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

Proceeding	91181266
Party	Defendant Plaza IP Holdings LLC (USA)
Correspondence Address	Alan N. Sutin Greenberg Traurig, LLP 200 Park Avenue, 34th Floor New York, NY 10166 UNITED STATES
Submission	Motion to Suspend for Civil Action
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Date	01/22/2008
Attachments	Plaza266.pdf (36 pages)(1344494 bytes)

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

In the Matter of Application No. 77/111,298
Mark: PP THE PLAZA AND DESIGN

Tamares Las Vegas Properties, LLC)	
)	
Opposer,	)	Opposition No. 91181266
v.)	
)	
Plaza IP Holdings LLC (USA))	
)	
)	
Applicant.)	
)	

**APPLICANT PLAZA IP HOLDINGS LLC (USA)'S MOTION TO SUSPEND PENDING
DISPOSITION OF A CIVIL ACTION**

Pursuant to Section 37 C.F.R Section 2.117 and Section 510.02(a) of the Trademark Trial and Appeal Board Manual of Procedure, Applicant Plaza IP Holdings LLC (USA) ("Applicant") herein moves to suspend this Opposition proceeding pending the outcome of a civil action filed on August 9, 2007 by Tamares Las Vegas Properties, LLC with the District Court in Clark County, Nevada, case number A546046, captioned Tamares Las Vegas Properties, LLC v. The El-Ad Group, Ltd.; El Ad Properties, Las Vegas LLC; and El-Ad Las Vegas, LLC ("Civil Action"). Copies of the Complaint in the Civil Action and a Brief filed by Opposer in the Civil Action on January 8, 2008 is annexed as Exhibits A and B to this Motion. The Civil Action is currently scheduled for trial in June or July of 2008; a copy of the Court's Scheduling Order in the Civil Action is annexed as Exhibit C to this Motion. Applicant's counsel requested the consent of Opposer's counsel to this motion, but Opposer's counsel refused to consent.

Notably, in the Brief filed by Opposer in the Civil Action and shown in Exhibit C, Opposer includes a section captioned “ONLY THIS COURT CAN HEAR TAMARES’ CASE, NOT THE TRADEMARK TRIAL AND APPEAL BOARD,” arguing strenuously that the Civil Action is the appropriate proceeding in which to litigate the relevant issues. Opposer cannot now credibly turn around and argue that this Opposition proceeding should go forward concurrently with the Civil Action.

The Board’s power to stay proceedings may be exercised where “a party or parties to a pending case are engaged in a civil action or another Board proceeding which may have a bearing on the case”¹ Here, Opposer is the Plaintiff in the Civil Action and Applicant is affiliated with Defendants in the Civil Action. In its Notice of Opposition, Opposer asserts likelihood of confusion and priority of use as grounds for the Opposition, claiming prior use of the mark PLAZA (and other marks containing the term PLAZA) for, *inter alia*, hotel and restaurant services. Applicant and its predecessors have used the mark THE PLAZA since 1906 for world-famous hotel and restaurant services, which are now expanding into related casino services and condominium hotel services. Thus, the same issues with respect to the same marks and the same and/or closely related services are at issue in the Civil Action, which therefore may have a bearing on this Opposition proceeding.

¹ 37 C.F.R. § 2.117(a); See also General Motors Corp. v. Cadillac Club Fashions Inc., 22 U.S.P.Q.2d 1933, 1936-37 (TTAB 1992); Tamarkin Co. v. Seaway Food Town Inc., 34 U.S.P.Q.2d 1587, 1592 (TTAB 1995).

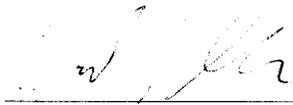
Accordingly, Applicant respectfully requests that the Board suspend this Opposition proceeding pending the outcome of the Civil Action.

Dated: January 22, 2008

Respectfully submitted,

GREENBERG TRAURIG, LLP

By:



Alan N. Sutin, Esq.
Daniel I. Schloss, Esq.
David Saenz, Esq.
200 Park Avenue
New York, New York 10166
(212) 801-9200
Attorneys for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 22, 2008, a true and correct copy of the foregoing Motion to Suspend Pending Disposition of a Civil Action has been sent by US Mail, postage prepaid, to counsel of record for Opposer Tamares Las Vegas Properties, LLC:

Michelle M. Graham, Esq.
Kelley Drye & Warren LLP
101 Park Avenue
New York, NY 10178

Date: January 22, 2008



Daniel I. Schloss

EXHIBIT A

1 **COMP**
2 Rodney M. Jean, Bar # 1395
3 Lionel Sawyer & Collins
4 300 S. 4th St. #1700
5 Las Vegas, Nevada 89101
6 Telephone: 702 383-8830
7 Facsimile: 702 383-8940
8 Attorneys for Plaintiff

FILED

AUG 9 10 46 AM '07

Cliff Collins
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

9	Tamares Las Vegas Properties, LLC,	)	Case No.	A 5 4 6 0 4 6
		)	Dept. No.	
10	Plaintiff,	)		1 X
		)	<u>COMPLAINT</u>	
11	v.)		
		)	(Jury Demand)	
12	The El-Ad Group, Ltd., El Ad)		
13	Properties Las Vegas LLC; and)		
14	El-Ad Las Vegas, LLC,	)	Exempt From Arbitration;	
		)	Amount In Controversy Exceeds	
15	Defendants.	)	\$50,000 And Relief Sought Is	
		)	Equitable	
16)		

17 Plaintiff, TAMARES LAS VEGAS PROPERTIES, LLC, as and for its Complaint against
18 the above-named Defendants, through its undersigned attorneys, Lionel Sawyer & Collins, alleges.
19 upon knowledge as to its own acts and upon information and belief as to all other matters, as
20 follows:
21

22 **NATURE OF THE CASE**

23 1. This is an action for: (i) state trademark infringement under NRS 600.420; (ii) state
24 trademark dilution under NRS 600.435; (iii) deceptive trade practices under NRS 598.0903, *et seq.*;
25 and (iv) substantial and related claims of trademark infringement and unfair competition under the
26 common law of the State of Nevada.
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PARTIES

2. Plaintiff, TAMARES LAS VEGAS PROPERTIES, LLC ("Tamares"), is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business located at 1500 Broadway, New York, New York 10036.

3. Upon information and belief, Defendant THE EL-AD GROUP LTD. ("El-Ad Group") is a Delaware corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 575 Madison Avenue, New York, New York 10022.

