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

Proceeding	91198376
Party	Plaintiff Ameristar Casinos, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERISTAR CASINOS, INC., Opposer, vs. GROUPE AMERISPA INC., Applicant.	Opposition No. 91198376 Mark: AMERISPA Application Serial No.: 77/783,874 Filed: July 17, 2009 Published: September 28, 2010

AMENDED NOTICE OF OPPOSITION

Ameristar Casinos, Inc., a Nevada corporation doing business at 3773 Howard Hughes Parkway, Suite 490S, Las Vegas, Nevada 89109 (hereinafter "Opposer"), believes that it will be damaged by registration of the mark AMERISPA shown in application Serial No. 77/783,874, filed on an intent to use basis under Section 1B and based on a prior Canadian registration under Section 44E, for use in connection with "[h]ealth and beauty spa services, namely, providing massage, facial and body treatment services, [and] cosmetic body care services" in International Class 44 and "[b]ody and beauty care cosmetics" in International Class 3 by Groupe Amerispa Inc. (hereinafter "Applicant"), and hereby opposes the same. Said mark was published in the Official Gazette on September 28, 2010, with a request to extend the time to oppose filed and granted thereafter, giving Opposer until January 26, 2011, in which to file a Notice of Opposition. The Notice of Opposition was filed on January 26, 2011. It is believed that this Amended Notice of Opposition is being filed before an Answer was filed by Applicant in the

case.

As grounds for opposition, it is alleged that:

1. Opposer is owner of the service mark and trademark AMERISTAR, and other similar marks using the same word, including the marks AMERISTAR CASINO and AMERISTAR CASINO HOTEL. Opposer is also owner of service marks and trademarks that utilize the word AMERISTAR with the word SPA, including the marks AMERISTAR HOTEL & SPA, THE SPA AT AMERISTAR, AMERISTAR CASINO RESORT SPA, AMERISTAR CASINO RESORT SPA ST. CHARLES, AMERISTAR CASINO RESORT SPA BLACK HAWK, the related mark ARA SPA, and other similar marks. Opposer also has or has had ownership rights in service marks and trademarks that utilize the word AMERI with a second word, including the marks AMERISTAR, AMERISPORTS and AMERIBUCKS.

2. As owner of the above-described marks, Opposer has licensed use of the marks to its wholly owned subsidiaries, including, without limitation, Ameristar Casino Vicksburg, Inc., Ameristar Casino Council Bluffs, Inc., Ameristar Casino Kansas City, Inc., Ameristar Casino St. Charles, Inc., Ameristar Casino Black Hawk, Inc. and Ameristar Casino East Chicago, LLC (said subsidiaries are hereinafter sometimes collectively referred to as the "Subsidiaries"). The Subsidiaries are in privity with Opposer. Opposer has retained control over the nature and quality of services and goods offered by the Subsidiaries in connection with the marks.

3. Opposer, through its Subsidiaries, is and has been actively engaged in offering hotel, resort hotel, casino, restaurant, entertainment and related services and goods, at multiple locations in the United States. In addition, Opposer, through its Subsidiaries, is and has been actively engaged in offering health and beauty spa services, namely, providing massage, facial

and body treatment services, cosmetic body care services, and retail sale of body and beauty care cosmetics, as well as other health and beauty spa services, at multiple locations in the United States. The foregoing services are generally provided at, through or in connection with hotels and resort hotels.

4. Based on information and belief, Applicant will also be engaged in offering health and beauty spa services, namely, providing massage, facial and body treatment services, and cosmetic body care services, as well as body and beauty care cosmetics, as set forth in its pending federal service mark and trademark application. Based on information and belief, Applicant may also provide the foregoing services and goods at, through or in connection with hotels and resort hotels, in the same or similar manner that it currently does in Canada.

