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VIA FEDERAL EXPRESS

July 15, 2016

Mr. Leo J. Govoni  
President  
Big Storm Brewing Co.  
4912 Creekside Drive  
Clearwater, Florida 33760

Re: Infringement and/or Dilution of Trademark Rights of DUE SOUTH BREWING CO., INC.

Dear Mr. Govoni:

This law firm represents Due South Brewing Co, Inc. (hereinafter “Due South”) in connection with its intellectual property rights. Your use of “Category 3” and “Category 4” is a violation of Due South’s common law trademark rights, common law service mark rights, and trade name rights, and this letter constitutes Due South’s demand that you cease and desist any and all use of the “Category 3” and “Category 4” names. You should immediately forward this letter to your attorney.

Due South is a privately owned brewery offering premium craft beer to consumers in the Palm Beach County and South Florida areas, throughout Florida, Pennsylvania, and internationally in Spain. Due South was registered as a Florida corporation in April 2012 and has continually used both “Category 3” and “Category 4” (the “Marks”) throughout Florida as one of its brand names since that time. Since its incorporation, Due South has continually used the Marks in advertising campaigns and in the community, including through its website at [www.duesouthales.com](http://www.duesouthales.com) which Due South registered on or about March 2012. In addition, Due South has been actively involved in the community in its efforts to further promote its brand including its sponsorship of numerous events. As a result of these efforts, Due South’s customers, and the general public, have come to recognize Due South as a well-established and successful craft brewery.

Recently, Due South became aware of your use of the “Category 3” and “Category 4” names, in conjunction with your new “Belgian Tripel” and “Belgian Quadrupel” beers respectively.

Due South appropriated its common law exclusive right to the Marks by its actual prior and continuous use in commerce. Under both Federal law and Florida state law, common law trademark infringement occurs when a party utilizes a trade or service mark that creates a likelihood of consumer confusion. Common law trademark dilution occurs when a party’s unauthorized use of a distinctive mark

diminishes consumer goodwill by competitors or non-competitors. As you are undoubtedly aware, the names you are using for your beers are exactly the same as Due South's Marks.

Due South appropriated its common law exclusive right to the Marks by its actual prior and continuous use in commerce.<sup>1</sup> Under both Federal law and Florida state law, common law trademark infringement occurs when a party utilizes a trade or service mark that creates a likelihood of consumer confusion. Common law trademark dilution occurs when a party's unauthorized use of a distinctive mark diminishes consumer goodwill by competitors or non-competitors. As you are undoubtedly aware, the names you are using for your beers are exactly the same as Due South's Marks.

Because of your use of "Category 3" and "Category 4", Due South has already witnessed actual confusion in the market. Since you debuted your "Hurricane Series" on or about July 12, 2016, Due South has received numerous telephone calls from consumers and other individuals in the craft beer industry questioning your use of Due South's Marks and whether your beers' names are connected or related to Due South's Marks.

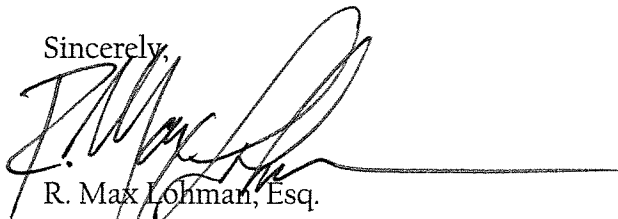
In less than one week, Due South has received over thirty (30) reports of actual consumer confusion and/or diminution of consumer goodwill. This presumably represents a small portion of consumers who are confused but never take the time to find another way to contact Due South and report the confusion caused by your use of these beer names.

Due South has several options under Florida law to enforce its legal rights in the Marks. If Due South were to file a lawsuit against you, it would be entitled to seek: (1) preliminary and permanent injunctions; (2) actual monetary damages; (3) disgorging of any profits you have realized through your use of the Marks; (4) reimbursement of attorney's fees required to prosecute a lawsuit against you; and (5) monetary damages for damage to Due South's goodwill in the market.

Please be advised that Due South will undertake all appropriate steps to protect its Marks and its associated goodwill. You can avoid legal action by immediately ceasing and desisting from any and all infringing activity including use of the "Category 3" and "Category 4". You must cease and desist all promotion and/or marketing of "Category 3" and "Category 4". You are hereby put on notice that Due South and I will be monitoring your illegal use of these Marks. Additionally, you must execute a copy of this letter and send it to this firm within ten (10) days of the receipt of this letter. I recommend you consult with an attorney before taking any action.

If you or your attorney have any questions, please feel free to contact me.

Sincerely,



R. Max Lohman, Esq.

cc: Client

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<sup>1</sup> See *United States v. Steffens*, 100 U.S. 82, 25 L. Ed. 550 (1879); *J. McCarthy, Trademarks and Unfair Competition* Sec. 16:1, at 720 (2d Ed.1984); *Junior Food Stores of W. Fla. v. Junior Food Stores, Inc.*, 226 So. 2d 393, 396 (Fla.1969)

I, Leo J. Govoni, personally and on behalf of Big Storm Brewing Co., agree to immediately cease and desist from any and all further use of "Category 3" and "Category 4". In the event this agreement is breached by me or Big Storm Brewing Co., Due South Brewing Co., Inc. shall be entitled to costs, attorney's fees, and collection costs related to any claims and/or action brought to enforce this agreement and shall be free to pursue all rights it had as of the date of this letter as if this letter had never been signed. I certify that I have the authority to enter into this agreement on behalf of Big Storm Brewing Co.

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Leo J. Govoni, President

Both individually and on behalf of Big Storm Brewing Co.