

1:19-cv-3803

# **EXHIBIT 1**

**MUTUAL TRADEMARK LICENSE AGREEMENT**

This **MUTUAL TRADEMARK LICENSE AGREEMENT** (this “**Agreement**”), dated as of August 27, 2018 (the “**Effective Date**”), is by and between **NWHL HOLDINGS, LLC**, a New York limited liability company with offices located at 67 West Street, Brooklyn, NY 11222 (“**Holdings**”), and **BUFFALO BEAUTS HOCKEY, LLC**, a Delaware limited liability company with offices located at 199 Scott Street, Suite 200, Buffalo, New York 14203 (“**BBH**”).

**WHEREAS**, **NWHL, LLC**, a Delaware limited liability company, and **Holdings** are selling substantially all of the assets of the Buffalo Beauts, a professional women’s ice hockey team based in Buffalo, New York (the “**Beauts**”), to **BBH** (the “**Purchase Transaction**”) pursuant to that certain Asset Purchase Agreement dated as of the date hereof (the “**Purchase Agreement**”);

**WHEREAS**, as a condition precedent to **BBH** entering into the Purchase Agreement, **Holdings** and **BBH** have agreed to enter into this Agreement, which provides **BBH** with, inter alia, a perpetual, royalty-free right and license to use certain National Women’s Hockey League (the “**League**”) related intellectual property owned by **Holdings** as necessary and customary to carry on day-to-day operations of the Beauts;

**WHEREAS**, **Holdings** is the sole and exclusive owner of the trademarks set forth on **Exhibit A** hereto;

**WHEREAS**, **BBH** wishes to use the trademarks identified on **Exhibit A**, and any other trademarks, service marks or other indicia of origin as may be agreed upon by **Holdings** and **BBH** from time to time (collectively, the “**Holdings Trademarks**”), in connection with **BBH**’s operation of the Beauts, and **Holdings** is willing to grant to **BBH** a license to use the **Holdings Trademarks** on the terms and conditions set forth in this Agreement;

**WHEREAS**, immediately following the Closing (as that term is defined in the Purchase Agreement) of the Purchase Transaction, **BBH** is the sole and exclusive owner of the trademarks set forth on **Exhibit B** hereto (collectively, the “**BBH Trademarks**” and together with the **Holdings Trademarks**, the “**Licensed Trademarks**”); and

**WHEREAS**, **Holdings** wishes to use the **BBH Trademarks** in connection with the operation and promotion of the League, and **BBH** is willing to grant to **Holdings** a license to use the **BBH Trademarks** on the terms and conditions set forth in this Agreement.

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

1. Grant of License.

1.1 Grant. Subject to the terms and conditions of this Agreement, **Holdings** hereby grants to **BBH** a perpetual, non-exclusive, royalty-free (subject to Section 9.16 hereof) and sublicensable (subject to Section 1.5 hereof) right and license to use the **Holdings Trademarks** identified on **Exhibit A** in connection with **BBH**’s operation and promotion of the Beauts (including, without limitation, the sale of various merchandise and apparel bearing the **Holdings**

Trademarks). BBH hereby grants to Holdings a perpetual, royalty-free (subject to Section 9.16 hereof), non-exclusive, sublicensable (subject to Section 1.5 hereof) right and license to use the BBH Trademarks identified on Exhibit B in connection with Holdings' operation and promotion of the League (including, without limitation, the sale of various merchandise and apparel bearing the BBH Trademarks).

1.2 Use of Holdings Trademarks. BBH hereby acknowledges that its use of the Holdings Trademarks identified on Exhibit A hereto, as the same may be updated, amended or modified from time to time, as it relates to the manufacture, advertising, marketing, promotion, sale and distribution of various merchandise items ("**BBH Merchandise**") is subject to Holdings' approval which shall not be unreasonably withheld, conditioned or delayed. Except to the extent it is not reasonably practicable, or the parties hereto otherwise agree in writing, BBH shall furnish to Holdings a virtual sample (e.g., printer's proof) of each item of BBH Merchandise prior to distribution of any BBH Merchandise bearing a Holdings Trademark; provided, however, during the Term of this Agreement, BBH shall retain a physical sample of each item of BBH Merchandise at its facilities for inspection by Holdings. Holdings also reserves the right to inspect any manufacturing facilities to ensure proper quality controls are in place. BBH represents that any manufacturing will be in compliance with applicable laws and any goods imported will be in compliance with applicable regulations.

