

Fresh Samantha, Inc. Trademark Registrations

MARK:	REGISTRATION NO.
THE BIG BANG BODY ZOOM JUICE	2,198,618
DESPERATELY SEEKING C	2,196,068
FRESH SAMANTHA	1,913,653
DESIGN (girl carrying fruit)	2,023,377
WILLY BOY	2,349,987
WILLY BOY & DESIGN	2,348,540
FRESH SAMANTHA (Stylized)	2,349,992

Fresh Samantha, Inc. Trademark Applications

MARK:	SERIAL NO.
POWER SNACK	75/659,391
SUPER JUICE WITH ECHINACEA & DESIGN	75/782,772
OH HAPPY DAY	75/654,497
FLOWER POWER	75/659,350
MS. GINGER PEACH	75/654,496
MANGO MAMA	75/708,859
JUICEHEAD	75/666,061
BODY ZOOMERS	75/708,601
THE BIG BANG	75/708,200
PROTEIN BLAST	75/708,377
GET SMART	75/666,062
SHAKE IT UP BABY	75/666,060
FROZEN SAMANTHA	75/741,252
MADAM BRIDGEWATER'S RASPBERRY LIMEADE	75/807,607
THE BIG BANG	75/807,830
FRESH SAMANTHA	75/807,835
IT AIN'T EASY BEING GREEN	75/807,831
HIP SIP	75/807,832
VEGGIE CHA CHA	75/807,833
FRESH SAMANTHA	75/807,834

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") is entered into as of February 2, 2000, by and among **ODWALLA, INC.**, a California corporation (the "Purchaser"), **FRESH SAMANTHA, INC.**, a Maine corporation (the "Company"), **ORANGE ACQUISITION SUB, INC.**, a Maine corporation and a wholly-owned subsidiary of Purchaser (the "Merger Sub"), the Company and Merger Sub sometimes being hereinafter collectively referred to as the "Constituent Corporations," **SAMANTHA INVESTORS, LLC**, a Massachusetts limited liability company (the "LLC"), and the individuals and Entities listed on *Schedule I* attached hereto. Certain capitalized terms in this Agreement are defined in *Exhibit A*.

RECITALS

- A. The Board of Directors of Purchaser, Merger Sub and the Company each have determined that it is in the best interests of their respective shareholders for the Purchaser to acquire the Company by the merger of the Merger Sub with and into the Company upon the terms, and subject to the conditions, set forth herein (the "Merger").
- B. For federal income tax purposes, it is intended that the Merger constitute a reorganization under the provisions of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code") and that this Agreement shall constitute a plan of reorganization for purposes of Section 368 of the Code.

AGREEMENT

The Purchaser, the Company, the Merger Sub and the Selling Shareholders, intending to be legally bound, agree as follows:

1. The Merger; Effective Time.

1.1 The Merger.

Subject to the terms and conditions of this Agreement, at the Effective Time (as defined in Section 1.2 hereof), Merger Sub shall be merged with and into the Company, the Company shall be the surviving corporation in such Merger (the "Surviving Corporation"), and the separate existence of Merger Sub shall thereupon cease. The Merger shall have the effects set forth in Sections 902 through 910 of the Maine Code. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all property, rights, powers, privileges and franchises of Merger Sub shall vest in the Company as the Surviving Corporation, and all debts, liabilities and duties of Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation. Immediately following the Effective Time, the Surviving Corporation shall be a wholly-owned subsidiary of Purchaser.

1.2 Effective Time of the Merger.

The Merger shall become effective upon the completion of the filing of properly executed Articles of Merger with the Secretary of State of the State of Maine, which filing shall be made

(vi) result in the imposition or creation of any material encumbrance upon or with respect to any asset owned or used by the Company; or

(vii) require the Company to make any filing with or give any notice to, or obtain any Consent from, any Person in connection with the execution and delivery of this Agreement and the other Transactional Agreements or the consummation or performance of any of the Transactions.

(b) Other than the filings and submissions that the Company shall make under the HSR Act in connection with the Transactions, the Company will not be required to make any filing with or give any notice to, or obtain any Consent from, any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Transactions, except for filings, the failure of which to make, and Consents, the failure of which to obtain, are not reasonably likely to have a Material Adverse Effect on the Company.

