



TTAB

09-28-2001

U.S. Patent & TMO/c/TM Mail Rpt Dt. #76

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

Concurrent Use No. 1157
Mark "CARVERS"

Carver Brewing Company, a Colorado Corporation ,

v.

Paragon of Michigan, Inc., a Wisconsin Corporation

02 OCT -2 AM 10:53

STIPULATION OF CONCURRENT USE REGISTRATION

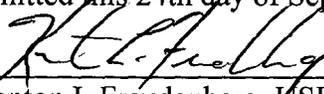
1. This matter comes before the Board at the request of Carver Brewing Company ("CBC") which seeks registration of its trademark "CARVERS" concurrently with registration number 1,757,386, owned by of Paragon of Michigan, Inc."("Paragon"), for the mark "CARVERS."
2. The parties have reached an agreement to resolve the pending Concurrent Use Proceeding, to stipulate a factual basis for a concurrent use registration by CBC, and to provide for concurrent use of their respective marks while taking steps prevent any confusion or likelihood of confusion in the marketplace between their respective marks. A copy of the written agreement is attached hereto and is incorporated herein by reference.
3. Accordingly, pursuant to the agreement between the parties it is stipulated that Carver Brewing Company shall be entitled to a concurrent use registration limited to the following six counties:

- a. Archuleta , Colorado
- b. Dolores, Colorado
- c. La Plata, Colorado
- d. Montezuma, Colorado
- e. San Juan, Colorado
- f. San Juan, New Mexico

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4. It is respectfully requested that the Board order concurrent registration of the "CARVERS" mark of Carver Brewing Company, Serial No. 75-363,285, with the geographical limitations agreed to by the parties to this proceeding.

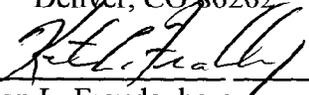
Respectfully submitted this 24th day of September 2001.


Kenton L Freudenberg, USPTO Registration # 32732
P.O. Box 841
Durango, CO 81302
Phone 970 259-2765
FAX 970 259-2765

CERTIFICATE OF SERVICE

I hereby certify that on the date shown below a copy of this document has been served upon Paragon of Michigan, Inc. by depositing it with United States Postal Service bearing sufficient postage as First Class Mail in an envelope addressed to:

David E. Sipiora
Townsend and Townsend and Crew
1200 Seventeenth Street
Suite 2700
Denver, CO 80202


Kenton L. Freudenberg

Date 24 Sept 2001

TRADEMARK CONCURRENT USE AGREEMENT

This TRADEMARK CONCURRENT USE AGREEMENT ("AGREEMENT") is entered into between Paragon of Michigan, Inc., a Wisconsin Corporation having its principal office and place of business at 10200 Willow Creek Road San Diego, California 92131 (hereinafter referred to as "PARAGON"); and Carver Brewing Company, a Colorado Corporation, having its principal office and place of business at 1022 Main Avenue, Durango, Colorado, 81301, (hereinafter referred to as "CBC").

WHEREAS:

PARAGON is the owner of the registered trademark "CARVERS," registration number 1,757,386, filed December 2, 1991 as Serial No. 74-227,227, with an alleged date of first use in commerce of July 20, 1992.

CBC is the owner of the trademark, "CARVERS", for restaurant services with an alleged date of first use in commerce of June 30, 1983 by CBC or its predecessors in interest.

On September 25, 1997, CBC filed federal trademark registration application Serial No. 75-363,285 for its mark, "CARVERS", for restaurant services.

The registration of the PARAGON mark has been cited as a basis for refusal of the registration of the mark of CBC.

CBC has sought registration of its "CARVERS" mark by initiating Concurrent Use No. 1157 with the Trademark Trial and Appeal Board.

On October 26, 2000, CBC filed its motion for summary judgment, with supporting exhibits, in the concurrent use proceeding.

The respective trademark registration and registration application of Paragon and CBC are incorporated herein by reference, and copies of the U.S. Trademark Office "TESS" records are attached hereto as Exhibits "A" and "B" respectively.

