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

Proceeding	91192645
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Attachments	PAMPALONE_DECLARATION_EXHIBIT_1.pdf (16 pages)(145577 bytes)

EXHIBIT 1

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H. Tierney
as an individual opposer?

A. Yes.

Q. Is it your understanding that Applicant's Exhibit 18 is the document requesting you to appear today in your individual capacity?

A. Yes.

Q. Prior to the formation of Trummer Bar, LLC -- strike that.

When was Trummer Bar, LLC formed?

A. I don't have the date in front of me, but we formed it probably nine months before we opened. When we started -- I had signed the lease and then we started raising money shortly after that. So, I would guess about nine months before we opened, which was May 2008 -- sorry -- August 2008. So, minus nine months, I'm guessing.

Q. Okay. So, approximately, December of 2007?

A. Okay. That sounds right.

Q. Okay. When you say "formed Trummer Bar, LLC," what do you mean by that?

A. It means filed legally the legal



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his -- he was a bartender, so I would see him at the places that he worked. And so, the conversations would happen there across the bar.

Q. When was the first time you discussed entering into a business relationship?

A. I don't recall. But, you know, we probably had several casual conversations about it. And the first real conversation we had about it was when I had signed the lease for Doyers Street. And I asked him if he wanted to do the cocktails for the bar.

Q. When did you sign the lease for Doyers Street?

A. I signed the lease personally, I believe, October 2007, I'm guessing.

MR. PAMPALONE: Don't guess.

THE WITNESS: Okay.

MR. PAMPALONE: You can answer to the best of your ability.

A. I don't recall. I signed the lease a few months before we signed -- I signed the business -- I signed the lease to the



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2 company. I don't know exactly when.

3 BY MR. YUVAL:

4 Q. And what was the -- you think -- I
5 believe you said that, after you signed the
6 lease, you had conversations with Albert
7 about starting a business?

8 A. We had conversations about starting
9 a business on Doyers Street specifically
10 after I signed the lease. He was in L.A. at
11 the time.

12 Q. And what were the nature of those
13 conversations?

14 A. Conversations about starting a
15 business together.

16 Q. And did you ask Albert to perform
17 any services in connection with this
18 business?

19 A. I just said I -- I asked him if he
20 wanted to do the cocktails for the business.
21 So, yes, that would be a service.

22 Q. And what did Albert say?

23 A. He said he would like to do the
24 cocktails for the business. And he was
25 excited about it.



1 H. Tierney

2 Q. So, you and Albert never went
3 together to look at different possible spaces
4 for the Apotheke bar?

5 A. Oh, we looked at spaces, like, from
6 time to time. Like I said, we had casual
7 conversations. But there was never any -- it
8 was just what you do. I look at spaces all
9 the time. You look at spaces when you're an
10 entrepreneur.

11 Q. I don't understand. If you never
12 talked about going into business at -- with
13 respect to the Apotheke bar -- strike that.

14 What was the purpose of looking at
15 spaces with Albert?

16 A. Like I said, we had casual
17 conversations about doing a bar together.
18 And when you have those conversations, you
19 look at real estate. I'm not exactly sure
20 when he was living in New York and he was
21 back and forth between L.A. and New York.
22 But we had casual conversations about it.
23 And that's when we looked at the spaces.

24 We didn't talk about doing the
25 business specifically on Doyers Street until



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I found the lease and signed it.

Q. And what was the concept of the type of business that you and Albert would be working on together?

A. A cocktail bar.

Q. And was there any specific type of cocktail bar that was discussed?

A. Downtown cocktail bar.

MR. YUVAL: Can you mark that as -- is it 19?

(Applicant's Exhibit 19, E-mail dated Jan 31, 2007, from heather@sortednyc.com to trummerhome@aol.com, marked for identification as of this date.)

BY MR. YUVAL:

Q. The reporter is handing you what's been marked as Applicant's Exhibit 19. Can you please review this document and let me know if you've seen it before.

(Witness reviewing document.)

A. I didn't. This is an e-mail that I must have sent Albert in 2007.

Q. The document bears the number



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called -- sponsorship, something like that.

Q. Does it promote the proposed
Apotheke bar concept?

MR. PAMPALONE: Objection to the
form of the question.

A. No.

BY MR. YUVAL:

Q. It does not?

A. It does not mention Apotheke in
here at all.

Q. Why is that?

A. Because it was -- the Apotheke
concept wasn't created yet.

Q. Who created the Apotheke concept?

A. It was created between Albert and
myself.

Q. Okay. Explain how that happened.

A. We had a phone call after I signed
the lease -- at some point after we signed
the lease. I don't exactly recall when. And
we were talking about the concept over the
phone on what we could do. And we came up
with the concept of making it into an
apothecary since we had done some research



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2 about old apothecaries and how back in the
3 day it used to be a bar in the apothecary.
4 And I liked idea of calling it -- calling it
5 something, like, Pharmacy or Apothecary, but
6 in another language.

7 So, I actually came up with the
8 idea of calling it Apotheke in French. And
9 then we decided on maybe putting it in German
10 because we liked the way it looked better.
11 So, it was part of that conversation.

12 Q. When you said you had done some
13 research about apothecaries, who is the "we"?

14 A. Me and Albert.

15 Q. And can you explain what research
16 you did?

17 A. I was looking up old bars and -- in
18 Google images and I found an old image of an
19 apothecary with a bar in it, and I thought it
20 was really cool.

