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

Proceeding	91115866
Party	Defendant TREASURE ISLAND CORPORATION
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

PRAIRIE ISLAND INDIAN COMMUNITY,
A FEDERALLY RECOGNIZED INDIAN TRIBE,

Plaintiff,

vs.

TREASURE ISLAND CORP.,

Defendant.

Opposition Nos. 91115866 and
91157981

Cancellation Nos. 92028126
92028127; 92028130; 92028133;
92028145; 92028155; 92028171;
92028174; 92028199; 92028248;
92028280; 92028294; 92028314;
92028319; 92029325; 92028342;
and 92028379 (as consolidated)

DEFENDANT'S TRIAL BRIEF

ORAL ARGUMENT REQUESTED

INTRODUCTION AND STATEMENT OF THE ISSUES

This consolidated proceeding involves nineteen (19) marks owned by the Defendant, Treasure Island Corp. ("Treasure Island"), incorporating the terms TREASURE ISLAND or some variation thereof, as well as design features. See Chart of Treasure Island Marks attached hereto as Appendix A. All of the marks are used for casino or related goods and services. The crux of this matter is the issue of priority of use between Treasure Island's marks for casino and related services and a TREASURE ISLAND mark owned by Plaintiff, Prairie Island Indian Community ("Prairie Island"), also used for casino services.

Treasure Island, through its predecessor-in-interest, first used a TREASURE ISLAND mark in commerce for casino services at least as early as June 1989. Plaintiff, does not dispute the accuracy or authenticity of Treasure Island's evidence showing a date of first use of the mark for casinos services by as early as June 1989. Prairie Island claims January 1990 as the date of first use of its TREASURE ISLAND mark for casino services. This date is clearly subsequent to Treasure Island's date of first use and priority must be awarded to Treasure Island based upon the abundant clear and convincing evidence.

Prairie Island argues that because prior judgments were entered in its favor against other discontinued TREASURE ISLAND design marks owned by Treasure Island, those prior judgments should act as *res judicata* (claim preclusion) regarding the marks at issue in this consolidated proceeding. However, the marks at issue here (i) convey a sufficiently dissimilar commercial impression than those prior marks and (ii) were filed years before Prairie Island filed its first cancellation proceeding. Therefore, *res judicata* does not apply. Further, *res judicata* should not be used in the manner Prairie Island suggests, as a sword, to attempt to defeat priority.

Based upon the undisputed facts, Treasure Island has priority of use for a TREASURE ISLAND mark for casino and related goods and services and hotel and related goods and services and as a result, the oppositions and cancellations should be adjudicated in its favor.

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DESCRIPTION OF THE RECORD

The record consists of nineteen (19) registrations identified in Appendix A, attached hereto; portions of the testimony transcript (with exhibits) of Thomas O. Mikulich, President and COO of Treasure Island Hotel and Casino; portions of the testimony transcript (with exhibits) of Andrew S. Pascal, former employee of The Golden Nugget and The Mirage (predecessors-in-interest to Treasure Island Hotel and Casino); portions of the testimony transcript (with exhibits) of Mark W. Russell, Vice President and General Counsel of The Mirage; portions of the testimony transcript (with exhibits) of John Schadler, partner in the Schadler, Kramer Group and former Vice President in Advertising for The Mirage; portions of the testimony transcript (with exhibits) of Ronald Valentine, former General Manager of Prairie Island; portions of the testimony transcript (with exhibits) of Cindy Flemke, Administration Manager at Prairie Island; portions of the testimony transcript (with exhibits) of Dolores Knapp, Hotel Manager at Prairie Island; various answers and objections to discovery propounded in this proceeding, third party documents and state registrations relied upon by Treasure Island and Prairie Island through Notices of Reliance.

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RECITATION OF FACTS

I. CASINOS OFFER SLOT MACHINE PLAY AS CASINO SERVICES TO THEIR CUSTOMERS

A. Use of TREASURE ISLAND for Casino Services

In 1988, Treasure Island's predecessor in interest owned and operated the world-famous Golden Nugget Hotel and Casino ("Golden Nugget") located on Freemont Street in downtown Las Vegas, Nevada. In those days, Las Vegas casinos only used slot machines and video poker games produced by game manufacturers. Mikulich Tr., pp. 18-19. The Golden Nugget however, believed that unique casino games could be developed and specially branded to attract casino customers. The Golden Nugget devised a number of concepts to create a broader and more unique appeal for the casino as a place to play. Unique proprietary games was a way for the Golden Nugget to "stand out among other casinos." Schadler Tr., pp. 8-9. In order to stand out from the competition that had generic-type games on their floors, the Golden Nugget developed "personalities" for the games. Schadler Tr., pp. 23-24. This was a way to distinguish the Golden Nugget from every other casino in town. We were at that time "...the leaders" in that direction. Schadler Tr., pp. 24-26. After developing a unique game and its associated name and artwork, the Golden Nugget placed its proprietary TREASURE ISLAND branded games on its casino floor in the second quarter of 1988. Pascal Tr., pp. 7-8. This was the first time that any Las Vegas casino had developed and used a non-generic slot machine in its casino. Schadler Tr., pp. 23-25; Mikulich Tr., pp. 18-19. Artwork, known in the casino industry as "belly glass," was developed for the glass inserts of the slot machines (Mikulich Ex. A) and for video poker games (Mikulich Ex. B). The belly glass was placed on the two types of games to provide the TREASURE ISLAND games with a specific brand identification.¹ Mikulich Tr., p. 14-15 and Ex. A and B; Pascal Tr., pp. 4-6. Exhibits C, D and E identify TREASURE ISLAND slot machines and TREASURE ISLAND video poker games at the Golden Nugget with

¹ Belly glass is a term of art for the exterior aesthetic additions to slot machines that allow people to differentiate one slot machine from another by artistic renderings or names, or both. Russell Tr., pp. 13-14.

the signage above them. Mikulich Tr., p. 16. The video poker games were different from all other video poker games because of their TREASURE ISLAND brand and because the game was a three-tiered progressive game which no other casino had at that time. Mikulich Tr., p. 19.

By the spring of 1989, the Golden Nugget was focused on “slot marketing, entertainment marketing and room sales.” Slot marketing is “promoting the casino, the slot machine component of the casino.” “It is basically the promotion of slots as an entertainment offering for the general consumer...” Schadler Tr., p. 7. By May 15, 1989, two areas or “banks”² of TREASURE ISLAND games, e.g. both slot and video poker machines were in place at various locations within the Golden Nugget and signs identifying the brand were placed above each bank of games. Mikulich Tr., p. 15-18 and Ex. C, D, E, and F. About 50 games in the Golden Nugget carried the TREASURE ISLAND mark. Mikulich Tr., pp. 44-46. Photographs of the TREASURE ISLAND slots and video poker games show the TREASURE ISLAND branded “belly glass” located just above the coin tray of each type of game. Mikulich Tr., pp. 15-18, Ex. C, D, E and F.

Initially, the TREASURE ISLAND branded games were exclusively offered at the Golden Nugget (Mikulich Tr., pp. 25-26) and casino customers who wanted to play the exclusive TREASURE ISLAND casino games had to go to the Golden Nugget. Mikulich Tr., pp. 30-31. Slot tournaments using those games were held in the casino to draw customers from outside of Nevada and fill Golden Nugget hotel rooms with out of state players invited to play in the slot tournament. Mikulich Tr., pp. 66-68. Uniquely branded games drove business. Mikulich Tr., pp. 30-31. “The idea was to develop hotel/casino customer loyalty. You want customers to develop property loyalty and loyalty to a game so you can generate repeat business.” Russell Tr., p. 26.

In early 1988 or 1989, games carrying the TREASURE ISLAND brand were promoted through back-lighted sign panels or “duratrans” located on the exterior of the Golden Nugget where they could be viewed by pedestrians and motorists. Pascal Tr., pp. 9-10, 14-15; Mikulich

² A slot bank is a grouping of slot machines on a casino floor that are close to one another in some configuration. Often a sign is placed above the bank to identify the games. It’s a way to refer to a grouping of slot machines less than all the slot machines on a casino floor, Russell Tr., pp. 28-29.

Tr., pp. 36-38. Billboards advertising "Only Golden Nugget Has TREASURE ISLAND SLOTS" were placed throughout Las Vegas and on the freeway coming from Los Angeles into downtown Las Vegas. Mikulich Tr., pp. 39-40, 43 and Ex. H. Additional print advertising for the Treasure island games was carried by local newspapers. The mark also appeared on the casino slot cups placed at each bank of slots used by customers. Mikulich Tr., pp. 70-72. Many customers took slot cups home as souvenirs. Mikulich Tr., pp. 36-37.

During the nine year period of May, 1989 through 1998, the Golden Nugget continuously used TREASURE ISLAND games on its premises. Mikulich Tr., p. 23. While early in that period some consideration was given to removing the TREASURE ISLAND branded slots from the casino floor, GNLV Corporation³ decided to keep the machines because the brand was to be used in the future for casino and casino-related goods and services. Mikulich Tr., pp. 75-76. By May of 1989, approximately \$50-\$55 million in casino revenue was generated at the Golden Nugget by gaming machines, including slots and video poker. Mikulich Tr., pp. 29-30. By August of 1990, slot revenue at the Golden Nugget had reached almost \$90 million. Mikulich Tr., p. 29-30.

In order to repeat the commercial success (of the brand), games at the Golden Nugget were placed at sister properties under the Mirage Resorts umbrella.⁴ Mikulich Tr., pp. 56-57. In November of 1989, TREASURE ISLAND games were also in the Golden Nugget in Laughlin, Nevada. Mikulich Tr., p. 56. On November 22, 1989, Mirage Resorts, Incorporated opened the Mirage Hotel and Casino (the "Mirage") on the Las Vegas Strip. Russell Tr., p.35. When the Mirage opened, TREASURE ISLAND branded games from the Golden Nugget properties were placed on the floor of the Mirage. Mikulich Tr., pp. 56- 57; Pascal Tr., pp. 13-14. Prior to placing the TREASURE ISLAND games on the floor of the Mirage casino, the design of the

³ GNLV Corporation is the Nevada corporation that owned and operated the Golden Nugget Hotel and Casino.

⁴ At the time relevant to this action, the family of companies under Mirage Resorts Incorporated included: The Mirage Casino-Hotel; The Bellagio; Treasure Island Corporation; Golden Nugget Las Vegas; Golden Nugget Laughlin (Nevada) and Beau Rivage (Mississippi). Steven Wynn was the Chairman of the Board of Mirage Resorts, Inc. Mikulich Tr., pp. 10-11.

belly glass artwork used earlier at the Golden Nugget was revisited for use at the Mirage. Pascal Tr., p. 11-13. The August 24, 1989 letter from Suburban Graphics⁵ to the "Golden Nugget/Mirage" identified the change made to the art work of the TREASURE ISLAND games before the games were placed on the Mirage casino floor. Pascal Tr. 11-13, Ex H at TIC 1140. Like the Golden Nugget, the Mirage held slot tournaments using TREASURE ISLAND branded games. Billboards advertising "Treasure Island, a Pirate's Treasure Awaits You Only at the Mirage and the Golden Nugget" were placed around Las Vegas. Mikulich Tr., pp. 60 and Ex. J at TIC 1189. The Mirage promoted TREASURE ISLAND slot tournaments because "it was a popular game and a popular brand" and "at the time we were developing the Treasure Island Resort" so we "leveraged (the game) as kind of a preview and introduction to the resort." Pascal Tr., p. 16. In fact, one of the objectives of the 1993 TREASURE ISLAND slot tournament at the Mirage was to generate interest and expose existing Mirage customers to the Treasure Island Resort; to "pre-sell" the Resort that was to open in October 1993. Pascal Tr., pp. 15 -17 and Ex. I at TIC 1190, 1227 and TIC 1281.

In order to stop competitors from using custom games it developed, GNLV Corporation registered its trademarks. Mikulich Tr., p. 26. On July 7, 1989, GNLV Corporation registered the mark TREASURE ISLAND in the State of Nevada for "slot merchandizing." Russell Tr., p. 29-30 and Exhibit K. The date of first use was listed as June 1989.⁶ Russell Tr., p. 30. The term "slot merchandising" was used partially "to fit within the format of an application." "You don't sell the slot machine. You sell time to play on the slot machine or the entertainment value of playing the slot machine that is physically present in your casino." Russell Tr., pp. 85-87. Treasure Island's predecessor-in-interest used the mark to attract customers to use or play or wager in its casinos and to develop brand recognition. "The product that we are selling is the
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⁵ Suburban Graphics produced the designs for the Golden Nugget and printed the belly glass. Pascal Tr., pp. 11-13.

⁶ Mark Russell testified that the June date on the Nevada State registration was the date he was given. Russell Tr., pp. 30-31.

entertainment value or service value of somebody wagering on those particular slot machines.”
Ibid.

On October 1, 1994, GNLV Corporation, assigned its rights in the TREASURE ISLAND mark to Treasure Island Corporation.⁷ Russell Tr., pp. 64-66 and Ex. T. Steven Wynn was the chairman of the Board of Golden Nugget/GNLV Corporation and was the Chairman of Mirage Resorts, Incorporated, the parent company of both GNLV Corporation and Treasure Island Corporation. Russell Tr., pp. 35-36. Since the Treasure Island Corporation was running a full-service resort with slot and video games, table games, hotel and retail services, it made business sense that the TREASURE ISLAND mark resided with that subsidiary company. Russell Tr., p. 65-66, Ex's K and T (a certified copy of the Assignment). Also see Respondent's Notice of Reliance Under Rule 2.122(d); assignment of Nevada State registration number SM00220807 showing that Treasure Island is the successor in interest of the mark.

Prairie Island did not offer gaming services under the mark TREASURE ISLAND until January 19, 1990, however its Minnesota Certificate of Registration alleges it first used the mark on January 1, 1990. Plaintiff Trial Brief, Ex. 17. During its testimony, Prairie Island offered an advertisement it made “with the opening (of the casino) on January 19, 1990.” Flemke Tr., p. 23. That advertisement identifies their premises as “Treasure Island BINGO and Casino.” Flemke Tr., pp. 22-23, Ex. 1.

B. The Registrant Announces Its Plans to Build the Treasure Island Hotel and Casino.

It is undisputed that the Los Angeles Times reported that Mr. Wynn announced the development of the Treasure Island Hotel and Casino on October 30, 1991. Plaintiff's Trial Brief at p. 10. The announcement was the beginning of a national publicity campaign for the Treasure Island Hotel and Casino. One commercial pirating the airways aired on all television stations at the same time. Pascal Tr., p. 17. This national campaign to market and promote the

⁷ The legal name for Treasure Island Hotel is Treasure Island Corporation. The stock of Treasure island Corporation was owned by the Mirage Casino/Hotel which was owned by Mirage Resorts, Incorporated, a publicly traded company. Russell Tr., pp. 43-44.

opening of the new resort included a made for TV movie "Treasure Island-The Adventure Begins" the movie of the week, which aired to a national TV audience. Schadler Tr., pp. 35-36; Russell Tr., pp. 48-50, Ex. O (videotape). After the Treasure Island Resort's announcement, hundreds of publications regarding the Treasure Island Resort and Casino appeared in the National press. Respondent's Second Notice of Reliance Under Rule 2.122(e).

Treasure Island opened in Las Vegas in October of 1993. Pascal Tr., p. 17. Treasure Island Corporation filed trademark applications in 1992 and 1993 for various design marks that depicted various pirate theme designs as well as marks that identified its sister property, the Mirage, as TREASURE ISLAND AT THE MIRAGE. See registrations and applications at issue in this proceeding.

By at least the spring of 1992, the Prairie Island Tribal Council ("Council") knew about the development of the Treasure Island in Las Vegas. Respondent's Notice of Reliance Under Rule 2.120(j). The general manager of Prairie Island's casino, made at least two trips to Las Vegas. Valentine Tr., p. 9. During the fall of 1992, Valentine met and hired John Hall, floor manager in the table games department at the Mirage Hotel in Las Vegas. Valentine Tr., pp. 9-10. It was during those trips that Valentine first learned that Treasure Island at the Mirage was being built in Las Vegas. Valentine Tr., pp. 11-13. After his trip to Las Vegas, Valentine made a presentation in which he advised the Council about the Treasure Island at the Mirage and recommended hiring the Merchant & Gould law firm ("Firm") to determine whether a trademark registration for the mark TREASURE ISLAND could be obtained. Valentine Tr., pp. 17.

Prairie Island did not conduct a trademark search before it adopted or began using the mark⁸ "Treasure Island" on January 19 1990. More than two (2) years after its adoption of the mark, Merchant and Gould conducted a search. An April 15, 1992 letter provided Valentine and the Council with the firm's search results and referenced a March 30, 1992 *Business Week* article reporting that Steve Wynn was "spending \$430 million on another 3,000 room casino

⁸ Defendant's Notice of Reliance Under Rule 2.120(j), (5) Petitioner's Response to Registrant's Request for Admission No. 1.

hotel called Treasure Island. Valentine Tr. p. 30, Ex. B. "Planned for an 18-acre site next to the Mirage on the Las Vegas strip, the new project will have its own splash of daring. In a 360-foot water-filled canal, mock pirate ships will stage gun battles." Valentine Tr., pp. 30-31 and Ex. B. Merchant & Gould's findings included the following: "After review of the *Business Week* article, it is not clear whether this is the same entity headed by Steve Wynn." "[Y]ou [Valentine] may note that TREASURE ISLAND has been registered in Nevada for Slot Merchandising to GNLV Corporation." "You had expressed concern regarding Steve Wynn's plans for his new TREASURE ISLAND casino in Las Vegas. Since it involves a huge investment, we can assume he will try to protect and enforce his rights and we should continue to watch his operations." Merchant & Gould's opinion concludes "[I]t is unlikely that you will be able to obtain a federal registration for the mark, but it appears that you should be able to obtain a state registration." Valentine Tr. pp. 30-32 and Ex. B at p 1.⁹

In early 1992, after he knew of Wynn's plans for a pirate-themed resort, Valentine placed an order for a motorized, confetti shooting pirate ship to be used in parades in Minnesota. Valentine Tr., pp. 56-58 and Ex. H. Valentine admits that he knew Treasure Island's plans included mock pirate ships staging gun battles before he placed the April 27, 1992 purchase order. Valentine Tr., p. 53-57.

By January of 1995, Plaintiff's *Island Times Magazine* provided to its customers began offering promotional trips to the Treasure Island property in Las Vegas. The *Island Times* headline reads: "To thank you for visiting Treasure Island in Minnesota, we would like to treat you to Treasure Island in Las Vegas." The Las Vegas trips were advertised to be given away "every weekend in January." Flemke Tr., p. 223-225 and Ex. F. Prairie Island admits that it sent at least one of its customers to Las Vegas to stay at Treasure Island.¹⁰

⁹ Merchant & Gould's letter includes its Trademark Search report but the report provided to Defendant does not include the page referencing the mark TREASURE ISLAND registered to GNLV Corporation. Valentine Tr., Exh. C. Mr. Valentine could not explain the reason the report produced in discovery was incomplete. The Report starts with Reference 1 but skips to Reference 27. Valentine Tr., pp. 36-38.

¹⁰ Respondent's Notice of Reliance Under Rule 2.12(j), (3) Petitioner's Supplemental Answers to Respondent's Interrogatory No. 4.

1) Prairie Island Provided Hotel Services In December Of 1996.

Prairie Island opened its hotel in December of 1996. Plaintiff Trial Brief, p. 24. Prairie Island alleges it "began offering lodging services since it opened its casino in January of 1990." Plaintiff's Trial Brief at p. 24. Prairie Island admits, however, it did not own a hotel facility or offer hotel services on its premises during the six (6) year period from January 1, 1990 through December 20, 1996. Defendant's Notice of Reliance Under Rule 2.120(j); Petitioner's Answers to Respondent's Interrogatory No. 10. Prairie Island has submitted no evidence to suggest it owned or operated hotel rooms, had hotel employees to service hotel rooms, had cleaning services for hotel rooms or offered any amenities the public generally associates with hotels during this six (6) year period. See Plaintiff's Trial Brief. Prairie Island further admits that none of the hotels at which guests may have stayed during the prior six year period, January 1990 through December 1996, were identified as "Treasure Island." Rather, Prairie Island's flyer states only that "Fine Local Hotels" provided lodging services. Ex. 34. Hotel services were provided only by the hotels which were operating in nearby communities. For example, the Super 8 in Red Wing, Super 8 in Hastings, Minnesota, the Parkway Hotel in Red Wing, and the Saint James Hotel in Red Wing. Flemke Tr., p. 177-179. Additionally, the public had to call "Trilogy Tours," not Prairie Island, to book those travel packages. Plaintiff's Trial Brief, Ex. 34. Prairie Island offers Exhibit 34 as evidence that it used the mark for hotel services and to promote hotel packages at local hotels in 1990. However, a legible copy of the exhibit provided in discovery demonstrates that the travel promotion is dated October 15, 1992, one year after Treasure Island announced the development of its property in Las Vegas. ¹¹ Plaintiff's Trial Brief, Ex 34.

During its testimony period, Prairie Island introduced a series of exhibits to support its contention that "Treasure Island Bingo and Casino" opened its doors for the first time on

¹¹ While the witness authenticated a package of materials which included Exhibit 34, she did not provide any testimony regarding the date the package was actually advertised. The copy produced during testimony obscured the date, so a more legible copy is included as Exhibit 34. Flemke Tr., pp. 89-92.

January 19, 1990 (Flemke Tr., p. 22) and to describe the services offered at its casino.¹² Those exhibits, dated January 19, 1990 through 1994, do not describe either the offering of hotel services or the brokering of arrangements for casino guests to stay at other local lodgings. Flemke Tr., Ex 1-10. Prairie Island also submits Exhibits 13, 14, 15 & 16, covering the period 1990 through 1992. Plaintiff's Trial Brief, p. 9. None of these exhibits mention or reference hotel services. Prairie Island also provided testimony that its 1994 brochure "accurately describes" the services actually offered by the casino at that time. Flemke Tr., pp. 85-87 and Ex. 22. That brochure does not describe either hotel lodgings or reservation services being offered by, or in conjunction with, Prairie Island's casino.

C. Prairie Island's Own Actions Regarding Confusion

1) Prairie Island's Allegations of Confusion

Prairie Island offers alleged evidence of confusion including calls that were purportedly misdirected to the Treasure Island's premises, email communications directed to Prairie Island's website treasureisland.com, and hearsay accounts of an incident allegedly experienced by a Prairie Island employee who stayed at Defendant's Treasure Island. Plaintiff's Trial Brief, p. 22. Based on this evidence, Prairie Island alleges "actual confusion is rampant." Plaintiff's Trial Brief p. 20. Prairie Island's Call Tracking Summary references the period January 1997 through February 1999. Knapp Tr., p. 197 and Ex. 28. Prairie Island states that during that two year period, "260 individuals phoned its place of business believing they were phoning Defendants' place of business." Plaintiff's Trial Brief at p. 21. Since more callers to Prairie Island's premises booked a room than the 35,535 who did not book a room, (Knapp Tr., pp. 197-199) Prairie Island's exhibits demonstrates that the percentage of "misdirected" callers was less than the .007 % shown on the exhibit.¹³

¹² Throughout the deposition of Cindy Flemke, the property was referred to generically as "Treasure Island." However, the technical name for the property, as demonstrated by the exhibits introduced and authenticated by Flemke during her deposition, is "Treasure Island Bingo and Casino."

¹³ The bottom row of Ex. 28 shows the "total[s]" number of callers to the hotel that did not book a room during the two year period. The column heading under which those totals are shown indicates the reason a caller did not book a room. Simple addition of the "Totals" in each of the column totals demonstrates

When Prairie Island opened its casino (as Treasure Island Bingo and Casino) on January 19, 1990, telephone operators identified the casino as being in Red Wing, Minnesota. Flemke Tr., pp. 161-163. When Prairie Island opened its hotel in December of 1996, hotel operators were instructed to answer the phone, "Treasure Island Redwing, Minnesota." Knapp Tr., pp. 104-106. Some time after the hotel opened, the operators ceased identifying the hotel as being in Red Wing, Minnesota. During the period 1999 to 2002, the hotel did not inform callers that they were calling Red Wing unless the caller provided a clue to the operator that "in reality" the caller was seeking reservations in Las Vegas, Nevada.¹⁴ Knapp Tr., pp. 153-155.

Prairie Island tried to tender evidence to show calls were "misdirected" through the hotel's 1-800 telephone number. To support this contention, Knapp testified potential guests of the hotel could not obtain the hotel's telephone number through the 1-800 directory assistance operators. Prairie Island supported this testimony by calling 1-800 directory assistance on the record during a testimony deposition. Knapp Tr., pp. 20-25. Knapp testified she "specifically asked for information about Treasure Island Resort and Casino in Red Wing and was given the Las Vegas phone number." Knapp Tr., p. 25. During cross examination Knapp admitted, however, that before she testified she had learned that the Prairie Island was not even listed in 1-800 directory assistance. During her testimony of September 28, 2005 Knapp testified that she could not determine the 1-800 telephone number by calling directory assistance. Knapp Tr., p. 23. During her testimony of September 29, 2005 Knapp testified that "two to three" days earlier (i.e. before her testimony) she became aware that Prairie Island did not have a 1-800 number listing.

that during the two year period 35,535 calls were tracked ($744 + 239 + 151 + \dots + 80 = 35,535$). Therefore the 260 "misdirected" calls during the period represents less than .007 % of the total number of calls tracked on this document (260 divided by 35,535 = .007).

