

ESTTA Tracking number: **ESTTA357281**

Filing date: **07/09/2010**

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

**Notice of Opposition**

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

**Opposer Information**

Name	5280 Publishing, Inc.
Granted to Date of previous extension	07/10/2010
Address	1515 Wazee St., Ste. 400 Denver, CO 80202 UNITED STATES

Attorney information	Christopher P. Beall Levine Sullivan Koch & Schulz, L.L.P. 1888 Sherman Street, Suite 370 Denver, CO 80203 UNITED STATES cbeall@lskslaw.com, chenning@lskslaw.com Phone:303.376.2400
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**Applicant Information**

Application No	77892723	Publication date	05/11/2010
Opposition Filing Date	07/09/2010	Opposition Period Ends	07/10/2010
Applicant	5280Wellness, LLC 8380 Coors Street Arvada, CO 80005 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 044. First Use: 2009/10/22 First Use In Commerce: 2009/12/08 All goods and services in the class are opposed, namely: Providing healthy lifestyle and nutrition services, namely, personal assessments, personalized routines, maintenance schedules, and counseling
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Marks Cited by Opposer as Basis for Opposition**

U.S. Registration No.	2378822	Application Date	01/28/1999
Registration Date	08/22/2000	Foreign Priority Date	NONE
Word Mark	5280		

Design Mark	<b>5280</b>
Description of Mark	NONE
Goods/Services	Class 016. First use: First Use: 1993/07/30 First Use In Commerce: 1993/07/30 PRINTED MAGAZINES FEATURING POLITICS, ENTERTAINMENT, ARTS, CULTURAL ACTIVITIES, DINING AND SHOPPING LOCAL TO THE CITY OF DENVER AND THE STATE OF COLORADO

U.S. Registration No.	3158264	Application Date	11/18/2005
Registration Date	10/17/2006	Foreign Priority Date	NONE
Word Mark	5280		
Design Mark	<b>5280</b>		
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1995/08/00 First Use In Commerce: 1995/08/00 Providing on-line reviews of restaurants		

U.S. Registration No.	3158265	Application Date	11/18/2005
Registration Date	10/17/2006	Foreign Priority Date	NONE
Word Mark	5280		
Design Mark	<b>5280</b>		
Description of Mark	NONE		

Goods/Services	Class 035. First use: First Use: 1998/12/00 First Use In Commerce: 1998/12/00 Dissemination of advertisements for others via on-line communications network on the Internet; operating an on-line marketplace for sellers of goods and services		
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U.S. Registration No.	3158266	Application Date	11/18/2005
Registration Date	10/17/2006	Foreign Priority Date	NONE
Word Mark	5280		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1993/03/00 First Use In Commerce: 1993/03/00 Financial sponsorship of cultural and sporting events and sports teams		

U.S. Registration No.	3158267	Application Date	11/18/2005
Registration Date	10/17/2006	Foreign Priority Date	NONE
Word Mark	5280		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1995/06/00 First Use In Commerce: 1995/06/00 On-line journals, namely blogs featuring current news, social, cultural, political events, sporting events and topics of popular culture; entertainment services, namely, providing a web site featuring on-line magazine content featuring current news, social, cultural, political events, sporting events and topics of popular culture; on-line publication of newsletters; providing newsletters in the fields of restaurants and food, current events, and popular culture, via e-mail		

U.S. Registration No.	3733796	Application Date	05/18/2009
Registration Date	01/05/2010	Foreign Priority Date	NONE
Word Mark	5280		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1993/07/01 First Use In Commerce: 1993/07/01 Magazine sections reporting on physicians and medical professionals in the Denver metropolitan region Class 035. First use: First Use: 1993/07/01 First Use In Commerce: 1993/07/01 Promoting the services of physicians and medical professionals in the Denver metropolitan region by means of periodic awards and reviews and providing advertising space in magazines and by providing advertising space on a web site		

Attachments	75629187#TMSN.gif ( 1 page )( bytes ) 78757309#TMSN.jpeg ( 1 page )( bytes ) 78757341#TMSN.jpeg ( 1 page )( bytes ) 78757356#TMSN.jpeg ( 1 page )( bytes ) 78757368#TMSN.jpeg ( 1 page )( bytes ) 77739314#TMSN.jpeg ( 1 page )( bytes ) 00318349.PDF ( 7 pages )(128319 bytes ) 00318346.PDF ( 24 pages )(823081 bytes ) 00318340.PDF ( 10 pages )(140255 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Christopher P. Beall/
Name	Christopher P. Beall
Date	07/09/2010

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



Trademark:  
Serial No.: 77/892,723  
Filed: December 14, 2009  
Date of Publication: May 11, 2010

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**5280 PUBLISHING, INC.,**  
Opposer,

v.

**5280WELLNESS, LLC,**  
Applicant.

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} Opposition No. \_\_\_\_\_  
}  
}

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**NOTICE OF OPPOSITION**

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5280 Publishing, Inc. (“Opposer”), a Colorado corporation with its principal offices at 1515 Wazee Street, Suite 400, Denver, Colorado 80202, through its attorneys Levine Sullivan Koch & Schulz, L.L.P., hereby opposes the application of 5280Wellness, LLC (“Applicant”) for registration of the service mark depicted in serial number 77/892,723, in connection with “[p]roviding healthy lifestyle and nutrition services, namely, personal assessments, personalized routines, maintenance schedules, and counseling,” published in the Official Gazette on May 11, 2010, for the following design:



Opposer believes that it will be damaged by registration of the mark shown in the Application and opposes on the following grounds:

1. Opposer has used the mark **5280** continuously since at least 1993.
2. Opposer owns the following federal trademark registrations:
  - **5280** – Registration No. 2,378,822, issued August 22, 2000, with Section 8 & 15 Affidavit filed August 31, 2005, in connection with printed magazines featuring politics, entertainment, arts, cultural activities, dining and shopping local to the City of Denver and the State of Colorado, in International Class 16.
  - **5280** – Registration No. 3,158,264, issued October 17, 2006, in connection with providing on-line reviews of restaurants, in International Class 43.
  - **5280** – Registration No. 3,158,265, issued October 17, 2006, in connection with dissemination of advertisements for others via on-line communications network on the Internet; operating an on-line

marketplace for sellers of goods and services, in International Class 35.