4. Defendants EL AD PROPERTIES LAS VEGAS LLC and EL-AD LAS VEGAS, LLC (collectively, the "El Ad Properties") are limited liability companies organized and existing under the laws of the State of Nevada. On information and belief, their principal places of business are located in Las Vegas, Nevada.

ALLEGATIONS COMMON TO ALL CLAIMS

5. Tamares owns the famous PLAZA HOTEL AND CASINO gaming resort which is located at One Main Street in the heart of historic downtown Las Vegas, Nevada. The hotel and casino was called "The Union Plaza" when it first opened its doors to the public at least as early as 1971. But its guests, patrons and the local inhabitants inevitably telescoped the name to its most distinctive part -- PLAZA -- which became the name and mark by which it is known, among the trade and public, in Las Vegas and elsewhere throughout the State of Nevada and its environs. The predecessors of the present owners, Tamares, acknowledged this popular coinage and dropped the word "Union" from the name of the gaming resort. As a result, for many years this iconic Las Vegas hotel and casino has been known simply as the "PLAZA."

6. The drawing power of the PLAZA name and mark has grown considerably through its long use among gamblers and others who patronize the hotel and casino or are frequent visitors to Las Vegas. This commercial magnetism has been reinforced by the distinctive neon PLAZA

1 signage displayed in connection with the hotel and casino in Las Vegas as well as through the
2 extensive press and media coverage received over the last three decades. Attached hereto as Exhibit
3 A are historical and current photographs of the PLAZA HOTEL AND CASINO gaming resort.

4
5 7. In short, the PLAZA name and mark, and variants thereof featuring the word
6 "PLAZA," have in Las Vegas and its environs become indelibly associated with the gaming, hotel,
7 casino, bar, restaurant, entertainment and related services offered there, and represents a great and
8 inestimable goodwill belonging exclusively to Tamares.

9
10 8. Since at least as early as December 31, 1997, Tamares and its predecessors-in-
11 interest, have adopted and used, and have continued to use, the marks PLAZA, PLAZA LAS
12 VEGAS, PLAZA PLAY CLUB, PLAZA HOTEL AND CASINO and PLAZA HOTEL & CASINO
13 (collectively, "the PLAZA Marks") in connection with the advertising, promotion and provision of
14 gaming, hotel, casino, bar, restaurant, entertainment and related services throughout the State of
15 Nevada, and in particular, within the City of Las Vegas and in the surrounding metropolitan area.

16
17 9. Tamares is the owner of all right, title, and interest, in and to the following Nevada
18 state trademark registrations for the marks PLAZA, PLAZA LAS VEGAS and PLAZA HOTEL
19 AND CASINO which have been duly registered with the Office of the Secretary of State of Nevada:

- 20 • NV Reg. No. E0380452007-3 for the mark PLAZA for "Casinos";
21 • NV Reg. No. E0392412007-3 for the mark PLAZA for "Hotel, bar and restaurant services";
22 • NV Reg. No. E0380922007-0 for the mark PLAZA LAS VEGAS for "Casinos";
23 • NV Reg. No. E0380842007-0 for the mark PLAZA LAS VEGAS for "Hotel, bar and restaurant
24 services";
25 • NV Reg. No. E0392602007-6 for the mark PLAZA HOTEL AND CASINO for "Casinos";
26 and
27 • NV Reg. No. E0392652007-1 for the mark PLAZA HOTEL AND CASINO for "Hotel, bar
28 and restaurant services."

1 Certified copies of those registrations are attached hereto as Exhibits B, C, D, E, F, and G,
2 respectively.

3 10. The aforesaid Nevada state registrations are valid and subsisting, unrevoked and
4 uncanceled. Tamares is the owner of said registrations and the trademarks shown therein and all of
5 the business and goodwill connected with said trademarks in the State of Nevada.
6

7 11. While the majority of the customers of Tamares' PLAZA HOTEL AND CASINO
8 gaming resort come from Nevada, California and other Western states, the "PLAZA" in Las Vegas
9 has attracted customers from all fifty states and several foreign countries. Over 100,000 gamblers
10 and hotel customers have signed up as members of the PLAZA PLAY CLUB.
11

12 12. Since long prior to the acts of Defendants complained of herein, the PLAZA HOTEL
13 AND CASINO property, and the gaming, hotel, casino, bar, restaurant, entertainment and related
14 services offered there, have been widely and intensely advertised and promoted in Las Vegas, the
15 State of Nevada and elsewhere by Tamares and its predecessors under the PLAZA Marks, which
16 represent and symbolize an invaluable reputation and good will in Las Vegas, the State of Nevada
17 and its environs, which rightfully belong exclusively to Tamares.
18

19 13. Tamares' advertising and promotional campaign has included newspaper and
20 magazine articles and advertisements, radio and television spots, direct mailings, and various other
21 forms of advertising and promotion. Attached hereto as Exhibit H are copies of representative
22 newspaper and magazine advertisements featuring the PLAZA HOTEL AND CASINO gaming
23 resort. Attached hereto as Exhibit I are copies of representative samples of various other forms of
24 advertising and promotion of the services provided under the PLAZA Marks.
25

26 14. Many millions of dollars have been spent advertising and promoting the gaming,
27 hotel, casino, bar, restaurant, entertainment and related services offered by Tamares and its
28 predecessors under the PLAZA Marks in Las Vegas, throughout the State of Nevada, and elsewhere.

