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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|--|
| Proceeding | 85892299 |
| Applicant | Michael D Mathes |
| Applied for Mark | SOUTH BEACH SWIMWEAR |
| Correspondence Address | STEVEN E EISENBERG LIPSCOMB EISENBERG & BAKER PL 2 S BISCAYNE BLVD , STE 3800 MIAMI, FL 33131-1809 UNITED STATES SEisenberg@LEBFIRM.COM, melias@trademarkportfolios.com |
| Submission | Appeal Brief |
| Attachments | Appeal Brief Serial No. 85892299.pdf(633115 bytes) Exhibit A.pdf(519197 bytes) Exhibit B.pdf(471206 bytes) |
| Filer's Name | Steven E. Eisenberg |
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| Signature | /see/ |
| Date | 08/06/2014 |

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant/Appellant: Michael D. Mathes
Serial No.: **85/892,299**
Filing Date: April 1, 2013
Mark: SOUTH BEACH SWIMWEAR AND DESIGN
Law Office: 105
Examining Attorney: Simon Teng

FILED VIA ESTTA
Commissioner for Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICANT'S APPEAL BRIEF

Applicant Michael D. Mathes, "Applicant" appeals from the Examiner's June 5, 2014 final refusal of the trademark SOUTH BEACH SWIMWEAR AND DESIGN, Serial No. 85/892,299. The present Appeal Brief is submitted in support of a Notice of Appeal timely filed electronically on May 15, 2014.

I. Index of Cited Cases and Treatises

California Cooler, Inc. v. Loretto Winery Ltd., 774 F.2d 1451, 1455 (9th Cir.1985);
Champagne Louis Roederer, S.A. v. Delicato Vineyards, 148 F.3d 1373 (Fed. Cir. 1998);
Estate of P.D. Beckwith, Inc. v. Commissioner of Patents, 252 U.S. 538, 545-46, (1920);
*Information Resources v. X*Press Info. Servs.*, 6 U.S.P.Q.2d 1034 (T.T.A.B. 1988);
In NEC Electronics v. New England Circuit Sales, Inc., 722 F.Supp. 861, 13 U.S.P.Q.2d 1058 (D. Mass. 1989);
In re Dayco Products-Eagle Motive Inc., 9 U.S.P.Q. 2d 1910 (T.T.A.B. 1988);
In re Hearst Corp., 25 U.S.P.Q. 2d 1238, 1239 (Fed. Cir. 1992);
In re National Data Corp., 753 F.2d 1056 (Fed. Cir. 1985);
In re Bentley Motors Ltd., Serial No. 85325994 (December 3, 2013);
Kiekhaefer Corp. v. Willys-Overland Motors, Inc., 236 F.2d 423, 111 U.S.P.Q. 105 (C.C.P.A. 1956);
Local Trademarks, Inc. v. Handy Boys Inc., 16 USPQ2d 1156 (TTAB 1990);

McCarthy on Trademarks and Unfair Competition, n. 23:100 at 23-236 (4th Ed. 2001);
Midwestern Pet Foods, Inc. v. Societe Des Produits Nestle S.A., 685 F.3d 1046 (Fed. Cir. 2012);
The Sports Authority Michigan, Inc. v. The PC Authority, Inc., 2002 WL 575718, * 9-10
(T.T.A.B. 2001); and
United Shoe Corp. v. Chapman, 229 U.S.P.Q. 74 (T.T.A.B. 1985).

II. Statement of the Issue on Appeal and Requested Action by the TTAB

Registration of the present mark SOUTH BEACH SWIMWEAR AND DESIGN is sought for use in connection with “Swimsuits; Swimwear excluding T-shirts, polo shirts, tank tops, hats, visors, aprons.” The trademark examining attorney refused registration of Applicant’s mark and denied Applicant’s request for reconsideration as to the mark in Registration No. 3,864,216. The refusal of registration is based on an asserted likelihood of confusion with the mark SOUTH BEACH WINE & FOOD FESTIVAL having U.S. Registration No. 3,864,216, for t-shirts, polo shirts, tank tops, hats, visors and aprons. The cited mark SOUTH BEACH WINE & FOOD FESTIVAL is owned by Southern Wines & Spirits of America, Inc. a Florida corporation.