- **5280** – Registration No. 3,158,266, issued October 17, 2006, in connection with financial sponsorship of cultural and sporting events and sports teams, in International Class 36.
- **5280** – Registration No. 3,158,267, issued October 17, 2006, in connection with on-line journals, namely blogs featuring current news, social, cultural, political events, sporting events and topics of popular culture; entertainment services, namely, providing a web site featuring on-line magazine content featuring current news, social, cultural, political events, sporting events and topics of popular culture; on-line publication of newsletters; providing newsletters in the fields of restaurants and food, current events, and popular culture, via e-mail, in International Class 41.
- **5280** – Registration No. 3,733,796, issued January 5, 2010, in connection with magazine sections reporting on physicians and medical professionals in the Denver metropolitan region, and promoting the services of physicians and medical professionals in the Denver metropolitan region by means of periodic awards and reviews and providing advertising space in magazines and by providing advertising space on a web site, in International Classes 16 and 35.

True and correct copies of the registration certificates and the PTO status reports from the TARR database for each of the foregoing registrations is attached here as **Exhibit A**.

3. Opposer has provided the goods and services listed in the foregoing federal trademark registrations in interstate commerce, and has done so continuously from the dates of first use reflected in each of those registrations.

4. Opposer publishes in its print magazine and at its online website, at [www.5280.com](http://www.5280.com), under the mark **5280**, various reviews, commentary and features stories concerning the health and wellness industries in the Denver metropolitan area, including reports about businesses of the kind described in Applicant's application.

5. Opposer publishes and promotes its annual "Top of the Town" listings under the mark **5280**, which regularly include listings of health and wellness businesses in the Denver metropolitan region of the kind described in Applicant's application.

6. Opposer published and promotes its annual "Top Docs" listings under the mark **5280**, providing recognition and endorsement to medical and health professionals in the Denver metropolitan region who perform services similar in kind to the services described in Applicant's application.

7. As a result of Opposer's efforts to promote the services of medical and health professionals in the Denver metropolitan region, consumers look for the endorsement by Opposer under the **5280** mark as an indication of quality, approval, and endorsement of medical and health professionals.

8. On January 30, 2009, in connection with a trademark infringement matter involving a different defendant, in the District Court for the State of Colorado, in the District of

the City & County of Denver, Chief Judge Larry Naves found that Opposer's mark **5280** "is very strong." A true and correct copy of Judge Naves' preliminary injunction in that case and his bench ruling on the matter, reported in *5280 Publishing, Inc. v. 1480 Café, LLC*, No. 08-cv-9893, 37 Media L. Rep. 1355, 1358 (Colo. Dist. Ct., Denver, Jan. 30, 2009), is attached hereto and incorporated as **Exhibit B**.

9. Applicant filed its application here on December 14, 2009.

10. Applicant claims a first-use date of October 22, 2009, and a first-use-in-commerce date of December 8, 2009.

11. Any use that Applicant may purportedly have made of the mark at issue here is junior in time to Opposer's senior rights.

12. Applicant's mark is confusingly similar to Opposer's mark.

13. Applicant's mark is likely to cause confusion, mistake or deception as to the association, affiliation, approval, or sponsorship of Applicant's services.

14. Applicant's mark is likely to falsely suggest a connection with Opposer.

15. Because of the likelihood of confusion caused by Applicant's mark, the application at issue here should be refused pursuant to Sections 2(d) and 13(a) of the Lanham Act, 15 U.S.C. §§ 1052(d) and 1063(a).

**WHEREFORE**, Opposer prays that the Board sustain this opposition, and that the

application for registration of the mark  be refused.

Respectfully submitted this 9th day of July, 2010.

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

A handwritten signature in blue ink, appearing to read "Christopher P. Beall", written in a cursive style.

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Christopher P. Beall  
1888 Sherman Street, Suite 370  
Denver, Colorado 80203  
Telephone - (303) 376-2400  
Facsimile - (303) 376-2401  
E-mail - [cbeall@lkslaw.com](mailto:cbeall@lkslaw.com)

Attorneys for Opposer  
5280 PUBLISHING, INC.

## CERTIFICATE OF SERVICE

I do hereby certify that on this 9th day of July, 2010, a true and correct copy of the foregoing **NOTICE OF OPPOSITION** has been served email transmission and U.S. Mail delivery to counsel for the Applicant, addressed as follows:

Brian E. Geoghegan, Esq.  
Stigler Wussow + Braverman, Ltd.  
1123 Spruce Street  
Boulder, Colorado 80302  
Email: [bg@swandb.com](mailto:bg@swandb.com)

*/s Christopher P. Beall*

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# Exhibit A

**Int. Cl.: 16**

**Prior U.S. Cls.: 2, 5, 22, 23, 29, 37, 38 and 50**

**United States Patent and Trademark Office**

**Reg. No. 2,378,822**

**Registered Aug. 22, 2000**

**TRADEMARK  
PRINCIPAL REGISTER**

**5280**

5280 PUBLISHING, INC. (COLORADO CORPORATION)  
1552 PENNSYLVANIA STREET  
DENVER, CO 80203

FOR: PRINTED MAGAZINES FEATURING POLITICS, ENTERTAINMENT, ARTS, CULTURAL ACTIVITIES, DINING AND SHOPPING LOCAL TO THE

CITY OF DENVER AND THE STATE OF COLORADO, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 7-30-1993; IN COMMERCE 7-30-1993.

SER. NO. 75-629,187, FILED 1-28-1999.

AMY PAGE, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2010-07-09 19:25:04 ET

Serial Number: 75629187 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 2378822

Mark (words only): 5280

Standard Character claim: No

Current Status: Section 8 and 15 affidavits have been accepted and acknowledged.

