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Filing date: **09/18/2012**

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

Proceeding	91192645
Party	Plaintiff Trummer Bar, LLC, Heather Tierney, Christopher Tierney and Eric Lopez
Correspondence Address	MICHAEL J PAMPALONE III COLUCCI & UMANS 218 EAST 50TH STREET NEW YORK, NY 10022 UNITED STATES mpampalone@colucci-umans.com
Submission	Other Motions/Papers
Filer's Name	Michael J. Pampalone, III
Filer's e-mail	mpampalone@colucci-umans.com
Signature	/Michael Pampalone/
Date	09/18/2012
Attachments	Redacted Supplemental Pampalone Declaration.PDF ( 42 pages )(1184358 bytes )

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

----- x

TRUMMER BAR, LLC, HEATHER TIERNEY,	:	
CHRISTOPHER TIERNEY and ERIC LOPEZ,	:	Opposition No. 91,192,645
	:	
Opposers,	:	Serial No. 77/584,448
	:	APOTHEKE
v.	:	
	:	
ALBERT TRUMMER,	:	
	:	
Applicant.	:	
	:	

----- x

**SUPPLEMENTAL DECLARATION OF MICHAEL J. PAMPALONE, III, IN SUPPORT  
OF OPPOSERS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO  
APPLICANT'S CROSS MOTION FOR SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, Michael J. Pampalone, III declares under penalty of perjury as follows:

1. I am an associate with the firm of Colucci & Umans, attorneys of record for Opposers in the above-referenced opposition. I submit this declaration in support of Opposers' Motion for Summary Judgment and in response and opposition to Applicant's Opposition and Cross Motion for Summary Judgment and to place before the Honorable Trademark Trial and Appeal Board true and accurate copies of pertinent documents and exhibits.

2. Exhibit 1 consists of true and accurate copies of testimonial excerpts taken from the transcript of the deposition of applicant, Albert Trummer, which took place on May 30, 2012.

3. Exhibit 2 consists of a true and accurate copy of a notice published on the website of the New York City Fire Marshall relating to and describing the circumstances of Albert Trummer's June 10, 2010 arrest.

4. Exhibit 3 consists of a true and accurate copy of a notice published on the website of the New York City Fire Marshall relating to and describing the circumstances of Albert Trummer's October 17, 2010 arrest.

5. Exhibit 4 consists of a true and accurate copy of a complaint filed against Albert Trummer by opposers Apotheke, LLC (formerly Trummer Bar, LLC) and Heather Tierney in the Supreme Court of the State of New York on October 28, 2010.

6. Exhibit 5 consists of true and accurate copies of an Order of the Supreme Court of the State of New York and transcript of a motion/stipulation proceeding that took place before the Supreme Court of the State of New York on November 15, 2010.

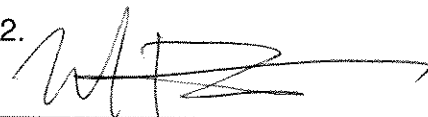
7. Exhibit 6 consists of a true and accurate copy of a stipulation from the New York State Liquor Authority to Opposer, Apotheke, LLC.

8. Exhibit 7 consists of true and accurate copies of testimonial excerpts taken from the transcript of the deposition of Opposer, and Apotheke, LLC's designated Rule 30(b)(6) witness, Heather Tierney, which took place on May 12, 2012.

9. Exhibit 8 consists of a printout taken from the website of the Lake's Hotel located in Pörschach am Wörthersee, Austria.

I declare under penalty of perjury that the foregoing is true and correct.

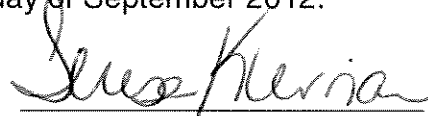
Executed this 18<sup>th</sup> day of September 2012.



Michael J. Pampalone, III

**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing "Supplemental Declaration of Michael J. Pampalone, III, in Support of Opposers Motion For Summary Judgment and in Opposition to Applicant's Cross Motion for Summary Judgment" has been served, via first-class mail, postage prepaid, on Applicant's Attorneys, Yuval Marcus, Esq., Cameron Reuber, Esq., Leason Ellis LLP, One Barker Avenue, Fifth Floor, White Plains, New York 10601-1526 this 18<sup>th</sup> day of September 2012.



Teresa Kiernan

# EXHIBIT 1

1 TRUMMER

2 Q Do you see any reference in here to  
3 the word Apotheke in the entire agreement?

4 A That was in detail defined in the  
5 separate licensing agreement.

6 Q Where is the separate lensing  
7 agreement?

8 A We had the intention or the intent to  
9 sign it.

10 Q Was there ever a separate licensing  
11 agreement ever signed by the parties?

12 A No.

13 Q Besides the Apotheke trademark you  
14 claim to own, do you own any other trademarks?

15 A No.

16 Q Do you own any copyrights?

17 A Relating to what?

18 Q Relating to anything.

19 A No.

20 Q Why does the paragraph on Page  
21 entitled, Separate licensing agreement refer to  
22 copyrighted material?

23 A There was also -- this was also  
24 defined in the separate licensing agreement.

25 Q If you don't own any copyrights, why

1 TRUMMER

2 is this copyright language included in this  
3 agreement?

