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13 *Pro Hac Vice Applications Forthcoming*

14 Attorneys for Caesars World, Inc.

15 **UNITED STATES DISTRICT COURT**  
 16 **DISTRICT OF NEVADA**

17 CAESARS WORLD, INC., a Florida  
 18 corporation,

19 Plaintiff,

20 v.

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

24 Defendants.

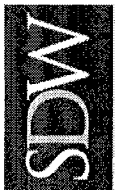
CASE NO.:

**COMPLAINT**

25 Plaintiff Caesars World, Inc. ("Caesars") files this Complaint against Defendants Marcel  
 26 July ("July") and Octavius Tower LLC ("OTLLC") (collectively "Defendants") and in support  
 27 thereof alleges as follows:

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**NATURE AND BASIS OF ACTION**

1  
2 1. This is an action for a declaratory judgment pursuant to the federal Declaratory  
3 Judgment Act, 28 U.S.C. §§ 2201-02, and the declaratory judgment statutes of Nevada and  
4 Florida, as well as for cancellation of federal and state service mark registrations owned by July.  
5 Specifically, Caesars seeks a declaration of non-infringement of Defendants' claimed rights in  
6 the service mark and trade name OCTAVIUS TOWER and associated domain names, and  
7 cancellation of July's federal and state service mark registrations in Nevada and Florida for the  
8 OCTAVIUS TOWER mark.

**PARTIES, JURISDICTION AND VENUE**

9  
10 2. Caesars is a corporation organized and existing under the laws of the State of  
11 Florida, having its principal place of business at One Caesars Palace Drive, Las Vegas, Nevada  
12 89109.

13 3. OTLLC is a limited liability company organized and existing under the laws of  
14 the State of Nevada and can be served process through its registered agent Corporate Creations  
15 Network at 8275 South Eastern Avenue # 200, Las Vegas, Nevada 89123.

16 4. July is an individual who, upon information and belief, resides in Port Charlotte,  
17 Florida and can be served process at 21216 Argyle Ave., Port Charlotte, Florida 33954-3147.  
18 July is the managing member of OTLLC.

19 5. This Court has original jurisdiction over the subject matter of this action pursuant  
20 to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331, 1337 and 1338, and 28 U.S.C. §§ 2201 and 2202, this  
21 being an action to have declared the rights and other legal relations of the parties.

22 6. This Court has supplemental jurisdiction over Caesars' claims under state law  
23 pursuant to 28 U.S.C. § 1367.

24 7. This Court has personal jurisdiction over OTLLC because it is a citizen of this  
25 State and the claims asserted in this action arise out of OTLLC's transaction of business in this  
26 state and assertion of legal rights under the laws of this State.

27 8. This Court has personal jurisdiction over July because this action arises from  
28 July's conduct and claimed legal rights in Nevada and this judicial district.

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1 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

2 **FACTS GIVING RISE TO THIS ACTION**

3 **Caesars and Its OCTAVIUS TOWER Mark**

4 10. Caesars, through wholly-owned subsidiaries, is the owner and operator of the  
5 famous CAESARS PALACE branded casino hotel in Las Vegas, Nevada, and CAESARS  
6 branded casino hotel in Atlantic City, New Jersey, and is the operator of a CAESARS branded  
7 casino hotel in Ontario, Canada and a CAESARS branded casino in Cairo, Egypt.

8 11. The Caesars Palace casino is located in the heart of the strip in Las Vegas, Nevada  
9 and was opened on August 5, 1966. As a result of its location, quality of service, and size, the  
10 Caesars Palace casino and hotel has enjoyed and continues to enjoy widespread recognition and  
11 success, and is one of the most famous hotels in the world.

12 12. On average, approximately 1.5 million people stay at Caesars Palace each year.  
13 Millions more from around the world visit the casino, dine at Caesars' restaurants and cafes, or  
14 watch a show in Caesars' 4,100-seat theater named the Colosseum.

15 13. Built around a Roman theme, Caesars Palace features more than 3,300 hotel guest  
16 rooms and suites in five towers, which towers are named Augustus, Centurion, Forum, Palace,  
17 and Roman.

