

ESTTA Tracking number: **ESTTA952435**

Filing date: **02/06/2019**

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

Proceeding	91239139
Party	Plaintiff San Pasqual Casino Development Group, Inc.
Correspondence Address	HILARY A BROOKS BROOKS QUINN LLC 6513 132ND AVE NE #378 KIRKLAND, WA 98033 UNITED STATES hillary@brooksquinn.com, docketing@brooksquinn.com 503-629-1559
Submission	Other Motions/Papers
Filer's Name	Delfina S. Homen
Filer's email	delfina@brooksquinn.com, hillary@brooksquinn.com, docketing@brooksquinn.com
Signature	/Delfina S. Homen/
Date	02/06/2019
Attachments	Notice to Board re Director Decision on Petitions.pdf(101018 bytes) Exhibit A to Notice to Board re Director Decision on Petitions.pdf(719214 bytes) Exhibit B to Notice to Board re Director Decision on Petitions.pdf(736196 bytes) Exhibit C to Notice to Board re Director Decision on Petitions.pdf(756819 bytes) Exhibit D to Notice to Board re Director Decision on Petitions.pdf(753949 bytes)

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

SAN PASQUAL CASINO)	
DEVELOPMENT GROUP, INC.,)	Opposition No. 91239139
)	
Opposer,)	
)	
v.)	
)	
3 SQUARE, INC.,)	
)	
Applicant.)	

OPPOSER’S NOTICE TO BOARD RE: DIRECTOR’S DECISION ON PETITIONS

On June 19, 2018, Opposer San Pasqual Casino Development Group, Inc. (“Opposer”) filed its Motion to Suspend Proceedings, requesting that the Board suspend the instant Opposition pending decision on Opposer’s Petitions to the Director, filed with respect to Opposer’s pending App. Ser. Nos. 86/143,373 and 86/143,341. (*See* 11 TTABVUE.) As the basis for its Motion, Opposer argued that Opposer’s applications, which are pled as part of this proceeding, seek concurrent use registration of Opposer’s marks excepting, if proved, Applicant 3 Square, LLC’s (“Applicant”) area of prior geographic use of the marks in Applicant’s applications. The examining attorney erroneously suspended Opposer’s applications rather than publishing them, necessitating Petitions to the Director to have the applications removed from suspension so that a concurrent use proceeding could be instituted between Opposer’s applications and Applicant’s applications. Applicant did not oppose the Motion.

On September 16, 2018, the Board issued an Order suspending this proceeding pending the Director’s decision on Opposer’s petitions, and instructing Opposer to “inform the Board within **TEN DAYS** of the Director’s decision on the petition so that this proceeding can be resumed, as appropriate.” (12 TTABVUE at 12.)

On January 25, 2019, the examining attorney removed Opposer's applications from suspension and approved the applications for publication. The Director therefore dismissed Opposer's Petitions as moot on January 28, 2019. (See Exhibits A-B.) Opposer's applications are set to publish on March 5, 2019. (See Exhibits C-D.) Accordingly, a concurrent use proceeding is due to be instituted on or around April 4, 2019, between Opposer's applications and Applicant's applications, all of which are the subject of this Opposition.

Opposer challenged Applicant's applications on the grounds that Applicant is not entitled to the geographically unrestricted registrations Applicant will receive if Applicant's applications are allowed to register. (See Not. Opp., 1 TTABVUE, ¶¶ 21-25, 60-71.) Since a concurrent use proceeding will soon be instituted between Opposer's applications and Applicant's applications, allowing the Board to consider the geographic restrictions necessary for either party to have a registration under the circumstances involved here, Opposer requests that the Board maintain suspension of this Opposition until the concurrent use proceeding is instituted, and then consolidate the two proceedings owing to the common questions of law and fact present in both proceedings. See TMEP § 511; Fed. R. Civ. P. 42(a); see also 11 TTABVUE at 3 (requesting consolidation in its Motion to Suspend).

Dated this 6th day of February, 2019.

