

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Mailed: August 9, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*Shakopee Mdewakanton Sioux Community*

*v.*

*Adrenalin Attractions, LLC*

—  
Opposition No. 91246474 (parent)  
Cancellation No. 92070605  
—

James R. Steffen and Katlyn M. Moseley,  
of Faegre Drinker Biddle & Reath LLP,  
for Shakopee Mdewakanton Sioux Community.

Rob L. Phillips of FisherBroyles, LLP,  
for Adrenalin Attractions, LLC.

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Before Coggins, Dunn and Lebow,  
Administrative Trademark Judges.

Opinion by Lebow, Administrative Trademark Judge:

Adrenalin Attractions, LLC (“Adrenalin”) applied to register the mark MYSTIC PARKS AND RESORTS, in standard characters, with “PARKS AND RESORTS” disclaimed, on the Principal Register for “amusement park and theme park services”

in International Class 41 (“the Application”).<sup>1</sup>

Shakopee Mdewakanton Sioux Community (“Shakopee”) opposed registration on the ground of likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d). Shakopee claims common law use of the term MYSTIC LAKE for a resort destination, and ownership of a family of marks comprising nine registrations on the Principal Register for marks that include the term “MYSTIC” and “MYSTIC LAKE” for a variety of services, such as its registration for the mark MYSTIC in

stylized form -  - for inter alia, casino services, live entertainment services, hotel services, and restaurant services.<sup>2</sup>

Shakopee also petitioned to cancel Adrenalin’s registration of the mark MYSTIC CITY, in standard characters, for “amusement park and theme park services; entertainment in the nature of an amusement park ride,” in International Class 41 (“the Adrenalin Registration”),<sup>3</sup> on grounds of likelihood of confusion (based on the same common law use and family of pleaded registrations) and nonuse of the mark as of the filing date of the statement of use in support of registration under Section

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<sup>1</sup> Application Serial No. 87742831 was filed on January 4, 2018, claiming first use anywhere and in commerce under Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), since November 1, 2015.

<sup>2</sup> Registration No. 2799696, registered December 30, 2003; renewed. Shakopee also pleaded ownership of a pending application, Serial No. 87631823, which was abandoned during this proceeding.

As we explain later in this opinion, our analysis focuses on the pleaded  registration. Therefore, we provide a complete listing of Shakopee’s pleaded registrations in an Appendix to this decision.

<sup>3</sup> Registration No. 5633245, registered December 18, 2018.

1(a) of the Trademark Act, 15 U.S.C. § 1051(a).<sup>4</sup>

Adrenalin denied the salient allegations in its answers to the notice of opposition and petition to cancel.<sup>5</sup>

The opposition and cancellation proceedings were consolidated and have been presented on the same record and briefs. We thus decide both cases in a single opinion. For the reasons that follow, we sustain the notice of opposition and grant the petition to cancel.

### **I. The Record**

The record includes the pleadings, the files of the Adrenalin Application and Registration pursuant to Trademark Rule 2.122(d)(2), 37 C.F.R. § 2.122(d)(2), and the following submissions by Shakopee:

- Notice of reliance on Shakopee's pleaded registrations and other registrations owned by Shakopee;<sup>6</sup>

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<sup>4</sup> Shakopee also alleged fraud in the procurement of the Registration. However, because the fraud claim is not referenced in Shakopee's brief, we find that this claim has been waived. *See, e.g., Harry Winston, Inc. v. Bruce Winston Gem Corp.*, 111 USPQ2d 1419, 1435 (TTAB 2013) (fraud claim waived where claim not addressed in brief); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 801.01 (June 2021).

<sup>5</sup> Adrenalin also asserted several affirmative defenses and purported "affirmative defenses" in its answers, including failure to state a claim which is not a true affirmative defense. *John W. Carson Found. v. Toilets.com, Inc.*, 94 USPQ2d 1942, 1949 (TTAB 2010). Adrenalin did not present any evidence with respect to these defenses at trial, so they are deemed waived. *See, e.g., Alcatraz Media Inc. v. Chesapeake Marine Tours Inc.*, 107 USPQ2d 1750, 1753 n.6 (TTAB 2013); *Mitchel Miller, a Prof'l Corp. v. Miller*, 105 USPQ2d 1615, 1616 n.3 (TTAB 2013).

<sup>6</sup> 8 TTABVUE. All TTABVUE citations in this decision reference the docket in the parent case, i.e., Opposition No. 91246474, and we reference the record in the TTABVUE docket by the entry number and .pdf page number, respectively. *Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

- Notice of reliance on Adrenalin’s responses to Shakopee’s interrogatories;<sup>7</sup>
- Notice of reliance on screen captures of Adrenalin’s Mystic City website and Mystic City USA Twitter page;<sup>8</sup> and
- Notice of reliance on filings from a federal district court case involving Adrenalin and a third-party, as well as a Board decision in a prior opposition proceeding involving Shakopee and a third-party.<sup>9</sup>

Adrenalin introduced no evidence during its testimony period.<sup>10</sup>

## II. Entitlement to a Statutory Cause of Action, and Priority

Entitlement to a statutory cause of action must be established in every inter partes case. *See Australian Therapeutic Supplies Pty. Ltd. v. Naked TM, LLC*, 965 F.3d 1370, 2020 USPQ2d 10837, at \*3 (Fed. Cir. 2020), *reh’g en banc denied* 981 F.3d 1083 (Dec. 4, 2020), *petition for cert. filed*, No. 20-1552 (Apr. 28, 2021) (citing *Lexmark*

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<sup>7</sup> 9 TTABVUE.

<sup>8</sup> 10 TTABVUE.

