

COEXISTENCE AGREEMENT

THIS COEXISTENCE AGREEMENT ("Agreement") is effective March 11, 2016, between Frasca Food and Wine, Inc., a Colorado Corporation ("FFW"), and Dunlay's Roscoe LLC, an Illinois Limited Liability Company ("Dunlay's") (collectively referred to herein as the "Parties").

WHEREAS, FFW has, since July, 2004, (through its predecessors and licensees) used the "FRASCA" name and mark for restaurant and bar services in Boulder, Colorado;

WHEREAS, FFW applied for U.S. federal registration for "FRASCA" (Serial No. 87021371) for bar and restaurant services on May 2, 2016.

WHEREAS, Dunlay's uses the "FRASCA" name and mark for bar and restaurant services in connection with its Frasca Pizzeria + Wine Bar restaurant in Chicago, Illinois;

WHEREAS, Dunlay's owns a U.S. federal registration for "FRASCA" (Reg. No. 3899836) for bar and restaurant services which was issued on January 4, 2011 and claims the date of first use as May 17, 2006;

WHEREAS, The Parties acknowledge their longstanding coexistence and that they have simultaneously used "FRASCA" for more than ten (10) years in connection with restaurant and bar services without any instances of consumer confusion or other conflict;

WHEREAS, The Parties operate substantially different restaurants, offer substantially different products at different price points, and market to different consumers;

WHEREAS, The Parties agree that, subject to the restrictions and conditions set forth herein, and for the reasons set forth herein, their respective marks can continue to coexist in the US marketplace without a likelihood of consumer confusion; and

WHEREAS, The Parties wish to continue to peacefully coexist and formally enter into an agreement whereby public confusion will continue to be avoided in the future.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FFW and Dunlay's agree as follows:

1. Dunlay's expressly agrees that it will only use its FRASCA mark in Illinois, Michigan and Indiana.
2. FFW expressly agrees that it will only use its FRASCA mark in areas other than Illinois, Michigan and Indiana.
3. Dunlay's and FFW believe that confusion from their continued coexistence continues to be unlikely. Furthermore, the Parties acknowledge that there are recognized differences in their goods and services as the Parties:

- (a) operate substantially different restaurants with substantially different trade dress;

(b) offer substantially different products and price points; and

(c) market to different classes of consumers.

The Parties agree that because of these differences, along with the fact that in the 10+ years that both marks have coexisted, there have been no instances of consumer confusion, the likelihood of confusion, mistake or deception of purchasers arising from the common use of the marks remains unlikely.

4. The Parties agree that they will continue to refrain from advertising or promoting their goods and services under the marks in a manner that implies that such party or its goods are affiliated or connected with the other party or the other party's goods.

5. The Parties agree to take reasonable measures under the circumstances to market and promote their respective goods and services in such a way to mitigate any likelihood of confusion between them.

6. In the unlikely event that either party becomes aware of any actual consumer confusion resulting from the simultaneous use of the marks as permitted by this Agreement, such party shall:

(a) advise the other party within five (5) business days of the details of such confusion;

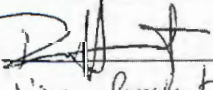
(b) the Parties shall confer in good faith and take commercially reasonable steps to address the confusion and prevent its future occurrence.

7. Each Party hereby represents and warrants that it has the right and capacity to enter into this Agreement.

8. The parties are independent and operate and manage their businesses as independent entities without interference of the other relating to internal business operations or decisions and neither party is the agent, joint venturer, partner, franchisee or employee of the other.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Frasca Food and Wine, Inc.

By:  1/18/17
Vice President

Dunlay's Roscoe LLC

By: _____

(b) offer substantially different products and price points; and

(c) market to different classes of consumers.

The Parties agree that because of these differences, along with the fact that in the 10+ years that both marks have coexisted, there have been no instances of consumer confusion, the likelihood of confusion, mistake or deception of purchasers arising from the common use of the marks remains unlikely.

4. The Parties agree that they will continue to refrain from advertising or promoting their goods and services under the marks in a manner that implies that such party or its goods are affiliated or connected with the other party or the other party's goods.

5. The Parties agree to take reasonable measures under the circumstances to market and promote their respective goods and services in such a way to mitigate any likelihood of confusion between them.

6. In the unlikely event that either party becomes aware of any actual consumer confusion resulting from the simultaneous use of the marks as permitted by this Agreement, such party shall:

(a) advise the other party within five (5) business days of the details of such confusion;

(b) the Parties shall confer in good faith and take commercially reasonable steps to address the confusion and prevent its future occurrence.