1.3 Use of BBH Trademarks. Holdings hereby acknowledges that its use of the BBH Trademarks identified on Exhibit B hereto, as the same may be updated, amended or modified from time to time, as it relates to the manufacture, advertising, marketing, promotion, sale and distribution of various merchandise items ("**Holdings Merchandise**" and together with the BBH Merchandise, collectively "**Merchandise**") is subject to BBH's approval which shall not be unreasonably withheld, conditioned or delayed. Except to the extent it is not reasonably practicable, or the parties hereto otherwise agree in writing, Holdings shall furnish to BBH a virtual sample (e.g., printer's proof) of each item of Holdings Merchandise prior to distribution of any Holdings Merchandise bearing a BBH Trademark; provided, however, during the Term of this Agreement, Holdings shall retain a physical sample of each item of Holdings Merchandise at its facilities for inspection by BBH. BBH reserves the right to inspect any manufacturing facilities to ensure proper quality controls are in place. Holdings also represents that any manufacturing will be in compliance with applicable laws and any goods imported will be in compliance with applicable regulations.

1.4 Sell-Off Period. Subject to the terms and conditions of this Agreement, upon the expiration or termination of this Agreement, each party shall have ninety (90) days (the "**Sell-Off Period**") to sell-off all Merchandise comprising the remaining portion of such party's inventory of Merchandise as of the expiration or termination of the Term (as defined below).

1.5 Sublicensing. Subject to the terms of Section 1.1, both parties shall have the right to grant sublicenses to any of its affiliates or subsidiaries, whether now existing or hereinafter formed, under the license rights granted under Section 1.1. All sublicenses shall be subject to the terms and conditions of this Agreement.

2. Ownership and Protection of Holdings Trademarks.

2.1 Acknowledgement of Ownership. BBH acknowledges that (a) as between BBH and Holdings, Holdings is the owner of the Holdings Trademarks and all goodwill related thereto, and (b) all use of the Holdings Trademarks hereunder and any goodwill accruing therefrom shall inure solely to the benefit of Holdings. Holdings acknowledges that (i) as between BBH and Holdings, BBH is the owner of the BBH Trademarks and all goodwill related thereto, and (ii) all use of the BBH Trademarks hereunder and any goodwill accruing therefrom shall inure solely to the benefit of BBH.

2.2 Maintenance of Trademarks.

(a) Each party shall, at its sole expense, diligently maintain all registrations of its respective Licensed Trademarks and diligently prosecute any pending applications for licensed intellectual property. Each party agrees to keep the other party informed of any opposition or other challenge by any other person or entity to the ownership or validity of any Licensed Trademark and promptly forward a copy of any relevant correspondence or document filed with a trademark office or court. Each party further agrees to consider comments of the other party relating to any challenge to such intellectual property in good faith.

(b) BBH agrees to, within forty-five (45) days of the Effective Date, file applications for registration of the BEAUTS (plus design) mark (as set forth on Exhibit B) and BUFFALO BEAUTS word mark with Canadian Intellectual Property Office (“CIPO”) in connection with at least entertainment services in International Class 41 and clothing and apparel in International Class 25. Such applications shall be filed irrespective of the results of clearance. Holdings agrees to provide BBH with necessary dates of first use for filings if BBH wishes to file such applications based upon use in commerce in Canada. BBH also agrees to file with CIPO, irrespective of clearance, a single class word mark application for the mark BEAUTS in connection with entertainment services in International Class 41 and clothing and apparel currently in use in International Class 25. BBH agrees to consider future requests of Holdings regarding intellectual property strategy in good faith.

(c) BBH agrees to promptly forward Holdings filing receipts or confirmation of filing containing an application serial number for any trademark or service mark application filed for the purposes of Holdings docketing and record keeping as necessary for the operation of League.

(d) Neither party shall take any action or omit to take any action or make or permit any use of Licensed Trademarks that disparages the other party or any of its products or services, or otherwise dilutes, tarnishes, or impairs the value and/or goodwill of the Licensed Trademarks.

