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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  
**DEFENDANT MARCEL JULY’S  
MOTION TO DISMISS CERTAIN  
COUNTERCLAIMS PURSUANT TO  
R.CIV.P. 12(B)(6)**

Pursuant to F.R.Civ.P. 41(a)(2), Defendant Marcel July, by and through undersigned counsel, herewith moves this Honorable Court to enter orders dismissing certain portions of Mr. July’s Counterclaim against the Plaintiff. Specifically, Defendant requests a dismissal of Count Two of his Counterclaim for Dilution of Trademark or Tradename and further those portions of County One requesting monetary damages arising from Infringement. This Motion is supported by the following Memorandum of Points and Authorities, incorporated by reference herein.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**A. 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

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registered in his name with the United State Patent and Trademark Office (USPTO). In this matter, Plaintiff Caesar’s World, Inc. has stated various claims against Mr. July, to which Mr. July has responded and presented his own Counterclaim against the Plaintiff. In Mr. July’s Counterclaim, the Defendant lists two counts, one for Infringement under 15 U.S.C. §§ 1114, 1116, and 1117 and a second for Dilution under 15 U.S.C. § 1125.

To better facilitate ongoing settlement discussions, Mr. July wishes to dismiss voluntarily Count Two of his Counterclaim in its entirety, including any monetary damages contained in his prayer for relief allegedly arising from Dilution. As to Count One of his Counterclaim, Mr. July wishes to retain only those portions requesting injunctive relief and a recovery of his costs and attorneys fees. Mr. July requests that these allegations be dismissed without prejudice.

**B. LEGAL ARGUMENT**

Federal Rule of Civil Procedure 41(a)(1) allows a party requesting relief to voluntarily dismiss its claims by filing a notice of dismissal “before the opposing party serves either an answer or a motion for summary judgment.” Otherwise, the provisions of F.R.Civ.P. 41(a)(2) are applicable, which provides that:

Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper. . . Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

In this matter, Plaintiff has responded to Defendant’s Counterclaim and filed a motion pursuant to F.R.Civ.P. 12(b)(6). From this it would appear that the provisions of Rule 41(a)(1) are not applicable, and Defendant cannot summarily dismiss his own claims by merely filing a notice. A dismissal as Defendant has outlined is therefore only permissible under Rule 41(a)(2), namely by order of this Honorable Court. Under that rule, such a dismissal should be without prejudice.

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**C. CONCLUSION**

From the foregoing, a dismissal of Defendant’s Counterclaim Count One partially as outlined above and Count Two entirely is in the interests of justice.

DATED THIS 28<sup>th</sup> DAY OF November 2011.

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