

ESTTA Tracking number: **ESTTA743811**

Filing date: **05/02/2016**

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

**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	TRIBECA HOTEL LLC		
Entity	limited liability company	Citizenship	New York
Address	1271 Avenue of the Americas 39th Floor New York, NY 10020 UNITED STATES		

Attorney information	Ralph N. Gaboury, Esq. Cox Padmore Skolnik & Shakarchy LLP 630 Third Avenue New York, NY 10017 UNITED STATES gaboury@cpslaw.com Phone:2129536633
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**Registration Subject to Cancellation**

Registration No	3955620	Registration date	05/03/2011
Registrant	Nevada Property 1 LLC 4285 Polaris Avenue Las Vegas, NV 89103 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 043. First Use: 2010/12/15 First Use In Commerce: 2010/12/15 All goods and services in the class are cancelled, namely: Resort hotels; Providing temporary housing accommodations in condominiums
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**Grounds for Cancellation**

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
False suggestion of a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute	Trademark Act Sections 14(3) and 2(a)
Deceptiveness	Trademark Act Sections 14(3) and 2(a)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used	Trademark Act Section 14(3)
Other	Petitioner will be further damaged by the Opposed Registration because the registration will give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

## Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86367275	Application Date	08/14/2014
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	COSMOPOLITAN HOTEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 1989/00/00 First Use In Commerce: 1989/00/00 Hotel services		

U.S. Application No.	86887517	Application Date	01/26/2016
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	C COSMOPOLITAN HOTEL - TRIBECA		
Design Mark			
Description of Mark	The mark consists of the letter "C" within a stylized oval design, centered above the words "COSMOPOLITAN HOTEL - TRIBECA"; the word "COSMOPOLITAN" is in capital letters centered below the letter "C" on its own line, with the words "HOTEL - TRIBECA" located below the word "COSMOPOLITAN" in smaller capital letters.		

Goods/Services	Class 043. First use: First Use: 2012/03/00 First Use In Commerce: 2012/03/00 Hotel services
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Attachments	86367275#TMSN.png( bytes ) 86887517#TMSN.png( bytes ) Petition to Cancel THE COSMOPOLITAN OF LAS VEGAS 5-2-2016.pdf(52755 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Ralph Gaboury/
Name	Ralph N. Gaboury, Esq.
Date	05/02/2016

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

In the matter of trademark Registration No. 3,955,620  
For the mark: C THE COSMOPOLITAN OF LAS VEGAS and Design  
Date registered: May 3, 2011

TRIBECA HOTEL LLC,

Petitioner,

v.

Nevada Property 1 LLC,

Registrant.

Cancellation No. \_\_\_\_\_

**PETITION TO CANCEL**

TRIBECA HOTEL LLC (“Petitioner”), a New York limited liability company, with an address at c/o Triumph Hospitality, LLC, 1271 Avenue of the Americas, 39th Floor, New York, NY 10020, is and will continue to be damaged by the above-identified registration, and hereby petitions to cancel the same in its entirety. To the best of petitioner’s knowledge, the name and address of the current owner of the registration is Nevada Property 1 LLC, 4285 Polaris Avenue, Las Vegas, Nevada 89103 (“Registrant”).

The grounds for cancellation are as follows:

1. For many decades, Petitioner and its predecessors-in-interest have operated the COSMOPOLITAN HOTEL located in the Tribeca neighborhood of New York City at 95 West Broadway.
2. Petitioner has invested substantial monetary and other resources in promoting the COSMOPOLITAN HOTEL mark, which through advertising and promotion has resulted in tremendous value and recognition of the COSMOPOLITAN HOTEL throughout the United

States and the world. In fact, the COSMOPOLITAN HOTEL attracts tourists from around the world visiting New York City – for both its accommodations and as an official historic landmark dating back to the early 1800s.

3. To protect the nationwide goodwill associated with Petitioner’s COSMOPOLITAN HOTEL mark, Petitioner has filed the following federal trademark registration applications: App. Ser. No. 86367275 for COSMOPOLITAN HOTEL (date of first use 1989), and App. Ser. No. 86887517 for C COSMOPOLITAN HOTEL – TRIBECA and Design (date of first use March, 2012).

4. Notwithstanding Petitioner’s preexisting rights in and to the COSMOPOLITAN HOTEL mark, on January 26, 2010, nearly 20 years after Petitioner began using the COSMOPOLITAN HOTEL mark in commerce, Registrant filed its application for registration of C THE COSMOPOLITAN OF LAS VEGAS and Design, for use in connection with “Resort hotels; Providing temporary housing accommodations in condominiums” in class 043, alleging a date of first use in commerce of December 15, 2010. The Application was assigned Serial No. 77920749, and the USPTO ultimately granted to Registrant trademark Reg. No. 3955620 (the “Opposed Registration”).

5. As discussed above, Petitioner uses the COSMOPOLITAN HOTEL mark in connection with hotel services identical to those listed in the Opposed Registration, and has done so for nearly two decades prior to the date of first use alleged in the Opposed Registration. As such, Registrant’s use of COSMOPOLITAN as depicted in the Opposed Registration, in connection with the same hotel services offered by Petitioner for decades, and the closely related use for condominium accommodations, is and/or is likely to cause confusion, to the damage of Petitioner.

6. Registrant's use of COSMOPOLITAN, as depicted in the Registration, in connection with the services listed in the Registration suggests that Registrant is trading deceptively off the valuable goodwill that Petitioner has developed in its COSMOPOLITAN HOTEL mark. Accordingly, Petitioner is presently and will be damaged by the Registration because consumers are and will be likely to believe, falsely, that Registrant's services are authorized, sponsored or approved by Petitioner or that Petitioner is otherwise affiliated or connected with Registrant, in violation of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a).

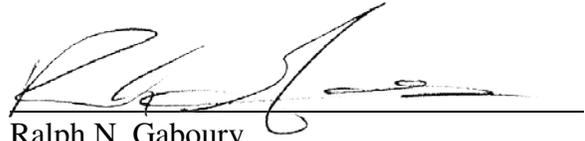
7. Registrant's use of COSMOPOLITAN as depicted in the Opposed Registration has and will continue to damage Petitioner because Registrant's use is confusingly similar to Petitioner's COSMOPOLITAN HOTEL mark being used on identical and closely related services. As such, Registrant's use of COSMOPOLITAN as depicted in the Opposed Registration is likely to cause confusion, deception, and/or mistake among the consuming public in violation of Sections 2(a) and 2(d) of the Lanham Act, 15 U.S.C. § 1052(a) and (d).

8. Registrant's use of COSMOPOLITAN as depicted in the Opposed Registration has and will continue to damage Petitioner because the Opposed Registration is being used by the Registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used, in violation of Section 14 of the Lanham Act, 15 U.S.C. § 1064.

9. Petitioner will be further damaged by the Opposed Registration because the registration will give color of exclusive statutory rights to Registrant in violation and derogation of the prior and superior rights of Petitioner.

WHEREFORE, as Petitioner has and will be damaged by the Opposed Registration, Petitioner respectfully requests that the Opposed Registration be cancelled. Submitted herewith is the required filing fee to cover the filing of this Petition to Cancel.

Dated: May 2, 2016



Ralph N. Gaboury

COX PADMORE SKOLNIK &  
SHAKARCHY LLP

Attorneys for Petitioner  
TRIBECA HOTEL LLC

630 Third Avenue, 19th Floor  
New York, NY 10017  
P: (212) 953-6633  
F: (212) 949-6943  
E: [gaboury@cpsslaw.com](mailto:gaboury@cpsslaw.com)