

**UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513**

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Mailed: May 14, 2002

Concurrent Use No. 1,157

Carver Brewing Company

v.

Paragon of Michigan, Inc.

Albert Zervas, Interlocutory Attorney

Carver Brewing Company (hereinafter "CBC") seeks a concurrent use registration for the mark CARVERS (in typed form) for "restaurants" in International Class 42, citing as an exception to its exclusive right to use, Registration No. 1,757,386 for the mark CARVERS (in typed form) for "restaurant services" in International Class 42, with Paragon of Michigan, Inc. (hereinafter "Paragon") as the owner of record. CBC claims the State of Colorado as CBC's territory in its application.

On September 28, 2001, CBC filed a motion to terminate the concurrent use proceeding and a copy of a settlement agreement between the parties. The Board has not received a response from Paragon.

The settlement agreement, in relevant part, states that CBC "has conducted business" under its trademark only in the

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counties of Archuleta, Dolores, La Plata, Montezuma, and San Juan in Colorado, and the county of San Juan in New Mexico (such counties hereinafter referred to as "the Region"); that Paragon "has not conducted and will not conduct business under its mark in the Region and that CBC shall have exclusive rights to the term 'CARVERS' within the Region"; and that 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."

CBC's territory under the settlement agreement includes the county of San Juan, New Mexico, but CBC claims only the State of Colorado as CBC's territory in its application. Thus, if the parties desire to maintain the territories allocated to CBC in the settlement agreement, CBC must amend its application to claim the county of San Juan, New Mexico as within CBC's territory. CBC therefore is allowed until **thirty days** from the date of this order to serve and file an amendment to its application which adds the county of San Juan, New Mexico to CBC's territory.

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If the Board does not receive such an amendment, the motion to terminate the concurrent use proceeding will be given no further consideration.¹

Proceedings herein remain otherwise suspended.

¹ CBC is advised that if it amends its application to identify CBC's area of use to include a territory outside the State of Colorado, the application will have to be republished for opposition because CBC is changing its claimed area of use.