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

Proceeding	91214649
Party	Plaintiff Noodle Time, Inc.
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Date	09/02/2015
Attachments	MOT - Motion for Summary Judgment 09012015.pdf(76658 bytes) MEMO - Memorandum Supporting MSJ 09012015 - REDACTED.pdf(303943 bytes) EXHIBIT A -- Depo Transcript of Benny Hodge.pdf(1858517 bytes) EXHIBIT B -- Registrations + Use of marks in classes 041 and 043.pdf(5210119 bytes)

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

NOODLE TIME, INC.,
Opposer,

Opposition No.: 91214649

v.

Mark: **BENNY HUNNA**

BENNY HODGE,
Applicant.

Serial No.: 85/920,599

Filing date: May 01, 2013

Publication Date: October 08, 2013

OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Trademark Rules 2.116 and 2.127, Opposer, Noodle Time, Inc. (“Opposer” or “Benihana”), hereby respectfully moves the Board to enter summary judgment sustaining Opposition No. 91214649 on the grounds that (i) the mark BENNY HUNNA, subject of U.S. Application Serial No. 85/920,559 (the “Subject Application”), filed in the name of Benny Hodge (hereinafter, “Applicant”) is likely to cause confusion, mistake, or deception as to source, sponsorship, or affiliation with Opposer’s BENIHANA® Marks (as later defined); and (ii) Applicant’s BENNY HUNNA Mark will dilute the distinctive quality of Opposer’s BENIHANA® Marks.

In support of its Motion for Summary Judgment, Opposer relies on the pleadings, the records of the USPTO, the Memorandum in Support of Opposer’s Motion for Summary Judgment (filed contemporaneously herewith), the declaration of Elizabeth Jean Means, and attached exhibits. This Motion for Summary Judgment is being timely filed. 37 C.F.R. § 2.127(e)(1); TMBP § 528.02.

The undisputed facts and arguments supporting this Motion for Summary Judgment (“Motion”) are set forth in the Memorandum in Support of Opposer’s Motion for Summary Judgment (“Memorandum”).

Dated: September 2, 2015

Respectfully submitted,

/S/ Janet C. Moreira

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CERTIFICATE OF ELECTRONIC TRANSMISSION

I HEREBY CERTIFY that a true copy of the foregoing OPPOSER'S MOTION FOR SUMMARY JUDGMENT is being transmitted electronically through ESTTA pursuant to 37 C.F.R. § 2.195(a) on September 2, 2015.

/S/ Janet C. Moreira

Janet C. Moreira

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing OPPOSER'S MOTION FOR SUMMARY JUDGMENT has been served on all counsel and/or parties of record as follows on September 2, 2015:

By Email: bennyhodge25@yahoo.com

Benny Hodge
122 Country Club Drive
Greenwood, MS 38930

Courtesy Copy by Federal Express:

Benny Hodge
5260 Catspaw Drive
Antioch, TN 37013

/s/ Janet C. Moreira

Janet C. Moreira

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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NOODLE TIME, INC.,
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BENNY HODGE,
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Opposition No.: 91214649

Mark: **BENNY HUNNA**

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**OPPOSER'S MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

Dated: September 2, 2015

Respectfully submitted,

/S/ Janet C. Moreira

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I. PRELIMINARY STATEMENT

Almost 50 years from the date of first use of the **BENIHANA**® Marks (as defined in the Notice of Opposition (filed January 27, 2014) ¶ 8 and the Declaration of Elizabeth Jean Means, dated August 31, 2015 (“*Means Dec.*”), ¶ 15)¹, decades after the marks were registered with the United States Patent and Trademark Office, and long after the **BENIHANA**® Marks had acquired fame through extensive use, advertising, unsolicited promotion, and billions of dollars in sales, Applicant Benny Hodge (“Applicant”)², an aspiring rapper/musical artist from Greenwood, Mississippi, a small town of about 16,000 people, filed a federal trademark application to register BENNY HUNNA on an intent-to-use basis in connection with “entertainment services in the nature of live musical performances.” Applicant, while claiming he never heard of **BENIHANA**® prior to filing his application (which seems unlikely given the pervasiveness of the **BENIHANA**® Marks for decades and the particular significance the **BENIHANA**® Marks have in the same genre of music that Applicant intends to perform) reached out to Benihana soon after filing his application to request corporate sponsorship based upon the similarities in the marks – **BENIHANA**® and BENNY HUNNA. Even Applicant, by his own statements and conduct, recognizes the fame and value of associating his BENNY HUNNA mark with the **BENIHANA**® Marks.

As discussed in detail in the following sections, Benihana’s claims warrant summary judgment as there are no genuine issues of material fact and there is a likelihood of confusion and dilution as a matter of law. Accordingly, judgment should be granted to Benihana, this Opposition should be sustained, and registration of the BENNY HUNNA mark shown in Application Serial No. 85/920,599 should be denied.

II. STATEMENT OF UNCONTROVERTED FACTS

A. HISTORY OF BENIHANA

¹ The Declaration of Elizabeth Jean Means, dated August 31, 2015, has been filed contemporaneously herewith. Benihana incorporates by reference the information in the *Means Dec.* along with all exhibits attached thereto.

² See Excerpts of Deposition Transcript of Applicant Benny Hodge (“*Hodge Depo.*”), and any related deposition exhibits, attached hereto as **Exhibit A**. References to page and line number shall appear in the following format: “Page:Line.”

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Opposer Noodle Time, Inc. (“Opposer” or “Benihana”) introduced Americans to Japanese food in the 1960s. *Means Dec.*, ¶ 7. That statement, alone, encapsulates the power, history, strength, and magnitude of the **BENIHANA®** Marks. The **BENIHANA®** story starts with Rocky Aoki (“Aoki”), a descendant of a Samurai warrior and popular entertainer. *Means Dec.*, ¶¶1-6. Aoki moved to the United States after high school, and opened America’s first teppanyaki restaurant in New York City in 1964, and named it **BENIHANA OF TOKYO®** after his parents’ Tokyo coffee shop. *Id.* at ¶ 6. The first **BENIHANA®** restaurant was unlike anything Americans had ever seen, with Japanese food being prepared on steel grills right in front of them. *Id.* at ¶¶ 6-7.

The uniqueness of the **BENIHANA®** restaurants is not only the food but the highly trained chefs who showcase intricate knife work and “tricks” --- slicing, dicing and tossing food in the air --- while preparing customer’s meals. *Id.* at ¶ 8. After a rave review in the *New York Herald Tribune* in 1965, the restaurant gained popularity and momentum and Rocky opened additional locations in New York and Chicago. *Id.* at ¶¶ 9-10. By 1972, there were six (6) **BENIHANA®** locations across the country grossing over \$12 million per year. *Id.* at ¶ 10. Today, there are more than 75 **BENIHANA®** restaurants and 4,900 employees nationwide. *Id.* at ¶¶ 11-12.

B. DURATION, EXTENT AND GEOGRAPHIC REACH OF ADVERTISING OF THE BENIHANA® MARKS

Benihana has continuously and exclusively used the **BENIHANA®** Marks to identify its unique brand of restaurant, entertainment and related services since 1964. *Means Dec.*, ¶¶ 13-14. Benihana devotes enormous amounts of resources, including millions of dollars on an annual basis, to the advertising, marketing, and promotion of its operations, menu items, and dining entertainment. *Id.* at ¶¶ 32, 37-38, 40-

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Benihana advertises and promotes its **BENIHANA®** Marks in and on television, radio, billboards, print media, e-mail marketing programs, and social media, through the issuance of press releases, and by

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participating in community events. *Means Dec.*, ¶¶ 33-35, 38, 40-44, 46. Benihana's television, radio, billboard advertising, and participation in community events are targeted to local markets where its restaurants are located. *Id.* at ¶ 34. With restaurants located in 24 States across the United States (with multiple restaurants in the States of Arizona, California, Colorado, Florida, Georgia, Illinois, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Texas), Benihana has extensive geographic reach in its television, radio, and billboard advertising. *Id.* at ¶ 34. It regularly issues press releases on **BENIHANA®** happenings, including without limitation, everything from corporate hiring to Father's Day specials, keeping its customers engaged and informed with not only **BENIHANA®** the restaurant, but also **BENIHANA®**, the global business operation. *Id.* at ¶ 38.

Benihana engages its customers and fans through extensive online, social media, and e-mail marketing and has gained a public and loyal fan base, which includes many celebrities. *Means Dec.*, ¶¶ 40-44, 51-53.

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Through these programs, Benihana keeps customers up-to-date on **BENIHANA®** specials and sends its customers birthday gift certificates. *Id.* at ¶¶ 41-43. Benihana also stays connected with its customers through Facebook, Twitter, Instagram, Youtube, and Pinterest. *Id.* at ¶ 44. Customers regularly post pictures of their experiences and celebrations at **BENIHANA®** restaurants onto Benihana's social media pages and/or "tag" Benihana, creating a link from the customer's page to the **BENIHANA®** page. *Id.*

In each of its 70-plus U.S. locations, Benihana prominently and extensively displays the **BENIHANA®** Marks on items throughout the restaurant including, without limitation, employee uniforms, marketing monitors, menus, table cards, flyers, take-out and catering menus, carry-out chopsticks, take-out carrying bags, receipts, and packaging. *Means Dec.*, ¶ 45. The popularity of the **BENIHANA®** Marks and the **BENIHANA®** experience has resulted in a cult-like following and has created a secondary market for **BENIHANA®** memorabilia. *Id.* at ¶ 46.

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C. AMOUNT, VOLUME AND GEOGRAPHIC EXTENT OF SALES OF BENIHANA® SERVICES

The **BENIHANA®** services have been advertised, displayed, and sold across the United States at more than 70 restaurant locations. *Means Dec.*, ¶ 34. As a result of the geographic extent of its locations combined with extensive advertising and promotion,

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Notably, these numbers only account for the last 10 of the 50-plus years that the **BENIHANA®** Marks have been in use! Indeed, the number of customers served, extensive sales, and geographic locations of the **BENIHANA®** services across the United States establish fame of the **BENIHANA®** Marks.

D. EXTENT OF ACTUAL RECOGNITION OF THE BENIHANA® MARKS

1. THE BENIHANA® MARKS ARE FAMOUS AND REPRESENT A CULTURAL PHENOMENON

The social popularity of the **BENIHANA®** Marks in connection with restaurants, entertainment, and celebrations for both families and foodies is evidence of the fame and tremendous level of consumer recognition that the **BENIHANA®** Marks enjoy. Benihana's concerted efforts have garnered the **BENIHANA®** Marks extensive customer goodwill, recognition, and fame.

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The **BENIHANA®** Marks are undoubtedly famous; however, it is the unsolicited press, celebrity following, media attention, and third party references to **BENIHANA®** in film, television, music, educational case studies, books, and articles that have taken the **BENIHANA®** Marks from famous to culturally iconic. *Means Dec.*, ¶¶ 48-69.

The **BENIHANA®** Mark have become part of the national fabric appearing in popular television programs such as *Friends*, *The Office*, *Saturday Night Live*, *Mad Men*, and *30 Rock* and on the big screen in *The 40-Year Old Virgin* and *The Wolf on Wall Street*; television shows and movies seen by hundreds of millions of people since 1995. (*Id.* at ¶¶ 54-61). In addition to these big and small screen references, viewed by millions of Americans across the United States, **BENIHANA®** is frequently referenced in musical works. Whether it is a reference to **BENIHANA®** chefs' knife-throwing tricks or whether alluding to affluence and success (*see also Hodge Depo*, 51:17-24), **BENIHANA®** is referred to in hundreds of songs. *Means Dec.*, ¶¶ 63-66. Numerous articles discuss this cultural phenomenon and rap's infatuation with **BENIHANA®**. *Means Dec.*, ¶¶ 63-69.

2. THE BENIHANA® RESTAURANT SUCCESS STORY IS USED BY EDUCATIONAL INSTITUTIONS AND IS THE SUBJECT OF MULTIPLE BOOKS

The success of **BENIHANA®**, particularly in terms of restaurant operations, has been the subject of several academic papers and studies, including a Harvard Business School case study that is considered a benchmark in operations management. *Id.* at ¶¶ 48-49. The **BENIHANA®** legacy has also been the subject of two (2) books available on Amazon.com titled "*Making it in America, the Life and Times of Rocky Aoki, Benihana's Pioneer*" and "*Mr. Benihana: The Rocky Aoki Story.*" *Id.* at ¶ 50.

3. THIRD PARTY PRESS AND RECOGNITION OF BENIHANA®

Since 2012, Benihana has been identified as a Top 100 Company by restaurant industry magazine, *Nation's Restaurant News*. *Means Dec.*, ¶ 79. The website Ranker.com identifies **BENIHANA®** restaurants as a top restaurant on several lists including, "The Best Restaurant Chains for Anniversary Dinners," "The Best Restaurant Chains for Kids Birthdays" and "The Best High-End Restaurant Chains." *Id.* at ¶ 80.

BENIHANA® has also been the topic of countless news articles, in top publications from *Fortune Magazine* to *The Washington Post*. A limited search for **BENIHANA®** in the Lexis Nexis news database reveals nearly 4,000 articles. *Means Dec.*, ¶ 81. Many of these articles make reference to the **BENIHANA®**

Marks as “world famous” or “iconic.” *Id.* at ¶ 82. Given Benihana’s 50-plus years of use of the **BENIHANA®** mark for restaurants located across the United States, the sales revenue, advertising expenses, modern culture, entertainment and educational references, the extensive recognition by third parties, and the depth and scope of such use and recognition, the **BENIHANA®** mark is famous, well-known, distinctive, and entitled to great protection. *Id.* at ¶ 83.

E. PROTECTION OF THE BENIHANA® TRADEMARKS

Benihana is the owner of multiple United States (and foreign) trademark registrations consisting of the **BENIHANA®** Marks. *Id.* at ¶¶ 15-16.³ The registrations for the **BENIHANA®** Marks shows that the marks are registered on the Principal Register as inherently distinctive marks without resort to Section 2(f) or subject to disclaimer of any elements of the marks. *Id.* All of the registrations identified in the Notice of Opposition were registered long before the filing date of the Subject Application. *Id.*

Most of these registrations are now incontestable under Section 15 of the United States Trademark Act, 15 U.S.C. § 1065. To protect its trademark and intellectual property rights, Benihana has an active enforcement program in place to thwart and prevent infringers. *Means Dec.*, ¶¶ 15-23. Benihana regularly monitors the marketplace, files federal lawsuits, initiates domain name disputes, and sends cease and desist letters. *Id.* at ¶¶ 18-22. As a result of the fame of the **BENIHANA®** Marks and Benihana’s federal registrations, Benihana has not had to take formal legal action against most infringers because most infringers agree to cease use immediately upon notification of Benihana’s intellectual property rights. *Id.* Benihana has filed sixteen (16) domain name disputes involving the **BENIHANA®** Marks since 2011 and has won each one. *Id.* at ¶ 19. In two of those UDRP proceedings, the National Arbitration Forum recognized that the **BENIHANA®** Marks are “well-known” or “famous.” *Id.* at ¶ 20.

³ Opposer inadvertently omitted Registration No. 940142 for the mark **BENIHANA OF TOKYO**, from the Notice of Opposition and requests the Board’s consideration of the additional federal trademark registration, which has a filing date of May 20, 1971, more than 44 years ago.

F. HISTORY BETWEEN THE PARTIES

Benihana learned of BENNY HUNNA when Applicant sent a disturbing email to the company on June 21, 2013 through the company website www.benihana.com. *Means Dec.* ¶¶ 24-25, *Hodge Depo.*, 52:14-20, Ex. 3. In the email, Applicant states that he is the owner of the BENNY HUNNA mark and goes on to state:

By the names BENIHANA and BENNY HUNNA being so similar in pronunciation it will be a matter of time before we come together and be a house hold name “everywhere.” Music is my profession and I know we can reach a broader audience through music and music videos...I would like to start with the BENIHANA in Memphis, Tennessee and go to everyone in the world. After all, I am Benny Hunna and it would only be right. What I am saying is I need a sponser [sic] and corporate knowledge which Benihana has... I know with my musical talent and Benihana’s corporate knowledge we can expand broader across the globe.

Hodge Depo. 52:9-53:18, Ex. 3. Benihana immediately took action. *Means Dec.*, ¶¶ 25-30. Benihana is concerned with the use of the BENNY HUNNA mark based upon its similarities with the famous **BENIHANA®** Marks, Applicant’s intent to trade on the goodwill (and “corporate knowledge”) of Benihana and the **BENIHANA®** Marks, Applicant’s proposed use in the entertainment industry, Applicant’s proposed use in connection with musical works in the genre of rap music, Applicant’s proposed use to sell/offer its services in **BENIHANA®** restaurants, and Applicant’s use of vulgar language and adult content in its musical videos which could tarnish the reputation of the **BENIHANA®** Marks, known for its connection with family celebrations. *Means Dec.*, ¶¶ 25, 30-31, 70-75; *Hodge Depo.*, 90:16-92:24, Ex. 3.

These concerns are heightened by the fact that **BENIHANA®** is a famous mark. Applicant has even acknowledged this fact in his deposition. During this deposition, Applicant testifies:

Q: But do you understand what trademark rights protect?

A: Yeah. Trademark --- I guess since y’all registered and famous --- famous to a certain extent, I guess that y’all got extra protection.

Hodge Depo., 94:25-95:9.

Applicant further admits the potential for confusion by not only suggesting that a sponsorship is imperative (“it will only be right”) but also forthcoming (“it will be a matter of time”) based upon a

similarity in the marks. *Means Dec.* ¶ 30; *Hodge Depo.* 52:9-53:11, Ex. 3. Such a presumption is exactly the kind of association, mistake, or deception that Benihana wishes to avoid. If Applicant were to obtain a registration for the mark BENNY HUNNA, his registration and proposed use of the mark would confuse customers, devalue the **BENIHANA®** brand, and cause significant harm to the **BENIHANA®** Marks by diluting their distinctiveness and tarnishing the reputation associated therewith. This is particularly true whereas here, after the filing of the Subject Application, Applicant reached out to Benihana to seek corporate sponsorship and when rejected, reached out to media sources to exploit the potential connection and then posted the resulting press on his social media pages. *Hodge Depo.* 85:24-88:10, 146:1-23, Ex. 15.

