PTO- 2194
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Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	90193700
LAW OFFICE ASSIGNED	LAW OFFICE 118
DATE OF NOTICE OF ABANDONMENT	08/20/2021
PETITION	
PETITION STATEMENT	Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional, and requests the USPTO to revive the abandoned application.
RESPONSE TO OFFICE ACTION	
MARK SECTION	
MARK	mark
LITERAL ELEMENT	PALADAR
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size or color.
EVIDENCE SECTION	
EVIDENCE FILE NAME(S)	
ORIGINAL PDF FILE	evi_1-726819583-202109051 35607644410_._Argument__P ALADAR__Serial_No._901937 00_.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT18\IMAGEOUT 18\901\937\90193700\xml7\ POA0002.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\901\937\90193700\xml7\ POA0003.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\901\937\90193700\xml7\ POA0004.JPG
ORIGINAL PDF FILE	evi_1-726819583-202109051 35607644410_._PALADAR___P ALATE_VODKA_-_Consent_Agr eement.pdf
CONVERTED PDF FILE(S) (8 pages)	\\TICRS\EXPORT18\IMAGEOUT 18\901\937\90193700\xml7\ POA0005.JPG
	\\TICRS\EXPORT18\IMAGEOUT 18\901\937\90193700\xml7\ POA0006.JPG
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	\\TICRS\EXPORT18\IMAGEOUT 18\901\937\90193700\xml7\ POA0009.JPG
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	\\TICRS\EXPORT18\IMAGEOUT 18\901\937\90193700\xml7\ POA0012.JPG
DESCRIPTION OF EVIDENCE FILE	applicant's response to the refusal to register; applicant's and the cited registrant's executed Consent Agreement and that agreement's Exhibit A
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	033
DESCRIPTION	
Mezcal; Distilled spirits; Distilled spirits produced in Mexico in accordance with specific standards; Alcoholic mixed beverages except beers; Distilled agave liquor; Distilled blue agave liquor; Prepared cocktails consisting primarily of distilled spirits and also including beer	
FILING BASIS	Section 1(b)
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	033
TRACKED TEXT DESCRIPTION	
Mezcal; ~~Distilled spirits~~; Distilled agave liquor; ~~Distilled spirits produced in Mexico in accordance with specific standards~~; Distilled blue agave liquor, namely tequila; ~~Alcoholic mixed beverages except beers~~; ~~Distilled blue agave liquor~~; ~~Prepared cocktails consisting primarily of distilled spirits and also including beer~~	
FINAL DESCRIPTION	
Mezcal; Distilled agave liquor; Distilled blue agave liquor, namely tequila	
WEBPAGE URL	None Provided
WEBPAGE DATE OF ACCESS	None Provided
FILING BASIS	Section 1(b)
ADDITIONAL STATEMENTS SECTION	
TRANSLATION	The English translation of PALADAR in the mark is palate.
CORRESPONDENCE INFORMATION (current)	
NAME	M.J. Williams
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	mjwilliams@mjw-law.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	nate@drifterspirits.com
CORRESPONDENCE INFORMATION (proposed)	
NAME	M.J. Williams
PRIMARY EMAIL ADDRESS FOR CORRESPONDENCE	mjwilliams@mjw-law.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES)	nate@drifterspirits.com
PAYMENT SECTION	
PETITION TO REVIVE (INCLUDING A PETITION TO DIRECTOR USED SOLELY AS A PETITION TO REVIVE)	150
ADDITIONAL FEE FOR APPLICATION NOT MEETING TEAS PLUS FILING REQUIREMENTS PER CLASS	100
NUMBER OF CLASSES	1
TOTAL FEES DUE	250
SIGNATURE SECTION	
PETITION SIGNATURE	/Nathan Whitehouse/
SIGNATORY'S NAME	Nathan Whitehouse
SIGNATORY'S POSITION	Principal

