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June 2, 2015

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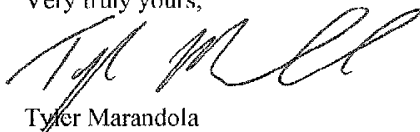
Re: Opposition to Petition to Director, Serial Number 85737435

Dear Sir/Madam:

Enclosed for filing is LVGV, LLC's Memorandum of Law in Opposition to Applicant's Petition for Suspension of the Rules and for Extension of Time to File Reply Briefs Filed May 20, 2015. LVGV respectfully requests that this document be filed in place of the document attached to LVGV's June 1, 2015 filing under Serial Number 85737435, and considered accordingly. The originally-filed document was filed in error, and LVGV requests that it be disregarded.

If there are any additional fees associated with the substitute memorandum of law, LVGV asks that they be charged to Ballard Spahr's USPTO account, Number 020755.

Very truly yours,



Tyler Marandola

TM/cmm
Attachments

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

LVGV, LLC,	:	
	:	
Opposer,	:	
	:	
	:	91215208 (parent)
v.	:	91215212
	:	Opposition Nos.: 91215216
	:	91215246
Empire Resorts, Inc.,	:	91215247
	:	91215415
Applicant.	:	

**MEMORANDUM OF LAW IN OPPOSITION TO
APPLICANT’S PETITION FOR SUSPENSION OF THE RULES
AND FOR EXTENSION OF TIME TO FILE REPLY BRIEFS FILED MAY 20, 2015¹**

Opposer, LVGV, LLC (“Opposer” or “LVGV”), respectfully submits this memorandum of law in opposition to Applicant, Empire Resort, Inc.’s (“Applicant” or “Empire”) Petition for Suspension of the Rules and for Extension of Time to File Reply Briefs.

Empire’s petition effectively concedes what LVGV has already explained twice in these proceedings: a motion asking the Board to suspend the rules is procedurally improper because it seeks relief that the Board is not authorized to grant. (May 20, 2015 Petition, at 5 n.1.) Rather than withdraw its improper motion, Empire’s petition asks the Director to treat its motion addressed to the Board as an actual petition with the Director and decide it as though it were properly filed. But Empire’s untimely request – made almost three weeks past the deadline for a petition from the Board’s April 1, 2015 decision – does not change the nature of its motion, which was improperly directed to the Board and tellingly fails to even address, let alone satisfy,

¹ LVGV respectfully asks the Director to disregard its previous memorandum of law in opposition to Empire’s petition, docketed June 1, 2015. That document was filed in error.

the stringent legal standard for a petition under 37 C.F.R. § 2.146(a)(5) or 2.148. Additionally, Empire's motion necessarily fails on the merits because Empire's only stated justification for a suspension of the rules – a docketing failure – is indisputably not an extraordinary situation under the governing legal precedence. Accordingly, Empire's petition seeking to treat its earlier motion with the Board as a proper petition should be denied.²

BACKGROUND

Empire seeks to register an "M" logo and "Me." logo for goods and services emanating from a destination casino resort. LVGV, the owner of a destination casino resort, is the owner of a number of federal registrations for its "M" mark and logo and its "M IS FOR ME" slogan, which LVGV uses to designate the source of the goods and services emanating from its destination casino resort. (E.g., Dkt. 1, Opp. 91215208, at ¶¶ 14-15, 19.)

Empire filed individual intent-to-use applications for its "M" and "Me." logos in three separate classes for a total of six applications. Given the common issues of law and fact across the six applications, all of which are for goods and services emanating from a destination casino resort, LVGV moved to consolidate the proceedings, and the Board granted its request on April 1, 2015. (Dkt. 5, Opp. 91215208; Dkt. 26, Opp. 91215208.) Empire filed a motion for reconsideration of that decision on May 1, 2015. (Dkt. 27, Opp. 91215208.)

Two months after LVGV moved for consolidation, Empire filed six motions for judgment on the pleadings, which the Board characterized as "largely redundant," while observing that "large swaths of each motion are repeated verbatim." (Dkt. 26, Opp. 91215208.) At the same time the Board consolidated the proceedings, it denied all six motions, recognizing that it had no authority to "weigh any evidence" and that "at a minimum, genuine issues as to the

² LVGV takes no position on Empire's separate request for a 30-day extension of time to file reply briefs in further support of its three May 1, 2015 motions.

strength of the marks and their commercial impressions, the similarities of the marks, and the relatedness of the goods and services” precluded judgment on the pleadings. (*Id.*) Empire filed a motion for reconsideration of that decision on May 1, 2015 as well. (Dkt. 28, Opp. 91215208.)

Empire also filed a third motion on May 1, 2015, directed to the Board, that it styled a “Motion for Suspension of the Rules and for Extended Time to Petition the Director Regarding Procedural Improprieties Respecting the Board’s 1 April 2015 Decision Denying Empire’s Motion for Judgment/Partial Judgment on the Pleadings.” (Dkt. 29, Opp. 91215208.) The motion did not identify the “procedural improprieties” that Empire wished to raise with the Director. Empire’s request for additional time was based on its failure to properly docket the 30-day deadline for a petition to the Director from an interlocutory order. *See* 37 C.F.R. § 2.146(e)(2). Rather than the correct deadline, Empire’s counsel asserted that his “docketing personnel” mistakenly inputted a 60-day time limit. Thus, despite having already filed two motions for reconsideration concerning the same order, Empire asked for 30 extra days to file a petition to the Director.

LGVV filed oppositions to all three motions within the fifteen day period prescribed by the Rules. 37 C.F.R. 2.217(a). In opposing Empire’s motion to suspend the rules, LGVV pointed out that the Board lacked the authority to suspend the rule imposing a 30 day deadline for petitions to the Director from an interlocutory order of the Board. 37 C.F.R. § 2.146(e)(2); (Dkt. 32, Opp. 91215208, at 2-3.) Empire now concedes that LGVV is correct.

What Empire fails to note is that the parties have been here before. Earlier in this opposition, on November 5, 2014, Empire filed a motion with the Board asking for it to suspend the rules. *E.g.*, Dkt. 19, Opp. 91215208.) As LGVV explained at the time, “Rule 2.148 does not grant authority to the Board to suspend the rules,” and thus Empire’s motion sought “relief that

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