


**CONSENT TO USE AND REGISTER
AGREEMENT**

This Agreement is entered into this ____ day of April, 2018 by and between the parties, Noble Savage Inc., 18 East Main Street, Somerville, NJ 08876 (“Applicant”) and Verve, LLC, 104 Bronson St., Ste. 19, Santa Cruz, CA 95062 (“Registrant”) (collectively, “parties”).

RECITALS

A. Registrant owns U.S. Trademark Registration No. 4588343 (Registered August

VERVE
COFFEE ROASTERS

19, 2014) for the mark  for “Restaurant and cafe services, namely, preparation of food and drink for consumption and supplying coffee to restaurant and café facilities,” and U.S. Trademark Registration No. 4959141 (Registered May 17, 2016) for the mark VERVE COFFEE ROASTERS for “Restaurant and cafe services, namely, preparation of food and drink for consumption and restaurant and café coffee supply services” both registrations being in International Class 043, and both with a claimed date of first use in commerce of November 19, 2007 (the “VERVE COFFEE ROASTERS Registrations”).

B. On October 26, 2015, Applicant filed in the U.S. its Trademark Application, Serial No. 86799478, based on use in the United States of the mark, VERVE, for “Bar and cocktail lounge services; Bar and restaurant services” with a claimed date of first use in commerce of 1996 (the “Application”).

C. On February 17, 2016 (and February 7, 2017) the Application was refused registration under Section 2(d) by the United States Patent and Trademark Office (“USPTO”) based on prior registrations including the VERVE COFFEE ROASTERS Registrations.

D. The parties believe that their respective marks are not likely to be confused and that the marks create substantially different commercial impressions based upon, *inter alia*, the nature of the parties' respective services, the variations of the parties' respective marks, and the manner of use of the marks by each respective party.

E. The parties wish to confirm the validity of their respective marks and their respective rights to use the same, and to facilitate registration of VERVE to Applicant and the continued registration of the VERVE COFFEE ROASTERS Registrations to Registrant, and to take appropriate steps to avoid any likelihood of confusion or actual confusion with respect to the marks of the parties both in commerce and in interstate commerce.

F. This Agreement is expressly contingent upon the withdrawal by the USPTO of the 2(d) citation for the VERVE COFFEE ROASTERS Registrations against the Application and or any subsequent 2(d) citation against the Application for other applications or registrations owned by Registrant. In the event the 2(d) citations (or subsequent 2(d) Registrant citations against the Application) are not ultimately withdrawn by the USPTO, this Agreement in its entirety shall be considered null and void.

IN CONSIDERATION of the foregoing expressed and mutual recitals contained herein, the parties agree as follows:

1. The parties incorporate above clauses A-F, as if fully set forth herein.
2. The parties are business persons well-acquainted with the hospitality industry, namely the restaurant business. Registrant has used its VERVE COFFEE ROASTERS marks in commerce for over ten years, namely since December of 2007. Applicant has used its VERVE mark in commerce for over 20 years, namely since 1996. Neither party has ever encountered an

instance of consumer or wholesaler confusion, mistake, or deception in interstate commerce or otherwise.

3. The parties acknowledge that Registrant's mark, VERVE COFFEE ROASTERS, immediately conveys a meaning and commercial impression that the services are related to coffee and coffee roasting and that Applicant's mark has no such meaning or commercial impression.

4. Registrant's VERVE COFFEE ROASTERS marks recite "supplying coffee to restaurant and café facilities" and "café coffee supply services". Applicant has not sought to register and agrees not to register or use its VERVE mark on or in association with "supplying coffee to restaurant and café facilities" or providing "café coffee supply services".

5. Registrant deals in a casual cafe style arrangement that does not serve alcohol and that is mainly geared around coffee and pastries.

6. Applicant is a sophisticated white-tablecloth, sit-down type restaurant and bar offering alcoholic drinks. Coffee is incidental to Applicant's services and is not the focus or theme of Applicant's services.

7. Subject to and upon approval of the USPTO, Applicant will amend the recitation of services in its application to state "Bar and cocktail lounge services; Bar and restaurant services with coffee not being a prominently featured item."

8. Registrant agrees that Applicant's VERVE mark as set forth in Applicant's Application for Applicant's services, as amended in paragraph 7 above, is not likely to be confused with Registrant's VERVE COFFEE ROASTERS marks.

9. Applicant agrees that Registrant's VERVE COFFEE ROASTERS marks as set forth in Registrant's VERVE COFFEE ROASTERS Registrations is not likely to be confused

with Applicant's VERVE mark as set forth in Applicant's Application for Applicant's services, as amended in paragraph 7 above.

10. Registrant shall not challenge the use, Application or registration of Applicant's VERVE mark provided the services offered are limited to or substantially similar to those stated in the VERVE Application as amended in paragraph 7 above.

11. Applicant shall not challenge the use or registration of Registrant's VERVE COFFEE ROASTERS marks provided the services offered are limited to or substantially similar to those stated in Registrant's VERVE COFFEE ROASTERS Registrations and/or the goods stated in the registrations attached hereto as Appendix A, namely Registrations Nos. 3652173, 4575443, and 4716147.

12. Applicant agrees that it will not use the words COFFEE ROASTERS as a trademark.

13. In the event either party deems that advertising, promotional or marketing activity of the other party utilizing the marks that are the subject of this Agreement creates a likelihood of confusion to its mark, said party shall promptly notify the other and provide it with a suggestion for aborting any such likelihood of confusion; and, the parties agree to use their best efforts to resolve such matters and to avoid any such likelihood of confusion. In the event the parties cannot resolve the matter through such efforts, the parties agree to settle the matter through arbitration or mediation.

14. The parties consent to the use and registration of their respective marks for the services identified in their respective Registrations and Application as set forth above.

15. To enable Applicant to obtain registration(s) for its mark(s), Registrant expressly consents to the submission of a copy of this Agreement as evidence of Registrant's consent and will execute all necessary, relevant, and consenting documents with respect thereto.

16. This Agreement shall be binding on the assigns, successors in interest and subsidiaries, direct or indirect, of both parties.

17. Any notice or other communication given pursuant to this agreement shall be in writing and shall be deemed to have been given on the earlier of (1) receipt or (2) five days after notice was sent to the receiving party at the addresses first set forth above or to such other addresses or telecopier numbers as such parties shall from time to time have specified in the manner indicated in this Section.

18. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of such provision or waiver of the right of either party to thereafter enforce such provision.

19. This Agreement may not be amended except by a writing signed by the parties hereto. There are no understandings, agreements or representations, express or implied, not otherwise specified herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first written above.

Noble Savage Inc.



By: Richard St. Pierre, President.

Verve, LLC.



By: Mike Eyre, CFO