¹⁴ Q. All right. Mrs. Knapp, is it your policy, as the hotel manager, to instruct your hotel reservations -- your hotel reservations operators to only identify that this hotel is located in Red Wing, Minnesota if you get one of those queues that we talked about? A. One of the red flags type of things? Q. One of the red flags. A. Yes. Q. Okay. Has that -- have you ever initiated another policy? A. Not that I can recall. Knapp Tr., p. 153.

- Q: All right. So you're telling me that, as hotel manager who is in charge of doing everything in your power to make sure the guest is not confused, that you were not aware until approximately two or three days ago that there was no 1-800 assistance directory information available to callers? Is that your testimony?
- A: Yes. May I explain?
Knapp Tr., p. 114.

Prairie Island admits that there is a high probability that callers using a 1-800 number really want to make reservations in Las Vegas. Knapp Tr., pp. 134-135. Until the time of its own trial testimony in September of 2005, Prairie Island did not know that during the three year period of May 2002 through September 2005, Prairie Island was not listed in the 1-800 directory assistance phone book. Knapp Tr., pp. 113-124.

D. Confusion evidence

Prairie Island's hotel has 247 rooms available for occupancy. Knapp Tr., p. 173. The math demonstrates that Prairie Island's hotel has approximately ninety thousand (90,000) room nights per year ($247 \times 365 = 90,155$). Treasure Island, however, has 2,665 standard rooms and 220 suites (a total of 2885 rooms) on its premises. On the average, two people stay in each room each night. Mikulich Tr., pp. 78-81. Treasure Island has over one million room nights per year ($2,885 \times 365 = 1,053,025$) and over 2 million guests stay in the hotel each year ($2 \times 1,053,025 = 2,106,050$). Because the hotel has a 96% occupancy rate, Treasure Island provides over two million guests with hotel rooms each year ($2,106,050 \times 96\% = 2,021,808$). Mikulich Tr., p. 79. In comparison, assuming a 100% occupancy rate and two guests per night per room, Prairie Island's hotel provides 180,000 guests with hotel rooms each year.¹⁵ The Prairie Island Call Tracking summary identifies 260 calls meant for Defendant out of 35,535 calls between January, 1997 and February, 1999. Knapp Tr., Ex. 41.

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¹⁵ Prairie Island could not or did not produce room occupancy rates. Knapp Tr., pp. 172-173.

ARGUMENTS

II. **TREASURE ISLAND HAS PRIORITY OF USE FOR THE WORD MARK TREASURE ISLAND FOR CASINO SERVICES.**

- A. **As early as 1988, Treasure Island's predecessor provided games under the TREASURE ISLAND mark, as a casino service, for customer play.**

In 1988 Treasure Island's predecessor-in-interest, The Golden Nugget (GNLV Corporation) was the first Las Vegas casino to provide gaming services to its patrons by developing its own line of proprietarily branded games played on slot and video gaming machines. Schadler Tr., pp. 23-25; Mikulich Tr., pp. 18-19. These machines were placed in casinos to allow customers to play games of chance on machines that they enjoy. Treasure Island's predecessor-in-interest, The Golden Nugget, developed the first proprietary brand of slot and video games to develop customer loyalty to the games that were available in only this casino(s). Pascal Tr., pp. 7-8.

Gaming machines played under the TREASURE ISLAND mark were developed and placed on the Golden Nugget floor for play and testing in 1988. By May 15, 1989, TREASURE ISLAND games had received approval by the State Gaming Control Board and were in daily play at the Golden Nugget casino in slot banks. Mikulich Tr., p. 31. To promote greater casino play, the Golden Nugget held Treasure Island tournaments in which patrons played only the Treasure Island games. The hotel promoted and advertised the Treasure Island tournaments by direct mailings to customers across the country, advertised the games in newspapers and promoted the games on billboards. The Golden Nugget also displayed exterior signage on the hotel/casino promoting the TREASURE ISLAND games. Pascal Tr., pp. 4-5, 9-10, 14-15; Mikulich Tr., pp. 36-37, 39-40, 43, 66-68, 70-71 and Ex. H. The games and their advertising and promotional efforts were so effective that Golden Nugget casino revenue from slot and video games was increased from \$55 million to \$90 million dollars. Mikulich Tr., pp. 29-30.

Based upon this successful casino play of the Treasure Island games, they were installed in the casino of the Golden Nugget sister property, The Mirage Hotel and Casino, when

it opened in November of 1989. Treasure Island games continued to be promoted at the Golden Nugget, The Mirage and at the Golden Nugget Laughlin continuously until 1998, five years after the Treasure Island Hotel and Casino in Las Vegas opened. Mikulich Tr., pp. 56-57

Providing gaming machines for customer play is a service provided by a casino to its customers. When a casino places a branded game on its property, either in the form of a table game or a machine, it is offering an opportunity for its patrons to access the games for play. The patrons play the machines in the hope of winning jackpots. Patrons do not buy the games or the machines or take them home; they use or “play” them for limited durations of time.

By making the TREASURE ISLAND brand of games available for play, both in tournament and regular play, the Golden Nugget provided “casino services” to its patrons under the TREASURE ISLAND mark.¹⁶ “One of the bedrock principles of trademark law is that trademark, or service mark ownership, is not acquired by federal or state registration. Rather, ownership flows only from prior appropriation and actual use in the market.” See Allard Enterprises, Inc. vs. Advanced Programming Resources, Inc., 46 U.S. P2d, 1865, 1870 (6th Cir. 1998). Treasure Island’s rights for casino services flow from providing games under the mark, TREASURE ISLAND, for play by the public. These facts are uncontroverted and establish priority by Treasure Island’s processor-in-interest and thus Treasure Island for casino services. By contrast, Prairie Island has failed to offer any legal authority whatsoever in support of its contention of priority via clear and convincing testimony and documentary evidence of the person(s) responsible for these casino games it marketed. “Opposer must establish its own prior proprietary rights in the same or a confusingly similar designation, in order to refute the application.” See T.A.B. Systems vs. Packtel Teletrac, 37 U.S. P2d, 1879, 1881 (Fed. Cir. 1996). “The burden of proof in a cancellation proceeding for a service mark is no different from that of a trade or certificate mark. Thus, a presumption of validity attaches to a service mark registration and the party seeking cancellation must rebut this presumption by a preponderance

¹⁶ The TREASURE ISLAND mark is a word mark. At the Treasure Island, slot machines, belly glass, signs above the slot banks, billboards and mailings presented TREASURE ISLAND in a variety of styles and fonts.

of the evidence.” See Martahas v. Video Duplication Services Inc., 3F3d 417, 421, 27 U.S.P.Q. 2d 1846,1850 (Fed. Cir. 1993). Prairie Island has failed to meet its burden. The abundance of clear and convincing evidence is that Treasure Island through its predecessor-in-interest has priority use of the mark TREASURE ISLAND and thus is entitled to its registrations for casino services.

B. The PTO has consistently registered the names of gaming machines provided for customer play with the description of services identified as casino services.

The United States Patent and Trademark Office has consistently registered the names of gaming machines provided for customer play with the description of services identified as casino services. The Board should note it has long been a practice of the Trademark Office to allow registration of the names of games offered for casino play to the public as casino services. Exhibits supporting the claim of casino services often consist of photographs of slot and video game banks and signage promoting the games for play. For example, one of the more famous brands in the casino industry is Park Place, Registration No. 1,353,936. The Trademark Trial and Appeal Board should take judicial notice that the specimen supporting the original application for Park Place for casino services in 1979 was signage that appeared over a bank of slot machines in a casino.

Numerous registrations have been granted to Palace Station, Inc. and its parent company, Station Casinos, Inc., for casino services in International Class 41, in which the registration for casino services was supported by photographs of the belly glass on slot machines. For example:

ACES OVER DEUCES	Reg. No. 1,788,567
DOUBLE ON DIAMONDS	Reg. No. 1,798,260
“BONUS SEVENS” POKER	Reg. No. 1,793,011
CRAZY EIGHTS	Reg. No. 1,874,258
8’S OR BETTER	Reg. No. 1,804,853
FANTASTIC FIVES	Reg. No. 1,798,259
JUMPIN’ JACKS	Reg. No. 1,788,566
FLUSH MANIA	Reg. No. 1,788,565
JOKERS GONE WILD	Reg. No. 1,788,564
ROYAL COURT	Reg. No. 1,788,563
SWEETHEART ROYAL POKER	Reg. No. 1,788,562
STRAIGHT FLUSH RUSH	Reg. No. 1,788,561

RACEY ACES
TRIPLE PAY DEUCES WILD POKER

Reg. No. 1,789,721
Reg. No. 1,788,560

These registrations and the belly glass samples of use to support the registrations are in the files of the United States Patent and Trademark Office. The Board should take judicial notice of this evidence.

Similarly, the Board should take judicial notice of similar casino services designations in Registration No. 2,465,866 in international class 41 for casino services for Paris Casino Resort which is likewise supported by signage above a bank of slot machines. Similarly, Registration No. 2,845,193 in international class 41 for casino services for the mark RED ROCK STATION is evidenced by Red Rock Station signage above a bank of slot machines.¹⁷

Treasure Island's predecessor-in-interest used the mark in both these ways and much more. The TREASURE ISLAND mark was used on the games' belly glass, on the signage above the games, on billboards advertising the casino games, on signage outside the casino, in direct mail pieces promoting Treasure Island slot tournaments and in newspapers. Pascal Tr., pp. 4-5, 9-10, 14-15; Mikulich Tr., pp. 36-37, 39-40, 43, 66-68, 70-71 and Ex. H. The evidence is abundant and clear that the TREASURE ISLAND mark was used for casino services by at least 1989 and Treasure Island is entitled to its registration based upon that date.

C. Treasure Island, through its predecessor-in-interest, used the TREASURE ISLAND mark for casino services well prior to Prairie Island's first use.

The uncontested facts are that Treasure Island's predecessor-in-interest, GNLV Corporation, which operated the Golden Nugget Hotel and Casino in Las Vegas, developed and

¹⁷ In addition there are numerous other similar registrations for example: the mark RANDOM RICHES, Registration No. 2,370,176 is supported for casino gaming services in international class 41 by specimens showing the belly glass and related signage of the gaming machine. The mark PENNY LANE, Registration No. 2,988,239 registered to Boyd Gaming Corporation, in international class 41 for casino services was supported by the signage above a bank of slot machines. The word mark PLAY-IN-PAY THE TICKET WAY, Registration No. 2,965,142 in international class 41 for casino services is supported by a sign above the bank of slots bearing that mark. The word mark WORLDS OF CASH, Registration No. 2,308,620 supporting "casino services featuring slot machines and gaming equipment" in international class 41 is supported by signage above the bank of slot machines. Boyd Gaming's PENNY WAY, Registration No. 2,878,996 in international class 41 for casino services is supported by signage above a bank of slots. Caesars Entertainment, Inc.'s PENNYVILLE, Registration No. 2,985,522 supports international class 41 for casino services with photographs of the slot machine bearing the PENNYVILLE mark and signage within this casino announcing the PENNYVILLE slots.

placed Treasure Island games on the Golden Nugget casino floor by 1988 and made the games available for daily play at least as early as May 1989.¹⁸ Further the facts are uncontested that the Golden Nugget continued to provide the Treasure Island games for use by its patrons at the Golden Nugget continuously thereafter through 1998 and assigned its rights to the TREASURE ISLAND mark to the registrant in 1994.¹⁹ The assignment of the Treasure Island mark is not disputed and has not been challenged or contested by Prairie Island with testimony or documentary evidence.

On the other hand, the trial testimony establishes that Prairie Island did not open its renamed casino until January 19, 1990. Flemke Tr., pp. 16-17. The facts are undisputed that although the Prairie Island Minnesota state registration shows a first use of January 1, 1990 that casino was closed then and did not reopen to the public until January 19th, a date after Treasure Island's predecessor's first use. Treasure Island slot games were on the floor of the Golden Nugget as early as the second quarter of 1988. Public play, advertising and promotion, including slot tournaments, occurred as early as the following year in 1989. Both pre-date the earliest claimed use by Prairie Island who had previously operated as Island Bingo and reopened its casino in 1990 as "Treasure Island Bingo and Casino." Plaintiff's Trial Brief, p. 8 and Ex. 13.

D. To the extent that Prairie Island's multiple cancellations and oppositions to Treasure Island's registrations are based upon alleged priority of use for casino services; their cancellations and opposition must fail.

Prairie Island has challenged Treasure Island's applications by relying upon the claimed date of first use in its Minnesota state registration and comparing that date with the dates reflected in the Treasure Island federal registrations which were based upon the opening date of

¹⁸ The unrefuted testimony of Andrew Pascal is that the Treasure Island games were placed on the casino floor in 1988. Tom Mikulich's uncontested testimony is that the games were available for public play when he first arrived at the hotel in May of 1989. Both dates pre-date the June 1989 date reflected on the TREASURE ISLAND Nevada State trademark registration. The date on the registration in turn pre-dates the claimed date of first use by Prairie Island, thus, Treasure Island has priority.

¹⁹ See Russell Tr., Ex. T, which is the uncontested assignment of TREASURE ISLAND mark and good will associated therewith.

Treasure Island Hotel and Casino in Las Vegas. Prairie Island has admitted in its testimony period that the date on its Minnesota registration is wrong and first use did not occur until January 19, 1990. Flemke Tr., pp. 180-181. Prairie Island does not address the use of Treasure Island for casino services by Treasure Island's predecessor-in-interest. They have ignored the first use of Treasure Island by Golden Nugget, and Treasure Island's receipt of the assignment of the mark from Golden Nugget. By ignoring such undisputed facts, Prairie Island undoubtedly hopes the Board will likewise overlook the facts as well; it should not. To the extent that Prairie Island's challenge is based upon its alleged priority in providing casino services, its challenge must fail. The undisputed facts are Treasure Island games were developed and placed on the floor of the Golden Nugget in 1988 and promoted for public play and tournaments as casino services by at least as early as May 1989, well before Prairie Island's January 19, 1990 first use. These facts are supported by significant documentary evidence and the unchallenged and unrefuted testimony of Andrew Pascal and John Schadler, individuals who were directly involved with the casino games, but who are no longer employees of Golden Nugget or Treasure Island. Treasure Island's predecessor-in-interest was entitled to registration of the TREASURE ISLAND mark for casino services in 1989 and Treasure Island is entitled to its registrations now. The evidence on this point is unchallenged and overwhelming.

III. TREASURE ISLAND HAS PRIORITY OF USE OF THE MARK TREASURE ISLAND FOR HOTEL SERVICES

Treasure Island first announced its intent to use the TREASURE ISLAND mark for a three hundred million dollar (\$300,000,000)²⁰ resort hotel casino in Las Vegas on October 29, 1991. Russell Tr., pp. 49-51 and Ex. N. At that time, Prairie Island did not have a hotel, or offer hotel services. Flemke Tr., p. 87. Since its October 1991 announcement, Treasure Island actively promoted its new resort throughout the construction and pre-opening phases not only in Las Vegas, but throughout the United States.

[I]n the motel or hotel business, the opening of a new hotel or motel is generally publicized and promoted long prior to its completion so as to acquaint the public

²⁰ By the time the hotel casino opened the cost was around \$430,000,000. Valentine Tr., p. 28-30.

with its facilities and to book conventions, trade shows, and other events which are usually arranged years in advance of their occurrence. A party may acquire rights in a designation which may be superior to any rights that a subsequent user may acquire in a confusingly similar term through prior use thereof in advertising or promotional material connected with the publicizing and/or offering for sale of goods or services providing that this use has been of such nature and extent as to create an association of the goods or services and the mark with the user thereof.

Hotel Corp. of America v. Inn America, Inc., 153 U.S.P.Q. 574, 576 (T.T.A.B. 1967) ; Chance v. Pac-Tel Teletrac, Inc. 58 U.S.P.Q.2d 1222, 1228 (9th Cir. 2001). Moreover, after an initial use of a mark the owner must show “activities which would tend to indicate a continuing effort or intent to continue such use and place the product on the market on a commercial scale within a time demonstrated to be reasonable in the particular trade.” Id. at 1226. This factor eliminates “token use” of marks. Id.

Treasure Island’s pre-opening promotions included announcements and advertisements in newspapers and magazines, pre-opening Treasure Island slot machine tournaments at sister properties, pre-opening hotel room reservation services, offering the public t-shirts and other promotional goods, and even a made-for-television movie aired nationally soon after the hotel casino opened. Russell Tr., pp. 48-50, 56-57 and Ex. N; Schadler Tr., 35-36. There is no question that the tens of millions of dollars spent by Treasure Island from October 1991 to the hotel casino’s opening in October 1993, and beyond, show its pre-opening marketing and publicity activities were extensive.²¹ Moreover, the fact that Treasure Island has continued its national advertising of the mark and has been successful in maintaining a ninety-six percent (96%) occupancy rate for its 2,885 hotel rooms evidences it has made more than a “token use.” It has created an association in the minds of the public between the TREASURE ISLAND mark and the Treasure Island Resort Hotel and Casino in Las Vegas.²²

²¹ Television and media costs alone prior to the opening of Treasure Island were \$5 to \$6 million dollars. Schadler Tr., p. 34.

²² The unrefuted testimony supports and the math demonstrates that Treasure Island has over one million “room nights” per year ($2,885 \times 365 = 1,053,025$) and over 2 million guests stay in the hotel each year ($2 \times 1,053,025 = 2,106,050$). Because the hotel has a 96% occupancy rate, Treasure Island provides over two million guests with hotel rooms each year. Mikulich Tr., p. 79. Respondent, Treasure Island’s Second Notice of Reliance Under Rule 2.122(e).

In December 1996, more than five (5) years after Treasure Island began advertising and promoting its hotel casino property, more than three (3) years after Treasure Island opened its TREASURE ISLAND resort hotel casino, and after more than three (3) million room nights had been booked at the Treasure Island in Las Vegas, Prairie Island opened its two hundred and forty-seven (247) room hotel in Red Wing, Minnesota. Flemke Tr., p 87; Knapp Tr., p. 173. Clearly, Treasure Island's adoption and use of a TREASURE ISLAND mark for hotel services pre-dates Prairie Island's adoption and use of the mark for hotel services by several years.

Prairie Island attempts to claim priority of use for a TREASURE ISLAND mark for hotel services by arguing it "began offering lodging services since it opened its facility in January of 1990." Plaintiff's Trial Brief at p. 24. Yet Prairie Island admits it did not have a hotel or offer hotel services during the period January 1, 1990 through December 20, 1996. Defendant's Notice of Reliance Under Rule 2.120(j); Petitioner's Answers to Respondent's Interrogatory No. 10. Moreover, there is no evidence in the record to suggest that during that six (6) year period that Prairie Island had owned or operated hotel rooms, engaged hotel employees to service hotel rooms, provided cleaning services for hotel rooms, or offered any amenities the public generally associates with hotels. Nor has there been any evidence submitted that such customary amenities normally associated with hotel services were provided by Prairie Island under the TREASURE ISLAND mark between 1990 and December of 1996.

Unlike Treasure Island, Prairie Island offers no substantive documentary evidence of use of a TREASURE ISLAND mark for hotel services prior to its hotel opening in December 1996. Its scant evidence includes but a single poorly copied flyer intended to prove Prairie Island's claimed January 1990 use of a TREASURE ISLAND mark for hotel services through promoting packages with a tour and travel company to stay at local hotels. However, a legible copy of the flyer, produced during discovery, demonstrates that the promotion is dated October 15, 1992, one year after Treasure Island announced the development of its property in Las Vegas.²³

²³ While the witness authenticated Ex. 34 during her testimony, she did not provide any testimony regarding the date the package was actually advertised. Flemke Tr., pp. 89-92.

Plaintiff's Trial Brief, Ex. 34. Additionally, the flyer expressly states that it is "Trilogy Tours" together with Prairie Island offering the "tour packages." The flyer directs potential customers to call Trilogy Tours, not Prairie Island. One of the basic tenets of trademark law is that a mark must identify in the minds of the public a single source. T.A.B. Systems v. PacTel Teletrac, 37 U.S.P.Q.2d 1879, 1883 (Fed. Cir. 1996). Prairie Island has failed to establish that it, and not Trilogy Tours, is the "single source" of origin of the alleged hotel reservation or booking services. Id. It is equally feasible to infer that the mark for these purported services is TRILOGY TOURS since it is Trilogy Tours the consumer must call for information. Also, the hotel services providers are identified in the exhibit solely as those of "A Fine Local Hotel," none of which were called Treasure Island. Plaintiff's Trial Brief, Ex. 34. Flemke Tr., p. 177-179. Making reservations or booking rooms is not providing lodging or hotel services. It may be tour or travel services, but it is not hotel services and there is no actual evidence that Prairie island even did that. The flyer directs calls to the tour operator.

Importantly, no documentary evidence has been submitted by Prairie Island showing it actually sold any of these hotel packages or that these alleged services were continuously used until its hotel opened in December 1996. Moreover, only one witness testified about providing hotel services in 1990. "We didn't have hotel facilities in 1990 (sic) but what they would do is go to various cities and they would book for instance at Super 8 at Redwing or Super 8..." Flemke tr., p. 91. The entities providing hotel services were other businesses. Factors considered to determine whether a service has actually been "rendered in commerce" include a "commercially reasonable attempt to market the service, the degree of ongoing activity of the holder to conduct the business using the mark, the amount of business transacted, and other similar factors." Chance v. Pac-Tel Teletrac, Inc. 58 U.S.P.Q.2d at 1228. Also, "the user must prove that the 'necessary association' was created among more than an insubstantial number of potential customers. Otherwise, he cannot show 'significant impact on the purchasing public.'" T.A.B. Systems v. PacTel Teletrac, 37 U.S.P.Q.2d at 1883. Based upon the scant evidence presented, Prairie Island cannot establish the "necessary association" in the minds of potential

customers when it not only failed to establish that customers, if any, used these alleged services but also “utterly failed to prove the size of the market” and that its services reached a “substantial portion of the public that might be expected to purchase the service.” Id.

Prairie Island cannot establish that its TREASURE ISLAND mark created a public identification with hotel services any time prior to December 1996. As Treasure Island has established it spent millions of dollars on pre-opening activities which reached a substantial portion of its market since 1991, and as it opened its hotel in 1993 and Prairie Island did not open until December of 1996, Treasure Island has priority of use of a TREASURE ISLAND mark for hotel services. Treasure Island has established this fact with clear and convincing evidence. Prairie Island, on the other hand, has failed to prove its claim as it is required to do with a preponderance of the evidence. Its evidence is a single photocopy of a flyer that is not dated 1990, but 1992. Its single witness admitted it did not have hotel facilities, but that its customers stayed at Super 8’s and other hotels in the area.

IV. TREASURE ISLAND HAS PRIORITY OF USE OF THE MARK TREASURE ISLAND FOR SOUVENIR ITEMS

The mark TREASURE ISLAND was first used on promotional goods, such as on slot cups placed next to its uniquely branded and highly successful TREASURE ISLAND slot machines as early as 1989 at the Golden Nugget and the Mirage. Mikulich Tr., pp. 36-37. Consumers would often take these slot cups home as souvenirs. Id. If a game was successful, as the TREASURE ISLAND slots were, then other collateral promotions would be done to advertise the slots to the customers. Schadler Tr., p. 9. The TREASURE ISLAND mark continued to be used on clothing items such as sweatshirts, t-shirts, hats and coffee mugs through 1992 to market and promote the new Treasure Island resort hotel casino to be opened in 1993. Russell Tr., at p. 76-77. Once the Treasure Island Resort Hotel Casino opened in October 1993, retail stores sold numerous additional items bearing the TREASURE ISLAND mark including cups, jogging suits, caps, glasses, evening wear, pants, swimwear, ties, shorts

and shirts. Russell Tr., p. 66; Federal Registrations 2,040,756 (in international class 025) and 2,019,481 (in international class 021).

As ownership rights in a mark flow only from use, clearly Treasure Island's prior use of the TREASURE ISLAND mark for souvenir items such as slot cups from at least 1989 gives it priority over Prairie Island which did not begin using its mark on promotional goods until at least 1990. Allard Enterprises, Inc. v. Advanced Programming Resources, Inc., 58 U.S.P.Q.2d 1710, 1715 (6th Cir. 2001). The evidence of Treasure Island's use is supported by the uncontested testimony of at least three witnesses and substantial documentary evidence that demonstrates a first use in 1989 and continued use from that day to the present.

V. CONFUSION

Prairie Island argues actual confusion between the marks is "rampant." Plaintiff's Trial Brief at p. 20. If actual confusion has occurred it is either the result of Prairie Island's own misconduct or is *de minimus*. Moreover, because Treasure Island has priority of use of a TREASURE ISLAND mark for casino, hotel and related goods and services, Prairie Island's arguments regarding a likelihood of confusion do not apply to this proceeding.

A. Prairie Island Caused Any Alleged Instances Of Consumer Confusion by Drawing Themselves Closer to Treasure Island.

According to Prairie Island's Call Tracking Summary, the alleged instances of actual confusion did not begin until around August 1997. Knapp Tr., Ex. 41. This demonstrates that not only was there no confusion related to casino services, but also it suggests that there was something related to the operation of Prairie Island's hotel that triggered this confusion. This is a logical inference as the bulk of Prairie Island's alleged confusion evidence rests in telephone calls from persons attempting to make room reservations at its property. Knapp Tr., p. 84. Consumers do not make reservations to book casino services, hence no confusion arose during the prior seven years' use of the marks for casino and related services from 1990 through 1997. Consumers clearly knew and know if they were enjoying casino services in Las Vegas, Nevada or Red Wing, Minnesota.