SIGNATORY'S PHONE NUMBER	2024920750
DATE SIGNED	09/05/2021
SIGNATURE METHOD	Sent to third party for signature
RESPONSE SIGNATURE	/Nathan Whitehouse/
SIGNATORY'S NAME	Nathan Whitehouse
SIGNATORY'S POSITION	Owner
SIGNATORY'S PHONE NUMBER	2024920750
DATE SIGNED	09/05/2021
ROLE OF AUTHORIZED SIGNATORY	Authorized U.S.-Licensed Attorney
SIGNATURE METHOD	Signed directly within the form
FILING INFORMATION SECTION	
SUBMIT DATE	Sun Sep 05 15:05:17 ET 2021
TEAS STAMP	USPTO/POA-XX.XX.XXX.XX-20 210905150517194522-901937 00-781e43ebe8f67768e87958 ac7efbb296cbf38c86c15d7f8 2d4f4bf52c74f82d5e-CC-051 31669-2021090513560764441 0

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Petition To Revive Abandoned Application - Failure To Respond Timely To Office Action

To the Commissioner for Trademarks:

Application serial no. **90193700** PALADAR(Standard Characters, see https://tmng-al.uspto.gov/resting2/api/img/90193700/large) has been amended as follows:

PETITION

Petition Statement

Applicant has firsthand knowledge that the failure to respond to the Office Action by the specified deadline was unintentional, and requests the USPTO to revive the abandoned application.

RESPONSE TO OFFICE ACTION

EVIDENCE

Evidence has been attached: applicant's response to the refusal to register; applicant's and the cited registrant's executed Consent Agreement and that agreement's Exhibit A

Original PDF file:

evi_1-726819583-202109051 35607644410_._Argument__P ALADAR__Serial_No._901937 00_.pdf

Converted PDF file(s) (3 pages) Evidence-1Evidence-2Evidence-3

Original PDF file:

evi_1-726819583-202109051 35607644410_._PALADAR___P ALATE_VODKA_-_Consent_Agr eement.pdf

Converted PDF file(s) (8 pages) Evidence-1Evidence-2Evidence-3Evidence-4Evidence-5Evidence-6Evidence-7Evidence-8

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following:

Current:
Class 033 for Mezcal; Distilled spirits; Distilled spirits produced in Mexico in accordance with specific standards; Alcoholic mixed beverages except beers; Distilled agave liquor; Distilled blue agave liquor; Prepared cocktails consisting primarily of distilled spirits and also including beer
Filing Basis: Section 1(b), Intent to Use: ***For a trademark or service mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. ***For a certification mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Proposed:

Tracked Text Description: Mezcal; ~~Distilled spirits~~; Distilled agave liquor; ~~Distilled spirits produced in Mexico in accordance with specific standards~~; Distilled blue agave liquor, namely tequila; ~~Alcoholic mixed beverages except beers~~; ~~Distilled blue agave liquor~~; ~~Prepared cocktails consisting primarily of distilled spirits and also including beer~~

Class 033 for Mezcal; Distilled agave liquor; Distilled blue agave liquor, namely tequila
Filing Basis: Section 1(b), Intent to Use: ***For a trademark or service mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to use the mark in commerce on or in connection with the identified goods/services in the application. ***For a collective trademark, collective service mark, or collective membership mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the identified goods/services/collective membership organization. ***For a certification mark application:*** As of the application filing date, the applicant had a bona fide intention, and was entitled, to exercise legitimate control over the use of the mark in commerce by authorized users in connection with the identified goods/services, and the applicant will not engage in the production or marketing of the goods/services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods/services that meet the certification standards of the applicant.

Webpage URL: None Provided
Webpage Date of Access: None Provided

ADDITIONAL STATEMENTS
Translation
The English translation of PALADAR in the mark is palate.

Correspondence Information (current):
M.J. Williams
PRIMARY EMAIL FOR CORRESPONDENCE: mjwilliams@mjw-law.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): nate@drifterspirits.com

Correspondence Information (proposed):
M.J. Williams
PRIMARY EMAIL FOR CORRESPONDENCE: mjwilliams@mjw-law.com
SECONDARY EMAIL ADDRESS(ES) (COURTESY COPIES): nate@drifterspirits.com

Requirement for Email and Electronic Filing: I understand that a valid email address must be maintained by the owner/holder and the owner's/holder's attorney, if appointed, and that all official trademark correspondence must be submitted via the Trademark Electronic Application System (TEAS).