21 Q. Was it done while you were by
22 yourself or together with Albert at the same
23 time?

24 A. A lot of it was done on my own at
25 my computer. And I'm sure there were times



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Q. Were you successful at recruiting investors for Trummer Bar, LLC?

A. Yes.

Q. How many investors did you bring in?

A. Let's see. Four.

Q. Can you name them, please?

A. Sarah Simon, Joseph Varet, Peter Hess Freidland, Eric Lopez. And there was one lender.

Q. Who is that?

A. His name is Richard Tarlow.

Q. Turning to page 8 of Applicant's Exhibit 21, under the paragraph that's entitled "The Concept."

A. Um-hum.

Q. Can you read that, please, to yourself.

A. Out loud?

Q. No, to yourself.

(Witness reviewing document.)

A. Okay. Okay.

Q. Is it fair to say that, at this point, the concept of an apothecary had not



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A. Christopher Tierney is my brother.

Q. And when did he become involved in Trummer Bar, LLC?

A. We asked him to design the bar and branding and things like that. So, he was asked -- the same time Albert was asked to do the cocktails and be a managing part of the bar, Chris was asked to do the design.

MR. YUVAL: Why don't we take a break now.

MR. PAMPALONE: Sure, no problem.

(Recess taken.)

BY MR. YUVAL:

Q. I'm handing you what's previously been marked as Applicant's Exhibit 2. Take a look at that document, let me know if you recognize it.

A. Yes.

Q. Do you recognize this document?

A. Yes.

Q. What do you recognize it to be?

A. It is an operating agreement for Trummer Bar, LLC.

Q. Turning to the page that has the



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A. Well, actually I don't want to say never, but there's all sorts of majority approval, I guess, voting that happens when you have meetings. So, unless I have the document in front of me, I don't know. But that is, you know, the one that I remember.

Q. What was your understanding of your role as manager of Trummer Bar, LLC from the period June 2nd, 2008 until Albert Trummer was no longer a manager of Trummer Bar, LLC?

A. I am a managing member of the business. My role was to oversee the business in all capacities. I had fiduciary duty to the business. I had a fiduciary duty to the investors. I brought in all the investors. And my role was to manage the business.

Q. What was your understanding of whether you had to ask Albert Trummer to approve actions that you wanted to take as manager?

MR. PAMPALONE: Objection to the form of the question.

You can answer.



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BY MR. YUVAL:

Q. Turning to page 7 of the operating agreement --

A. Yeah.

Q. -- at the bottom of the page, whose handwriting is that?

A. That's my handwriting.

Q. Could you explain why this handwritten provision is in the operating agreement?

A. Because it was excluded from the version I was going to sign. And it should have been put in there, so I just wrote it in.

Q. Can you explain the purpose of this section?

A. The purpose is it just describes the company property. You want me to read it out loud?

Q. No. I want you to explain what it means and why you had to insert it by hand.

MR. PAMPALONE: Objection. The document speaks for itself. So does this provision.



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we filed the extension. But he never did.
Then we had go through with it.

BY MR. YUVAL:

Q. So, I'm just trying to understand
your testimony. You say there was a
conversation with you and Albert?

A. Several conversations with Albert,
my brother and myself.

MR. PAMPALONE: You got to let him
finish his question.

THE WITNESS: Sorry.

BY MR. YUVAL:

Q. So, was there anyone else involved
in any of those conversations?

A. Possibly. Mostly it was just
Albert, my brother and myself after we
discovered that he had registered the
trademark in his own name personally. So,
those conversations took place after we
discovered that. And we confronted him about
it, and he said he would assign it to the
company.

Q. Do you remember when you found out
that Albert had filed a trademark in his name



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And that is things that he wants to trademark, like his cocktail recipes. And sometimes Albert calls it "Apotheke" and sometimes he calls it his "cocktail recipes." But the only thing that we agreed to license was his cocktail recipes, again.

Q. So, you did not reach an agreement as to who owns the Apotheke trademark?

MR. PAMPALONE: Object to the form of the question.

You can answer.

A. No, it doesn't appear we did. Even though we had several conversations that we were all unanimous that the company owned the trademark.

BY MR. YUVAL:

Q. Unanimous for everyone except Albert?

A. Albert agreed that the company owned the trademark several times -- most -- I mean, and then behind the scenes he wouldn't. So, that's why we're here.

MR. YUVAL: Ask the reporter to mark, as Applicant's Exhibit 36, a



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A. Like I said, there was always talk of Albert making a license agreement for his cocktail recipes. There was never one presented for us suitable to sign.

MR. YUVAL: I'm going to ask the reporter to mark, as Applicant's Exhibit 39, a multipage document that bears the legend Trummer 0379 (sic) through Trummer 0375.

(Discussion off the record.)

MR. YUVAL: I ask the reporter to mark, as Applicant's Exhibit 39, a multipage document that begins with the page -- bearing the legend Trummer 0342 and ends with the page bearing the legend Trummer 0375.

(Applicant's Exhibit 39, E-mail dated March 30, 2009, from Tom Pitegoff to heather@sortednyc.com and trummerhome@aol.com, marked for identification as of this date.)

BY MR. YUVAL:

Q. Ms. Tierney, does Applicant's Exhibit 39 accurately reflect an e-mail sent

