ESTTA Tracking number: **ESTTA611927**
Filing date: **06/25/2014**

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

Proceeding	91202705
Party	Defendant Grand Canyon Ranch
Correspondence Address	THOMAS I ROZSA ROZSA LAW GROUP LC 18757 BURBANK BLVD, SUITE 220 TARZANA, CA 91356-3346 UNITED STATES amy@rozsalaw.com
Submission	Rebuttal Brief
Filer's Name	Thomas I. Rozsa
Filer's e-mail	tom@rozsalaw.com
Signature	/s/Thomas I. Rozsa
Date	06/25/2014
Attachments	Respondent's Rebuttal Trial Brief.pdf(275814 bytes)

Thomas I. Rozsa, State Bar No. 080615
ROZSA LAW GROUP LC
18757 Burbank Boulevard, Suite 220
Tarzana, California 91356-3346
Telephone (818) 783-0990
Facsimile (818) 783-0992

Attorney for Respondent
Grand Canyon Ranch, LLC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CR License, LLC, Petitioner, vs. GRAND CANYON RANCH, LLC Respondent.	In the matter of Cancellation Nos. 91202705 92054034 Marks: GRAND CANYON RANCH Reg. No. 3,927,500 GRAND CANYON RANCH AT SPIRIT MOUNTAIN App. No. 77/905,088

REBUTTAL BRIEF OF RESPONDENT GRAND CANYON RANCH, LLC

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

Pursuant to the parties' Stipulation to Participate in Accelerated Case Resolution under C.F.R. § 2.128, Respondent GRAND CANYON RANCH, LLC ("Respondent" or "GCR") hereby submits its Rebuttal Brief in Support of its Answer to Petition to Cancel U.S. Trademark No. 3,927,500 and in Support of its Answer to Amended Notice of Opposition to U.S. Trademark Serial No. 77/905,088 (hereafter "Respondent's Rebuttal Brief") in the now consolidated cancellation and opposition proceedings initiated by Petitioner CR LICENSE, LLC (hereafter "Petitioner" or "CR License"). Respondent further submits Respondent's Rebuttal Brief in support of the Trial Brief of Respondent Grand Canyon Ranch, LLC submitted on May 19, 2014 and in opposition to Petitioner's ACR Rebuttal Brief submitted on June 6, 2014. Respondent is timely submitting its Rebuttal Brief on June 24, 2014.

I. INTRODUCTION

Petitioner is seeking the cancellation of Respondent's mark for "GRAND CANYON RANCH and Design", U.S. Trademark Registration No. 3,927,500 and the refusal to register Respondent's mark "GRAND CANYON RANCH AT SPIRIT MOUNTAIN and Design", U.S. Serial No. 77/905,088 ("GRAND CANYON RANCH and Design" and "GRAND CANYON RANCH AT SPIRIT MOUNTAIN and Design" hereafter jointly "GCR Marks" or "Respondent's Marks"). Respondent argued in Respondent's Trial Brief that Registration No. 3,927,500 shall be upheld and Respondent's application U.S. Serial No. 77/905,088 shall be allowed to registration. The basis for Respondent's arguments is that the GCR Marks feature distinctive designs which are the essence of these marks due to the fact that Respondent had to disclaim the phrases "GRAND CANYON" and "SPIRIT MOUNTAIN". Respondent's services offered under Respondent's Marks greatly differ from Petitioner's services; and the customer base of Respondent also differs from Petitioner's customer base. Moreover, Petitioner presented no evidence of any actual confusion where the public mistakenly

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

believed Respondent's services were provided by Petitioner, or that Respondent was affiliated with Petitioner. In fact, Respondent's mark coexisted with Petitioner for years without any instance of confusion. Therefore, Respondent maintains its position that there is no likelihood of confusion between Respondent's Marks and Petitioner's "CANYON RANCH" mark (hereafter "Petitioner's Mark"). Respondent that the GCR Marks and Petitioner's mark can continue to peacefully coexist in the marketplace, and the continued registration of Respondent's Marks would not dilute Petitioner's "CANYON RANCH" marks by blurring or tarnishment.

Accordingly, Respondent respectfully repeats its request that Petitioner's cancellation and opposition be dismissed on all grounds, Respondent's registration be sustained and Respondent's application be allowed to proceed to registration.