FEE(S)
Fee(s) in the amount of $250 is being submitted.

SIGNATURE(S)

Signature: /Nathan Whitehouse/ Date: 09/05/2021
Signatory's Name: Nathan Whitehouse
Signatory's Position: Principal
Signatory's Phone Number: 2024920750

Response Signature
Signature: /Nathan Whitehouse/ Date: 09/05/2021
Signatory's Name: Nathan Whitehouse
Signatory's Position: Owner

Signatory's Phone Number: 2024920750 Signature method: Signed directly within the form

The signatory has confirmed that he/she is not represented by an authorized attorney, and that he/she is either: (1) the owner/holder; or (2) a person or persons with legal authority to bind the owner/holder; and if he/she had previously been represented by an attorney in this matter, either he/she revoked their power of attorney by filing a signed revocation with the USPTO or the USPTO has granted this attorney's withdrawal request.

Mailing Address: M.J. Williams
M.J. Williams Law

11 Broadway, Suite 615
New York, New York 10004
Mailing Address: M.J. Williams
M.J. Williams Law
11 Broadway, Suite 615
New York, New York 10004

PAYMENT: 90193700
PAYMENT DATE: 09/07/2021

Serial Number: 90193700
Internet Transmission Date: Sun Sep 05 15:05:17 ET 2021
TEAS Stamp: USPTO/POA-XX.XX.XXX.XX-20210905150517194
522-90193700-781e43ebe8f67768e87958ac7ef
bb296cbf38c86c15d7f82d4f4bf52c74f82d5e-C
C-05131669-20210905135607644410

Response to Office Action: PALADAR (Serial No. 90193700)

The examining attorney provisionally refused registration of PALADAR (Serial No. 90193700) on Section 2(d) grounds, arguing that its registration and use is likely to cause consumer confusion as to source with the registered mark PALATE VODKA (Reg. No. 5853402).

Applicant and the registrant respectfully disagree. The parties have entered a negotiated consent agreement allowing registration and use of PALADAR in connection with an amended set of goods concurrent with registration and use of PALATE VODKA. The agreement, annexed hereto, memorializes the parties' forbearances and affirmative "actions to ensure no consumer confusion as to the source of the Parties' goods and any perception of authorization by, or affiliation between the Parties will occur in the marketplace." See Consent Agreement, preamble.

Applicant submits that the parties' Consent Agreement, new evidence before the USPTO, should be given substantial weight, given its detailed terms calculated by the parties to avoid consumer confusion between the marks and their products and source in the marketplace. See *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1362 (CCPA 1973); see generally TMEP § 1207.01(d)(viii).

As is well-established, the likelihood of confusion analysis proceeds according to the factors set forth in du Pont. 476 F.2d 1357. In the Office Action, the examining attorney addressed two factors: similarity of the marks and the relatedness of their goods. Here, applicant provides evidence and analysis of the market interface between the marks, established by the owners' consent agreement. This additional examination of the marks and their use demonstrates that applicant's mark is entitled to registration.

The Consent Agreement

Under the tenth du Pont factor, "[m]arket interface between applicant and the owner of the prior mark," namely, agreements between the parties, is considered. du Pont, 476 F.2d at 1361. This factor requires an analysis of any consent agreement, determining whether its terms and conditions result in a "naked" or "clothed" agreement to registration and use of the later-introduced mark. See In re American Cruise Lines, Inc., 128 USPQ2d1157, 1162 (TTAB 2018).

A "naked consent agreement" is an agreement that contains little more than the registrant's consent to registration and perhaps a statement that confusion is believed to be unlikely. TMEP § 1207.01(d)(viii) (July 2021). In contrast, a more "clothed" agreement supplies a basis for the consent and/or undertaking to avoid confusion. See In re Donnay Int'l, S.A., 31 USPQ2d 1953, 1956 (TTAB 1994).

