

ESTTA Tracking number: **ESTTA533942**

Filing date: **04/23/2013**

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

Proceeding	92056820
Party	Plaintiff Hollywood Casino Corporation
Correspondence Address	HARA K JACOBS BALLARD SPAHR LLP 1735 MARKET STREET, 51ST FLOOR PHILADELPHIA, PA 19103-7599 UNITED STATES jacobsh@ballardspahr.com, cramerp@ballardspahr.com, sternam@ballardspahr.com, phila_tmddocketing@ballardspahr.com
Submission	Motion to Amend Pleading/Amended Pleading
Filer's Name	Hara K. Jacobs
Filer's e-mail	jacobsh@ballardspahr.com, sternam@ballardspahr.com, shorem@ballardspahr.com, phila_tmddocketing@ballardspahr.com
Signature	/Hara K. Jacobs/
Date	04/23/2013
Attachments	DOC122.pdf (23 pages)(388509 bytes)

Registration Nos. 1,851,759 and 1,903,858 for the mark HOLLYWOOD CASINO for hotel services and casino services, all collectively referred to as the “Hollywood Casino Marks.” Attached hereto as Exhibits A and B are current TSDR report printouts from the electronic database records of the USPTO showing the current status and title of Registration Nos. 1,851,759 and 1,903,858.

3. Petitioner offers, among other things, hotel services, casino services, restaurant and bar services, gaming facilities for patrons to play slot machines and video lottery terminals and other games of chance, and other casino services and related entertainment and hospitality services under the Hollywood Casino Marks (collectively, “Petitioner’s Services”).

4. Hollywood Burger Holdings, Inc. (“Respondent”) has secured Registration No. 4,036,289, issued on October 4, 2011, for the mark HOLLYWOOD CAFÉ for “coffee-house and snack-bar services; fast-food restaurant services; fast-food restaurants and snackbars; preparation of food and beverages; providing of food and drink; providing of food and drink via a mobile truck; provision of food and drink in restaurants; restaurant services, including sit-down service of food and take-out restaurant services; restaurant services, namely, providing of food and beverages for consumption on and off the premises” in Class 43 (collectively, “Respondent’s Eatery Services”).

5. The Registration matured from Application No. 85/171,303, which Respondent filed on November 8, 2010 based on Respondent’s intent to use the mark in commerce, under Section 1(b) of the Lanham Act.

6. On July 21, 2011, Respondent filed a specimen and Statement of Use, stating that the mark HOLLYWOOD CAFÉ for the services identified herein was used at least as early as

November 8, 2010, and first used in commerce at least as early as July 15, 2011 (the “Statement of Use”).

7. The trademark examiner accepted the Statement of Use, and converted the Application to a use-based application under Section 1(a) of the Lanham Act.

8. Petitioner’s dates of first use in commerce for each of the Hollywood Casino Marks precede Respondent’s alleged date of first use in commerce for the mark HOLLYWOOD CAFÉ.

9. The registrations for the Hollywood Casino Marks are valid, subsisting and are incontestable.

10. Petitioner’s use of the Hollywood Casino Marks has been continuous, exclusive and commercially significant for many years in connection with Petitioner’s Services.

11. Petitioner’s Hollywood Casino Marks are valid and have been valid and in continuous use since at least their respective dates of first use and have not been abandoned.

12. Because of the substantial investment of time and resources nationally to promote, advertise, and enforce the Hollywood Casino Marks, consumers have come to associate the Hollywood Casino Marks exclusively with Petitioner’s Services.

13. By virtue of Petitioner’s continuous use in commerce of the Hollywood Casino Marks in connection with Petitioner’s Services, such services have become favorably known to the relevant trade and public under such marks.

14. In the Registration which is the subject of this cancellation, there are no restrictions on trade channels, so it must be presumed that the services of the Registration identified will travel through all trade channels appropriate for services of that type.

15. On information and belief, Respondent's Eatery Services, and Petitioner's Services are intended to be marketed through overlapping channels of trade and are intended to be sold to overlapping classes of purchasers.