Date of Status: 2005-12-01

Filing Date: 1999-01-28

Transformed into a National Application: No

Registration Date: 2000-08-22

Register: Principal

Law Office Assigned: LAW OFFICE 110

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 40S -Scanning On Demand

Date In Location: 2006-03-09

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#### LAST APPLICANT(S)/OWNER(S) OF RECORD

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1. 5280 PUBLISHING, INC.

**Address:**

5280 PUBLISHING, INC.

1224 SPEER BLVD.

Denver, CO 80204

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** Colorado

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#### GOODS AND/OR SERVICES

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**International Class:** 016

**Class Status:** Active

PRINTED MAGAZINES FEATURING POLITICS, ENTERTAINMENT, ARTS, CULTURAL ACTIVITIES, DINING AND SHOPPING LOCAL TO THE CITY OF DENVER AND THE STATE OF COLORADO

**Basis:** 1(a)

**First Use Date:** [1993-07-30](#)

**First Use in Commerce Date:** [1993-07-30](#)

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**ADDITIONAL INFORMATION**

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(NOT AVAILABLE)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

[2006-03-09 - Case File In TICRS](#)

[2005-12-01 - Section 8 \(6-year\) accepted & Section 15 acknowledged](#)

[2005-08-31 - Section 8 \(6-year\) and Section 15 Filed](#)

[2005-08-31 - TEAS Section 8 & 15 Received](#)

[2000-08-22 - Registered - Principal Register](#)

[2000-05-30 - Published for opposition](#)

[2000-04-28 - Notice of publication](#)

[2000-03-20 - Approved for Pub - Principal Register \(Initial exam\)](#)

[1999-11-24 - Communication received from applicant](#)

[1999-05-27 - Non-final action mailed](#)

[1999-05-25 - Assigned To Examiner](#)

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**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

[ESTER MARTIN MAILLARO](#)

**Correspondent**

[ESTER MARTIN MAILLARO](#)

[FAEGRE & BENSON LLP](#)

[1900 15TH STREET](#)

[BOULDER, CO 80302-5414](#)

**Int. Cl.: 43**

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

**United States Patent and Trademark Office**

**Reg. No. 3,158,264**

**Registered Oct. 17, 2006**

**SERVICE MARK  
PRINCIPAL REGISTER**

**5280**

5280 PUBLISHING, INC. (COLORADO CORPORATION)  
1224 SPEER BLVD.  
DENVER, CO 80204

FOR: PROVIDING ON-LINE REVIEWS OF RESTAURANTS, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 8-0-1995; IN COMMERCE 8-0-1995.

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

OWNER OF U.S. REG. NO. 2,378,822.

SER. NO. 78-757,309, FILED 11-18-2005.

MATTHEW MCDOWELL, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2010-07-09 19:26:16 ET

Serial Number: 78757309 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3158264

Mark

5280

(words only): 5280

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2006-10-17

Filing Date: 2005-11-18

Transformed into a National Application: No

Registration Date: 2006-10-17

Register: Principal

Law Office Assigned: LAW OFFICE 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-10-17

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. [5280 Publishing, Inc.](#)

**Address:**

5280 Publishing, Inc.

1224 Speer Blvd.

Denver, CO 80204

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** [Colorado](#)

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**GOODS AND/OR SERVICES**

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**International Class:** [043](#)

**Class Status:** [Active](#)

[Providing on-line reviews of restaurants](#)

**Basis:** [1\(a\)](#)

**First Use Date:** [1995-08-00](#)

**First Use in Commerce Date:** [1995-08-00](#)

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**ADDITIONAL INFORMATION**

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**Prior Registration Number(s):**

[2378822](#)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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[2006-10-17 - Registered - Principal Register](#)

[2006-08-01 - Published for opposition](#)

[2006-07-12 - Notice of publication](#)

[2006-06-12 - Law Office Publication Review Completed](#)

[2006-06-09 - Assigned To LIE](#)

[2006-05-30 - Approved for Pub - Principal Register \(Initial exam\)](#)

[2006-05-25 - Examiner's Amendment Entered](#)

[2006-05-25 - Examiners amendment e-mailed](#)

[2006-05-25 - Examiners Amendment -Written](#)

[2006-05-24 - Assigned To Examiner](#)

[2005-11-25 - New Application Entered In Tram](#)

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**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Christopher P. Beall

**Correspondent**

CHRISTOPHER P. BEALL  
FAEGRE & BENSON LLP  
1900 15TH ST  
BOULDER, CO 80302-5414  
Phone Number: (303) 447-7700  
Fax Number: (303) 447-7800

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**Int. Cl.: 35**

**Prior U.S. Cls.: 100, 101 and 102**

**United States Patent and Trademark Office**

**Reg. No. 3,158,265**

**Registered Oct. 17, 2006**

**SERVICE MARK  
PRINCIPAL REGISTER**

**5280**

5280 PUBLISHING, INC. (COLORADO CORPORATION)  
1224 SPEER BLVD.  
DENVER, CO 80204

FOR: DISSEMINATION OF ADVERTISEMENTS FOR OTHERS VIA ON-LINE COMMUNICATIONS NETWORK ON THE INTERNET; OPERATING AN ON-LINE MARKETPLACE FOR SELLERS OF GOODS AND SERVICES , IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 12-0-1998; IN COMMERCE 12-0-1998.

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

OWNER OF U.S. REG. NO. 2,378,822.

SER. NO. 78-757,341, FILED 11-18-2005.