<sup>9</sup> 11 TTABVUE. Shakopee also filed a document, titled “Testimony of [Shakopee],” consisting of a confidential 2010 declaration of Shakopee’s then Vice President of Marketing filed in a federal district court case involving Shakopee and a third-party, which provides gross revenues for Shakopee’s Mystic Lake Casino from 2007-2010. 12 TTABVUE. To be admissible, testimony from another proceeding must (i) involve “the same parties or those in privity”; (ii) be introduced pursuant to a stipulation of the parties approved by the Board or by motion granted by the Board; and (iii) be trial testimony, or a discovery deposition which was used, by agreement of the parties, as trial testimony in the other proceeding. Trademark Rule 2.122(f), 37 C.F.R. § 2.122(f); TBMP § 704.13. None of those prerequisites to admissibility are satisfied here. Accordingly, the declaration does not constitute evidence in this case, and we give it no consideration.

<sup>10</sup> Adrenalin submitted screen captures of two websites for the first time with its trial brief, 16 TTABVUE 14-15 (Adrenalin’s Brief), to which Shakopee objected as untimely, 17 TTABVUE 9, 11 (Shakopee’s Reply Brief). The objection is sustained. *See* Trademark Rule 2.121(a), 37 C.F.R. § 2.121(a), (“No ... evidence [shall be] presented except during the times assigned, unless by stipulation of the parties approved by the Board, or upon motion granted by the Board, or by order of the Board.”). *See also Baseball Am., Inc. v. Powerplay Sports, Ltd.*, 71 USPQ2d 1844, 1846 n.8 (TTAB 2004) (material submitted outside of party’s assigned testimony period given no consideration); TBMP § 801.01.

*Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 109 USPQ2d 2061, 2067 n.4 (2014)). A party in the position of plaintiff may oppose registration of a mark, or petition to cancel a registered mark, where such opposition/cancellation is within the zone of interests protected by the statute, 15 U.S.C. §§ 1063-1064, and the plaintiff has a reasonable belief in damage that is proximately caused by registration or continued registration of a mark. *Corcamore, LLC v. SFM, LLC*, 978 F.3d 1298, 2020 USPQ2d 11277, at \*6-7 (Fed. Cir. 2020), *cert. denied*, \_\_ S. Ct. \_\_, 2021 WL 2044561 (May 24, 2021).

“A claim of likelihood of confusion that is not wholly without merit, including prior use of a confusingly similar mark, may be sufficient ‘to establish a reasonable basis for a belief that one is damaged.’” *DeVivo v. Ortiz*, 2020 USPQ2d 10153, \*2 (TTAB 2020) (quoting *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1026 (Fed. Cir. 1999) and *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185, 189 (CCPA 1982)). Shakopee’s pleaded, valid, and subsisting registrations, which are of record, establish its entitlement to oppose registration of Adrenalin’s mark in the Application, and petition to cancel the Adrenalin Registration. *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Primrose Ret. Comm’s., LLC v. Edward Rose Senior Living, LLC*, 122 USPQ2d 1030, 1032 (TTAB 2016).

Because Shakopee’s pleaded registrations are of record and there is no pending counterclaim against them, priority is not at issue respect to the marks and services

identified in those registrations.<sup>11</sup> *Mini Melts, Inc. v. Reckitt Benckiser LLC*, 118 USPQ2d 1464, 1469 (TTAB 2016) (citing *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108, 110 (CCPA 1974)).

### III. Likelihood of Confusion

Trademark Act Section 2(d), 15 U.S.C. § 1052(d), prohibits the registration of a mark that

[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

To prevail on its Section 2(d) claims, Shakopee must prove by a preponderance of the evidence that Adrenalin's use of its marks are likely to cause confusion, mistake, or deception as to the source or sponsorship of the services identified in the Application and Adrenalin Registration. *Cunningham*, 55 USPQ2d at 1844 (plaintiff must prove priority and likelihood of confusion by a preponderance of the evidence); *Hydro-Dynamics, Inc. v. George Putnam & Co.*, 811 F.2d 1470, 1 USPQ2d 1772, 1773 (Fed. Cir. 1987) (same).

We base our determination of likelihood of confusion under Section 2(d) on an analysis of all of the probative facts of record. *In re E. I. du Pont de Nemours & Co.*,

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<sup>11</sup> Adrenalin filed a petition to cancel Shakopee's Registration No. 2799696 for the mark

**Mystic** approximately one year after Adrenalin filed its answer in this proceeding. See Cancellation No. 92073779. However, that proceeding was not consolidated, and Adrenalin failed to present any evidence during its testimony period therein, which resulted in the Board granting Shakopee's motion to dismiss that petition for failure to prosecute. See 12 TTABVue in Cancellation No. 92073779.

476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”). In assessing likelihood of confusion, we consider each *DuPont* factor for which there is evidence and argument. *In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162 (Fed. Cir. 2019). However, we may assign varying weights to each *DuPont* factor depending on the evidence presented in a particular case. *See Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993) (“[T]he various evidentiary factors may play more or less weighty roles in any particular determination.”).

“In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services.” *Ricardo Media v. Inventive Software*, 2019 USPQ2d 311355, \*5 (TTAB 2019) (citing, inter alia, *In re Chatham Int’l Inc.*, 380 F.3d 1340, 71 USPQ2d 1944, 1945 (Fed. Cir. 2004) (referring to these as “two key considerations”)).

#### **A. Shakopee’s Alleged Family of Marks**

Before turning to the relevant *DuPont* factors, we address Shakopee’s claim (Pars. 3, 6-8 in the notice of opposition and Pars. 5-8 in the petition to cancel) that it owns a family of MYSTIC marks, and that registration of the mark MYSTIC PARKS AND RESORTS in the Application, and continued registration the mark MYSTIC CITY in the Adrenalin Registration, are likely to cause confusion with Shakopee’s family of marks.<sup>12</sup>

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<sup>12</sup> 15 TTABVUE 7 (Shakopee’s Brief).

The Federal Circuit, our primary reviewing court, describes a family of marks as follows:

A family of marks is a group of marks having a recognizable common characteristic, wherein the marks are composed and used in such a way that the public associates not only the individual marks, but the common characteristic of the family, with the trademark owner. Simply using a series of similar marks does not of itself establish the existence of a family. There must be a recognition among the purchasing public that the common characteristic is indicative of a common origin of the [services].

