

1 Mark G. Tratos (Nevada Bar No. 1086)
Lauri S. Thompson (Nevada Bar No. 6846)
2 Peter H. Ajemian (Nevada Bar No. 9491)
GREENBERG TRAUERIG, LLP
3 3773 Howard Hughes Parkway
Suite 400 North
4 Las Vegas, Nevada 89169
Telephone: (702) 792-3773
5 Facsimile: (702) 792-9002

6 Counsel for Defendants
7

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 SLEP-TONE ENTERTAINMENT
CORPORATION,

11 Plaintiff,

12 vs.

13 ELLIS ISLAND CASINO & BREWERY, et
14 al.,

15 Defendants.
16

Case No. 2:12-cv-00239-KJD-RJJ

**MOTION TO SEVER BY
DEFENDANTS PT'S PLACE;
GOLDEN-PT'S PUB CHEYENNE-
NELLIS 5, LLC; PT'S PUB; GOLDEN-
PT'S PUB WEST SAHARA 8, LLC;
PT'S GOLD; GOLDEN-PT'S PUB
CENTENNIAL 32, LLC; GOLDEN-PT'S
PUB STEWART-NELLIS 2, LLC; AND
GOLDEN TAVERN GROUP, LLC**

17
18 Pursuant to Federal Rules of Civil Procedure 20(a)(2) and 21, Defendants PT'S
19 PLACE; GOLDEN-PT'S PUB CHEYENNE-NELLIS 5, LLC; PT'S PUB; GOLDEN-PT'S PUB
20 WEST SAHARA 8, LLC; PT'S GOLD; GOLDEN-PT'S PUB CENTENNIAL 32, LLC;
21 GOLDEN-PT'S PUB STEWART-NELLIS 2, LLC; GOLDEN TAVERN GROUP, LLC
22 (collectively "PT'S Defendants") hereby move the Court for entry of an order severing the
23 PT'S Defendants from the other defendants in this case and dismissing the PT'S
24 Defendants from this case without prejudice. This motion is based upon the attached
25 memorandum of points and authorities, the papers and pleadings on file in this action, and
26 any oral argument that this Court may allow.

27 ///

28 ///

Greenberg Traurig, LLP
Suite 400 North, 3773 Howard Hughes Parkway
Las Vegas, Nevada 89109
(702) 792-3773
(702) 792-9002 (fax)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case arises out of Plaintiff’s claims that its SOUND CHOICE trademarks have been infringed by various “Karaoke Jockeys” (or “KJs” as Plaintiff defines this occupation in its Complaint) who provide their karaoke entertainment services in various bar and restaurant venues in and around Las Vegas, Nevada. Plaintiff alleges that KJs are making unauthorized copies of Plaintiff’s compact disks and that the visual elements of these unauthorized compact disks display Plaintiff’s SOUND CHOICE trademark during karaoke performances, constituting trademark infringement and unfair competition.

In addition to the KJs, Plaintiff has also named dozens of individual venues who hire these independent contractor KJs to perform in their establishments - including the PT’S Defendants as the owner and/or operator of the PT’S brand of bar/restaurants throughout Las Vegas. In total, Plaintiff has named 95 individual defendants in this matter and has asserted similar claims in over fifty (50) cases filed nationwide. As it has done in similar cases nationwide, Plaintiff has improperly joined numerous unrelated defendants in its complaint. Plaintiff’s tactics have been rejected by other courts and should be rejected by this Court as well. As such, this Court should grant PT’S Defendants Motion to Sever and order that Plaintiff’s claims against the PT’S Defendants be brought in a separate action.

II. STATEMENT OF FACTS

Defendant Golden Tavern Group, LLC (“Golden Tavern”) owns and operates a number of bar/restaurants in Las Vegas, Nevada, including PT’S Defendants, under the “PT’S” brand, which is a popular and well known chain of bar/restaurants in Las Vegas, Nevada specializing in serving Las Vegas residents. The PT’S Defendants offer a “locals-friendly” restaurant and bar environment which includes causal dining, premium spirits and advanced casino gaming technology (including sports betting at select locations), as well as a variety of other amenities for patrons, including high-definition televisions for watching sports. Additionally, many of the PT’S branded bar/restaurants host live entertainment on designated nights, including karaoke.