5. Opposer, through its Subsidiaries, has acquired extensive common law rights in the service mark and trademark AMERISTAR and other similar marks, and is the exclusive owner of said marks. Opposer, through its Subsidiaries, has actively and continuously used the AMERISTAR mark and similar marks in the United States since at least 1996 through the present in connection with health spa services, and since at least 2007 and/or early 2008 in connection with a full line of health and beauty spa services. It has used and continues to use the AMERISTAR mark and similar marks in connection with health and beauty spa services, namely, providing massage services, facial and body treatment services, cosmetic body care services, and retail sale of body and beauty care cosmetics, including, without limitation, providing massages, body massages, back massages, arm massages, leg massages, chair massages, shoulder massages, neck massages, hand massages, foot massages, face massages, beauty care services, beauty care for the face and body, facials, peels, immersions, manicures,

pedicures, hair removal, hair styling, hair coloring, hair conditioning, makeup applications, aromatherapy, scrubs, soaks, hydrotherapy, water massage facility services, hot tub facility services, whirlpool facility services, sauna facility services, steam room facility services, bath facility services, health and exercise room services, conditioning room services, swim pool facility services, other spa and day spa services, and providing information in the foregoing fields. Opposer, through its Subsidiaries, has also actively and continuously used the AMERISTAR mark, and the AMERISTAR CASINO and similar marks, in the United States since at least 1994 through the present in connection with hotel, resort hotel, casino, restaurant, entertainment and related services and goods, and has actively and continuously used the AMERISTAR CASINO HOTEL mark with hotel, resort hotel and related services and goods since at least 1996. Opposer's use of its marks directly and/or through its Subsidiaries extends to all fifty states and beyond.

6. Opposer, through its Subsidiaries, has acquired extensive common law rights in services marks and trademarks that utilize the word AMERISTAR with the word SPA, including the marks AMERISTAR HOTEL & SPA, THE SPA AT AMERISTAR, AMERISTAR CASINO RESORT SPA, AMERISTAR CASINO RESORT SPA ST. CHARLES, AMERISTAR CASINO RESORT SPA BLACK HAWK, the related mark ARA SPA, and other similar marks, and is the exclusive owner of said marks. Opposer, through its Subsidiaries, has actively and continuously used the marks AMERISTAR HOTEL & SPA, THE SPA AT AMERISTAR, AMERISTAR CASINO RESORT SPA, AMERISTAR CASINO RESORT SPA ST. CHARLES, and the related mark ARA SPA, in the United States since at least 2007 and/or 2008 through the present in connection with health and beauty spa services. Specifically, Opposer, through its

Subsidiaries, has had early and continuing use of the above-described marks and similar marks in connection with health and beauty spa services, namely, providing massages, facial and body treatment services, cosmetic body care services, and retail sale of body and beauty care cosmetics, including, without limitation, providing massages, body massages, back massages, arm massages, leg massages, chair massages, shoulder massages, neck massages, hand massages, foot massages, face massages, beauty care services, beauty care for the face and body, facials, peels, immersions, manicures, pedicures, hair removal, hair styling, hair coloring, hair conditioning, makeup applications, aromatherapy, scrubs, soaks, hydrotherapy, water massage facility services, hot tub facility services, whirlpool facility services, sauna facility services, steam room facility services, bath facility services, health and exercise room services, conditioning room services, swim pool facility services, other spa and day spa services, and providing information in the foregoing fields. Opposer's use of its marks directly and/or through its Subsidiaries extends to all fifty states and beyond.

7. Opposer, through its Subsidiaries, has acquired extensive common law rights in services marks and trademarks that utilize the word AMERI with a second word, including the marks AMERISTAR, AMERISPORTS and AMERIBUCKS, and is or has been the exclusive owner of said marks. Opposer, through its Subsidiaries, has actively and continuously used the marks AMERISTAR and AMERISPORTS in the United States since at least 1994 and 2002, respectively, through the present, and actively and continuously used the mark AMERIBUCKS from approximately 2004 to 2006, in connection with its services. Opposer's use of its marks directly and/or through its Subsidiaries extends to multiple states or to all fifty states and beyond.

8. Opposer's extensive common law rights in its services marks and trademarks as noted above are more than sufficient to preclude registration of Opposer's mark and application. In this regard, the Lanham Act governing service marks and trademarks in the United States expressly states that a mark shall be refused registration if it consists of a mark which so resembles "a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d). See also 15 U.S.C. §§ 1053 and 1063. Opposer need not rely on federal service mark or trademark registrations in order to prevail. Its prior common law rights are sufficient.

