

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM313154

<b>SUBMISSION TYPE:</b>	RESUBMISSION
<b>NATURE OF CONVEYANCE:</b>	Consent Agreement
<b>RESUBMIT DOCUMENT ID:</b>	900296316

## CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Elliott Levinson		07/10/2014	INDIVIDUAL: UNITED STATES
Rochelle Levinson		07/10/2014	INDIVIDUAL: UNITED STATES
Maiden America, LLC		07/10/2014	LIMITED LIABILITY COMPANY: NEVADA
The Duck Factory		07/10/2014	CORPORATION: NEVADA

## RECEIVING PARTY DATA

<b>Name:</b>	Robert M. Kaye
<b>Street Address:</b>	330 East Hillcrest Place
<b>City:</b>	Tucson
<b>State/Country:</b>	ARIZONA
<b>Postal Code:</b>	85704
<b>Entity Type:</b>	INDIVIDUAL: UNITED STATES

## PROPERTY NUMBERS Total: 3

Property Type	Number	Word Mark
<b>Serial Number:</b>	85465166	MAIDENAMERICA
<b>Serial Number:</b>	85464080	MAIDENAMERICA
<b>Serial Number:</b>	85464095	I AM MAIDENAMERICA

## CORRESPONDENCE DATA

**Fax Number:** 5203225585  
*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.*

**Phone:** 520-322-5000  
**Email:** pgoldman@dmyl.com  
**Correspondent Name:** Peter B. Goldman  
**Address Line 1:** 2525 E. Broadway Blvd.  
**Address Line 2:** Suite 200  
**Address Line 4:** Tucson, ARIZONA 85716

<b>NAME OF SUBMITTER:</b>	Peter B. Goldman
<b>SIGNATURE:</b>	/Peter B. Goldman/

<b>DATE SIGNED:</b>	08/06/2014
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**Total Attachments: 10**

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## CONSENT AGREEMENT

This Consent Agreement ("Agreement") is made and entered into this 10<sup>th</sup> day of July, 2014, by and between Robert M. Kaye ("R.M. Kaye"), an individual, his agents, officers, representatives, successors, and assigns; Chestnut Hill Ventures, L.L.C., an Arizona limited liability company, its agents, officers, representatives, successors, and assigns ("Chestnut Hill"); and Sentinel Peak Ventures, L.L.C., an Arizona limited liability company, its agents, officers, representatives, successors, and assigns ("SPV"; collectively, R.M. Kaye, Chestnut Hill and SPV are referred to as "Kaye"), and the following individuals and entities collectively referred to herein as "Levinson": Elliot and Rochelle Levinson, husband and wife, their agents, officers, representatives, heirs, and assigns ("Mr. and Ms. Levinson"); Maiden America, L.L.C., a Nevada limited liability company, its agents, officers, representatives, successors, and assigns ("Maiden America"); and The Duck Factory, a Nevada corporation, its agents, officers, representatives, successors, and assigns ("The Duck Factory"). Kaye and Levinson are collectively referred to herein as the "Parties".

### RECITALS

- A. R.M. Kaye is the owner of various trademarks that he licenses or intends to license to certain companies.
- B. Chestnut Hill was founded on or about November, 2011, in Tucson, Arizona, by R.M. Kaye. Chestnut Hill is a licensee or intended licensee of R.M. Kaye.
- C. Since 2011 Chestnut Hill devotes itself to licensing and the development of strategies for apparel and footwear companies to encourage and enhance sustainable business practices in the Tucson community, the state of Arizona, and the United States.

D. SPV was founded on or about November, 2011, in Tucson, Arizona, by R.M. Kaye. SPV is a licensee or intended licensee of R.M. Kaye and/or Chestnut Hill.

E. Since 2011 SPV devotes itself to licensing and the development of strategies for apparel and footwear companies to encourage and enhance sustainable business practices in the Tucson community, the state of Arizona, and the United States.

F. Since 2011 Kaye has offered or intends to offer its brands, goods and services in commerce to apparel and footwear companies under the trademarks "MAIDENAMERICA," "maidenamerica" in stylized form, "I AM MAIDENAMERICA," (the "Kaye Marks").

G. Kaye's consuming public consists of apparel and footwear companies who make, market, and sell apparel and footwear throughout the United States. However, this is a self-selecting consuming public. These are companies who support and advocate an explicit social agenda by manufacturing, marketing, and selling products advancing sustainability and sustainable businesses. Likewise, their clientele seeks out their products because their purchasing decisions are grounded in and reflect the same values. Consequently, Kaye's customers cannot be considered impulse shoppers.

