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

Proceeding	91194772
Party	Plaintiff Cannery Casino Resorts, LLC
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Attachments	91194772 M for Lv to Amend N of Opp.pdf ( 12 pages )(515730 bytes ) 91194772 Exh A and A-1 to M for Lv to Amend N of Opp.pdf ( 45 pages ) (1279340 bytes ) 91194772 Exh B to M for Lv to Amend N of Opp.pdf ( 6 pages )(162617 bytes )

I hereby certify that this correspondence is being deposited with the United States Patent and Trademark Office, Trademark Trial and Appeal Board via electronic filing through its website accessible through the following domain name: <http://esta.uspto.gov> on December 21, 2011.

  
Joy A. Jones, *Para Legal*

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

Cannery Casino Resorts, LLC,

Opposer,

vs.

Omri S. Shellef,

Applicant.

Marks:

EAST SIDE SOCIAL CLUB,  
Serial No. 77/767677

Opposition No.: 91194772

**OPPOSER'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION**

Opposer Cannery Casino Resorts, LLC (“CCR”), by and through its undersigned counsel of record, respectfully requests that the Trademark Trial and Appeal Board (the “Board”) enter an Order granting Opposer leave to amend its initial Notice of Opposition pursuant to Fed. R. Civ. P. 15(a), 37 C.F.R. § 2.107(a) and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 507.02.<sup>1</sup> This Motion to Amend is based upon the records and pleadings on file herein, the Memorandum of Points and Authorities set for below, the Declaration of Bryce K. Earl, Esq. In Support of Opposer’s Motion for Leave to Amend Notice of Opposition (“Earl Decl.”) attached hereto and incorporated herein by this reference as **Exhibit A**, and the other documents and exhibits submitted in support hereof.

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<sup>1</sup> This Motion for Leave to Amend Notice of Opposition (“Motion to Amend”) is filed simultaneously with CCR’s Motion for Summary Judgment (the “MSJ”). CCR’s MSJ is based upon the same claims of non-use and no use in commerce by Applicant. Furthermore, CCR fully believes that these same two (2) claims are dispositive of this entire proceeding

## I. MEMORANDUM OF POINTS AND AUTHORITIES

### A. Introduction

CCR seeks leave to amend its Notice of Opposition by adding the additional claims of non-use and lack of “use in commerce” by Applicant Omri S. Shellef (“Applicant”). CCR learned through Applicant’s discovery testimony that Applicant does not and has never offered bar, restaurant, catering and hotel services in association with Applicant’s EAST SIDE SOCIAL CLUB mark (the “Class 43 Mark”). CCR further learned through Applicant’s discovery testimony that Applicant does not “use in commerce” either of Applicant’s EAST SIDE SOCIAL CLUB marks in International Classes 41 or 43 (the “Shellef Marks”) as required under the Lanham Act.

To date, CCR has refrained from seeking leave to amend because adding the additional claims would have threatened to destroy the possibility of resolving this matter with Applicant through negotiation. However, Applicant has since demonstrated within at least the last several weeks an unwillingness to negotiate in good faith.<sup>2</sup> Consequently, Applicant has left CCR with no other alternative but to adjudicate this matter short of settlement.

Moreover, as discussed below, the granting of this Motion to Amend will not prejudice the rights of Applicant because, at a minimum, all facts and evidence supporting the two (2) additional claims CCR seeks to add have always been solely within the possession and knowledge of Applicant. Furthermore, because all facts and evidence have always been within Applicant’s possession and knowledge, no additional discovery is required and no delay will occur to fully adjudicating this matter.

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<sup>2</sup> As further explained *infra*, Applicant’s pro se status has resulted in many challenges to CCR including, for example, Applicant’s lack of familiarity with these types of proceedings and his seeming inability to read the rules governing this proceeding.)

Accordingly, CCR seeks leave from this Board to amend its Notice of Opposition to add the additional claims of non-use and lack of “use in commerce” and to enter CCR’s Amended Notice of Opposition, attached hereto as **Exhibit B**.

**B. Procedural Background**

CCR filed its original Notice of Opposition on or about May 5, 2010. Applicant filed his Answer on or about June 14, 2010, but failed to timely serve his Answer on CCR. Given Applicant’s pro se status, CCR made several efforts to contact Applicant. *See* Earl Decl., at ¶ 5. Applicant eventually served his Answer on CCR on or about July 13, 2010, without objection from CCR. Throughout this proceeding, CCR has continued to extend similar courtesies to Applicant in light of his pro se status.<sup>3</sup>

Shortly after Applicant served his Answer on CCR, CCR began good faith settlement negotiations with Applicant that ultimately resulted in CCR sending Applicant a draft agreement on or about July 17, 2010. *See* Earl Decl., at ¶ 8. The forward momentum of the settlement negotiations stopped, however, when Applicant refused to consent to an extension of the discovery period and instead filed a Request to Expedite Trademark Registration (“Request to Expedite”). Up until Applicant filed his Request to Expedite, CCR believed that Applicant was still considering the draft agreement and was continuing to negotiate in good faith. *See* Earl

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<sup>3</sup> For example, on or about July 16, 2010, Applicant filed through the Board’s Electronic System for Trademark Trials and Appeals (“ESTTA”) a letter to CCR making various requests for information and documents. *See* Earl Decl., at ¶ 9. Given Applicant’s pro se status and as a courtesy to Applicant, on or about July 17, 2010, CCR sent an email to Applicant enumerating the four types of information Applicant is required to disclose in Applicant’s Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1). Furthermore, CCR informed Applicant that the initial disclosures need only be disclosed to CCR and not to the Board. *See* Earl Decl., at ¶ 10. On or about August 12, 2010, CCR timely served its Initial Disclosures on Applicant. *See* Earl Decl., at ¶ 11. Applicant, however, failed to serve his Initial Disclosures on CCR by the August 13, 2010 deadline. As a courtesy to Applicant, on or about October 12, 2010, CCR sent a letter to Applicant via electronic mail and U.S. mail requesting Applicant’s Initial Disclosures. *See* Earl Decl., at ¶ 12. Further, on or about October 15, 2010, CCR left a message for Applicant requesting his Initial Disclosures. *See* Earl Decl., at ¶ 13. Applicant finally sent his Initial Disclosures to CCR on or about October 15, 2010. Given Applicant’s pro se status and as a courtesy to Applicant, CCR did not object to Applicant’s untimely disclosure of his Initial Disclosures or Applicant’s improper service of his Initial Disclosures. *See* Earl Decl., at ¶ 14.

Decl., at ¶ 19. CCR would later learn that Applicant did not view his Request to Expedite as contrary to the parties' settlement negotiations and, in fact, Applicant was open to continuing settlement negotiations despite his Request to Expedite.<sup>4</sup> This type of situation is illustrative of the challenges CCR has faced in its interactions with Applicant.

CCR served its discovery requests on Applicant on or about December 29, 2010. *See* Earl Decl., at ¶ 21. On January 7, 2011, Applicant propounded written discovery on CCR (which was in essence the same written discovery propounded by CCR on Applicant with the names of the parties reversed). *See* Earl Decl., at ¶ 23. CCR received Applicant's responses via Federal Express on or about August 8, 2011, the date reset by the Board's Order granting the parties' Joint Motion for Continued Suspension of Opposition (the "Second Suspension"). *See* Earl Decl., at ¶ 22. CCR provided Applicant with its responses on August 10, 2011, the date reset by the Board's Second Suspension. *See* Earl Decl., at ¶ 23.

In response to Applicant's Request to Expedite, CCR filed its Motion for Extension of Case Management Deadlines ("Motion to Extend") on or about December 30, 2010. *See* Earl Decl., at ¶ 20. CCR also scheduled the deposition of Applicant on January 10, 2011 in New York City, New York. *See* Earl Decl., at ¶ 24. It was during Applicant's deposition that CCR had an opportunity to explore Applicant's use of the Class 43 Mark and Applicant's use in commerce of the Shellef Marks. *See* Earl Decl., at ¶ 25.