4 A That is legal language that was  
5 incorporated by my attorney to protect my rights.  
6 And I cannot further interpret this.

7 Q Now, you have certain recipes and  
8 formulas for your elixirs; is that correct?

9 A Yes.

10 Q These are your trade secrets; is that  
11 correct?

12 A Yes.

13 Q What other trade secrets do you own?

14 MR. MARCUS: Before you answer, I am  
15 going to -- you are not asking him to  
16 disclose what his trade secrets are  
17 outside of this context?

18 MR. COLUCCI: Without disclosing  
19 trade secrets.

20 MR. MARCUS: Don't disclose any trade  
21 secrets that aren't already known to  
22 Apotheke.

23 A So let's say the design of elixirs  
24 and the mixers for the bases for all cocktails.

25 Q Those are your trade secrets?

1 TRUMMER

2 A Yes.

3 Q Only you know those trade secrets,  
4 correct?

5 A Yes.

6 Q You have not shared them with anyone,  
7 right?

8 A Not the components of the elixirs.

9 Q No. The trade secrets I am talking  
10 about.

11 Did you share the trade secrets with  
12 anyone other than yourself?

13 A No.

14 Q Do you have bartenders working with  
15 you that mix up these drinks?

16 A Not the basis.

17 Q You are telling me the bartenders  
18 that work with you, they don't know how to make  
19 these drinks that you claim to be trade secrets?

20 MR. MARCUS: Objection;  
21 argumentative.

22 A So they know the basic recipes, but  
23 they don't know the exact components of all the  
24 basic herbs.

25 Q So are you saying that the recipes

# EXHIBIT 2

# NEW YORK CITY FIRE DEPARTMENT

## Bar Owner Arrested After Joint Effort by Fire Prevention Inspectors and Fire Marshals

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A joint effort by FDNY Fire Prevention Inspectors and Fire Marshals led to the June 13 arrest of the owner of Manhattan's Apotheke Bar, for use of unsafe pyrotechnic activities in his establishment.

Supervising Inspectors James Grant and John Stabner of the Fire Prevention's Public Assembly Unit investigated Mr. Albert Trummer, owner of the bar on Doyers Street in Chinatown on May 15.

They had received an anonymous tip that the owner was performing a "show" that involved dousing the 20 foot bar with high-proof alcohol and setting it on fire.

They issued a number of violations, including orders to discontinue use of an open flame without a permit, discontinue use of an open flame on the premise, provide flame-proofing affidavit for all drapery throughout, provide roll-down gates that are in the open and locked position while the establishment was open to the public and maintain all occupancy to 74 persons.

When Mr. Trummer did not adhere to these infractions, fire marshals from the Special Investigations Unit (SIU) began an undercover investigation.

Members of SIU visited the bar on several occasions over two weeks time. During this investigation they witnessed Mr. Trummer performing the "show," which they said created such a substantial fire, patrons had to back away from the bar because of the heat.

At around 2 a.m. the marshals arrested Mr. Trummer and charged him with reckless endangerment and criminal nuisance.

Chief Fire Marshal Robert Byrnes said, "This had all the makings of another Rhode Island Station Nightclub incident [where more than 100 people died and 200 were injured]. It was a great effort by both Fire Prevention and the Bureau of Fire Investigation; the members should be credited for their life-saving work."

# EXHIBIT 3

http://www.nyc.gov/html/fdny/html/events/2010/111710a.shtml

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Fire Marshals Arrest



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## NEW YORK CITY FIRE DEPARTMENT



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### Fire Marshals Arrest Apotheke Bar Co-Owner for Second Time

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#### Customer Satisfaction

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Fire marshals arrested Albert Trummer, co-owner of Apotheke bar, for a second time on Nov. 10. He is charged with continuing to use unsafe pyrotechnic displays in his establishment.

Mr. Trummer turned himself in to the 5th precinct on Nov. 10. He was charged with one count attempted arson 2, one count reckless endangerment 1 and one count reckless endangerment property.

At approximately 3 a.m. on Oct. 17, Mr. Trummer announced to the employees at his Chinatown bar that he was going to perform a fire show. Several employees warned him not to do so.

He took two bottles of Sambuca and smashed the contents on the bar. He then lit the bar with a candle.

Someone in the bar called 911, and responding police officers asked Mr. Trummer to leave. There is a court order barring Mr. Trummer from the Apotheke bar.