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Recognition of the family is achieved when the pattern of usage of the common element is sufficient to be indicative of the origin of the family. It is thus necessary to consider the use, advertisement, and distinctiveness of the marks, including assessment of the contribution of the common feature to the recognition of the marks as of common origin.

*J & J Snack Foods Corp. v. McDonald's Corp.*, 932 F.2d 1460, 18 USPQ2d 1889, 1891 (Fed. Cir. 1991). The trademark owner creates a family of marks through use, not registration. *See Polaroid Corp. v. Richard Mfg. Co.*, 341 F.2d 150, 144 USPQ 419, 420-21 (CCPA 1965) (ownership and registration of a number of marks containing a common feature is not sufficient to create a family of marks); *New Era Cap Co., Inc. v. Pro Era, LLC*, 2020 USPQ2d 10596, \*7 (TTAB 2020) (“Neither the mere intention to create a family of marks, nor ownership of multiple registrations containing the family term, is sufficient in and of itself to establish that a party owns a family of marks.”); *Evans Prods. Co. v. Boise Cascade Corp.*, 218 USPQ 160, 162 (TTAB 1983) (“Ownership of two registrations containing a common word is not sufficient per se to create the exclusivity under the ‘family of marks’ doctrine.”).

Shakopee’s argument that it owns a family of marks must be rejected because it

failed to introduce any testimony or evidence regarding the use of any of its pleaded marks, let alone a showing that such marks have been promoted together in a manner so as to create public recognition coupled with an association of common origin predicated upon the family feature. *See In re LC Trademarks, Inc.*, 121 USPQ2d 1197, 1199 (TTAB 2016); *Truescents LLC v. Ride Skin Care LLC*, 81 USPQ2d 1334, 1338 (TTAB 2006); *Marion Labs. Inc. v. Biochemical/Diagnostics Inc.*, 6 USPQ2d 1215, 1218-19 (TTAB 1988) (citing *Land-O-Nod Co. v. Paulison*, 220 USPQ 61, 65-66 (TTAB 1983)). Shakopee's mere ownership and registration of a number of marks containing the common feature MYSTIC is not sufficient to create a family of marks.

In view of the foregoing, Shakopee has not shown that it has a family of marks. Our Section 2(d) priority and likelihood of confusion analyses, therefore, shall be based separately on Opposer's pleaded marks. *Truescents*, 81 USPQ2d at 1338.

### **B. The *DuPont* Factors**

In this analysis, we will focus on Shakopee's registration of the mark  for services including "casino services, entertainment services, namely, live entertainment in the nature of musical, theatrical, dancing, sporting, and comedy performances" (Class 41) and "hotel services; arena services, namely, providing facilities for sports, concerts, conventions, trade shows, conferences, exhibitions, and banquets; restaurant services; food preparation and catering services" (Class 42) ("the MYSTIC Registration"),<sup>13</sup> which, of Shakopee's nine pleaded registrations, is most

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<sup>13</sup> Registration No. 2892303, registered October 12, 2004; renewed. Color is not claimed as a feature of the mark.

similar to Adrenalin's standard character marks MYSTIC PARKS AND RESORTS and MYSTIC CITY. If we do not find confusion likely with regard to these marks, we would not find confusion likely between Shakopee's other registered marks and Adrenalin's marks. *Fiserv, Inc. v. Elec. Transaction Sys. Corp.*, 113 USPQ2d 1913, 1917 (TTAB 2015) (citing *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010)).

### **1. Strength of Shakopee's Mark**

We begin with the fifth *DuPont* factor, which considers the "fame" or strength of Shakopee's mark. *DuPont*, 177 USPQ at 567, as that will affect the scope of protection to which it is entitled. The strength of a mark rests on the extent to which "a significant portion of the relevant consuming public ... recognizes the mark as a source indicator." *Joseph Phelps Vineyards, LLC v. Fairmont Holdings, LLC*, 857 F.3d 1323, 122 USPQ2d 1733, 1734 (Fed. Cir. 2017) (citing *Palm Bay Imps. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005)). This factor involves assessing the mark "along a spectrum from very strong to very weak." *Id.* (internal quotation omitted). A very strong mark receives a wider latitude of legal protection in the likelihood of confusion analysis. *See Palm Bay*, 73 USPQ2d at 1694 (strong marks "enjoy wide latitude of legal protection" and are "more attractive as targets for would-be copyists").

In determining the strength of a mark, we evaluate both inherent strength, based on the nature of the mark, and commercial strength or recognition. *Bell's Brewery, Inc. v. Innovation Brewing*, 125 USPQ2d 1340, 1345 (TTAB 2017) (citing

*Coach/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1476 (TTAB 2014)); *see also In re Chippendales USA Inc.*, 622 F.3d 1346, 96 USPQ2d 1681, 1686 (Fed. Cir. 2010) (a mark's strength is measured both by its conceptual strength and its marketplace strength).

Shakopee argues that its mark is strong.<sup>14</sup> In support, Shakopee points to testimony from the 2010 district court proceeding which we already indicated will be given no consideration,<sup>15</sup> as well as a 2016 Board decision in an opposition proceeding involving Shakopee and a third-party.<sup>16</sup> The Board's decision finding that Shakopee's mark was strong in 2016 on a different record in a different proceeding against a different adversary is not binding or even persuasive legal precedent, and it is not "evidence," because it does not serve to prove facts for this proceeding. It is well settled that each case must be decided on its own facts, based on the particular mark, the particular goods or services, and the particular record. *See, e.g., Indus. Nucleonics Corp. v. Hinde*, 475 F.2d 1197, 177 USPQ 386, 387 (CCPA 1973) ("Several other cases have been cited as precedents to be followed. As we have said innumerable times, prior decisions on other marks for other goods are of very little help one way or the other in cases of this type. Each case must be decided on its own facts and the differences are often subtle ones."); *In re Jacques Bernier Inc.*, 1 USPQ2d 1924, 1925 (TTAB 1987).