1 In 2006 alone, Tamares spent over \$10.1 million on the advertisement and promotion of its
2 aforesaid services under the PLAZA Marks in the State of Nevada. As is customary in the gaming
3 and hotel business, this sum includes providing complimentary rooms and related services to
4 gamblers who patronize the PLAZA HOTEL AND CASINO gaming resort in Las Vegas, including
5 members of the PLAZA PLAY CLUB.
6

7 15. The PLAZA HOTEL AND CASINO gaming resort has also received and continues
8 to receive a great deal of free exposure on radio, television and in other media, including local and
9 national newspapers and magazines. Upon information and belief, these publications are read by
10 millions of people annually. Attached hereto as Exhibit J are copies of representative newspaper
11 and magazine articles featuring the PLAZA HOTEL AND CASINO gaming resort.
12

13 16. The PLAZA HOTEL AND CASINO gaming resort also receives intensive exposure
14 through its official website which is located at <http://plazahotelcasino.com>. That site receives
15 approximately 115,000 hits per month on average. Attached hereto as Exhibit K are representative
16 pages from that website.
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18 17. Over the last three decades, Tamares' PLAZA HOTEL AND CASINO gaming resort
19 has enjoyed such wide renown that it has become a Nevada landmark, a not to be missed destination
20 for legions of Las Vegas tourists from throughout the United States and around the world, an iconic
21 structure in American films and television shows, and the subject of historical and reference books
22 tracing the dawn of Las Vegas as a gambling mecca. That status has been reinforced by its
23 distinctive neon PLAZA signage. Attached hereto as Exhibit L is a list of the movies and television
24 programs featuring the PLAZA HOTEL AND CASINO gaming resort. Attached hereto as Exhibit
25 M are selected pages from books featuring the "PLAZA." Attached hereto as Exhibit N are pages
26 from selected third-party websites featuring the PLAZA HOTEL AND CASINO gaming resort.
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1 Attached hereto as Exhibit O is a photograph of the façade of the PLAZA HOTEL AND CASINO
2 gaming resort which prominently features the PLAZA signage.

3 18. As a result of the widespread success and popularity of the PLAZA HOTEL AND
4 CASINO gaming resort with the purchasing public and Tamares' intensive advertisement and
5 promotional efforts in support of its gaming, hotel, casino, bar, restaurant, entertainment and related
6 services, Tamares has built up an invaluable reputation, goodwill and fame in the PLAZA Marks in
7 the State of Nevada.
8

9 19. Furthermore, as a result of Tamares' widespread and prolonged provision of the
10 aforesaid services in connection with the PLAZA Marks over the years in the State of Nevada, the
11 heavy advertising and promotion of those services and the PLAZA HOTEL AND CASINO gaming
12 resort itself, Tamares' PLAZA Marks have acquired substantial additional distinctiveness, making
13 them among the most valuable, distinctive and famous marks in the State of Nevada and, in
14 particular, within the City of Las Vegas and its surroundings.
15

16 DEFENDANTS' UNLAWFUL CONDUCT

17 20. Upon information and belief, Defendant El-Ad Group is an international real estate
18 conglomerate which owns and operates numerous commercial properties in the United States,
19 Canada and elsewhere. El-Ad Group recently acquired The Plaza Hotel in New York City from
20 Donald Trump, who owns and operates the TRUMP PLAZA gaming resort in Atlantic City, New
21 Jersey. El-Ad Group maintains its United States headquarters in New York, New York and has a
22 representative office in Las Vegas, Nevada where it has established the Defendants collectively
23 identified as the El Ad Properties.
24

25 21. The predecessors of El-Ad Group for many years acquiesced and consented to the
26 use of the word "Plaza" as the predominant part of the names of many competing hotels, motels,
27 lodges and inns. A small sampling of these competing usages of "Plaza" follows:
28

- 1 • The Plaza Hotel in Harlingen, TX;
- 2 • The Plaza Motel in Pearisburg, VA;
- 3 • The Plaza Motel in Pigeon Forge, TN;
- 4 • The Plaza Hotel in Phoenix, AZ;
- 5 • The Plaza Inn in Palm Beach, FL;
- 6 • The Plaza Inn in Midland, TX;
- 7 • The Plaza Inn in Oklahoma City, OK;
- 8 • The Deluxe Plaza Hotel in Baltimore, MD;
- 9 • The Plaza Athence Hotel in New York, New York;
- 10 • The Plaza Suites Hotel in Santa Clara, CA;
- 11 • The Amway Grand Plaza Hotel in Grand Rapids, MI; and
- 12 • The Crowne Plaza nationwide hotel chain.

13 22. Upon information and belief, El-Ad Group has recently begun to advertise and
14 promote its properties and services through national magazines and newspapers circulated within the
15 State of Nevada, as well as over the Internet, through an interactive website located at
16 <http://eladgroup.com>, and others, which may be readily accessed by citizens of the State of Nevada.

17 23. Defendant El-Ad Group and its predecessors-in-title knew long before the purchase
18 by the El-Ad Group of The Plaza Hotel in New York that the PLAZA HOTEL AND CASINO was a
19 prominent gaming resort in Las Vegas, and that it enjoyed a substantial reputation and goodwill in
20 its Las Vegas trading area under the "PLAZA" name and mark. Despite that awareness, and indeed,
21 because of it, in or around the Spring of 2007, El-Ad Group launched a massive media campaign
22 announcing its plans to build its own gaming resort in Las Vegas under the identical "PLAZA"
23 name long previously used by Tamares. The project involved the \$1.2 billion purchase of the New
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1 Frontier Hotel & Casino which would be torn down and replaced with a \$5 billion hotel-casino
2 complex on the Las Vegas Strip named "THE PLAZA."

3 24. On May 16, 2007, in an article entitled "Plaza Hotel's Owner Goes West," *The Wall*
4 *Street Journal* announced El-Ad Group's plans to build a hotel-casino complex in Las Vegas under
5 the name and mark "THE PLAZA." When asked about the obvious conflict that Tamares' PLAZA
6 HOTEL AND CASINO gaming resort would cause to El-Ad Group's project, an El-Ad Group
7 spokesman dismissively responded, "We're not anticipating any issues." Attached hereto as Exhibit
8 P are copies of the May 16, 2007 *Wall Street Journal* article and related magazine and newspaper
9 articles covering El-Ad Group's purchase of the New Frontier Hotel & Casino in Las Vegas.
10 Attached hereto as Exhibit Q are selected pages from El-Ad Group's website located at
11 <http://eladgroup.com> announcing that purchase and El-Ad Group's intention to build a hotel-casino
12 complex under the name and mark "THE PLAZA" in Las Vegas.

13 25. Upon information and belief, Defendants have closed, or are about to close, on the
14 purchase of the New Frontier Hotel & Casino property and are planning to demolish that property in
15 order to clear the site to begin the construction of their own gaming resort under the name and mark
16 "THE PLAZA."