(e) Future intellectual property used by both BBH and Holdings containing the terms BEAUTS, NATIONAL WOMEN’S HOCKEY LEAGUE or NWHL shall be considered part of this Agreement and are hereby incorporated by reference. Design marks not containing the terms but used in connection with the operation of the Beauts or the League shall also be considered part of this Agreement and are hereby incorporated by reference.

2.3 Enforcement.

(a) Each party shall promptly notify the other party of any actual or potential infringement, counterfeiting, or other unauthorized use of the Holdings Trademarks or the BBH Trademarks by any other person or entity (an “**Infringement**”) of which it becomes aware. If the parties disagree with respect to a best course of action for addressing an instance of Infringement, counsel for the parties shall discuss in good faith. Should either party determine that its rights under this Agreement are impaired as a result of a failure of the other party to pursue legal action or competently stop an Infringement, such party may pursue legal action at its own costs.

3. Confidentiality. Each party (the “**Receiving Party**”) acknowledges that in connection with this Agreement it will gain access to information that is treated as confidential by the other party (the “**Disclosing Party**”), including information about its business operations and strategies, goods and services, customers, pricing, marketing, and other sensitive and proprietary information (collectively, the “**Confidential Information**”). Confidential Information shall not include information that, at the time of disclosure and as established by documentary evidence: (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 3 by the Receiving Party; (b) is or becomes available to the Receiving Party on a non-confidential basis from another person, provided that such person is not and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of the Receiving Party prior to being disclosed by or on behalf of the Disclosing Party; or (d) is required to be disclosed by applicable law, including pursuant to the terms of a court order; provided that the Receiving Party has given the Disclosing Party prior written notice of such disclosure and an opportunity to contest such disclosure and to seek a protective order or other remedy. The Receiving Party shall: (x) protect and safeguard the confidentiality of the Disclosing Party’s Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (z) not disclose any such Confidential Information to any person, except to the Receiving Party’s officers, employees, consultants, accountants, and legal advisors who are bound by written confidentiality obligations and have a need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

4. Representations and Warranties.

4.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that:

(a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws of its jurisdiction of incorporation or organization;

(b) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary organizational action of the party; and

(d) when executed and delivered by such party, this Agreement shall constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

4.2 Holdings' Representations and Warranties. Holdings represents and warrants that:

(a) it is the sole and exclusive legal and beneficial owner of the entire right, title, and interest in and to the Holdings Trademarks;

(b) it is the record owner of the registrations and applications set forth on Exhibit A hereto, and all such issued registrations are valid, subsisting, and in full force and effect;

(c) it has not granted any licenses, liens, security interests, or other encumbrances in, to or under the Holdings Trademarks;

(d) to its knowledge, the exercise by BBH of the rights and license granted under this Agreement will not infringe or otherwise conflict with the rights of any other person or entity;

(e) there is no settled, pending, or, to its knowledge, threatened litigation, opposition, or other claim or proceeding challenging the validity, enforceability, ownership, registration, or use of any Holdings Trademarks; and

(f) it has not brought or threatened any claim against any third party alleging infringement of any Holdings Trademarks, nor, to its knowledge, is any third party infringing or threatening to infringe any Holdings Trademarks.

4.3 BBH's Representations and Warranties. BBH represents and warrants that:

(a) upon the Closing of the Purchase Transaction, it is the sole and exclusive legal and beneficial owner of the entire right, title, and interest in and to the BBH Trademarks;

(b) upon the Closing of the Purchase Transaction, it is the record owner of the registrations and applications set forth on Exhibit B hereto, and all such issued registrations are valid, subsisting, and in full force and effect;

(c) it has not granted any licenses, liens, security interests, or other encumbrances in, to or under the BBH Trademarks;

(d) to its knowledge, the exercise by Holdings of the rights and license granted under this Agreement will not infringe or otherwise conflict with the rights of any other person or entity;

(e) there is no settled, pending, or, to its knowledge, threatened litigation, opposition, or other claim or proceeding challenging the validity, enforceability, ownership, registration, or use of any the BBH Trademarks; and

(f) it has not brought or threatened any claim against any third party alleging infringement of any BBH Trademarks, nor, to its knowledge, is any third party infringing or threatening to infringe any BBH Trademarks.

