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

Proceeding	91194772
Party	Defendant Omri S. Shellef
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Cannery Casino Resorts, LLC, Opposer,  Vs.  Omri Shellef, Applicant	Marks: East Side Social Club, Serial No. 77/767677  Opposition No.: 91194772
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**Applicant's Response to Opposer's Response to Applicant's Request to Reopen Time to Respond to Opposer's Motions**

**Background**

The following is a response by the Applicant of the mark "East Side Social Club," Mr. Shellef ("Applicant"), to the "Opposer's Response to Applicant's Request to Reopen Time to Respond to Opposer's Motions." The primary purpose of this response is to address and correct the ongoing misrepresentations and lies that the Opposer ("CCR," "Opposition," "Cannery Casino Resorts,") continues to present to this Court, and that the Opposer has once again alleged in its "Response." As set forth in detail below, notwithstanding that the Opposition has engaged in deliberately provocative, coercive, and disingenuous conduct throughout the pendency of this action, the Opposer has nevertheless failed to make out a single meritorious, substantive argument against the Applicant's request, as it remains intact.

## **Introduction**

From the outset of this dispute, counsel for the Opposer has continuously and repeatedly made critical material misrepresentations for the deliberate purpose of deceiving this Court. The Applicant has been beleaguered, bullied, and harassed by the Opposer through every step of the process, one that began when the Applicant sought to trademark—as permitted by the United States' government—a mark that has been in use since August 2007, nearly five years ago (notably, one year longer than the distinct trademark belonging to the Opposer, CCR). Perhaps naively, the Applicant initially trusted that the Opposer's bad faith conduct would be exposed as the process unfolded. Clearly, the Applicant was mistaken. No longer can the Applicant stand on the side as he has while the Opposition distorts and skews the reality of what has taken place both in these formal proceedings and in settlement negotiations to nearly fraudulent and conspiratorial proportions.

## **Responses to the Opposition's Factual Claims and Allegations**

1. The Applicant clearly has not denied that he was unable to timely respond to the Opposer's motions; hence he filed the Request. However, by characterizing them as "three separate motions," as the Opposer has done in its Response to the Request, the Opposer is disingenuously suggesting that the Applicant has failed to comply with three different deadlines on three separate occasions. This, of course, is not the case.

As an initial matter, the motions were made contemporaneously by the Opposer; they were sent collectively in one package, on the same date, and with the same timeline for a response. Moreover, in addition to being tied to one another physically, the motions are

indisputably interrelated in content. For example, by the Opposer's own admissions, one is a motion to add new grounds for the Opposer's position, while another is a summary judgment motion that is based on those new grounds.

Indeed, the arguments are so interrelated that the Applicant would likely present one concise response to the Opposer's "three separate motions" and, therefore, any suggestion that the Applicant has sought three distinct extensions is a clear mischaracterization, at best.

2. The Opposer asserts that the Applicant is acting contrary to the "Board's clear instructions" by filing his Request. The Opposition here is implying, if not stating outright, that the Applicant may not act on his behalf by initiating a request or otherwise during this proceeding over *his own application*. Certainly, this cannot be the case. Requests, as understood by the Applicant, are permitted from both parties and are not, as the Opposer suggests, reserved exclusively for the Opposer's needs.

3. The Opposer, yet again, revisits the events surrounding service of the Applicant's answer to the initial opposition, notwithstanding that any resulting issues have long since been resolved. As the Opposer has yet again miscast these events, the Applicant will briefly clarify for the Court's convenience.

CCR did not make "several efforts to contact the applicant" as it contends. Rather, CCR, through its attorney Mr. Earl, made one single "effort," and Mr. Earl was successful in reaching the Applicant on that very first occasion. Upon learning that the Applicant was unrepresented, Mr. Earl recognized that the Applicant had no experience with the trademark process, especially in regards to the legal procedure surrounding the opposition. Specifically, Mr. Earl

acknowledged that the Applicant was entirely unaware of his responsibility to send a copy of his response to the Opposition, as the instructional letter from the USPTO regarding a response made no mention of any obligation to serve the Opposer. Accordingly, Mr. Earl graciously consented to the late service at the time, and the Applicant immediately shipped his response by Federal Express overnight delivery in a good faith attempt to furnish the Opposer with a copy as expeditiously as possible.

Consent was given for this late service by counsel for the Opposition, and the Opposer has never suggested that it was harmed in any way by it, nor has it ever attempted to dismiss the case based on this event. As such, it is irrelevant at this stage in the process, and the Opposer's motive in raising it again in its Response to the Applicant's Request is a clear attempt to cast the Applicant in bad light and divert the Court's attention away from the resolution of the merits of this dispute.

4. The Opposition refers to settlement negotiations that supposedly occurred prior to December 2010 (Part II in Opposer's *Response*). The Opposition is mistaken, however, as there had been no negotiations yet at that time. Although seemingly innocuous, this factual inaccuracy is a further example of the great liberties the Opposer has taken in manipulating the procedural history of this dispute.

5. The Opposer then goes on to note that the alleged settlement negotiations ended when the Applicant filed his Request to Expedite Trademark Registration on December 27, 2010, after which CCR asserts that it was "forced to file a motion for extension of case management deadlines on December 30, 2010" (Also, Part II in Opposer's *Response*) With all due respect, no

one—certainly not the Applicant—has ever forced CCR to do anything. Rather, in accordance with the inaccurate and disingenuous picture that the Opposition has attempted to paint of the Applicant, this is a blatant attempt by the Opposer to shift the blame for *the Opposer's own request for deadline extensions* onto the Applicant.

