

FORM PTO-1618A
Expires 06/30/99
OMB 0661-0027

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

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

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
Effective Date
Month Day Year
- Merger
- 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 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.)
- Corporation Association
- Other

Citizenship/State of Incorporation/Organization

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0661-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0661-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

TRADEMARK
REEL: 002088 FRAME: 0918

FORM PTO-1618B
Expires 06/30/99
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U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

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.

Michael J. MacDermott

July 26, 2000

Name of Person Signing

Signature

Date Signed

INTELLECTUAL PROPERTY TRANSFER AGREEMENT

This Agreement, dated this 13th day of April, 1999, contains all the terms and conditions by which the Outrigger Duke Kahanamoku Foundation ("ODKF"), Duke Paoa Kahanamoku, Ltd. ("DPKL") and Charlie O. Carr ("Carr"), (sometimes referred to herein collectively as "Transferors"), transfer their rights relating to Duke Paoa Kahanamoku to Malama Pono, Ltd. ("MPL"), by which the status of Martin H. Freeman ("Freeman") as agent for transferors is concluded, and by which Donald Love, Michael P. Graham and the business entity or entities operating under the name of Gramicci ("Gramicci") guarantee the obligations of MPL hereunder.

WHEREAS, Transferors own, or purport to own, with regard to all goods, services, organizations and events, all rights with respect to Duke Paoa Kahanamoku, including:

- (a). rights to license to third parties,
- (b). rights to obtain and perfect all forms of intellectual property, including but not limited to copyrights, trade names and trademarks, both under federal and state registrations and those under common law,
- (c). rights to protect such intellectual property against infringements, past, present and future, and against related instances of dilution of such intellectual property,
- (d). rights to exploit in the marketplace, worldwide,
- (e). rights to the use of his name, likeness, life story and personality,
- (f). rights of publicity, and to registrations thereof,
- (g). rights of access to memorabilia for marketing, and
- (h). all good will

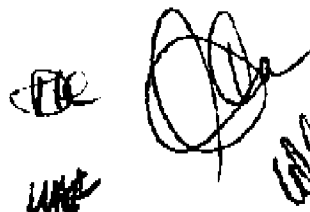
(hereinafter, "the Rights"), and

WHEREAS, Transferors desire to transfer the Rights to MPL pursuant to the terms and conditions set forth herein, and

WHEREAS, MPL desires to receive transfer of the Rights pursuant to the terms and conditions set forth herein, and

WHEREAS, Donald Love, Michael P. Graham and Gramicci, in order to facilitate the transfer, desire to guarantee the obligations of MPL pursuant to the terms of this Agreement, and

WHEREAS, Transferors and Freeman desire to conclude Freeman's status as agent for Transferors pursuant to the terms and conditions set forth herein.



NOW THEREFORE, IT IS AGREED, for good and valuable consideration, as follows:

1. TRANSFER, AND RELATED DOCUMENT EXECUTION. Transferors transfer the Rights to MPL, without limitation or reservation, except as expressly provided in Paragraphs 9 and 10 herein. Transferors, or any of them, shall execute, when and as requested by MPL, documents necessary to effectuate the terms and conditions of this Agreement, including but not limited to documents necessary to assign federal or state registrations of any or all trademarks, trade names, copyrights, rights of publicity and any other intellectual property, and to assign any such trademarks, trade names, copyrights, rights of publicity and any other such intellectual property which may exist at common law.

2. ASSUMPTION OF RESPONSIBILITY. MPL assumes complete legal and financial responsibility for developing, perfecting and protecting the Rights.

3. MPL AS LICENSOR. MPL shall operate as licensor pursuant to the terms of existing license or license type agreements and letters of intent with respect to licensing, according to their terms, with all the rights and responsibilities attendant thereto.