5. Indemnification.

5.1 By Holdings. Holdings shall indemnify, defend, and hold harmless BBH, its subsidiaries and affiliates, and each of their members, officers, directors, employees, agents, sublicensees, successors, and assigns (each, a “**BBH Indemnified Party**”) from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, “**Losses**”) arising out of or in connection with any third party claim, suit, action, or proceeding (“**Third Party Claim**”) relating to any actual or alleged: (a) breach by Holdings of any representation, warranty, covenant, or obligation under this Agreement, or (b) infringement, dilution, or other violation of any intellectual property or other personal or proprietary rights of any person or entity resulting from the use of the Holdings Trademarks by BBH or any of its sublicensees, affiliates or subsidiaries in accordance with this Agreement.

5.2 By BBH. BBH shall indemnify, defend, and hold harmless Holdings and its officers, directors, employees, agents, successors, and assigns (each, a “**Holdings Indemnified Party**”) from and against all Losses arising out of or in connection with any Third Party Claim relating to any actual or alleged breach by BBH of any representation, warranty, covenant, or obligation under this Agreement, except to the extent any such Third Party Claim relates to the use of the Holdings Trademarks in accordance with this Agreement or otherwise is covered by Holdings’ indemnity obligations in Section 5.1.

5.3 Indemnification Procedure. An Indemnified Party shall promptly notify the party from whom it is seeking indemnification (“**Indemnifying Party**”) upon becoming aware of a Third Party Claim under this Section 5 (“**Indemnified Claim**”). The Indemnifying Party shall promptly assume control of the defense and investigation of the Indemnified Claim, with counsel reasonably acceptable to the Indemnified Party, and the Indemnified Party shall fully cooperate with the Indemnifying Party in connection therewith, in each case at the Indemnifying Party’s sole cost and expense. The Indemnified Party may participate in the defense of such Indemnified Claim, with counsel of its own choosing and at its own cost and expense. The Indemnifying Party shall not settle any Indemnified Claim without the Indemnified Party’s prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed). If the Indemnifying Party fails or refuses to assume control of the defense of such Indemnified Claim, the Indemnified Party shall have the right, but no obligation, to defend against such Indemnified Claim, including settling such Indemnified Claim after giving notice to the Indemnifying Party, in each case in such manner and on such terms as the Indemnified Party may deem appropriate. Neither the Indemnified Party’s failure to perform any obligation under this Section 5.3 nor any act or omission of the Indemnified Party in the defense or settlement of any Indemnified Claim shall not relieve the Indemnifying Party of its obligations under this Section 5, including with respect to any Losses, except to the

extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result thereof.

6. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR ENHANCED DAMAGES, OR FOR ANY LOSS OF ACTUAL OR ANTICIPATED PROFITS (REGARDLESS OF HOW THESE ARE CLASSIFIED AS DAMAGES), WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE, OR BREACH OF THIS AGREEMENT), REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO (A) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 5; OR (B) LOSSES ARISING OUT OF OR RELATING TO A PARTY'S FAILURE TO COMPLY WITH ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 3.

7. Term and Termination.

7.1 Term. The term of this Agreement shall commence as of the Effective Date and continue until terminated in accordance with Section 7.2 (the "**Term**").

7.2 Termination. Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party (a) materially breaches this Agreement and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receiving written notice thereof; (b) becomes insolvent or admits its inability to pay its debts generally as they become due; (c) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed, vacated or dismissed within thirty (30) days after filing; (d) is dissolved or liquidated or takes any corporate action for such purpose; (e) makes a general assignment for the benefit of creditors; or (f) has a receiver, trustee, custodian or similar agent appointed by court order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. In addition, BBH may terminate this Agreement effective immediately upon written notice to Holdings if the League fails to operate during any calendar year.

7.3 Effect of Termination. Upon the expiration or termination of this Agreement:

(a) The parties shall cease all use of Licensed Trademarks except as expressly permitted in writing;

(b) All sublicenses that have been granted shall automatically and immediately terminate; provided, however, that any sublicensee may elect to continue its sublicense as a direct license by providing written notice of its election and of its agreement to assume all obligations (including obligations for payment) contained in its sublicense agreement as direct obligations of the sublicensee; and



(c) the Receiving Party shall promptly return to the Disclosing Party, or at the Disclosing Party's option, destroy, all records and copies of any Confidential Information of the Disclosing Party.

