or offered for sale on the premises of Wynn Las Vegas, Clark County, Nevada.

Applicant objects to the Interrogatory subpart requesting annual sales revenues on the ground that the Opposer seeks confidential, trade secret or commercially sensitive information. Applicant also objects on the ground that such requests seek to impose duties on Applicant beyond the scope of the Federal Rules of Civil Procedure for this action.

Applicant also objects to the Interrogatory subpart requesting annual sales revenues on the grounds that the requests is overly broad, would impose on Applicant an unduly burdensome search for and disclosure of information that is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of

information or evidence admissible at trial, as the amount of revenue received is not at issue or an element of any cause or defense of this action.

Applicant will provide, however, relevant and non-objectionable information when an appropriate protective agreement has been negotiated and executed by the parties.

**Interrogatory No. 4:**

For each and every product and service with which Applicant has used or is using Applicant's Mark, "CABANA BAR & CASINO" in a design, state the date of first use of each mark with that product or service, and state the date of first use of each mark with that product or service in interstate commerce.

**Answer:**

Applicant began using Applicant's Mark for each and every product and service identified from at least April 28, 2005, the date the Wynn Las Vegas hotel opened.

**Interrogatory No. 5:**

Identify all entities, products and events that Applicant sponsors or endorses, or intends to sponsor or endorse, under Applicant's Mark, "CABANA BAR & CASINO" in a design.

**Answer:**

Applicant responds that only the identified services of Applicant are offered under the Mark.

**Interrogatory No. 6:**

Identify all entities, products and events that endorse or sponsor, or intend to endorse or sponsor, anything under Applicant's Mark, "CABANA BAR & CASINO" in a design.

**Answer:**

Applicant responds that only the identified services of Applicant are offered under the Mark.

**Interrogatory No. 7:**

Identify every survey, pretest, poll or other investigation conducted by, for, or on Applicant's behalf relating to the public's recognition of or reaction to Applicant's Mark "CABANA BAR & CASINO" in a design, or the likelihood of confusion or mistake or deception resulting from the use of Applicant's Mark, "CABANA BAR & CASINO" in a design, and for each survey or other investigation:

- A. state the results of the survey or investigation;
- B. identify all persons or entities conducting, preparing, supervising or involved in execution of the survey or investigation;
- C. state the date of each survey or investigation;
- D. state the geographical market or other area, or universe, surveyed or investigated;
- E. identify the classes of persons and state the number of persons in each class surveyed or investigated;
- F. state the methods used to make the survey or investigation; and
- G. identify and produce each document referring or relating to each such survey or investigation, including all drafts of all reports, questionnaires and all of the backup material used in connection therewith.

**Answer:**

Applicant is presently unaware of any survey, pretest, poll or other investigation responsive to this request.

Applicant's investigation is ongoing, and Applicant reserves the right to supplement this response, should Applicant become aware of additional information responsive to this request.

**Interrogatory No. 8:**

If Applicant or Applicant's attorney or agent has ever made or caused to be made any search relating to the registration, application for registration, or use of Applicant's Mark, "CABANA BAR & CASINO" in a design, or related marks by persons other than

Applicant, or to determine the availability or registrability of Applicant's Mark, "CABANA BAR & CASINO" in a design, as a service mark or trademark, state the following:

- A. identify each trademark, or service mark, or trade name found in each search;
- B. identify each document including, but not limited to, each search report, referring or relating to any such search;
- C. describe the actions, if any, taken by Applicant as a result of any matter revealed in the report or any such search; and
- D. the substance of the opinion given, if any, in connection with the report as to Applicant's proposed or actual use of each of Applicant's Mark, "CABANA BAR & CASINO" in a design.

**Answer:**

Applicant objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine.

Applicant further objects to this Interrogatory on the grounds that the request imposes on Applicant an unduly burdensome search for and disclosure of information that is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of information or evidence admissible at trial.

Applicant further objects to this Interrogatory on the grounds that it seek information purporting to relate to third-parties, which information is not within the possession, custody or control of Applicant.

Applicant further objects to this interrogatory on the grounds that it seeks to impose duties on Applicant beyond the scope of the Federal Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, Applicant answers as follows:

See the Thompson & Thompson search report dated June 18, 2003, Bates Numbered WYN 00001-00211.

**Interrogatory No. 9:**

State the date(s) on which Applicant first became aware of Opposer's use of, or applications or registrations for, Opposer's Mark or "The Cabana at Waikiki".

**Answer:**

Applicant responds that Applicant became aware of Opposer's Mark or "The Cabana at Waikiki" by Opposer's initiation of the instant action.

Applicant's investigation is ongoing, and Applicant reserves the right to supplement this response, should Applicant become aware of additional information responsive to this request.

**Interrogatory No. 10:**

Identify every person or entity who has ever inquired, orally or in writing, whether goods or services sold by Applicant or on Applicant's behalf under Applicant's Mark, "CABANA BAR & CASINO" in a design, were sponsored, endorsed by, or were/are in any way connected or affiliated with Opposer, and if so, then for each such inquiry:

- A. state the date on which the inquiry or reference was made;
- B. state the substance of the inquiry or reference;
- C. identify all persons having knowledge of the inquiry or reference; and
- D. identify all documents referring or relating to the inquiry or reference and any response thereto.

**Answer:**

Applicant objects to this Interrogatory on the grounds that it is vague, ambiguous and overly broad and on the grounds that it seeks to impose on Applicant an unduly burdensome search for and disclosure of information that is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of information or evidence admissible at trial, as this request seeks information for a period of time that is inclusive of that period prior to Applicant's application for, or use of Applicant's Mark.

Subject to and without waiving the foregoing objections, Applicant answers as follows:

No person or entity as so inquired, orally or in writing after Applicant's application for, or after Applicant's first use of, Applicant's Mark.

Applicant's investigation is ongoing, and Applicant reserves the right to supplement this response, should Applicant become aware of additional information responsive to this request.

**Interrogatory No. 11:**

If Applicant has ever received any misdirected mail, electronic mail, telephone calls, orders, inquiries or complaints, which were or may have been intended for Opposer, as a result of Applicant's use of Applicant's Mark, "CABANA BAR & CASINO" in a design:

- A. identify the communication or incident;
  - B. identify all persons having knowledge of the communication or incident;
- and
- C. identify and produce all documents referring or relating to such communication or incident.

**Answer:**

Applicant objects to this Interrogatory on the grounds that it is vague, ambiguous and overly broad and on the grounds that it seeks to impose on Applicant an unduly burdensome search for and disclosure of information that is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of information or evidence admissible at trial, as this request seeks information for a period of time that is inclusive of that period prior to Applicant's application for, or use of Applicant's Mark.

Subject to and without waiving the foregoing objections, Applicant answers as follows:

Applicant has not received any such communication or experienced any such incident after Applicant's application for, or after Applicant's first use of, Applicant's Mark.

Applicant's investigation is ongoing, and Applicant reserves the right to supplement this response, should Applicant become aware of additional information responsive to this request.

**Interrogatory No. 12:**

Describe in detail Applicant's standard for clearance of proposed trademarks and/or service marks, and indicate whether this procedure was used in clearance of Applicant's Mark, "CABANA BAR & CASINO" in a design.

**Answer:**

Applicant objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine.

Applicant further objects to this Interrogatory on the grounds that the request imposes on Applicant an unduly burdensome search for and disclosure of information that is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of information or evidence admissible at trial.

Applicant further objects to this interrogatory on the grounds that it seeks to impose duties on Applicant beyond the scope of the Federal Rules of Civil Procedure.

Subject to and without waiving the foregoing objections, Applicant answers as follows:

See the Thompson & Thompson search report dated June 18, 2003, Bates Numbered WYN 00001-00211.

**Interrogatory No. 13:**

Identify each owner or each person having or having had any right to use Applicant's mark and through or under which Applicant claims any rights in Applicant's Mark "CABANA BAR & CASINO" in a design.

**Answer:**

None.

Applicant's investigation is ongoing, and Applicant reserves the right to supplement this response, should Applicant become aware of additional information responsive to this request.

**Interrogatory No. 14:**

Identify the channels of trade in which Applicant has sold, sells, and/or intends to sell its products or services in connection with Applicant's Mark, "CABANA BAR & CASINO" in a design.