MATTHEW MCDOWELL, EXAMINING ATTORNEY

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2010-07-09 19:27:12 ET

Serial Number: 78757341 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3158265

Mark

5280

(words only): 5280

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2006-10-17

Filing Date: 2005-11-18

Transformed into a National Application: No

Registration Date: 2006-10-17

Register: Principal

Law Office Assigned: LAW OFFICE 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-10-17

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. [5280 Publishing, Inc.](#)

**Address:**

5280 Publishing, Inc.

1224 Speer Blvd.

Denver, CO 80204

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** [Colorado](#)

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**GOODS AND/OR SERVICES**

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**International Class:** [035](#)

**Class Status:** [Active](#)

[Dissemination of advertisements for others via on-line communications network on the Internet; operating an on-line marketplace for sellers of goods and services](#)

**Basis:** [1\(a\)](#)

**First Use Date:** [1998-12-00](#)

**First Use in Commerce Date:** [1998-12-00](#)

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**ADDITIONAL INFORMATION**

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**Prior Registration Number(s):**

[2378822](#)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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[2006-10-17 - Registered - Principal Register](#)

[2006-08-01 - Published for opposition](#)

[2006-07-12 - Notice of publication](#)

[2006-06-12 - Law Office Publication Review Completed](#)

[2006-06-09 - Assigned To LIE](#)

[2006-05-30 - Approved for Pub - Principal Register \(Initial exam\)](#)

[2006-05-25 - Examiner's Amendment Entered](#)

[2006-05-25 - Examiners amendment e-mailed](#)

[2006-05-25 - Examiners Amendment -Written](#)

[2006-05-24 - Assigned To Examiner](#)

[2005-11-25 - New Application Entered In Tram](#)

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Christopher P. Beall

**Correspondent**

CHRISTOPHER P. BEALL

FAEGRE & BENSON LLP

1900 15TH ST

BOULDER, CO 80302-5414

Phone Number: (303) 447-7700

Fax Number: (303) 447-7800

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**Int. Cl.: 36**

**Prior U.S. Cls.: 100, 101 and 102**

**United States Patent and Trademark Office**

**Reg. No. 3,158,266**

**Registered Oct. 17, 2006**

**SERVICE MARK  
PRINCIPAL REGISTER**

**5280**

5280 PUBLISHING, INC. (COLORADO CORPORATION)  
1224 SPEER BLVD.  
DENVER, CO 80204

FOR: FINANCIAL SPONSORSHIP OF CULTURAL AND SPORTING EVENTS AND SPORTS TEAMS, IN CLASS 36 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-0-1993; IN COMMERCE 3-0-1993.

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

OWNER OF U.S. REG. NO. 2,378,822.

SER. NO. 78-757,356, FILED 11-18-2005.

MATTHEW MCDOWELL, EXAMINING ATTORNEY

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Serial Number: 78757356 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3158266

Mark

5280

(words only): 5280

Standard Character claim: Yes

Current Status: [Registered](#).

Date of Status: 2006-10-17

Filing Date: 2005-11-18

Transformed into a National Application: No

Registration Date: 2006-10-17

Register: [Principal](#)

Law Office Assigned: [LAW OFFICE 101](#)

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: [650 -Publication And Issue Section](#)

Date In Location: 2006-10-17

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**LAST APPLICANT(S)/OWNER(S) OF RECORD**

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1. [5280 Publishing, Inc.](#)

**Address:**

5280 Publishing, Inc.

1224 Speer Blvd.

Denver, CO 80204

United States

**Legal Entity Type:** [Corporation](#)

**State or Country of Incorporation:** [Colorado](#)

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**GOODS AND/OR SERVICES**

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**International Class:** [036](#)

**Class Status:** [Active](#)

[Financial sponsorship of cultural and sporting events and sports teams](#)

**Basis:** [1\(a\)](#)

**First Use Date:** [1993-03-00](#)

**First Use in Commerce Date:** [1993-03-00](#)

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**ADDITIONAL INFORMATION**

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**Prior Registration Number(s):**

[2378822](#)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

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[2006-08-01 - Published for opposition](#)

[2006-07-12 - Notice of publication](#)

[2006-06-12 - Law Office Publication Review Completed](#)

[2006-06-09 - Assigned To LIE](#)

[2006-05-30 - Approved for Pub - Principal Register \(Initial exam\)](#)

[2006-05-25 - Examiner's Amendment Entered](#)

[2006-05-25 - Examiners amendment e-mailed](#)

[2006-05-25 - Examiners Amendment -Written](#)

[2006-05-24 - Assigned To Examiner](#)

[2005-11-25 - New Application Entered In Tram](#)

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**ATTORNEY/CORRESPONDENT INFORMATION**

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**Attorney of Record**

Christopher P. Beall

**Correspondent**

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1900 15TH ST  
BOULDER, CO 80302-5414  
Phone Number: (303) 447-7700  
Fax Number: (303) 447-7800

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**Int. Cl.: 41**

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

**United States Patent and Trademark Office**

**Reg. No. 3,158,267**

**Registered Oct. 17, 2006**

**SERVICE MARK  
PRINCIPAL REGISTER**

**5280**

5280 PUBLISHING, INC. (COLORADO CORPORATION)  
1224 SPEER BLVD.  
DENVER, CO 80204

FOR: ON-LINE JOURNALS, NAMELY BLOGS FEATURING CURRENT NEWS, SOCIAL, CULTURAL, POLITICAL EVENTS, SPORTING EVENTS AND TOPICS OF POPULAR CULTURE; ENTERTAINMENT SERVICES, NAMELY, PROVIDING A WEB SITE FEATURING ON-LINE MAGAZINE CONTENT FEATURING CURRENT NEWS, SOCIAL, CULTURAL, POLITICAL EVENTS, SPORTING EVENTS AND TOPICS OF POPULAR CULTURE; ON-LINE PUBLICATION OF NEWSLETTERS; PROVIDING NEWSLETTERS IN THE FIELDS OF RESTAURANTS AND FOOD, CURRENT EVENTS, AND

POPULAR CULTURE, VIA E-MAIL, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-0-1995; IN COMMERCE 6-0-1995.

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

OWNER OF U.S. REG. NO. 2,378,822.

SER. NO. 78-757,368, FILED 11-18-2005.