Applicant respectfully requests reversal of the refusal of registration, and allowance of the present application for publication as Appellant’s mark, when applied to Applicant’s goods, is sufficiently different and distinct from the cited mark to avoid any likelihood of confusion.

III. Arguments

Applicant’s mark, when applied to Applicant’s goods, is sufficiently different and distinct from the cited SOUTH BEACH WINE & FOOD FESTIVAL mark with regard to its goods so as to avoid any likelihood of confusion, whereby customers would not be confused, mistaken, or deceived as to the source of the Applicant’s and the Registrants’ respective goods. The ultimate inquiry is whether, in light of the conditions of their sale, "confusion as to the source of the goods offered under the respective marks is likely to result." *Midwestern Pet Foods, Inc. v. Societe Des Produits Nestle S.A.*, 685 F.3d 1046 (Fed. Cir. 2012).

Applicant respectfully states that the refusal to register the present mark is improperly based on perceived similarities in the appearance and/or sound of dissected portions of the marks, while overlooking differences in the marks in their entireties. Additional differences between the marks comprise the connotation of the marks, the differences in the goods used in connection with the marks, and perhaps most importantly, the targeted consumer for the parties' respective goods. When all of these factors are properly evaluated, an absence of likelihood of confusion is evident and reversal of the refusal of registration is required.

A. **The Subject Marks Differ in Visual Impression**

Applicant's SOUTH BEACH SWIMWEAR AND DESIGN and Registrants' SOUTH BEACH WINE & FOOD FESTIVAL differ in appearance. Applicant's mark is composed of three words, "SOUTH BEACH SWIMWEAR", all in stylized form with an elongated circle around it.



Registrant's SOUTH BEACH WINE & FOOD FESTIVAL mark is comprised of five words with no design or stylized form whatsoever.

SOUTH BEACH WINE & FOOD
FESTIVAL

In order to be able to view these marks as similar marks, these marks must be dissected. Under the anti-dissection rule, the validity and distinctiveness of a composite trademark is determined by viewing the trademark as a whole, as it appears in the marketplace.

California Cooler, Inc. v. Loretto Winery Ltd., 774 F.2d 1451, 1455 (9th Cir.1985). However, according to *In re National Data Corp.*, 753 F.2d 1056 (Fed. Cir. 1985) marks must be considered in their entirety, and all components must be given appropriate weight. In *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373, 1375 (Fed. Cir. 1998), the Federal Circuit affirmed the Board's finding that confusion between CRISTAL and CRYSTAL CREEK was unlikely, despite the fact that the goods were similar, "wine and champagne," traveled in the same trade channels, and were purchased by the same consumers, because the marks were dissimilar with respect to appearance, sound, significance, and commercial impression. See also *The Sports Authority Michigan, Inc. v. The PC Authority, Inc.*, 2002 WL 575718, * 9-10 (T.T.A.B. 2001) (no confusion between THE SPORTS AUTHORITY (words only mark and design mark) and THE PERSONAL COMPUTER AUTHORITY and PC AUTHORITY (and design) considered in their entirety); *United Shoe Corp. v. Chapman*, 229 U.S.P.Q. 74 (T.T.A.B. 1985) (considered in their entirety COBBLER'S OUTLET and CALIFORNIA COBBLERS (stylized) do not look or sound alike, both for shoes).

There are stark differences in the way SOUTH BEACH SWIMWEAR AND DESIGN and SOUTH BEACH WINE & FOOD FESTIVAL look. Although the marks share the letters "SOUTH BEACH," the fact that there are a different number of words in the marks and a logo design in Applicant's mark versus Registrant's mark makes each mark unique and completely different from each other. The differences between these marks more than offset their similarities as applied to the goods in question. The average consumer would not break-down the mark to guess the source. Instead he or she will look at the entire mark. "The commercial impression of a trade-mark is derived from it as a whole, not from its elements separated and considered in detail. Thus, the composite may become a distinguishing mark even though its components individually cannot." *Estate of P.D. Beckwith, Inc. v. Commissioner of Patents*, 252 U.S. 538, 545-46, (1920).

