

COEXISTENCE AND CONSENT AGREEMENT

This agreement (the “Agreement”) is entered as of this 31 day of January, 2021 (“Effective Date”), by and between Tilla Care Ltd., a corporation organized and existing under the laws of Israel with a principal place of business located at 2nd Elgar St., Carmel Building, Entrance 2, 1st Floor, Tirat Carmel, 3903213, Israel (“Tilla Care”), and Tilen Tercelj Schweizer, an individual residing at Kocenska 11, Ljubljana, Slovenia 1000 (“Schweizer”).

WHEREAS, Tilla Care is the owner of the mark TILLACARE for medical devices for the collection of urine in elderly, infirm and incontinent persons, namely, non-invasive catheters;

WHEREAS, Tilla Care is the owner of U.S. Registration No. 5,974,615 of its TILLACARE mark (the “TILLACARE Registration”);

WHEREAS, Tilla Care also uses the name and mark TILLA CARE for medical devices for the collection of urine in elderly, infirm and incontinent persons, namely, non-invasive catheters

WHEREAS, Schweizer is the owner of the mark TILCARE & Design shown below



for medical apparatus, namely, an ear wash device in the nature of a container to be filled with appropriate fluid by the user for flushing ear wax from the ear and portable hand-held urinals;

WHEREAS, on June 18, 2019, Schweizer filed Application Serial No. 88/477,225 to register TILCARE & Design for medical apparatus, namely, an ear wash device in the nature of a container to be filled with appropriate fluid by the user for flushing ear wax from the ear and portable hand-held urinals (the “TILCARE Application”);

WHEREAS, on May 26, 2020, the Patent and Trademark Office (“PTO”) issued an office action refusing registration of the TILCARE & Design mark because the PTO found that there is a likelihood of confusion between the TILLACARE mark and the TILCARE & Design mark;

WHEREAS, on November 26, 2020, Schweizer filed a response arguing that there is no likelihood of confusion between the TILLACARE mark and the TILCARE & Design mark;

WHEREAS, the PTO has not yet responded to Schweizer's response; and

WHEREAS, the parties herein believe that they can coexist under their respective TILLACARE and TILCARE & Design marks and wish to enter into a Coexistence Agreement that defines the terms of such coexistence;

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter stated, the parties agree as follows:

1. Use of the TILLACARE Mark and Consent to the TILCARE Mark.

(a) After the Effective Date, Tilla Care shall not use or seek to register the mark "TILCARE" for any goods or services.

(b) After the Effective Date, Tilla Care shall not use the TILLACARE or TILLA CARE mark for any ear wash devices or any portable urine collection devices.

(c) Tilla Care consents to registration of the mark TILCARE & Design that is the subject matter of the TILCARE Application, and shall not object to, and shall provide separate written consent if necessary to, the TILCARE Application and to future applications filed by Schweizer for the mark TILCARE in word or design format for ear wash devices and/or portable urinals, provided that such application complies with the terms of this Agreement.

(d) Tilla Care consents to use of the TILCARE & Design and TILCARE mark by Schweizer for ear wash devices and portable urinals, so long as such use complies with the terms of this Agreement.

2. Use of the TILCARE Mark and Consent to the TILLACARE Mark.

(a) After the Effective Date, Schweizer shall not use or seek to register the mark "TILLACARE" or "TILLA CARE" for any goods or services.

(b) After the Effective Date, Schweizer shall not use the TILCARE mark for any catheters or other non-portable urine collection devices.

(c) Schweizer consents to registration of the TILLACARE mark that is the subject matter of the TILLACARE Registration, and shall not object to, and shall provide written consent if necessary to, future applications filed by Tilla Care for the marks TILLACARE and TILLA CARE in word or design format for medical devices for the collection of urine in elderly, infirm and incontinent persons, namely, non-invasive catheters, provided that any such application complies with the terms of this Agreement.