After Treasure Island announced its intent to open a resort hotel casino under the TREASURE ISLAND mark in October 1991, Prairie Island shifted from a tropical island theme for its properties and instead adopted a pirate theme similar to that identified in Steve Wynn's 1991 announcement. Valentine Tr., pp. 51-53. The fact that use shifted to a pirate theme by Prairie Island is demonstrated by in its ordering of a pirate parade float and the new name for its employee magazine "No Bones About It." Valentine Tr., pp. 53-59 and Ex. H. Additionally, during the fall of 1992, Prairie Island's Tribal Council member Ron Valentine traveled to Las Vegas and hired John Hall, floor manager in the table games department at The Mirage, to work at the Minnesota property. Valentine Tr., pp. 9-10. Undoubtedly, Mr. Hall was familiar with the Treasure Island game at the Mirage and the construction of the Treasure Island which was under way at the Mirage property. Most importantly, at some time, Prairie Island stopped calling itself Treasure Island Bingo and Casino as it did when it opened in 1990 and now calls itself Treasure Island Resort and Casino. Prairie island offers no evidence as to when or why it did so, but the effect is clear. It makes Prairie Island's property sound more like the Las Vegas resort than a Midwestern Bingo Hall operated by an Indian tribe.

In January, 1995 Prairie Island offered trips to Treasure Island in Las Vegas as a contest prize. Its promotion of that contest clearly demonstrates it intended to infer an affiliation between itself and Treasure Island. In fact, Prairie Island's January/February 1995 newsletter read "To thank you for visiting Treasure Island in Minnesota, we'd like to treat you to Treasure Island in Las Vegas." Flemke Tr., Ex. F. Three years subsequent to the opening of Treasure Island's hotel, Prairie Island opened its own hotel. When it opened, it answered the phone as Treasure Island in Red Wing, Minnesota. Some time thereafter, the designation "Red Wing, Minnesota" was dropped from Prairie Island's telephone greeting and instances of alleged confusion began. Knapp Tr., pp. 152-153. Further, Prairie Island's election to not have clear identification of its geographic location on its web site invited further consumer confusion. Knapp Tr., pp. 205-206. Finally, despite Prairie Island's insistence that much consumer confusion was caused because persons calling on their 1-800 number were incorrectly directed

to Treasure Island in Las Vegas, Prairie Island has admitted during the testimony period it had not maintained an 800 number listing for approximately three (3) years. Knapp Tr., pp. 114-116. Most troubling, Prairie's Island's witness Knapp tried to create false evidence of confusion. Even after she knew that Prairie Island had not had a 1-800 number listing for several years, she tried to create the appearances of confusion by calling the 1-800 number operator while on the record and asking for the Minnesota property. When the operator gave her the Treasure Island number in Las Vegas, she pretended that was evidence of confusion. It was only in cross examination that she admitted that she had learned two days before the testimony that Prairie Island was not listed in the 1-800 number operator-assisted directory. The Board should not permit such misleading efforts to be considered as "evidence."

Prairie Island continues to attempt to mislead the public and this Board. It has produced alleged instances of confusion in the form of Reservation Desk-Wrong Treasure Island Information Sheets from 2001 and 2002, four (4) years after filing this action. Knapp Tr., Ex. 43 segment. However, Prairie Island has produced no evidence to suggest that since filing its first action in this consolidated proceeding in October, 1998, it has taken meaningful steps to minimize any potential confusion by identifying itself and its location to consumers. The parties' marks co-existed in the market place apparently without consumer confusion for many years. The alleged confusion began only when Prairie Island took a series of actions to draw itself closer to Treasure Island and continues only because Prairie Island refuses to reform its conduct.

B. If Consumer Confusion Did Occur, It Was *De Minimus* At Best

Even if confusion were found to have occurred, these instances of much less than one percent (1%) of the calls being "misdirected" is *de minimus*. "Evidence of only a small number of instances of actual confusion can be dismissed as inconsequential or *de minimus*." See J. Thomas McCarthy, McCarthy On Trademarks And Unfair Competition § 23:13 (4th ed. 2005). "Evidence of the number of instances of actual confusion must be placed against the background of the number of opportunities for confusion before one can make an informed

decision as to the weight to be given to the evidence.” See id. Plaintiff admits that it received many more than the 35,535 calls listed in its Call Tracking Summary over this two year period making the percentage of purported “wrong TI” calls even smaller than the .007% calculated. Knapp Tr., p. 198. Even adding the reservation sheets Prairie Island produced to support its actual confusion claims from 2001-2002 does not make the percentage of purported instances of confusion any less minimal.²⁴ Knapp Tr., Ex. 43 segment. Importantly, the alleged evidence only occurs after 1997, even though Treasure island opened in Las Vegas in 1993. Treasure island has more than a million (1,000,000) room nights each year and more than two million guests per year. In that context, 260 misdirected calls over several years to Prairie Island is an extraordinarily small percentage. Placing this percentage against the background of opportunity for consumers to be confused into calling the “wrong TI,” shows that little or no weight should be given to Prairie Island’s confusion evidence, as it is *de minimus*.

C. Likelihood of Confusion - The *Du Pont* Factors

As Treasure Island has priority of use of a TREASURE ISLAND mark for casino, hotel and related goods and services, the *Du Pont* factors generally used to determine any likelihood of confusion between marks have little relevance in this proceeding, see In re E.I. Du Pont De Nemours & Co., 177 U.S.P.Q. 563, 567 (CCPA 1973).²⁵ Because Treasure Island has priority

²⁴ The basis of Prairie Island’s confusion argument is that out of 35,535 calls made to its Red Wing, Minnesota property over a two year period which did not result in a room reservation, two hundred and sixty (260), or less than .007%, of those calls were purportedly “meant for Defendant.” The total number of callers to Prairie Island was actually higher. Knapp Tr., p. 198. Plaintiff Brief at pp. 20-21. The bottom row of Ex. 28 shows the “total[s]” number of callers to the hotel that did not book a room during the two year period. The column heading under which those totals are shown indicates the reason a caller did not book a room. Simple addition of the “Totals” in each of the column totals demonstrates that during the two year period 35,535 calls were tracked (744 + 239 + 151 +80 = 35,535). Therefore during the period less than .007 % of the total number of calls tracked on this document were “misdirected” (260 divided by 35,535 = .007). Plaintiff’s Call Tracking Summary which it uses to support its confusion argument is not only hearsay, it also fails to identify the criteria used, if any, to determine whether a call was made to the “wrong TI.” Knapp Tr., Ex. 41. Moreover, Prairie Island’s own witness admitted that persons making “wrong TI” calls were not asked how they got the Red Wing, Minnesota number. Flemke Tr., p. 123. In fact, Prairie Island’s operators waited for “clues” before determining the caller did not want the Red Wing, Minnesota property. Knapp Tr., pp. 39, 143-46, 153. This evidence that actual confusion occurred is tenuous at best and certainly *de minimus*.

²⁵ The *Du Pont* factors are: (1) similarity of the marks in their entireties as to appearance, sound, connotation and commercial impression, (2) similarity in the nature of the services at issue, (3) similarity in channels of trade, (4) sophistication of the consumer, (5) the fame of the marks, (6) number of similar

in casino, hotel and related goods and services, Prairie Island's reliance on the DuPont factors is misplaced and is no more than a red herring which should not be allowed to distract the board from the relevant issues of facts and law.

It should be noted, however, that fourteen (14) out of the nineteen (19) marks at issue are TREASURE ISLAND AT THE MIRAGE, some with elaborate design features. See Treasure Island Marks at Appendix A. Treasure Island intentionally elected to show its affiliation with its famous sister property The Mirage.

The Mirage name and marks were deemed to be famous by the United States District Court in Mirage Resorts, Inc. v. Stirpe, 152 F.Supp.2d 1208 (D. Nev. 2000). Famous marks are entitled to a broader scope of protection. Genesco Inc. v. Martz, 66 USPQ2d 1260, 1270 (T.T.A.B. 2003). Moreover, "[u]se of a strong, well-known mark as part of a composite name reduces the likelihood that the remainder of the composite name will create a commercial impression distinct from that mark." Four Seasons Hotels, Ltd. v. Koury Corp., 21 U.S.P.Q.2d 1847, 1852 (E.D.N.C. 1991).

As the Treasure Island is a sister company and located on the Mirage Resort property, it has always promoted its affiliation with Mirage Resorts. The TREASURE ISLAND AT THE MIRAGE marks incorporate an element of fame. As the Treasure Island resort hotel casino, and 14 of its marks at issue are clearly affiliated with its famous sister property, The Mirage, there is little likelihood that consumers would confuse the TREASURE ISLAND AT THE MIRAGE marks with those used by Prairie Island Indian community in Minnesota, even though it now calls itself Treasure Island Resort and Casino.

VI. ESTOPPEL BY ACQUIESCENCE TO THE USE OF AND REGISTRATION OF TREASURE ISLAND MARKS

Prairie Island should be estopped from challenging the TREASURE ISLAND mark. Prairie Island knew of Treasure Island's intent to use TREASURE ISLAND marks for hotel and

marks on similar goods or services, (7) nature and extent of actual confusion, (8) duration and conditions of concurrent use without actual confusion, (9) variety of goods or services on which mark is used, (10) market interface between users of the marks, (11) extent of right to exclude others from use of mark, and (12) extent of potential confusion.

resort casino services since at least as early as April 1992, when it received a report from Merchant & Gould identifying GNLV Corporation's Nevada State registration for TREASURE ISLAND and Steve Wynn's announced plans of a mega resort hotel casino. Yet, it waited and took no action regarding the use and filing of TREASURE ISLAND marks until 1998. Moreover, during this six (6) year period Prairie Island actively encouraged and promoted Treasure Island's use of its TREASURE ISLAND marks and, in fact, not only availed itself of Treasure Island's services, but it also sent its own customers to enjoy the services provided by the Las Vegas property under the TREASURE ISLAND marks. Flemke Tr., Ex. F.

"In determining whether a party has too long 'slept on its rights' it is necessary to show that the party knew or should have known that it had a right of action, yet did not act to assert or protect its rights." See Bridgestone/Firestone Research, Inc. v. Automobile Club de 'Ouest de la France, 58 U.S.P.Q.2d 1460, 1462 (Fed. Cir. 2001). For a defendant to prevail under this doctrine, "[t]here must also have been some detriment due to the delay." See Bridgestone/Firestone Research, Inc. v. Automobile Club de 'Ouest de la France, 58 U.S.P.Q.2d at 1463.

A. Prairie Island Knew of The Trademark Use of TREASURE ISLAND in Nevada And Treasure Island's Intent to Use a TREASURE ISLAND Mark At Least As Early As April 1992.

Beginning on October 29, 1991, Treasure Island made nationwide announcements regarding its intent to use TREASURE ISLAND for a large resort hotel casino in Las Vegas, Nevada.²⁶ Russell Tr., pp. 49-50. Even if Prairie Island missed these national announcements, it certainly knew of Treasure Island's intent to use the TREASURE ISLAND mark for its resort at least as early as April 1992, when informed by Merchant and Gould by letter. Valentine Tr., Ex. B.²⁷ Moreover, Prairie Island apparently monitored trademark filings with the U.S.P.T.O. as

²⁶ As announced, the resort was to be more than 2,000 rooms and cost \$300,000,000 but eventually cost \$430,000,000. See footnote # 19.

²⁷ A letter to Prairie Island from its counsel referenced Treasure Island's April 15, 1992 press announcement and its intent to open a resort hotel casino in Las Vegas under the TREASURE ISLAND name. A copy of the announcement was attached to the letter. Also the letter referenced GNLV Corporation's 1989 Nevada State trademark registration of TREASURE ISLAND for slot merchandizing.

evidenced by the letter's discussion of a TREASURE ISLAND mark registered to an entity in St. Maarten. As such, Prairie Island was likely aware of Treasure Island's federal trademark applications filed in 1992 – 93. They were also aware of the construction of the hotel as members of the Tribal Council visited Las Vegas during its construction. They were also well aware of Treasure Island as they traveled to and stayed at the Las Vegas resort after it opened. Knapp Tr., pp. 26-27; Flemke Tr., Ex. E. Moreover, the publication and issuance of Treasure Island's registrations for TREASURE ISLAND in 1995 – 96 put Prairie Island on constructive notice of the existence of the TREASURE ISLAND mark for hotel, casino and related goods and services. See Bridgestone/Firestone Research, Inc. v. Automobile Club de 'Ouest de la France, 58 U.S.P.Q.2d at 1463.

Despite actual, on-going, and constructive knowledge of the existence and use of Treasure Island's marks since April 1992 and 1993, it was more than five (5) years before Prairie Island sought to challenge Treasure Island's federal registrations. Prairie Island has for too long “slept on its rights.” See Sara Lee Corp. v. Kayser-Roth Corp., 38 U.S.P.Q.2d at 1453. See also Bridgestone/Firestone Research, Inc. v. Automobile Club de 'Ouest de la France, 58 U.S.P.Q.2d at 1462.

B. Prairie Island Availed Itself of Treasure Island's Hotel and Casino Services

Prairie Island acquiesced to Treasure Islands' use of TREASURE ISLAND marks by knowingly availing itself of the hotel and casino services offered under those marks. Prairie Island 's representatives traveled to Las Vegas on multiple occasions in relation to gaming conventions and trade shows and stayed at the Treasure Island Resort Hotel. Flemke Tr., pp. 205-217 and Ex. E. Prairie Island cannot later be heard to complain of Treasure Island's registrations of the TREASURE ISLAND marks when its own representatives voluntarily chose to acknowledge the use by staying and enjoying the services and amenities of Treasure Island at the Mirage without objection.

Merchant & Gould advised Prairie Island that they would continue to monitor Treasure Island's uses. GNLV Corporation is Treasure Island's predecessor-in-interest.

Prairie Island further acquiesced to Treasure Island's interest in the marks by actively awarding trips to Treasure Island in Las Vegas as a prize for a contest in Minnesota in 1995. In fact, the January/February 1995 newsletter that advertised the contest read: "To thank you for visiting Treasure Island in Minnesota, we'd like to treat you to Treasure Island in Las Vegas." Flemke Tr., p. 225 and Ex. F. The manner in which the contest was promoted, in particular using the identical print size and font for the Minnesota TREASURE ISLAND and the Las Vegas TREASURE ISLAND in promotional materials, suggests that Prairie Island intended to infer an affiliation between its Minnesota property and Treasure Island's Las Vegas Treasure Island property. Flemke Tr., Ex. F. At the very least, Treasure Island would have fairly seen Prairie Island's conduct as an overt expression of acquiescence. In such an instance, Prairie Island should be estopped from later changing positions and challenging the registrations. See Conan Properties, Inc. v. Conan's Pizza, Inc., 752 F.2d 145 (5th Cir. 1985).

C. Prairie Island's Delay In Filing Its Cancellation and Opposition Petitions Has Caused Treasure Island substantial Economic Prejudice.

"Economic prejudice arises from investment in a development of the trademark, and the continued commercial use and economic promotion of a mark over a prolonged period adds weight to the evidence of prejudice." See Bridgestone/Firestone Research, Inc. v. Automobile Club de 'Ouest de la France, 58 U.S.P.Q.2d at 1463 (Fed Cir. 2001). .

Since Steven Wynn announced the intent to open its Treasure Island Resort Hotel Casino in October 1991, Treasure Island has used the TREASURE ISLAND marks in marketing and promotional materials throughout the United States. For many years it has been expending tens of millions of dollars in advertising and promoting its marks. The evidence is unrefuted that Treasure Island has invested tens of millions of dollars to advertise and promote its registered marks and the use of those marks at its resort. Russell Tr., Ex. V. Treasure Island would lose the benefit of the monies invested in the registration and prosecution of its marks should they be cancelled and would further lose the ability to stop third parties' use of the marks.

The prejudice to Treasure Island as a result of Prairie Island's unreasonable delay is clear and sufficient to warrant the application of the doctrine of estopped by acquiescence.

D. Prairie Island's Delay In Challenging Treasure Island's TREASURE ISLAND Marks Is Inexcusable and Unreasonable.

Prairie Island has offered no evidence, nor is there any, as to why it waited to challenge Treasure Island's marks. This delay is both unexcused and unreasonable. See What-A-Burger of Virginia, Inc. v. Whataburger, Inc. of Corpus Christi, Texas, 69 U.S.P.Q.2d at 1834. While Courts have found delays of fourteen (14) months (Bellbrook Dairies, Inc. v. Bowman Dairy Co., 124 U.S.P.Q. 316) and three (3) years (Plymouth Cordage Co. v. Solar Nitrogen Chemicals, Inc., 152 U.S.P.Q. 34) reasonable, a delay of five (5) years was found to be unreasonable. See Regal Rugs, Inc. v. United States Rubber Co., 152 U.S.P.Q. 34 (TTAB 1966). See also Bill Rivers Trailer, Inc. v. Thermo King Corp., 1771 U.S.P.Q. 764 (CCPA 1973). In this instance Prairie Island's delay was more than five (5) years and should, therefore, be found unreasonable.

VII. THE BOARD SHOULD NOT CANCEL TREASURE ISLAND'S MARKS BECAUSE THE DOCTRINE OF RES JUDICATA (CLAIM PRECLUSION) DOES NOT APPLY.

A. Prior Proceedings

Treasure Island applied for and obtained numerous federal registrations for TREASURE ISLAND marks, and variations thereof, beginning in 1992 – 93 and which are the subject of this proceeding. See Treasure Island Marks Appendix A. Most of those marks continue in use today. However, over the years, business decisions were made by Treasure Island to discontinue use of five (5) of these marks, namely the TREASURE ISLAND marks that include the "parrot design" and the tagline ADVENTURE RESORT for hotel services. As Treasure Island could no longer show use of these marks, no Section 8 declarations were filed and the marks were abandoned. Treasure Island continued to use and filed Section 8 declarations for the remaining TREASURE ISLAND registrations that include the "crossed swords" and "skull" designs and a word marks.

In 2004, the TTAB ordered Treasure Island to show cause why the abandoned registrations should not be cancelled by request of Prairie Island and result in an inter-parties judgment against Treasure Island. After briefing by both parties, the TTAB issued an Order canceling the five (5) marks on the basis of priority of use and likelihood of confusion.

Prairie Island now relies on the doctrine of *res judicata* to seek to cancel (and in one case oppose) the remaining marks. Plaintiff Brief at p. 32. Treasure Island asserts that the doctrine of *res judicata* does not apply to the remaining marks because Treasure Island filed these applications many years before Prairie Island initiated the first cancellation proceeding, and these marks are not legal equivalents to the previously cancelled marks.

B. Legal Standards

Prior TTAB opposition judgments can be used by a petitioner to oppose similar marks under the doctrine of *res judicata*. See Miller Brewing Co. v. Coy Int'l Corp., 230 U.S.P.Q. 675 (T.T.A.B. 1986). In determining whether or not *res judicata* applies to a particular mark, the Board considers both the timing of filing the subject applications and the similarity of the marks at issue. Metromedia Steakhouses, Inc. v. Pondco II, Inc., 28 U.S.P.Q.2d 1205, 1208 (T.T.A.B. 1993). This Board has held that "claim preclusion does not apply in cases such as the present one, where the defendant's . . . applications were already pending at the time that judgment was entered against applicant as to one of the applications." The Institut National Des Appellations d'Origine and The Bureau National Interprofessionel du Cognac v. Brown-Forman Corp., 47 U.S.P.Q.2d 1875, 1895 (T.T.A.B. 1998).

Furthermore, the TTAB has held that the doctrine of *res judicata* generally only applies in situations where the previously adjudicated mark conveys the same commercial impression as the current mark. Miller Brewing Co., 230 U.S.P.Q. at 678. The Board has more recently refined this test, stating "the proper test for determining whether two marks have the same commercial impression, for purposes of the claim preclusion doctrine, is the test used in tacking situations, i.e., whether the marks are legal equivalents." The Institut National Des Appellations

d'Origine and The Bureau National Interprofessionel du Cognac v. Brown-Forman Corp., 47 U.S.P.Q.2d 1875, 1895 (T.T.A.B. 1998).

The Board should hold that the doctrine of *res judicata* does not apply in the instant case because not only were all of the marks at issue filed long before Prairie Island initiated the first cancellation proceeding, but none of the current marks are the “legal equivalent” of any of the previously cancelled marks.

C. Treasure Island Filed Applications for its Current Marks Long Before Prairie Island Initiated the First Cancellation Proceeding Against Any of the Marks.

Treasure Island filed all of the applications for its marks long before Prairie Island initiated the first cancellation proceeding against any of the marks; therefore, the doctrine of *res judicata* does not apply in this case. This Board has reasoned that the doctrine of *res judicata* generally applies in certain situations because “the Board does not wish to encourage losing parties to insignificantly modify their marks after an adverse ruling and thereby avoid the *res judicata* effect of the prior adjudication.” Miller Brewing Co., 230 U.S.P.Q. at 678.

Furthermore, in Metromedia Steakhouses, Inc., this Board refused to apply the doctrine of *res judicata*, placing heavy emphasis on the fact that “[b]oth applications had been filed long before opposer objected to registration of the first mark” and when “the second application was filed, the opposition to the first had not yet even been instituted.” 28 U.S.P.Q.2d at 1208. After considering these facts, the Board determined that the “applicant plainly did not simply change its mark in some insignificant respect in an attempt to avoid the preclusive effect of the adverse judgment as to the first mark;” therefore, the doctrine of *res judicata* did not apply. Id. The Board’s decision in that case is consistent with its position that it “does not wish to encourage losing parties to insignificantly modify their marks after an adverse ruling and thereby avoid the *res judicata* effect of the prior adjudication.” Miller Brewing Co., 230 U.S.P.Q. at 678.

Moreover, in Institut National the Board reiterated its position that *res judicata* is most often appropriate in situations where an applicant files its application to register a mark merely as an attempt to evade the preclusive effect of the previous judgment entered against it. 47

U.S.P.Q.2d at 1895. In ultimately holding that *res judicata* did not apply to that case, this Board reasoned that like in Metromedia Steakhouses, Inc., “both of applicant’s applications had been filed long before the...opposition was instituted.” Id.

In the instant case, the doctrine of *res judicata* does not apply to any of the current marks at issue because all of these marks were filed many years prior to the start of the first cancellation proceeding against any of Treasure Island’s marks. Similar to Metromedia Steakhouses, Inc. and Institut National, here Treasure Island filed all of its applications for the marks at issue long before Prairie Island initiated the first cancellation proceeding against any of those marks. As evidenced by record on the USPTO official website, all but two of Treasure Island’s federal applications were filed in 1993 (the exceptions being Registration Nos. 2,040,756 and 2,040,770, both filed in 1996).

In contrast, all of Prairie Island’s cancellation proceedings, including the proceedings relied on here for *res judicata* purposes, were initiated in 1998. Treasure Island did not attempt to insignificantly alter any of its marks merely for the purpose of attempting to avoid a prior adverse judgment. Most of Treasure Island’s marks were filed for registration five years prior to Prairie Island’s first cancellation proceedings, while two were filed two years prior. As such, a finding by the Board in favor of Treasure Island will be consistent with its position against encouraging losing parties to insignificantly modify their marks after an adverse ruling for the purpose of avoiding the *res judicata* effect of the prior adjudication.

D. None of Treasure Island’s Current Marks are the Legal Equivalent of any of the Previously Cancelled Marks.

None of Treasure Island’s current marks are the legal equivalent of any of the previously cancelled marks; therefore, the doctrine of *res judicata* does not apply in this case. The TTAB has addressed the issue of *res judicata* as it applies to a cancellation and/or opposition proceeding on a number of occasions. In Miller Brewing Co., the TTAB held that *res judicata* operated to preclude an application for registration of a mark where a previous judgment had been entered against the applicant for prior similar mark that the Board considered to “represent

one transaction or a series of connected transactions for the purpose of *res judicata*.” 230 U.S.P.Q. at 677-78. In that case, this Board applied the doctrine of *res judicata* to preclude a mark’s registration because the applicant had a judgment entered against it in a prior opposition proceeding based on its abandonment of the application of a nearly identical mark without the consent of the opposer. Id.

However, the Board’s decision in Miller Brewing Co. turned in large part on the fact that “the two marks creat[ed] substantially the same commercial impression and the minor alterations [did] not rise to the level of a new mark sufficient, under the circumstances, to allow applicant to seek registration.” Id. at 678. Additionally, the applicant admitted that the design of its new mark had “evolved out of the original design” and, as such, the TTAB stated that “the evidence relating to the issue of likelihood of confusion with respect to the first design would be identical with respect to the second design, forming, therefore, a convenient trial unit for purposes of [*res judicata*].” Id.

In Metromedia Steakhouses, Inc., the Board came to the conclusion that *res judicata* (claim preclusion) did not operate to enter judgment against the applicant. 28 U.S.P.Q.2d at 1207-08. In that case, the TTAB considered applying the doctrine of *res judicata* to an applicant’s mark where the applicant had previously expressly abandoned an application for a similar mark during an opposition proceeding without the written consent of the opposer. Id. at 1206. The mark that the applicant had expressly abandoned was for “RANCH STEAK & SEAFOOD” in typed form for restaurant services, while the mark for which the applicant was presently seeking a registration was for the stylized script “RANCH STEAK & SEAFOOD” with a landscape design. Id. at 1208.