The documents and testimony provided by Applicant clearly supports CCR's claims of non-use of the Class 43 Mark by Applicant and no use in commerce of the Shellef Marks.

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<sup>4</sup> Applicant stated in his deposition that he was still open to a settlement agreement. Earl Decl., ¶ 37, Ex. A-1 (131:10-11). Further, in Applicant's untimely response to CCR's Motion for Extension of Case Management Deadlines, Applicant stated that he believes that "negotiations can proceed even if the process of [his] trademark registration is expedited" and that "[t]he two actions are not mutually exclusive". *See* Applicant's Response to Opposer's Motion for an Extension dated February 5, 2011. Although, CCR strongly disagreed and continues to disagree with Applicant's position that his Motion to Expedite is not mutually exclusive of settlement negotiations, CCR continued to reach out to Applicant in hopes of reinitiating settlement negotiations. Eventually, settlement negotiations were reinitiated between the parties. *See* Earl Decl., at ¶ 28.

Nevertheless, CCR refrained from seeking leave to amend its Notice of Opposition until now because, shortly after Applicant's deposition, the parties resumed good faith negotiations and CCR did not want to jeopardize those negotiations by filing a Motion to Amend. See Earl Decl., at ¶ 28. Given CCR's past experiences with Applicant and his purposeful ignorance of the rules and procedures governing this proceeding, it was reasonable for CCR to conclude that Applicant would view a Motion to Amend as an act of bad faith and not as a procedure by which CCR was simply preserving its rights. See Earl Decl., at ¶ 28.

Ultimately, the parties agreed to stipulate to a suspension of the proceedings pending settlement negotiations. On or about February 9, 2011, the Board granted CCR's Motion to Extend and the parties' Joint Motion for Suspension of Opposition. See Earl Decl., at ¶ 27. As the end of the initial suspension period drew near, the parties realized that more time was needed to finalize a settlement. See Earl Decl., at ¶ 29. Therefore, on or about May 11, 2011, the parties filed their Second Suspension. On or about June 8, 2011, the Board granted the parties' Second Suspension and reset the proceeding to resume on August 8, 2011 with Discovery to close on November 8, 2011. See Earl Decl., at ¶ 30.

During this second suspension period, CCR continued to work toward settlement. In fact, until recently, CCR believed that there was only one issue remaining. See Earl Decl., at ¶ 32. To CCR's utter surprise, however, Applicant responded by unexpectedly raising multiple issues, some of which CCR understood to be resolved and others which were wholly new. See Earl Decl., at ¶ 34. Due to Applicant's ambush negotiating tactics and inconsistent positions, CCR is left with no other alternative but to adjudicate this matter on the merits. See Earl Decl., at ¶ 35. Accordingly, CCR seeks leave from this Board to amend its Notice of Opposition to add the

additional claims of non-use and lack of “use in commerce” and to grant CCR’s Motion for Summary Judgment filed simultaneously herewith.

**C. Argument**

**1. Standard**

The TBMP provides that once a responsive pleading has been served in an opposition, a party may amend its original pleading only by written consent of every adverse party or by leave of the Board. TBMP § 507.02. Further, leave to amend pleadings must be freely given when justice so requires. *Id.*; *see also*, Fed. R. Civ. P. 15(a). Consistent therewith, the Board liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. *See, e.g.*, *Commodore Electronics Ltd. v. CBM Kabushiki Kaisha*, 26 USPQ2d 1503 (TTAB 1993); *United States Olympic Committee v. O-M Bread Inc.*, 26 USPQ2d 1221 (TTAB 1993).

Prejudice to the non-moving party is inextricably linked to the concept of undue delay. *See Marshall Field & Co. v. Mrs. Field's Cookies*, 17 USPQ2d 1652 (TTAB 1990). But even a long delay may not be prejudicial where the motion to amend is based on facts obtained by the moving party through discovery of the non-moving party. TBMP § 507.02(a); *see also*, *Karsten Manufacturing Corp. v. Editoy AG*, 79 USPQ2d 1783, 1786 (TTAB 2006) (motion for leave to amend pleading granted because grounds for new claim was learned during discovery).

**2. Justice Requires the Granting of CCR’s Motion to Amend.**

Rule 15(a) of the Federal Rules of Civil Procedure encourages courts to look favorably on motions to amend when justice so requires. In the instant matter, justice requires the granting of CCR’s Motion to Amend. In contrast to Applicant, CCR will suffer great prejudice if leave to

amend is not granted because CCR will be denied the opportunity to contest the Shellef Marks based upon facts supporting the claim of non-use and no use in commerce that were solely within the possession and knowledge of Applicant. Furthermore, as an unintended consequence of a denial of CCR's Motion to Amend, Applicant's application may be allowed to register despite the fact that Applicant failed to meet the Lanham Act's statutory requirement of providing a specimen of use.

Moreover, Applicant has refused to provide testimony and documentary evidence of his use in commerce of the Shellef Marks. Although Applicant has an obligation under the Federal Rules of Civil Procedure to produce any documents or other evidence supporting his use of the Shellef Marks, Applicant has openly refused to provide such evidence to CCR. For example, Applicant refused to answer questions about the geographic scope of use of the Shellef Marks at his deposition and again refused to answer similar questions presented in CCR's First Set of Interrogatories.<sup>5</sup> Applicant also refused to answer questions about the marketing and promotion of the Shellef Marks.<sup>6</sup> He even refused to answer questions about a document that appeared to be an ad that he provided to CCR.<sup>7</sup> Applicant further refused to provide any financial information evidencing the breadth, scale and scope of Applicant's marketing activities and sales.<sup>8</sup> Furthermore, although Applicant testified that the his business (the "Shellef Business") has been mentioned in print publications, Applicant has provided no evidence in support of his claim except for his own self-serving testimony. Rewarding Applicant for his blatant disregard

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<sup>5</sup> Earl Decl, ¶ 37, Ex. A-1 (105:22 thru 106:20). Even after CCR's counsel explained that geographic scope of use of a mark is always relevant in these types of proceedings, Applicant continued to refuse to answer.

<sup>6</sup> Earl Decl, ¶ 37, Ex. A-1 (95: 3-8; 112:9-24) Even after CCR's counsel clarified that he was not interested in Applicant's marketing strategies but Applicant's channels of trade, Applicant continued to refuse to answer.

<sup>7</sup> Earl Decl, ¶ 37, Ex. A-1 (111:7 thru 112:13).

<sup>8</sup> Earl Decl, ¶ 37, Ex. A-1 (25:22-24; 56:4-7; 121:17 thru 122-9). Applicant refused several times to discuss or disclose any financial information related to his use of the Shellef Marks. CCR's Counsel attempted to explain that the request for financial information was limited to substantiating Applicant's use in commerce, however, Applicant kept interrupting counsel and ultimately refused to answer.

of the rules governing this procedure by denying CCR's Motion to Amend would surely work an injustice against CCR.

**3. The Entry of CCR's Proposed Amended Notice of Opposition Will Not Violate Settled Law.**

Entry of CCR's proposed Amended Notice of Opposition will not violate settled law. Under the Lanham Act, an opposition may be amended in the same manner and to the same extent as in a civil action in a United States District Court, except that after the close of the time period for filing an opposition, a Notice of Opposition may not be amended to add to the goods or services being opposed. *See* 37 CFR § 2.107(a). CCR seeks to amend its original Notice of Opposition to add additional claims of non-use and a lack of use in commerce; it does not seek to add additional goods or services not otherwise identified in its original Notice of Opposition.

**4. Applicant Will Suffer No Prejudice Because CCR's Additional Claims are Based on Facts Within Applicant's Knowledge.**

This Board should grant CCR leave to amend its Notice of Opposition because such a grant will not prejudice Applicant. Generally, the non-moving party does not suffer prejudice when the factual basis for the motion to amend was obtained by the moving party through discovery taken from the non-moving party. *See* TBMP § 507.02(a). CCR makes its Motion to Amend based on discovered evidence obtained by CCR through Applicant's deposition testimony, which evidence was not available to CCR at the time it filed its Notice of Opposition. Consequently, Applicant will suffer no prejudice if the Notice of Opposition is amended to add the additional claims of non-use and lack of use in commerce because the facts concerning the additional claims were obtained through discovery taken from Applicant and such facts are solely within Applicant's knowledge and control.