Respectfully submitted,

BROOKS QUINN, LLC

/Hillary A. Brooks/
Hillary A. Brooks
Registration No. 45,815
Attorneys for Opposer

BROOKS QUINN, LLC
6512 132nd Ave. NE #378
Kirkland, WA 98033
(503) 629-1559

CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that the **OPPOSER'S NOTICE TO BOARD RE: DIRECTOR'S DECISION ON PETITIONS** was electronically filed with the Trademark Trial and Appeal Board on February 6, 2019.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **OPPOSER'S NOTICE TO BOARD RE: DIRECTOR'S DECISION ON PETITIONS** was served upon Applicant on February 6, 2019, by forwarding said copy via email to counsel for Applicant at the following email addresses:

Michael A. Grow
Chiara Giuliani
Michael.Grow@arentfox.com
Chiara.Giuliani@arentfox.com

By: /Delfina S. Homen/
Delfina S. Homen

EXHIBIT A

To: San Pasqual Casino Development Group, In ETC. (docketing@brooksquinn.com)
Subject: TRADEMARK APPLICATION NO. 86143373 - BLD'S - 8171.0068
Sent: 1/28/2019 1:36:41 PM
Sent As: ECOMPET
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

**U. S. APPLICATION
SERIAL NUMBER:**
86/143373

86143373

**U. S. REGISTRATION
NUMBER:**

**CORRESPONDENCE
ADDRESS:**

HILLARY A. BROOKS
BROOKS QUINN, LLC
6513 132nd Ave NE #378
Kirkland, WA, 98033

RETURN ADDRESS:

Commissioner for
Trademarks
P.O. Box 1451
Alexandria, VA
22313-1451

MARK:
BLD'S

ISSUE/MAILING DATE:
January 28, 2019

APPLICANT/REGISTRANT
:
San Pasqual Casino
Development Group, In ETC.

**CORRESPONDENT'S
REFERENCE/DOCKET
NO:**
8171.0068

**CORRESPONDENT'S
EMAIL ADDRESS:**

docketing@brooksquinn.com

PETITION TO DIRECTOR

Dear Ms. Brooks:

This acknowledges receipt on June 19, 2018 of your petition to the Director of the United States Patent and Trademark Office (Director) requesting review of the examining attorney's June 2, 2018 suspension of the application pending the outcome of an opposition proceeding. 15 U.S.C. §1052; 37 C.F.R. §2.83; TMEP §§716.02(a), (c)-(d), 1208 *et seq.* The Director has the authority to review this request. *See* 37 C.F.R. §2.146.

In the petition, you requested review of the examining attorney's decision to suspend the application on June 2, 2018. A review of the file record shows that, upon further consideration, the examining attorney removed the application from suspension and approved it for publication on January 25, 2019.

Therefore, the petition is hereby dismissed as MOOT.[\[1\]](#)

Sincerely,

/Allison P. Schrody/
Attorney Advisor
Office of the Deputy Commissioner
for Trademark Examination Policy
allison.schrody@uspto.gov
571.272.5893

For general and other useful information about trademarks, you are encouraged to visit the USPTO web site at <http://www.uspto.gov/main/trademarks.htm>.

^[1] The \$100 petition fee will be refunded in due course. *See Trademark Manual of Examining Procedure (TMEP) §405.04.*

EXHIBIT B

To: San Pasqual Casino Development Group, In ETC. (docketing@brooksquinn.com)
Subject: TRADEMARK APPLICATION NO. 86143341 - BLD - 8171.0067
Sent: 1/28/2019 1:29:24 PM
Sent As: ECOMPET
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

**U. S. APPLICATION
SERIAL NUMBER:**
86/143341

86143341

**U. S. REGISTRATION
NUMBER:**

**CORRESPONDENCE
ADDRESS:**

HILLARY A. BROOKS
BROOKS QUINN, LLC
6513 132nd Ave NE #378
Kirkland, WA, 98033

RETURN ADDRESS:

Commissioner for
Trademarks
P.O. Box 1451
Alexandria, VA
22313-1451

MARK:
BLD

ISSUE/MAILING DATE:
January 28, 2019

APPLICANT/REGISTRANT

:
San Pasqual Casino
Development Group, In ETC.

