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Filing date: **07/22/2014**

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

Proceeding	91215415
Party	Plaintiff LVGV, LLC
Correspondence Address	HARA K JACOBS BALLARD SPAHR LLP 1735 MARKET STREET, 51ST FLOOR PHILADELPHIA, PA 19103-7599 UNITED STATES jacobsh@ballardspahr.com, larsont@ballardspahr.com, shor-em@ballardspahr.com, phila_tmddocketing@ballardspahr.com, cramerp@ballardspahr.com
Submission	Other Motions/Papers
Filer's Name	Hara K. Jacobs
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Signature	/Hara K. Jacobs/
Date	07/22/2014
Attachments	Motion to Consolidate.pdf(214113 bytes )

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

LVG V, LLC,	:	
	:	
Opposer,	:	
	:	
	:	91215208
v.	:	91215215
	:	Opposition Nos.: 91215216
	:	91215246
Empire Resorts, Inc.,	:	91215247
	:	91215415
Applicant.	:	

**MOTION TO CONSOLIDATE**

Pursuant to Rule 42(a) of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Opposer, LVGV, LLC (“Opposer”), through its attorneys, Ballard Spahr LLP, hereby moves to consolidate the above-captioned six opposition proceedings between the parties hereto concerning Applicant’s attempt to register the marks Me. (Stylized) and M (Stylized) for casino, entertainment, hotel, restaurant, and bar services, and a variety of playthings and sporting equipment.

**PRELIMINARY STATEMENT**

Applicant, which intends to open a destination casino resort in New York, filed six applications for two marks containing the identical stylized “M” for hotel, casino, entertainment, restaurant, and bar services, as well as other goods and services that typically emanate from a casino resort, including a variety of playthings (e.g., dice and playing cards) and sporting equipment (e.g. tennis racquets). Opposer is the owner of the M Resort, a destination casino resort in Las Vegas. Opposer has registered and uses several “M” marks to designate the source of its M Resort and the goods and services offered at its casino resort property, including

hotel, casino, entertainment, restaurant, and bar services. Opposer opposed the six applications because Applicant's proposed M marks are likely to cause confusion with Opposer's M marks.

All of the proceedings involve common questions of law and fact—that is, whether Applicant's M marks for hotel, casino, entertainment, restaurant, and bar services, and a variety of playthings and sporting equipment associated with a casino resort are likely to cause confusion with Opposer's M marks for the goods and services it offers at its casino resort property.

Because all of the proceedings are between the identical parties, and because consolidating the proceedings will save the parties and the Board substantial time, effort and expense, Opposer respectfully submits that consolidating the proceedings is warranted.

**STATEMENT OF FACTS AND  
PROCEDURAL HISTORY**

Applicant seeks to register the following marks:

**Me.**



for the following goods and services:



Class 41: Casino services; gambling services; entertainment services in the nature of live performances by singers, comedians, dancers, and musical groups; entertainment services in the nature of providing closed circuit and pay-per-view performances of concerts, performances by musical groups, and sporting events to resort guests; entertainment services in the nature of providing horse racing for wagering; entertainment service in the nature of providing facilities, coaching and instruction for personal exercise, fitness, and sporting endeavors in the nature of weight and endurance training, swimming, golf, tennis, hiking, horseback riding, skeet and trap shooting.

Class 43: Resort hotel services; resort lodging services; restaurant, catering, bar, nightclub and cocktail lounge services; provision of

general purpose facilities for meetings, conferences and exhibitions; provision of banquet and social function facilities for special occasions; and reservation service for hotel accommodations for others.

Class 28: Playing cards; dice; other playthings and sporting articles, namely, dolls, baby rattles, miniature toy cars, boats, trains, airplanes, rockets and spaceships; molded toy figurines; toy guns; water pistols; rubber balls; spinning tops; tennis balls and racquets; golf clubs and golf balls; beach balls; croquet mallets and balls; table tennis paddles and balls; lawn bowling balls; lacrosse sticks and balls; footballs; hockey pucks and sticks; board games; baseball bats, balls and gloves; softball bats, balls and gloves; badminton racquets; shuttlecocks; water polo balls; billiards and pool cues.

