

06-02-1999

Re



101054624

TRADEMARK ONLY

FORM PTO-1595

1-31-92

2.16.99

EET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.

1. Name of Conveying Party(ies):
Allen & Company, Inc.

- Individual(s)
- General partnership
- Corporation-State
- Other Assignment
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? YES NO

3. Nature of Conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: April 9, 1998

2. Name and address of receiving party(ies):

Fred Meyer, Inc.

Name:

Internal Address:

Street Address: 3800 SE 72nd Ave.

City Portland State OR ZIP 97202

Individual(s) Citizenship

Association

General Partnership

Limited Partnership

Corporation-State

Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designation must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark registration No.(s)

1,522,302

1,850,498

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name:

Klarquist Sparkman Campbell Leigh & Whinston, LLP

Internal Address:

One World Trade Center, Suite 1600

Street Address:

121 S.W. Salmon Street

City Portland State Oregon ZIP 97024-2988

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41):... \$65.00

Previously submitted (copy of check enclosed)

Any deficiency/overpayment is authorized to be charged to deposit account

8. Deposit account number: 02-4550

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Kenneth S. Klarquist

5/26/99

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments and document: 14

TRADEMARK

REEL: 001904 FRAME: 0528

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FORM PTO-159e



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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

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02-16-1999

of Patents and Trademarks. Please record the attached original documents or copy thereof.

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #34

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- Corporation-State
- Other:

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B. Trademark registration No.(s)

1,522,302

1,850,498

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Kenneth S. Klarquist

Klarquist Sparkman Campbell Leigh & Whinston, LLP

Internal Address:

One World Trade Center, Suite 1600

Street Address:

121 S.W. Salmon Street

City Portland State Oregon ZIP 97024-2988

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Enclosed

Any deficiency/overpayment is authorized to be charged to deposit account

8. Deposit account number: 02-4550

02/22/1999 DNGUYEN 00000224 1522302

DO NOT USE THIS SPACE 01 FC:481
02 FC:482

40.00 OP
25.00 OP

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Kenneth S. Klarquist

2/10/99

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments and document: 9

66-01-20211-99

AGREEMENT

This agreement is by and between Allen & Company, Inc., a Maryland Corporation, of 406 W. Pennsylvania Ave., Baltimore, Maryland 21204-4267 (hereinafter "Allen") and Peter J. Georges, of Brennan & Georges, 3150 Commonwealth Ave., Alexandria, Virginia, 22305, authorized agent acting on behalf of an unnamed principal (hereinafter "Assignee").

WHEREAS, Allen is the owner of U.S. Trademark Registration No. 1,522,302 for the mark FIRST CHOICE and Design, and U.S. Trademark Registration No. 1,850,498 for the mark FIRST CHOICE and Design;

WHEREAS Assignee desires to use the mark FIRST CHOICE for goods of the type marketed in a grocery store and services of a type rendered in connection with grocery store activities; and

WHEREAS, for and in consideration of the sum of one hundred thousand dollars (\$100,000.00) and other good and valuable consideration, Allen and Assignee hereby agree as set forth below;

It is agreed:

1. Definitions:

A. For purposes of this Agreement, the term "Allen's Territory" shall mean the entire United States of America, except for those areas included in the definition of Assignee's Territory as stated in subparagraph 1(B) of this agreement.

B. "Assignee's Territory" shall mean the following portion of the United

States of America: The entirety of all states west of the Mississippi river including the entire state of Minnesota, the entire state of Hawaii and the entire state of Alaska; that portion of the state of Illinois consisting of Cook, Dupage, Kane, Kendall, Lake, Lee, McHenry, Will, DeKalb and Kankakee counties; Lake County Indiana; and Walworth County, Wisconsin.

C. For the purpose of this Agreement, "FIRST CHOICE Marks" are defined as the marks of U.S. Registration No. 1,522,302, and No. 1,850,498, and any and all marks consisting of the words First Choice alone or in combination with other words.

2. For good and valuable consideration, the receipt of which is acknowledged, Allen hereby assigns to Assignee its entire right, title and interest to FIRST CHOICE Marks only in Assignee's Territory, together with the good will symbolized by or associated with FIRST CHOICE marks. Allen retains all right, title and interest to FIRST CHOICE marks in Allen's Territory, together with the good will symbolized by or associated with FIRST CHOICE marks.

3. It is agreed that Assignee may use FIRST CHOICE as a trademark or service mark only in Assignee's Territory either alone or in combination with other words or designs.

4. It is anticipated that Assignee will file in the United States Patent and Trademark Office one or more applications to register FIRST CHOICE alone or in combination with other words and/or designs for grocery products and/or services of the type rendered in connection with grocery stores only for Assignee's Territory. Allen will when requested by Assignee move to amend its aforesaid registrations to except Assignee's Territory from registrations, no. 1,522,302 and no. 1,850,498. The parties will request the United States Patent

and Trademark Office to initiate concurrent use proceeding(s) between Allen and Assignee. Allen and Assignee will cooperate in good faith to resolve such concurrent use proceeding(s) with the intention that each party will secure a federal registration including the words "First Choice" for grocery store related products for its own territory as defined above.

5. Upon the institution of such a concurrent use proceeding and notice to the parties in accordance with Rule 2.99(b) affording them an opportunity to answer, the parties agree to file a joint statement indicating that they do not desire to file an answer and which requests that trial dates be set as expeditiously as possible so that the parties can file stipulated facts and briefs. The parties shall then provide a joint stipulation of testimony as provided for in Rule 2.123(b) and a joint brief setting forth each party's claim to their territories as defined by this Agreement and the basis for such claim. In no event will either party claim more than its own territory as set forth in the definition of paragraph 1 above without the other party's written consent.

In the event the United States Patent and Trademark Office objects to such a division of territories, the parties will cooperate in a good faith attempt to agree on a redefinition of their territories or on other steps necessary to meet the requirements of the United States Patent and Trademark Office. The goal of the parties is that any such redefined territories will be as close as possible to the territories as defined in paragraph 1 above. In the absence of an agreement, the matter will be arbitrated as set forth in paragraph 15 of this Agreement.

6. In furtherance hereof, (a) Assignee hereby consents to Allen's federal registration of the mark FIRST CHOICE, regardless of the form in which it is presented, in Allen's Territory for grocery store related goods; (b) Allen hereby consents to Assignee's federal

registration of the mark FIRST CHOICE, regardless of the form in which it is presented in Assignee's Territory's for grocery store related goods and/or services of the type rendered by grocery stores.

7. Allen agrees that it will not object to or interfere with any use by Assignee of the mark FIRST CHOICE within Assignee's Territory and Assignee agrees that it will not object to or interfere with any use by Allen of the mark FIRST CHOICE within Allen's Territory.

8. In any federal trademark or service mark registration application for the mark including FIRST CHOICE filed by Assignee, Assignee will except Allen's Territory. In any federal trademark or service mark registration application for the mark FIRST CHOICE filed by Allen, Allen will except Assignee's Territory.

9. Assignee will not use, authorize others to use, or assist others in using the mark FIRST CHOICE, or any confusingly similar mark, for any goods or services in Allen's Territory. Allen will not use, authorize others to use, or assist others in using the mark FIRST CHOICE, or any confusingly similar mark, for any goods or services in Assignee's Territory.

10. Assignee and Allen agree to advertise FIRST CHOICE goods and services only within their own territories, except that advertising by one party in nationwide or regional media, including any on the internet or in connection with internet advertising or other forms of advertising now known or hereafter developed, which overlaps into the other party's territory is permitted so long as the parties only sell or distribute FIRST CHOICE goods in their own territories and render services under the FIRST CHOICE mark from locations in their own

territories.

11. Assignee and Allen believe that the territorial division to which they have agreed will minimize any possibility of a likelihood of confusion.

12. By this Agreement, the parties are only resolving their differences with respect to the mark FIRST CHOICE, although the parties are not aware of any other differences they have at this time.

13. In the event either party entirely abandons its rights in FIRST CHOICE, including all uses of FIRST CHOICE, then the other party shall not be bound by the restrictions of this Agreement, and, as between the parties, shall be entitled to obtain a federal registration for FIRST CHOICE marks for the entire United States of America. The party abandoning use of FIRST CHOICE marks agrees to notify the other party in writing of its intent to abandon such use and agrees upon request by the non-abandoning party to assign to the other party all right, title and interest it may have in such marks at the time of such abandonment.

14. Assignee agrees to (a) prepare all documentation necessary to achieve the objectives set forth in paragraphs 3 - 7, inclusive, for review, comment and approval by counsel for Allen, and for execution and filing by the parties, and (b) reimburse Allen for its reasonable attorneys fees and expenses incurred in carrying out its obligations pursuant to paragraphs 3 - 7, inclusive within 15 days of receipt of documentation verifying such attorneys fees and expenses.

15. In the event there is any dispute under this Agreement, such dispute shall be resolved by arbitration in accordance with the rules of the American Arbitration Association then in effect. The parties shall agree upon an arbitrator and, in absence of such agreement, the

parties shall each propose an arbitrator who together shall then select an arbitrator to carry out the arbitration at a site to be determined by such arbitrator. The site of arbitration shall be selected so as to minimize and equalize the costs to the parties insofar as is reasonable under the circumstances.

16. This Agreement shall be binding upon the parties, their officers, their directors, partners, successors and assigns.

17. This Agreement is assignable by either party to a successor to all, or substantially all, of the party's FIRST CHOICE business, but not otherwise.

18. Each party is entitled to specific performance of this Agreement and they each acknowledge that adequate remedies at law are not available in the event this Agreement is breached by either party.

19. Assignee is Fred Meyer, Inc., a Delaware Corporation
P.O. Box 42121 3800 S.E. 72nd Ave.
Portland, OR 97202

20. The parties agree that paragraph 19 is to be filled in after execution of the Agreement by Allen, but upon execution by Assignee, and that the agreement will nevertheless remain in full force and effect.

21. This Agreement merges all prior discussions, negotiations, commitments and writings between the parties hereto in respect to the subject matter hereof.

ALLEN & COMPANY, INC.

Michael E. Glenn
By: Michael E. Glenn, President

4/6/98
Date

Executed at Baltimore City, State of Maryland, this 6th day of April, 1998.

Michael E. Glenn

STATE OF Maryland)
) ss.
COUNTY OF Baltimore)

This 6th day of April, 1998, before me personally came the above-named President of Allen & Company, Inc., who executed the foregoing instrument in my presence, and who acknowledged to me that he executed the same of his own free will for the purposes set forth therein.

[Signature]
Notary Public for Baltimore County
My commission expires: 10/1/98

[SEAL]

ASSIGNEE

Roger A. Cooke
By: Roger A. Cooke, SUP Encl. Cust. & Secy

4-9-98
Date

Executed at Portland, State of OREGON, this 9th day of April, 1998.

STATE OF OREGON)
COUNTY OF Multnomah) ss.

This 9th day of April, 1998, before me personally came the above-named ROGER A. COOKE, who executed the foregoing instrument in my presence, and who acknowledged to me that he executed the same of his own free will for the purposes set forth therein.

June E. Hall
Notary Public for OREGON
My commission expires: 1/24/2001



[SEAL]

**KLARQUIST SPARKMAN CAMPBELL
LEIGH & WHINSTON, LLP**

1595/Assistant Commissioner for Tra 02/10/99

DATE INVOICE NO

02/10/99 49839

Fred Meyer 449-49839 Assignment recordal

AMOUNT

65.00

DISCOUNT

.00

CHECK NO 71977

NET AMOUNT

65.00

65.00

KSK/mjc

KSK/mjc

**KLARQUIST SPARKMAN CAMPBELL
LEIGH & WHINSTON, LLP**
ATTORNEYS AT LAW
ONE WORLD TRADE CENTER, SUITE 1600
121 S.W. SALMON ST. PH. 503-226-7391
PORTLAND, OR 97204

WELLS FARGO BANK
FIFTH AND SALMON BRANCH
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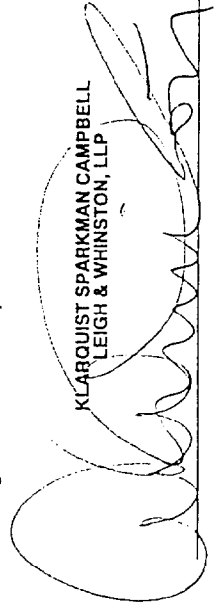
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PAY TO THE ORDER OF:

DATE 02/10/99 CHECK NO. 71977 AMOUNT \$65.00
*****Sixty-Five & 00/100

Assistant Commissioner for Trademarks

KLARQUIST SPARKMAN CAMPBELL
LEIGH & WHINSTON, LLP



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