[9/11 Memorial Pages](#) | [Tribute](#)

# EXHIBIT 4



DAVID A. PATERSON  
GOVERNOR

STATE OF NEW YORK  
EXECUTIVE DEPARTMENT  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
STATE LIQUOR AUTHORITY  
ALFRED E. SMITH BUILDING  
80 SOUTH SWAN STREET, SUITE 900  
ALBANY, NEW YORK 12210-0002

DENNIS ROSEN  
CHAIRMAN

JEANIQUE GREENE  
NOREEN HEALEY  
COMMISSIONERS

## Stipulation For Renewal of License

STATE OF NEW YORK  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
STATE LIQUOR AUTHORITY

In the Matter of the License Application of **STIPULATION**

License Number: 1205504  
Licensee: TRUMMER BAR LLC  
APOTHEKE  
Premises Address: 9 DOYERS STREET  
NEW YORK, NY 10013  
License Period: 08/01/2010 To 07/31/2012

The above-named Licensee and the New York State Liquor Authority hereby stipulate as follows:

- 1) The Licensee has filed an application for the renewal of its license;
- 2) There are current disciplinary charges pending against the Licensee that could result in the revocation or cancellation of the license;
- 3) The renewal of the license shall be approved without prejudice to the right of the State Liquor Authority to impose a penalty with respect to such disciplinary charges, or any future disciplinary charges that may be brought against the licensee for conduct prior to, or after, the renewal of the license;
- 4) Upon execution of this stipulation, the Licensee accepts its terms and conditions and waives any right to challenge the terms and conditions of this stipulation in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules of the State of New York or in any Federal or State action or proceeding.

Dated: \_\_\_\_\_

Dated: 07/29/2010

By: Licensee

New York State Liquor Authority  
Kerri J. O'Brien, Deputy Commissioner



# EXHIBIT 5

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

-----X  
TRUMMER BAR, LLC and  
HEATHER TIERNEY,

Index No. \_\_\_\_\_

Plaintiffs,

-against-

ALBERT TRUMMER,

**COMPLAINT**

Defendant.  
-----X

Plaintiffs Trummer Bar, LLC (“TBL”) and Heather Tierney (“Tierney”, and together with TBL, “Plaintiffs”), by and through their undersigned attorneys, for their complaint against Defendant Albert Trummer (“Trummer” or “Defendant”), allege and aver as follows:

**INTRODUCTION**

1. Plaintiffs bring this action to recover damages and to obtain preliminary and permanent injunctive relief against Defendant as a result of Defendant’s repeated, unlawful and dangerous actions and conduct, and for Defendant’s breaches of contract and of the covenant of good faith and fair dealing, and for Defendant’s repeated breaches of fiduciary duties, and for Defendant’s tortious interference with the business and business relationships of Plaintiff TBL.

2. Plaintiff TBL owns and operates a cocktail bar business named Apotheke located on the premises and at the address of 9 Doyers Street, New York, New York 10013, located in New York County. Plaintiff Tierney is a member Manager and 35% owner of TBL.

3. Commencing in or about the early part of 2010 through and including at least October 17, 2010, Defendant Trummer willfully, deliberately and repeatedly, and without lawful justification or authorization, has started and caused to be started unlawful fires and dangerous pyrotechnic displays on the premises of Apotheke. These fires have caused great harm and damages to Plaintiffs and to the reputation of Apotheke and gravely threaten TBL's continued operations and existence. Defendant's continued and threatened actions in causing unlawful fires on the premises of Apotheke threaten grave and irreparable harm to Plaintiffs and others.

#### PARTIES

4. Plaintiff TBL is a limited liability company organized and existing under the laws of the State of New York, having a principal place of business located at 9 Doyers Street, New York, New York 10013, in New York County.

5. Plaintiff Tierney is an individual residing in New York County. Tierney is a member Manager of TBL and is a party to the Amended and Restated Limited Liability Company Operating Agreement of Trummer Bar, LLC dated as of June 2, 2008 (the "Operating Agreement"). A true and correct copy of the Operating Agreement is attached hereto as Exhibit 1.

6. Defendant Trummer is an individual residing in New York County. Trummer is a member Manager of TBL and is a party to the Operating Agreement.

FACTS RELEVANT TO ALL CAUSES OF ACTION

7. TBL's business is the ownership and operation of a cocktail bar named Apotheke, open to the general public, located and doing business on the premises of 9 Doyers Street, New York, New York 10013.

8. Apotheke operates under and by virtue of a valid liquor license issued by the New York State Liquor Authority. Apotheke's hours of operation are daily from 6:30 P.M. to 2:00 A.M.

9. TBL is required to be managed in accordance with the New York Limited Liability Company Act, the terms of the Operating Agreement, and in full compliance with all other applicable laws and regulations in effect in the State of New York governing the operations of bars and similar establishments in New York City.

**Defendant's Unlawful and Dangerous Fires at Apotheke**

10. Despite the fact that Defendant Trummer holds an ownership interest in TBL and was himself appointed a Manager of TBL pursuant to its Operating Agreement, he has on a number of separate occasions, commencing in or about the beginning of 2010 and continuing through at least October 17, 2010, set and started fires on the bar inside of Apotheke while both employees and patrons were present on the premises during normal business hours.

11. Defendant has started the fires by pouring large quantities of highly inflammable liquor on top of the bar and lighting it on fire. Defendant at all times started the fires on his own initiative and without the agreement or consent of any other member or Manager of TBL.