9. Based on information and belief, Applicant has no common law rights in its mark in the United States. Applicant's federal application for the mark AMERISPA was initially submitted under 15 U.S.C. § 1051(b) on an "intent to use" basis, and under Section 44E, with no Amendment to Allege Use or Statement of Use filed to date, and no other filings evidencing use of the mark in the United States to date, to the best of Opposer's knowledge. Based on information and belief, Applicant has yet to submit any evidence that it has used the AMERISPA mark in commerce in the United States. Even if it has used the mark in the United States, its use is presumably recent and limited geographically, with such use constituting infringement of Opposer's mark. Applicant's application for and use of the AMERISPA mark are without Opposer's consent.

10. In addition to its extensive common law rights, Opposer has also acquired federal registration rights with the United States Patent and Trademark Office for the service mark AMERISTAR in typed drawing form on the Principal Register in, among others, International

Class 42 in connection with some of its services, including "resort hotel services; hotel services; lodging services; hotel concierge services; restaurant services; snack bar services; bar services; night club services; and providing banquet and social function facilities for special occasions," and in International Classes 41 and 35 in connection with certain casino, gambling, entertainment and gift shop services. The registration for the mark is identified as number 2697230. Opposer has also acquired federal registration rights with the United States Patent and Trademark Office for the service mark AMERISTAR CASINO in typed drawing form on the Principal Register in, among others, International Class 42 in connection with "resort hotels, hotels, and making reservations and booking for temporary lodging," and in International Classes 41 and 42 in connection with casino, gambling, entertainment, restaurant, bar, night club and gift shop services. The registrations for the mark are identified as numbers 2132916 and No. 1971539 respectively.

11. Opposer has also acquired federal registration rights with the United States Patent and Trademark Office for the service mark AMERISPORTS BAR & GRILL in typed drawing form on the Principal Register in International Classes 41 and 43 in connection with casino, gambling, entertainment, restaurant, bar and snack bar services. The registration for the mark is identified as number 2915917. In addition, Opposer has acquired federal registration rights with the United States Patent and Trademark Office for the service mark ARA SPA in typed drawing form on the Principal Register in International Class 42 in connection with "health spa and day spa services offered as part of a casino establishment, namely, hydrotherapy, facials, manicures, pedicures, beauty care services, and beauty care for the face and body; providing health and day spa, sauna, steam room, hot tub, bath and whirlpool bath facilities as part of a casino

establishment; and providing information as part of a casino establishment in the fields of hydrotherapy, facials, manicures, pedicures, beauty care services and beauty care for the face and body." The registration for the mark is identified as number 3699609.

12. The five federal service mark registrations identified above, namely registration numbers 2697230, 2132916, 1971539, 2915917 and 3699609, should be included as registered marks cited by Opposer as a basis for the opposition, in addition to the extensive common law marks and rights noted above. The electronic citation to federal registration number 2687230 (GUTTER GRABBER) as included with the initial Notice of Opposition was unintentional. It was off by one digit from the intended registration number and should be deleted from the Notice of Opposition and the Trademark Trial and Appeal Board records.

13. Based on information and belief, Applicant has no federal registration rights for the AMERISPA mark with the United States Patent and Trademark Office. Applicant's only application for said mark in the United States is the subject of the current opposition proceeding, namely an application seeking registration of the mark AMERISPA in stylized form in International Class numbers 44 and 3 in connection with "[h]ealth and beauty spa services, namely, providing massage, facial and body treatment services, cosmetic body care services" and "[b]ody and beauty care cosmetics." The application, identified as number 77/783,874, was filed on July 17, 2009.

14. There is no issue as to priority, with first use by Opposer, acting through its Subsidiaries, substantially predating Applicant's application filing date and first use. Again, under the Lanham Act governing the case, first use at common law is sufficient to preclude registration of confusingly similar marks, irrespective of any federal service mark registration

