

02-28-2003

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

2-24-03 RECORDED



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

102376562

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

1. Name of conveying party(ies):

MasterGrip, Inc.

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State TEXAS, 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: February 12, 2003

2. Name and address of receiving party(ies)

Name: Nike, Inc.

Internal

Address:

Street Address: One Bowerman Drive

City: Beaverton State: OR Zip: 97005

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State Oregon, 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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,808,554

Additional number(s) attached Yes No

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

Name: Kenneth M. Kwartler, Esq.

Internal Address: Nike, Inc.

Street Address: One Bowerman Drive

City: Beaverton State: OR Zip: 97005

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:

501029

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

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.

Kenneth M. Kwartler, Esq.

Name of Person Signing

[Handwritten Signature]

Signature

2/24/03

Date

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

7

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

02/27/2003 6TON11 00000157 501029 1808554 01 KC:8521 40.00 CH

TRADEMARK REEL: 002679 FRAME: 0964

ASSIGNMENT OF TRADEMARK

WHEREAS, MasterGrip, Inc., a Texas corporation with offices at 3410 Century Circle, Irving Texas 75062, is the owner of U.S. Registration No. 1,808,554 for SLING SHOT for golf clubs; and

WHEREAS, Nike, Inc., an Oregon corporation with offices at One Bowerman Drive, Beaverton, Oregon 97005, is desirous of acquiring said mark and any and all goodwill associated therewith in accordance with the parties' written Agreement.

NOW, THEREFORE; in consideration of and in exchange for the good and valuable consideration set forth in the parties written Agreement, the sufficiency of which is hereby acknowledged, MasterGrip, Inc. does hereby sell, assign, transfer, and grant to Nike, Inc. its entire right, title and interest in and to the trademark SLING SHOT, U.S. Reg. No. 1,808,554, and any and all goodwill associated therewith.

This assignment is executed at IRVING, TX this 12 day of February, 2003.

MASTERGRIP, INC.

By: _____

Name: ERIC CARL

Title: PRESIDENT

AGREEMENT

This Agreement is between Nike, Inc., an Oregon Corporation with offices at One Bowerman Drive, Beaverton, Oregon 97005 ("Nike"), and MasterGrip, Inc. a Texas corporation with offices at 3410 Century Circle, Irving, Texas 75062 ("MasterGrip").

WHEREAS, Nike designs, manufactures, markets, and sells athletic and athleisure footwear, apparel, and equipment, and intends to design, manufacture, market, and sell golf clubs bearing the brand name SLINGSHOT;

WHEREAS, MasterGrip is the owner of United States Trademark Registration No. 1,808,554 issued on November 30, 1993 for SLING SHOT for golf clubs; and

WHEREAS, Nike and MasterGrip wish to enter into certain arrangements relating to Nike's and MasterGrip's uses of the trademark SLING SHOT.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, Nike and MasterGrip hereby agree as set forth below.

Article 1.

1.1 **Scope.** Subject to the terms and conditions set forth in this Agreement, MasterGrip will execute an assignment (the "Assignment") of its trademark U.S. Reg. No. 1,808,554 for SLING SHOT for golf clubs and the goodwill associated therewith to Nike in the form attached hereto at Exhibit A. MasterGrip will execute such Assignment at the time of execution of this Agreement. Such original, executed Agreement and Assignment must be sent by a nationally recognized overnight courier service to Leslie K. Mitchell, Esq., Fitzpatrick, Cella, Harper & Scinto, 30 Rockefeller Plaza, New York, New York 10112. Following execution of the Assignment and receipt of the fees set forth in Paragraph 1.3, MasterGrip will not object to or in any way oppose any use by Nike of the SLINGSHOT mark or challenge, oppose or attempt to cancel any federal trademark registration therefor.

MasterGrip further agrees that it will not design, manufacture, market, sell, offer to sell, distribute, dispose of, or advertise any products bearing the SLING SHOT mark or the individual term "sling" after October 1, 2003; provided, however that if the individual term "sling" becomes commonly used to describe a feature or function of a golf related product, MasterGrip shall be entitled to use it in a descriptive fashion.

