

12-22-1999



101230118

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

MRD 12.9.99

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

Submission Type

- New
- 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 Change of Name
 - Other
- Effective Date
Month Day Year

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.)

12/21/1999 TTON11 00000230 1782061

FOR OFFICE USE ONLY

01 FC:481
02 FC:482
03 FC:998

40.00 OP
25.00 OP
15.00 OP

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 002002 FRAME: 0387

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)

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.

L. Persaud

L. Persaud

Nov. 5, 1999

Name of Person Signing

Signature

Date Signed

From Universal Foods Merchandise Co.

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

Conveying Party

Mark if additional names of conveying parties attached

Enter Additional Conveying Party

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Enter Additional Receiving Party

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 the Assignment.)

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)

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UNIVERSAL FOODS & MERCHANDISE CO.,

Plaintiff and
Defendant on Counterclaims,

Civil Action No.
95 CV 3106 (RJD)

-against-

BEDESSEE IMPORTS LTD.,

Defendant and
Plaintiff on Counterclaims.

-----x

FINAL JUDGMENT AND
INJUNCTION ON CONSENT

This action having been commenced by Universal Foods & Merchandise Co. ("Universal") against Bedessee Imports Ltd. ("Bedessee") for claims of statutory and common law trademark infringement and unfair competition involving the trademarks KRISHNA, MARSHALS, COW & GIRL, RED SPOT, TARGET and DUTCH BABE, and Bedessee having asserted against Universal counterclaims for infringement and unfair competition involving the same trademarks or slight variations thereof, and the parties being involved in related proceedings involving the same trademarks before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office and before the Canadian Federal Court and in the Trade Marks Office in Canada, and the parties now having settled their differences and having stipulated to the form, substance and entry of the within Order, it is hereby

A. Consent to Jurisdiction of the Court

1. This Court has jurisdiction over Universal and Bedessee, and the subject matter of this action.
2. The parties intend this Final Judgment and Injunction on Consent to govern their use and registration of trademarks for their respective products as set forth herein on a worldwide basis. The Court therefore retains jurisdiction over this matter for the purpose of enforcing the provisions of this Final Judgment and Injunction on Consent and the parties submit to the continued jurisdiction of the Court for such purpose regardless of the territory in which the need for enforcement arises.
3. In this Final Judgment and Injunction on Consent, references to either "Universal" or "Bedessee" will be deemed to include each party's officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them.

B. KRISHNA

4. As of June 1, 1998, Bedessee, its officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and hereby are, permanently enjoined and restrained from using and/or registering the designation KRISHNA, SRI KRISHNA or any other designation containing KRISHNA as a mark in connection with any

goods or services, except as set forth in paragraphs 5 and 9 below.

5. Bedessee is entitled to use and/or register RADHA KRISHNA in connection with ghee, honey, incense oil, incense holders, incense saucers, cotton wicks, and dooph sticks, provided that Bedessee does not display on the packaging for such products any images confusingly similar to those shown in Exhibit 1 hereto. [package of Universal's KRISHNA incense]

6. Notwithstanding any other provision of this Final Judgment and Injunction on Consent, in the event that another person or entity unrelated to Bedessee ("the Third Party") sells to Bedessee a product displaying a mark containing the word KRISHNA ("Third Party KRISHNA Mark"), Bedessee may continue to purchase and sell such product until such time that it is finally determined after exhaustion of all right of appeal that Universal has rights in the Third Party KRISHNA Mark superior to those of the Third Party for said product.

7. Universal is entitled to use and/or register the designation KRISHNA standing alone as a trademark for any goods or services, with the exception of brass dias.

8. Universal, its officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and hereby are, permanently enjoined and restrained from using and/or registering the designations SRI KRISHNA and RADHA KRISHNA in connection with any goods or services.

9. Bedessee is entitled to use and/or register the designation SRI KRISHNA for use in connection with brass dias, and to maintain said registrations.

10. Bedessee will not object to use and/or registration by Universal of KRISHNA standing alone in any country and will withdraw any proceedings against any application by Universal to register KRISHNA.

11. Universal will not object to use and/or registration by Bedessee in any country of a mark containing KRISHNA as permitted by paragraphs 5 and 9 hereof.