rights. Opposer, acting through its Subsidiaries, first used its AMERISTAR and similar marks in commerce and interstate commerce in connection with health spa services by at least 1996, and with a full line of health and beauty spa services and the retail sale of body and beauty care cosmetics by at least 2007 and/or early 2008, and with hotel, resort hotel, casino, restaurant, entertainment and related services and goods by at least 1994, and first used its AMERISTAR CASINO HOTEL mark in commerce and interstate commerce with hotel, resort hotel and other services by at least 1996. Opposer, acting through its Subsidiaries, first used its AMERISTAR HOTEL & SPA, THE SPA AT AMERISTAR, AMERISTAR CASINO RESORT SPA, and AMERISTAR CASINO RESORT SPA ST. CHARLES marks, and the related ARA SPA mark, in commerce and interstate commerce in connection with health and beauty spa services, and including retail sale of body and beauty care cosmetics, by at least 2007 and/or 2008. Opposer, acting through its Subsidiaries, first used its AMERISTAR, AMERISPORTS and AMERIBUCKS marks in commerce and interstate commerce in connection with its services by at least 1994, 2002 and approximately 2004, respectively. Based on information and belief, Applicant has never used its proposed AMERISPA mark in commerce or interstate commerce in the United States, or has not used such mark earlier than its federal application filing date of July 17, 2009. Opposer's first use predates Applicant's first use by more than fifteen years, making Opposer the prior user of its marks in the United States.

15. Opposer has developed substantial goodwill, a most valuable reputation, and a large and profitable national business identified by its AMERISTAR, AMERISTAR HOTEL & SPA, THE SPA AT AMERISTAR, AMERISTAR CASINO RESORT SPA, AMERISTAR CASINO RESORT SPA ST. CHARLES, AMERISTAR CASINO RESORT SPA BLACK

HAWK, ARA SPA, AMERISPORTS, AMERIBUCKS and related marks. Customers, the general public and others throughout the United States have come to know, rely upon, and recognize Opposer's health and beauty spa services and retail sale of body and beauty care cosmetics, hotel services, resort hotel services and other services, by its marks.

16. Opposer has expended significant money, effort, and personnel resources over a period of years advertising, promoting and selling its services and goods in connection with its marks and developing a reputation for excellence in connection with its health and beauty spa services and retail sale of body and beauty care cosmetics, hotel services, resort hotel services and other services, at many locations in the United States.

17. The mark Applicant proposes to register is highly similar to Opposer's AMERISTAR mark and related marks. Applicant's proposed AMERISPA mark is highly similar in appearance, sound, meaning and commercial impression to Opposer's AMERISTAR mark and related marks. In this regard, Applicant's mark uses precisely the same word as Opposer's mark as the dominant distinctive feature, namely the word AMERI. Moreover, this dominant distinctive word is used in the same sequence in both marks, namely at the beginning of the mark. Indeed, three of the first four syllables in each mark are virtually identical in each case. Thereafter, Applicant's mark further resembles Opposer's AMERISTAR mark by using a final and fourth syllable that starts with precisely the same letter as Opposer's mark, namely the letter "S." Applicant's mark then further duplicates Opposer's mark by using the letter "A" near the end in the final syllable, much like Opposer's mark. Indeed, the only difference in the marks consists of two letters near the end. The sound of the two marks as heard in their entirety is also

very similar. Applicant's AMERISPA mark is thus confusingly similar to Opposer's AMERISTAR mark.

18. The AMERISPA mark that Applicant proposes to register is also confusingly similar to Opposer's marks that utilize the word AMERISTAR with the word SPA, including the marks AMERISTAR HOTEL & SPA, THE SPA AT AMERISTAR, AMERISTAR CASINO RESORT SPA, AMERISTAR CASINO RESORT SPA ST. CHARLES, AMERISTAR CASINO RESORT SPA BLACK HAWK, the related mark ARA SPA, and other similar marks. Applicant's proposed AMERISPA mark is highly similar in appearance, sound, meaning and commercial impression to Opposer's SPA marks as noted above. Not only does Applicant's mark adopt the same dominant identical feature as Opposer's marks, namely the word AMERI, in the same sequence as Opposer's marks, with the identical first three syllables, and a highly similar final syllable, precisely like Opposer's marks, but it then adds precisely the same second word, which is the only other word in Applicant's mark, namely the word SPA, thereby matching precisely the word SPA as used in Opposer's marks as noted above. As such, nearly every element of Applicant's mark is also found in Opposer's marks, making likelihood of confusion virtually certain. Applicant's mark is but another variation of Opposer's SPA marks as noted above, assuring likelihood of confusion. There will be likelihood of confusion not only as to source or origin, but also as to sponsorship, approval and affiliation, all of which are also equally actionable. Applicant's mark is also similar to Opposer's ARA SPA mark by utilizing two of the same initial letters and the word SPA in the same sequence, with a similar sound. Applicant's AMERISPA mark is thus confusingly similar to Opposer's SPA marks on multiple grounds.