**Answer:**

Services under the Opposed Mark are only offered on the premises of Wynn Resort Las Vegas in Clark County, Nevada. Specifically, a sign identifying Applicant's Mark is located and visible primarily to hotel guests within the pool area on the premises of Wynn Las Vegas in Clark County, Nevada.

**Interrogatory No. 15:**

For each and every product or service with which Applicant has used, is using or intends to use Applicant's Mark, "CABANA BAR & CASINO" in a design, describe the class(es) of purchasers (e.g. retail consumers, industrial processors, etc.) to whom each product or service is or will be sold.

**Answer:**

Services under the Opposed Mark are offered only to registered adult guests who enter the pool area on the premises of Wynn Las Vegas in Clark County, Nevada.

**Interrogatory No. 16:**

State whether Applicant has ever obtained any of Opposer's products with which Opposer uses Opposer's Mark, and if so, provide a detailed explanation of the reason(s) why and the circumstances by which Applicant obtained such products.

**Answer:**

Applicant has not ever obtained any of Opposer's products with which Opposer uses Opposer's Mark.

Applicant's investigation is ongoing, and Applicant reserves the right to supplement this response, should Applicant become aware of additional information responsive to this request.

**Interrogatory No. 17:**

Describe with particularity every variation in which Applicant has used or intends to use Applicant's Mark, "CABANA BAR & CASINO" in a design, such as with or without a design, with other words, designs, etc., or with words or portions omitted, or as abbreviated or truncated.

**Answer:**

Every variation presently intended or used by Applicant is identified by Applicant's applications for registration with the United States Patent and Trademark Office for Applicant's Mark and by documents Bates Numbered 00253-00260.

Applicant's investigation is ongoing, and Applicant reserves the right to supplement this response, should Applicant become aware of additional information responsive to this request.

**Interrogatory No. 18:**

Identify all of Applicant's former and current licensees, distributors, dealers or representatives who sell or who will sell its products or services bearing Applicant's Mark, "CABANA BAR & CASINO" in a design, or offer or provide services under Applicant's Mark, "CABANA BAR & CASINO" in a design, either on their own behalf or on Applicant's behalf in the United States under a license or some other agreement and for each person, state their relationship to Applicant.

**Answer:**

None.

Applicant's investigation is ongoing, and Applicant reserves the right to supplement this response, should Applicant become aware of additional information responsive to this request.

**Interrogatory No. 19:**

Identify every person Applicant has contacted for the purpose of being an expert witness in these proceedings and state whether or not Applicant has retained their services. For each person whose services have been retained, state the subject matter upon which the person was consulted to testify or advise; the facts and opinions given by the person; and a summary of the grounds for each such opinion.

**Answer:**

Applicant objects to this Interrogatory on the basis that it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Applicant responds as follows:

Applicant has not yet determined whether an expert will be called to testify in these proceedings. If Applicant determines to call an expert, the requested information will be provided through discovery as afforded by the Trademark Trial and Appeal Board Manual of Procedure and the Federal Rules of Civil Procedure.

**Interrogatory No. 20:**

Identify all other pending trademark applications for marks containing "CABANA BAR & CASINO" in a design, Opposer's Mark, "CABANA", or marks similar to, or diluting, "CABANA", filed by Applicant.

**Answer:**

Applicant has filed the following Applications responsive to this Interrogatory with the United States Patent and Trademark Office:

Serial # 78475098

Serial # 78475092

Serial # 78475101

Serial # 78475100

Serial # 76597835

Serial # 76597834

**Interrogatory No. 21:**

Identify the person most knowledgeable at Applicant regarding Applicant's use of Applicant's Mark, "CABANA BAR & CASINO" in a design.

**Answer:**

Applicant objects to this Interrogatory on the grounds that it vague, ambiguous and overly broad. Opposer has not sufficiently described the testimony for which it seeks the identity of a person most knowledgeable, as the particular use of Applicant's mark is unidentified, undefined and overly broad.

Subject to and without waiving the foregoing objections, Applicant responds that the following or other individuals have knowledge regarding various aspects of the use of Applicant's Mark:

Mark Rubinstein, General Counsel, Wynn Resorts Limited.

Kevin Tourek, General Counsel, Wynn Las Vegas.

Denise Randazzo, Vice President of Public Relations & Advertising.

Roger Thomas, Executive VP of Design with Wynn Design and Development.

**Interrogatory No. 22:**

Identify every person whom Applicant expects to call as a witness during its testimony period (including without limitation any expert witnesses) and provide a short statement of the subject matter to which each person is expected to testify.

**Answer:**

Applicant objects to this Interrogatory on the basis that it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing objections, Applicant responds as follows:

Applicant has not yet determined the identity of the witnesses that will be called to testify in these proceedings. If Applicant determines to call a witness or witnesses, the requested information will be provided through discovery as afforded by the Trademark Trial and Appeal Board Manual of Procedure and the Federal Rules of Civil Procedure.

**Interrogatory No. 23**

For all persons participating in the answers to these interrogatories, please state:

- A. such person's identity, business address and personal address;
- B. the specific interrogatory answer(s), which such person participated in answering;
- C. the job title and relationship of each such person to Applicant.

**Answer:**

The person verifying these answers participated in answering all of the Interrogatories propounded by Opposer.

DATED: January 31, 2006.

**GREENBERG TRAURIG**



F. Christopher Austin  
3773 Howard Hughes Parkway  
Suite 500 North  
Las Vegas, Nevada 89109

Counsel for Applicant Wynn Resorts Holdings,  
LLC

**VERIFICATION**

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF CLARK        )

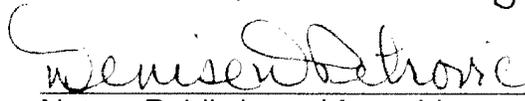
I, Kevin Tourek, declare, under penalty of perjury, that the following statements are true:

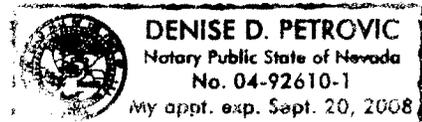
1. I am the General Counsel of Wynn Las Vegas, LLC and I am duly authorized to sign these Answers;

2. I have read Applicant's Objections and Responses to Opposer's First Set of Interrogatories, know the contents therein, and the same is true of my own knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

  
\_\_\_\_\_  
KEVIN TOUREK

SUBSCRIBED AND SWORN TO before me  
this 31<sup>st</sup> day of January, 2006.

  
\_\_\_\_\_  
Notary Public in and for said  
County and State.



**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **Applicant's Response to Opposer's First Request for Interrogatories** on:

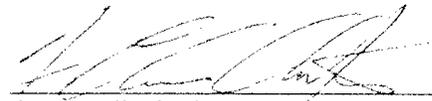
Martin E. Hsia  
CADES SCHUTTE LLP  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813

Counsel for: Opposer

by causing a full, true, and correct copy thereof to be sent by the following indicated method or methods, on the date set forth below:

- by mailing in a sealed, first-class postage-prepaid envelope, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service at Las Vegas, Nevada.
- by hand delivery.
- by sending via overnight courier in a sealed envelope.
- by faxing to the attorney at the fax number that is the last-known fax number.
- by electronic mail to the last known e-mail address.

DATED: January 31, 2006.



\_\_\_\_\_  
Jacquelin Ierien  
An employee of Greenberg Traurig

# **EXHIBIT “E”**

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 76/630391

APPLICANT: VENTURE OUT PROPERTIES LLC

**\*76630391\***

**CORRESPONDENT ADDRESS:**

MARTIN E. HSIA  
CADES SCHUTTE, L.L.L.P.  
PO BOX 939  
HONOLULU, HI 96808-0939

**RETURN ADDRESS:**

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

MARK: CABANA

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

Please provide in all correspondence:

CORRESPONDENT EMAIL ADDRESS:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

**OFFICE ACTION**

**RESPONSE TIME LIMIT:** TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

Serial Number 76/630391

The assigned trademark examining attorney has reviewed the referenced application filed on February 7, 2005, and has determined the following.

**REGISTRATION REFUSED--LIKELIHOOD OF CONFUSION**

Registration of the proposed mark is refused because of a likelihood of confusion with the marks in U.S. Registration Nos. 2851141 and 1238864. Trademark Act Section 2(d), 15 U.S.C. §1052(d); TMEP §§1207.01 *et seq.* See the enclosed registrations.