B. The Subject Marks Differ Orally

SOUTH BEACH SWIMWEAR AND DESIGN and SOUTH BEACH WINE & FOOD FESTIVAL are orally and aurally different from one another and therefore, that confusion is not at all probable. Applicant's SOUTH BEACH SWIMWEAR AND DESIGN is comprised of three

words: SOUTH BEACH SWIMWEAR, all in stylized form. In comparison, Registrant's SOUTH BEACH WINE & FOOD FESTIVAL is comprised of 5 words including SOUTH BEACH, making it sound very different than Applicant's mark when pronounced together.

There is simply no oral or aural relationship between the marks under consideration. Surely, the average consumer would not associate these marks with one another. In addition, the presence of distinguishing words, such as "SWIMWEAR" in the Applicant's mark, and the descriptive words "WINE AND FOOD FESTIVAL" in the cited registration, further distinguish the mark and contribute to a totally different commercial impression. Both marks sound completely different, one referring to swimsuits, the other one to an event featuring alcoholic beverages and food.

The Examiner argues that both marks begin with the prefix SOUTH BEACH and as such, consumers are generally more inclined to focus on the first word, prefix, or syllable in any trademark or service mark as opposed to the entire mark, hence making the SOUTH BEACH the dominant element of each mark. Applicant disagrees. The inclusion of one or more identical terms between competing marks does not necessitate a finding of confusing similarity. *In re Hearst Corp.*, 25 U.S.P.Q. 2d 1238, 1239 (Fed. Cir. 1992). In *Hearst*, the Federal Circuit held that the word marks VARGA GIRL and VARGAS, both used in connection with calendars and paper goods in class 16, were sufficiently different to negate any likelihood of confusion. *Id.*; accord *In re Dayco Products-Eagle Motive Inc.*, 9 U.S.P.Q. 2d 1910 (T.T.A.B. 1988) (IMPERIAL for automobile and structural parts and IMPERIAL for automotive products held not confusingly similar). The Federal Circuit criticized the Board's "analytic" approach of determining likelihood of confusion, namely by reversing the ruling that because "VARGA" was the dominant term and "GIRL" was descriptive the terms were confusingly similar. *See* 25 U.S.P.Q. at 1239. The court determined that the addition of the word "GIRL" even though descriptive, and the additional letter "S" in Registrant's mark defeated any likelihood of confusion. *Id.* Applying the court's rationale to the instant case, even though the word SWIMWEAR is descriptive of Applicant's goods, the addition of such term coupled with Registrant's WINE AND FOOD FESTIVAL, destroy any chances of a possibility of likelihood of confusion.

C. The Subject Marks Make Different Mental Impressions

The marks create different connotations and different commercial impressions in the minds of consumers. The different mental impressions created by the present marks augers against any likelihood of confusion. In *Champagne Louis Roederer*, the Federal Circuit affirmed the Board’s finding that the marks CRISTAL and CRYSTAL CREEK evoked very different images in the minds of relevant consumers for similar goods; wine and champagne:

“the word marks CRISTAL and CRYSTAL CREEK evoked very different images in the minds of relevant consumers: while the former suggested the clarity of the wine within the bottle or the glass of which the bottle itself was made, the latter suggested “a very clear (and hence probably remote from civilization) creek or stream.”

SOUTH BEACH SWIMWEAR and SOUTH BEACH WINE & FOOD FESTIVAL look different, feel different and create a different mental impression in the minds of consumers.

D. Difference in Goods Avoids Confusion

The Trademark Examiner points out that the goods of the parties need not be identical or even competitive to find a likelihood of confusion. Applicant respectfully disagrees with the Trademark Examiner. Applicant submits that there is little, if any, similarity between Applicant’s goods and Registrant’s goods. Registrant’s SOUTH BEACH WINE & FOOD FESTIVAL is registered in connection with T-shirts, polo shirts, tank tops, hats, visors, aprons; and posters, likely to be found at this festival which takes place once a year, and in one unaffiliated website, <http://www.flavourgallery.com/collections/south-beach-wine-food-festival> attached hereto as Exhibit “A”.

In comparison, Applicant’s goods are namely swimsuits, distributed on a person by person basis. Applicant’s goods are available through private distribution channels only and are available all year round.