According to du Pont, a consent agreement constituting more than a mere naked consent should play a substantial role in the likelihood of confusion analysis. du Pont, 476 F.2d at 1362-63. Indeed, "the USPTO should not substitute its judgment concerning likelihood of confusion for the judgment of the real parties in interest without good reason," TMEP § 1207.01(d)(viii), given trademark owners' familiarity of the marketplace and financial interest in avoiding confusion. du Pont, 476 F.2d at 1362-63. Here, the marks' owners have provided numerous bases and undertakings, specific to their marks, products, and market, in order to consent to registration of applicant's mark. The parties' consent agreement should therefore be afforded substantial weight.

Namely, the Consent Agreement binds applicant to:

- Limit its use of PALADAR to only "Mezcal; Distilled agave liquor; Distilled blue agave liquor, namely tequila" and amend its application accordingly;
- Limit its packaging and trade dress of PALADAR products and stylization of the PALADAR mark to a "rustic look-and-feel, earth-toned color palette, imagery depicting the Mexican desert landscape and terrain, and its stylization of the PALADAR Mark in all capital lettering," as shown in the Consent Agreement's Exhibit A;
- Limit the graphic design and imagery used for marketing, advertising, and promotion of PALADAR products to a "rustic look-and-feel, earth-toned color palette, imagery depicting the Mexican desert landscape and terrain, and its stylization of the PALADAR Mark in all capital lettering," as shown in the Consent Agreement's Exhibit A
- Never use the English-language translation of "paladar, i.e., "palate," in connection with the PALADAR mark or its goods.

See Consent Agreement, 1.(a).

The Consent Agreement binds Registrant to:

- Limit its use of PALATE VODKA in the marketplace to only vodka;
- Never seek registration of PALATE in connection with applicant's goods or goods associated with applicant's goods, namely, "mezcal, tequila, agave liquors, and any spirits, liquors, alcoholic beverages including mixtures thereof, including beer, originating from or commercially associated with Mexico;"
- Limit its packaging and trade dress of PALATE VODKA products and stylization of the PALATE VODKA mark to designs that are visually dissimilar to applicant's packaging, trade dress, and stylization shown on the agreement's Exhibit A, namely, restrict itself to "a clean, modern look-and-feel, monochromatic color palette, and stylization;"

- Limit the graphic design and imagery used for marketing, advertising, and promotion of PALATE VODKA products to "a clean, modern look-and-feel, monochromatic color palette, and stylization," calculated to be distinct from applicant's design and stylization of PALADAR shown on the agreement's Exhibit A;
- Never use or refer to the Spanish-language translation of "palate," namely, paladar, in connection with the PALATE VODKA mark or goods.

See id., 1.(b).

Based on these forbearances, and the parties' Consent Agreement as a whole, the examining attorney should treat the parties' agreement as a "proper" or "clothed" consent agreement and afford it great weight. TMEP § 1207.01(d)(viii).

Other Factors

As the examining attorney must acknowledge, the parties' marks are distinguishable in their appearance and sound and the marks' respective goods, as amended, differ.

These differences, when materially amplified by the parties' agreement, which requires they each use visually dissimilar trade dress, stylization, and "look-and-feel" for marketing and promotion of their marks and their respective products, militate against consumer confusion.

Conclusion

Applicant respectfully submits that the facts and terms set forth in the parties' Consent Agreement demonstrate that confusion is not likely between the marks. The Consent Agreement, moreover, binds the parties to emphasize the distinct commercial impression each mark makes and not to offer the same or similar products. Accordingly, applicant respectfully requests that the examining attorney withdraw the refusal of registration and, upon consideration of applicant's complete response to the Office Action, approve the application for publication.

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TRADEMARK CONSENT AGREEMENT

This TRADEMARK CONSENT AGREEMENT (the "Consent Agreement") and its appended Confidential Service Agreement is entered into as of the later of execution dates set forth below (the "Effective Date") by and between TWO TALL TOQUES, LLC, a Florida Limited Liability Company with an address at 1089 Nottingham Drive, Naples, Florida 34109 ("TTT") and ICONOCLAST VENTURES, LLC, a Delaware Limited Liability Company with an address at 3828 Delmas Drive, Fort Worth, Texas 76116 ("Iconoclast") (collectively, the "Parties," and each separately, a "Party").

