

01-02-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

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J.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): Pokka USA, Inc.

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 12/16/99

2. Name and address of receiving party(ies)

Name: Jim Moffitt Internal Address:

Street Address: 1013 Opal Way

City: Vacaville State: CA Zip: 95687

- Individual(s) citizenship United States 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 name(s) & address(es) attached? Yes No

OFFICE OF PATENT RECORDS RECEIVED 27 11 12:36 FINANCE SECTION

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2,354,132 2,404,788 1,226,831 1,124,610

Additional number(s) attached Yes No

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

Name: Stephen T. Kong

Internal Address:

Street Address: Squire Sanders & Dempsey LLP

One Maritime Plaza, Suite 300

City: San Francisco State: CA Zip: 94111

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41): \$ 115.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

07-1850

DO NOT USE THIS SPACE

9. Signature.

Stephen T. Kong Name of Person Signing

Signature

12-20-02 Date

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

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

12/31/2002 6TON11 00000178 071850 2354132

01 FC:0521 40.00 CH 02 FC:0522 75.00 CH

TRADEMARK REEL: 002641 FRAME: 0016

ASSIGNMENT AGREEMENT

THIS ASSIGNMENT AGREEMENT ("Agreement") is entered into this 30 day of December, 1999 ("Effective Date") by and between Pokka USA, Inc., a California corporation ("Assignor") and Jim Moffitt, an individual ("Assignee"). Together, Assignor and Assignee are sometimes referred to herein as the "Parties."

WHEREAS: Assignor is the sole owner of certain trademarks and associated goodwill, trade secrets, know-how, and trade dress (collectively referred to herein as the "Rights") which are more fully described in Attachment A, which is hereby incorporated herein by reference;

WHEREAS: Assignor desires to sell and Assignee desires to purchase the Rights pursuant to the terms and conditions set forth below; and

WHEREAS: Assignee is a former employee of Assignor. In recognition of Assignee's valuable service to Assignor over the years and Assignor's desire to assist Assignee in starting a new business venture, Assignor, as a professional and personal courtesy, is willing to assign the Rights to Assignee for less than fair market value.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

1. **ASSIGNMENT.** Assignor hereby sells, transfers and assigns and Assignee hereby purchases all of Assignor's right, title and interest to the Rights subject to the conditions subsequent contained herein ("Assignment"). Notwithstanding anything contained herein to the contrary, this Assignment does not include, and Assignee shall have no right to use, the trademarks **POKKA** or the **POKKA P Design**, Assignor's name or address, or any other indicia of origin associated with Assignor, other than the Rights specifically identified in Attachment A. The Assignment contained herein is specifically subject to the following express conditions subsequent:
 - A. Assignee may not assign, transfer, sell, encumber, license or otherwise convey any of the Rights to any third party within twenty-four (24) months of the Effective Date of this Agreement ("Third Party Assignment") without the express prior written consent of Assignor, which shall be granted or not granted pursuant to Assignor's sole and absolute discretion. Any Third Party Assignment that violates this Agreement shall be null and void and have no legal effect whatsoever.
 - B. Assignee must sell no fewer than ~~Six Hundred~~ ^{Six Thousand} (6000) cases of goods bearing at least one of the Trademarks (as defined in Attachment A, Section I.A) within twenty-four (24) months from the Effective Date of this Agreement (collectively referred to herein as the "Sales Quota"). The Sales Quota applies to each of the Trademarks listed in Attachment A, Section I.A and is independent and severable for each Trademark. Assignee, at its sole cost and expense, shall keep and maintain all records necessary or appropriate to demonstrate that it has met the Sales Quota for each Trademark. At the conclusion of the twenty-four (24) months after the Effective Date of this Agreement, Assignor has the right to audit

Assignee's compliance with the Sales Quota for each Trademark using an auditor of its choice ("Audit"). Licensee shall cooperate with all reasonable requests made by the auditor in connection with the Audit, including but not limited to providing the auditor with all reasonable access to Licensee's books and records kept in connection with this Agreement. The Audit shall be deemed conclusive as to whether or not Assignee has met the Sales Quota for each Trademark. If Assignee is deemed to have failed to meet the Sales Quota for any of the Trademarks, in addition to the remedies outlined below in Section 7, Assignee shall pay Assignor for all of its reasonable costs in performing the Audit.



