

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GULLIVER’S TAVERN, INC.,

Plaintiff,

v.

FRANK’S OF BROCKTON, INC.,

Defendant.

Civil Action No. 22-CV-10653

**STIPULATED INJUNCTION AND
DISMISSAL**

Plaintiff Gulliver’s Tavern, Inc., (“Gulliver’s”) and Defendant Frank’s of Brockton, Inc., (“Frank’s”) hereby stipulate as follows, and request the Court so order and adjudge:

WHEREAS, on May 2, 2022, Gulliver’s this action in which it asserts claims of breach of contract, breach of implied covenant of good faith and fair dealing, trademark infringement – 15 U.S.C. § 1114(1) (regarding the “Foxy Lady” mark, U.S. Patent & Trademark Office Registration No. 2809938 (hereinafter the “’938 Registration”), and state trademark infringement against Frank’s;

WHEREAS, on June 16, 2022, Frank’s filed a counterclaim in this action in which it asserts claims of cancellation of the ‘938 Registration – naked license, cancellation of the ‘938 Registration – abandonment by failure to police, cancellation of the ‘938 Registration – fraud on the Patent and Trademark Office, and invalidation of the 1999 oral agreement;

WHEREAS, Frank’s agrees that it does not and will not contest that (a) Gulliver’s is the sole owner of the “Foxy Lady” mark for the goods and services identified in the ‘938 Registration; (b) the 1999 oral agreement made subject of this action was not a naked license of the “Foxy Lady” mark; (c) Gulliver’s has not failed to police the said “Foxy Lady” mark; (d) Gulliver’s did not commit fraud on the U.S. Patent & Trademark Office in connection with the ‘938 Registration;

and (e) all uses by Frank's of the "Foxy Lady" mark inured to the benefit of Gulliver's, and Gulliver's owns all rights created by such uses; and

WHEREAS, the Parties wish to otherwise resolve their dispute and this action,

IT IS STIPULATED, AGREED, AND ADJUDGED AS FOLLOWS:

1. Injunction

- a) Frank's of Brockton, Inc., is hereby permanently enjoined from using the "Foxy Lady" mark, U.S. Patent & Trademark Office Registration No. 2809938, for any and all goods and/or services covered by the registration, and any and all confusingly similar variations of the mark.
- b) Gulliver's may provide Frank's with notice of any uses of the mark that refer to Frank's on social media and/or online accounts.
- c) For uses identified to Frank's that involve social media and/or online accounts under its ownership and/or control, Frank's shall remove the mark within 30 days of such notice.
- d) For uses identified to Frank's that involve social media and/or online accounts not under Frank's control, Frank's shall make commercially reasonable efforts to demand that the service not use the mark with respect to Frank's nor direct patrons to its business using the mark. Sending a written request to the particular account identified in the notice that requests the removal of the mark within 30 days of such notice shall serve as a "commercially reasonable effort" regardless of whether the mark is subsequently removed.
- e) This Court shall have continuing jurisdiction to enforce this injunction.

2. Dismissal

Pursuant to Fed. R. Civ. P. 41(1)(A)(ii), the Parties, through undersigned counsel, stipulate and agree that the above-captioned action, including all claims, counterclaims, and defenses asserted therein, is hereby dismissed with prejudice, with the exception of the foregoing injunction. Each party will bear its own costs, expenses, and attorneys' fees, and waives all rights of appeal regarding any claims or counterclaims in the above-captioned action.

Dated: October 7, 2022

Respectfully Submitted,


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Frank's of Brockton, Inc.

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Gulliver's Tavern, Inc.

SO ORDERED AND ADJUDGED:


Indira Talwani, U.S.D.J.