III. ARGUMENT

A. SUMMARY JUDGMENT STANDARD

The purpose of summary judgment is to avoid a “useless” trial. *Pure Gold, Inc. v. Syntex (USA) Inc.*, 739 F.2d 624, 626, 222 USPQ 741, 743 (Fed. Cir. 1984). “‘Useless’ means that more evidence than is already available...cannot be reasonably expected to change the result.” *Id.* Using the mechanism of summary judgment in *inter partes* trademark proceedings is to be encouraged.

The basic purpose of summary judgment procedure is one of judicial economy --- to save the time and expense of a full trial when it is unnecessary because the essential facts necessary to decision of the issue can be adequately developed by less costly procedures, as contemplated by the FRCP rules here involved, with a net benefit to society.

Pure Gold, Inc., 739 F.2d at 626; *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 1565, 4 USPQ2d 1793, 1797 (Fed. Cir. 1987) (“The uniform precedent of [the Federal Circuit] is that the issue of likelihood of confusion is one of law.”). The Board frequently grants summary judgment to a party opposing registration on the basis of either a likelihood of confusion or dilution. *See Sweats Fashions, Inc.*, 833 F.2d at 1565; *The Kosher Garden, Inc. v. Sioux Falls Grocery I, LLC*, 2013 TTAB Lexis 605 (TTAB 2013) (granting summary judgment on likelihood of confusion); *National Pork Board v. Supreme Lobster and Seafood Co.*, 96 USPQ2d 1479, 1495 (TTAB 2010) (granting summary judgment on dilution); *Hawaiian Moon, Inc. v. Rodney Doo*, 2006 TTAB Lexis 163 (TTAB 2006) (granting summary judgment

on likelihood of confusion); *Slip Guard Systems, Inc. v. Slip Guard Worldwide, Inc.*, 2001 TTAB Lexis 361 (TTAB 2001) (granting summary judgment on likelihood of confusion); *Turner Entertainment Co. v. Nelson*, 38 USPQ2d 1942, 1946 (TTAB 1996) (granting summary judgment on likelihood of confusion).

Summary judgment is appropriate when the movant has established that “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” T.B.M.P §528.01 quoting Rule 56(c), Fed. R. Civ. P; see *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Malletier v. Hyundai Motor Am.*, 2012 U.S. Dist. LEXIS 42795, *10 (S.D. N.Y. 2012).

As detailed below, there are no genuine issues of material fact in this matter that would preclude the entry of summary judgment on the issues of likelihood of confusion and dilution.

B. BENIHANA HAS STANDING AND PRIORITY

There is no dispute as to Benihana’s standing or priority. Applicant’s Answer to Not. Opp. (filed March 8, 2014) (“App. Ans.”), ¶¶ 20, 24. In order to prove standing, opposer must establish that it has a “real interest” in this proceeding. *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999). Benihana owns several valid, existing, and incontestable registrations for the **BENIHANA®** Marks that predate the application at issue. *Means Decl.*, ¶ 15. Benihana has established standing. *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Chanel, Inc. v. Jerzy Makarczyk*, 2014 TTAB Lexis 217, 110 USPQ2d 2013, *13 (TTAB 2014). In view of such registrations and Applicant’s express concession that Benihana has priority, priority is undisputed. *King Candy Co. v. King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ2d 108, 110 (CCPA 1974); App. Ans., ¶¶ 20, 24. Accordingly, there is no genuine dispute of material fact regarding Benihana’s standing or priority.

C. LIKELIHOOD OF CONFUSION BETWEEN BENIHANA® AND BENNY HUNNA

The next inquiry is whether BENNY HUNNA, if used as a mark with the services listed in the application, would create a likelihood of confusion with Benihana’s **BENIHANA®** Marks as to affiliation,

sponsorship, or approval. 15 U.S.C. § 1125(a)(1)(A). When analyzed pursuant to *DuPont*, likelihood of confusion is inescapable. *In re E.I. DuPont De Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 352, 22 USPQ2d 1453 (Fed. Cir. 1992).⁴ Not all *DuPont* factors need to be considered to reach a finding of likelihood of confusion, and any one factor such as fame, may dominate a case. *Id.* at 1455-1456. An analysis of the *DuPont* factors below, in view of the undisputed facts, makes it clear that summary judgment on Benihana's likelihood of confusion claim is justified and warranted.

1. THE BENIHANA® MARKS ARE STRONG, FAMOUS, AND ENTITLED TO A BROAD SCOPE OF PROTECTION

The fame and strength of opposer's mark(s) plays a "dominant role in the process of balancing the *DuPont* factors." See *Bose Corp. v. QSC Audio Prods.*, 293 F.3d 1367, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002) citing *Recot, Inc. v. Becton*, 214 F.3d 1322, 1327, 54 USPQ2d 1894, (Fed. Cir. 2000). In determining strength, the Board should consider inherent strength based on the nature of the mark and its market strength. *Tea Bd. Of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1898-99 (TTAB 2006) (sustaining opposition in large part because of the fame of opposer's mark). "A mark that is registered on the Principal Register is entitled to all Section 7(b) presumptions including the presumption that the mark is distinctive and moreover, in the absence of a Section 2(f) claim... that the mark is inherently distinctive for the goods." *Id.* at 1899.

⁴ The *DuPont* factors are: (1) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression; (2) the similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use; (3) the similarity or dissimilarity of established, likely-to-continue trade channels; (4) the conditions under which and buyers to whom sales are made, *i.e.*, "impulse" vs. careful, sophisticated purchasing; (5) the fame of the prior mark (sales, advertising, length of use); (6) the number and nature of similar marks in use on similar goods; (7) the nature and extent of any actual confusion; (8) the length of time during and conditions under which there has been concurrent use without evidence of actual confusion; (9) the variety of goods on which a mark is or is not used (house mark, "family" mark, product mark); (10) the market interface between applicant and the owner of a prior mark; (11) the extent to which applicant has a right to exclude others from use of its mark on its goods; (12) the extent of potential confusion, *i.e.*, whether *de minimis* or substantial; and (13) any other established fact probative of the effect of use. See *id.*

In 1964, at the time of its adoption and first use, the **BENIHANA®** mark was and continues to be clearly and arbitrarily applied to its goods and services, and from the outset was entitled to protection as a source indicator. *Means Decl.*, ¶ 14. The **BENIHANA®** Marks are registered on the Principal Register, in accordance with Section 7 and 33 of the Lanham Act, and enjoy a presumption of distinctiveness. *Means Dec.*, ¶¶ 15-16; *Lois Sportswear, U.S., Inc. v. Levi Strauss & Co.*, 799 F.2d 867, 871 (2d Cir. 1986). Fame, for purposes of likelihood of confusion, involves judging commercial strength, i.e. whether the mark has garnered recognition in a “significant portion of the relevant consuming public.” *See UMG Recordings, Inc.*, 2011 TTAB Lexis 286, *43 citing *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Masion Fondee en 1772*, 396 F.3d 1369, 1375, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). First of all, Applicant recognizes the fame of the **BENIHANA®** Marks. *Hodge Depo.*, 94:25–95:9. Second, by considering indirect evidence, i.e. volume of sales and advertising expenditures, it is clear that the **BENIHANA®** brand has the level of sales and advertising (for an extensive period of time) to be considered famous. *See Means Dec.*, ¶¶ 32-69; *Palm Bay*, 396 F.3d at 1375 citing *Bose Corp.*, 293 F.3d at 1376 (finding ACOUSTIC WAVE famous based on eleven years of use, total sales over \$250 million, total advertising expenses of over \$60 million, and extensive media coverage); *Nina Ricci S.A.R.L. v. E.T.F. Enterprises*, 889 F.2d 1070, 1075, 12 USPQ2d 1901, 1904 (Fed. Cir. 1989) (finding NINA RICCI famous for perfume, clothing accessories based on over \$200 million in sales, more than \$37 million in advertising, and more than 27 years of use); *Kimberly-Clark Corp. v. H. Douglas Enter. Ltd.*, 774 F.2d 1144, 146-1147, 222 USPQ 541, 542 (Fed. Cir. 1983) (finding HUGGIES famous for diapers based upon over \$300 million in sales over 9 years, \$15 million in advertising in one year); *Planters Nut & Chocolate Co. v. Crown Nut Co.*, 50 CCPA 1120, 305 F.2d 916, 917-918, 134 USPQ 504, 506 (CCPA 1962) (finding MR. PEANUT DESIGN famous for nuts and nut products based upon \$350 million in sales, \$10 million in advertising over a period of 10 years). Certainly, the duration, extent, and geographic extent of advertising, publicity, sales, and third party recognition of the **BENIHANA®** Marks warrants a finding of fame.

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BENIHANA® introduced a new way of dining and a new cuisine to Americans. *Means Decl.*, ¶¶ 6-9. Fifty years later, the **BENIHANA**® Marks are among the strongest in the U.S. and have become culturally significant, famous, and well-known. *Means Decl.*, ¶¶ 32-69, 76-78.

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Awareness at this level has certainly supported a finding of fame. *See e.g. National Pork Board*, 96 USPQ2d at 1496 (80-85% of general adult population and nearly 70% of correct source recognition supported fame); *NASDAQ Stock Market, Inc. v. Antarctica, S.r.l.*, 69 USPQ2d 1718, 1737 (TTAB 1998) (75% recognition among investors sufficient for finding of dilution); *7-Eleven, Inc. v. Wechsler*, 83 USPQ2d 1715, 1727-1728 (TTAB 2007) (fame for dilution purposes with survey showing awareness among 73% of general consumers). This survey, performed long before this litigation arose, is probative evidence of the fact that the **BENIHANA**® Marks became famous prior to the May 1, 2013 filing date of the Subject Application.

The **BENIHANA**® Marks have been the subject of numerous books, educational studies, and have been extensively referenced in films, television programs, and musical works --- with such intense media and cultural attention, exposing tens of millions of people, if not hundreds of millions over the last 50 years of use, the **BENIHANA**® Marks are unquestionably famous. *See, generally, Means Decl., Hodge Depo.* 94:25– 95:9; *Chanel*, 2014 TTAB Lexis 217, *27. The third party references and discussions about the **BENIHANA**® Marks have been pervasive, reflecting the extreme popularity of the mark. *Nike, Inc.*, 100 USPQ2d at 1023 (most significant of the elements for determining fame for dilution purposes is the extent of public recognition).

Famous marks enjoy a wide latitude of legal protection. Indeed, there can be “no excuse for even approaching the well-known trademark of a competitor... and that all doubt as to whether confusion, mistake, or deception is likely is to be resolved against the newcomer, especially where the established mark is one which is famous.” *Nina Ricci S.A.R.L.*, 889 F.2d at 1074 (quoting *Planter’s Nut & Chocolate Co.*, 305 F.2d at 924-925). Such is the case here. The **BENIHANA®** Mark is famous, inherently strong, and commercially strong, and thus, deserves wide latitude of legal protection. The fame factor weighs in favor of Benihana.

2. SIMILARITY OF THE MARKS

Applicant admits the **BENIHANA®** Marks are famous. (*Hodge Depo.* 94:24-95:9). Accordingly, there is less tolerance for similarity between competing marks. See *Kenner Parker Toys*, 963 F.2d at 353-354; *Recot, Inc.*, 214 F.3d at 1328-1329; *UMG Recordings*, 100 USPQ2d at 1885; *Nina Ricci S.A.R.L.*, 889 F.2d at 1074.

This *DuPont* factor looks at the marks’ appearance, sound, connotation, and commercial impression. *DuPont*, 476 F.2d at 1361; *Palm Bay Imports, Inc.*, 396 F.3d at 1371. Applicant admits the similarity in pronunciation (“[b]y the names BENIHANA and BENNY HUNNA being so similar in pronunciation, it will only be a matter of time before we come together”). *Means Decl.*, ¶ 24; *Hodge Depo.* 52:9-53:18, Ex. 3. Applicant’s statement summarizes the potential for confusion --- that the sound of the marks, alone, will confuse customers into believing that Benihana sponsors or approves of Applicant, BENNY HUNNA, and/or Applicant’s services. See *In re 1st USA Realty Profs, Inc.*, 2007 TTAB Lexis 73, 84 USPQD2d 1581, 1586 (TTAB 2007) (finding that 1ST USA & DESIGN was confusingly similar to FIRST USA & DESIGN); *In re White Swan, Ltd.*, 1998 TTAB Lexis 37, 8 USPQ2d 1534, 1535 (TTAB 1988) (finding SHAKE SCATTER & GROW confusingly similar to SHAKE-N-GROW).

Aside from the aural similarity, the marks are similar in appearance and commercial impression. **BENIHANA®** and BENNY HUNNA each consist of four syllables, with each of the four syllables sounding the same. As to the connotation of the two marks, Benihana has introduced extensive evidence

demonstrating the significance of the **BENIHANA®** Marks in film, television, and music and specifically, in the genre of rap and hip hop that goes beyond the literal translation of the wording. *Means Decl.*, ¶¶ 51-69. The fact that Applicant is attempting to use the mark in connection with entertainment services in the nature of live musical (rap and hip hop) performances and wants to offer said services in **BENIHANA®** restaurants further highlights the similarities in the commercial impressions of the marks. *Means Dec.*, ¶¶ 70-75; *Hodge Depo.* 52:9-53:18, 60:23-61:13, Ex. 3.

This factor weighs in favor of Benihana.

3. SIMILARITY OF GOODS AND SERVICES

This *DuPont* factor of similarity of goods/services focuses on whether the goods/services are so related that a consumer may believe that marks indicate that the goods/services come from a single source. *On-line Careline Inc. v. America Online, Inc.*, 229 F.3d 1080, 56 USPQ2d 1471 (Fed. Cir. 2000); *In re Martin's Famous Pastry Shoppe, Inc.*, 748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984); *In re Opus One, Inc.*, 60 USPQ2d 1812 (TTAB 2001). Overlap is not required for confusion to be likely. *Recot*, 214 F.3d at 1328-1329; *see also Hewlett-Packard v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002); *American Sugar Refining Co. v. Andreassen*, 49 CCPA 782, 296 F.2d 783, 784, 132 USPQ 10, 11 (CCPA 1961) (DOMINO for sugar confusingly similar to DOMINO for pet food); *Hunt Foods & Indus. Inc. v. Gerson Stewart Corp.*, 54 CCPA 751, 367 F.2d 431, 435, 151 USQ 350, 352 (CCPA 1966) (holding that HUNT'S for canned food products is confusingly similar to HUNT for cleaning products); *UMG Recordings, Inc.*, 100 USPQ2d at 1868 (finding that MOTOWN METAL in connection with toy vehicles are sufficiently related to, and reasonably within the scope of, opposer's MOTOWN-branded collateral goods and are likely items in opposer's MOTOWN-branded retail store and museum gift shop, that confusion as to source is likely if identified by substantially similar marks); *Tiffany & Co. v. Classic Motor Carriages, Inc.*, 1989 TTAB Lexis 13, 10 USPQ2d 1835, 1843 (TTAB 1989) (TIFFANY for jewelry confusingly similar to CLASSIC TIFFANY for cars); *RJ Reynolds Tobacco Co. v. R. Seelig & Hille*, 201 USPQ 856, 860 (TTAB 1978) (holding SIR WINSTON & DESIGN for tea confusingly similar to

WINSTON for cigarettes). The Board should accord “full weight to the fame of a famous mark when analyzing likelihood of confusion between products that are not closely related.” *Recot, Inc. v. Becton*, 214 F.2d at 1327.

The USPTO record reflects that there are many live applications and registrations for marks in both classes 41 (entertainment services) and 043 (restaurant services). See **Exhibit B**. Further research shows that many of these marks are in use in commerce for both entertainment and restaurant services. *Id.* Therefore, it requires no stretch of the imagination for consumers to believe that the varied goods/services to be offered under the BENNY HUNNA mark could be sponsored, approved by, or affiliated with Benihana. This is especially true in here when the Subject Application sounds identical and is highly similar to a famous mark. Further, Benihana has introduced its significance in the entertainment industry – further closing the gap between Benihana’s services and Applicant’s proposed services. *Means Dec.*, ¶¶ 51-78. This factor weighs in favor of Benihana.

4. SIMILARITY OF TRADE CHANNELS

The third *DuPont* factor involves how and to whom the goods and services at issue are sold and marketed. Applicant’s description of good/services contains no limitation of trade. *Hodge Depo*, 19:17-20:12, Ex. 1. Therefore, the same consumers purchasing **BENIHANA®** services should be presumed to be likely to purchase music or to attend live musical performances. More telling, Applicant has considered offering those services in restaurants – which increases the potential for confusion among customers – whether said services are offered at **BENIHANA®** restaurants or not. *Hodge Depo*, 52:9-53:18, Ex. 3.

This factor weighs in favor of Benihana.

5. CONDITIONS FOR BUYERS

The fact that the services themselves are different – restaurant services vis a vis entertainment in the nature of live musical performances – does not compel a conclusion that consumers may not confuse the origin of the services in hasty, economically painless transactions. Further the potential for confusion in these circumstances is accentuated by the significance of a famous mark. *Id. citing Kenner Parker*, 963

F.2d at 355; *Burger Chef Systems, Inc. v. Burger Man, Inc.*, 492 F.2d 1398, 181 USPQ 168, 169 (CCPA 1974) (finding a likelihood of confusion based upon, in part, “the circumstances of use of the marks by the parties in chain restaurants catering to the motorist trade where many customers are on the move and in a hurry and often select their eateries on the basis of casual recollection of what they may have experienced in other places at other times...”).

This factor weighs in favor of Benihana.

6. THE NUMBER AND NATURE OF SIMILAR MARKS IN USE ON SIMILAR SERVICES

The record is devoid of any third party applications or registrations for identical marks. *Means Decl.*, ¶ 23, Ex. 8. This factor weighs in favor of Benihana.

