

ESTTA Tracking number: **ESTTA708299**

Filing date: **11/12/2015**

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

Proceeding	86297940
Applicant	House of Cheatham, Inc.
Applied for Mark	MAGNIFICENT MANE
Correspondence Address	NATHAN C. BELZER BELZER PC 2905 BULL ST SAVANNAH, GA 31405-2021 UNITED STATES nbelzer@belzerlaw.com
Submission	Applicants Request for Remand and Amendment
Attachments	Request for Remand for the mark MAGNIFICENT MANE.pdf(76149 bytes) executed coexistence agreement regarding MAGNIFICENT MANE.pdf(1937639 bytes)
Filer's Name	Nathan C. Belzer
Filer's e-mail	nbelzer@belzerlaw.com
Signature	/Nathan C. Belzer/
Date	11/12/2015

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

In re Applicant:

House of Cheatham, Inc.

Mark: MAGNIFICENT MANE

Serial No.: 86/297,940

Filed: June 2, 2014

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REQUEST FOR REMAND

Applicant is appealing a final refusal to register the mark MAGNIFICENT MANE. The Examining Attorney alleged that Applicant's mark so resembled the marks in United States Registration Nos. 964,739 and 965,177 (the "Cited Registrations") as to be substantially likely to cause confusion when used on or in connection with Applicant's goods. The Cited Registrations are both owned by J. Strickland & Co.

Applicant does not believe that the marks in the Cited Registrations are likely to be confused with Applicant's MAGNIFICENT MANE mark. Nevertheless, Applicant sought and has now received a consent to Applicant's registration of the MAGNIFICENT MANE mark from J. Strickland & Co. (a copy of which is attached). Such consent was not entered into by the parties until October 21, 2015 and thus could not have been provided to the Examining Attorney before the deadline for filing this appeal.

Thus, pursuant to Section 1207.02 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Applicant respectfully requests that the subject application be remanded to the Examining Attorney for further consideration in light of

this newly executed consent agreement. Applicant notes that good cause is shown in this case because the additional evidence was not available until after the appeal had been instituted. Further, in an email exchange with the Examining Attorney, Kathy Wang, Ms. Wang expressly consented to this application being remanded to her. Thus, two of the three examples cited in Section 1207.02 as evidence of good cause are present here -- either of which alone would be sufficient to show good cause. In addition, Section 1207.02 specifically notes:

[B]ecause a consent agreement offered in response to a refusal to register under Trademark Act § 2(d), 15 U.S.C. § 1052(d), is inherently difficult and time-consuming to obtain, and may be highly persuasive of registrability, the Board will grant a request to suspend and remand for consideration of a consent agreement if the request, accompanied by the consent agreement, is filed at any time prior to the rendering of the Board's final decision on the appeal.

Finally, applicant notes that, pursuant to TMBP § 1209.04, its appeal brief should not be filed until it receives notification that the Board has acted on this request.

Respectfully submitted,

/Nathan C. Belzer/
Nathan C. Belzer
Attorney for Applicant

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being transmitted through the Electronic System for Trademark Trials and Appeals to the United States Patent and Trademark Office on this 12th day of November, 2015.

/Nathan C. Belzer/
Nathan C. Belzer

COEXISTENCE AGREEMENT

This Trademark Coexistence Agreement (the "Agreement") is entered into as of the last date set forth below (the "Effective Date") by and between House of Cheatham, Inc., a Georgia corporation with its principal place of business located at 1550 Roadhaven Drive, Stone Mountain, Georgia 30083 ("HOC") and J. Strickland & Co., a Tennessee corporation with a principal place of business at 10420 Desoto Road, Olive Branch, Mississippi 38654 ("Strickland").