18 14. On July 19, 2007, the parent company of Caesars, Harrah's Entertainment, Inc.  
19 (now known as Caesars Entertainment Corporation), issued a widely published press release that  
20 announced plans for a \$1 billion expansion of Caesars Palace. A true and correct copy of the  
21 press release is attached as Exhibit A. The announced centerpiece of this expansion was the  
22 building of a new 665 room tower named "Octavius Tower."

23 15. Caesars has issued several additional press releases regarding its Octavius Tower,  
24 and the tower has been the subject of numerous news articles and other publicity that have  
25 caused Caesars' plans to become well known to the consuming public. As a result, the  
26 OCTAVIUS TOWER name and mark has achieved significant notoriety in the United States.

27 16. Octavius Tower opened its doors on September 11, 2009, with the launch of three  
28 luxury villas that are each more than 8,000 square feet in size and rent for \$40,000 per night.

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1 17. On July 20, 2007, Caesars, through its affiliate Caesars License Company, LLC,  
2 formerly known as Harrah’s License Company, LLC (collectively “Caesars”), filed an intent-to-  
3 use service mark application with the U.S. Patent and Trademark Office (“USPTO”) for the mark  
4 OCTAVIUS TOWER for “hotel services” in International Class 43. The USPTO assigned the  
5 application Serial Number 77/235,142 (hereinafter the “First Caesars Application”).

6 18. On January 29, 2008, the USPTO issued Caesars a Notice of Allowance regarding  
7 its application and set a deadline of January 29, 2011 for Caesars to file a Statement of Use.

8 19. Due to a delay in construction and full opening of the tower as a result of the  
9 downturn in the economy, Caesars was unable to provide the USPTO with a suitable specimen of  
10 use prior to the January 29, 2011 deadline, thereby resulting in the abandonment of the  
11 application.

12 20. Nevertheless, prior to abandoning its application, Caesars filed a new intent-to-  
13 use application with the USPTO for the OCTAVIUS TOWER mark on December 14, 2010 for  
14 the same services. The USPTO assigned the application Serial Number 85/197,796 (hereinafter  
15 the “Second Caesars Application”).

16 **July and His Unlawful Actions**

17 **A. July’s Infringing Domain Name Registrations**

18 21. On July 20, 2007, two days after Caesars announced its plans to build Octavius  
19 Tower, July registered the domain names <octaviustower.com>; <octaviustowers.com>;  
20 <octaviustowerlasvegas.com>; <octaviustowerslasvegas.com> (collectively the “OCTAVIUS  
21 Domain Names”). On the same day, July also registered the domain names  
22 <caesarstower.com>; <caesarstowers.com>; <caesarspalacetower.com>;  
23 <caesarspalacetowers.com>; and <caesarspalacetowerslasvegas.com> (collectively the  
24 “CAESARS Domain Names”) (all OCTAVIUS Domain Names and CAESARS Domain Names  
25 referred to collectively as the “Infringing Domain Names”).

26 22. July used the OCTAVIUS Domain Names as addresses for websites that stated  
27 “The new Caesars Palace Towers are Coming Soon!” The websites also included offers to sell  
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1 each of the Infringing Domain Names next to four photographs of Caesars Palace. True and  
2 correct copies of print-outs of July's websites are attached as Exhibit B.

3 23. Through correspondence sent to July in September 2007, Caesars demanded that  
4 July transfer the Infringing Domain Names to Caesars.

5 24. When July refused to do so, Caesars filed a domain name arbitration complaint  
6 with the National Arbitration Forum ("NAF") under ICANN's Uniform Domain Name Dispute  
7 Resolution Policy ("UDRP"), alleging that July had registered and used the CAESARS Domain  
8 Names in bad faith. Because a registration had not yet issued for Caesars' First Service Mark  
9 Application, Caesars did not address the OCTAVIUS Domain Names in its UDRP complaint.

10 25. The NAF found that July's registration of the CAESARS Domain Names two  
11 days after Caesars announced its plans to open its new tower was "opportunistic action"  
12 undertaken in bad faith. *Caesars World, Inc. v. Marcel July Ra Christian Kaldenhoff*, Nat'l Arb.  
13 Forum, FA 0801001126341 (March 3, 2008). The NAF panel therefore ordered that the  
14 CAESARS Domain Names be transferred to Caesars. A true and correct copy of the NAF's  
15 decision is attached as Exhibit C.

