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

Proceeding	91239537
Party	Plaintiff Tom Bergerson
Correspondence Address	TOM BERGERSON 3745 WATERTOWN RD ORONO, MN 55359-9615 UNITED STATES Email: tom@bangpath.com
Submission	Withdrawal of Opposition
Filer's Name	Thomas Bergerson
Filer's email	tom@bangpath.com
Signature	/Thomas Bergerson/
Date	04/06/2018
Attachments	Tom Tea Coexistence Agreement.executed_20180402.pdf(332088 bytes) WithdrawalOfOpposition.91239537.pdf(82575 bytes)

TRADEMARK COEXISTENCE AGREEMENT

This Trademark Coexistence Agreement (the "Agreement") is made effective on 2 April 2018 (the "Effective Date") by and between MOOD & MIND, LLC., a North Carolina Limited Liability Company ("Senior User"), and TOM BERGERSON, a Minnesota individual ("Junior User").

WHEREAS, Senior User operates a food, beverage, and nutritional supplement company, and is the owner of a pending application for the word mark TOM TEA Serial Number 87/310,553 for use in International Class 030 on teas and herbal teas, and a soon-to-be-filed mark in International Class 5 for medicinal teas, which are identified on Schedule A attached hereto (the "Senior User Marks");

WHEREAS, Junior User intends to operate a beverage company, and intends to develop intellectual property to promote its brand with the mark identified in Schedule B ("Junior User Mark"); and

WHEREAS, the parties recognize the validity of their concurrent use and registration of their respective marks in connection with their respective goods and wish to avoid any conflict with the other party's use and registration of its marks;

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions set forth hereinafter, the parties hereto agree as follows:

1. Recitals. The recitals to this Agreement are adopted as substantive provisions.
2. No Likelihood of Confusion. The parties have concluded that consumer confusion is not likely to arise from the concurrent use of their respective marks in accordance with this Agreement, because such marks are, and shall continue to be distinct.
3. Junior User's Use and Registration of the Junior User Marks. Junior User can continue to use and register the Junior User Marks, and reasonably related marks, as set forth in this Agreement; provided, however, that Junior User agrees that it shall never attempt to oppose or cancel the Senior User Mark and provided that Junior User never enters the field of teas containing the ingredient kratom.
4. Dismissal of Pending Opposition; No Future Opposition. Junior User agrees to voluntarily dismiss the pending Opposition Number 91239537, currently before the Trademark Trial and Appeal Board, within five days of execution of this Agreement. Junior User further agrees not to oppose, seek to cancel or otherwise challenge the applications listed in Exhibit A, or similar, goods as those identified in this Agreement and otherwise comply with the terms of this Agreement, including, without limitation, Senior User's existing applications for TOM TEA. Likewise, Senior User agrees not to oppose, seek to cancel or otherwise challenge any applications or registrations existing now or in the future for Junior User's TOM'S TEAS marks where such applications or registrations specify the same, or similar, goods as those identified in this Agreement and otherwise comply with the terms of this Agreement. In any event, should an issue arise with respect to an application or registration belonging to either party, the parties agree to cooperate to attempt to resolve any such issues, including, without limitation, agreeing on amendments to

descriptions of goods and/or services supporting such applications and/or registrations and providing letters of consent or other documents to be filed with applicable trademark agencies.

5. Mutual Consent to Use and Registration. The parties hereby consent to the use and registration of their respective marks throughout the world in accordance with the terms of this Agreement and agree to provide reasonable assistance to each other in the form of providing letters of consent or other documents as may be necessary to permit the registration and renewal of their respective marks.

6. Prevention of Confusion. The parties (i) are not aware of any instance of actual confusion, and (ii) agree to continue to take reasonable action to prevent any confusion due to the coexistence of usage and registration of their respective marks, and to notify each other in the unlikely event that any instances of confusion arise.

7. Fees and Costs. The parties shall each bear their own legal fees and expenses and other costs associated with this Agreement.

