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

Proceeding	92056072
Party	Plaintiff Ravel Hotel LLC
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Date	06/03/2013
Attachments	Reply Brief in Support of Motion to Join a Party.pdf(299839 bytes)

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

RAVEL HOTEL LLC, Petitioner, v. REVEL ENTERTAINMENT GROUP, LLC, Respondent.	Consolidated Proceedings No. 92056068 and 92056072

REPLY BRIEF IN SUPPORT OF MOTION TO JOIN A PARTY

Petitioner Ravel Hotel LLC ("Ravel") submits this Reply Brief in support of Ravel's Motion to Join a Party (the "Motion"). As stated in its moving brief on the Motion, Ravel does not oppose a stay of the Consolidated Proceeding Nos. 92056068 and 92056072 (the "Consolidated Proceedings") as to debtor Revel Entertainment Group, LLC's ("REG"), but moves to join Revel Group, LLC ("Revel Group")[1] as a party since it appears that Revel Group is the current owner by assignment of the disputed marks. In its opposition to the Motion, Revel Group states that it does not oppose the motion to join Revel Group as a party to this proceeding. Revel Group, however, argues that the Consolidated Proceedings should be stayed as to Revel Group in favor of the action filed by Ravel against REG and Revel Group for trademark infringement in the United States Bankruptcy Court for the District of New Jersey (the "Civil Action") and that Revel Group, a non-debtor, should receive the benefit of the automatic stay of the Bankruptcy Code, despite established law to the contrary.

[1] All other terms previously defined in Ravel's brief in support of the Motion are used herein without further explanation.

Ravel maintains that the Consolidated Proceedings should not be stayed as to Revel Group, but should proceed. The TTAB has unparalleled expertise in deciding issues relating to registration of trademarks. Given the TTAB's specialized knowledge concerning trademark registrability, the TTAB's decision in the Consolidated Proceedings will be instructive to the Court in the Civil Action. Finally, as argued in Ravel's moving brief, Revel Group has not filed for bankruptcy protection and cannot benefit from the automatic stay. As such, the Consolidated Proceeding should not be stayed as to non-debtor Revel Group.

ARGUMENT

I. The Consolidated Proceedings Should Not Be Stayed In Favor Of The Civil Action Because The TTAB's Expertise Will Result In A Decision That Could Be Useful To The Court In The Civil Action.

The TTAB specializes in deciding registrability of trademarks. A decision by the TTAB concerning registrability of the REVEL marks at issue in the Consolidated Proceedings, would be instructive and valuable to the court in the Civil Action. Consequently, the Consolidated Proceedings should not be stayed in favor of the Civil Action, but should proceed against Revel Group. Both the parties and the court in the Civil Action will benefit from the TTAB's insight and expertise in the area of trademark registrability.

II. The Automatic Stay Of Section 362 Of The Bankruptcy Code Is Inapplicable To Proceedings Or Claims Against Non-Debtor Revel Group.

As argued in Ravel's moving brief on the Motion, the automatic stay provided for by Section 362 of the Bankruptcy Code applies only to the debtor in bankruptcy, not affiliated corporations or entities. . See Austin v. Unarco Indus., Inc., 705 F.2d 1, 4 (1st Cir.), cert. dismissed, 463 U.S. 1247, 77 L. Ed. 2d 1454, 104 S. Ct. 34 (1983); see also Park West Real Estate Corp. v. Calvert (In re Calvert), 135 B.R. 398, 400-401 (Bankr. S.D. Cal. 1991); In re Two Appeals Arising out of the Sun Juan Dupont Plaza Hotel Fire Litig., 994 F.2d 956, 969 (4th

Cir. 1993) (holding automatic stay does not apply to actions against non-debtor subsidiary). As such, only actions or proceedings against REG are stayed as a result of its bankruptcy filing. Here, REG transferred its ownership of the Registrations that are at issue in the Consolidated Proceedings to non-debtor Revel Group. Revel Group is not protected by the automatic stay of Section 362 and these proceedings should not be stayed as to the claims for cancellation, which are now claims against non-debtor Revel Group, and not against REG any longer.

Given the fact that both parties' marks cover the same or closely related goods and plainly are targeted to similar, if not identical consumers, the issues in the Consolidated Proceedings are likely to be primarily questions of law relating to similarity of the parties' marks that do not require significant discovery. As of the time that REG filed its bankruptcy petition, Revel Group owned 97% of the stock of REG. See Reply Declaration of Gary H. Fechter ("Fechter Decl."), Ex. C at Answer to ¶7 of Complaint in Civil Action. In addition, REG is presumably a licensee of Revel Group. Information concerning use of the REVEL marks at issue in the Consolidated Proceeding is deemed to be within the possession, custody or control of Revel Group and subject to discovery requests directed to Revel Group. See Glaxo v. Geneva, 1995 U.S. Dist. LEXIS 21894, at * 4 (D. N.J. May 9, 1995) (holding that documents in parent corporation's possession were in the "possession, custody and control" of defendant subsidiary corporation and were subject to production in litigation); see also Japan Halon, Co., Ltd. v. Great Lakes Chemical Corp., 155 F.R.D. 626 (N.D. Ind. 1993). If a subsidiary can be deemed to have possession, custody or control over documents in the files of its parent corporation, certainly a parent corporation that owns 97% of a subsidiary corporation has possession, custody or control over documents and information in the subsidiary's possession. In addition, as licensor of the REVEL marks to REG, Revel Group presumably has information concerning use of the REVEL

Marks, assuming that REG is not using the REVEL marks subject to a naked license. To the extent that discovery is required directly from REG, that discovery can be taken from REG after the automatic stay is lifted.