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<sup>14</sup> 15 TTABVUE 18-19 (Shakopee's Brief).

<sup>15</sup> *See* footnote 9, *supra*.

<sup>16</sup> 11 TTABVUE 34-53 (Shakopee's Fourth Notice of Reliance).

“The inherent or conceptual strength of [Shakopee’s *Mystic*] mark is not seriously at issue.” *New Era*, 2020 USPQ2d 10596 at \*10. “Mystic” is defined as “deeply or mysteriously spiritual; mystical,” and so has no descriptive or suggestive meaning as applied to the registered “casino services, live entertainment services, hotel services, and restaurant services.”<sup>17</sup> The term is thus arbitrary with respect to Shakopee’s casino, entertainment, hotel, and restaurant services, and the mark’s inherent distinctiveness is “evidenced by its registration on the Principal Register without a claim of acquired distinctiveness under Section 2(f) of the Trademark Act.” *Id.*, citing *Tea Bd. of India v. Republic of Tea, Inc.*, 80 USPQ2d 1881, 1889 (TTAB 2006). We find that Shakopee’s *Mystic* mark is conceptually strong.

However, there is no evidence that Shakopee’s *Mystic* mark is commercially strong, and as noted earlier, Shakopee has not presented any evidence regarding the use of any of its marks, nor are Shakopee’s pleaded registrations evidence of their use. Trademark Rule 2.122(b)(2) (“The allegation in ... a registration [ ] of a date of use is not evidence on behalf of the ... registrant ...”). Accordingly, there is no evidence regarding the commercial strength of Shakopee’s *Mystic* mark.

In sum, we find that Shakopee’s mark is entitled to a normal scope of protection

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<sup>17</sup> AMERICAN HERITAGE DICTIONARY (ahdictionary.com), accessed Aug. 5, 2021. The Board may take judicial notice of dictionary definitions, including online dictionaries that exist in printed format. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d*, 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016).

for a mark registered on the Principal Register and the fifth *DuPont* factor is neutral.

## 2. Similarity or Dissimilarity of the Marks

We now turn to the first *DuPont* factor, which considers the “[t]he similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression.” *In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1048 (Fed. Cir. 2018) (quoting *DuPont*, 177 USPQ at 567). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (quoting *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014), *aff’d mem.*, 777 F. App’x. 516 (Fed. Cir. 2019)).

The test is not whether the marks can be distinguished in a side-by-side comparison, but whether their overall commercial impressions are so similar that confusion as to the source of the services offered under the respective marks is likely to result. *See Cai v. Diamond Hong, Inc.*, 901 F.3d 1367, 127 USPQ2d 1797, 1801 (Fed. Cir. 2018) (citing *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1721 (Fed. Cir. 2012)). Our focus is on the recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. *See Neutrogena Corp. v. Bristol-Myers Co.*, 410 F.2d 1391, 56 CCPA 1159, 161 USPQ 687, 688 (CCPA 1969) (many consumers “may have but dim recollections from having previously seen or heard one or the other of the involved marks”); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1740 (TTAB 2014). The average purchaser in this case is an ordinary consumer, including consumers

who attend amusement and theme parks, casino services, live entertainment services, hotel services, and restaurant services.

Adrenalin's MYSTIC PARKS AND RESORTS and MYSTIC CITY marks are

similar to Shakopee's  mark in appearance and sound to the extent they share the term "MYSTIC," which as mentioned previously is arbitrary and has no meaning in connection with the respective services. It is also the first portion and the common element in Adrenalin's marks, and forms the entirety of Shakopee's

 mark. "[I]t is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered," *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988), and that general principle applies where the first part of the mark is a strong distinctive term. *See Palm Bay Imps.*, 73 USPQ2d at 1692 ("Veuve" is the most prominent part of the mark VEUVE CLICQUOT because "veuve" is the first word in the mark and the first word to appear on the label); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed Cir. 1992) (finding similarity between CENTURY 21 and CENTURY LIFE OF AMERICA in part because "consumers must first notice th[e] identical lead word").

In addition, marks have frequently been found to be similar where one mark incorporates the entirety of another mark, at least as to the literal element as is the case here. *See, e.g., Coca-Cola Bottling Co. of Memphis, Tenn., Inc. v. Joseph E. Seagram and Sons, Inc.*, 526 F.2d 556, 188 USPQ 105 (CCPA 1975) (BENGAL

LANCER for club soda, quinine water and ginger ale likely to cause confusion with BENGAL for gin); *In re Mr. Recipe, LLC*, 118 USPQ2d 1084, 1090 (TTAB 2016) (finding JAWS DEVOUR YOUR HUNGER and JAWS confusingly similar); *In re S. Bend Toy Mfg. Co., Inc.*, 218 USPQ 479, 480 (TTAB 1983) (finding LIL' LADY BUG for toy doll carriages and LITTLE LADY for doll clothing confusingly similar).

Further, for Adrenalin's MYSTIC PARKS AND RESORTS mark, Adrenalin disclaimed the wording "PARKS AND RESORTS" in recognition of its descriptiveness for parks and resort services. Disclaimed matter that is descriptive of a party's services is typically less significant or less dominant when comparing marks, and we agree that it is less significant here. *See Detroit Athletic Co.*, 128 USPQ2d at 1050 (citing *In re Dixie Rests.*, 105 F.3d 1405, 41 USPQ2d 1531, 1533-34); *Cunningham*, 55 USPQ2d at 1846 ("Regarding descriptive terms, this court has noted that the 'descriptive component of a mark may be given little weight in reaching a conclusion on the likelihood of confusion.") (quoting *Nat'l Data Corp.*, 224 USPQ at 752); *In re Code Consultants, Inc.*, 60 USPQ2d 1699, 1702 (TTAB 2001) (disclaimed matter is often "less significant in creating the mark's commercial impression").

