

ESTTA Tracking number: **ESTTA627054**

Filing date: **09/15/2014**

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

Proceeding	91215246
Party	Defendant Empire Resorts, Inc.
Correspondence Address	CHARLES N QUINN FOX ROTHSCHILD LLP 2000 MARKET ST, 20TH FLOOR PHILADELPHIA, PA 19103-3222 UNITED STATES cquinn@foxrothschild.com, dmcgregor@foxrothschild.com, cesch@foxrothschild.com, ipdocket@foxrothschild.com, dwilliams@foxrothschild.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Darcy A. Williams
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Signature	/Darcy A. Williams/
Date	09/15/2014
Attachments	27020005_1_CONSENTED MOTION TO FILE AMENDED ANSWER (AS FILED) (91215246).PDF(172749 bytes)

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

LVGV, LLC,		: Opposition: 91215246
	Opposer	:
v.		: Application: 85/736,471
		:
EMPIRE RESORTS, INC.,		: Mark: "M (stylized)"
	Applicant	: Class 28

CONSENTED MOTION TO FILE AMENDED ANSWER

Applicant, Empire Resorts, Inc. ("Applicant"), hereby moves the Board to grant Applicant leave to file the Amended Answer to Notice of Opposition, attached hereto as Exhibit "A", pursuant to Fed. R. Civ. P. 15. The parties are not at this time requesting that the Board reset the deadlines in this matter.

Opposer, LVGV LLC, consented to the instant motion in an email exchange conducted between counsel for the parties between August 27, 2014, and August 31, 2014.

Respectfully submitted,

FOX ROTHSCHILD LLP

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Dated: September 15, 2014

**EXHIBIT "A" TO CONSENTED MOTION TO FILE AMENDED ANSWER
September 15, 2014**

**UNITED STATES PATENT AND TRADEMARK OFFICE
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AMENDED ANSWER TO NOTICE OF OPPOSITION

Applicant, Empire Resorts, Inc. ("Applicant"), hereby answers the Notice of Opposition as filed in correspondingly numbered paragraphs:

1. Lacking information and belief, denied.
2. Admitted only that Opposer attached to the Notice of Opposition what appear to be reports from the electronic database records of the United States Patent and Trademark Office showing the current status and title of certain putative trademark registrations; otherwise, lacking information and belief, denied.
3. Lacking information and belief, denied.
4. Admitted.
5. Admitted.
6. Lacking information and belief, denied.
7. Lacking information and belief, denied.
8. Lacking information and belief, denied.
9. Lacking information and belief, denied.
10. Lacking information and belief, denied.
11. Lacking information and belief, denied.

12. Lacking information and belief, denied.
13. Admitted only that Applicant's application does not contain any trade channel restrictions; otherwise, denied.
14. Admitted only that Applicant seeks registration for Applicant's mark in connection with the goods recited; otherwise denied.
15. Admitted that the recitation of goods set forth in this paragraph is an accurate recitation of the goods as set forth in Applicant's application; otherwise denied, and specifically denied that Applicant's mark is likely to cause confusion with, or is confusingly similar to, the putative alleged "M" marks allegedly owned by Opposer.
16. Admitted that the dominant element in Applicant's "M" (stylized) mark is the letter "M". Otherwise, denied.
17. Admitted only that the dominant feature of Applicant's mark is the letter "M"; otherwise denied.
18. Generally denied and specifically denied that Applicant's goods overlap with or are intended to overlap with any services allegedly offered by Opposer.
19. Denied.
20. Denied.
21. Generally denied, and specifically denied that there will be any defect, objection to or fault found with Applicant's goods.
22. Admitted that if Applicant is granted registration Applicant will obtain the *prima facie* exclusive right to use Applicant's mark, but denied that any such registration obtained by Applicant would be injurious or damaging to Opposer.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Applicant's mark is distinctive and dissimilar from Opposer's alleged putative marks in appearance, sound, connotation, and commercial impression and is unlikely to cause confusion with any or all of Opposer's alleged putative marks. Registration of Applicant's mark will not damage Opposer.

Applicant reserves the right to plead additional affirmative defenses and counterclaims in the event evidence comes to hand in the course of this proceeding to support the same.

WHEREFORE, Applicant prays that this opposition be dismissed and that application serial number 85/736,471 be issued as a registration for Applicant's mark "M (stylized)".

Respectfully submitted,

/Charles N. Quinn/
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Date: September 15, 2014

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		:
EMPIRE RESORTS, INC.,		: Mark: "M (stylized)"
	Applicant	: Class 28

CERTIFICATE OF SERVICE

I, Darcy A. Williams, Esquire, hereby certify that a true and correct copy of the foregoing Amended Answer to Notice of Opposition was served on Opposer's Counsel via electronic mail on 15 September 2014 at the addresses below:

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/Darcy A. Williams/
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