

ESTTA Tracking number: **ESTTA970310**

Filing date: **04/30/2019**

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

Proceeding	92071017
Party	Plaintiff AMZ Supply, Inc.
Correspondence Address	VICTORIA FRIEDMAN DENNEMEYER & ASSOCIATES LLC 2 N RIVERSIDE PLAZA SUITE 1500 CHICAGO, IL 60606 UNITED STATES vfriedman@dennemeyer-law.com, mmcgvorn@dennemeyer-law.com, mbabilonia@dennemeyer-law.com, docket@dennemeyer-law.com, tm-us@dennemeyer-law.com 312-628-5529
Submission	Withdrawal of Petition to Cancel
Filer's Name	Victoria Friedman
Filer's email	vfriedman@dennemeyer-law.com, mmcgvorn@dennemeyer-law.com, tm-us@dennemeyer-law.com, docket@dennemeyer-law.com, mbabilonia@dennemeyer-law.com
Signature	/Victoria Friedman/
Date	04/30/2019
Attachments	Withdrawal of Cancellation Proceeding.pdf(143546 bytes) Coexist Agreement AMZ Plus fully executed.pdf(225342 bytes)

Cancellation No. 92071017

AMZ Supply, Inc.

v.

Brand Services and Holdings

I, Victoria Friedman, withdraw the cancellation proceedings no. 92071017 against Brand Services and Holdings LLC (AMZ PLUS) because we have come to an agreement that they will allow our mark to co-exist with the AMZ PLUS mark.

After this co-exist agreement is in place, we will not file any further cancellation requests to Brand Service and Holdings LLC with regard to this mark in the future.



Signature: _____

Name: Victoria Friedman

Date: 4/30/19

TRADEMARK COEXISTENCE AGREEMENT

*****CONFIDENTIAL*****

THIS AGREEMENT ("Agreement") is made by and between the following Parties, effective on the last date signed by one of the Parties ("Effective Date"):

Brand Services and Holdings LLC ("Brand Services and Holdings"), a Limited Liability Company of the State of Nevada, having a principle place of business at 3609 Hammerkop Dr., North Las Vegas, Nevada 89084; and AMZ Supply, Inc. ("AMZ"), an Illinois corporation, having a principle place of business at 1743 Leeds Court, Mundelein, Illinois 60060 (collectively referred to herein as the "Parties").

WHEREAS, Brand Services and Holdings is the owner of the entire right, title and interest in and to the trademark AMZ PLUS (the "AMZ PLUS" mark), which is the subject of U.S. Trademark Registration No. 5,205,071 for

"On-line retail store services featuring electrics and electronic components, computer accessories, phone accessories, camera accessories, video game accessories, smart watches, musical accessories, school supplies, office products, household goods, lighting, wedding decoration, festive decorations, home décor articles for animals, gardening tools, kitchen utensils, tableware, cookware and containers, cosmetic and toilet utensils and bathroom articles, toys, games, playthings and novelties, party favors, paper decorative garlands for parties, paper party decorations, party ornaments of plastic, clothing, shoes, hats, bags, jewelry, hair accessories, ornaments, watches, automotive and motorcycle products, telecommunication products, security and protection products, protective and safety equipment, monitoring instruments, home improvement products, sporting goods, sporting articles and equipment, hunting and fishing equipment, swimming equipment, skiing and snowboarding equipment, cycling equipment, camping and hiking equipment, fitness and body building equipment, climbing equipment, cosmetics and cleaning substances, toiletries, health, beauty and personal care products, make-up, skin care preparations

("Brand Services and Holdings Services") in International Class 035;

WHEREAS, the trademark registrations for the AMZ PLUS mark is valid, subsisting and in full force and effect;

WHEREAS, AMZ has filed an application in the United States Patent and Trademark Office ("USPTO") for the trademark AMZ SUPPLY & Design (the "AMZ SUPPLY" mark), which is the subject of U.S. Serial No. 87/946,970 for

ON-LINE RETAIL STORE SERVICES FEATURING OFFICE SUPPLIES

("AMZ Services") in International Class 035;

WHEREAS, the USPTO issued a non-final office action on January 18, 2019 refusing registration of the trademark AMZ SUPPLY because of a likelihood of confusion with the mark in U.S. Registration No. 5205071, AMZ PLUS; and

WHEREAS, the Parties desire to provide for use and registration of their respective marks under the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Parties agree as follows:

