

ESTTA Tracking number: **ESTTA926180**

Filing date: **10/03/2018**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Wynn Resorts Holdings, LLC
Granted to Date of previous extension	10/03/2018
Address	3131 Las Vegas Blvd. South Las Vegas, NV 89109 UNITED STATES

Attorney information	Peter H. Ajemian Brownstein Hyatt Farber Schreck, LLP 100 N. City Parkway, Suite 1600 Las Vegas, NV 89106 UNITED STATES lvpto@bhfs.com, jobermeyer@bhfs.com, lwilliams@bhfs.com, pajemian@bhfs.com 702-382-2101
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Applicant Information

Application No	87763490	Publication date	06/05/2018
Opposition Filing Date	10/03/2018	Opposition Period Ends	10/03/2018
Applicant	XJW Entertainment, Inc. #3315 1240 NE 24 Street Wilton Manors, FL 33305 UNITED STATES		

Goods/Services Affected by Opposition


Class 043. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Bar services; Cocktail lounge services


Grounds for Opposition


Priority and likelihood of confusion	Trademark Act Section 2(d)
Dilution by blurring	Trademark Act Sections 2 and 43(c)
Dilution by tarnishment	Trademark Act Sections 2 and 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4009078	Application Date	12/23/2010
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Registration Date	08/09/2011	Foreign Priority Date	NONE
Word Mark	XS		
Design Mark			
Description of Mark	The mark consists of the letters "X" and "S" in stylized form.		
Goods/Services	Class 041. First use: First Use: 2008/04/10 First Use In Commerce: 2008/12/31 Special event planning for social entertainment purposes; arranging and conducting nightclub entertainment events; night club services Class 043. First use: First Use: 2008/04/10 First Use In Commerce: 2008/12/31 Bar and cocktail lounge services		

U.S. Registration No.	4056589	Application Date	02/04/2008
Registration Date	11/15/2011	Foreign Priority Date	NONE
Word Mark	XS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2008/12/31 First Use In Commerce: 2008/12/31 Restaurant and bar services; Cocktail lounges		

U.S. Registration No.	3981821	Application Date	02/04/2008
Registration Date	06/21/2011	Foreign Priority Date	NONE
Word Mark	XS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2008/12/31 First Use In Commerce: 2008/12/31 special event planning; arranging and conducting nightclub entertainment events; night club services		

U.S. Registration No.	2158323	Application Date	11/06/1996
Registration Date	05/19/1998	Foreign Priority Date	NONE
Word Mark	XS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 1996/12/22 First Use In Commerce: 1996/12/22 entertainment in the nature of indoor and outdoor amusement complexes Class 042. First use: First Use: 1996/12/22 First Use In Commerce: 1996/12/22 restaurant services, namely, restaurant and bar services		

Attachments	85205395#TMSN.png(bytes) 77388304#TMSN.png(bytes) 77388300#TMSN.png(bytes) 75193932#TMSN.png(bytes) Notice of Opposition 87763490 for XES.pdf(16079 bytes)
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Signature	/Peter H. Ajemian/
Name	Peter H. Ajemian

Date	10/03/2018
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application
Serial No. 87/763,490

Mark: XES

Published in the Official Gazette
On June 5, 2018

WYNN RESORTS HOLDINGS, LLC
Opposer,

v.

XJW ENTERTAINMENT, INC.
Applicant.

OPPOSITION NO. _____

NOTICE OF OPPOSITION

Wynn Resorts Holdings, LLC (“Opposer”), a Nevada limited liability company having an address at 3131 Las Vegas Boulevard South, Las Vegas, Nevada 89109, believes it will be damaged by registration of the mark XES in Application Serial No. 87/763,490 filed by XJW Entertainment, Inc. (“Applicant”). Pursuant to 15 U.S.C. § 1063, Opposer hereby opposes said application, and as grounds for the opposition, Opposer alleges the following:

I. BACKGROUND FACTS

A. Opposer’s Rights in Its “XS” Trademark

1. Opposer is the owner and operator of the Wynn Las Vegas and Encore resort casinos in Las Vegas, Nevada, which are located on the famous Las Vegas Strip.
2. Since at least as early as December 31, 2008, Opposer has continuously used the trademark XS (the “XS Mark”) at its resort hotel properties in connection with night club, bar,

cocktail lounge, restaurant, and special event planning services, among other associated services.

3. Since launching in 2008, Opposer has heavily promoted the XS Mark through print, broadcast media, various social media outlets and on the Internet at www.wynnresorts.com and www.xslasvegas.com.

4. Opposer has received national media coverage by various news outlets including, for example, the *Las Vegas Sun*, *Las Vegas Review-Journal*, *Las Vegas Weekly*, and *Billboard*, related to its use of the XS Mark.

5. Presently, Opposer continues to use the XS Mark prominently in the nationwide promotion of its various services.

6. Since its first use in 2008, and as a direct result of Opposer's significant marketing efforts and investment in the XS Mark, the XS Mark has become widely known throughout the country among consumers and has acquired fame, distinctiveness, and tremendous goodwill in the United States.