16. Respondent's HOLLYWOOD CAFÉ mark as used in association with Respondent's Eatery Services is confusingly similar to the Hollywood Casino Marks established by Petitioner because the marks are similar in sound, appearance and overall commercial impression.

17. Respondent's HOLLYWOOD CAFÉ mark as applied to the identification of services in the Registration so resembles the Hollywood Casino Marks as applied to Petitioner's Services that it is likely to cause confusion, mistake and/or deception.

18. If Respondent's registration for the mark HOLLYWOOD CAFÉ for the services set forth in Class 43 of the Registration is permitted to continue, confusion of the relevant trade and public is likely to result, which will damage and injure Petitioner.

19. Any defect, objection to, or fault found with Respondent's services under the HOLLYWOOD CAFÉ mark would necessarily reflect on and seriously injure the reputation that Petitioner has established for its services and business.

20. Respondent's statement in the Statement of Use that the mark HOLLYWOOD CAFÉ was in use in commerce as of July 15, 2011, and was in use in commerce as of the date of the Statement of Use, July 21, 2011, is a false misrepresentation of fact because Respondent does not provide Respondent's Eatery Services in the United States.

21. Respondent publicly states both on its website and in press releases that Respondent has a single restaurant in the country of Argentina, which is its first location, and a newly opened restaurant in the United Arab Emirates, which is its second location, and that

Respondent's next planned locations will be additional restaurants in Argentina and the United Arab Emirates. A copy of the "Locations" page from Respondent's website containing the aforementioned statements is attached as Exhibit C hereto.

22. Respondent's website, under the tab 'Hollywood Café' states that it is "Currently Under Construction. Coming Soon!" A copy of the Hollywood Café page from Respondent's website is attached hereto as Exhibit D.

23. Petitioner has performed an investigation into Respondent's services. That investigation revealed that Respondent does not provide Respondent's Eatery Services in the United States and did not provide Respondent's Eatery Services in the United States at the time it filed its application, at the time it claims to have first used the mark in commerce, July 15, 2011, or at the time Respondent filed its Statement of Use, July 21, 2011.

24. Respondent does not presently provide Respondent's Eatery Services in the United States.

25. Respondent did not provide Respondent's Eatery Services in the United States at the time Respondent filed its application.

26. Respondent did not provide Respondent's Eatery Services in the United States at the time Respondent claims to have first used the mark in commerce, July 15, 2011.

27. Respondent did not provide Respondent's Eatery Services in the United States at the time Respondent filed its Statement of Use, July 21, 2011.

28. Respondent does not provide Respondent's Eatery Services in the United States and did not provide Respondent's Eatery Services in the United States at the time it filed its application, at the time it claims to have first used the mark in commerce, July 15, 2011, or at the time Respondent filed its Statement of Use, July 21, 2011.

29. Respondent has never provided Respondent's Eatery Services in the United States.

30. Because Respondent has not used the mark HOLLYWOOD CAFÉ in commerce, as defined in 15 U.S.C. § 1127, for any of the services listed in the Registration, the Registration is void *ab initio*.

31. Petitioner's investigation further revealed that Respondent is marketing its restaurant concept to potential franchisees by emphasizing that it has a trademark registration in the United States.

32. On information and belief, and upon the results of Petitioner's investigation, Respondent knowingly made false, material misrepresentations of fact in submitting its Application and the Statement of Use, with the intent to deceive the U.S. Patent & Trademark Office in procuring a federal registration for the mark HOLLYWOOD CAFÉ because Respondent knew that its mark, HOLLYWOOD CAFÉ, was not in use in commerce, as defined in 15 U.S.C. § 1127, in connection with the services referenced in the Application at the time the Application was filed, at the time of its alleged date of first of use in commerce, July 15, 2011, or at the time the Statement of Use was filed, July 21, 2011.