The Court in *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973), listed the principal factors to be considered in determining whether there is a likelihood of confusion under Section 2(d). Any one of the factors listed may be dominant in any given case, depending upon the evidence of record. *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997); In this case, the following factors are the most relevant: similarity of the marks, similarity of the goods and/or services, and similarity of trade channels of the goods and/or services. *See In*

**EXHIBIT E**

*re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001); *In re Dakin's Miniatures Inc.*, 59 USPQ2d 1593 (TTAB 1999); *In re Azteca Restaurant Enterprises, Inc.*, 50 USPQ2d 1209 (TTAB 1999); *In re L.C. Licensing Inc.*, 49 USPQ2d 1379 (TTAB 1998); TMEP §§1207.01 *et seq.*

Taking into account the relevant *DuPont* factors, a likelihood of confusion determination in this case involves a two-part analysis. First, the marks are compared for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Second, the goods or services are compared to determine whether they are similar or related or whether the activities surrounding their marketing are such that confusion as to origin is likely. *In re National Novice Hockey League, Inc.*, 222 USPQ 638 (TTAB 1984); *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re Int'l Tel. and Tel. Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Prods. Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); TMEP §§1207.01 *et seq.* The overriding concern is to prevent buyer confusion as to the source of the goods and/or services. *In re Shell Oil Co.*, 992 F.2d 1204, 1208, 26 USPQ2d 1687, 1690 (Fed. Cir. 1993). Therefore, any doubt as to the existence of a likelihood of confusion must be resolved in favor of the registrant. *In re Hyper Shoppes (Ohio), Inc.*, 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988); *Lone Star Mfg. Co. v. Bill Beasley, Inc.*, 498 F.2d 906, 182 USPQ 368 (C.C.P.A. 1974).

Regarding the issue of likelihood of confusion, all circumstances surrounding the sale of the goods and/or services are considered. *Industrial Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386 (C.C.P.A. 1973). These circumstances include the marketing channels, the identity of the prospective purchasers, and the degree of similarity between the marks and between the goods and/or services. In comparing the marks, similarity in any one of the elements of sound, appearance or meaning is sufficient to find a likelihood of confusion. In comparing the goods and/or services, it is necessary to show that they are related in some manner. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1536 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *In re Mack*, 197 USPQ 755, 757 (TTAB 1977); TMEP §§1207.01 *et seq.*

The applicant has applied for registration of the proposed mark, CABANA. The registrant's marks are LA CABANA and THE CABANA CAFÉ (Café is disclaimed).

The marks are compared for similarities in sound, appearance, meaning or connotation. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973). Similarity in any one of these elements may be sufficient to find a likelihood of confusion. *In re White Swan Ltd.*, 8 USPQ2d 1534, 1536 (TTAB 1988); *In re Lamson Oil Co.*, 6 USPQ2d 1041, 1043 (TTAB 1987); *In re Mack*, 197 USPQ 755 (TTAB 1977); TMEP §1207.01(b).

In the present case, the respective marks are nearly identical in appearance, sound, commercial impression and connotation. If the marks of the respective parties are identical or highly similar, the examining attorney must consider the commercial relationship between the goods or services of the respective parties carefully to determine whether there is a likelihood of confusion. *In re Concordia International Forwarding Corp.*, 222 USPQ 355 (TTAB 1983).

The services of the applicant are identified as "hotel services." The services of Registration No. 2851141 are identified as "restaurant and bar services." The services of Registration No. 1238864 are identified as "restaurant services."

The services of the parties need not be identical or directly competitive to find a likelihood of confusion. Instead, they need only be related in some manner, or the conditions surrounding their marketing be such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the services come from a common source. *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991); *In re Corning Glass Works*, 229 USPQ 65 (TTAB 1985); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984); *Guardian Prods. Co., Inc. v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978); *In re Int'l Tel. & Tel. Corp.*, 197 USPQ 910 (TTAB 1978); TMEP §1207.01(a)(i).

In the present case, the services of the parties could well be presumed to be from the same source inasmuch as the services of the parties relate to hotel and restaurant services which are commonly found together. Attached are copies of printouts from the USPTO X-Search database, which show third-party registrations of marks used in connection with the same or similar goods and/or services as those of applicant and registrant in this case. These printouts have probative value to the extent that they serve to suggest that the goods and/or services listed therein, namely hotel and restaurant services, are of a kind that may emanate from a single source. *See In re Infinity Broad. Corp.*, 60 USPQ2d 1214, 1217-1218 (TTAB 2001); *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783, 1785-86 (TTAB 1993); *In re Mucky Duck Mustard Co., Inc.*, 6 USPQ2d

1467, 1470 at n.6 (TTAB 1988). Consequently, the services of the present parties clearly move in the same normal channels of trade, are available to all potential customers and may be utilized for the same or similar (i.e., related) purposes by the same classes of purchasers.

Accordingly, based on the nearly identical nature of the marks and the similarity of the services of the parties, there is a likelihood of confusion under Section 2(d) of the Trademark Act.

Although the examining attorney has refused registration, the applicant may respond to the refusal to register by submitting evidence and arguments in support of registration.

If applicant chooses to respond to the refusal to register, then applicant must also respond to the following requirement.

### **PRIOR PENDING APPLICATIONS**

Information regarding pending Application Serial Nos. 76597834, 76597835, 78493465, 78493470, 78493473, 78475092 and 78475098 are enclosed. The effective filing dates of the referenced applications precede the applicant's filing date.

There may be a likelihood of confusion under Trademark Act Section 2(d) between applicant's mark and the referenced marks. If one or more of the referenced applications mature into a registration, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §§1208 *et seq.* Therefore, upon entry of a response to this Office action, action on this case may be suspended pending final disposition of the earlier-filed applications.

If applicant believes that there is no potential conflict between this application and the earlier-filed applications, then applicant may present arguments relevant to the issue in a response to this Office action. The election not to submit arguments at this time in no way limits applicant's right to address this issue at a later point.

Howard Smiga /HS/

Trademark Examining Attorney

Law Office 102

571-272-9220

571-273-9102 Fax

Howard.Smiga@uspto.gov

### **HOW TO RESPOND TO THIS OFFICE ACTION:**

- **ONLINE RESPONSE:** You may respond formally using the Office's Trademark Electronic Application System (TEAS) Response to Office Action form (visit <http://www.uspto.gov/teas/index.html> and follow the instructions, but if the Office Action has been issued via email, you must wait 72 hours after receipt of the Office Action to respond via TEAS).
- **REGULAR MAIL RESPONSE:** To respond by regular mail, your response should be sent to the mailing

# **EXHIBIT “F”**

**UNITED STATES PATENT AND TRADEMARK OFFICE**

**SERIAL NO:** 76/630391

**APPLICANT:** VENTURE OUT PROPERTIES LLC

**\*76630391\***

**CORRESPONDENT ADDRESS:**  
MARTIN E. HSIA  
CADES SCHUTTE, L.L.L.P.  
PO BOX 939  
HONOLULU, HI 96808-0939

**RETURN ADDRESS:**  
Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include the words  
"Box Responses - No Fee."

**MARK:** CABANA

**CORRESPONDENT'S REFERENCE/DOCKET NO:** N/A

**CORRESPONDENT EMAIL ADDRESS:**

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 76/630391

**NOTICE OF SUSPENSION**

**SUSPENSION PROCEDURE:** This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. 37 C.F.R. §2.67. However, the examining attorney will conduct periodic status checks and may issue inquiries at 6 month intervals from the mailing date of this notice. TMEP §716.05. If a status inquiry Office action issues, applicant will have 6 months from the mailing or e-mailing date of the status inquiry to respond. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

**MAILING/E-MAILING DATE INFORMATION:** If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tarr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Action on this application is suspended pending the disposition of:

**EXHIBIT F**

- Application Serial No(s). **76597834, 76597835, 78493465, 78493470, 78493473, 78475092 and 78475098**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) **is attached**.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

- Cancellation No(s). **Please provide with Respect to Registration No. 2851141**

The proceeding(s) above pertains to one or more of the following: (1) a registration cited as a bar to applicant's registration under Section 2(d) of the Trademark Act, (2) a pending application(s) that could present a future bar to registration under Section 2(d) if it matured into a registration, and/or (3) the registrability of applicant's mark. 15 U.S.C. §1052. Therefore action is suspended pending the final disposition of this proceeding(s). See 37 C.F.R. §2.83; TMEP §§716.02(a), (c) and (d), 1208 et seq. Any refusal(s) made under Section 2 is herein maintained.