16 **B. July's OCTAVIUS TOWER Service Mark Registrations**

17 26. On May 7, 2008, July filed a federal service mark application with the USPTO to  
18 register the mark OCTAVIUS TOWER for "Entertainment services, namely, providing a web  
19 site featuring musical performances, musical videos, related film clips and photographs" in  
20 International Class 41. The USPTO assigned the application Serial No. 77/467,916.

21 27. In his application, July claimed a date of first use of the mark in connection with  
22 the subject services of February 4, 1992, and a date of first use in commerce of June 8, 1993.

23 28. The USPTO found no likelihood of confusion between July's mark and Caesars'  
24 OCTAVIUS TOWER mark for hotel services, which was the subject of Caesars' then pending  
25 first application for the mark.

26 29. The USPTO granted registration to July's mark on September 1, 2009, and issued  
27 July Certificate of Registration No. 3,675,168 for the mark (hereinafter the "Website  
28 Registration").

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1           30.     Upon information and belief, July has not made bona fide use of the mark  
2     OCTAVIUS TOWER in the United States for any of the services identified in the Website  
3     Registration.

4           31.     Upon further information and belief, July did not first use the OCTAVIUS  
5     TOWER mark for any of the services identified in the Website Registration as of the dates of  
6     first use claimed in his registration, and July knew the same when he filed his application to  
7     register the mark with the USPTO.

8           32.     On July 23, 2009, July filed a second service mark registration application with  
9     the USPTO to register the OCTAVIUS TOWER mark in connection with “Entertainment in the  
10    nature of visual and audio performances, and musical, variety, news and comedy shows;  
11    Presentation of live show performances; Theatrical and musical floor shows provided at  
12    discotheques and nightclubs; Theatrical and musical floor shows provided at performance  
13    venues” in International Class 41. The USPTO assigned the application Serial No. 77/787,941.

14          33.     In his application, July claimed a date of first use of the mark in connection with  
15    the subject services of February 4, 1992, and a date of first use in commerce of June 8, 1993 –  
16    the same dates claimed in his first application.

17          34.     The USPTO found no likelihood of confusion between July’s mark and Caesars’  
18    OCTAVIUS TOWER mark for hotel services.

19          35.     The USPTO granted registration to July’s mark on September 1, 2009, and issued  
20    July Certificate of Registration No. 3,675,168 for the mark (hereinafter the “Floor Show  
21    Registration”).

22          36.     Upon information and belief, July has never used the mark OCTAVIUS TOWER  
23    in the United States for any of the services identified in the Floor Show Registration.

24          37.     Upon further information and belief, July did not first use the OCTAVIUS  
25    TOWER mark for any of the services identified in the Floor Show Registration as of the dates of  
26    first use claimed in his registration, and July knew the same when he filed his application to  
27    register the mark with the USPTO.  
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1 38. In addition to his two federal registrations, July also owns the following Nevada  
2 and Florida state service mark registrations – each of which was filed for after Caesars’ 2007  
3 press release:

4 a. Nevada Reg. No. E0360772009-9 for the mark OCTAVIUS TOWER in  
5 U.S. Class 101 for “entertainment services, namely providing a web site featuring musical  
6 performances, musical videos, related film clips and photographs” with a claimed date of first  
7 use in Nevada of April 6, 2008.

8 b. Nevada Reg. No. E0360792009-1 for the mark OCTAVIUS TOWER in  
9 U.S. Class 107 for “entertainment services, namely providing a web site featuring musical  
10 performances, musical videos, related film clips and photographs” with a claimed date of first  
11 use in Nevada of April 6, 2008.

12 c. Nevada Reg. No. E0495922009-0 for the mark OCTAVIUS TOWER in  
13 U.S. Class 107 for “entertainment in the nature of visual and audio performances, and music  
14 variety, news and comedy show; presentation of live show performances; theatrical and musical  
15 floor shows provided on stage” with a claimed date of first use in Nevada of April 6, 2006.

16 d. Florida Reg. No. T09,000,000,664 for the mark OCTAVIUS TOWER for  
17 “entertainment services, a name of a band, providing web site featuring musical performances,  
18 musical videos, related film clips & photographs,” with a claimed date of first use in Florida of  
19 May 10, 2008.