(d) Neither party shall be liable to the other party for damages of any kind solely as a result of terminating this Agreement in accordance with Section 7.3.

7.4 Survival. The rights and obligations of the parties set forth in Section 3 (Confidentiality), Section 4 (Representations and Warranties), and Section 5 (Indemnification), and the provisions of Section 9 (Miscellaneous) (excluding Section 9.1), and any right, obligation, or required performance of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

8. Assignment.

8.1 By BBH. BBH shall have the right to assign or otherwise transfer this Agreement, or any right or obligation hereunder, upon thirty (30) days' prior written notice to Holdings to (a) an affiliate of BBH; (b) a successor by consolidation or merger (whether or not BBH is the surviving entity) or operation of law; or (c) a purchaser of all or substantially all of BBH's assets or the assets or business of BBH to which this Agreement relates; provided that BBH shall require the assignee or transferee, as applicable, to acknowledge and agree in writing to assume and be bound by all of the applicable terms and conditions of this Agreement. Any assignment, delegation, or transfer of this Agreement in violation of this Section 8.1 shall be void and of no force and effect.

8.2 By Holdings. Prior to Holdings' sale, assignment, or other transfer (including any exclusive license) of any Holdings Trademarks to any person during the Term, Holdings shall (a) require the purchaser, assignee, or transferee, as applicable, to acknowledge and agree in writing (i) to assume and be bound by all of the applicable terms and conditions of this Agreement, including all of Holdings' obligations and undertakings under this Agreement with respect to the Holdings Trademarks, (ii) to require and obligate any subsequent purchaser, assignee, or transferee, as applicable, to do the same in connection with any such subsequent sale, assignment, or other transfer of such Holdings Trademarks, and (iii) that BBH is a third party beneficiary of such agreement; and (b) provide BBH with an executed copy of such agreement.

9. Miscellaneous.

9.1 Holdings Bankruptcy. Holdings acknowledges and agrees that, if Holdings shall become subject to any bankruptcy or similar proceeding, all rights and licenses granted to BBH hereunder will continue subject to the terms and conditions of this Agreement, and will not be affected, including by Holdings' rejection of this Agreement. Without limiting the foregoing, to protect BBH from and against all damages of any kind or nature resulting from rejection of this Agreement in the event of Holdings' bankruptcy, Holdings hereby grants to BBH a continuing security interest in and first priority lien upon the Holdings Trademarks. Holdings shall execute any documents and perform all further acts, including with all applicable government offices, at

BBH's expense, as reasonably necessary in order to evidence and perfect the security interest granted hereunder. In the event that Holdings files for bankruptcy, BBH may enforce all rights and remedies of a secured creditor under applicable law.

9.2 Further Assurances. Each party shall, upon the reasonable request of the other party, and, except as otherwise expressly set forth herein, at such other party's sole expense, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of this Agreement.

9.3 Independent Contractors. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

9.4 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and sent via e-mail to the below listed e-mail addresses. Notice shall be deemed to have been given on the date sent by email if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.4).

If to Holdings:

NWHL Holdings, LLC

67 West Street

Brooklyn NY, 11222

Attention: Dani Rylan, Commissioner

E-mail: [drylan@nwllhq.com](mailto:drylan@nwllhq.com); [bnatter@haugpartners.com](mailto:bnatter@haugpartners.com); [cturner@haugpartners.com](mailto:cturner@haugpartners.com)

If to BBH:

Buffalo Beauts Hockey, LLC

199 Scott Street, Suite 200

Buffalo, New York 14203

Attention: General Counsel

Email: [Gregg.brandon@psentertainment.com](mailto:Gregg.brandon@psentertainment.com); [benjamin.white@psentertainment.com](mailto:benjamin.white@psentertainment.com)

9.5 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

9.6 Entire Agreement. This Agreement, together with all Exhibits hereto, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

9.7 No Third-Party Beneficiaries. Except as expressly set forth herein with respect to BBH's affiliates and in Section 5 with respect to Indemnified Parties, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

9.8 Binding Agreement. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

9.9 Amendment and Modification; Waiver. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by either party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the waiving party. 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.