Additionally, the evidence Applicant has provided, or lack thereof, supports a conclusion that Applicant does not offer the services he identified in this application in Class 43. For example, Applicant testified during his deposition that he is the sole proprietor of a business that organizes and hosts events under the mark EAST SIDE SOCIAL CLUB (i.e., the Shellef Business).<sup>9</sup> Applicant also testified that Applicant and the Shellef Business do not hold any business licenses, permits, tax ID numbers, or other similar government issued documents in relation to the Shellef Business.<sup>10</sup> Further, Applicant testified that he does not own a bar or hotel.<sup>11</sup> He further testified that he does not hold any hotel licenses,<sup>12</sup> any restaurant licenses,<sup>13</sup> a liquor license<sup>14</sup> or a license to prepare food.<sup>15</sup> Basically, Applicant testified that he brokers deals with various third-party venues where he can organize and host events,<sup>16</sup> and that sometimes the venue is a bar or restaurant and other times the venue is a hotel.<sup>17</sup> All venues have been located within the State of New York, and more specifically, the greater New York City metropolitan area.<sup>18</sup> Further, whatever the venue, third-party vendors provide the food, drinks and service staff for the events.<sup>19</sup> Thus, it is readily clear from Applicant's testimony that Applicant does not provide the services he identified in his application in Class 43.

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<sup>9</sup> Earl Decl, ¶ 37, Ex. A-1 (9:16-21; 41:12 thru 42: 8).

<sup>10</sup> Earl Decl, ¶ 37, Ex. A-1 (10:14 thru 11:5).

<sup>11</sup> Earl Decl, ¶ 37, Ex. A-1 (40:8-11).

<sup>12</sup> Earl Decl, ¶ 37, Ex. A-1 (89:11-14).

<sup>13</sup> Earl Decl, ¶ 37, Ex. A-1 (99:2-3).

<sup>14</sup> Earl Decl, ¶ 37, Ex. A-1 (40:12-17; 99:4-5).

<sup>15</sup> Earl Decl, ¶ 37, Ex. A-1 (99:21 thru 100:2; 101:4-7).

<sup>16</sup> Earl Decl, ¶ 37, Ex. A-1 (41:19 thru 42:24).

<sup>17</sup> Earl Decl, ¶ 37, Ex. A-1 (33:21-25; 40:12-17; 41:19 thru 42:5; 88:2-15; 98:2-18).

<sup>18</sup> Earl Decl, ¶ 37, Ex. A-1 (33:19-22; 52:4-6; 117:21-25 ). Although during his deposition testimony Applicant refused to answer a direct question regarding the geographic scope of his use of the Shellef Marks, he did answer questions regarding the locations of the various venues where he has hosted events; all of which have been located in New York City. Further, the numerous specimens provided by Applicant in his application show that the events were held in New York City. Furthermore, Applicant has proved no evidence to CCR that he hosts events outside of the State of New York. Moreover, it would be fundamentally unfair and prejudicial to CCR to allow Applicant to benefit from a presumption of use in commerce when he has failed to provide any supporting evidence and affirmatively refuses to answer questions directly at issue in this proceeding.

<sup>19</sup> Earl Decl, ¶ 37, Ex. A-1 (41:2-5; 90:9-20). When asked if hotel staff came as part of a deal Applicant would make with the hotel for use of its ballroom, Applicant testified that he doesn't "hire servers or bartenders or anything like

Moreover, the prosecution history of Applicant's application fails to provide any documents supporting use of the Class 43 Mark. Specifically, a specimen of use in Class 43 is conspicuously absent from Applicant's application even though Applicant was required to submit a specimen of use pursuant to an Office Action issued on or about November 17, 2009 (the "Office Action").<sup>20</sup> According to Applicant, the only specimens he has provided to the USPTO are those submitted with his original application,<sup>21</sup> which the examining attorney stated in the Office Action were acceptable for Class 41 only. Applicant did not and has not communicated with the examining attorney about the requirement of an additional specimen of use for Class 43.<sup>22</sup> Furthermore, since this issue was brought to Applicant's attention during his deposition, Applicant has yet to file a specimen of use in Class 43, amend his application to delete the Class 43 services, or divide his application.

Moreover, Applicant will not be prejudiced by the grant of CCR's Motion to Amend because Applicant has been on notice since at least as early as his deposition testimony that his non-use and lack of use in commerce of the Shellef Marks may become an issue in this proceeding. Indeed, when Applicant refused to answer certain questions during his deposition, CCR's counsel went out of his way to point out to Applicant that the subject matter of those questions concerned issues common in these types of proceedings and relevant to the adjudication of this matter.<sup>23</sup>

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that." When further asked if the hotel would provide something like that, Applicant testified that "[a]s would a bar, as would a restaurant, as would anything else. Any staff beyond what they have, that I will hire."

<sup>20</sup> Applicant sought registration of the Shellef Marks in two Classes, 41 and 43, but at the time of filing the application, Applicant only paid for one class. In the Office Action, the examining attorney required Applicant to submit a filing fee for the additional Class of services not covered by the fee already paid and a specimen of use for Class 43. *See* Office Action dated November 17, 2009 ("[P]lease note that the specimens of record are acceptable for International Class 41 only").

<sup>21</sup> Earl Decl, ¶ 37, Ex. A-1 (75:2-10).

<sup>22</sup> Earl Decl, ¶ 37, Ex. A-1 (75:11-20).

<sup>23</sup> Earl Decl, ¶ 37, Ex. A-1 (105:22 thru 106:20; 112:25 thru 113:6).

Put simply, Applicant has had ample opportunity to gather evidence in support of his use and use in commerce and provide such evidence to CCR—but Applicant has simply failed to do so.

**D. Conclusion**

For the foregoing reasons, CCR respectfully requests that this Board:

1. Grant CCR's Motion to Amend;
2. Enter CCR's Amended Notice of Opposition;
3. Adjudicate CCR's concurrently-filed Motion for Summary Judgment, which is based upon the additional claims of non-use and lack of use in commerce and filed simultaneously herewith; and
4. Stay any and all of CCR's obligations including, but not limited to, pretrial disclosures pending the resolution of this Motion to Amend and CCR's Motion for Summary Judgment.

SANTORO, DRIGGS, WALCH, et al.

Dated: December 21, 2011

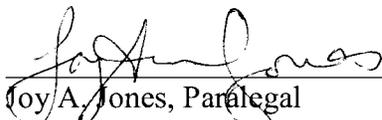
  
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(702)791-0308

Attorneys for Opposer,  
Cannery Casino Resorts, LLC

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing **MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION** was served via First Class Mail, postage prepaid, on this 21<sup>st</sup> day of December, 2011, upon:

Mr. Omri S. Shellef  
135 Station Rd  
Great Neck, NY 11023-1721  
Email: [tkomri@soulpushernyc.com](mailto:tkomri@soulpushernyc.com)

  
\_\_\_\_\_  
Joy A. Jones, Paralegal  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
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**EXHIBIT A**

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

Cannery Casino Resorts, LLC,

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Mark:

EAST SIDE SOCIAL CLUB,

Serial No. 77/767677

Opposition No.: 91194772

**DECLARATION OF BRYCE K. EARL, ESQ. IN SUPPORT OF OPPOSER'S  
MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION**

I, BRYCE K. EARL, ESQ., hereby declare the following:

1. I am an attorney licensed to practice law in the State of Nevada and am one of the attorneys representing Opposer Cannery Casino Resorts, LLC ("CCR") in this proceeding. I make this declaration based upon my personal knowledge and observations, and would be competent to testify to the matters set forth herein if called to testify.