4. PAYMENT TO AGENT, AND TERMINATION OF AGENCY. Upon execution of this Agreement, MPL shall pay directly to Freeman the sum of \$50,000, which shall serve as the balance due for full and complete compensation to him for any and all services rendered, expenses incurred, and agency fees earned pursuant to the Settlement Agreement of July 10, 1997. Upon receipt of said sum, the agency relationship between Freeman and the Transferors shall be terminated. By this Agreement, Transferors and Freeman hold each other harmless and mutually release each other, from any and all claims which either may have, or come to have, against the other, from the beginning of the world to the end of all relationships that the other parties to this Agreement, or any of them, have with the Rights, or any of them. It is expressly understood that Freeman hereby waives any and all rights to, or claim to, any portion of any future payments by MPL to Transferors, or to anything of value that should inure to the benefit of Transferors upon and after the exercise by Transferors of the right of reversion as hereinafter defined and provided for, or upon and after the retransfer of the Rights, or any portion of them, to the Transferors, or any of them.

5. PAYMENTS TO TRANSFERORS. MPL shall pay one (1%) percent of gross receipts from all sources developed from any use of the Rights, to Transferors for a period of ten (10) years, payable quarterly. Gross receipts shall exclude receipts paid to MPL from T.S. Enterprises (hereinafter "T.S.") under its existing license Agreement for restaurant services, up to a maximum of \$80,000 per year. Said restaurant services receipts, up to the maximum of \$80,000 per year, which are paid pursuant to the terms of the T.S. license Agreement and for the life of that Agreement, will be passed through MPL to the Transferors, without regard to the aforesaid ten (10) year limitation. Restaurant service receipts from T.S. in excess of \$80,000 per year shall be included in the gross receipts from which the one (1%) percent payment shall be made to Transferors.

6. PAYMENTS UPON TERMINATION OF T.S. LICENSE. MPL shall use its best efforts to enforce and maintain the license Agreement dated August 30, 1994, granting T.S. a license for restaurant services. If the license to T.S. is terminated for any reason, by licensor, licensee, or otherwise by operation of law, MPL shall continue to pass through to Transfersors royalties received from licensees of restaurant services, up to a maximum of \$80,000 per year. In the event MPL itself provides restaurant services, then it shall pay to Transfersors one (1%) percent of gross receipts derived from such restaurant services, up to a maximum of \$80,000 per year.

7. SHARING OF PAYMENTS. MPL shall make payments under Paragraphs 5 and 6, as follows:

a. As to each payment from gross receipts derived from the sale and licensing of apparel, including but not limited to all items listed in International Trademark Class 25, DPKL and Carr, acting as one, shall receive ninety (90%) percent of each such payment and ODKF shall receive ten (10%) percent of each such payment.

b. As to each payment from gross receipts derived from the sale and licensing of restaurant services, as they pertain to and are included in International Trademark Class 42, ODKF shall receive ninety (90%) percent of each such payment and DPKL and Carr, acting as one, shall receive ten (10%) percent of each such payment.

c. As to each payment from gross receipts derived from all sources other than apparel and restaurant services, ODKF shall receive fifty (50%) percent of each such payment and DPKL and Carr, acting as one, shall receive fifty (50%) percent of each such payment.

d. All payments due from MPL to DPKL and Carr, acting as one, shall be paid directly to DPKL and Carr, acting as one. All payments due from MPL to ODKF shall be paid directly to ODKF.

8. CERTIFICATION. Each payment to Transfersors shall be accompanied by certification by MPL's auditors, verifying gross receipts from each source of such receipts, and that the payment accurately reflects amounts due, and to be shared in proportion by, the Transfersors. A separate copy of each such certification shall be provided to DPKL and Carr, acting as one, and to ODKF.

9. DEFAULTS AND RIGHTS OF REVERSION. In the event of any of the following defaults by MPL and if, after due notice is given to MPL by either or both of the Transfersors, the default is not cured in timely fashion, the transfer shall be voided, and the Rights shall revert to the Transfersors:

- a. failure to make any payment required under Paragraphs 4, 5, 6, and 7,
- b. failure to provide any certification required under Paragraph 8,
- c. abandonment of the rights for a period of one (1) year,
- d. cessation of revenue derivation from the exploitation of the Rights for a period of one (1) year.

