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

Proceeding	91206745
Party	Defendant Barhyte Specialty Foods, Inc.
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Date	08/22/2013
Attachments	Motion to Dismiss Proceeding 91206745.pdf(1875095 bytes)

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

Longrain Hospitality Group LLC

Opposer

v.

Barhyte Specialty Foods, Inc.

Applicant

Opposition No. 91206745

MOTION TO DISMISS OPPOSITION

Applicant Barhyte Specialty Foods, Inc. (“Barhyte”) respectfully moves the Trademark Trial and Appeal Board to dismiss this opposition proceeding with prejudice, based on the attached “Consent to Use, Registration and Coexistence Agreement” (“Agreement”) with Opposer Longrain Hospitality Group LLC (“Longrain”), allowing Barhyte’s published marks in Applications Serial Nos. 85481880 and 85481838 to proceed to registration, and lifting the suspension of Longrain’s Application Serial No. 85533892 and allowing Longrain’s proposed mark to proceed to publication. Barhyte hereby represents to the Board that Longrain joins in this motion as set forth in the attached Agreement and does not object to the proposed dismissal on the terms set forth therein.

Dated: August 22, 2013

Respectfully submitted,

Paul A. Raney
Kell, Alterman & Runstein, L.L.P.
520 SW Yamhill, Suite 600
Portland, OR 97204
(503) 222-3531
Attorney for Barhyte Specialty Foods, Inc.

CERTIFICATE OF SERVICE

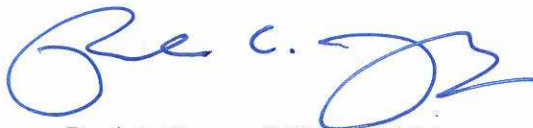
I certify that I served the foregoing MOTION TO DISMISS OPPOSITION in Opposition No, 91206745 with attachment on the following counsel for the Opposer:

Thomas Huszar
Moritt Hock & Hamroff LLP
450 Seventh Avenue, Suite 1504
New York, New York 10123

by placing a copy in an envelope addressed to said recipient at the above-listed address and depositing the envelope, with first class postage prepaid, in the mail of the United States Postal Service in Portland, Oregon.

Dated August 22, 2013.

KELL, ALTERMAN & RUNSTEIN, LLP



Paul A. Raney, OSB #964057
praney@kelrun.com
Attorneys for Applicant
Barhyte Specialty Foods, Inc.

CONSENT TO USE, REGISTRATION AND COEXISTENCE

This AGREEMENT is made and entered into as of June 10, 2013 by and among Longrain Hospitality Group LLC ("Longrain") and Barhyte Specialty Foods, Inc. ("Barhyte"), (each a "Party" and collectively "the Parties").

WHEREAS, Longrain is the current owner of U.S. Application Serial No. 85533892, originally filed on February 3, 2012 by prior owner Rong-Shing, Inc., in which Longrain seeks to register its stylized logo of the word "Suzie's", for restaurant services and bar services in International Class 043;

WHEREAS, Barhyte is the owner of U.S. Applications Serial No. 85481880 and Serial No. 85481838, filed on August 4, 2011, in which Barhyte seeks to register its stylized logo of the word "Suzie's" and a standard character mark of "Suzie's", for ready-made sauces, mustards and salad dressings in International Class 030;

WHEREAS, Longrain has operated a Chinese restaurant and bar in New York City named "Suzie's" but has never produced, marketed, sold or distributed any condiments of any kind under its "Suzie's" logo or under the name "Suzie's", specifically no ready-made sauces, mustards or salad dressings, and never intended its proposed servicemark to extend to such goods;

WHEREAS, Barhyte has never opened or operated a restaurant or bar under its "Suzie's" logo or under the name "Suzie's", has not objected to the registration of Longrain's proposed mark, and never intended its proposed trademarks to extend to such services;

WHEREAS, Longrain's logo is in an angular, asian style, and Barhyte's logo is in a nostalgic, flowing style;

WHEREAS, the Parties are unaware of any instance of actual confusion of any kind between Longrain's restaurant and Barhyte's ready-made sauces, mustards or salad dressings;

WHEREAS, notwithstanding the great differences between the Parties' marks and between the services (Longrain) and goods (Barhyte) with which those marks are used, the trademark examiner suspended Longrain's application due to Barhyte's prior-filed applications, leading Longrain to object to Barhyte's applications and giving rise to Appeal No. 91206745 currently pending before the Trademark Trial and Appeal Board;