MATTHEW MCDOWELL, EXAMINING ATTORNEY

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This page was generated by the TARR system on 2010-07-09 19:28:27 ET

Serial Number: 78757368 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3158267

Mark

5280

(words only): 5280

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2006-10-17

Filing Date: 2005-11-18

Transformed into a National Application: No

Registration Date: 2006-10-17

Register: Principal

Law Office Assigned: LAW OFFICE 101

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 650 -Publication And Issue Section

Date In Location: 2006-10-17

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. [5280 Publishing, Inc.](#)

**Address:**

5280 Publishing, Inc.

1224 Speer Blvd.

Denver, CO 80204

United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** [Colorado](#)

---

**GOODS AND/OR SERVICES**

---

**International Class:** [041](#)

**Class Status:** [Active](#)

[On-line journals, namely blogs featuring current news, social, cultural, political events, sporting events and topics of popular culture; entertainment services, namely, providing a web site featuring on-line magazine content featuring current news, social, cultural, political events, sporting events and topics of popular culture; on-line publication of newsletters; providing newsletters in the fields of restaurants and food, current events, and popular culture, via e-mail](#)

**Basis:** [1\(a\)](#)

**First Use Date:** [1995-06-00](#)

**First Use in Commerce Date:** [1995-06-00](#)

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**ADDITIONAL INFORMATION**

---

**Prior Registration Number(s):**

[2378822](#)

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**MADRID PROTOCOL INFORMATION**

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(NOT AVAILABLE)

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**PROSECUTION HISTORY**

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

[2006-10-17 - Registered - Principal Register](#)

[2006-08-01 - Published for opposition](#)

[2006-07-12 - Notice of publication](#)

[2006-06-12 - Law Office Publication Review Completed](#)

[2006-06-09 - Assigned To LIE](#)

[2006-05-30 - Approved for Pub - Principal Register \(Initial exam\)](#)

[2006-05-25 - Examiner's Amendment Entered](#)

[2006-05-25 - Examiners amendment e-mailed](#)

[2006-05-25 - Examiners Amendment -Written](#)

[2006-05-24 - Assigned To Examiner](#)

[2005-11-25 - New Application Entered In Tram](#)

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**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

Christopher P. Beall

**Correspondent**

CHRISTOPHER P. BEALL

FAEGRE & BENSON LLP

1900 15TH ST

BOULDER, CO 80302-5414

Phone Number: (303) 447-7700

Fax Number: (303) 447-7800

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# United States of America

United States Patent and Trademark Office

## 5280

**Reg. No. 3,733,796** 5280 PUBLISHING, INC. (COLORADO CORPORATION)  
Registered Jan. 5, 2010 1515 WAZEE STREET, SUITE 400  
DENVER, CO 80202

**Int. Cls.: 16 and 35** FOR: MAGAZINE SECTIONS REPORTING ON PHYSICIANS AND MEDICAL PROFESSIONALS IN THE DENVER METROPOLITAN REGION , IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

**TRADEMARK  
SERVICE MARK  
PRINCIPAL REGISTER**

FIRST USE 7-1-1993; IN COMMERCE 7-1-1993.

FOR: PROMOTING THE SERVICES OF PHYSICIANS AND MEDICAL PROFESSIONALS IN THE DENVER METROPOLITAN REGION BY MEANS OF PERIODIC AWARDS AND REVIEWS AND PROVIDING ADVERTISING SPACE IN MAGAZINES AND BY PROVIDING ADVERTISING SPACE ON A WEB SITE, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 7-1-1993; IN COMMERCE 7-1-1993.

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

OWNER OF U.S. REG. NOS. 2,378,822, 3,158,265 AND OTHERS.

SER. NO. 77-739,314, FILED 5-18-2009.

BONNIE LUKEN, EXAMINING ATTORNEY



*David J. Kybas*

Director of the United States Patent and Trademark Office

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Serial Number: 77739314 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: 3733796

Mark

5280

(words only): 5280

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2010-01-05

Filing Date: 2009-05-18

Transformed into a National Application: No

Registration Date: 2010-01-05

Register: Principal

Law Office Assigned: LAW OFFICE 107

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov)

Current Location: 650 -Publication And Issue Section

Date In Location: 2010-01-05

---

**LAST APPLICANT(S)/OWNER(S) OF RECORD**

---

1. [5280 Publishing, Inc.](#)

**Address:**

5280 Publishing, Inc.  
1515 Wazee Street, Suite 400  
Denver, CO 80202  
United States

**Legal Entity Type:** Corporation

**State or Country of Incorporation:** [Colorado](#)

**Phone Number:** [303-832-5280](#)

**Fax Number:** [303-832-0470](#)

---

### GOODS AND/OR SERVICES

---

**International Class:** [016](#)

**Class Status:** [Active](#)

[Magazine sections reporting on physicians and medical professionals in the Denver metropolitan region](#)

**Basis:** [1\(a\)](#)

**First Use Date:** [1993-07-01](#)

**First Use in Commerce Date:** [1993-07-01](#)

**International Class:** [035](#)

**Class Status:** [Active](#)

[Promoting the services of physicians and medical professionals in the Denver metropolitan region by means of periodic awards and reviews and providing advertising space in magazines and by providing advertising space on a web site](#)

**Basis:** [1\(a\)](#)

**First Use Date:** [1993-07-01](#)

**First Use in Commerce Date:** [1993-07-01](#)

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### ADDITIONAL INFORMATION

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**Prior Registration Number(s):**

[2378822](#)

[3158264](#)

[3158265](#)

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### MADRID PROTOCOL INFORMATION

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(NOT AVAILABLE)

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### PROSECUTION HISTORY

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**NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.**

[2010-01-05 - Registered - Principal Register](#)

[2009-10-20 - Notice Of Publication E-Mailed](#)

[2009-10-20 - Published for opposition](#)

[2009-09-16 - Law Office Publication Review Completed](#)

[2009-09-15 - Assigned To LIE](#)

