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September 14, 2012

**VIA ELECTRONIC MAIL([trademarkdocket@jmbm.com](mailto:trademarkdocket@jmbm.com))  
AND FIRST CLASS MAIL**

Rod S. Berman, Esquire  
Jeffer Mangels Butler & Mitchell LLP  
1900 Avenue of the Stars FL 7  
Los Angeles, California 90067-4308

RE: PALE 31  
Owner: Firestone Walker LLC  
USPTO Registration No.: 3996999  
Our File No.: 25839.304212

Dear Mr. Berman:

We represent DuClaw Brewery LLC, a Maryland limited liability company, who is attempting to register its trademark: 31 (Class 32, namely beer, ale, and porter). My client's goods and services are solely beer, ale, and porter in connection with its proposed trademark filing. However, the U.S. Patent and Trademark Office (USPTO), has refused to register my client's trademark citing that marks are highly similar and the goods are related to and overlapping of your above-referenced client's goods, namely beer under the above referenced registered trademark. It appears your client is a Firestone Walker LLC operating in Buellton, California.

Our client's purported use of the numeral "31" is to denote a specific seasonal beer product released by DuClaw Brewery LLC on October 31st, and brewed only during the Fall season each year. 31 is a spiced munich dunkel beer. Please see a copy of our specimen tap handle as submitted to the USPTO.

While the above marks may appear to be similar because of their use of the number 31, and the goods may appear related, despite the USPTO's position, we are seeking on behalf of our client, a Co-Existence Agreement such that both parties would agree to the registration of their respective trademarks under certain terms and conditions based upon the distinctions in the use of the trademark as described above.

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We are also seeking a Co-Existence Agreement with the Registrant, Bayou Teche Brewing, LLC, a Louisiana limited liability company, who currently owns the Registered trademark LA 31, for beer, pursuant to Registration No. 4157265.

If your client is willing to enter into such a Co-Existence Agreement, please advise me of same. I have enclosed a copy of the form of Co-Existence Agreement we would be seeking. If acceptable to your client, please arrange for execution in counterpart and I will do the same on behalf of my client. If your client requires any changes, please contact me.

We appreciate your prompt attention to this request as our response to the USPTO's refusal is due September 14, 2012. I have spoken to Ronald McMorrow, the Examiner, and he has agreed to grant us three weeks to obtain this Co-Existence Agreement should your client be willing to do so.

With kindest regards, I am

Sincerely,



Colleen Ferg Helmlinger  
[chelmlinger@gsmllaw.com](mailto:chelmlinger@gsmllaw.com)

16.6383

Enclosures

cc: Rusty Pachilis, CFO  
DuClaw Brewery LLC

## CO-EXISTENCE AGREEMENT

This Co-Existence Agreement (this "Agreement"), entered into as of the date stated below, is by and between DuClaw Brewery LLC ("DuClaw Brewery"), a Maryland limited liability company, located at 16 A Bel Air South Parkway, Bel Air, Maryland 21015, and Firestone Walker LLC ("Firestone"), a California limited liability company, located at 620 McMurray Road, Buellton, California 93427.

WHEREAS, DuClaw Brewery has adopted and has used the mark 31 in connection with beer, ale and porter (International Class 32) since at least as early as September 1, 2007 and has filed for U.S. trademark registration under Serial No. 85479933;

WHEREAS, Firestone has adopted and has used the mark PALE 31 in connection with beer (International Class 32) since at least as early as February 28, 2007 and first used PALE 31 in commerce on February 28, 2007 and owns U.S. Trademark Registration No. 3996999 for the mark PALE 31 covering beer;

WHEREAS, the U.S. Patent and Trademark Office has refused registration of DuClaw Brewery's application Serial No. 85479933 for the mark "31" in light of Firestone's prior registration of the mark "PALE 31";

WHEREAS, DuClaw Brewery use of the name "31" is to denote a specific seasonal beer product brewed by DuClaw Brewery LLC only during the Halloween season, and therefore, called "31", as a reference to the date October 31, and which is a spiced munich dunkel. Attached are copies of the specimen tap handles as submitted to the USPTO by Firestone and by DuClaw Brewery further illustrating this distinction in use;

WHEREAS, the parties mutually desire to resolve their respective rights in similar reference to 31 in their respective marks (collectively, the "Marks"), and any confusingly similar variations of these marks and to co-exist without the likelihood of confusion within the marketplace;

WHEREAS, the parties acknowledge that their respective Marks have co-existed in the United States at least since 2007 without confusion and agree that, so long as the terms and conditions of this Agreement are performed, their respective Marks can co-exist in the marketplace without confusion.

NOW THEREFORE, in consideration of the premises and the mutual covenants and promises of the parties and other good and valuable consideration, the sufficiency of which are hereby mutually acknowledged, the parties hereby agree as follows:

1. DuClaw Brewery and Firestone believe there will be no likelihood of confusion or conflict between the Marks described above;

2. DuClaw Brewery consents to the adoption, use, and registration by Firestone of the trademark PALE 31 relating to its beer brewed by Firestone. DuClaw will take no action to interfere with the use and registration of PALE 31 by Firestone in the aforesaid manner, so long as Firestone does not permanently cease use of this mark.

3. Firestone consents to the adoption, use, and registration by DuClaw Brewery of the trademark 31 for "beer, ale, porter" throughout the United States for which DuClaw shall use such mark to denote its seasonal spiced munich dunkel beer released on October 31<sup>st</sup> of each year, and agrees not to cancel or otherwise challenge DuClaw Brewery's use or registration of 31 for "beers, ale and porter," so long as DuClaw Brewery does not permanently cease use of this mark in any of such states.

