

09-17-1999



101129247



RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New **7-13-99**

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger
Effective Date
Month Day Year

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

07/14/1999 DNGUYEN 00000252 75364866

FOR OFFICE USE ONLY

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40.00 OP

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text" value="75-364866"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

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<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Thomas C. Buckley, Esq.

7/9/99

Name of Person Signing

Signature

Date Signed

TRADEMARK LICENSE AGREEMENT

THIS TRADEMARK LICENSE AGREEMENT (the "Agreement") is made to be effective as of the 10th day of May, 1999, between North American Baking, Inc., an Ohio corporation ("Licensor"), and Fort Biscuit Company, LLC, a Limited Liability Company organized under the laws of Arkansas ("Licensee").

WITNESSETH:

WHEREAS, Licensor and Licensee have entered into a Settlement and Exchange Agreement dated May 10, 1999, the Licensor has agreed to license the mark OCCASIONS to Licensee.

WHEREAS, Licensor owns the trademark "OCCASIONS" and the pending United States Trademark Application therefor, Serial No. 75-364,866 (the "Licensed Trademark").

WHEREAS, pursuant to the Settlement and Exchange Agreement, Licensee desires to license the Licensed Trademark and Licensor desires to grant it the right to do so, all on the terms and conditions hereafter set forth.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. The following terms shall have the meanings set forth below:

- (a) "Term" shall mean the term of this Agreement as defined in Article X.
- (b) "Products" shall mean butterspray crackers similar in type to those sold under the RITZ® trademark owned by Nabisco Brands Company of the UPC code 44000-00028.
- (c) "Territory" shall mean worldwide.

ARTICLE II
GRANT OF LICENSE

Section 2.01. Subject to the terms and conditions herein, Licensor hereby grants to Licensee during the Term of this Agreement, a nonassignable, nontransferable and exclusive right and license to use the Licensed Trademark only in connection with the manufacture and sale of the Products to customers in the Territory. Licensee may use the Licensed Trademark on Product containers, labels, packaging, and shipping cases. Licensee may use the Licensed Trademark on advertising materials for the Products that have been submitted to and approved by Licensor as provided in Section 3.01. Licensee may not use the Licensed Trademark on or in connection with any goods or products other than the Products and associated approved advertising materials for the Products.

Section 2.02. Licensor represents that during the Term of this Agreement, it will not license any other party to use the Licensed Trademark on the Products in the Territory. Licensor will not itself sell Products identified by the Licensed Trademark within the Territory, but may use the Licensed Trademark in connection with the manufacture, distribution and sale of products other than the Products.

ARTICLE III
MARKETING OBLIGATIONS

Section 3.01. Licensee shall obtain written approval for all advertising, promotional and point of purchase materials published or distributed by Licensee which materially differs from the previous materials and which are used in connection with the Licensed Trademark. Such written approval by Licensor shall not be unreasonably withheld, and if Licensee does not receive such approval within ten (10) days of submission, then such advertising, promotional and point of purchase materials shall be deemed approved.

ARTICLE IV
PACKAGING

Section 4.01. If Licensee desires to adopt new cartons or packaging bearing the Licensed Trademark, which package designs or trade dress ("New Package Designs") are materially different from those heretofore used by Licensee, Licensee shall submit to Licensor at least one (1) representative sample of each such new carton and packaging material and may not use any such materials in connection with the Licensed Trademark without Licensor's prior written approval, which approval shall not be unreasonably withheld. If Licensee does not receive such approval within ten (10) days of submission to Licensor's License Coordinator, the packaging material shall be deemed approved. As soon as possible after the date

hereof, licensor shall transfer any existing packaging material for the Product which utilizes the Licensed Trademark to Licensee and Licensee shall pay the shipping costs for the transfer.

ARTICLE V TRADEMARKS

Section 5.01. Nothing in this Agreement shall be construed as conferring upon Licensee any right or interest in any of the Licensed Trademark other than as expressly stated herein. Any use of the Licensed Trademarks by Licensee shall inure to the sole benefit of Licensor.