20 39. Upon information and belief, July formed OTLLC on November 6, 2009, and  
21 July is OTLCC’s managing member.

22 **July’s Threats to Caesars**

23 40. Despite the USPTO’s prior finding that there is no likelihood of confusion  
24 between Caesars’ OCTAVIUS TOWER mark for hotel services and July’s use of the mark for  
25 entertainment services, the USPTO issued an office action to Caesars on February 24, 2011  
26 regarding the Second Caesars Application in which the USPTO cited a likelihood of confusion  
27 between Caesars’ mark and July’s Floor Show Registration. The USPTO did not cite a  
28 likelihood of confusion with July’s Website Registration.

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**COUNT I**

**Declaration of Non-Infringement of Defendants’  
Alleged Rights under the Federal Lanham Act**

46. Caesars incorporates by reference the allegations set forth in Paragraphs 1-45 above as if fully set forth herein.

47. There is an actual and justiciable case or controversy between the parties as a result of Defendants’ allegations that Caesars’ use and planned use of the OCTAVIUS TOWER mark infringes Defendants’ claimed rights under federal law in the same mark and name for different and unrelated services, and Defendants’ demand that Caesars cease use of its mark.

48. Caesars does not infringe, and at all times has not infringed, any service mark, trade name or domain name rights, if any, Defendants own under federal law by Caesars’ offering and plans to offer hotel services at Caesars Palace under the OCTAVIUS TOWER mark. Caesars is therefore entitled to a declaration under the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, that Caesars’ use and planned use of the OCTAVIUS TOWER mark does not violate any putative rights Defendants own under the federal Lanham Act, 15 U.S.C. § 1051 *et seq.*

**COUNT II**

**Declaration of Non-Infringement  
of Defendants’ Alleged Rights Under Nevada Law**

49. Caesars incorporates by reference the allegations set forth in Paragraphs 1-48 above as if fully set forth herein.

50. There is an actual and justiciable case or controversy between the parties as a result of Defendants’ allegations that Caesars’ use and planned use of the OCTAVIUS TOWER mark infringes Defendants’ claimed rights under Nevada law in the same mark and name for different and unrelated services.

51. Caesars does not infringe, and at all times has not infringed, any service mark, trade name or domain name rights, if any, Defendants own under Nevada law by Caesars’ offering and plans to offer hotel services at Caesars Palace under the OCTAVIUS TOWER

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1 mark. Caesars is therefore entitled to a declaration under the Nevada declaratory judgment  
2 statute, NEV. REV. STAT. § 30.030, that Caesars' use and planned use of the OCTAVIUS  
3 TOWER mark does not violate any putative rights Defendants own under Nevada law.

4 **COUNT III**

5 **Declaration of Non-Infringement**  
6 **of Defendants' Alleged Rights Under Florida Law**

7 52. Caesars incorporates by reference the allegations set forth in Paragraphs 1-51  
8 above as if fully set forth herein.

9 53. There is an actual and justiciable case or present controversy between the parties  
10 as a result of Defendants' allegations that Caesars' use and planned use of the OCTAVIUS  
11 TOWER mark infringes rights Defendants claim to own in the same mark and name for different  
12 and unrelated services.

13 54. Caesars does not infringe, and at all times has not infringed, any service mark,  
14 trade name or domain name rights, if any, Defendants own under Florida law by Caesars'  
15 offering and plans to offer hotel services at Caesars Palace under the OCTAVIUS TOWER  
16 mark. Caesars is therefore entitled to a declaration under the Florida declaratory judgment  
17 statute, FLA. STAT. §§ 86.011 and 86.021, that Caesars' use and planned use of the OCTAVIUS  
18 TOWER mark does not violate any putative rights Defendants own under Florida law.

19 **COUNT IV**

20 **Cancellation of July's Federal Service Mark**  
21 **Registrations for Non-Use or Abandonment**

22 55. Caesars incorporates by reference the allegations set forth in Paragraphs 1-54  
23 above as if fully set forth herein.