[2009-09-08 - Approved for Pub - Principal Register \(Initial exam\)](#)

2009-08-21 - Examiner's Amendment Entered  
2009-08-21 - Notification Of Examiners Amendment E-Mailed  
2009-08-21 - EXAMINERS AMENDMENT E-MAILED  
2009-08-21 - Examiners Amendment -Written  
2009-08-20 - Allowance Withdrawn-Inadvertently Issued Action  
2009-08-20 - Approved for Pub - Principal Register (Initial exam)  
2009-08-19 - Examiner's Amendment Entered  
2009-08-19 - Notification Of Examiners Amendment E-Mailed  
2009-08-19 - Examiners amendment e-mailed  
2009-08-19 - Examiners Amendment -Written  
2009-08-17 - Assigned To Examiner  
2009-05-21 - New Application Office Supplied Data Entered In Tram  
2009-05-21 - New Application Entered In Tram

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**ATTORNEY/CORRESPONDENT INFORMATION**

---

**Attorney of Record**

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DENVER, CO 80203-1158  
Phone Number: 303-376-2400  
Fax Number: 303-376-2401

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# Exhibit B



**GRANTED**

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

**Larry J. Naves  
District Court Judge**

<p>DISTRICT COURT, CITY &amp; COUNTY OF DENVER, STATE OF COLORADO</p> <p>Court Address:       1437 Bannock St.                                   Denver, Colorado 80202</p> <hr/> <p><b>Plaintiff:</b>     <b>5280 Publishing, Inc.</b>, a Colorado corporation,</p> <p>v.</p> <p><b>Defendants:</b>     <b>1480 Café, LLC</b>, a Colorado limited liability company doing business as “5280 STEAK HOUSE”; and,     <b>J. Guadalupe Gonzalez</b>, a Colorado resident.</p>	<p>DATE OF ORDER INDICATED ON ATTACHMENT</p>          <p>▲ COURT USE ONLY ▲</p> <hr/> <p>Case No.: <b>08CV9493</b></p> <p>Courtroom: 6</p>
<p align="center"><b>ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION</b></p>	

Before the Court is the Rule 65(a) motion of Plaintiff 5280 Publishing, Inc. seeking to bar Defendants 1480 Café, LLC and J. Guadalupe Gonzalez from using the term “5280” in connection with the defendants’ new restaurant in Denver, and having considered the parties’ submissions and the evidence presented at the hearing on this motion, and finding good cause for the requested relief, the Court hereby **GRANTS** the motion and **ORDERS** as follows:

- 1) Pending a final determination of the merits of the Plaintiff’s claims in this action, Defendants 1480 Café, LLC and J. Guadalupe Gonzalez, and any of

their officers, employees, agents, representatives, and any other entity in which they have a direct or beneficial interest may not:

- a. Use the term “5280,” or any confusingly similar variation of the term, in the name of any restaurant under their control, supervision, or management;
- b. Use the term “5280,” or any confusingly similar variation of the term, in any advertising for any restaurant under their control, supervision, or management; and,
- c. Make any other statement that suggests or implies endorsement or association between the Defendants’ restaurant and the Plaintiff or the Plaintiffs goods and services.

2) This injunction will become effective upon the deposit with Clerk of Court of security in the form of an injunction bond or cash in the amount of \$1,000.00.

Entered this 30th day of January, 2009.



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Larry J. Naves  
District Court Judge

This document constitutes a ruling of the court and should be treated as such.

**Court:** CO Denver County District Court 2nd JD

**Judge:** Larry J Naves

**File & Serve**

**Transaction ID:** 22260200

**Current Date:** Jan 30, 2009

**Case Number:** 2008CV9493

**Case Name:** 5280 PUBL INC vs. 1480 CAFE LLC et al

---

/s/ **Judge Larry J Naves**



Source: Media Law Reporter Cases > Colorado > 5280 Publishing Inc. v. 1480 Café LLC, 37 Med.L.Rptr. 1355 (Colo. Dist. Ct. 2009)

**37 Med.L.Rptr. 1355**  
**5280 Publishing Inc. v. 1480 Café LLC**  
**Colorado District Court**  
**Denver City and County**

No. 08 CV 9493

January 30, 2009

**5280 PUBLISHING, INC. v. 1480 CAFÉ LLC, et al.**

**Headnotes**

**REGULATION OF MEDIA CONTENT**

[1] Commercial speech/advertising — In general (► 15.01)

**MEDIA OWNERSHIP**

Print media ownership — In general (► 67.01)

Plaintiff "5280" magazine has stated cause of action for trademark infringement against owner of "5280" restaurant, and is entitled to preliminary injunction prohibiting defendant's use of mark, even though parties' services and channels of trade differ, since plaintiff has valid, incontestable trademark, since defendant's generic description of steak house is insignificant, and thus marks are legally same, since defendant had intent to derive benefit from plaintiff's reputation or good will, since evidence of actual confusion exists, since magazine's mark is very strong, since evidence shows that magazine will suffer irreparable harm in absence of injunctive relief, and since public interest favors injunction.

**Case History and Disposition**

Trademark infringement action, in which plaintiff filed motion for preliminary injunction.

Granted.

**Page 1356**

[Editor's Note: The following is a partial transcript of the proceedings held on Jan. 30, 2009.]

**Attorneys**

Christopher Beall and Adam Platt, of Levine Sullivan Koch & Schulz, Denver, Colo., for plaintiff.

Brian D. Smith, Denver, for defendant.

**Opinion Text**

**Opinion By:**

Naves, J.:

**Partial Transcript of Proceedings**

(WHEREUPON, further proceedings were held but not herein transcribed at the request of the ordering party.)

(Call to Order of the Court at 3:36 p.m.)

THE COURT: All right. Initially I want to thank counsel for the really good briefs that you—that you

filed. Most cases in this area—I think most are heard in Federal Court, so it's really good to be put on the right page by experienced lawyers in the area, so I appreciate that.