17 26. Defendants' activities are purposefully poised to destroy the business of Tamares'
18 PLAZA HOTEL AND CASINO gaming resort. If Defendants are allowed to pursue their plans to
19 build a new hotel-casino complex called "THE PLAZA" on the Las Vegas Strip and advertise and
20 promote that complex to Nevada citizens and tourists to Las Vegas, there is no question that these
21 activities will cause a likelihood of confusion, mistake and deception among the consuming public
22 and the trade, destroying the goodwill and reputation that Tamares and its predecessors-in-interest
23 had built up in the PLAZA HOTEL AND CASINO gaming resort. Indeed, should Defendants
24 proceed with their massive and costly advertising and promotional campaign and construction plans,
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1 a likelihood of reverse confusion will arise in Las Vegas as long-standing customers and visitors to
2 Las Vegas will be deceived into believing that Tamares' "PLAZA" has been acquired by, or is
3 somehow affiliated with, Defendants.

4 27. Defendants have so acted and continue to act with knowledge that Tamares' PLAZA
5 Marks, when used on or in connection with gaming, hotel, casino, bar, restaurant, entertainment and
6 related services, has long identified and distinguished Tamares' services from the services of others
7 in the State of Nevada. The foregoing acts of Defendants were and continue to be committed with
8 the intent and for the purpose of profiting from and poaching upon the commercial magnetism of
9 Tamares' renowned PLAZA family of marks.

10 28. The use as aforesaid by Defendants of the designation "THE PLAZA" on or in
11 connection with a hotel-casino complex in Las Vegas is without Tamares' consent, license,
12 authority, or permission.

13 29. Upon information and belief, Defendants have committed, and continue to commit
14 the acts herein alleged in bad faith for the purpose of misappropriating Tamares' goodwill and
15 diverting sales from Tamares to Defendants.

16 30. Use by Defendants of the designation "THE PLAZA," or any other PLAZA-
17 formative mark in connection with providing gaming, hotel, casino, bar, restaurant, entertainment
18 and related services in Nevada is likely to cause confusion, to cause mistake or to deceive customers
19 and potential customers and to cause them to believe that the goods and services offered by
20 Defendants are Tamares' goods and services, or are approved by, sponsored by, or somehow
21 affiliated or connected with Tamares, all to the detriment of Tamares, the trade, and the public.

22 **FIRST CLAIM**

23 **State Trademark Infringement in Violation of NRS 600.420**

24 31. Tamares incorporates herein by reference each and every allegation contained in

1 paragraphs 1 through 30 with the same force and effect as if fully set forth herein.

2 32. Defendants have used and/or are using the PLAZA Marks or marks confusingly
3 similar to the PLAZA Marks without Tamares' consent.

4 33. Defendants' use in commerce of the PLAZA Marks and/or marks confusingly similar
5 to the PLAZA Marks on or in connection with Defendants' services constitutes a reproduction,
6 copying, counterfeiting, and colorable imitation of the PLAZA Marks in a manner that is likely to
7 cause confusion or mistake or is likely to deceive consumers.
8

9 34. By using the PLAZA Marks and/or marks confusingly similar to the PLAZA Marks
10 with the knowledge that Tamares owns and has used, and continues to use, its trademarks in the
11 State of Nevada, Defendants have intended to cause confusion, cause mistake or deceive consumers.
12

13 35. Defendants are using marks that are the same as and/or confusingly similar to the
14 PLAZA Marks in connection with the sale, offering for sale or advertising and promotion of
15 services in a manner that is likely to cause confusion or mistake, or to deceive consumers as to an
16 affiliation, connection, or association with Tamares, or as to the origin, sponsorship, or approval of
17 Defendants' services or commercial activities by Tamares.
18

19 36. Defendants' use of the PLAZA Marks and/or marks confusingly similar to the
20 PLAZA Marks has created a likelihood of confusion among consumers who may falsely believe that
21 Defendants' business and activities are associated with Tamares or that Tamares sponsors or
22 approves of Defendants' services or commercial activities.
23

24 37. As a direct and proximate result of Defendants' infringement, Tamares has suffered
25 and will continue to suffer, monetary loss in an amount in excess of \$10,000, and irreparable injury
26 to its business, reputation and goodwill for which Tamares has no adequate remedy at law.
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1 oppression, fraud, or malice, and Tamares is therefore entitled to recover all profits derived from
2 Defendants' wrongful acts, treble damages on all profits of Defendants or damages suffered by
3 Tamares.

4 **THIRD CLAIM**

5 **Deceptive Trade Practices in Violation of NRS 598.0915**

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7 46. Tamares incorporates herein by reference each and every allegation contained in
8 paragraphs 1 through 45 with the same force and effect as if fully set forth herein.

9 47. Upon information and belief, in the course of conducting business, Defendants
10 knowingly made and continue to make false representations as to an affiliation, connection and/or
11 association with Tamares by using marks identical and/or confusingly similar to the PLAZA Marks
12 and otherwise engaged in deceptive trade practices.

13
14 48. As a direct and proximate result of Defendants' deceptive conduct, Tamares has
15 suffered, and will continue to suffer, monetary damages in an amount in excess of \$10,000, and
16 irreparable injury to its business, reputation and goodwill for which Tamares has no adequate
17 remedy at law.

18
19 49. Defendants' willful deceptive conduct constitutes oppression, fraud, or malice, and
20 Tamares is therefore entitled to an award of punitive damages.

21 **FOURTH CLAIM**

22 **Common Law Trademark Infringement and Unfair Competition**

23 50. Tamares incorporates herein by reference each and every allegation contained in
24 paragraphs 1 through 49 with the same force and effect as if fully set forth herein.

25
26 51. By virtue of having used and continuing to use the PLAZA Marks, Tamares has
27 acquired common law rights in the PLAZA Marks.

1 52. Defendants' use of marks that are the same as and/or confusingly similar to the
2 PLAZA Marks infringes Tamares' common law rights in its PLAZA Marks and is likely to cause
3 confusion, mistake, or deception among consumers, who will believe that Defendants' services
4 originate from, or are affiliated with or endorsed by Tamares, when in fact, they are not.
5

6 53. As the direct and proximate result of Defendants' infringement of Tamares' common
7 law trademark rights under Nevada and other common law, Tamares has suffered, and will continue
8 to suffer, monetary damages in an amount in excess of \$10,000, and irreparable injury to its
9 business, reputation and goodwill for which Tamares has no adequate remedy at law.
10

11 54. Defendants' willful infringements of the PLAZA Marks constitute oppression, fraud,
12 or malice, and Tamares is therefore entitled to an award of punitive damages.