PLEASE NOTE: Registration No. 1238864 has expired and is no longer a bar to registration in the instant case.

Howard Smiga /HS/

Trademark Examining Attorney

Law Office 102

571-272-9220

571-273-9102 Fax



**Print: Mar 28, 2006**

**76007403**

**DESIGN MARK**

**Serial Number**

76007403

**Status**

CANCELLATION PENDING

**Word Mark**

LA CABANA

**Standard Character Mark**

No

**Registration Number**

2851141

**Date Registered**

2004/06/08

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(1) TYPED DRAWING

**Owner**

ORIENT-EXPRESS HOTELS INC. CORPORATION DELAWARE 1155 Avenue of the Americas New York NEW YORK 100362711

**Goods/Services**

Class Status -- ACTIVE. IC 042. US 100 101. G & S: restaurant and bar services. First Use: 2003/09/14. First Use In Commerce: 2003/09/14.

**Filing Date**

2000/03/22

**Examining Attorney**

FOSDICK, GEOFFREY

**Attorney of Record**

J. Timothy Hobbs

# **LA CABANA**

**DESIGN MARK**

**Serial Number**

76597834

**Status**

OPPOSITION PENDING

**Word Mark**

CABANA BAR & CASINO

**Standard Character Mark**

Yes

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Wynn Resorts Holdings, LLC CORPORATION NEVADA 3145 Las Vegas Blvd.  
South Las Vegas NEVADA 89109

**Goods/Services**

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: casino  
services.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE BAR & CASINO APART FROM  
THE MARK AS SHOWN.

**Filing Date**

2004/06/15

**Examining Attorney**

KIM, SOPHIA S.

**Attorney of Record**

LAURI S. THOMPSON

# **CABANA BAR & CASINO**

**DESIGN MARK**

**Serial Number**

76597835

**Status**

OPPOSITION PENDING

**Word Mark**

CABANA BAR

**Standard Character Mark**

Yes

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Wynn Resorts Holdings, LLC CORPORATION NEVADA 3145 Las Vegas Blvd.  
South Las Vegas NEVADA 89109

**Goods/Services**

Class Status -- ACTIVE. IC 043. US 100 101. G & S: restaurant, bar  
and cocktail lounge services.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAR" APART FROM THE  
MARK AS SHOWN.

**Filing Date**

2004/06/15

**Examining Attorney**

KIM, SOPHIA S.

**Attorney of Record**

LAURI S. THOMPSON

**CABANA BAR**

**DESIGN MARK**

**Serial Number**

78475092

**Status**

OPPOSITION PENDING

**Word Mark**

CABANA BAR & CASINO

**Standard Character Mark**

No

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

**Owner**

Wynn Resorts Holdings, LLC LTD LIAB CO NEVADA 3131 Las Vegas Blvd.  
South Las Vegas NEVADA 89109

**Goods/Services**

Class Status -- ACTIVE. IC 043. US 100 101. G & S: restaurant, bar  
and cocktail lounge services.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE BAR & CASINO APART FROM  
THE MARK AS SHOWN.

**Description of Mark**

The mark consists of the stylized word CABANA on top of the stylized  
words BAR & CASINO.

**Filing Date**

2004/08/27

**Examining Attorney**

KIM, SOPHIA S.

**Attorney of Record**

Lauri S. Thompson, Esq.

**C A B A N A**  
B A I L E C A O S I N

**DESIGN MARK**

**Serial Number**

78475098

**Status**

OPPOSITION PENDING

**Word Mark**

CABANA BAR & CASINO

**Standard Character Mark**

No

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

**Owner**

Wynn Resorts Holdings, LLC LTD LIAB CO NEVADA 3131 Las Vegas Blvd.  
South Las Vegas NEVADA 89109

**Goods/Services**

Class Status -- ACTIVE. IC 041. US 100 101 107. G & S: casino  
services.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BAR & CASINO" APART  
FROM THE MARK AS SHOWN.

**Description of Mark**

The mark consists of the stylized word CABANA on top of the stylized  
words BAR & CASINO.

**Filing Date**

2004/08/27

**Examining Attorney**

KIM, SOPHIA S.

**Attorney of Record**

Lauri S. Thompson, Esq.

**C A B A N A**  
B A R & C L A S S I C S

**DESIGN MARK**

**Serial Number**

78493465

**Status**

OPPOSITION PENDING

**Word Mark**

CABANA BEACH

**Standard Character Mark**

Yes

**Type of Mark**

TRADEMARK; SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Estefan Enterprises, Inc. CORPORATION FLORIDA 420 Jefferson Avenue  
Miami Beach FLORIDA 33139

**Goods/Services**

Class Status -- ACTIVE. IC 018. US 001 002 003 022 041. G & S:  
Souvenir umbrellas.

**Goods/Services**

Class Status -- ACTIVE. IC 020. US 002 013 022 025 032 050. G & S:  
Nonmetal key chains.

**Goods/Services**

Class Status -- ACTIVE. IC 021. US 002 013 023 029 030 033 040 050.  
G & S: Souvenir drinking glasses, mugs, cups and saucers.

**Goods/Services**

Class Status -- ACTIVE. IC 024. US 042 050. G & S: Souvenir beach  
towels.

**Goods/Services**

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing,  
namely, rainwear, t-shirts, sweat shirts, jerseys, shorts, sweat  
pants, jackets, scarves, gloves, hosiery, neckties, pajamas, robes,  
night shirts, night gowns, underwear, boxer shorts, head bands, wrist  
bands, swim suits, skirts, shirts, tank tops, pants, coats, sweaters,  
leotards, leg warmers, stocking, socks, panty hose, tights, belts;  
footwear, namely, shoes, athletic shoes, slippers, boots, sandals; and

headwear, namely, hats and caps.

**Goods/Services**

Class Status -- ACTIVE. IC 043. US 100 101. G & S: Hotel, resort hotels, restaurant, bar, cocktail lounge, provision of conference and banquet facilities.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE BEACH APART FROM THE MARK AS SHOWN.

**Filing Date**

2004/10/01

**Examining Attorney**

STRASER, RICHARD A

**Attorney of Record**

Denise I. Mroz

**CABANA BEACH**

**DESIGN MARK**

**Serial Number**

78493470

**Status**

OPPOSITION PENDING

**Word Mark**

CABANA BEACH RESORT

**Standard Character Mark**

Yes

**Type of Mark**

TRADEMARK; SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Estefan Enterprises, Inc. CORPORATION FLORIDA 420 Jefferson Avenue  
Miami Beach FLORIDA 33139

**Goods/Services**

Class Status -- ACTIVE. IC 018. US 001 002 003 022 041. G & S:  
Souvenir umbrellas.

**Goods/Services**

Class Status -- ACTIVE. IC 020. US 002 013 022 025 032 050. G & S:  
Nonmetal key chains.

**Goods/Services**

Class Status -- ACTIVE. IC 021. US 002 013 023 029 030 033 040 050.  
G & S: Souvenir drinking glasses, mugs, cups and saucers.

**Goods/Services**

Class Status -- ACTIVE. IC 024. US 042 050. G & S: Souvenir beach  
towels.

**Goods/Services**

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing,  
namely, rainwear, t-shirts, sweat shirts, jerseys, shorts, sweat  
pants, jackets, scarves, gloves, hosiery, neckties, pajamas, robes,  
night shirts, night gowns, underwear, boxer shorts, head bands, wrist  
bands, swim suits, skirts, shirts, tank tops, pants, coats, sweaters,  
leotards, leg warmers, stocking, socks, panty hose, tights, belts;  
footwear, namely, shoes, athletic shoes, slippers, boots, sandals; and

headwear, namely, hats and caps.

**Goods/Services**

Class Status -- ACTIVE. IC 043. US 100 101. G & S: Hotel, resort hotels, restaurant, bar, cocktail lounge, provision of conference and banquet facilities.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE BEACH RESORT APART FROM THE MARK AS SHOWN.

