

ESTTA Tracking number: **ESTTA85385**

Filing date: **06/14/2006**

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

**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Creative Nightlife Concepts, LLC		
Entity	LLC	Citizenship	Nevada
Address	206 N. 4th Street, Suite 800 Sandpoint, ID 83864 UNITED STATES		

Attorney information	Karen S. Frank Howard Rice Nemerovski Canady Falk & Rabkin Three Embarcadero Center, Seventh Floor San Francisco, CA 94111 UNITED STATES amcalister@howardrice.com, kfrank@howardrice.com, trademarks@howardrice.com Phone:(415) 434-1600		
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**Applicant Information**

Application No	78724475	Publication date	06/13/2006
Opposition Filing Date	06/14/2006	Opposition Period Ends	07/13/2006
Applicant	DOWNTOWN RESORTS, LLC 450 FREMONT STREET SUITE 310 LAS VEGAS, NV 89101 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 043. All goods and services in the class are opposed, namely: Resort hotels, resort lodging services, hotels, restaurant, bar and cocktail lounge services; hotel, restaurant and bar services featuring customer loyalty programs that provide hotel, restaurant and bar benefits to reward repeat customers; arena services, namely providing facilities for sports, concerts, conventions and exhibitions; cafeterias; snack bars; catering; day care centers; providing banquet and social function facilities for special occasions; providing campground facilities; providing convention facilities; providing facilities for exhibitions; providing travel agency services, namely making reservations and bookings for temporary lodging and entertainment in the nature of restaurants and meals; providing hotel and dining information via the Internet
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Attachments	downtown notc opp_06142006_124900PM.pdf ( 5 pages )(222281 bytes )
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Signature	/ksf/
Name	Karen S. Frank
Date	06/14/2006

I hereby certify that this paper is being electronically transmitted to the United States Patent and Trademark Office, Trademark Trial and Appeal Board on this 14th day of June 2006 and is addressed to BOX TTAB-FEE, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.



Kathleen A. Bliven

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

Attorney Docket No. 16677.0003.G-101

CREATIVE NIGHTLIFE CONCEPTS, LLC,

Opposer,

v.

DOWNTOWN RESORTS, LLC,

Applicant.

Trademark Application

Mark: DOWNTOWN

Serial No. 78/724,475

Filed: September 30, 2005

Published: June 13, 2006

Opposition No.: \_\_\_\_\_

NOTICE OF OPPOSITION

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

Sir:

Creative Nightlife Concepts, LLC, a limited liability company organized and existing under the laws of the State of Nevada, with its principal place of business at 206 N. 4th Street, Suite 800, Sandpoint, Idaho 83864 (“Creative Nightlife”), believes it will be damaged by registration of the mark DOWNTOWN shown in Application Serial No. 78/724,475 and hereby opposes the same.

As grounds for opposition, Opposer alleges:

1. Downtown Resorts, LLC, a Nevada limited liability company, under its prior name, The Henry Brent Company LLC (“Applicant”), on September 30, 2005 filed a trademark application, Serial No. 78/724,475 (the “Opposed Application”), to register the mark DOWNTOWN (the “Proposed Mark”) for use in connection with “resort hotels, resort lodging services, hotels, restaurant, bar and cocktail lounge services; hotel, restaurant and bar services featuring customer loyalty programs that provide hotel, restaurant and bar benefits to reward repeat customers; arena services, namely providing facilities for sports, concerts, conventions and exhibitions; cafeterias; snack bars; catering; day care centers; providing banquet and social function facilities for special occasions; providing campground facilities; providing convention facilities; providing facilities for exhibitions; providing travel agency services, namely making reservations and bookings for temporary lodging and entertainment in the nature of restaurants and meals; providing hotel and dining information via the Internet,” in International Class 043.

2. The Opposed Application was published for opposition in the Official Gazette on June 13, 2006.

3. This Notice of Opposition is timely filed.

4. The Opposed Application was filed on September 30, 2005, on the basis of Applicant’s bona fide intent to use the mark in commerce.

5. On information and belief, Applicant made no use of the Proposed Mark prior to the filing date of the Opposed Application.

6. On information and belief, on the date Applicant filed the Opposed Application, Applicant did not have a *bona fide* intent to use the Proposed Mark on each and every one of Applicant’s services listed in the Opposed Application.

7. On information and belief, Applicant intends to offer its services in connection with a resort, hotel, restaurant, bar and cocktail lounge and related services in the revitalized Downtown entertainment district of Las Vegas.

8. As a result of Applicant's intended use of the Proposed Mark in connection with its services in the downtown area of Las Vegas, Applicant's mark is geographically descriptive and is therefore unregistrable under Section 2(e) of the Lanham Act, 15 U.S.C. §1052(e).

9. Alternatively, if the Proposed Mark is not geographically descriptive, Opposer has superior rights in and to the DOWNTOWN mark in connection with bar and cocktail lounge services because Opposer's use of the mark DOWNTOWN, which has been continuous since at least as early as February 2005, precedes Applicant's filing date of the Opposed Application.

10. Since at least as early as February 2005, Opposer has widely promoted its forthcoming cocktail lounge in the Las Vegas, Nevada area under the DOWNTOWN mark ("Opposer's Mark"). Opposer's widespread advance promotion of the DOWNTOWN name nationwide to consumers, journalists, entertainment booking agents, disc jockeys, advertisers and others aware of and involved in the Las Vegas bar and restaurant scene, as is customary in the bar and restaurant industry to generate awareness of an establishment prior to its opening, has established considerable consumer recognition for Opposer in the DOWNTOWN name.

11. The extensive use and promotion of the DOWNTOWN mark by Opposer has resulted in its achieving secondary meaning for Opposer.

12. Applicant's registration and use of DOWNTOWN as a service mark for, among other things, restaurant, bar and cocktail lounge services, would create a likelihood of consumer mistake or deception in the minds of prospective consumers as to the origin, source or sponsorship of Applicant's services.

13. Applicant's Proposed Mark is identical to Opposer's Mark. Because of Opposer's widespread promotion and use of its Mark, and because of the wide recognition of its Mark, Consumers familiar with Opposer's DOWNTOWN mark are likely to believe that Applicant's services are sponsored, authorized or otherwise approved by Opposer. Deficiencies or faults in the quality of Applicant's services will reflect negatively upon and tarnish the reputation of Opposer and cause Opposer loss of revenues and damage to its reputation.

14. If Applicant is granted registration for the Proposed Mark, it would obtain at least a *prima facie* exclusive right to the use of the Proposed Mark. Such registration would be a source of damage and injury to Opposer.

15. Upon information and belief, Applicant intends to adopt and use the Proposed Mark in commerce with knowledge of Opposer's prior rights, and with the intention of trading unfairly upon the goodwill associated with Opposer's Mark.

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Accordingly, for the aforementioned reasons, Applicant's Proposed Mark is not entitled to registration pursuant to 15 U.S.C. §1052(d).

WHEREFORE, Opposer respectfully requests that registration of the mark shown in Applicant's Serial No. 78/724,475 be refused and that this Opposition be sustained in favor of Opposer.

Please deduct the filing fee of \$300 from Deposit Account No. 08-2792. Please deduct any additional fees that may be due, or credit any overpayment, to the same deposit account.

DATED: June 14, 2006

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