13 WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief

14 1. That Defendants and their respective directors, officers, agents, servants, employees,
15 attorneys, successors, and assigns, and all persons in active concert or participation with them, or
16 any of them, be preliminarily and permanently enjoined and restrained from:

17 (a) using the PLAZA Marks, or any variation thereof, including but not limited to the
18 designation "PLAZA", alone or in combination with any other letters, words, phrases, designs,
19 devices, or symbols, on or in connection with the advertising, promotion and provision of gaming,
20 hotel, casino, bar, restaurant, entertainment and related services in the State of Nevada, including,
21 but not limited to, using those marks and/or other designations as a trademark, service mark, domain
22 name, style designation or grade mark;
23

24 (b) doing any other act or thing calculated or likely to dilute, tarnish, or otherwise
25 diminish the distinctive quality of the PLAZA Marks; and
26

27 (c) otherwise unfairly competing with Tamares by doing any other act or thing
28 calculated or likely to cause confusion or mistake in the mind of the trade or the public, or to

1 deceive purchasers into the belief that Defendants' services are Tamares' services or are approved or
2 sponsored by Tamares or that Defendants or Defendants' business are Tamares or Tamares'
3 business or are approved by, sponsored by, or affiliated or connected with Tamares, or to otherwise
4 injure the business reputation of Tamares;

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6 2. That Defendants be ordered to deliver up to Tamares for destruction all materials,
7 boxes, packaging, labels, tags, pamphlets, brochures, signage, sales literature, stationery,
8 advertisements, contracts, and any other written or printed material, including materials put on the
9 Internet, in its possession, custody or control bearing the designation "PLAZA" or any other
10 designation confusingly similar to the PLAZA Marks, and that Defendants be ordered to deliver up
11 to Tamares for destruction all plates, molds and other means of making the aforesaid products and
12 printed materials;

13
14 3. That Defendants be directed to file with the Court and serve upon Tamares' counsel
15 within thirty (30) days after service of the injunction upon Defendants, a report in writing, under
16 oath, setting forth in detail the manner and form in which Defendants has complied with the
17 injunction entered herein;

18
19 4. That Tamares is awarded compensatory, consequential, statutory, and punitive
20 damages in an amount in excess of \$10,000 to be determined at trial;

21 5. That Tamares is awarded treble damages pursuant to NRS 600.430;

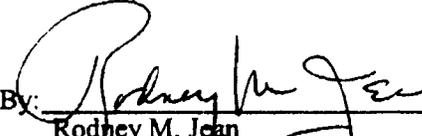
22 6. That, based on the deliberate and willful acts of Defendants, Tamares is awarded all
23 interest, costs, disbursements and attorneys' fees incurred in prosecuting this action; and
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7. That Tamares have such further relief as this Court may deem just.

Dated: August 8th, 2007.

Lionel Sawyer & Collins

By: 
Rodney M. Jean
Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands trial of all its claims for relief herein before a jury.

Dated: August 8th, 2007.

Lionel Sawyer & Collins

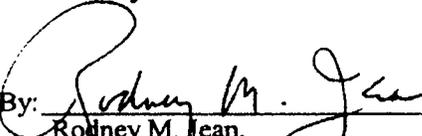
By: 
Rodney M. Jean,
Attorneys for Plaintiff

EXHIBIT B

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

TAMARES LAS VEGAS PROPERTIES, LLC,
Plaintiff,
vs.
THE EL-AD GROUP, LTD., EL AD
PROPERTIES LAS VEGAS, LLC; and EL-AD
LAS VEGAS, LLC,
Defendants.

Case No.: A546046
Dept. No.: XI

**SUPPLEMENTAL BRIEF IN SUPPORT
OF PLAINTIFF'S COMPLAINT
AND MOTION FOR
PRELIMINARY INJUNCTION**

PRELIMINARY STATEMENT

At the conclusion of the December 13, 2007 status conference before this Court, the parties were granted leave to file supplemental briefs and information to address matters not covered by the pleadings that are "important for [the Court] to know." See Transcript of Proceedings for December 13, 2007 Status Check at 16:8-9 ("12/13/07 Tr."). Accordingly, Plaintiff Tamares Las Vegas Properties, LLC ("Tamares") supplements its Complaint filed on August 9, 2007 and accompanying Motion for Preliminary Injunction (and all memoranda, affidavits and exhibits filed in support thereof) with the following:

1 • Evidence demonstrating that Tamares and its predecessors have continuously
2 used the name and mark PLAZA since at least as early as January 1, 1977 and the
3 name and mark PLAZA HOTEL AND CASINO since at least as early as December
4 31, 1982, both on and in connection with the advertising, promotion and provision of
5 gaming, hotel, casino, bar, restaurant, entertainment and related services throughout
6 the State of Nevada, and in particular, in Las Vegas and surrounding areas, with
7 supplemental briefing addressing the continuous use doctrine. *See* Affidavit of
8 Kenneth Landfield dated January 9, 2008 (“Landfield Aff.”)¹ ¶¶ 2-3 and Exh. A-D;
9 *see also infra* Section I;

10 • Evidence of actual confusion; *See* Affidavit of Ernest Black dated January
11 9, 2008 (“Black Aff.”);²

12 • Evidence categorically refuting statements made by El-Ad Group’s counsel at
13 the December 13, 2007 status conference that “There isn’t any . . . immediate and
14 irreparable injury threatened. The defendant is not in business or doing business here
15 now and advertising and promoting the mark that we believe is superior to the mark
16 that the plaintiffs are claiming the exclusive right to use” with supplemental briefing
17 addressing recent advertising and promotional use of El-Ad Group’s purported marks
18 on an invitation for an event held at Wynn Las Vegas on November 13, 2007 as “an
19 introduction to the principals of The Plaza Hotel project.” *See* 12/13/07 Tr. at 8:16-
20 21; *see also* Affidavit of Matthew D. Marcotte dated January 9, 2008 (“Marcotte
21 Aff.”)³ ¶ 73 and Exh. 65; *infra* Section II;

22 • Evidence demonstrating overwhelming consumer awareness of the PLAZA
23 Marks with supplemental briefing on the issue of survey evidence. *See* Affidavit of
24 Alvin Ossip dated January 9, 2008 (“Ossip Aff.”)⁴ ¶¶ 5-9; *see also infra* Section III;
25 and

26 • Evidence relating to four trademark opposition proceedings filed by Tamares
27 in the Trademark Trial and Appeal Board (“TTAB”) of the U.S. Patent and
28 Trademark Office (“PTO”) on December 12, 2007 against four trademark
applications filed by Plaza IP Holdings LLC (USA) with supplemental briefing
addressing why these proceedings have no bearing on this Court’s adjudication of the
instant motion for injunctive relief. *See* Marcotte Aff. ¶¶ 140-44 and Exh. 130-33;
see also infra Section IV.

