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Filing date: **09/29/2020**

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

| | |
|------------------------|--|
| Proceeding | 91246474 |
| Party | Plaintiff Shakopee Mdewakanton Sioux Community |
| Correspondence Address | PETER M. ROUTHIER FAEGRE DRINKER BIDDLE & REATH LLP 90 SOUTH SEVENTH STREET 2200 WELLS FARGO CENTER MINNEAPOLIS, MN 55402 UNITED STATES Primary Email: trademark@faegredrinker.com Secondary Email(s): peter.routhier@faegredrinker.com 612-766-7000 |
| Submission | Plaintiff's Notice of Reliance |
| Filer's Name | Peter M. Routhier |
| Filer's email | trademark@faegredrinker.com, peter.routhier@faegredrinker.com |
| Signature | /s/ Peter M. Routhier |
| Date | 09/29/2020 |
| Attachments | Second Notice of Reliance.pdf(232500 bytes) Response Interrogatories Set No 1 - Mystic City 041720.PDF(169789 bytes) 10-21-2019 Applicant Response to First Set of Rogs Mystic Parks and Resorts.PDF(144137 bytes) |

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

In the Matter of App. No. 87742831
For the Mark: MYSTIC PARKS AND RESORTS
Filed: Jan. 4, 2018
Published: October 23, 2018

In the Matter of Reg. No. 5633245
For the Mark: MYSTIC CITY
Filed: Jan. 12, 2016
Registered: Dec. 18, 2018

Shakopee Mdewakanton Sioux
Community,

Opposer,

v.

Adrenalin Attractions, LLC,

Applicant.

Opposition No. 91246474 (Parent Case)
Cancellation No. 92070605

Opposer's Second Notice of Reliance

Opposer Shakopee Mdewakanton Sioux Community, a Federally Recognized Indian Tribe, ("SMSC" or "Opposer") hereby submits this Second Notice of Reliance pursuant to 37 C.F.R. § 2.120(k). Specifically, Opposer submits as evidence Applicant Adrenalin Attractions LLC's October 21, 2019 Responses to Interrogatories, and Applicant's April 17, 2020 Responses to Petitioner's Interrogatories. Applicant's Interrogatory Responses are relevant to Applicant's claimed use, strength, and marketing of the MYSTIC CITY and MYSTIC PARKS AND RESORTS marks, the

similarity of the goods and services offered under Applicant's and Opposer's marks, and otherwise to the likelihood of confusion analysis.

Respectfully submitted,

September 29, 2020

Faegre Drinker Biddle & Reath LLP

/s/ Peter M. Routhier

Peter M. Routhier

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90 South Seventh Street

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*Attorney for Shakopee Mdewakanton Sioux
Community*

CERTIFICATE OF SERVICE

I do hereby certify that on this 29th day of September, 2020 a true and correct copy of the above and foregoing **Opposer's Second Notice of Reliance** has been served via electronic mail to counsel for the applicant at rob.phillips@fisherbroyles.com.

/s/ Peter M. Routhier

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

Registration No. 5633245
Mark: MYSTIC CITY
Filed: January 12, 2016
Registered: December 18, 2018

SHAKOPEE MDEWAKANTON SIOUX)
COMMUNITY,)
)
Petitioner,)
)
v.)
)
ADRENALIN ATTRACTIONS, LLC)
)
Respondent.)
_____)

**OPPOSITION NO. 91246474 (PARENT)
CANCELLATION NO. 92070605**

Respondent, by and through its attorneys, and pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and the Rules of the USPTO, responds and objects to Petitioner’s First Set of Interrogatories as follows:

PRELIMINARY STATEMENTS

1. Respondent’s investigation and development of all facts and circumstances relating to this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Respondent’s right to rely on other facts or documents at trial.

2. By making the accompanying responses and objections to Petitioner’s First Set Interrogatories, Respondent does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege. Further, Respondent makes the responses and objections herein without

in any way implying that it considers the Interrogatories, and responses to Interrogatories, to be relevant or material to the subject matter of this action.

3. Respondent expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

GENERAL OBJECTIONS

1. Respondent objects to each instruction, definition and Interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure.

2. Respondent objects to each Interrogatory that is overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

3. Respondent objects to each instruction, definition, and Interrogatory to the extent that it seeks documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by Respondent occur, it is inadvertent and shall not constitute a waiver of any privilege.

4. Respondent objects to each instruction, definition and Interrogatory as overbroad and unduly burdensome to the extent it seeks documents or information that are readily or more accessible to Petitioner from Petitioner's own files, from documents or information in Petitioner's possession, or from documents or information that Petitioner previously produced to Respondent. Responding to such Interrogatories would be oppressive, unduly burdensome, and unnecessarily

expensive, and the burden of responding to such Interrogatories is substantially the same or less for Petitioner as for Respondent.

5. Petitioner's Interrogatories call for information that were produced to the Petitioner by other entities and that may contain confidential, proprietary, or trade secret information.

6. Respondent incorporates by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any general objection to that request. Moreover, Respondent does not waive its right to amend its responses.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1

Describe in detail the process by which the Subject Mark was chosen for use, including a description of any other marks considered as part of the process and the reasons that the Subject Mark was chosen.

Response to Interrogatory No. 1

Adrenalin Attractions originally used and obtained the United States Trademark Registration for Mystic Motel, an attraction we opened at least as early as 2013. The response to Mystic Motel was so positive Adrenalin Attractions wanted to further develop the brand. Mystic City was Adrenalin Attractions' choice to expand the story, brand, and theming for the Mystic Motel attraction. Adrenalin Attractions developed a theme park concept around the Mystic City name and began branding Adrenalin Attractions' Mystic Motel attraction as well as Adrenalin Attractions' Journey to Polar Point attractions, all of which are themed in the fictional Mystic City.

Interrogatory No. 2

Describe in detail any trademark investigation or search undertaken by you or on your behalf in connection with the adoption of the Subject Mark of the application to register the Subject Mark with the U.S. Patent and Trademark Office.

Response to Interrogatory No. 2

Scott D'Avanzo, CEO of Respondent, performed an online trademark search and uncovered no pending trademarks or pending trademark applications that would be likely to cause confusion. Accordingly, Adrenalin Attractions moved forward with use of Mystic City and filing of a United States Trademark Application for Mystic City which ultimately registered and is the subject of this proceeding. Adrenalin Attractions also purchased MysticCity.com for \$4,500 from GoDaddy auctions.

Interrogatory No. 3

For each good and/or service you claim to currently offer under the Subject Mark, describe the good and/or service in detail, state the date of first use by you of the Subject Mark in connection with that good and/or service, and state your reason for fixing the date of first use on that date.

Response to Interrogatory No. 3

See response to Interrogatory No. 1. Date of first use is February 15, 2018 based on the date that Respondent began using the Mystic City mark to promote a Mystic City theme park and in conjunction with the Mystic Motel attraction.

Adrenalin Attractions is currently conducting Halloween season and Christmas season events where Adrenalin Attractions offer the Mystic Motel and Journey to Polar Point (aka Polar Point) all under the Mystic City theme and brand. These have all been covered by multiple news outlets including Fox 11, LA Times, Orange County Register, Good Morning America, ABC

News, Ryan Seacrest 102.7 KIIS FM, Theme Park Review, Theme Park Adventure, Parks and Cons and several others. Mystic Motel, Mystic City and Polar Point each has its own social media presence that is continuously operating as well.

Interrogatory No. 4

For each good and/or service you intend to offer under the Subject Mark, describe the good and/or service in detail, state the anticipated date of first use by you of the Subject Mark in connection with that good and/or service, and state your reason for fixing the date of first use on that date.

Response to Interrogatory No. 4

Ultimately, Mystic City will be a more expansive theme park akin to Disneyland or Universal Studios that will offer numerous attractions, themed areas, dining, retail, lodging and entertainment. There are no plans for any gaming to be present at Mystic City.

Interrogatory No. 5

Identify all demographic information known to you about customers or potential customers for goods and/or services you offer or intend to offer under the Subject Mark.

Response to Interrogatory No. 5

The ideal demographic is younger families, tweeners, and teens but like other theme parks middle aged adults may become customers.

Interrogatory No. 6

Describe in detail any instance in which any individual has stated or implied that there is a connection, affiliation, or other relationship between you and/or your services and Opposer and/or its services, or in which any individual has inquired as to whether there is a connection, affiliation, or other relationship between you and/or your services and Opposer and/or its services.

Response to Interrogatory No. 6

There have been no instances of confusion to the knowledge of Adrenalin Attractions.

Interrogatory No. 7

Describe in detail the basis for your contention that the Subject Mark and Opposer's Mark are not confusingly similar and that there is no likelihood of confusion, mistake, or deception.

