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

Proceeding	91221326
Party	Plaintiff Hollywood Entertainment, LLC, dba Avalon and dba Bardot
Correspondence Address	CHRISTIE GAUMER LAW OFFICES OF CHRISTIE GAUMER 3940 LAUREL CANYON BLVD NO 733 STUDIO CITY, CA 91604 UNITED STATES christie@gaumerlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Christie Gaumer
Filer's e-mail	christie@gaumerlaw.com
Signature	/Christie Gaumer/
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HOLLYWOOD ENTERTAINMENT, LLC
dba AVALON and dba BARDOT

Opposer,

vs.

CITYCENTER LAND, LLC,

Applicant.

OPPOSITION NO.: 91221326

Serial No.: 86/243405

**OPPOSER'S OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT;
DECLARATIONS AND EXHIBITS**

Opposer HOLLYWOOD ENTERTAINMENT, LLC dba Avalon and dba BARDOT ("Opposer") hereby submits its opposition to the motion for summary judgment filed by CITYCENTER LAND, LLC ("Applicant"). There are triable issues of fact, and the motion should be denied.

I. Background Facts Showing Likelihood of Confusion

Opposer owns and operates a nightclub in a historic location in Los Angeles, known as Avalon. John Lyons Declaration ("Lyons Decl."), ¶ 2. The manager of Opposer has been in the nightclub business for decades. Additionally, Opposer's manager operates another business that installs light and sound systems for third parties. *Id.*

Opposer began using the subject mark "Bardot" on December 1, 2008 in connection with an entertainment venue for recorded and live music, which venue also serves food and beverages, including alcoholic beverages. See Amendment to Allege Use, Exhibit A; Lyons Decl., ¶ 3. Opposer has continued to use that name since that date for its restaurant and bar business within the Bardot entertainment venue. Lyons Decl., ¶ 3. The Bardot club is located within the building that houses Avalon. Bardot, as well as Avalon, attracts customers from the Los Angeles area and throughout the western region of the United States, including without

limitation Las Vegas, by featuring popular DJs and other performers. The Bardot club and restaurant/bar are well known, with nationally known celebrity clientele and having been featured in popular news media. Additionally, Bardot has a url website under that name, and has had such since 2008. Bardot too attracts customers from within and around Los Angeles as well as other national cities, such as Las Vegas. Lyons Decl., ¶ 4.

Applicant intends to open a restaurant in Las Vegas using the Bardot mark. The restaurant is located in the Citycenter complex. Opposer's manager, through his other light and sound business, was hired to install light and sound equipment in the Citycenter complex, and did that installation. As a result, before adoption of the Bardot name, the Citycenter decision-makers knew or had reason to know of Opposer's use of the Bardot mark through that work. Lyons Decl., ¶ 5.

Applicant's planned use as a restaurant and bar conflicts with Opposer's use. There is a likelihood of confusion since the market is the same, namely that of a trendy audience of people who travel between Los Angeles and Las Vegas, and other similar entertainment-based cities. Lyons Decl., ¶ 6. Therefore, Opposer filed its opposition.

II. Discovery – Requests for Admission

On June 3, 2016, Applicant mail-served Opposer's counsel with Requests for Admission. On July 5, 2016, Opposer served objections to those Requests for Admission. Christie Gaumer Declaration ("Gaumer Decl."), ¶ 2, Exh. B (Objection). Prior to that time, counsel had been engaging in settlement communications. At the time the objections were served, Opposer's counsel understood other counsel would be retained for Opposer, and so counsel served the objections. Gaumer Decl., ¶ 2.

At no time did Applicant meet and confer concerning the objections or otherwise request responses. Further, settlement discussions simply ceased. Gaumer Decl., ¶ 3.

Because Opposer served the objections, there is no authority to deem the Requests for Admissions admitted. See Fed. R. Civ. P. 36(a)(4) (no request was admitted, and there was no failure to respond).

III. Statement of Disputed Facts

The following sets forth the counter position to the facts Applicant claims were admitted.

1. Applicant's statement: Neither Opposer nor its subsidiaries, parents, affiliates, licenses, and their representative officers, directors, employees, agents, and predecessor-in-interest (the "Opposer Parties") currently operate a restaurant under the name BARDOT.

Opposer's Counter Statement: The Amendment to Allege Use filed September 12, 2014, and its accompanying declaration, show use dating back to December 1, 2008. Also, the attached declaration shows use dating back to December 1, 2008 through the present. Lyons Decl., ¶ 3. No fact was admitted. See Exhibit B (Objection).

2. Applicant's Statement: The Opposer Parties have not operated a restaurant under the name BARDOT since December of 2008.

Opposer's Counter Statement: The Amendment to Allege Use filed September 12, 2014, and its accompanying declaration, show use dating back to December 1, 2008. Also, the attached declaration shows use dating back to December 1, 2008 through the present. Lyons Decl., ¶ 3. No fact was admitted. See Exhibit B (Objection).

3. Applicant's Statement: The Opposer Parties do not currently operate a bar under the name BARDOT.

Opposer's Counter Statement: The Amendment to Allege Use filed September 12, 2014, and its accompanying declaration, show use dating back to December 1, 2008. Also, the attached declaration shows use dating back to December 1, 2008 through the present. Lyons Decl., ¶ 3. No fact was admitted. See Exhibit B (Objection).

4. Applicant's Statement: The Opposer Parties have not operated a bar under the name BARDOT since December of 2008.

Opposer's Counter Statement: The Amendment to Allege Use filed September 12, 2014, and its accompanying declaration, show use dating back to December 1, 2008. Also, the attached declaration shows use dating back to December 1, 2008 through the present. Lyons Decl., 3. No fact was admitted. See Exhibit B (Objection).

5. Applicant's Statement: The consumers of the services that the Opposer Parties offer under the BARDOT mark are sophisticated.

Opposer's Counter Statement: The users are not sophisticated. Lyons Decl., ¶ 4 (describing the nature of the customers as general consumers). No fact was admitted. See Exhibit B (Objection).

6. Applicant's Statement: The Opposer Parties are not aware of any instance of actual confusion due to the Opposer Parties' use of BARDOT and Applicant's use of BARDOT.

Opposer's Counter Statement: No fact was admitted. See Exhibit B (Objection).

7. Applicant's Statement: There is no likelihood of confusion as to the source or sponsorship of the goods and services designated by the

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