Applicant filed a total of six applications for the two marks for the identical goods and services in three International Classes. In short, Applicant chose to apply for a separate registration for each International Class for both marks:

<i>Applications at Issue</i>	<b>Class 28</b>	<b>Class 41</b>	<b>Class 43</b>
	App. Serial No. 85736471	App. Serial No. 85736924	App. Serial No. 85737435
	App. Serial No. 85733861	App. Serial No. 85734289	App. Serial No. 85734672

Opposer LVGV has opposed the six applications on the ground of likelihood of confusion, and is asserting its use of, and registrations for, the marks M; M RESORT; M CAFÉ; M RESORT \* SPA \* CASINO LAS VEGAS; I M agine REWARDS; and M IS FOR ME

(collectively the “M Marks”) in each of the six proceedings. Specifically, Opposer has alleged that Applicant’s marks will likely cause confusion with Opposer’s M Marks, which are used in connection with Opposer’s hotel, casino, bar, restaurant, and related goods, services, and businesses. Opposer is pleading the identical federal registrations incorporating its M Marks in each of the six proceedings for the Oppositions: Registration Nos. 3,667,648; 3,411,031; 3,628,876; 3,632,946; 3,544,752; 3,896,121; 3,896,122; 3,977,752; 3,627,974; 3,664,380; 3,747,310; 3,620,814; 3,620,816; 3,920,133; 3,512,483; and 3,894,290. (See Exhibit A to Notice of Opposition Nos. 91215415; 91215216; 91215247; 91215246; 91215215; and 91215208).

Currently, there are six opposition proceedings pending between the parties: Proceeding Nos. 91215415 (Me. for Class 28); 91215216 (Me. for Class 41); 91215247 (Me. for Class 43); 91215246 (M for Class 28); 91215215 (M for Class 41); and 91215208 (M for Class 43) (collectively, the “Proceedings”). With regard to each of the Proceedings, Applicant has filed an Answer, the parties have conducted a Discovery Conference, and the parties have exchanged Initial Disclosures. Discovery has not closed in any of the Proceedings.

On May 15, 2014 during the Discovery Conference, Opposer requested that Applicant consent to consolidation of the six Proceedings to save the parties and the Board time, effort, and expense. Applicant refused.

### **ARGUMENT**

The Board should consolidate the six Proceedings because all of the Proceedings involve common questions of law and fact, are between the identical parties, and consolidation will save the parties and the Board substantial time, effort and expense. See TBMP § 511.

In each proceeding, Applicant seeks to register marks with the stylized “M” depicted below for casino, entertainment, recreation, hotel, restaurant, and bar services, and a variety of playthings and sporting equipment:



There are six Proceedings because Applicant filed six different applications for what are two substantially similar M marks. Although each class of goods and services is represented in a separate application, the identified goods and services are all of a type that typically emanate from resort casinos, including hotel, casino, entertainment, restaurant, and bar services, and a variety of playthings (novelty casino equipment and hotel gift shop merchandise) and sporting equipment (resort recreation items like tennis balls and racquets). In each Proceeding, Opposer has cited the same marks comprising and incorporating its M Marks for hotel, casino, bar, restaurant, and related goods, services, and businesses. Accordingly, each of the six Proceedings involves the same or a substantially similar applied-for stylized M mark, the identical goods and services in Classes 28, 41 and 43, and the same pleaded marks and registrations owned by Opposer.

Opposer has opposed registration of the applied-for marks for all of the goods and services in each of the applications. The ultimate issue to be decided in each proceeding—the likelihood of confusion arising from Applicant’s proposed use of the stylized M in the applied-for M and Me. marks to designate its hotel, casino, bar, restaurant, and variety of playthings and sporting equipment—is identical. Likewise, the facts presented and legal arguments that the parties will make in each proceeding will be virtually identical.