12. The fires started by Defendant are unlawful under the New York City Fire Code.

13. The fires started by Defendant create the very real potential to cause severe injury or worse to any persons in the bar, as well as the risk of causing serious damages to the premises of the bar.

14. The fires started by Defendant and Defendant's unlawful and reckless behavior have put at risk Apotheke's liquor license issued by the New York State Liquor Authority ("NYSLA"). Absent possession of a lawful liquor license from the NYSLA, Apotheke's would have to shut down its operations.

15. The fires set by Defendant create great risk of irreparable harm, both to TBL and its owners and to members of the public who frequent Apotheke and may be present when a fire is started by Defendant.

16. Despite being asked by Tierney and by the other owners of Apotheke to cease his dangerous and unlawful fire-making activity, Defendant has simply ignored the demands of the members of the TBL and persisted with his pyrotechnics inside the bar.

**Defendant is Investigated by the FDNY and Warned Against Starting Fires**

17. On May 15, 2010 two Inspectors of the New York City Fire Department ("FDNY") who were conducting an investigation of Trummer's activities at Apotheke observed Trummer dousing the bar with alcohol and setting it on fire.

18. Based on their observations on May 15, 2010, the FDNY Inspectors issued a number of violations, including orders to discontinue use of an open flame without a permit, to discontinue use of an open flame on the premises and other

directives. Specifically, Trummer was personally warned by New York City Fire Inspectors on May 15, 2010 to immediately cease and desist from any further pyrotechnic displays.

**Defendant Continues His Unlawful Fire Displays and is Arrested and Criminally Charged by the NYC Fire Department and Manhattan District Attorney**

20. Despite being personally warned by the Fire Inspectors on May 15, Trummer nevertheless continued his pyrotechnic activities in Apotheke. The Fire Department was continuing to monitor Apotheke with fire marshals operating undercover and, on June 13, 2010, Trummer was arrested for again starting fires on the premises of Apotheke by officers from the Special Investigations Unit of the New York City Fire Department.

21. Following his arrest on June 13, 2010 Defendant was criminally charged with reckless endangerment and criminal nuisance for his fire making activities at Apotheke. These charges against Trummer are, upon information and belief, presently being prosecuted by the Manhattan District Attorney's Office and, as of the date of this Complaint, remain pending against Defendant in the New York County Criminal Court.

22. The New York City Fire Department has issued a public press release concerning the events at Apotheke involving the Defendant and the Department's investigation and arrest of Trummer on June 13, 2010. Attached is a true and correct copy of the Fire Department's press release as Exhibit 2 to this Complaint. In the Fire Department's official release, referring to the fires at Apotheke started by Defendant, Chief Fire Marshal Robert Byrnes is quoted as stating: "This had all the makings of

another Rhode Island Station Nightclub incident [where more than 100 people died and 200 were injured].”

**Trummer Again Attempts to Start a Fire at Apotheke on October 17, 2010**

23. Despite the fact that Defendant was at that time awaiting trial or other disposition of the aforementioned criminal charges against him, early on Sunday morning, October 17, 2010, at approximately 1:00 A.M., while the bar was open and busy, Defendant Trummer entered onto the premises of Apotheke.

24. Going behind the bar Defendant first took four bottles of champagne, shook them and then cut off the tops of the bottles with a sharp knife. He then sprayed the champagne from the open bottles around the vicinity of the bar, wetting patrons and employees who happened to be nearby.

25. Defendant next took two bottles of liquor (Sambucca, which is highly inflammable) and smashed them on the side of the granite bar. Defendant then poured the liquor over the top of the bar. He attempted to light it with a match. While attempting to start the fire the Defendant shouted that “if I’m going to be arrested, it’s going to be for real.”

26. While Defendant was attempting to light the liquor on fire one of the bar tenders poured water on the top of the bar which prevented the fire from actually starting.

27. As a result of Defendant’s misconduct on October 17, 2010 the New York City police were called on 911 by Tierney who reported what was happening.

28. The two police officers were familiar with the problems involving Defendant’s fire displays at Apotheke. One of the officers stated that Apotheke was in

danger of being shut down because of Defendant's continuing pyrotechnic activity and that "you need to get a court order" against Defendant.

29. As a result of Defendant's setting fires in Apotheke, the NYSLA is closely monitoring Defendant's criminal case as well as any ongoing problems at Apotheke involving Defendant's pyrotechnic displays. The NYSLA has indicated that it may not renew Apotheke's liquor license depending upon future developments. Attached hereto as Exhibit 3 to this Complaint is a relevant notice received by Plaintiffs from the NYSLA.

30. Even after being arrested and criminally charged for his misconduct at Apotheke Defendant attempted on October 17, 2010 to start a fire inside the bar. Defendant's illegal and dangerous pyrotechnics puts the continued existence of TBL's business at grave risk. It puts at risk the continued employment of the people who work at Apotheke. It risks the investment of the owners of TBL. It puts at risk the safety of members of the public who patronize Apotheke and the safety of the employees who work there.