19. Nor does the likelihood of confusion between marks end there. The AMERISPA mark Applicant proposes to register is also confusingly similar to Opposer's marks that utilize the word AMERI with a second word, including the marks AMERISTAR, AMERISPORTS and AMERIBUCKS. Applicant's proposed AMERISPA mark follows precisely the same pattern as that utilized in Opposer's family of AMERI mark variations as identified above, making Applicant's mark highly similar in appearance, sound, meaning and commercial impression to Opposer's AMERI marks. Over the years Opposer has used marks that utilize four distinct elements as part of a pattern. First, they use the word AMERI. Second, the word AMERI appears first in sequence. Third, a second short word follows immediately after the word AMERI. Fourth, both words are combined into a single word. Notably, Applicant's mark adopts precisely this same pattern as to all four elements. It includes the word AMERI, the word AMERI appears first, there is a single short second word, and the two words are combined as a single word. This alone virtually assures likelihood of confusion, with customers concluding that it is yet another variation of Opposer's AMERI mark variations. The fact both parties offer spa services, and that Opposer also owns a group of highly similar marks with the word SPA as noted above, further assures likelihood of confusion as to source, origin, sponsorship, affiliation and approval. Applicant's AMERISPA mark is thus confusingly similar

20. Applicant's services and goods offered with its mark as set forth in its application for registration are identical or nearly identical to Opposer's services in the spa field as offered through its Subsidiaries. Applicant's application covers "[h]ealth and beauty spa services, namely, providing massage, facial and body treatment services, [and] cosmetic body care services" and "[b]ody and beauty care cosmetics." Moreover, Applicant's spa services in Canada

are offered at, through or in connection with hotels and resort hotels. Opposer's services likewise include health and beauty spa services, namely, providing massage, facial and body treatment services, cosmetic body care services, and retail sale of body and beauty care cosmetics, making them virtually the same as Applicant's services. Moreover, as with Applicant's services in Canada, Opposer's services are also offered at, through or in connection with hotels and resort hotels. Customers of Opposer's services are likely to believe that Applicant's services originate from and/or are approved by Opposer, resulting in confusion, deception, and mistake. Alternatively, the public would readily expect that Opposer may expand its services to include Applicant's services.

21. The types of trade channels, advertising venues, and customers of the parties are similar or otherwise overlapping. Opposer advertises through the internet, direct mail, brochures, and other printed materials in connection with its mark. Based on information and belief, Applicant also promotes its services and goods through many of the same trade channels and advertising venues in connection with its mark. In this regard, Opposer, either directly or through its Subsidiaries, advertises in all fifty states in the United States. Moreover, for purposes of this opposition proceeding, the parties are deemed to operate in immediate geographic proximity. *See, e.g.*, *In re Appetito Provisions Co.*, 3 U.S.P.Q. 2d 1553, 1554 n.4 (TTAB 1987); J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 23:78, at 23-168.2 (4th ed. 1999). Moreover, even if advertising venues were to differ, the same type of end-user customers will view the respective marks, namely those interested in health and beauty spa services and related services. Furthermore, the fame of Opposer's marks after their long period

of extensive and exclusive use, and Opposer's extensive and exclusive common law rights, further demonstrates likelihood of confusion, damaging Opposer's rights and interests.

22. The highly similar nature of Applicant's AMERISPA mark, and the identical or nearly identical nature of Applicant's services and goods, trade channels, advertising venues, customers, and other factors, as set forth above, to those of Opposer, as offered through its Subsidiaries, will be likely to cause confusion, or to cause mistake, or to deceive. Confusion, mistake, and/or deception as to the source or origin of the services and goods, and the ownership, affiliation and related party status of each business, among customers, potential customers, the general public, and the business community, is likely. Many familiar with Opposer's marks, as used with health and beauty spa services, and retail sale of body and beauty care cosmetics, as well as hotel services, resort hotel services and related services and goods, will be likely to conclude that Applicant's health and beauty spa services, namely providing massage, facial, and body treatment services, and cosmetic body care services, and body and beauty care cosmetics, including advertising and promoting them to hotel, resort hotel and lodging customers, are provided by or originate from Opposer. Even if some should notice a difference between Opposer's marks and Applicant's mark, they will nevertheless be likely to believe that Opposer's marks and Applicant's mark are companion marks, originating from the same source or origin. Confusion will increase as Applicant begins and/or expands sales of its services and goods and use of its mark in interstate commerce. The resulting confusion, mistake, and/or deception will be to the detriment of Opposer and its Subsidiaries as the prior users of Opposer's marks.

