

ESTTA Tracking number: **ESTTA163499**

Filing date: **09/18/2007**

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

Proceeding	91171687
Party	Defendant Centaur Entertainment, Inc. and Gay Days, Inc.
Correspondence Address	NICK DE BIASE NICHOLAS R. DE BIASE, ESQ. 45 MAIN STREET SUITE 707 BROOKLYN, NY 11201 UNITED STATES nick@centaurmusic.com
Submission	Motion to Amend Application
Filer's Name	Nicholas R. De Biase
Filer's e-mail	nick@centaurmusic.com
Signature	/Nicholas R De Biase/
Date	09/18/2007
Attachments	Motion Amend-final.pdf (4 pages)(65516 bytes) Motion Amend-Decl NDB-final.pdf (2 pages)(17710 bytes) Motion Amend-Decl CAM-final.pdf (2 pages)(1266453 bytes)

NICHOLAS R. DE BIASE, ESQ.
45 Main Street, Suite 707
Brooklyn, NY 11201
(718) 852-6777

Attorney for Defendants
CENTAUR ENTERTAINMENT, INC.
GAY DAYS, INC.

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

_____)	
MASTER ENTERTAINMENT, INC.,	)	Opposition No. 91171687
	)	Serial No. 78521976
Plaintiff/Opposer,)	
	)	MOTION TO AMEND
vs.	)	APPLICATION TO ADD
	)	NAME OF JOINT OWNER
CENTAUR ENTERTAINMENT, INC.	)	AND TO AMEND DATE OF
and GAY DAYS, INC.	)	FIRST USE
)	
Defendants.)	
_____)	

Defendant Centaur Entertainment, Inc. (“Centaur”) hereby moves this Board to allow Centaur to amend its application in Serial No. 78521976 for the mark GAY DAYS (the “Application”) to add the name of the joint owner, Gay Days, Inc. Centaur further moves to amend the Application to modify the date of first use of the mark GAY DAYS to August 25, 1997, which is the date of first use in commerce of the mark GAY DAYS by joint owner Gay Days, Inc.

A. Amendment to Add Name of Joint Owner

TBMP 512.03 provides that, “If an assignment or change of name document is recorded in the Assignment Division well prior to the time the subject application is prepared for issuance of a registration, the registration may issue in the name of the assignee, or in the new name, even if no 37 CFR § 3.85 request is filed. However, the registration may issue in the name of the assignor, or in the old name. The purpose of the written request is to call the attention of the USPTO to the assignment, or change of name, and thus to ensure that the registration issues in the name of the assignee, or in the new name. Accordingly, it is sufficient for the purpose if applicant files a paper referring to the assignment or change of name, and the assignment or change of name document has either been recorded, or applicant states that the document has been submitted for recording.” (emphasis supplied)

37 C.F.R. section 3.85 further provides that the issue of a trademark registration to an assignee is permitted provided the applicant submits a written request to the Trademark Trial And Appeal Board. The present motion is submitted to satisfy these requirements. This motion is based on the assignment between Centaur and Gay Days, Inc., which was recorded with the Trademark Office and filed with this Board on August 11, 2006 as part of the Declaration of Nicholas R. De Biase filed that same date. Pursuant to said assignment, Gay Days, Inc. became a joint owner of the subject mark effective as of May 1, 2005. Accordingly, Gay Days, Inc. is entitled to have its name appear on the to be issued registration as a joint owner of the GAY DAYS mark.

B. Motion To Amend Date of First Use.

A party seeking to “tack” the use of an earlier mark onto its later mark may do so if the earlier and later marks are legal equivalents, or are indistinguishable from one another.

“The previously used mark must be the legal equivalent of the mark in question or indistinguishable therefrom, and the consumer should consider both as the same mark. [T]he later mark should not materially differ from or alter the character of the mark attempted to be ‘tacked.’” *Van Dyne-Crotty Inc. v. Wear-Guard Corp.*, 926 F.2d 1156, 1159, 17 USPQ2d 1866 (Fed. Cir. 1991). “[O]ur inquiry must focus on both marks *in their entirety* to determine whether each conveys the same commercial impression...” *Van Dyne-Crotty*, at 1160 (emphasis in the original).

The mark used by applicant Centaur – GAY DAYS – and the mark used by Gay Days, Inc. – GAY DAYS – are identical and have the exact same commercial impression; even the stylized lettering of Centaur’s use of the GAY DAYS mark (as it appears on the specimen filed with the Application) is the exact same as that of the GAY DAYS mark used by Gay Days, Inc. Declaration of Nicholas R. De Biase at paragraph 2.

