

RE MPD 4-27-01

FORM PTO-1618A Expires 08/30/99 OMB 0651-0027

04-27-2001

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



101692509

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Submission Type

Submission Type options: New, Resubmission (Non-Recordation) with Document ID # 101519412, Correction of PTO Error, Corrective Document.

Conveyance Type

Conveyance Type options: Assignment (checked), License, Security Agreement, Nunc Pro Tunc Assignment, Merger, Change of Name, Other.

Conveying Party

Conveying Party details: Name Peter Brasseler, doing business as Gebr. Brasseler, Execution Date 08 11 78.

Conveying Party details: Individual (checked), Citizenship/State of Incorporation/Organization Germany.

Receiving Party

706436

Receiving Party details: Name Gebr. Brasseler GmbH & Co. KG, Mark if additional names of receiving parties attached.

Receiving Party details: DBA/AKATA, Composed of, Address (line 1) Trophagener Weg 25, Address (line 2) D-32675, Address (line 3) Lemgo, Germany, Limited Partnership (checked).

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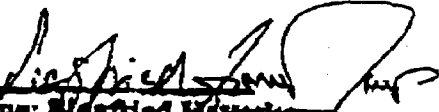
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**DESIGNATION OF DOMESTIC REPRESENTATIVE**

Applicant hereby appoints Lisa N. Kaufman, of BLANK ROME COMISKY & McCAULEY LLP, 900 17th Street, N.W., Suite 1000, Washington, D.C. 20006, as its domestic representative on whom may be served notices or process in proceedings affecting the subject mark. Please direct all correspondence to Lisa N. Kaufman at (202) 530-7434.

Gebr. Bräsele GmbH & Co. KG

Dated: 20-10-00

By:   
Name: Siegfried Haverkamp  
Title: Managing Director

MRD 10/24/00

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027

11-17-2000

U.S. Department of Commerce  
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Conveyance Type

- Assignment  License  
By Operation of Law
- 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

Execution Date  
Month Day Year

Name

Formerly

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Name

DBA/AKATA

Composed of

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FORM PTO-1618B  
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Page 2

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Patent and Trademark Office  
**TRADEMARK**

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**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.

Lisa N. Kaufman  
Name of Person Signing

  
Signature

10/23/2000  
Date Signed

## Legal Opinion



Office Hamburg

Rechtsanwälte  
Wirtschaftsprüfer  
Steuerberater

Date October 16, 2000  
From Dr. Tessa Schoof  
To To whom it may concern

### Legal Opinion concerning the ownership of the US trademark 706436 "Brasseler"

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Gebr. Brasseler GmbH & Co. KG asked us to render a legal opinion addressing issues of German law in the above referenced trademark matter.

By way of background, we are a firm of over 200 attorneys in various major German cities as well as in Brussels and in Shanghai. We advise clients on all aspects of German Civil and Commercial Law as well as public law. We further offer our clients a full range of services, including representation in proceedings in national and local courts. The undersigned is a member of the Hamburg Bar since 1998 and is specialized in Commercial Law.

Berlin  
Düsseldorf/Neuss  
Frankfurt a. M.  
Hamburg  
Leipzig  
München  
Alicante  
Brüssel  
Shanghai

1. On October 25, 1960 the trademark "Brasseler" was registered for Peter Brasseler doing business as Gebrüder Brasseler, a sole proprietorship run by Peter Brasseler - who deceased in 1978 - under the firm "Gebrüder Brasseler". This company was first registered in the commercial register at the local court (in German: "Amtsgericht") on May 24, 1952. Thus, the trademark was not registered for Peter Brasseler as a private person.
2. In 1974 Friedrich Hankemeier entered the company "Gebrüder Brasseler" as a limited partner and Peter Brasseler took the position of a general partner. Since then the company traded as a limited partnership (in German:

Mitglied in der Conference of European Lawyers (EWIV)  
zusammen mit Liedekerke Wolters Waalbroeck Kirkpatrick & Cerfontaine, Brüssel  
Siméon & Associés, Paris und Houthoff Buruma, Amsterdam

"Kommanditgesellschaft"). Legally, however, this did not affect the company as a legal entity which was continued under the firm "Gebrüder Brasseler" ever since. In 1978 the company's name was changed into "Gebr. Brasseler GmbH & Co. KG" ("Gebr." is the short form of "Gebrüder"). The change of the company's name did not have any impact on the legal identity of the company either. It only showed that the position of the general partner was now filled by a German limited liability company (in German: "GmbH") The company has been continuously registered as the same entity in the competent commercial register.

