

08-29-2002



Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

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S. DEPARTMENT OF COMMERCE U.S. 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):

SJI Wholesale, Inc.

08-26-02

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

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

2. Name and address of receiving party(ies)

Name: American Western, Inc.

Internal

Address:

Street Address: 2575 Queen City Avenue

City: Cincinnati State: OH Zip: 45238

Individual(s) citizenship

Association

General Partnership

Limited Partnership

Corporation-State Ohio

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 name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 07-22-02

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2,328,372 / 2,299,789/2,318,369/2,356,756 2,393,874

Additional number(s) attached Yes No

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

Name: Karen Kreider Gaunt

Internal Address: Keating, Muething & Klekamp

Street Address: 1400 Provident Tower

One East Fourth Street

City: Cincinnati State: OH Zip: 45202

6. Total number of applications and registrations involved:

5

7. Total fee (37 CFR 3.41) \$ 140.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

500735

DO NOT USE THIS SPACE

9. Signature.

Karen Kreider Gaunt

[Handwritten Signature]

8-19-02

Name of Person Signing

Signature

Date

08/26/2002 08:48:02 BYRNE 0000057 2328372

Total number of pages including cover sheet, attachments, and document: 6

01 FC:481 02 FC:482

40.00 100.00

All documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

EXHIBIT D TO SETTLEMENT AGREEMENT
BY AND AMONG SJI WHOLESale and ALFRED J. BERGER, DSI LIMITED, and
AMERICAN WESTERN, INC. f/k/a AMERICAN LUGGAGE & CASE CO., d/b/a
AMERICAN WESTERN CIGAR CO.

TRADEMARK ASSIGNMENT

THIS TRADEMARK ASSIGNMENT is effective as of this 22nd day of July, 2002 ("Effective Date") from SJI WHOLESale, INC., a Tennessee corporation through Sterling P. Owen IV, in his capacity as Trustee for the Bankruptcy Estate of SJI Wholesale Inc., and CARIBBEAN CIGAR COMPANY, INC., a Florida corporation with its principal address at 321 Troy Circle, Knoxville, Tennessee, 37950, and all individual officers, directors, agents and employees thereof, (collectively "Assignor"), to American Western, Inc., f/k/a American Case & Luggage Co., d/b/a American Western Cigar Co., an Ohio corporation located at 2575 Queen City Avenue, Cincinnati, Ohio 45238 ("Assignee").

WHEREAS, Assignor has adopted, has used and has asserted to be the exclusive owner of all right, title, and interest in and to certain trademarks; and

WHEREAS, Assignor entered into an agreement with a secured party, Finova Capital, to obtain the trademarks and all rights appurtenant thereto of a third party company by the name of Caribbean Cigar Co., that were owned by Finova Capital, as a result of its providing financing to Caribbean Cigar Co.;

WHEREAS, Assignor initiated a lawsuit currently pending in the United States District Court, Southern District of Ohio, Western Division at Cincinnati, captioned *SJI Wholesale, Inc., v. Alfred J Berger, DSI Limited and American Case & Luggage Co. d/b/a American Western Cigar Co.*, alleging trademark infringement claims against the A WI and the Assignee herein (the "Action");

WHEREAS, as part of the settlement of the Action, Assignor has agreed to assign, without warranty, to Assignee all of its right, title and interest to the trademarks, trade names and trade dress at issue in the Action; and

WHEREAS, Assignee wishes to acquire from Assignor the entirety of Assignor's right, title and interest in and to such trademarks;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Assignor and any and all parties, affiliates, entities, associates, employees, directors, officers, agents, and owners thereof, and any other parties claiming rights under or through Assignee, hereby assigns, transfers and conveys, without warranty, to Assignee, its successors and assigns forever, Assignor's entire right, title and interest in, to and under the following and the assets and goodwill of the business symbolized thereby:

1. All of its trademarks, trade dress, trade names, service marks, service names and brand names used in connection with Assignor's cigar business, including without limitation the United States trademarks listed on Schedule A annexed hereto; any other trademarks in which assignor owns common law rights, any and all foreign trademarks listed on Schedule B annexed hereto, and any and all trade names, trademarks, and trade dress used therewith and/or substantially and/or confusingly similar thereto; all of the above together with the goodwill of Assignor's business and Assignor's assets appertaining thereto and/or symbolized thereby (the entirety of the above, collectively hereinafter, "Trademarks");
2. Any and all other rights, privileges and priorities of Assignor provided under United States, state or foreign law with respect to the foregoing Trademarks, including without limitation common law rights, trade dress rights and rights under the laws of unfair competition ("Related Rights");
3. Any and all rights to contest, protest or sue at law or in equity for any infringement, imitation, impairment, distortion, dilution or other unauthorized use or conduct in derogation of the Trademarks and Related Rights occurring prior to the Effective Date, including the right to receive all proceeds and damages therefrom; and
4. Any and all rights to obtain renewals of registration or other legal protections pertaining to the Trademarks and Related Rights.

Assignee, its successors and assigns, shall hold the rights to the foregoing for and during the existence of such Trademarks and Related Rights, and all renewals thereof, as fully and as entirely as the same would have been held and enjoyed by Assignor had this Assignment not been made.