9.10 Severability. 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. Upon a determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent permitted under applicable law.

9.11 Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the federal courts of the United States, 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.

9.12 Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any claim, suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

9.13 Equitable Relief. Each party acknowledges that a breach by the other party of this Agreement may cause the non-breaching party irreparable harm, for which an award of damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, the non-breaching party will be entitled to equitable relief, including in the form of orders for preliminary or permanent injunction, specific performance, and any other relief that may be available from any court, and the parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such relief. These remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available under this Agreement at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

9.14 Attorneys' Fees. In the event that any claim, suit, action, or proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees and court costs from the non-prevailing party.

9.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission (to which a signed PDF copy is attached) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

9.16 League Governance. Both parties hereby agree that this Agreement shall automatically be subject and subordinate to any and all League rules and regulations, including, without limitation, any League Constitution or By-Laws, as the same may be amended from time to time, effective as of the date such rule or regulation shall take effect.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

**HOLDINGS:**

NWHL HOLDINGS, LLC

By: NWHL Group, LLC

By: \_\_\_\_\_

Its: Managing Member

Name: Dani Rylan

**BBH:**

BUFFALO BEAUS HOCKEY, LLC

By: \_\_\_\_\_

Its: Assistant Secretary

Name: Gregg G. Brandon

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date by their respective officers thereunto duly authorized.

**HOLDINGS:**

NWHL HOLDINGS, LLC

By: NWHL Group, LLC

By: \_\_\_\_\_

Its: Managing Member

Name: Dani Rylan

**BBH:**

BUFFALO BEAUTS HOCKEY, LLC

By:  \_\_\_\_\_

Its: Assistant Secretary

Name: Gregg G. Brandon

**EXHIBIT A**

**Holdings Federal Trademarks**

Registration No. 4,886,895

Application Serial No. 88/009,882, 88/013,959 and 88/013,975

**Common Law Trademarks**

NWHL

NATIONAL WOMEN'S HOCKEY LEAGUE

NWHL (plus design)

**EXHIBIT B**

**BBH US Federal Trademarks**

Applications Serial Nos. 88/009,831, 88/013,888 and 88/013,784

Registration No. 4,906,135

**Common Law Trademarks**

BUFFALO BEAUTS

BEAUTS (plus design)



## **EXHIBIT 2**

**United States of America**  
United States Patent and Trademark Office

**BUFFALO BEAUTS**

**Reg. No. 4,906,135**

NWHL HOLDINGS LLC (NEW YORK LIMITED LIABILITY COMPANY)  
C/O NATTER & NATTER, 501 FIFTH AVENUE  
NEW YORK, NY 10017

**Registered Feb. 23, 2016**

**Int. Cl.: 41**

FOR: ENTERTAINMENT IN THE NATURE OF HOCKEY GAMES, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

**SERVICE MARK**

FIRST USE 3-0-2015; IN COMMERCE 9-25-2015.

**PRINCIPAL REGISTER**

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "BUFFALO", APART FROM THE MARK AS SHOWN.

SN 86-521,146, FILED 2-2-2015.

BRIAN PINO, EXAMINING ATTORNEY



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL  
TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE  
DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

***First Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

***Second Filing Deadline:*** You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.\* *See* 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

**\*ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.**

# United States of America

United States Patent and Trademark Office

## BUFFALO BEAUTS

**Reg. No. 5,655,814**

**Registered Jan. 15, 2019**

**Int. Cl.: 25**

**Trademark**

**Principal Register**

BUFFALO BEAUTS HOCKEY, LLC (DELAWARE LIMITED LIABILITY COMPANY)  
199 Scott Street, Suite 200  
Buffalo, NEW YORK 14204

CLASS 25: Hats; Hoodies; Jerseys; Leggings; One-piece garments for children; Shirts; Sports bra; Sweatshirts; Tank tops

FIRST USE 8-00-2015; IN COMMERCE 8-00-2015

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

OWNER OF U.S. REG. NO. 4906135

No claim is made to the exclusive right to use the following apart from the mark as shown:  
"BUFFALO"