WHEREAS, TTT owns and has used the mark PALATE VODKA (the "PALATE VODKA Mark") in connection with vodka since April 1, 2019;

WHEREAS, TTT owns the following U.S. trademark registration: PALATE VODKA, Reg. No. 5,853,402, issued September 3, 2019, covering "Alcoholic beverages, except beer, namely, vodka" in Class 33 (the "'402 Registration");

WHEREAS, Iconoclast applied to register the mark PALADAR, Serial No. 90/193,700 on September 20, 2019 (the "'700 Application"), based on intent-to-use the mark in commerce in the United States of America in connection with "Mezcal; Distilled spirits; Distilled spirits produced in Mexico in accordance with specific standards; Alcoholic mixed beverages except beers; Distilled agave liquor; Distilled blue agave liquor; Prepared cocktails consisting primarily of distilled spirits and also including beer" in Class 33 (the "PALADAR Mark");

WHEREAS, the United States Patent and Trademark Office ("USPTO") issued an Office Action provisionally refusing registration of the '700 Application on likelihood of confusion grounds citing the '402 Registration;

WHEREAS, the Parties wish to clarify the extent of use and intended use of their respective marks, and the Parties desire to avoid future disputes between them regarding their respective trademarks;

WHEREAS, the Parties mutually agree that confusion in the marketplace between the PALATE VODKA Mark and the PALADAR Mark as applied to their respective goods is unlikely; however, the Parties wish to undertake actions to ensure no consumer confusion as to the source of the Parties' goods and any perception of authorization by, or affiliation between the Parties will occur in the marketplace;

WHEREAS, the Parties mutually agree that the '700 Application should be approved for registration by the USPTO and coexist on the USPTO Register with the '402 Registration;

WHEREAS, the Parties agree to enter a Confidential Service Agreement to be appended to this Consent Agreement as its Exhibit B (the "Service Agreement"), which provides good and valuable consideration for this Consent Agreement;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements contained in this Consent Agreement, the receipt and sufficiency of which the Parties acknowledge, each Party, intending to be mutually bound, agree as follows:

1. **Trademark Consent Provisions.**

a) Iconoclast shall:

i. not use the PALADAR Mark in connection with any alcohol other than mezcal, tequila, and other agave liquors;

ii. within five (5) business days of the Effective Date amend the recitation of goods articulated in the '700 Application to: "Mezcal; Distilled agave liquor; Distilled blue agave liquor, namely tequila" in Class 33;

iii. limit any of its future trademark filings featuring the PALADAR mark in Class 33 to "Mezcal; Distilled agave liquor; Distilled blue agave liquor, namely tequila";

iv. continue to use the PALADAR Mark on product packaging that is distinctive, namely, glass bottles affixed with rustic-style materials and paper labels in an earth-toned palette, said labels consisting of color photographs depicting Mexican desert terrain and scenery from the Mexican desert and rustic-style labelling identifying the goods, with literal terms, including the PALADAR Mark, in all capital lettering, as shown on Exhibit A;

v. use the same style of its product packaging shown on Exhibit A – namely, a rustic look-and-feel, earth-toned color palette, imagery depicting the Mexican desert landscape and terrain, and its stylization of the PALADAR Mark in all capital lettering – for its promotional, marketing, and advertising collateral in all media for the PALADAR Mark and its respective goods;

vi. not use or refer to the English-language translation of the literal term "paladar" in connection with the PALADAR Mark or the goods to which it is affixed.