WHEREAS, the Parties wish to confirm that there is no likelihood of confusion and resolve the pending proceedings on mutually acceptable terms;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is expressly acknowledged, Longrain hereby consents to the use and registration of Barhyte's marks and Barhyte hereby consents to the use and registration of Longrain's mark, on the terms and conditions set forth hereafter:

- (1) Longrain and Barhyte agree that the respective parties' marks, as well as the goods and services in connection with which they are used, are sufficiently different to avoid confusion as to source of origin, sponsorship or affiliation.
- (2) Longrain hereby recognizes and acknowledges Barhyte's right, title and interest in and to Barhyte's marks, as well as any application or registration therefor, and will not in any way, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title or interest.
- (3) Barhyte hereby recognizes and acknowledges Longrain's right, title and interest in and to Longrain's mark, as well as any application or registration therefor, and will not in any way, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of said right, title or interest.
- (4) Longrain agrees not to use its proposed mark in Application No. 85533892 for ready-made sauces, mustards or salad dressings. Barhyte may sell its ready-made sauces, mustards or salad dressings to restaurants or bars but agrees not to use its proposed marks in Application No. 85481880 or Application No. 85481838 to operate a restaurant or bar.
- (5) Effective immediately upon the trademark examiner's lifting of the suspension of Longrain's U.S. Application Serial No. 85533892, Longrain hereby withdraws its objection to Barhyte's Applications No. 85481880 and No. 85481838 and dismisses with prejudice its Appeal No. 91206745 currently pending before the Trademark Trial and Appeal Board. Barhyte will file this signed agreement with the U.S. Patent and Trademark Office and the Trademark Trial and Appeal Board; Longrain will take any further action necessary to accomplish the withdrawal and dismissal.
- (6) Longrain and Barhyte acknowledge that, to date, no instance of actual confusion has been brought to the attention of either Party. Nevertheless, the Parties agree to employ their commercially reasonable efforts to use their respective marks in a manner that does not cause actual confusion as to either source of origin or sponsorship. If, despite the Parties' efforts, such actual confusion shall be brought to the attention of either Longrain or Barhyte, the Party receiving such notice shall document the incident or incidents of confusion in writing and forward a copy of the documentation to the other Party within a reasonable period of time after the receipt of such notice. Following the receipt of notice of an incident or incidents of actual confusion, or the receipt of documentation of such an incident or incidents as the case may be, both Parties shall take significant steps to independently mitigate or correct such actual confusion, including, by way of example, corresponding with the confused consumer to explain the independence of the Parties of their respective marks and goods or providing samples of their respective uses. Each Party shall provide the other Party with copies of all correspondence or documentation relating to the mitigation or correction of actual confusion.
- (7) Longrain and Barhyte agree to take such further action and execute such further consents as may be reasonably necessary to carry out the spirit of this Agreement.
- (8) This Agreement shall immediately terminate if Barhyte abandons, fails to maintain or fails to register both of its U.S. trademarks sought herein, or if Longrain abandons,

fails to maintain or fails to register its U.S. trademark sought herein, notwithstanding this Agreement.

(9) This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement and merges all prior discussions between the Parties. This Agreement may be signed in two or more counterparts, and all counterparts will constitute one and the same instrument. No waiver or modification to this Agreement shall be effective unless it is in writing executed by both Parties.

(10) This Agreement is binding upon and inures to the benefit of Longrain, Barhyte, and their respective successors and assigns.

(11) This Agreement shall be governed by and construed under the laws of the United States and the State of Oregon. The parties hereby submit to the nonexclusive jurisdiction of, and waive any venue objections against, the United States District Court for the District of Oregon, the Multnomah County Circuit Court for the State of Oregon, the United States District Court for the Southern District of New York, and the Supreme Court of New York, Civil Branch, New York County.

(12) Each Party represents to the other that the person signing this Agreement on its behalf is authorized to do so and to bind his or her respective Party hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Longrain Hospitality Group LLC

Barhyte Specialty Foods, Inc.

By: Joshua Tiu
Joshua Tiu Manager
[Print Name] [Title]

By: Chris Barhyte
Chris Barhyte, President