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

Proceeding	94002589
Party	Applicant Goldies Group, LLC
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Date	08/04/2016
Attachments	Ex Parte Statement Proving Entitlement to Concurrent Use Registration.pdf(324527 bytes)

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

Goldie's Group, LLC, Petitioner, v. Goldie's Shoreline Casino, Defendant.	Concurrent Use Proceeding No.: 94002589 Application Serial No.: 85131205

BOX TTAB FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S EX PARTE STATEMENT PROVING ENTITLEMENT TO CONCURRENT USE REGISTRATION

Pursuant to the Board's July 5, 2016 Order, Petitioner Goldie's Group, LLC ("Petitioner"), by and through its counsel of record, the law firm of Greenberg Traurig, LLP, hereby makes this *Ex Parte* Statement Proving Entitlement to Concurrent Use Registration ("Statement"). This Statement is supported by the Declaration of Matthew Flandermeyer, attached hereto.

Petitioner has lawfully been using the trademark GOLDIE'S since April 1, 2010, and filed for its federal trademark registration on September 16, 2010. The application was filed as a concurrent use application claiming the entire US with the exception of the state of Washington.

Petitioner's casino operating under the GOLDIE'S mark is located in northern Nevada. Petitioner does not operate any GOLDIE'S locations within the state of Washington. Although Defendant only operates a single casino in Shoreline, Washington, it has claimed that its use of its mark extends into the states of Oregon and Idaho, a fact that Petitioner does not concede. Nevertheless, Petitioner also does not operate any GOLDIE'S casinos in either Oregon or Idaho.

Furthermore, during discovery, Petitioner disclosed several pieces of evidence demonstrating that Defendant only uses the term "GOLDIE'S" in conjunction with the words "SHORELINE CASINO" and does not use GOLDIE'S as a standalone mark to identify its business. In particular, Petitioner identified and disclosed (i) screen shots of Defendant's website, (ii) a photograph of the sign outside of Defendant's casino, (iii) a casino chip from Defendant's casino, (iv) internet advertisements, and (v) an internet articles featuring a photograph of a gaming table inside of Defendant's casino. See Evidence of Defendant's Use, attached hereto as **Exhibit 1**. Each of these documents only shows use by Defendant of the entire mark "GOLDIE'S SHORELINE CASINO." Defendant provided no evidence that its mark is or ever has been used as a standalone GOLDIE'S mark. In this case, the use of the geographic designation "SHORELINE" in Defendant's mark will cause consumers to immediately associate Defendant's mark with its casino located in Shoreline, Washington, rather than Petitioner's establishment located in northern Nevada. Therefore, Petitioner submits that the parties' respective marks, when viewed in their entirety as consumers will encounter them in the marketplace in geographically remote areas, are sufficiently distinguishable in sight, sound, and meaning such that consumer confusion is not likely.

Moreover, Petitioner's and Defendant's respective businesses have peacefully coexisted for more than six years, with no known instances of confusion. An online search does not indicate that Defendant has any immediate plans to expand its business beyond Shoreline, Washington, and it appears that Defendant's business has not materially changed since this proceeding began. Petitioner's closest location to Washington and the areas of Idaho and Oregon where Defendant has indicated that it believes some of its customers may travel from is in northern Nevada. This part of Nevada borders the southern-most areas of Oregon and Idaho and is hundreds of miles from the most northern parts of Oregon and Idaho where Defendant claimed some of its patrons traveled from. Therefore, Petitioner submits that there will be virtually no overlap in the parties' respective customer base, further minimizing any potential for confusion.

Petitioner is a lawful junior user as it began use of the trademark GOLDIE'S without knowledge of Defendant's business, and does business in areas that are geographically remote to Washington. To the best of Petitioner's knowledge, Defendant has never expanded its rights beyond Shoreline, Washington. Despite Petitioner's requests, Defendant failed to provide any evidence in discovery demonstrating that it provided any services under its GOLDIE'S SHORELINE CASINO mark outside of Shoreline, Washington. Defendant does not hold any state or federal trademark registrations that could expand the territory claimed by Defendant beyond its actual use. Therefore, as a result of this concurrent use proceeding, Defendant's geographic scope of rights has been expanded beyond the scope of its actual business, to include the entire state of Washington.