H. Levinson went into business in or about 2005 in Henderson, Nevada, and does business at one or more locations in Nevada. Levinson's consuming public similarly is self-selecting.

I. Levinson markets clothing and novelties as a retailer, directly to retail consumers. However these are consumers who are dedicated sports competitors and fans. More specifically they are NASCAR competitors and fans, and women's roller derby competitors and fans. Their focus is on products that reflect their specific engagement with specific sports. Although, for example, a T-shirt is a relatively low-priced item, Levinson's customers cannot be considered

impulse shoppers if for no other reason than that they are engaged in their sport, as only a sports competitor or fan can be.

J. Levinson has offered its goods in commerce continuously under the trademark "MAIDEN AMERICA" (the "Levinson Mark") since 2005.

K. Levinson's consuming public is located in the Henderson community, the state of Nevada, and in the southwestern region of the United States.

L. Kaye and Levinson are not competitors.

M. Kaye and Levinson market their goods and services through disparate channels of trade.

N. Kaye and Levinson provide goods that are related but are purchased by disparate consuming publics.

O. The Parties market their goods and services to experienced consumers of substantial expertise who make their purchases carefully and thoughtfully.

P. The Parties have diligently monitored their respective marketplaces and consuming publics since each opened for business, respectively in 2011 (Kaye) and 2005 (Levinson).

Q. Since opening for business the Parties have recorded no instances of confusion in the marketplace among their respective consuming publics concerning or related to their respective trademarks and/or goods and/or services, nor any likelihood of confusion.

R. With this Agreement the Parties memorialize their intention to prevent any dispute or controversy between them relating in any way to Kaye's use of the Kaye Marks and Levinson's use of the Levinson Mark.

S. With this Agreement the Parties affirm their intention to avoid confusion in the

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marketplace while offering their goods and services in commerce under their respective trademarks, i.e., respectively: MAIDEN AMERICA (Levinson); and MAIDENAMERICA, maidenamerica (stylized), I AM MAIDENAMERICA (Kaye).

T. In entering into this Agreement it is the intention and agreement of the Parties that each may offer its goods and services in commerce under its respective trademarks, so long as neither party markets goods or services that compete with the other's goods or services.

U. In this way the Parties intend and agree that their use of their respective trademarks will not cause any confusion in the marketplace.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises herein contained, and intending to be legally bound thereby, the Parties agree as follows:

#### **SUBSTANTIVE PROVISIONS**

1. The Parties agree that they are familiar with the use of their goods and services in the marketplace, that they each have an interest in precluding confusion in the marketplace, and that this Agreement is designed to avoid confusion in the marketplace.

2. The Parties agree that they are not competitors and that they are well-acquainted with the realities of the marketplace and the channels of trade through which they each offer their respective goods and services in commerce.

3. The Parties agree that the nature of their goods and services, and the nature and preferences of their respective target markets, discourages impulse purchasing.

4. The Parties agree that their relevant consuming public consists of purchasers whose decision to purchase is based upon a careful study of the source of the goods offered (Kaye) and the activity and context in which the goods are offered (Levinson). This careful study, typically a deliberative and self-selecting procedure, includes prospective consumer

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review, review or inspection of the goods and review of the services, and consultation with past purchasers of the goods and services offered.

5. The Parties agree that they have been marketing their respective goods and services for many years, that there has been concurrent use of their goods and services by the relevant consuming publics, and that there has been no evidence of actual confusion or likely confusion.

6. The Parties agree that Kaye's marketing of its goods and services under the Kaye Marks and Levinson's marketing of its goods under the Levinson Mark are in keeping with this Agreement and will not cause confusion in the marketplace.

#### CONSENT

7. Kaye owns and has pending before the U.S. Patent and Trademark Office ("PTO") United States Trademark Applications, Serial Numbers 85/464,080, 85/464,095, and 85/465,166, to register the Kaye Marks MAIDENAMERICA, filing date 11/03/2011, I AM MAIDENAMERICA, filing date 11/03/2011, and maidenamerica (stylized), filing date 11/04/2011 (the "Kaye Applications").

8. Levinson consents and agrees that it does not and will not oppose the Kaye Applications and will not commence any proceedings to oppose registration of the Kaye Marks.

9. Levinson consents and agrees that it will not commence any proceedings to cancel or invalidate the Kaye Marks upon their registration.

10. Levinson consents and agrees that Kaye may register the Kaye Marks, MAIDENAMERICA, I AM MAIDENAMERICA, and maidenamerica (stylized) to market its goods and services and that goods and services so offered in commerce are not likely to cause and will not cause confusion in the marketplace or injury to Levinson.