7. THE NATURE AND EXTENT OF ANY ACTUAL CONFUSION AND LENGTH OF CONCURRENT USE WITHOUT EVIDENCE OF ACTUAL CONFUSION

Applicant claims to have not yet used the BENNY HUNNA mark in commerce in connection with the services recited in the Subject Application; thus, there can be no evidence of actual confusion. *Hodge Depo.* 97:4-98:15, Ex. 1. This factor is not applicable.

8. MARKET INTERFACE BETWEEN BENIHANA AND APPLICANT

Benihana **has not**: (i) consented or otherwise agreed to Applicant’s use of the **BENIHANA®** Marks; (ii) licensed or assigned to Applicant the right to use the **BENIHANA®** Marks; and/or (iii) sat on its rights with respect to Applicant. Benihana has been aggressive (and successful) in policing the marketplace to immediately stop infringing third-party uses and took action immediately upon receipt of Applicant’s June 24, 2013 e-mail. *Means Decl.*, ¶¶ 17-31; *Hodge Depo.* 94:14-24.

This factor weighs heavily in favor of Benihana.

9. THE EXTENT TO WHICH APPLICANT HAS RIGHT TO EXCLUDE OTHERS FROM USE OF THEIR MARK

Applicant admits it has not used the BENNY HUNNA mark in commerce. *Hodge Depo.* 97:4-98:15, Ex. 1. Therefore, Applicant has no trademark rights and thus, no right to exclude others. In fact,

Applicant indicates he was aware of another user of the BENNY HUNNA mark prior to filing the Subject Application. *Hodge Depo.* 30:8-32:18. This factor weighs heavily in favor of Benihana.

10. EXTENT OF POTENTIAL CONFUSION

Given the fame of the **BENIHANA®** Marks, the exclusive use, the substantial investment in advertising and promotion of the same, extensive sales, marketing studies, unsolicited third party press, references in televisions, film and music (*see, generally, Means Dec.*), there is little doubt that if Applicant's mark is permitted to register, consumers will be confused as the origin, sponsorship or affiliation of any services offered by Applicant. Applicant's email succinctly characterizes Benihana's concerns --- that upon seeing/hearing the BENNY HUNNA name, consumers will believe that "it was only a matter of time" before Benihana went into the entertainment business and that Applicant's services are sponsored or approved by Benihana. *Hodge Depo.* 52:9-53:18, Ex. 3.

This factor weighs in favor of Benihana.

11. APPLICANT'S INTENT

The **BENIHANA®** Marks are famous. It is difficult to believe that given the fame of the **BENIHANA®** Marks and the extensive use of **BENIHANA®** in entertainment, film, and music, that Applicant had never heard of the **BENIHANA®** Marks prior to the filing of the Subject Application. Regardless, it is apparent that Applicant intended to trade on the goodwill of the **BENIHANA®** Marks since the filing of the Subject Application. Applicant reached out to Benihana regarding corporate sponsorship, believing that an affiliation between Benihana and Applicant was inevitable. *Hodge Depo.* 52:9-53:18, Ex. 3. Once it became clear that Benihana was not interested in sponsoring BENNY HUNNA, Applicant then used Benihana's fame to garner media attention and press. Applicant admitted to reaching out to two (2) different news sources in order to tell them the story of how Benihana was enforcing its **BENIHANA®** Marks against Applicant. *Hodge Depo.* 85:24-88:10, 146:1-23, Ex. 15. No news source had ever previously or since taken an interest in the BENNY HUNNA mark until it became associated (even through this opposition) with the **BENIHANA®** Marks. *Id.*

This factor weighs in favor of Benihana.

12. ALL DOUBT ABOUT LIKELIHOOD OF CONFUSION TO BE RESOLVED AGAINST NEWCOMER

In the event of doubts about the likelihood of confusion, the Board should resolve those doubts against the newcomer, *Kenner Parker Toys*, 963 F.2d at 354, especially when the established mark is famous. *Nina Ricci S.A.R.L.*, 889 F.2d at 1074.

This factor weighs in favor of Benihana.

13. CONCLUSION REGARDING LIKELIHOOD OF CONFUSION

As set forth above, the **BENIHANA®** Marks are famous and a balancing of the likelihood of confusion factors weighs heavily in favor of Benihana. Accordingly, the Board should grant summary judgment on likelihood of confusion in favor of Benihana.

D. BENNY HUNNA IS LIKELY TO CAUSE DILUTION OF THE BENIHANA® MARKS

The Trademark Act provides a cause of action for dilution of famous marks. 15 U.S.C. § 1125(c). According to 15 U.S.C. § 1125(c):

Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

In addition to causing a likelihood of confusion, the BENNY HUNNA mark is also likely to dilute Benihana's famous **BENIHANA®** Marks by whittling away the distinctive character of the marks. Dilution by blurring is "association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark." 15 U.S.C. § 1125(c)(2)(B). It diminishes the selling power that a distinctive mark has in the mind of the consuming public. *Chanel*, 2014 TTAB Lexis 217, *15 (citing *Toro Co. v. ToroHead*, 61 USPQ2d 1164, 1182 (TTAB 2001)). When considering dilution [by blurring], the following elements are considered:

- (i) Whether the **BENIHANA®** Mark is famous;

- (ii) Whether the **BENIHANA®** Mark became famous prior to Applicant's filing of the application to register the mark BENNY HUNNA;
- (iii) Whether the BENNY HUNNA mark is likely to blur the distinctiveness of Opposer's **BENIHANA®** Mark.⁵

Nike, Inc., 100 USPQ2d at 1023 citing *National Pork Board*, 96 USPQ2d at 1494-1495; *UMG Recordings*, 100 USPQ2d at 1886. In this case, on the undisputed facts in this matter (see Section II.), all of these elements favor a finding of dilution by blurring.

1. THE BENIHANA® MARKS ARE FAMOUS

A threshold question in a federal dilution claim is whether the plaintiff's mark is "famous." A mark is famous for dilution purposes "if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner." 15 U.S.C. § 43(c)(2)(A). There are typically four non-exclusive factors to consider when determining whether a mark is famous:

- (1) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.
- (2) The amount, volume, and geographic extent of sales of goods or services offered under the mark.
- (3) The extent of actual recognition of the mark.
- (4) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

15 U.S.C. § 43(c)(2)(A). In this case, Benihana has established that the **BENIHANA®** Marks are famous (See Section II.A.-D.) for purposes of likelihood of confusion and dilution. Benihana incorporates its preceding discussion on fame as if fully set forth herein and submits that this factor weighs in favor of Benihana.

2. THE BENIHANA® MARKS WERE FAMOUS PRIOR TO THE FILING OF SUBJECT APPLICATION

Having now found that the **BENIHANA®** Marks are famous, the Board must determine whether the fame attached to the mark prior to any date upon which Applicant may rely. Since Applicant has not used the mark in commerce in connection with the bona fide offering of any goods/services, the earliest

⁵ In cases involving intent-to-use applications, the Board has applied a three-prong test, not considering the factor of use of the mark in commerce by the applicant. *National Pork Board*, 96 USPQ2d at 1497.

date upon which the Applicant may rely is May 1, 2013, the filing date of the Subject Application. *Hodge Depo.*, 19:17-20:12, 97:1-98:14, Ex. 1; *Nike, Inc.*, 100 USPQ2d at 1018 citing *Citigroup, Inc. v. Capital City Bank Group, Inc.*, 94 USPQ2d 1645, 1650, fn 13 (TTAB 2010) *aff'd Citigroup, Inc. v. Capital City Bank Group, Inc.*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011) (intent-to-use applicant asserting any use prior to its filing date is required to plead such use as an affirmative defense to dilution claim).

As noted in the *Means Declaration*, and discussed in Section II, the **BENIHANA®** Marks entered a state of cultural phenomenon and have enjoyed fame long before the filing date of Applicant's Subject Application, or any other date that the Applicant may be able to claim. *Means Decl.*, ¶¶ 6-23, 32-69, 76-83. This factor weights in favor of Benihana.

3. APPLICANT'S USE OF BENNY HUNNA CONSTITUTES DILUTION BY BLURRING

Dilution by blurring is an "association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark," 15 U.S.C. § 1125(c)(2)(B), and may be found "regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury," 15 U.S.C. § 1125(c)(1); see also *Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208, 219 (2d Cir. 1999); *Toys "R" Us, Inc. v. Carnarsie Kiddie Shop, Inc.*, 559 F.Supp. 1189, 1208 (E.D. N.Y. 1983) (finding blurring of TOYS R US by KIDS R US). Over time, the gradual whittling away of distinctiveness will cause the trademark holder to suffer "death by a thousand cuts." *National Pork Board.*, 96 USPQ2d at 1496 (citing Barton Beebe, "A Defense of the New Federal Trademark Antidilution Law," 16 *Fordham Intell. Prop. Media & Ent. L.J.* 1143, 1163 (2006)).

Federal law specifies six non-exhaustive factors for the courts to consider in determining whether there is dilution by blurring: (1) the degree of similarity between the defendant's mark and the famous mark; (2) the degree of inherent or acquired distinctiveness of the famous mark; (3) the extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark; (4) the degree of recognition of the famous mark; (5) whether defendant's mark intended to create an association with the famous mark; (6) any actual association between defendant's mark or trade name and the famous mark. 15

U.S.C.S. § 1125(c)(2)(B)(i)-(vi).

(a) Degree of Similarity Between the Applicant's Mark and Famous Mark

Here, the focus is whether the **BENIHANA®** Marks and the BENNY HUNNA mark are “sufficiently similar to trigger consumers to conjure up a famous mark when confronted with the second mark.” *UMG Recordings*, 100 USPQ2d at 1889; *National Pork Board*, 96 USPQ2d at 1497. Marks are compared under the test for similarity for likelihood of confusion purposes. *Nike Inc. v. Maher*, 2011 TTAB Lexis 234, 100 USPQ2d 1018, 1030 (TTAB 2011). Given the Applicant's admission of similarity (*Hodge Depo.* 52:9-53:18, Ex. 3) similarity between the marks, as addressed in the preceding sections (Section II. and Section III.C.2), it is clear that Applicant's mark BENNY HUNNA conjures up Benihana's **BENIHANA®** Marks and the parties' marks are thus highly similar for dilution purposes.

(b) The BENIHANA® Marks are Distinctive

The greater a mark's distinctiveness, the higher its degree of protection under dilution law. *Nabisco, Inc.*, 191 F.3d at 217 *abrogated on other grounds*, *Moseley v. V. Secret Catalogue, Inc.*, 537 U.S. 418, 123 S. Ct. 1115, 155 L. Ed. 2d 1 (2003). The trademark dilution statute is weighted toward a finding of dilution when the famous mark in question is commercially strong and inherently distinctive. *National Pork Board*, *63. The **BENIHANA®** Mark is entitled to a presumption of inherent distinctiveness. *Means Decl.*, ¶ 15; *National Pork Board*, *63 citing *Tea Bd. Of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1899 (TTAB 2006).

Applicant acknowledges that the **BENIHANA®** Marks are famous. *Hodge Depo.* 94:25-95:9. The **BENIHANA®** Marks have acquired a cult-like following and have attracted widespread recognition and success as an indicator of Benihana's services. *Means Decl.*, ¶¶ 32-69, 76-83. This is a coined mark and is inherently distinctive, as evidenced by Benihana's incontestable registrations. *Id.* at, ¶¶ 6, 13-15. In addition, Benihana is not aware of any other uses of the mark by third parties and no such third parties uses have been made of record. *Id.* at ¶ 23. Benihana has established that its mark is so “distinctive that the

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public would associate the term with the owner of the famous mark even when it encounters the term apart from the owner's goods or services." *Nike, Inc.*, 100 USPQ2d at 1028.

This factor weighs in favor of Benihana.

(c) Benihana Exercises Exclusive Use of the BENIHANA® Mark

The record herein demonstrates that Benihana's use of the BENIHANA® Marks is virtually exclusive and that Benihana vigilantly enforces its rights in the BENIHANA® Marks. *Means Decl*, ¶¶ 15-23. There is no evidence of any third party use in commerce of the BENIHANA® Marks. *Id.*

(d) The BENIHANA® Marks Are Famous and Have a High Degree of Recognition

As noted in the *Means Declaration*, and further discussed in Section II., the BENIHANA® Marks are primarily associated with Benihana even when it is considered outside of the context of the owner's goods/services such that the mark has become part of the vernacular. *Means Decl*, ¶¶ 48-69, 76-83. The mark is extremely well recognized by a broad spectrum of consumers and this degree of recognition among the general consuming public supports the conclusion that dilution by blurring is likely upon the introduction of Applicant's BENNY HUNNA mark into the marketplace. *Id.* As in the *UMG Recordings* case, the record here establishes extensive third-party and books about its founder and history. *Means Decl*, ¶¶ 48-69, 76-83; *UMG Recordings*, 100 USPQ2d at 1889.

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Benihana's continued long use and promotion of the brand have created an extremely well-recognized mark. *Id.* This factor weighs in favor of Benihana.

(e) Applicant Intended to Create an Association with Benihana

The intent to associate with a famous mark weighs in favor of dilution. *See e.g. National Pork*, 96 USPQ2d at 1498. Evidence of an intent to associate with a mark does not require evidence of bad faith. There is no evidence that Applicant intended to create an association with Opposer's famous BENIHANA® Marks prior to filing the Subject Application, but there is no dispute that Opposer intended

to create an association with Opposer after the filing of the Subject Application. *Hodge Depo.*, 52:14-20, 85:24-88:10, Ex. 3. This factor weighs in favor of Benihana.

(f) **Any Actual Association Between the BENNY HUNNA Mark and BENIHANA® Marks**

To prove actual association, a plaintiff must establish that defendant's mark "conjure[s] an association with the senior [mark]," thereby "lessen[ing] the distinctiveness of the senior mark." *Louis Vuitton v. Hyundai*, 2012 U.S. Dist. LEXIS 42795 *27 citing *Nabisco*, 191 F.3d at 218. "In a situation like this where applicant has filed an intent-to-use application and has to date not engaged in any actual use of the junior mark, it is impossible to present any evidence of actual association between the marks in the marketplace." *National Pork Board*, 96 USPQ2d at 1497.

The Subject Application is based on a bona fide intention to use the mark in commerce, and no allegation of use has been filed. *Hodge Depo.*, 19:17-20:12, Ex. 1, 97:1-98:14. On its face, there is no opportunity for an actual association between Applicant's Mark and the **BENIHANA®** Mark to have occurred. However, there is evidence of record which demonstrates that Applicant has used the mark in connection with a limited number of music videos, attempted to create an association or sponsorship with Benihana and contacted various local news stations in order to associate **BENIHANA®** and BENNY HUNNA. *Hodge Depo.*, 52:14-20, 85:24-88:10, Ex. 3. This factor weighs in favor of Benihana.

4. CONCLUSION ON ISSUE OF DILUTION BY BLURRING

As set forth above, the **BENIHANA®** Marks are famous and Benihana has come forward with evidence in support of each statutory factors in support of a finding of dilution by blurring pursuant to 15 U.S.C. § 1125(c)(2)(B).

5. THESE FACTS ALSO ESTABLISH DILUTION BY TARNISHMENT

Dilution by tarnishment is defined as an association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark. 15 U.S.C. § 1125(c)(2)(C). Applicant proposes to use the BENNY HUNNA marks in **BENIHANA®** restaurants, and Applicant admits to the use of vulgar language and adult content in his limited uses of musical recordings available for free

on the Internet. *Means Decl.*, ¶¶ 25, 30-31, 70-75; *Hodge Depo.*, 90:16-92:24, Ex. 3. Such use is offensive and vulgar because as Applicant concedes, such material is inappropriate for children and directly contradicts Benihana's image as a place for family, children, and celebrations. *Id.*

This factor weighs in favor of Benihana.

IV. CONCLUSION

As fully detailed herein, there are no genuine issues of material fact that would preclude summary judgment on the following issues: (1) Applicant's Subject Application for BENNY HUNNA was based upon an intent-to-use the mark in commerce (*Hodge Depo.*, 19:17-20:12, Ex. 1); (2) Applicant has never provided the services recited in the Subject Application (*Hodge Depo.* 97:1-98:14); (3) Benihana owns several federal registrations for the **BENIHANA®** Marks which are famous, strong, distinctive, and entitled to a broad scope of protection (*Means Decl.*, ¶¶ 15-16, 32-47); (4) Applicant acknowledges and admits that the **BENIHANA®** Marks are famous and accordingly are entitled to "extra protection" (*Hodge Depo.* 94:25-95:9); (5) given the multiple pop culture references to **BENIHANA®** in various entertainment media, the use of BENNY HUNNA for entertainment services would likely cause confusion as to the source, sponsorship or affiliation of Applicant's services (*Means Decl.*, ¶¶ 48-69); (6) Applicant expressed an interest in offering, promoting and selling his services in the same trade channels as **BENIHANA®** services --- namely, **BENIHANA®** restaurants (*Hodge Depo.* 52:9-53:18, Ex. 3); (7) Applicant admits to the similarities in the marks (*Id.*); (8) the marks are similar in appearance, sound, and overall commercial impression; (9) Applicant reached out to Benihana (and only Benihana) to seek corporate sponsorship because "it [would] only be right" and the association was likely to happen ("in a matter of time") (*Means Decl.*, ¶¶ 24-31; *Hodge Depo.* 75:13-15); (10) Applicant's BENNY HUNNA mark has been associated with certain musical videos (not for sale) which are posted online and consist of adult content (sex, drugs, and violence) and adult language (*Means Decl.*, ¶¶ 70-75; *Hodge Depo.* 26:8-19; 92:12-22); (11) Applicant filed an application to register the BENNY HUNNA mark long after the **BENIHANA®** Marks acquired fame (*Means Decl.* ¶¶ 6-14, 32-69, 76-83; (12) Applicant's BENNY HUNNA Mark is likely to cause confusion

with the **BENIHANA®** Marks, shall dilute the distinctiveness of the marks and will tarnish the goodwill symbolized by the marks.