33. By reason of the foregoing, Petitioner is likely to be harmed by continued registration of U.S. Registration No. 4,036,289.

WHEREFORE, Hollywood Casino Corporation requests that this Petition to Cancel be granted, and that Registration No. 4,036,289 for the HOLLYWOOD CAFÉ mark be cancelled.

The required fee of \$300 may be charged to Deposit Account No. 02-0755 and any overpayment may be credited to this account.

Dated: April 23, 2013

Respectfully submitted,

By: /Hara K. Jacobs/

Hara K. Jacobs
Andrew M. Stern
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, Pennsylvania 19103-7599
(215) 665-8500

ATTORNEYS FOR PETITIONER

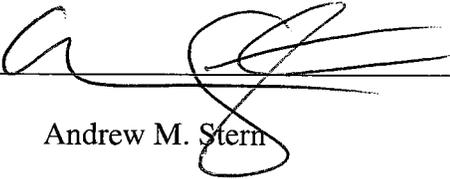
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Amended Petition for Cancellation was served on the Attorney of Record for the Respondent, Hollywood Burger Holdings, Inc. by First Class U.S. Mail on the date below:

ERIC S. HUNTER
HUTNER KLARISH LLP
1359 BROADWAY RM 2001
NEW YORK, NY 10018-7833

Dated: _____

4/23/13



Andrew M. Stern

EXHIBIT A

STATUS

DOCUMENTS

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Mark: HOLLYWOOD CASINO

US Serial Number: 74801556

Application Filing Date: May 05, 1993

US Registration Number: 1851759

Registration Date: Aug. 30, 1994

Register: Principal

Mark Type: Service Mark

Status: A Section 15 declaration has been acknowledged.

Status Date: Jul. 01, 2008

Publication Date: Jun. 07, 1994

Mark Information

Mark Literal Elements: HOLLYWOOD CASINO

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Disclaimer: "CASINO"

Related Properties Information

International Registration Number:

International Application(s): A0034213

/Registration(s) Based on this Property:

Claimed Ownership of US Registrations: 74388870

Child Of: 74388870

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((...)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *..* identify additional (new) wording in the goods/services.

For: casino services

International Class: 041 - Primary Class

U.S Class: 107

Class Status: ACTIVE

Basis: 1(a)

First Use: Jun. 17, 1993

Use in Commerce: Jun. 17, 1993

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Hollywood Casino Corporation

Owner Address: 825 BERKSHIRE BOULEVARD, STE 200
WYOMISSING, PENNSYLVANIA 19610
UNITED STATES

Legal Entity Type: CORPORATION

State or Country: DELAWARE

Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Patricia G. Cramer

Docket Number: 894428

Attorney Primary Email Address: cramerp@ballardspahr.com

Attorney Email Authorized: Yes

Email Address:

Authorized:

Correspondent

Correspondent Name/Address: Patricia G. Cramer

Name/Address: Ballard Spahr Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PENNSYLVANIA 19103-7599
UNITED STATES

Phone: 215-864-8607

Fax: 215-864-9744

Correspondent e-mail: cramerp@ballardspahr.com

Correspondent e-mail: Yes

Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 20, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jul. 01, 2008	REGISTERED - SEC. 15 ACKNOWLEDGED	66607
Jun. 17, 2008	ASSIGNED TO PARALEGAL	66607
Jun. 06, 2008	TEAS SECTION 15 RECEIVED	
Jul. 20, 2007	CASE FILE IN TICRS	
Dec. 12, 2005	ATTORNEY REVOKED AND/OR APPOINTED	
Dec. 12, 2005	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Jan. 13, 2004	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	
Jan. 13, 2004	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Nov. 03, 2003	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Apr. 29, 2003	CANCELLATION TERMINATED NO. 999999	30800
Apr. 29, 2003	CANCELLATION DISMISSED NO. 999999	30800
Apr. 18, 2003	CANCELLATION GRANTED NO. 999999	30800
Oct. 30, 2000	REGISTERED - SEC. 8 (6-YR) ACCEPTED	
Aug. 18, 2000	REGISTERED - SEC. 8 (6-YR) FILED	
Aug. 25, 2000	CANCELLATION INSTITUTED NO. 999999	30800
Aug. 30, 1994	REGISTERED-PRINCIPAL REGISTER	
Jun. 07, 1994	PUBLISHED FOR OPPOSITION	
May 06, 1994	NOTICE OF PUBLICATION	
Mar. 01, 1994	APPROVED FOR PUB - PRINCIPAL REGISTER	
Mar. 01, 1994	USE AMENDMENT ACCEPTED	
Jan. 31, 1994	AMENDMENT TO USE PROCESSING COMPLETE	
Sep. 01, 1993	USE AMENDMENT FILED	