**CORRESPONDENT'S
REFERENCE/DOCKET
NO:**

8171.0067

**CORRESPONDENT'S
EMAIL ADDRESS:**

docketing@brooksquinn.com

PETITION TO DIRECTOR

Dear Ms. Brooks:

This acknowledges receipt on June 19, 2018 of your petition to the Director of the United States Patent and Trademark Office (Director) requesting review of the examining attorney's June 2, 2018 suspension of the application pending the outcome of an opposition proceeding. 15 U.S.C. §1052; 37 C.F.R. §2.83; TMEP §§716.02(a), (c)-(d), 1208 *et seq.* The Director has the authority to review this request. *See* 37 C.F.R. §2.146.

In the petition, you requested review of the examining attorney's decision to suspend the application on June 2, 2018. A review of the file record shows that, upon further consideration, the examining attorney removed the application from suspension and approved it for publication on January 25, 2019.

Therefore, the petition is hereby dismissed as MOOT. [\[1\]](#)

Sincerely,

/Allison P. Schrody/
Attorney Advisor
Office of the Deputy Commissioner
for Trademark Examination Policy
allison.schrody@uspto.gov
571.272.5893

For general and other useful information about trademarks, you are encouraged to visit the USPTO web site at <http://www.uspto.gov/main/trademarks.htm>.

^[1] The \$100 petition fee will be refunded in due course. *See Trademark Manual of Examining Procedure* (TMEP) §405.04.

EXHIBIT C

Trademark Snap Shot Publication & Issue Review Stylesheet
(Table presents the data on Publication & Issue Review Complete)

OVERVIEW

SERIAL NUMBER	86143373	FILING DATE	12/13/2013
REG NUMBER	0000000	REG DATE	N/A
REGISTER	PRINCIPAL	MARK TYPE	SERVICE MARK
INTL REG #	N/A	INTL REG DATE	N/A
TM ATTORNEY	VALLILLO, MELISSA C	L.O. ASSIGNED	105

PUB INFORMATION

RUN DATE	01/30/2019		
PUB DATE	03/05/2019		
STATUS	681-PUBLICATION/ISSUE REVIEW COMPLETE		
STATUS DATE	01/29/2019		
LITERAL MARK ELEMENT	BLD'S		
DATE ABANDONED	N/A	DATE CANCELLED	N/A
SECTION 2F	NO	SECTION 2F IN PART	NO
SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	BLD'S
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

CURRENT OWNER INFORMATION

PARTY TYPE	10-ORIGINAL APPLICANT
NAME	San Pasqual Casino Development Group, Inc.
ADDRESS	16300 Nyemii Pass Rd. Valley View, CA 92082
ENTITY	99-tribally-chartered corporation formed under the laws of the San Pasqual Band of Mission Indians

CITIZENSHIP	United States of America
GOODS AND SERVICES	
INTERNATIONAL CLASS	043
DESCRIPTION TEXT	bar and restaurant services

GOODS AND SERVICES CLASSIFICATION							
INTERNATIONAL CLASS	043	FIRST USE DATE	10/30/2007	FIRST USE IN COMMERCE DATE	10/30/2007	CLASS STATUS	6-ACTIVE

MISCELLANEOUS INFORMATION/STATEMENTS	
CHANGE IN REGISTRATION	NO
CONCURRENT USE STATEMENT	Concurrent use information. Registration limited to the area comprising the entire United States except for 7450 Beverly Blvd, Los Angeles, California 90036, and a ten miles radius thereof
PSEUDO MARK	BREAKFAST LUNCH DINNER'S