For all the reasons discussed herein, Opposer's Motion for Summary Judgment should be granted, the Opposition should be sustained, and the registration of the BENNY HUNNA mark should be denied on the basis of Opposer's claims of likelihood of confusion and likelihood of dilution.

CERTIFICATE OF ELECTRONIC TRANSMISSION

I HEREBY CERTIFY that a true copy of the foregoing OPPOSER'S MEMORANDUM IIN SUPPORT OF MOTION FOR SUMMARY JUDGMENT is being transmitted electronically through ESTTA pursuant to 37 C.F.R. § 2.195(a) on September 2, 2015.

/s/ Janet C. Moreira

Janet C. Moreira

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing OPPOSER'S MEMORANDUM IIN SUPPORT OF MOTION FOR SUMMARY JUDGMENT has been served on all counsel and/or parties of record as follows on September 2, 2015:

By Email: bennyhodge25@yahoo.com
Benny Hodge
122 Country Club Drive
Greenwood, MS 38930

Courtesy Copy by Mail:
Benny Hodge
5260 Catspaw Drive
Antioch, TN 37013

/s/ Janet C. Moreira

Janet C. Moreira

EXHIBIT A

1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
2 TRADEMARK TRIAL AND APPEAL BOARD

3 NOODLE TIME, INC.,)
4)
5) Opposer,)
6)
7) Opposition No.
8 vs.) 91214649
9)
10 BENNY HODGE,)
11)
12) Applicant.)
13)

14
15 Deposition of:
16 BENNY HODGE
17 Taken on behalf of the Opposer
18 June 23, 2015
19

20 APPEARANCES:

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For the Applicant: Benny Hodge
(Pro Se) 5260 Catspaw Drive
Antioch, Tennessee 37013

26 CLEETON DAVIS COURT REPORTERS, LLC
27 402 BNA Drive, Suite 108
28 Nashville, Tennessee 37217
29 (615) 726-2737
30 www.cleetondavis.com
31

1 Q. -- correct?

2 A. Both the -- yes.

3 Q. Okay. The opposition is not with regard to
4 just Benny.

5 A. Right.

6 Q. Okay. So you -- you mentioned earlier that
7 you had heard about Benihana in about May of -- what
8 year was that? Do you recall?

9 A. It was the same time that I -- the same year
10 that I filed, and I think it was 2012.

11 Q. Okay.

12 A. The filing date --

13 Q. Well, I can --

14 A. -- was May the 1st.

15 Q. I can tell you -- and I'll -- I'll introduce
16 this. Let me go to it. Give me one second.

17 MS. MOREIRA: This is going to be Exhibit 1.

18 (Document marked Exhibit No. 1.)

19 BY MS. MOREIRA:

20 Q. Okay. I'm going to show you what has been
21 marked as Exhibit 1. And why don't you take a quick
22 look at that, and tell me if you recognize that
23 document.

24 A. (Witness complies.)

25 Yes. I'd say that this would be my

1 application -- my filing application.

2 Q. Okay. So what's marked as Exhibit 1 is an
3 accurate copy of your federal trademark registration
4 application to register the mark Benny Hunna?

5 A. Yes, from what I'm looking at.

6 Q. Okay. And can you tell me where it says --
7 what is the date signed on that if...

8 A. Date signed, May the 1st, 2013.

9 Q. Okay.

10 A. Okay. So it's 2013.

11 Q. So 2013?

12 A. Yes.

13 Q. In approximately May of 2013 is when you
14 first heard of Benihana, the restaurant?

15 A. Yes.

16 Q. Okay. And prior to that, you had never
17 heard the word "Benihana" in any rap lyric?

18 A. Not as far as I -- I know, no.

19 Q. Okay. You had never seen it as a subject of
20 a show?

21 A. No.

22 Q. Or commercial?

23 A. No. Never seen a commercial to this day.

24 Q. Okay. And can you recall where you were
25 when you first heard it? You said you were with your

1 Q. Do you record at your own home?

2 A. No. I just bought me some studio equipment
3 recently and all I need is a mic now, which I'm going
4 to get Friday, and I'm going to start recording
5 myself.

6 Q. Okay.

7 A. Yeah.

8 Q. How many -- now, you mentioned again 20 to
9 30 songs in your -- can I call it a catalog?

10 A. Yeah.

11 Q. Okay. Of those 20 and 30 songs, how many
12 videos do you have of those songs? Does each song
13 have a video?

14 A. No. All my videos are on YouTube. Y'all
15 have my YouTube, so I guess you can look those up.
16 All the videos are on YouTube. One, 1738, 15, I got a
17 couple studio sessions -- I'm not sure on the number.
18 I can't give you an accurate number, but it's on
19 YouTube.

20 Q. Okay. And when you say "studio sessions,"
21 are you talking about the studio sessions with
22 Mr. West and Mr. Gooch?

23 A. Mr. West.

24 Q. Okay. And where have you recorded your
25 videos?

1 Q. Well, let's see.

2 A. This is the reason for me actually getting
3 my name trademarked because at first, you know, I was
4 on house arrest at the time and I was recording songs,
5 and I was doing little videos here and there. And I
6 had my Twitter and I had my Facebook, and I was always
7 posting things on there. And then one day, I just
8 decided to Google my name and --

9 Q. Let me -- let me stop you. Under these
10 accounts that you're talking about, what was -- what
11 was the name that you were using?

12 A. Benny Hunna.

13 Q. Okay. And -- okay. Continue. I'm sorry.
14 I just wanted to be sure.

15 A. And when I Googled my name, all -- at first,
16 all I was seeing was me, but then I started -- well,
17 when I Googled my name, it was in, I guess, 2013
18 before I decided to file for it.

19 Q. Uh-huh.

20 A. I saw other people with the name Benny
21 Hunna, other rappers, and they had songs on different
22 sites. And I was thinking to myself -- I was, like,
23 well, I'm Benny Hunna, but if they -- if -- if they
24 get noticed -- if they get signed or anything first,
25 then what's going to make me Benny Hunna and not them

1 because they're not from Mississippi. They're from
2 different places.

3 So I was like, okay, well, what's going to
4 separate me from them and I found out -- I looked up
5 the trademarking and, you know, the copyright,
6 trademarking and everything, intellectual property.

7 Q. Uh-huh.

8 A. And they said to own names you had to get
9 them trademarked, so that's what I decided to do. I
10 decided to get my name trademarked to protect myself
11 because I knew that it was others out there saying
12 that they were Benny Hunna. And if I can get my name
13 trademarked, then that will, you know, give me
14 protection to be who I say I am.

15 Q. Do you -- do you recall who these other
16 artists were?

17 A. It was -- I know one of them, at first, his
18 name was Taz Montana.

19 Q. Taz Montana?

20 A. Yeah.

21 Q. T-A-Z, M-O-N-T-A-N-A?

22 A. Yeah.

23 Q. Okay.

24 A. And I think he was from somewhere in
25 Virginia.

1 Q. Okay. And he changed his name to Benny
2 Hunna, spelled the same way --
3 A. Yes. Spelled --
4 Q. -- that you spell it?
5 A. Spelled the exact same way as mine.
6 Q. Okay. And where was he from?
7 A. I -- somewhere in Virginia.
8 Q. Okay.
9 A. And it's another guy, his name was Benny
10 Hunna and --
11 Q. And spelled the same way that you spell it?
12 A. Yeah. Spelled the same way, but I don't
13 know where he was from, but he had a song on a -- he
14 had some songs on a website called Hiphop something.
15 Q. Okay. So -- and this was -- these -- these
16 searches you conducted online, these took place in
17 2013 before you filed your trademark application?
18 A. Yes, yes.
19 Q. Okay. When -- when were you on house
20 arrest? What were the dates?
21 A. I can't tell you the exact date.
22 Q. You can't remember when you stopped being on
23 house arrest?
24 A. When I -- when I stopped, I believe it
25 was -- I believe it was -- it wasn't 2014. It had to

1 Q. Well, have you conducted any research or
2 surveys to ask people whether they knew Benihana?

3 A. No, I haven't.

4 Q. Okay. So this is based on what? What is
5 your conclusion based on?

6 A. My conclusion is based on my logical
7 thinking and -- and that there's no Benihana in the
8 state of Mississippi. That's where I'm from and
9 that's where all this began at. And, you know, it's
10 even people up here who don't even know what Benihana
11 is because it's not -- it's not all over the place.

12 Y'all probably make money -- a lot of money,
13 but that's because y'all are high end, you know.
14 Y'all don't -- y'all don't have a dollar menu. It's
15 not -- it's not for the people who don't have money.
16 You've got to have money to go there, you know.

17 Q. Well, do you think that if Benihana wasn't
18 well known, it would appear in so many songs?

19 A. It -- I think it appears in -- in songs
20 because rappers like to portray the image of having
21 money. They like to portray the image of driving
22 Maseratis and Lamborghinis. Yeah, Lamborghini is well
23 known, but at the same time, everybody's not riding in
24 a Lamborghini, you know.

25 Q. Well, let's -- let's focus on Benihana.

1 A. Okay. Everybody -- everybody doesn't eat
2 Benihana, doesn't...

3 Q. You think that that is what -- what makes a
4 brand well known, is whether everybody can have it?

5 A. No. It'll be -- well known is -- it would
6 be how many people know about it --

7 Q. Yes.

8 A. -- Benihana.

9 MS. MOREIRA: Okay. Can I take a 5-minute
10 break?

11 (Recess, 10:35 a.m. to 10:38 a.m.)

12 (Document marked Exhibit No. 3.)

13 BY MS. MOREIRA:

14 Q. Okay. So I wanted to show you and mark this
15 as Exhibit 3. And do you recognize this document?

16 A. Yes. It is the document that your sister
17 company sent me that you said has nothing to do with
18 this.

19 Q. Is that an e-mail that you sent to Benihana?

20 A. Yes.

21 Q. Okay.

22 A. It is -- it's a -- it's a -- I sent it to
23 the website. I didn't actually e-mail it, but I guess
24 it goes through as an e-mail when you type in whatever
25 you type in.

1 Q. How did you -- so you went onto the
2 benihana.com website?
3 A. Right.
4 Q. And submitted something through perhaps
5 their contact form?
6 A. Yeah. I think that's what it was.
7 Q. Okay.
8 A. Something like that.
9 Q. Okay. And can you tell me what the date of
10 that e-mail is?
11 A. June 21st, 2013.
12 Q. Okay. And -- and it says, First name:
13 Benny. Last name: Hodge. Address: 122 Country Club
14 Drive. City: Greenwood. State: Mississippi. Zip
15 Code: 38930. Phone number: 662-897-8525.
16 And that's you, correct?
17 A. Uh-huh. I didn't know why I put all that
18 information on there.
19 Q. Okay. So I'd like you to take a look at it
20 just to kind of refresh your recollection about what
21 you wrote.
22 A. Uh-huh.
23 Q. Was this the only time that you wrote to
24 Benihana?
25 A. Yes, I think so.

1 is.

2 Q. Well, certainly famous -- famous enough to
3 be in multiple songs, to be in over 70, 80, 90
4 restaurants across the United States and to be in the
5 movie Wolf of Wall Street?

6 A. I understand, but --

7 Q. But that's --

8 A. -- to my -- look how -- this is how I am:
9 It's 70 -- it's 70 McDonald's in -- in one state.
10 It's 50 states. It's probably thousands of those
11 around.

12 Q. Okay.

13 A. So that's my --

14 Q. That's your definition.

15 A. -- idea of fame --

16 Q. Okay.

17 A. -- you know.

18 Q. Well, it says here that you had a good
19 experience at the Memphis, Tennessee location.

20 A. Oh.

21 Q. Is that correct?

22 A. Yeah.

23 Q. Okay. And the next sentence, it says, "I
24 would like to start with the Benihana in Memphis,
25 Tennessee and go to everyone in the world. After all,

1 I am Benny Hunna and it would only be right."

2 A. Yeah.

3 Q. What did you want to start at the Benihana
4 in Memphis?

5 A. I just wanted to go in there and do a video
6 like I discussed with the manager or who I thought was
7 the quote/unquote boss man. And as he -- he confirmed
8 that I could do it, so I just figured, like, hey,
9 well, maybe I can go there and do it. Then once I
10 looked it up -- after a period of time, I looked it up
11 and I saw that y'all are around. I was, like,
12 maybe -- maybe we can go around doing this thing,
13 but...

14 Q. Okay. And "it would only be right," what
15 does that mean? What would be right?

16 A. You know, it would be right for -- for -- I
17 suppose I was saying there for lack of good words, I
18 suppose, it would only be right. I was just saying it
19 would only be right. But for -- to get it as -- to be
20 a household name, yeah, that seemed like the right way
21 to go about it, if you ask me.

22 Q. Well, isn't it because Benihana was well
23 known that anyone had any interest in the story in
24 your local news station?

25 A. No. Actually, when I -- when I -- when I

1 A. No.

2 Q. Did anyone help you prepare the e-mail that
3 you sent to them on June 1st?

4 A. No.

5 Q. Did you tell anybody that you were going to
6 ask Benihana for corporate sponsorship?

7 A. No. I didn't say anything about corporate
8 sponsorship. I never asked about corporate
9 sponsorship, but I did tell my wife I was going to
10 reach out to Benihana when we was at -- when we left
11 the restaurant and, you know, she was there. She
12 knows everything that was said.

13 Q. Did you write to any other company seeking
14 corporate sponsorship?

15 A. Not to my recollection.

16 Q. So why would you request corporate
17 sponsorship from Benihana?

18 A. Because I thought -- I thought that -- I
19 thought that was -- I thought it was a good idea.

20 Q. Because the names were similar, correct?

21 A. Yeah, when pronounced in a certain way.

22 Q. Okay.

23 A. But they're not the same.

24 Q. Did you send any additional e-mails to
25 Benihana after that date?

1 A. Yeah. I might -- I might feel like El Guapo
2 sometimes when I get to -- I might speak a little
3 Spanish.

4 Q. Oh, okay. Are you Spanish?

5 A. (Spanish spoken.)

6 Q. I'm with you.

7 Now, between -- we had talked earlier about
8 the civil lawsuit that was filed in the northern
9 district of Mississippi.

10 A. Yes.

11 Q. Do you recall us mentioning that earlier?

12 A. Yes.

13 Q. Okay. That was filed -- if I told you it
14 was filed in December of 2014, does that sound
15 accurate to you?

16 A. Yes.

17 Q. Now, between December 2014 when the lawsuit
18 was filed and January 2015, were you contacted by any
19 news source to discuss that dispute?

20 A. Discuss the lawsuit?

21 Q. Discuss the lawsuit or the dispute with
22 Benihana.

23 A. Between -- between the filing of the --

24 Q. Lawsuit.

25 A. -- of the lawsuit, was I contacted by any --

1 Q. Well, let's just say after that to make that
2 easier.

3 A. Okay. After. The only people that I talked
4 to after -- after that was WABG.

5 Q. And you were the ones who contacted them?

6 A. Yeah.

7 Q. Okay. And so you were not contacted by
8 techdirt.com?

9 A. No.

10 Q. Lexology.com?

11 A. No.

12 Q. XXLmag.com?

13 A. No.

14 Q. Thedailymeal.com?

15 A. No.

16 Q. Did you contact any of those sources?

17 A. I did not contact any of those sources.

18 Q. TMZ?

19 A. TMZ? I -- TMZ actually was before the
20 lawsuit.

21 Q. Did you contact them or did they contact
22 you?

23 A. I contacted someone who -- who knew about --
24 who knew or probably worked for TMZ.

25 Q. Who was that person?

1 A. Rachelle -- Rachelle (phonetic) Harper. I
2 think that's her name.

3 Q. So at some point -- well, tell me if you can
4 recall when you contacted her.

5 A. It was probably sometime in December. It
6 was -- it was before the 22nd because they filed it on
7 the 22nd and they filed it on the 22nd because -- it's
8 kind of funny. They filed it on the 22nd. The TMZ
9 story came out on the 21st, so it made me feel like
10 they filed the -- a lawsuit because the TMZ story came
11 out a day before the lawsuit came out.

12 Q. What did you -- so you contacted Rachelle
13 Harper and what did you say to Rachelle?

14 A. I told her I got her -- a story about a
15 hiphop artist who was getting -- who is getting
16 opposed from Benihana. And, you know, my name is
17 Benny Hunna and B-E-N-N-Y, H-U-N-N-A, Benny Hunna. I
18 spelled it all and I let them know about the -- the
19 story and everything and the opposition.

20 Q. Okay. So there were -- sounds like you
21 contacted two different news sources after the
22 opposition was filed, WABG and TMZ.

23 A. Yeah.

24 Q. Is that correct?

25 A. Yeah.

1 Q. Did you contact anybody else about the
2 dispute?

3 A. No.

4 Q. Did anyone ever contact you about the
5 dispute?

6 A. No, they didn't.

7 Q. Did anyone ever contact you prior to the
8 dispute because they wanted to do a story on Benny
9 Hunna, the artist?

10 A. No.

11 Q. Do you know whether you received any
12 additional fans to your Facebook page or to your
13 Twitter account or to any other social media as a
14 result of the press you got because of the dispute
15 with Benihana?

16 A. No. I -- I don't think so. I don't think I
17 did. Not -- you know, you always get new friends on
18 Facebook and Twitter. It's not no big jump like going
19 from 300 followers to -- even at that, I only have
20 1,000 followers on -- on Twitter. I -- I had, like,
21 less than 300 followers on Twitter and I still have
22 less than 300 followers on Twitter, even though all of
23 those news sources that you're naming did a -- well,
24 actually, probably took the TMZ story and kind of ran
25 with it, but, no, I ain't got any.

1 Q. Where is he located?

2 A. I have no idea.

3 Q. You saw him on YouTube?

4 A. I saw him on YouTube.

5 Q. And what kind of music?

6 A. I think he's a rapper.

7 Q. He's also a rapper. Okay. Good to know.

8 Have you heard of anybody else using that

9 name?