(d) Schweizer consents to use of the TILLACARE and TILLA CARE name and mark by Tilla Care so long as such use complies with the terms of this Agreement.

3. Acknowledgement of Parties. The parties recognize and acknowledge the differences between their respective marks and their respective goods and services. The parties do not believe that there exists any confusion between them, their marks, and their respective goods and services due to the differences in their respective marks, the differences in their respective goods and services, and the differences in the types of customers they target, if they use their respective marks in accordance with the terms of this Agreement. The parties agree and acknowledge that it is unlikely that the concurrent use of TILLACARE and TILLA CARE for medical devices for the collection of urine in elderly, infirm and incontinent persons, namely, non-invasive catheters, on the one hand, and the TILCARE mark for ear wash devices and portable urinals, on the other, will create confusion among consumers as to the source, origin, or sponsorship of the parties' respective goods and services. This conclusion is supported by differences between how they use their marks, differences in their core businesses, and differences in the customers targeted by the parties. Specifically:

- (a) The marks are different in sight, sound and overall commercial impression;
- (b) Schweizer's ear wash devices are very different from Tilla Care's non-invasive catheters;
- (c) Tilla Care does not sell ear wash devices.
- (d) Tilcare's portable urinals are very different from Tilla Care's non-invasive catheters;

- (e) In the case of Schweizer's portable urinals, such products are primarily marketed to and used by persons who do not have easy access to restroom facilities and need a portable urinal for relief;
- (f) In contrast, in the case of Tilla Care's non-invasive catheters, such products are primarily marketed to hospitals, nursing homes, and medical providers for use by bed-ridden patients;
- (g) Customers of Tilla Care's non-invasive catheters either provide medical care to bed-ridden patients or are bed-ridden patients themselves and have no need for portable catheters;
- (h) Customers of Schweitzer's goods are unlikely to believe that they originate from a provider of non-invasive catheters.
- (i) Similarly, customers of Tilla Care's goods are unlikely to believe that they originate from a provider of ear wash devices and portable urinals.

4. Future Disputes. Tilla Care and Schweizer agree that, in their own opinion, there is no likelihood of confusion between Tilla Care's TILLACARE and TILLA CARE names and marks, on the one hand, and Schweizer's TILCARE mark, on the other, when used to identify their respective goods and services, so long as the terms and conditions of this Agreement are met. In the event that, notwithstanding the foregoing, actual confusion develops in the marketplace, the parties shall take all reasonable steps necessary to eliminate such confusion. In the event that a dispute arises with respect to use of the TILLACARE or TILLACARE name and mark, on the one hand, and the TILCARE mark, on the other, the parties shall make good faith efforts to resolve any dispute between themselves regarding the subject matter of this Agreement ("Dispute") before resorting to litigation or other adversary proceeding. Such efforts include written notice of any alleged breach of this Agreement in accordance with the notice provision of Paragraph 7(c), if applicable, and a "cool down" period of thirty (30) business days for discussions after notice has been provided before the institution of any adversary proceeding in regard to a Dispute. If the party who has committed the alleged breach cures the alleged breach during this thirty-day "cool down" period, then such party shall not be liable for such alleged breach.

5. Right to Void Agreement. In the event that the U.S. Patent and Trademark Office rejects, and after appeal to the Trademark Trial and Appeal Board ("TTAB"), the TTAB rejects, Tilcare's application to register a TILCARE mark for medical apparatus, namely, an ear wash device in the nature of a container to be filled with appropriate fluid

by the user for flushing ear wax from the ear and portable hand-held urinals, as is contemplated herein, on the basis of a likelihood of confusion with a Tilla Care mark despite the Parties' having entered into and complied with this Agreement, then the Parties agree to explore in good faith other actions which they may reasonably take, singly or jointly, including, if necessary, filing for concurrent use registration of their respective marks in their respective areas of exclusive use as defined herein, to allow each Party to register their respective marks with the PTO as is contemplated by and intended under this Agreement. If, after such reasonable actions are taken by the Parties, Tilcare is unable to register a TILCARE mark as contemplated by this Agreement, then and only then, this Agreement shall be voidable by either party and therein not admissible as evidence in any administrative or judicial proceeding pursuant to Fed. R. Evid. 408.

