

03-17-2003

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

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



102391045

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

1. Name of conveying party(ies): 2-26-03

Linden Oaks Corporation

Individual(s) Association

General Partnership Limited Partnership

Corporation-State Delaware

Other _____

2. Name and address of receiving party(ies):

Name: Birds Eye Foods, Inc. FEB 26 2003

Internal Address: _____

Street Address: 90 Linden Place

City: Rochester State: NY Zip 14625

Individual(s) citizenship _____

Association _____

General Partnership _____

Limited Partnership _____

Corporation-State Delaware

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 14, 2003

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) 1,151,153; 547,472; 1,426,706; 1,445,394

Additional number(s) attached Yes No

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

Name Harter, Secrest & Emery LLP

Internal Address: _____

03/14/2003 GTDN11 00000111 033875 1151153

01 FC:8521 40.00 CH

02 FC:8522 75.00 CH

Street Address: 1600 Bausch & Lomb Place

City: Rochester State NY Zip 14604

6. Total number of applications and regulations involved 4

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

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: 03-3875

DO NOT USE THIS SPACE

9. Signature. Stephen B. Salai February 25, 2003

Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 8

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

TRADEMARK
REEL: 002691 FRAME: 0200

TRADEMARK PURCHASE AGREEMENT

THIS AGREEMENT is made as February 14, 2003.

AMONG: **LINDEN OAKS CORPORATION**, a corporation incorporated under the laws of Delaware

(the "Seller")

- and -

BIRDS EYE FOODS, INC., a corporation incorporated under the laws of Delaware

(the "Buyer")

WHEREAS:

A. The Seller is the owner of all right, title and interest in and to those certain trademarks used in connection with the sale of sauerkraut, pickles and other produce (hereinafter referred to in the aggregate as the "Trademarks") which are registered in the United States Patent and Trademark Office to the extent noted below:

<u>Mark</u>	<u>Reg. No.</u>
SILVER FLOSS	547,472
SILVER FLOSS with design	1,151,153
VICTOR	1,426,706
CORTLAND VALLEY	1,445,394

B. The Seller has agreed to sell the Trademarks, along with the goodwill of the business symbolized by the Trademarks, to the Buyer in exchange for fair consideration of Ten Thousand Dollars (\$10,000.00); and

C. Buyer has agreed to purchase the Trademarks and the goodwill of the business symbolized by the Trademarks from the Seller for cash consideration of Ten Thousand Dollars (\$10,000.00).

NOW THEREFORE in consideration of these premises and the mutual covenants herein and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties) the parties hereto covenant and agree as follows:

1. **DEFINITIONS**

In this agreement, the following terms shall have the following meanings:

- 1.1 "Agreement" means this Agreement and the expressions "hereof", "herein", "hereto" and "hereunder" and similar expressions refer to this agreement;
- 1.2 "Assignment Document" shall mean the Trademark Assignment attached to this Agreement as Exhibit A hereto.
- 1.3 "Closing" means the completion of the sale and purchase of the Trademarks hereunder by the transfer and delivery of an Assignment Document and other documents required herein, and the payment of the purchase price;
- 1.4 "Closing Date" shall mean February 24, 2003, or such earlier or later date as may be mutually acceptable to the parties hereto;
- 1.5 "Purchase Price" will have the meaning attributed thereto in paragraph 2 of this Agreement; and
- 1.6 "Trademarks" shall mean those certain trademarks used in connection with the sale of sauerkraut, pickles and other produce which are registered in the United States Patent and Trademark Office to the extent noted below:

<u>Mark</u>	<u>Reg. No.</u>
SILVER FLOSS	547,472
SILVER FLOSS with design	1,151,153
VICTOR	1,426,706
CORTLAND VALLEY	1,445,394

2. **PURCHASE AND SALE**

- 2.1 **Agreement to Purchase.** The Seller shall sell and Buyer shall purchase the Trademarks, along with the goodwill of the business symbolized by the Trademarks, and any related product packaging or trade dress. The purchase transaction shall be pursuant to the terms and conditions contained herein.
- 2.2 **Purchase Price.** Buyer agrees to pay the Seller Ten Thousand Dollars (US) (\$10,000.00 US) for the Trademarks along with the goodwill of the business symbolized by the Trademarks, and any related product packaging or trade dress.
- 2.3 **Payment of Purchase Price.** The Purchase Price shall be paid and satisfied by the Buyer delivering to the Seller a certified check, bank draft or wire transfer in the amounts of \$10,000.00 (US) on the Closing Date.

2.4 Trademark Sale Only. This Agreement does not pertain to the sale or purchase of any assets of Seller other than the Trademarks, and related product and packaging trade dress, together with any and all associated good will.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 As an inducement to Buyer to purchase the Trademarks, Seller represents, warrants and covenants to Buyer as follows:

3.1.1. Seller is a stock corporation, organized under the laws of the state of Delaware, is validly existing pursuant to said laws, and has the power and authority to engage in the business presently conducted by Seller.

3.1.2 Seller has the power, and has taken all requisite corporate action to enter into and perform its obligations under this Agreement. The performance of the obligations of Seller under this Agreement does not violate any contract or other instrument or any order or judgment applicable to Seller, and does not require the approval of any person, governmental agency or instrumentality.

3.1.3 At the closing Seller shall have, and shall convey to Buyer, good and marketable title to the Trademarks.

3.2. As an inducement to Seller to sell the Trademarks, Buyer represents, warrants and covenants to Seller as follows:

3.2.1 Buyer is a stock corporation, organized under the laws of the state of Delaware, is validly existing pursuant to said laws, and has the power and authority to engage in the business presently conducted by Buyer.