b) TTT shall:

i. not use the PALATE VODKA Mark in connection with any alcohol other than vodka;

ii. limit any of its future trademark filings featuring the PALATE VODKA mark in Class 33 to "Alcoholic beverages, except beer, namely, vodka";

iii. limit any future trademark filings featuring the mark PALATE in Class 33 to exclude mezcal, tequila, agave liquors, and any spirits, liquors, alcoholic beverages including mixtures thereof, including beer, originating from or commercially associated with Mexico;

iv. continue to use the PALATE VODKA on product packaging that is distinctive, namely, glass bottles imprinted with clean, modern lower-case stylized lettering using a monochrome color palette;

v. use the same style of its product packaging – namely, a clean, modern look-and-feel, monochromatic color palette, and stylization of the PALATE VODKA Mark in lower-case lettering – for its promotional, marketing, and advertising collateral in all media for the PALATE VODKA Mark and its respective goods;

vi. not use or refer to the Spanish-language translation of the literal term "palate" in connection with the PALATE VODKA Mark or the goods to which it is affixed.

c) The Parties agree that their respective product packaging and trademark stylization are distinctly different and that each Party's compliance with the terms of this Consent Agreement shall prevent consumer confusion as to the source of their respective goods.

d) Iconoclast acknowledges that TTT owns valid and subsisting trademark rights in the PALATE VODKA Mark in connection with vodka, and so long as TTT complies with the terms of this Consent Agreement, Iconoclast shall not contest, object to, or otherwise challenge TTT's use and registration of the PALATE VODKA Mark in connection with vodka;

e) TTT will not object to or challenge Iconoclast's use or registration of the PALADAR Mark, or any other application owned by Iconoclast for the PALADAR mark, provided that Iconoclast complies with the terms of this Consent Agreement.

f) The Parties believe that their continued use of their respective trademarks under the terms of this Consent Agreement is not likely to cause confusion; however, should either Party become aware of any actual confusion among the consuming public resulting from the concurrent use of the PALATE VODKA Mark and the PALADAR Mark, that Party shall notify the other Party and provide all details, including proof of such actual confusion within fifteen (15) business days of their notice of its occurrence. Upon such notice, the Parties shall promptly confer and cooperate in good faith to take steps commensurate with the scope and extent of the confusion to promptly abate its cause and to prevent such confusion from reoccurring.

2. **Breach and Cure; Waiver.** Exclusive and apart from the procedure set forth at Paragraph 1.(f) of the Consent Agreement, if either Party has a dispute with the other Party regarding any term, provision, matter of, or in connection with the Consent Agreement, then the aggrieved Party shall give written notice to the other Party regarding such dispute, and the Party receiving such notice shall have fifteen (15) business days from receipt of such written notice to cure and/or remedy any such dispute, including by

conferring in good faith with the aggrieved Party, who shall cooperate in good faith, to the extent the circumstances of the dispute merit and warrant, to resolve the dispute. No breach of any provision of the Consent Agreement shall be waived unless waived expressly and in writing. The failure of either Party at any time to require strict performance by the other Party of any provision of Consent Agreement shall in no way affect the full right to require such performance at any time thereafter, nor shall the waiver by either Party of a breach of any provision of Consent Agreement be a waiver of any succeeding breach of the same or any other provisions of the respective Agreement;

a) Effect of Breach. If a breach of the Consent Agreement is not cured as set forth herein, the Parties agree that the Consent Agreement and all obligations, promises, covenants, and agreements provided therein shall terminate.

3. **Termination.** This Consent Agreement shall terminate if either party ceases to use its trademark(s) at issue in this Consent Agreement with no intention to resume use, or otherwise abandons its right to use the respective trademark(s).

4. **Terms and Provisions of the Consent Agreement and the Confidential Service Agreement.**

a) Scope. The geographic scope of the Consent and Service Agreements is worldwide.

b) Entire Agreement. Severability; Amendment. The Consent Agreement and Service Agreement constitute the entire understanding and agreement between the Parties regarding the subject matter of each Agreement and supersedes and replaces any prior agreements or understandings. All recitals contained and/or referenced in the Consent Agreement and the Service Agreement are fully incorporated as part of each said Agreement. If any provision, or any part of any provision, of the Consent Agreement or Service Agreement is determined by a court to be unenforceable, the Parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from the respective Agreement, and the remainder of that Agreement will continue in effect. The Consent Agreement and Service Agreement may not be changed or modified in any way except by another written, agreement executed by both Parties that specifically refers to the respective Agreement.

