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August 23, 2010

Mr. Richardson C. Griswold, Esq.
Griswold Law
101 N. Acacia Ave., Suite 120
Solana Beach, CA 92075

Via fax: 888.624.9177
and by post

Re: *Port Brewing, LLC adv. Moylan's Brewery & Restaurant*

FAXED

Dear Mr. Griswold:

This office represents Moylan's Brewery & Restaurant of Novato, California, in trademark, copyright and related intellectual property matters. We are in receipt of a letter dated May 19, 2010, from another attorney, Pollie Gautsch, Esq., as well as your letter dated July 13, 2010, addressed to Daniel Bornstein, Esq., regarding the above matter. Please be advised that this matter has been referred to this office for consideration and response.

At the outset, be assured that Moylan's Brewery & Restaurant respects the intellectual property of others and would not intentionally violate valid trademarks of any third party, including Port Brewing, LLC. While my client disputes that your client's design is, in fact, a "Celtic cross", we do note that cross designs similar to the designs claimed by your client have been in wide spread use and in the public domain for thousands of years. Cross designs like the designs alleged by your client have also been used for many years in a wide variety of industries, including within the restaurant and brewing industries. Indeed, I have represented several breweries, brew pubs and restaurants over the years and I am aware that this type of cross symbol is in wide use in the restaurant and beverage industries.

Ms. Gautsch's letter refers to two recently-filed applications for federal trademark registration, i.e. Serial Nos. 85/038,380 and 85/038,385. However, as I am sure you are aware, your client's application is of no evidentiary value whatsoever. Such an application confers none of the presumptions or benefits provided under federal law. See, 15 U.S.C. §1115.

Mr. Richardson C. Griswold, Esq.
August 23, 2010
Page Two

I note that Application Serial No. 85/038,380, alleges October 1, 2005, as your client's first use date in commerce. As set forth above, however, many others, including my client, used cross designs in this industry long before 2005. For example, my client has used cross top beer taps for many years, dating back to at least as early as January, 1999. I am enclosing a copy of an invoice dated "01/07/99", which evidences my client's use several years before the first use date claimed in your client's application for trademark registration.

I also note that Application Serial No. 85/038,385, is a "words only" application to register the words THE LOST ABBEY for beer tap handles in International Class 7. My client is obviously not using the words claimed in this application, and your client's reference to this application in connection with this matter is considered to be without any reasonable basis and, therefore, frivolous.

In terms of any alleged common law rights, your client has not provided, and our investigation has not revealed, any evidence that your client's mark has attained any secondary meaning in the marketplace. There simply is no evidence that any relevant class of consumers have come to recognize your client's alleged cross design as an indicator of source.

Ms. Gautsch's contention that your client's cross design is a "famous trademark" is also entirely without merit. Under Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c)(2)(A)(i)-(iv), "a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the marks' owner." In determining whether a mark is famous, a "court may consider all relevant factors, including" the four factors set forth in subsections (i)-(iv) of the statute. As set forth above, there is no secondary meaning or other consumer recognition of your client's cross design as a designation of source. It is, therefore, entirely unreasonable for your client to contend its beer tap is "famous", i.e. "widely recognized by the general public of the United States".

Moreover, your client's infringement allegations are false because the parties' respective marks are dissimilar and convey distinctly different marketplace impressions. As I am sure you are aware, the test for trademark infringement is whether or not there is a likelihood of consumer confusion in the marketplace regarding the source of the parties' respective products. In the present case, there are substantial dissimilarities between the marks, e.g. different words, coloring, stylized lettering, proportion, which preclude any such likelihood of confusion.

My client's consistent use of its stylized "M" design on the top front portion of its tap and its company name, MOYLAN'S, written in bright yellow letters on the side of the tap, in combination with the names of its beers, for example, "POMEGRANATE WHEAT ALE" or "CELTS GOLDEN ALE", which appear in bright letters on the front of the tap, clearly identifies my client as the source of its products in the marketplace. As set forth above, your client has not

Mr. Richardson C. Griswold, Esq.
August 23, 2010
Page Three

and cannot reasonably allege my client's use of the words THE LOST ABBEY, as claimed and used by your client. This is further evidence that the marks are dissimilar and not likely to lead to any confusion in the marketplace. We are aware of no instances in which any consumer has expressed any confusion as the source of the parties' respective products.

Notwithstanding the lack of merit of your client's allegations, however, my client previously agreed to change the style of its Celtic cross tap handle upon the exhaustion of its current inventory. This is all my client offered and it is all that my client is willing to do. My client made this offer of compromise in good faith to avoid the waste of time and money associated with litigating the matter. Indeed, my client specifically denies any liability with respect to Port Brewing, LLC's allegations of infringement in this matter.

If this matter is not resolved pursuant to my client's offer, and your client files suit, be advised that my client will vigorously defend its rights. This defense shall include my client's opposition to any application for registration and/or cancellation of any registration relating to your client's alleged cross design. My client shall also seek a court declaration that your client's alleged trademark is in the public domain and invalid, and request sanctions under Fed. R. Civ. P. Rule 11, on the grounds that your client's claims are frivolous, unwarranted by existing law, and without any evidentiary support.

While my client remains desirous of resolving this matter pursuant to the terms previously offered, it is also very protective of its rights and will vigorously defend the matter as set forth above. Therefore, please discuss the above with your client and let me know of its acceptance of my client's offer.

If you have any questions or comments regarding the above do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael James Cronen', with a long, sweeping horizontal line extending to the right.

Michael James Cronen

MJC/mc

cc: Moylan's Brewery & Restaurant,
Pollie A. Gautsch, Esq.

Sculpture Concepts
 4451 Highway 20
 Marysville, CA 95901
 (530)742-7070, fax (530)742-7770

Invoice

Date	Invoice No.
01/07/99	3368

Bill To
Moylan's Brewery & Restaurant Brenden Moylan 15 Roland Way Navato, CA 94945

Ship To
Moylan's Brewery & Restaurant Curtis Cassidy 15 Roland Way Navato, CA 94945

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P.O. Number	Terms	Due Date	Rep	Ship Date	Ship Via	FOB	Project	
phone CC	Visa	01/07/99	RL	01/07/99	UPS	Loma Rica		
Item	Description				Quantity	Rate	Amount	
#1001 Celtic Cross Shipping	Square tap 7"				51	5.99	305.49T	
	Small "Celtic Cross" custom tap handle				10	15.75	157.50T	
	Shipping					16.93	16.93	
	Sales Tax					7.25%	33.57	
We appreciate your business							Total	\$513.49