

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) effective this 20th day of January, 2009, is hereby entered into by Union Square Partnership, Inc., a not-for-profit New York corporation that maintains its principal place of business at 4 Irving Place, Room 1148S, New York, New York 10003 and Union Square Partnership District Management Association, Inc., a not-for-profit New York corporation that maintains its principal place of business at the same address (collectively, “USP”) and Savitri Durkee (“Ms. Durkee”) who currently resides in Brooklyn, New York. USP and Ms. Durkee are also referred to collectively herein as “the Parties.”

WHEREAS, on or about May 15, 2008, Ms. Durkee made publicly available an internet website criticizing USP’s activities, including but not limited to USP’s proposed development changes to Union Square Park in New York, New York (“the Website,” screenshots of which are attached hereto as Exhibit A);

WHEREAS, the domain names that Ms. Durkee registered and configured to direct internet visitors to the Website were unionsquarepartnership.org and unionsquarepartnership.com (“the Domain Names”);

WHEREAS, on July 1, 2008, USP issued a takedown notice to the DreamHost, Inc. (“DreamHost”), Ms. Durkee’s web hosting company, demanding that the Website be disabled pursuant to 17 U.S.C. 512;

WHEREAS, on July 5, 2008, pursuant to USP’s takedown notice, DreamHost disabled public access to the Website;

WHEREAS, on July 13, 2008, Ms. Durkee issued a counter-notification pursuant to 17 U.S.C. § 512 asking that the Website be restored;

WHEREAS, on July 16, 2008, DreamHost informed USP that pursuant to Ms. Durkee’s counter-notification, access to the Website would be restored;

WHEREAS, on July 30, 2008, USP filed suit against Ms. Durkee in United States District Court for the Eastern District of New York, alleging that the Website constituted copyright infringement under 17 U.S.C. § 502 (“the Copyright Complaint”);

WHEREAS, on August 12, 2008, USP submitted a Complaint (the “WIPO Complaint”) to the World Intellectual Property Organization Arbitration and Mediation Center (“WIPO Arbitration Panel”), pursuant to the Uniform Domain-Name Dispute-Resolution Policy (“UDRP”) of the Internet Corporation for Assigned Names and Numbers (“ICANN”) to which domain name registrants agree to be bound, seeking transfer of the Domain Names to USP;

WHEREAS, on October 22, 2008, the WIPO Arbitration Panel ruled that the Domain Names be transferred to USP; a copy of the WIPO Arbitration Decision can be found at <http://www.wipo.int/amc/en/domains/decisions/html/2008/d2008-1234.html>;

WHEREAS, on November 18, 2008, Durkee filed her Answer and Counterclaims to USP’s Copyright Complaint, seeking declaratory relief of non-infringement of trademark and non-infringement of the Anti-Cybersquatting Consumer Protection Act as well as alleging that USP violated New York’s Anti-SLAPP Act (N.Y. Civil Rights Law §§ 70-a, 76-a) in filing its Copyright Complaint against Ms. Durkee (“Answer/Counterclaims”); and

WHEREAS, the Parties desire to resolve all disagreements and disputes between them;

NOW THEREFORE, for and in consideration of the mutual covenants and promises herein contained, the Parties hereto agree as follows:

1. Within ten (10) business days after execution of this Agreement by all Parties, Ms. Durkee will instruct DreamHost to transfer ownership and control of the Domain Names to USP and will prepare or execute any necessary documents or respond promptly to any e-mails

necessary to complete the transfer. USP's contact information to effectuate the transfer is attached hereto as Exhibit B.

2. USP agrees not to contest the registration or use by Ms. Durkee of any other internet domain name so long as that internet domain name does not include:

- The terms "USP" or "Union Square Partnership" (or any plurals of such terms) alone;
- A term substantially similar to "USP" or "Union Square Partnership" alone;
- The terms "USP" or "Union Square Partnership" (or any plurals of such terms) as a continuous part of a generic top-level ("gTLD") unless the gTLD also contains additional words which reasonably act as a disclaimer of an association with USP;
- The phrase "TheReal" or a similar phrase in front of the terms "USP" or "Union Square Partnership";
- The term "unionsquarenyc" (or any plurals of such terms) alone; or
- the names of any current USP Executive Members or USP Board Members.

