

Florida developer wants 'Destiny'

Company alleges in court Pyramid obtained use of the name fraudulently.

By Rick Moriarty, Staff writer

A developer who wants to build an "eco-sustainable city" in central Florida called Destiny is alleging that a Syracuse developer obtained a trademark on the name through fraudulent statements to the U.S. Patent & Trademark Office.

Land Co. of Osceola County LLC and its principals alleged in a filing in U.S. District Court in Orlando that Pyramid Co. falsely told the patent office that it had been using the Destiny USA name in connection with real estate development services since Oct. 31, 2001.

Pyramid, the mall development company founded by Carousel Center owner Robert Congel, obtained a trademark on the Destiny USA name in October 2004 in connection with "real estate development services, namely development of convention and tourism centers, theme parks and shopping centers."

Congel says Destiny USA will be a huge, environmentally friendly shopping, hotel and entertainment complex in Syracuse's lakefront area. Construction of the first phase, a \$540 million, 1.3-million-square-foot addition to the Carousel Center mall, began in 2007 and is expected to be finished later this year.

Land Co. of Osceola County said Pyramid could not have put the name Destiny USA to commercial use in 2001, as it claimed in its trademark application, because it did not even start construction until 2007.

Congel first announced his plans to call his new development Destiny USA during a news conference at the Carousel Center on Oct. 31, 2001, with then-Gov. George Pataki.

Pyramid sued Land Co. of Osceola County and its principals, Anthony V. Pugliese Inc. and Anthony V. Pugliese III, in April 2008, alleging they were infringing on Pyramid's trademark by calling their planned 41,300-acre residential and commercial development in central Florida "Destiny Florida."

Like Destiny USA, Destiny Florida is being marketed as a world-class model for sustainable green-building technology.

Pyramid has alleged that the planned Florida development is similar to Destiny USA, uses a stylized globe logo similar to Destiny USA's and has caused consumer confusion.

Land Co. of Osceola County has said there is no evidence of actual confusion because neither development is open for business.

In a counterclaim filed Friday, the Florida company and its principals said Pyramid obtained a trademark on the Destiny name through "fraudulent and material misrepresentations" and that Pyramid's continued ownership of it was wrongfully hindering their registration of the "unaffiliated Community of Destiny Florida" trademark.

They asked U.S. District Court Judge Gregory Presnell to nullify Pyramid's trademark of the Destiny name.

"They weren't using it in commerce," their attorney, Richard Roth, of New York City, said Thursday.

Roth said Pyramid's "announcement" of the Destiny name in 2001 did not give it the right to trademark the name.

"It's got to be more than an idea," he said. "You have to use it."

Destiny USA executive David Aitken called the counterclaim "baseless."

"Hundreds of millions of dollars have been invested in the development of Destiny USA since 2001, and legal counsel will vehemently oppose the assertions," he said.

On Feb. 4, Judge Presnell denied Land Co. of Osceola County's motion to dismiss Pyramid's lawsuit. But at the same time, Presnell said Pyramid's infringement claims "appear weak."