5.6 Intellectual Property.

(a) Part 5.6 of the Company Disclosure Schedule sets forth a complete list of all patents, registered and material unregistered trademarks, registered copyrights, registered maskworks, registered and material unregistered trade names and registered and material unregistered service marks, and any applications therefor in respect of any of the foregoing, included in the Company's Proprietary Assets, and specifies, where applicable, the jurisdictions in which each such Proprietary Asset has been issued or registered or for which an application for such issuance and registration has been filed, including the respective registration or application numbers and the names of all registered owners. Part 5.6 of the Company Disclosure Schedule also sets forth a complete list of all material licenses, sublicenses and other agreements as to which the Company is a party and pursuant to which the Company or any other Person is authorized to use any of the Company's Proprietary Assets (excluding end-user licenses granted to end-users in the ordinary course of business that permit use of software products without a right to modify, distribute or sublicense the same), and includes the identity of all parties thereto, a description of the nature and subject matter thereof, the applicable royalty and the term thereof. The Company is not in violation of any license, sublicense or agreement described on such list except such violations as do not materially impair the Company's rights under such license, sublicense or agreement, and except for such violations as would not, individually or in the aggregate, be reasonably likely to have a Material Adverse Effect on the Company. Except for any consents to transfer required under any Material Company Contract, the execution and delivery of this Agreement by the Company, and the consummation of the transactions contemplated hereby, (i) will not cause the Company to be in material violation or default under any such license, sublicense or agreement, (ii) will not entitle any other party to any such license, sublicense or agreement to terminate or modify such license, sublicense or agreement or (iii) will not require the Company to repay any funds already received by it from a third party, except, in each case or in the aggregate, where such action(s) would not be reasonably likely to have a Material Adverse Effect on the Company.

(b) The Company has all right, title and interest in and to and is (i) the sole and exclusive owner or (ii) the licensee of (free and clear of any liens or encumbrances), the Company's Proprietary Assets, and has sole and exclusive rights (and is not contractually

obligated to pay any compensation to any third party in respect thereof) to the use thereof or the material covered thereby.

(c) No claims with respect to the Company's Proprietary Assets have been asserted or, to the Knowledge of the Company, are threatened by any Person for any bona fide claims: (i) to the effect that the manufacture, sale, licensing or use of any of the products of the Company as now manufactured, sold, licensed or used or proposed for manufacture, sale, licensing or use by the Company infringes on any third party's Proprietary Assets; (ii) against the use by the Company of its Proprietary Assets in its business as currently conducted; or (iii) challenging the ownership by the Company, validity or enforceability of any of the Company's Proprietary Assets, except in each case or in the aggregate, where such claims which would not be reasonably likely to have a Material Adverse Effect on the Company. To the Company's Knowledge, all registered patents, trademarks, service marks and copyrights held by the Company, if any, are valid and subsisting.

(d) To the Knowledge of the Company, there is no material unauthorized use, infringement or misappropriation of any of the Company's Proprietary Assets by any third party, including any employee or former employee of the Company, except where such action would not be reasonably likely to have a Material Adverse Effect on the Company.

(e) None of the Company's Proprietary Assets are subject to any outstanding decree, order, judgment, or stipulation restricting in any manner the licensing thereof by the Company.

(f) The Company has not entered into any agreement under which the Company is restricted from selling, licensing or otherwise distributing any of its products to any class of customers, in any geographic area, during any period of time or in any segment of the market.

5.7 Proceedings; Orders.

(a) There is no pending Proceeding, and, to the Company's Knowledge, no Person has threatened to commence any Proceeding:

(i) to which the Company is a party and that is reasonably likely to have a Material Adverse Effect on the Company; or

(ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Transactions or the Company's ability to comply with or perform its obligations and covenants under the Transactional Agreements, and, to the Knowledge of the Company, no event has occurred, and no claim, dispute or other condition or circumstance exists, that might directly or indirectly give rise to or serve as a basis for the commencement of any such Proceeding.

(b) The Company has made available to the Purchaser accurate and complete copies of all pleadings, correspondence and other written materials to which the Company has access that relate to the Proceedings identified in Part 5.7(a) of the Company Disclosure Schedule, if any.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT AND PLAN OF MERGER as of the date set forth in the first paragraph hereof.

COMPANY:

STRAWBERRY, INC.,
a Maine corporation

By: _____

Name: Douglas Lewis
Title: Chief Executive Officer

PURCHASER:

ODWALLA, INC.,
a California corporation

By: _____

Name: D. Stephen C. Williamson
Title: Chief Executive Officer

MERGER SUB:

ORANGE ACQUISITION SUB, INC.,
a Maine corporation

By: _____

Name: D. Stephen C. Williamson
Title: Chief Executive Officer

Signature Page to Merger Agreement

IN WITNESS WHEREOF, the parties hereto have executed this **AGREEMENT AND PLAN OF MERGER** as of the date set forth in the first paragraph hereof.

