

ESTTA Tracking number: **ESTTA148079**

Filing date: **06/27/2007**

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

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Yonkers Racing Corporation
Granted to Date of previous extension	06/27/2007
Address	810 Yonkers Avenue Yonkers, NY 10704 UNITED STATES

Attorney information	Thomas G. Bailey, Jr. Bleakley, Platt & Schmidt, LLP One North Lexington Avenue White Plains, NY 10601 UNITED STATES tbailey@bpslaw.com Phone:9142876127
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### Applicant Information

Application No	78715299	Publication date	02/27/2007
Opposition Filing Date	06/27/2007	Opposition Period Ends	06/27/2007
Applicant	Empire Resorts, Inc. Route 17B PO Box 5013 Monticello, NY 12701 UNITED STATES		

### Goods/Services Affected by Opposition

Class 041. All goods and services in the class are opposed, namely: casino and gaming services; providing casino and gaming facilities
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	76386820	Application Date	03/25/2002
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	EMPIRE CITY		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 036. First use: First Use: 2006/10/11 First Use In Commerce: 2006/10/11 WAGERING SERVICES Class 041. First use: First Use: 2006/10/11 First Use In Commerce: 2006/10/11 ENTERTAINMENT SERVICES IN THE NATURE OF HORSE RACING

Attachments	76386820#TMSN.gif ( 1 page )( bytes ) NOTICE.OPPOSITION.6.27.07.pdf ( 4 pages )(227438 bytes )
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Signature	/Thomas G. Bailey, Jr./
Name	Thomas G. Bailey, Jr.
Date	06/27/2007

**In the Matter of Trademark Application Serial No. 78715299**

**For the Mark EMPIRE**

**Published in the Official Gazette on February 27, 2007**

**YONKERS RACING CORPORATION, INC.**

**v.**

**EMPIRE RESORTS, INC.**

**NOTICE OF OPPOSITION**

Opposer, Yonkers Racing Corporation a New York Corporation with premises located at 810 Yonkers Avenue, Yonkers, New York, 10704, believes that it will be damaged by the registration of the mark shown in Application Serial No. 78715299 and hereby opposes same.

The above referenced application for EMPIRE was filed in a single class, International Class 41, by Applicant Empire Resorts, Inc. on September 18, 2005 and was published for opposition on February 27, 2007. On March 27, 2007, Opposer filed a request for a thirty-day extension of time to oppose registration until April 28, 2007, which request was duly granted. On April 25, 2007, opposer filed a second extension of time to oppose registration, which request was granted, extending the time to respond until June 27, 2007. Accordingly, this notice of opposition is timely filed.

As grounds for opposition, Opposer declares:

1. Opposer is the applicant for the trademark for EMPIRE CITY, U.S. Serial No. 76386820. EMPIRE CITY and variations of that phrase that employ the "Empire" formative have been used and associated with Opposer's horse racing, entertainment and wagering activities since 1899 when Opposer's business was founded as the Empire City Trotting Club.

2. On March 25, 2002, Opposer filed its application for the mark EMPIRE CITY on an intent to use basis. On March 6, 2007, Opposer timely filed a statement of use for its EMPIRE CITY mark, declaring that Opposer has used the mark EMPIRE CITY in commerce continuously since October 11, 2006 in connection with its operation and promotion of wagering services and entertainment services in the nature of horse racing.

3. On June 5, 2007, the examining attorney accepted the Opposer's Statement of Use approving Opposer's mark for registration on the principal register.

4. Opposer's EMPIRE CITY premises and operations are located in Yonkers, New York. During the course of the past year or more Opposer has been heavily promoting its EMPIRE CITY horse racing, entertaining and wagering business in the New York City metropolitan and tri-state areas, the Hudson Valley and the Catskills, and the entire Northeast United States.

5. Opposer's EMPIRE CITY mark is symbolic of extensive goodwill and consumer recognition built by Opposer through Opposer's advertising, promotion and sale of its services under the EMPIRE CITY mark over the course of the past century, and particularly during the past year.

6. Applicant filed its application for EMPIRE on September 18, 2005 on an intent to use basis, without reference to any date of first use.

7. Applicant's mark is substantially similar to Opposer's mark, and relies solely on the name "Empire" which is the exact formative that appears as the dominant part of Opposer's mark.

8. Applicant seeks to register its mark for EMPIRE in International Class 41 for casino and gaming services, which is substantially the same as Opposer's prior application in

International Class 36 for wagering services and International Class 41 for entertainment services in the nature of horse racing.

9. Applicant seeks the exclusive right to use the name EMPIRE in connection with casino and gaming services and providing casino and gaming facilities which are similar, if not virtually identical to the description of services in Opposer's application. Moreover, Applicant's address is Monticello, New York, where Applicant operates horse racing and wagering facilities known as the Monticello Raceway, less than 90 miles away from Opposer's EMPIRE CITY and Yonkers Raceway facilities located in Yonkers, New York.

10. In view of the essentially identical nature of the dominant word in their respective marks, the virtual identical nature offered by the services of the respective parties, and the close proximity of their respective facilities, it is alleged that Applicant's mark so resembles Opposer's mark as to be likely, indeed absolutely certain, to cause confusion, or to cause mistake, or to deceive, or to falsely suggest an association between Opposer and Applicant, and the gaming and horse racing services offered by both parties.

11. The substantial likelihood of confusion, mistake, deception or false association between Applicant's mark and Opposer's proposed mark will cause irreparable damage to the extensive goodwill and consumer recognition that Opposer has carefully created and built in to its mark.

WHEREFORE, Opposer prays that said Application Serial No. 78715299 be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

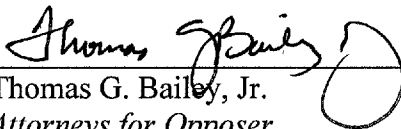
Opposer herewith submits the requisite filing fee in the amount of \$600.00.

Opposer hereby appoints Thomas G. Bailey, Jr. of the law firm of Bleakley Platt & Schmidt, LLP to act as attorney for Opposer herein, with full power to prosecute said opposition, to transact all relevant business with the Patent and Trademark Office and in the United States Courts and to receive all official communications in connection with this opposition.

Dated: June 27, 2007

Respectfully submitted,

BLEAKLEY PLATT & SCHMIDT, LLP

By:   
Thomas G. Bailey, Jr.  
*Attorneys for Opposer*  
Yonkers Racing Corporation, Inc.