12. Universal may continue to use the trade dress presently used for its KRISHNA products as shown in Exhibit 2 hereto. Bedessee does not object to Universal's use of this trade dress.

13. Bedessee may continue to use the trade dress presently used for its SRI KRISHNA products as shown in Exhibit 3 hereto. Universal does not object to Bedessee's use of this trade dress.

14. Except as permitted by paragraph 9 hereof, Bedessee will withdraw all pending applications to register SRI KRISHNA in any country anywhere in the world.

15. The parties will stipulate to the dismissal of any and all actions and proceedings anywhere in the world challenging the other's use, application to register and/or registration of the foregoing marks.

C. MARSHALS/MORESHALL/MARSHALL'S

16. As of February 1, 1998, Universal, its officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and hereby are, permanently enjoined and restrained from using and/or registering the designations MARSHALS, MORESHALL or MARSHALL'S, or any other designations confusingly similar thereto, in connection with any goods or services.

17. Bedessee is entitled to use and/or register the designation MARSHALL'S as a trademark for any goods or services.

18. Universal will not object to the use and/or registration by Bedessee of MARSHALL'S in any country and will withdraw any proceedings in any country against any use, application to register, or registration of MARSHALL'S by Bedessee.

19. Universal will withdraw any pending applications to register MARSHALS, MORESHALL or MARSHALL'S in any country anywhere in the world.

20. Universal will assign to Bedessee any registrations of the trademarks MARSHALS, MORESHALL or MARSHALL'S issued to Universal in any country, including without limitation its incontestable U.S. Registration No. 1,713,934 of the trademark MARSHALS issued by the United States Patent and Trademark Office on September 8, 1992.

21. The parties will stipulate to the dismissal of any and all actions and proceedings anywhere in the world challenging the other's use, application to register and/or registration of the foregoing marks.

D. COW & GIRL/COW AND GIRL

22. As of sixty days from the date of entry of this Final Judgment and Injunction on Consent, Bedessee, its officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and hereby are, permanently enjoined and restrained from using and/or registering the designations COW AND GIRL and/or COW & GIRL or any other designation confusingly similar thereto in connection with any goods or services.

23. Universal is entitled to use and/or register the designation COW & GIRL as a trademark for any goods or services.

24. Bedessee will not object to the use and/or registration by Universal of COW & GIRL in any country and will withdraw any proceedings against any application by Universal to register COW & GIRL as a trademark.

25. Bedessee will withdraw all pending applications to register COW AND GIRL and/or COW & GIRL in any country anywhere in the world, and the parties will stipulate to the dismissal of any and all actions and proceedings anywhere in the world challenging the other's use, application to register and/or registration of the foregoing marks.

26. Bedessee will assign to Universal any registrations of COW & GIRL or COW AND GIRL issued to Bedessee in any country, including without limitation its incontestable U.S. Registration No. 1,683,094 issued by the United States Patent and Trademark Office on April 14, 1992.

E. DUTCH BABE/DUTCH BABY

27. Universal, its officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and hereby are, permanently enjoined and restrained from using and/or registering the designations DUTCH BABE, DUTCH BABY or any other designation confusingly similar thereto in connection with any goods or services.

28. Bedessee is entitled to use and/or register the designation DUTCH BABY as a trademark for any goods or services.

29. Universal will not object to use and/or registration by Bedessee of DUTCH BABY in any country and will withdraw any proceedings against any application by Bedessee to register DUTCH BABY.

30. Universal will withdraw all pending applications to register DUTCH BABE or DUTCH BABY in any country anywhere in the world, and the parties will stipulate to the dismissal of any and all actions and proceedings anywhere in the world challenging the other's use, application to register and/or registration of the foregoing marks.

31. Universal will assign to Bedessee any registrations of DUTCH BABE or DUTCH BABY issued to Universal in any country anywhere in the world.

F. RED SPOT

32. As of February 28, 1998, Bedessee, its officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and hereby are, permanently enjoined and restrained from using and/or registering the designation RED SPOT or any other designation confusingly similar thereto in connection with any goods or services.