2. I submit this Declaration in Support of Opposer's Motion For Leave to Amend the Notice of Opposition (the "Motion").

3. CCR filed its Notice of Opposition to Applicant Omri S. Shellef's ("Applicant") application on or about May 5, 2010.

4. On or about June 16, 2010, Applicant filed his Answer with the Trademark Trial and Appeal Board (the "Board"). Applicant failed, however, to serve his Answer on CCR.

5. Given Applicant's pro se status, I made several efforts to contact Applicant regarding Applicant's deficient service of process.

6. Applicant finally served his Answer on CCR one month later, on or about July 13, 2010.

7. On or about July 13, 2010, the Discovery Conference was held between me and Applicant via telephone. During the Discovery Conference, we discussed, among other things, the August deadline for providing the Initial Disclosures and possible settlement of the matter. During our telephone call, Applicant expressed an interest in negotiating a settlement. Accordingly, the parties entered into good faith settlement negotiations.

8. Four days later, on or about July 17, 2010, I forwarded to Applicant via electronic mail a draft of an agreement for Applicant's review and consideration to further settlement negotiations.

9. In the interim, on or about July 16, 2010, Applicant filed through the Board's Electronic System for Trademark Trials and Appeals ("ESTTA") a letter to CCR making various requests for information and documents (the "Applicant Letter").

10. Again, given Applicant's pro se status and as a courtesy to Applicant, on or about July 17, 2010, I sent an email to Applicant enumerating the four types of information Applicant is required to disclose in Applicant's Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1). Furthermore, I informed Applicant that the initial disclosures need only be disclosed to me and not the Board.

11. Initial Disclosures were due August 13, 2010. On or about August 12, 2010, CCR served its Initial Disclosures on Applicant.

12. On or about October 12, 2010, as a continuing courtesy to Applicant and in light of the on-going settlement negotiations and pending agreement, I sent a letter to Applicant via electronic mail and U.S. mail requesting Applicant's Initial Disclosures.

13. On or about October 15, 2010, I left a message for Applicant requesting his Initial Disclosures.

14. Applicant finally forwarded what he designated as his Initial Disclosures to CCR on or about October 15, 2010. Applicant's service of his Initial Disclosures was improper, however, as a continuing courtesy to Applicant, I did not object to Applicant's improper service or his untimely disclosure.

15. I thereafter attempted to contact Applicant to discuss the status of this matter, but received no response from Applicant.

16. Noting that the holiday season was upon us and that the discovery period ends in January, I left a message for and sent an email to Applicant on or about December 21, 2010, proposing the parties consent to extend the discovery period.

17. After receiving no response from Applicant, on or about December 23, 2010, I sent a letter to Applicant via electronic mail and U.S. mail giving him notice of CCR's intent to take his deposition and requesting Applicant provide a date at his convenience.

18. On or about December 27, 2010, Applicant sent me an email rejecting CCR's request for consent to extend the discovery period.

19. Furthermore, on or about December 27, 2010, Applicant filed through ESTTA Applicant's Request to Expedite Trademark Registration ("Request to Expedite"). Up until Applicant filed his Request to Expedite, CCR believed that Applicant was still considering the draft agreement and was continuing to negotiate in good faith.

20. In response to Applicant's Request to Expedite, CCR filed its Motion for Extension of Case Management Deadlines ("Motion to Extend") on or about December 30, 2010.

21. Wishing to preserve its discovery rights in light of Applicant's refusal to consent to an extension and the filing of the Request to Expedite, on or about December 29, 2010, CCR

served its discovery requests on Applicant, including Opposer's First Set of Interrogatories, Opposer's First Set of Requests for Admission, and Opposer's First Set of Requests for Production of Documents and Things.

22. CCR received Applicant's responses to Opposer's First Set of Interrogatories, and Opposer's First Set of Requests for Admission via Federal Express on or about August 8, 2011, the date reset by the Board's Order granting the parties' Joint Motion for Continued Suspension of Opposition ("Second Suspension Order").

23. On January 7, 2011, Applicant also propounded written discovery on CCR (which was in essence the same written discovery propounded by CCR on Applicant with the names of the parties reversed). CCR timely provided Applicant with its responses on August 10, 2011, the date reset by the Board's Second Suspension Order.

24. CCR's counsel deposed Applicant on January 10, 2011 in New York City, New York.

25. It was during Applicant's deposition that CCR's counsel had an opportunity to explore Applicant's use of the Class 43 Mark and Applicant's use in commerce of the Shellef Marks.

26. Shortly after Applicant's deposition, I resumed good faith negotiations with Applicant. Applicant and I agreed to stipulate to a suspension of the proceedings pending settlement negotiations.

27. On or about February 9, 2011, the Board granted CCR's Motion to Extend and the parties' Joint Motion for Suspension of Opposition.

28. CCR refrained from seeking leave to amend its Notice of Opposition based upon Applicant's deposition testimony because CCR did not want to jeopardize its negotiations with

Applicant. Given CCR's past experiences with Applicant and his purposeful ignorance of the rules and procedures governing this proceeding, it was reasonable for CCR to conclude that Applicant would view a motion to amend as an act of bad faith and not as a procedure by which CCR was simply preserving its rights.

29. As the end of the initial suspension period drew near, the parties realized that more time was needed to finalize a settlement. Therefore, on or about May 11, 2011, the parties filed their Joint Motion for Continued Suspension of Opposition.

30. On or about June 8, 2011, the Board issued the Second Suspension Order and reset the proceeding to resume on August 8, 2011 with Discovery to close on November 8, 2011.

31. During the second suspension period, CCR continued to work toward settlement.

32. CCR believed that there was only one issue remaining.

33. In an effort to finalize the settlement agreement, I offered to resolve the one remaining issue by completely deleting a certain provision from the agreement.

34. I was surprised when Applicant responded by unexpectedly raising multiple issues, some of which I understood to be resolved and others which were wholly new.

35. In light of Applicant's negotiating tactics and inconsistent positions, Applicant has forced CCR to take a more adversarial posture in this proceeding.

36. At all times during this proceeding, CCR has acted in good faith in its conduct toward Applicant, and has acted responsibly toward its own obligations.

37. Attached as Exhibit A-1 are true and accurate copies of cited excerpts from the transcript of the January 10, 2011 deposition of Applicant, Omri Shellef ("Applicant"), which are submitted in support of the Motion.

**[Signature on the following page.]**

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on: Dec 21, 2011

  
\_\_\_\_\_  
Bryce K. Earl, Esq.

**EXHIBIT A-1**

**EXHIBIT A-1**

**Original Transcript**

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

CANNERY CASINO RESORTS, LLC,

Plaintiff(s),

vs.

Opposition No. 91194772

OMRI S. SHELLEF,

Defendant(s).

-----

**DEPOSITION OF**

**OMRI S. SHELLEF**

January 10, 2011

9:00 a.m.

200 Park Avenue  
New York, New York

Joan Warnock



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

-----X

CANNERY CASINO RESORTS,  
LLC,

Opposer,

Marks:

EAST SIDE SOCIAL CLUB

vs.

Opposition No.

91194772

OMRI S. SHELLEF,

Applicant.

-----X

DEPOSITION OF OMRI S. SHELLEF

New York, New York

Monday, January 10, 2011

Reported by:

JOAN WARNOCK

JOB NO. 316687



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January 10, 2011

9:00 a.m.

Deposition of OMRI S. SHELLEF, held  
at the offices of Gibson, Dunn &  
Crutcher, 200 Park Avenue, New York,  
New York, pursuant to Notice, before  
Joan Warnock, a Notary Public of the  
State of New York.



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A P P E A R A N C E S:

SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON

Attorneys for Opposer

400 South Fourth Street

Third Floor

Las Vegas, Nevada 89101

BY: JAMES D. BOYLE, ESQ.

OMRI S. SHELLEF, Pro Se

135 Station Road

Great Neck, New York 11023

ALSO PRESENT:

DOV SHELLEF



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O. Shellef

O M R I S. S H E L L E F, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

COURT REPORTER: Please state your name and address for the record.