Section 5.02. Licensee shall cooperate with Licensor in the protection of the Licensed Trademark and in connection therewith shall:

(a) Promptly inform Licensor of any third party use of any Licensed Trademark or any infringement or encroachment upon or any misuse whatsoever of any Licensed Trademark which comes to Licensee's attention; and

(b) Promptly inform Licensor of any claim against Licensee that the use of the Licensed Trademark infringes the rights of others or of the institution of any proceeding against Licensee predicated upon any such claimed infringement.

Section 5.03. Licensor shall have the sole right to determine what action, if any, shall be taken in respect to any alleged infringements of the Licensed Trademark, and may settle any such claim in its sole discretion. Licensor shall bear all costs in connection with any such action and shall retain all recoveries or damages obtained in any such action.

Section 5.04. Licensee shall not take any action to cause an abandonment or forfeiture of any of Licensor's rights in the Licensed Trademark and shall not take any action to cancel or challenge any registration in the United States or elsewhere of any Licensed Trademark in the name of Licensor or to interfere with any renewal of any such registration. Licensee shall reasonably cooperate with and shall not oppose any application by or on behalf of Licensor to register, maintain or renew any registration of any Licensed Trademark in the United States or elsewhere.

Section 5.05. Licensee hereby acknowledges and agrees that its use of the Licensed Trademark shall be subject at all times during the Term of this Agreement to the reasonable control of Licensor in order for Licensor to maintain the consistent standard of quality associated with the Licensed Trademark. Licensee will preserve the good appearance of the Licensed Trademark wherever and whenever it is used and shall not use the Licensed Trademark in a manner which it is likely to derogate the integrity, distinctiveness or strength of such mark. In particular, whenever the

Licensed Trademark is placed on any media for a period longer than 120 days, such as on vehicles, signs or billboards, Licensee will maintain the good appearance of such media and display.

Section 5.06 From time to time, Licensor may determine that a previously published use of the Licensed Trademark by Licensee may threaten the value of the Licensed Trademark, or is otherwise inconsistent with Licensor's quality standards. Upon written notice from Licensor, Licensee shall implement Licensor's directions regarding the proper use of the Licensed Trademark in a timely manner, which period of implementation shall, in no case, exceed thirty (30) days. Notwithstanding the foregoing, any use of the existing Licensed Trademark by Licensee shall not be deemed to violate Article V if such use is identical to the use of the Licensed Trademark at the effective time of this Agreement.

ARTICLE VI

(INTENTIONALLY OMITTED)

ARTICLE VII QUALITY STANDARDS

Section 7.01. Licensee warrants that all Products bearing the Licensed Trademark shall be of a high standard and of such quality as to protect and enhance the Licensed Trademark, and the goodwill pertaining thereto, and shall be consistent with the historic standards of quality used by Licensee for the Products distributed in Canada.

Section 7.02. Upon written request by Licensor, but not more often than annually, Licensee shall furnish to Licensor a reasonable number of representative samples of the Products to permit Licensor to determine that such Products meet the quality standards set forth herein. The costs associated with the submission of such samples shall be borne by Licensee. If so notified in writing by Licensor, Licensee shall not offer or provide any Products whose nature or quality does not comply with the quality standards established by Licensor.

Section 7.03. In the event Licensor determines that the quality of the Products adopting material incorporating and/or being distributed by Licensee does not meet Licensor's quality standards, Licensor shall so notify Licensee in writing and Licensee shall have the right to correct such quality during the next one hundred twenty (120) days. In the event Licensee fails to correct such quality within such one hundred twenty (120) day period, Licensor shall have the right to terminate this Agreement, in its entirety, immediately upon written notice to Licensee.

ARTICLE VIII
INDEMNIFICATION AND INSURANCE

Section 8.01. Licensee hereby indemnifies, undertakes to defend and hold Licensor harmless from and against any and all claims, suits, losses, damages, fines, penalties, and/or expenses, including, but not limited to, attorneys' fees, arising out of or based upon:

(a) Licensee's production, distribution or sale of Products bearing the Licensed Trademark; or

(b) any breach by Licensee of its obligations hereunder; or

(c) any proceeding brought by any governmental agency or consumer group in connection with the Products processed, sold or distributed by Licensee bearing or using the Licensed Trademark; or

(d) any violations of any applicable law or regulation or civil claims relating to the manufacture, processing, sale, distribution, promotion or advertising of Products bearing or using the Licensed Trademark unless attributable to Licensor's breach of its obligations under this Agreement. Licensor may participate in the defense of any such litigation.

Section 8.02. Licensee shall be solely responsible for the acts and omissions of those with whom it contracts for any aspect of the manufacture, processing, distribution and sale of Products bearing or using the Licensed Trademark.

Section 8.03. In order to assure its ability to discharge its obligations to Licensor, Licensee agrees that it will maintain throughout the Term of this Agreement, at its expense, comprehensive general liability insurance, including product liability insurance and contractual liability coverage specifically endorsed to cover the indemnity provisions in this Agreement, from a reputable carrier in a minimum amount of One Million Dollars (\$1,000,000) primary product liability insurance plus Five Million Dollars (\$5,000,000) umbrella or secondary coverage combined single limit for each single occurrence, for bodily injury and property damage, except that such minimum amount of insurance shall never be greater than the combined amount of general liability insurance (including umbrella) which NAB carries. Licensee's comprehensive general liability insurance shall designate Licensor as an additional insured in the event of any material modification, cancellation or termination. Licensee shall deliver certificates of such insurance coverage to Licensor prior to the sale and/or distribution of any Products bearing the Licensed Trademark.

ARTICLE IX
RELATIONSHIP

Section 9.01. The relationship between Licensor and the Licensee during the Term shall be that of licensor and licensee; the Licensee shall under no circumstances be deemed an agent, franchisee, broker, distributor or representative of Licensor. Subject to certain specified exceptions herein regarding Licensor's responsibility to maintain consistent standards of quality for the Products bearing or using the Licensed Trademark, Licensee shall independently establish its own marketing plan and system.

Section 9.02. Licensee will pay at its own expense, any and all expenses, charges, fees and taxes arising out of or incidental to the carrying on of their business including, without limiting the generality of the foregoing, all workers' compensation, unemployment insurance and social security taxes levied or assessed with respect to their own employees and each, as applicable, will defend, indemnify and save Licensor harmless against any and all claims for such expenses, charges, fees and taxes.

ARTICLE X
TERM AND TERMINATION

Section 10.01. The term of this Agreement shall be for a period of three years (3) from the date hereof (the "Term").

Section 10.02. Upon the termination or expiration, Licensee shall cease all use of the Licensed Trademark or any confusingly similar word(s), provided that, Licensee may dispose of inventory on hand of Products in the ordinary course of their business if Licensee complies with the obligations it has assumed pursuant to this Agreement. Nothing herein shall be deemed to limit Licensee's continued use of the artwork associated with the Licensed Trademark. Licensee hereby agrees that at the termination or expiration of this Agreement, Licensee will be deemed to have assigned, transferred and conveyed to Licensor any rights, equities, good will, title or other rights in and to the Licensed Trademark which may have been obtained by Licensee pursuant to this Agreement. Upon termination or expiration of this Agreement, Licensee may continue to use the formula specifications for the manufacture of the Products, the artwork used for the Products during the Term, and any New Package Designs it may have developed for use in connection with the Products pursuant to Section 4.01, provided that it removes the Licensed Trademark from said packages and cease all use as described in this Section 10.02.

Section 10.03. In addition to all other rights and remedies provided for herein, Licensor shall have the right to cancel and terminate this Agreement immediately by written notice to Licensee upon the occurrence of any one (1) or more of the following events:

- (a) Licensee fails to deliver to Licensor or to maintain in full force and effect the insurance referred to in Section 8.03; or
- (b) The breach by Licensee of any of its obligations pursuant to this Agreement and the failure to cure such breach upon thirty (30) days written notice thereof from Licensor; or
- (c) The failure or refusal of Licensee:
 - (1) to abide by Licensor's written instructions issued pursuant to Section 3.01, 4.01, 5.06, 7.01, 7.02 and 7.03, within ten (10) days of receipt thereof, regarding the quality standards of the Licensed Trademark and Products;
 - (2) to perform, or comply with, any provision contained in Articles VII and VIII, which failure results in the production for sale of Products that are unsafe or unfit for human consumption;
- (d) Licensee's transfer or disposal of its rights under this Agreement in violation of the terms of this Agreement; or
- (e) The insolvency of Licensee; any assignment by Licensee for the benefit of Licensee's creditors; the failure to obtain the dismissal of any involuntary bankruptcy or reorganization petition filed against Licensee within sixty (60) days from the date of such filing; the failure of Licensee to vacate the appointment of a receiver for all or any part of its business within sixty (60) days from the date of such appointment; or the dissolution of Licensee; or
- (f) An involuntary recall of Products bearing the Licensed Trademark for reasons directly or indirectly related to the safety of such Products and attributable to the negligence of Licensee.

Section 10.04. Licensee hereby acknowledges and agrees that in the event it breaches or otherwise defaults under Articles VII, VIII or XI of this Agreement, Licensor shall suffer immediate and irreparable harm for which there is not an adequate remedy at law. Licensee agrees that Licensor shall be entitled to equitable relief by way of injunction, and Licensee agrees to waive proof thereof.

ARTICLE XI
ASSIGNMENT: TRANSFER

(INTENTIONALLY OMITTED)

ARTICLE XII
NOTICES

All notices pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested, as follows:

If to Licensee:

North American Baking, Inc.
144 Professional Drive, #3
Cabot, Arkansas 72023
Attn: Marvin Jones
Fax No.: (501) 843-0103

With a copy thereof to:

Vorys, Sater, Seymour and Pease LLP
Suite 2100, Atrium Two
221 East Fourth Street
P.O. Box 0236
Cincinnati, Ohio 45202
Attn: Daniel J. Buckley
Fax No.: (513) 723-4056

If to Licensor:

Fort Biscuit Company, LLC
5725 Dragon Way, Suite 215
Cincinnati, Ohio 45227
Attn: Neil E. Lampe
Fax No.: (513) 561-1069

With a copy thereof to:

Dinsmore & Shohl
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202-3172
Attn: Charles F. Hertlein, Jr.
Fax No.: (513) 977-8327

Any notice delivered personally shall be deemed to have been given on the date it is so delivered, and any notice delivered by registered or certified mail shall

be deemed to have been given on the date it is delivered. Either party by notice in writing delivered or mailed to the other may change the name or address or both to which future notices to such party shall be delivered.

ARTICLE XIII
MISCELLANEOUS

Section 13.01. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof, and supersede and merge all prior agreements and discussions between the parties relating hereto. No changes in the terms of this Agreement shall be valid, except when and if reduced to writing and signed by both Licensee and Licensor.

Section 13.02. The failure of Licensor to enforce any provision of this Agreement for any period of time shall not be a waiver of any such provision or of Licensor's right to enforce it and all other provisions hereof.

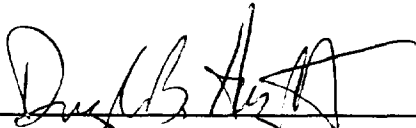
Section 13.03. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio.

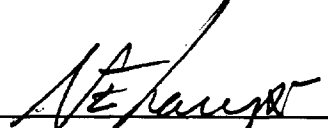
Section 13.04. This Agreement shall be binding upon, and shall inure to the behalf of, Licensor's successors and assigns.

IN WITNESS WHEREOF, the parties hereto have duly executed this License Agreement as of the day and year first above written.

NORTH AMERICAN BAKING, INC.

FORT BISCUIT COMPANY, LLC

By: 
Name: Douglas B. Hertz
Title: V.P. of Marketing

By: 
Name: N.E. Lampe
Title: Sole Member