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

Proceeding	94002584
Party	Applicant Bay Billiards, Inc.
Correspondence Address	JANE D TUCKER VANDEVENTER BLACK LLP 101 W MAIN ST , STE 500 NORFOLK, VA 23510-1699 UNITED STATES jtucker@vanblk.com
Submission	Other Motions/Papers
Filer's Name	Jane D. Tucker/
Filer's e-mail	jtucker@vanblk.com
Signature	/Jane D. Tucker/
Date	02/18/2014
Attachments	Bay Billiards Withdrawal of Concurrent Use.pdf(294914 bytes)

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

In the matter of Application Serial No. 85331348

BAY BILLIARDS, INC.

Applicant, Concurrent Use No.: 9400 2584

vs.

CIM/HUNTINGTON, LLC

Respondent.

Applicant BAY BILLIARDS, INC., by and through its undersigned counsel and pursuant to a settlement agreement with Respondent, hereby withdraws its Concurrent Use Proceeding with prejudice.

DATED this 18th day of February, 2014.

Respectfully submitted,

By: _____
Jane D. Tucker

Jane D. Tucker, Esq. (VSB No.: 26493)
Vandeventer Black LLP
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Attorney for Applicant

CERTIFICATE OF MAILING

I hereby certify that this Withdrawal of Concurrent Use Proceeding, pursuant to 37 C.F.R. §1.8, is being filed electronically with the Trademark and Appeal Board on:

Date: February 18, 2014 By: _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Withdrawal of Concurrent Use Proceeding was deposited in the United States mail, first class postage prepaid, to Respondent's attorney at the address and on the date indicated below:

Adam K. Sacharoff, Esq.
Much Shelist
191 W. Wacker Drive/Suite 1800
Chicago, ILL 60606

Date: February 18 2014 By: _____

4851-6212-4312, v. 1

SETTLEMENT AND CO-EXISTENCE AGREEMENT

This Settlement and Co-Existence Agreement (this "Agreement") is entered into as of this 13th day of Feb., 2014 ("Effective Date") by and between Bay Billiards, Inc., a Virginia corporation with an address at 2941 Shore Drive, Virginia Beach, Virginia. 23451 ("Bay Billiards") and CIM/Huntington, LLC, with an address at 6922 Hollywood Blvd., Suite 900, Los Angeles, California 90028 ("CIM").

Preliminary Statement. This Agreement is entered into with reference to the following facts:

A. Bay Billiards represents that it has used in commerce the mark SHOREBREAK PIZZA SPORTS BILLIARDS in connection with restaurant, sports bar and cocktail lounge services.

B. On May 26, 2011 Bay Billiards filed an application for registration of the mark SHOREBREAK PIZZA SPORTS BILLIARDS with the U. S. Patent and Trademark Office ("USPTO"), U.S. Serial No. 85331348, in International Class 043 for use in connection with "restaurant, sports bar and cocktail lounge services" (the "Bay Billiards Application").

C. CIM represents that it has used in commerce the mark SHOREBREAK in connection with hotel services and hotels.

D. CIM has a registered service mark for the mark SHOREBREAK, USPTO Registration No. 3676946 in Class 043 for hotel services and hotels.

E. There are differences in the markets of each mark, one being for hotel services and the other being for restaurant and bar services.

F. Neither party is aware of any instances of actual confusion arising from the parties' use of their respective marks and both parties believe that there is no likelihood of confusion to be caused by their continued use of their respective marks.

G. On June 6, 2013, the application for registration of the mark SHOREBREAK PIZZA SPORTS BILLIARDS was amended to a concurrent use application, subject to concurrent use with CIM's Registration No. 3676946 for SHOREBREAK, and a concurrent use proceeding was initiated (the "Concurrent Use Proceeding").

H. Rather than engage in expensive and time consuming litigation, the parties now wish to enter into this Agreement to fully and finally resolve all disputes between them with respect to the parties' respective rights relating to the SHOREBREAK PIZZA SPORTS BILLIARDS and SHOREBREAK marks.

Agreement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Restrictions on Use.

a. CIM agrees that it will not use the mark SHOREBREAK for restaurant and/or bar services; provided, however, that this restriction shall not apply to restaurants or bars located within a SHOREBREAK-branded hotel.

b. Bay Billiards agrees that it will not use the mark SHOREBREAK for hotel services or hotels.