10 A. No. Besides Young Jeezy made a whole song

11 about Benihana.

12 Q. Right, but he made a song about Benihana.

13 He's not called Benihana, correct?

14 A. Yeah, but he kind of tarnished it a little

15 bit. He was talking about dope and stuff on there.

16 Q. Well, what do you talk about in your songs?

17 A. Huh?

18 Q. What do you talk about in your songs?

19 A. I talk about -- I talk about -- I tell my

20 story.

21 Q. What's your story?

22 A. About a young, black man from Greenwood,

23 Mississippi who grew up in a good home, mom and dad,

24 you know, graduated from high school, real smart.

25 Dabbled in drugs a little bit, went off track for a

1 little while, started being in the street. Caught a
2 couple charges, sat back while I was at home on house
3 arrest and realized that, man, either you're going to
4 be legit or you're going to die or go to prison. And,
5 you know, I chose to be legit. I'm not messing with
6 anything illegal anymore, so, you know, sky's the
7 limit for me.

8 Q. What -- do you curse in any of your songs?

9 A. Yeah.

10 Q. Do you talk about drugs?

11 A. Yes.

12 Q. Do you talk about sex?

13 A. Yeah.

14 Q. Do you think that your songs are appropriate
15 for children?

16 A. Not all of them but, see, this is how I look
17 at it -- you want to know really how I look at it?

18 Q. No. I asked you a question.

19 A. Oh, okay. I was going to tell you.

20 Q. Well, tell me. You want to tell me what?

21 A. I'm telling you like, see, I don't know if
22 you're a Christian or not, but I believe in God and I
23 think, like, the book of Benny --

24 Q. Who's -- the book of Benny who?

25 A. The book of Benny, that's like if I had a

1 book named Benny, like Matthew, Mark, Luke, John,
2 Acts, if there was a book called Benny --
3 Q. In the Bible?
4 A. No. If there was a book called Benny,
5 period -- yeah. If it was in the Bible, then that
6 book wouldn't have all good things in it --
7 Q. Okay.
8 A. -- because, you know, everybody done stuff
9 that was wrong, you know. So it wouldn't be all good,
10 but as long as you change and doing things for the
11 better, then that would be a pretty good book.
12 Q. Okay. But what I was asking you was about
13 whether there's foul language in it, adult content in
14 your songs.
15 A. Yeah. It's -- it's foul language, you know,
16 but it's --
17 Q. But let's stick with the question.
18 A. Okay.
19 Q. Is there adult language in your songs?
20 A. Oh, yeah. There's adult language.
21 Q. Is there adult content in your songs?
22 A. Yes, it is.
23 Q. Okay.
24 A. Yes, it is.
25 Q. And you mentioned that you knew of one other

1 Q. Okay. Has anyone ever asked you if you are
2 connected with Benihana?

3 A. No.

4 Q. Has anyone ever asked you if you're
5 sponsored by Benihana?

6 A. No.

7 Q. Upon hearing your name, has anyone ever
8 suggested that because of the similarity to Benihana,
9 that you seek a corporate sponsorship from them?

10 A. No.

11 Q. Or that you get permission from them to --
12 to use their name?

13 A. No.

14 Q. Has Benihana ever consented to your use of
15 Benny Hunna?

16 A. Consent to the use of the name that I'm
17 using?

18 Q. Yes.

19 A. No. They -- they have not consented to a
20 name that they don't even own.

21 Q. But you're not a trademark lawyer, so you
22 don't know what trademark rights they might have; is
23 that correct?

24 A. To my knowledge, they don't own my name.

25 Q. But do you understand what trademark rights

1 protect?

2 A. Yeah. Trademark -- I guess since y'all
3 registered and famous -- famous to a certain extent, I
4 guess that y'all got extra protection.

5 Q. Okay. What do you mean by that?

6 A. Extra protection like -- not protection as a
7 regular -- a regular trademark would have. Famous
8 trademarks are getting more protection, to my
9 knowledge.

10 Q. Okay.

11 A. Like delusion --

12 Q. Right.

13 A. -- like one of the -- one of the --

14 Q. Claims?

15 A. -- yeah, claims.

16 Q. In our opposition?

17 A. Yes. Claims in your opposition.

18 Q. Okay. Okay. All right. We're going to
19 look at -- speaking of notice of opposition, we're
20 going to look at your answer to the opposition.

21 MS. MOREIRA: So we can mark this as
22 Exhibit 5.

23 (Document marked Exhibit No. 5.)

24 BY MS. MOREIRA:

25 Q. Can you take a look at this document and

1 Q. As of -- well, as of today, you haven't
2 actually performed any live musical performances.

3 A. No, but I intend to.

4 Q. Okay. But -- so the mark -- the name "Benny
5 Hunna" could not have identified you as a stage name
6 when you hadn't actually performed on stage.

7 A. Right.

8 Q. Is that true?

9 A. It couldn't -- it couldn't identify me
10 for -- for the goods and services that -- that this
11 mark is for --

12 Q. Right.

13 A. -- at this time because I have not used it
14 in commerce. I intend to use it.

15 Q. Well, you haven't used it in connection --
16 forget about --

17 A. Not yet.

18 Q. Forget about in commerce for a second.

19 A. Yeah. I haven't used it --

20 Q. You haven't used it in connection with live
21 musical performances at all.

22 A. Not live musical performance --

23 Q. Okay.

24 A. -- at all.

25 Q. And you haven't sold or performed for any

1 money at this point?

2 A. No.

3 Q. Okay. You haven't sold any music videos?

4 A. No, I haven't.

5 Q. You haven't sold any sound recordings?

6 A. No, I haven't.

7 Q. Have you sold any musical compositions?

8 A. No, I haven't.

9 Q. Have you offered your services of writing

10 music for other people?

11 A. No.

12 Q. Okay. Okay. On your Facebook page, you

13 don't have anything suggesting that you were available

14 for live musical performance, do you?

15 A. No, I don't.

16 Q. Okay. Let's go through the discovery.

17 MS. MOREIRA: Does anybody need to take a

18 break? No?

19 THE WITNESS: No.

20 MS. MOREIRA: You're okay?

21 THE WITNESS: Yeah.

22 MS. MOREIRA: All right. Well, let's

23 look -- we'll look at Exhibit 6.

24 (Document marked Exhibit No. 6.)

25

1 Q. Okay. You posted on here -- it looks like
2 it went through your Twitter feed -- posts about the
3 dispute with Benihana; is that correct?

4 A. On what day?

5 Q. On June -- January 1st. Excuse me. If you
6 go back to -- it shows page 115 on the bottom.

7 A. January the 1st. Yes. This was from the
8 article from Techdirt.

9 Q. Uh-huh.

10 A. And, you know, that came like -- it started
11 on December the 21st when everybody started making
12 articles and everything about this situation.

13 Q. Well, everyone started making articles
14 because you contacted people, correct?

15 A. I -- I don't know people's reasons, every --
16 Techdirt's reasons, but I know that they got it from
17 TMZ and I did contact someone who was affiliated with
18 TMZ.

19 Q. Right.

20 A. But they did this article and I don't know
21 if this was the date that I saw it or, you know, I was
22 reading it and I just -- I decided to post it. It
23 said like, share, tweet and I tweeted it.

24 Q. On January 3rd a couple days later, you post
25 the Young Jeezy video called Benihana featuring Rocko

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85920599

Filing Date: 05/01/2013



*NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.*

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	<u>BENNY HUNNA</u>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	BENNY HUNNA
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	HODGE, BENNY
*STREET	122 COUNTRY CLUB DR.
*CITY	GREENWOOD
*STATE (Required for U.S. applicants)	Mississippi
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	38930
PHONE	662-897-8525
EMAIL ADDRESS	bennyhodge25@yahoo.com

AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
*TYPE	INDIVIDUAL
* COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	041
*IDENTIFICATION	Entertainment services in the nature of live musical performances
*FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
CORRESPONDENCE INFORMATION	
*NAME	HODGE, BENNY
*STREET	122 COUNTRY CLUB DR.
*CITY	GREENWOOD
*STATE (Required for U.S. applicants)	Mississippi
*COUNTRY	United States
*ZIP/POSTAL CODE	38930
PHONE	662-897-8525
*EMAIL ADDRESS	bennyhodge25@yahoo.com
* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	

FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/BENNY HODGE/
* SIGNATORY'S NAME	BENNY HODGE
* SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	662-897-8525
* DATE SIGNED	05/01/2013

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 85920599

Filing Date: 05/01/2013

To the Commissioner for Trademarks:

MARK: BENNY HUNNA (Standard Characters, see [mark](#))

The literal element of the mark consists of BENNY HUNNA.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, BENNY HODGE, a citizen of United States, having an address of
122 COUNTRY CLUB DR.
GREENWOOD, Mississippi 38930
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 041: Entertainment services in the nature of live musical performances

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant's current Correspondence Information:

HODGE, BENNY
122 COUNTRY CLUB DR.
GREENWOOD, Mississippi 38930
662-897-8525(phone)
bennyhodge25@yahoo.com (authorized)

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and

the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /BENNY HODGE/ Date Signed: 05/01/2013

Signatory's Name: BENNY HODGE

Signatory's Position: Owner

RAM Sale Number: 85920599

RAM Accounting Date: 05/02/2013

Serial Number: 85920599

Internet Transmission Date: Wed May 01 17:20:44 EDT 2013

TEAS Stamp: USPTO/FTK-64.129.61.2-201305011720442456

89-85920599-500b2d2e135645fafc6495908902

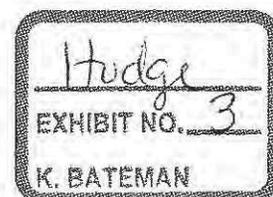
311c36f9efd17ce84867757b98617992cc393-DA

-4429-20130428163837076404

BENNY HUNNA

From: do_not_reply@benihana.com [mailto:do_not_reply@benihana.com]
Sent: Friday, June 21, 2013 12:30 PM
To: Luisa Ruiz
Subject: bennyhodge25@yahoo.com

Submitted on: 06/21/13 - 12:30pm
Submitted values are:
First Name: BENNY
Last Name: HODGE
Address: 122 COUNTRY CLUB DR.
City: GREENWOOD
State: MS
Zip Code 38930
Phone Number: 662-897-8525



Birthday: //

E-Mail Address: bennyhodge25@yahoo.com

Choose Your Category: Marketing

Choose Your Location: Memphis-TN

Comments: MY NAME IS BENNY HODGE. I AM THE SERVICE MARK OWNER THE NAME BENNY HUNNA. BENNY HUNNA IS AN ENTERTAINER/MUSICIAN/DIRECTOR. BY THE NAMES BENIHANA AND BENNY HUNNA BEING SO SIMILAR IN PRONOUNCIATION IT WILL BE A MATTER OF TIME BEFORE WE COME TOGETHER AND BE A HOUSE HOLD NAME "EVERYWHERE". MUSIC IS MY PROFESSION AND I KNOW WE CAN REACH A BROADER AUDIENCE THROUGH MUSIC AND MUSIC VIDEOS. I ATE AT BENIHANA IN MEMPHIS, TENNESSEE FOR MY BIRTHDAY AND REALLY ENJOYED THE HOSPITALITY AND GREAT FOOD (SEAFOOD DIABLO). I WOULD LIKE TO START WITH THE BENIHANA IN MEMPHIS, TENNESSEE AND GO TO EVERYONE IN THE WORLD, AFTER ALL I AM BENNY HUNNA AND IT WOULD ONLY BE RIGHT. WHAT I AM SAYING IS I NEED A SPONSER AND CORPORATE KNOWLEDGE WHICH BENIHANA HAS. I HAVE A NUMBER OF VIDEOS ON THE WEB. THE EASIEST WAY TO ACCESS THEM IS TO GOOGLE SEARCH BENNY HUNNA. AS I STATED I AM THE OWNER OF THE SERVICE MARK (TRADEMARK) BENNY HUNNA AND I KNOW WITH MY MUSICAL TALENT AND BENIHANA'S CORPORATE KNOWLEDGE WE CAN EXPAND BROADER ACROSS THE GLOBE. THANKS FOR YOUR COOPERATION AND I WILL BE LOOKING FORWARD TO HEARING FROM BENIHANA AND EVENTUALLY DOING BUSINESS WITH YOU.

View and reply to this message [here](#).



Benny Hunna

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DO YOU KNOW BENNY?

To see what he shares with friends, send him a friend request.

Add Friend



Benny Hunna

23 hrs ·

MY TWEET BEFORE THE GAME AND IT'S VERY MUCH TRUE



Benny Hunna

#JORDANWOULDHAVEIDIT #NBAFINALS #CHAMPIONSHIPGAME #GAMESIX

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(1) Benny Hunna

Benihana vs. Benny Hunna -- Shrimp Flipper Battles Hip Hopper in Epic Name War <http://t.co/yHK0zI2rcJ> via @TMZ @H2HUNNA



Benihana vs. Benny Hunna -- Shrimp Flipper Battles Hip Hopper in Epic Name War

Benihana doesn't want anybody mistaking a guy who slings rhymes with a chef who slings rice balls -- so it's trying to force the rapper to drop his...

TMZ.COM

Like · Share · [@H2HUNNA](#) on Twitter · 5



Benny Hunna

March 13 · Twitter ·

BENNY HUNNA - SHOTS (TRAILER): <https://t.co/qbuqrhFIU> via @YouTube

BENNY HUNNA - SHOTS (TRAILER)

A BENNY HUNNA PRODUCTION SHOT BY COREY MACDREARY TO THE MIXTAPE TRACK "SHOTS"

YOUTUBE



(1) Benny Hunna



Benny Hunna
January 3 · Twitter ·

I WONDER IF THEY PAID @YoungJeezy FOR THAT COLLABORATION
<https://t.co/MkslmV1yC4>



Young Jeezy - Benihana feat. Rocko & 2 Chainz

Young Jeezy - Benihana feat. Rocko & 2 Chainz (November 2013) Young Jeezy - Benihana feat. Rocko & 2 Chainz (November 2013) Young Jeezy - Benihana feat. Rocko...
TUUTDEUWI

Like · Share · @H2HUNNA on Twitter



Benny Hunna
January 3 · Twitter ·

PROCRASTINATION POLLUTING MY POPULATION @DJONESBOY

Like · Share · @H2HUNNA on Twitter



Benny Hunna
January 3 · Twitter ·

I'M FROM THE COTTON CAPITAL OF THE WORLD GREENWOOD MS
YALL AIN'T FROM MY WORLD

Like · Share · @H2HUNNA on Twitter · 14



Benny Hunna
January 3 · Twitter ·

I JUST WANT THE WORLD TO LISTEN TO ME @BOOSIEOFFICIAL

Like · Share · @H2HUNNA on Twitter · 4

(1) Benny Hunna



Benny Hunna

January 1 · Twitter ·

HUNNA TV - BENNY HUNNA: <http://t.co/25OVsNBfxs> #HIPHOP #MIXTAPE #RAP #STUDIO #THEREALBENNYHUNNA #XXLMAG #TMZ #FOLLOW



HUNNA TV - BENNY HUNNA

HUNNA TV - BENNY HUNNA -

PLUNNA TV INC |

Like · Share · @H2HUNNA on Twitter · 1

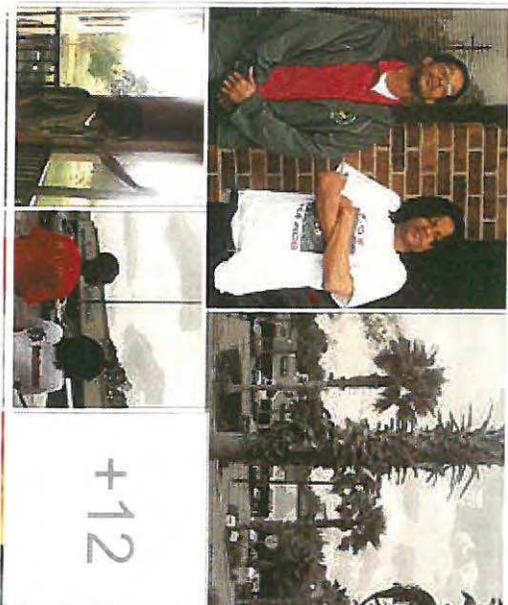


Benny Hunna

January 1 · Twitter ·

Benihana Thinks Morons In A Hurry Will Be Confused By Rap Artist Benny Hunna's Name <https://t.co/YuHS92MOeJ> via @Techdirt #NEWS #HIPHOP #RAP

PHOTOS · 2015



FRIENDS · 2015



6/18/2015

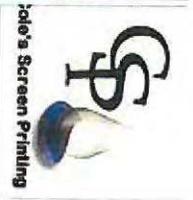


+294

LIKES · 2015



Rudeboination ent.



Cole's Printing

+18

2014

(1) Benny Hunna



Benhana Thinks Morons In A Hurry Will Be Confused By Rap Artist Benny Hunna's Name | Techdirt

Trademarks, ostensibly to do with preventing customer confusion, sometimes get quite strange. Just in recent...

TECHDIRT.COM

Like · Share · @H2HUNNA on Twitter · 1



Benny Hunna

January 1 · Twitter ·

2015 WATCH ME DO ME #HappyNewYear

Like · Share · @H2HUNNA on Twitter · 3

HIGHLIGHTS ▾



Benny Hunna

December 31, 2014 · Twitter ·

IMPOSSIBLE AIN'T IMPOSSIBLE AT ALL @LITunechi

Like · Share · @H2HUNNA on Twitter · 7



Benny Hunna

December 31, 2014 · Twitter ·

(1) Benny Hunna



+8

Like · Share · 3

Benny Hunna

June 15, 2013 ·



MY NEW NAME..... I NEED MORE COMMAS

Like · Share · 3

Benny Hunna

June 15, 2013 ·



NIGGAZ DON'T FW YA TIL YO PAPER SKY ROCKET BUT THEY CAN GET
THEY ASS ON CUZ THEY AIN'T GETTIN IN MY POCKET..... #DEEJONES
#MH4L

Like · Share · 7

Benny Hunna shared a link — with Darrell Jones and 14 others.