33. Universal is entitled to use and/or register the designation RED SPOT as a trademark for any goods or services.

34. (a) Universal, its officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and hereby are, permanently enjoined and restrained from using Canada Dry or Good-O as its bottler, and from manufacturing, distributing, offering for sale or selling soft drinks in containers that are smaller than nine ounces, or in containers that are tinted green, or which are packaged in a yellow wrapper, or which use any label or trade dress similar to that previously or currently used by Bedessee.

(b) As of three years from the date of entry of this Final Judgment and Injunction on Consent, the injunction set

forth in paragraph 34(a) hereof is modified to permit Universal to sell soft drinks displaying trademarks other than RED SPOT in containers smaller than nine ounces.

(c) As of ten years from the date of entry of this Final Judgment and Injunction on Consent, the injunction set forth in paragraph 34(a) hereof is further modified to permit Universal to sell soft drinks displaying the trademark RED SPOT in containers smaller than nine ounces.

(d) Nothing in the injunction set forth in paragraph 34(a) hereof will prevent Universal from selling ginger beer and ginger ale in green tinted containers ten ounces or larger displaying either the GINGER UP, ICEE or SPREE trademarks.

35. Bedessee will not object to use and/or registration by Universal of RED SPOT in any country and will withdraw any proceedings against any application by Universal to register RED SPOT as a trademark.

36. Bedessee will withdraw all pending applications to register RED SPOT in any country anywhere in the world, and the parties will stipulate to the dismissal of any and all actions and proceedings anywhere in the world challenging the other's use, application to register and/or registration of the foregoing mark.

37. Bedessee will assign to Universal any registration of RED SPOT issued to Bedessee in any country.

G. TARGET

38. As of 120 days from entry of this Final Judgment and Injunction on Consent, Bedessee, its officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and hereby are, permanently enjoined and restrained from using and registering the designations TARGET, IMPERIAL TARGET or any other designation confusingly similar thereto in connection with any goods or services.

39. Universal is entitled to use and/or register the designation TARGET as a trademark for any goods or services.

40. Universal, its officers, partners, agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and hereby are, permanently enjoined and restrained from using and/or registering the designation IMPERIAL TARGET in connection with any goods or services, and from using a trade dress confusingly similar to that shown in Exhibit 4. Attached hereto as Exhibit 5 is a specimen of the trade dress currently used by Universal for its TARGET products which Bedessee acknowledges is in compliance with the terms of this paragraph.

41. Bedessee will not object to use and/or registration by Universal of TARGET in any country and will withdraw any proceedings against any application by Universal plaintiff to register TARGET as a trademark.

42. Bedessee will withdraw any pending applications to register TARGET and/or IMPERIAL TARGET in any country anywhere in the world, and the parties will stipulate to the dismissal of any and all actions and proceedings anywhere in the world challenging the other's use, application to register and/or registration of the foregoing marks.

43. Bedessee will assign to Universal any registrations of TARGET issued to Bedessee in any country. If Bedessee has any registration of IMPERIAL TARGET, it will surrender any such registrations for cancellation.

H. Miscellaneous

44. With respect to the dates of discontinuance set forth in the injunctive provisions in Sections B through G above, Universal and Bedessee understand that those dates are intended to establish a sell-off period to allow depletion of existing inventory of products bearing enjoined trademarks, and Universal and Bedessee will not manufacture additional products bearing enjoined trademarks during such sell-off periods.

45. Each party agrees not to induce any other person or entity to adopt or use any trademark identified in Sections B through G above, or in the lists set forth in Exhibits 6, 7 and 8 hereto.

I. Depletion of Existing Inventory

46. With respect to a trademark which a party has been enjoined from using, that party will, as of the respective dates

indicated herein for each such trademark, make no further use of any such mark in accordance with the provisions hereof and will destroy any inventory of labels, packaging, advertising and promotional materials or any other printed materials displaying such a mark. Nothing in this Final Judgment and Injunction on Consent shall require either party to recall from the market or trade any goods bearing discontinued marks which were delivered and sold prior to the respective dates of discontinued use specified herein.