1.2 **Notification.** No later than October 2, 2003, an officer of MasterGrip will provide to Nike a notarized written confirmation that: i) any remaining inventory of products bearing the SLING SHOT name have been depleted or destroyed; ii) MasterGrip has ceased all sales, distribution and advertising of products bearing the SLING SHOT mark; iii) all advertising, promotional materials and sales materials bearing the mark SLING SHOT, either in printed or electronic form, have been depleted or destroyed; and (iv) all websites owned, operated or under the control of MasterGrip, including www.mastergrip.com, have been changed to eliminate all references, photos or any other use of the mark SLING SHOT. Such original executed notification must be sent by a nationally recognized overnight courier service to

1.3 **Fees.** Nike will pay to MasterGrip a nonrefundable fee of \$45,000 by attorney's check within five (5) business days of its receipt of the executed Agreement and Assignment described in Paragraph 1.1.

1.4 **Other Fees.** Nike agrees to pay MasterGrip's reasonable professional fees solely limited to its attorney's fees in connection with negotiating, executing and performing this Agreement and Assignment, provided such amount does not exceed \$1,000. MasterGrip's request for this payment must include an itemized attorney's bill and must be submitted to Nike's attorney Leslie K. Mitchell, at the address provided in Paragraph 1.1, within thirty (30) business days of execution of the Agreement. Payment of the professional fees will be made within forty (40) business days of Fitzpatrick, Cella, Harper & Scinto's receipt of the itemized attorney's bill.

Article 2.

2.1 **Term.** This Agreement continues from the date of execution until October 2, 2003 pursuant to the notification terms of Paragraph 1.2. Upon receipt by Nike of the notarized written confirmation regarding the MasterGrip SLING SHOT inventory, the Agreement shall be deemed fulfilled by MasterGrip.

Article 3.

3.1 **Nike's Representations and Warranties.** Nike hereby represents and warrants to MasterGrip that the Agreement is Nike's valid and binding obligation enforceable in accordance with its terms. Nike has the unencumbered right to enter into the Agreement and to fulfill its duties thereunder.

3.2 **MasterGrip's Representations and Warranties.** MasterGrip hereby represents and warrants to Nike as follows:

(a) The Agreement is MasterGrip's valid and binding obligation enforceable in accordance with its terms. MasterGrip has the unencumbered right to enter into the Agreement and to fulfill its duties thereunder.

(b) MasterGrip is the sole owner of and, to the best of its knowledge, has the right to use and permit the use of the trademark SLING SHOT and has not licensed any other to use the trademark SLING SHOT for golf clubs and has the right to grant Nike the assignment of the trademark SLING SHOT as represented by Reg. No. 1,808,554 described in Paragraph 1.1 of the Agreement.

Article 4.

4.1 **Governing Law.** The Agreement will be governed by and construed in accordance with the internal laws of the State of Texas applicable to contracts made and to be performed in such state, without regard to its Conflicts of Law provisions.

4.2 **Assignment.** The Agreement will be binding upon the parties hereto and their respective successors and permitted assigns. Neither Nike nor MasterGrip may assign all or any portion of its rights or obligations hereunder without the express prior written consent of the other party, which consent will not be withheld without a proper showing of cause.

4.3 **Waivers.** Any waivers by either party of any rights arising from a breach of any covenants or conditions of the Agreement must be in writing and is not to be construed as a continuing waiver of other breaches of the same nature or other covenants or conditions of the Agreement.

4.4 **Amendment.** Neither the Agreement nor any provision thereof may be amended or waived except by a writing signed by the party against which enforcement of the amendment or waiver is sought.

4.5 **Relationship of Parties.** The Agreement is not intended to create, nor should it be construed as creating, any agency, joint venture, partnership or similar relationship between the parties. Each party will act solely as an independent contractor and will have no right to act for or bind the other party in any way or to represent that such party is in any way responsible for any acts or omissions of the other party.