Greenberg Traurig, LLP
Suite 400 North, 3773 Howard Hughes Parkway
Las Vegas, Nevada 89109
(702) 792-3773
(702) 792-9002 (fax)

1 The PT'S Defendants do not own karaoke equipment or provide karaoke services
2 themselves. Rather, as Plaintiff acknowledges, these karaoke nights are provided by
3 independent contractor Defendant Roll N Mobile, LLC to provide "Karaoke Jockeys" (or
4 "KJs" as Plaintiff defines this occupation in its Complaint) to perform at their various venues
5 for special karaoke events and private parties. In fact, during the time period at issue the
6 PT'S Defendants exclusively used this Nevada limited liability company, and its principal
7 Kenneth Angell, also named as a Defendant, to provide them with karaoke services at their
8 venues.

9 Plaintiff's thirty-eight page Complaint boils down to a single claim -- that KJs
10 infringe Plaintiff's trademarks when KJs display Plaintiff's SOUND CHOICE trademark in
11 those instances when they are using illegal copies of Plaintiff's audio and visual tracks.
12 Plaintiff describes the KJs as "entertainers who provide karaoke services in bars,
13 restaurants, and other venues," and such karaoke services include "providing the karaoke
14 music and equipment for playback, entertaining the assembled crowd for warm-up
15 purposes, and organizing the karaoke show by controlling access to the stage, setting the
16 order of performance, and operating the karaoke equipment." (See Pl. Slep-Tone's
17 Complaint, ¶ 63 [Docket # 1]). Further, Plaintiff claims that "[t]ypically a KJ will maintain a
18 catalog of songs available for performances in order to aid participants in selecting a song
19 to sing," and "[l]egitimate KJs purchase equipment and purchase or license compact disks
20 containing accompaniment tracks and charge for the above-mentioned karaoke services."
21 (See *Id.* ¶¶ 64-5).

22 Plaintiff goes on in its Complaint to allege that recent technology has made it easy
23 for unscrupulous KJs to illegally build up libraries of thousands of karaoke songs without
24 paying for them through decoding and illegitimately copying its SOUND CHOICE brand
25 karaoke disks, or by downloading the tracks from illegal file sharing sites, and then
26 distributing, sharing, and/or swapping the illegally obtained SOUND CHOICE karaoke
27 tracks with other KJs. (See *Id.* ¶ 51). Plaintiff further alleges that this wide-spread piracy
28 by KJs of its SOUND CHOICE brand karaoke disks causes unfair competition in the

1 marketplace because “the illegitimate KJs are able to provide karaoke services with a
 2 considerably lower overhead cost and significantly more songs through the pirating of
 3 SLEP-TONE’s tracks.” (See Id. ¶ 87). Plaintiff claims that the “pirate KJs” conduct in turn
 4 pressures the “legitimate KJs” to “skirt or ignore the law and become pirates” by engaging
 5 in infringement in order to compete with the “pirate KJs.” (See Id. ¶¶ 57, 89, 91).

6 None of these allegations pertain in any way, however, to the PT’S Defendants. The
 7 only allegations that Plaintiff makes about the PT’S Defendants are that “[v]enues such as
 8 those operated by the Defendants can enjoy significant savings by turning a blind eye to
 9 the actions of the illegitimate KJs they hire,” and that the PT’S Defendants’ “venues benefit
 10 from piracy because unfair competition from pirate KJs pressures legitimate KJs to accept
 11 lower compensation from the venues to obtain new business or retain old business. By
 12 decreasing the fixed cost of entertainment, the Defendants’ operations become more
 13 profitable.” (Id. ¶¶ 93-4). Further, Plaintiff alleges that the PT’S Defendants “knowingly
 14 benefits” from the KJs’ pirating of the SOUND CHOICE karaoke disks. (Id. ¶ 232). Plaintiff
 15 does not claim that it made any attempt to put the PT’S Defendants on notice of the alleged
 16 trademark infringement prior to filing instant Complaint in the United States District Court,
 17 District of Nevada on February 15, 2012.

18 Finally, the PT’S Defendants are not significantly related to any of the other
 19 defendants, and the PT’S Defendants’ allegedly infringing conduct is unrelated to the
 20 conduct of the other defendants named in the instant suit.

21 **III. LEGAL ARGUMENT**

22 **A. Severance of The Claims Against the PT’S Defendants Is** 23 **Warranted.**

24 Rule 21 of the Federal Rules of Civil Procedure provides that when parties are
 25 “misjoined”, “[a]ny claim against a party may be severed and proceeded with separately.”
 26 In order to determine whether parties are properly joined, courts look to Federal Rule of
 27 Civil Procedure 20. Rule 20 provides two requirements for proper joinder: (1) the plaintiffs
 28 must assert a right to relief arising out of the same transaction or occurrence; and (2) there

1 must a question of law or fact common to all plaintiffs in the action. For a joinder to be
2 proper under Rule 20, both requirements of the rule must be satisfied. See, Waterfall
3 Homeowners Ass'n v. Viega, Inc., 2012 U.S. Dist. LEXIS 10315, at *10 (D. Nev. Jan. 30,
4 2012). As demonstrated below, Plaintiff fails to satisfy either of these two requirements.