¹ The Affidavit of Kenneth Landfield is attached to this brief as Exhibit A.

² The Affidavit of Ernest Black is attached to this brief as Exhibit B.

³ “Marcotte Aff. ¶ ___ and Exh. ___” denotes references to the Affidavit of Matthew D. Marcotte, which is attached to this brief as Exhibit C.

⁴ The Affidavit of Alvin Ossip is attached to this brief as Exhibit D.

1 I. **TAMARES' PRIOR USE OF THE PLAZA MARKS TRUMPS EL-AD GROUP'S**
2 **PURPORTED FEDERAL REGISTRATION RIGHTS**

3 El-Ad Group argues that their purported federal registrations, issued in 1986
4 and 1987, of certain marks incorporating the term "Plaza" precludes certain of
5 Tamares' claims. See Defendants' Opposition to Motion for Preliminary Injunction
6 and Countermotion to Dismiss dated August 23, 2007 at 16-20. They are wrong.
7 Concurrently with this memorandum, Tamares has now submitted undisputed
8 evidence that it and its predecessors have continuously and exclusively used the
9 marks PLAZA and PLAZA HOTEL AND CASINO in connection with the
10 advertising, promotion and provision of gaming, hotel, casino, bar, restaurant,
11 entertainment and related services in Nevada since at least as early as 1977 and 1982,
12 respectively, long prior to the issuance dates of the federal registrations upon which
13 El-Ad Group relies. See Landfield Aff. ¶¶ 2-3 and Exh. A-D. Courts have regularly
14 upheld the rights of parties in the same position as Tamares — a prior user of marks
15 at common law — to allow them not only to continue using their marks in their local
16 geographic territory of use despite the existence of later-issued federal registrations,
17 but also to obtain injunctive relief against the federal registrants who attempted to
18 enter that territory.

19 In *Burger King of Florida, Inc. v. Hoots*, 403 F.2d 904 (7th Cir. 1968), a
20 procedural converse of the instant case, the national chain of Burger King restaurants
21 and owners of the federally-registered BURGER KING mark sued a Mattoon,
22 Illinois-based restaurant operating under the same Burger King name. *Id.* at 906.
23 The court not only denied the plaintiff's request for injunctive relief, but also held
24 that since the defendant had continuously used its mark prior to the issuance date of
25 plaintiff's federal registrations, that mark was entitled to protection in its geographic
26 use area. Accordingly, the court enjoined the plaintiff from using its federally-
27 registered BURGER KING mark in the Mattoon, Illinois region. *Id.* at 906-07.
28 Similarly, in *Thrifty Rent-A-Car System, Inc. v. Thrift Cars, Inc.*, 639 F.Supp. 750

1 (D. Mass. 1986), the court found that, "The intended effect of § 1115(b)(5), far from
2 trying to diminish a good-faith junior user's rights, is to allow the junior user
3 maximum benefit of any good will acquired by hard and honest labor. The statute
4 achieves that result by freezing, not cutting back, the junior user's business activities
5 on the date of registration." *Id.* at 757. The *Thrifty Rent-a-Car* plaintiff, who owned
6 a federal registration for the mark THRIFTY RENT-A-CAR SYSTEM, was enjoined
7 from operating any business establishment under that mark in the area where the
8 defendant had established prior common law use of its mark THRIFT CARS for car
9 rentals. Thrifty Rent-a-Car was also enjoined from advertising in media intended to
10 target that community. *Id.* Finally, in *Wrist-Rocket Mfg. Co., Inc. v. Saunders*
11 *Archery Co.*, 578 F.2d 727 (8th Cir. 1978), the manufacturer of a wrist-braced
12 slingshot brought an action against a former distributor for trademark infringement.
13 *Id.* at 729-30. The manufacturer owned a federal trademark registration for the mark
14 WRIST ROCKET, but the defendant, as distributor, had begun using that mark prior
15 to the issuance date of the manufacturer's registration. *Id.* at 730. The court held
16 that a common-law owner of a mark whose use pre-dates the issuance date of a
17 federal registration has exclusive rights in the geographic area carved out by the
18 common-law owner. *Id.* at 730. The court determined that defendants had the right
19 to exclusive use of the mark in those states where they had used the mark prior to the
20 issuance date of the manufacturer's registration. *Id.* at 733.

21 Each of the above cases are on all fours with the present case where the
22 purported owner of federal registrations is attempting to assert those rights against
23 prior rights established by a common law user. As demonstrated by its supplemental
24 evidence, Tamares' predecessors made use of the PLAZA and PLAZA HOTEL
25 AND CASINO marks in Nevada long before El-Ad Group registered its purported
26 marks in 1986-87. Accordingly, the Court should enjoin El-Ad Group from entering
27 Nevada using "Plaza" as a name or mark, as Tamares has superior rights to PLAZA
28

1 as a mark for gaming, hotel, casino, bar, restaurant, entertainment and related
2 services in this state.