3. USP agrees not to assert claims under the Lanham Act, the Copyright Act, or any analogous state, foreign, or common law claims based on the content of the Website or a substantially similar website so long as Ms. Durkee complies with the terms of this Agreement.

4. Ms. Durkee agrees not to identify herself as an Executive Member of USP or as any member of the USP Board on the Website or a substantially similar website, including in any videos placed on the Website or substantially similar website. Ms. Durkee further agrees not to include images or videos of other individuals identifying themselves as a USP Executive Member or USP Board Member on the Website or a substantially similar website.

5. Ms. Durkee agrees not to include original photographs that now appear on USP's website (www.unionsquarenyc.org) or previously appeared on USP's website at the time of the filing of USP's Copyright Complaint as part of the Website or a substantially similar website.

6. Ms. Durkee agrees to add to the Website or a substantially similar website the following disclaimer: "This site is not sponsored by or affiliated with Union Square Partnership ("USP"), nor does it reflect the opinions of USP. For USP's official website, click here: www.unionsquarenyc.org." This statement shall be located directly below the logo in the first column of the site and will be at least the same font size as the body text in the rest of the site. Ms. Durkee further agrees that if she creates or causes to be created a video in which she or another person represents that she or he speaks on behalf of USP, that video will also include a disclaimer, in either written or audio form, that substantially states that the video is not sponsored by or affiliated with Union Square Partnership, nor does it reflect the opinions of Union Square Partnership. The disclaimer may be placed at the end of the video. If Ms. Durkee causes the video to be hosted at a video sharing website such as YouTube.com or Blip.TV that permits text descriptions to accompany uploaded videos, Ms. Durkee further agrees that the disclaimer will also be included in the text description of the video.

7. Ms. Durkee agrees that any future parodic video she creates or causes to be created in which USP and/or its activities are singled out for discussion shall not contain an exact reproduction of an official USP logo.

8. For avoidance of doubt, Ms. Durkee does not agree to alter the content or design of the Website in any way other than as specified in this Agreement. Ms. Durkee is not required to alter the content or design of any prior drafts of the Website or prior drafts of a substantially similar website that are located solely on her personal computer or in backup media.

9. Except for the obligations set forth herein, the Parties hereby release each other from any and all claims, demands, damages, losses, liabilities, rights, or causes of action arising out of the WIPO Proceeding, the Action, and/or the Website.

10. Contemporaneously of execution of this Agreement, the Parties shall execute a Stipulation of Dismissal with Prejudice in the form attached hereto as Exhibit C in the action dismissing all claims and counterclaims with prejudice, with each side to bear its own fees and costs.

11. USP and Ms. Durkee agree that the terms of this Agreement may be made public, and both parties are free to comment on any aspect of this Agreement or prior legal proceedings. However, settlement communications shall remain confidential.

12. The Parties understand and agree that any consideration provided by either Party to the other under this Agreement does not constitute an admission of any violation of any law or breach of any legal duty.

13. No term or provision of this Agreement may be varied, changed, modified, waived, or terminated orally, but only by an instrument in writing and signed in ink on paper by all of the Parties hereto. The waiver by any Party hereto of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provision hereof, nor shall any failure to enforce any provision hereof operate as a waiver at such time or at any future time of such provision or of any other provision hereof.

14. In any lawsuit to enforce the terms of this Agreement, the prevailing party shall be entitled to recover her or its costs and expenses, including attorney's fees.

15. This Agreement embodies the entire agreement of the Parties with respect to the subject matter involved. All previous communications and/or agreements, whether written or oral, between the Parties are superseded unless expressly incorporated or made a part hereof.

16. This Agreement shall be binding upon the Parties' successors and assigns.

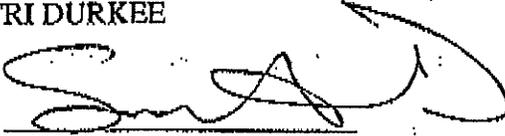
17. This Agreement may be executed in identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties execute this Agreement in counterparts by their duly authorized signatories as of the effective date stated above.

UNION SQUARE PARTNERSHIP, INC.

SAVITRI DURKEE

By: Janifer Falk
Title: Executive Director
Date: 1/21/2009

By: 
Date: 01-20-09

UNION SQUARE PARTNERSHIP
DISTRICT MANAGEMENT
ASSOCIATION, INC.

By: Janifer Falk
Title: Executive Director
Date: 1/21/2009