

09-17-2001

Form PTO-1594



101844697

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

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
 Select Service & Supply Company, Inc. n/k/a Sportime,
 Juggle Bug, Inc. **9-10-01**

Individual(s) Association
 General Partnership Limited
 Corporation-State Georgia Partnership
 Other:

Additional name(s) of conveying party(ies) attached?
 Yes No

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other Mutual Release and Settlement Agreement

Execution Date: February 13, 2000

2. Name and address of receiving party(ies):
 Name: Oliver D. Finnigan, III
 Internal Address:
 Street Address: 604 Front Street, Celebration
 City: Kissimmee State: FL Zip: 34747
 Individual(s) citizenship US
 Association
 General Partnership
 Limited Partnership
 Corporation-State
 Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No.

(Designations must be a separate document from Assignment) Additional names(s) & address(es) attached?
 Yes No

4. Application number(s) or registration number(s):
 A. Trademark Application No.(s)

Additional numbers attached?

B. Trademark registration No.(s)

1,617,767

Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Denise L. Stoker
Godfrey & Kahn, S.C.
 Internal Address:
 Street Address: 780 N. Water Street
 City: Milwaukee State: WI Zip: 53202

6. Total number of applications and registrations involved:.....[1]

7. Total fee (37 CFR 3.41):\$ 40.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: 07-1509

(Attach duplicate copy of this page if paying by deposit account)

09/17/2001 TDIAZ1 00000006 1617767
 01 FC:481 40.00 01

DO NOT USE THIS SPACE

9. 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.

Denise L. Stoker
 Name of Person Signing

Signature

8-23-01
 Date

Total Number of pages, including cover sheet and attachments: [14]

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement is made this 13th day of ~~January~~^{February}, 2000, by and between SPORTIME, LLC ("Sportime") and OLIVER D. FINNIGAN, III ("Finnigan").

WHEREAS, Select Service & Supply Company, Inc., a Georgia corporation, now known as Sportime, Juggle Bug, Inc. ("Jugglebug"), and Finnigan entered into an Asset Purchase Agreement whereby Sportime purchased the assets of Jugglebug from Finnigan in December 1994;

WHEREAS, Select Service & Supply Company, Inc., a Georgia corporation, now known as Sportime, and Finnigan entered into an Employment and Noncompetition Agreement on January 6, 1995, a true and correct copy of which is attached hereto as Exhibit "A";

WHEREAS, Select Service & Supply Company, Inc., a Georgia corporation, now known as Sportime, and Finnigan entered into a Royalty Agreement on or about January 1995, a true and correct copy of which is attached hereto as Exhibit "B";

WHEREAS, Select Service & Supply Company, Inc., changed its name to Sportime, LLC;

WHEREAS, a dispute has arisen between Sportime and Finnigan concerning the parties' performance under the Employment and Noncompetition Agreement;

WHEREAS, Sportime and Finnigan desire to resolve these disputed matters through compromise in order to avoid the costs and uncertainties of litigation.

NOW, THEREFORE, in consideration of the covenants, agreements, and promises contained herein and other good and valuable consideration, the adequacy of which is hereby acknowledged, Sportime and Finnigan hereby agree as follows:

1. Employment of Finnigan Through April 8, 2000. Sportime shall employ Finnigan on a full-time basis through and including April 8, 2000, at which time Finnigan's employment with Sportime shall terminate. Until April 8, 2000, Finnigan shall be paid the same base salary, receive the same employee benefits (including, but not limited to, participation in the 401(k) plan, medical insurance, disability insurance, sick leave and paid vacation) and receive reimbursement of expenses (including but not limited to \$1,400 per month for use of his motor home) as Finnigan received in December of 1999. During this period of employment, Finnigan shall attend up to 10 tradeshowes at the discretion of Sportime on behalf of Sportime and perform his regular duties of employment.

2. Termination of Employment and Noncompetition Agreement. Sportime releases and hereby forever discharges Finnigan from the January 6, 1995 Employment and Noncompetition Agreement, including but not limited to, the non-competition provisions thereof, and Finnigan releases and hereby forever discharges Sportime from the January 6, 1995 Employment and Noncompetition Agreement,

and the January 6, 1995 Employment and Noncompetition Agreement is hereby terminated, cancelled, and of no further effect.

3. Conveyance of Trade Names and Copyrights. Sportime agrees to convey, assign, transfer and deliver to Finnigan all of Sportime's right, title, and interest in and to the copyrights and trade names relating to the Jugglebug brand name and logo, including the trade names "JUGGLEBUG" and "JUG-L-EZE," all registrations or rights to registration of said trade names and related service marks and trademarks, and all of Sportime's right, title, and interest in and to the copyrights and trade names related to all Jugglebug books, videos, audio cassettes and other related printed or recorded material, including, but not limited to, the copyrights related to *The Complete Juggler, The Joy of Juggling, Learn to Juggle With Professor Confidence, Jugglercize, Juggling Star, Juggler's Jam, Professor Confidence, The Juggling Institute, Juggling For Success, Juggletime, and Juggling Step-By-Step*, including all songs on all Jugglebug tapes and all songs written by Finnigan and used in said videos or audio cassettes, and all instructional materials which accompany any Jugglebug products, books, or videos, and other similar intangible rights owned or controlled by Sportime which relate in any way to Jugglebug products or Jugglebug books, videos, audios cassettes and other related printed or recorded material.

Sportime represents that it has not transferred any interest in the Jugglebug name to any third party, and, except as otherwise provided herein, Finnigan shall be the sole owner of the Jugglebug name and of all rights and interest in Jugglebug

products, books, cassettes, and videos, including any television and movie rights to Jugglebug books and the rights to produce or market the material or programs contained in the Jugglebug books, cassettes, or videos in CD-ROM or any other media or computer media format. Sportime's warranty concerning the rights and interests to the "Jugglebug" name transferred herein by Sportime to Finnigan shall not exceed the extent of those rights and interests to the "Jugglebug" name transferred by Finnigan to Sportime pursuant to the Asset Purchase Agreement executed by Finnigan and Sportime in December 1994 except to the extent new products have been added to the Jugglebug product line since December 1994.

4. Jugglebug Products. "Jugglebug products" shall be defined to include all products on which Sportime has paid Finnigan a royalty in the past (including, but not limited to, those products listed by name and stock number on Exhibit "C" attached hereto), and any and all similar products related to juggling or any variation of juggling scarves, juggling balls, juggling beanbags, juggling rings, and juggling clubs, devil sticks, diabolos, spinning plates, "cigar boxes," and juggling hats, which Sportime currently sells or adds to its product line subsequent to the execution of this Agreement. If Sportime introduces branded juggling products which are already sold in the United States or abroad, and if margins on such products are deemed to be insufficient for payment of a royalty on such products, Sportime may elect in its sole discretion not to include such products in the "Jugglebug products" line subject to royalty payments as set forth in Section 8 of this Agreement.

5. Rights to Sell Jugglebug Products in Institutional, Wholesale, and Retail Markets. Notwithstanding the foregoing, Sportime shall retain the exclusive right to sell Jugglebug products in the institutional market, which market shall consist of that group of institutional customers (such as schools and municipal recreation departments) to whom Sportime mails its catalogs. Sportime shall retain the right to continue to produce Jugglebug products. Sportime may convey, transfer, sell, or assign to any party its exclusive right to sell Jugglebug products in the institutional market, as well as the non-exclusive right to sell in the wholesale market, provided Sportime notifies Finnigan of the assignment and notifies the assignee of Sportime's obligations hereunder, which obligations shall be assumed by such assignee. Should Sportime decide it no longer desires to sell any individual Jugglebug product in the institutional market, all rights to such product in all markets shall revert back to Finnigan with no penalty. Sportime shall have the right to sell Jugglebug products in the wholesale market on a non-exclusive basis. Finnigan shall have no obligation to manufacture, purchase, produce, or otherwise obtain or acquire any such Jugglebug products for Sportime.

Finnigan shall have the exclusive right to sell Jugglebug products and Jugglebug books, videos, audio cassettes, and other related printed or recorded material in all other markets, including the retail market, and retail sales over the Internet. Sportime shall share contact information on vendors from whom it purchases juggling books, videos, and audio cassettes with Finnigan if requested. If Sportime returns the exclusive wholesale rights to any individual product to

Finnigan as referenced herein, Sportime shall share contact information on vendors from whom it purchases such product with Finnigan if requested.

6. Rights to Sell Jugglebug Books, Videos, and Audio Cassettes.

Sportime may continue to manufacture, produce, and sell Jugglebug books, videos, and audio-cassettes on a non-exclusive basis in the institutional and wholesale markets. Finnigan shall have no obligation to print, publish, reproduce, record, or otherwise produce any such Jugglebug books, videos, or audio cassettes for Sportime.