1. AMZ acknowledges the validity and enforceability of the AMZ PLUS mark and shall not act to contest the validity or, injure, or discredit AMZ PLUS mark. AMZ shall not file any proceedings with the USPTO or with any court of law in the United States to challenge Brand Services and Holdings' rights to use and register the AMZ PLUS mark.
2. Brand Services and Holdings agrees not to oppose the use and registration of the AMZ mark provided that AMZ shall only use the AMZ SUPPLY mark in connection with on-line retail store services featuring office supplies, and not in connection with the remaining Brand Services and Holdings Services.
3. The Parties agree to take reasonable measures under the circumstances to market and promote their respective goods and services in such a way as to mitigate any likelihood of confusion between them. In the unlikely event that confusion occurs, the Parties agree to notify each other of the confusion in writing, and to take adequate measures to prevent the likelihood of further confusion.
4. The Parties agree to sign further documents and agreements as may be consistent with and reasonably necessary to affect the intent of this Agreement, such as agreements for filing in the USPTO.
5. AMZ, its subsidiaries, divisions and affiliates, will refrain from taking any action or proceeding, legal or otherwise, that would hinder Brand Services and Holdings in its free and unfettered use of the AMZ PLUS marks in connection with the Brand Services and Holdings Services. AMZ, its subsidiaries, divisions and affiliates will not challenge or contest in any manner Brand Services and Holdings' registration or ownership of the AMZ PLUS mark in connection with Brand Services and Holdings Services.

6. Brand Services and Holdings, its subsidiaries, divisions and affiliates consent to the registration by AMZ of the AMZ SUPPLY mark in connection with the AMZ Services throughout the United States and will refrain from taking any action or proceeding, legal or otherwise, that would hinder AMZ's registration of the AMZ SUPPLY mark in connection with the AMZ Services.
7. Brand Services and Holdings will cooperate with AMZ at AMZ's expense by providing its written consent or taking any other action reasonably necessary to permit registration of AMZ's AMZ SUPPLY mark in connection with the AMZ Services.
8. The Parties agree that, except as otherwise expressly provided in any separate written agreement entered into between the Parties, each will not associate itself with the other Party or the other Party's goods and services. To that end, the Parties agree that they will take reasonable steps to prevent confusion between their respective goods and services, should such confusion occur in the future.
9. This Agreement will be binding on and inure to the benefit of the Brand Services and Holdings, its successors, assigns, licensees, subsidiaries, divisions, affiliates and all others acting by or through them or with or under their direction or in privity with them. This Agreement is likewise binding upon any permitted assignee of Brand Services and Holdings.
10. This Agreement will be deemed to have been jointly drafted by the Parties and will be construed in accordance with its fair meaning, and not strictly against any Party.
11. The Parties respectively represent and warrant that they have the full legal right and authority to enter into this Agreement and to perform any obligations undertaken pursuant to this Agreement, that the persons signing on their behalf are legally authorized to do so, and that they have not sold, assigned, or otherwise transferred, prior to the date of this Agreement, any claim or demand that they had or might have had against the other Party or Parties.
12. This Agreement shall remain in full force and effect until the expiration of the AMZ SUPPLY mark to expire and any rights in and to the AMZ SUPPLY mark in the United States.
13. In the event that a Party deems any action or omission by the other Party to be in default or breach of the terms of this Agreement, such Party shall notify the other Party of such breach and the other Party shall have thirty (30) days to cure such breach. In the event that a timely cure of such breach has not been effected, the non-breaching party shall have available any remedy in law or equity except for any remedies that would affect a modification or termination of all or any part of this Agreement. Any modification to this Agreement shall only be effective if set forth in a writing signed by the Parties hereto. The Parties acknowledge that there will be no adequate remedy at law for either Party's failure to comply with the terms herewith. Accordingly, in the event that either Party fails to comply with the terms of this Agreement and fails to cure such breach within the time allowed, both Parties agree that

the non-breaching Party shall have the right to seek to have any breach or default of this Agreement remedied by equitable relief by way of a temporary restraining order, preliminary injunction, permanent injunction, and such other alternative relief as may be appropriate without the necessity of the non-breaching Party posting a bond or proving damages. Should either Party retain counsel for the purpose of preventing the breach of any provision hereof, including, but not limited to: (i) by instituting any action or proceeding to enforce any provision hereof; (ii) for damages by reason of any alleged breach of any provision hereof; (iii) for a declaration of such Party's rights or obligations hereunder; (iv) for injunctive relief; or (v) for any other judicial remedy, then, if said matter is resolved by judicial determination, the prevailing Party shall be entitled to be reimbursed by the other Party for all costs and expenses incurred thereby including, but not limited to, reasonable attorneys' fees, costs, expert witness fees, and other litigation expenses as shall be fixed by a court of competent jurisdiction.