Because Registrant’s and Applicant’s goods are so different, it is unlikely that they will be marketed in such a way that they would be encountered by the same persons in situations that would create the incorrect assumption that the goods originate from the same source. See, *Local*

Trademarks, Inc. v. Handy Boys Inc., 16 USPQ2d 1156 (T.T.A.B. 1990). The goods are so different that it is obvious that the products will not be sitting next to each other in a store or at the festival, and as such there can be no confusion. Accordingly, Applicant's provided goods are dissimilar from Registrant's, rendering confusion between the marks unlikely.

E. The Targeted Customers are Sophisticated, Careful and Different

Any likelihood of confusion is obviated by the degree of consumer care involved in the purchasing of these types of products. The standard of care expected of these sophisticated consumers is higher and they are less likely to be confused by similar trademarks. *McCarthy on Trademarks and Unfair Competition*, n. 23:100 at 23-236 (4th Ed. 2001).

Thus, the careful consideration necessary in purchasing the goods in question reduces greatly the likelihood of confusion even if the marks are deemed similar. *Kiekhaefer Corp. v. Willys-Overland Motors, Inc.*, 236 F.2d 423, 111 U.S.P.Q. 105 (C.C.P.A. 1956); *Beer Nuts, Inc. v. Clover Club Foods Co.*, 805 F.2d 920, 925, 231 U.S.P.Q. 913, 916 (10th Cir. 1986). In *NEC Electronics v. New England Circuit Sales, Inc.*, 722 F.Supp. 861, 13 U.S.P.Q.2d 1058 (D. Mass. 1989), the court held that the marks NEC and NECS were not likely to be confused despite both companies dealing in the same goods [computer chips] because the uses targeted sophisticated consumers.

Applicant's products specifically target consumers interested in swimwear and nothing else. These consumers are considered to be detail oriented consumers looking for swimsuits; as opposed to Registrant's consumers who are interested in t-shirts, aprons and the like in connection with a festival that happens once a year. Since Applicant's customers are different than Registrant's, there is no likelihood of confusion between the Applicant's mark and the cited marks. See *Du Pont*, 476 F.2d at 1361. See also, *Information Resources v. X*Press Info. Servs.*, 6 U.S.P.Q.2d 1034 (T.T.A.B. 1988) (X*PRESS for a news service transmitted through cable television to a personal computer was found not likely to cause confusion with EXPRESS for highly specialized information analysis computer programs).

F. There are Several Marks Co-Existing for Similar/Related Goods Comprising “SOUTH BEACH.”

Applicant makes reference to third-party registrations and pending applications incorporating the word “SOUTH BEACH;” “SOUTH;” and “BEACHWEAR” as part of their mark, available at the Trademark Office for products in class 25. All of these registrations and applications co-exist without any likelihood of confusion. Some have the word SOUTH BEACH disclaimed and others do not such as SOUTH BEACH CAMP and SOUTH SIDE BEACHWEAR. Attached is a copy of these applications and registrations as “Exhibit B”.

Some of these registrations and applications are:



1.

Goods and Services IC 025: Wearing apparel, namely, shirts, t-shirts and headwear;
Registration Number 4079318

LIPSHITZ & DIMAGGIO SOUTH
BEACH MARKET

2.

Goods and Services IC 025: Hats, sweat shirts, t-shirts
Registration Number 4039365



3.

Goods and Services IC 025: Wearing apparel, namely, shirts, t-shirts and headwear
Registration Number 4031534



4.

Goods and Services IC 025: Beach clothing, namely, shirts, shorts, and hats
Registration Number 3623061



5.

Goods and Services IC 025: Neck ties for men
Registration Number 3184466



6.

Goods and Services IC 025: Clothing, namely, dresses, pants, shirts, shorts, skirts, tops, tunics, sweaters, blouses, jackets, sarongs, sandals.
Registration Number 3764747

Camp South Beach

7.

Goods and Services IC 025: Coats; Dresses; Footwear; Head wear; Jackets; Loungewear; Pants; Shirts; Shorts; Skirts; Sleepwear; Swim wear; Tops; Underwear
Application Serial Number 85/648,233
Status: A third request for extension of time to file a Statement of Use has been granted.

The Examiner, in his denial for reconsideration, points out that Applicant's argument was unpersuasive concerning Applicant's likelihood of confusion with Registrant's SOUTH BEACH WINE & FOOD FESTIVAL because many notorious retailers such as NIKE, VICTORIA SECRET, HOLLISTER, GAP, and others sell t-shirts *and* swimwear. We respectfully disagree with the Examiner because the fact that some retailers have decided to incorporate swimwear to

their line of products, does not mean that Registrant will do the same. At the present moment, Registrant does not sell or market for sale swimwear, and does not have a trademark application or registration covering those goods. Nevertheless, and in an effort to dissipate the Examiner's concern with regard to protecting the Registrant from adverse commercial impact due to use of a similar mark by a newcomer, Applicant has amended the instant application to exclude "T-shirts, polo shirts, tank tops, hats, visors, aprons." This way, Applicant has restricted his goods to only swimwear and swimwear alone and unlike the retailers mentioned by Examiner, Applicant does not include registrant's goods within his application.

G. The Channels of Trade Differ Vastly From One Another

The trade channels at issue here are entirely dissimilar. Applicant's trade channels are limited to a person by person basis. Registrant's trade channels are sales via the festival event and through one unaffiliated website, neither of which sell swimwear. Notably, in Sports Authority, the Trademark Trial and Appeal Board found that the trade channel factor did not favor a finding of confusion where both parties provided retail store services and used similar methods of advertising because there was nothing to suggest retail services focusing on computer hardware, software, and peripherals would be rendered through a retail store focusing on sporting goods and equipment. Indeed, the Board's finding in Sports Authority is applicable to the instant case. The consumers buying Applicant's product will look for swimwear or swimsuits, whereas consumers looking to buy Registrant's goods will look for t-shirts, aprons, sweaters and tank tops as shown in the attached Exhibit A. In a typical sales day for either Applicant or Registrant, their goods would not be found in close proximity of each other. Applicant does not advertise or sell his goods to the website selling Registrant's goods and Applicant does not participate as a vendor at Registrant's annual festival, hence the goods will not be found next to each other.

Applicant respectfully disagrees with the Examiner's position that the channels of trade are not different. Although Registrant's description of goods does not contain any limitation or restrictions as to trade channels, the Examiner did not show any evidence that the ordinary

channels of trade for Registrant's goods include private sector stores. The fact that there are many retailers that sell both t-shirts and swimwear makes no reference to Registrant's goods including the private sector stores or person to person distribution. Recently, the Board reversed a refusal to register the mark **BENTLEY** for perfume, cosmetics, and glassware " sold only in authorized vehicle dealers and authorized vehicle service outlets," finding the mark not likely to cause confusion with the marks **BENTLEY**, **BENTLEY UNIVERSITY**, and **BENTLEY ORGANIC** for similar or identical goods. Applicant Bentley Motors successfully argued that, because its goods are sold only through the "very tightly-knit" Bentley circle of dealers and service outlets, to a "niche, affluent clientele," confusion is unlikely. *In re Bentley Motors Ltd.*, Serial No. 85325994 (December 3, 2013). This case is like the *Bentley* case because Applicant's goods are only sold on a person by person basis and not found in the website Registrant's goods are sold and as such will not cross paths as far as the channels of distribution.

IV. Conclusion

For the reasons set forth in detail above, the refusal of registration based on a likelihood of confusion should be reversed. Applicant respectfully requests allowance of the present application for publication.

Dated: August 5, 2014

Respectfully submitted,

s/Steven E. Eisenberg/
Steven E. Eisenberg, Esq.

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Exhibit A



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Filters: Burnout, Chef, Dolman, Henley, Hoodie, Kids, Men's, Pullover

South Beach Wine & Food Festival



Flavour Gallery launched its first collection with South Beach in 2012 and we are proud to be part of the 13th Annual **South Beach Wine & Food Festival** in 2014. Just as before, this product offering will ONLY be available for sale at this year's festival as well as on FlavourGallery.com.

Our designs are inspired by the South Beach's vibrant colors, ocean breezes and feelgood times we experience each year at SOBEWFF. Help us spread the word on **Twitter** and don't forget to use hashtag **#SOBEWFF**.