Jan. 10, 1994	DIVISIONAL PROCESSING COMPLETE	
Nov. 22, 1993	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Sep. 30, 1993	APPROVED FOR PUB - PRINCIPAL REGISTER	
Aug. 23, 1993	EXAMINER'S AMENDMENT MAILED	
Aug. 20, 1993	ASSIGNED TO EXAMINER	67348
Aug. 16, 1993	ASSIGNED TO EXAMINER	59899
Aug. 16, 1993	ASSIGNED TO EXAMINER	59899

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted

Renewal Date: Aug. 30, 2004

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: POST REGISTRATION

Date in Location: Jul. 01, 2008

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

EXHIBIT B

STATUS DOCUMENTS

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Mark: HOLLYWOOD CASINO

US Serial Number: 74388870

Application Filing Date: May 05, 1993

US Registration Number: 1903858

Registration Date: Jul. 04, 1995

Register: Principal

Mark Type: Service Mark

Status: The registration has been renewed.

Status Date: Apr. 24, 2006

Publication Date: Aug. 16, 1994

Notice of Allowance Date: Nov. 08, 1994

Mark Information

Mark Literal Elements: HOLLYWOOD CASINO

Standard Character Claim: No

Mark Drawing Type: 1 - TYPESET WORD(S) /LETTER(S) /NUMBER(S)

Disclaimer: "CASINO"

Related Properties Information

International Registration Number:

International Application(s): A0034213

/Registration(s) Based on this Property:

Claimed Ownership of US Registrations: 74801556

Parent Of: 74801556

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [.] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks *.* identify additional (new) wording in the goods/services.

For: hotel services

International Class: 042 - Primary Class

U.S Class: 100, 101

Class Status: ACTIVE

Basis: 1(a)

First Use: Sep. 09, 1994

Use in Commerce: Sep. 09, 1994

Basis Information (Case Level)

Filed Use: No	Currently Use: Yes	Amended Use: No
Filed ITU: Yes	Currently ITU: No	Amended ITU: No
Filed 44D: No	Currently 44D: No	Amended 44D: No
Filed 44E: No	Currently 44E: No	Amended 44E: No
Filed 66A: No	Currently 66A: No	
Filed No Basis: No	Currently No Basis: No	

Current Owner(s) Information

Owner Name: Hollywood Casino Corporation

Owner Address: Two Galleria Tower, Suite 2200
13455 Noel Road, L.B. 48
Dallas, TEXAS 75240
UNITED STATES

Legal Entity Type: CORPORATION

State or Country DELAWARE
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Patricia G. Cramer; Roberta Jacobs-Meadway; Jay K. Meadway; Richard E. Peirce; Robert H. Lefevre

Docket Number: 894428

Attorney Primary Email Address: cramerp@ballardspahr.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: PATRICIA G CRAMER ROBERTA JACOBS- MEADW
BALLARD SPAHR ANDREWS & INGERSOLL LLP
1735 MARKET ST 51ST FL
PHILADELPHIA, PENNSYLVANIA 19103-7599

UNITED STATES

Phone: 215-864-8607

Fax: 215-864-9744

Correspondent e-mail: cramerp@ballardspahr.com

Correspondent e-mail Yes

Authorized:

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Jul. 20, 2011	ASSIGNMENT OF OWNERSHIP NOT UPDATED AUTOMATICALLY	
Jun. 27, 2007	CASE FILE IN TICRS	
Apr. 24, 2006	REGISTERED AND RENEWED (FIRST RENEWAL - 10 YRS)	68335
Apr. 24, 2006	REGISTERED - SEC. 8 (10-YR) ACCEPTED/SEC. 9 GRANTED	
Apr. 24, 2006	ASSIGNED TO PARALEGAL	68335
Dec. 12, 2005	REGISTERED - COMBINED SECTION 8 (10-YR) & SEC. 9 FILED	
Dec. 12, 2005	TEAS SECTION 8 & 9 RECEIVED	
Dec. 12, 2005	ATTORNEY REVOKED AND/OR APPOINTED	
Dec. 12, 2005	TEAS REVOKE/APPOINT ATTORNEY RECEIVED	
Aug. 13, 2001	REGISTERED - SEC. 8 (6-YR) ACCEPTED & SEC. 15 ACK.	
Jul. 03, 2001	REGISTERED - SEC. 8 (6-YR) & SEC. 15 FILED	
Jul. 04, 1995	REGISTERED-PRINCIPAL REGISTER	
Mar. 29, 1995	ALLOWED PRINCIPAL REGISTER - SOU ACCEPTED	
Mar. 16, 1995	ASSIGNED TO EXAMINER	67348
Mar. 08, 1995	STATEMENT OF USE PROCESSING COMPLETE	
Jan. 13, 1995	USE AMENDMENT FILED	
Nov. 08, 1994	NOA MAILED - SOU REQUIRED FROM APPLICANT	
Aug. 16, 1994	PUBLISHED FOR OPPOSITION	
Jul. 15, 1994	NOTICE OF PUBLICATION	
Mar. 01, 1994	APPROVED FOR PUB - PRINCIPAL REGISTER	

Jan. 27, 1994	CORRESPONDENCE RECEIVED IN LAW OFFICE	
Jan. 10, 1994	DIVISIONAL PROCESSING COMPLETE	
Sep. 01, 1993	DIVISIONAL REQUEST RECEIVED	
Nov. 22, 1993	PREVIOUS ALLOWANCE COUNT WITHDRAWN	
Sep. 30, 1993	APPROVED FOR PUB - PRINCIPAL REGISTER	
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Aug. 16, 1993	ASSIGNED TO EXAMINER	59899

Maintenance Filings or Post Registration Information

Affidavit of Continued Use: Section 8 - Accepted

Affidavit of Incontestability: Section 15 - Accepted
 Renewal Date: Jul. 04, 2005

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: SCANNING ON DEMAND Date in Location: Jun. 27, 2007

Assignment Abstract Of Title Information - Click to Load

Proceedings - Click to Load

EXHIBIT C



[STAR STRUCK](#)
Our Concept

[GREAT GRUB](#)
Menu

[THE STAGE](#)
Locations

[FUN TIMES](#)
Fan Club

[COOL](#)
Merchandise

[THE BUZZ](#)
Franchising

Let's go to Hollywood!

Hollywood Burger Restaurants are located:

San Rafael, Mendoza, Argentina
[Hollywood Burger, 1530 Avenida Hipólito Yrigoyen](#)

Dubai, UAE
[Hollywood Burger, The Boulevard Mall, Unit GF003](#)
Boulevard Central, Old Town
email: boulevard@hollywoodburger.ae

Coming soon:

Dubai, UAE
[Hollywood Burger, The Avenue Mall](#)
email: avenue@hollywoodburger.ae

Córdoba, Argentina
[Hollywood Burger, Avenida Rafael Núñez & Miguel Potel Junot](#)





Sign-Up

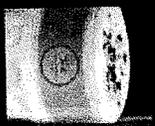
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EXHIBIT D



Let's Go To Hollywood!

Currently Under Construction.
COMING SOON!



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