3 **II. TAMARES IS THREATENED WITH IRREPARABLE**
4 **INJURY IF NO INJUNCTION ISSUES**

5 El-Ad Group argues that because its "Plaza" complex will not be open for
6 business for several more years, it is not using "Plaza" as a trademark in Nevada and
7 thus, Tamares cannot be suffering any harm. *See* Defendants' Opposition to Motion
8 for Preliminary Injunction and Countermotion to Dismiss dated August 23, 2007 at
9 16-20. Although Tamares need not show actual confusion at this stage of the
10 litigation, consumers have already been confused, *see* Black Aff. ¶¶ 2-3, and will
11 continue to be confused absent an injunction. Also, on December 12, 2007, El-Ad
12 Group held a promotional event in Las Vegas to serve as "an introduction to the
13 principals of The Plaza Hotel project" and the invitation for that event prominently
14 featured its purported "Plaza" mark. *See* Marcotte Aff. ¶ 73 and Exh. 65. And, as
15 demonstrated in the plethora of news articles submitted previously and herewith, El-
16 Ad Group, in its comments to the press and otherwise, has indicated that the hotel
17 and casino complex it intends to operate in Las Vegas will be branded with its
18 purported "Plaza" mark. *See* Marcotte Aff. ¶¶ 64-71 and Exh. 58-64. Accordingly,
19 Tamares, its customers and the general public face the prospect of both forward and
20 reverse confusion. *See, e.g., Dreamwerks Prod. Group v. SKG Studio*, 142 F.3d
21 1127, 1130 (9th Cir. 1998) (acknowledging the danger that "consumers doing
22 business with the senior user might mistakenly believe that they are dealing with the
23 junior user"); *National Customer Eng'g v. Lockheed Martin*, No. CV 96-8938 DDP
24 (ANx), 1997 U.S. Dist. LEXIS 10757, at *5 (C.D. Cal. Feb. 14, 1997) (granting
25 plaintiff's motion for preliminary injunction in a trademark infringement action and
26 noting that the result of reverse confusion is that "the senior user loses the value of
27 the trademark -- its product identity, corporate identity, control over its goodwill and
28 reputation, and ability to move into new markets").

1 It is well settled that advertising and promotional use of a service mark
2 constitutes use sufficient to give rise to an action for trademark infringement. *See,*
3 *e.g., Club Gene & Georgetti Ltd. P'ship v. La Luna Enters., Inc.*, 889 F. Supp. 324,
4 325 (D. Ill. 1995) (granting plaintiff's motion for a preliminary injunction where
5 defendant was using highly similar mark on invitations to "Preview Party"); *Nat'l*
6 *League of Junior Cotillions, Inc. v. Porter*, No. 3:06-cv-508-RJC, 2007 U.S. Dist.
7 LEXIS 58117, at *9 and *35 (D.N.C. Aug. 9, 2007) (enjoining defendants from
8 using infringing mark which appeared on promotional materials including
9 invitations); *Intelligent Sports Inc. v. Randy Buller*, No. 95,384, 1997 TTAB LEXIS
10 147, at *12 (TTAB Nov. 6, 1997) (finding use on invitations sufficient to support
11 claimed first use date). Accordingly, absent injunctive relief, even more consumers
12 will be confused, Tamares' brand will continue to be eroded by El-Ad Group's
13 infringing advertising, promotional and other activities and Tamares will continue to
14 suffer irreparable harm.

15 **III. TAMARES' PLAZA MARKS ARE WIDELY RECOGNIZED**

16 In prior briefing, El-Ad Group has suggested that Tamares' marks are not
17 recognized by the broader community and are thus not entitled to protection. *See*
18 Defendants' Opposition to Motion for Preliminary Injunction and Countermotion to
19 Dismiss dated August 23, 2007 at 13. The Affidavit of Alvin Ossip overwhelmingly
20 demonstrates that this is not the case and that Tamares' PLAZA Mark are strong in
21 Las Vegas and surrounding areas.

22 Earlier this month, Mr. Ossip conducted a consumer awareness survey of men
23 and women, age 21 and over, living in the Las Vegas area, who have gambled in a
24 Las Vegas area casino in the last 12 months, and who are very or somewhat likely to
25 do so again in the next 12 months. *See* Ossip Aff. ¶ 6. When asked if they were
26 aware of a hotel-casino operating under the name PLAZA in Las Vegas, a
27 resounding 81.1% of respondents said "Yes." *See* Ossip Aff. ¶ 9. This level of
28 consumer awareness confirms that Tamares not only has a protectible mark, but a

1 strong one. *See, e.g., Nissan Motor Co. v. Nissan Computer Corp.*, 378 F.3d 1002,
2 1014 (9th Cir. 2004) (suggesting that findings of 55%, 60%, and 65% awareness in
3 survey could support finding of fame for purpose of trademark dilution action), *Anti-*
4 *Monopoly, Inc. v. General Mills Fun Group*, 684 F.2d 1316, 1321 (9th Cir. 1982)
5 (finding 63% recognition of MONOPOLY as a brand name “high”), *CSC Brands,*
6 *L.P. v. Herdez Corp.*, 191 F.Supp.2d 1145, 1150 (E.D. Cal. 2001) (finding V8
7 SPLASH mark strong where unaided awareness was less than 10%).

8 **IV. ONLY THIS COURT CAN HEAR TAMARES’ CASE,**
9 **NOT THE TRADEMARK TRIAL AND APPEAL BOARD**

10 On December 12, 2007, Tamares filed trademark opposition proceedings with
11 the Trademark Trial and Appeal Board (the “TTAB”) against four trademark
12 applications filed by a company presumably affiliated with the El-Ad Group because
13 Tamares believed that it would be damaged by registration of the marks identified in
14 each application for the services enumerated therein, namely:

- 15 • Application Ser. No. 77/116,124 for the mark THE PLAZA for “Casinos”
16 filed on February 26, 2007.
- 17 • Application Ser. No. 77/116,137 for the mark PP THE PLAZA & Design for
18 “Casinos” filed on February 26, 2007; and
- 19 • Application Ser. No. 77/111,172 for the mark THE PLAZA for
20 “Condominium hotel services” filed on February 20, 2007; and
- 21 • Application Ser. No. 77/111,298 for the mark PP THE PLAZA & Design for
22 “Condominium hotel services” filed on February 20, 2007.

23 *See Marcotte Aff.* ¶¶ 140-144 and Exh. 130-133. Each application had been filed on
24 an intent-to-use basis, under Section 1(b) of the Lanham Act, which means that the
25 applicant had not made any use of the marks applied for on or in connection with the
26 services identified in the applications. *See Marcotte Aff.* ¶¶ 140-144 and Exh. 130-
27 133.⁵ At the December 13, 2007 status conference, El-Ad Group’s counsel

28 ⁵ As previously argued, the fact that El-Ad Group filed these applications is an admission that
it has no trademark rights for casino and related services. *See Reply in Support of Plaintiff’s*

1 suggested that these TTAB proceedings would interfere with the Court's
2 adjudication of the instant motion. See 12/13/07 Tr. 7:20-8:1. As argued more fully
3 below, only this Court, not the TTAB, has the power to decide the infringement and
4 other related issues which are alleged in the Complaint.