With respect to Adrenalin's MYSTIC CITY mark, Shakopee argues that the term "CITY" is descriptive of Adrenalin's amusement and theme park services and should be given little weight.<sup>18</sup> Adrenalin disagrees, arguing that "MYSTIC CITY is not susceptible to dissection because the term 'CITY' is not a descriptive term with no source-identifying value. That is, the term 'CITY' is not descriptive of an amusement

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<sup>18</sup> 15 TTABVUE 17 (Shakopee's Brief); 17 TTABVUE 6 (Shakopee's Reply Brief).

park or amusement park ride for which the MYSTIC CITY mark is used.”<sup>19</sup> While there is no evidence showing “CITY” to be descriptive of amusement and theme park services, one definition of the term is “of, in, for, or characteristic of a city.”<sup>20</sup> Thus, the term is somewhat suggestive of Applicant’s services to the extent amusement parks have characteristics of a city.

In any event, we must also account for the fact that Adrenalin’s marks are in standard characters. As such, their display is not limited to any special stylization or size, and we must assume that they could be displayed in a similar or even the same

font style as Shakopee’s *Mystic* mark (e.g., *Mystic* CITY or *Mystic* PARKS AND RESORTS). *See* Trademark Rule 2.52(a), 37 C.F.R. § 2.52(a) (“Standard character” marks are registered “without claim to any particular font style, size, or color.”); *In re Aquitaine Wine USA, LLC*, 126 USPQ2d 1181, 1186 (TTAB 2018); *In re Viterra Inc.*, 101 USPQ2d at 1909-11; *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1823 (TTAB 2015).

On balance, we find that Shakopee’s *Mystic* mark and Adrenalin’s MYSTIC CITY PARKS AND RESORTS and MYSTIC CITY marks, compared in their entireties, are more similar than dissimilar in appearance, sound, connotation and commercial impression. The first *DuPont* factor thus weighs in favor of finding likelihood of confusion.

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<sup>19</sup> 16 TTABVUE 7 (Adrenalin’s Brief).

<sup>20</sup> COLLINS DICTIONARY, [www.collinsdictionary.com/dictionary/english/city](http://www.collinsdictionary.com/dictionary/english/city) (accessed Aug. 5, 2021), American English.

### 3. Similarity or Dissimilarity of the Services

We turn next to the second *DuPont* factor, which considers “[t]he similarity or dissimilarity and nature of the ... services as described in an application or registration.” *In re Detroit Athletic Co.*, 128 USPQ2d at 1051 (quoting *DuPont*, 177 USPQ at 567).

Shakopee’s **Mystic** Registration identifies services including “casino services, entertainment services, namely, live entertainment in the nature of musical, theatrical, dancing, sporting, and comedy performances” (Class 41) and “hotel services; arena services, namely, providing facilities for sports, concerts, conventions, trade shows, conferences, exhibitions, and banquets; restaurant services; food preparation and catering services” (Class 42). Adrenalin’s MYSTIC PARKS AND RESORTS and MYSTIC CITY both identify “amusement park and theme park services” (Class 41); the latter also includes “entertainment in the nature of an amusement park ride” (Class 41).

Shakopee argues that the services in the Application “are highly related to those in Shakopee’s family of MYSTIC registrations for a variety of casino, live entertainment, restaurant and other resort-style services. Indeed, it seems without question that members of the public would suppose that Shakopee might likewise provide amusement park or theme park services under its MYSTIC family of

marks.”<sup>21</sup> However, as noted earlier, Shakopee did not prove ownership of a family of marks and cannot rely on the wide scope of protection afforded to a family of marks.

Shakopee also did not provide any extrinsic evidence, such as third-party use or registration evidence, to show that the parties’ services are likely to emanate from the same source. However, the application and registrations themselves may provide evidence of the relationship between the services. *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002); *Merrit Foods v. Associated Citrus Packers, Inc.*, 222 USPQ 255 (TTAB 1984).

Dictionary definitions provide some insight into the relatedness of the parties’ services. A “casino” is “a public room or building for gambling and other entertainment,”<sup>22</sup> and an “amusement park” is a “commercially operated enterprise that offers rides, games, and other forms of entertainment.”<sup>23</sup> With respect to Shakopee’s services, the “other entertainment” that a casino may provide takes the form of live entertainment in the nature of musical, theatrical, dancing, sporting, and comedy performances, as well as providing facilities for sports and concerts.

We find that there is an inherent relationship between the relevant services because both Shakopee’s mark and Adrenalin’s marks identify entertainment services, albeit differing types. *Turdin v. Tribolite, Ltd.*, 109 USPQ2d 1473, 1482 (TTAB 2014) (“we find that there is an inherent relationship between ‘motion picture

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<sup>21</sup> 15 TTABVUE 18 (Shakopee’s Brief).

<sup>22</sup> AMERICAN HERITAGE DICTIONARY (ahdictionary.com), accessed Aug. 5, 2021.

<sup>23</sup> AMERICAN HERITAGE DICTIONARY (ahdictionary.com), accessed Aug. 5, 2021.

film production’ and ‘audio recording and production’ in that sound and music featured in a motion picture film may also be the subject of audio recordings.”); *In re Anderson*, 101 USPQ2d 1912, 1920 (TTAB 2012) (“we find an inherent relationship between the ‘tires’ and the ‘vehicle wheel cap and hub caps’ in the cited registrations on the one hand and the ‘custom manufacture of automobile services’ in the application on the other hand, since tires and either hub caps or wheel caps may be an essential element in the manufacture of many automobiles”).

Adrenalin argues that the parties’ services are unrelated because casinos “are highly regulated enterprises which facilitate gambling activities for adults (e.g., persons 21 years old or older),” and “[m]any casinos also include a hotel for patrons to stay overnight adjacent to the casino and offer other forms of adult entertainment (e.g., concerts, bars, golf, spas, etc.). In other words, casinos want their adult patrons to stay nearby so they can gamble at the adjoining casino.”<sup>24</sup> In contrast, Adrenalin urges, amusement parts “cater and advertise to people of all ages ... and offer rides ... and attractions ... to attract children and young adults who then utilize parents for taking them to such amusement parks.”<sup>25</sup>

However, where services are broadly identified in an application or registration “we must presume that the services encompass all services of the type identified,” *In re Solid State Design Inc.*, 125 USPQ2d 1409, 1413-14 (TTAB 2018), “and that the [services] would be purchased by all potential customers,” *In re Elbaum*, 211 USPQ

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<sup>24</sup> 16 TTABVUE 8-9 (Adrenalin’s Brief).