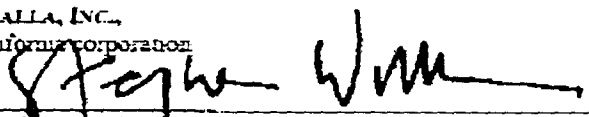
COMPANY:

STRAWBERRY, INC.,
a Maine corporation

By: _____
Name: Douglas Levin
Title: President

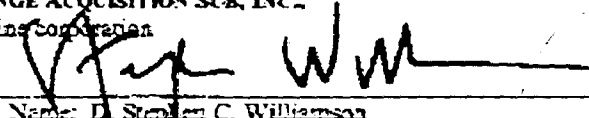
PURCHASER:

ODWALLA, INC.,
a California corporation

By:  _____
Name: D. Stephen C. Williamson
Title: Chief Executive Officer

MERGER SUB:

ORANGE ACQUISITION SUB, INC.,
a Maine corporation

By:  _____
Name: D. Stephen C. Williamson
Title: Chief Executive Officer

Signature Page to Merger Agreement

LLC

SAMANTHA INVESTORS, LLC

By: 

Name: Mark E. Nunnelly
Title: Authorized Person

SELLING SHAREHOLDERS:

BAIN CAPITAL FUND VI, L.P.,

By: Bain Capital Partners VI, L.P.,
its general partner

By: Bain Capital Investors VI, Inc.,
its general partner

By: 

Name: Mark E. Nunnelly
Title: Managing Director

BCIP ASSOCIATES II

BCIP TRUST ASSOCIATES II

BCIP ASSOCIATES II-B

BCIP TRUST ASSOCIATES II-B

BCIP ASSOCIATES II-C,

By: Bain Capital, Inc.,
their Managing Partner

By: 

Name: Mark E. Nunnelly
Title: Managing Director

PEP INVESTMENTS FTY LTD.,

By: Bain Capital, Inc.
its Attorney-in-Fact

By: 

Name: Mark E. Nunnelly
Title: Managing Director

Selling Shareholders:

RGIP, LLC,
a Delaware limited liability company

By: 
Name: _____
Title: Authorized Person

JIP Enterprises, Inc.,
a British Virgin Islands corporation

By: _____
Name: _____
Title: Authorized Person

Robert Carter, Jr.,
an individual

Julie Carter,
an individual

Michael D. Carter,
an individual

Douglas Levin,
an individual

Martha Carter,
an individual

Abby Carter,
an individual

Signature Page to Merger Agreement

Selling Shareholders:

EGIP, LLC,
a Delaware Limited Liability company

By: _____
Name:
Title: Authorized Person

JIP Enterprises, Inc.,
a British Virgin Islands corporation

By: _____
Name: *J. P. [Signature]*
Title: Authorized Person

Robert Carter, Jr.,
an individual

Julia Carter,
an individual

Michael D. Carter,
an individual

Douglas Levin,
an individual

Martha Carter,
an individual

Abby Carter,
an individual

Signature Page to Merger Agreement

FEB. 1. 2004 11:21 AM

Selling Shareholders:

RCIP, LLC,
a Delaware limited liability company

By: _____
Name:
Title: Authorized Person

JIP Enterprises, Inc.,
a British Virgin Islands corporation

By: _____
Name:
Title: Authorized Person

Robert D. Carter
Robert Carter, Jr.,
an individual

Jule Carter
Jule Carter,
an individual

Michael D. Carter
Michael D. Carter
an individual

Douglas Levin
an individual

Martin Carter
Martin Carter,
an individual

Abby Carter,
an individual

Signature Page to Merger Agreement

Schedule II
DISCLOSURE SCHEDULE

Part 5.6
Intellectual Property
Page 1 of 3

U.S. FEDERALLY REGISTERED TRADEMARKS

MARK	REG. DATE	REG. NO.
THE BIG BANG BODY		
ZOOM JUICE	10/20/98	2,198,618
DESPERATELY SEEKING C	10/13/98	2,196,068
FRESH SAMANTHA	08/22/95	1,913,653
Girl Carrying Fruit	12/17/96	2,023,377

PENDING U.S. TRADEMARK APPLICATIONS

MARK	APP. DATE	TYPE	SERIAL NO.
POWER SNACK	03/12/99	Use	75/659,391
WILLY BOY	05/17/99	Use	75/708,266
WILLY BOY (design)	05/17/99	Use	75/707,332
SUPER JUICE WITH			
ECHINACEA (design)	08/19/99	Use	75/782,772
OH HAPPY DAY	03/05/99	ITU	75/654,497
FLOWER POWER	03/12/99	ITU	75/659,350
MS. GINGER PEACH	03/05/99	ITU	75/654,496
MANGO MAMA	05/17/99	Use	75/708,859
FRESH SAMANTHA			
(Abby font design)	05/17/99	Use	75/708,609
JUICEHEAD	03/23/99	ITU	75/666,061
BODY ZOOMERS	05/17/99	Use	75/708,601
THE BIG BANG	05/17/99	Use	75/708,200
PROTEIN BLAST	05/17/99	Use	75/708,377
GET SMART	03/23/99	Use	75/666,062
SHAKE IT UP BABY	03/23/99	ITU	75/666,060
FROZEN SAMANTHA	07/01/99	ITU	75/741,252
MADAM BRIDGEWATER'S			
RASPBERRY LIMEADE	09/24/99	Use	75/807,607