3. By transformation of Gebrüder Brasseler from a sole proprietorship into a limited partnership all contractual relationships, liabilities and rights – including the trademark "Brasseler" described above – have been transferred to "Gebrüder Brasseler" as a limited partnership. In more detail:

a. If a person enters a sole proprietorship as a limited partner a limited partnership is established. In such a case section 28 sub.-sec. 1 HGB (German Commercial Code) provides for a transfer of all liabilities incurred in the ordinary course of business of a sole proprietorship to the limited partnership. Section 28 sub.-sec. 1 HGB has the following wording:

**"If a person enters the business of a sole proprietorship as a partner with personal liability or as a limited partner, the partnership, even though it does not continue the former firm name, is liable for all the obligations of the former proprietor of the business which have been incurred in the ordinary course of business. Claims arising out of the course of the business are deemed, as against the debtors, to have passed to the partnership."**

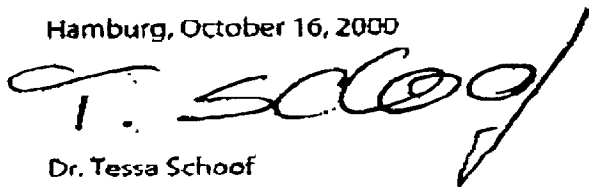
b. German courts have held that according to section 28 sub.-sec. 1 HGB all contractual relationships concluded by the sole proprietor in the ordinary course of business of the sole proprietorship are deemed to be transferred to the limited partnership as well (among others District Court Stuttgart, NJW-RR 1996, 1378, 1379, Karsten Schmidt, Handelsrecht ("Commercial Law"), 5<sup>th</sup> edition 1999, page 231).

- c. Moreover, as the sole proprietor contributes his entire business as a contribution in kind to the limited partnership, it is undisputed that by doing so all company assets are also transferred into the limited partnership by the sole proprietor (Münchener Kommentar, HGB, 1<sup>st</sup> edition 1996, section 28 note 1; Karsten Schmidt, Handelsrecht, 5<sup>th</sup> edition 1999, page 225 ff.). German law does not require the execution of a formal deed of transfer or a similar kind. The transfer of assets can be executed by implied agreement (Karsten Schmidt, Handelsrecht, 5<sup>th</sup> edition 1999, page 229) which is often done in Germany.

From this it follows that in 1974 Peter Brasseler transferred all assets belonging to the business of the sole proprietorship "Gebrüder Brasseler" at the time into the limited partnership "Gebrüder Brasseler" in order for Peter Brasseler to fulfill his for such contribution in kind. Consequently, Peter Brasseler has transferred all company assets, including rights such as trademarks, to the limited partnership by implied agreement.

4. Consequently, Peter Brasseler has transferred the US trademark "Brasseler" as part of the assets of its sole proprietorship to the limited partnership "Gebrüder Brasseler" in 1974 which is presently named "Gebr. Brasseler GmbH & Co. KG".

Hamburg, October 16, 2000



Dr. Tessa Schoof

**Amtsgericht Lemgo****Unbeglaubigte Ablichtung**

aus dem

**Handelsregister****6 HRA 1156**

Es wird ausdrücklich darauf hingewiesen, daß die unterstrichenen Teile der Eintragung in der nachstehenden Ablichtung gelöscht sind.



1	2	3	4	5	6
a) Firma b) Ort der Niederlegung (Nutz für Gesellschaft) c) Gegenstand des Unternehmens (bei natürlichen Personen)	Geschäftsführer Persönlich haftende Gesellschafter Verband Abwickler	Prokura	Rechtsverhältnisse	a) Tag der Eintragung und Unterdrift b) Bemerkungen	
1 a) Gebrüder Brasseler b) <del>Leugo</del>	Kaufmann Peter Brasseler in Leugo.	Einzelprokura: Kaufm. Angestellter Friedrich Mantemeier in Leugo.		a) Umgeschriebe von BPA 274 17. April 1992 (Kostek) Justizobersekretäre b) Erste Eintragung am 24. 5. 1992	PA Höter, Schmitz, Wob Tel: +49-89-64244711
2	Der Prokurist Friedrich Mantemeier ist zur Verfügung und Belastung von Grundstücken berechtigt.		Kommanditgesellschaft. Der Prokurist Friedrich Mantemeier ist Kommanditist mit 20.000,- DM Stamme. Die Gesellschaft hat am 5. September 1974 begonnen.	a) 6. September Kater Justizobersekretäre	
3			Der Kommanditist Friedrich Mantemeier hat seine Kommanditaliane in Folge der Sonderrechtsnachfolge auf die BPA/BPA Brasseler Gesellschaft mit beschränkter Haftung in Leugo übertragen.	a) 30. Oktober Kater Justizobersekretäre	
4	Einzelprokura: Walter Kracht in Leugo			a) 4. August Kehl Justizassistenten	
5	Gebr. Brasseler GmbH & Co Kommanditgesellschaft	BPA/BPA Brasseler Gesellschaft mit beschränkter Haftung, Leugo; Fabrikant Peter Brasseler in Leugo.	Der Komplementär Peter Brasseler ist durch Tod ausgeschieden. Der Fabrikant Peter Brasseler iun. und die BPA/BPA Brasseler Gesellschaft mit beschränkter Haftung sind als Komplementäre eingestrichen. Beide Komplementäre sind wegen der Fortsetzung der Gesellschaft berechtigt. Die BPA/BPA Brasseler Gesellschaft hat beschränkter Haftung ist als Kommanditistin ausgeschieden. Als Kommanditist sind eingetragen: Kaufmann Peter Brasseler iun. Leugo, mit einer Stamme von 600.000 DM; Kaufmann Peter Brasseler iun. Brasseler, Leugo, mit einer Stamme von 1.750.000 DM. Die Firma ist geändert.	a) 11. August Beckmann Justizassistenten	19 Okt 00 15:54 Nr. 008 P. 07
6			Die Stamme der Kommanditistin Peter Brasseler iun. Leugo beträgt 6.000.000 DM.	a) Berichtigungen eingetragen 1. August Kehl Justizassistenten	