4.6 **Third Party Claims.** MasterGrip agrees that it will notify Nike promptly of the existence of any third party claim, demand or other action against it regarding its use and/or ownership of the trademark SLING SHOT prior to October 1, 2003. Nike shall have the sole right to determine if it wants to participate in any defense at its own expense and has no obligation to pay any of MasterGrip's costs or expenses incurred as a result of MasterGrip's defense of claims regarding its use and/or ownership of the trademark SLING SHOT prior to October 1, 2003. In the event that any third party claim, demand or other action is brought against MasterGrip regarding its use of any term other than SLING SHOT, Nike has no obligation to participate in the defense of such claim.

4.7 **Remedies.** It is understood and agreed that in the event of any breach or threatened breach of the provisions of the Agreement, the remedies at law of the nonbreaching party will be inadequate and such party will be entitled to seek appropriate injunctive and other equitable relief in addition to its remedies at law. All remedies available to either party for breach of the Agreement are cumulative and may be exercised concurrently or separately. The exercise of one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

4.8 **Consequential Damages.** In no event will either party be liable to the other party for any consequential, indirect, incidental, exemplary or special damages of any kind unless such party has engaged in intentional misconduct or gross negligence.

4.9 **Notices.** All notices, requests and other communications under the Agreement will be in writing and will be delivered by personal service or sent by nationally recognized overnight courier service, telecommunication or registered or certified U.S. mail, postage prepaid in each case, addressed as follows:

If to Nike: Nike, Inc.
One Bowerman Drive
Beaverton, Oregon 97005
Attention: Dorothy C. Alevizatos, Assistant General Counsel
Facsimile: (503) 646-6926

If to MasterGrip: Lewis T. Steadman, Jr., Esq.
Holland & Knight LLC
55 West Monroe Street
Chicago, Illinois 60603
Facsimile: (312) 578-6666

or to such other address as the addressee party may direct by notice given as provided herein. All such communications will be deemed effective on the earlier of (a) actual receipt or (b) if sent by courier service, on the business day following date delivered to the courier or (c) if sent by mail, five (5) business days after deposit with the U.S. Postal Service or (d) if sent by written telecommunication, on the sending date (subject to the sender's confirmation receipt).

4.10 **Disclosure.** Except as reasonably necessary for performance under the Agreement or otherwise required by law, neither party will publicly announce or otherwise disclose the terms of the Agreement without the express prior written consent of the other party.

4.11 **Headings.** The headings of the articles, paragraphs and subparagraphs of the Agreement have been added for the convenience of the parties and will not be deemed a part thereof.

4.12 **Severability.** In the event any provision of the Agreement, in whole or in part, is invalid, unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, such provision will be replaced, to the extent possible, with a provision that accomplishes the original business purposes of the provision in a valid and enforceable manner, and the remainder of the Agreement will remain unaffected and in full force, provided, however, that if without such invalid provision the fundamental mutual objectives of the parties cannot be achieved, then either party may terminate the Agreement without penalty upon written notice of termination to the other party.

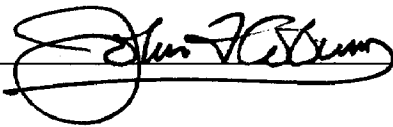
4.13 **Further Assurances.** Each party agrees to execute and deliver such further documents and assurances, if any, as may be required from time to time to give effect to the provisions of the Agreement.

4.14 **Sole Understanding.** The Agreement is the sole understanding and agreement of the parties hereto with respect to the subject matter thereof and supersedes all other such prior or contemporaneous oral and written agreements and understandings.

4.15 **Execution.** Each person executing this Agreement on behalf of a party expressly represents and warrants that said person has been duly authorized to enter into this Agreement on its behalf.

Signed, sealed and delivered by a duly authorized representative of Nike and MasterGrip as of the date set forth below.

NIKE, INC.

By:  _____

Title: Assistant Secretary

Date: Feb. 24, 2003

MASTERGRIP, INC.

By:  _____

Title: PRESIDENT

Date: FEB 12, 2003