The present motion to amend the date of first use of the subject mark is based on the date of first use in commerce of the GAY DAYS mark by joint applicant and joint owner Gay Days, Inc. Gay Days, Inc. owns the trademark for the name GAY DAYS in the State of Florida and first used the subject GAY DAYS mark in commerce on March 3, 1998. *See* Declarations of Nicholas R. De Biase and Chris Alexander-Manley filed with this motion.

Accordingly, the date of first use of the mark GAY DAYS for the current applications should

//

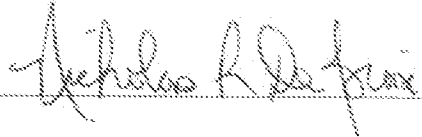
be tacked back to the date of first use by joint owner Gay Days, Inc. and the date of first use
in the Application should be amended to ~~March 2008~~, August 25, 1997. ^{NS}

Dated: September 18, 2007

Respectfully submitted,

CENTAUR ENTERTAINMENT, INC.

By: _____



Nicholas R. De Biase, Esq.

Attorney for Defendants
CENTAUR ENTERTAINMENT, INC.
GAY DAYS, INC.

NICHOLAS R. DE BIASE, ESQ.
45 Main Street, Suite 707
Brooklyn, NY 11201
(718) 852-6777

Attorney for Defendants
CENTAUR ENTERTAINMENT, INC.
GAY DAYS, INC.

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

_____)	
MASTER ENTERTAINMENT, INC.,	)	Opposition No. 91171687
	)	Serial No. 78521976
Plaintiff/Opposer,)	
	)	DECLARATION OF
vs.	)	NICHOLAS R. DE BIASE
	)	IN SUPPORT OF MOTION
CENTAUR ENTERTAINMENT, INC.	)	TO AMEND APPLICATION
and GAY DAYS, INC.)	
)	
Defendants.)	
_____)	

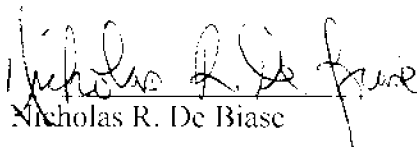
I, Nicholas R. De Biase, hereby repeat, restate and incorporate by reference each of the statements made by me in the Declaration of Nicholas R. De Biase filed on August 11, 2006 with the Board in this matter.

The mark used by applicant Centaur – GAY DAYS – and the mark used by Gay Days, Inc. – GAY DAYS – are identical and have the exact same commercial impression; even the stylized lettering of Centaur’s use of the GAY DAYS mark (as it appears on the

specimen filed with the Application) is the exact same as that of the GAY DAYS mark used by Gay Days, Inc.

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

Executed this 18th day of September, 2007 at Brooklyn, New York.



Nicholas R. De Biase

NICHOLAS R. DE BIASE, ESQ.
45 Main Street, Suite 707
Brooklyn, NY 11201
(718) 852-6777

Attorney for Defendants
CENTAUR ENTERTAINMENT, INC.
GAYDAYS, INC.

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

.....)	
MASTER ENTERTAINMENT, INC.,	)	Opposition No. 91171687
	)	Serial No. 78521976
Plaintiff/Opposer,)	
	)	DECLARATION OF CHRIS
vs.	)	ALEXANDER-MANLEY
)	
CENTAUR ENTERTAINMENT, INC.)	
and GAY DAYS, INC.)	
)	
Defendants.)	
.....)	

I, Chris Alexander-Manley, do declare as follows:

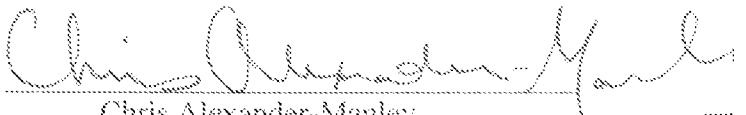
1. I am the vice-president of Gay Days, Inc., d.b.a. GayDayS.com, GayOrlando.com, GayFlorida.com, Gay Orlando Talk and Gay Orlando Film Festival (collectively "Gay Days, Inc."). In that capacity, I have first hand knowledge of the following facts.

2. Gay Days, Inc. has registered the mark GAYDAYS in the State of Florida under the classes 0039 and 0041. The number of this mark is T99000001144. Said mark was registered on September 20, 1999.

3. This GAYDAYS mark was first used in commerce by Gay Days, Inc. on August 25, 1997.

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

Executed this ~~14th~~ day of September, 2007 at Orlando, Florida.


Chris Alexander-Manley