8. Limited Agreement. Subject to the terms of this Agreement, and except as expressly set forth herein, nothing shall prevent either party from enforcing its trademark rights against the other in the future, and seeking damages and/or equitable relief for a violation thereof, and nothing in this Agreement or otherwise shall prevent either party from bringing an action for breach or enforcement of this Agreement.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, understandings and agreements, whether written or oral, between the parties with respect to the matter set forth herein. No amendment, change or modification to this Agreement shall be valid unless it is in writing and signed by the parties hereto.

10. Assignment. This Agreement may not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent will not be unreasonably withheld or denied, and any attempt to assign any rights, duties or obligations which arise under this Agreement without such consent shall be null and void. Notwithstanding the foregoing, either party may, without the consent of the other party, assign this Agreement to any person or entity that is acquiring all or substantially all of such party's assets, excluding through bankruptcy or insolvency, or which is a successor by merger, consolidation, acquisition of stock or assets, or other business combination to such party or to any entity which is established for the purpose of carrying out the business associated with using the Junior User Mark.

11. Bound Parties. This Agreement extends to all countries of the world and shall be binding upon the parties hereto, their respective successors, licensees, permitted assigns and affiliated companies.

12. Term. This Agreement shall continue in perpetuity unless terminated in writing.

13. Governing Law and Venue. This Agreement shall be construed in accordance with and will be exclusively governed by the laws of the state of North Carolina, without taking into account the choice of law provisions. Any action at law by either party to interpret, construe, or enforce any of the provisions of this Agreement shall be brought solely in the State of North Carolina in a state court or federal court in

accordance with the laws of the State of North Carolina and the judicial code of the United States in force at the time that an action is commenced. The parties agree that a state or federal court within the State of North Carolina shall have personal jurisdiction over the parties to this Agreement in any action to interpret, construe, or enforce any of the provisions of this Agreement.


14. Savings Clause. If any provision of this Agreement is in violation of any federal, state, or national statute or law, such provision shall be severed and shall not affect the validity of the remaining provisions, and the parties shall negotiate a good faith amendment of this Agreement consistent with the spirit of this Agreement.

15. Waiver. No failure, refusal or neglect on the part of either party to exercise any right under this Agreement or to insist on full compliance by the other party with any obligations under this Agreement shall constitute a waiver of any provision of this Agreement or of any subsequent breach or non-compliance.

16. Counterparts. This Agreement may be executed in one or more counterparts and exchanged via PDF, each of which shall be deemed an original and all of which shall be considered one and the same agreement.

IN WITNESS WHEREOF, the parties hereto do affix their authorized signatures.

MOOD & MIND LLC

By: 

Name: Paul Sturgis

Title: Member/Manager

TOM BERGERSON

By: 

Name: Tom Bergerson

SCHEDULE A
Senior User Marks

TOM TEA - U.S. Serial Number 87/310,553
TOM TEA - to be filed in Class 5 for medicinal teas

SCHEDULE B
Junior User Marks

TOM'S TEAS - U.S. Serial Number 87/799,024

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

In the Matter of Application Serial No. 87/310,553

Mark: TOM TEA

TOM BERGERSON,

Opposition No. 91239537

Opposer,

v.

MOOD & MIND LLC,
Applicant.

APPLICANT'S ANSWER TO NOTICE OF OPPOSITION

Whereas Tom Bergerson ("Opposer") and Mood & Mind LLC ("Applicant") have reached a Trademark Coexistence Agreement ("the Agreement") dated 2 April 2018 with respect to the marks represented in U.S. Trademark Application Serial No. 87/310,553 and U.S. Trademark Application Serial No. 87/799,024 now therefore:

1. Opposer Tom Bergerson hereby withdraws the Opposition No. 91239537 with prejudice

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Withdrawal of Opposition has been served upon the following party by electronic mail, this the 6th day of April, 2018:

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