7. Among many others, Opposer presently owns the following pertinent federal trademark registrations with the United States Patent and Trademark Office ("USPTO"):

XS (and Design) (Reg. No. 4,009,078) for special event planning for social entertainment purposes; arranging and conducting nightclub entertainment events; night club services in International Class 41, and bar and cocktail lounge services in International Class 43;

XS (Reg. No. 4,056,589) for restaurant and bar services; cocktail lounges in International Class 43;

XS (Reg. No. 3,981,821) for special event planning; arranging and conducting nightclub entertainment events; night club services in International Class 41; and

XS (Reg. No. 2,158,323) for entertainment in the nature of indoor and outdoor amusement complexes in International Class 41, and restaurant services, namely, restaurant and bar services in International Class 42.

B. Applicant and Its Intended Use of XES

8. Upon information and belief, and as stated in the records of the USPTO, Applicant is a Florida corporation with an office at 1240 NE 24th Street #3315, Wilton Manors, Florida 33305.

9. Upon information and belief, and as stated in the records of the USPTO, on January 20, 2018, Applicant filed an intent-to-use application for XES for “bar services; cocktail lounge services” in International Class 43 (the “XES Mark”).

10. The USPTO assigned Applicant’s application for the XES Mark Serial No. 87/763,490 (the “Application”), which is the subject of this Notice of Opposition.

11. Upon information and belief, and as stated in the records of the USPTO, Applicant has not filed an Amendment to Allege Use of the XES Mark in commerce.

12. Upon information and belief, and as stated in the records of the USPTO, the Application was published for opposition in the Official Gazette on June 5, 2018.

II. STANDING

13. Opposer will be damaged by the registration of the XES Mark because a likelihood of confusion exists between it and the XS Mark.

14. Opposer will also be damaged by registration of the XES Mark because it is dilutive of the XS Mark.

15. Therefore, registration of the XES Mark will limit Opposer’s ability to protect the XS Mark from infringement and dilution by others, and will otherwise cause irreparable injury to Opposer’s business, reputation, and goodwill.

III. GROUNDS FOR OPPOSITION – LIKELIHOOD OF CONFUSION AND DILUTION

16. As a result of extensive use in interstate commerce in the United States and

throughout the world, the public has come to associate goods and services bearing the WYNN Mark with Opposer alone and therefore, Opposer's XS Mark has become famous.

17. Opposer's rights and developed fame in the XS Mark predate the filing of the Application, which Applicant filed without Opposer's consent.

18. Opposer has no control over Applicant's proposed use of the XES Mark in connection with its proposed goods.

19. Applicant's XES Mark is nearly identical to Opposer's XS Mark in sound, appearance, connotation, structure, and overall commercial impression.

20. The services set forth in the Application are identical and/or highly related to the services that Opposer offers under the XS Mark and included in at least one of Opposer's federal trademark registrations for its XS Mark, particularly with respect to Opposer's restaurant, bar, lounge, and night club services.

21. Consumers are likely to mistakenly believe that Applicant's services are sponsored, authorized, approved or endorsed by, or otherwise affiliated with, Opposer and the XS Mark when, in fact, they are not.

22. Opposer and its predecessors in interest's rights in the XS Mark vested prior to the filing date of the Application for the XES Mark.

23. Accordingly, Applicant's registration and proposed use of XES Mark is likely to cause confusion, mistake, or deceive consumers as to the source or origin of the parties' respective goods and services in violation of Section 2(d) of the Lanham Act, as amended, 15 U.S.C. § 1052(d), and will result in dilution by blurring and/or dilution by tarnishment of the XS Mark in violation of Section 43 of Lanham Act, as amended, 15 U.S.C. § 1125(c).

24. Because Opposer's rights in the famous XS Mark are prior and senior to the filing

date of the Application, and consumers are likely to confuse the XES Mark with Opposer and its XS Mark, and/or because Applicant's proposed use and registration of the XES Mark will dilute the XS Mark, the Board should refuse to register the XES pursuant to 15 U.S.C. §§ 1052(d) and 1125(c).

IV. RELIEF REQUESTED

WHEREFORE, Opposer prays that the Board sustain this Opposition and refuse registration of Application Serial No. 87/763,490 for the mark XES.

Respectfully submitted,

Dated: October 3, 2018

By: /Peter H. Ajemian/
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*Attorneys for Opposer
Wynn Resorts Holdings, LLC*

Certificate of Service

I, Julie Obermeyer, hereby certify that a true and complete copy of the foregoing Notice of Opposition was served on counsel for XJW Entertainment, Inc., David P. Lhota, Esq., via electronic mail on October 3, 2018, at the following address:

David.Lhota@iplawyersusa.com

/s/ Julie Obermeyer/
Julie Obermeyer, Paralegal
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