23. Approval of Applicant's application for registration and use of Applicant's mark would further constitute a false designation of origin and a false and misleading representation of

fact likely to cause confusion, mistake, or deception as to the affiliation, connection, or association of the parties, or as to the origin, sponsorship or approval of Applicant's services and goods by Opposer directly and through Subsidiaries. See 15 U.S.C. § 1125(a).

24. Approval of Applicant's application for registration and use of Applicant's mark would further damage Opposer, directly and through Subsidiaries, because third parties, upon examining the registration, would reach incorrect conclusions regarding, and Applicant would be in a position to raise doubts as to, the extent and nature of Opposer's right to use its service marks and trademarks in connection with its services and goods, now and in the future, on its own behalf and through Subsidiaries.

25. Approval of Applicant's application for registration and use of Applicant's mark would eventually deprive Opposer's marks of distinctiveness, blurring identification of Opposer's marks with its services and goods and those of its Subsidiaries, and tarnishing Opposer's goodwill, value, and reputation as associated with its marks, directly and through Subsidiaries, through association with Applicant's mark, services and goods. Adverse conditions, business failures, defects, or defaults on the part of Applicant's services, goods or business would reflect upon and seriously injure Opposer's marks, reputation, and business, directly and through Subsidiaries.

26. If Applicant is granted the registration herein opposed, it will obtain a prima facie exclusive right to use its mark in commerce with its services and goods, its mark will likely be deemed incontestable five (5) years from the date of registration, and Applicant will thereby obtain an incontestable right to use the mark in commerce. As a consequence, Opposer's common law, registration and other rights will be greatly impaired, Applicant will be able to

trade on Opposer's goodwill, substantial confusion, deception, and mistake will continue, and great damage and injury will result to Opposer as the prior user of the AMERISTAR, AMERISTAR HOTEL & SPA, THE SPA AT AMERISTAR, AMERISTAR CASINO RESORT SPA, AMERISTAR CASINO RESORT SPA ST. CHARLES, AMERISTAR CASINO RESORT SPA BLACK HAWK, ARA SPA, AMERISTAR CASINO, AMERISTAR CASINO HOTEL, AMERISPORTS and AMERIBUCKS marks, on its own behalf and through its Subsidiaries.

27. Based on the foregoing, issuance of a federal registration by the United States Patent and Trademark Office for the AMERISPA mark to Applicant would be in violation of Opposer's rights to the AMERISTAR, AMERISTAR HOTEL & SPA, THE SPA AT AMERISTAR, AMERISTAR CASINO RESORT SPA, AMERISTAR CASINO RESORT SPA ST. CHARLES, AMERISTAR CASINO RESORT SPA BLACK HAWK, ARA SPA, AMERISTAR CASINO, AMERISTAR CASINO HOTEL, AMERISPORTS and related marks, causing Opposer, as owner, and Subsidiaries, as related parties and licensees, substantial damage and injury.

WHEREFORE, Opposer prays that the present opposition be sustained and that the registration sought by Applicant identified as Serial No. 77/783,874 be refused.

Please recognize Lester K. Essig and Arthur B. Berger, members of the Bar of the State of Utah, and the law firm of Ray Quinney & Nebeker, whose mailing address is 36 South State Street, Suite 1400, P.O. Box 45385, Salt Lake City, Utah 84145-0385, with telephone number (801) 532-1500, as attorneys for Opposer in the above-captioned opposition. Please address all correspondence to them.

DATED this 18th day of April, 2011.

Respectfully submitted,

AMERISTAR CASINOS, INC.

/s/

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Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of April, 2011, a true and correct copy of the foregoing AMENDED NOTICE OF OPPOSITION was mailed by first-class mail, postage prepaid, to the following:

Brent E. Routman
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910

/s/ Lester K. Essig

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