June 15, 2013 ·



**BENNY HUNNA - 1738 (OFFICIAL
MUSIC VIDEO) PROMO**
LIKE, COMMENT, SHARE

1738.MUSICVIDEO.COM



Like · Share · 4

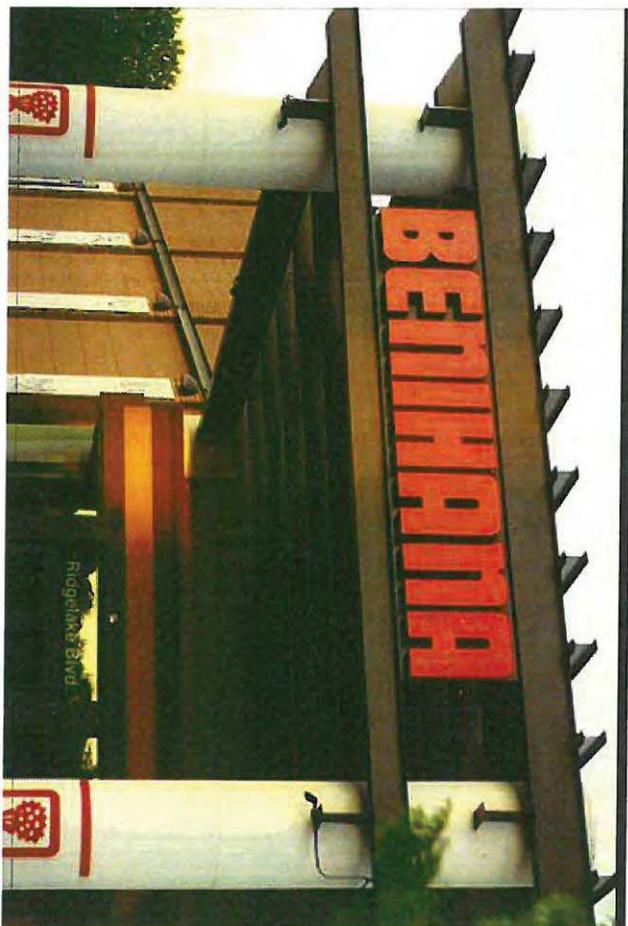
(1) Benny Hunna

Like · Share · 2



Benny Hunna updated his cover photo.

June 12, 2013 ·



Like · Share · 19



Benny Hunna

June 12, 2013 ·

HOME SWEET HOME
H2HUNNA

Like · Share · 2



Benny Hunna

June 11, 2013 ·

VACATION ALMOST OVER I WSH IT COULD NEVA END BUT WHEN I
TOUCH BACK DOWN IM BACK TO DA BIZNESS..... HUNNA

(1) Benny Hunna



HUNNA MAN

OFFICIAL HUNNA TV CHANNEL BY GREENWOOD MS INDEPENDANT ARTIST
BENNY HUNNA.....

Facebook

Like · Share · 1



Benny Hunna

June 3, 2013 ·

I Dun Paid My Dues

Like · Share · 2 · 1



Benny Hunna

June 2, 2013 · Greenwood, MS ·

WE AIN'T GONNA STOP TIL WE GET THERE AND WHEN WE GET THERE
WE GONNA SIT THERE — with Desmond Dee Jones.

Like · Share · 3 · 3



Benny Hunna

June 2, 2013 · Greenwood, MS ·

WAS JUST THINKIN IM BENNY HUNNA SO I GOT TO GO TO Benihana
ONE DAY AND I THINK ITS GONNA BE SOON

EXHIBIT B

Entertainment Properties | DragonRidge Country Club | <https://www.pacificlinks.com/dragonridge>

Select Language

DRAGONRIDGE COUNTRY CLUB

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Contact

Club News

Request a Membership Kit

DragonRidge Country Club Henderson (Las Vegas), Nevada

Artfully constructed by noted golf course architects Jay Morrish and David Druzicky, DragonRidge Country Club complements the impressive portfolios of both designers.

Located in the McCullough Mountains, high above the Las Vegas Valley floor, DragonRidge is a unique Country Club that offers features unsurpassed in Southern Nevada. DragonRidge complements the impressive portfolios of noted golf course architects Jay Morrish and David Druzicky. Between them, the two have built other well-known facilities such as Troon North and the TPC Stadium Course in Scottsdale, Arizona, Forest Highlands in Flagstaff, Arizona, the Reserve in Palm Springs, and many others. At DragonRidge, Morrish and Druzicky have designed a true "Members Course" that is challenging for all skill levels. With spectacular views of the entire valley, DragonRidge consists of an 18-hole, par 72 layout that stretches to 6,875 yards. With the innovative use of natural hillsides and canyons, the topography that makes up DragonRidge and the entire MacDonnell Highlands community is simply breathtaking.



[Click here to visit DragonRidge's Facebook page.](#)
[Click here to visit DragonRidge's Twitter page.](#)



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Word Mark DRAGONRIDGE COUNTRY CLUB

Goods and Services IC 025. US 022 039. G & S: Clothing, namely, shirts, t-shirts, tops, caps, and visors. FIRST USE: 20140218. FIRST USE IN COMMERCE: 20140218

IC 035. US 100 101 102. G & S: Arranging and conducting special events, exhibitions, competitions, trade fairs and trade shows for commercial, promotional or advertising purposes; business management of golf membership and country club membership programs; retail store services featuring wallets, bags, clothing, golf equipment, and general consumer merchandise. FIRST USE: 20140218. FIRST USE IN COMMERCE: 20140218

IC 041. US 100 101 107. G & S: Arranging and conducting golf tournaments and special events for social **entertainment** purposes; providing access to golf facilities, golf instruction, and golf courses; providing a website featuring information regarding access to golf instruction, golf events in the nature of golf tournaments and golf matches; providing news and information relating to the sport of golf; providing basketball, tennis and volleyball courts, golf, swimming, and recreational facilities; providing recreational services and instruction in the nature of tennis and sport and fitness; Country club services; and providing a website featuring information regarding country club events. FIRST USE: 20140218. FIRST USE IN COMMERCE: 20140218

IC 043. US 100 101. G & S: **Restaurant** services, namely, providing of food and beverages for consumption on and off the premises. FIRST USE: 20140218. FIRST USE IN COMMERCE: 20140218

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search 04.05.01 - Dragons; Griffons
26.17.13 - Letters or words underlined and/or overlined by one or more strokes or lines; Overlined words or

Code letters; Underlined words or letters
Serial Number 86385892
Filing Date September 4, 2014
Current Basis 1A
Original Filing Basis 1A
Published for Opposition January 27, 2015
Registration Number 4720176
Registration Date April 14, 2015
Owner (REGISTRANT) Nevada DragonRidge, LLC LIMITED LIABILITY COMPANY DELAWARE 29 Grand Mediterra Boulevard Henderson NEVADA 89011
Attorney of Record Deborah M. Lodge
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COUNTRY CLUB" APART FROM THE MARK AS SHOWN
Description of Mark Color is not claimed as a feature of the mark. The mark consists of an image of a dragon and the words "DRAGONRIDGE COUNTRY CLUB".
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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FIFE TOURNEVENT OF CHAMPIONS



JOHN CLAYTON FANTASY FOOTBALL CAMP



ASIA FEST
September 6, 2015

Tournament Registration
FIVE HOTEL & CASINO



Aug 26, 2015 4:00 PM

August Birthday Giveaway
15 TACOMA CASINO



Sep 3, 2015 6:00 PM

Rasman's Groove
15 TACOMA BRIDGE NIGHTCLUB



Aug 28, 2015 9:00 PM

Rasman's Groove
15 TACOMA BRIDGE NIGHTCLUB



Aug 29, 2015 9:00 PM



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EMERALD QUEEN HOTEL & CASINOS

Word Mark EMERALD QUEEN HOTEL & CASINOS

Goods and Services IC 025. US 022 039. G & S: Clothing, namely, hats, skirts, jackets, pants, tank tops, sweatshirts, sweatpants, scarves, gloves, and wind resistant jackets. FIRST USE: 20040601. USED IN ANOTHER FORM The mark was first used anywhere in a different form other than that sought to be registered at least as early as 04/19/1997. FIRST USE IN COMMERCE: 20040601

IC 041. US 100 101 107. G & S: Providing casino and gaming facilities and services; providing **entertainment** in the nature of gambling tournaments, live music and comedy; providing live theatrical performances and sporting events, namely, boxing, basketball, hockey, football, soccer, and mixed martial arts. FIRST USE: 20040601. USED IN ANOTHER FORM The mark was first used anywhere in a different form other than that sought to be registered at least as early as 04/19/1997. FIRST USE IN COMMERCE: 20040601

IC 043. US 100 101. G & S: Hotel, bar, and **restaurant** services. FIRST USE: 20040601. USED IN ANOTHER FORM The mark was first used anywhere in a different form other than that sought to be registered at least as early as 04/19/1997. FIRST USE IN COMMERCE: 20040601

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86276290

Filing Date May 8, 2014

Current Basis 1A

Original Filing Basis 1A

Published for Opposition February 3, 2015

Registration Number 4722536

Registration Date April 21, 2015

Owner (REGISTRANT) Puyallup Tribe of Indians federally-recognized Indian tribe UNITED STATES 3009 East Portland Avenue Tacoma WASHINGTON 98404

Attorney of Record Paul L. Havel

Prior Registrations 3461238;3461239;3542706;AND OTHERS

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOTEL & CASINOS" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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mayakoba™



HOME | RIVIERA MAYA | LIFE IN MAYAQUA | LUXURY RESORTS | WOLF | MAYAQUA RESIDENCES | DEVELOPER / O&A | CONTACT US | PUBLISHER

Luxury and Nature in harmony on Mexico's Riviera Maya

Mayakoba started as a vision: a dream shaped by its blue skies and its serene beauty, offering an "unique" destination in the Riviera Maya. A team of talented biologists, architects and designers pursued in the preservation of the flora and fauna of Mayakoba resort surrounded by natural water, sports and activities. The miles of freshwater canals surrounded by exotic mangroves and birds connect three encircling hotels: Banyan Tree, Rosewood, Parkroyal and a spectacular 18-hole Greg Norman golf course. Guests are peacefully transported in boats through the resort, contemplating a revolutionary vision of beauty and harmony.



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MAYAKOBA

Word Mark MAYAKOBA

Translations The wording "Mayakoba" has no meaning in a foreign language.

Goods and Services IC 036. US 100 101 102. G & S: Assessment and management of real estate; Financial investment in the field of real estate; Leasing of real estate; Real estate acquisition services; Real estate brokerage; Real estate financing services; Real estate investment services; Real estate management of condominiums, apartments, time share properties, vacation homes, retirement communities; Real estate time-sharing; Vacation real estate time share exchange services; Vacation real estate timeshare services. FIRST USE: 20070200. FIRST USE IN COMMERCE: 20070200

IC 041. US 100 101 107. G & S: Education services, namely, providing live and on-line classes and seminars featuring instruction in the sport of golf; **Entertainment** and educational services in the nature of competitions in the field of **entertainment**, education, culture, sports, and other non-business and non-commercial fields; **Entertainment** in the nature of competitions in the field of golf and physical fitness; Health club services, namely, providing instruction and equipment in the field of physical exercise; Providing facilities for sports tournaments; Providing facilities for golf and physical fitness training. FIRST USE: 20070200. FIRST USE IN COMMERCE: 20070200

IC 043. US 100 101. G & S: Catering services; Cocktail lounge buffets; Making reservations and bookings for others for accommodations and meals at hotel, **restaurant** and health spas; Providing general purpose facilities for sports activities, business conferences, trade shows, exhibitions, educational conventions; Resort hotel services. FIRST USE: 20070200. FIRST USE IN COMMERCE: 20070200

Standard Characters Claimed

Mark

Drawing

(4) STANDARD CHARACTER MARK

Code
Serial Number 86299570
Filing Date June 3, 2014
Current Basis 1A
Original Filing Basis 1A
Published for Opposition November 18, 2014
Registration Number 4681177
Registration Date February 3, 2015
Owner (REGISTRANT) HUARIBE, S.A. DE C.V. CORPORATION MEXICO Playa del Carmen Carr. Chetumal- Puerto Juarez, Km 298 Solidaridad, Q. Roo MEXICO 77710
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator **LIVE**

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MATUNUCK
protect our community

IMPORTANT !!! SIGN >>>SEND>>>SHARE
Please click the link below for all information regarding protect Matunuck!

Check out this Weeks Live Music!

- Tuesday Night - Ticket Machine w/ High Low Sound 8-10
- Thursday Night - The Rave 8-10
- Friday Afternoon - Some Cold Eggs 5-8pm
- Friday Night - @_mccormackandmead
- Saturday Day - The Ocean Mist 9:30-11:30
- Saturday Night - Start Making Sense 9:30
- Sunday Family - The Comptons 1:30-6:30

Facebook: 17,216 Likes
Twitter: 1,217 Following
Instagram: 1,136 Followers

Live Music **DELTA SWINGERS**

Erin Harpe & the Delta Swingers
Lead by singer/guitarist Erin Harpe, the band's unique "Dixie, River Delta Blues"...

Special Promos

MATUNUCK
protect our community

IMPORTANT !!! SIGN >>>SEND>>>SHARE
Please click the link below for all information regarding protect Matunuck!

Live Music EVERY Saturday Afternoon w/ The Ocean Mist's --
September 2015 By Ocean Mist

Events Happy Labor Day Weekend!!!!
September 3rd by Ocean Mist

August 2015

M	T	W	T	F	S	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

< Dec |> Sep >

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OCEAN MIST

Word Mark OCEAN MIST
Goods and Services IC 041. US 100 101 107. G & S: **Entertainment**, namely, live music concerts. FIRST USE: 19880501. FIRST USE IN COMMERCE: 19880501
 IC 043. US 100 101. G & S: **Restaurant** and bar services. FIRST USE: 19880501. FIRST USE IN COMMERCE: 19880501
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86435662
Filing Date October 27, 2014
Current Basis 1A
Original Filing Basis 1A
Published for Opposition March 31, 2015
Registration Number 4755667
Registration Date June 16, 2015
Owner (REGISTRANT) Finnegan, Kevin INDIVIDUAL UNITED STATES 331 Succotash Rd. South Kingstown RHODE ISLAND 02879
Attorney of Record Robert Salter
Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

- | | | | | | | | | | |
|---------------------------|---------------------------|----------------------------|---------------------------|-----------------------------|---------------------------|---------------------|----------------------|---------------------------|---------------------------|
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Not sure if we have your song?

Get Your Search On
(<http://www.singoffkey.com/>)

Kansas City's first Private Suite Karaoke Bar!

Two ways to join in on the fun:

Suites: Rent one of our full service private suites for parties of up to 50. Suites are equipped with your very own karaoke system including multiple microphones and TV's.

Main Bar: Not your traditional karaoke! No stage, no problem. Wireless microphones allow you to sing from anywhere in the bar. Multiple TVs throughout the main room display lyrics which allow the entire bar to sing along. Singing is first come first serve.

Great for special occasions:

- Birthday Parties
- Bachelorette Parties
- Corporate Team Building
- Anniversaries



Book Your Suite

Hours

Sunday, Wednesday, & Thursday: 8:00 pm - 1:00 am

Friday & Saturday: 6:00 pm - 3:00 am

Monday & Tuesday: *Closed*

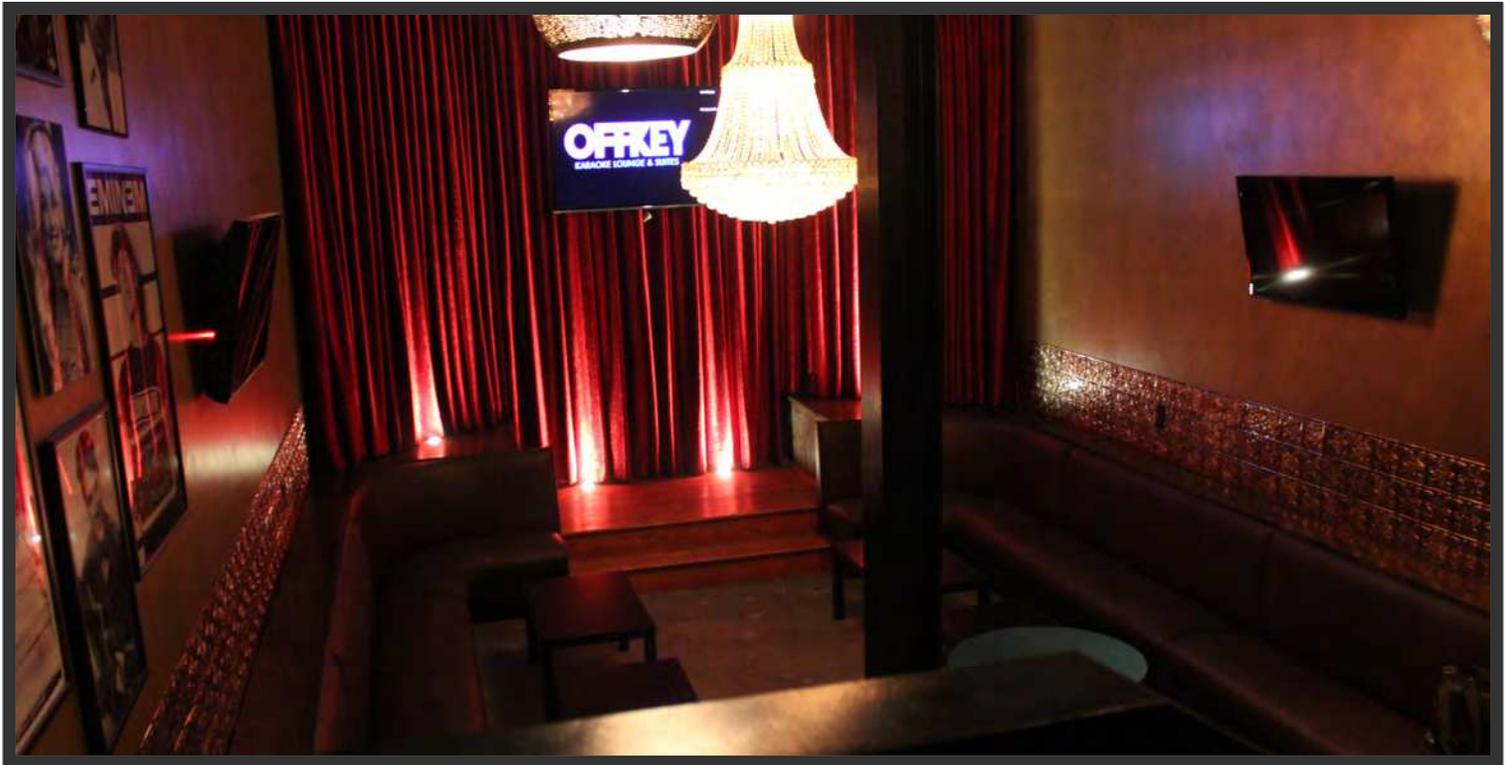
Classic Suite

- Accommodates 20 Guests
- Two Microphones, Two Displays, Premium Sound System, Tambourine Included