HRA 1156

Geferlich am 24. Okt. 1997

PA Höfer, Schütz, Weber Tel: +49-89-64244711

MKA 1130

Kurzseite von dem...

Amtsgericht Lemgo

Nr. der Eintragung	a) Firma b) Order Niederlassung (Sitz der Gesellschaft) c) Gespenfond des Unternehmens (bei juristischen Personen)	Geschäftlicher Persönlich haltende Gesellschafter Vorstand Abwilder	Prokura	Rechtverhältnisse	a) Tag der Eintragung und b) Bemerkungen
7	2	3	4	3	6 a) 11. Dez. 1991 Heermann Justizsek.
8					a) 3. Februa 1992 Heermann Justizsek.
9		Kommanditgesellschaft mit beschränkter Haftung, Lemgo			a) 13. März 1992 Heermann Justizsek.
10			Einzelprokura: Ernst Baehre, Detmold. Er ist gemeinsam mit einem der persönlich haftenden Gesellschafter vertretungsberechtigt.		a) 22. Janua 1992 Heermann Justizsek.
11					a) 05. Novemb 1992 Heermann Justizsek.
12			Die bisherige Einzelprokura des Prokuristen Ernst Baehre, Detmold, ist in eine Gesamtprokura umgewandelt. Gesamtprokura: Albrecht Axtenssp., Detmold. Beide Prokuristen sind gesamtschuldnerisch vertretungsberechtigt.		a) 21. Janua 1992 Heermann Justizsek.
13					a) 19. Janua 1992 Heermann Justizsek.

Gefährlich am 24. Okt. 1997

Amisgericht

14	15	16	17	18	19	20	21	22
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Nr. der Eintragung	a) Firma b) Ort der Niederlassung (Sitz der Gesellschaft) c) Gegenstand des Unternehmens (bei juristischen Personen)	Personlich haftende Gesellschafter Vorstand Abwickler	Prokura	Rechtswertklasse	4) Tag der Eintragung und Unterschrift b) Bemerkungen
14		Geschäftsinhaber Personlich haftende Gesellschafter Vorstand Abwickler	Prokura	3	6
15	Die Prokuren von Friedrich Haukenmeyer, Walter Krauch, Ernst Rasche und Eberhard Haverkamp sind erloschen.				<p>b) 750.000 DM auf Studentin Sabine Brasseler (geb. 1.9.1958), Rosenheim; c) 750.000 DM auf Karin Brasseler (geb. 30.10.1959), Kilton Head, South Carolina, USA; die im Wege der Sonderrechtsnachfolge mit den vorstehenden Kommanditeinlagen als Kommanditisten in die Gesellschaft eingetreten sind.</p> <p>Der Kaufmann Peter Brasseler sen., Leugo ist mit einer Einlage von 4.500.000,-- DM als Kommanditist eingetreten. Die Kommanditistin Meta Brasseler ist aus der Gesellschaft ausgeschieden. Ihre Einlage von 6.000.000,-- DM ist übergegangen im Wege der Sonderrechtsnachfolge: a) in Höhe von 4.500.000,-- DM auf die Kommanditistin Klara Niekus, deren Einlage nunmehr 8.250.000,-- DM beträgt; b) in Höhe von 1.500.000,-- DM auf den Kommanditisten Peter Brasseler sen., dessen Einlage nunmehr 5.000.000,-- DM beträgt.</p> <p>Die Einlage des Kommanditisten Peter Brasseler sen. ist um 4.750.000,-- DM auf 1.650.000,-- DM herabgesetzt. Dieser Teil der Einlage ist auf die 3 x Brasseler GmbH in Leugo, die im Wege der Sonderrechtsnachfolge mit der Einlage von 4.500.000,-- DM als Kommanditistin in die Gesellschaft eingetreten ist, übergegangen.</p>
16					<p>24. März 1988 Becker Justizsekretär</p> <p>24. Okt. 1997 Becker Justizsekretär</p>

HR A 156

24. Okt. 1997