<sup>25</sup> *Id.* at 9.

639, 640 (TTAB 1981). Here, the services identified in Shakopee's *Mystic* Registration are not limited to adult entertainment; they include entertainment services in the nature of musical, theatrical, dancing, sporting, and comedy performances; hotel and restaurant services; sports facilities; and the provision of providing facilities for sports and concerts; and those services may be offered to customers of all ages, including adults with their families. Likewise, the identification of services in the Adrenalin Registration and Application are not limited, and while Adrenalin may target its services to children and young adults, as Adrenalin concedes, customers of amusement park services include "people of all ages," including adults.

With respect to Adrenalin's services, although Adrenalin's MYSTIC CITY mark specifically identifies "entertainment in the nature of an amusement park ride," both the Application and Adrenalin Registration separately identify amusement park and theme park services. As "amusement park" is defined, in addition to rides and games, amusement park services may include "other entertainment," which is broad enough to include Shakopee's identified "live entertainment in the nature of musical, theatrical, dancing, sporting and comedy performances." We thus consider the services related.

Although Adrenalin maintains that its services are not identical to any of Shakopee's services,<sup>26</sup> "it is not necessary that the [services] of the parties be identical

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<sup>26</sup> 16 TTABVUE 8 (Adrenalin's Brief).

or even competitive to support a finding of a likelihood of confusion.” *Coach Servs.*, 101 USPQ2d at 1722 (quoting *7-Eleven, Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). “[L]ikelihood of confusion can be found ‘if the respective [services] are related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that they emanate from the same source.’” *Id.* (quoting *7-Eleven*, 83 USPQ2d at 1724). Here, as demonstrated by the plain language of the services and their dictionary definitions, the parties’ services are not just related, but Adrenalin’s broadly worded amusement park services may encompass Shakopee’s more specific live entertainment services. Moreover, Adrenalin admits that “an amusement park may include a hotel,”<sup>27</sup> which corroborates our finding that the parties’ services are related.

Adrenalin also argues that casinos are “highly regulated enterprises which facilitate gambling activities for adults,” whereas “[a]musement parks ... cater and advertise to people of all ages ... and offer rides ... and attractions ... to attract children and young adults who then utilize parents for taking them to such amusement parks.”<sup>28</sup> However, Shakopee’s *Mystic* Registration identifies more than just casino services; it identifies live entertainment, hotel, and restaurant services, none of which are limited to particular age group, and we will not read a limitation into Shakopee’s identification of services. *See SquirtCo v. Tomy Corp.*, 697

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<sup>27</sup> 9 TTABVUE 10 (Shakopee’s Second Notice of Reliance: Adrenalin’s Response to Shakopee’s Interrogatory No. 7).

<sup>28</sup> 16 TTABVUE 8-9 (Adrenalin’s brief).

F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) (“There is no specific limitation here, and nothing in the inherent nature of SquirtCo’s mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The board, thus, improperly read limitations into the registration.”).

According to Adrenalin, the fact that Shakopee’s Registration does not identify amusement park services per se “makes sense since [Shakopee] operates a casino and hotel.... Arguably, the closest services to those of [Adrenalin] identified by [Shakopee] in any of its cited Mystic marks are hotel services ....”<sup>29</sup> On this point, Adrenalin indicates that, “[u]ltimately, Mystic City will be a more expansive theme park akin to Disneyland or University Studios that will offer ... dining, ... lodging and entertainment.”<sup>30</sup> Adrenalin’s plan to offer the same dining, lodging, and entertainment services identified in Shakopee’s *Mystic* Registration is consistent with our finding that the parties’ services are related.

Given the range of resort services identified by Shakopee’s *Mystic* Registration which, in addition to casinos, includes various types of entertainment (i.e., musical, theatrical, dancing, and comedy performances), and the fact that amusement parks, in addition to rides, also provide other entertainment similar to Shakopee’s identified services, the distance between Adrenalin’s and Shakopee’s services is not a sufficiently large one to make those services dissimilar for purposes

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<sup>29</sup> *Id.* at 8.

<sup>30</sup> 9 TTABVUE 9 (Adrenalin’s Response to Shakopee’s Interrogatory No. 2).

of likelihood of confusion. “The question is not whether [Shakopee] in fact sells the same [services] as [Adrenalin], but whether consumers are likely to mistakenly *think* that it does.” *Anheuser-Busch, LLC v. Innvopak Sys. Pty Ltd.*, 115 USPQ2d 1816, 1827 (TTAB 2015). We thus find that consumers could readily conclude Adrenalin’s MYSTIC PARKS AND RESORTS and MYSTIC CITY amusement park services may be an extension of Shakopee’s casino, hotel, restaurant, and entertainment services provided under its **Mystic** mark.

The second *DuPont* factor supports a finding of likelihood of confusion.

#### 4. Consumer Sophistication

The fourth *DuPont* factor considers “[t]he conditions under which and buyers to whom sales are made, i.e., ‘impulse’ vs. careful, sophisticated purchasing.” *DuPont*, 177 USPQ at 567. Shakopee argues that “both Adrenalin and Shakopee’s services would be purchased by the general public.”<sup>31</sup>

However, neither Shakopee’s **Mystic** Registration nor the Adrenalin Registration or Application include any limitations on their respective services. We therefore “must assume that the [services] are [provided] all price points and to all types of buyers and overlap to include both the discriminating purchaser as well as the ordinary [purchaser].” *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163 (Fed. Cir. 2014). In addition, we must assess the impact of the fourth *DuPont* factor “based ‘on the least sophisticated potential

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<sup>31</sup> 15 TTABVUE 19 (Shakopee’s Brief).

purchasers” of the services, *id.* at 110 (quoting *Gen. Mills, Inc. v. Fage Dairy Proc. Indus. S.A.*, 100 USPQ2d 1584, 1600 (TTAB 2011), *judgment set aside on other grounds*, 2014 WL 343267 (TTAB Jan. 22, 2014)), and there is no evidence that the least sophisticated potential purchaser of amusement park services on the one hand, and casino, hotel, restaurant, and other entertainment services on the other hand, will exercise anything more than ordinary care in purchasing.