Also, I think it's necessary to just remind everyone that this is a preliminary injunction hearing. It happens at an early stage of the proceedings, and when I rule it reflects the evidence that I've heard, and evaluated at this early stage of the proceeding. It doesn't mean it won't change.

But I think this ability to have a ruling at an early stage, and one has been with us for a long, long time, and I think it's clear that there are just circumstances where there's a potential for irreparable damages, and that it is just to be able to have a hearing at an early stage, and to try to prevent or minimize or limit damages that are irreparable.

So, preliminary injunctions do make sense even though it's not a final ruling in the case. With that, I have evaluated the evidence, and make the following findings and ruling.

The test that I have to apply in this case is under Colorado law. It's Rule 65, and is interpreted by many cases, and the primary case is *Rathke*, so I'm going to apply those factors here. I'm not going to repeat them all as right now, but I'll refer to them as I make findings.

The first *Rathke* factor is whether the petitioner who is seeking, well, the plaintiff in this case, who is seeking the injunction has the burden of proof and has to prove that there's a reasonable probability that 5280 will succeed on the merits of its trademark infringement claim.

And in order to address this first factor the primary issue is on confusion rather than the first aspect of the claim, which is for the plaintiff to show that it has a valid claim.

[ 1 ] I think the evidence is clear that from the evidence presented here that plaintiff has a valid mark in this case. The initial registration from August of 2000 is in evidence, and then the subsequent—I think it was four registrations, the last four were all in October of 2006, have all been established without any—any evidence to challenge that.

So, the—and I agree with the law, and position of the plaintiff that with respect to the first registration, the 5280's registration, has become incontestable and gives rise to certain presumptions.

Even so, plaintiff still has the burden of showing the likelihood of confusion as to the association or approval of the competing use of the mark by the defendants.

Both sides agree that this second element of the trademark claim requires a consideration of six factors that was referred to as the king of the mountain factors. So I'm going to examine those.

First is the degree of similarity between the marks, and there's been arguments about the sight, sound, and meaning application. And in this case I agree with the plaintiffs that the generic description of steak house is insignificant and that legally the marks—the plaintiff's mark and the defendant's mark are the same.

So that factor favors the plaintiff.

The second factor is the intent of the defendant in adopting the mark. Did the defendant have the intent to derive benefit from the reputation or good will of the plaintiff. I found the testimony of Mr. Gonzales to be often confusing, contradictory; I think he was impeached in some areas. And that's a factor in my concluding that he did have the intent to derive benefit from the reputation or good will of the plaintiff.

This is a case in which Mr. Gonzales knew of the name. He had what I believe was probably extensive knowledge of the mark because he advertised the rest—his restaurant when he had an ownership interest in the magazine before he chose to name the defendant restaurant 5280.

I also find from the evidence that prior to using or adopting the 5280 mark, he did not do a reasonable search to determine that he was violating the rights of the plaintiff.

**Page 1357**

So I find, under the second factor, that it favors the plaintiff.

The next factor is evidence of actual confusion. And there was evidence of actual confusion. There's testimony that I ruled was admissible based upon the 10th Circuit Court ruling under Rule 8033, I believe, that it was admissible for the office manager and that test—some testimony came through

him of the consumer who came to the office of the plaintiff to purchase a magazine, looked out the window and the restaurant is really close and he could see the restaurant sign. And this consumer was confused thinking that the restaurant might be affiliated with the magazine.

Also there was testimony concerning post office deliveries, and testimony from the owner that he had had three or four telephone contacts or calls where persons indicated some confusion because they knew of the name of the steak house.

So, I find from the evidence that there was actual confusion as to an association between the steak house and 5280, so that factor favors the plaintiff.

Another factor is the similarity of the parties' services and channels of trade. And in this case that is not—that is not an examination, and it's not answered by simply stating that the restaurant is a restaurant that serves food, and the plaintiff services—it's a magazine.

Here the issue is association and affiliation, and that's what—what has to be examined.

In this case there's evidence of, from testimony I think of Mr. Gonzales, that 60 to 70 percent of the customers are in hotels or from out of town. There's evidence that the magazine is distributed and available in all of those hotels and magazines, and there's a significant risk that those are persons who would associate a restaurant with a mark as being associated with the magazine.

Probably the most in significant, though, are the nature of what is published in a magazine. The magazine has—has published reviews of restaurants, ratings of restaurants. There's evidence of their top of the town issue, a couple or more issues a year; also feature restaurants on the cover. There are ads from restaurants. And the plaintiffs have shown by the evidence how significant their reputation is; their reputation for objectivity, and their integrity in doing reviews, and having consumers being able to rely on their reviews being objective and without, I suppose, some self interest.

And having a restaurant that by name appears associated and affiliated with the—with the plaintiff, and with the mark, would harm, and does harm the integrity and goodwill that this plaintiff has been establishing for a long period.

This—there is a significant risk in evidence that it's actually happened that consumers might believe that the defendant restaurant is associated with, and affiliated with the mark, and with the plaintiff. And I find that that could be—cause significant damage potentially to the plaintiff.

And I earlier mentioned too that restaurants, like the defendant, do advertise in the—in the magazine, so under this factor I find that there is a similarity that would cause and confuse consumers.

The next factor is the degree of care exercised by consumers. There's some evidence of sophistication; there's some evidence of maybe not sophisticated in purchasing purchases of the magazine. But that's not a—this factor is not a major one in a case like this where the issue is not consumers choosing between different buyers, but really being confused about the association and affiliation of the plaintiff and the defendant. So, I didn't give much weight to that.

The significant part of the evidence in this case concerns the final factor, and that is the strength of the mark of 5280.

I find that 5280 is arbitrary in that the name doesn't really describe the services that are provided by the magazine.

I also find that the evidence shows that 5280 has clearly gained secondary meaning.

I guess I should also find that 5280 does not refer to a place. I think the evidence shows that 5280, the pronunciation is significant, and that most persons do not refer to 5280 as the elevation of—to an elevation. Most people who are referring to an elevation say 5,280 feet.