Schedule II
DISCLOSURE SCHEDULE

Part 5.6
Intellectual Property
Page 2 of 3

THE BIG BANG	09/24/99	Use	75/807,830
FRESH SAMANTHA (Clothing & Tea)	09/24/99	Use	75/807,835
IT AIN'T EASY BEING GREEN	09/24/99	ITU	75/807,831
HIP SIP	09/24/99	ITU	75/807,832
VEGGIE CHA CHA	09/24/99	ITU	75/807,833
FRESH SAMANTHA (Juice Bar)	09/24/99	ITU	75/807,834
RASPBERRY DREAM	01/27/00	Use	(not yet assigned)

BEVERAGE NAMES

See attached "Fresh Samantha Price List" for list of names of all beverages.

OTHER TRADE NAMES AND TRADEMARKS

Fresh Samantha, Inc. (Corporate Name)
Fresh Samantha Juice Bars, Inc. (Corporate Name)
Label Designs
freshsamantha.com
freshsam.com

COPYRIGHTS

Label Designs
Brochures
Advertising Materials
web sites

Schedule II
DISCLOSURE SCHEDULE

Part 5.6
Intellectual Property
Page 3 of 3

LICENSES AND SUBLICENSES

Trademark License Agreement from Fresh Samantha, Inc. to Fresh Samantha Juice Bars, Inc.

CLAIMS

By letter dated July 9, 1999, Warner Brothers, on behalf of its affiliate, DC Comics, asserted that the "Samantha" character appearing on the "SUPER JUICE" label might infringe on DC Comics' rights in the "SUPERMAN" character. By letter dated July 29, 1999, the Company replied to DC Comics' legal counsel and the Company has received no further communication in this matter.

See also Disclosure Schedule Part 5.10(a) and 5.12(a).

Conveying Party: Fresh Samantha, Inc.

Receiving Party: Odwalla, Inc.

Reg. Nos.: 2,198,618; 2,196,068; 1,913,653; 2,023,377; 2,349,987;
2,348,540; 2,349,992

Marks: THE BIG BANG BODY ZOOM JUICE;
DESPERATELY SEEKING C; FRESH SAMANTHA;
DESIGN (girl carrying fruit); WILLY BOY; WILLY
BOY & DESIGN; FRESH SAMANTHA (Stylized)

Ser. Nos.: 75/659,391; 75/782,772; 75/654,497; 75/659,350;
75/654,496; 75/708,859; 75/666,061; 75/708,601;
75/708,200; 75/708,377; 75/666,062; 75/666,060;
75/741,252; 75/807,607; 75/807,830; 75,807,835;
75/807,831; 75/807,832; 75/807,833; 75/807,834

Marks: POWER SNACK; SUPER JUICE WITH ECHINACEA
& DESIGN; OH HAPPY DAY; FLOWER POWER;
MS. GINGER PEACH; MANGO MAMA; JUICEHEAD;
BODY ZOOMERS; THE BIG BANG; PROTEIN BLAST;
GET SMART; SHAKE IT UP BABY;
FROZEN SAMANTHA; MADAM BRIDGEWATER'S
RASBERRY LIMEADE; THE BIG BANG; FRESH
SAMANTHA; IT AIN'T EASY BEING GREEN;
HIP SIP; VEGGIE CHA CHA; FRESH SAMANTHA

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

Commissioner of Patents and Trademarks
BOX ASSIGNMENTS
Washington, D.C. 20231

Dear Sir:

Express Mail Label No.: First Class Mail

Date of Deposit: June 20, 2000

I hereby certify that on the date indicated above, the attached **Recordation Form Cover Sheet Trademarks Only, Fresh Samantha, Inc. Trademark Registrations; Fresh Samantha,**

**Inc. Trademark Applications; Agreement and Plan of Merger; Schedule II -Disclosure
Schedule , check for \$690.00, and receipt verification postcard** are being deposited with the
United States Postal Office as First Class Mail and is addressed to: Commissioner of Patents and
Trademarks, Box Assignments, Washington, D.C. 20231.

Respectfully submitted,

By:



Lucia M. Sario