- e. use of the Rights in any way which will involve or permit association of the Rights, the person Duke Paoo Kahanamoku, or the Hawaiian People, with pornography, obscenity, violence, parody, low quality, high volume services (e. g., fast food restaurants), or other uses which would cast the Rights, the person Duke Paoo Kahanamoku or the Hawaiian People, in a bad light or would lead to ridicule or impairment of the reputation of Duke Paoo Kahanamoku or the Hawaiian People.
- f. use of the Rights in any way that is not in a first class manner, as set forth in Paragraph 9 (c).

Due notice of an asserted default shall be given in writing by Transferors, or their representative, stating the specific action which is not in compliance with any of Paragraphs 4 through 8, or of Paragraphs 9.c. through 9.f., and which therefore comprises a default and which, if not cured, would result in reversion of the Rights. MPL shall have the right to cure the default within 60 days of receipt of such notice. In the event of reversion of the Rights, ownership of the Rights shall revert back to the Transferors in the same proportion as contained in the Settlement Agreement of July 10, 1997.

10. ODKF'S RETENTION OF CERTAIN RIGHTS. Notwithstanding any provision of this document which might otherwise be interpreted to the contrary, ODKF shall retain the right, without compensatory obligation, to use Duke Kahanamoku in its name and in any of its activities directly associated with its charitable fundraising activities. ODKF agrees to inform MPL of its public fundraising events to afford MPL the opportunity to coordinate ODKF's events with the Rights transferred to MPL under this Agreement, including but not limited to MPL's right to provide products and/or services in connection therewith, for the mutual benefit of ODKF and MPL, and preservation and enhancement of the value and quality of the Duke Kahanamoku name and Rights.

11. PRIOR AGREEMENTS. Except to the extent that its terms may apply in the event of reversion of the Rights pursuant to Paragraph 9, the Settlement Agreement of July 10, 1997, in full force and effect prior to the date of this Agreement, shall be terminated and shall no longer be in effect upon execution of this Agreement and payment to Freeman pursuant to Paragraph 4. This Agreement shall then supersede the existing master license, entitled Letter of Agreement, dated December 4th and 5th, 1998, between Malama Pono Partners (now MPL), and Freeman as agent for Transferors, which Letter of Agreement (master license) shall cease to exist upon the execution of this Agreement.

12. GUARANTEE. Donald Love and Michael P. Graham, jointly and severally, hereby guarantee satisfaction of those obligations of MPL incurred during the ten-year period following the effective date of this Agreement, and which are incurred pursuant to the terms set forth in this Agreement. Gramicci hereby guarantees satisfaction of those obligations of MPL incurred after the expiration of the ten-year period following the execution of this Agreement, and which are incurred pursuant to the terms of this Agreement. In the event MPL, pursuant to Paragraph 14, transfers all or a controlling part of its interest in the Rights obtained pursuant to this Agreement, the transferor

of such interest or controlling part thereof may substitute guarantors for Donald Love, Michael P. Graham and Gramicci who are financially qualified, subject to prior approval of said substitute guarantors by the Transferors, which approval shall not be unreasonably withheld or delayed.

13. **NO OTHER AGREEMENTS.** ODKF, DPKL, Carr and Freeman each confirm that they have no Agreement with MPL or its principal, Donald N. Love, except as set forth in this Agreement.

14. **RIGHT OF FIRST OFFER.** In the event MPL desires to transfer, sell or otherwise convey all or a controlling part of its interest in the Rights obtained pursuant to this Agreement, it must first give notice to ODKF, DPKL and Carr of its intent to transfer such interest. Each of (1) ODKF and (2) DPKL and Carr, acting as one, shall have 45 days from receipt of such notice to negotiate terms and conditions of such a transfer from MPL to either of them, respectively, or both of them, collectively. No such transfer to either of them shall effect the rights of the other of them under this Agreement. If neither of them, separately or collectively, reach Agreement with MPL on the terms of such transfer within the said 45-day period, or on such earlier date that both indicate that no Agreement can be reached, MPL shall be free to market all or a controlling part of its interest upon terms no less favorable than those proposed to each of them, and for a price no less than 90% of that proposed to each of them. The right of first offer set forth in this Paragraph 14 shall not apply to the transfer, sale or other conveyance of such part of MPL's interest in the Rights which leaves MPL with a controlling interest in the Rights; however, in the event of such transfer, MPL and the transferee or transferees of such non-controlling interest, together shall be jointly and severally responsible for all obligations then and thereafter due under the Agreement, and Donald Love, Michael P. Graham and Gramicci, pursuant to Paragraph 12, shall continue as guarantors.