THE WITNESS: Omri Shmuel Shellef, 135 Station Road, Great Neck, New York 11023.

EXAMINATION BY

MR. BOYLE:

Q. Mr. Shellef, I notice that you're here with -- is this your father, Dov Shellef?

A. Yes, it is.

Q. Is your father an attorney?

A. No.

Q. Are you represented by an attorney?

A. No.

Q. Have you had your deposition taken before?

A. Never.

Q. Are you familiar with the process at all?



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1 O. Shellef

2 A. I'm not.

3 Q. I'll give you a quick rundown. I'm  
4 going to ask some questions. We're going to  
5 go through some documents as well, which I'll  
6 give you copies of. She's going to make a  
7 copy of the transcript for us, so all of your  
8 answers need to be oral so that she can  
9 transcribe them. If you have any questions  
10 about the question that I ask, just stop me.  
11 If I need to clarify it or you don't  
12 understand what I'm asking, just let me know.

13 A. Okay.

14 Q. At the end of the deposition she'll  
15 make a transcript. You'll have an  
16 opportunity to get a copy of that and to  
17 review it. If you choose to make some  
18 changes to that transcript after you've read  
19 it, you can do that. Just understand that  
20 you're subject to being examined again as to  
21 why you've changed a position --

22 A. Yeah.

23 Q. -- if you do that. Do you have any  
24 physical ailments or illnesses which might  
25 affect your testimony today?



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1 O. Shellef

2 study that you've been pursuing?

3 A. I study political science,  
4 philosophy.

5 Q. Are you currently employed?

6 A. My employment is what I do. It's  
7 what -- it's everything that I'm applying for  
8 in terms of the trademarks. I'm  
9 self-employed.

10 Q. So self-employed through the --

11 A. Yes.

12 Q. -- through this entity called East  
13 Side Social Club?

14 A. The entity is not called East Side  
15 Social Club.

16 Q. What is the entity called?

17 A. That is a mark that I use.

18 Q. Okay. The entity --

19 A. The entity is myself. The marks --  
20 one of the marks I use is East Side Social  
21 Club.

22 Q. Do you have any corporate entity  
23 registered at all?

24 A. No.

25 Q. Do you have any other employment at



1 O. Shellef

2 all?

3 A. No.

4 Q. Do you have any other individuals  
5 that are involved with you with the business  
6 that you operate?

7 A. No.

8 Q. It's just you?

9 A. Yes.

10 Q. Would you consider your business to  
11 be a sole proprietorship?

12 A. I'm not sure what the definition of  
13 that is, so I can't say.

14 Q. Do you hold any business licenses?

15 A. No, I don't hold any business  
16 licenses.

17 Q. Do you have a tax ID number?

18 A. No, I don't.

19 Q. Have you filed any fictitious  
20 business registrations with the State of  
21 New York or any of the boroughs?

22 A. Meaning what?

23 Q. Any kind of a permit or what's  
24 called a fictitious business registration?

25 A. No. A permit, no.



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O. Shellef

Q. Have you ever filed any documents with any government agency as Omri Shellef, d/b/a East Side Social Club?

A. I have not.

Q. Do you have any investors in the business entity known as East Side Social Club?

A. No.

Q. Do you have any employees?

A. No.

Q. Did you discuss your deposition with anyone before you came here today?

A. With anyone at all?

Q. Yes.

A. Or with any counsel?

Q. With anyone at all.

A. Yes. I discussed it with my father.

Q. Did you discuss it with any attorneys at all?

A. No.

Q. Did you review any documents before you came to your deposition today?

A. I reviewed the documents that were



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2 brought in today, right? Which one is the  
3 one that applies? The one that says today or  
4 the one that says 30 days from now?

5 Q. To the extent you have some  
6 documents today that you've brought with you,  
7 we'll bring them in today, and then you don't  
8 need to produce them again in 30 days out,  
9 because we'll already have them. If there's  
10 anything that you didn't bring today that  
11 would be requested, then yes, we'll want to  
12 have those produced with the request we sent  
13 you last week.

14 A. Okay.

15 Q. So are these the documents that  
16 you're handing me now are the ones that you  
17 brought responsive to this --

18 A. These are the documents that are  
19 responsive to this. Anything regarding money  
20 I find to be irrelevant. I object to it. I  
21 have not brought anything on that.

22 Q. So you didn't bring any financial  
23 records with you today?

24 A. No financial records. Yeah.

25 Q. And what I'm looking at then --



1 O. Shellef  
2 the mark East Side Social Club for my  
3 business --

4 Q. Let me ask you this.

5 A. -- that I can answer. When I  
6 started the business East Side Social Club, I  
7 can't -- I'm under oath. I would be lying to  
8 say that East Side Social Club is a  
9 corporation or it's -- or it has a tax ID  
10 number or something like that, which is  
11 inferred by calling it a business.

12 Q. Let me rephrase the question, then.  
13 Let me ask you this. Do you recall the date  
14 that you first conducted an event using East  
15 Side Social Club?

16 A. I first used the name East Side  
17 Social Club, the phrase in the summer of  
18 2007.

19 Q. Do you recall where that event  
20 occurred?

21 A. The first event occurred at 86 East  
22 10th Street in Manhattan, New York.

23 Q. Do you recall what type of venue  
24 that was?

25 A. That is a bar.



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1 O. Shellef

2 bar or some other business you rent out, some  
3 other building or venue or place that you  
4 rent out; right?

5 A. Well, are you indirectly asking if  
6 I own a bar?

7 Q. Correct.

8 A. So if you're asking if I own a bar,  
9 no, I don't own a bar.

10 Q. Do you own a hotel?

11 A. No, I don't own a hotel.

12 Q. So is it fair to say all of your  
13 events are at another person's bar, somebody  
14 else owns it?

15 A. Someone else's name is on the  
16 lease. Someone else's name is on the liquor  
17 license. Yeah.

18 Q. And you enter into some arrangement  
19 with them, you do your event, they get some  
20 portion of the take, if you will?

21 A. Yeah. We'll have different -- it's  
22 done differently everywhere.

23 Q. Are these events, I mean are they  
24 sit-down dinner type things?

25 A. I've had that, yeah.



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2 Q. And for the preparation of the food  
3 and the alcohol, that all comes from somebody  
4 else?

5 A. The actual preparation, yeah. I  
6 don't sit and -- I don't stand in the kitchen  
7 and cook, no, but I -- a lot of times I say  
8 what needs to be done, what kind of food,  
9 what kind of, you know, how the food should  
10 be presented, how, you know, how the place  
11 should be set up.

12 Q. You do all the organization?

13 A. I will be -- yes. I will do that  
14 with the owner of this third-party venue.  
15 Yeah. I mean if I'm doing something, it has  
16 to be my vision as I see it. So if the place  
17 needs to be rearranged for the night, I'll  
18 make -- I'll do that if I need to.

19 Q. Right. But is it fair to say you  
20 organize the whole from point A to point Z?

21 A. What needs to be organized, yes.

22 Q. And then you run it from A to Z  
23 basically at a global level?

24 A. What I -- yeah, what I need to do  
25 from my A to my Z, yes. I mean there's, you



1 O. Shellef  
2 know. I don't order alcohol. I don't do  
3 that. That's -- I rent out and use  
4 third-party venues so that I precisely don't  
5 have to do that, because at the end of the  
6 day I can't even -- I can't save that alcohol  
7 because I can't take it out of the place  
8 because there's an open container law.

9 Q. Sure.

10 A. So why would I put money and rent  
11 out a place and buy all this alcohol and  
12 create, you know, and do that for a night.  
13 You know, I'm more likely to lose money.

14 Q. And that's what I understand is you  
15 enter into arrangements with these other --  
16 here's my idea, I'm going to host, I need a  
17 place to go.

18 A. Yeah.

19 Q. I find a place to go, I put it on,  
20 and then you do all the marketing, and then  
21 you do the event?

22 A. Well, yeah. It's more -- I mean  
23 it's not just putting on an event, yeah. But  
24 yeah.

25 Q. Is there more to it?



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2 other locations?

