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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CAESAR’S WORLD, INC., a Florida
corporation,

Plaintiff,

vs.

MARCEL JULY, an individual; and
OCTAVIUS TOWER, LLC, a Nevada
limited liability company,

Defendant.

CASE NO. 2:11-CV-0536 GMN-PAL

**MOTION FOR RULE 65 PRELIMINARY
INJUNCTION**

MARCEL JULY, an individual,

Counterclaimant,

vs.

CAESAR’S WORLD, INC., a Florida
Corporation,

Counterdefendant.

Pursuant to Fed.R.Civ.Pro. 65, Defendant-Counterclaimant Marcel July, by and through undersigned counsel, herewith moves this Honorable Court for a preliminary injunction against Plaintiff-Counterdefendant Caesar’s World, Inc., enjoining the same from any act or omission to act infringing upon or diluting Mr. July’s trademark or tradename pertaining to “Octavius Tower.” Authority for such remedies is generally mandated at 15 U.S.C. § 1111 *et seq.*, with particular emphasis upon §§ 1114, 1116, and 1125. This Motion is supported by the following Memorandum of Points and Authorities, the pleadings of the parties, including all attached exhibits, and the entire record in this matter, incorporated by reference herein.

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MEMORANDUM OF POINTS AND AUTHORITIES

FACTUAL BACK GROUND

This matter arises from alleged infringement of Caesar’s World, Inc. (hereafter “Caesar’s”), against the trademark or tradename “Octavius Tower,” owned by Marcel July and registered in his name with the United State Patent and Trademark Office (USPTO). Marcel July has been the owner and manager of “Octavius Tower,” originally an international rock band formed in Germany in or about 1992, but whose activities have included more broadly other entertainment services and merchandizing. Caesar’s operates the Caesar’s Palace Casino in Las Vegas, Nevada, including a concern also named “Octavius Tower,” offering luxury entertainments and accommodations to guests. Both Mr. July and Caesar’s advertise their respective “Octavius Tower” offerings to the public. Caesar’s filed initial suit against July and co-defendant Octavius Tower, LLC, seeking, among other remedies, cancellation of Mr. July’s registration at the USPTO as well as with the state of Nevada and Florida. Mr. July has countersued Caesar’s, alleging infringement and dilution of trademark.

The particularized facts of this case can be found in Mr. July’s Answer and Counterclaim (hereafter “Counterclaim”), paragraphs 68 through 101 and attached Exhibits A through O of that pleading. Those facts condense into the following:

- 1) Mr. July has owned and utilized the “Octavius Tower” trademark and/or tradename since 1992, with paid, public musical performances beginning in 1993 (Counterclaim, paragraphs 68 through 74).
- 2) Mr. July’s first use of “Octavius Tower” on a website occurred in 1993 (Counterclaim, paragraph 73).
- 3) Mr. July’s band “Octavius Tower” began publicly advertised performances in Nevada and Florida, among other states, in 2003 (Counterclaim, paragraph 77).
- 4) Mr. July is the “owner” (within the meaning of 15 U.S.C. § 1115) registered with the USPTO, the State of Nevada, and the State of Florida for the “Octavius Tower”

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trademark; as such, his claim to the “Octavius Tower” trademark is senior to Caesar’s junior claim, if any (Counterclaim paragraphs 79 through 89).

- 5) From the foregoing, Mr. July proves both first date of use and priority in registration of the “Octavius Tower” trademark in relation to any claim of Caesar’s with respect to the same.
- 6) Notwithstanding the foregoing, and despite public and specifically directed notice, Caesar’s has continued to advertise services and issue other public releases in the name of “Octavius Tower” to the public, thus creating likelihood of confusion and/or diminution of Mr. July’s rightfully claim to that trademark.
- 7) Mr. July has been contacted by fans and friends of the Octavius Tower band alike inquiring from Caesar’s advertisements and public releases whether the band is involved in some performance arrangement with Caesar’s Palace in Las Vegas (Counterclaim paragraph 95).

LEGAL ARGUMENT

Federal Rule of Civil Procedure 65(a)(1) provides that “The court may issue a preliminary injunction,” in essence, one enjoining an adverse party from unlawful activity during the pendency of an action before final trial. Pursuant to 15 U.S.C. §§ 1114 and 1125, infringement and dilution of trademark, as alleged in Mr. July’s Counterclaim and in the foregoing paragraphs, constitute such unlawful activity. While an award of monetary damages is an issue under 15 U.S.C. § 1117, it is clear the essential remedy for a senior claimant of a trademark is to enjoin junior alleged claimants from further infringement and/or dilution.

Under 15 U.S.C. § 1116:

The several courts vested with jurisdiction of civil actions arising under this chapter shall have power to grant injunctions, according to the principles of equity and upon such terms as the

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2 court may deem reasonable, to prevent the violation of any right of the registrant of a mark
3 registered in the Patent and Trademark Office.

4 The foregoing paragraph makes reference to this Honorable Court's powers vested in
5 principles of equity. Equity is ultimately a question of fairness among the parties. In this case,
6 Caesar's, in its Complaint, boasts it "has enjoyed and continues to enjoy widespread recognition
7 and success, and is one of the most famous hotels in the world" (paragraph 11). Caesar's goes on
8 to state that "(m)illions more from around the world visit the casino, dine in Caesar's restaurants
9 and cafes, or watch a show in Caesars' 4,100-seat theater," describing further its "3,300 hotel
10 guest rooms and suits" (Caesar's Complaint, paragraphs 11-12). Of its own "Octavius Tower,"
11 Caesar's lauds its "significant notoriety" with its "luxury villas that are more than 8,000 square
12 feet in size and rent for \$40,000 per night" (Caesar's Complaint, paragraphs 15-16).

13 Unquestionably, Caesar's business operations are grand in a scale invoking the legacy of its
14 namesakes.

15
16 However, equity ultimately revolves not around the relative grandeur of the involved
17 parties, but rather their respective rights. Principles of equity, in contrast to and conjunction with
18 those of law, demand that the parties be viewed through eyes only viewing those rights. In this
19 case, there is simply no question: Marcel July's first use predates that of Caesar's by more than a
20 decade, and nearly two decades prior to the instant writing. Mr. July is also the only owner of
21 any USPTO registration (in this instance, two) of the name "Octavius Tower," as well as three
22 registrations in Nevada and one in Florida. From this, there is no question that Mr. July's claims
23 are senior to those of Caesar's. And from this, it is clear that Mr. July is entitled to injunctive
24 relief against Caesar during the pendency of this action prior to final trial.
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DATED THIS 18th DAY OF May 2011.

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