c) Binding Effect; Assignment. The Consent Agreement and Service Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns, and all others acting by, through or in privity with the Parties. The rights and obligations of the Parties shall be freely assignable provided that the assigning Party must provide prior written notice of the assignment to the other Party. By taking an assignment, an assignee shall be deemed to have accepted and agreed to perform all

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of the rights and obligations of the assignor under the Consent Agreement and Service Agreement.

d) Representations; Warranties. Each Party represents and warrants that it has reviewed and executed the Consent Agreement and Service Agreement freely, fully intending to be bound by their terms and provisions, and that it has full power and authority to execute, deliver, and perform Consent Agreement and Service Agreement. Each Party further acknowledges that it has had the opportunity to consult with counsel and to seek counsel's advice with respect to the negotiation and execution of the Consent Agreement and Service Agreement.

e) No Relationship. Nothing contained in the Consent Agreement and Service Agreement shall in any way be construed to create an agency relationship, partnership, or joint venture between the Parties.

f) No Other Rights Conferred. Nothing contained in the Consent Agreement and Service Agreement shall be construed as conferring by implication, estoppel, or otherwise upon either Party herein any license or other right except the licenses, rights, and uses expressly granted to a Party in the Consent Agreement and/or Service Agreement to a Party hereto.

g) Interpretation. The Parties agree that the Consent Agreement shall be interpreted under the trademark law of the United States of America and that the Consent Agreement and the Service Agreement shall be interpreted under the laws of the State of New York.

h) Venue. The Parties agree that the exclusive venue for litigation of any dispute related to the Consent Agreement and the Service Agreement shall be in the State of New York.

i) Attorneys' Fees. The parties agree to bear their own costs and attorneys' fees associated with the negotiation and entry into the Consent Agreement and Service Agreement, including, any action brought by either party to enforce the terms of the Consent Agreement or Service Agreement.

j) Notices. Any notices or other communication pursuant to Consent Agreement and Service Agreement shall be in writing and (a) mailed by certified or registered mail, return receipt requested, or (b) delivered by a recognized national overnight or express mail courier service. A duplicate of any such notice shall also be delivered by email to the other Party.

If to TTT, to the following:

Two Tall Toques, LLC
1089 Nottingham Drive
Naples, Florida 34109
Email: info@palatevodka.com

With a copy, by email only to:
law@lawipgroup.com

If to Iconoclast, to the following:

Iconoclast Ventures, LLC
3828 Delmas Drive
Fort Worth, Texas 76116
Email: nate@drifterspirits.com

With a copy, by email only to:
M.J. Williams (mjwilliams@mjw-law.com)

k) Counterparts. The Consent Agreement and Service Agreement may be executed in identical counterparts with the same force and effect as if the signature(s) were made on a single instrument. The Consent Agreement and Service Agreement are deemed to be executed and effective as of the later of the dates on which a Party signs a counterpart to the respective Agreement. Any signature created and/or transmitted via digital means shall be fully enforceable as an original signature.

IN WITNESS WHEREOF, the parties hereto have duly executed this Consent Agreement as of the Effective Date indicated below.

TWO TALL TOQUES, LLC

DocuSigned by:
Name: D3C53B112BF5425...

Printed Name: Brian Lord

Title: Managing Member

Date: August 27, 2021

ICONOCLAST VENTURES, LLC

DocuSigned by:
Name: Nathan Whitehouse
B85804CB92BA439...

Printed Name: Nathan Whitehouse

Title: Managing Member

Date: August 27, 2021

DocuSign Envelope ID: 8C7F805C-147B-4B4E-931C-BC719C6E1B99

EXHIBIT A

DocuSign Envelope ID: 8C7F805C-147B-4B4E-931C-BC719C6E1B99

PALADAR Mark product packaging

RAM SALE NUMBER: 90193700

RAM ACCOUNTING DATE: 20210907

INTERNET TRANSMISSION DATE:

2021/09/05

SERIAL NUMBER:

90/193700

Description	Fee Code	Transaction	Total Fees Paid
	7010	2021/09/05	150
	7008	2021/09/05	100