J. Other Existing Trademarks

47. Attached hereto as Exhibits 6 and 7 are lists of trademarks currently used by Universal.

(a) Bedessee will not attempt to use and/or register any of the trademarks set forth in Exhibit 6 in connection with any products, and will not purchase from other persons or entities unrelated to Bedessee ("the Third Party") or sell products bearing any of said word marks.

(b) Bedessee will not attempt to use and/or register any of the trademarks set forth in Exhibit 7, and will not purchase or sell the products (as set forth in parentheses) of Third Parties bearing any of said word marks. However, Bedessee may purchase products (other than those set forth in parentheses) displaying any of the marks shown in Exhibit 7, and may continue to purchase and sell such products until such time that it is finally determined after exhaustion of all right of

appeal that Universal has superior rights to the mark on such products sold by the Third Party to Bedessee.

(c) Notwithstanding (a) and (b) above, Bedessee shall not be precluded from utilizing pictorial representations of any word mark set forth in Exhibits 6 or 7. For example, and without limitation, Bedessee's use of a label displaying a pictorial depiction of a coconut tree is not a use of the COCONUT TREE mark, and Bedessee's use of a label displaying a pictorial depiction of a bee is not a use of the QUEEN BEE mark.

(d) Notwithstanding (a) and (b) above, Bedessee shall not be precluded from using the designations set forth in Exhibits 6 or 7 for descriptive, non-trademark purposes. For example, and without limitation, Bedessee's use of the term "gusto" to describe taste is not a use of the GUSTO mark, and Bedessee's use of the term "fresh fruit" on a label to indicate that a fruit juice is made from "fresh fruit" is not a use of the FRESH FRUIT mark.

48. 786: Universal claims 786 as a trademark. Bedessee agrees that it will not use or register 786 as a trademark. However, Bedessee may sell food products on or in connection with which 786 is displayed in a nontrademark manner as an indication ~~to the Muslim community~~ of quality or acceptability of the food product.

49. SHILING OIL: Universal will not sell SHILING OIL in the United States. In Canada, Bedessee agrees to abide by the final disposition, after exhaustion of all appeals, of the civil

court action determining Universal's rights to the SHILING OIL mark in Canada.

50. SUPPLEGENT: In Canada, Bedessee agrees to abide by the final disposition, after exhaustion of all appeals, of the civil court action determining Universal's rights to the SUPPLEGENT mark in Canada.

51. Bedessee will not adopt or use a trade dress that is confusingly similar to any protectable trade dress owned and now in use by Universal in connection with any of its products.

52. Subject to paragraphs 7, 34, 40 and 57, Bedessee will not request customers or suppliers of Universal either orally or in writing to refrain from selling any products displaying the trademarks KRISHNA, COW & GIRL, RED SPOT, TARGET or any trademark listed in Exhibits 6 or 7.

53. Bedessee will not induce any Third Party to introduce or sell any new products under any of the marks set forth in Exhibits 6 or 7.

54. Attached hereto as Exhibit 8 is a list of trademarks currently used by Bedessee.

(a) Universal will not attempt to use and/or register any of the trademarks set forth in Exhibit 8 in connection with any products, and will not purchase or sell any products of Third Parties bearing any of said marks.

(b) Notwithstanding (a) above, Universal shall not be precluded from utilizing pictorial representations of any word mark set forth in Exhibit 8. For example, and without

limitation, Universal's use of a label displaying a pictorial depiction of a jaguar is not a use of the JAGUAR mark, and Universal's use of a label displaying a pictorial depiction of a red bull is not a use of the RED BULL mark.

(c) Notwithstanding (a) above, Universal shall not be precluded from using the designations set forth in Exhibit 8 for descriptive, non-trademark purposes. For example, and without limitation, Universal's use of the term "Amazon" to describe a region of South America is not a use of the AMAZON mark.

55. Universal will not adopt or use a trade dress that is confusingly similar to any protectable trade dress owned and now in use by Bedessee in connection with any of its products.

56. Universal will not request customers or suppliers of Bedessee either orally or in writing to refrain from selling any products displaying the trademarks RADHA KRISHNA (in connection with the products set forth in paragraph 5 hereof), SRI KRISHNA (in connection with brass dias), MARSHALL'S, DUTCH BABY or any trademark listed in Exhibit 8.