UltraVIP Suite

- Accommodates 50 Guests
- Four Microphones, Three Displays, Premium Sound System, Food Serving Area, Tambourine Included



Offkey Rates	Classic Suites	VIP Suite	As Low As
Mon & Tue	CLOSED	CLOSED	
Wed & Thr	\$25 per hour	\$60 per hour	\$.75 per Person
Fri & Sat	\$60 per hour	\$125 per hour	\$3 per Person
Sunday	\$5 per person all night long 4 Person Minimum		

Name : *

Email : *

Phone : *

Date of Reservation :

01 ▼ January ▼ 2015 ▼

Preferred Start Time : *

Select Option ▼

Party Length : *

2 Hours
 3 Hours
 4 Hours

Size of Party : *

1 - 9 10 - 20 20+ VIP

Special Instructions :

Submit

Our Location

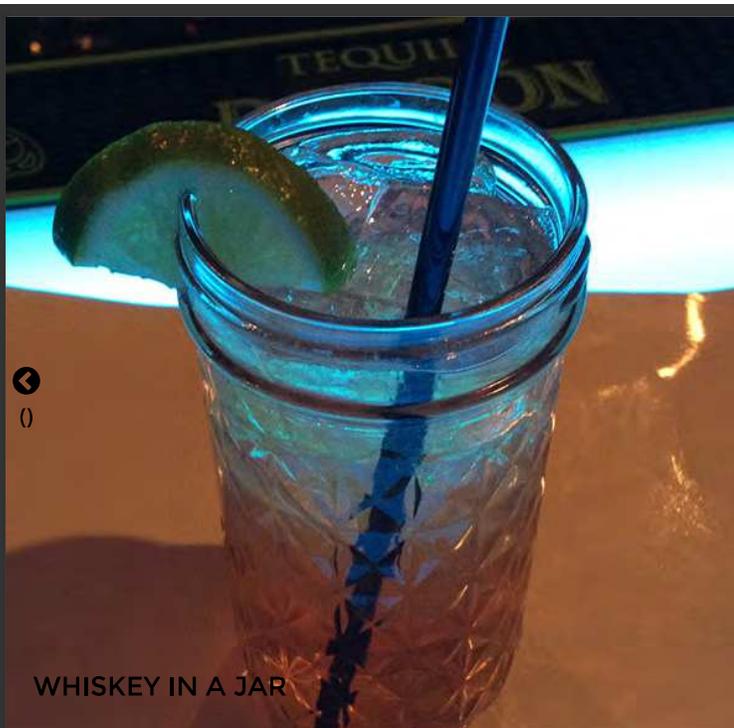
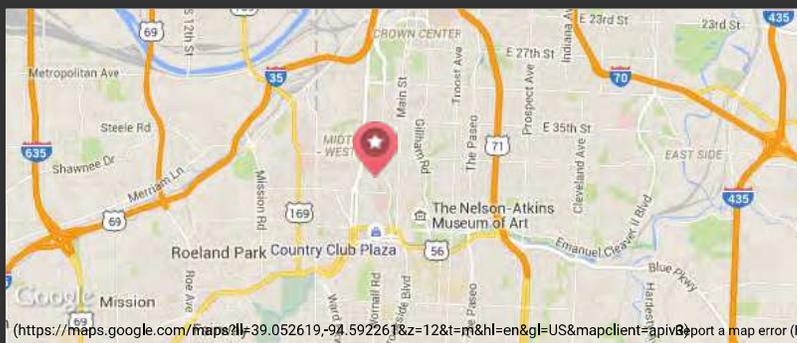
Phone

(816) 531-7464

Email

We would love to host your birthday, bachelorette, or company event. Please email us at reservations@offkeykc.com (:mailto) to get started!

Directions



WHISKEY IN A JAR



WILLOW WHIP

Events at Offkey

S.I.N. Service Industry Night (http://offkeykc.com/?event_id1=1)

7:00 pm Every Sunday Night at Offkey
\$2 PBR & \$3.50 Jameson Every Sunday

Drinks Menu

SIGNATURE COCKTAILS

RIDERS ON THE STORM {8}

Gosling's Black Seal Rum, fresh lime juice,
cherry ginger beer, Angostura Bitters

RING OF FIRE {8}

Fireball Cinnamon Whisky, Pumpkin Puree, Bitters, cream

STAN' BI ME {8}

Rumchata, Crème de Cocoa, Crème de Menthe,
Rumple Minze

ROOT DOWN {8}

Old Overholt Rye Whisky, Root Liqueur,
Jones Cream Soda

WHISKEY IN A JAR {8}

Bulleit Rye Bourbon, Southern Comfort, fresh lime juice,
lemon-lime soda

PURPLE RAIN {8}

Pearl Plum Vodka, cranberry-pomegranate juice,
housemade sour mix, sparkling wine

DESTINY'S NEXT CHILD {8}

Old Overholt Rye Bourbon, Angry Orchard Cider, Caramel

SIG

WILLOW WHIP {8}

Pearl Whipt Vodka, Orange Liqueur, cream,
fresh orange juice

LIKE A VIRGIN {4}

Raspberry Gomme Syrup, housemade sour mix,
ginger beer (alcohol can be added)

THE OFFKEY {3}

Jinro Soju House Sour Mix

I WILL SURVIVE {4}

Lunazul Tequila w/ Chili Salt and Lime

LOVE SHACKED {5}

Pearl Plum Vodka, Pom/Cran & Sour Mix

HEY MAN NICE SHOT {6}

Sake Bomb

START ME UP {6}

Choice of flavored Pearl Vodka & Energy

**HIT ME WITH YOUR
BEST SHOT {7}**

House Choice Shot & Beer

SIGNATURE SHOTS

BEER

TALL BOY {3}

Pabst Blue Ribbon, Coors Original

DOMESTIC {4} BUCKET {18}

Coors Light, Miller Lite, Bud Light, Budweiser, Michelob Ultra

CRAFT/FOREIGN {5} BUCKET {23}

Angry Orchard, Blue Moon, Boulevard Wheat, Boulevard Pale Ale, Boulevard Single Wide IPA, New Castle, Sam Adams, Corona, Guinness Can, Heineken, Hite, Sapporo

SPARKLING

Freixenet Blanc de Blanc	{6/22}
Tosti Pink Moscato	{28 BTL}
Ruffino Prosecco	{30 BTL}
Gloria Ferrer Blanc de Blanc	{45 BTL}
Clicquot Yellow	{50/100}

WINE

WHITE

Jacob's Creek Chardonnay	{6/20}
Jacob's Creek Pinot Grigio	{6/20}
Jacob's Creek Moscato	{7/21}

RED

Jacob's Creek Merlot	{6/20}
Jacob's Creek Cabernet	{6/20}
Jacob's Creek Syrah	{6/20}

Jacob's Creek Syrah
Kikkoman Plum Wine

{6/20}
{6/20}

JINO SOJU {3/12} (375ML)
Korean Rice Liquor

OZEKI FUGA PEACH {16} (250ML)
Junmai sake, sparkling & refreshing

SAKE/SOJU

OZEKI HANA AWAKA {16} (250ML)
'Sparkling Flower', Junmai sake,
sparkling light & fresh

MOMOKAWA PEARL {30} (750ML)
Creamy Nigori sake, hearty rice flavor

MOMOKAWA DIAMOND {30} (750ML)
Junmai Ginjo sake, layers of earthy minerals
& complex fruit notes

GEKKEIKAN HORIN {40} (300ML)
Junmai Daiginjo sake, medium creamy body with delicate
notes of over-ripe melon

OZEKI HANA BONBORI {50} (500ML)
'Flower Lantern' Daiginjo sake, light & fragrant

BOTTLE SERVICE

VODKA

Pearl	100
Blueberry, Cherry, Citrus	
Cucumber, Grape, Orange,	
Plum, Pomegrante,	
Red Berry & Whipt	
American Harvest	130
Absolut	130
Tito's	130
Stolichnaya	130
Grey Goose	180
Cîroc & Flavors	180
Belevedere	180
Ketel One	180

TEQUILA

Lunazul Blanco	100
Lunazul Añejo	100
Corralejo Reposado	130
Casamigos Blanco	160
Casamigos Reposado	160
Patrón Silver	195

GIN

Pearl	100
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RUM

Don Q	100
Captain Morgan	130
Bacardi	130
Malibu	130

WHISKEY

Old Overholt	100
Jim Beam	100
Johnnie Walker Red	150
Jameson	150
Jack Daniel's	150
Bulleit Rye	160
Bulleit	160
Makers Mark	190
Crown Royal	190
Woodford Reserve	190
Knob Creek	190
Booker's	195
Macallan 12 Yr	225

Tanqueray	150
Bombay Sapphire	150
Hendricks	180

SPARKLING

Freixenet Blanc de Blanc	22
Tosti Pink Moscato	28
Ruffino Processco	30
Gloria Ferrer Blanc de Blanc	45
Clicquot Yellow	50/100

WHITE

Jacob's Creek Chardonnay	20
Jacob's Creek Pinot Grigio	20
Jacob's Creek Moscato	21

RED

Jacob's Creek Merlot	20
Jacob's Creek Cabernet	20
Jacob's Creek Syrah	20
Kikkoman Plum Wine	20

 PACKAGES

BOTTLE SERVICE

BASIC PACKAGE

Three carafes w/ choices of soda water, tonic, cranberry or soft drink, lemons and limes - included

BOOST PACKAGE [25]

Basic + Red Bull Energy Drink (5) and orange juice

HIGHBALL PACKAGE [25]

Basic + Fever Free sodas & craft syrups

GQ PACKAGE [40]

Basic + vermouths, bitters, syrups

JINO SOJU {3/12} (375ML)

Korean Rice Liquor

OZEKI FUGA PEACH {16} (250ML)

Junmai sake, sparkling & refreshing

OZEKI HANA AWAKA {16} (250ML)

'Sparkling Flower', Junmai sake, sparkling light & fresh

MOMOKAWA PEARL {30} (750ML)

Creamy Nigori sake, hearty rice flavor

/SOJU

SAKE

MOMOKAWA DIAMOND {30} (750ML)

Junmai Ginjo sake, layers of earthy minerals
& complex fruit notes

GEKKEIKAN HORIN {40} (300ML)

Junmai Daiginjo sake, medium creamy body with delicate
notes of over-ripe melon

OZEKI HANA BONBORI {50} (500ML)

'Flower Lantern' Daiginjo sake, light & fragrant

Our Rock Stars

Example Rockstar (<http://offkeykc.com/?teams=test-employee>)



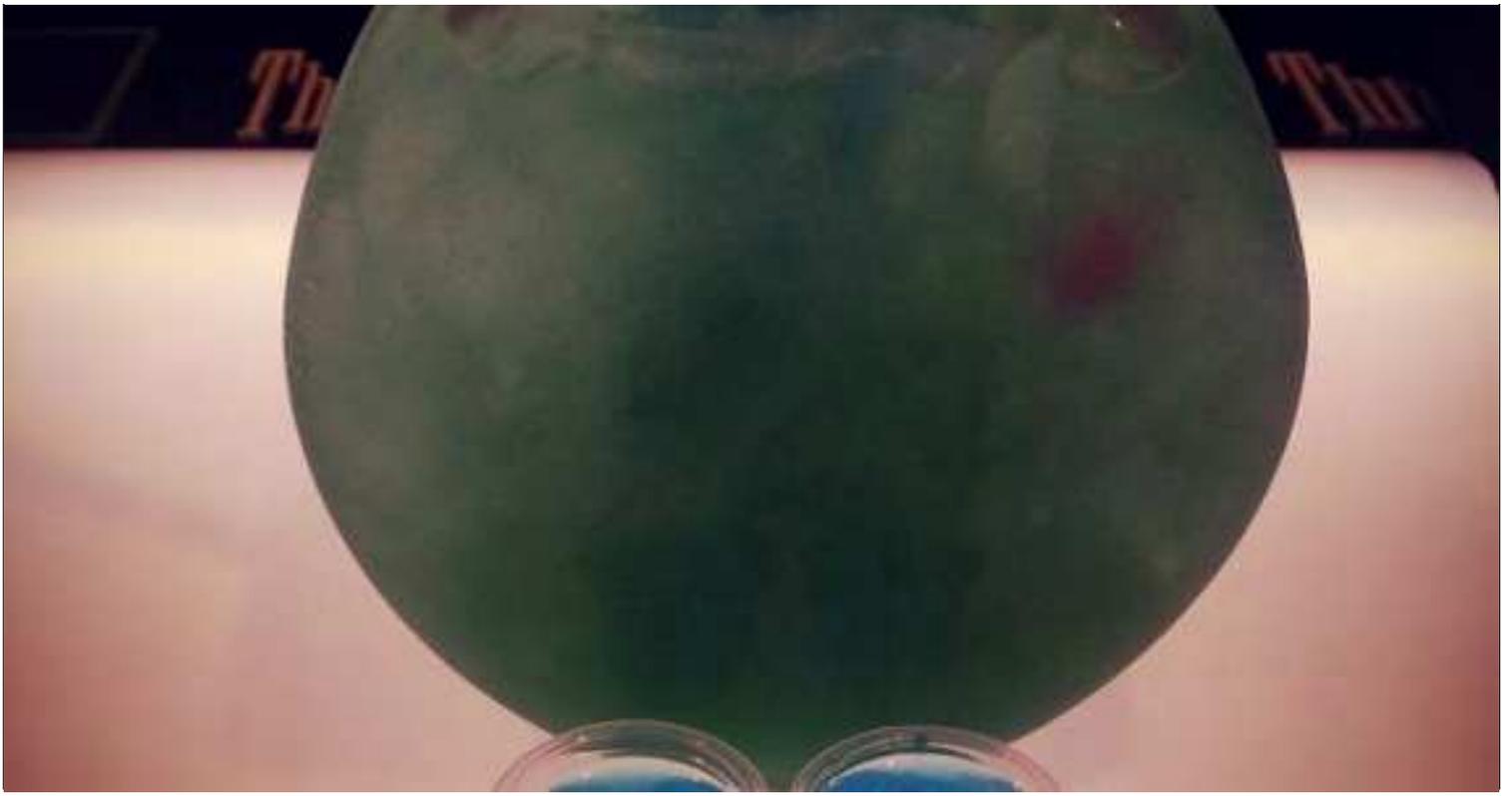
The Rockstar

(https://twitter.com/offkey_kc)

The OffKey Gallery













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OFFKEY

Word Mark OFFKEY

Goods and Services IC 041. US 100 101 107. G & S: Karaoke lounge services; Karaoke machine rental services; Hosting social **entertainment** events, namely, karaoke parties for others. FIRST USE: 20130101. FIRST USE IN COMMERCE: 20140801

IC 043. US 100 101. G & S: **Restaurant** and bar services; catering services. FIRST USE: 20130101. FIRST USE IN COMMERCE: 20140801

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86499261

Filing Date January 9, 2015

Current Basis 1A

Original Filing Basis 1A

Published for Opposition June 9, 2015

Registration Number 4799144

Registration Date August 25, 2015
Owner (REGISTRANT) Off Key Entertainment, LLC LIMITED LIABILITY COMPANY MISSOURI 510 Westport Road Kansas City MISSOURI 64111
Attorney of Record John Salcido
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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- | | | | | | | | | | |
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Open Chord

Word Mark OPEN CHORD
Goods and Services IC 041. US 100 101 107. G & S: **Entertainment** services, namely, live music concerts. FIRST USE: 20140725. FIRST USE IN COMMERCE: 20140904
 IC 043. US 100 101. G & S: **Restaurant** and bar services; Café and coffee shop services. FIRST USE: 20140725. FIRST USE IN COMMERCE: 20140904
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86391359
Filing Date September 10, 2014
Current Basis 1A
Original Filing Basis 1B
Published for Opposition December 23, 2014
Registration Number 4774283
Registration Date July 14, 2015
Owner (REGISTRANT) Randal Holmes INDIVIDUAL UNITED STATES 2216 Southern Shade Blvd. Knoxville TENNESSEE 37932
Attorney of Record John Prince

Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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- | | | | | | | | | | |
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Entertainment Properties | Birthday Parties & Group

pinstackbowl.com

App | Bookmarks | IP Connected

BOWL EAT PLAY EVENTS LOCATIONS **PIN STACK** PRESS ABOUT CAREERS BOOK AN EVENT

BOWL + BITE NIGHT

MONDAYS 4 PM TO CLOSE (excluding holidays) -
\$3 DRAFT BEER - 1/2 PRICE APPETIZERS (excluding Party Platter)





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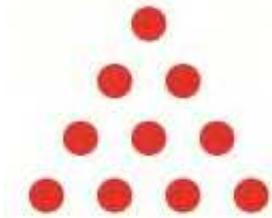
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Goods and Services IC 041. US 100 101 107. G & S: **entertainment** services, namely, operating bowling alleys and providing amusement arcade rooms at bowling alleys; **entertainment** services in the nature of indoor amusement complexes. FIRST USE: 20150130. FIRST USE IN COMMERCE: 20150130

IC 043. US 100 101. G & S: **restaurant** services; providing of food and drink at bowling alleys. FIRST USE: 20150130. FIRST USE IN COMMERCE: 20150130

Mark Drawing Code (2) DESIGN ONLY

Design Search Code 26.01.21 - Circles that are totally or partially shaded.
 26.01.31 - Circles - five or more; Five or more circles
 26.05.09 - Triangles made of geometric figures, objects, humans, plants or animals

Serial Number 86164886

Filing Date January 14, 2014

Current Basis 1A

Original Filing Basis 1B

Published for Opposition June 10, 2014

Registration Number 4724889

Registration Date April 21, 2015

Owner (REGISTRANT) ENTERTAINMENT PROPERTIES GROUP, INC. CORPORATION TEXAS Suite 800
12400 Coit Road Dallas TEXAS 75251

Attorney of Record John M. Cone

Description of Mark The color(s) red is/are claimed as a feature of the mark. The mark consists of the shape of a triangle consisting of red dots, with one red dot at the apex, followed by a line of two red dots, followed by a line of three red dots, and followed by a line of four red dots which forms the base of the triangle.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Socks required for everyone entering our play area.