2. Consents.

a. Subject to the limitations set forth in Section 1, CIM consents to Bay Billiards worldwide use and registration of the mark SHOREBREAK PIZZA SPORTS BILLIARDS in connection with restaurant, sports bar and cocktail lounge services. CIM agrees to take no action of any kind to challenge or block Bay Billiards' use of the mark SHOREBREAK PIZZA SPORTS BILLIARDS in connection with restaurant, sports bar and cocktail lounge services, and will not challenge, block, oppose registration, or seek to cancel registration of the mark SHOREBREAK PIZZA SPORTS BILLIARDS in connection with restaurant, sports bar and cocktail lounge services.

b. Subject to the limitations set forth in Section 1, Bay Billiards consents to CIM's worldwide use and registration of the mark SHOREBREAK in connection with hotel services and hotels. Bay Billiards agrees to take no action of any kind to challenge or block CIM's use of the SHOREBREAK mark in connection with hotel services and hotels, and will not challenge, block, oppose registration, or seek to cancel registration of the SHOREBREAK mark in connection with hotel services and hotels.

c. Provided that the parties abide by the terms of this Agreement regarding the restricted use of their respective marks, the parties do not anticipate any likelihood of confusion arising out of the use of their respective marks. Nevertheless, the parties agree to take such reasonable steps as may be necessary to ensure no confusion occurs as a result of the use of the marks.

3. Releases.

a. CIM, for itself and its successors, assigns, officers, directors, parents, subsidiaries, affiliates, and agents, hereby releases Bay Billiards, its successors, assigns, officers, directors, parents, subsidiaries, affiliates, and agents from any and all rights, claims, actions, and demands of every kind and nature, in law, equity or otherwise, known and unknown, disclosed and undisclosed, suspected or unsuspected, including, without limitation, any claims for damages, actual and consequential, past and present that arise out of or that in any way relate to Bay Billiards' use or application for registration of the SHOREBREAK PIZZA SPORTS BILLIARDS mark in connection with restaurant, sports bar and cocktail lounge services, provided, however, that this paragraph shall not apply to any action or claim to enforce the terms of this Agreement.

b. Bay Billiards, for itself and its successors, assigns, officers, directors, parents, subsidiaries, affiliates, and agents, hereby releases CIM, its successors, assigns, officers,

directors, parents, subsidiaries, affiliates, and agents from any and all rights, claims, actions, and demands of every kind and nature, in law, equity or otherwise, known and unknown, disclosed and undisclosed, suspected or unsuspected, including, without limitation, any claims for damages, actual and consequential, past and present that arise out of or in any way relate to CIM's use or application for registration of the SHOEBREAK mark in connection with hotel services and hotels, provided, however, that this paragraph shall not apply to any action or claim to enforce the terms of this Agreement.

4. Representation and Covenant Not to Sue; Termination and Withdrawal of Concurrent Use Proceeding.

a. CIM represents and agrees that it has not filed or pursued, and that it will not threaten, file, or pursue, any charges, suits, complaints, grievances, actions, or other activities which assert or arise out of the claims released by CIM under this Agreement.

b. Bay Billiards represents and agrees that it has not filed or pursued, and that it will not threaten, file, or pursue, any charges, suits, complaints, grievances, actions or other activities which assert or arise out of the claims released by Bay Billiards under this Agreement.

c. Immediately upon execution of this Agreement, Bay Billiards shall terminate with prejudice the Concurrent Use Proceeding and amend the Bay Billiards Application to delete and withdraw the concurrent use basis.

d. Notwithstanding the foregoing, Section 4(a) and 4(b) shall not apply to any action or claim by either party to enforce the terms of this Agreement.

5. Miscellaneous. This Agreement: (i) may be executed in any number of counterparts, each of which, when executed by the parties to the Agreement shall be deemed to be an original, and all of which counterparts together shall constitute one and the same instrument; (ii) constitutes the entire agreement of the parties with respect to the subject matter hereof, superseding all prior oral and written communications, proposals, negotiations, representations, understandings, courses of dealing, agreement, contracts and the like between the parties with respect thereto; (iii) may be amended, modified, or terminated, and any right under this Agreement may be waived in whole or in part, only by a writing signed by each of the parties; (iv) contains headings only for convenience, which headings do not form part, and shall not be used in construction, of this Agreement; (v) shall inure to the benefit of, and shall be binding on, each party's successors and assigns; and (vi) is entered into without reliance upon any representation other than as specifically set forth herein. A copy of this Agreement, or of any signature hereto, shall have the same force and effect as the original. Each party shall have the right to assign its rights and obligations under this Agreement.

IN WITNESS WHEREOF, each party has, through its duly authorized representative, executed this Agreement as of the date above first written.

[SIGNATURES ON FOLLOWING PAGE]

BAY BILLIARDS, INC.

By: _____
Duly Authorized Agent

CIM/HUNTINGTON, LLC

By: _____
Duly Authorized Agent

Jordan Dembo
Associate General Counsel

4849-1046-2488, v. 1