7. Termination of Prior Royalty Agreement. The Royalty Agreement

attached hereto as Exhibit "B" is hereby terminated, cancelled, and of no further effect.

8. Royalties On Sales of Jugglebug Products. Sportime shall pay

Finnigan royalty payments equivalent to five percent (5%) of the actual sales price paid to Sportime, or to any other affiliate through which Sportime authorizes the sale, on all of Sportime's (or its affiliates') sales of Jugglebug products, whether within or without the United States. Such royalty payments shall be paid for a period of five years from the effective date of this Agreement. Beginning on the first day of the sixth (6) year from the effective date of this Agreement, and continuing for a period of ten (10) years thereafter, Sportime shall pay Finnigan royalty payments equivalent to three percent (3%) of the actual sales price paid to Sportime, or paid to any other affiliate through which Sportime authorizes the sale, on all of Sportime's (or its affiliates') sales of Jugglebug products, whether within

or without the United States. If in any calendar year during said ten (10) year time period, such sales equal or exceed \$1,300,000, Sportime shall pay Finnigan an additional royalty of two percent (2%) of the actual sales price paid to Sportime, or paid to any other affiliate through which Sportime authorizes the sale, on all of Sportime's (or its affiliates') sales of Jugglebug products during such calendar year, whether within or without the United States. The sales price on which such royalties are based shall be the actual sales price received by Sportime or by any other affiliate through which Sportime authorizes the sale. Should Finnigan not survive beyond fifteen years from the date of this Agreement, Sportime shall pay the royalties referenced herein to Finnigan's heirs as he designates in his Last Will and Testament.

Sportime shall not be liable for royalty payments to Finnigan on Sportime's (or its affiliates') sales of Jugglebug products in the wholesale market in any quarter in which Finnigan actively competes with Sportime in the sale of Jugglebug products in the wholesale market. Occasional or inadvertent sales of Jugglebug products by Finnigan to purchasers who may be wholesalers shall not be deemed active competition in the wholesale market by Finnigan. If Sportime is not selling a particular juggling product in the wholesale market, or if Sportime sells a juggling product branded by someone other than Jugglebug which is already sold in the United States or abroad as referenced in Section 4 hereof, then Finnigan may sell that type of juggling product in the wholesale market and shall not be deemed to be actively competing with Sportime in the wholesale market. If Finnigan does

actively compete with Sportime in the wholesale market, but subsequently ceases such active competition, then Sportime shall resume royalty payments to Finnigan on Sportime's (or its affiliates') sales of Jugglebug products in the wholesale market after Finnigan ceases such active competition. Nothing herein shall have any bearing on Sportime's obligations to pay royalties to Finnigan on Sportime's (or its affiliates') sales of Jugglebug products in the institutional market.

9. Royalties On Jugglebug Books, Audio Cassettes and Videos. Sportime shall pay to Finnigan, his heirs, successors and assigns, royalties on all sales of Jugglebug books, audio cassettes and videos, whether within or without the United States, in perpetuity. Such royalty payments shall equal five percent (5%) of the actual sales price. Notwithstanding the foregoing, royalty payments attributable to sales of the book *The Complete Juggler*, whether in soft or hard cover, shall be allocated 3.9% to Finnigan and 1.1% to all other collaborators.

10. Quarterly Payment of Royalties/Audit. Royalties shall be calculated by Sportime following the closure of each calendar quarter and shall be paid to Finnigan quarterly upon completion of the calculations, but in no event later than 30 days following the close of the calendar quarter. Sportime shall provide Finnigan, his agents, or whomever is entitled to royalties after Finnigan's death, with statements of sales and royalties itemized by product, and such other information as Finnigan reasonably requests to verify the amounts due hereunder. Finnigan or his agents shall have the right to audit the books of Sportime to ensure that Sportime has complied with its obligations to pay royalty payments under this

Agreement, and Sportime shall have the obligation to make available the information necessary to complete the audit.

11. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of Sportime and Finnigan, as well as their respective parent corporations, subsidiaries, affiliates, successors, assigns, heirs, and personal representatives.

12. Return of Materials. Sportime shall return to Finnigan Finnigan's tradeshow display, and all *Juggling For Success* brochures and deskbags currently in Sportime's possession.