**Filing Date**

2004/10/01

**Examining Attorney**

STRASER, RICHARD A

**Attorney of Record**

Denise I. Mroz

# CABANA BEACH RESORT

**DESIGN MARK**

**Serial Number**

78493473

**Status**

OPPOSITION PENDING

**Word Mark**

CABANA BEACH HOTEL & RESORT

**Standard Character Mark**

Yes

**Type of Mark**

TRADEMARK; SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Estefan Enterprises, Inc. CORPORATION FLORIDA 420 Jefferson Avenue  
Miami Beach FLORIDA 33139

**Goods/Services**

Class Status -- ACTIVE. IC 018. US 001 002 003 022 041. G & S:  
Souvenir umbrellas.

**Goods/Services**

Class Status -- ACTIVE. IC 020. US 002 013 022 025 032 050. G & S:  
Nonmetal key chains.

**Goods/Services**

Class Status -- ACTIVE. IC 021. US 002 013 023 029 030 033 040 050.  
G & S: Souvenir drinking glasses, mugs, cups and saucers.

**Goods/Services**

Class Status -- ACTIVE. IC 024. US 042 050. G & S: Souvenir beach  
towels.

**Goods/Services**

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing,  
namely, rainwear, t-shirts, sweat shirts, jerseys, shorts, sweat  
pants, jackets, scarves, gloves, hosiery, neckties, pajamas, robes,  
night shirts, night gowns, underwear, boxer shorts, head bands, wrist  
bands, swim suits, skirts, shirts, tank tops, pants, coats, sweaters,  
leotards, leg warmers, stocking, socks, panty hose, tights, belts;  
footwear, namely, shoes, athletic shoes, slippers, boots, sandals; and

headwear, namely, hats and caps.

**Goods/Services**

Class Status -- ACTIVE. IC 043. US 100 101. G & S: Hotel, resort hotels, restaurant, bar, cocktail lounge, provision of conference and banquet facilities.

**Disclaimer Statement**

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE BEACH HOTEL & RESORT APART FROM THE MARK AS SHOWN.

**Filing Date**

2004/10/01

**Examining Attorney**

STRASER, RICHARD A

**Attorney of Record**

Denise I. Mroz

**CABANA BEACH HOTEL  
& RESORT**

# **EXHIBIT “G”**

**UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

VENTURE OUT PROPERTIES LLC,

Opposer,

v.

WYNN RESORTS HOLDINGS, LLC,

Applicant.

Opposition No. 91167237

**APPLICANT'S RESPONSE TO  
OPPOSER'S FIRST SET OF REQUEST OF ADMISSIONS**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and rule 411 of the Trademark Trial and Appeal Board Manual of Procedure, Applicant hereby objects and responses to Opposer's First Set of Requests for Admission.

**GENERAL OBJECTIONS APPLICABLE TO ALL ANSWERS**

1. Applicant objects to each request for admission to the extent it seeks information protected by the attorney-client privilege or work product doctrine.
2. Applicant objects to each request for admission to the extent it seeks information not within the possession, custody or control of Applicant.
3. Applicant objects to each request for admission to the extent it seeks to impose duties on the Applicant beyond the scope of the Federal Rules of Civil Procedure.
4. Applicant objects to each request for admission to the extent it seeks confidential, proprietary or sensitive business information.
5. Applicant objects generally to Opposer's requests for admission to the extent that they are vague, ambiguous, overly broad or seek to impose upon Applicant an unduly burdensome search for and disclosure of information that is neither relevant

to the subject matter of this action, nor reasonably calculated to lead to the discovery of information or evidence admissible at trial.

6. Applicant reserves the right to supplement, amend and correct the answers set forth below. Applicant's investigation is ongoing and the information contained in these answers is preliminary

7. Applicant hereby incorporates by reference these general objections into each specific answer.

8. Applicant has not completed its investigation of the applicable facts and has not yet completed discovery in this action. Applicant's answers herein are without prejudice to its rights to produce evidence of any additional facts.

## **RESPONSES**

### **Request for Admission No. 1:**

On or about August 27, 2004, Applicant filed or caused to be filed with the U.S.D. Patent and Trademark Office an application denoted as Serial no. 78/475,098 (the "Wynn Resorts Application"), to register "CABANA BAR & CASINO" in a design ("Applicant's Mark") as a trademark in connection with "casino services" in International Class 41 ("Applicant's Services").

### **Response**

Admit.

### **Request for Admission No. 2:**

The Wynn Resorts Application does not contain any restrictions as to channels of trade or purchasers.

### **Response**

Admit.

### **Request for Admission No. 3:**

The dominant part of Applicant's Mark is "CABANA".

### **Response**

Deny.

**Request for Admission No. 4:**

Applicant has disclaimed any exclusive rights to use the portion of Applicant's Mark consisting of "BAR & CASINO".

**Response**

Admit.

**Request for Admission No. 5:**

The words "BAR & CASINO" are smaller than "CABANA" in Applicant's Mark.

**Response**

Admit.

**Request for Admission No. 6:**

Applicant's Mark deemphasizes the words "BAR & CASINO".

**Response**

Deny.

**Request for Admission No. 7:**

The "casino services" set forth in the Wynn Resorts Application are related to those services covered by Opposer's pending Application Serial No. 76/630,391 for "hotel services" in International Class 43 ("Opposer's Services").

**Response**

Deny.

**Request for Admission No. 8:**

Applicant's Services are related to Opposer's Services.

**Response**

Deny.

**Request for Admission No. 9:**

Casino services are related to hotel services.

**Response**

Deny.

**Request for Admission No. 10:**

Applicant has used or uses Applicant's Mark in connection with casino services that are offered at Applicant's hotel, the Wynn Las Vegas.

**Response**

Admit.

**Request for Admission No. 11:**

Applicant's Mark is confusingly similar to "CABANA".

**Response**

Deny.

**Request for Admission No. 12:**

"BAR & CASINO" is generic or merely descriptive.

**Response**

Deny.

**Request for Admission No. 13:**

"BAR & CASINO" has not acquired secondary meaning for Applicant's Services.

**Response**

Deny.

**Request for Admission No. 14:**

The only distinctive portion of Applicant's Mark is "CABANA".

**Response**

Deny.

DATED: January 27, 2006.

**GREENBERG TRAURIG**



---

Mark G. Tratos.  
R. Richard Costello, (Of Counsel)  
F. Christopher Austin  
Laraine M.I. Burrell  
3773 Howard Hughes Parkway  
Suite 500 North  
Las Vegas, Nevada 89109  
Counsel for Applicant Wynn Resorts Holdings,  
LLC

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **Applicant's Response to Opposer's First Set of Request for Admissions** on:

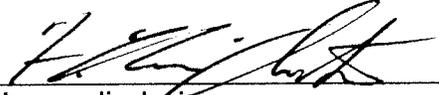
Martin E. Hsia  
CADES SCHUTTE LLP  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813

Counsel for: Opposer

by causing a full, true, and correct copy thereof to be sent by the following indicated method or methods, on the date set forth below:

- by mailing in a sealed, first-class postage-prepaid envelope, addressed to the last-known office address of the attorney, and deposited with the United States Postal Service at Las Vegas, Nevada. *Cheryl Kujala*
- by hand delivery.
- by sending via overnight courier in a sealed envelope.
- by faxing to the attorney at the fax number that is the last-known fax number.
- by electronic mail to the last known e-mail address.

DATED: January 27, 2006.

  
\_\_\_\_\_  
Jacquelin Ierfen  
An employee of Greenberg Traurig

# **EXHIBIT “H”**

Int. Cls.: 41 and 42

Prior U.S. Cls.: 100 and 107

United States Patent and Trademark Office  
10 Year Renewal

Reg. No. 907,693

Registered Feb. 9, 1971

Renewal Approved Feb. 12, 1991

**SERVICE MARK  
PRINCIPAL REGISTER**

**CAESARS PALACE**

CAESARS WORLD, INC. (FLORIDA CORPORATION)  
1801 CENTURY PARK EAST  
LOS ANGELES, CA 90067, ASSIGNEE BY  
ASSIGNMENT AND CHANGE OF  
NAME FROM LUM'S, INC. (FLORIDA CORPORATION) MIAMI, FL

FOR: HOTEL AND RESTAURANT  
SERVICES, IN CLASS 100 (INT. CL. 42).

