



City of Ketchum

July 18, 2022

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Trademark Licensing Agreement #22778

Recommendation and Summary

Staff is recommending Council approve Trademark Licensing Agreement #22778 with Sawtooth Brewery and adopt with the following motion:

“I move to approve Trademark Licensing Agreement #22778 with Sawtooth Brewery.”

The reasons for the recommendation are as follows:

- The phrase Ketch’em Alive, is a registered trademark of the City of Ketchum.
- Licensing a trademark without quality control is known as “naked licensing” and can put trademark rights in jeopardy.

Introduction and History

Sawtooth Brewery is producing a 2022 Thursday Summer Music Series, Hailey Alive. The use of the term Hailey Alive is an infringement on the city’s trademark Ketch’em Alive due to its likeness in terms of the name and the event itself, and in its close proximity to the Ketch’em Alive event.

Because the event is heavily advertised, staff requests Council approve a licensing agreement for this year only to allow Sawtooth Brewery to continue to use Hailey Alive through the 2022 event. Sawtooth Brewery plans to change the name in future years.

Financial Impact

There is no financial impact associated with this agreement.

Attachments:

Trademark Licensing Agreement #22778
Hailey Alive Poster

TRADEMARK LICENSE AGREEMENT #22778

THIS AGREEMENT is entered into this 18th day of July, 2022 by and between THE CITY OF KETCHUM (“Licensor”), 191 5th Street West, Ketchum, Idaho, 83340, and SAWTOOTH BREWERY (“Licensee”), 110 N River Street, Hailey, ID 83333.

SECTION 1
DEFINITIONS

1.1 **“Licensee”** means Sawtooth Brewery, a restaurant and brewery, whose principal location is 110 N River Street, Hailey, Idaho 83333.

1.2 **“Licensor”** means the City of Ketchum, a municipal corporation and political subdivision of the State of Idaho, whose principal office is located at 191 5th Street West, Ketchum, Idaho 83340.

1.3 **“Trademark”** means the phrase KETCH’EM ALIVE, a pending trademark with U.S. serial number 90838798. Application was approved for publication and published in the Official Gazette on May 17, 2022.

1.4 **“Event”** means “Hailey Alive,” a newly created weekly music series offered by the Sawtooth Brewery during the summer months.

1.5 **“Ketch’em Alive”** means Ketch’em Alive, an annual weekly music series, offered by the Licensee and held in Ketchum, Idaho.

SECTION 2
RECITALS

2.1 Licensor is the owner of the Trademark;

2.2 Licensee is Sawtooth Brewery;

2.3 Licensor uses the Trademark in connection with Ketch’em Alive;

2.4 “Hailey Alive” is a newly created concert series, occurring weekly during the summer months;

2.5 Licensee desires to use “Hailey Alive” in the name of the Event; a similar phrase in the same general area showing affiliation of the event with the Licensor as owner of the Trademark;

2.6 Licensor is willing to permit the use of the name of the Event provided that Licensee agrees to certain terms and conditions governing the use of its Trademark;

2.7 Licensee is willing to agree to the terms and conditions set forth herein;

2.8 In recognition of the status of the Event, Licensor is willing to grant Licensee a royalty-free license of its Trademark, provided that the Licensee complies with the terms and conditions of this License Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

SECTION 3
LICENSE OF TRADEMARK

3.1 **Grant of License.** Licensor grants to Licensee a limited, non-exclusive license to use the Trademark in the name of the Event during the following time period: June 16-August 12, 2022.

3.2 **Royalty.** Licensee will not be required to pay a royalty for the licensed use of the Trademark during the term of this Agreement, provided that the Trademark is used only for those purposes authorized by this Agreement.

3.3 **Terms and Conditions of License.** The license is granted subject to the following terms and conditions:

3.3.1 **Authorized Use.** The Trademark is to be used only in the name of the Event, and will not be used for any other purpose without the written consent of the Licensor. The Trademark will not be used by the Licensee for fundraising or commercial purposes without the express written consent of the Licensor, except that it may be used in marketing materials promoting the Event.

3.3.2 **Limitations on Use.** The Licensee will conduct the Event in a manner that ensures the preservation of the goodwill associated with the Trademark. The Trademark will not be used in a manner that would be likely to damage the reputation of the City of Ketchum, its officers or staff. The Licensee will cooperate with quality control efforts of the Licensor, including requests of the Licensor to refrain from activities that damage the goodwill associated with the Trademark.

3.3.3 **Licensor Review of Trademark Use.** All use of the Trademark by the Licensee, including but not limited to uses in signs or banners displayed at the Event or in advertising or promotion of the event, will be provided to the Licensor for review and will be subject to the approval of the Licensor. The Licensor may request changes to signs, banners, promotional materials, or other materials that display the Trademark if, in its sole discretion, it determines that the materials are offensive, disparaging, or detrimental to the reputation of the Licensor or Ketch'em Alive.

3.4 **Merchandising.** No merchandising rights to the Trademark are granted to the Licensee herein. Any merchandising rights shall be granted only by a separate written agreement signed by an authorized agent of the Licensor.

3.5 **Sublicense.** Licensee shall not sublicense the Trademark without written authorization from the Licensor.

3.6 **Assignment.** Licensee may not assign its rights to use the Trademark to any other party without the written consent of the Licensor. In the event of an unauthorized assignment of the Trademark rights this license shall immediately terminate.