2. **ASSIGNMENT FEES.** Upon execution of this Agreement by both Parties, Assignee shall pay Assignor the sum of Two Hundred Dollars (\$200.00). In addition, Assignee shall pay or otherwise reimburse Assignor for all reasonable expenses related to any filing or registration fees with the United States Patent & Trademark Office ("PTO") and associated attorneys' fees.
3. **SHORT FORM ASSIGNMENT.** Assignor shall have the right to record a short form of this Assignment Agreement, in the form attached hereto as Exhibit B and incorporated herein by reference, with the PTO upon execution of this Agreement and such short form.
4. **CONFIDENTIALITY.** Assignee, its agents, employees and representatives, agrees that at all times during the first twenty-four (24) months after the Effective Date of this Agreement it will not divulge to any third party other than on a need-to-know basis solely for the production and sale of beverages, any confidential or proprietary information regarding any of the Rights which it receives from Assignor, including but not limited to Trade Secrets (as defined in Attachment A). In the event of a breach or threatened breach of the terms of this provision, Assignor shall be entitled to an injunction prohibiting any such breach. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of money damages. The Parties acknowledge that such confidential information is valuable and unique and that disclosure in breach of this provision will result in irreparable injury to Assignor. The purpose of this confidentiality provision is to protect the economic value of Assignor's reversionary interest to the Rights.
5. **INDEMNITY.** To the fullest extent permitted by law, Assignee indemnifies Assignor from any action, regardless of whether the action is for tort, breach of contract, or property right, brought against Assignor by any third party related to or in connection with this Agreement, the Assignment, Assignee's use of the Rights, or any products manufactured, marketed, or otherwise sold by Assignor in connection with the Rights after the Effective Date of this Agreement.
6. **DISCLAIMER OF WARRANTY.** ASSIGNEE ACCEPTS THE ASSIGNMENT GRANTED HEREIN 'AS IS' AND AT HIS OWN RISK. ASSIGNOR MAKES NO WARRANTIES EXPRESS OR IMPLIED AS TO ANY OF THE RIGHTS ASSIGNED HEREIN, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT.
7. **VIOLATION OF ASSIGNMENT.** In addition to all other rights available to Assignor in law or in equity, upon Assignee's violation of the Third Party Assignment, all of Assignee's right, title and interest to the Rights shall automatically and immediately revert to Assignor ("Reversion of Rights"). In addition to all other rights available to Assignor in law or in equity, upon Assignee's violation of any of the Sales Quotas, all of

Assignee's right, title and interest to the applicable Trademark or Trademarks shall automatically and immediately revert to Assignor ("Reversion of Trademarks"), provided however, if Assignee fails to meet the Sales Quota for all of the Trademarks, then such violation shall constitute a Reversion of Rights. Upon the Reversion of Rights or Reversion of Trademarks, Assignee shall assist Assignor with the preparation of any and all documentation required or helpful in effectuating or documenting the Reversion of Rights or the Reversion of Trademarks, whichever is applicable, from Assignee to Assignor, as deemed appropriate by Assignor. Assignee shall pay or otherwise reimburse Assignor for any and all reasonable costs associated with the Reversion of Rights or Reversion of Trademarks, including any reasonable attorneys' fees, filing fees, or court costs. Assignor, upon actual knowledge of any violation of the Third Party Assignment or of any of the Sales Quotas and the completion of any transactions required or helpful in effectuating or documenting the Reversion of Rights or Reversion of Trademarks, shall pay Assignee the sum of Fifty Dollars (\$50.00) for each Trademark reverted, minus any fees or costs owed to it by Assignee pursuant to this Agreement. Assignee hereby waives any claim or potential claim it may have against Assignor for any losses or other injury resulting from or in any way related to the Reversion of Rights or the Reversion of Trademarks.