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11. Kaye consents and agrees that Levinson may market its goods and services under the Levinson Mark, MAIDEN AMERICA, and that goods and services so offered in commerce are not likely to cause and will not cause confusion in the marketplace or injury to Kaye.

12. The Parties agree that if, as a consequence of their use in commerce of their respective trademarks, i.e., MAIDENAMERICA, I AM MAIDENAMERICA, and maidenamerica (stylized) (Kaye) and MAIDEN AMERICA (Levinson), confusion occurs in the marketplace they will cooperate and work together to dispel it.

#### MISCELLANEOUS PROVISIONS

13. Recitals. The Parties acknowledge that the foregoing Recitals are true and accurate and form a material part of this Agreement and are incorporated into the terms and conditions herein.

14. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto.

15. Binding Effect; Amendment. The Parties expressly acknowledge and agree that this Agreement has been entered into in good faith and is binding upon and shall inure to the benefit of the Parties and their respective officers, agents, representatives, affiliates, successors, and assigns. This Agreement may be amended only by a writing signed on behalf of each party.

16. Attorney's Fees. In the event either of the Parties initiates legal proceedings to enforce the terms of this Agreement, the prevailing party in any such proceeding shall be entitled to an award of its costs and attorney's fees incurred in connection with that legal proceeding.

17. Construction. The Parties acknowledge that this Agreement was reached as a result of negotiations between competent Parties. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party drafting a



document. It shall be construed neither for nor against Kaye or Levinson but shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the Parties.

18. Governing Law; Jurisdiction; Venue. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Arizona without regard to the principles of conflict of laws. The Parties submit to the exclusive personal jurisdiction of the State of Arizona. Venue for the adjudication of any dispute arising under or related to this Agreement shall be only in Pima County, Arizona, and not elsewhere. Objections to the venue are hereby waived.

19. Invalidity; Severability. If any provisions of this Agreement should be or become invalid or unenforceable, the validity of the remaining provisions shall not be affected. The invalid or unenforceable provision shall be converted by mutual consent of the Parties, to the extent possible, to a valid and enforceable provision which comes as close as possible to the intent of the original provision.

20. No Waiver. Under this Agreement a waiver by a party of any default in performance by the other party shall not constitute a waiver of any subsequent default in performance. A waiver by a party to excuse any right or option or to enforce any term, condition, or provision of this Agreement shall operate as a waiver only for the specific occasion that the waiver is given and this Agreement shall otherwise continue to be fully effective, enforceable, and operable as to all other occasions.

21. Counterparts. This Agreement may be executed in any number of identical counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same Agreement.

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22. Notices. All notices by the Parties must be in writing, served by certified mail return receipt requested, or by facsimile which must be confirmed by a letter, or by hand delivery against receipt. Notices shall be delivered to the following addresses:

To Kaye: Robert M. Kaye  
330 East Hillcrest Place  
Tucson, Arizona 85704

With Copy To: Peter B. Goldman  
DeConcini McDonald Yetwin & Lacy, P.C.  
2525 East Broadway Blvd., Suite 200  
Tucson, Arizona 85716

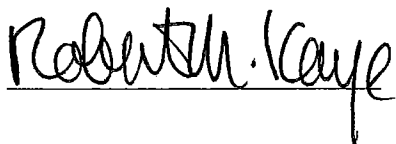
To Levinson: Elliot Levinson  
2227 Sawtooth Mountain Dr.  
Henderson, NV 89044

With Copy To: \_\_\_\_\_  
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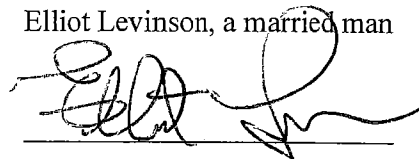
23. Effective Date. This Agreement shall be deemed effective as of the date first stated above and may be specifically enforced.

*The undersigned Parties have carefully reviewed this Agreement and accept its terms and conditions. We execute this Agreement as of its Effective Date.*

Robert M. Kaye



Elliot Levinson, a married man



Consent Agreement

Rochelle Levinson, a married woman

Rochelle Levinson

Chestnut Hill Ventures, L.L.C.

By: Robert M. Kaye

Title: Member

Sentinel Peak Ventures, L.L.C.

By: Robert M. Kaye

Title: Member

Maiden America L.L.C.

By: Rochelle Levinson

Title: Member

The Duck Factory, Inc.

By: [Signature]

Title: President

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