II. ARGUMENT

A. RESPONDENT MAINTAINS ITS OBJECTION TO EVIDENCE SUBMITTED WITH PETITIONER'S ACR TRIAL BRIEF

1. Objection to the Supplemental Affidavit of Jerrod I. Cohen

Respondent maintains its objection to the Supplemental Affidavit of Jerrod I. Cohen. Petitioner argues in its rebuttal brief that the statements found in the supplementary affidavit were disclosed "nearly verbatim" from Canyon Ranch's interrogatory responses served on June 5, 2012, and that the attachments were disclosed prior to the discovery cutoff period. However, the interrogatory responses or production responses of Canyon Ranch were not verified by Jerrod I. Cohen. Indeed, Petitioner identified a different individual the source of information of its responses. Registrant's Interrogatory No. 59 and Petitioner's response to the same are as follows [Page 66, Exhibit A to Petitioner's Rebuttal ACR Brief]:

> "Please IDENTIFY each and every PERSON who supplied information or documents for, or who has participated in responding to these Special Interrogatories, Registrant's Requests for Production of Documents and Things and/or Registrant's Requests for Admissions.
> RESPONSE: The responses to the requests above were furnished by Gary S. Milner, Vice President of Development."

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

Therefore, the Supplemental Affidavit of Jerrod I. Cohen is an untimely attempt of Petitioner to provide foundation for the unverified information and documents submitted as part of Petitioner's discovery responses. Therefore, GCR's objection to the supplemental affidavit should be sustained.

2. Objection to Documents Bates Nos. CR003745-CR003821

Petitioner admits in its Rebuttal Brief that its cover letter omitted identifying CR03745-CR003821. The CDs received by Respondent were also labeled in a manner that indicated that the last Bates Numbered document produced by Petitioner was CR003744. However, on closer inspection Respondent noted that Bates Nos. CR003745-CR003821 were indeed included on CD#3 of Petitioner's January 10, 2014 disclosure. Therefore, this objection is withdrawn.

3. Objection to Exhibit B to the Garrison Affidavit

Respondent sustains its objection to Exhibit B to the Garrison Affidavit. Petitioner argues that the customer reviews produced in Exhibit B are not offered to establish the truth of the statements, but rather as evidence of Petitioner's tarnishment claims. Indeed, Petitioner is suggesting in its arguments that these customer reviews are indicative of the questionable quality of services Respondent, not merely that reviews appeared about Respondent on certain dates in certain trade publications. Therefore, Respondent continues to object to the contents of the above-referenced Exhibit B.

B. THERE IS NO LIKELIHOOD OF CONFUSION BETWEEN RESPONDENT'S MARK AND PETITIONER'S MARK THEREFORE THE PETITION TO CANCEL MUST BE REJECTED AND RESPONDENT'S MARK SHOULD BE ALLOWED REGISTRATION

Respondent has set forth its arguments relating to likelihood of confusion in Respondent's Opening Brief. Respondent's Marks reference the location and style of Respondent's ranch facilities, which are in the Grand Canyon. They provide for a rustic experience, with outdoors adventures and accommodations in log cabins or a tipi. Respondent's marks clearly depict the brand of Respondent's ranch and the image of the Spirit Mountain that overlooks the facilities. Respondent's marks are

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

clearly distinguishable from Petitioner's marks, and so are the services provided by Respondent. Petitioner's high end spa services target a very different customer base from Respondent's customer base. While Petitioner provides services in Las Vegas, and Respondent does provide helicopter rides to its facilities from Las Vegas, there is no overlap between the geographical location of where the services of Respondent or Petitioner are provided.

Furthermore, Petitioner is unable to present a single piece of evidence that would show any actual confusion between Respondent's Marks and/or respondent's services and Petitioner, because none exists. Respondent and Petitioner coexisted for years on the marketplace. The Affidavit of Nigel Turner clearly establishes that the Grand Canyon Ranch mark has been in use since 2003 and that the Grand Canyon Ranch mark could coexist even with the Grand Canyon West Ranch designation.

Therefore, it is respectfully submitted that no likelihood of confusion is found and Respondent's Marks be allowed to registration.