24 56. Pursuant to 15 U.S.C. § 1119, "[i]n any action involving a registered mark the  
25 court may ... order the cancellation of registrations, in whole or in part ... and otherwise rectify  
26 the register with respect to the registrations of any party to the action."

27 57. Pursuant to 15 U.S.C. § 1051, a mark does not qualify for registration on the  
28 Principal Register of the USPTO until the applicant has made bona fide use of the mark in

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1 commerce in the United States for each of the goods and/or services identified in a registration  
2 application.

3 58. Pursuant to 15 U.S.C. § 1064, a registration may be cancelled at any time if the  
4 court determines that the registered mark has been abandoned.

5 59. Upon information and belief, July has never used the OCTAVIUS TOWER mark  
6 in commerce in the United States for entertainment services in the nature of a website featuring  
7 musical videos or related film clips, as set forth in the Website Registration, or for any of the  
8 services identified in the Floor Show Registration. Upon further information and belief, if July  
9 has used the mark for any of the foregoing services at any time, he has abandoned the mark for  
10 the services within the meaning of 15 U.S.C. § 1127.

11 60. Upon information and belief, July has never made bona fide use of the  
12 OCTAVIUS TOWER mark in commerce in the United States for entertainment services in the  
13 nature of a website featuring musical performances or photographs, as set forth in the Website  
14 Registration. Rather, upon information and belief, he began use of the mark for these services  
15 only after becoming aware of Caesars' planned use of the OCTAVIUS TOWER mark for hotel  
16 services and in an effort to fabricate legal rights to be asserted against Caesars. Such use is not  
17 bona fide use and does not support a valid service mark registration in the United States.

18 61. Based on the foregoing, Caesars is entitled to an order pursuant to 15 U.S.C.  
19 § 1119 directing the Director of the Trademark Office to cancel U.S. Registration Nos. 3,675,168  
20 and 3,736,945.

21 **COUNT V**

22 **Cancellation of July's Federal Service Mark**  
23 **Registrations Based on Fraud**

24 62. Caesars incorporates by reference the allegations set forth in Paragraphs 1-61  
25 above as if fully set forth herein.

26 63. Pursuant to 15 U.S.C. § 1119, "[i]n any action involving a registered mark the  
27 court may ... order the cancellation of registrations, in whole or in part ... and otherwise rectify  
28 the register with respect to the registrations of any party to the action."

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1           64. Pursuant to 15 U.S.C. § 1120, “[a]ny person who shall procure registration in the  
2 Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral  
3 or in writing, or by any false means, shall be liable in a civil action by any person injured thereby  
4 for any damages sustained in consequence thereof.”

5           65. Pursuant to 15 U.S.C. § 1064, a mark may be cancelled at any time if the Court  
6 determines that the registration was obtained through fraud.

7           66. In support of the applications July filed with the USPTO that resulted in the  
8 Website Registration and the Floor Show Registration, July signed oaths in which he alleged  
9 under penalty of perjury that he had used the mark OCTAVIUS TOWER in connection with the  
10 services identified in the registration applications since February 4, 1992 and in interstate  
11 commerce in the United States since June 8, 1993.

12           67. Upon information and belief, July has never used the OCTAVIUS TOWER mark  
13 in commerce in the United States for entertainment services in the nature of a website featuring  
14 musical videos or related film clips, as set forth in the Website Registration, or for any of the  
15 services identified in the Floor Show Registration, and July knew the same when he signed the  
16 oaths supporting the applications.

17           68. Upon information and belief, July has never made bona fide use of the  
18 OCTAVIUS TOWER mark in commerce in the United States for entertainment services in the  
19 nature of a website featuring musical performances or photographs, as set forth in the Website  
20 Registration, and, to the extent July has offered the services at all, he did not begin offering these  
21 services as of the dates of first use listed in the oath he signed supporting his application, and  
22 July knew the same when he signed the oath supporting the application. Upon information and  
23 belief, July alleged dates of first use that he knew to be false to make it appear that his rights are  
24 senior to Caesars’.

25           69. Upon information and belief, but for July’s intentional misrepresentations of  
26 material fact, the USPTO would not have issued either Reg. No. 3,675,168 or Reg. No.  
27 3,736,945 to July, and July made the misrepresentations to the USPTO for the purpose of  
28

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1 inducing the USPTO to issue registrations to him he knew the USPTO would not otherwise  
2 issue.