AS AND FOR A FIRST CAUSE OF ACTION  
(Willful Breach of the Operating Agreement)

31. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 30 of this Complaint in this paragraph 31 of the Complaint.

32. Defendant is a party to the Operating Agreement which requires Defendant, as one of two Managers, to "manage and control the operations, business, affairs and properties of the Company."

33. Defendant is in willful breach of his duties and obligations under the Operating Agreement due to his reckless, grossly negligent, and willful misconduct in starting unlawful fires on the premises of Apotheke.

34. Defendant has repeatedly failed and refused to comply with his contractual duties and obligations under the Operating Agreement.

35. Defendant has willfully failed to properly manage the business of TBL and Apotheke and has instead engaged in unlawful conduct which has caused, and threatens to cause, irreparable harm and damages to Plaintiffs.

36. Instead of properly performing his contractual duties under the Operating Agreement Defendant has willfully, recklessly and with gross negligence engaged in unlawful actions which have severely damaged the reputation of TBL's business and which have and continue to put at risk TBL's ability to continue in business.

37. Plaintiffs have been, and will in the future be, irreparable damaged and harmed by Defendant's willful and repeated breaches of the Operating Agreement. Accordingly, Plaintiffs are entitled to preliminary and permanent injunctive relief against Defendant.

AS AND FOR A SECOND CAUSE OF ACTION  
(Breach of the Covenant of Good Faith and Fair Dealing)

38. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 38 of this Complaint in this paragraph 39 of the Complaint.

39. As a party to the Operating Agreement the law imposes on Defendant an implied covenant of good faith and fair dealing with respect to the other parties to the Operating Agreement, including to the Plaintiffs and each of them.

40. Defendant has repeatedly and willfully breached his duty of good faith and fair dealing under the Operating Agreement by means of his reckless, grossly negligent, and willful misconduct in starting unlawful fires on the premises of Apotheke.

41. Plaintiffs have been, and will in the future be, irreparable damaged and harmed by Defendant's willful and repeated breaches of his duties of good faith and fair dealing under the Operating Agreement. Accordingly, Plaintiffs are entitled to preliminary and permanent injunctive relief against Defendant.

AS AND FOR A THIRD CAUSE OF ACTION  
(Breach of Fiduciary Duties)

42. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 41 of this Complaint in this paragraph 42 of the Complaint.

43. Defendant owes fiduciary duties to Plaintiffs as a member of the Plaintiff TBL owning a significant ownership share of the limited liability company membership interests.

44. Defendant owes fiduciary duties to Plaintiffs as a named Manager of the Plaintiff TBL holding significant managerial responsibilities under the terms of the Operating Agreement.

45. Defendant has repeatedly and willfully breached his fiduciary duties owed by him to Plaintiffs and others as a member of Plaintiff TBL and as a Manager under the Operating Agreement by reason of his reckless, grossly negligent, and willful misconduct in starting unlawful fires on the premises of Apotheke.

46. Defendant has willfully failed to properly manage the business of TBL and Apotheke and has instead engaged in unlawful conduct which has caused, and threatens to cause, irreparable harm and damages to Plaintiffs. Defendant has breached his fiduciary duties owed by him to Plaintiffs by such misconduct.

47. Plaintiffs have been, and will in the future be, irreparable damaged and harmed by Defendant's willful and repeated breaches of his fiduciary duties as a member of Plaintiff TBL and as a Manager under the Operating Agreement. Accordingly, Plaintiffs are entitled to preliminary and permanent injunctive relief against Defendant.

AS AND FOR A FOURTH CAUSE OF ACTION  
(Tortious Interference with Plaintiffs' Business Relationships)

48. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 47 of this Complaint in this paragraph 48 of the Complaint.

49. Defendant, as a member of Plaintiff TBL and as a named Manager under the terms of the Operating Agreement, at all times had knowledge of the business and customers of TBL and had knowledge concerning the official regulatory bodies, including the New York State Liquor Authority and the New York City Fire Department, which directly and indirectly have authority over the continued operations of TBL and Apotheke.

50. Defendant has willfully, intentionally and tortiously interfered with, and severely damaged, Plaintiffs business relationships with its customers, the New York State Liquor Authority and the New York City Fire Department by reason of his reckless, grossly negligent, and willful misconduct in starting unlawful fires on the premises of Apotheke.

51. Defendant's wrongful actions which have damaged, and which threaten to irreparably harm, Plaintiffs business relationships, constituted crimes and independent torts, and were intentional and malicious.

52. Plaintiffs have been, and will in the future be, irreparable damaged and harmed by Defendant's willful and repeated acts of tortious interference with Plaintiffs business relationships. Accordingly, Plaintiffs are entitled to preliminary and permanent injunctive relief against Defendant.