FIRST USE 8-5-1966; IN COMMERCE  
8-5-1966.

FOR: NIGHTCLUB ENTERTAINMENT SERVICES FEATURING MUSIC, DANCING AND COMEDY, AND CASINO SERVICES. IN CLASS 107 (INT. CL. 41).

FIRST USE 8-5-1966; IN COMMERCE  
8-5-1966.

SER. NO. 72-300,265. FILED 6-12-1968.

*In testimony whereof I have hereunto set my hand  
and caused the seal of The Patent and Trademark  
Office to be affixed on Mar. 26, 1991.*

COMMISSIONER OF PATENTS AND TRADEMARKS

# **EXHIBIT “I”**

Int. Cls.: 41 and 42

Prior U.S. Cls.: 100 and 107

**United States Patent and Trademark Office** **Reg. No. 1,851,743**  
Registered Aug. 30, 1994

**SERVICE MARK  
PRINCIPAL REGISTER**

**4 QUEENS**

FOUR QUEENS, INC. (NEVADA CORPORATION)  
202 E. FREMONT ST.  
LAS VEGAS, NV 89101

FOR: CASINO SERVICES, IN CLASS 41 (U.S. CL. 107).  
FIRST USE 6-0-1966; IN COMMERCE 6-0-1966.

FOR: HOTEL SERVICES, IN CLASS 42 (U.S. CL. 100).  
FIRST USE 6-0-1966; IN COMMERCE 6-0-1966.

SER. NO. 74-432,640, FILED 9-2-1993.  
AMOS T. MATTHEWS, JR., EXAMINING ATTORNEY

**EXHIBIT I**

# **EXHIBIT “J”**

Int. Cls.: 41 and 42

Prior U.S. Cls.: 100, 101 and 107

**United States Patent and Trademark Office**

**Reg. No. 2,015,176**

Registered Nov. 12, 1996

**SERVICE MARK  
PRINCIPAL REGISTER**

**FLAMINGO PLAYERS CLUB**

FLAMINGO HILTON CORPORATION  
(NEVADA CORPORATION)  
ATTN: LEGAL DEPARTMENT  
3930 HOWARD HUGHES PARKWAY, FOURTH  
FLOOR  
LAS VEGAS, NV 89109

FOR: CASINO SERVICES, IN CLASS 41 (U.S.  
CLS. 100, 101 AND 107).

FIRST USE 7-8-1993; IN COMMERCE  
7-8-1993.

FOR: HOTEL SERVICES, IN CLASS 42 (U.S.  
CLS. 100 AND 101).

FIRST USE 7-8-1993; IN COMMERCE  
7-8-1993.

OWNER OF U.S. REG. NOS. 1,123,064 AND  
1,948,975.

NO CLAIM IS MADE TO THE EXCLUSIVE  
RIGHT TO USE "PLAYERS CLUB", APART  
FROM THE MARK AS SHOWN.

SER. NO. 74-718,370, FILED 8-21-1995.

MIDGE BUTLER, EXAMINING ATTORNEY

**EXHIBIT J**

# **EXHIBIT “K”**

Int. Cls.: 41 and 42

Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,121,189

**United States Patent and Trademark Office**

Registered Dec. 16, 1997

**SERVICE MARK  
PRINCIPAL REGISTER**

**TAJ MAHAL**

TRUMP, DONALD J. (UNITED STATES CITIZEN)  
725 FIFTH AVENUE  
NEW YORK, NY 10022

FOR: CASINO SERVICES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 4-1-1990; IN COMMERCE 4-1-1990.

FOR: HOTEL SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 4-1-1990; IN COMMERCE 4-1-1990.

OWNER OF U.S. REG. NO. 1,755,971.

SER. NO. 75-159,919, FILED 8-29-1996.

CHRISIE B. KING, EXAMINING ATTORNEY

**EXHIBIT K**

# **EXHIBIT “L”**

Int. Cls.: 41, 43 and 44

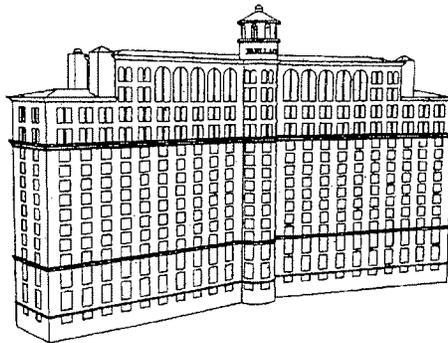
Prior U.S. Cls.: 100, 101 and 107

Reg. No. 2,771,155

United States Patent and Trademark Office

Registered Oct. 7, 2003

**SERVICE MARK  
PRINCIPAL REGISTER**



BELLAGIO, LLC (NEVADA LTD LIAB CO)  
3600 LAS VEGAS BLVD SOUTH  
LAS VEGAS, NV 89109

FOR: HEALTH SPA, NAMELY, COSMETIC BODY  
CARE SERVICES; BEAUTY SALONS, IN CLASS 44  
(U.S. CLS. 100 AND 101).

FOR: CASINO SERVICES; ENTERTAINMENT  
SERVICES IN THE NATURE OF LIVE PERFOR-  
MANCES BY SINGERS, COMEDIANS, DANCERS,  
AND MUSICAL GROUPS, IN CLASS 41 (U.S. CLS.  
100, 101 AND 107).

FIRST USE 10-15-1998; IN COMMERCE 10-15-1998.

OWNER OF U.S. REG. NOS. 2,232,486 AND  
2,559,405.

FIRST USE 10-15-1998; IN COMMERCE 10-15-1998.

THE ENGLISH TRANSLATION OF "BELLAGIO"  
IS "BEAUTIFUL LAKE".

FOR: RESORT HOTEL, RESTAURANT, BAR  
AND LOUNGE SERVICES, IN CLASS 43 (U.S. CLS.  
100 AND 101).

SER. NO. 76-430,080, FILED 7-12-2002.

FIRST USE 10-15-1998; IN COMMERCE 10-15-1998.

GEORGIA CARTY, EXAMINING ATTORNEY

**EXHIBIT L**

# **EXHIBIT “M”**

**Int. Cls.: 41 and 42**

**Prior U.S. Cls.: 100, 101, and 107**

**Reg. No. 2,789,028**

**United States Patent and Trademark Office**

**Registered Dec. 2, 2003**

**SERVICE MARK  
PRINCIPAL REGISTER**

**HARD ROCK CASINO**

HARD ROCK CAFE INTERNATIONAL (USA),  
INC. (FLORIDA CORPORATION)  
6100 OLD PARK LANE  
ORLANDO, FL 32835

FOR: CONDUCTING ENTERTAINMENT EXHIBITIONS IN THE NATURE OF LIVE MUSIC, MUSIC FESTIVALS AND CASINO SERVICES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 5-9-2003; IN COMMERCE 5-9-2003.

FOR: RESTAURANT, BAR AND TAKE-OUT FOOD SERVICES AND HOTEL SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 5-9-2003; IN COMMERCE 5-9-2003.

OWNER OF U.S. REG. NOS. 1,397,180, 2,120,014, AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CASINO", APART FROM THE MARK AS SHOWN.

SEC. 2(F) AS TO "HARD ROCK".

SN 75-511,501, FILED 7-1-1998.

AMY GEARIN, EXAMINING ATTORNEY

**EXHIBIT M**

# **EXHIBIT “N”**

**Int. Cls.: 41 and 43**

**Prior U.S. Cls.: 100, 101 and 107**

**Reg. No. 2,843,123**

**United States Patent and Trademark Office**

**Registered May 18, 2004**

**SERVICE MARK  
PRINCIPAL REGISTER**

The logo for Harrah's, featuring the word "Harrah's" in a bold, stylized font with a star above the letter 'h'.

HARRAH'S LAS VEGAS, INC. (NEVADA CORPORATION)  
LAW DEPARTMENT  
C/O HARRAH'S ENTERTAINMENT, INC. ONE  
HARRAH'S COURT  
LAS VEGAS, NV 89119

FOR: CASINO ENTERTAINMENT SERVICES, IN  
CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 5-31-1994; IN COMMERCE 5-31-1994.