4. Should the U.S. Patent and Trademark Office not accept this Agreement and not withdraw the refusal of DuClaw Brewery's application Serial No. 85479933 based on Firestone's Registration No. 3996999, Firestone hereby agrees to execute a letter of consent consenting to the use within the designated jurisdictions, and registration of DuClaw Brewery's mark for purposes of securing removal of the citation of Firestone's registration. Said document will be drafted by DuClaw Brewery and Firestone shall have the right to make any necessary modifications to the letter in order to ensure consistency with the terms and spirit of this Agreement.

5. In the event that Firestone's Registration No. 3996999, are not withdrawn as a bar to registration of DuClaw Brewery's application Serial No. 85479933, and DuClaw Brewery decides to challenge Firestone's right to use the mark PALE 31 or Petition to Cancel Registration No. 3996999, the Parties agree that this Agreement shall be null and void in every respect, and nothing therein shall be admissible as evidence in any subsequent proceedings.

6. The parties will continue their cooperation and communication, in good faith. Should future developments suggest to either party the possibility that the parties' respective marks are likely to be confused with one another, the parties will consult with each other with a view toward avoiding any such confusion.

7. The geographic scope of this Agreement shall be worldwide.

8. This Agreement and its terms and conditions shall bind the parties and their parents, subsidiaries, divisions, successors and all other related companies acting by, through or with them or under their authority, direction or control, and shall inure to the benefit of their successors and assigns. The parties to this Agreement may license or assign their respective rights hereunder, along with the related good will, provided that such license or assignment does not alter or amend the provisions of this Agreement, and provided that any such licensees and assignees will be bound by the terms of this Agreement.

9. This Agreement constitutes the entire agreement and understanding between

the parties with respect to the subject matter hereof and terminates, replaces and supersedes in their entirety all discussions, writings, representations, communications, understandings and agreements prior to or contemporaneous with this Agreement with respect to the subject matter of this Agreement. No change, modification or amendment to this Agreement, in whole or in part, whether by addition, deletion or otherwise, shall be valid unless in writing and signed by or on behalf of the party to be charged therewith.

10. This Agreement shall be deemed separable and if any portion hereof shall be held invalid for any reason, the remainder shall not be invalidated but shall remain in full force and effect.

11. Each party represents and warrants to the other that it has the authority to enter into this Agreement and to bind the entities referred to herein to the terms and conditions, obligations and undertakings set forth in this Agreement.

12. This Agreement shall be construed and governed in accordance with the laws of the State of Maryland and the Trademark Act (15 U.S.C. § 1051 et seq.).

13. This Agreement shall be effective as of the date first written below and shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

14. This Agreement may be executed in duplicate and in counterpart signatures, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

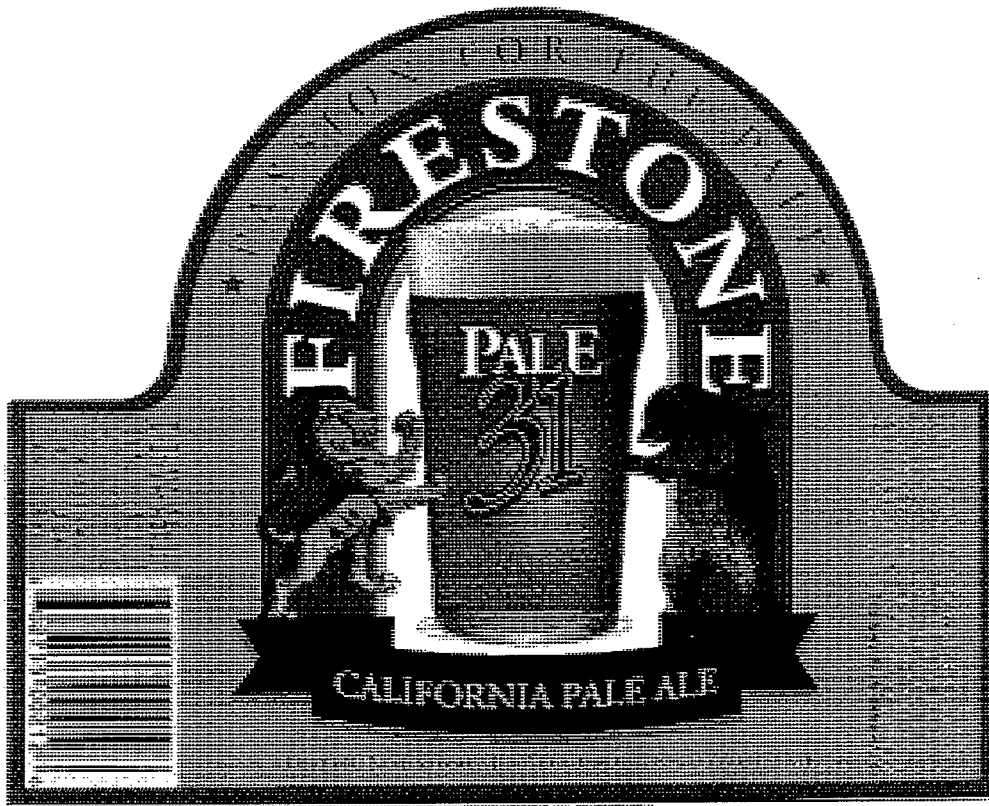
INTENDING TO BE BOUND, the parties have caused this Co-Existence Agreement to be executed by their authorized representatives, in duplicate counterparts as of the date first written below.

**FIRESTONE WALKER LLC**

\_\_\_\_\_  
Name:  
Title:  
DATED: \_\_\_\_\_

**DUCLAW BREWERY LLC**

\_\_\_\_\_  
Name:  
Title:  
DATED: \_\_\_\_\_



DUCLAU

BREWING CO.

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SPICED  
MUNICH  
DUNKEL