

ESTTA Tracking number: **ESTTA1071181**

Filing date: **07/28/2020**

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	New Jersey Devils LLC
Granted to Date of previous extension	07/29/2020
Address	25 LAFAYETTE STREET NEWARK, NJ 07102 UNITED STATES
Attorney information	KELLEY A. LYNCH NHL ENTERPRISES, L.P. 1185 AVENUE OF THE AMERICAS, 15TH FLOOR NEW YORK, NY 10036 UNITED STATES Primary Email: klynch@nhl.com Secondary Email(s): tprochnow@nhl.com, jwang@nhl.com, arosenblatt@nhl.com, anunez@nhl.com, vfaraci@nhl.com, gbueti@nhl.com 212-789-2000
Docket Number	

Applicant Information

Application No.	88692389	Publication date	03/31/2020
Opposition Filing Date	07/28/2020	Opposition Period Ends	07/29/2020
Applicant	Resorts Digital Gaming, LLC 1133 BOARDWALK ATLANTIC CITY, NJ 08401 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Entertainment services, namely, providing temporary use of non-downloadable interactive games; Gaming services in the nature of on-line casino gambling; Entertainment services, namely, providing online electronic games; Entertainment services, namely, providing an on-line computer game; Providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours for recreational computer game playing purposes; Providing an on-line computer game in the field of casino gambling
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Dilution by blurring	Trademark Act Sections 2 and 43(c)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1264070	Application Date	09/30/1982
Registration Date	01/17/1984	Foreign Priority Date	NONE
Word Mark	DEVILS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 009. First use: First Use: 1982/09/21 First Use In Commerce: 1982/09/21 [Plastic Megaphones] Class 016. First use: First Use: 1982/09/21 First Use In Commerce: 1982/09/21 Printed Adhesive Labels Class 024. First use: First Use: 1982/09/21 First Use In Commerce: 1982/09/21 Pennants Class 025. First use: First Use: 1982/09/21 First Use In Commerce: 1982/09/21 Shirts Class 041. First use: First Use: 1982/09/21 First Use In Commerce: 1982/09/21 Entertainment Services-Namely, Conducting Professional Hockey Competitions and Exhibitions		

U.S. Registration No.	1662564	Application Date	11/15/1990
Registration Date	10/29/1991	Foreign Priority Date	NONE
Word Mark	DEVILS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1982/00/00 First Use In Commerce: 1982/00/00 clothing; namely, T-shirts, sport shirts, jerseys, sweaters, sweatshirts, jackets, sweatpants, warm-up suits, shorts, caps, hats, scarves, mittens and cloth bibs		

U.S. Registration No.	3959997	Application Date	02/18/2009
Registration Date	05/10/2011	Foreign Priority Date	NONE
Word Mark	JERSEY'S TEAM		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: First Use: 2008/08/00 First Use In Commerce: 2008/08/00 ENTERTAINMENT SERVICES, NAMELY, ORGANIZING AND CONDUCTING HOCKEY CONTESTS AND EXHIBITIONS		

U.S. Registration No.	4793989	Application Date	12/19/2014
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Registration Date	08/18/2015	Foreign Priority Date	NONE
Word Mark	DEVILS DEN		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2007/10/27 First Use In Commerce: 2007/10/27 RETAIL STORE SERVICES FEATURING APPAREL, NOVELTIES, JEWELRY, PINS, POSTERS, GIFTWARE, AND BOOKS		

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	NEW JERSEY DEVILS		
Goods/Services	hockey related goods and services		

Attachments	NOO JERSEY DEVIL SLOT.7.28.20.pdf(102135 bytes)
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Signature	/kelley a. lynch/
Name	KELLEY A. LYNCH
Date	07/28/2020

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

In the matter of trademark applications Serial Nos. 88/692,389
Published in the Official Gazette on March 31, 2020