7. Each Party hereby represents and warrants that it has the right and capacity to enter into this Agreement.

8. The parties are independent and operate and manage their businesses as independent entities without interference of the other relating to internal business operations or decisions and neither party is the agent, joint venturer, partner, franchisee or employee of the other.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Frasca Food and Wine, Inc.

By: _____

Dunlay's Roscoe LLC

By:  _____

CONCURRENT USE AGREEMENT

THIS CONCURRENT USE AGREEMENT ("Agreement") is effective March 10, 2016, between Frasca Food and Wine, Inc., a Colorado Corporation ("FFW"), and Dunlay's Roscoe LLC, an Illinois Limited Liability Company ("Dunlay's") (collectively referred to herein as the "Parties").

WHEREAS, FFW has, since July, 2004, (through its predecessors and licensees) used the "FRASCA" name and mark for restaurant and bar services in Boulder, Colorado;

WHEREAS, FFW applied for U.S. federal registration for "FRASCA" (Serial No. 87021371) for bar and restaurant services on May 2, 2016.

WHEREAS, Dunlay's uses the "FRASCA" name and mark for bar and restaurant services in connection with its Frasca Pizzeria + Wine Bar restaurant in Chicago, Illinois;

WHEREAS, Dunlay's owns a U.S. federal registration for "FRASCA" (Reg. No. 3899836) for bar and restaurant services which was issued on January 4, 2011 and claims the date of first use as May 17, 2006;

WHEREAS, The Parties acknowledge their longstanding coexistence and that they have simultaneously used "FRASCA" for more than ten (10) years without any instances of confusion or other conflict;

WHEREAS, The Parties operate substantially different restaurants, offer substantially different products at different price points, and market to different consumers through separate trade channels.

WHEREAS, The Parties agree that, subject to the restrictions and conditions set forth herein, and for the reasons set forth herein, their respective marks can continue to coexist in the US marketplace without a likelihood of consumer confusion; and

WHEREAS, The Parties wish to continue to peacefully coexist and formally enter into an agreement whereby public confusion will continue to be avoided in the future.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FFW and Dunlay's agree as follows:

1. Dunlay's expressly agrees that it will only use the FRASCA mark in connection with its restaurant(s) within the geographic area encompassed by the states of Illinois, Michigan and Indiana.
2. FFW expressly agrees that it will only use the FRASCA mark for bar and restaurant services within the entire United States, excluding the geographic areas encompassed by the states of Illinois, Michigan and Indiana.
3. Dunlay's and FFW believe that confusion from their continued coexistence continues to be unlikely. Furthermore, the Parties acknowledge that there are recognized differences in their goods and services as the Parties:

- (a) operate substantially different restaurants with substantially different trade dress;
- (b) offer substantially different products and price points; and
- (c) market to different classes of consumers through separate trade channels.

The Parties agree that because of these differences, along with the fact that in the 10+ years that both marks have coexisted, there have been no instances of consumer confusion, the likelihood of confusion, mistake or deception of purchasers arising from the common use of the marks remains unlikely. *See*, Declaration of Lachlan Patterson, Owner of FFW and Declaration of Douglas Dunlay, Owner of Dunlay's.

4. The Parties agree that they will continue to refrain from advertising or promoting their goods and services under the marks in a manner that implies that such party or its goods are affiliated or connected with the other party or the other party's goods.

5. The Parties agree to take reasonable measures under the circumstances to market and promote their respective goods and services in such a way to mitigate any likelihood of confusion between them.

6. In the unlikely event that either party becomes aware of any actual consumer confusion resulting from the concurrent use of the marks as permitted by this Agreement, such party shall:

- (a) advise the other party within five (5) business days of the details of such confusion;
- (b) the Parties shall confer in good faith and take commercially reasonable steps to address the confusion and prevent its future occurrence.

The Parties agree to provide notice of actual consumer confusion or mistake between the Parties' respective uses of their FRASCA marks to:

Frasca Food and Wine, Inc.
1738 Pearl Street
Boulder, CO 80302

Dunlay's Roscoe LLC
3358 N. Paulina St.
Chicago, IL 60657

With copy to:
Michael J. Laszlo
LaszloLaw
2595 Canyon Blvd. Suite 210
Boulder, CO 80302

With copy to:
Gregory J. Chinlund
Marshall, Gerstein & Borun LLP
233 South Wacker Drive
6300 Willis Tower
Chicago, IL 60606-6357

7. Each Party hereby represents and warrants that it has the right and capacity to enter into this Agreement.

8. The parties are independent and operate and manage their businesses as independent entities without interference of the other relating to internal business operations or

decisions and neither party is the agent, joint venturer, partner, franchisee or employee of the other.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Frasca Food and Wine, Inc.