SOBEWFF '14 - Text - Men's Tri-Blen...
\$30.00



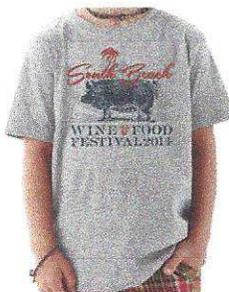
SOBEWFF '14 - Text - Unisex Zip-Up...
\$60.00



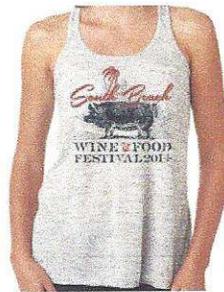
SOBEWFF '14 - Utensils - Unisex Zip...
\$60.00



SOBEWFF '14 - Pig - Unisex Zip-Up...
\$60.00



SOBEWFF '14 - Pig - Toddler T-Shirt
\$30.00



SOBEWFF '14 - Pig - Women's Tank
\$30.00



SOBEWFF '14 - Pig - Tote Bag
\$30.00



SOBEWFF '14 - Sunset - Tote Bag
\$30.00



SOBEWFF '14 - Sunset - Tote Bag
\$30.00



SOBEWFF '14 - Text - Women's Tri-...
\$30.00



SOBEWFF '14 - Text - Women's Dol...
\$32.00



SOBEWFF '14 - Text - Women's Terr...
\$30.00

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EXHIBIT "B"



| | |
|---------------------------------|--|
| Word Mark | CLEVELANDER SOUTH BEACH |
| Goods and Services | IC 025. US 022 039. G & S: Wearing apparel, namely, shirts, t-shirts and headwear. FIRST USE: 20060600. FIRST USE IN COMMERCE: 20090200 |
| | IC 041. US 100 101 107. G & S: Entertainment services, namely, presentation of live entertainment and multimedia entertainment shows, fashion shows and beauty contests. FIRST USE: 20060600. FIRST USE IN COMMERCE: 20090200 |
| | IC 043. US 100 101. G & S: Hotel, bar and restaurant services; catering services. FIRST USE: 20060600. FIRST USE IN COMMERCE: 20090200 |
| Mark Drawing Code | (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS |
| Design Search Code | 26.01.02 - Circles, plain single line; Plain single line circles 26.01.17 - Circles, two concentric; Concentric circles, two; Two concentric circles 26.11.02 - Plain single line rectangles; Rectangles (single line) |
| Serial Number | 85244417 |
| Filing Date | February 16, 2011 |
| Current Basis | 1A |
| Original Filing Basis | 1A |
| Published for Opposition | July 12, 2011 |
| Registration Number | 4079318 |
| Registration Date | January 3, 2012 |
| Owner | (REGISTRANT) 2K South Beach Hotel, LLC LIMITED LIABILITY COMPANY DELAWARE P.O. Box 371347 San Diego CALIFORNIA 92137 |
| Attorney of Record | CHARLES B. WITHAM, |
| Prior Registrations | 3020820;3037922 |
| Disclaimer | NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOUTH BEACH" APART FROM THE MARK AS SHOWN |
| Description of Mark | Color is not claimed as a feature of the mark. The mark consists of stylized letters "C L E V E L A N D E R" displayed in a horizontal text bar superimposed upon a circular donut shaped design that contains smaller words "SOUTH BEACH" in the lower portion. |
| Type of Mark | TRADEMARK. SERVICE MARK |
| Register | PRINCIPAL |
| Live/Dead Indicator | LIVE |

EXHIBIT "B"

LIPSHITZ & DIMAGGIO SOUTH
BEACH MARKET

Word Mark LIPSHITZ & DIMAGGIO SOUTH BEACH MARKET
Goods and Services IC 025. US 022 039. G & S: Hats; Sweat shirts; T-shirts. FIRST USE: 20100701.
FIRST USE IN COMMERCE: 20110701
IC 035. US 100 101 102. G & S: Retail convenience stores. FIRST USE: 20100701.
FIRST USE IN COMMERCE: 20110101
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85048791
Filing Date May 26, 2010
Current Basis 1A
Original Filing Basis 1B
Published for Opposition April 26, 2011
Registration Number 4039365
Registration Date October 11, 2011
Owner (REGISTRANT) Gallery 34949, Inc. CORPORATION FLORIDA 737 Grovenburg Road Holt MICHIGAN 48842
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOUTH BEACH MARKET" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