As set forth above, Petitioner submits that it has become entitled to use its GOLDIE'S mark as a result of its concurrent lawful use that commenced prior to the filing date of its concurrent use application. Further, there will be no likelihood of confusion by reason of Petitioner's and Defendant's concurrent use of their respective marks. Petitioner further acknowledges that it will take whatever steps are necessary to prevent confusion between its business and Defendant's business and if Petitioner encounters any actual confusion, it will cooperate with Defendant in order to remedy such confusion and avoid further instances of confusion. Petitioner further states that it will not open any casinos under the mark GOLDIE'S in the state of Washington, as long as Defendant continues to do business under its GOLDIE'S SHORELINE CASINO trademark in Washington. Petitioner further states that it shall not interfere with Defendant's rights in its mark within the state of Washington.

DATED this 4th day of August, 2016.

GREENBERG TRAURIG, LLP
By: /Shauna L. Norton/
Lauri S. Thompson
Shauna L. Norton
3773 Howard Hughes Pkwy., Ste. 400N
Las Vegas, Nevada 89169
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2016, I served the foregoing **EX PARTE STATEMENT PROVING ENTITLEMENT TO CONCURRENT USE REGISTRATION** on:

Everett E. Fruehling
Aline S. Morris
Christensen O'Connor Johnson Kindness PLLC
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Seattle, WA 98101-3029
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Attorneys for Defendant

by causing a full, true, and correct copy thereof to be sent by the following indicated method or methods, on the date set forth below:

X by mailing in a sealed, first-class postage-prepaid envelope, addressed to the last-known office address of the attorney/party, and deposited with the United States Postal Service at Las Vegas, Nevada.

/s/ Cynthia L. Ney
An employee of Greenberg Traurig, LLP

EXHIBIT 1

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

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DECLARATION OF MATTHEW FLANDERMEYER IN SUPPORT OF PETITIONER'S EX PARTE STATEMENT PROVING ENTITLEMENT TO CONCURRENT USE REGISTRATION

I, Matthew Flandermeyer, declare under penalty of perjury under the laws of the United States as follows:

1. The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his own knowledge are true; and all statements made on information and belief are believed to be true.

2. I am the Chief Financial Officer and Vice President of Strategic Development for Golding Gaming, Inc., the parent company of Petitioner Goldie's Group, LLC, and have acted in that capacity since 2007. I have personal knowledge of the facts set forth herein and could truthfully testify to those facts based upon my personal knowledge.

3. This declaration is made in support of Petitioner's Ex Parte Statement Proving Entitlement to Concurrent Use Registration.

4. Petitioner has lawfully been using the trademark GOLDIE'S since April 1, 2010, and filed its application for federal trademark registration on September 16, 2010. The application was filed as a concurrent use application claiming the entire US with the exception of the state of Washington.

5. Petitioner's casino operating under the GOLDIE'S mark is located in northern Nevada. Petitioner does not operate any GOLDIE'S locations within the state of Washington. Petitioner also does not operate any GOLDIE'S casinos in either Oregon or Idaho.

6. Defendant, a common law concurrent user, operates a single casino establishment under the mark GOLDIE'S SHORELINE CASINO, which is located at 15030 Aurora Ave N., Shoreline, Washington 98133. Defendant does not own any federal or state trademark registrations.

7. It is my understanding that Defendant only uses the term "GOLDIE'S" in conjunction with the words "SHORELINE CASINO" and does not use GOLDIE'S as a standalone mark to provide its casino services. See Exhibit 1.

8. Petitioner's business and Defendant's business have peacefully coexisted for more than six years, with no known instances of confusion.

9. To the best of my knowledge, Defendant has no immediate plans to expand its business beyond Shoreline, Washington and I do not believe that Defendant's business has materially changed since this proceeding began.

10. Petitioner's closest location to Washington and the areas of Idaho and Oregon where Defendant has indicated that it believes some of its customers may travel from is northern Nevada.

11. Petitioner began use of the trademark GOLDIE'S without knowledge of Defendant's business, and does business in areas that are geographically remote to Washington. Furthermore, to my knowledge, Defendant has never expanded its rights beyond Shoreline, Washington.

12. Accordingly, Petitioner has become entitled to use its GOLDIE'S mark as a result of its concurrent lawful use which commenced prior to the filing date of its concurrent use applications.

13. There will be no likelihood of confusion by reason of Petitioner's and Defendant's concurrent use of their respective marks. I acknowledge that Petitioner will take whatever steps are necessary to prevent confusion between its business and Defendant's business. If any instances of actual confusion are encountered, I will ensure that Petitioner cooperates with Defendant in order to remedy such confusion and avoid further instances of confusion.

14. Petitioner will not open any casinos under the mark GOLDIE'S in the state of Washington and will not interfere with Defendant's rights in its GOLDIE'S SHORELINE CASINO trademark within the state of Washington, for as long as Defendant continues to do business within that state.

Dated this 3rd day of July, 2016.

MATTHEW FLANDERMEYER