In Metromedia Steakhouses, Inc., both parties relied on the decision in Miller Brewing Co. to support their positions. Id. at 1207. The Board held that although the principles enunciated in that case did apply to the case at hand, they “lead to the opposite result when the facts of the instant case [were] considered.” Id. at 1208. In ultimately denying the opposer’s motion for summary judgment on the basis of *res judicata*, the Board placed heavy emphasis on

the facts surrounding the case. For example, the Board stated that “the two marks of the applicant are clearly too different to be considered a single transaction or a series of transactions within the meaning” of the Restatement (Second) of Judgments definition of *res judicata* and thus “cannot be considered the same claim.” Id. In coming to this conclusion, the Board relied on the fact that the first mark was made up of only words, while the second mark included the same words along with several design elements. Id. Since the commercial impressions of the word mark and the design mark were dissimilar, “the evidence relating to the issue of likelihood of confusion with the first mark would not be precisely the same as the evidence with respect to likelihood of confusion with the second mark;” therefore, *res judicata* did not apply. Id.

In a more recent case, the Board denied the opposers’ motion for leave to amend the notice of opposition to add a *res judicata* claim. Institut National, 47 U.S.P.Q.2d at 1896. Relying on Miller Brewing Co. and Metromedia Steakhouses, Inc., the Board reaffirmed its position that marks with dissimilar commercial impressions could not be “deemed to be a single ‘claim,’ for claim preclusion purposes.” Id. at 1895. Furthermore, in Institute National this Board refined the test for determining whether *res judicata* applies to a particular case; specifically, the Board held that “the proper test for determining whether two marks have the same commercial impression, for purposes of the claim preclusion doctrine, is the test used in tacking situations, i.e., whether the marks are legal equivalents.” Id.

In Institut National, the marks at issue were MIST AND COGNAC and CANADIAN MIST AND COGNAC, both for the identical goods of an “alcoholic beverage consisting of a mixture of Canadian whiskey and cognac.” Id. at 1892. In adopting the more stringent “legal equivalents” test for applying *res judicata*, this Board found that the obvious differences in the marks clearly proved that they were not legal equivalents; therefore, the doctrine of *res judicata* did not apply. Id. at 1894-95.

In the instant case, Prairie Island argues that prior TTAB judgments on priority of use and likelihood of confusion entered against Treasure Island on certain abandoned marks

mandate judgments in Prairie Island's favor on the marks currently at issue. Essentially, Prairie Island is basing its argument on the doctrine of *res judicata*; specifically, that judgment should be entered in Prairie Island's favor relevant to several of the remaining proceedings because Treasure Island had abandoned certain "Treasure Island" marks while they were subject to cancellation proceedings initiated by Prairie Island without consent.²⁸

Here, applying trademark law and the doctrine of *res judicata* as set forth by TTAB precedent in Miller Brewing Co., Metromedia Steakhouses, Inc. and Institut National, *res judicata* does not mandate judgment against Treasure Island on any of its current marks, claims or affirmative defenses. Because of obvious dissimilarities between the marks at issue, they are not "legal equivalents" for purposes of *res judicata*; therefore, the doctrine does not apply. Even if the Board were to use the outdated same commercial impression test, the marks at issue are still sufficiently dissimilar in commercial impression to the cancelled marks as to not constitute a single "claim" for *res judicata* purposes; therefore, the doctrine of *res judicata* does require judgment against Treasure Island in any of the current cancellation proceedings.

Five registrations were previously cancelled in this consolidated action. The first four were composite marks for TREASURE ISLAND AT THE MIRAGE with a "parrot design." These marks are not the legal equivalent of any of the marks now at issue, all of which are either word marks or design marks with markedly different designs. Similar to Metromedia Steakhouses, where this Board held that a word mark and composite mark incorporating the same words with a unique design conveyed different commercial impressions, the cancelled "parrot design" marks do not convey the same commercial impression as the word marks, nor do they convey the same commercial impression as the various current, visually distinguishable, design marks. Furthermore, like in Institut National, the marks at issue are far too dissimilar in appearance to be considered legal equivalents; therefore, the doctrine of *res judicata* does not apply under either test.

²⁸ Cancellation Nos.: 92,028,127; 92,028,174; 92,028,314; 92,028,319 and 92,028,325.

The fifth previously cancelled registration (No. 1,981,369) is for the word mark TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT for "hotel services" in International Class 042. This mark is identical in appearance and sound to one of the marks currently at issue (Registration No. 2,024,221), however that mark is for completely different services, "casino services" in IC 041. Because of differences in services and classes, the two registrations are not legal equivalents for tacking purposes and the doctrine of *res judicata* cannot be invoked in Prairie Island's favor.

For the Board's convenience, the previously cancelled registrations and the marks presently at issue are summarized below. While some to the marks at issue could be seen as confusingly similar to the previously cancelled registrations for infringement purposes, none of them are legal equivalents for tacking or *res judicata* purposes.

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PREVIOUSLY CANCELLED REGISTRATIONS

RELIED ON BY PRAIRIE ISLAND

Registration Number	Class	Mark
1,955,279	042	
1,903,619	025	
1,943,123	041	
1,949,379	021	
1,981,369	042	TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT

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REGISTRATIONS AT ISSUE

Registration Number	Class	Mark
1,949,380	041	
1,941,475	025	
1,985,968	042	
2,019,481	021	
2,040,770	041	
2,040,756	025	
2,010,396	041	TREASURE ISLAND AT THE MIRAGE
1,984,421	042	
1,918,033	025	
1,966,090	009 021	
2,024,221	041	TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT

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APPLICATIONS AT ISSUE

Serial Number	Class	Mark
75/136,734	042	

In summary, not only were all the marks at issue filed many years prior to Prairie Island's initiation of the first cancellation proceeding, but none of them are "legal equivalents" to the previously cancelled registrations. Therefore, the doctrine of *res judicata* does not require judgment against Treasure Island in any of the current proceedings. Furthermore, while *res judicata* is frequently used offensively by petitioners to prevail in opposition actions (e.g. Miller Brewing Co.) and used defensively by respondents to prevail in cancellation actions (e.g. Vitaline Corporation v. General Mills Inc., 891 F.2d 273 (Fed. Cir. 1989)), after exhaustive research, Treasure Island has found no instances (and Prairie Island has offered no instances) where the TTAB has allowed a petitioner to use *res judicata* offensively to prevail in a cancellation action. This is only logical. An owner of multiple, co-existing trademark registrations should be able to allow cancellation of less valuable or unused registrations without fear of losing more valuable coexisting registrations. The doctrine of *res judicata* exists to save judicial resources by preventing re-litigation of decided issues rather than to give TTAB parties incentive to fully litigate every registration in a coexisting trademark portfolio. Here, the Board should reject Prairie Island's request to make new law and use *res judicata* offensively in a cancellation action.

VIII. OBJECTIONS TO OPPOSER'S EVIDENCE

Treasure Island enters the following objections to the evidence Prairie Island seeks to enter and rely upon:

1. Ex. 28. Knapp's testimony about the document kept by the hotel tour department lacks foundation, includes hearsay and is speculative because she could identify the dates used for the report printed May 1, 2001. Knapp Tr. pp. 77-83.
2. Exs. 28, 29 & 30. (1) The exhibits are overlapping dates and cumulative. Ex. 28 is for the period December 1996 through August 4, 1999. Knapp Tr., p. 67. Ex 29 reports an overlapping period, January 1997 through February 1999. Ex. 30 reports the period January 1, 1998 to July 14, 2002 and overlaps with Ex. 29. (2) Ex's 29 & 30 lack foundation and are misleading because they report a period during which Prairie Island admitted in cross-examinations it did not have an 800 directory assistance listing. Knapp Tr., pp. 123-124.
3. Ex. 40. The report was (1) not produced during the discovery period, (2) is cumulatively in that it reports the period January 1-2004 through September 24, 2005 and (3) lacks foundation and is misleading because it reports a period during which Prairie Island admits it did not have an 800 directory assistance listing. Knapp Tr., pp. 123-124.
4. Ex. 45 to Knapp. The email communication is not relevant to show confusion because it was generated by a source outside the United States.
5. Defendant also asserts objections to the following Exhibits identified in Plaintiff's Trial Brief as "Confidential:"
 - A. Exhibits 25 through 36, 43 through 45 and G to Knapp;
 - B. Exhibits 31, 32 & 33 to Knapp; and
 - C. Exhibits A, B, C & D to Flemke

Plaintiff improperly asserts these exhibits are "Confidential." The TTAB's Order of December 17, 1999 refers the parties to TMBP 412.02 *et seq.*, (formerly TMBP 416) (Filing of Confidential Materials with The Board) (Handling of Confidential Materials by the Board). The parties' stipulated Protective Agreement generally includes the requirement that a party claiming confidentiality or trade secret designate the information covered by the claim prior to the disclosure of the information during discovery. See *e.g.* TMBP 412.02(d). First, Plaintiff did not designate the materials in these exhibits as "confidential" during discovery as required by the

TTAB's order. It has therefore waived any claim that the materials are confidential. In addition, Defendant hereby reasserts each of the objections it made to these materials during the testimony depositions of the identified witnesses. Secondly, the Protective Agreement generally includes the provision that a party may not designate information as confidential or trade secret unless the party has a reasonable basis for believing that the information is confidential or trade secret. Plaintiff has not provided any factual or legal basis to support such a contention.

6. Treasure Island reasserts the basis for each of the objections it made during the testimony depositions.

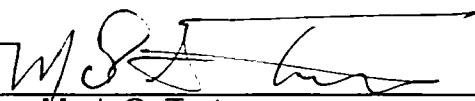
7. Treasure Island reasserts the basis for each of the objections it made to the exhibits offered by Prairie Island during the testimony period.

IX. CONCLUSION

Based upon the foregoing facts and law, the cancellations and objections should fail and the Board should sustain Treasure Island's registration of its marks. Treasure Island has demonstrated with the preponderance of clear and convincing evidence that it has priority for casino services, hotel services and related goods and services. As such, it is entitled to the registrations of its TREASURE ISLAND marks. Prairie Island's cancellations and objections should be dismissed and judgment entered for Treasure Island.

Dated this 26th day of May, 2005.

GREENBERG TRAURIG

By 
Mark G. Tratos
/ R. Richard Costello, of Counsel
/ Laraine M.I. Burrell
Greenberg Traurig
3773 Howard Hughes Pkwy #500N
Las Vegas, NV 89109
Attorneys for Defendant

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

PRAIRIE ISLAND INDIAN COMMUNITY,
A FEDERALLY RECOGNIZED INDIAN TRIBE,

Plaintiff,

vs.

TREASURE ISLAND CORP.,

Defendant.

Opposition Nos. 91115866 and
91157981

Cancellation Nos. 92028126
92028127; 92028130; 92028133;
92028145; 92028155; 92028171;
92029174; 92028199; 92028248;
92028280; 92028294; 92028314;
92028319; 92029325; 92028342;
and 92028379 (as consolidated)

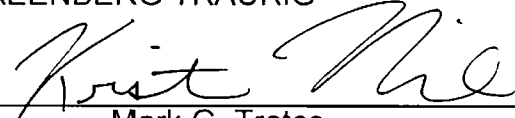
CERTIFICATE OF MAILING VIA EXPRESS MAIL

TRADEMARK TRIAL AND APPEAL BOARD
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

I hereby certify that the attached TRIAL BRIEF, EXHIBITS and CERTIFICATE OF MAILING in connection with the above-identified matter is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated below and is addressed to TRADEMARK TRIAL AND APPEAL BOARD, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, under Express Mail Label No. EV-705987222-US on May 26, 2006.

Dated this 26th day of May, 2006.

GREENBERG TRAURIG

By 

Mark G. Tratos
R. Richard Costello, of Counsel
Laraine M.I. Burrell
Greenberg Traurig
3773 Howard Hughes Parkway
#500N
Las Vegas, NV 89109
Attorneys for Defendant

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
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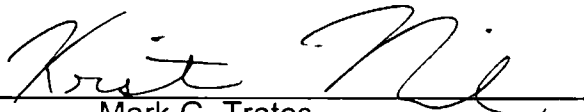
TRADEMARK TRIAL AND APPEAL BOARD
COMMISSIONER FOR TRADEMARKS
P.O. BOX 1451
ALEXANDRIA, VA 22313-1451

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing documents: TRIAL BRIEF and EXHIBITS were served on Prairie Island Indian Community, c/o Eric Haugen of Haugen Law Firm, PLLP, 121 S. Eighth Street, #1130, Minneapolis, MN 55402, Attorney for Plaintiff, by first class mail postage prepaid on May 26, 2006.

Dated this 26th day of May, 2006.



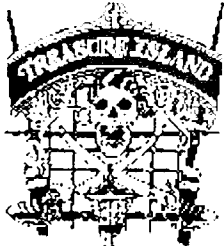

GREENBERG TRAURIG






By 




Mark G. Tratos
R. Richard Costello, of Counsel
Laraine M.I. Burrell
Greenberg Traurig
3773 Howard Hughes Parkway
#500N
Las Vegas, NV 89109
Attorneys for Defendant

Appendix A

TREASURE ISLAND MARKS IN THIS PROCEEDING

Reg./Ser. No Filing Date International Class	Treasure Island Mark	Date of First Use
1949380 01/00/1993 IC 041		04/93
1955279 01/00/1993 IC 042		05/11/93
1984421 11/23/1993 IC 042	TREASURE ISLAND AT THE MIRAGE	04/93
2176004 10/23/1993 IC 042		06/21/93
1984421 11/23/1993 IC 042	TREASURE ISLAND AT THE MIRAGE	06/93
2024221 10/27/1993 IC 041	TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT	06/93
2019481 07/23/1993 IC 021		07/93

1918033 10/07/1992 IC 025	TREASURE ISLAND AT THE MIRAGE	1993
1941475 11/23/1993 IC 025		1993
1966090 01/12/1993 IC 021, 009, 034	TREASURE ISLAND AT THE MIRAGE	04/25/94
1903619 10/27/1993 IC 025		1994
1943123 01/00/1993 IC 041		1994
1949379 10/19/1993 IC 021, 009		1994
1985968 10/27/1993 IC 042		10/07/93

2040756 07/21/1993 IC 025		1994
2040770 10/27/1993 IC 041		1994
1981369 11/22/1993 IC 042	TREASURE ISLAND AT THE MIRAGE THE ADVENTURE RESORT	1994
75136734 07/17/1996		11/23/93

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

PRAIRIE ISLAND INDIAN COMMUNITY,
A FEDERALLY RECOGNIZED INDIAN TRIBE,

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92028174; 92028199; 92028248;
92028280; 92028294; 92028314;
92028319; 92029325; 92028342;
and 92028379 (as consolidated)

INDEX TO DEFENDANT'S TESTIMONY EXHIBITS
CITED IN DEFENDANT'S TRIAL BRIEF

<u>EXHIBIT NO</u>	<u>DESCRIPTION</u>
Russell Exhibit K	Nevada State Mark Registration
Russell Exhibit N	Article from Los Angeles Times entitled "Mirage Resorts Plans Family Hotel in Vegas"
Russell Exhibit O	Videotape of "Treasure Island the Adventure Begins"
Russell Exhibit T	Assignment of Mark
Russell Exhibit V	Registrant's Objections and Responses to Petitioner's Fourth Set of Interrogatories
Mikulich Exhibit A	Copy of Belly Glass
Mikulich Exhibit B	Copy of Belly Glass
Mikulich Exhibit C	Photograph of "Treasure Island – Win A Pirate's Ransom" slot sign
Mikulich Exhibit D	Close-Up photograph of Treasure Island Progressive slot sign from left-hand side
Mikulich Exhibit E	Photograph of Treasure Island Progressive slot sign
Mikulich Exhibit F	Close-Up photograph of Treasure Island Progressive slot sign from right-hand side
Mikulich Exhibit H	Copy of "Treasure Island A Pirate's Treasure Awaits You... Only at the Mirage & Golden Nugget" sign; "Golden Nugget Grand Prix Slots" sign; "Golden Nugget Zodiac Slots" sign; "Golden Nugget 4Way Progressive Slots" sign
Mikulich Exhibit J	Copy of "Treasure Island A Pirate's Treasure Awaits You.... Only at the Mirage & Golden Nugget" sign
Pascal Exhibit H	August 24, 1989 correspondence from Suburban Graphics to

<u>EXHIBIT NO</u>	<u>DESCRIPTION</u>
	Golden Nuggett
Pascal Exhibit I	Purchase requisitions and related documents
Valentine Exhibit B	April 15, 1992 correspondence from Gregory A. Sebald of Merchant & Gould to Ronald Valentine
Valentine Exhibit H	Purchase Order from Treasure Island Casino & Bingo to Designing Signs dated April 27, 1992
Plaintiffs Exhibit 34 in Plaintiff's Trial Brief (Flemke Exhibit 23)	Legible Copy of Trilogy Tours Advertisement dated October 15, 1992

STATE OF NEVADA
DEPARTMENT OF STATE
Carson City, Nevada

OFFICE USE ONLY
Date Reg. 7-6-89
Vol. 33 Page 807
Expires 7-6-99

MARK REGISTRATION

IMPORTANT: PLEASE READ INSTRUCTIONS ON REVERSE SIDE BEFORE COMPLETING FORM

1. Please Designate ONE Choice: TRADEMARK ☐ TRADE NAME ☐ SERVICE MARK ☒
2. Mark to Be Registered.....Treasure Island..... 3. Class No. 100/107
4. Name of Applicant.....GNLV, CORP.
5. Business Address.....P. O. Box 610, Las Vegas, Nevada 89125
6. Applicant is: Individual ☐ Partnership ☐ Corporation ☒ Association ☐ Other ☐
7. If a corporation, give state where incorporated.....Nevada
8. If a partnership, list names of general partners.....N/A
9. Date mark was first used anywhere.....6/89..... In Nevada.....6/89
10. If mark used by predecessor in business, give name and address of same:
N/A
11. State specific goods or services in connection with which the mark is used:
slot merchandising
12. (a) If a trademark, check how the mark is used. By applying it: directly to the goods....., directly to the containers for the goods....., to tags or labels affixed to the goods....., to tags or labels affixed to the containers for the goods....., or by displaying it: in physical association with the goods in the sale or distribution thereof.....
(b) If a service mark, by displaying it: in advertisements of the service.....X....., on documents, wrappers, or articles delivered in connection with the service rendered....., in other fashion....., if so, (Specify).....
Russell - Treasure Island Exhibit k
(c) If trade name, the general nature of the business.....Prairie Island Indian Community v. Treasure Island Corp.

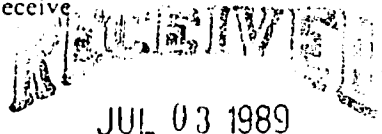
STATE OF.....NEVADA.....

COUNTY OF.....CLARK.....

Mark W. Russell

is VP/General Counsel of GNLV, Corp.

herein, and makes this affidavit in.....its..... behalf; that he has read the above application and that the statements and facts set out therein are true; that the applicant is the owner of the mark sought to be registered; that no other person has the right in the State of Nevada to use such mark either in the identical form set forth in the application or in such near resemblance to it as might, when applied to the goods or services of such other person, cause confusion or cause mistake or be calculated to deceive



Mark W. Russell
Applicant

Vice President/General Counsel

Official capacity

Subscribed and sworn to before me this.....9th..... day of.....June..... 1989

See instructions on reverse side

SECRETARY OF STATE

STATE CAPITOL COMPLEX

CARSON CITY, NEVADA 89710



NOTARY PUBLIC

STATE OF NEVADA

County of Clark

Rebecca L. Quinn

My Appointment Expires July 25, 1992

June

1989

Rebecca L. Quinn
Notary Public

Mirage Resorts Plans Family Hotel in Vegas

■ **Gaming:** The \$300-million Treasure Island complex is expected to intensify competition in Nevada's biggest entertainment oasis.

By GEORGE WHITE
Times Staff Writer

Mirage Resorts Inc. has announced it will build a \$100-million family-oriented theme resort in Las Vegas, intensifying the fight for family business in the Nevada gaming and adult entertainment oasis.

The Las Vegas-based company, which owns the Golden Nugget casinos in Las Vegas and Laughlin, Nev., said its latest mega-venture—to be called Treasure Island—will have 3,000 guest rooms and will be located adjacent to the Mirage, the firm's flagship casino and resort.

The new resort is expected to open in mid-1994, Mirage Resorts said.

The company joins a long list of gaming firms entering the burgeoning family entertainment market in a city once viewed as an adults-only vacation spot. Circus Circus Enterprises Inc. in June 1990 opened the Excalibur, a 4,000-room hotel and casino that has a medieval theme and offers substantial non-gaming entertainment. Circus Circus is expected to announce soon that it plans to build yet another property.

In addition, MGM Grand Inc., which is controlled by Beverly Hills investor Kirk Kerkorian, this month began construction of a \$600-million, 112-acre complex in Las Vegas that will include a 5,000-room hotel and a theme park.

The Mirage Resorts announcement is another sign of changing times in Las Vegas, said Murray Cortez, executive director of Las



Photo by Jeffery M. Leach

Steve Wynn announces plans for new resort called Treasure Island.

Vegas Convention and Visitors Authority.

"Because of the proliferation of gaming around the country, the local casinos have decided that they can survive only by expanding and diversifying to attract a broader (spectrum) of people," Cortez said.

However, the booming boom is expected to create a competitive shakeout in Las Vegas. The city has about 77,000 hotel rooms, a 10% increase over the past two years. With just the announced expansion plans, Las Vegas would have an additional 10,000 rooms by next year, said William Brown, a gaming industry analyst for Stern, Warren, Neumann & New York.

The smaller casinos and casinos with weaker management are going to face some tough times," Brown said. By 1994, a number of casinos will be barely hanging on, some will be purchased by larger operations and some will head into bankruptcy.

However, some firms are already feeling the competitive pressure. The hotel occupancy rate thus far in 1991 is 83%, compared to 86% for the same period in 1990. Casino revenue growth in 1991 is

about 3%, compared to about 12% a year earlier, said Walter J. Winkski, an industry analyst who contributes to Resort Management Report, a trade journal published in Manothan, Va.

Besides (new) construction, business has never recovered from the downturn that began in 1989, after the Gulf War and a slow-down in the economy, Tyne Winkski said.

However, Mirage Resorts Chairman Steve Wynn said Treasure Island will allow his company to enter the lucrative lower-priced family-oriented market. Room rates at the new property will average \$10 a night, he said. The Mirage's 1,000-room \$610-a-night hotel and casino that opened in November 1989 suffers from a drop in demand of the market. Wynn said it is averaging \$120 a night.

Some major casino stocks dropped on Wall Street earlier after the Mirage's announcement. New York Stock Exchange-listed Mirage Resorts fell from \$21 1/2 to \$17 1/2, down \$4. The Las Vegas Board trading Circus Circus at \$1 1/4, closing at \$1 1/4, while the Hilton slipped 2 1/2 cents to \$16 1/2. However, Circus gained 50 cents to close at \$14 1/2.

Russell - Treasure Island Exhibit M

Prairie Island Indian Community v.
Treasure Island Corp.

Opposition Nos: 91115866 and
91157981

7-6-89

11-22-94

ASSIGNMENT OF MARK

For and in consideration of the sum of Effective October 1, 1994, for
~~cash in hand paid and other~~ good and valuable consideration, the receipt of which is hereby acknowledged, the
undersigned hereby assigns unto Treasure Island Corp.

Address 3300 Las Vegas Boulevard South

Las Vegas, Nevada 89109

all right, title and interest, together with the good will of the business in which the mark is used, or with that part of the
good will of the business connected with the use of and symbolized by the mark.

Name of mark TREASURE ISLAND

How mark is used slot merchandising services

Russell - Treasure Island Exhibit I

Name of owner of mark GNLV Corp.

Prairie Island Indian Community v.
Treasure Island Corp.

Address Post Office Box 610

Opposition Nos: 9115866 and
91157981

Las Vegas, Nevada 89109

Witness our signatures this the 22 day of Nov, 19 94

GNLV Corp.

By Barry Shier

Barry Shier, President Signature of Assignor

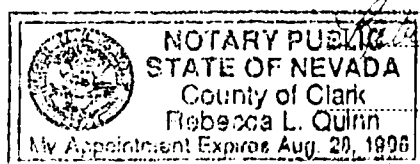
STATE OF NEVADA

COUNTY OF CLARK

Personally came and appeared before me the undersigned authority in and for said county and state, and while within
my said jurisdiction, the within named Barry Shier, President of GNLV Corp.,

owner of the above mark, who acknowledged that he (they) executed the above and foregoing assignment of mark on the 22
day and year herein written. NOV 22 1994

Given under my hand and seal of office this the 14th day of November, 19 94



My Commission Expires Aug 20 1996

THIS FORM MUST BE FILED WITH THE SECRETARY OF STATE AND MUST BE ACCOMPANIED BY A \$50.00 FEE.

State Capitol Complex, Carson City, Nevada 89710
Telephone (702) 687-5203

UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK TRIAL AND APPEAL BOARD

	)	Reg. Nos	1,949,380;	1,955,279;
PRAIRIE ISLAND INDIAN COMMUNITY,	)	2,010,396;	2,176,004;	1,984,421;
	)	2,024,221;	2,019,481;	1,918,033;
Petitioner,	)	1,941,475;	1,966,090;	1,903,619;
	)	1,943,123;	1,949,379;	1,985,968;
v.	)	2,040,756;	2,040,770;	1,981,369
)			
TREASURE ISLAND CORPORATION,	)	Cancellation Nos.	28,126;	28,127;
	)	28,130;	28,133;	28,145;
Registrant	)	28,155;	28,199;	
	)	28,248;	28,280;	28,294;
	)	28,314;	28,319;	
	)	28,325;	28,342;	28,379;
	)	28,171;	28,174	

REGISTRANT'S OBJECTIONS AND RESPONSES
TO PETITIONER'S FOURTH SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 407 of the Trademark Trial and Appeal Board Manual of Procedure, Registrant hereby objects and responds to Petitioner's Third Set of Interrogatories in the consolidated cancellation proceedings referenced above. Pursuant to the stipulation between the parties, this response shall serve as the consolidated response to the second set of interrogatories served by Petitioner in each of the cancellation proceedings.