13. Use of Sportime Phone/Return of Mail. Sportime shall permit Finnigan to use Sportime's 1-800 telephone numbers for messages and to have access to extension 204 at Sportime for call-backs to book juggling programs for a period of time not to exceed five (5) years from the date of this Agreement. Sportime will forward Finnigan's mail on a weekly basis as long as it receives Finnigan's mail at Sportime, but not to exceed five (5) years from the date of this Agreement; Finnigan will make every effort to change his address with all parties from whom he receives mail and telephone calls as soon as reasonably practicable.

14. Open Account. Sportime shall permit Mr. Finnigan to maintain an open account with Sportime to purchase Jugglebug products and Jugglebug books, videos, and audio cassettes from Sportime at Sportime's best available discount provided Finnigan makes payment to Sportime pursuant to the terms offered to Sportime customers having open accounts.

15. Completion of Existing Obligations. Within a reasonable time after they have been ascertained, Sportime shall make a one time payment to Finnigan of royalties in arrears for 1999, including Finnigan's portion of the \$1,000.00 advance and subsequent royalties on the Italian version of the *The Complete Juggler*, if any, which have not been received by Finnigan prior to the execution and delivery of this Agreement. From January 1, 2000 through the effective date of this Agreement, Sportime shall pay Finnigan a two percent (2%) royalty on Sportime's sales of the following products:

<u>Product</u>	<u>Stock No.</u>
Success Balls, 4', set of 6	122422
Success Balls, 6', set of 6	122423
Success Balls, 8.5', set of 6	122424

16. Finnigan Release. Finnigan, on behalf of himself, and on behalf of his agents, successors, assigns, predecessors, parent corporations, subsidiaries, affiliates, officers, directors, employees, shareholders, owners, and other legal representatives, hereby releases and forever discharges Sportime, as well as Sportime's agents, successors, assigns, predecessors, parent corporations, subsidiaries, affiliates, officers, directors, shareholders, owners, employees, and other legal representatives, from any and all debts, claims, demands, liabilities, assessments, actions or causes of action, whether in law or in equity, whether direct or indirect, whether presently known or unknown, which Finnigan had, now has, may have had or may claim to have against Sportime prior to and at the

moment of the execution of this Mutual Release and Settlement Agreement, other than the binding terms of this Mutual Release and Settlement Agreement.

17. Sportime Release. Sportime, on behalf of itself, and on behalf of its agents, successors, assigns, predecessors, parent corporations, subsidiaries, affiliates, officers, directors, employees, shareholders, owners, and other legal representatives, hereby releases and forever discharges Finnigan, as well as Finnigan's agents, successors, assigns, predecessors, parent corporations, subsidiaries, affiliates, officers, directors, shareholders, owners, employees, and other legal representatives, from any and all debts, claims, demands, liabilities, assessments, actions or causes of action, whether in law or in equity, whether direct or indirect, whether presently known or unknown, which Sportime had, now has, may have had, or may claim to have against Finnigan prior to and at the moment of the execution of this Mutual Release and Settlement Agreement, other than the binding terms of this Mutual Release and Settlement Agreement.

18. Fees. The parties to this Agreement shall be responsible for their own fees, costs, and all other expenses (including, without limitation, fees and/or expenses for attorneys, consultants, or other professionals) arising from or in any way related to the dispute referenced herein and/or the preparation and execution of this Agreement.

19. No Presumption of Drafter. The parties acknowledge and agree that this Agreement and the settlement memorialized herein ("the Settlement") were negotiated between counsel for all parties and that, in the event of a dispute about

the meaning, construction, or interpretation of this Agreement, no presumption shall apply to construe the language of this Agreement for or against any of the parties to this Agreement.

20. Severability. If any provision of this Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable.

21. Georgia Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Georgia.

22. Entire Agreement. The parties acknowledge and agree that (a) this Agreement contains the entire Agreement between the parties with respect to the matters herein and all negotiations in connection with the Settlement are merged herein; (b) no representations or agreements, oral or otherwise, not included herein shall be of any force or effect; and (c) no promise or inducement has been offered in connection with the Settlement except as set forth herein.

23. Warranty. The parties represent and warrant that they have not conveyed, transferred, pledged, hypothecated, or in any manner whatsoever assigned or encumbered any of the rights, demands, claims, suits, actions, or causes of action released herein. The parties hereto further represent that they have read this Agreement, understand it fully, have consulted with counsel of their choice, and signed this Agreement voluntarily.

24. Multiple Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this

13 day of February, 2000.

SPORTIME, LLC

BY: 

Peter Savitz, President

OLIVER D. FINNIGAN, III

BY: 

Oliver D. Finnigan, III