8. **GOVERNING LAW.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any disputes arising from or otherwise related to this Agreement shall be heard by a court of competent jurisdiction located in San Francisco, California.
9. **NO WAIVER.** The failure of Assignor at any time to enforce any right or remedy available to it under this Agreement with respect to any breach or failure by Assignor shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by Assignee.
10. **GENERAL PROVISIONS.** This Agreement constitutes the entire agreement between the Parties. No prior or contemporaneous written or oral representation or agreement forms a part of this Agreement, and this Agreement supersedes all prior oral or written agreements between the Parties relating to the subject matter of this Agreement. No amendment, modification or supplement to this Agreement shall be effective unless it is in writing and either signed by an authorized representative of both Parties, or is signed by the Party to be charged. This Agreement is not intended to and shall not be construed to provide any rights, remedies or benefits to or for any person or entity not a Party hereto. Nothing contained in this Agreement shall be construed to constitute the Parties as partners, joint venturers or to constitute employment. In the event either Party commences formal legal action to interpret and / or enforce the terms of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to recover, in addition to all other available relief, its reasonable attorneys' fees and court costs. Should any court of competent jurisdiction render any provision of this Agreement void, invalid or unenforceable, such a holding shall not render void or unenforceable any other provision.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the day and year first above written and represent and warrant that the person executing on its behalf has all necessary and appropriate authority to bind that Party hereto.

ASSIGNOR - Pokka USA, Inc., a California corporation ASSIGNEE - Jim Moffitt, an individual

By:  12/16/93 By: 
Don Soetaert, President & CEO Jim Moffitt

Attachment A

- I. Pursuant to the terms and conditions contained in the Agreement, Assignor assigns to Assignee all of its right, title and interest to the Rights, which shall consist of the following:

A. TRADEMARKS

Application / Serial No.:	Mark:	Application / Reg. Date:
75/605,746	OCHACO ORCHARD	December 15, 1998
75/621,200	NATURE'S A.C. BLAST	January 15, 1999
1,124,610	APPLE-APPLE	August 28, 1979
1,226,831	MISSION SAN JUAN	February 8, 1983

B. TRADE SECRETS AND KNOW-HOW

All formulas and other trade secrets and know-how embodied in, or necessary for, the production of the beverages sold by Assignor prior to the Effective Date bearing the Marks (collectively, the "Trade Secrets").

C. TRADE DRESS

The package and label design for the beverages sold by Assignor prior to the Effective Date bearing the Marks.

- II. The following trademarks are expressly excluded from the Assignment:

Serial No.:	Mark:	Registration Date:
74-077755	POKKA	April 7, 1992
73-557819	POKKA-P	January 13, 1987

Attachment B**ASSIGNMENT OF TRADEMARKS**

WHEREAS, Pokka USA, Inc., a California corporation (hereinafter "ASSIGNOR"), with its principal place of business at 1201 Commerce Boulevard, American Canyon, California 95589, is the present owner of the following trademarks and U.S. trademark applications and registrations (collectively "Marks"):

Application / Serial No.:	Mark:	Application / Reg. Date:
75/605,746	OCHACO ORCHARD	December 15, 1998
75/621,200	NATURE'S A.C. BLAST	January 15, 1999
1,124,610	APPLE-APPLE	August 28, 1979
1,226,831	MISSION SAN JUAN	February 8, 1983

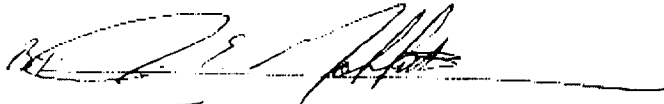
WHEREAS, Jim Moffitt, an individual, with his principal place of business at 1063 ORAL WAY, VACAVILLE, CA 95687 (hereinafter referred to as "ASSIGNEE"), is desirous of acquiring all rights, title and interest owned by ASSIGNOR in and to said Marks.

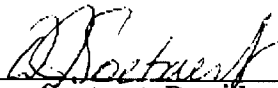
NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that for good and valuable consideration, receipt of which is hereby acknowledged by ASSIGNOR, ASSIGNOR hereby assigns, sells and transfers unto said ASSIGNEE, ASSIGNEE's successors and assigns, all of ASSIGNOR's rights, title and interest in and to said Marks, together with the goodwill of the business symbolized by the Marks subject to the terms and conditions of that certain Assignment Agreement dated December __, 1999.

IN WITNESS WHEREOF, ASSIGNOR hereby signs its name below.

Date: December 16, 1999.

POKKA USA, Inc.


JAMES C. MOFFITT

By: 
Don Soetaert, President & CEO