3 70. Caesars has suffered, and continues to suffer, damage as a result of the USPTO's  
4 reliance on July's intentional misrepresentations.

5 71. July's intentional misrepresentations to the USPTO to obtain the Website  
6 Registration and the Floor Show Registration constitute fraud on the Trademark Office.  
7 Accordingly, this Court should order that the registrations be cancelled pursuant to 15 U.S.C.  
8 §§ 1119.

9 **COUNT VI**

10 **Cancellation of July's Nevada Registrations**  
11 **Based on Non-Use or Abandonment**

12 72. Caesars incorporates by reference the allegations set forth in Paragraphs 1-71  
13 above as if fully set forth herein.

14 73. A mark may only be registered in Nevada if it is used within the state for the  
15 goods or services identified in a registration application for the mark, and the mark is deemed to  
16 be used in Nevada "[o]n services when it is used or displayed in the sale or advertising of  
17 services and the services are rendered in this State." NEV. REV. STAT. § 600.320.

18 74. Pursuant to NEV. REV. STAT. § 600.390, "The Secretary of State shall cancel from  
19 the register...(3) Any registration concerning which a court of competent jurisdiction finds that:  
20 (a) The registered mark has been abandoned...[or] (4) Any registration when a court of  
21 competent jurisdiction orders cancellation of the registration on any ground."

22 75. Upon information and belief, July has never used the OCTAVIUS TOWER mark  
23 in Nevada for entertainment services in the nature of a website featuring musical videos or  
24 related film clips, as set forth in Nevada Reg. Nos. E0360772009-9 and E0360792009-1, or for  
25 any of the services identified in Nevada Reg. No. E0360792009-0. Upon further information  
26 and belief, if July has used the mark for any of these services at any time, he has abandoned use  
27 of the mark.  
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1 83. Upon information and belief, July has never used the OCTAVIUS TOWER mark  
2 in Nevada for entertainment services in the nature of a website featuring musical videos or  
3 related film clips, as set forth in Nevada Reg. Nos. E0360772009-9 and E 0360792009-1, or for  
4 any of the services identified in Nevada Reg. No. E0495922009-0, and July knew the same when  
5 he signed his applications.

6 84. Upon information and belief, July has never made bona fide use of the  
7 OCTAVIUS TOWER mark in Nevada for entertainment services in the nature of a website  
8 featuring musical performances or photographs, as set forth in Nevada Reg. Nos. E0360772009-  
9 9 and E 0360792009-1, and, to the extent July has offered the services at all, he did not begin  
10 offering these services as of the dates of first use listed in his application, and July knew the  
11 same when he submitted his registration applications. Upon information and belief, July alleged  
12 dates of first use that he knew to be false to make it appear that his rights are senior to Caesars'.

13 85. Upon information and belief, but for July's intentional misrepresentations of  
14 material fact, the Nevada Secretary of State's Office would not have issued the registrations to  
15 him, and July knew the same.

16 86. Caesars has suffered, and continues to suffer, damage as a result of the the  
17 Nevada Secretary of State's Office's justifiable reliance on July's intentional misrepresentations.

18 87. July's intentional misrepresentations in connection with his Nevada service mark  
19 applications constitute fraud. Accordingly, this Court should order that Nevada Reg. Nos.  
20 E0360772009-9, E0360792009-1, and E0495922009-0 be cancelled pursuant to NEV. REV.  
21 STAT. § 600.390.

22 **COUNT VIII**

23 **Cancellation of July's Florida Registration**  
24 **Based on Non-Use or Abandonment**

25 88. Caesars incorporates by reference the allegations set forth in Paragraphs 1-87  
26 above as if fully set forth herein.

27 89. A mark may only be registered in Florida if it is used within the state for the  
28 goods or services identified in a registration application for the mark, and the mark is deemed to

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1 be used in Florida “[o]n services when the mark is used or displayed in the sale or advertising of  
2 services and the services are rendered in this state.” FLA. STAT § 495.011(14).