3 A. Yeah. Yeah, there are.

4 Q. Do you recall where those were  
5 occurring?

6 A. Fridays at Beauty Bar.

7 Q. Beauty Bar?

8 A. Yeah.

9 Q. Do you know the address of that, by  
10 any chance?

11 A. Off the top, no. Not the exact  
12 address.

13 Q. Were they different events than the  
14 ones at Black and White, different theme,  
15 different --

16 A. Yeah. I mean it's -- yeah.  
17 They're completely different. It's different  
18 people. It's different things. Yes.

19 Q. Let's just sort of focus in on the  
20 summer of 2007 now, fall of 2007. Do you  
21 recall how many events you were doing on a  
22 weekly basis?

23 A. It could range -- it could range  
24 from two or three to six. No, I can't. It's  
25 not like -- they weren't on a weekly -- not



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2 Q. Okay. I understand you don't want  
3 to share it. Do you have it?

4 A. Anything that -- I'm not discussing  
5 anything that has to do with finances or  
6 anything like that, because I don't see the  
7 relevance, and I object to it.

8 Q. Okay. I understand. All I'm  
9 really trying to do is --

10 A. I'm just saying I'm not going to  
11 discuss it at all.

12 Q. Is to try to get into you've got  
13 this 2007 claim of date of first use, and I'm  
14 just trying to figure out what exists --

15 A. Yeah, I mean --

16 Q. -- to substantiate --

17 A. I have other web sites that state  
18 that I was around in 2007 that have their --  
19 they were web sites that were around then,  
20 and they have me on since then. Nothing was  
21 added afterwards.

22 Q. Can you provide copies of that?

23 A. You have screen capture web site.  
24 You can go on the web site.

25 Q. I mean all of them. If you can



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2 Q. And then there is Page 7, Page 8,  
3 Page 9, Page 10, Page 11, those are all  
4 specimens; correct?

5 A. Yes.

6 Q. Do you recall providing the PTO  
7 with any other specimens other than the ones  
8 attached to the mark application itself?

9 A. I don't remember. I don't remember  
10 any -- I don't any other at that time.

11 Q. But you don't recall Mr. Salemi or  
12 ever having any telephone conferences with  
13 Mr. Salemi about this last paragraph?

14 A. Yeah. I would have -- I would have  
15 -- if there were any telephone conversations,  
16 I would have submitted more specimen after  
17 the fact, I guess. But there was never -- he  
18 never brought this up. He never called about  
19 it. He never left any messages or emails or  
20 letters.

21 Q. Okay.

22 A. I mean eventually they -- he okayed  
23 this --

24 Q. Right.

25 A. -- application.



1 O. Shellef

2 Q. Okay. In referring now to your  
3 mark, East Side Social Club, what type of  
4 hotel services do you offer?

5 A. The hotel services are similar --  
6 similar to bar and restaurant services in  
7 that I will rent out a place for the night.  
8 They have halls and things like that. Or for  
9 the day do certain events. I may do -- I may  
10 broker a deal where I will rent out the space  
11 to someone else. It's not -- it's not hotel  
12 services in terms of rooms, even though I've  
13 brokered rooms for people in the past. It's  
14 the restaurant and bar services within the  
15 hotel that belong to a hotel.

16 Q. You're primarily, then --

17 A. Or the halls within the hotel, the  
18 banquet halls or --

19 Q. Banquet rooms, things like that?

20 A. Yeah, conference rooms, things like  
21 that. And those events, I mean because of  
22 the spaces vary in nature, some of them have  
23 nothing to do with alcohol.

24 Q. I gotcha. Do you know, and let's  
25 sort of take the period August 2007 to the



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2 present, how many different hotels you have  
3 worked with?  
4 A. No. Not off the top of my head.  
5 Q. But you don't own any of those  
6 facilities; correct?  
7 A. No, but neither do the people that  
8 I work with own them.  
9 Q. Right. They're lessees?  
10 A. I don't know what their deal is.  
11 Q. You don't hold any hotel licenses,  
12 though?  
13 A. No, I don't hold any hotel  
14 licenses.  
15 Q. Do you hire any employees from the  
16 hotel to help with any of the events that you  
17 hold there?  
18 A. I don't need to hire them. They  
19 come -- I don't -- they come with the room.  
20 They come with -- I don't need -- what do you  
21 mean?  
22 Q. So you get a package deal that says  
23 I'm going to use this ballroom, and all the  
24 hotel staff comes with that?  
25 A. Generally when you do something,



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2 don't you get -- I'm asking you if you were  
3 to throw a Sweet 16 for your daughter, if you  
4 have one, at a place, wouldn't you expect the  
5 staff to come along with it?

6 Q. I don't know. The short answer  
7 would be yes, but I don't know what you do.  
8 That's what I'm trying to understand.

9 A. Yeah. I mean I don't hire -- I  
10 don't hire -- I don't hire staff in that  
11 regard. I hire performers. I hire -- I hire  
12 performers. I hire DJs. I hire door people.  
13 I hire -- I don't hire servers or bartenders  
14 or anything like that.

15 Q. The hotel would provide something  
16 like that?

17 A. As would a bar, as would a  
18 restaurant, as would anything else. Any  
19 staff beyond what they have, that I will  
20 hire.

21 Q. Security would be theirs or yours?

22 A. It depends.

23 Q. It varies from event to event?

24 A. It varies from place to place.

25 Q. So when you advertise or promote or



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2 dot com, dot org, dot net.

3 Q. So if you were going to host an  
4 event at a hotel, whether it's in association  
5 with but there's going to be an event at a  
6 hotel, how would you promote and market that  
7 typically?

8 A. I'm not going to share that.  
9 That's I feel like -- my marketing strategies  
10 are my own and I'd rather not share them with  
11 someone else.

12 Q. Fair enough. I can understand that  
13 you would claim some proprietary interest in  
14 those. Without getting into sort of the  
15 specifics of the strategy, I'm just trying to  
16 get an idea of what -- would it come out  
17 primarily in electronic form, then? I mean  
18 it's not like you go down and put a poster on  
19 a wall; right?

20 A. It could even come out as a phone  
21 call. I could put posters on the wall. I've  
22 done all sorts of things. The way I choose  
23 to market or advertise depends on what I'm  
24 doing. It depends on the size of the  
25 project, as it does -- as every business --



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2 Q. When you're dealing with just those  
3 events, not the ones in hotels but just a  
4 stand-alone bar or stand-alone restaurant,  
5 it's a similar situation, though, you reach  
6 an agreement with that particular venue to  
7 host your event there or have an event there?  
8 You're using their --

9 A. Well, you have to reach an  
10 agreement to --

11 Q. You're using their facility?

12 A. -- to use the space, certainly.  
13 You have to reach an agreement to use the  
14 space. But the question is the type of  
15 agreement. The type of agreement changes  
16 from space to space, from day to day, from  
17 whatever I'm doing it changes. And that's  
18 where -- that's where there's differences.

19 Q. You don't have any ownership  
20 interest in any of those facilities, though;  
21 is that correct?

22 A. There are facilities that have  
23 asked me, but I don't, no.

24 Q. Do you have any restaurant  
25 licenses? No?



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1 O. Shellef

2 A. No, I don't have any restaurant  
3 licenses.

4 Q. Do you have a liquor license?

5 A. No. It's not...

6 Q. With regard to catering services --

7 A. Yeah.

8 Q. -- do you have a food preparation  
9 license at all?

10 A. I mean we're starting -- we're  
11 starting to get back, you know, we're  
12 starting to go backwards now. In regards to  
13 catering services, I believe that that was --  
14 that mostly, and I've spoken with Mr. Earl  
15 about it, was in the box that you click when  
16 you choose 43, you know, if you're doing it  
17 on your own and you can't -- and you don't --  
18 there's no option, I guess, to specify what  
19 you're doing.

20 Q. Sure. Check the box.

21 A. Catering is a part of 43, from what  
22 I remember. So I mean that's -- that's in  
23 there for that reason, I think. I mean I've  
24 dealt with many catering events, but no, I  
25 don't have a food preparation license, and I



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2 don't prepare food.