15. **RIGHTS OF FIRST REFUSAL.** In the event that ODKF, on the one hand, or DPKL and Carr, acting as one, on the other hand, desires to transfer, sell or otherwise convey its (his) interest in this Agreement, or any portion thereof, to any third party, each grants mutually to the other the right of first refusal to purchase such interest or portion thereof, upon such terms as have been agreed to by the third party. In the event that Carr desires to transfer, sell or otherwise convey his stock interest in DPKL during his lifetime, Carr grants to ODKF the right of first refusal to purchase said stock interest, subject to any existing superior rights of Debbie Haugen and Cameron Kahanamoku, the other shareholders in DPKL.

16. **PURCHASE OF CARR'S DPKL STOCK THROUGH HIS ESTATE.** In the event that Carr owns DPKL stock at the time of his death, Carr agrees that ODKF, subject to any existing superior rights of Debbie Haugen and Cameron Kahanamoku, shall have the option to purchase said stock from his estate at the then fair market value, to be established by mutual Agreement between ODKF and the representative of Carr's estate, or, failing such Agreement, by its value as may be determined for federal estate tax purposes. If no such valuation is made, then its value shall be determined by binding appraisal of a qualified appraiser appointed by said personal representative, a qualified appraiser appointed by ODKF, and a third qualified appraiser selected by the two appointed appraisers.

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17. TRANSFERORS' REPRESENTATIVE. DPKL and Carr, acting as one, and ODKF shall, with regard to relations with MPL from and after the execution of this Agreement, act only after mutual Agreement between them, as to any and all discussions, negotiations, or litigation with MPL. In the event that they cannot reach such mutual Agreement, DPKL and Carr, and ODKF, agree to act only through a mutually agreed upon representative, which may be an approved person, accounting firm, bank or trust company.

18. NO WARRANTIES AND ACKNOWLEDGMENT. Transferors and Freeman make no warranties whatsoever concerning the Rights. MPL acknowledges that the existence of all or part of the Rights may be disputed by third parties, known and unknown. MPL acknowledges that Transferors and Freeman have, in good faith, disclosed all existing disputes regarding the Rights.

19. TRADEMARK FILES AND LICENSES. Prior to execution of this Agreement, ODKF will transfer all trademark files in its control, pertaining to Duke Kahanamoku, to MPL, including those in possession of David Newman, Esquire; DPKL and Carr will transfer all trademark files in their control, pertaining to Duke Kahanamoku, to MPL, including those received from Authentic Fitness's intellectual property attorneys following the termination of the Authentic Fitness license; and Freeman and Transferors will transfer all existing license and license-type agreements, including letters of intent, pertaining to Duke Kahanamoku, in his or their possession to MPL.

20. DISPUTES. If a dispute should arise out of this Agreement, or any breach thereof, and if the dispute cannot be settled through direct discussions, the parties agree first to endeavor to settle the dispute in a amicable manner by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this Agreement, or any breach thereof, shall be settled by arbitration in accordance with the Commercial Rules of the American Arbitration Association, in Los Angeles, California, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

21. REPRESENTATIONS. Representations made in this Agreement by the parties thereto have been made in good faith. The parties hereto, and the individuals signing for them, represent that they have the legal capacity, and authority to enter into this Agreement for themselves or for the entity for which they are signing, as the case may be.

22. APPLICABLE LAW. This Agreement, its interpretation, and resolution of disputes which may arise out of this Agreement, shall be governed by the law of California.