3.2.2 Buyer has the power and has taken all requisite corporate action to enter into and perform its obligations under this Agreement. The performance of the obligations of Buyer under this Agreement does not violate any contract or other instrument or any order or judgment applicable to Buyer, and does not require the approval of any person, governmental agency or instrumentality.

4. CLOSING

4.1 The completion of all matters and the Closing of the transactions herein contemplated shall be effected at the offices of Seller on the Closing Date.

- 4.2 On the Closing Date, the Seller, through an authorized officer, shall execute and deliver to Buyer the Assignment Document.
- 4.3 On the Closing Date, Buyer shall deliver payment of the Purchase Price to Seller as set forth in paragraph 2 hereof.

5. **NOTICES**

- 5.1 Any notice or other written communication required or permitted hereunder shall be in writing and:
- 5.1.1 delivered personally to an officer of the party to whom it is directed; or
- 5.1.2 sent by registered mail, postage prepaid, return receipt requested (provided that such notice or other written communication shall not be forwarded by mail if on the date of mailing there exists an actual or imminent postal service disruption in the city from which such communication is to be mailed or in which the address of the recipient is found); or
- 5.1.3 sent by fax (provided that transmission of the same can be confirmed).
- 5.2 All such notices shall be addressed to the party to whom it is directed at the following addresses:

If to : **Linden Oaks Corporation**

By mail or personal delivery to:

Suite 290, 103 Foulk Road, Wilmington, Delaware, 19803

Attention: Karen T. Severino

By fax: 302-652-8667

If to : **Birds Eye Foods, Inc.**

By mail or personal delivery to:

90 Linden Place, Rochester, New York 14625

Attention: Timothy Benjamin

By fax: 716-383-1568

Any such notice or other written communication shall, if mailed as aforesaid be effective seven (7) days from the date of posting; if given by fax, shall be

effective on the first business day after the sending thereof; and if given by personal delivery shall be effective on the day of delivery.

Either party may at any time change its address by giving notice of such change of address to the other party in the manner specified in this paragraph.

6. **COSTS OF THE TRANSACTION**

Each of the parties shall be responsible for their own costs incurred or paid in connection with the negotiation and entering into of this Agreement and the completion of the transactions contemplated hereby.

7. **FURTHER ASSURANCES**

The parties hereto shall do all acts and things and execute all further documents reasonably required in the circumstances to effect the provisions and intent of this Agreement.

8. **SCHEDULES**

This Agreement together with the exhibits, if any, attached hereto constitutes the entire Agreement between the parties and supersedes all prior and contemporaneous Agreements, understandings and discussions whether oral or written, and there are no other warranties, Agreements or representations between the parties as expressly set forth herein.

9. **GOVERNING LAW**

The Agreements shall be governed by and interpreted in accordance with the laws of the State of Delaware.

10. **AGREEMENT BINDING**

This Agreement shall enure to the benefit of and be binding upon the Seller and Buyer, and their respective heirs, legal representatives, successors and assigns.

11. **COUNTERPARTS**

This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement, and each of which shall be deemed an original.

IN WITNESS WHEREOF this agreement has been executed and delivered by the parties hereto to be effective as of February 14, 2003.

LINDEN OAKS CORPORATION

BY: Timothy J. Benjamin
Name: Timothy J. Benjamin
Title: President

BIRDS EYE FOODS, INC.

BY: Earl L. Powers
Name: EARL L. POWERS
Title: EVP, CFO AND SECRETARY

EXHIBIT A

TRADEMARK PURCHASE AGREEMENT

TRADEMARK ASSIGNMENT

THIS ASSIGNMENT, dated to be effective as of February 24, 2003, and made by Linden Oaks Corporation whose sole office is located at Suite 209, 103 Foulk Road, Wilmington, Delaware, 19803 (or "Linden Oaks"), recites and provides:

WHEREAS, Linden Oaks is the owner of all right, title and interest in and to those certain trademarks used in connection with the sale of sauerkraut (hereinafter referred to in the aggregate as the "Trademarks") which are registered in the United States Patent and Trademark Office to the extent noted below:

<u>Mark</u>	<u>Reg. No.</u>
SILVER FLOSS	547,472
SILVER FLOSS with design	1,151,153
VICTOR	1,426,706
CORTLAND VALLEY	1,445,394

AND WHEREAS, Birds Eye Foods, Inc., a Delaware corporation whose principal office is located at 90 Linden Place, Rochester, New York, 14625 (or "Birds Eye Foods") is desirous of acquiring said Trademarks and the registrations thereof;

AND WHEREAS, it is desired that the assignment of said Trademarks be made of record in the United States Patent and Trademark Office.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Linden Oaks does hereby assign and transfer unto said Birds Eye Foods, and for Birds Eye Foods' successors and assigns, all right, title and interest in and to each of said Trademarks, together with the goodwill of the business symbolized by said Trademarks, and the registrations thereof; and all income, royalties, damages, and payments now or hereafter due or payable in respect of the Trademarks, and the registrations thereof; and in and to all causes of action (either in law or in equity) and the right to sue, counterclaim, and recover for past, present, or future infringement of the rights assigned to Birds Eye Foods under this Assignment.

IN WITNESS WHEREOF, this instrument has been duly executed by a duly authorized officer of Linden Oaks to be effective on February 24, 2003.

LINDEN OAKS CORPORATION

By: Timothy J. Benjamin
Name: Timothy J. Benjamin
Title: President