

Trademark Consent Agreement

This Consent Agreement ("**Agreement**"), dated as of January 21, 2019, is by and between Blaze Beverage, LLC, ("**Applicant**") a limited liability company organized and existing under the laws of Colorado, having a principal place of business at 1228 S Clayton Street, Denver, Colorado 80210, and Players Club DSM, LLC, dba Ricochet, ("**Registrant**"), a limited liability company organized and existing under the laws of Iowa, having a principal place of business at 504 East Locust Street, No. 200, Des Moines, Iowa 50309, (each, a "Party" and collectively, the "**Parties**").

WHEREAS, Registrant owns all right, title, and interest in the Registrant's Registration and Registrant's Application (as defined below) for Registrant's Marks (as defined below) in International Class 43 for the Registrant's Services (as defined below);

WHEREAS, Applicant is the owner of the Applicant's Application (as defined below) to register the Applicant's Mark (as defined below) in International Class 33 for alcoholic beverages except beers; distilled spirits; wine;

WHEREAS, in an Office Action dated November 29, 2018, the US Patent & Trademark Office refused registration of Applicant's Mark based on a finding of likelihood of confusion with the Registrant's Marks as shown in Registrant's Registration and Registrant's Application; and

WHEREAS, Registrant and Applicant believe that Applicant's use of Applicant's Mark within the scope of the Application does not and will not create actual or likelihood of confusion with Registrant's use of Registrant's Marks within the scope of Registrant's Registration or Registrant's Application.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"**Applicant's Application**" means US trademark application Serial Number 88/069,717.

"**Applicant's Goods**" means the goods listed in the Application, namely "Alcoholic beverages except beers; Distilled spirits; Wine" in Class 33.

"**Applicant's Mark**" means the trademark RICOCHET shown in the Applicant's Application.

"Registrant's Services" means the services listed in the Registrant's Registration and Registrant's Application (as defined below), namely: Bar and restaurant services; Cocktail lounge services in Class 43.

"Registrant's Marks" means the trademark RICOCHET shown in the Registrant's Registration and Registrant's Application (both defined below).

"Registrant's Registration" means US trademark Registration Number 4,272,885.

"Registrant's Application" means US trademark application Serial Number 87/314,602.

"Territory" means the United States of America and its territories and possessions.

2. **Consent to Use and Registration.** Subject to Applicant's performance of its obligations under this Agreement, Registrant hereby consents to:

(a) Registration in the US Patent & Trademark Office of Applicant's Mark in International Class 33 for Applicant's Goods.

(b) Applicant's use of Applicant's Mark in the Territory within the scope of the Application.

3. **No Likelihood of Confusion.** The parties acknowledge and agree that there is and will be no likelihood of consumer confusion resulting from the simultaneous use and registration of the Marks for their respective goods/services as set forth herein because:

(a) Each party's identified goods/services are not closely related to the other's goods/services, and the goods/services of each are not commonly offered by the same source making the existence of a likelihood of confusion extremely unlikely.

(b) Applicant has not yet used the RICOCHET mark to identify alcoholic beverages except beers; distilled spirits; and wine. Registrant, and its predecessor in interest, have used the RICOCHET mark to identify bar and restaurant services; cocktail lounge services since at least as early as October 21, 2011 and has owned at least one active registration since January 8, 2013.

4. **Further Efforts to Avoid Confusion.** Each party agrees not to advertise or promote its goods or services under the Marks in a manner that implies that such party or its goods or services are affiliated or connected with the other party or the other party's goods.

5. **Cooperation in the Event of Actual Confusion.** In the unlikely event that either party becomes aware of any actual consumer confusion resulting from the simultaneous use of the Marks as permitted by this Agreement:

(a) Such party shall advise the other party within ten (10) business days of the details of such confusion.

(b) The parties shall take commercially reasonable steps to address the confusion and prevent its future occurrence.

6. Payment. Applicant agrees to pay Registrant one lump sum payment of ~~_____~~ ~~_____~~, payable no later than ten (10) days after the execution date of this Agreement, which is intended to defray any costs, including attorney fees, associated with Registrant's entry into this Agreement. Applicant is not required to make any additional payments to Registrant or any other party relating to this Agreement.

7. No Challenge.

(a) Applicant consents to and shall not challenge Registrant's use or registration of the Registrant's Mark for Registrant's Services.

(b) Applicant shall not challenge the validity of the Registration for Registrant's Mark or of Registrant's ownership thereof.

8. Further Assurances. Each of the parties hereto shall and shall cause its respective Affiliates to execute and deliver such additional documents, instruments, conveyances, and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof.

9. Miscellaneous.

(a) **This Agreement shall be governed by and construed in accordance with the laws of the United States and the internal laws of the States of Colorado and Iowa without giving effect to any choice or conflict of law provision or rule (whether of the States of Colorado or Iowa or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the States of Colorado or Iowa. Any legal suit, action, or proceeding arising out of or related to this Agreement may be instituted in the federal courts of the United States or the courts of the States of Colorado or Iowa, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.**

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.

(c) This Agreement, including the attached Exhibit A, constitutes the sole and entire agreement of the parties with respect to the subject matter contained therein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

(d) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.


(e) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto, and any of the terms thereof may be waived only by a written document signed by the party or parties waiving compliance. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f) This Agreement may be executed in multiple counterparts and by facsimile signature, each of which shall be deemed an original and all of which together shall constitute one instrument. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(g) All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section 9(g)). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (i) upon receipt by the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section 9(g).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Blaze Beverage, LLC

By: 
Name: Kevin Byrne
Title: Principal

**Players Club DSM, LLC
dba Ricochet**


By: 
Name: Brad Argo
Title: Owner

Exhibit A

LETTER OF CONSENT

Players Club DSM, LLC dba Ricochet, a limited liability company organized and existing under the laws of Iowa, having a principal place of business at 504 East Locust Street, No. 200, Des Moines, Iowa 50309 (“Ricochet”) is the owner of U.S. Registration No. 4,272,885 and U.S. Application Serial No. 87/314,602 for RICOCHET for “Bar and restaurant services; Cocktail lounge services” in International Class 43.

Blaze Beverage, LLC (“Blaze Beverage”), a corporation organized and existing under the laws of Colorado, having a principal place of business at 1228 S Clayton Street, Denver, Colorado 80210, is the owner of U.S. trademark application serial No. 88/069,717 for the mark RICOCHET filed August 8, 2018 (“Blaze Beverage’s Application”), for use with “Alcoholic beverages except beers; Distilled spirits; Wine ” in International Class 33.

Ricochet's Registration has been cited by the Examining Attorney against Blaze Beverage’s Application as a bar to registration on the basis of likelihood of confusion under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d).


Ricochet hereby consents to the use and registration of the mark RICOCHET (U.S. App. No. 88/069,717) by Blaze Beverage for the applied-for goods.

The parties believe that there is no likelihood of confusion or conflict between the parties use of the marks listed above, based in part on the following factors: (1) differences in the type of goods with which each party uses their mark, (2) differences in the marks, and (3) different consumer audiences to which each party markets and sells its products.

This consent is given as of January 21, 2019.

[signature page follows]

Players Club DSM, LLC, dba Ricochet

By: 

Name: Brad Argo

Title: Owner

Blaze Beverage, LLC

By: 

Name: Kevin Byrne

Title: Principal