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

Proceeding	91228071
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

**In re Trademark of:**

**Applicant:** Boyd Gaming Corporation  
**Application No.** 86/745,661  
**Filing Date:** September 2, 2015  
**Mark:** B EMPOWERED

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B HOTEL GROUP, LLC,

Opposer,

v.

BOYD GAMING CORPORATION,

Applicant.

**Opposition No. 91228071**

Interlocutory Attorney Yong Oh (“Richard”) Kim

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**BOYD GAMING CORPORATION’S ANSWER TO B HOTEL GROUP, LLC’S  
NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES**

Boyd Gaming Corporation (hereinafter “Boyd” or “Applicant”), by and through its undersigned attorneys, Howard & Howard Attorneys PLLC, answers B Hotel Group, LLC’s (hereinafter “BHG” or “Opposer”) Notice of Opposition filed against its application for registration of trademark B EMPOWERED, Serial No. 86/745,661, filed on September 2, 2015 and published in the Official Gazette on January 26, 2016 as follows:

1. On or about September 2, 2015, Applicant Boyd Gaming Corporation filed U.S. Trademark Application Serial No. 86/745,661 for B EMPOWERED & Design for “Casinos; Conducting and providing facilities for casino gaming contests and tournaments; Entertainment services, namely, casino gaming; Providing casino facilities; Providing casino services featuring a casino players rewards program; Providing casino services featuring stored value membership cards for redeeming cash, discounts, and other benefits” in International Class 41 under Section 1(b) of the Trademark Act. 15 U.S.C. § 1052(b).

**ANSWER:**

Admitted.

2. U.S. Trademark Application Serial No. 86/745,661 is not based on use in commerce, and upon information and belief, Applicant has made no use of the applied-for mark as a service mark in the United States.

**ANSWER:**

Admitted that the Application was not based on use.

3. Since at least as early as 2010, and prior to the constructive date of first use of U.S. Trademark Application Serial No. 86/745,661, B Hotel has owned and maintained a luxury hotel, resort, restaurant, and spa business under the B HOTEL & RESORT house mark, and has also

employed numerous additional trademarks and service marks used in close association with B Hotel's B HOTEL & RESORT house mark, which all contain or are comprised of the dominant use of the initial "B" combined with other words to form catchy and unique imperative statements.

**ANSWER:**

Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore leaves Opposer to its proofs.

4. To formalize and perfect its rights in its marks, Opposer has registered the following with the United States Patent and Trademark Office:

- a. U.S. Trademark Reg. No. 3,917,917 for B HOTEL & RESORT for "hotel, resort lodging and motel services; restaurant, catering, bar and cocktail lounge services; provision of general purpose facilities for meetings, conferences and exhibitions; provision of banquet and social function facilities for special occasions; hotel services for preferred customers; spa services, namely, providing temporary accommodations and meals to clients of a health or beauty spa; and reservation services for hotel accommodations for others," in International Class 43; filed on November 6, 2009, with a date of first use of September 23, 2010;
- b. U.S. Trademark Reg. No. 4,739,252 for B HOTEL for "hotel, resort lodging and motel services; restaurant, catering, bar and cocktail lounge services; provision of general purpose facilities for meetings, conferences and exhibitions; provision of banquet and social function facilities for special occasions; hotel services for preferred customers; spa services, namely, providing temporary accommodations and meals to clients of a health or beauty spa; and reservation services for hotel accommodations for others," in International Class 43, with a filing date of June 7, 2010, and a date of first use of March 4, 2015.

("Opposer's Marks") as well as many others. (TSBR copies attached).

**ANSWER:**

Applicant lacks knowledge or information sufficient to form a belief about the truth of the allegations and therefore leaves Opposer to its proofs.

5. The services set forth in U.S. Trademark Application Serial No. 86/745,661 are identical, similar, or closely related to the services and goods offered by Opposer under Opposer's Marks. Furthermore, on information and belief, Applicant's services will be offered to a similar class of consumers who purchase the services and goods in connection with which Opposer uses Opposer's Marks, and will be offered through the same channels of trade.