3.7 **Retention of Ownership.** Licensee acknowledges that Licensor is the owner of the Trademark and retains all ownership rights, subject only to the limited use rights granted to Licensee herein. All usage of the Trademark by the Licensee shall inure to the benefit of the Licensor. Licensor makes no representations or warranties regarding its Trademark rights not expressly stated herein. In addition to its present registration in the State of Idaho and pending federal registration, Licensor may, in its sole discretion, apply for registration of the Trademark with other state or foreign authorities. Licensee agrees to cooperate with reasonable requests of the Licensor to sign documents or provide specimens or information necessary to complete registration of the Trademark with such authorities at the request of the Licensor.

3.8 **Indemnification.** Licensee is solely responsible for the Event. Licensee agrees to indemnify and hold harmless Licensor for any loss, liability, cost, expense, fees or fines arising out of the Licensee's use of the Trademark for the Event, including but not limited to any claims related to or arising out of the Event.

SECTION 4 DEFAULT AND TERMINATION

4.1 **Default of Licensee.** The following events shall constitute a default of the Licensee under this Agreement:

- 4.1.1 Use of the Trademark in a manner unauthorized by Section 3.3 of this Agreement;
- 4.1.2 Unauthorized assignment of the Licensee's rights under this Agreement or unauthorized sublicense of the Trademark;
- 4.1.3 Unauthorized commercial exploitation or merchandising of the Trademark;
- 4.1.4 Use of the Trademark in a manner that damages the reputation of the Licensee, its officers and employees;
- 4.1.5 Failure of Licensee to perform or observe any of the other terms, covenants, or conditions of this License.

4.2 **Notice of default.** In the event of the Licensee's default due to failure to perform any of the terms and conditions of this Agreement, the Licensor shall provide the Licensee with written notice of the default. Licensor, in its sole discretion, may provide Licensee with up to thirty (30) days to cure the default, or may immediately terminate this Agreement.

4.3 **Remedies.** In the event of the Licensee's default and, if granted time to cure, failure to cure said default within thirty (30) days of receipt of written notice of default, the Licensor may, in the Licensor's sole discretion:

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4.3.1 Terminate this Agreement in accordance with Section 4.4;

4.3.2 Bring an appropriate action for injunction and/or damages incurred by Licensor as a result of said default; or

4.3.3 Pursue any other remedies available at law or in equity.

4.4 **Termination.** This Agreement will terminate immediately upon the conclusion of the Event on August 12, 2022. In addition, this Agreement may be terminated prior to the conclusion of the Event:

4.4.1 By mutual agreement of the parties;

4.4.2 In the case of default by the Licensee, immediately upon receipt of notice of default from the Licensor, or if granted time to cure, five (5) days after receipt of notice of default if Licensee fails to cure said default;

4.5 **Notice of Termination.** Upon termination of this Agreement the Licensor shall give written notice of termination to the Licensee.

SECTION 5
GENERAL PROVISIONS

5.1 **Assignment.** Licensor shall have the right to assign this Agreement to any entity to which its Trademark rights are assigned upon written notice to the Licensee. Licensee may not assign any rights under this Agreement without the written consent of Licensor.

5.2 **Relationship.** Nothing in this Agreement shall be construed as creating a partnership, joint venture or agency relationship between the parties hereto. Unless specifically provided herein neither party shall have the right to create any duty or obligation, express or implied, on behalf of the other party.

5.3 **Notices.** All notices under this Agreement shall be in writing and delivered in person or sent by certified or registered mail, postage prepaid, or sent by recognized overnight courier at the addresses set forth in Section 1, or to such other addresses as may from time to time be designated by any such party in writing. Notice will be deemed given on the date the notice is delivered by personal delivery or on the date the notice is deposited with an overnight delivery service or in the United States mail. Notice will be deemed received on the date the notice is actually received or delivery is refused.

5.4 **Computation of Time.** The word “day” means “calendar day,” and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified herein.

5.5 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho and any federal law that may be applicable to the subject matter thereof.

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5.6 **Costs and Attorney Fees.** If either party herein shall bring any action for relief against the other, declaratory or otherwise, arising out of this Agreement, the losing party shall pay the prevailing party for all reasonable attorneys' fees (including attorneys' fees on appeal) and costs (including court costs and disbursements) which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. The prevailing party will be that party who was awarded judgment as a result of trial or arbitration, or who receives a payment of money from the other party in settlement of claims asserted by that party.

5.7 **Severability.** Any provision of this Agreement that shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall remain in full force and effect.

5.8 **Entire Agreement.** This Agreement contains all covenants and agreements between the parties hereto relating in any manner to the subject matter herein. No prior agreements or understandings pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Agreement shall not be altered, modified or added to except in writing signed by Licensor and Licensee.

5.9 **Effective Date.** This Agreement is effective on the date set forth above when signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective authorized representatives as set forth below.

Dated: _____, 2022

CITY OF KETCHUM

Neil Bradshaw, Mayor

Dated: _____, 2022

SAWTOOTH BREWERY

Kevin Jones, Business Director

ATTEST:

Lisa Enourato, Interim City Clerk

2022 THURSDAY

SUMMER MUSIC SERIES

W. BULLION ST.

HOP PORTER PARK



HAILEY ALIVE

PRESENTED BY SAWTOOTH BREWERY

- JUNE 16** BOOT JUICE
- 23** CARY MORIN & GHOST DOG
- 30** HAND TREMBLER
- JULY 7** COLE & THE THORNES
- 14** LOW-FI
- 21** WATER TOWER
- AUG 4** ALLEGEDLY
- 11** BREAD & CIRCUS

7-9:30 PM

FREE MUSIC!

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