WHEREFORE, Plaintiffs pray for entry of final judgment in their favor and against Defendant as follows:

A. Permanently enjoining and barring Defendant from at any time entering onto, or attempting to enter onto, or from remaining in or around the premises of Apotheke, located at 9 Doyers Street, New York, New York 10013;

B. compensatory damages in an amount to be determined at trial with respect to the First Cause of Action;

C. compensatory damages in an amount to be determined at trial with respect to the Second Cause of Action;

D. compensatory damages in an amount to be determined at trial with respect to the Third Cause of Action;

E. compensatory damages in an amount to be determined at trial with respect to the Fourth Cause of Action;

F. exemplary damages in an amount to be determined at trial;

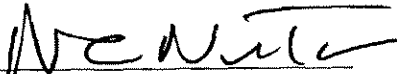
G. an award of costs and reasonable attorneys' fees; and

H. such other and further relief as to this Court seems just and appropriate.

Dated: New York, New York

October 28, 2010

NORTON & ASSOCIATES, LLC

By: 

Michael E. Norton  
8 West 40<sup>th</sup> Street, 12<sup>th</sup> Floor  
New York, NY 10018  
Telephone: (212) - 297-0100  
Facsimile: (212) - 376-6080

*Attorneys for Plaintiffs Trummer Bar, LLC  
and Heather Tierney*

# EXHIBIT 6

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Schwartz Justice

PART 45m

Trommer Bar LLC

INDEX NO. 651873/10

- v -

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

Albert Trommer

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

*for a preliminary injunction made by plaintiff is GRANTED on consent per the Stipulation on the Record entered November 15, 2010.*

*A control date for the parties to report to the court by conference call is January 14, 2011 at 12 NOON.*

Dated: November 15, 2010

*[Signature]*  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : CIVIL TERM PART 45

-----X  
TRUMMER BAR, LLC and HEATHER TIERNEY,

Plaintiffs,

- against -

Index #  
651873/10

ALBERT TRUMMER,

Defendant.

-----X  
TRANSCRIPT OF MOTION/STIPULATION PROCEEDINGS

Place: New York Supreme Court  
26 Broadway  
New York, New York

Date November 15, 2010

B E F O R E:

HONORABLE MELVIN SCHWEITZER, Justice

A P P E A R A N C E S:

FOR THE PLAINTIFFS:

NORTON & ASSOCIATES, LLC  
8 West 40th Street - 12th Floor  
New York, New York 10018  
BY: MICHAEL E. NORTON, ESQ.

FOR THE DEFENDANT:

LAW OFFICES OF KEVIN SEAN O'DONOGHUE  
110 William Street - Suites 1410  
New York, New York 10038  
BY: KEVIN SEAN O'DONOGHUE, ESQ.

- and -

LAW OFFICES OF DANIEL BIBB  
9 Murray Street.  
New York, New York 10007  
BY: DANIEL BIBB, ESQ.

Daniel J. Carone, C.S.R., C.M  
Senior Court Reporter  
60 Centre Street-Room 420-New York, New York  
Phone: 646.386.3692

1 - Motion/Stipulation Proceedings -

2 (The following is heard in open court:)

3 THE COURT: Good afternoon. Be seated.

4 Okay. My clerk tells me that the parties have  
5 been talking and have reached some kind of an agreement  
6 that they want to put on the record.

7 Is that right?

8 MR. NORTON: Yes, Your Honor. Michael Norton  
9 for the plaintiffs.

10 MR. O'DONOGHUE: Kevin O'Donoghue for the  
11 defendant.

12 MR. BIBB: Daniel Bibb for the defendant, Your  
13 Honor.

14 MR. NORTON: I'll take a crack at it, Your  
15 Honor, and counsel can correct me if I have it wrong.

16 THE COURT: Okay.

17 MR. NORTON: We have agreed, Your Honor, that,  
18 with respect to this motion, the defendant, Mr. Trummer, is  
19 going to consent to the entry of the preliminary  
20 injunction. Ms. Tierney, who is the co-manager, will now  
21 take over responsibilities for managing the bar.

22 We have also agreed that Mr. Trummer will  
23 continue to get his access to the QuickBooks accounts of  
24 the business. Those are updated every week. He has a  
25 password and he can access that information on line. He  
26 also has access to the business's CPA firm. He has free

- Motion/Stipulation Proceedings -

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2 access to them as well.

3 He's also asked for, and we have agreed, that  
4 he can physically inspect the premises. This would be, I  
5 guess, it's sort of an exception to the blanket injunction  
6 of his coming out of the premises. We have agreed that  
7 once a month, during non-business hours, on three days'  
8 notice, either to myself or to Ms. Tierney, that Mr.  
9 Trummer can come to the premises of the bar to inspect the  
10 premises and also to meet with the bookkeeper. So that  
11 this would have to happen at a time when the bookkeeper was  
12 there to have the bookkeeper answer any questions he might  
13 have.

14 As far as his financial interest in the bar,  
15 what would happen is that he would continue, of course, to  
16 own his 35 percent interest in the bar. The goal here,  
17 Your Honor, is to have the parties attempt to negotiate the  
18 purchase of Mr. Trummer's interest, and we will make a  
19 good-faith attempt to do that. But until that happens, of  
20 course he will continue to own his 35 percent stake in the  
21 bar. He will be entitled to be paid his quarterly profit  
22 distribution that relates to his ownership interest and  
23 that that will simply continue the way it has been.