3 90. Pursuant to FLA. STAT. § 495,101, “[t]he Secretary of State shall cancel from the  
4 register...(3) Any registration concerning which a court of competent jurisdiction finds that: (a)  
5 The registered mark has been abandoned...[or] (4) When a court of competent jurisdiction shall  
6 order cancellation of a registration on any ground.”

7 91. Upon information and belief, July has never used the OCTAVIUS TOWER mark  
8 in Florida for entertainment services, namely, for providing a website featuring musical videos  
9 and related film clips, as set forth in Florida Reg. No. T09,000,000,664. Upon further  
10 information and belief, if July has used the mark for any of these services at any time, he has  
11 abandoned use of the mark in Florida.

12 92. Upon information and belief, July has never made bona fide use of the  
13 OCTAVIUS TOWER mark in Florida for entertainment services, namely, a name of a band, or  
14 for providing a website featuring musical performances and related photographs, as set forth in  
15 Florida State Reg. No. T09,000,000,664. Rather, any use he has made began only after he  
16 became aware of Caesars’ planned use of the OCTAVIUS TOWER mark for hotel services and  
17 in an effort to fabricate legal rights to assert against Caesars. Such use is not bona fide use and  
18 does not support a valid service mark registration in Florida.

19 93. Based on the foregoing, Caesars is entitled to an order directing that Florida State  
20 Registration No. T09,000,000,664 be cancelled.

21 **COUNT IX**

22 **Cancellation of Florida Service Mark**  
23 **Registration Based on Fraud**

24 94. Caesars incorporates by reference the allegations set forth in Paragraphs 1-93 as if  
25 fully set forth herein.

26 95. Pursuant to FLA. STAT. § 495,101, “[t]he department shall cancel from the  
27 register: (3) Any registration for which a court of competent jurisdiction finds that:... (d) [t]he  
28 registration was obtained fraudulently.”

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KEARNEY, HOLLEY & THOMPSON





1           96. Pursuant to FLA. STAT. § 495,121, “[a]ny person who shall for herself or himself,  
2 or on behalf of any other person, procure the filing or registration of any mark with the  
3 Department of State under the provisions hereof, by knowingly making any false or fraudulent  
4 representation or declaration, verbally or in writing, or by any other fraudulent means, shall be  
5 liable to pay all damages sustained in consequence of such filing or registration, and for punitive  
6 or exemplary damages, to be recovered by or on behalf of the party injured thereby in any court  
7 of competent jurisdiction.”

8           97. In support of his applications that resulted in Florida Reg. No. T09,000,000,664,  
9 July claimed that he had used the OCTAVIUS TOWER mark in connection with the services  
10 identified in the application in Florida since May 10, 2008.

11           98. Upon information and belief, July has never used the OCTAVIUS TOWER mark  
12 in Florida for entertainment services in the nature of a website featuring musical videos or  
13 related film clips, as set forth in Florida Reg. No. T09,000,000,664, and July knew the same  
14 when he signed the oath supporting his application.

15           99. Upon information and belief, July has never made bona fide use of the  
16 OCTAVIUS TOWER mark in Florida for entertainment services in the nature of a band or a  
17 website featuring musical performances or photographs, as set forth in Florida State Reg. No.  
18 T09,000,000,664, and, to the extent July has offered the services at all, he did not begin offering  
19 these services as of the date of first use listed in the oath he signed supporting his application,  
20 and July knew the same when he signed the oath supporting the application. Upon information  
21 and belief, July alleged a date of first use that he knew to be false to make it appear that his rights  
22 are senior to Caesars’.

23           100. Upon information and belief, but for July’s intentional misrepresentations of  
24 material fact, the Florida Department of State would not have issued the registration to him, and  
25 July knew the same.

26           101. Caesars has suffered, and continues to suffer, damage as a result of the Florida  
27 Department of State’s reliance on July’s intentional misrepresentations.  
28



1 (g) Award Caesars such other, further and additional relief as the Court deems just  
2 and proper.

3 DATED this 8<sup>th</sup> day of April, 2011.

4 **SANTORO, DRIGGS, WALCH,**  
5 **KEARNEY, HOLLEY & THOMPSON**

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7 \_\_\_\_\_  
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19 Pro Hac Vice Applications Forthcoming

20 *Attorneys for Caesars World, Inc.*

SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON



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