57. Universal will not use or register the trademark BETTY on or in connection with casareep, noodles, essence or jam.

58. Universal will not use or register the trademark SHILING OIL in the United States.

59. Universal will not induce any Third Party to introduce or sell any new products under any of the marks set forth in Exhibit 8.

K. Enforcement of the Final Judgment and Injunction on Consent

60. In the event that a party claims that the other party has violated a provision of this Final Judgment and Injunction on Consent, the complaining party will notify the violating party of the claimed violation and give the violating party a period of fourteen days in which to cure the claimed violation.

61. If the claimed violation is not cured within the fourteen-day cure period, then the complaining party may notify the Court of the claimed violation and seek the Court's intervention to correct the violation. Upon finding a party to be in violation of a provision of the Final Judgment and Injunction on Consent, the Court will issue an order directing the violating party to comply with the violated provisions. The party which substantially prevails in ~~litigating~~ ⁷⁸ any claim arising out of this Final Judgment and Injunction on Consent ^{VS. [Signature]} shall be entitled to recover from the adverse party its reasonable attorneys fees and costs.

62. Universal's claims and Bedessee's counterclaims in this action are dismissed with each party to bear its own costs and attorneys fees.

63. After (i) the determination of the pending appeal, (ii) any and all assessments and awards of costs relating to the granting of summary judgment on June 28, 1996 and/or the appeal therefrom, and (iii) the payment and recovery of all said costs assessed and awarded, the parties will enter into a stipulation

of dismissal of the civil action pending in the Federal Court of Canada captioned "1013579 Ontario Inc. v. Bedessee Imports Ltd." (Court File No. T-705-95). Universal, which does business in Canada as 1013579 Ontario Inc., hereby agrees to pay all costs associated with Federal Court of Canada Action No. T-705-95 as may be assessed against it and awarded to Bedessee in connection with said summary judgment motion and appeal. Bedessee hereby agrees to pay all costs associated with Federal Court of Canada Action No. T-705-95 as may be assessed against it and awarded to Universal in connection with said summary judgment motion and appeal.

64. In the event that the business of either party is sold or that either party sells or licenses one of the trademarks covered by the provisions of this Final Judgment and Injunction on Consent, then the purchaser or licensee of the business or the trademark will be notified of the existence of this Final Judgment and Injunction on Consent and the purchasing party or licensee will take the business or the trademark subject to the provisions hereof.

65. To effectuate the purposes and intent of this Final Judgment and Injunction on Consent, and to enable the parties to obtain and maintain registrations of their respective marks, each party upon the request of the other party will cooperate by executing necessary, relevant and consenting documents in connection with the marks set forth in Sections B through G hereof.

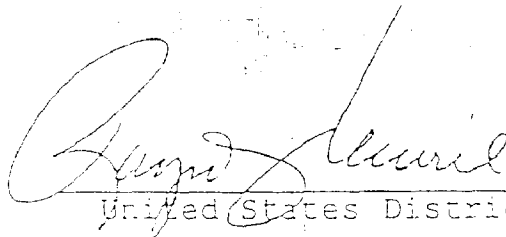
66. Commencing five years from the date hereof;

neither party will be enjoined or otherwise precluded from resuming use of, or from otherwise adopting, using or registering any mark that said party was enjoined or precluded from using and/or registering by the terms of this Final Judgment and Injunction on Consent, if the said mark is abandoned by the other party, its successors or assigns within the meaning of Section 45 of the Trademark Act of 1946, as amended, 15 U.S.C. § 1127, or if a third party is adjudicated to have rights superior to the other party with respect to the said mark.

Dated: Brooklyn, New York

~~November 1997~~

April 29, 1998



United States District Judge

CONSENTED AND AGREED TO:

UNIVERSAL FOODS & MERCHANDISE CO.

By: *Leticia da Rosa*

Title: *Secretary*

BEDESSEE IMPORTS LTD.

By: *V. P.*

Title: *V.P.*

APPROVED AS TO FORM:

ROBIN, BLECKER, DALEY & DRISCOLL

By: *Howard B. Barnaby*
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