FOR: HOTEL AND RESTAURANT SERVICES, IN  
CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 5-31-1994; IN COMMERCE 5-31-1994.

OWNER OF U.S. REG. NOS. 1,295,055, 2,628,095  
AND OTHERS.

THE STIPPLING IS FOR SHADING PURPOSES.

SEC. 2(F).

SER. NO. 78-249,083, FILED 5-13-2003.

GIANCARLO CASTRO, EXAMINING ATTORNEY

**EXHIBIT N**

# **EXHIBIT “O”**

**Int. Cls.: 25, 41, and 43**

**Prior U.S. Cls.: 22, 39, 100, 101, and 107**

**Reg. No. 3,021,734**

**United States Patent and Trademark Office**

**Registered Nov. 29, 2005**

**TRADEMARK  
SERVICE MARK  
PRINCIPAL REGISTER**

**CAESARS ENTERTAINMENT**

CAESARS ENTERTAINMENT, INC. (DELAWARE CORPORATION)  
ONE HARRAH'S COURT  
LAS VEGAS, NV 89119

FOR: CLOTHING, NAMELY, T-SHIRTS, SWEAT-SHIRTS, JACKETS, SHORTS, HATS AND VISORS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 1-5-2004; IN COMMERCE 1-5-2004.

FOR: ENTERTAINMENT SERVICES, NAMELY, LIVE MUSICAL AND LIVE COMEDY NIGHTCLUB PERFORMANCES, LIVE PERFORMANCES BY SINGERS, DANCERS, MUSICIANS, PANTOMIMES, MAGICIANS, ACTORS, ACTRESSES, COMEDIANS AND ACROBATS; LIVE VARIETY SHOWS, MUSIC CONCERTS, BOXING MATCHES AND WRESTLING MATCHES; CASINO SERVICES; TELEVISION SHOW PRODUCTION AND COUNTRY CLUB SERVICES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 1-5-2004; IN COMMERCE 1-5-2004.

FOR: RESORT HOTEL, BAR, AND RESTAURANT SERVICES; PROVIDING CONVENTION SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 1-5-2004; IN COMMERCE 1-5-2004.

OWNER OF U.S. REG. NOS. 907,693, 1,553,829, AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ENTERTAINMENT", APART FROM THE MARK AS SHOWN.

SN 78-274,378, FILED 7-15-2003.

IRA J. GOODSaid, EXAMINING ATTORNEY

**EXHIBIT O**

# **EXHIBIT “P”**

**Int. Cls.: 41 and 43**

**Prior U.S. Cls.: 100, 101 and 107**

**Reg. No. 3,034,766**

**United States Patent and Trademark Office**

**Registered Dec. 27, 2005**

**SERVICE MARK  
PRINCIPAL REGISTER**

**GLORY OF ROME**

CEASARS WORLD, INC. (DELAWARE CORPORATION)  
3930 HOWARD HUGHES PARKWAY  
LAS VEGAS, NV 89109

FOR: ENTERTAINMENT SERVICES, NAMELY, LIVE MUSICAL AND LIVE COMEDY NIGHTCLUB PERFORMANCES FEATURING SINGERS, DANCERS, MUSICIANS, PANTOMIMES, MAGICIANS, ACTORS, ACTRESSES, COMEDIANS AND ACROBATS; ENTERTAINMENT IN THE NATURE OF LIVE VARIETY SHOWS, MUSIC CONCERTS, BOXING MATCHES; ORGANIZING EXHIBITIONS FOR SPORTING EVENTS; CASINOS; NIGHTCLUBS; PROVIDING FACILITIES FOR GAMING CONTESTS; TELEVISION SHOW PRODUCTION, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 11-16-1998; IN COMMERCE 11-16-1998.

FOR: RESORT, HOTEL, BAR, RESTAURANT AND COCKTAIL LOUNGE SERVICES; PROVIDING CONVENTION FACILITIES; PROVIDING BANQUET FACILITIES FOR SPECIAL OCCASIONS, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 11-16-1998; IN COMMERCE 11-16-1998.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 78-445,480, FILED 7-2-2004.

BERYL GARDNER, EXAMINING ATTORNEY

**EXHIBIT P**

# **EXHIBIT “Q”**

## Trademark/Service Mark Application, Principal Register

**Serial Number: 78679036**

**Filing Date: 07/26/2005**

**The table below presents the data as entered.**

Input Field	Entered
<b>MARK SECTION</b>	
MARK FILE NAME	\\TICRS\EXPORT9\IMAGEOUT9 \786\790\78679036\xml1\AP P0002.JPG
STANDARD CHARACTERS	NO
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	WYNN.
COLOR MARK	NO
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the stylized word WYNN followed by a period.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	940 x 866
<b>OWNER SECTION</b>	
NAME	Wynn Resorts Holdings, LLC
STREET	3131 Las Vegas Blvd South
CITY	Las Vegas
STATE	Nevada
ZIP/POSTAL CODE	89109
COUNTRY	United States
AUTHORIZED EMAIL COMMUNICATION	No
<b>LEGAL ENTITY SECTION</b>	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY UNDER WHICH ORGANIZED	Nevada
NAME OF ALL GENERAL PARTNERS, ACTIVE MEMBERS, INDIVIDUAL, TRUSTEES, OR EXECUTORS, AND CITIZENSHIP/ INCORPORATION	Wynn Resorts, Limited a Nevada corporation
<b>GOODS AND/OR SERVICES SECTION</b>	
INTERNATIONAL CLASS	041

**EXHIBIT Q**

DESCRIPTION	casino services; entertainment services in the nature of live performances by singers, comedians, dancers, and musical groups
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/28/2005
FIRST USE IN COMMERCE DATE	At least as early as 04/28/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT9\IMAGEOUT9 \786\790\78679036\xml1\AP P0003.JPG
SPECIMEN DESCRIPTION	A page from the applicants website showing the trade dress along with the services provided
<b>GOODS AND/OR SERVICES SECTION</b>	
INTERNATIONAL CLASS	043
DESCRIPTION	resort hotel, restaurant, bar and lounge services
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/28/2005
FIRST USE IN COMMERCE DATE	At least as early as 04/28/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT9\IMAGEOUT9 \786\790\78679036\xml1\AP P0004.JPG
SPECIMEN DESCRIPTION	A page from the applicants website showing the trade dress along with the services provided
<b>GOODS AND/OR SERVICES SECTION</b>	
INTERNATIONAL CLASS	044
DESCRIPTION	health spa, namely, cosmetic body care services; beauty salons
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 04/28/2005
FIRST USE IN COMMERCE DATE	At least as early as 04/28/2005
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT9\IMAGEOUT9 \786\790\78679036\xml1\AP P0005.JPG
SPECIMEN DESCRIPTION	A page from the applicants website showing the trade dress along with the services provided
<b>SIGNATURE SECTION</b>	
SIGNATURE	/Marc H. Rubinstein/
SIGNATORY NAME	Marc H. Rubinstein
SIGNATORY DATE	05/25/2005
SIGNATORY POSITION	Senior Vice President, General Counsel and Secretary
<b>PAYMENT SECTION</b>	

NUMBER OF CLASSES	3
NUMBER OF CLASSES PAID	3
SUBTOTAL AMOUNT	975
TOTAL AMOUNT	975
<b>ATTORNEY</b>	
NAME	Laraine M.I. Burrell, Esq.
FIRM NAME	Greenberg Traurig, LLC
INTERNAL ADDRESS	Suite 500N
STREET	3773 Howard Hughes Parkway
CITY	Las Vegas
STATE	Nevada
ZIP/POSTAL CODE	89109
COUNTRY	Other
PHONE	702-792-3773
FAX	702-792-9002
EMAIL	pto@gtlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes
ATTORNEY DOCKET NUMBER	0410 trade dress cl 41 43 44
OTHER APPOINTED ATTORNEY(S)	Mark G. Tratos, Jason D. Firth, Lauri S. Thompson, Laraine M.I. Burrell, Linda M. Norcross and Andrew D. Sedlock
<b>CORRESPONDENCE SECTION</b>	
NAME	Laraine M.I. Burrell, Esq.
FIRM NAME	Greenberg Traurig, LLC
INTERNAL ADDRESS	Suite 500N
STREET	3773 Howard Hughes Parkway
CITY	Las Vegas
STATE	Nevada
ZIP/POSTAL CODE	89109
COUNTRY	Other
PHONE	702-792-3773
FAX	702-792-9002
EMAIL	pto@gtlaw.com
AUTHORIZED EMAIL COMMUNICATION	Yes

FILING INFORMATION	
SUBMIT DATE	Tue Jul 26 19:04:33 EDT 2005
TEAS STAMP	USPTO/BAS-6311023718-2005 0726190433664777-78679036 -2007676f73ada23a04c9efcb a243c2b761-DA-727-2005072 6190147255646

File Path: F:\file\78679036  
 (http://www.uspto.gov/teas/teas.html)

## Trademark/Service Mark Application, Principal Register

**Serial Number: 78679036**

**Filing Date: 07/26/2005**

### To the Commissioner for Trademarks:

**MARK:** WYNN. (stylized and/or with design, see mark)

The literal element of the mark consists of WYNN..

