

## At Your Service April 2014

By RIW on April 10, 2014

# At Your Service

The eNewsletter of RIW's Hospitality and Retail Services Group



April 2014

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### CALENDAR

- April 29, 2014 – Taste of the Nation Boston – Boston, MA
- May 12, 2014 – **The 22nd Annual Restaurant Trends Seminar** – Revere Hotel, Boston, MA

Sponsored by the real estate firm, The Boston Restaurant Group, Inc., the construction management firm Cafco Construction Management, Inc., the business law firm of Ruberto, Israel & Weiner, P.C., the top-ranked commercial lender Rockland Trust, the insurance and financial services firm USI, and the media sponsor The Boston Business Journal.

- May 23-26, 2014 – MFA 2014 Annual Convention, Bretton Woods, NH
- June 12, 2014 – MA Commercial Food Waste Vendor Fair – Framingham, MA

### Hotel Trademark Decision Provides Teachable Moments



by Stacey C. Friends, Esq.

A recent case in the First Circuit court contains several important lessons regarding the importance of trademark registration, enforcement, searching and clearance, particularly for hotels and restaurants entering a new territory.

The case involved two hotels – Hotel Meliá, located in Ponce, Puerto Rico and Gran Meliá, located in Coco Beach, Puerto Rico. Hotel Meliá

Inc. (HMI), had been operating the Hotel Meliá since the 1890s, but never registered its mark. Gran Meliá's owner, Sol Meliá S.A. (now Meliá Hotels International, "MHI"), is a large Spanish hotel chain with 350 hotels in 35 countries. MHI's trademark holding company, Dorpan S.L., holds several U.S. registrations for marks containing the distinctive term, Meliá, the oldest of which dates back to 1998. In 2007 MHI re-named the Coco Beach property "Gran Meliá," and both parties eventually filed countering trademark lawsuits. Although MHI at first prevailed in the District Court, the First Circuit held on appeal that MHI could not use the "Gran Meliá" mark in Puerto Rico due to a likelihood of confusion with the senior Hotel Meliá. [Click here](#) to read more.

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## Business Divorce – Is Judicial Dissolution a Practical Solution?



by Michael J. Duffy, Esq.

Not every relationship is meant to last forever. Differences among business owners of closely-held hospitality and retail companies and corporations sometimes make a "business divorce" inevitable. In some cases, mechanisms for resolving a break-up already have been designed and hard-wired into the organizations' governing documents. Where no such provisions exist and the parties cannot reach agreement on the process going forward, however, one or more parties may seek a "judicial dissolution". Although these statutory remedies exist for certain desperate circumstances, the risks, unpredictability of results, and costs of such proceedings often make judicial dissolution impractical. Organizations finding themselves with ownership at loggerheads are well-advised to sharpen their pencils and reach a negotiated solution where one of the owners buys the other(s) out or where the company is sold to a third party and the proceeds are divided.

Proceeding with judicial dissolution means putting the decision to dissolve the entity in the hands of the court and embracing an uncertain outcome. Under the Massachusetts statute governing corporations, a petition for dissolution must (a) be made by shareholders holding at least 40% of the voting shares, and (b) must demonstrate there is a deadlock in management, the parties cannot break the deadlock, and irreparable harm to the corporation is being threatened or suffered. Under the statute governing limited liability companies, the requirements are somewhat different. A petitioner must show that "it is not reasonably practicable to carry on its business in conformity with the certificate of organization or the operating agreement." In real terms, the statutory requirements for obtaining a judicial dissolution are not easily proved, especially in a contested litigation process. [Click here](#) to read more.

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## Cost Control at the Bar Goes High Tech



by Tim O'Connor, CPA, Edelstein & Company LLP  
As published FSR Magazine, January 2014

If you own, manage, or work in a bar, restaurant, or any other kind of food operation, you know the truth in what Chris Evans told me the other day: "If management's not measuring, then they are not managing."

Evans is senior partner at BevIntel, the distributor of BevChek, an

inventory management device for bar and restaurant operations. Instead of depending on good luck and a lot of manual checking, BevChek uses a proprietary software and state-of-the-art magnetic flow meters to automatically monitor the output of every keg, 24/7/365.

### Keeping costs down

Your food and beverage costs are right up there with rent and labor. So, being able to continuously track precise yields, profits, and quality of every single beer keg is a huge cost control advantage.

In an industry where profit margins are typically thin and the fight against waste can be a deal breaker, capturing real-time data about your beer system is a big plus for owners and managers. BevChek continuously monitors every aspect of our draught beer system. Consequently, it frees you and your managers up to spend more time with customers and to do the other things that make you more money. Shawn McClary, manager of Mick Morgan's Irish Pub and Restaurant in Newton, Massachusetts, can attest to the value of having the data BevIntel delivers. Working with BevIntel saves us thousands of dollars a month and it saves a lot of time freeing management to focus on fixing problems and growing sales." [Click here](#) to read more.

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### Shhhh...



A very common complaint by the dining public is noise. Particularly in more upscale eateries, people want to relax... and perhaps have some quiet conversation.

While it's difficult to completely eliminate background chatter in a crowded restaurant, there are steps you can take to reduce it to acceptable levels. If building out, better planning and design at the front end makes sense. If you inherited a noisy interior, with the right materials such as wall hangings, acoustic tiles, etc., you can make a difference.

In either case a small investment with an acoustical engineer could go a long way to come up with some relatively simple fixes.



**Mike Rosen** attended SOBE 2014 (South Beach Wine & Food Festival). Pictured with Mike is chef Chris Santos.

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## Industry Trends

- [More restaurants adopting no-tipping policy](#)
- [Shopping for a retail winner? Here's what to look for](#)
- [Travelers Rank Complimentary Breakfast and Free Wi-Fi as the Most Valuable Hotel Amenities in Global Survey](#)

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Ruberto, Israel & Weiner attorneys have comprehensive knowledge and expertise in the areas of law in which they practice and the industries served. Attorneys in RIW's Hospitality Practice Group have provided legal services to industry clients for over 30 years.

Additionally, our attorneys organize seminars, lecture, write articles, participate in trade associations, and serve on Boards of Advisors for retail, food and hospitality industry companies.

For a full description of our Hospitality Practice Group, including a list of representative clients, [click here](#).

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## ARCHIVES

[Click here](#) for past articles on a range of issues including: Finance; Leasing; Data Security;

Succession & Estate Planning; Disputes; Construction; and Branding.

Published by Ruberto, Israel & Weiner. **Kelly A. Caralis, Esq.**, Editor.

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