Response to Interrogatory No. 7

Mystic Parks & Resorts, Mystic City, Mystic Motel and Mystic Diner are all related to a theme park resort and/or attractions, not a casino destination. None of the Mystic brands will ever be offered in the same state as Mystic Lakes Casino as Adrenalin Attractions focus is California and Florida and potentially overseas. While it is possible that an amusement park may include a hotel or other lodging, that does not infer that consumers will be confused with a single casino in Minnesota that happens to have lodging as well. Moreover, the use of "Mystic Lakes" by Petitioner is geographically descriptive which further mitigates consumer confusion.

Interrogatory No. 8

Identify each person you intend or expect to call as a witness during the testimony period in this proceeding, and describe in detail the substance of each such person's expected testimony.

Response to Interrogatory No. 8

Scott D'Avanzo, CEO of Adrenalin Attractions, LLC. His testimony will cover all aspects of the U.S. Trademark Application for Mystic City.

Interrogatory No. 9

Identify each document or thing you intend or expect into evidence during the testimony period in this proceeding.

Response to Interrogatory No. 9

The evidence and documents served responsive to your Requests for Production of Documents served in conjunction with these Interrogatories.

Interrogatory No. 10

Identify your total advertising expenditures, marketing expenditures, and sales of products or services in connection with the Subject Mark.

Response to Interrogatory No. 10

Approximately \$500,000 including theme park renderings, feasibility studies, domain names, building Mystic Motel and Journey to Polar Point attractions under the Mystic City brand, patents, trademarks, mini-movie productions for social media marketing, legal fees and other business and marketing-related expenditures.

Respectfully Submitted,

April 17, 2020

/s/ Rob L. Phillips
Rob L. Phillips
FisherBroyles, LLP
5670 Wilshire Blvd., Suite 1800
Los Angeles, CA 90036
702-518-1239
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of **Respondent's Responses to Petitioner's First Set of Interrogatories** were served on opposing counsel by email on April 17, 2020 to the email address set forth below.

David F. Gomez
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
david.gomez@faegredrinker.com

/s/ Rob L. Phillips
Rob L. Phillips, Counsel for Respondent
FisherBroyles, LLP

April 17, 2020

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

Application No. 87/742831
Mark: MYSTIC PARKS AND RESORTS
Filed: January 4, 2018
Published: October 23, 2018

SHAKOPEE MDEWAKANTON SIOUX)
COMMUNITY,)
)
Petitioner,)
)
v.)
)
ADRENALIN ATTRACTIONS, LLC)
)
Respondent.)
_____)

OPPOSITION NO. 91246474

Defendant, by and through its attorneys, and pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and the Rules of the USPTO, responds and objects to Petitioner’s First Set of Interrogatories as follows:

PRELIMINARY STATEMENT

1. Respondent’s investigation and development of all facts and circumstances relating to this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, Respondent’s right to rely on other facts or documents at trial.

2. By making the accompanying responses and objections to Petitioner’s First Set Interrogatories, Respondent does not waive, and hereby expressly reserves, its right to assert any and all objections as to the admissibility of such responses into evidence in this action, or in any other proceedings, on any and all grounds including, but not limited to, competency, relevancy, materiality, and privilege. Further, Respondent makes the responses and objections herein without

in any way implying that it considers the Interrogatories, and responses to Interrogatories, to be relevant or material to the subject matter of this action.

3. Respondent expressly reserves the right to supplement, clarify, revise, or correct any or all of the responses and objections herein, and to assert additional objections or privileges, in one or more subsequent supplemental response(s).

GENERAL OBJECTIONS

1. Respondent objects to each instruction, definition and Interrogatory to the extent that it purports to impose any requirement or discovery obligation greater than or different from those under the Federal Rules of Civil Procedure.

2. Respondent objects to each Interrogatory that is overly broad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

3. Respondent objects to each instruction, definition, and Interrogatory to the extent that it seeks documents protected from disclosure by the attorney-client privilege, deliberative process privilege, attorney work product doctrine, or any other applicable privilege. Should any such disclosure by Respondent occur, it is inadvertent and shall not constitute a waiver of any privilege.

4. Respondent objects to each instruction, definition and Interrogatory as overbroad and unduly burdensome to the extent it seeks documents or information that are readily or more accessible to Petitioner from Petitioner's own files, from documents or information in Petitioner's possession, or from documents or information that Petitioner previously produced to Respondent. Responding to such Interrogatories would be oppressive, unduly burdensome, and unnecessarily

expensive, and the burden of responding to such Interrogatories is substantially the same or less for Petitioner as for Respondent.

5. Petitioner's Interrogatories call for information that were produced to the Petitioner by other entities and that may contain confidential, proprietary, or trade secret information.