NEW JERSEY DEVILS LLC	:	
	:	
Opposer,	:	Opposition No.
	:	
v.	:	<u>NOTICE OF OPPOSITION</u>
	:	
RESORTS DIGITAL GAMING, LLC	:	
Applicant.	:	

NOTICE OF OPPOSITION

New Jersey Devils LLC (“New Jersey Devils”), a Delaware limited liability company having a principal place of business at 25 Lafayette Street, Newark, New Jersey 07102, believes that it will be damaged by registration of the subject mark of Application Serial No. 88/692,389 for JERSEY DEVIL SLOT (the “Challenged Application”) and hereby opposes same. On information and belief, the owner of the Challenged Application is Resorts Digital Gaming, LLC (“Applicant”), a New Jersey limited liability company having a principal place of business at 1133 Boardwalk Atlantic City, NJ 08401.

The grounds for opposition are as follows:

1. Opposer New Jersey Devils is the owner of the well-known professional ice hockey team, the New Jersey Devils. The New Jersey Devils team has been a member of the National Hockey League (“NHL”) since 1982 and has consistently attracted a large following, both in the United States and worldwide.

2. The NHL is the world’s foremost professional ice hockey league. Founded in 1917, the NHL is an association of thirty-one (31) member clubs, including the New Jersey Devils team.

3. New Jersey Devils is the owner of the following federal trademark registrations, among others (the “NEW JERSEY DEVILS Registrations”):

MARK	REG. NO.	GOODS	STATUS AND PRIORITY DATE
DEVILS	1,264,070	<u>Class 16</u> : printed adhesive labels <u>Class 24</u> : pennants <u>Class 25</u> : shirts <u>Class 41</u> : entertainment services-namely, conducting professional hockey competitions and exhibitions	Registered 1/17/1984 Priority as of 9/21/1982
DEVILS	1,662,564	<u>Class 25</u> : clothing; namely, t-shirts, sport shirts, jerseys, sweaters, sweatshirts, jackets, sweatpants, warm-up suits, shorts, caps, hats, scarves, mittens and cloth bibs	Registered 10/29/1991 Priority as of 1982
JERSEY’S TEAM	3,959,997	<u>Class 41</u> : entertainment services, namely, organizing and conducting hockey contests and exhibitions	Registered 5/10/2011 Priority as of August 2008
DEVILS DEN	4,793,989	<u>Class 35</u> : retail store services featuring apparel, novelties, jewelry, pins, posters, giftware, and books	Registered 8/18/2015 Priority as of 10/27/2007

4. All of the NEW JERSEY DEVILS Registrations are valid and subsisting.

5. Registrations Nos. 1,264,070 and 1,662,564 are incontestable within the meaning of 15 U.S.C. §§ 1115(b) and 1065. These registrations constitute conclusive evidence of the validity of the subject marks thereof, the registrations therefor, and of New Jersey Devils’

exclusive right to use those marks in connection with the goods set forth in these registrations.

6. Registrations Nos. 3,959,997 and 4,793,989 constitute prima facie evidence of the validity of the subject marks thereof, the registrations therefor, and of New Jersey Devils' exclusive right to use those marks in connection with the goods set forth in those registrations.

7. New Jersey Devils is also the owner of common law rights in, *inter alia*, the marks that are the subject of the NEW JERSEY DEVILS Registrations, the trademark NEW JERSEY DEVILS, along with a family of other related trademarks (collectively, the "NEW JERSEY DEVILS Marks") covering, *inter alia*, hockey competitions and exhibitions and a wide variety of related goods and services, including but not limited to online and interactive games.

8. New Jersey Devils' use of the NEW JERSEY DEVILS Marks long predates the filing date of the Challenged Application, which is based on intent-to-use.