GENERAL OBJECTIONS APPLICABLE TO ALL INTERROGATORIES

1. Registrant objects to each interrogatory to the extent it seeks information protected by the attorney-client privilege or work product doctrine.
2. Registrant objects to each interrogatory to the extent it seeks information not within the possession, custody or control of Registrant
3. Registrant objects to the interrogatories to the extent they seek to impose duties on the Registrant beyond the scope of the Federal Rules of Civil Procedure

4. Registrant reserves the right to supplement, amend and correct the responses set forth below. Registrant's investigation is ongoing and the information contained in these responses is preliminary.

5. Registrant objects to each interrogatory to the extent it seeks confidential, proprietary or sensitive business information

6. Registrant incorporates by reference the "Preliminary Statement, Reservation of Rights and Continuing General Objections" set forth in numbered paragraphs 1 through 15 in "Petitioner's Answer and Objections to Registrant's First Set of Interrogatories" served in Cancellation No. 28,126.

OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1:

List all publications in which your property has been advertised

RESPONSE TO INTERROGATORY NO. 1:

Registrant objects to this interrogatory on the grounds that it is overly broad and unduly burdensome. The interrogatory seeks to require Registrant to locate and identify each publication that it has ever advertised in without any limitation as to time.

Subject to and notwithstanding the foregoing objections, pursuant to Rule 33(d), Registrant will produce advertisements from a representative sample of publications in which it has advertised.

INTERROGATORY NO. 2:

Rank in order the fifteen states in which the greatest number of customers of your property reside

RESPONSE TO INTERROGATORY NO. 2:

Registrant objects to this interrogatory on the grounds that it is vague and ambiguous as to what is meant by "customers," specifically, whether "customers" include anyone who has entered the property grounds, entered the property building, stayed at the hotel, played in the casino, attended shows, dined in restaurants, or some other variation or combination thereof. Moreover, because Petitioner is seeking information regarding "customers" in this interrogatory and "visitors" in Interrogatory No. 5 it appears that the Petitioner intends to ascribe a different meaning to each of these terms but has failed to define these terms. Moreover, this interrogatory is vague as to the time period for which it is seeking information. Registrant further objects to this interrogatory on the grounds that it is overly broad and unduly burdensome. Depending on what definition of "customer" is used, Registrant may not have information sufficient to respond to this interrogatory or, alternatively, responding to this information may require review of substantially voluminous records. Registrant further objects to this interrogatory on the grounds that it seeks discovery outside of the scope of Rule 26, as amended on December 1, 2000.

Subject to and notwithstanding the foregoing objections, as of Fall 1999, Registrant's slot club members (which may or may not be representative of the guests, visitors or customers of the property as a whole) reside in the following top 15 states (from highest to lowest):

1. California
2. Texas
3. Illinois
4. New York
5. Ohio

6. Michigan
7. Nevada
8. Florida
9. Pennsylvania
10. New Jersey
11. Arizona
12. Washington
13. Wisconsin
14. Colorado
15. Massachusetts

INTERROGATORY NO. 3:

Identify the number of Minnesota residents who have stayed at your hotel for each year since your Property opened for business.

RESPONSE TO INTERROGATORY NO. 3:

Registrant objects to this interrogatory on the grounds that it seeks discovery outside of the scope of permissible discovery under Rule 26, as amended on December 1, 2000.

Subject to and without waiving this objection, Registrant cannot provide this information for the period of time from opening until August 1998, when Registrant changed its reservation system. During the period of 1998 to May 2001, a total of 16,681 Minnesota residents stayed at the property, for an annualized average of approximately 8,996.

INTERROGATORY NO. 4:

State the amount of money that has been spent on advertising, marketing, and promoting your property for each year since it opened for business

RESPONSE TO INTERROGATORY NO. 4:

Registrant objects to this interrogatory on the grounds that it is vague and ambiguous as what constitutes advertising, marketing and promotion. Registrant further objects to this interrogatory to the extent it seeks information not within the possession, custody or control of the Registrant, such as travel agencies and others who may have spent money promoting the Registrant's property.

Subject to and notwithstanding the foregoing objections, Registrant has spent the following amounts on advertising each year since 1993:

	Advertising	Complimentary Expenses	Marketing Expense
1993	\$892,360	\$4,573,934	\$1,156,520
1994	\$2,738,921	\$23,882,572	\$6,984,323
1995	\$1,939,905	\$28,201,364	\$8,556,565
1996	\$2,125,460	\$30,881,638	\$10,313,423
1997	\$32,236,800	\$31,378,660	\$11,437,804
1998	\$3,064,053	\$34,250,821	\$11,189,785
1999	\$3,835,881	\$32,354,177	\$10,510,018
2000	\$3,788,611	\$34,525,934	\$7,246,740
2001	\$991,655	\$11,485,312	\$2,186,773
TOTAL	\$21,613,645	\$231,534,411	\$69,581,952

Note: 2001 figures are through April

INTERROGATORY NO. 5:

State the total visitor volume for your Property for each year since your Property opened for business

RESPONSE TO INTERROGATORY NO. 5:

Registrant objects to this interrogatory on the grounds that it is vague and ambiguous as to "visitor" volume, including whether visitor includes anyone who has entered the property grounds, entered the property building, stayed at the hotel, played in the casino, attended shows, dined in restaurants, or some other variation or combination thereof. Moreover, because Petitioner is seeking information regarding "visitors" in this interrogatory and "customers" in Interrogatory No. 2, it appears that the Petitioner intends to ascribe a different meaning to each of these terms but has failed to define these terms. Registrant further objects to this interrogatory on the grounds that it is unduly burdensome. Registrant does not keep tallies of the number of visitors to its property.

Subject to and notwithstanding the foregoing objections, the rooms occupied for the period of 1993 through April 2001 were:

1993: 159,544 (excluding suites)

1994: 1,039,583

1995: 1,049,062

1996: 1,046,629

1997: 1,038,872

1998: 1,034,466

1999: 971,057

2000: 1,027,544

2001: 350,286 (through April 2001)

These numbers do not reflect the number of people in each room. These numbers do not reflect visitors to the property who did not stay in the hotel. Registrant estimates that 20,000 people visit the property each day.

RESPONSE TO INTERROGATORY NO. 21:

Registrant objects to this interrogatory on the grounds that it seeks disclosure of communications that would be protected by the attorney-client privilege and/or work product doctrine. Registrant further objects to this interrogatory on the grounds that it seeks information that is not within the scope of permissible discovery under Rule 26

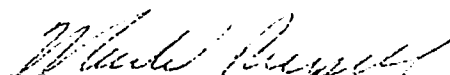
INTERROGATORY NO. 22:

Identify the Hotel front desk supervisors who were on duty at Treasure Island Las Vegas on April 8, 1999.

RESPONSE TO INTERROGATORY NO. 22:

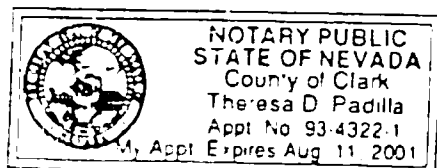
Scott Gold, Polly Brekken, Christina Johnson, Lauren LoBue, Dawn Frazer, Robert Hornbuckle, Rod Jones, Anthony Westbrook, Chris Forrester, and Ivan Hoff.

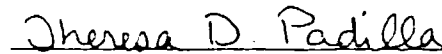
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)



Mark W. Russell
Vice President and General Counsel
The Mirage Casino-Hotel

Signed and sworn to before me on this 12th day of June, 2001, by Mark W Russell



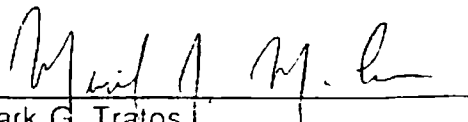


Theresa D. Padilla
Notary Public

My commission expires: Aug. 11, 2001

Objections are by counsel.

QUIRK & TRATOS

By 
Mark G. Tratos

Michael J. McCue

Jenna F. Karadbil

3773 Howard Hughes Parkway

Suite 500 North

Las Vegas, Nevada 89109


Attorneys for Registrant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing REGISTRANT'S OBJECTIONS
AND RESPONSES TO PETITIONER'S FOURTH SET OF INTERROGATORIES was
transmitted this 24th day of June, 2001, by first class mail, postage prepaid, to
Petitioner's counsel of record, as follows:

Henry N. Buffalo, Jr.
Joseph F. Halloran
JACOBSON, BUFFALO, SCHOESSLER & MAGNUSON, Ltd.
18885 University Avenue, Suite 246
St. Paul, MN 55104

Orrin Haugen
Eric Haugen
Haugen Law Firm PLLP
121 South Eighth Street, Suite 1130
Minneapolis, Minnesota 55402


An Employee of Quirk & Tratos



Mikulich - Treasure Island Exhibit A

Prairie Island Indian Community v.
Treasure Island Corp.

Opposition Nos: 91115866 and



Mikulich - Treasure Island Exhibit B

Prairie Island Indian Community v.
Treasure Island Corp.

Opposition Nos: 91115866 and
91115867

Ikutlich - Treasure Island Exhibit _ c

aire Island Indian Community v.
easure Island Corp.

p, _don Nos 91115866 and
1157981



TIC 03918

Mikulich - Treasure Island Exhibit 12

Prairie Island Indian Community v.
Treasure Island Corp.

Opposition Nos: 91115866 and
91157981



TIC 03919

Mikulich - Treasure Island Exhibit

Prairie Island Indian Community v.
Treasure Island Corp.

Opposition Nos: 9115866 and
91157981

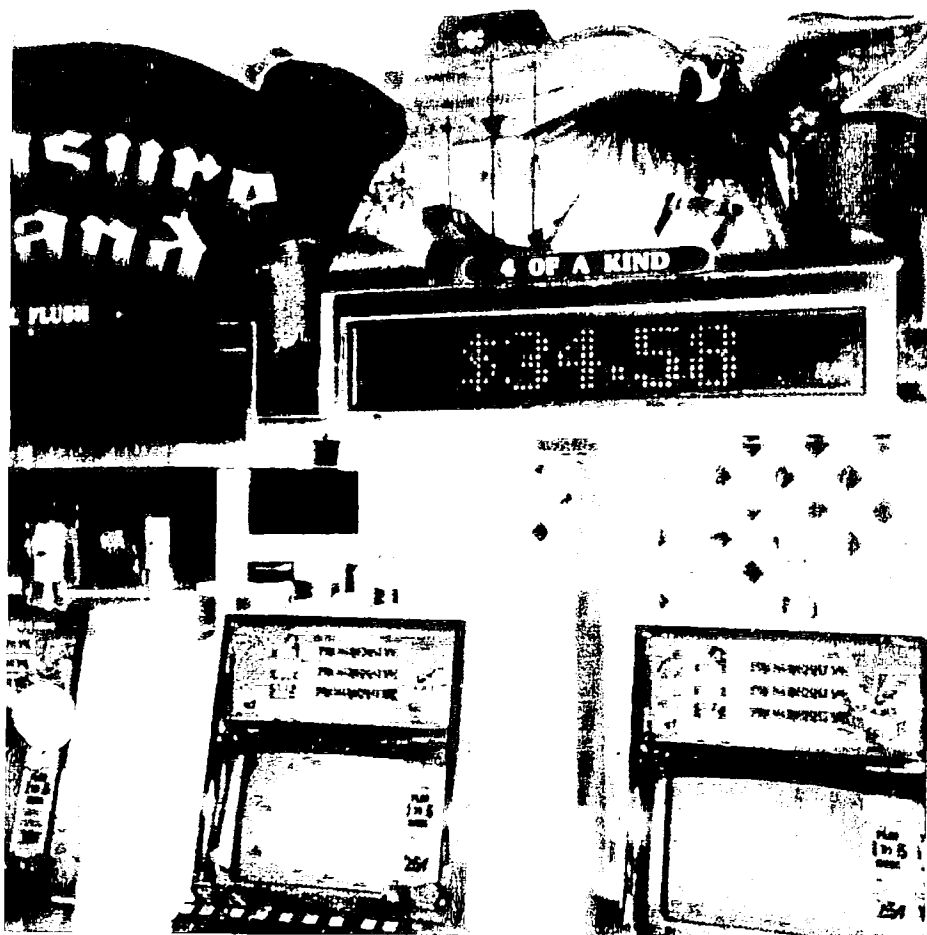


TIC 03920

Aikulich - Treasure Island Exhibit *E*

Prairie Island Indian Community v.
Treasure Island Corp

Deposition Nos: 91115866 and
911157981



TIC 03921



Mikulich - Treasure Island Exhibit *H*

Prairie Island Indian Community v
Treasure Island Corp.

Opinion Nos. 9115866 and
91157981

TREASURE ISLAND

A pirates

treasure awaits you.

Only at the Mirage & Golden Nugget.

Mikulich - Treasure Island Exhibit

Prairie Island Indian Community v.
Treasure Island Corp.

Opposition Nos: 9115866 and
91157981

My 2000 2000

August 24, 1989

Golden Nugget/Mirage

ATTENTION:

Bobby Baldwin
Andrew Pascal
Doris Young

Machine Critique

1. Nickelodean

- A. Award Belly dark pink as reel and top glass
- B. "Win Meter"
"Credits" } white letters take out
"Coin Played" } white highlights this area

2. Gran Prix

- A. Belly Award make top pay jump out
- B. Logo - 2 flags ~~XX~~ "Gran Prix" on top of flags
- C. Lettering colors to match sign "Gran Prix"
(we will get photo of sign)

3. Zodiac

- A. Black outline on all "Any 2" on top awards
- B. "2" on glass not in box with sign
- C. Darken blue background (too light)
- D. Purple glass make "Any 2" darker blue also
- E. On reel top insert "Play your lucky sign"
- F. Disclaimers "sign - doubles winning combination"
top of top award
- G. Disclaimer "2 signs pays 4x's winning combination
except when 3 signs are showing moved to bottom"
similar to I.G.T. Double Jackpot Glass

4. \$5 Million

- A. Total re-do check w/Doris PC sheet

Pascal - Treasure Island Exhibit H

CONTINUED ON FOLLOWING PAGE

Prairie Island Indian Community v.
Treasure Island Corp.

Opposition Nos: 91115866 and
91157981

Machine Critique - Page 2

5. Treasure Island

- Cindy need
play 3 coins &
win Pirate
Return
(on 4 woodgrain)*
- king on
computer*
- A. Hat on pirate needs to look as sign - ok
 - B. Colors on chest not same (Dan would like woodgrain as sign)
 - C. Pirate off strips and payschedule/new symbol - ok
 - D. Sandy look for sand - ok
 - E. Blue on poker not as dark as slots (check) - ok
 - F. Poker glass - new look on top glass -
take out boxes "Progressive"
 - G. fix 1/2 tone on belly - ok
 - H. Get photos of signs for gradation on "Treasure Island" - ok

All changes will be reviewed by Doris and Andrew before printing.

Thank You

Judy Gray
Judy Gray

JG/tji

1 machine working

DATE Aug 23 '89

CHARGE ☒ CDD

JOB # 4064

CUSTOMER _____

CONTACT Andrew Pascal

PO # A-00953

DUE DATE Sept 20 '89

PHONE # _____

ORDER QTY	DESC	PART #	LO #	PRINTED STOCK	SIZE	NEED	EXTD	PRINT	RAW STOCK
6	AWARD GLASS	73412	2701-E	①	9 3/4 x 19 1/2				
6	" "	73411	2700-E	②	" "				
6	" "	73413	2702-E	③	" "				
18	Bell glass	71373	2691-E	④					
6	Rail glass 2C/113	72203	2692-E	⑤	3 1/4 x 19 3/8				
6	Rail glass 3 line	72196	2693-E	⑥	" "				
6	Rail glass	72195	2692-E	⑦	" "				
6	Stripes	40786 40789	754-S	⑧	Kitch?				
6	Stripes	40780 40791	755-S	⑨					
6	Stripes	40786 40787	753-S	⑩					

SHIP TO _____

DELIVER / PICK UP
1PS - REG / 1PS
REG EX - STAND / 1 DAY
YELLOW / ANDERSON / 1PS
OTHER _____

CHECK NOT
PREPAID _____
INSURANCE
ADDS \$ _____

COMMENTS: *Kitch art
before you can pr
part numbers*

GLASS LAYOUT

Customer Part#: S.G. Part#: 71475
Manuf.: Model#:
Size: 9 7/8 x 20 3/8
Variations:

COLORS:**Main Background:**

- | | | |
|------------------|------------------|---------------------|
| 1. HL-710 black | 6. 1GT 400 green | 11. SG 104 flesh |
| 2. gold | 7. HL-502 red | 12. SG-1057 purple |
| 3. SG-701 smoke | 8. HL-207 yellow | 13. SG 1057 purple |
| 4. 1GT 400 green | 9. SG 806 brown | 14. KP 2113 dk blue |
| 5. HL-520 red | 10. SG-109 flesh | 15. 1GT 500 lt blue |
- KP-29920 units

Suburban Graphics, Inc.

PH. (702) 731-1212
800-552-6363
FAX (702) 735-1510

2901 S. HIGHLAND LAS VEGAS, NEVADA 89109

TIC 1126

☐ GOODS
☐ SERVICES
☒ GOODS AND SERVICES



☐ ONE-TIME PURCHASE
☐ REPEATING PURCHASE
☐ SERVICE AGREEMENT

CHARGE TO	DEPARTMENT ACCOUNT	WORK ORDER	POB	TERMS	BYR/TYP	TAX	DEL REQ	DATE	NUMBER
	Slot Marketing	M-4771	4/1/93					4/1/93	4310

FOR PURCHASING DEPARTMENT USE

1 Graphics West
Creative Graphics
2 Orange

PURCHASE
ORDER
NUMBER
SUPPLIER

DELIVERY REQUESTED 4/15/93 KLSH

[illegible]

ALL NONBUDGETED ITEMS AND VARIATIONS IN EXCESS OF
NOTE: BUDGET REQUIRE JUSTIFICATION AND EXECUTIVE APPROVAL

—Pascal - Treasure Island Exhibit

ESTIMATED COST

REASON FOR PURCHASE:

Prairie Island Indian Community v.
Treasure Island Corp.

Opposition Nos: 91115866 and
91157981

TO: The Mirage
Care of Stephanie Ishii
Special Events

REQUESTED BY Ken Hofbauer 53991

APPROVED

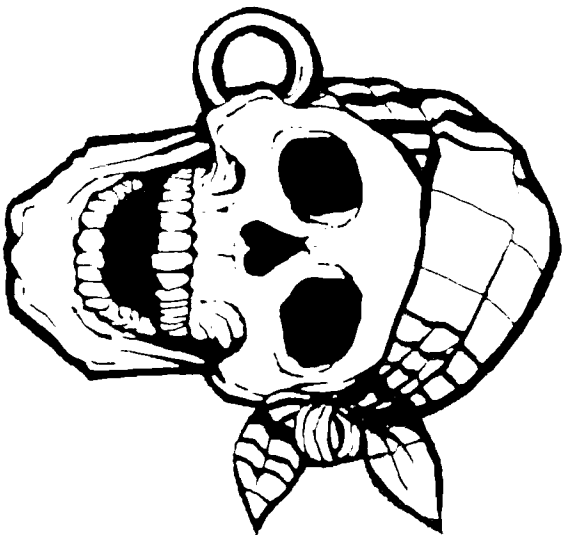
APPROVED

APPROVED

SHIP VIA

TIC 1191

AVAST YE SCOUNDRELS!
PREPARE TO SET SAIL TO THE NEW
TREASURE ISLAND RESORT AND CASINO
FOR YOUR COMPLIMENTARY TWO NIGHT STAY.



PLEASE CONTACT YOUR FAVORITE
CLUB MIRAGE MATIES AT 1-800-937-4444
TO MAKE YOUR RESERVATIONS

This offer is valid from October 27, 1993 to January 27, 1994 and is subject to availability. Must present photo I.D. upon check-in. This certificate has no cash value and is non-transferable.

Avast ye scoundrels!
Prepare to set sail to the new
Treasure Island Resort and Casino
for your complimentary two night stay.



Please contact your favorite Club Mirage Maties at
1-800-937-4444 to make your reservations.



This offer is valid from October 27, 1993 to January 27, 1994 and is subject to availability. Must present photo I.D.
upon check-in. This certificate has no cash value and is non-transferable.

MERCHANT & GOULD

Merchant, Gould, Smith,
Edell, Walker & Schmidt
Professional Association
Patent, Trademark &
Copyright Lawyers

3100 North East Center
90 South Seventh Street
Minneapolis, Minnesota
USA 55402-4121
FAX 612/332-5081
Telex 250193 M&G Nps
112722 3300

Direct Dial 336-4728

John D. Gould
Philip E. Smith
Robert T. Edell
Paul A. Walker
Craig C. Schmidt
John S. Sweeney
Alan G. Carlson
Michael L. Schweigert
Earl D. Rehnold
Charles E. Gills
Douglas J. Williams
Douglas A. Strawnbridge
Albert L. Underhill
D. Randall King
Michael B. Lasky
Curtis B. Elmer
Michael D. Schomaker
Michael L. Mac
John A. Clifford
Mark J. DuPont
Steven W. Lundberg
Warren D. Forrester

Timothy R. Gorman
Alan R. Lowenthal
Daniel W. McDonald
...
David G. Johnson
Robert C. Foyard
Daniel J. Elmer
Wesley M. McDonald
Linda M. Eyrer
Mark D. Schomaker
Randall A. Billies
John P. Sommer
Brian R. Batzli
David M. TeUenover
John J. Gorman
Paul E. Lary
Kathleen M. Mikeli
Philip R. Carpenter
Gregory A. Sebald
Allan J. Milner
Robert C. Erick
Ernest M. Simonsen

Gregory B. Taylor
Steven C. Foyard
John A. Reubler
Ernest W. Lasky
Earl C. Schweigert
Matthew J. Duggan
Anthony C. Mordant
Mark J. Gribbards
Adrian D. Schomaker
Steven J. Smith
Paul S. Burns
Kathleen M. Eyrer
David M. Gorman
Gloria M. Slinger
Peter J. Gorman
J. Daniel Vandenberg

Of Counsel
A. Carl Kray

April 15, 1992

Mr. Ron Valentine, General Manager
Treasure Island Casino & Bingo
5734 Sturgeon Lake Road
Welch, MN 55089

Re: M&G 9813.0-00-01 - Trademark Search

Dear Mr. Valentine:

We have now completed our review of the trademark availability search results and for the TREASURE ISLAND service marks for use in connection with gaming services. In brief, it is our opinion that it is unlikely that you will be able to obtain a federal registration for the mark, but it appears that you should be able to obtain a state registration.

The search turned up a variety of federal registrations for variations of TREASURE ISLAND as well as TREASURE ISLAND registrations in a number of classes. As we have discussed, the most relevant mark discovered in the search is TREASURE ISLAND HOTEL & CASINO ST. MAARTEN, N.A., registered for educational and entertainment services and owned by Treasure Island N.V. Netherlands Antilles Corporation. The mark is federally registered and, unfortunately, also has a use prior to your first use of Treasure Island. The portions of the mark "HOTEL & CASINO" and "ST. MAARTEN, N.A." have been disclaimed, leaving only TREASURE ISLAND. Since we believe that "CASINO & BINGO" would have to be disclaimed for your mark, we believe that there is a likelihood of confusion and therefore an application for a federal registration would likely be denied Valentine - Treasure Island Exhibit 12

Prairie Island Indian Community v.
Treasure Island Corp.

Mr. Ron Valentine
April 15, 1992
Page 2

In the search of state registrations and common law marks, several marks for TREASURE ISLAND were uncovered. However, none would appear to block registration in Minnesota. As we had discussed on the phone, we are proceeding with preparing an application. If you decide to continue, you should also consider filing in other states in which you are actively advertising and drawing customers using the TREASURE ISLAND marks. It appears that Wisconsin and Iowa, among others, would also be available for registration.

A relevant mark, and one which you had expressed concern over, was the registration of TREASURE ISLAND in Nevada. The goods and services listed were Hotel & Casino. The mark has a first use of October 27, 1988, again preceding your first use. The mark is registered to Jerald J. White d/b/a Four Torey Corporation. After review of the Business Week article, it is not clear whether this is the same entity headed by Steve Wynn.

Also of interest, you might note that TREASURE ISLAND has been registered in Nevada for Slot Merchandising to GNLV Corporation. In addition, TREASURE CHEST has been registered in Nevada for a Casino to Donald L. Owens and TREASURE CHEST has been registered in Nevada for a Proposed Hotel & Casino to David J. Morrison.

Since the mark for the Netherlands Antilles is registered and has a first use preceding the other first use dates, we believe that it should block federal registration of the Nevada TREASURE ISLAND marks.

The mark for the Netherlands Antilles will have an affidavit of current use due in December of this year, we will monitor whether such an affidavit is filed. If no affidavit is filed, the mark will be cancelled. Note that we have checked and the hotel is still in business at this time. However, should the mark be cancelled, we believe that we could file for a federal registration before any of the other owners of TREASURE ISLAND marks. Since the Nevada mark has a prior use, they could also file, but if we file first, then they could only request a concurrent use registration. With a concurrent use registration, each party may only use the mark in designated geographic areas.