24 The last item I have, I think we have discussed  
25 and agreed to, is that Mr. Trummer, because he was one of  
26 the managers, had been entitled to, and was taking, a

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2 management fee draw which amounted to \$2,000 a week. Since  
3 he is no longer going to be managing the bar, he won't  
4 necessarily be entitled to that, but, as a compromise, we  
5 have agreed that he will be paid a thousand dollars a week  
6 as a draw until we can get, hopefully get, a resolution of  
7 this matter.

8 And as a final matter, the plaintiffs have a  
9 concern because there have been some fairly large  
10 withdrawals from the bank accounts by Mr. Trummer recently,  
11 and we have agreed that Mr. Trummer will no longer have  
12 automatic access to the bank accounts, but he will have the  
13 right to be paid these amounts.

14 I think that's the sum of it, Your Honor.

15 MR. O'DONOGHUE: Can I just have one second,  
16 Your Honor?

17 THE COURT: Sure.

18 (Brief pause.)

19 MR. O'DONOGHUE: Sorry, Judge.

20 Again, my name is Kevin O'Donoghue. I  
21 represent the defendant in this matter.

22 Judge, what Mr. Norton said is acceptable to  
23 the defendant, although we would like some limitations on  
24 this. We don't want it to continue in perpetuity.  
25 Obviously this is a preliminary injunction, it's not a  
26 permanent injunction. So we would just like to have some

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1  
2 kind of an end point, at least some kind of access to come  
3 back to the court in case any problems arise, Judge.

4           Additionally, we have a concern with some  
5 issues with the bar next door Ms. Tierney owns having an  
6 impact on the current bar. So we are just concerned that  
7 there may be some issues of withdrawals that were not  
8 normally authorized where Mr. Trummer is involved with the  
9 business from the operating account. So we just want to  
10 have a way of access to come back to the court in the case  
11 of going over the books, the QuickBooks, with the  
12 bookkeeper, he starts to see something that he wouldn't  
13 necessarily think is normal or authorized, we would just  
14 like to have some access to come back.

15           That's my only issue.

16           THE COURT: Well, I don't have a problem with  
17 that.

18           We'll put a control date in and then since it  
19 is a continuation of the TRO and now a preliminary  
20 injunction, it's not a permanent injunction, so we won't  
21 mark it off the calendar yet.

22           MR. O'DONOGHUE: Could I ask for 60 days,  
23 Judge; would that be acceptable?

24           THE COURT: That's fine.

25           MR. O'DONOGHUE: We'll try to come to an  
26 agreement before the end of the year hopefully settling

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1  
2 this matter once and for all, but obviously until that  
3 point Mr. Trummer does need access to the records, he does  
4 continue to get paid.

5 And one other thing, Judge, is that there is  
6 Mr. Trummer's intellectual property in the bar, which is in  
7 the operating agreement. It may seem, you know, sort of  
8 frivolous to the court, but he spent his whole life  
9 creating drink recipes, creating this concept which he is  
10 now using. We just want to make sure, for the time being,  
11 there is no extraneous use of his recipes; that recipes  
12 can't be sold, franchised, his idea can't be sold or  
13 franchised while this all goes on because he is very  
14 concerned. There is a trademark dispute going on. He is  
15 just concerned there's intellectual property not only in  
16 the bar, Judge, but also in the recipes and in the concept.  
17 So at least during the pendency of this we would like to  
18 ask that everything be status quo until such time as we are  
19 able to come back to the court.

20 THE COURT: What does that mean with respect to  
21 severing the drinks that he mixes or are his mixed recipes  
22 now at the existing bar?

23 MR. O'DONOGHUE: The menu can remain how it is,  
24 and they can use what they have for now. We just don't  
25 want those recipes being disseminated or otherwise used in  
26 the property. Judge, it's intellectual property we are

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2 saying.

3 MR. NORTON: We don't have a problem with the  
4 drinks, Your Honor.

5 I just point out that there is a trademark  
6 dispute between the parties that's now before the  
7 Patent/Trademark Office. I would just say let's let the  
8 Patent/Trademark Office resolve that and not ask Your Honor  
9 to issue an order that's going to stay that proceeding. I  
10 think that's really kind of unrelated to what is before  
11 Your Honor today.

12 THE COURT: Well, I'm not going to stay it. I  
13 just wanted to clarify that the current owner can use the  
14 recipes at the --

15 MR. O'DONOGHUE: Yes, Judge.

16 THE COURT: -- bar that she's operating now.

17 MR. O'DONOGHUE: And nowhere else and they are  
18 not to be sold or otherwise transferred.

19 THE COURT: That's fine.

20 MR. NORTON: That is fine, Your Honor.

21 MR. O'DONOGHUE: Finally, Judge, as part of my  
22 cross-motion there is a prong under 3211(a)7, Mr. Norton  
23 has not had an opportunity to respond, but I would like the  
24 motion to continue.