We find the fourth *DuPont* factor neutral in our analysis.

### **5. Actual Confusion**

Addressing “[t]he nature and extent of any actual confusion,” and “the length of time during and conditions under which there has been concurrent use without evidence of actual confusion,” the seventh and eighth *DuPont* factors, *DuPont*, 177 USPQ at 567, Adrenalin asserts that “Shakopee has not disclosed any instances of actual confusion” and “Adrenalin is similarly aware of any instances of actual confusion. Adrenalin has been using its MYSTIC CITY and MYSTIC PARKS AND RESORTS marks since February 15, 2018 and November 1, 2015, respectively.”<sup>32</sup>

The absence of any reported instances of confusion is meaningful only if the record indicates appreciable and continuous use by Adrenalin of its marks for a significant period of time in the same markets as those served by Shakopee under its mark. *Gillette Can. Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992). Alas, as noted earlier, Adrenalin presented no evidence, much less evidence regarding the use, or extent of use, of its marks. As we also noted, the allegation of use in a registration is

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<sup>32</sup> 16 TTABVUE 10 (Adrenalin’s Brief).

not evidence of use on behalf of a registrant. *See* Trademark Rule 2.122(b)(2). The same is true for an application. *Id.* *See also In re Ala. Tourism Dep't.*, 2020 USPQ2d 10485, \*30 n.27 (TTAB 2020) (citing *Wet Seal, Inc. v. FD Mgmt., Inc.*, 82 USPQ2d 1629, 1634 n.11 (TTAB 2007)).

Furthermore, the eighth *DuPont* factor “requires us to look at actual market conditions, to the extent there is evidence of such conditions of record[,]” *Guild Mortg. Co.*, 2020 USPQ2d 10279 at \*6, and, considering the absence of any evidence introduced by Adrenalin, there is no evidence of market conditions. Adrenalin relies solely on the argument of counsel, which “is no substitute for evidence.” *Cai v. Diamond Hong*, 127 USPQ2d at 1799 (quoting *Enzo Biochem, Inc. v. Gen-Probe Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005)).

The seventh and eighth *DuPont* factors are neutral.

## **6. Potential Confusion**

Lastly, addressing “[t]he extent of potential confusion, i.e., whether de minimis or substantial,” *DuPont*, 177 USPQ at 567, Adrenalin asserts that “Shakopee operates a single tribal casino”; “tribal casinos are highly regulated and subject to state and federal compacts and laws”; and “Shakopee is not legally able to own and operate a casino beyond its reservation lands of approximately 2000 acres in the state of Minnesota.”<sup>33</sup> “Consequently,” Adrenalin contends, “without any ability to legally expand, any confusion that may ensue from Adrenalin’s Marks and Shakopee’s family

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<sup>33</sup> 16 TTABVUE 11 (Adrenalin’s Brief).

of Mystic marks is quite aptly defined as *de minimis*.”<sup>34</sup> Once again, Adrenalin’s contentions are not based on evidence in the record, but rather on the unsupported argument of its counsel. The eighth *DuPont* factor is thus neutral.

#### IV. Conclusion

On the basis of the preceding discussion of the factors favoring Shakopee, including the similarity of the marks and services, we find that Adrenalin’s marks MYSTIC PARKS AND RESORTS (Serial No. 87742831) and MYSTIC CITY (Registration No. 5633245) for amusement park and theme park services are likely to cause confusion with Shakopee’s *Mystic* mark (Registration No. 2799696) for casino services, various live entertainment services, hotel services, and restaurant services.

Like the federal courts, the Board has generally used its discretion to decide only those claims necessary to enter judgment and dispose of the case. *Multisorb Techs., Inc. v. Pactiv Corp.*, 109 USPQ2d 1170, 1171 (TTAB 2013) (“[T]he Board’s determination of registrability does not require, in every instance, decision on every pleaded claim”). Our conclusion on likelihood of confusion is sufficient to grant the petition to cancel, and so we do not reach Shakopee’s additional claim of nonuse in the cancellation proceeding.

**Decision:** The notice of opposition is sustained, and registration of the mark MYSTIC PARKS AND RESORTS in Application Serial No. 87742831 is refused. The

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<sup>34</sup> *Id.* at 11.

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petition to cancel is granted on the claim under Section 2(d), and Registration No. 5633245 for the mark MYSTIC CITY will be cancelled in due course.

**APPENDIX**

Plaintiff's pleaded registrations include the following.

1. MYSTIC LAKE (Registration No. 2008798) in typed form for "hotels" in International Class 42.

2. **Mystic LAKE** (Registration No. 2699711) for "promoting the child care services of others; promoting health club and athletic facilities of others; promoting the golf services of others; promoting the concert ticket sale services of others; retail shops featuring souvenirs, crafts, clothing, and related merchandise; providing meeting, reception, seminar, event, banquet, convention, conference, trade show, and exhibition facilities," in International Class 35; "laundry and dry cleaning services; installation and repair of audio-visual multi-media equipment," in International Class 37; "valet parking services; shuffle bus services; ground transportation of passengers via bus," in International Class 39; "casino services, entertainment services in the nature of providing games and gaming machines, such as slot machines, video slot machines, video poker machines, video lottery terminals, video keno machines, video craps machines, video roulette machines, and pull tab machines; entertainment services in the nature of providing and conducting blackjack games and tournaments, bingo game events and promotions, slot machine events and promotions, sporting-related promotions, and providing and conducting drawings for cash and prize giveaways; entertainment services in the nature of providing movies and video games for use by guests; providing live entertainment in the nature of musical, theatrical, dancing, sporting, comedy, and celebrity, performances and events; rental of audio-visual multi-media equipment," in International Class 41; and "hotel services, hotel concierge services; arena services, namely, providing facilities for sports, concerts, conventions, trade shows, conferences, and exhibitions; providing online hotel reservation services; restaurant services; food preparation and catering services," in International Class 42.