SER. NO. 88-009,831, FILED 06-21-2018



*Andrei Iancu*

Director of the United States  
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.\* See 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

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# United States of America

United States Patent and Trademark Office



**Reg. No. 5,638,076**

**Registered Dec. 25, 2018**

**Int. Cl.: 41**

**Service Mark**

**Principal Register**

NWHL Holdings LLC (NEW YORK LIMITED LIABILITY COMPANY)  
Suite 401-b11  
67 West Street  
Brooklyn, NEW YORK 11222

CLASS 41: Entertainment in the nature of hockey games

FIRST USE 3-00-2015; IN COMMERCE 9-25-2015

The mark consists of the word "Beaut's" written in cursive below a bison below an arch of stars, which contains a crown over the head of the bison.

OWNER OF U.S. REG. NO. 4906135

SER. NO. 88-013,888, FILED 06-25-2018



*Andrei Iancu*

Director of the United States  
Patent and Trademark Office

**REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.\* See 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

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# United States of America

United States Patent and Trademark Office



**Reg. No. 5,661,523**

**Registered Jan. 22, 2019**

**Int. Cl.: 25**

**Trademark**

**Principal Register**

BUFFALO BEAUTS HOCKEY, LLC (DELAWARE LIMITED LIABILITY COMPANY)  
199 Scott Street, Suite 200  
Buffalo, NEW YORK 14204

CLASS 25: Hats; Hoodies; Jerseys; Leggings; One-piece garments for children; Shirts; Sports bra; Sweatshirts; Tank tops

FIRST USE 8-00-2015; IN COMMERCE 8-00-2015

The mark consists of the word "Beauts" written in cursive below a bison below an arch of stars, which contains a crown over the head of the bison.

OWNER OF U.S. REG. NO. 4906135

SER. NO. 88-013,784, FILED 06-25-2018



*Andrei Iancu*

Director of the United States  
Patent and Trademark Office



**REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION**

**WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.**

**Requirements in the First Ten Years\***

**What and When to File:**

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.\* See 15 U.S.C. §1059.

**Requirements in Successive Ten-Year Periods\***

**What and When to File:**

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.\*

**Grace Period Filings\***

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**NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.**

**NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.**

## **EXHIBIT 3**



# Lipsitz Green Scime Cambria LLP

Attorneys at Law

42 Delaware Avenue, Suite 120, Buffalo, New York 14202-3924 P 716 849 1333 F 716 855 1580 (Not for Service) www.lglaw.com

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 James T. Scime  
 Herbert L. Greenman  
 Michael Schiavone  
 Laraine Kelley  
 Richard P. Weisbeck, Jr.  
 Mark L. Stulmaker  
 Barry Nelson Covert  
 Robert L. Boreanaz  
 Thomas M. Mercure  
 John A. Collins  
 Michael P. Stuermer<sup>3</sup>  
 Jeffrey F. Reina  
 Cherie L. Peterson  
 Joseph J. Manna  
 William P. Moore  
 Thomas C. Burnham  
 Jonathan W. Brown<sup>3</sup>  
 Diane M. Perri Roberts  
 Matthew B. Morey  
 Sharon M. Heim  
 Paul J. Cieslik  
 Gregory P. Krull  
 Robert E. Ziske  
 Patrick J. Mackey<sup>4</sup>  
 Max Humann<sup>6</sup>  
 Katherine A. Gillette  
 Lynn M. Bochenek  
 Joseph L. Guza  
 Richard A. Maltese, Jr.  
 Justin D. Ginter  
 Erin McCampbell Paris  
 Jeffrey B. Novak  
 Lucy M. Berkman<sup>2</sup>  
 Dale J. Bauman<sup>2,7</sup>  
 Michelle M. Ragusa  
 Karoline R. Faltus  
 Melissa D. Wischerath<sup>8</sup>  
 Alexander E. Basinski  
 Taylor D. Golba  
 Maxwell A. Whitenight  
 Patricia A. Fay

June 25, 2019

**VIA REGISTERED MAIL AND EMAIL (drylan@nwhlhq.com)**

Dani Rylan, Commissioner  
 NWHL Holdings, LLC  
 67 West Street  
 Suite 401-B11  
 Brooklyn, New York 11222

**Re: BUFFALO BEAUTS® and BEAUTS®**

Dear Ms. Rylan:

Please be advised that this law firm represents Buffalo Beauts Hockey, LLC (“BBH”). Accordingly, please direct any future correspondence in this matter to the undersigned.