The parties hereto desire to enter into an agreement to resolve the pending Concurrent Use Proceeding, to provide a factual basis for a concurrent use registration by CBC, and to provide for concurrent use of their respective marks while taking steps prevent any confusion or likelihood of confusion in the marketplace between their respective marks.

NOW THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter set forth, the parties hereto intending to be legally bound, hereby agree as follows:

1. For purposes of this Agreement only, PARAGON acknowledges that CBC has established use of its mark "CARVERS" in conjunction with restaurant services prior to any actual or constructive use by PARAGON of its similar mark.

2. The parties agree that the following counties in southwest Colorado and northwest New Mexico (the "Region") can be reasonably construed to be the geographical area in which CBC has conducted business under its trademark, "CARVERS." The Region is comprised of the following counties only:

- a. Archuleta , Colorado
- b. Dolores, Colorado
- c. La Plata, Colorado
- d. Montezuma, Colorado
- e. San Juan, Colorado
- f. San Juan, New Mexico

3. Neither party hereto is aware of any instance of actual confusion between their respective marks.

4. The parties acknowledge that PARAGON has not conducted and will not conduct business under its similar mark in the Region and that CBC shall have exclusive rights to the term "CARVERS" within the Region.

5. Within the Region, CBC is the senior user of the "CARVERS" mark and, notwithstanding the registration of PARAGON, is entitled to the use of its mark under 15 USC §1115(b)(5).

6. CBC shall be entitled to a federal concurrent use registration based upon the geographical limitations listed above.

7. Pursuant to its existing federal registration, PARAGON shall have exclusive rights to the mark "CARVERS" for restaurant services in all other areas within the United States and CBC agrees it will not conduct business under its similar mark in those areas, that is, in any area outside the Region.

8. The parties agree that the geographical limitations set out herein are sufficient to avoid any likelihood of confusion in the marketplace between their respective marks.

9. The parties agree to take any further actions and execute any further agreements necessary to carry out the spirit and intent of this Agreement.

10. This Agreement shall be the basis of a stipulated resolution of the pending TTAB concurrent use proceeding between the parties.

11. This Agreement shall be in effect so long as the parties continue use of their respective marks and maintain any related trademark registrations; provided that CBC is not denied a federal concurrent use registration based upon the stipulations herein.

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

13. This Agreement contains the entire agreement among the parties thereto and shall not be modified except by a written agreement executed by both parties.

14. This agreement may be executed in duplicate counterparts including copies electronically transmitted by facsimile.

IN WITNESS WHEREOF, the parties hereto intending to be bound, have duly executed this Agreement as of the last date set forth below.

Carver Brewing Company
1022 Main Avenue
Durango Colorado 81301

BY: William Carver
Title President

Signature: W Carver Date 6-18-01

Paragon of Michigan, Inc.
10200 Willow Creek Road
San Diego, California 92131

BY: Hiram J. Woo
Title President

Signature: [Handwritten Signature] Date 7-16-01

Exhibit "A"



U.S. Trademark Electronic Search System (TESS)

Typed Drawing

Word Mark	CARVERS
Goods and Services	IC 042. US 100. G & S: restaurant services. FIRST USE: 19920720. FIRST USE IN COMMERCE: 19920720
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	74227227
Filing Date	December 2, 1991
Filed ITU	FILED AS ITU
Published for Opposition	December 15, 1992
Registration Number	1757386
Registration Date	March 9, 1993
Owner	(REGISTRANT) Paragon of Michigan, Inc. CORPORATION WISCONSIN 10200 Willow Creek Road San Diego CALIFORNIA 92131
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	LESLEY S CRAIG
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR).
Live/Dead Indicator	LIVE

Exhibit "B"



U.S. Trademark Electronic Search System (TESS)

Typed Drawing

Word Mark	CARVERS
Goods and Services	IC 042. US 100 101. G & S: restaurants. FIRST USE: 19830630. FIRST USE IN COMMERCE: 19830630
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75363285
Filing Date	September 25, 1997
Owner	(APPLICANT) Carver Brewing Company CORPORATION COLORADO 1022 Main Avenue Durango COLORADO 81301
Attorney of Record	KENTON L FREUDENBERG
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE