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

Proceeding	92059112
Party	Defendant King Show Games Inc.
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Submission	Answer
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Date	06/06/2014
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 4328612
Registration Date: April 30, 2013
For the trademark: MAGIC DIAMOND

TOWN PUMP, INC.)
) Cancellation No. 92059112
Petitioner,)
)
v.)
)
KING SHOW GAMES, INC.)
)
Registrant.)
)
)
)

ANSWER AND AFFIRMATIVE DEFENSES TO PETITION TO CANCEL

King Show Games, Inc. (“Registrant”) hereby submits its Answer to the Petition to Cancel filed by Town Pump, Inc. (“Petitioner”) as follows: Registrant denies each allegation in the Petition to Cancel except those expressly admitted below. This Answer is based upon Registrant’s investigation to date, and Registrant reserves the right to amend this Answer as new information is learned. Registrant also reserves the right file counterclaims based on Petitioner’s U.S. Trademark Application No. 86250700. To the extent an answer is required to the unnumbered introductory paragraphs on page 1 of the Petition to Cancel, Registrant admits its name and address, but denies the remainder of the unnumbered paragraphs. With regard to the numbered paragraphs in the Petition to Cancel, the Registrant Answers with the following numbered paragraphs under the headings used in the Petition to Cancel.

1. Registrant admits that the United States Patent and Trademark Office records indicate that U.S. Trademark Application No. 86250700 for the MAGIC DIAMOND CASINOS word mark was filed on April 13, 2014 in International Class 041 for the services: Casinos;

Entertainment services, namely, casino gaming; Gaming services in the nature of casino gaming; Providing casino services featuring a casino players rewards program. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 1 and, therefore, denies the same.

2. Registrant admits that the United States Patent and Trademark Office records indicate that U.S. Trademark Application No. 86250706 for the stylized mark shown in the corresponding paragraph in the Petition to Cancel was filed on April 13, 2014 in International Class 041 for the services: Casinos; Entertainment services, namely, casino gaming; Gaming services in the nature of casino gaming; Providing casino services featuring a casino players rewards program. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 2 and, therefore, denies the same.

3. Registrant admits that the United States Patent and Trademark Office records indicate that U.S. Trademark Registration No. 2534319 was cancelled on October 31, 2008 and that U.S. Trademark Registration No. 2588553 was cancelled on April 4, 2009. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 3 and, therefore, denies the same.

4. Registrant admits to filing U.S. Trademark Application No. 77958718 for the mark MAGIC DIAMOND in International Class 009 for Gaming devices, namely, gaming machines, slot machines, bingo machines, with or without video output; Gaming equipment, namely, slot machines with or without video output; Gaming machines; Gaming machines featuring a device that accepts wagers; Gaming machines including slot machines or video lottery terminals; Gaming machines that generate or display wager outcomes; Gaming machines, namely, slot machines and video lottery terminals; Gaming machines, namely, devices which accept a wager; Gaming machines, namely, electronic slot and bingo machines; Gaming software that generates

or displays wager outcomes of gaming machines; Slot machines. Registrant further admits that U.S. Trademark Registration No. 4328612 for the word mark MAGIC DIAMOND issued on April 30, 2013, and that the mark was used in commerce at least as early as January 22, 2013. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 4 and, therefore, denies the same.

5. Registrant admits that the United States Patent and Trademark Office records indicate that U.S. Trademark Application No. 85515210 for the word mark MAGIC DIAMOND, and that U.S. Trademark Application No. 85515229 for the design mark or logo MAGIC DIAMOND CASINOS were filed on January 12, 2012. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 5 and, therefore, denies the same.

6. Registrant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 6 and, therefore, denies the same.

7. Registrant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 7 and, therefore, denies the same.

8. Registrant denies the allegations found in paragraph 8.

9. Registrant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 9 and, therefore, denies the same.

PRIORITY OF USE AND LIKELIHOOD OF CONFUSION (COUNT 1)

10. Registrant acknowledges Petitioner's incorporation by reference in Paragraph 10, but takes no position on the properness of any inferences created by this incorporation by reference.

11. Registrant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 11 and, therefore, denies the same.

12. Registrant denies that the presumption of paragraph 12 must be made given the premise presented in paragraph 12. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 12 and, therefore, denies the same.

13. Registrant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 13 and, therefore, denies the same.

14. Registrant is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 14 and, therefore, denies the same.

15. Registrant denies the allegations found in paragraph 15.

16. Registrant admits that Registrant does not have an express license, consent, or permission from Petitioner to use or register the MAGIC DIAMOND mark. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 16 and, therefore, denies the same.

17. Registrant denies that the continuous registration of the mark covered by U.S. Trademark Registration No. 4328612 is likely to cause injury to Petitioner, its business, reputation, and goodwill. Registrant is without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 17 and, therefore, denies the same.

AFFIRMATIVE DEFENSES

FURTHERMORE, Registrant sets forth the following in support of its position:

18. Petitioner's Petition to Cancel fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the cancellation proceeding of Registrant's Registration No. 4328612.

19. Petitioner's claims are barred in whole or in part by the doctrines of unclean hands, waiver, laches, estoppel and/or acquiescence.

20. Petitioner is without standing to state a claim for cancellation of Registrant's Registration No. 4328612.

21. Petitioner's Application Serial No. 86250706 has an alleged first use on August 31, 2010, which is after the filing date of Registrant's Registration No. 4328612 of March 15 2010. Hence, Registrant's Registration No. 4328612 has priority over Petitioner's Application Serial No. 86250706.

22. Petitioner's use of any mark related to its casino services has been geographically limited to the state of Montana, where Petitioner solely operates its casinos. Hence, even if Petitioner can sustain a showing of prior and continuous use, and a likelihood of confusion between the marks, the Registrant is entitled to, at most, a limited territory and zone of natural expansion to use their marks.

WHEREFORE, Registrant prays that Cancellation No. 92059112 be dismissed, and U.S. Trademark Registration No. 4328612 for MAGIC DIAMOND be recognized as a valid federally registered trademark.

Respectfully submitted,

KING SHOW GAMES, INC.

Dated: June 6, 2014

/Gregg Palmer/
Gregg Palmer
Reg. No. 55,520
Intellectual Property Counsel for Registrant

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CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that this ANSWER TO PETITION TO CANCEL was electronically filed with the Trademark Trial and Appeal Board on June 6, 2014.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the ANSWER TO PETITION TO CANCEL was served via First Class Mail as follows:

Antoinette M. Tease
Antoinette M. Tease, P.L.L.C.
PO Box 51016
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on this 6 day of June, 2014.

/Gregg Palmer/

Gregg Palmer

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