3 Q. So if you were to have catering at  
4 one of your events, would you bring in  
5 another party to provide that aspect of the  
6 overall event?

7 A. It depends. It depends on the  
8 event. You know, if I'm doing a party at a  
9 loft that's an empty space and I do provide  
10 everything into this place and I buy some  
11 bags of Doritos and I buy some falafels and  
12 stuff like that, am I providing catering?  
13 I'm providing food for people. But, you  
14 know, it's not -- I'm not doing anything in  
15 that sense. But I've got events with food,  
16 but they're not from an outside caterer, no.  
17 The ones that I do regularly are not with an  
18 outside caterer, I guess.

19 Q. Most of the events, then, would be  
20 dealing with a third-party caterer if you  
21 were going to have food and alcohol or  
22 beverages at that event, that's been brought  
23 by somebody?

24 A. I'm not -- isn't that -- isn't this  
25 what you just asked?



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O. Shellef

Q. I'm just trying to understand. And obviously, I've never been to one of --

A. I'm not -- well, I mean your question was I'm not a caterer. I don't have a food preparation license. I mean so it's -- let's say that.

Q. Okay.

(Opposer's Exhibit 9, Response to Notice of Opposition, marked for identification, as of this date.)

Q. You've been handed what has been marked as Exhibit 9.

A. Yes.

Q. Do you recognize this document?

A. It says that it's the Response to Notice of Opposition.

Q. And did you prepare this document?

A. Yes.

Q. Did you have any assistance with the preparation of this document?

A. Just bouncing ideas off of my father.

Q. The very first sentence there reads, "Omri S. Shellef doing business as



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O. Shellef

Q. NewYorkPost.com?

A. Yeah. And the books that I've been featured in, they are -- I can give you the names. I don't have like the --

Q. Do you have any titles?

A. I don't have the exact titles on me, but if you email me, I'll send you the names. The books feature me, and that's why it says Mr. Shellef and the mark. It's a combination. It's Mr. Shellef and East Side Social Club. So it's -- that sentence is also talking about me, not just me with the mark or...

Q. Okay. Fair enough. And then at the top of the following page where it talks about Mr. Shellef or the mark East Side Social Club being in the sites of hundreds of thousands of people around the world since August of 2007.

A. Yeah.

Q. Do you host any events or conduct any events outside the State of New York?

A. I don't see the relevance of that, so I'm not going to answer that.



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1 O. Shellef

2 Q. I'm just trying to get an idea sort  
3 of --

4 A. I understand, but I don't --

5 Q. -- what the geographic --

6 A. I understand, but I don't see how  
7 that's --

8 Q. I'm just trying to get an idea of  
9 what the geographic scope is.

10 A. I don't think that the geographic  
11 scope is relevant in this matter, so I'm  
12 not --

13 Q. Well, geographic scope of mark use  
14 is always relevant.

15 A. Yeah. Okay.

16 Q. So are you not going to answer any  
17 questions about the geographic -- where you  
18 conduct events and where you --

19 A. Yeah. I'm not going to answer any  
20 questions in regards to that, no.

21 Q. With regard to any of the documents  
22 you provided to me today, are any of these  
23 promotion or marking materials for events out  
24 of New York?

25 A. The ones I provided for you?



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O. Shellef

A. Possibly.

Q. What about 2008, any idea?

A. No.

Q. More than a hundred?

A. Possibly.

Q. For the promotion and marketing or advertising of your events, do you contact organizations or the people that publish a magazine, for example, or the people that publish, you know, some sort of a paper document, not an internet document, but a paper document? I mean how does that stuff end up in a publication?

A. How does what? The press on me?

Q. Yeah. I mean --

A. Someone chooses to write an article about me.

Q. No, no, no. Let me take this document, just the very first one you gave me, which may be a bad example. Let me take the second one. This is a document that you gave me this morning. It's got what appears to be two different -- is it the same ad?

A. No. It's two --



1 O. Shellef

2 Q. It's two different events?

3 A. Two different events. Each one of  
4 those -- yeah, it's two different events. A  
5 lot of the papers have multiple --

6 Q. Sure. And I see that. There's two  
7 or three sometimes on each page.

8 A. Yeah.

9 Q. But where would this actually be  
10 published at or printed?

11 A. That goes back to before, that I'm  
12 not -- I'm not discussing my marketing  
13 strategies.

14 Q. Right. And I'm not trying to  
15 figure how you do it. I mean trying to  
16 figure out about where -- I mean is it in --

17 A. That's a part of the marketing  
18 strategy. In marketing you focus on a group  
19 that you want, you know. I'm sure you took  
20 business courses, marketing courses when you  
21 were in college. And so you don't want to  
22 just throw everything out there generally for  
23 everyone if that's not the need. So I'm not  
24 going to discuss where I do certain things.

25 Q. Well, one of the elements that is



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O. Shellef

going to be at play in this case is what's called channels of trade.

A. Okay.

Q. Cannery is entitled to know what your channels of trade are for your mark, both in how you present it --

A. Okay.

Q. -- and where you present it. And, frankly, when you've presented it is obviously an issue. And I'm trying to understand what your channels of trade are, and I'm trying to figure out the most focused way to ask you that question so you can answer it. I'm not interested in knowing how you -- I mean when I leave New York today, you probably won't see me in the city for five years.

A. Yeah.

Q. Okay. I don't know who your competitors are, and I don't care.

A. Yeah. I know.

Q. I'm not going to sit there and stand on the street corner and tell everybody how you --



1 O. Shellef  
2 that they can go and they can get this and  
3 they can get that there. So if it's an event  
4 or if it's day or if it's something that I do  
5 that is just as firm and as stable as any  
6 other establishment, I don't have to use -- I  
7 don't have to use, you know, all my money or  
8 anything to advertise it, because people know  
9 -- people know over time, you know, they know  
10 it's there. I don't need to -- I've already  
11 got a line waiting out the door. How many  
12 more people am I going to be able to fit in?  
13 So why -- you know, I've got a brand and a  
14 mark, I've got a mark that has made its way  
15 and that people know about, and so the rest  
16 of it, I do actively market it after that  
17 point, but I don't need to spend, you know, a  
18 thousand dollars to get a section in a  
19 newspaper because it's not -- it's not, you  
20 know, it's just not worth it really.

21 Q. Have you ever done an event in  
22 New Jersey?

23 A. Again, it's not -- I'm not  
24 answering anything. That's geographic scope.  
25 We've established that already.



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O. Shellef

try to associate with for everything, no.

Q. Any particular age group?

A. No. That would go in with demographic.

Q. Fair enough. Any particular economic group?

A. That's demographic as well, so no.

Q. One of the factors that will be analyzed by the TTAB in resolving Cannery's opposition is the extent of the financial use of your mark. I know before you told me you didn't want to talk about any financial issues and you didn't want to provide me any financial documents.

A. That's correct.

Q. Do you have any documents in your possession with regard to the use of the mark in 2007?

A. You have documents in your possession with regard to use of the mark in 2007.

Q. No. I'm talking about financial documents. Any kind of receipts?

A. Receipts.



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O. Shellef

Q. Bank records or contracts?

A. I could. I'm not sure.

Q. What about 2008?

A. I could. I'm not sure.

Q. Have you looked?

A. For the purposes of this deposition I have not, because I'm not going to discuss anything financial.

Q. Do you have any opinion as to what the public perceives to be East Side Social Club?

A. You have there some web sites that each one has -- shows what they perceive East Side Social Club to be. Web sites are in the back the way I handed it to you, so.

Q. This particular document here --

A. Which one?

Q. -- that appears to be --

A. Oh, that's just a My Space to show you the --

Q. This is a My Space --

A. Yeah. That's just for the year with activation on it.

Q. Do you remember what year that was?



1 O. Shellef

2 A. I skimmed through it.

3 Q. Would entering into a consensual  
4 use agreement with Cannery Casino Resorts,  
5 LLC, be something you would be interested in  
6 doing?