You had expressed concern regarding Steve Wynn's plans for his new TREASURE ISLAND casino in Las Vegas. Since it involves a huge investment, we can assume he will try to protect and enforce his rights and we should continue to watch his operations. Therefore, we are now monitoring the mark TREASURE ISLAND on our trademark board. We also note that he is developing casinos on Native American land in Kansas and in Washington state. As we had discussed, he will certainly find out about your business and use of TREASURE ISLAND. Should any issues arise, we may want to consider sending a warning letter.

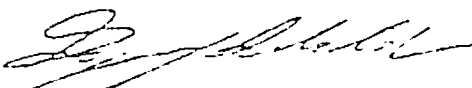
Mr. Ron Valentine
April 15, 1952
Page 3

We will proceed with the state registration for TREASURE ISLAND and monitor whether the federal registration for the mark has been renewed. Please review our proposals in light of the plans for the casino. We would be happy to meet and further discuss the courses of action available. As always, if you should have any questions, please do not hesitate to call.

Sincerely,

MERCHANT, GOULD, SMITH, EDELL,
WELTER & SCHMIDT, P.A.

By:



Gregory A. SeLald

GAS:mdh

cc: William J. Hardecker, Esq.
Michelle M. Michel, Esq.

WYNN'S WORLD: WHITE TIGERS, BLACKJACK, AND A MIDAS TOUCH

His Mirage casino has won over high rollers. Now, he's betting on the "mass-market" crowd

It's not starting out as a good day for Steve Wynn. The flamboyant chairman of Mirage Resorts Inc.—the man who brought white tigers and exploding volcanoes to Las Vegas—is having problems with his wristwatch. "See that," he says impatiently to the nervous-looking manager of his hotel's jewelry shop. "It's the face. Every time I move my wrist, it slips off to the side." It's the third time Wynn has summoned the manager, and it's the third time that he has sent him off to find a new watchman.

Those who know Stephen A. Wynn well understand the jeweler's dilemma. Merciful, always demanding, Wynn is a man with an unshakable notion of how he wants things done. He builds the fanciest, most expensive casinos in town, and, like a rich man's P. T. Barnum, draws in high rollers and celebrities to make the projects pay off. "People love to bad-mouth Steve because he can be extravagant and showy," says Jack Binion, who runs Binion's Horseshoe casino. "But just about everything he touches turns golden, and no one is going to deny that."

Two years ago Wynn laid down the heftiest wager Las Vegas had ever seen: a \$630 million hotel extravaganza called the Mirage. Many scoffed that he'd never make it pay, but Wynn won the bet. Today, the Mirage is a cash machine, and its great attraction is pure Wynn hyperbole. A five-story volcano out front explodes every 15 minutes during the evenings. White tigers behind glass and sharks in a tank greet guests in the lobby. Out back, dolphins frolic in an enormous pool.

AUSSIE FORAY. Donald Trump in Atlantic City is also known for his extravagant casinos, but while Trump's debt-burdened Taj Mahal was forced to restructure, Wynn is laying plans for more expansion. Wynn wants to develop casinos in Australia and Argentina, where national governments may sanction gambling. And pending regulatory approval, Mirage has been signed to develop casinos on Native American land for the Sac and Fox nation in Kansas and the Puyallup tribe in Washington state.

But these projects are like nickel slots compared to the next big bet Wynn is placing on Vegas. With the paint on the Mirage barely dry, he's spending \$430 million on another 3,000-room casino hotel called Treasure Island. Planned for an 18-acre site next to the Mirage on the Las Vegas strip, the new project will have its own splash of daring. In a 360-foot water-filled canal, mock pirate ships will stage gun battles where stuntmen catapult into the air as explosions appear to destroy their vessels. "It's dynamite, pure magic," bubbles Wynn. "Shiner me timbers, warking the plank. Who could resist that?"

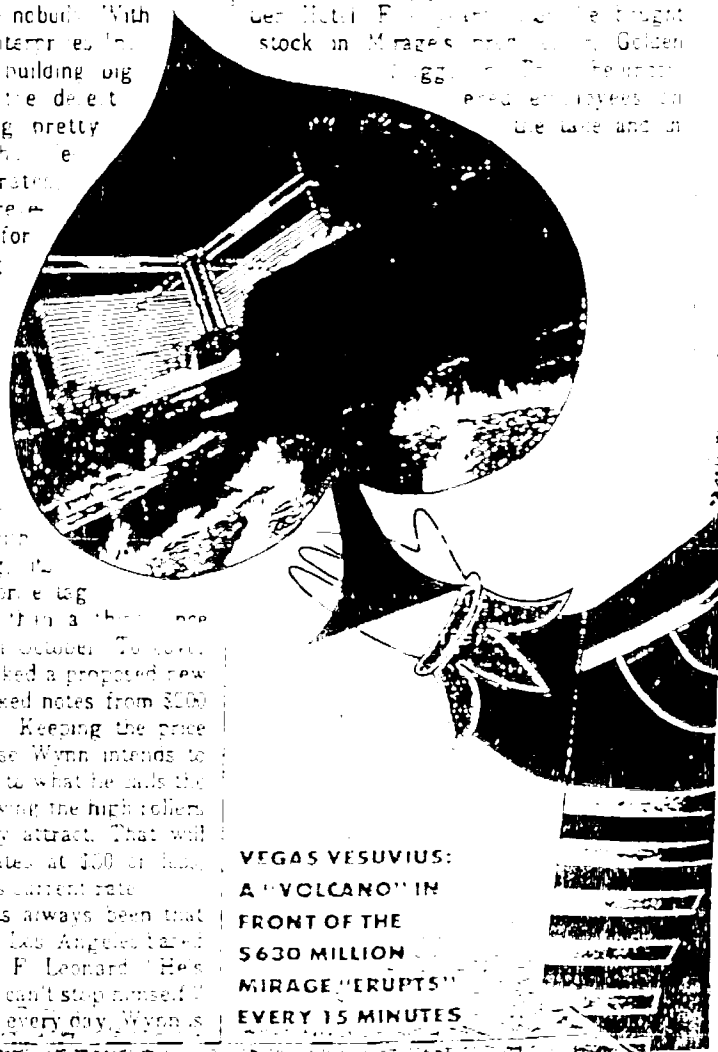
He had better hope nobody. With both Circus Circus Enterprises Inc. and Kirk Kerkorian building big Las Vegas casinos, the desert landscape is getting pretty crowded. Recession has depressed occupancy rates, and Vegas gaming revenues have dropped for two years, running. What's more, Wynn's Mirage is cannibalizing patrons from his own Golden Nugget casino; downtown Nugget revenues slipped 21% last year.

In that environment, Wynn's new project is fraught with risks. For one thing, its original \$400 million price tag has surged by more than a third since Wynn announced it in October. To cover the increase, he has liked a proposed new issue of mortgage-backed notes from \$200 million to \$300 million. Keeping the price down is crucial because Wynn intends to market the new casino to what he calls the "mass market," eschewing the high rollers that his places usually attract. That will mean setting room rates at \$50 or less, about half the Mirage's current rate.

"Steve's problem has always been that he's a winner," says Las Vegas-based casino consultant Paul F. Leonard. "He's so creative that he just can't stop himself." On this day, as he does every day, Wynn is

looking over plans at Atlandia Design, Mirage's in-house design department. Thirty pounds lighter from two months of dieting, he's holding a bag of microwave popcorn as he argues with Atlandia's top designer, Joel Bergman. The problem? Visitors retrieving cars will have to veer around several columns to get out of the garage. Wynn would rather move the columns, which will hike costs. And though Bergman objects, the change will be made.

Wynn has always been that aggressive. The son of a Maryland big-game operator, he got his start in 1967 by paying \$35,000 for a tiny piece of Las Vegas, Frontier Hotel. Five years later, he bought stock in Mirage's parent, Golden Nugget. In 1982, he won the hearts of investors in the lake and in



VEGAS VESUVIUS:
A "VOLCANO" IN
FRONT OF THE
\$630 MILLION
MIRAGE "ERUPTS"
EVERY 15 MINUTES

Wynn was the third chairman to leave it. In 1987, he was replaced by a man who has been a pretender. After turning the Nugget into a money-maker, Wynn joined a smaller Golden Nugget in Atlantic City in 1987. It became one of the city's most profitable casinos and cemented the Wynn formula. By now, that formula is the center from New York and Philadelphia, luring them with a hotel and casino package. He bought the other Wynn from the place with big expectations. When he sold out to Bally Manufacturing Corp. in 1987 for \$440 million, his net worth was \$170 million.

The timing of Wynn's departure from Atlantic City was dramatic. Within a few months, the Nevada's resort began a long slide. By then, Wynn was already focused on the Mirage. To build

himself, he pushed the company's total debt to more than \$1 billion—85% of capital. He spent \$40 million to build a 320-acre golf course lined with 10,000 pine trees transplanted from Canada. And he signed Sheraton & Roy, the illusionist act, to a five-year deal worth \$40 million. With all the money, many skeptics thought the debt would eat him up.

IF YOU BUILD IT... Wynn is not the dice anyway. "What people don't understand is that we're selling fun and games and wham-bam-thank-you-ma-lam excitement," he says. "We have something big and fancy and people are going to want to come and see it." They did. In 1991, the Mirage's second year, operating cash flow hit \$301 million, which analysts contend is a record for a single casino property. That was enough for Wynn to retire nearly a third of the company's debt. Mirage Resorts' net income leaped 175% in 1991, to \$46.8 million, though the recession capped 1992's revenues, which came in at \$202.8 million.

Wynn's success has not been without controversy. He has been accused of using his power to influence the state's gaming laws. He has also been accused of using his power to influence the state's gaming laws.

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new slot rights for the Flamingo. He refused to sell to any of Trump's Atlantic City casinos. When other casinos and Wynn they had to bid as a group, he shipped Atlantic City to another. Trainer figures the slot cost him \$200,000.

Wynn definitely does not get his own way. But Wynn's argue. He owns 65% of Mirage stock, and his brother and wife sit on the board. He pays himself \$1 million a year and lives in

Treasure Island will have a 360-foot canal with pirate ships and mock gun battles—if Wynn can sell \$300 million in bonds to pay for it

the countryside. He courts to add glitter to his casinos. At his 50th birthday party in January, guests included actor George Hamilton, Quincy Jones, and former baseball commissioner Peter Ueberroth. Michael Jackson is a frequent guest in the Mirage's lush lounge. He likes to watch the

disco. Wynn and his wife Elaine have been together for 21 years. Though they were divorced five years ago and remarried last June. Since 1975, they have lived in the same place near Las Vegas, but they just bought the house next door in order to bar them both down and build an 8,000-square-foot mansion in their place. An exercise fanatic, Wynn loves to jog and hit the stairmaster. A lack of penitence was caused by the love disease, but it's not a permanent fix for him. He's not a gambler or a shark.

Wynn's dream, take it or leave it, is to build a lot of people in Las Vegas. But most think he's good for gambling. Henry "Doc" Chapman of rival Caesar's World Inc. puts it this way: "You have to separate the ego from the accomplishments. We don't care what he does or how long as it's better in business to the city." Wynn, though, has to watch that his ego doesn't interfere with all his hard work. A chairman named Buggy wore once owned to Las Vegas and now he's tended to a heavy

Wynn has a lot of money and he's a lot smarter than that. But he'll need to play his cards carefully to make sure his latest gamble pays off like the first.

By Robert D. Green in Las Vegas



SHIP TO

Treasure Island

C.A.S.I.N.O. B.I.N.G.O.

34 Sturgeon Lake Rd., Welch, MN 55089

**PURCHASE
ORDER**

NUMBER

No 1991

DATE

ISSUED TO:

04/27/92

- DESIGNING SIGNS
- RT 2 BOX 14C
- OWANTONNA, MN 55060

IMPORTANT

Our Order Number must appear on Invoices,
Packages, and Correspondence.
Acknowledge if unable to deliver by date required.

DATE REQUIRED 04/27/92	TERMS 55% DOWN	FOB POINT DESTINATION	HOW SHIP <input type="checkbox"/> Air <input type="checkbox"/> Rail <input type="checkbox"/> Truck <input type="checkbox"/> Parcel Post <input checked="" type="checkbox"/> Other
REQUISITION NO. FOR RON VALENTINE		ROUTING	PLEASE SEND _____ COPIES OF YOUR INVOICE WITH ORIGINAL BILL OF LADING
PLEASE SUPPLY ITEMS LISTED BELOW			

	QTY. ORDERED	QTY. RECEIVED	STOCK NUMBER	ITEM DESCRIPTION	UNIT PRICE	TOTAL AMOUNT
1	1			SELF PROPELLED FLOAT - TREASURE		45,000 00
2				ISLAND PITATE SHIP		
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						45,000 00

Valentine - Treasure Island Exhibit H

Prairie Island Indian Community v.
Treasure Island Corp.

Opposition Nos: 91115866 and
91157981

SPECIAL INSTRUCTIONS

Authorized Signature

ORIGINAL - WHITE

DUPLICATE - YELLOW

TRIPPLICATE - PINK

PRA 00180

Trilogy Tour and Treasure Island Casino presents

The Treasure Island Connection from Indianapolis!

Located just 45 minutes from the Minneapolis/St. Paul Airport in Welch, Minnesota on the Mississippi River, Treasure Island has some of the best gambling in the country. A short flight takes you to Treasure Island's exciting Poker and Blackjack tables, High Stakes Bingo, 600 Keno, and high-return slot machines. You'll find Treasure Island *THE* place to be!

HOTEL PACKAGE INCLUDES:

- Round trip air fare from Indianapolis
- Transfers from hotel to airport
- Transfers from hotel to casino

- Fun book
- Casino rebate
- 2 meals at the Casino

1 Night: \$199.00
Casino Rebate: - \$100.00

Your Cost: \$99.00

2 Nights: \$219.00
Casino Rebate: - \$100.00

Your Cost: \$119.00

FLIGHT PACKAGE INCLUDES (no hotel included):

- Round trip air fare from Indianapolis with transfers from the airport to casino

- Fun book
- Casino rebate
- 2 meals at the casino

Air only with transfers: \$154.00
Casino Rebate: - \$75.00

Your Cost: \$79.00

FLIGHT INFORMATION

TW 401 LV: IND 9:10 P.M. — AR: MPLS 9:50 P.M.
TW 202 LV: MPLS 9:00 A.M. — AR: IND 11:34 A.M.

All rates are per person, double occupancy. Participants are not required to gamble and must be at least 21. Some restrictions may apply. Casino Rebate given at Treasure Island Casino — not by Trilogy Tours.

For More Information, Please Call:
TRILOGY TOURS

Soo Line Bldg., 105 South 5th St., Minneapolis, MN

PLAINTIFF
EXHIBIT

asure Island Casino



0 Minutes South Of Minneapolis/St. Paul Airport Off Highway 61

h Return Slots • 52 Blackjack Tables • High Stakes Bingo
• Buffets: 24 Hours/Every Day

The FUN!

The Midwest's Finest Casino!

Leaving Locally Every Thursday,
Friday & Saturday at 7 P.M.

Gold Package

* ~~149.00~~ Per Person Includes:

* 3 Days & 2 Nights At A Fine Local Hotel

* \$25 In Silver

* Buy \$20 In Quarters Receive \$20 In Quarters FREE

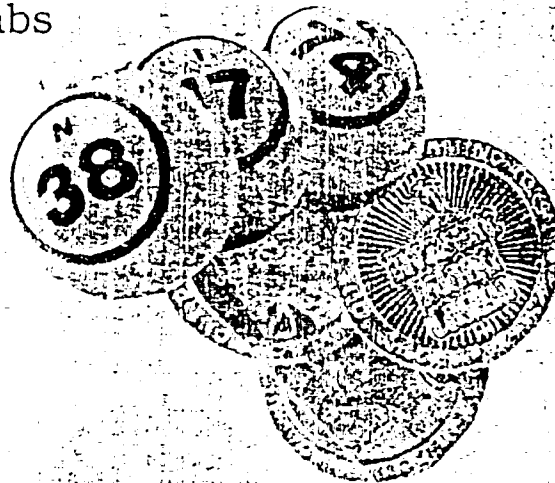
(Total of \$40)

* \$5.00 In Special Tour Pull Tabs

* FREE Gift

* 50% OFF A Meal

* Round-Trip Transportation



board For A Taste Of
d Class Gaming!

Midwest's Largest Gaming Facility!

to BINGO Winnings, we pay out over \$450,000 per month with
otions, give-aways, and fun and exciting special sessions,

\$149⁰⁰ Per Person Includes:

- * 3 Days & 2 Nights At A Fine Local Hotel
- * \$25 In Silver
- * Buy \$20 In Quarters, Receive \$20 In Quarters FREE (Total of \$40)
- * \$5.00 In Special Tour Pull Tabs
- * FREE Gift
- * 50% OFF A Meal
- * Round-Trip Transportation

**ard For A Taste Of
Class Gaming!**

dwest's Largest Gaming Facility!

NGO Winnings, we pay out over \$450,000 per month with
s, give-aways, and fun and exciting special sessions,
ere's never been so many ways to win!!

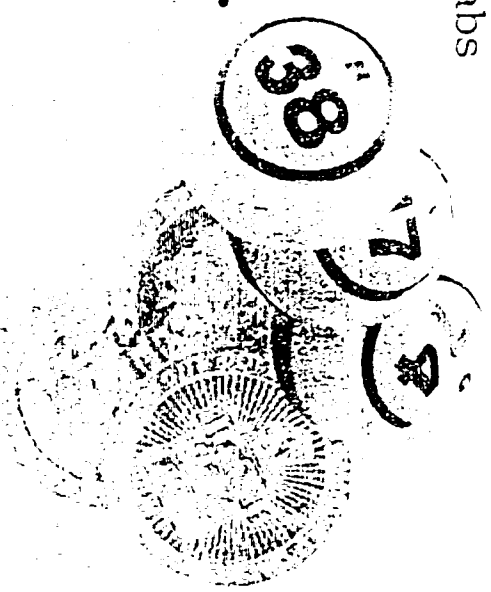
Call

omnor (314) 937-3342

reservations & Information

No Change Without Notice - Limited Seating Available


**Treasure
Island
Casino**



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

PRAIRIE ISLAND INDIAN COMMUNITY,
A FEDERALLY RECOGNIZED INDIAN TRIBE,

Plaintiff,

vs.

TREASURE ISLAND CORP.,

Defendant.

Opposition Nos. 91115866 and
91157981

Cancellation Nos. 92028126
92028127; 92028130; 92028133;
92028145; 92028155; 92028171;
92028174; 92028199; 92028248;
92028280; 92028294; 92028314;
92028319; 92029325; 92028342;
and 92028379 (as consolidated)

**INDEX TO PLAINTIFF'S TESTIMONY EXHIBITS
CITED IN DEFENDANT'S TRIAL BRIEF**

<u>EXHIBIT NO</u>	<u>DESCRIPTION</u>
Flemke Exhibit 1	Flyer entitled "Treasure Island Bingo and Casino" dated January, 1990
Flemke Exhibit 2	February 1990 calendar entitled "Treasure Island Bingo & Casino"
Flemke Exhibit 3	Copy of Advertisements for "Treasure Island Bingo & Casino"
Flemke Exhibit 4	November, December, and January 1991 calendars entitled "Treasure Island Bingo & Casino"
Flemke Exhibit 5	May 1991 Calendar entitled "Treasure Island Bingo & Casino"
Flemke Exhibit 6	June 1991 Calendar entitled "Treasure Island Bingo & Casino"
Flemke Exhibit 7	July 1991 Calendar entitled "Treasure Island Bingo & Casino" with two flyers attached
Flemke Exhibit 8	Photocopy of a December 22, 1991 newspaper with an advertisement entitled "May All Your Christmases Be Green"
Flemke Exhibit 9	"Coming in January, 1992" document with flyer attached
Flemke Exhibit 10	"Coming in June, 1992" document with flyer attached
Flemke Exhibit 22	Photocopy of "Treasure Island Resort & Casino"
Flemke Exhibit E	Tribal Council Travel to Las Vegas Since 1997 Spreadsheet
Flemke Exhibit F	January/February 1995 "Island Times"
Knapp Exhibit 28	Front Desk Wrong Treasure Island Information Sheet
Knapp Exhibit 41	Call Tracking Summary
Knapp Exhibit 43	Example of Reservations Desk-Wrong Treasure Island Information Sheet

Treasure Island BINGO

All New!



Play For
A New Car
Every Nite

And Casino

(Formerly Island Bingo)

OPEN - Friday, January 19th under new management.

Focus on entertainment & large cash prizes.

Featuring: All new cafe with great food at affordable prices.

All new smoke shop with major brands at discount prices

Expanded Vegas Style Casino with over 100

different video games & exciting new table games.

All new No-Smoking section and exciting new Bingo program.

NEW BINGO HOURS

Doors Open
6 p.m. Fri & Sat
2:30 p.m. Sunday

Early Birds
7:00 p.m. Fri. & Sat.
3:30 p.m. Sunday

Regular Session
7:30 p.m. Fri. & Sat.
4:00 p.m. Sunday

CASINO/SMOKE SHOP

12-8 Monday thru Thursday

12-12 Friday & Saturday

12-10 Sunday

Play On Your
Birthday
Free!
Daily Video
Specials

January 1990

Friday, 19

Free \$500
Intermission
Game
Fastball
Bingo

Saturday

Drawing
Victorian H

Free \$5
Intermis
Gam
Fastb
Bing

Friday, 26

Regular
Evening
Session

Saturday

Regu
Eveni
Sessi

Treasure Island

Victorian

At The St. J
Red Win

Limit One Coupon Per
Drawing Held January 20th, 19

EXHIBIT

Flamke
Wick



TRIASURIE ISLAND BINGO & CASINO

5734 Sturgeon Lake Rd., Welch, MN 55089 - Phone: In MN - 1-800-222-7077 - Outside MN - 1-800-822-4529

FEBRUARY 1990

DAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
For A New Car Nitely!!! and Opening Coming March 15-18 to Now Open Thursday - Sunday*						
Nite Any	5. Casino Open 12-8	6. Casino Open 12-8	7. Casino Open 12-8	1. Designated Driver Nite 4 or More in Car - Driver Plays Free Free Drawings	2. Evening Session 7:30 Free Drawings	3. Evening Session 7:30 Free Drawings
Nite Any	12. Casino Open 12-8	13. Casino Open 12-8	14. Casino Open 12-8	8. Evening Session 7:30 Free Drawings	9. Casino Nite - 50 Drawings for 15.00 in Chips Free Drawings	10. Evening Session 7:30 Free Drawings
Nite Any	19. Casino Open 12-8	20. Casino Open 12-8	21. Casino Open 12-8	15. 1/2 Price Nite buy Single, Double, Combo - Only 1/2 Price Free Drawings	16. Evening Session 7:30 Free Drawings	17. Evening Session 7:30 Free Drawings
Nite Any	26. Casino Open 12-8	27. Casino Open 12-8	28. Casino Open 12-8	22. Evening Session 7:30 Free Drawings	23. Winner's Circle 20 Drawings for 100 Free Drawings	24. Evening Session 7:30 Free Drawings
CASINO OPEN 7 DAYS						

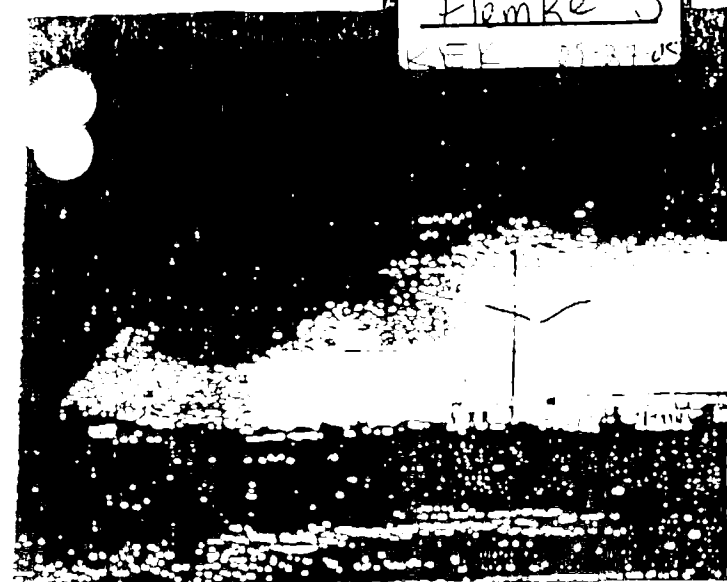
EXHIBIT

File 10 2
KFK 22-25

EXHIBIT

Flemke 3

KIE 88-3745



side hit the southern part of Heaton, Kan., on its way to doing heavy damage to the central Kansas town. — AP photo

strike across nation

1. God, Coal strike

...about 4 miles
...Bluff, five people
...a tornado Wednesday
...chief sheriff's
...three homes were
...ruined and panthers
...other homes.

...of the
...premier"

...in central Texas
...homes, tore off roofs
...city police "redneck"

...and Kansas, volunteers
...Sunday clearing up
...debris of tornadoes
...up on Tuesday. In
...Heaton, Kan.,
...two people and
...about 1,000 people,
...from the Memphis
...Serfite, helped
...up.
...Christians this is one
...of God's love with
...are helping," said
...a farmer who
...sister

East of the Mississippi Valley, at
least 31 cities reported record or
near-record high temperatures
Wednesday, the third day of unseasonable warmth.