Assignor shall, without further consideration, comply with a reasonable request by Assignee, at Assignee's expense, to execute promptly any additional documents and take promptly any further action reasonably necessary to protect, secure and vest good, valid and marketable title to the Trademarks and Related Rights in Assignee and to record this Assignment with all appropriate authorities; provided however, the Assignor does not, and cannot, warrant that ~~title to the Trademarks~~ ^{it} is good, valid and marketable ^{has} ~~title to the trademarks.~~

Assignor hereby further quitclaims, disavows, and relinquishes any and all rights of any kind that Assignor may claim or allege to have to the Trademarks, any similar marks, and any and all other trade names, trade dress, or trademarks incorporating any aspect, portion or component of the Trademarks.

This Assignment may be executed in any number of counterparts and all counterparts so executed shall together constitute one and the same agreement, binding on and enforceable against the parties hereto.

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IN WITNESS WHEREOF, the undersigned has caused this Assignment to be duly executed and delivered as of the 22 day of ~~May~~ JULY, 2002.

ASSIGNOR: SJI WHOLESale, INC.

By: Sterling P. Owen IV

Name: STERLING P. OWEN, IV

Title: Bankruptcy Trustee for SJI in my capacity as Trustee only.

ASSIGNOR: CARIBBEAN CIGAR COMPANY, INC. (BY SJI WHOLESale AS PURCHASER OF THE TRADEMARKS CONTAINED HEREIN FROM CARIBBEAN CIGAR COMPANY)

By: Sterling P. Owen IV

Name: STERLING P. OWEN, IV

Title: BANKRUPTCY TRUSTEE for SJI in my capacity as Trustee only

STATE of Tennessee

COUNTY of Knox

On this 22nd day of July, 2002, before me appearing Sterling P. Owen, IV, the Trustee for SJI Wholesale, Inc., on behalf of the Assignor herein, the person who signed this instrument, who acknowledged that he signed it as a free act on his own behalf (or on behalf of the identified corporation or other juristic entity with authority to do so.

Jeresa H. Wheeler

Signature of Notary Public
My Commission expires 9/12/04

SCHEDULE A TO EXHIBIT D

**TO SETTLEMENT AGREEMENT BY AND AMONG SJI WHOLESALE and ALFRED
J. BERGER, DSI LIMITED, and AMERICAN WESTERN, INC., f/k/a AMERICAN
LUGGAGE & CASE CO., d/b/a AMERICAN WESTERN CIGAR CO.**

Assigned Marks:

**United States' Trademarks Applications and Common Law Marks of
SJI Wholesale and/or Caribbean Cigar Company.**

Trademark	Ser. # / Reg. #	Filing Date	Applicant	Status
DON ESCOBAR & Design	2,328,372	09/16/98	SJI Wholesale, Inc.	Live
RED HEAD & Design	2,299,789	09/16/98	SJI Wholesale, Inc.	Live
LA O'PAREE & Design	2,318,369	09/16/98	SJI Wholesale, Inc.	Live
CUBANO A MANO & Design	2,356,756	09/16/98	SJI Wholesale, Inc.	Live
HECHO A MANO DOMINICANA & Design	2,393,874	12/02/97	SJI Wholesale, Inc.	Live
CELESTINO VEGA HAND MADE & Design	2,289,898	01/30/98	Caribbean Cigar Company	Live
FUN	2,176,732	06/20/97	Caribbean Cigar Company	Live
RUM RUNNER CARIBBEAN CIGAR & Design	75/303,395	06/04/97	Caribbean Cigar Company	Dead
SIGNATURE COLLECTION	75/197,672	11/14/96	Caribbean Cigar Company	Dead
WEST INDIES VANILLA	75/175,976	10/02/96	Caribbean Cigar Company	Dead
ISLAND AMARETTO	75/175,904	10/02/96	Caribbean Cigar Company	Dead
MORRO CASTLE	2,082,480	04/05/96	Caribbean Cigar Company	Live
DOMINO PARK	2,082,479	04/05/96	Caribbean Cigar Company	Live
FREE CUBA	75/084,590	04/05/96	Caribbean Cigar Company	Live
RUM RUNNER	Common Law	N/A		N/A
CELESTINO VEGA	Common Law	N/A		N/A
C.V.	Common Law	N/A		N/A
CALLE OCHO	Common Law	N/A		N/A
SIGNATURE COLLECTION	Common Law	N/A		N/A
FLOR DE FILIPINAS	Common Law	N/A		N/A
FIGHTING COCK	Common Law	N/A		N/A
HECHO A MANO	Common Law	N/A		N/A
DOUBLE HAPPINESS	Common Law	N/A		N/A

SCHEDULE B TO EXHIBIT D
TO SETTLEMENT AGREEMENT BY AND AMONG SJI WHOLESALÉ and ALFRED
J. BERGER, DSI LIMITED, and AMERICAN WESTERN, INC., f/k/a AMERICAN
LUGGAGE & CASE CO., d/b/a AMERICAN WESTERN CIGAR CO.

List of Foreign Assigned Marks

Trademark	Ser. # / Reg. #	Filing Date	Applicant	Country
CELESTINO VEGA	803,015	04/16/98	Caribbean Cigar Co	CTM ¹
SIGNATURE COLLECTION LIMITED RESERVE	803,031	04/16/98	Caribbean Cigar Co	CTM
CALLE OCHO	803,056	04/16/98	Caribbean Cigar Co	CTM
RUM RUNNER	803,080	04/16/98	Caribbean Cigar Co	CTM
WEST INDIES VANILLA	803,114	04/16/98	Caribbean Cigar Co	CTM
ISLAND AMARETTO	803,148	04/16/98	Caribbean Cigar Co	CTM

¹ CTM means Community Trademark Application and includes any and all National applications filed for these trademarks and/or upon which any of the CTM applications referenced herein may be based.