The Opposer then states that the Applicant filed his Request *again* as a response to the Opposer's motion for deadline extensions, when, in reality, the Opposer is well aware of the gross inaccuracy of such a statement. Specifically, the actual timeline for these submissions and events is as follows:

A. The Applicant served his Request to Expedite Trademark Registration to the TTAB of the USPTO and the Opposer on December 27, 2010.

B. The Opposer received this Request and in response filed its own Motion for an extension of case management deadlines on December 30, 2010.

C. Presumably due to intake or processing errors at the USPTO, the TTAB mistakenly labeled the Applicant's Request as an indirect response to the Opposer's Motion, ignoring the service date and postmark on the Request. The Request was never "rehashed" as a response, as the Opposer now claims, and of course, given the respective service dates of the Request and Motion, the Request was clearly never intended to be a response to the Opposer's Motion, as the USPTO mistakenly declared.

E. In January 2011, the Opposer's counsel made the Applicant aware that it did want to pursue a settlement. Based on this representation, and in good faith, the Applicant did not respond to the Motion, instead, he eventually consented to the suspension that was approved by the USPTO.

As made clear above, the timeline of events and the designation of the documents is

completely misrepresented by the Opposer in its most recent response. The Request was never a response to the Opposer's motion, but rather was always a distinct submission entirely unrelated to any other documents.

6. In Part II of its Response the Opposer goes on to misrepresent the procedural events that occurred in late 2011, stating: "On December 21/22, 2011 -- following multiple efforts by CCR to reach a good faith settlement with Applicant (which he unexplainably torpedoed)." This statement is only partially true.

Specifically, the Opposer and Applicant did discuss the possibility of settlement during the suspension, this is true. What is also true is that the Applicant corresponded with Mr. Earl, and that the Applicant sent his changes to the draft of the settlement agreement to Mr. Earl, with a statement that the Applicant would sign the settlement agreement with these changes. At this time, in August of 2011, and not December of 2011 as the Opposer now states, the Opposer ceased all communication with Applicant, dismissing and ignoring every one of the Applicant's concerns regarding the settlement agreement. The Opposer, not the Applicant, chose to "torpedo" settlement negotiations and continue with the proceedings in the TTAB.

### **Response to the Opposer's "Legal Argument"**

The Applicant utilized the channels of the USPTO to the best of his ability and has shown a tremendous amount of effort in complying with the USPTO's requirements and respecting its authority.

The USPTO does offer assistance to attorneys and to those representing themselves, and attempts by the Applicant to avail himself of these services should be viewed as legitimate effort.

In the Contact section of the USPTO website, under the heading "General Trademark Information," it states: "Telephone 1-800-786-9199. NOTE: The Trademark Assistance Center can answer general questions about the trademark process or provide guidance on the type of information to include on a form." Therefore, it is entirely reasonable for an individual of any level of experience to trust that the person contacted at this number is familiar with the trademark procedure. This is a service offered by the USPTO to assist Applicants including to "answer general questions" and "provide guidance," and it cannot categorically be said that "reliance" on these express representations is "improper," as the Opposer stated in its Response.

The Opposer states that "to the extent that Applicant believed he needed (or deserved) additional time in which to file his responsive briefs he could have either requested that CCR stipulate to additional time or he could have submitted a motion to the Board explaining his good cause justification for needing additional time" (Opposer's *Response*, B.1.). As stated in Applicant's request, He attempted to reach the Opposer's counsel by telephone. His attempts and voice messages were ignored by the Opposer. And the Applicant's Request is indeed a motion to the Board as the Opposer states above.

The Opposer acknowledges that it served its motions during the holiday season and that it is a time when it is generally more difficult to reach people. The difficulty in reaching the Interlocutory Attorney was not a result of the holiday season, however it is interesting that the Opposer notes the timing, its own timing of when it sent such important documents. Regardless, this argument by the Opposer of a reason for the break down in communication is entirely based on assumptions and so must be disregarded.

### **Conclusion**

The Applicant has engaged in respectful and good faith behavior throughout the proceedings, both to the Opposer and to the USPTO. The Opposer, conversely, seeks to capitalize on the Applicant's unrepresented status and continues to present fabrications and deceptions to the TTAP and USPTO, that began with the very first letter of Opposition, as shown above; and even going so far as to admitting into evidence and unverified, unsigned (and so invalid) Deposition to which the Opposer denied the Applicant access. Whether such behavior is intended by the Opposer or is genuinely a result of the Opposer's own internal miscommunications, it should be rejected by the USPTO as unethical and in bad faith. The Applicant proved "excusable neglect" while acting in good faith and respectfully requests the opportunity to respond to the merits of the arguments presented by CCR in its most recent motions.

A photograph of a handwritten signature in black ink on a light-colored surface. The signature is stylized and appears to read 'Omri Shellef'.

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Omri Shellef  
Applicant  
135 Station Rd.  
Great Neck, NY 11023  
11 April 2012

Certificate of Service

I certify that a true and accurate copy of the Applicant's Request to Reopen Time to Respond to the Opposer's Motions was served by US Post Office this day 11<sup>th</sup> of April, 2012 upon Cannery Casino Resorts, LLC via counsel:

Mr. Bryce Earl  
Santoro, Driggs, Walch, Kearney, Holley & Thompso  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

A rectangular area containing a handwritten signature in dark ink. The signature is stylized and appears to read 'Omri Shellef'.

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Omri Shellef  
135 Station Rd.  
Great Neck, NY 11023