The records included 85 at
Baltimore, 75 at Detroit, 76 at
Indianapolis and 76 at Washington's National Airport. The high at
Indianapolis erased a record on the
books since 1875. Buffalo, N.Y.,
registered 74.

Cherry blossoms in the nation's
capital will peak today and Friday
because of the unreasonable
warmth and will be gone by the
April opening of the annual Cherry
Blossom Festival, said National
Park Service spokeswoman Anne
Morris. "They'll only last four or
five days," she said.

Tulips, though, are about three
weeks ahead of schedule and will
blossom in time for the cherry
blossom festival, she said.

Cold front coming

A cold front was expected to end
the record-breaking warm weather
today.

From farmers in New Jersey fear
the heat may have fouled their
blueberries, peaches and peaches

into budding before freeze temperatures
arrive.

The weather is making the
peaches very hot, said a farmer
said Kenie DeCau, who runs a 100-
acre peach, pear, cherry and apple
farm in Shiloh.

Thunderstorms in the Midwest
dumped heavy rain, which was
compounded in Wisconsin by a
dam burst on a pond leading to the
Trempealeau River. But Ardena,
Wis., Police Chief Patrick Grady
said the river was receding.

"Everything we've been doing up
to this point has been preparing for
the worst and, hopefully, that won't
happen now," he said.

In Vernon County in western
Missouri, an 8-year-old boy was
found dead Wednesday after falling
into one of Missouri's ancient
caves.

In St. Petersburg, Fla., Roman
Catholic Bishop John Favalora is
praying for rain. "I am confident
that the Lord will hear our prayers,"
he said in a message broadcast
every hour on the local Catholic
radio station.

up seeks Darville pardon

led by Ron Edwards
...Darville's behalf as
...asking that Darville
...executive pardon or

...the request is being
...widely. Darville was
...from County District
...the university had
...investigation of inter-
...nities at the school.
...of the investigation
...last week, showing
...violations in writ-

ing and unethic.

Edwards said Darville could have
benefitted from the report by
showing that mismanagement of
university athletics was not limited
to sports. Darville was considered
with as an aide to Baker and other
members.

The group also is asking for a
review of the circumstances sur-
rounding the delay of the report.
But University of Minnesota attorney
Bill Donohue said the report
was expected to be released in two

parts, partly because the university
wanted to report on testimony of
Darville's trial.

Donald J. Gustafson, secretary
of the pardon board, said he said
he had considered the Darville case
before but was unable to complete it
in the United States District Court
reporting.

The pardon board has now heard
evidence from Darville's trial, he
said.

E-S

p. 10

...traveling proposal
...seek more funding
...for Spencer Black
...able a top priority
...traveling centers
...paper and other

Man who felt compelled to kill gets 11 years in prison

STILLWATER, Minn. (AP) —
A Lakeville man has been
sentenced to 11 years in prison for
voluntarily giving his car to a
couple taking the car to the
...the

Jack Walsh, 40, of Stillwater,
...and a psychiatrist found
that Walsh was mentally ill, but the
judge ruled that he knew the
consequences of his action when he
...the couple.

Red Wing, Minn. (AP) — Mar. 15, 1990 Republican Eagle B

Housing bid opening set

An April 10 bid opening has been
set by the Red Wing Housing and
Redevelopment Authority. Bids
for 100, 1000, Avenue Housing
project. The authority plans to
build four duplexes.

Executive Director Mary
Wierant said if the bids come in
within budget, construction will be
done over the summer and the eight
units could be occupied Oct. 1.

Starting Monday, March 19th

NEW HOURS!

Monday-Friday
Thursday
Saturday
Sunday

9 a.m.-8 p.m.
9 a.m.-9 p.m.
9 a.m.-6 p.m.
Noon-5 p.m.

The Dahl House

St. James Shopping Center, Red Wing

328-7620

COUPON

LENTEN FRIDAY FAMILY FISH FRY

Featuring CRAB DELIKE

Plus our famous: Broiled Fish • Deep Fried Shrimp • Extra Fried
Fish • Baked Chicken
With complete salad bar \$5.95
& more

Buy fast Regular Price \$6.95 or 25% Off
Valid March 16, 1990
Limit 2 adults per coupon

Children 6 and under FREE
6-16 years Old \$4.00

OPEN BOWLING DAILY

328-7577



Live Entertainment
Friday & Saturday

Make Your Reservations Now For

DINING AT ITS FINEST!

— OUR WEEKLY SPECIALS —

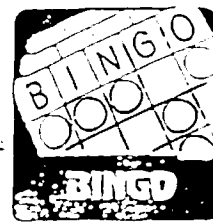
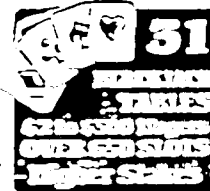
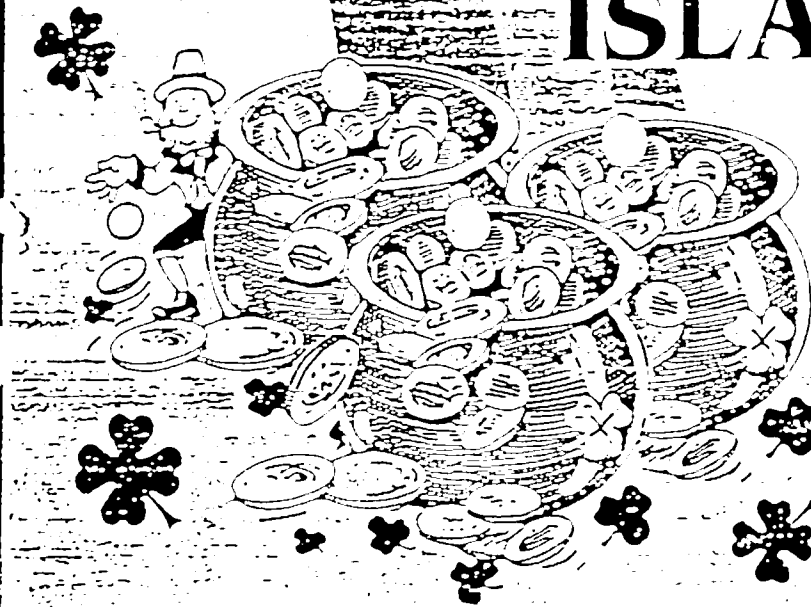
• SUNDAY: Chicken & Rice \$4.75
Koon to 4 Wollweide Pils \$7.95
• TUESDAY: Prime Rib \$10.95
• WEDNESDAY: Koff's Prime Rib \$5.95
• FRIDAY: Fish Dinner \$6.95

HOURS: 5-11 Mon thru Thurs, 5-12 Fri & Sat, 12-10 Sunday

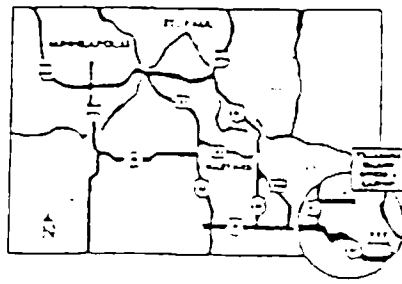
Wiederholt's SUPPER CLUB
Reservations Phone 657-3528 or 263-2263
MILLSVILLE, MN

TREASURE ISLAND
BINGO & CASINO
Presents It's
*Grand Opening
Weekend*
Four Special Nights
MARCH 15 THRU 18
ST. PAT'S DAY
BINGO BASH
— SAT., MARCH 17th —
\$100.00 ADMISSION
PAYS \$1000.00 TO \$5000.00
Plus A Brand New Car MUST BE Given Away!
Just minutes away in Welch, MN
CALL 388-1171 FOR MORE INFORMATION

Find Your *POT O' GOLD* At **TREASURE ISLAND**



Casino Open 24 Hours
7 Days a Week



Treasure Island

C · A · S · I · N · O · B · I · N · G · O

BETWEEN HASTINGS & RED WING, MN ON HWY 61

CALL TOLL FREE: 1-800-222-7077 OR 612-305-5300

Treasure Island
NOVEMBER BINGO CASINO NOVEMBER 1990

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1 FOOD SHELL WTE Draw one card back and receive \$1 OFF any package	2 EVENING SESSION 7:30 PM	3 MATINEE SESSION 3:00 PM B-Special EVENING SESSION 7:30 PM
4 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	5 SMALL CASINO OPEN 12:00 - 2:00	6 SMALL CASINO OPEN 12:00 - 2:00	7 DOUBLE UP Your lucky number could win you double or all 3 and 2 star games	8 FOOD SHELL WTE Draw one card back and receive \$1 OFF any package	9 NO CHANCE 2 chances to win or all 3 star games. Win up to \$1,000 or second chance	10 MATINEE SESSION 3:00 PM B-Special EVENING SESSION 7:30 PM
11 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	12 SMALL CASINO OPEN 12:00 - 2:00	13 SMALL CASINO OPEN 12:00 - 2:00	14 DOUBLE UP Your lucky number could win you double or all 3 and 2 star games	15 10 PRIZE WTE Buy single double, combo only half price!	16 EVENING SESSION 7:30 PM	17 MATINEE SESSION 3:00 PM B-Special SPECIAL BONUS BONUS \$100 must get 8 CARAMEL WTE
18 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	19 SMALL CASINO OPEN 12:00 - 2:00	20 SMALL CASINO OPEN 12:00 - 2:00	21 DOUBLE UP Your lucky number could win you double or all 3 and 2 star games	22 FOOD SHELL WTE Draw one card back and receive \$1 OFF any package	23 EVENING SESSION 7:30 PM	24 MATINEE SESSION 3:00 PM B-Special Matinee Drawing \$100 EVENING SESSION 7:30 PM
25 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	26 SMALL CASINO OPEN 12:00 - 2:00	27 SMALL CASINO OPEN 12:00 - 2:00	28 COUPON WTE Featuring any color to be \$10 OFF any pkg. DOUBLE UP DRAWING Win up to \$1,000	29 FOOD SHELL WTE Draw one card back and receive \$1 OFF any package	30 WINNERS CIRCLE DRAWING 1 - \$1,000.00 10 - \$100.00	

EXHIBIT
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KEL 09-22-90

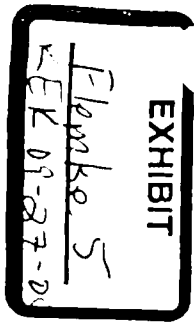
Treasure Island
DECEMBER BINGO CASINO DECEMBER 1990

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
						1 MATINEE SESSION 3:00 PM B-Special EVENING SESSION 7:30 PM
2 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	3 SMALL CASINO OPEN 12:00 - 2:00	4 SMALL CASINO OPEN 12:00 - 2:00	5 DOUBLE UP Your lucky number could win you double or all 3 and 2 star games	6 TOTS FOR TOTS Bring in 2 to 10 and receive \$1 OFF any package	7 EVENING SESSION 7:30 PM	8 MATINEE SESSION 3:00 PM B-Special EVENING SESSION 7:30 PM
9 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	10 SMALL CASINO OPEN 12:00 - 2:00	11 SMALL CASINO OPEN 12:00 - 2:00	12 DOUBLE UP Your lucky number could win you double or all 3 and 2 star games	13 TOTS FOR TOTS Bring in 2 to 10 and receive \$1 OFF any package	14 NO CHANCE 2 chances to win or all 3 star games. Win up to \$1,000 or second chance	15 MATINEE SESSION 3:00 PM B-Special EVENING SESSION 7:30 PM
16 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	17 SMALL CASINO OPEN 12:00 - 2:00	18 SMALL CASINO OPEN 12:00 - 2:00	19 DOUBLE UP Your lucky number could win you double or all 3 and 2 star games	20 10 PRIZE WTE Buy single double, combo only half price!	21 EVENING SESSION 7:30 PM	22 MATINEE SESSION 3:00 PM B-Special FREE CASH WTE Every player receives between \$1-500. Cash Special Drawing \$1,000
23 WIN SESSION 1:00 PM SENIOR WTE 4:00 PM \$5 OFF any pkg. 30	24 XMAS EVE NO BINGO 11 SPECIAL 11 NEW YEARS EVE BASH 31	25 Merry Christmas NO BINGO	26 COUPON WTE Featuring any color to be \$10 OFF any pkg. DOUBLE UP DRAWING Win up to \$1,000	27 FOOD SHELL WTE Draw one card back and receive \$1 OFF any package	28 WINNERS CIRCLE DRAWING 1 - \$1,000.00 10 - \$100.00	29 MATINEE SESSION 3:00 PM B-Special Matinee Drawing \$100 EVENING SESSION 7:30 PM

Treasure Island
JAN. 1991 BINGO CASINO JAN. 1991

000000

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1 Happy New Year HALL CLOSED	2 DOUBLE UP Your lucky number could win you double or all 3 and 2 star games	3 FOOD SHELL WTE Draw one card back and receive \$1 OFF any package	4 EVENING SESSION 7:30 PM	5 MATINEE SESSION 3:00 PM B-Special EVENING SESSION 7:30 PM
6 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	7 SMALL CASINO OPEN 12:00 - 2:00	8 SMALL CASINO OPEN 12:00 - 2:00	9 DOUBLE UP Your lucky number could win you double or all 3 and 2 star games	10 FOOD SHELL WTE Draw one card back and receive \$1 OFF any package	11 NO CHANCE 2 chances to win or all 3 star games. Win up to \$1,000 or second chance	12 MATINEE SESSION 3:00 PM B-Special EVENING SESSION 7:30 PM
13 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	14 cash	15 SMALL CASINO OPEN 12:00 - 2:00	16 DOUBLE UP Your lucky number could win you double or all 3 and 2 star games	17 10 PRIZE WTE Buy single double, combo only half price!	18 EVENING SESSION 7:30 PM	19 MATINEE SESSION 3:00 PM B-Special SPECIAL BONUS BONUS \$100 must get 8
20 WIN SESSION 1:00 PM SENIOR WTE \$5 OFF any pkg. 4:00 PM	21 SMALL CASINO OPEN 12:00 - 2:00	22 SMALL CASINO OPEN 12:00 - 2:00	23 DOUBLE UP DRAWING Win up to \$1,000.00	24 FOOD SHELL WTE Draw one card back and receive \$1 OFF any package	25 WINNERS CIRCLE DRAWING 1 - \$1,000.00 10 - \$100.00	26 MATINEE SESSION 3:00 PM B-Special Matinee Drawing \$100 EVENING SESSION 7:30 PM
27 WIN SESSION 1:00 PM	28	29	30 COUPON WTE Featuring any color	31 FOOD SHELL WTE Draw one card		



TREASURE ISLAND BINGO & CASINO

MAY

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
NOW... 2 MATINEES: SAT - 3:00 P.M. SUN - 1:00 P.M. ASK ABOUT OUR "B - SPECIAL"			1 DOUBLE UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAMES	2 FOOD SHELF NITE DONATE ONE CANNED FOOD ITEM AND RECEIVE \$5 OFF ANY PACKAGE	3 EVENING SESSION 7:30 P.M.
5 MATINEE SESSION 1:00 P.M. B-SPECIAL SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30 P.M.	6 SLOT MACHINES AND "21" TABLES OPEN 24 HRS EVERY DAY.	7 SLOT MACHINES AND "21" TABLES OPEN 24 HRS EVERY DAY.	8 DOUBLE UP DRAWING WIN UP TO \$1,000	9 FOOD SHELF NITE DONATE ONE CANNED FOOD ITEM AND RECEIVE \$5 OFF ANY PACKAGE	10 2ND CHANCE DRAWING ON ALL ONE WIN UP TO 2ND PRIZE
12 MATINEE SESSION 1:00 P.M. B-SPECIAL SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30 P.M.	13 SLOT MACHINES AND "21" TABLES OPEN 24 HRS EVERY DAY.	14 SLOT MACHINES AND "21" TABLES OPEN 24 HRS EVERY DAY.	15 DOUBLE UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAMES	16 1/2 PRICE NITE BUY ANY PACKAGE ONLY HALF PRICE	17 EVENING SESSION 7:30 P.M.
19 MATINEE SESSION 1:00 P.M. B-SPECIAL SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30 P.M.	20 SLOT MACHINES AND "21" TABLES OPEN 24 HRS EVERY DAY.	21 SLOT MACHINES AND "21" TABLES OPEN 24 HRS EVERY DAY.	22 DOUBLE UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAMES	23 FOOD SHELF NITE DONATE ONE CANNED FOOD ITEM AND RECEIVE \$5 OFF ANY PACKAGE	24 EVENING SESSION 7:30 P.M.
26 MATINEE SESSION 1:00 P.M. B-SPECIAL SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30 P.M.	27 MEMORIAL DAY SPECIAL BINGO SESSION 7:30 P.M.	28 SLOT MACHINES AND "21" TABLES OPEN 24 HRS EVERY DAY.	29 DOUBLE UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAMES	30 FOOD SHELF NITE DONATE ONE CANNED FOOD ITEM AND RECEIVE \$5 OFF ANY PACKAGE	31 WINNING DRAWING 11 - DRAWING 1 - SPECIAL 10 - SPECIAL

EXHIBIT
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TREASURE ISLAND BINGO & CASINO

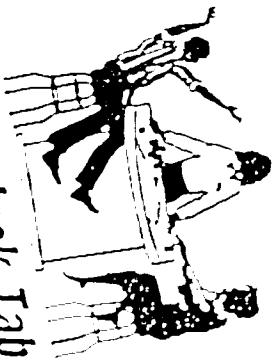
June

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
MATINEES ON SAT - 3:00 P.M. SUN - 1:00 P.M.					
2 MATINEE SESSION 1:00 P.M. B-SPECIAL SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30 P.M.	3 SLOT MACHINES AND BLACKJACK TABLES OPEN 24 HRS EVERY DAY.	4 SLOT MACHINES AND BLACKJACK TABLES OPEN 24 HRS EVERY DAY.	5 DOUBLE UP DRAWING WIN UP TO \$1,000	6 FOOD SHELF NITE DONATE ONE CANNED FOOD ITEM AND RECEIVE \$5 OFF ANY PACKAGE	7 2N 2 CH ON ALL WIN U 2
9 MATINEE SESSION 1:00 P.M. B-SPECIAL SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30 P.M.	10 SLOT MACHINES AND BLACKJACK TABLES OPEN 24 HRS EVERY DAY.	11 SLOT MACHINES AND BLACKJACK TABLES OPEN 24 HRS EVERY DAY.	12 DOUBLE UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAMES	13 1/2 PRICE NITE BUY ANY PACKAGE ONLY HALF PRICE	14
16 MATINEE SESSION 1:00 P.M. B-SPECIAL HAPPY FATHERS DAY SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30 P.M.	17 SLOT MACHINES AND BLACKJACK TABLES OPEN 24 HRS EVERY DAY.	18 SLOT MACHINES AND BLACKJACK TABLES OPEN 24 HRS EVERY DAY.	19 DOUBLE UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAMES	20 FOOD SHELF NITE DONATE ONE CANNED FOOD ITEM AND RECEIVE \$5 OFF ANY PACKAGE	21
23 MATINEE SESSION 1:00 P.M. B-SPECIAL SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30 P.M.	24 SLOT MACHINES AND BLACKJACK TABLES OPEN 24 HRS EVERY DAY.	25 SLOT MACHINES AND BLACKJACK TABLES OPEN 24 HRS EVERY DAY.	26 DOUBLE UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAMES	27 FOOD SHELF NITE DONATE ONE CANNED FOOD ITEM AND RECEIVE \$5 OFF ANY PACKAGE	28 11-

TREASURE ISLAND BINGO &

July

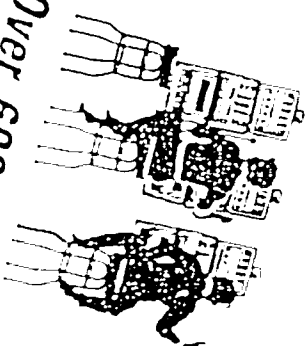
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday
<div> <div>EXHIBIT</div> <div>Fleunk 7</div> <div>KEK 09-27-05</div> </div>	1 GRAND OPENING BINGO FROM 11-9	2 GRAND OPENING BINGO FROM 11-9	3 DOUBLE-UP DRAWING WIN UP TO \$1000 ALSO DAYTIME BINGO 11-4 \$5.00 OFF EVE PACK FOR GRAND OPENING	4 LETS MAKE A DEAL ALSO DAYTIME BINGO 11-4 HAPPY 4TH	5 \$5.00 ANY EVE GRAND AL DAYTIME 1
7 MATINEE SESSION B-SPECIAL 1:00 \$5.00 OFF ANY EVE PACK FOR GRAND OPENING 5:30	8 SLOT MACHINES & BLACKJACK OPEN 24 HOURS EVERY DAY	9 SLOT MACHINES & BLACKJACK OPEN 24 HOURS EVERY DAY	10 DOUBLE-UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAMES 7:30	11 LETS MAKE A DEAL 7:30	12 2ND 2 CHANC ON ALL WIN \$ ON 2ND
14 MATINEE SESSION B-SPECIAL 1:00 SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30	15 SLOT MACHINES & BLACKJACK OPEN 24 HOURS EVERY DAY	16 SLOT MACHINES & BLACKJACK OPEN 24 HOURS EVERY DAY	17 DOUBLE-UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAMES 7:30	18 1/2 PRICE NITE BUY ANY PACKAGE ONLY 1/2 PRICE	19 E SE 7
21 MATINEE SESSION B-SPECIAL 1:00 SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30	22 SLOT MACHINES & BLACKJACK OPEN 24 HOURS EVERY DAY	23 SLOT MACHINES & BLACKJACK OPEN 24 HOURS EVERY DAY	24 DOUBLE-UP PLUS SPECIAL DRAWING FOR BRAND NEW BOAT	25 LETS MAKE A DEAL 7:30	26 WIN CI 11 DR 1- 10
28 MATINEE SESSION B-SPECIAL 1:00 SENIOR NITE \$5.00 OFF ANY PACKAGE 5:30	29 SLOT MACHINES & BLACKJACK OPEN 24 HOURS EVERY DAY	30 SLOT MACHINES & BLACKJACK OPEN 24 HOURS EVERY DAY	31 DOUBLE-UP YOUR LUCKY NUMBER COULD WIN YOU DOUBLE ON ALL 1 STAR GAM 30	ALL NEW EXC STARTING BE T HIGHER STAKES - M	



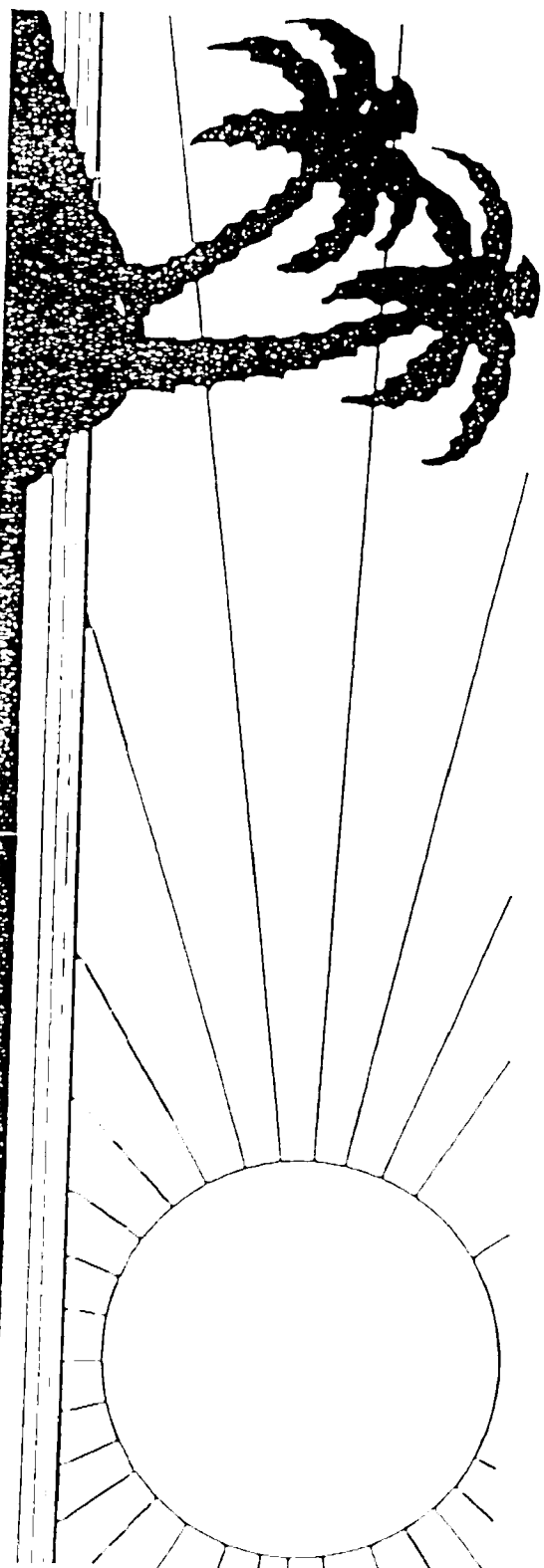
Black Jack Tables

**Casino Open 24 Hours
7 Days a Week**

000150



Over 600 Slots



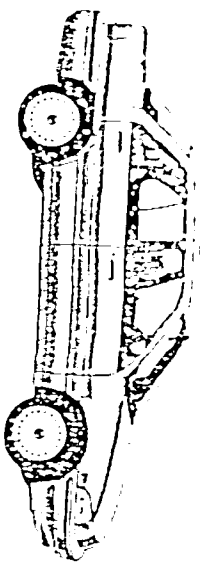
Treasure Island

C • A • S • I • N • O B • I • N • G • O

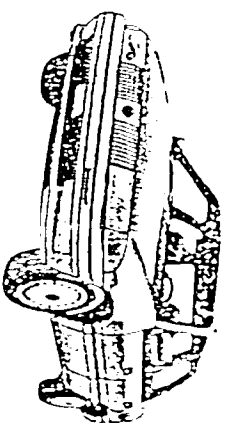
**New
Restaurant**

**Non Alcoholic
Bar**

SPECIAL EVENTS



GRAND OPENING JUNE 28th - JULY 7th



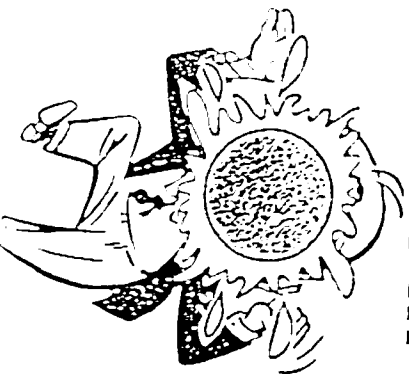
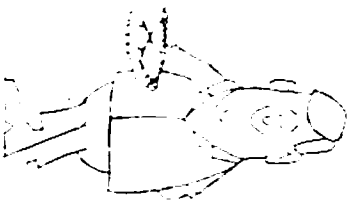
- ★ FREE GIFTS for the first 20,000 Guests
- ★ \$5.00 OFF any Evening Bingo Package
- 10 BRAND NEW CARS TO BE GIVEN AWAY**
(One Daily)

SATURDAY, JULY 6th

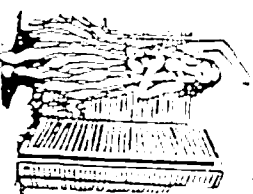
**1st Annual
Pie in the Face
Wite**

Win Cash
plus

*Nail your favorite Caller
with a pie in the face!*



SATURDAY, JULY 20



**Win A
Dream Vacation**



WEDNESDAY, JULY 24

**Double Up Bingo plus
Drawing For a
Brand New Boat!**



EXHIBIT

Element 8
KEY 09-27-05

SUNDAY, DECEMBER 31, 1991

in need of donations

Valley
Those who work at community centers are supposed to function as the backbone of social service, providing a variety of services to the community. But in recent years, many of these centers have been forced to turn to the public for help in order to keep their doors open.