WHEREAS, Strickland is the owner of U.S. trademark registration number 965,177 for the mark MAGNIFICENT (the "Strickland Registration") covering "hair conditioner" in Class 3;

WHEREAS, HOC is the owner of U.S. trademark application with serial number 86/297,940 (the "Application") for the mark MAGNIFICENT MANE (the "HOC Mark") covering "hair care preparations" in Class 3;

WHEREAS, the United States Patent and Trademark Office ("USPTO") has refused registration of the HOC Mark based on the Strickland Registration; and

WHEREAS, the parties have agreed that, with certain limitations and restrictions as set forth below, the parties' respective trademarks will be able to coexist without causing confusion.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

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1. **HOC Obligations.** HOC agrees as follows:

(a) HOC agrees that the HOC Mark shall always include the term MANE and that HOC will not use the term MAGNIFICENT alone as a trademark for ~~hair care products~~any purpose.

(b) HOC shall refrain forever from doing any act of any nature that is likely to misrepresent or induce the mistaken belief that any product or service of HOC is sponsored by or affiliated, connected, or otherwise associated with Strickland.

2. **Strickland Obligations.** As long as HOC abides by its obligations under this Agreement, Strickland agrees as follows:

(a) Strickland hereby consents to and agrees to take no action to interfere with or prevent HOC's use of the HOC Marks subject to the limitations set forth herein.

(b) Strickland hereby consents to and agrees to take no action to interfere with the Application or the resulting registration of the HOC Mark.

(c) Strickland hereby consents to and agrees to take no action to interfere with any future application by HOC to register the HOC Mark.

3. **Elimination of Confusion.** The parties agree that if, in the future, either party is apprised of any evidence of actual confusion, mistake, or deception with regard to the respective use of their marks, the party receiving and possessing such information shall promptly make the same available in detail to the other party. Thereafter, the parties, through their authorized officers, representatives, or attorneys, shall confer for the purposes of jointly considering such evidence and shall take steps necessary to eliminate such confusion.

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4. **Abandonment.** This Agreement shall terminate if either party abandons the use of its mark for more than three (3) consecutive years in connection with the respective goods and services offered by the parties.

5. **Miscellaneous.**

(a) *Authority to Execute this Coexistence Agreement.* The parties each warrant that they have the full power, authority, and legal right to execute, deliver, and perform the terms of this Agreement, that there is no other person, entity, or court whose consent is necessary to make this Agreement fully effective, and that this Agreement has been duly authorized by all necessary corporate action and shall constitute a valid and binding obligation of the respective parties hereto and is enforceable in accordance with its terms.

(b) *Entire Agreement.* The foregoing constitutes the full and complete agreement between the parties with respect to the subject matter hereof, or contemplated hereby, and there are no other oral or written agreements in relation to the subject matter of this Agreement, except as expressly provided for herein. The parties have not relied on any representations or agreements of the other party hereto which are not embodied herein.

(c) *Multiple Counterparts.* This Agreement may be executed in any manner of multiple originals by different parties hereto, each of which shall be deemed to be an original and all of which shall constitute collectively one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such fully executed counterpart.

(d) *Further Assurances.* The parties agree that upon the request of any one of them, they will execute and deliver such further documents and undertake such further

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action as may reasonably be required to effect any of the agreements and covenants contained in this Agreement, including without limitation executing and filing with the USPTO all documents that are reasonably necessary to effectuate the amendment to the Johnvince Application as outlined herein.

(e) *Severability.* In case any one or more provisions or portions hereof is determined to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

(f) *Parties Bound.* This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, representatives, successors, and permitted assigns.

(g) *Benefit of Advice of Counsel.* The parties agree that they have read this Agreement and have had their rights fully explained by their attorneys; that they have been advised by their attorneys that it is a fair and reasonable settlement; and that they have been advised by their attorneys to execute the Agreement.

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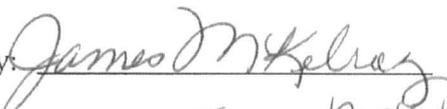
IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have caused

this Agreement to be executed in duplicate as of the Effective Date stated above by persons duly authorized to execute the same.

HOUSE OF CHEATHAM, INC.

By: 
Printed Name: Michael Barker
Title: President & CEO
Date: 10/21/15

J. STRICKLAND & CO.

By: 
Printed Name: JAMES McKelroy
Title: Executive V.P.
Date: 10/21/15