5280 is—lots of evidence that this plaintiff has gone to great lengths to establish in the community what their name is, and how it's pronounced. And there was evidence of how that took a while to do that, and how much confusion there has been.

But all of the exhibits show that over a number of years that the mark has become really strong. It's not only—it's not just a magazine.

**Page 1358**

The magazine promotes many, many activities, and they were all described here in the evidence.

I've seen the name as a sponsor of professional bicycle racing teams; charitable events; the restaurant week. The—I find in this contested issue that the 5280 mark is very strong.

So, that factor favors the plaintiff.

So, based upon all of the evidence with respect to the first *Rathke* factor, I find that there is a reasonable probability of success on the merits where plaintiff has a reasonable probability of success on the merits of his trademark claims.

With respect to the other *Rathke* factors, the evidence shows that 5280 will suffer irreparable harm in the absence of injunctive protection. This is the kind of harm that is really difficult to measure in money. It would be difficult to prove later if there were no injunction.

There's plenty of testimony on some practical matters such as how do you show that someone did not advertise with the magazine because they thought the magazine was associated with the restaurant, and for that reason did not think they could be objective in either their ratings, or just would be unfair to any other restaurant. And this restaurant type advertising is a significant part of the revenue for the magazine.

I also find that the public interest favors an injunction because right now there is confusion caused by the defendant naming the restaurant—because of the defendant Mr. Gonzales selecting the name of the restaurant that appears at this stage to infringe upon the mark of the plaintiff. And it would be in the interest of the public to reduce this confusion because a part of the injunction will involve ordering the defendant to not use the mark until the trial, or further court order.

If I did not grant the injunction, then the confusion might remain.

With respect to the balance of the equities in this case, the—that favors the plaintiff. The plaintiff has been around for a long time. They have good will. They've established a strong mark.

The steakhouse has been around since October, and right after opening was put on notice of the alleged infringement.

Further, Mr. Gonzales was aware when he used the mark that the plaintiff had established this name for its magazine. He was aware that they did restaurant reviews. And so for those reasons and others, the equity—balance of equity favors the plaintiff.

In addition there was no evidence of harm to the defendant other than what might be inferred from having to take down the sign.

So I am going to grant the injunction. And the plaintiff submitted a while back a proposed order, and I looked at that over the break, and it provides for me to order as follows:

"The pending of final determination of the merits of the plaintiff's claims in this action, defendant's 1480 Café LLC and Jay Guadalupe Gonzales, and any of their officers, employees, agents, representatives, and any other entity in which they have a direct or beneficial interest may not:

"A) Use the term 5280, or any confusingly similar variation of the term, in the name of any restaurant under their control, supervision, or management.

"B) Use of the terms 5280, or any confusingly similar variation of the term, in any advertising for any restaurant under their control, supervision, or management.

"And C) to make any other statement that suggests or implies endorsement or association between the defendant's restaurant and the plaintiff, or the plaintiff's goods and services."

And then, "This injunction will become effective upon deposit with the clerk of the Court of security in the form of an injunction, bond, or cash in the amount of, and I'm going to set the amount in a nominal amount of \$1,000.

So, unless plaintiff wants to argue for a change in language, that's what I think I'll sign.

MR. BEALL: No, Your Honor.

THE COURT: All right. Does either side wish me to make any further findings for the record?

MR. BEALL: No, Your Honor.

THE COURT: Mr. Smith.

MR. SMITH: No, Your Honor.

THE COURT: All right. Then let's have it written on the order, and it also says proposed. So I'm going to go and print it off of LexisNexis, and sign it. And—actually what I think I'll do is I'll just sign it through—it'll say proposed, but I'll just sign—sign it electronically. So I'll issue it today.

**Page 1359**

MR. BEALL: Just for clarification, Your Honor, you'll issue it electronically through LexisNexis.

THE COURT: Well, I forgot, though. When are you going to pay the bond, post the bond? I guess the order says it's effective upon posting the bond.

MR. BEALL: Right.

THE COURT: So, I think I could go ahead and do the—do the order.

MR. BEALL: Technically in these kinds of situations usually we have to submit something to the Court to demonstrate the filing—the posting of the bond, some notice of posting the bond.

I don't know if I need to confer with Mr. Brogan (ph) about whether he can simply write a check, or whether we need to—

THE COURT: Why don't you find out?

MR. BEALL:—get a bond.

He can—he's going to his car. But, yes, we can get it done. We can file that with the clerk.

THE COURT: All right. In the alternative? Let me see your watch. Got a Rolex, we'll take that.

Now, I'm—I'll do this order and then I think the clerk's office closes at 4:30. I'll think they'll—if you get there by 4:30.

MR. SMITH: We can do that.

THE COURT: We'll have to call them and tell them that the order is coming.

All right. We're in recess.

MR. SMITH: Your Honor, I did have—did want to make one statement.

THE COURT: All right.

MR. SMITH: When will the order go into effect? Is the order going to provide my client with any period of time in which to change the sign?

THE COURT: That's a good question.

MR. BEALL: The answer, Your Honor, from the plaintiff's point of view, is that the order should be effective upon posting of the bond, but that any—sorry.

It would be appropriate, Your Honor, to—the plaintiff doesn't have any problem if it takes some time to get the sign down, to have some time to get the sign down.

THE COURT: Okay. I'll give you all a chance to negotiate that, and then if you have an issue with it you can—we could have a telephone hearing.

MR. BEALL: Okay.

THE COURT: Or you could come in. We'd set it pretty quickly.

MR. BEALL: That's fine.

THE COURT: So whatever is agreeable to you all is agreeable to me, and if you can't agree, set it for a hearing, which again I'd do right away by telephone, conference, or have you come over quickly.

MR. SMITH: Okay.

THE COURT: All right.

MR. SMITH: Thank you very much, Your Honor.

(Proceedings adjourned at 4:03 p.m.)

- End of Case -

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ISSN Pending

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