C. RESPONDENT'S USE OF RESPONDENT'S MARK DOES NOT DILUTE PETITIONER'S MARK THEREFORE THE PETITION TO CANCEL MUST BE REJECTED AND RESPONDENT'S MARK SHOULD BE ALLOWED REGISTRATION

Petitioner argues that Respondent's use of Respondent's Marks will diminish the value of Petitioner's mark by blurring or tarnishment. As Respondent has pointed out it its Trial Brief, there is no substantive evidence of Petitioner's advertising expenditures or any evidence that Respondent's use of Respondent's Mark would impact Petitioner's use or value of Petitioner's Mark or Petitioner's business. Therefore, it is respectfully submitted that Petitioner's claims for dilution be denied.

III. CONCLUSION

Respondent respectfully submits that the Trademark Trial and Appeal Board should rule in favor of the Respondent for the following key reasons:

1. Respondent's "GRAND CANYON RANCH" and "GRAND

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

CANYON RANCH AT SPIRIT MOUNTAIN" marks are stylized designs set against the backdrop of a stylized helicopter including a portion having the Diamond Bar logo within the tail of the helicopter and the image of Spirit Mountain image, which are clearly distinct from "CANYON RANCH" which is a word mark without any stylized design.

2. The services provided in conjunction with the Petitioner's Mark and the Respondent's Marks are very different. The Petitioner offers its customers high-end spa and wellness experience at venues such as the Venetian® in Las Vega and other major hotels. The facilities owned by the Petitioner are located in Tucson, Arizona and in other high-end resort locations. As opposed to Petitioner's services and locations, the services offered by the Respondent are targeting customers who are seeking a rugged outdoor adventure in the Grand Canyon and are willing to either sleep in a pine cabin or a tipi.

3. The marks have peacefully coexisted for over a decade and there has not been one single instance of actual confusion that the Respondent is aware of, and neither did the Petitioner provide evidence of any instances of actual confusion. The reason for the lack of confusion in Respondent's opinion is that the target group of customers of Respondent and Petitioner vastly differ, because the Petitioner and Respondent are focusing on totally different types of vacation experiences.

4. Respondent's only facilities are located on the West Rim of the Grand Canyon. Respondent is offering services only at, and adjacent to the Grand Canyon. On the contrary, the facilities of Petitioner are located at venues that are not associated with the Grand Canyon.

5. Respondent and Petitioner have peacefully coexisted for years prior to the present cancellation and opposition actions. There are no actual instances of confusion made of record, and no survey or other evidence submitted of any customer perception of Grand Canyon Ranch being affiliated by, sponsored by or in other way connected to the services offered by Petitioner under Petitioner's Mark.

Therefore, it is respectfully submitted that the Opposition to United States

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

Trademark Serial No. 77/905,088 should be dismissed with prejudice and Respondent's application for GRAND CANYON RANCH AT SPIRIT MOUNTAIN and Design be permitted to the Notice of Allowance stage and issuance of a registration thereafter.

It is further respectfully submitted that the Petition to Cancel should be denied with prejudice and Respondent's Registration No. 3,927,500 for "GRAND CANYON RANCH" should be upheld.

ROZSA LAW GROUP LC

Dated: June 24, 2014

s/ Thomas I. Rozsa

Thomas I. Rozsa
18757 Burbank Boulevard, Suite 220
Tarzana, California 91356-3346
Telephone (818) 783-0990
Facsimile (818) 783-0992

Attorney for Respondent
GRAND CANYON RANCH

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990

CERTIFICATE OF SERVICE

I hereby certify that a copy of the document entitled REBUTTAL BRIEF OF RESPONDENT GRAND CANYON RANCH, LLC was sent on June 24, 2014 by e-mail to the attorneys for the Petitioner at the following e-mail addresses:

Sean D. Garrison, Esq.
Jennifer A. Van Kirk, Esq.
Cindy A. Villanueva, Esq.
LEWIS ROCA ROTHGERBER LLP

201 East Washington Street, Suite 1200
Phoenix, Arizona 85004-2595

Dated: June 24, 2014

__s/ Thomas I. Rozsa_____

Thomas I. Rozsa

Attorney for Respondent

GRAND CANYON RANCH, LLC

ROZSA LAW GROUP LC
ATTORNEYS AT LAW
18757 BURBANK BOULEVARD, SUITE 220
TARZANA, CALIFORNIA 91356-3346
TELEPHONE (818) 783-0990