6. Releases.

(a) Tilla Care, on behalf of itself and its parents, subsidiaries, affiliates, successors and assigns, hereby fully releases and discharges Schweizer and his predecessors, heirs, assigns, employees, attorneys, agents, insurers, business partners, vendors, members, and customers, from any and all claims, demands, causes of action, obligations, damages and liabilities of any nature whatsoever, arising from or related to the TILCARE Application and/or use of the TILCARE mark in word or design format, whether presently known or unknown, from the beginning of time to the Effective Date of this Agreement.

(b) Schweizer, on behalf of himself and his heirs and assigns, hereby fully releases and discharges Tilla Care and its parents, subsidiaries, affiliates, predecessors, successors, assigns, directors, officers, employees, attorneys, agents, insurers, business partners, vendors, members, and customers, from any and all claims, demands, causes of action, obligations, damages and liabilities of any nature whatsoever, arising from or related to the TILLACARE Registration and/or use of the TILLACARE and TILLA CARE names and marks, in word or design format, whether presently known or unknown, from the beginning of time to the Effective Date of this Agreement.

7. Miscellaneous.

(a) Each party warrants and represents to the other that it has the full right, power and authority to execute and perform the obligations of this Agreement.

(b) Each party shall bear its own attorney's fees and costs.

(c) Any notice required to be given by either party to the other shall be in writing and shall be given by courier, other personal delivery, by express or special delivery air transmittal such as FedEx, DHL or Airborne Express (“overnight mail”) or by registered or certified mail addressed to:

For Tilla Care:

Dr. Jonah Gavrieli
IP Manager
Tilla Care Ltd.
2nd Elgar St.
Carmel Building, Entrance 2, 1st Floor
Tirat Carmel, 3903213, Israel

With a copy sent by email to:

Elizabeth G. Borland - eborland@sgrlaw.com
Dr. Jonah Gavrieli - jonah@tillacare.com

For Schweizer:

Tilen Tercelj Schweizer
Kocenska 11 Ljubljana SLOVENIA 1000

With a copy sent by e-mail to:

Stephen F. Roth - sroth@lernerdavid.com
Tilen Tercelj Schweizer - tilen@tilcotrading.com

(d) This Agreement may not be changed, modified, amended or supplemented, except in a writing signed by the parties.

(e) If part of this Agreement is held unenforceable or invalid, it shall not affect the enforceability of the other parts of the Agreement or the total Agreement.

(f) This Agreement does not constitute or imply a partnership, joint venture, agency, employer/employee relationship, or any other similar relationship between the parties hereto.

(g) The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion will not be construed as a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(h) This Agreement is binding upon the parties, their successors or assigns and any user or licensee, which may be appointed by either of them.

(i) Neither party shall issue any press release, make a public announcement or otherwise reveal to any third party the existence and/or terms of this Agreement without the prior written consent of the other party, except as required by law, and except as necessary to obtain registrations of either party's marks.

(j) This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior contemporaneous agreements, oral or in writing.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

TILLA CARE LTD.

By:  _____

Name: Michael Cohn

Title: CEO

TILEN TERCELJ SCHWEIZER

(g) The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion will not be construed as a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

(h) This Agreement is binding upon the parties, their successors or assigns and any user or licensee, which may be appointed by either of them.

(i) Neither party shall issue any press release, make a public announcement or otherwise reveal to any third party the existence and/or terms of this Agreement without the prior written consent of the other party, except as required by law, and except as necessary to obtain registrations of either party's marks.

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TILLA CARE LTD.

By: _____
Name:
Title:



TILEN TERCELJ SCHWEIZER