6. Respondent incorporates by reference every general objection set forth above into each specific response set forth below. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response does not waive any general objection to that request. Moreover, Respondent does not waive its right to amend its responses.

RESPONSES TO INTERROGATORIES

Interrogatory No. 1

Describe in detail the process by which the Subject Mark was chosen for use, including a description of any other marks considered as part of the process and the reasons that the Subject Mark was chosen.

Response to Interrogatory No. 1

It was chosen after our Mystic Motel attraction and the story line associated with the attraction. We have been operating Mystic Motel since 2013. Mystic City is a fictional place in which Mystic Motel exists. The theme park centered around the theme and it was common sense to call the company that will design, develop and manage any parks Mystic Parks and Resorts.

Interrogatory No. 2

Describe in detail any trademark investigation or search undertaken by you or on your behalf in connection with the adoption of the Subject Mark of the application to register the Subject Mark with the U.S. Patent and Trademark Office.

Response to Interrogatory No. 2

A trademark search was conducted on the USPTO website and Google for any similar marks in the amusement park industry. None appeared other than Disney's Mystic Manor.

Interrogatory No. 3

For each good and/or service you claim to currently offer under the Subject Mark, describe the good and/or service in detail, state the date of first use by you of the Subject Mark in connection with that good and/or service, and state your reason for fixing the date of first use on that date.

Response to Interrogatory No. 3

Designing, developing and managing theme parks and attractions. Date of first use coincides with the beginning date associated with designing and developing an attraction to be known as Mystic Motel – a stay and scare attraction.

Interrogatory No. 4

For each good and/or service you intend to offer under the Subject Mark, describe the good and/or service in detail, state the anticipated date of first use by you of the Subject Mark in connection with that good and/or service, and state your reason for fixing the date of first use on that date.

Response to Interrogatory No. 4

See Interrogatory Response No. 3

Interrogatory No. 5

Identify all demographic information known to you about customers or potential customers for goods and/or services you offer or intend to offer under the Subject Mark.

Response to Interrogatory No. 5

Theme park operators and other entities interested in building a theme park or theme park style attraction or modifying an existing theme park or theme park style attraction and investors interested in funding a theme park or theme park style attraction.

Interrogatory No. 6

Describe in detail any instance in which any individual has stated or implied that there is a connection, affiliation, or other relationship between you and/or your services and Opposer and/or its services, or in which any individual has inquired as to whether there is a connection, affiliation, or other relationship between you and/or your services and Opposer and/or its services.

Response to Interrogatory No. 6

None.

Interrogatory No. 7

Describe in detail the basis for your contention that the Subject Mark and Opposer's Mark are not confusingly similar and that there is no likelihood of confusion, mistake, or deception.

Response to Interrogatory No. 7

The Subject Mark is used in the amusement park industry and Petitioner's marks are used in conjunction with a single casino on tribal lands. While it is possible that an amusement park may include a hotel or other lodging, that does not infer that consumers will be confused with a single casino that happens to have lodging as well. Moreover, the use of Mystic by Petitioner is

geographically-descriptive which will further mitigate any confusion of consumers coming into contact with Respondent's MYSTIC PARKS AND RESORTS mark.

Interrogatory No. 8

Identify each person you intend or expect to call as a witness during the testimony period in this proceeding, and describe in detail the substance of each such person's expected testimony.

Response to Interrogatory No. 8

Scott D'Avanzo, President of Adrenalin Attractions, LLC. His testimony will cover all aspects of the U.S. Trademark Application for MYSTIC PARKS AND RESORTS.

Ziad Bayaa will testify to initial discussions related to an amusement park project involving Mystic Parks and Resorts.

Interrogatory No. 9

Identify each document or thing you intend or expect into evidence during the testimony period in this proceeding.

Response to Interrogatory No. 9

Theme Park Renderings; Investor Booklet, NDAs with prospective investors and emails with prospective investors.

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Interrogatory No. 10

Identify your total advertising expenditures, marketing expenditures, and sales of products or services in connection with the Subject Mark.

Response to Interrogatory No. 10

Approximately \$30,000 in expenditures and \$0 in revenue to date.

Respectfully Submitted,

October 21, 2019

/s/ Rob L. Phillips
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702-518-1239
rob.phillips@fisherbroyles.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of **Respondent's Responses to Petitioner's First Set of Interrogatories** was served on opposing counsel by email on October 21, 2019 to the email address set forth below.

Jodi A. DeSchane
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
Jodi.DeSchane@FaegreBD.com

/s/ Rob L. Phillips
Rob L. Phillips, Counsel for Respondent
FisherBroyles, LLP

October 21, 2019