Applicant’s Initial Disclosures underscore the commonality of the questions of law and fact in each of the Proceedings. Applicant’s Initial Disclosures for each Proceeding are identical. (Initial Disclosures, attached hereto as Exhibit A.) For each of the six Proceedings,

Applicant identified the same person who is likely to have discoverable information, and the same category of documents it is likely to rely on in support of its defenses.

Under the circumstances, it would squander the parties' time and resources as well as the time and resources of the Board to move forward with six separate proceedings, including separate discovery, testimony and trial briefs for each of the proceedings. In contrast, if the proceedings are consolidated, there will be no prejudice to the parties because discovery remains open, the proceedings are in virtually identical procedural postures, and the parties will be making the same general factual and legal arguments in each proceeding.

In sum, Opposer's Motion to Consolidate should be granted because the proceedings involve the same parties and common questions of law and fact, consolidation will save substantial time and expense, and the parties will not suffer prejudice as a result of consolidation. See, e.g., Saint-Gobain Abrasives, Inc. v. Unova Industrial Automation Systems, Inc., 66 U.S.P.Q.2d 1355 (TTAB 2003) (consolidating cancellation and opposition proceedings concerning three different marks because the proceedings involved the same parties and common questions of law and fact); G-Mar Development Corporation v. Tully's Coffee Corporation, 46 U.S.P.Q.2d 1797 (TTAB 1998) (consolidating opposition proceedings concerning the same mark for different goods and services because the proceedings involved the same parties and common questions of law and fact).

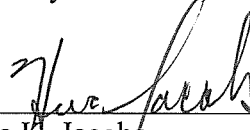
**CONCLUSION**

Opposer's Motion to Consolidate Opposition Nos. 91215415; 91215216; 91215247; 91215246; 91215215; and 91215208 concerning Applicant's attempt to register the marks M (Stylized) and Me. (Stylized) should be granted for the reasons set forth herein.

Respectfully submitted,

Date: July 22, 2014

By: \_\_\_\_\_



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[larsont@ballardspahr.com](mailto:larsont@ballardspahr.com)

ATTORNEYS FOR OPPOSER



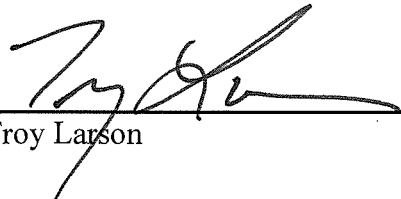
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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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	:	
Opposer,	:	
	:	
	:	91215208
v.	:	91215215
	:	Opposition Nos.: 91215216
	:	91215246
Empire Resorts, Inc.,	:	91215247
	:	91215415
Applicant.	:	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of Opposer's Motion to Consolidate in each of the above-captioned Opposition Proceedings was served by first-class mail and e-mail on July 22, 2014, upon Applicant's counsel:

Charles N. Quinn  
FOX ROTHSCHILD LLP  
2000 Market Street, Floor 20  
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dmgregor@foxrothschild.com  
cesch@foxrothschild.com  
ipdocket@foxrothschild.com

By:   
Troy Larson

# **EXHIBIT A**

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

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LVGV, LLC,	:	Opposition: 91215415
	:	
Opposer	:	Application: 85/733,861
v.	:	
	:	Mark: "Me. (stylized)"
EMPIRE RESORTS, INC.,	:	Class 28
	:	
Applicant	:	

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**INITIAL DISCLOSURES BY APPLICANT, EMPIRE RESORTS, INC.**

Applicant, Empire Resorts, Inc., makes the attached initial disclosures pursuant to Fed.R.Civ.P. 26(a)(1) and 37 C.F.R. 2.120.

No final determination has been made as to documents that may be used to support current or future asserted claims or defenses.

Applicant reserves the right to supplement these initial disclosures.

Respectfully submitted

Date: 30 June 2014

/Charles N. Quinn/  
Attorney for Applicant  
Fox Rothschild LLP  
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610-458-4984  
610-458-7337 (fax)  
[cquinn@foxrothschild.com](mailto:cquinn@foxrothschild.com)  
[www.foxrothschild.com](http://www.foxrothschild.com)

**INITIAL DISCLOSURES BY APPLICANT, EMPIRE RESORTS, INC.**

**26(a)(1)(A)(i) Individuals Likely to have Discoverable Information**

Joseph A. D'Amato  
CEO  
Empire Resorts, Inc.  
204 Rt. 17B,  
Monticello, New York, 12701.