7 A. In a recent correspondence with  
8 Mr. Earl, I stated that I -- my position  
9 hasn't changed about a settlement agreement.  
10 I'm still -- I would still be open, I'm still  
11 open to a settlement agreement, which was  
12 misrepresented in your motion to extend this  
13 time frame. You said that -- either you or  
14 Mr. Earl or whoever prepared it stated that I  
15 said that I had blindsided you with my -- and  
16 blindsided was a term they used there, that I  
17 blindsided you with basically flip-flopping  
18 on that position, which I had stated just  
19 within the last week and a half, two weeks of  
20 correspondence that I have not changed my  
21 position and I'm still open to an agreement.

22 After having skimmed through this,  
23 I saw that nothing that we had talked about  
24 over the phone was put in here, because I  
25 told him what my concerns were, and he didn't



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O. Shellef

A. The only one. I don't have any employees that I regularly use.

Q. Okay.

A. Or I mean I don't have any employees. I don't have any other people that I regularly use, you know.

MR. BOYLE: Okay. I think I'm done.

(Time noted: 12:00 p.m.)

---

OMRI S. SHELLEF

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 2010.



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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF WESTCHESTER )

I, JOAN WARNOCK, a Notary Public within and for the State of New York, do hereby certify:

That OMRI S. SHELLEF, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of January, 2010.

*Joan Warnock*

JOAN WARNOCK



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DEPOSITION ERRATA SHEET

Our Assignment No.: 316687  
Case Caption: Cannery Casino Resorts v.  
Omri S. Shellef

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury  
that I have read the entire transcript of my  
Deposition taken in the captioned matter or  
the same has been read to me, and the same is  
true and accurate, save and except for  
changes and/or corrections, if any, as  
indicated by me on the DEPOSITION ERRATA  
SHEET hereof, with the understanding that I  
offer these changes as if still under oath.

\_\_\_\_\_  
Omri S. Shellef

Subscribed and sworn to on the \_\_\_\_ day of  
\_\_\_\_\_, 20 \_\_\_\_ before me.

\_\_\_\_\_  
Notary Public,  
in and for the State of



**EXHIBIT B**

**EXHIBIT B**

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

Cannery Casino Resorts, LLC,

Opposer,

vs.

Omri S. Shellef,

Applicant.

Marks:

EAST SIDE SOCIAL CLUB, Serial No.  
77/767677

Opposition No.: 91194772

**AMENDED NOTICE OF OPPOSITION**

Cannery Casino Resorts, LLC (“CCR”), a Nevada limited liability company, located and doing business at 9107 West Russell Road, Las Vegas, Nevada, believes that it will be damaged by the registration of the mark EAST SIDE SOCIAL CLUB by Mr. Omri S. Shellef (“Applicant”), and hereby submits this Amended Notice of Opposition (“Amended Opposition”) to Applicant’s application, which was issued Serial No. 77/767677 (the “Shellef Application”).

As grounds for its Amended Opposition, CCR hereby alleges that:

1. CCR offers and markets a wide variety of goods and services, including, without limitation, entertainment services, hotel services, restaurant services, bar services and catering services, in association with the mark EASTSIDE CANNERY (the “EASTSIDE Marks”).
2. CCR is the owner of various federally registered trademarks and service marks incorporating the text “EASTSIDE” including the following (the “CCR Registrations”):

<b>Mark</b>	<b>Registration</b>	<b>Goods/Services</b>
EASTSIDE CANNERY	3,648,405	Class 21: Beverage glassware; coffee cups; mugs.
EASTSIDE CANNERY	3,648,406	Class 25: Men's and women's wearing apparel, namely, shirts, T-shirts, polo shirts, jackets, hats, caps, and sweatshirts.
EASTSIDE CANNERY	3,621,636	Class 41: Casino and gaming services; providing gaming facilities; conducting and providing facilities for special events featuring casino and gaming contests and tournaments; entertainment services in the nature of providing facilities to view television, cable television and pay-per-view television entertainment programs or episodes featuring sporting events, commentators and betting experts discussing sporting events; and nightclub services; provision of general and local news and information in the fields of sports, entertainment, gaming, art, leisure activities, and casino and sports games on and through a global computer network.
EASTSIDE CANNERY	3,621,637	Class 43: Hotel and resort services; restaurant services; bar services; cocktail lounge services; providing temporary lodging accommodations for others; food preparation services; providing information, news and commentary in the field of dining; providing travel lodging information services.
EASTSIDE CANNERY and Design	3,621,638	Class 41: Casino and gaming services; providing gaming facilities; conducting and providing facilities for special events featuring casino and gaming contests and tournaments; entertainment services in the nature of providing facilities to view television, cable television and pay-per-view television entertainment programs or episodes featuring sporting events, commentators and betting experts discussing sporting events; and nightclub services; provision of general and local news and information in the fields of sports, entertainment, gaming, art, leisure activities, and casino and sports games on and through a global computer network.
EASTSIDE CANNERY and Design	3,621,639	Class 43: Hotel and resort services; restaurant services; bar services; cocktail lounge services; providing temporary lodging accommodations for others; food preparation services; providing information, news and commentary in the field of dining; providing travel lodging information services.

3. In addition, CCR is the applicant of various federal mark applications incorporating the text "EASTSIDE".
4. The CCR Registrations are valid, subsisting and owned by CCR.
5. CCR's use of the EASTSIDE Marks is prior to the Shellef Application.
6. CCR has offered millions of dollars worth of goods and services for sale and sold millions of dollars worth of goods and services in connection with the EASTSIDE Marks.
7. CCR has spent significant sums advertising and promoting the EASTSIDE Marks throughout the United States.
8. By virtue of the ever-growing popularity of the goods and services offered by CCR in association with the EASTSIDE Marks, and Cannery's on-going investment in advertising, marketing and promotion of the EASTSIDE Marks, CCR has built and continues to build significant and valuable goodwill which is symbolized by CCR's EASTSIDE Marks.
9. Use by Applicant of the mark EAST SIDE SOCIAL CLUB for the services set forth in the Shellef Application is likely to result in confusion, mistake, or deception with CCR; or the goods and services advertised, marketed, promoted and sold by CCR in association with the EASTSIDE Marks; or in the belief that Applicant or the services offered by Applicant in association with the mark EAST SIDE SOCIAL CLUB are in some way legitimately connected with, or licensed or approved by, CCR.
10. Use by Applicant of the mark EAST SIDE SOCIAL CLUB is without CCR's consent or permission.

11. Applicant is not using and has never used the mark EAST SIDE SOCIAL CLUB in interstate commerce, and therefore Applicant is not entitled to a federal registration of the EAST SIDE SOCIAL CLUB mark.
12. Applicant's use of the mark EAST SIDE SOCIAL CLUB is purely intrastate in nature.
13. Applicant is not using and has never used the mark EAST SIDE SOCIAL CLUB in association with all of the services listed in Class 43 of the Shellef Application.
14. Applicant is therefore not entitled to federal registration of the mark EAST SIDE SOCIAL CLUB in Class 41 and/or Class 43.
15. CCR's Amended Opposition is based on evidence obtained by CCR through Applicant's deposition testimony, which evidence was not available to CCR at the time it filed its initial Notice of Opposition and was solely in the possession and knowledge of Applicant.
16. CCR has refrained from filing this Amended Opposition until now because, shortly after the taking of Applicant's deposition, Applicant reinitiated communication with CCR and the parties resumed settlement negotiations.

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17. Applicant has since indicated his unwillingness to continue negotiating a settlement agreement with CCR. Accordingly, CCR files this Amended Opposition.

**WHEREFORE**, registration by Applicant of the mark EAST SIDE SOCIAL CLUB in Classes 41 and 43 would be damaging to CCR, and the Shellef Application should therefore be denied in its entirety.

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON

Date: \_\_\_\_\_, 201\_

By: \_\_\_\_\_

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*Attorneys for Opposer,  
Cannery Casino Resorts, LLC*