

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 CAESARS WORLD, INC.,) Case No.: 11-cv-00536-GMN-PAL
4)
5 Plaintiff,) **ORDER**
6 vs.)
7 MARCEL JULY; OCTAVIUS TOWER LLC,)
8 Defendant.)
9

10 Before the Court is Plaintiff/Counter Defendant Caesars World, Inc.’s Motion for Partial
11 Dismissal of Counterclaims (ECF No. 22). Defendant/Counter Claimant Marcel July filed a
12 Response on June 30, 2011 (ECF No. 28) and Plaintiff/Counter Defendant filed a Reply on July
13 14, 2011 (ECF No. 29).

14 Before the Court had the opportunity to issue an Order on the Motion to Dismiss,
15 Defendant/Counter Claimant July filed a Voluntary Dismissal of some of his counterclaims
16 (ECF No. 44). Plaintiff/Counter Defendant Caesars filed a Non-Opposition to the motion (ECF
17 No. 47). July would like the Court to dismiss his second counterclaim for dilution under 15
18 U.S.C. § 1125 in its entirety. He would also like to dismiss part of his first counterclaim for
19 infringement under 15 U.S.C. §§ 1114, 1116, and 1117. July wishes to retain only those
20 portions of counterclaim one requesting injunctive relief and recovery of his costs and attorney
21 fees. Caesar’s Motion to Dismiss asks this Court to dismiss July’s second counterclaim for
22 dilution.

23 Federal Rule of Civil Procedure 41(a)(1) allows a party requesting relief to voluntarily
24 dismiss its claims by filing a notice of dismissal “before the opposing party serves either an
25 answer or a motion for summary judgment.” Otherwise, the provisions of Fed. R. Civ. P.

1 41(a)(2) are applicable, which provides that:

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

5 In general, a motion to dismiss pursuant to 12(b) for failure to state a claim does not
6 terminate the plaintiff's unilateral right to dismiss. See *Swedberg v. Marotzke*, 339 F.3d 1139
7 (holding that until a Rule 12(b)(6) motion is converted to a motion for summary judgment
8 plaintiff is free to file a proper notice of dismissal pursuant to Rule 41(a)(1)).

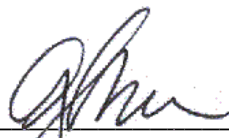
9 Caesars' Motion to Dismiss never asks the Court to consider outside evidence or to
10 convert the motion to one for summary judgment. (See MTD, ECF No. 22.) Accordingly, July
11 is free to file his notice of dismissal pursuant to Rule 41(a)(1) without leave of the Court.

12 Therefore July's Voluntary Dismissal (ECF No. 44) will be granted.

13 **IT IS HEREBY ORDERED** that Defendant/Counter Claimant July's Motion for
14 Voluntary Dismissal (ECF No. 44) is **GRANTED**.

15 **IT IS FURTHER ORDERED** that Plaintiff/Counter Defendant Caesars World, Inc.'s
16 Motion for Partial Dismissal of Counterclaims (ECF No. 22) is **DENIED as moot**.

17 DATED this 22nd day of December, 2011.

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22 Gloria M. Navarro
23 United States District Judge
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