

**CONSENT TO USE AND REGISTER
AGREEMENT**

This Agreement is entered into this ___ day of _____, 2018 by and between the parties, Noble Savage Inc., 18 East Main Street, Somerville, NJ 08876 (“Applicant”) and Verve, Inc., 2 Mill Street, Orono, ME 04473 (“Registrant”) (collectively, “parties”).

RECITALS

A. Registrant owns U.S. Trademark Registration No. 4695230 (Registered March 3,



2015) for the mark **VERVE** and U.S. Trademark Registration No. 4695229 (Registered March 3, 2015) for the mark VERVE BURRITOS, both in International Class 030 for “Restaurant and take-out restaurant services” with a first use of December 31, 2005 (the “VERVE BURRITOS 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 first use dating back to 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 BURRITOS 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 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 VERVE BURRITOS Registrations as a 2(d) citation against the Application. In the event the VERVE BURRITOS Registrations are not ultimately withdrawn by the USPTO as a 2(d) citation, this agreement shall be considered null and void.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 BURRITOS marks in commerce for over twelve years, namely since December of 2005. Applicant has used its VERVE mark in commerce for over 20 years, namely since 1996. The parties have been aware of each other for a number of years now, and neither party has ever encountered an instance of consumer or vendor confusion, mistake, or deception in interstate commerce or otherwise.
3. The parties acknowledge that Registrant's mark, VERVE BURRITOS, immediately conveys a meaning and commercial impression that the services are related to burritos and that Applicant's mark has no such meaning or commercial impression.
4. Registrant deals in a fast-food or takeaway style arrangement that is mainly geared around burritos and features Mexican cuisine. Applicant does not.

5. Applicant is a sophisticated white-tablecloth, sit-down type dinner restaurant and cocktail bar. Applicant has never served burritos, and Mexican or South American cuisine has never been the focus or theme of Applicant's services or the food it serves.

6. 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, excluding the service of "burritos" and excluding "take-out restaurant services".

7. Registrant agrees that Applicant's VERVE mark as set forth in Applicant's Application for Applicant's services, as amended in paragraph 6 above, is not likely to be confused with Registrant's VERVE BURRITOS marks.

8. Applicant agrees that Registrant's VERVE BURRITOS marks as set forth in Registrant's VERVE BURRITOS 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 6 above.

9. 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 6 above.

10. Applicant shall not challenge the use or registration of Registrant's VERVE BURRITOS marks or any application for a combination mark employing the mark VERVE, provided the services offered are limited to or substantially similar to those stated in Registrant's VERVE BURRITOS Registrations.

11. Applicant agrees that it will not use the word "burritos" as, or as part of, a trademark in association with "VERVE".

12. 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.

13. 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.

14. 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.

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

16. 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 addressees 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.

17. 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.

18. 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.

Verve, Inc.

By: _____

By: _____