As you are aware, BBH is the owner of multiple BUFFALO BEAUTS® and BEAUTS® trademarks and service marks, identified in the attached **Exhibit A** (the “BEAUTS Marks”). Also, as you are aware, NWHL Holdings, LLC and NWHL, LLC (collectively, “NWHL”), is no longer authorized to use the BEAUTS Marks.

Despite the lack of authorization, our attention has been drawn to the NWHL’s continued, unauthorized use of the BEAUTS Marks by NWHL and/or those acting in concert with it, including, but not limited to, those used of the BEAUTS Marks set forth in the attached **Exhibit B**. Such unauthorized use of the BEAUTS Marks is clearly willful and constitutes a violation of BBH’s intellectual property rights, is actionable under numerous federal and state laws, and constitutes trademark infringement, false affiliation, false endorsement, and unfair competition.

The civil remedies available for these violations include immediate and permanent injunctive relief, recovery of NWHL's profits, and up to three times the amount of monetary damages suffered by our client, as well as an award of attorney's fees.

**Given the above, we hereby demand that NWHL, and those acting in concert with it, immediately:**

- (1) Cease and desist all future use of the BEAUTS Marks;**
- (2) Cease and desist the display and/or distribution of any marketing materials, social media posts or websites that utilize the BEAUTS Marks;**

<sup>1</sup> Also admitted in District of Columbia  
<sup>2</sup> Also admitted in Florida  
<sup>3</sup> Also admitted in California  
<sup>4</sup> Also admitted in Illinois  
<sup>5</sup> Also admitted in Pennsylvania  
<sup>6</sup> Also admitted in Maryland  
<sup>7</sup> Also admitted in New Jersey  
<sup>8</sup> Also admitted in Oregon





Lipsitz Green Scime Cambria LLP

Dani Rylan  
NWHL  
June 25, 2019  
Page 2

- (3) Destroy any merchandise in NWHL's possession or control that bear the BEAUTS Marks; and**
- (4) Provide us with written assurances that you have complied with the above demands.**

We trust that you understand the seriousness of this matter and will comply with the above demands **on or before June 27, 2019**. If you fail to comply with the demands herein, be advised that BBH will not hesitate to take further legal action.

This letter is written without prejudice to any of BBH's rights in law or in equity, all of which are hereby expressly reserved. The above is not, nor should it be construed as, an exhaustive statement of all the relevant facts and law. Nothing contained herein or omitted from this letter constitutes an admission of any fact or waiver of any right, remedy or defense.

Very truly yours,

**LIPSITZ GREEN SCIME CAMBRIA LLP**

By: Michael Schiavone

MS:  
Enclosure

cc: Gregg G. Brandon, Esq.  
Benjamin White, Esq.

Writer's Extension: 309  
Writer's Direct Line: 716 844 3500  
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E-Mail: [mschiavone@lglaw.com](mailto:mschiavone@lglaw.com)

#2192229.v1  
61909.0002



**EXHIBIT A****Trademarks and Service Marks****Registered:**

Mark	Registration Number	Class(es)
BUFFALO BEAUTS	4,906,135	041: Entertainment in the nature of hockey games
BUFFALO BEAUTS	5,655,814	025: Hats; Hoodies; Jerseys; Leggings; One-piece garments for children; Shirts; Sports bra; Sweatshirts; Tank tops
BEAUTS (plus design)	5,638,076	041: Entertainment in the nature of hockey games
BEAUTS (plus design)	5,661,523	025: Hats; Hoodies; Jerseys; Leggings; One-piece garments for children; Shirts; Sports bra; Sweatshirts; Tank tops

**Common Law:**

Mark	Recommended Class(es)
BUFFALO BEAUTS	021: Cups and mugs
BEAUTS (plus design)	021: Cups and mugs
BUFFALO BEAUTS	035: On-line retail store services featuring {a wide variety of consumer goods}
BEAUTS (plus design)	035: On-line retail store services featuring {a wide variety of consumer goods}

**Exhibit B**

