

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
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mbm/WF/VV

May 13, 2019

Opposition No. 91209039 (**Parent Case**)  
Opposition No. 91238631

*Boyd Gaming Corporation*

*v.*

*B Hotel Group, LLC*

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Opposition Nos. 91227967, 91227968,  
91227970, 91227971, 91227972, 91227973,  
91228065, 91228066, 91228067, 91228068,  
91228069, 91228070, 91228071, 91228072,  
91228073, 91228074, 91228075, 91228076,  
91228077, 91232831, 91235302, 91238713

*B Hotel Group, LLC*

*v.*

*Boyd Gaming Corporation*

**By the Trademark Trial and Appeal Board:**

**I. MOTION TO AMEND**

On March 22, 2019, Boyd Gaming Corporation (“Boyd”) filed its motion to amend its involved application Serial Nos. 86744582, 86744670, 86744679, 86744691 and

Opposition No. 91209039 (Parent Case) and et al.

86746103 with the consent of B Hotel Group, LLC (“B Hotel”). See the pertinent details listed below:

APPLICATION NO.	MARK	OPPOSITION NO.
86744691		91227967
86744679		91227968
86744670		91227971
86744582		91227972
86746103		91228068

By the proposed amendment, Boyd seeks to amend the subject applications by deleting in its entirety the recitation of services in the opposed International Class 43.

In an opposition to an application having multiple classes, if the applicant files a request to amend the application to delete an opposed class, the request for amendment is, in effect, an abandonment of the application with respect to that class, and is governed by Trademark Rule 2.135, which provides:

After the commencement of an opposition, concurrent use, or interference proceeding, if the applicant files a written abandonment of the application or of the mark without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant. The written consent of an adverse party may be signed by the adverse party or by the adverse party's attorney or other authorized representative.

Opposition No. 91209039 (Parent Case) and et al.

Because B Hotel stipulates to the deletion of International Class 43, the motion is **GRANTED** and International Class 43 of the subject applications is abandoned.

The recitations of services in International Class 41 remain unchanged.

If the amendment resolves these proceedings, B Hotel Group is allowed until **THIRTY DAYS from the date of this order** to file a withdrawal of the five notices of opposition, failing which the remaining oppositions will go forward on the applications as amended (Class 41 only). See Trademark Rule § 2.114(c).

If no response is filed, the consolidated proceeding will be resumed and dates reset as appropriate. Moreover, **Opposition No. 91227697 will become the operative parent case**, as it will be the oldest remaining proceeding.

## II. MOTIONS TO WITHDRAW APPLICATIONS

In two separate filings (filed March 27, 2019), B Hotel filed motions requesting the withdrawal of Application Serial Nos. 85549694 and 87202451. Please see the details of the filings listed below:

DATE	APPLICATION No.	MARK	OPPOSITION NO.
3/27/2019	85549694	B INTERACTIVE	91209039
3/27/2019	87202451	B VEGAS	91238631

As an initial matter, both of the submissions filed on March 27, 2019 by B Hotel indicate that service was made via First Class Mail. Trademark Rule 2.119(b) states that every submission filed in an inter partes proceeding must be served upon the other party or parties by email, unless otherwise stipulated. In fact, the Board could decline to read or consider B Hotel's submissions due to lack of proper proof of service.

However, at this time, in order to expedite matters and because the interests of the parties would be served thereby, the Board serves, attached as Exhibit A, a copy of the two March 27<sup>th</sup> submissions that did not include proof of service. Also, the submissions may be accessed via TTABVUE at: <http://ttabvue.uspto.gov/ttabvue/>.

As discussed above, Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because Boyd's written consent to the abandonment is not of record, judgment is hereby entered against B Hotel, **Opposition Nos. 91209039** and **91238631** are **SUSTAINED** and registration to B Hotel is refused.

Additionally, on April 3, 2019, Boyd filed a motion requesting the withdrawal of Application Serial Nos. 86746111 and 86746091. Please see the details of the filing listed below:

DATE	APPLICATION No.	MARK	OPPOSITION NO.
4/3/2019	86746111		91228067
	86746091		91228069

Again, per Trademark Rule 2.135, because the applicant filed an abandonment without the written consent of the adverse party to the proceeding, judgment shall be entered against applicant. In view thereof, and because B Hotel's written consent to the abandonment is not of record, judgment is hereby entered against Boyd,

Opposition No. 91209039 (Parent Case) and et al.

**Opposition Nos. 91228067 and 91228069 are SUSTAINED** and registration to Boyd is refused.

### III. MOTION TO WITHDRAW OPPOSITIONS

On April 11, 2019, B Hotel, without the written consent of Boyd, filed a motion to withdraw the remaining oppositions pending in the present consolidated proceeding. Specifically, see the details of the motion listed below:

APPLICATION No.	MARK	OPPOSITION No.
86744646		91227970
86744596		91227973
86746122		91228065
86746118		91228066
86746044		91228070
86745661		91228071
86746085		91228072
86745999		91228073
86745904		91228074
86745824		91228075

APPLICATION NO.	MARK	OPPOSITION NO.
86745704		91228076
86745502		91228077
86744692		91232831
86744700		91235302
86744697		91238713

Trademark Rule 2.106(c) provides that after an answer is filed, the opposition may not be withdrawn without prejudice except with the written consent of applicant.

In view thereof, and because the withdrawal was filed after answer, the listed Opposition Nos. **91227970, 91227973, 91228065, 91228066, 91228070, 91228071, 91228072, 91228073, 91228074, 91228075, 91228076, 91228077, 91232831, 91235302** and **91238713** are **DISMISSED with prejudice**.

Proceedings are otherwise **suspended** pending B Hotel Group's response to this order.