9. New Jersey Devils is engaged in an extensive collateral licensing program of the NEW JERSEY DEVILS Marks. As part of this program, New Jersey Devils, together with NHL Enterprises, L.P. ("NHLE"), the licensing arm of the NHL and the NHL teams, licenses the NEW JERSEY DEVILS Marks to a variety of different companies for a variety of different products and services, including use in connection with online and interactive games. Moreover, both the NEW JERSEY DEVILS and NHLE have entered into sponsorship arrangements with casino and gaming companies in which the NEW JERSEY DEVILS Marks are used under license. The NEW JERSEY DEVILS has been so licensing the NEW JERSEY DEVILS Marks since prior to the filing date for Applicant's intent-to-use application for the mark herein opposed.

10. On November 14, 2019, Applicant filed Application Ser. No. 88/692,389, based on intent to use the trademark JERSEY DEVIL SLOT for "Entertainment services, namely,

providing temporary use of non-downloadable interactive games; Gaming services in the nature of on-line casino gambling; Entertainment services, namely, providing online electronic games; Entertainment services, namely, providing an on-line computer game; Providing a web-based system and on-line portal for customers to participate in on-line gaming, operation and coordination of game tournaments, leagues and tours for recreational computer game playing purposes; Providing an on-line computer game in the field of casino gambling” in International Class 41 (“Applicant’s Mark”).

11. New Jersey Devils’ rights in and to its NEW JERSEY DEVILS Marks are long prior to the filing date of the Challenged Application.

12. Applicant’s Mark so resembles the NEW JERSEY DEVILS Marks as to be likely, when used in connection with Applicant’s services, to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Applicant and its services with New Jersey Devils, or as to the origin, sponsorship, or approval of Applicant and its services by New Jersey Devils.

13. Applicant’s Mark creates the same, or essentially the same, commercial impression as the NEW JERSEY DEVILS Marks and is similar thereto in sight, sound and meaning.

14. On information and belief, Applicant’s Mark will be used in connection with services that are the same or substantially similar to goods and services offered by New Jersey Devils and/or its licensees under the NEW JERSEY DEVILS Marks.

15. On information and belief, services branded with Applicant’s Mark would be offered through some of the same channels of trade and to the same general class of purchasers as those through and to which New Jersey Devils’ goods and services sold under its NEW

JERSEY DEVILS Marks are offered. Such use would also be within New Jersey Devils' natural zone of expansion.

16. New Jersey Devils believes that it will be damaged by the registration of Applicant's Mark because such registration would support and assist Applicant in the confusing and misleading use of the designation it seeks to register, and would give color of exclusive statutory rights to Applicant, in violation and derogation of the prior and superior rights of New Jersey Devils.

COUNT I
Likelihood of Confusion
15 U.S.C. § 1052(d)

17. Paragraphs 1-16 above are realleged and incorporated herein by reference as if set forth in full.

18. Applicant's Mark so resembles the NEW JERSEY DEVILS Marks as to be likely, when used in connection with the services set forth in the Challenged Application, to cause confusion, or to cause mistake, or to deceive under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

COUNT II
Likelihood of Dilution
15 U.S.C. § 1125(c)

19. Paragraphs 1-18 above are realleged and incorporated herein by reference as if set forth in full.

20. New Jersey Devils' DEVILS and NEW JERSEY DEVILS trademarks became famous within the meaning of 15 U.S.C. § 1125(c) prior to the filing date of the Challenged Application, which is based on intent-to-use.

21. New Jersey Devils' DEVILS and NEW JERSEY DEVILS trademarks became

famous within the meaning of 15 U.S.C. § 1125(c) long prior to any rights Applicant may have in the United States with respect to Applicant's Mark.

22. Applicant's registration and use of Applicant's Mark in connection with the services set forth in the Challenged Application is likely to cause dilution of the DEVILS and NEW JERSEY DEVILS trademarks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

WHEREFORE, New Jersey Devils requests that the Challenged Application be refused registration on the basis of priority, likelihood of confusion and dilution, and that the Trademark Trial and Appeal Board grant such other relief as it deems just and proper.

Dated: July 28, 2020

Respectfully Submitted,

NHL ENTERPRISES, L.P.



By: _____

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