5 **B. Plaintiff's Claims Do Not Arise Out Of The Same**
6 **Transaction or Occurrence.**

7 The first prong of Rule 20, the "same transaction" requirement, refers to whether
8 claims share the same factual background. In the Ninth Circuit, the phrase "same
9 transaction, occurrence, or series of transactions or occurrences" refers to "similarity in the
10 factual background of a claim." See, Coughlin v. Rogers, 130 F.3d 1348, 1350 (9th Cir.
11 1997). It requires a "degree of factual commonality underlying the claims," which typically
12 means that a plaintiff "must assert rights that arise from related activities." See, Innovus
13 Prime, LLC v. LG Electronics, Inc., 2012 WL 161207 at *2 (N.D. Cal. Jan. 18, 2012)
14 (internal citations omitted). Further, "[w]here a plaintiff sues 'unrelated and competing
15 defendants for their own independent acts of....infringement,' and alleges that those
16 defendants were '*acting separately*,' such conduct cannot 'involve or arise out of the same
17 transaction, occurrence or series of transactions or occurrences' pursuant to Fed. R. Civ.
18 P. 20(a)(2)." Id. (Emphasis in original.)

19 In the instant matter, Plaintiff has alleged that 95 separate defendants have at
20 separate times and in separate places infringed its SOUND CHOICE Marks. No allegation
21 is made by Plaintiff that any of the defendants acted in concert. The only connection
22 between the defendants is that plaintiff has accused each defendant of infringing the same
23 trademark. This is insufficient for finding proper joinder. See, Interval Licensing LLC v.
24 AOL, Inc., 2011 WL 1655713 (W.D. Wash. Apr. 29, 2011) (finding joinder was improper
25 where the only connection between defendants was that they were accused of infringing
26 the same patent); WiAV Networks, LLC v. 3Com Corp., 2010 WL 3895047 at *1, 3 (N.D.
27 Cal. Oct. 1, 2010) (finding severance proper in a patent infringement suit brought against
28 40 unrelated defendants with unrelated products); Golden Scorpio Corp. v. Steel Horse

1 Bar & Grill, 596 F. Supp. 2d 1282, 1283 (D. Ariz. 2009) (finding misjoinder where multiple
2 defendants were sued for infringement of the same trademark but there were no
3 allegations that the defendants acted together to infringe the mark).

4 In Slep-Tone Entertainment Corporation v. Mainville, 2011 U.S. Dist. Lexis 11611
5 (W.D.N.C. Oct. 6, 2011), the Court rejected Slep-Tone's argument that the requisite series
6 of transactions and occurrences was created because the alleged counterfeit karaoke
7 tracks obtained or made by defendants all originated from the same ultimate source. In
8 Mainville, Slep-Tone also joined multiple unrelated defendants and alleged each had
9 committed trademark infringement. The court reasoned that "[o]bviously, the infringement
10 of any trademark....originates from a common ultimate source, that being the
11 trademark....itself. Here, defendants may have committed the same type of violation in
12 the same way, but, again, that does not link defendants together for purposes of joinder."
13 Id. at *12-13. The court went on to note that there was no allegation that the defendants
14 had acted in concert; rather, each defendant allegedly infringed separately, at different
15 places and at different times, with no knowledge that the other defendants were engaged
16 in alleged infringements of their own. Id. Under those circumstances, the court held that
17 joinder of multiple defendants was improper. Id. It severed all of the defendants, except
18 the first-named defendant, and required Slep-Tone to file separate actions against the
19 remaining defendants. In doing so, the court noted that "it appears that these cases are
20 really separate lawsuits combined together for no apparent reason except to avoid paying
21 filing fees." Id.

22 In the instant case, there are no allegations in the Complaint that all of the
23 defendants were working in concert or that the alleged infringements were taking place
24 with the knowledge of the other defendants. In fact, the Complaint alleges the defendants
25 committed infringements at many different locations. (See Pl. Slep-Tone's Complaint, ¶¶
26 99-229 [Docket # 1]). The only plausible inference that can be raised from Plaintiff's
27 allegations that each of the defendants has generally offered karaoke services is that
28 these services were offered in different locations and at different times. The Complaint

1 alleges no connection between the defendants other than the common allegation that they
 2 have each infringed Plaintiff's SOUND CHOICE Marks. That does not establish
 3 infringement arising out of the "same" transaction or occurrence. Rather, the Complaint
 4 alleges dozens of separate acts of infringement occurring at difference places and times.