PROSECUTION HISTORY				
DATE	ENT CD	ENT TYPE	DESCRIPTION	ENT NUM
01/29/2019	PREV	O	LAW OFFICE PUBLICATION REVIEW COMPLETED	036
01/28/2019	PC.D	I	PETITION TO DIRECTOR - DISMISSED	035
01/25/2019	CNSA	O	APPROVED FOR PUB - PRINCIPAL REGISTER	034
12/06/2018	RCSC	S	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	033
08/06/2018	APET	A	ASSIGNED TO PETITION STAFF	032
06/19/2018	TPDR	I	TEAS PETITION TO DIRECTOR RECEIVED	031
06/02/2018	GNS3	O	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	030
06/02/2018	GNSL	S	LETTER OF SUSPENSION E-MAILED	029
06/02/2018	CNSL	R	SUSPENSION LETTER WRITTEN	028
05/10/2018	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	027
05/09/2018	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	026
05/09/2018	ERSI	I	TEAS RESPONSE TO SUSPENSION INQUIRY RECEIVED	025
01/16/2018	RCSC	S	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	024
07/10/2017	RCSC	S	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	023
07/07/2017	ALIE	A	ASSIGNED TO LIE	022
01/04/2017	RCSC	S	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	021
12/23/2016	TCCA	I	TEAS CHANGE OF CORRESPONDENCE RECEIVED	020
06/23/2016	RCSC	S	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	019
05/16/2016	TCCA	I	TEAS CHANGE OF CORRESPONDENCE RECEIVED	018
12/17/2015	RCSC	S	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	017
06/11/2015	RCSC	S	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	016
11/21/2014	RCSC	S	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	015
11/21/2014	ALIE	A	ASSIGNED TO LIE	014
04/16/2014	GNS3	O	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	013
04/16/2014	GNSL	S	LETTER OF SUSPENSION E-MAILED	012
04/16/2014	CNSL	R	SUSPENSION LETTER WRITTEN	011

03/26/2014	TEME	I	TEAS/EMAIL CORRESPONDENCE ENTERED	010
03/25/2014	CRFA	I	CORRESPONDENCE RECEIVED IN LAW OFFICE	009
03/25/2014	TROA	I	TEAS RESPONSE TO OFFICE ACTION RECEIVED	008
02/27/2014	GNRN	O	NOTIFICATION OF NON-FINAL ACTION E-MAILED	007
02/27/2014	GNRT	F	NON-FINAL ACTION E-MAILED	006
02/27/2014	CNRT	R	NON-FINAL ACTION WRITTEN	005
02/21/2014	DOCK	D	ASSIGNED TO EXAMINER	004
12/31/2013	MPMK	E	NOTICE OF PSEUDO MARK E-MAILED	003
12/28/2013	NWOS	I	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	002
12/17/2013	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Hillary A. Brooks
CORRESPONDENCE ADDRESS	HILLARY A. BROOKS BROOKS QUINN, LLC 6513 132nd Ave NE #378 Kirkland, WA 98033
DOMESTIC REPRESENTATIVE	NONE

BLD'S

EXHIBIT D

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SECTION 8	NO	SECTION 8 IN PART	NO
SECTION 15	NO	REPUB 12C	N/A
RENEWAL FILED	NO	RENEWAL DATE	N/A
DATE AMEND REG	N/A		

FILING BASIS

FILED BASIS		CURRENT BASIS		AMENDED BASIS	
1 (a)	YES	1 (a)	YES	1 (a)	NO
1 (b)	NO	1 (b)	NO	1 (b)	NO
44D	NO	44D	NO	44D	NO
44E	NO	44E	NO	44E	NO
66A	NO	66A	NO		
NO BASIS	NO	NO BASIS	NO		

MARK DATA

STANDARD CHARACTER MARK	YES
LITERAL MARK ELEMENT	BLD
MARK DRAWING CODE	4-STANDARD CHARACTER MARK
COLOR DRAWING FLAG	NO

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02/27/2014	GNRT	F	NON-FINAL ACTION E-MAILED	005
02/27/2014	CNRT	R	NON-FINAL ACTION WRITTEN	004
02/21/2014	DOCK	D	ASSIGNED TO EXAMINER	003
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12/17/2013	NWAP	I	NEW APPLICATION ENTERED IN TRAM	001

CURRENT CORRESPONDENCE INFORMATION

ATTORNEY	Hillary A. Brooks
CORRESPONDENCE ADDRESS	HILLARY A. BROOKS BROOKS QUINN, LLC 6513 132nd Ave NE #378 Kirkland, WA 98033
DOMESTIC REPRESENTATIVE	NONE

BLD