Mr. Amato is knowledgeable about the goods and branding that will be offered under Empire's "Me. (stylized)" mark in Class 28.

**26(a)(1)(A)(ii) Documents in Applicant's Possession, Custody or Control**

The files of Empire Resorts Inc., located at 204 Rt. 17B, Monticello, New York, 12701.

**26(a)(1)(A)(iii) Computation of Damages by Category Claimed**

Empire does not seek any damages in this matter; by statute the Trademark Trial and Appeal Board may not award damages in a trademark opposition proceeding such as this.

**26(a)(1)(A)(iv) Insurance Agreements**

Irrelevant; see the statement immediately above.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing has been served by electronic mail on June 30, 2014, on the following counsel for the Registrant, at the email address as stated:

Hara K. Jacobs  
Troy Larson  
BALLARD SPAHR LLP  
1735 Market Street, 51<sup>st</sup> Floor  
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jacobsh@ballardspahr.com  
larsont@ballardspahr.com

Date: 30 June 2014

/Darcy A. Williams/  
Attorney for Applicant  
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**THE UNITED STATES PATENT AND TRADEMARK OFFICE  
THE TRADEMARK TRIAL AND APPEAL BOARD**

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LGVV, LLC,	:	Opposition: 91215246
	:	
Opposer	:	Application: 85/736,471
v.	:	
	:	Mark: "M (stylized)"
EMPIRE RESORTS, INC.,	:	Class 28
	:	
Applicant	:	

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Date: 30 June 2014

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Attorney for Applicant  
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204 Rt. 17B,  
Monticello, New York, 12701

Mr. Amato is knowledgeable about the services and branding that will be offered under Empire's "M (stylized)" mark in Class 41.

**26(a)(1)(A)(ii) Documents in Applicant's Possession, Custody or Control**

The files of Empire Resorts Inc., located at 204 Rt. 17B, Monticello, New York, 12701.

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

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LVGV, LLC,		: Opposition: 91215216
	Opposer	:
v.		: Application: 85/734,289
		:
EMPIRE RESORTS, INC.,		: Mark: Me. (stylized)
		: Class 41
Applicant		:

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Applicant, Empire Resorts, Inc., makes the attached initial disclosures pursuant to Fed.R.Civ.P. 26(a)(1) and 37 C.F.R. 2.120.

No final determination has been made as to documents that may be used to support current or future asserted claims or defenses.

Applicant reserves the right to supplement these initial disclosures.

Respectfully submitted

Date: 30 June 2014

/Charles N. Quinn/  
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CEO  
Empire Resorts, Inc.  
204 Rt. 17B,  
Monticello, New York, 12701

Mr. Amato is knowledgeable about the services and branding that will be offered under Empire's "Me. (stylized)" mark in Class 41.

**26(a)(1)(A)(ii) Documents in Applicant's Possession, Custody or Control**

The files of Empire Resorts Inc., located at 204 Rt. 17B, Monticello, New York, 12701.

**26(a)(1)(A)(iii) Computation of Damages by Category Claimed**

Empire does not seek any damages in this matter; by statute the Trademark Trial and Appeal Board may not award damages in a trademark opposition proceeding such as this.

**26(a)(1)(A)(iv) Insurance Agreements**

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

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LVGV, LLC,	:	Opposition: 91215208
	:	
Opposer	:	Application: 85/737,435
v.	:	
	:	Mark: "M (stylized)"
EMPIRE RESORTS, INC.,	:	Class 43
	:	
Applicant	:	
	:	

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

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LVGV, LLC,		: Opposition: 91215247
	Opposer	: :
v.		: Application: 85/734,672
		: :
EMPIRE RESORTS, INC.,		: Mark: "Me. (stylized)"
		: Class 43
Applicant		: :

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