3. MYSTIC LAKE (Registration No. 2726584) in typed form for "promoting the child care services of others; promoting health club and athletic facilities of others; promoting the golf services of others; promoting the concert ticket sale services of others; retail shops featuring souvenirs, crafts, clothing, and related merchandise," in International Class 35; "valet parking services; shuffle bus services; ground transportation of passengers via bus," in International Class 39; "casino services, entertainment services, namely, live entertainment in the nature of musical, theatrical, dancing, sporting, and comedy performances," in International Class 41; and "hotel services; arena services, namely, providing

facilities for sports, concerts, conventions, trade shows, conferences, exhibitions, and banquets; restaurant services; food preparation and catering services,” in International Class 42.

4. MYSTIC LAKE CASINO HOTEL (Registration No. 2760867) in typed form with CASINO HOTEL disclaimed for “promoting the child care services of others; promoting health club and athletic facilities of others; promoting the golf services of others; promoting the concert ticket sale services of others; retail shops featuring souvenirs, crafts, clothing, and related merchandise,” in International Class 35; “valet parking services; shuttle bus services; ground transportation of passengers via bus,” in International Class 39; “casino services, entertainment services, namely, live entertainment in the nature of musical, theatrical, dancing, sporting, and comedy performances,” in International Class 41; and “hotel services; arena services, namely, providing facilities for sports, concerts, conventions, trade shows, conferences, exhibitions, and banquets; restaurant services; food preparation and catering services,” in International Class 42.

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5. (Registration No. 2799696) for “promoting the child care services of others; promoting health club and athletic facilities of others; promoting the golf services of others; promoting the concert ticket sale services of others; retail shops featuring souvenirs, crafts, clothing, and related merchandise,” in International Class 35; “valet parking services; shuttle bus services; ground transportation of passengers via bus,” in International Class 39; “casino services, entertainment services, namely, live entertainment in the nature of musical, theatrical, dancing, sporting, and comedy performances,” in International Class 41; and “hotel services; arena services, namely, providing facilities for sports, concerts, conventions, trade shows, conferences, exhibitions, and banquets; restaurant services; food preparation and catering services,” in International Class 42.
6. MYSTIC ENTERTAINMENT (Registration No. 2892303) in typed form (“ENTERTAINMENT” disclaimed) for “promoting musical, sporting, comedy, and celebrity performances and events,” in International Class 35; and “entertainment services, namely providing live entertainment in the nature of musical, sporting, comedy, and celebrity performances and events,” in International Class 41.



7. (Registration No. 2998124) (“CASINO HOTEL” disclaimed) for “ground transportation services, namely transportation of passengers by bus,” in International Class 39; “casino services; golf tournaments; entertainment services, namely, providing live entertainment in the nature of musical, sporting, comedy, and celebrity performances and events; entertainment services in the nature of providing and conducting blackjack games and tournaments, bingo game events and promotions, slot machine events and promotions, sporting-related promotions; providing and conducting drawings for cash and prize giveaways; providing facilities for sports and concerts,” in International Class 41; and “providing facilities for conventions and exhibitions; catering; restaurant services; hotel services,” in International Class 43.
8. MYSTIC SHOWROOM (Registration No. 3864654) (“SHOWROOM” disclaimed in International Class 43) for “entertainment services in the nature of live comedy shows, musical performances, theatrical performances, and circus performances,” in International Class 41; and “providing convention and meeting space facilities,” in International class 43.



9. (Registration No. 4878819) for “merchandise bags; pens; paper coasters; coin holders; and post cards,” in International Class 16; “clothing, namely, shirts, shorts, pants; head wear,” in International Class 25; “promoting the sale of the concert tickets of others; retail shops featuring souvenirs, crafts, clothing, and related merchandise,” in International Class 35; “financial services, namely, check cashing services, automated teller machine (ATM) services, and electronic fund transfer services; cash replacement rendered by credit card services,” in International Class 36; “valet parking services; shuttle bus services; ground transportation of passengers via bus,” in International Class 29; and “casino services; entertainment services in the nature of providing casino gaming and providing facilities featuring gaming machines, namely, slot machines, video slot machines, video poker machines, video lottery terminals, video keno machines, video craps machines, video roulette machines, and pull tab machines; entertainment services in the nature of providing and conducting blackjack games and tournaments, bingo game events and gaming contests, slot machine events and gaming contests, sporting-related promotions, namely, games of chance based upon organized sporting events; lottery services, namely, providing and conducting drawings for cash and prize

giveaways; entertainment services in the nature of providing movie showings and video game arcades for use by guests; provision of non-downloadable films and movies via video on demand services; entertainment services, namely, providing on-line video games; providing live entertainment in the nature of magic shows, musical performances, theatrical performances, dancing performances, sporting events in the nature of golf tournaments, comedy performances, and celebrity performances and events in the nature of personal appearances by celebrities; arranging and conducting of concerts; entertainment, namely, live music concerts; rental of audio-visual multimedia equipment,” in International Class 41; “hotel services; arena services, namely, providing general purpose facilities for sports, concerts, conventions, trade shows, conferences, and exhibitions; providing online hotel reservation services for travelers; restaurant services; food preparation and catering services; providing general purpose facilities for meeting, reception, seminar, event, banquet, convention, conference, trade show, and exhibition facilities,” in International Class 43; and “health spa services, namely, cosmetic body care services; health spa services, namely, massages, facials, body treatments in the nature of body wraps and body polish, manicures, pedicures, nail care, hair styling; health spa services for health and wellness of the body and spirit offered at a hotel,” in International Class 45.