23. NOTICES. All notices hereunder shall be given by addressing them as indicated below and by depositing them as certified mail or registered mail, return receipt requested, postage prepaid, or by delivering them, toll prepaid to a telex or cable company or to a national overnight courier service.

The addresses of the parties hereto, until further notice, are:

Outrigger Duke Kahanamoku Foundation
P. O. Box 90310
Honolulu, Hawaii 96835

Duke Paoa Kahanamoku, Ltd.
c/o Charlie O. Carr
5838 Bonsall Drive
Malibu, California 90265

Charlie O. Carr
5838 Bonsall Drive
Malibu, California 90265

Martin H. Freeman
201 North Mill Street, Suite 203
Aspen, Colorado 81611

Malama Pono, Ltd.
1620 Emerson Avenue
Oxnard, California 93033

Gramicci
1620 Emerson Avenue
Oxnard, California 93033

Donald Love
1620 Emerson Avenue
Oxnard, California 93033

Michael P. Graham
1620 Emerson Avenue
Oxnard, California 93033

24. CAPTIONS. The captions used in connection with the paragraphs of this Agreement are inserted only for purposes of reference. Such captions shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Agreement or any party thereof, nor shall such captions otherwise be given any legal effect.

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25. **INTEGRATION.** This Agreement constitutes the entire understanding of the parties hereto, and revokes and supersedes all prior agreements between them, or any of them, and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing, signed by the parties, and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may be in conflict with this Agreement. Notwithstanding the prior provisions of this Paragraph 25, the signature of Freeman shall not be required to amend this Agreement, once payment has been made to him pursuant to Paragraph 4, provided that any amendments to Paragraphs 4 and 18-27, or any of them, shall not be effective as to Freeman's rights and responsibilities under Paragraphs 4 and 18-27; his rights shall continue to be governed by the content of Paragraphs 4 and 18-27, as those paragraphs existed before any such amendment was made.

26. **FACSIMILE SIGNATURES AND COUNTERPARTS.** This Agreement shall be binding whether signed in the original or via facsimile signature pages, and whether signed on a single original or in counterparts.

27. **HOLD HARMLESS AND INDEMNIFICATION.** MPL and Granicci shall hold the other parties to this Agreement harmless, and indemnify them from any and all acts and /or omissions of MPL and Granicci or their agents, servants and employees, without limitation. ODKF, DPKL, and Carr shall hold the other parties to this Agreement harmless, and indemnify them from any and all acts and/or omissions of ODKF, DPKL and Carr or their agents, servants and employees, without reservation.

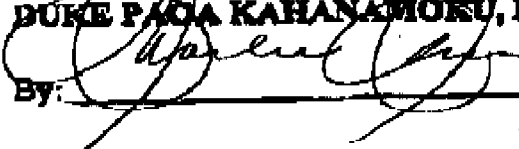
28. **EFFECTIVE DATE.** This Agreement shall become effective on the date the last signatory executes it.

The parties, by their signatures affixed below, agree and are bound by the terms and conditions as aforementioned above.


OUTRIGGER DUKE KAHANAMOKU FOUNDATION

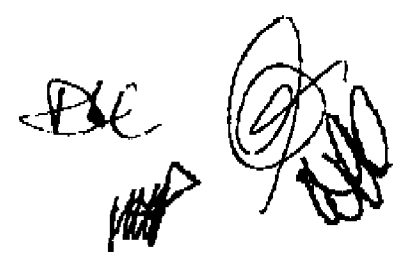
By:  4/13/99
(Date)

DUKE PAPA KAHANAMOKU, LTD.

By:  07/19/99
(Date)

MALAMA PONO, LTD.

By:  4-19-99
(Date)



GRAMICCI

By: Dior 4-19-99
(Date)

DONALD LOVE

Dior 4-19-99
(Date)

MICHAEL P. GRAHAM

M.P. Graham 4/19/99
(Date)

CHARLES O. CARR

Charles O. Carr 04/19/99
(Date)

MARTIN EL FREEMAN

Martin El Freeman 4/14/99
(Date)

[Handwritten initials/signature]

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