CLEVELANDER
SOUTH BEACH

Word Mark CLEVELANDER SOUTH BEACH
Goods and Services IC 025. US 022 039. G & S: Wearing apparel, namely, shirts, t-shirts and headwear. FIRST USE: 20060600. FIRST USE IN COMMERCE: 20090200
IC 041. US 100 101 107. G & S: Entertainment services, namely, presentation of live entertainment and multimedia entertainment shows, fashion shows and beauty contests. FIRST USE: 20060600. FIRST USE IN COMMERCE: 20090200
IC 043. US 100 101. G & S: Hotel, bar and restaurant services; catering services. FIRST USE: 20060600. FIRST USE IN COMMERCE: 20090200

EXHIBIT "B"

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number 85244388
Filing Date February 16, 2011
Current Basis 1A
Original Filing Basis 1A
Published for Opposition July 12, 2011
Registration Number 4031534
Registration Date September 27, 2011
Owner (REGISTRANT) 2K South Beach Hotel, LLC LIMITED LIABILITY COMPANY DELAWARE
P.O. Box 371347 San Diego CALIFORNIA 92137
Attorney of Record CHARLES B. WITHAM,
Prior Registrations 3020820;3037922
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOUTH BEACH" APART
FROM THE MARK AS SHOWN
Description of Mark Color is not claimed as a feature of the mark. The mark consists of stylized letters "C L E V
E L A N D E R" displayed above smaller right-justified words "SOUTH BEACH".
Type of Mark TRADEMARK. SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE



Word Mark SOUTHSIDE BEACHWEAR
Goods and Services IC 025. US 022 039. G & S: Beach clothing, namely, shirts, shorts, and hats. FIRST USE:
20050601. FIRST USE IN COMMERCE: 20050601
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 01.15.25 - Coal; Dust; Light rays; Liquids, spilling; Pouring liquids; Sand; Spilling liquids
26.03.21 - Ovals that are completely or partially shaded
26.03.28 - Miscellaneous designs with overall oval shape, including amoeba-like shapes and
irregular ovals; Oval shape (miscellaneous overall shape)
Trademark Search Facility INAN Inanimate objects such as lighting, clouds, footprints, atomic
configurations, snowflakes, rainbows, flames
Classification Code SHAPES-MISC Miscellaneous shaped designs
SHAPES-OVALS Oval figures or designs including incomplete ovals and one or more ovals
Serial Number 78952047
Filing Date August 15, 2006

EXHIBIT "B"

Current Basis 1A
Original Filing Basis 1A
Published for Opposition March 3, 2009
Registration Number 3623061
Registration Date May 19, 2009
Owner (REGISTRANT) Schreiber, Gary INDIVIDUAL UNITED STATES 19797 Shorecliff Lane Huntington Beach CALIFORNIA 92648
Attorney of Record Natalie Levy
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BEACHWEAR" APART FROM THE MARK AS SHOWN
Description of Mark Color is not claimed as a feature of the mark.
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE



Word Mark SOUTH BEACH TIES
Goods and Services IC 025. US 022 039. G & S: Neckties for Men. FIRST USE: 20031201. FIRST USE IN COMMERCE: 20040430
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 05.01.03 - Palm trees
 26.11.21 - Rectangles that are completely or partially shaded
Serial Number 78431933
Filing Date June 8, 2004
Current Basis 1A
Original Filing Basis 1B
Published for Opposition June 14, 2005
Registration Number 3184466
Registration Date December 12, 2006
Owner (REGISTRANT) Thornburg, Christian S. INDIVIDUAL UNITED STATES 400 Schooner Circle NW Atlanta GEORGIA 30328
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE SOUTH BEACH TIES APART FROM THE MARK AS SHOWN
Description of Mark Color is not claimed as a feature of the mark.
Type of Mark TRADEMARK

EXHIBIT "B"