CONCLUSION

Based upon the foregoing, Ravel respectfully submits that Revel Group should be joined as a party to the Consolidated Proceedings, as conceded by Revel Group, and that the Consolidated Proceedings should not be stayed as to Revel Group.

Dated: June 3, 2013

McCARTER & ENGLISH, LLP

By: _____

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

Ravel Hotel LLC.,	:	Consolidated Proceedings 92056068 and 92056072
Petitioner,	:	
v.	:	
Revel Entertainment Group, LLC,	:	
Registrant.	:	

REPLY DECLARATION OF GARY H. FECHTER IN SUPPORT OF MOTION TO JOIN A PARTY

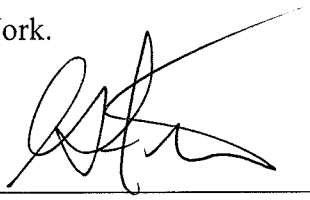
GARY H. FECHTER hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney at law of the State of New York and a member of the firm of McCarter & English, LLP. I submit this Declaration in support of Ravel Hotel LLC's ("Ravel") Motion to join Revel Group, LLC ("Revel Group") as a party to these consolidated cancellation proceedings.

2. Attached hereto as Exhibit A is a true and correct copy of excerpts from Revel Entertainment Group, LLC's Answer, Affirmative defenses and Counterclaim to Adversary Complaint, filed in *Ravel Hotel LLC v. Revel Entertainment Group, LLC (In re Revel AC Inc.)*, Adv. Proc. No. 13-01382-(JHW).

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on June 3, 2013, in New York, New York.



Gary H. Fechter

EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re: REVEL AC INC., et al. Debtors	Chapter 11 Case No. 13-16253-JHW Jointly Administered
RAVEL HOTEL LLC, Plaintiff, v. REVEL ENTERTAINMENT GROUP, LLC and REVEL GROUP, LLC, Defendants.	Adv. Proc. No. 13-01382-JHW

REVEL ENTERTAINMENT GROUP, LLC'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM TO ADVERSARY COMPLAINT

Defendant, Revel Entertainment Group, LLC ("REG"), hereby files this Answer,

Affirmative Defenses, and Counterclaim to the Adversary Complaint filed by Plaintiff, Ravel Hotel LLC ("Plaintiff"), and further states as follows:

NATURE OF THE ACTION

1. This action seeks injunctive and monetary relief based on Defendants' infringement of Plaintiff's trademark in violation of the United States Trademark Act (the "Lanham Act"), 15 U.S.C. § 1051, *et seq.*

ANSWER:

REG admits that Plaintiff seeks injunctive and monetary relief in this action, but denies that REG has infringed Plaintiff's trademark in violation of the United States Trademark Act (the "Lanham Act"), 15 U.S.C. § 1051, *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334, 151 and 157, and 11 U.S.C. § 541 and Bankruptcy Rule 7001(1), (2), (7) and (9).

ANSWER:

Admitted.

3. This is a proceeding related to the Debtor's bankruptcy case under 28 U.S.C. § 157(c). Plaintiff reserves all its rights (and nothing herein should be construed as a waiver of plaintiff's rights) to a jury trial and to seek the withdrawal of the reference of this adversary proceeding to the Bankruptcy Court pursuant to 28 U.S.C. § 157(d). Plaintiff does not consent to a trial by jury before this Court. Plaintiff does not consent to entry of final orders or judgments by the Bankruptcy Court.

ANSWER:

REG admits that this is a proceeding related to REG's bankruptcy case under 28 U.S.C. § 157(c). REG is without knowledge or information sufficient to form a belief as to the remaining "allegations" of Paragraph 3, and therefore denies them. In addition, the remaining "allegations" of Paragraph 3 are not true allegations and therefore require no answer.

4. Venue is properly located in the United States Bankruptcy Court for the District of New Jersey pursuant to 28 U.S.C. § 1409.

ANSWER:

Admitted.

PARTIES

5. Plaintiff Ravel Hotel LLC is a New York limited liability company, with its principal place of business located at 8-08 Queens Plaza South, Long Island City, New York 11101.

ANSWER:

REG is without information or knowledge sufficient to form a belief about the truth of the allegations of Paragraph 5, and therefore denies them.

6. Defendant Revel Entertainment Group, LLC is one of the debtors in the above captioned chapter 11 cases and a New Jersey limited liability company, with its principal place of business at 500 Boardwalk, Atlantic City, New Jersey 08401.

ANSWER:

Admitted.

7. Defendant Revel Group, LLC is a Delaware limited liability company, with its principal place of business at 500 Boardwalk, Atlantic City, New Jersey 08401. According to the documents filed by the Debtor in conjunction with its bankruptcy petition, Revel Group, LLC is the 97% owner of the Debtor's stock.

ANSWER:

REG admits that Revel Group, LLC was the 97% owner of the Debtor's stock at the time that the bankruptcy petition was filed and that Revel Group is a Delaware limited liability company. REG denies the remaining allegations contained in this paragraph.

8. Defendants REG and Revel Group are referred to collectively herein as "Defendants."

ANSWER: