

Clay D. Shorrock, Esq.
THE MCHATTIE LAW FIRM, LLC
550 West Main Street
Boonton, New Jersey 07005
Telephone: 973-402-5505
Facsimile: 973-400-4110

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

PHIL-AM TRADING, INC.

Plaintiff

v.

PHIL-AM MERCHANDISING, INC.

Defendant

Civil Act. No.: 2:15-CV-07132-SDW-LDW

Civil Action

**DECLARATION OF CLAY D.
SHORROCK, ESQ. IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

I, Clay D. Shorrock, Esq., an associate of The Mchattie Law Firm, LLC, counsel to plaintiff Phil-Am Trading, Inc. (“Trading”) in the above-captioned case, hereby declares as follows:

1. I am an attorney-at-law of the State of New Jersey and admitted to practice in the Federal District Court for the District of New Jersey. I am one of the attorneys for plaintiff Trading in the above-captioned action. I am thoroughly familiar with the facts and circumstances of this action.
2. Attached hereto as **Exhibit A** is a true and correct copy of the June 15, 2015 letter sent to defendant Phil-Am Merchandising’s (“Defendant”).
3. Attached hereto as **Exhibit B** is a true and correct copy of Trading’s July 10, 2015 letter, with original exhibits. After Defendant’s receipt of this letter, the parties began an effort to negotiate a resolution of the instant dispute without the need to resort to litigation.

4. On August 4, 2015, the parties and their respective counsel took part in a face-to-face meeting in an effort to negotiate a mutually agreeable resolution. While the meeting was productive, no resolution could be reached.

5. On August 20, 2015, counsel for Defendant provided to counsel for Trading a draft Settlement and Coexistence Agreement. Between August 20, 2015 and approximately September 7, 2015 the parties continued their effort to resolve the instant dispute.

6. Thereafter, on September 8, 2015, counsels for the parties had a telephone conference wherein counsel for Defendant offered settlement terms, central of which was Defendant giving up all rights to the Subject Mark in exchange for a full release from Trading of all claims against Defendant.

7. Attached hereto as **Exhibit C** is a true and correct copy of the emails exchanged between the parties' counsels on September 8, 2015.

8. Attached hereto as **Exhibit D** is a true and correct copy of the emails exchanged between the parties' counsels on September 9, 2015.

9. Attached hereto as **Exhibit E** is a true and correct copy of the September 9, 2015 letter sent to Defendant's counsel accepting Defendant's offer of settlement (the "Acceptance Letter").

10. Attached hereto as **Exhibit F** is a true and correct copy of the emails exchanged between the parties' counsels on September 15, 2015 and true correct copy of the draft formal Settlement Agreement as sent by Defendant's counsel.

11. Thereafter, the parties negotiated the draft formal Settlement Agreement in good faith. During these negotiations there was never any dispute as to the essential terms of the Settlement Agreement reached on September 8, 2015 and further confirmed by the Acceptance Letter, notwithstanding a continued "back and forth" on certain non-essential/ancillary terms.

12. On September 22, 2015, counsel for Trading called counsel for Defendant and was informed that: “Defendant no longer wanted to settle, no longer wished to give up all rights to the Subject Mark, would not negotiate the formal Settlement Agreement further, and would not enter into any agreement containing the terms as agreed in the September 8, 2015 Settlement Agreement and further confirmed by the Acceptance Letter.” No reason for this abrupt turn of events was provided.

13. Attached hereto as **Exhibit G** is a true and correct copy of the unreported case of Casagrande v. Casagrande, 2012 WL 5990122, at *5 (App.Div.Dec.3, 2012).

In accordance with 28 USC §1746, I hereby declare under penalty of perjury that the foregoing is true and correct.

THE MCHATTIE LAW FIRM, LLC

By: /s/ Clay D. Shorrock
 CLAY D. SHORROCK

Dated: December 15, 2015