14. This Agreement does not restrict or affect either Party's right to enforce its respective marks or the rights therein against any third party.
15. This Agreement shall be governed and construed in accordance with the laws of Illinois, irrespective of its choice of law principles. In the event that any legal action becomes necessary to enforce or interpret the terms of this Agreement, the Parties agree that such action shall be brought solely within a federal court located in Chicago, Illinois or a state court located in Cook County, Illinois and the Parties hereby submit to the exclusive jurisdiction and venue of said courts.
16. This Agreement does not create in any way any association, partnership, joint venture, or relationship of principal and agent between the Parties.
17. This Agreement does not inure AMZ any claims, demands, and rights of action, both statutory and based upon common law, that Brand Services and Holdings has or might have the right to assert against any third party by reason of any infringement of the AMZ PLUS mark prior to, on, or after the date of this Agreement, together with the right to prosecute such claims, demands, and rights of action in AMZ's own name.
18. For the avoidance of doubt, Brand Services and Holdings specifically retains all right, title, and interest in and to the AMZ PLUS mark throughout the world, and any and all renewals and extensions thereof, together with the goodwill associated with the AMZ PLUS mark for Brand Services and Holdings' exclusive use in connection with the Brand Services and Holdings Services.
19. The Parties further acknowledge and agree that if either Party receives a direct inquiry related to the goods and/or services of the other authorized hereunder, the Party receiving such inquiry will use its best reasonable efforts to direct that inquiry to the appropriate Party and

both Parties will take reasonable mutually acceptable steps to prevent further instances of misdirected inquiries or confusion.

20. The failure by any Party at any time to require performance of any of the provisions of this Agreement will not affect such Party's right later to require such performance. No written waiver in any one or more instances will (except as stated in such waiver) be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any condition or breach of any other term, covenant, representation, or warranty.
21. The territory of this Agreement shall be the entire territory of the United States.
22. If any provision of this Agreement is held to be void or unenforceable, in whole or in part, the court or tribunal so holding shall reform the provision to make it enforceable while maintaining the spirit and goal of the provision and if the court or tribunal finds it cannot so reform that provision, such provision or part thereof shall be treated as severable leaving valid the remainder of this Agreement.
23. This Agreement constitutes the entire understanding and agreement between the Parties and there are no representations, warranties, promises or undertakings other than those contained herein. As to the subject matter hereof, this Agreement supersedes and cancels all previous agreements between the Parties hereto. No course of conduct or dealing between the Parties shall act as a modification or waiver of any provisions of this Agreement and no waiver or modification of any of the terms or provisions of this Agreement shall be valid, unless contained in a single written document signed by both Parties.
24. Each Party shall perform any further acts and sign and deliver any further documents that are reasonably necessary to effectuate the terms of this Agreement.
25. Any notice, demand, waiver, consent, approval, or disapproval (collectively referred to as "notice") required or permitted herein shall be in writing and shall be given personally, by messenger, by air courier, by facsimile transmission, or by prepaid registered or certified mail, with return receipt requested, addressed to the Parties at their respective addresses below or at such other address as a Party may hereafter designate in writing to the other Party. A notice shall be deemed received on the date of receipt.

If to Brand Services and Holdings LLC:
Brand Services and Holdings LLC
3609 Hammerkop Dr.
North Las Vegas, Nevada 89084

If to AMZ Supply, Inc.:
AMZ Supply, Inc.
1743 Leeds Court

Mundelein, Illinois 60060

26. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one agreement.
27. The individuals who have executed this Agreement on behalf of the Parties expressly represent and warrant that they are authorized to sign on behalf of the Party for purposes of binding their respective Party to this Agreement.
28. Each Party shall bear its own attorney's fees in the drafting, negotiating, and execution of this Agreement. Should there be a breach, the non-breaching Party shall give the alleged breaching Party fifteen (15) days to cure with adequate notice and reasonable proof of the breach. In the event the non-breaching Party is forced to file action and prevails, the breaching Party shall be liable for all reasonable attorney's fees, cost, penalties, and interests.

BY SIGNING BELOW YOU SWEAR UNDER PENALTY OF PERJURY THAT ALL OF THE FORGOING ARE TRUE TO THE BEST OF YOUR KNOWLEDGE. YOU ALSO AGREE YOU HAVE BEEN ADVISED TO SEEK INDEPENDENT COUNSEL AND HAVE INTELLIGENTLY, KNOWINGLY, AND VOLUNTARILY DECIDED TO WAIVE AND SIGN BELOW.

IN WITNESS WHEREOF, the Parties executed this Agreement on the date set forth below.

Date: 2019/04/28

Date: 4/29/2019

By: PATRICK ZHANG

By: Dmitriy Pigorenko

Brand Services and Holdings LLC

AMZ Supply, Inc.