5 The TTAB, which is an administrative tribunal of the Patent and Trademark
6 Office, has no power to grant injunctive relief and may only decide registration
7 issues. "The Board is empowered to determine *only* the right to register. The Board
8 is *not authorized* to determine the right to use, *nor* may it decide broader questions of
9 infringement or unfair competition." Trademark Trial and Appeal Board Manual of
10 Procedure § 102.01 (emphasis added); see also 15 U.S.C. §§ 1067, 1068, 1070, and
11 1092 (2008). Indeed, in *Rhoades v. Avon Products, Inc.*, 504 F.3d 1151 (9th Cir.
12 2007), the 9th Circuit held that the District Court erred in dismissing a Declaratory
13 Judgment action filed several years after several TTAB proceedings had been
14 brought by the defendant; as "The point is not the number of TTAB proceedings, but
15 rather that only the district court can award damages or injunctive relief in an
16 infringement action."⁶ *Id.* at 1164 n. 12. See also *Rosenruist-Gestao E Servicos*
17 *LDA v. Virgin Enters.*, No. 06-1588, 2007 U.S. App. LEXIS 29807, at *15 (4th Cir.
18 Dec. 27, 2007) ("As an administrative tribunal of limited jurisdiction, the TTAB is
19 empowered only to decide whether a given trademark is registrable."); *Enterprise*
20 *Rent-A-Car Co. v. Advantage Rent-A-Car Inc.*, 62 U.S.P.Q.2d 1857, 1859 (TTAB
21 2002), *aff'd*, 300 F.3d 1333, 66 U.S.P.Q.2d 1811 (Fed. Cir. 2003) (TTAB "is an
22 administrative tribunal, established by statute for narrow and specific purposes, and
23 is not a court of general jurisdiction"; TTAB has no jurisdiction to decide issues
24 arising under state dilution laws); *Person's Co. v. Christman*, 900 F.2d 1565, 1570-
25 71 (Fed. Cir. 1990) ("It is well settled that the Trademark Trial and Appeal Board
26

27 Motion For a Preliminary Injunction and in Opposition to Defendants' Counter Motion to Dismiss
28 dated September 4, 2007 at 18-20.

⁶ Tamares' lead counsel, Kelley Drye & Warren LLP, represents Avon Products, Inc. in this matter, which has been remanded to the Central District of California and is pending.

1 cannot adjudicate unfair competition issues in a cancellation or opposition
2 proceeding. The Board's function is to determine whether there is a right to secure or
3 to maintain a registration."); *Paramount Pictures Corp. v. White*, 31 U.S.P.Q.2d
4 1768, 1771 n. 5 (TTAB 1994) ("The Board has no jurisdiction over claims of
5 trademark infringement and unfair competition. The proper forum for such claims is
6 a civil action.") *aff'd (unpub'd)*, 108 F.3d 1392 (Fed. Cir. 1997); Anne Gilson
7 Lalonde et al., *Gilson on Trademarks* § 11.03[3] (2007) ("deference to the PTO does
8 not necessitate a stay of the usual infringement case involving a comparison of marks
9 and trade channels and an analysis of evidence of confusion"). Accordingly,
10 Tamares' TTAB opposition proceedings do not preclude this Court from deciding the
11 instant motion for injunctive relief, nor any other issue alleged in or relating to the
12 Complaint.
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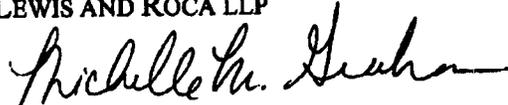
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CONCLUSION

For all of the foregoing reasons, as well as those briefed in Tamares' moving and reply memoranda and supporting affidavits and exhibits, Tamares' motion for a preliminary injunction should be granted.

Dated this 9th day of January, 2008.

LEWIS AND ROCA LLP



BY:

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EXHIBIT C

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DISTRICT COURT
CLARK COUNTY, NEVADA

TAMARES LAS VEGAS PROPERTIES, LLC,)
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Plaintiff,)
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vs.)
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THE EL-AD GROUP, LTD., EL AD)
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PROPERTIES LAS VEGAS, LLC; and EL-AD)
)
LAS VEGAS, LLC,)
)
Defendants.)

Case No.: A546046
Dept. No.: XI
Hearing Date: 1/14/08
Hearing Time: 10:00 a.m.

BUSINESS COURT SCHEDULING ORDER
AND TRIAL SETTING ORDER

This BUSINESS COURT SCHEDULING ORDER AND TRIAL SETTING ORDER ("Scheduling Order") is entered following the Rule 16 conference conducted on January 14, 2008. Based upon the information presented at the Rule 16 conference and the agreement of the parties, the requirement of filing a joint case conference report pursuant to NRCP 16.1(c) is suspended and EDCR Rule 2.55 is superseded by this Scheduling Order. This matter is deemed complex and all discovery disputes will be heard by the Court. This Order may be amended or modified by the Court upon good cause shown.

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

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Witnesses required to be disclosed under NRCP 16.1	02/04/2008
Documents required to be produced under NRCP 16.1	02/19/2008
Last day to file motions to amend pleadings or add parties	03/14/2008
Expert witness disclosure	04/04/2008
Last day to supplement list of percipient witnesses	05/08/2008
Last day to supplement list of documents	05/08/2008
Rebuttal expert witness disclosure	05/19/2008
Discovery cut off	06/13/2008
Last day to file dispositive motions or motions in <i>limine</i>	06/20/2008

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried on a stacked calendar beginning June 23, 2008 at 10:00 a.m. with a firm trial start date of July 21, 2008 at 10:00a.m.

B. A Status Check on Completion of Discovery will be held on June 17, 2008 at 9:00 a.m.

C. A Pretrial Conference will be held on May 30, 2008 at 9:00 a.m.

D. A Calendar Call will be held on June 19, 2008 at 9:00 a.m. Parties must bring to Calendar Call the following:

- (1) Typed exhibit lists;
- (2) List of depositions;
- (3) List of equipment needed for trial; and
- (4) Courtesy copies of any legal briefs on trial issues.

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D. The Joint Pre-trial Memorandum must be filed no later than **4:00 p.m. on July 7, 2008**, with a courtesy copy delivered to Department XI. All parties, (attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS** of E.D.C.R. 2.27, 2.47, 2.67, 2.68, and 2.69.

E. All dispositive motions or motions in limine, must be in writing and filed on or before **June 20, 2008**. **Orders shortening time will not be signed.**

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

DATED this 14th day of January, 2008.


ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

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I hereby certify that on the date filed, I placed a copy of this Order in the attorney's folder in the Clerk's Office, mailed or faxed a copy to:

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