By: _____

Peter Hoglund

Dunlay's Roscoe LLC

By: _____

Douglas Dunlay

DECLARATION

I, Peter Hoglund, declare:

1. I am over the age of eighteen (18) years old. I make this declaration of my own personal knowledge or on information and belief where so stated. If called as a witness, I could and would competently testify to the truth of the matters asserted herein.

2. I am an owner of Frasca Food and Wine, Inc. ("FFW"). I oversee the day-to-day affairs of FFW and participate substantially in the business decision making for FFW. I am knowledgeable about our operations and sales in the United States.

3. FFW has applied to register the "FRASCA" mark with the U.S. Patent and Trademark Office, (Serial No. 87021371) for bar and restaurant services on May 2, 2016 and claims the date of first use as August 1, 2004.

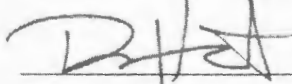
4. Dunlay's Roscoe LLC, an Illinois Limited Liability Company, ("Dunlay's") who is not affiliated or associated with FFW, owns a U.S. federal registration for "FRASCA" (Reg. No. 3899836) for bar and restaurant services which was issued on January 4, 2011 and claims the date of first use as May 17, 2006.

5. To the best of my knowledge, and from the information I have received as an owner of FFW, I am not aware of any instances where FFW's use of its FRASCA Mark has been the source of any consumer confusion with respect to the Dunlay's use of its FRASCA Mark. I am not aware of any instance of actual confusion having arisen during, at least, the past ten (10) years that FFW and Dunlay's have contemporaneously used trademarks that include the term "FRASCA."

6. FFW and Dunlay's have used their respective marks in connection with substantially different geographic areas. FFW currently operates primarily in Colorado. Dunlay's on the other hand, operates primarily in Illinois.

7. As such, FFW believes that there has not, will not, and is not likely to be any confusion among consumers in the marketplace regarding the source of the goods and/or services offered by FFW and Dunlay's under their respective trademarks.

I declare under penalty of perjury under the laws of the United States and the State of Colorado that the foregoing is true and correct.

 2/28/17

Peter Hoglund, owner, Frasca Food and Wine, Inc.

DECLARATION

I, Doug Dunlay, declare:

1. I am over the age of eighteen (18) years old. I make this declaration of my own personal knowledge or on information and belief where so stated. If called as a witness, I could and would competently testify to the truth of the matters asserted herein.

2. I am an owner of Dunlay's Roscoe, LLC. ("Dunlay's"). I oversee the day-to-day affairs of Dunlay's and participate substantially in the business decision making for Dunlay's. I am knowledgeable about our operations and sales in the United States.

3. Dunlay's Roscoe LLC, an Illinois Limited Liability Company, ("Dunlay's") and who is not affiliated or associated with FFW, owns a U.S. federal registration for "FRASCA" (Reg. No. 3899836) for bar and restaurant services which was issued on January 4, 2011 and claims the date of first use as May 17, 2006.

4. To the best of my knowledge, and from the information I have received as an owner of Dunlay's, I am not aware of any instances where Dunlay's use of its FRASCA Mark has been the source of any consumer confusion with respect to the FFW use of its FRASCA mark. I am not aware of any instance of actual confusion having arisen during, at least, the past ten (10) years that FFW and Dunlay's have contemporaneously used trademarks that include the term "FRASCA."

5. FFW and Dunlay's have used their respective marks in connection with substantially different geographic areas. FFW currently operates primarily in Colorado. Dunlay's on the other hand, operates primarily in Illinois.

6. As such, Dunlay's believes that there has not, will not, and is not likely to be any confusion among consumers in the marketplace regarding the source of the goods and/or services

offered by FFW and Dunlay's under their respective trademarks and therefore does not object to the concurrent use registration of the FFW Mark, pursuant to Application Serial No. 87021371, for the entire United States, excluding the geographic areas encompassed by the states of Illinois, Michigan and Indiana.

I declare under penalty of perjury under the laws of the United States and the State of Illinois that the foregoing is true and correct.

This the 28th day of February 2017.

Dunlay's Roscoe LLC

By: 

Doug Dunlay