5 As Plaintiff has failed to establish the "same transaction" requirement for permissive
 6 joinder, and because both Rule 20 requirements must be satisfied to join all of the
 7 defendants in this case, the Court should enter an order severing the PT'S Defendants
 8 from this case.

9 **C. Plaintiff's Claims Do Not Involve Common Questions Of Law Or Fact.**

10 Plaintiff also fails to satisfy the second requirement of Rule 20(a) - their claims do
 11 not involve sufficiently common questions of law or fact. There are no allegations that the
 12 alleged infringements took place at the same time, in the same place, or in the same
 13 manner. There are, thus, no common questions of fact. Even assuming there were,
 14 "[e]ach case of trademark infringement must be analyzed based on its own facts." See,
 15 J.B. Williams Co., Inc. v. Le Conte Cosmetics, Inc., 523 F. 2d 187, 191 (9th Cir. 1975).
 16 Although Plaintiff's claims against all of the defendants arise under the Lanham Act, "[t]he
 17 mere fact that all claims arise under the same general law does not necessary establish a
 18 common question of law or fact." See, Coughlin v. Rogers, 130 F.3d 1348, 1351 (9th Cir.
 19 1997).

20 With regard to the defendants joined in this case, they include the KJs themselves,
 21 as well as the venue owners where the KJs allegedly performed their services. Because
 22 the elements and proof required to establish direct, contributory, and/or vicarious
 23 infringement are different, Plaintiff will have to present different evidence for each of the
 24 defendants' alleged infringement in this case. The jury will have to apply a different set of
 25 facts and law to each individual defendant, depending upon whether the facts specific to
 26 that defendant tend to show that the claimed infringement was direct, contributory, or
 27 vicarious. Therefore, because the facts relating to each defendant's alleged infringement
 28

1 are different, there is no question of law common to each of the 95 defendants in this
2 case.

3 As a result, Plaintiff's claims do not raise common questions of fact or law within the
4 meaning of Rule 20. Therefore, the Court should enter an order severing the PT'S
5 Defendants from this case.

6 **II. CONCLUSION**

7 Based on the foregoing, severance of the PT'S Defendants from this case is
8 appropriate. Plaintiff fails to satisfy Rule 20, as their claims do not arise out of the same
9 transaction or occurrence and do not involve common questions of law and fact within the
10 meaning of the rule. Accordingly, the PT'S Defendants respectfully request that the Court
11 grant their motion and enter an order severing the claims alleged against them and
12 dismissing them from this case without prejudice.

13 DATED this 11th day of May, 2012.

14 Respectfully submitted,
15 GREENBERG TRAUIG, LLP
16 By: /s/ Lauri S. Thompson.

17 MARK G. TRATOS, ESQ.
18 Nevada Bar No. 1086
19 Lauri S. Thompson
20 Nevada Bar No. 6846
21 PETER H. AJEMIAN, ESQ.
22 Nevada Bar No. 9491
23 GREENBERG TRAUIG, LLP
24 3773 Howard Hughes Pkwy., Ste 400 North
25 Las Vegas, Nevada 89169
26 Telephone: (702) 792-3773
27 Facsimile: (702) 792-9002
28 *Counsel for Defendants*

Greenberg Traurig, LLP
Suite 400 North, 3773 Howard Hughes Parkway
Las Vegas, Nevada 89109
(702) 792-3773
(702) 792-9002 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2012, I served the foregoing **MOTION TO SEVER BY DEFENDANTS PT'S PLACE; GOLDEN-PT'S PUB CHEYENNE-NELLIS 5, LLC; PT'S PUB; GOLDEN-PT'S PUB WEST SAHARA 8, LLC; PT'S GOLD; GOLDEN-PT'S PUB CENTENNIAL 32, LLC; GOLDEN-PT'S PUB STEWART-NELLIS 2, LLC; AND GOLDEN TAVERN GROUP, LLC** via the Court's CM/ECF filing system to all counsel of record and parties as listed.

/s/ Cynthia L. Ney
An employee of GREENBERG TRAURIG, LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Greenberg Traurig, LLP
Suite 400 North, 3773 Howard Hughes Parkway
Las Vegas, Nevada 89109
(702) 792-3773
(702) 792-9002 (fax)