Register PRINCIPAL
Affidavit Text SECT 8 (6-YR).
Live/Dead Indicator LIVE

Typed Drawing

Word Mark RED CARTER SOUTH BEACH
Goods and Services IC 025. US 022 039. G & S: Swim wear, Beachwear and Coverups. FIRST USE: 20030700. FIRST USE IN COMMERCE: 20030700
Mark Drawing Code (1) TYPED DRAWING
Serial Number 78276107
Filing Date July 18, 2003
Current Basis 1A
Original Filing Basis 1A
Published for Opposition November 9, 2004
Registration Number 2922742
Registration Date February 1, 2005
Owner (REGISTRANT) Red Carter, LLC LIMITED LIABILITY COMPANY FLORIDA #1108 400 Alton Road Miami Beach FLORIDA 33139
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOUTH BEACH" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE



Word Mark DEBBIE KATZ SOUTH BEACH
Goods and Services IC 025. US 022 039. G & S: Clothing, namely, dresses, pants, shirts, shorts, skirts, tops, tunics, sweaters, blouses, jackets, sarongs, sandals. FIRST USE: 20010600. FIRST USE IN COMMERCE: 20010600
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 01.05.04 - Sun with rays but neither partially exposed nor with facial features
26.11.21 - Rectangles that are completely or partially shaded
Trademark Search Facility Classification Code INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames
SHAPES-ASTRO Astronomical shapes consisting of celestial bodies, globes and geographical maps
SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons

EXHIBIT "B"

SHAPES-MISC Miscellaneous shaped designs

Serial Number 77619794
Filing Date November 21, 2008
Current Basis 1A
Original Filing Basis 1B
Published for Opposition September 22, 2009
Registration Number 3764747
Registration Date March 23, 2010
Owner (REGISTRANT) DEBBIE KATZ SOUTH BEACH, INC. CORPORATION FLORIDA 7101 NORTH MIAMI AVENUE, SUITE 103 MIAMI FLORIDA 33150
Attorney of Record Judith L. Grubner
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOUTH BEACH" APART FROM THE MARK AS SHOWN
Description of Mark Color is not claimed as a feature of the mark. The mark consists of the design of a stylized sun above the wording "DEBBIE KATZ SOUTH BEACH".
Type of Mark TRADEMARK
Register PRINCIPAL
Other Data The name(s), portrait(s), and/or signature(s) shown in the mark identifies "DEBBIE KATZ", whose consent(s) to register is made of record.
Live/Dead Indicator LIVE

DEBBIE KATZ SOUTH BEACH

Word Mark DEBBIE KATZ SOUTH BEACH
Goods and Services IC 025. US 022 039. G & S: Clothing, namely, dresses, pants, shirts, shorts, skirts, tops, tunics, sweaters, blouses, jackets, sarongs, sandals. FIRST USE: 20010600. FIRST USE IN COMMERCE: 20010600
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 77619693
Filing Date November 21, 2008
Current Basis 1A
Original Filing Basis 1B
Published for Opposition September 22, 2009

EXHIBIT "B"

Registration Number 3764745
Registration Date March 23, 2010
Owner (REGISTRANT) DEBBIE KATZ SOUTH BEACH, INC. CORPORATION FLORIDA 7101 NORTH MIAMI AVENUE, SUITE 103 MIAMI FLORIDA 33150
Attorney of Record Judith L. Grubner
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SOUTH BEACH" APART FROM THE MARK AS SHOWN
Type of Mark TRADEMARK
Register PRINCIPAL
Other Data The name(s), portrait(s), and/or signature(s) shown in the mark identifies "DEBBIE KATZ", whose consent(s) to register is made of record.
Live/Dead Indicator **LIVE**

Camp South Beach

Word Mark CAMP SOUTH BEACH
Goods and Services IC 025. US 022 039. G & S: Coats; Dresses; Footwear; Head wear; Jackets; Loungewear; Pants; Shirts; Shorts; Skirts; Sleepwear; Swim wear; Tops; Underwear
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 85648233
Filing Date June 11, 2012
Current Basis 1B
Original Filing Basis 1B
Published for Opposition November 6, 2012
Owner (APPLICANT) Camp Brands Holdings LLC LIMITED LIABILITY COMPANY DELAWARE 156 West 56th Street c/o Bruce Bronster at Windels Marx New York NEW YORK 10019
Attorney of Record David Orlin
Prior Registrations 1219064;3049254;3049255
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator **LIVE**