The mark consists of the stylized word WYNN followed by a period.

The applicant, Wynn Resorts Holdings, LLC, a LIMITED LIABILITY COMPANY organized under the laws of Nevada, comprising of Wynn Resorts, Limited a Nevada corporation, residing at 3131 Las Vegas Blvd South, Las Vegas, Nevada, United States, 89109, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

The applicant, or the applicant's related company or licensee, is using the mark in commerce, and lists below the dates of use by the applicant, or the applicant's related company, licensee, or predecessor in interest, of the mark on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

International Class 041: casino services; entertainment services in the nature of live performances by singers, comedians, dancers, and musical groups

International Class 043: resort hotel, restaurant, bar and lounge services

International Class 044: health spa, namely, cosmetic body care services; beauty salons

In International Class 041, the mark was first used at least as early as 04/28/2005, and first used in commerce at least as early as 04/28/2005, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) A page from the applicants website showing the trade dress along with the services provided.

Specimen - 1

In International Class 043, the mark was first used at least as early as 04/28/2005, and first used in commerce at least as early as 04/28/2005, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) A page from the applicants website showing the trade dress along with the services provided.

Specimen - 1

In International Class 044, the mark was first used at least as early as 04/28/2005, and first used in commerce at least as early as 04/28/2005, and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, consisting of a(n) A page from the applicants website showing the trade

dress along with the services provided.

Specimen - 1

The applicant hereby appoints Laraine M.I. Burrell, Esq. and Mark G. Tratos, Jason D. Firth, Lauri S. Thompson, Laraine M.I. Burrell, Linda M. Norcross and Andrew D. Sedlock of Greenberg Traurig, LLC, Suite 500N, 3773 Howard Hughes Parkway, Las Vegas, Nevada, Other, 89109 to submit this application on behalf of the applicant. The attorney docket/reference number is 0410 trade dress cl 41 43 44.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: pto@gtlaw.com.

A fee payment in the amount of \$975 will be submitted with the application, representing payment for 3 class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Marc H. Rubinstein/ Date: 05/25/2005

Signatory's Name: Marc H. Rubinstein

Signatory's Position: Senior Vice President, General Counsel and Secretary

Mailing Address:

Laraine M.I. Burrell, Esq.  
Suite 500N  
3773 Howard Hughes Parkway  
Las Vegas, Nevada 89109

RAM Sale Number: 727

RAM Accounting Date: 07/27/2005

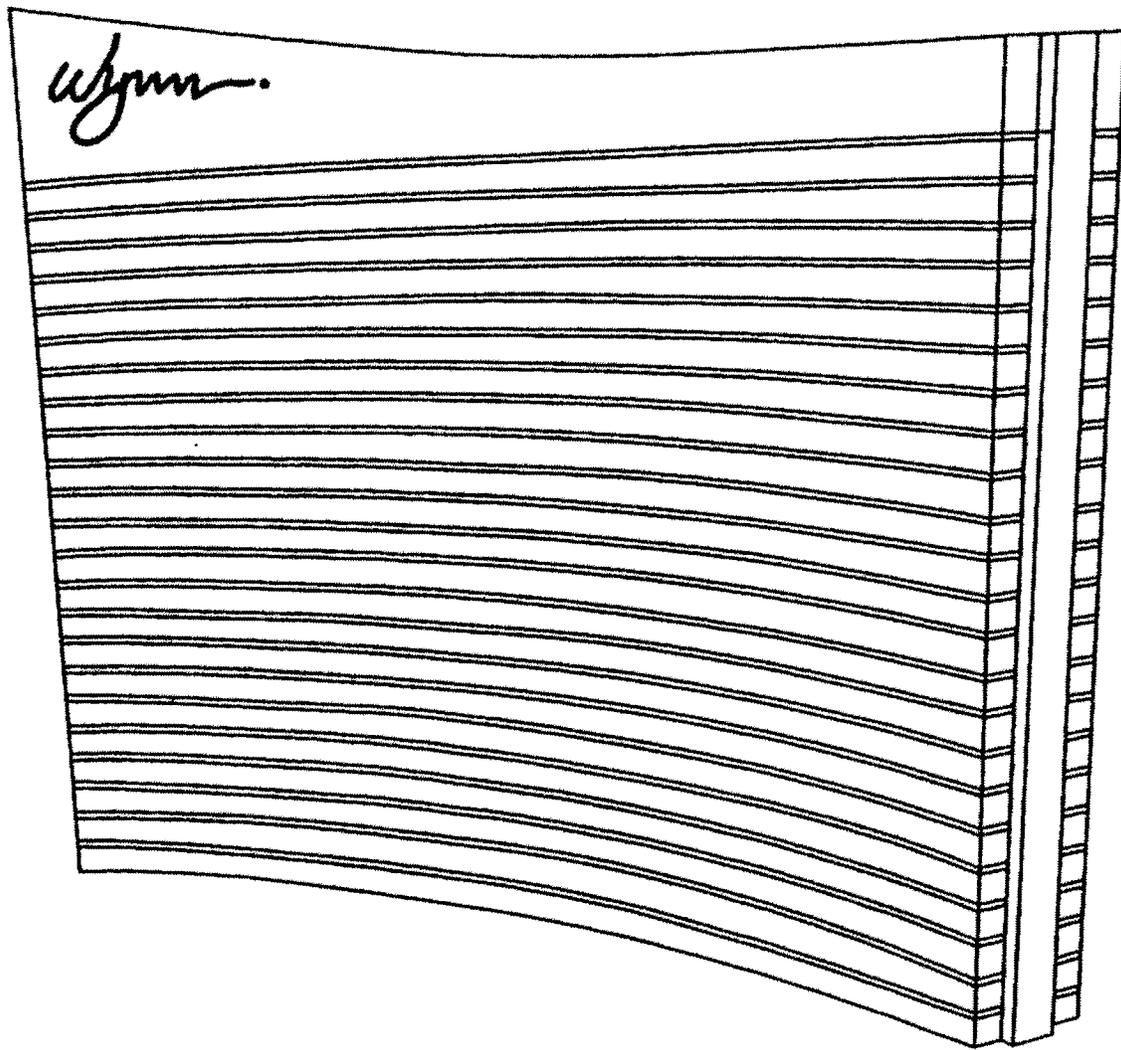
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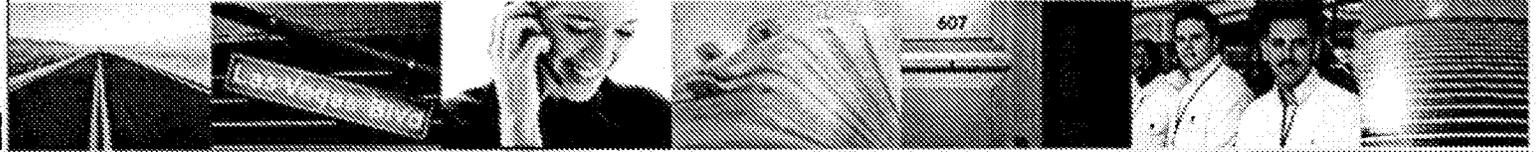
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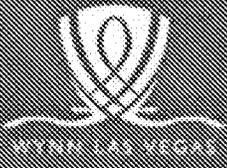
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