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Play

Cafe

Parties

Preschool

Calendar

About

Ranked Top 3 Best Kids Menu in the 2014 King5 Best of Western Washington awards!



2013 Red Tricycle award winner for Most Awesome Indoor Playspace for the Greater Seattle area
 Runner up for Most Awesome Family Restaurant & Cafe and Most Awesome Kid-Friendly Coffee Shop
 Top finalist for Kids Birthday Party Spot and Mom-Run Business



2014 ParentMap Golden Teddy Award for best Coffee Shop!
 Top finalist for Family-Friendly Restaurant, Breakfast Spot, Birthday Venue and Rainy-Day Fun!



PlayHappy Café is an upscale, innovative family and community focused gathering place for little ones and their favorite grown-ups. Located in Lynnwood just off the crossroads of the I-5 and 405 freeways and a short drive from Seattle, Everett and Bellevue, it's an ideal place for a playdate with your friends or to make new ones! Our 8,500 square foot space includes:

- A large, imaginative play space designed for little ones 0-6
- A separate area for infants & crawlers
- A café serving delicious food & beverages with free Wi-Fi
- Fabulously decorated birthday party rooms
- A morning preschool class
- Enrichment classes

Play

Play is often talked about as if it were a relief from serious learning. But for children play is serious learning. Play is really the work of childhood.
 -- Mister Rogers

Eat & Drink

A latte for you, a hot chocolate for your little one. Featuring Caffe Ladro coffee, our menu also offers delicious and wholesome breakfast, lunch and snacks as well as a few indulgences.

Celebrate

Celebrate your child's special day at PlayHappy Café! Relax, enjoy your friends & family and leave everything to us. Our gorgeously decorated party rooms are just the spot for baby showers as well.

Learn

In addition to our weekday morning preschool and summer camps, we have ballet, tap dance, yoga, and other enrichment classes.

BIG NEWS!! Playdate Cafe changed our name to PlayHappy Cafe during a fun Name Change Reveal and Rebranding fundraising event on Friday, Nov 14, 2014!



Here's a big SHOUT OUT to our complete list of awesome Kickstarter backers!! All 78 of them!! Thanks for all your amazing support!! We love our PlayHappy Cafe Community!!

Aaron Mustain, Alexandra Vargas, Alexis K, Alison Martine, Andrea Neupert, Andrea Nicolayeff, Angela Crain, Angela Kim, Anne Auve, Ariel, Ashley Studd, cari nebel, Cassie Calder, Cecile Del-Torchio, Chelsie McNeely, Chris Schwartz, Claire Cowen Crouch, Claudette Meyer, Dana, Diana Scott, Erich Bielski, Ericka Coleman, Erika Gaebel, Eva Grant, Frances Lin Blauvelt, FuriousJodo, Greta Huber, Hannah Tam, Hayley Waltz, Heather Nieuwesteeg, Hitomi Yokoyama, Janelle Duran, Jeanesse & Rob Miller, Jessica Foss, Joshua Buckingham, Julie adams, Katie McGrath, Kaytee Teichman, Kelli Hurley, Kelly, Kim, Kim Gabrelcik, Kristen Hinds Yuhan, Lanaya Waldron, laura spencer, Lindsey Fischer Bihary, Lindsey Fowler, Margaret Adams, Maria Gura, Marion Mohrlök, Marsci Dye, Martha Wills, Matt Richenburg, Matthew Titelbaum, Michelle Fox, Michelle Jung, Monique Detweiler, Nancy Bunten, Nicole Buesen, Nona Davenport, Rachel Stahlecker, Ryan Wasserman, Samantha Love, Sara Blanco, Sarah Tien, shari storm, Shawna, Soosie and Ryan Saunders, Stephanie Allard, Stephanie Birman, Tandi Sadowsky, Teresa Ayres, Veronica Ho, Vicky, Vonita Hallock Francisco, Willa Reynolds, yoon-mi antone, yuni

4114 198th Street SW, Suite 3
Lynnwood, Washington 98036 USA
(425) 582-7007
info@playhappycafe.com
Formerly known as Playdate Cafe

HOURS (Summer)
Monday through Thursday: 9am - 4pm
Friday: 9am - 8pm
Saturday: 10am - TBD. (Check [Website Calendar](#))
Sunday: Closed Summer Sundays (until Labor Day) except for full facility birthday parties.

Check out our Facebook feed below:

(<https://www.facebook.com/PlayHappyCafe/photos/a.377243818991383.78772.149913698391064/828441087204985/?type=1>) (<http://eepurl.com/brankP>)



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PLAYHAPPY

Word Mark PLAYHAPPY

Goods and Services IC 041. US 100 101 107. G & S: Entertainment services, namely, providing facilities for recreational activities for children and families; Entertainment services, namely, providing interactive play activity center areas for children and families; Entertainment services, namely, providing play areas for children; Providing educational classes in the field of music, art, yoga, martial arts, foreign language, baby sign language, parenting skills, and child development, fitness classes, and dance classes for babies, children, and families; Providing facilities for the provision of educational, fitness, and dance classes for babies, children, and families put on by others; Educational programs, namely, pre-schools and pre-kindergarten class instruction; Arranging, organizing, conducting, providing play center and specialized recreational facilities for, and hosting birthday parties and special events for entertainment purposes for children. FIRST USE: 20141103. FIRST USE IN COMMERCE: 20141113

IC 043. US 100 101. G & S: Cafe-restaurants services. FIRST USE: 20141103. FIRST USE IN COMMERCE: 20141113

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86453157

Filing Date November 13, 2014

Current Basis 1A

Original 1A

Filing Basis

Published

for May 12, 2015

Opposition

Registration 4780924
Number

Registration July 28, 2015
Date

Owner (REGISTRANT) Quain, Elizabeth INDIVIDUAL UNITED STATES 4114 198th Street SW, Suite 3
Lynnwood WASHINGTON 98036

Type of SERVICE MARK
Mark

Register PRINCIPAL

Live/Dead LIVE
Indicator

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Search Results for: stop and taste

New Holland Kicks Off Stop and Taste Harvest Dinner Series by Going Straight to the Source

New Holland Brewing Co. | Emily Haines

New Holland Brewing Co. will kick off its collaborative *Stop & Taste Harvest Dinner Series* with Grange in Ann Arbor, MI on July 24 at 6:30pm.

Staff from the brewery and the restaurant will tour area farms, visiting with farmers to source ingredients for their pending multi-course dinner. The menu and pairings is inspired by the ingredients and the season, ensuring a dinner that is "from the moment." The trip, dinner and pairings are orchestrated by Grange's Executive Chef, Brandon Johns the New Holland's "Beevangelist" Fred Bueltmann.

"The format is inspired by relationships we've developed with local farms and the talented restaurants who feature them," says Bueltmann. "These dinners invite people to connect with the ongoing harvest all around us, and the beauty of our agriculture. By designing dishes that showcase the ingredients in their peak moments, while artfully integrating beer, we engage the very best parts of eating and drinking seasonally." [Read More](#)





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Word Mark STOP & TASTE
Goods and Services IC 032. US 045 046 048. G & S: Beer. FIRST USE: 20130101. FIRST USE IN COMMERCE: 20130101
 IC 033. US 047 049. G & S: Spirits. FIRST USE: 20130101. FIRST USE IN COMMERCE: 20130101
 IC 041. US 100 101 107. G & S: Arranging, organizing, conducting, and hosting social **entertainment** events. FIRST USE: 20130101. FIRST USE IN COMMERCE: 20130101
 IC 043. US 100 101. G & S: **Restaurant**, bar and catering services. FIRST USE: 20130101. FIRST USE IN COMMERCE: 20130101

Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 24.09.07 - Advertising, banners; Banners

Serial Number 86398929

Filing Date September 18, 2014

Current Basis 1A

Original Filing Basis 1A

Published for Opposition February 10, 2015

Registration Number 4727645

Registration

Date April 28, 2015

Owner (REGISTRANT) New Holland Brewing Company, LLC LIMITED LIABILITY COMPANY MICHIGAN 66 East 8th Street Holland MICHIGAN 49423

Attorney of Record AARON J. WONG

Description of Mark Color is not claimed as a feature of the mark. The mark consists of a diagonal banner having the word "STOP" appearing over the word "TASTE" and an ampersand over the letter "E".

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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Current Search: S2: docs: 2743 occ: 23831

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	86733415		WINE DECODER - DEFINE YOUR WINE	TSDR	LIVE
2	86732941		COLLEGE FOOTBALL CAPITAL OF THE WORLD	TSDR	LIVE
3	86732722		MAHIKI	TSDR	LIVE
4	86731565		SOME LIKE IT VIRTUAL	TSDR	LIVE
5	86731051		WINE IS FAMILY	TSDR	LIVE
6	86730881		HAMMOCK SHOPS	TSDR	LIVE
7	86730643		HEART NIGHTCLUB	TSDR	LIVE
8	86721021		WHOLE FOODIE	TSDR	LIVE
9	86659697		365 EVERYDAY VALUES	TSDR	LIVE
10	86630015		BOOT LEGGER'S SALOON & DANCE HALL BL	TSDR	LIVE
11	86627184		SHARE OF SUITCASE	TSDR	LIVE
12	86608141		PHILLY FROM THE TOP	TSDR	LIVE
13	86577660		S SCARLET PEARL CASINO RESORT	TSDR	LIVE
14	86577650		S SCARLET PEARL CASINO RESORT	TSDR	LIVE
15	86577639		S SCARLET PEARL CASINO RESORT	TSDR	LIVE
16	86575791		CLICKS	TSDR	LIVE
17	86564694		THE LODGE AT RISING STAR CASINO	TSDR	LIVE
18	86564678		THE LODGE AT RISING STAR CASINO	TSDR	LIVE
19	86550708		SOLOS VACATIONS	TSDR	LIVE
20	86529149		JESSIE AND D' LILA	TSDR	LIVE
21	86523530		SOUTHBITES	TSDR	LIVE
22	86499261	4799144	OFFKEY	TSDR	LIVE
23	86485183		MASTERCARD WORLD CONCIERGE	TSDR	LIVE

24	86443319		RUMBA ROOM LIVE	TSDR	LIVE
25	86333115		COLUMBIA PARK	TSDR	LIVE
26	86326639		GO FURTHER WITH INDUSTRY-LEADING REWARDS	TSDR	LIVE
27	86325905	4798045		TSDR	LIVE
28	86320449	4797995	EMPIRE STATE BUILDING	TSDR	LIVE
29	86115710	4797664		TSDR	LIVE
30	86095748			TSDR	LIVE
31	86073962		CAVALLI RESTAURANT & LOUNGE	TSDR	LIVE
32	86060380		1 HOTEL & HOMES SOUTH BEACH	TSDR	LIVE
33	86060348		1 HOTEL & HOMES	TSDR	LIVE
34	86044616		SKYRISE MIAMI	TSDR	LIVE
35	86729252		PARK WINTERS	TSDR	LIVE
36	86649183		OCEAN	TSDR	LIVE
37	86649171		O OCEAN	TSDR	LIVE
38	86597330		TIMES SQUARE LANDING	TSDR	LIVE
39	86449364		EBF EDINBURGH BEER FACTORY	TSDR	LIVE
40	86341916			TSDR	LIVE
41	86323862		GREEKTOWN CASINO-HOTEL	TSDR	LIVE
42	86278577		CANOPY	TSDR	LIVE
43	86254871		AIR CHINA	TSDR	LIVE
44	86244979		CURIO	TSDR	LIVE
45	86203868		TOP OF THE ROCKIES	TSDR	LIVE
46	86678420		TEXAS LIVE!	TSDR	LIVE
47	86625812		LIVE! HOTEL & CASINO PHILADELPHIA	TSDR	LIVE
48	86625795		LIVE! HOTEL & CASINO	TSDR	LIVE
49	86728741		STRIDERS	TSDR	LIVE
50	86643727		DRAGON FIRE GRILL	TSDR	LIVE
51	86060308		1 HOTEL & HOME	TSDR	LIVE
52	86449239		WEKIP	TSDR	LIVE
53	86433802		LAZYDAYS AMERICA'S RV DESTINATION	TSDR	LIVE
54	86427305		ONE WORLD OBSERVATORY	TSDR	LIVE
55	86409151		SURESHOT	TSDR	LIVE
56	86035523		G	TSDR	LIVE
57	86726038		SIMPLE COUNTRY LUXURY	TSDR	LIVE
58	86725645			TSDR	LIVE
59	86724584		BLAKE'S PASSAGE	TSDR	LIVE
60	86724579		THE DAIRY BLOCK	TSDR	LIVE
61	86724572		MAKER'S ALLEY	TSDR	LIVE
62	86631957		TRUSTED MEDIA BRANDS, INC.	TSDR	LIVE
63	86216161		FIRST LIGHT	TSDR	LIVE
64	86723707		WORLD OF SPEED	TSDR	LIVE
65	86718458		SILVER SLIPPER CASINO HOTEL	TSDR	LIVE
66	86579489		SEVEN MILE CASINO	TSDR	LIVE

67	86496746	4794508	WHERE THE PARTY GOES ON AND ON	TSDR	LIVE
68	86440923		FARM CITY PRO RODEO	TSDR	LIVE
69	86418310		EN EL MAR, LA VIDA ES MEJOR	TSDR	LIVE
70	86387209		FAR FROM EVERYTHING CLOSER TO WHAT MATTERS	TSDR	LIVE
71	86302071	4796465	SILKY LOUNGE	TSDR	LIVE
72	86298413	4796449	TOPSIDE OASIS	TSDR	LIVE
73	86268669	4796283	CLUB ADDICTIVE	TSDR	LIVE
74	86143291		R	TSDR	LIVE
75	86621456		VINCA - GRAPES OF COLOR	TSDR	LIVE
76	86596300		ACEBOUNCE	TSDR	LIVE
77	86397416		PHOTOMENUS	TSDR	LIVE
78	86380432		GATEWAY LANDING	TSDR	LIVE
79	86343740		PLAY LEGENDARY	TSDR	LIVE
80	86261866		THE ART A HOTEL	TSDR	LIVE
81	86261806		THE ART, A HOTEL	TSDR	LIVE
82	86208218		CARTER CREEK	TSDR	LIVE
83	86208203		CARTER CREEK WINERY, RESORT AND SPA	TSDR	LIVE
84	86001339		WINCHESTER ESTATE	TSDR	LIVE
85	86618237		CE LA VI	TSDR	LIVE
86	86419507		PURPLE HAZE LOUNGE	TSDR	LIVE
87	86720202		BELIEVE IN BBQ	TSDR	LIVE
88	86720196		TASTEOPIA	TSDR	LIVE
89	86559930		THE RARE BARREL	TSDR	LIVE
90	86479180		MOJITO POINTE	TSDR	LIVE
91	86149484		THE BAY CLUB COMPANY	TSDR	LIVE
92	86149317		BAY CLUBS	TSDR	LIVE
93	86718985		MI CASA ES SU CASA HOLIDAY	TSDR	LIVE
94	86718948		VIDANTA RESORTS	TSDR	LIVE
95	86718335		S	TSDR	LIVE
96	86617677		MYTH RESORTS	TSDR	LIVE
97	86359432		MAGIC MIKE	TSDR	LIVE
98	86975825		ALON RESORTS	TSDR	LIVE
99	86975824		ALON LEISURE	TSDR	LIVE
100	86615530		BOUNCE MILWAUKEE	TSDR	LIVE

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THE ART HOTEL DENVER

Word Mark THE ART HOTEL DENVER

Goods and Services IC 035. US 100 101 102. G & S: special event planning for business purposes. FIRST USE: 20150515. FIRST USE IN COMMERCE: 20150515

IC 041. US 100 101 107. G & S: special event planning for social **entertainment** purposes. FIRST USE: 20150515. FIRST USE IN COMMERCE: 20150515

IC 043. US 100 101. G & S: hotel services; bar and **restaurant** services; catering services. FIRST USE: 20150515. FIRST USE IN COMMERCE: 20150515

Standard Characters Claimed

Mark Drawing Code (4) STANDARD CHARACTER MARK

Serial Number 86261915

Filing Date April 24, 2014

Current Basis 1A

Original Filing Basis 1B

Date Amended to Current Register May 18, 2015

Registration Number 4766109

Registration Date June 30, 2015

Owner (REGISTRANT) Corporex Companies, LLC LIMITED LIABILITY COMPANY KENTUCKY 100 East Rivercenter Blvd. Suite 1100 Covington KENTUCKY 41011

Attorney of Record Emily C. Holmes

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "HOTEL" AS TO CLASS 43
APART FROM THE MARK AS SHOWN

Type of Mark SERVICE MARK

Register SUPPLEMENTAL

Live/Dead Indicator LIVE

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