**ANSWER:**

Denied.

6. The mark represented in U.S. Trademark Application Serial No. 86/745,661 is confusingly similar to Opposer's Marks in terms of its appearance, sound, meaning, and overall commercial impression. As a result, it is likely to cause confusion, mistake, and deception as to an affiliation, connection, or association between Opposer and Applicant, or as to the sponsorship or approval of Applicant's services and other commercial activities by Opposer. Potential customers are likely to believe that Applicant's services originate from, or are sponsored or approved by, Opposer, when such is not the case. All of the foregoing will cause Opposer damage.

**ANSWER:**

Denied.

7. Applicant is not affiliated with or connected in any way to Opposer, and Opposer has not consented to Applicant's use of the mark represented in U.S. Trademark Application Serial No. 86/745,661 for any services or products.

**ANSWER:**

Admitted based on Applicant's prior ownership and use of its "B" trademark, U.S. Trademark Registration No. 3,528,785 for hotel resort, restaurant and bar services, and related

marks that are comprised of the dominant use of the initial “B” combined with other words to form unique imperative statements, which ownership and use predates the alleged trademark use by Opposer. Therefore, no consent from Opposer is necessary.

**WHEREFORE,** Applicant respectfully requests dismissal of Opposer’s Opposition and allowance of its Application Serial No. 86/745,661.

**AFFIRMATIVE DEFENSES**

Applicant, through its attorneys, Howard & Howard Attorneys PLLC, for its Affirmative or Special Defenses states as follows:

1. Opposer's opposition should be denied because of equitable estoppel.
2. Opposer's opposition should be denied because of unclean hands.
3. Opposer's Marks have a different sound, connotation, meaning, and commercial impression than Applicant's mark.
4. Opposer's marks previously have been refused registration in view of Applicant's marks. For example, Opposer's application for registration of B HOTELS & RESORTS, Serial Number 85/094013 was rejected by the USPTO assigned examining attorney in a final office action on the grounds that it was confusing similar to Applicant's and others' registrations, including Registration Nos. 3528785 for B, 3612645 and 3686206. As a result, Opposer abandoned its trademark application. Opposer is therefore making a bad faith attempt to broaden its rights beyond what was previously permitted. Further, as a result of abandoning its prior trademark application, Opposer has acquiesced to Applicant's marks comprising a "B."
5. Applicant's "B" registered trademark, U.S. Reg. No. 3528785, and family of marks comprising of the initial "B" combined with other words to form unique imperative statements, predate any trademark use by Opposer.
6. Opposer's opposition should be denied because it fails to state a claim under which relief can be granted.
7. There is no likelihood of confusion between Applicant's mark and Opposer's Marks.

Applicant: Boyd Gaming Corporation  
Application No. 86/745,661  
Filing Date: September 2, 2015  
Mark: B EMPOWERED

**WHEREFORE**, Applicant respectfully requests dismissal of Opposer's Opposition and allowance of its Application Serial No. 86/745,661.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS PLLC

Dated: November 1, 2016

By: /s/ Dean W. Amburn

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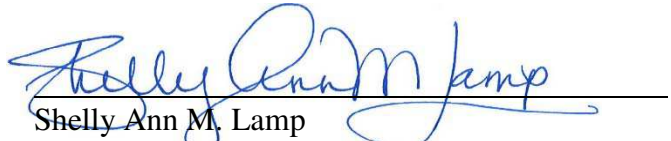


**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing *Boyd Gaming Corporation's Answer to B Hotel Group, LLC's Notice of Opposition* has been served on *Mark D. Passler* and *Rachel B. Rudensky* by mailing said copy via First Class Mail, postage prepaid to the below address on October 26, 2016 as well as via electronic mail.

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Dated: November 1, 2016

  
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