25 THE COURT: What motion is that for?

26 MR. O'DONOGHUE: That's 3211(a)(7), Judge,

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2 motion to dismiss for failure to state a cause of action  
3 upon which can be granted.

4 THE COURT: Okay.

5 MR. O'DONOGHUE: That is part of my  
6 cross-motion, which was filed November 11th, Judge. It was  
7 part of a sort of omnibus cross-motion, if you will, that  
8 involved vacating, modifying, dismissal on the  
9 jurisdictional claim and also to quash the subpoena of Mr.  
10 Trummer and for a protective order.

11 There had been basically two --

12 THE COURT: No, I understand that, but I find  
13 that there is a cause of action.

14 MR. O'DONOGHUE: Okay, Judge.

15 THE COURT: So the motion is made.

16 MR. O'DONOGHUE: Okay. Thank you, Judge.

17 THE COURT: All right. Let's make sure we have  
18 a definite 60-day date from -- we are on the 15th now of  
19 November.

20 So what are we talking about, January 15th?

21 MR. NORTON: That would be fine for us, Your  
22 Honor.

23 MR. O'DONOGHUE: That should be okay, Judge.

24 THE COURT: All right. Let's put it down as a  
25 control date for January 15.

26 MR. NORTON: Your Honor, would that be just to

1 - Motion/Stipulation Proceedings -

2 report --

3 THE COURT: Yes, to report back.

4 MR. NORTON: -- back here?

5 THE COURT: And then it's a continuing  
6 injunction.

7 Okay. If you have a dispute in the interim  
8 concerning what you have agreed to and that which is on the  
9 record, you can call.

10 THE COURT CLERK: That's a Saturday.

11 MR. BIBB: It's a Saturday.

12 MR. O'DONOGHUE: How about the 14th, Judge?

13 THE COURT: All right. Let's make it the 14th.

14 MR. NORTON: Do you want us to report in  
15 writing, Your Honor?

16 Is that how you would like the report  
17 presented?

18 THE COURT: I think better that you call  
19 chambers --

20 MR. NORTON: Okay.

21 THE COURT: -- and speak to Mr. Wilker, and if  
22 it's necessary, he will call you in after that. You will  
23 make a joint call to chambers.

24 MR. NORTON: All right.

25 MR. O'DONOGHUE: And, Judge, if any relief or  
26 problems arise in the meantime that we need, should we

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follow the same procedure?

THE COURT: Call Mr. Wilker and the reporter will obviously order a copy of this transcript, which I will sign as the order of the court so ordering this stipulation.

MR. NORTON: Thank you, Your Honor.

MR. BIBB: Thank you, Your Honor.

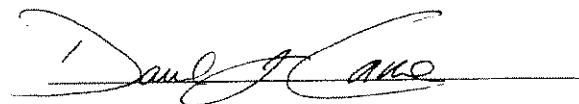
THE COURT: All right. We are in business. Thank you.

(Stipulation concluded.)

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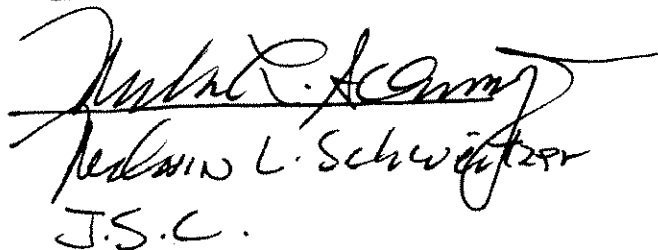
C E R T I F I C A T I O N

It is hereby certified that the foregoing is a true and accurate transcript of my stenographic notes of the proceedings in the above-captioned matter.



Daniel J. Carone, C.S.R., C.M.  
Official Court Reporter

SO ORDERED: November 24, 2010



Nelson L. Schwärzer  
J.S.C.

# EXHIBIT 7

**REDACTED**

# EXHIBIT 8



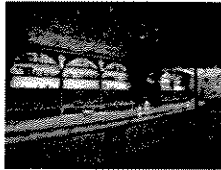
**my lake hotel & spa**

## The hot spot bar "Apotheke" comes from New York City to Lake's

The bar is one of the best in New York. That's what New York citizens say and what NY Times and NY Magazine wrote. We are talking about the "Apotheke", a German word for pharmacy. Founded in 2008 by the Austrian **Albert Trummer**, the location in Chinatown turned into a hot spot within no time. The presentation of the cocktails is as dramatic as the cocktails themselves. The ingredients: herbs and exotic essences. It is all about presentation – the bar functions as stage and chemistry lab at the same time.



For a short period of time, Albert Trummer himself brings his bar concept to **Lake's – my lake hotel & spa**. From July 13<sup>th</sup> until August 4<sup>th</sup> 2012 a special bar will be built up on the terrace of Lake's, overlooking Lake Wörthersee. The guests can expect great cocktails New York Style— mixed, stirred und perfectly staged.



[Menu \(PDF, 0,4 MB\)](#)