The government has to pick up the tab for the food program, but the government has to pick up the tab for the food program, but the government has to pick up the tab for the food program.

The center in Apple Valley is feeding an average of 350 families a month from its food shelf, said Lisa Brown, food shelf manager.

The food program numbers have been steady, about three to four hundred families a month, according to Brown.

In July 1990, the agency conducted a survey of the food shelf. It found that 58 percent of the families were on welfare, 21 percent were on unemployment, and 21 percent were on other forms of public assistance.

Other needs of the community center include providing a place for people to meet, a place for people to get help, and a place for people to get help.

SUNDAY, DECEMBER 31, 1991

Everything you ever wanted to know about politics, e



NICK COLEMAN

Q. I am a 16-year-old boy who is interested in politics. I want to know what you think about the current state of the country. A. I think the country is in a state of flux. There are many problems, but there are also many opportunities. I think the key is to stay informed and to get involved.

Q. What has gotten into the Clinton campaign? A. I think the Clinton campaign is a reflection of the current state of the country. It is a campaign that is focused on the needs of the people.

Q. How do you rate the Clinton administration? A. I think the Clinton administration has been a success. It has brought about many positive changes to the country.

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TIP-OFF

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of her former boss when he officially steps down here. She's marrying Diamond's younger brother, St. Paul businessman, Gov. Illinois for the third time, someone in justice, presidency, and until he at least turns 40, in no credible rubber, cracked Venetian, 1970 who was as stiff as Vic Terr-

PROE
PHOTO

Coming in January, 1992.

**SUPERBOWL
NIGHT**

JANUARY 10TH

WEAR NFL CLOTHES
OR BRING A FOOTBALL GET
\$7 OFF A PACKAGE OR
\$14 OFF A FORTUNET

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
		1 Double Up Your lucky number could win you double on all one star games.	2 1/2 Price Buy any package for 1/2 price.	3 Team Nite Evening session 7:30 PM.
5 Seniors Nite \$5.00 Off any package/4 PM session.	6 Remember! Mini-sessions Tuesday-Friday 12 NOON-4 PM.	7 Cash Drawings! Every 15 minutes.	8 Double Up Your lucky number could win you double on all one star games.	9 Evening Session Starting at 7:30 PM.
12 Seniors Nite \$5.00 off any package/4 PM session.	13	14 Cash Drawings! Every 15 minutes.	15 Double Up Your lucky number could win you double on all one star games.	10 Team Nite Second Chance 2 chances to win all one star games. Win up to \$1,000 second chance.
19 Seniors Nite \$5.00 off any package/4 PM session.	20	21 Cash Drawings! Every 15 minutes.	22 Double Up Your lucky number could win you double on all One Star Games.	17 Team Nite Evening session 7:30 PM.
26 Seniors Nite \$5.00 Off any package/4 PM Session	27	28 Cash Drawings! Every 15 minutes.	29 Double Up Your lucky number could win you double on all One Star Games.	23 Evening Session Starting at 7:30.
			30 Customer Appreciation Day.	24 Team Nite Evening session 7:30 PM.
				31 Winner's Team Nite - Evening Session - 7:30 PM 1- \$1000 all winners for month 10- \$100 have winners circle cards

It's New Year. Come Uncover Some Buried

January 1007 Bingo Cal. adar

Treasure Island
Casino & Bingo



Come Aboard.

Treasure Island
Casino & Bingo

Treasure Island, the
former gaming casino
you the excitement of
slot and slot machines.
ables, or get in the fun
go. We also have a new
delicious entrees or
all happens around
of the week.
board. And we'll do our
go home a winner.

Come Aboard.

This New Year, Your Ship Is About To

Come aboard and join the fun and excitement. On Tuesdays in January we'll have cash drawings every 15 minutes starting at 7:45 PM. You can win anywhere from \$25 to \$150 in minutes!!

Don't forget to mark your calendar on the 26th. It's Superbowl Sunday

at Treasure Island, where we seat a winner. With big-screen the casino and specials through

And, watch for the Bonanza Program coming in January. It's sure to be a winner!

Treasure Island
Casino & Bingo

For the pirate

1000
STARTS
11:00 AM
\$250.000
PER GAME

WUHANNAH IN JUNE, 1992

OPENS
11:00 AM
11:00 AM
10 AM MON

SUNDAY MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY SATURDAY

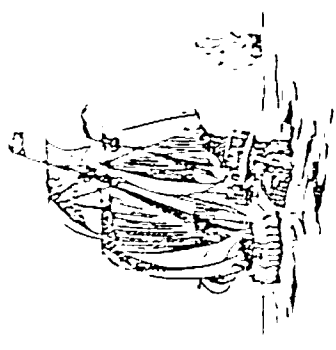
7 Seniors' Nite \$5.00 off any package. Dinner Trade-In Nite	1 Matinee 1 PM Session Neighbor Nite Dinner \$10.00 (Save \$2.00) Trade-In Nite	2 Matinee 1 PM Session Bingo Baccarat Hot Nite Trade-In Nite	3 Matinee 1 PM Session Double-Up Nite Double-Pak \$25.	4 Matinee 1 PM Session Combo Nite \$40 (Save \$15)	5 Matinee 1 PM Session Baseball Team Nite	6 Matinee 2:30 PM Session "B" Special Evening 7:30 Session
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June 25
Customer Appreciation Nite
We will give you a complimentary package to be played on another nite which is equal in value to the largest package you play tonight (1 gift per person).

EXHIBIT
Flamke 10
KEY 09-23-05

WUHANNAH IN JUNE, 1992

Treasure Island Casino & Bingo



Come Aboard.

Summer's Really Hot in All the Island.

Come aboard and join the fun and excitement. And there's no better way to kick off June than our new King & Queen Program. Watch for details and get ready for royal treatment!

Beginning Friday, June 5th, Baseball Team Nite will be played on the first and third Friday of each month. And dust off your cleats for World Series Day to be held October 23rd. Watch for it!

Speaking of baseball, don your Bingo Bunker baseball cap and get \$5.00 off any bingo game at the admissions counter every Tuesday in June.

For the pirate in all of us.
 Just 30 Minutes South Of The Minnesota/St. Paul Airport Off Highway 61
 1-800-222-7077

Treasure Island Casino & Bingo

So come aboard. And we'll do our best to see that you go home a winner.

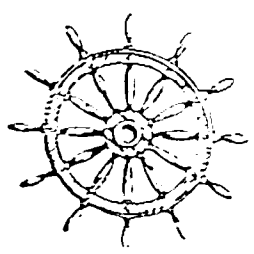
Welcome to Treasure Island, the Midwest's premier gaming casino. Where you can enjoy the excitement of over 1,000 keno, poker and slot machines, plus 52 blackjack tables, or get in the fun of Flip Stakes Bingo. We also have a new restaurant serving delicious entrees or tempting snacks. It all happens around the clock, every day of the week.

Come Aboard.

Don't forget, on the 7th and 28th of June if you bring us a dauber with any other bingo hall's name on it, we'll replace it with an Official Treasure Island Dauber absolutely FREE! And, everyone receives \$5 in casino cash with every package purchased.

As always, we have high stakes pull tabs for the instant win. So come on in to Treasure Island in June. Where the action's always hot!

Treasure Island Casino & Bingo



EXHIBIT

Exhibit 22
KEK 09-27-05



Meeting And Banquet Facilities:



Room	Dimensions	Square Feet	Capacity
Barbados Grand Ballroom	102' x 74'	7548	500
Show Room	115' x 75'	8625	500
Capri Ballroom	52' x 74'	3848	250
Tahiti Ballroom	49' x 74'	3626	250
Aruba Conference Room	24' x 14'	350	32
Malta Conference Room	24' x 14'	336	16
Aruba & Malta	49' x 14'	686	48

T 04533

Great Food As Well As Service.

Fresh-baked rolls, imported cheeses, savory soups, generous cuts of meat, plump juicy fruits, crisp, crunchy vegetables, heavenly desserts and servers who smile.

Our planning and catering staff understands how important food service is to any successful meeting or party. Choose from a wide selection of breakfast, snack, luncheon and dinner menu ideas. Treasure Island is your venue for consistent, high quality food and service.



All The Excitement Of The Island.

When work is done or the party winds down, there's nonstop 24 hour excitement going on right here. Your group can do it all—blackjack, bingo, video poker, video keno, video craps, slots and pull-tabs. It's an all day, all night party, and anyone over 18 is welcome any time.

So Many Ways To Play And Win.

Something is always happening at Treasure Island Casino. Like the Cash Tornado, a whirlwind of cash and big prizes. And the Gold Doubloon, a real buried treasure. Above and beyond all the casino action, there are three restaurants, bars, gift shops, ongoing drawings, free giveaways...a jackpot of daily surprises!

On With The Show!

Here's where you can see the big stars for free. Tuesday Night Comedy spotlights the funniest national comedy acts. Or enjoy live music from jazz to country. It's all free and it's all at Treasure Island.

A Pleasurable Port In The Storm.

Come to Treasure Island by land or by sea. Hundreds of RV parking bays are available, complete with water, sewer, electricity and near by fuel. Or you and your group can dock at the full service 134-slip marina for the day! Call the Prairie Island Visitors Center & Tourism Office at 1-800-883-8496 for reservations, details and other pleasurable ideas such as river cruises and shuttle trips between downtown Red Wing and Treasure Island Casino.



Bring Everybody To The Island.

Transport your group via luxury motorcoach or limousine. Some dates tend to fill quickly, so you'll want to plan ahead. Call today to reserve your next memorable event at Treasure Island.

1-800-222-7077

Catering Department - Ext. 551
Limousine Service - Ext. 541
Motor Coach Service - Ext. 590

Get Right Down To Business... Or Party On!

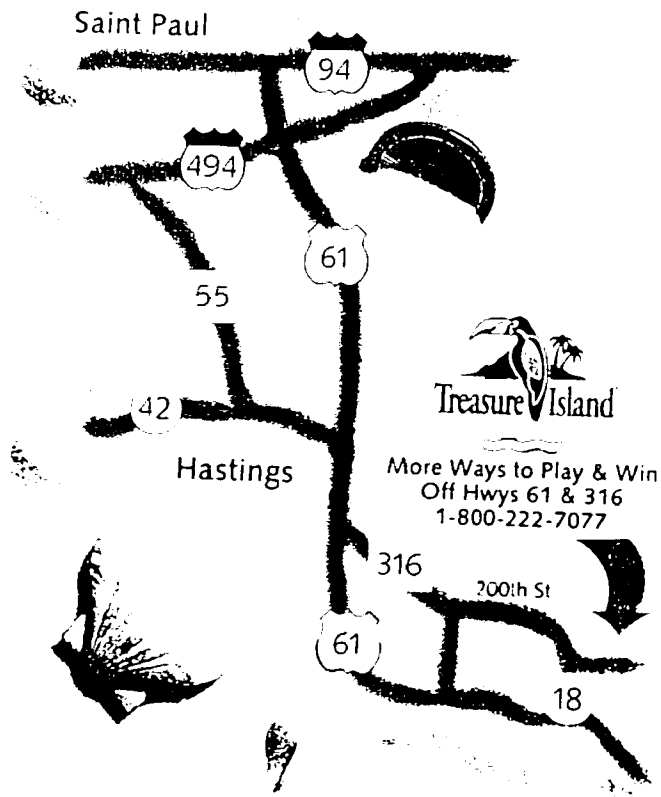
Come to Treasure Island for productive meetings with innovative surroundings. From hard working roll-up-your-sleeves board meetings to formal presentation dinners, we welcome your group with our own special brand of friendliness and professional service.

Come to Treasure Island for parties, showers, banquets and receptions, too. Menu choices are varied to suit the occasion. And the tropical atmosphere adds a charmingly exotic touch to your event.



Flexible Facilities— From Barbados To Aruba.

Hold a conference in Aruba, a meeting in Malta or a banquet in Barbados! Treasure Island has a space that's just right for your group.



This tropical island is closer than you might think.
We're located near Hastings, just off Highways 61 & 316.
Come play and win with us soon!

1-800-222-7077



Printed in USA

©1994 Treasure Island Casino

T 04538

Treasure Island Casino



Treasure Island

Come to the Island

TRIBAL COUNCIL TRAVEL TO LAS VEGAS SINCE 1997

MEETING / TRAVEL LOCATION / HOTEL	AUDREY KOHNEN	NOAH WHITE, JR	LU TAYLOR	DARR
World Gaming Congress & Expo, Las Vegas, NV				Se
Casino Financial Management & Budgeting, Las Vegas, NV			01/20/98-01/22/98	
Developing Tribal Budget Seminar, Las Vegas, NV			01/27/98-01/30/98	01/27
Gaming Background Investigations/Licensing, Las Vegas, NV				
Yucca Mountain & Co Shutes Reservation, Las Vegas, NV				
World Gaming Congress & Expo, Las Vegas, NV	09/17/98 - 09/26/98	09/17/98 - 09/26/98	09/17/98-09/26/98	09/17
National Gambling Impact Study Commis, Las Vegas, NV				11/08
Am Gaming, Lodging & Leisure Summit, Las Vegas, NV				01/11
Governmental Acctg & Indirect Cost Rates, Las Vegas, NV			01/13/99-01/15/99	01/13
World Gaming Congress & Expo, Las Vegas, NV	09/12/99 - 09/17/99	09/12/99 - 09/17/99	09/12/99-09/17/99	09/1
Yucca Mtn Tour w/NSP & Congressmen, Las Vegas, NV				10/16
International Assc of Chiefs of Police Indian Country Law Enforcement Section, Las Vegas, NV				02/2
International Security Conf & Expo, Las Vegas, NV		03/12/00 - 03/17/00		
World Gaming Conference, Las Vegas, NV	10/17/00 - 10/21/00	10/15/00 - 10/21/00	10/17/00-10/21/00	10/1
Yucca Mountain & Moapa Paiute Tribe, Las Vegas, NV	03/04/01 - 03/07/01	03/04/01 - 03/07/01	03/04/01-03/07/01	03/0
Indian Taxation/Falmouth Institute, Las Vegas, NV				03/3
Global Gaming Expo, Las Vegas, NV		09/29/01 - 10/04/01		09/2
Yucca Mountain Testimony, Las Vegas (Pahrump), NV				

EXHIBIT

Mont's E

10-22-00

TRIBAL COUNCIL TRAVEL TO LAS VEGAS SINCE 1997				
MEETING / TRAVEL LOCATION / HOTEL	DOREEN HAGEN	RON JOHNSON	HOTEL	
Casino Financial Management & Budgeting, Las Vegas, NV				
Developing Tribal Budget Seminar, Las Vegas, NV		01/27/98 - 01/30/98	Bally's	
Gaming Background Investigations/Licensing, Las Vegas, NV	04/14/98 - 04/18/98		San Reno Hotel	
Yucca Mountain & Co Shutes Reservation, Las Vegas, NV			Monte Carlo Hotel	
World Gaming Congress & Expo, Las Vegas, NV		09/17/98 - 09/26/98	New York New York	
National Gambling Impact Study Commis. Las Vegas, NV			MGM Grand	
Ann Gaming, Lodging & Leisure Summit, Las Vegas, NV			Bellagio Hotel	
Governmental Acctg & Indirect Cost Rates, Las Vegas, NV		01/11/99 - 01/16/99	Luxor Hotel	
World Gaming Congress & Expo, Las Vegas, NV		09/12/99 - 09/17/99	Rio Suites	
Tucaca Min Tour w/NSP & Congressmen, Las Vegas, NV				
International Assoc of Chiefs of Police Indian Country Law Enforcement Section, Las Vegas, NV				
International Security Conf & Expo, Las Vegas, NV				
World Gaming Conference, Las Vegas, NV	10/17/00 - 10/22/00		Monte Carlo - BW	
Yucca Mountain & Moapa Paiute Tribe, Las Vegas, NV	03/04/01 - 03/07/01		Venetian	
Indian Taxation/Edmundo Institute, Las Vegas, NV				
Global Gaming Expo, Las Vegas, NV	09/29/01 - 10/04/01		Venetian & Bellagio	
Yucca Mountain Testimony, Las Vegas (Pahrump), NV	10/11/01 - 10/13/01		Bellagio	

TO THANK YOU FOR VISITING
TREASURE ISLAND
 IN MINNESOTA,
 WE'D LIKE TO TREAT YOU TO
TREASURE ISLAND
 IN LAS VEGAS.

ISLAND

Tinies
 Treasure Island Casino & Bingo

THE ACTION IS HOTTER HERE

VOLUME 7 JANUARY/FEBRUARY, 1995

TRIPS GIVEN AWAY EVERY WEEKDAY IN JANUARY!

January, FREE of charge, and all month long, just for the fun of it, we're giving away a trip to Treasure Island for a pair of winners each weekday. And it's not just a trip to Treasure Island, it's a trip to Treasure Island in Las Vegas, including airfare and accommodations. The trip is good for two people, and it's a great way to spend the winter months.

EXHIBIT

RECEIVED
 CO. 2110

FRONT DESK-WRONG TREASURE ISLAND
INFORMATION SHEET

Date: 6/24/01

Time: 6:32pm

Guest Name: Glen Schreiner

Address: Box 56 West Highway 10

Phone Number: _____

Original Reservation Number: 409305

Quoted Room Rate: couldn't remember

Number of Nights: 1

Were we able to accommodate this guest here at Treasure Island? yes

(Yes/No/Partially?) yes

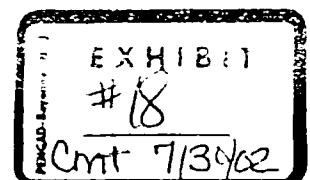
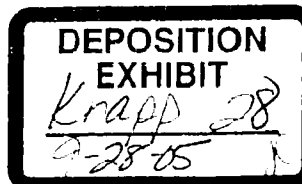
Explanation: Guest got flyer from Las Vegas - see attached -
Made reservation from:

How did this guest book this reservation? (Where did they find the number?)

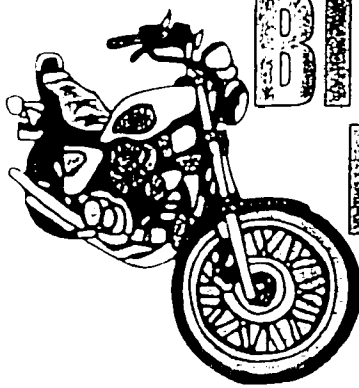
Number off flyer received in mail.

Form completed by: Tabby Simon

Please make every attempt to accommodate guests who booked in error at Treasure Island in Las Vegas.



TREASURE ISLAND PRESENTS



BIKES, BABES & BUCKS

**\$25,000
Slot
Tournament**

JUNE 24-26, 2001

Get your motor runnin' and head out for adventure at Treasure Island! You're gonna rock & roll all night and ride away with a share of a whole lotta CASH!

Sunday, June 24

Check into your room at an *easy ridin'* rate of \$45 per night for up to three nights
Session Registration & Gift Distribution

Monday, June 25

First day of tournament play (you'll play in two sessions)...
Spin your wheels and spin those reels!

Tuesday, June 26

Second day of tournament play...
Listen to the roar of the machines as you rack up those jackpots!

Everyone's a WINNER at the biggest Slot Rally around!

Call Casino Marketing at

800.944.3777

to make your reservations.

TREASURE ISLAND NOW OFFERS CASH BACK AND COMPLIMENTARIES
ON NICKEL AND QUARTER MACHINES.

Guests must be invited Treasure Island Slot Club Members and at least 21 years of age.
Treasure Island reserves the right to modify or limit participation at its own discretion.



P.O. Box 75
5734 Sturgeon Lake Road
Red Wing, MN 55066
Reservations: 888-867-STAY
FAX: (651) 385-2906
Business: (651) 388-6300

NAME: Glen Schreiner
STREET: Box 56 West Highway 10
CITY: Eleva
STATE: WI
ZIP: 54738
ARRIVE: 06/24/01
DEPART: 06/25/01
ADULTS: 2
MAKE OF CAR:
STATE:
ROOM: 241
RES#: 409305
DEPOSIT RECEIVED: 0.00
RATE: RACK / 40.50 (Incl. 10.00% Disc.)
METHOD OF PAYMENT: CASH ☐ CREDIT CARD ☐ CHECK ☐

COMMENTS

RM. 241
NAME: Schreiner, Glen
DEPART: 06/25/01
NO. IN PARTY: 2

I agree that my liability for this bill is not waived and agree to be personally liable in the event that the indicated person, company or association fails to pay the full amount of these charges.

SIGNATURE

CHECK OUT TIME IS 11 00 AM NO PETS ALLOWED



CHARGE CARD

Schreiner, Glen 409305

06/24/01

X 241 06/25/01

SIGNATURE

Schreiner, Glen 409305

06/24/01

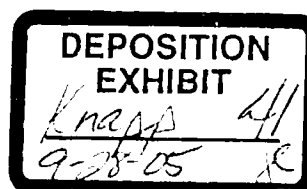
241 06/25/01

CALL TRACKING SUMMARY

	rate to high	no package	Group blk sold out	sold out weekend	sold out weekday	room type not avail	expect not met	wrong T.I.	rate info	lack of discount
Feb-99		2	18	2100	199	7	3	6	341	
Jan-99	5	4	22	1863	69	22	7	13	476	1
Dec-98	3	3	10	678	587	19	2	5	308	2
Nov-98	7	2	8	1147	97	26	3	16	381	1
Oct-98	15	6	6	1028	84	23	1	8	361	1
Sep-98	20		5	884	41	18		9	403	
Aug-98	54	1	12	740	7	25	1	14	592	
Jul-98	53	9	11	949	241	42	3	7	638	2
Jun-98	121	10	9	635	92	31	3	17	507	4
May-98	38	2	11	448	160	15	1	17	296	2
Apr-98	27	16	15	592	17	13	2	9	362	
Mar-98	23	20	7	1508	47	17	1	28	494	1
Feb-98	24	6	2	1533	100	9	1	14	262	2
Jan-98	30	12	2	1021	124	23	1	11	526	4
Dec-97	44	1	2	335	364	6	1	25	574	5
Nov-97	35	12	3	316	146	13	2	26	663	3
Oct-97	26	7	3	28	1460	30		20	717	1
Sep-97	31	10	2		730	64	7	11	632	1
Aug-97	100	9	3		139	39	12	4	748	8
Jul-97	22	5		134	9	2	2		511	4
Jun-97		62		192		5	4		649	12
May-97	22	29		478		12	7		396	14
Apr-97	40	8		1011			2			4
Mar-97	24	3		340			22			5
Feb-97										
Jan-97	1			1						2
Totals	744	239	151	17961	4713	461	88	260	10837	20

TOUR DEPT. CALLS

10 IN THE LAST 3 MONTHS



PLAINTIFF
EXHIBIT

k

RESERVATIONS DESK-WRONG TREASURE ISLAND
INFORMATION SHEET

Date: Feb 26-02

Time: 6:00 PM

Guest Name: Helen Walker

Address: _____

Phone Number: _____

How did they get our number? Internet

What made you realize that they did not want this Treasure Island?

When she asked if this was Treasure Island and
Reservation Agent: Sharon W. then gave me her address
of Utah.

Please make sure the guest is provided with the correct number for Treasure Island
Casino in Las Vegas.

Gave her the correct Number
for Vegas.

