

ESTTA Tracking number: **ESTTA291233**

Filing date: **06/22/2009**

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

Proceeding	91190177
Party	Defendant Jonas Lowrance
Correspondence Address	MICHAEL J. MCCUE LEWIS AND ROCA LLP 3993 HOWARD HUGHES PKWY STE 600 LAS VEGAS, NV 89169-5996 TRADEMARKS-LASVEGAS@LRLAW.COM
Submission	Answer and Counterclaim
Filer's Name	Linda M. Norcross
Filer's e-mail	TRADEMARKS-LASVEGAS@LRLAW.COM
Signature	/Linda M. Norcross/
Date	06/22/2009
Attachments	Answer - Oppo 91190177 (SN 77552843).pdf (6 pages)(17615 bytes)

Registration Subject to the filing

Registration No	2734651	Registration date	07/08/2003
Registrant	OPBIZ, L.L.C. 3667 Las Vegas Boulevard South Las Vegas, NV 89109 UNITED STATES		
Grounds for filing	The registered mark has been abandoned.		

Goods/Services Subject to the filing

Class 043. First Use: 2000/05/02 First Use In Commerce: 2000/05/02 All goods and services in the class are requested, namely: Bar and lounge services
--

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

OpBiz, LLC)	Proceeding No. 91190177
)	
)	Mark: ROKVEGAS
vs.)	
)	Serial No. 77/552843
)	
JONAS LOWRANCE)	Date of Application: August 21, 2008
)	
)	Applicant.
)	

ANSWER AND COUNTERCLAIM

Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Arlington, VA 22313-1451

Jonas Lowrance, (“Lowrance” or “Applicant”) hereby answers the Notice of Opposition (“Opposition”) filed by OpBiz, L.L.C. (“OpBiz” or “Opposer”), which opposes Applicant’s application (Serial No. 77/552,843) for the mark ROKVEGAS, and counterclaims to cancel OpBiz’s trademark registration (No. 2734651) for the ROC BAR mark.

ANSWER

1. Answering Paragraph 1 of the Opposition, Applicant admits that Opposer is the owner and operator of the Planet Hollywood Resort and Casino in Las Vegas, Nevada and admits that Opposer purchased the property and business now operating as the Planet Hollywood Resort and Casino, in 2003 after the Aladdin Resort and Casino filed for bankruptcy. Applicant lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph, and therefore, denies the allegations contained therein.

2. Answering Paragraph 2 of the Opposition, Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, denies the allegations contained therein.

3. Answering Paragraph 3 of the Opposition, Applicant admits that Opposer has undertaken a massive, multi-year rebranding and renovation project of the business and property, and admits that the Planet Hollywood Resort and casino is now a shopping, dining, nightlife and gambling destination in the center of the Las Vegas strip. Applicant lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph, and therefore, denies the allegations contained therein.

4. Answering Paragraph 4 of the Opposition, Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, denies the allegations contained therein.

5. Answering Paragraph 5 of the Opposition, Applicant denies that during the operation of the Roc Bar, it became a well-known and popular fixture in Las Vegas nightlife. Applicant lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations contained in this paragraph, and therefore, denies the allegations contained therein.

6. Answering Paragraph 6 of the Opposition, Applicant denies that Banger Brands, LLC opened a bar and nightclub called “RokVegas” inside the New York - New York Hotel and Casino. Applicant admits that it filed the Application to register its mark in the USPTO on an intent to use basis for “[c]lothing, namely, t-shirts, tank tops, jackets, sweat shirts, sweat pants, shorts, swim wear, skirts, blouses, pants, caps, hats and bandannas; headwear” in International Class 25.

7. Answering Paragraph 7 of the Opposition, Applicant admits that on August 21, 2008, Opposer notified Applicant of its objections to Applicant's use of Applicant's Mark, and on November 24, 2008, Opposer notified Applicant of its objection to Applicant's Mark as depicted in the Application.

8. Answering Paragraph 8 of the Opposition, Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, denies the allegations contained therein.

9. Answering Paragraph 9 of the Opposition, Applicant denies the allegations contained therein.

10. Answering Paragraph 10 of the Opposition, Applicant denies the allegations contained therein.

COUNT I

(Likelihood of Confusion)

11. Paragraph 11 of the Opposition does not call for an answer from Applicant.

12. Answering Paragraph 12 of the Opposition, Applicant denies the allegations contained therein.

COUNT II

(Fraud)

13. Paragraph 13 of the Opposition does not call for an answer from Applicant.

14. Answering Paragraph 14 of the Opposition, Applicant denies the allegations contained therein.

15. Answering Paragraph 15 of the Opposition, Applicant denies the allegations contained therein.

16. Answering Paragraph 16 of the Opposition, Applicant admits that Cancellation Proceeding 92046206 was denied with prejudice. Applicant denies the remaining allegations contained therein.

17. Answering Paragraph 17 of the Opposition, Applicant lacks sufficient information to form a belief as to the truth or falsity of the allegations contained in this paragraph, and therefore, denies the allegations contained therein.

COUNT III

(No Bona Fide Intent to Use)

18. Paragraph 18 of the Opposition does not call for an answer from Applicant.

19. Answering Paragraph 19 of the Opposition, Applicant denies the allegations contained therein.

REQUEST FOR RELIEF

20. Answering Paragraph 20 of the Opposition, Applicant denies the allegations contained in this paragraph.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Opposer's opposition is barred based upon Opposer's unclean hands.

COUNTERCLAIM FOR CANCELLATION

For its Counterclaim for Cancellation, Applicant alleges as follows:

1. Upon information and belief, in 2000, Aladdin Gaming LLC ("Aladdin") owned and operated the Aladdin Resort Hotel and Casino in Las Vegas, Nevada.

2. Upon information and belief, Aladdin began using the ROC BAR mark for a lounge at the resort in 2000.

3. Upon information and belief, Aladdin closed the ROC BAR lounge in 2003.

4. On July 8, 2003, the USPTO issued federal trademark registration number 2734651 to Aladdin for the ROC BAR mark for “bar and lounge” services in International Class 43 (“ROC BAR Registration”).

5. Upon information and belief, in 2003 or 2004, Aladdin assigned its right, title and interest in and to the ROC BAR Registration to Opposer (“Assignment”).

6. Upon information and belief, as of the date of the Assignment, Aladdin had ceased using the ROC BAR mark and did not have the intent to resume use of the ROC BAR mark.

7. Upon information and belief, after the date of the Assignment, OpBiz did not use the ROC BAR mark.

8. Upon information and belief, as of the date of the Assignment, OpBiz did not have the intent to resume use of the ROC BAR mark.

COUNT I

(Cancellation)

9. Applicant repeats and realleges the allegations set forth in Paragraphs 1 through 8 of the Counterclaim.

10. Upon information and belief, Aladdin and/or OpBiz abandoned any right, title, and interest in and to the ROC BAR mark and ROC BAR Registration.

11. Applicant will be damaged by the continued registration of the ROC BAR mark.

REQUEST FOR RELIEF

Applicant prays that the ROC BAR Registration be cancelled in its entirety and for such other relief in law or equity to which Applicant is entitled.

The filing fee for this Counterclaim for Cancellation has been submitted herewith.

Dated: June 22, 2009

LEWIS AND ROCA LLP

/s Michael J. McCue
Michael J. McCue
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
(702) 949-8200
(702) 949-8363 (facsimile)
Attorneys for Jonas Lowrance

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **ANSWER AND COUNTERCLAIM** upon Opposer's counsel by depositing a copy thereof in the United States Mail, first-class postage prepaid on June 23, 2009, addressed as follows:

Floyd A. Mandell
Breighanne A. Eggert
Katten Muchin Rosenman LLP
525 West Monroe Street
Chicago, IL 60661
floyd.mandell@kattenlaw.com
breighanne.eggert@kattenlaw.com
deborah.wing@kattenlaw.com

Dated this 22nd day of June, 2009.

/s Tenesa S. Scaturro
An Employee of Lewis and Roca LLP