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06-24-2003

Docket No.:

33284



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original documents or copy thereof.

1. Name of conveying party(ies):

Dallas Manufacturing Company, Inc.  
4215 McEwen Road  
Dallas, Texas 75244

- Individual(s)
- General Partnership
- Corporation-State Texas
- Other

Additional names(s) of conveying party(ies)  Yes  No

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

Name: Premier Pet Products, Inc.

Internal Address: \_\_\_\_\_

Street Address: 406 Branchway Road

City: Richmond State: VA ZIP: 23236

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State Virginia
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: November 27, 2002

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

A. Trademark Application No. (s)

Trademark Application No. (s) being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner for Patents, Mail Stop 1916492, P.O. Box 1450, Alexandria, VA 22313-1450, on this 17th day of June, 2003  
By Thomas H. Van Hoozer  
HOVEY WILLIAMS LLP  
Additional numbers  Yes  No

B. Trademark Registration No.(s)

1,916,492

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

Name: Thomas H. Van Hoozer

Internal Address: HOVEY WILLIAMS LLP

Suite 400

Street Address: 2405 Grand Boulevard

City: Kansas City State: MO ZIP: 64108

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:

19-0522

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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.

Thomas H. Van Hoozer, Reg. No. 32,761

Name of Person Signing

Thomas H. Van Hoozer  
Signature

June 17, 2003

Date

Total number of pages including cover sheet, attachments, and

5

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OFFICE OF PUBLICATION RECORDS  
FINANCE SECTION  
2003 JUN 20 PM 3:43

## SETTLEMENT AGREEMENT

This settlement agreement, made and entered into as of the 30th day of September, 2002, by and between Premier Pet Products, Inc., a Virginia corporation having its principal place of business in Richmond, Virginia (hereinafter "Premier") and Dallas Manufacturing Company, a Texas corporation having its principal place of business in Dallas, Texas (hereinafter "Dallas").

WHEREAS, Dallas has used the mark PREMIERE PET in connection with pet beds, pet clothing and pet furniture since about June 1, 1994 and is the owner of U.S. Trademark Registration No. 1,916,492 for the mark PREMIERE PET for pet beds; and

WHEREAS, Premier has used the mark PREMIER for, *inter alia*, dog collars since about October of 1989 and the mark PREMIER PET PRODUCTS for, *inter alia*, pet toys since about November of 1993 and for wholesale distributorship services featuring collars and leashes for pets since about November of 1989; and

WHEREAS, Premier has filed a petition to cancel Registration No. 1,916,492 of Dallas in the Trademark Trial and Appeals Board of the U.S. Patent and Trademark Office as Cancellation No. 29,975; and

WHEREAS, Premier and Dallas desire, by this Settlement Agreement, to resolve the pending cancellation proceeding between them and to address the questions of future use of the mark PREMIERE PET between them.

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

1. Dallas agrees to:
  - a) Assign its rights to the mark PREMIERE PET for pet related products including U.S. Trademark Registration No. 1,916,492 to Premier contemporaneously with the execution of this Settlement Agreement by executing the Assignment appended hereto as Exhibit A;
  - b) Except in connection with the sale of its existing inventory and exhaustion of packaging bearing the mark PREMIERE PET as provided in the License Agreement appended hereto as Exhibit B, Dallas agrees to discontinue all further use of the PREMIERE PET mark or any mark confusingly similar thereto on any products or services whatsoever;
  - c) Consent to the dismissal of Cancellation No. 29,975 without prejudice as provided in Exhibit C hereto;
  - d) Execute any further documents that may be necessary to effectuate assignment of all of Dallas' rights in and to the PREMIERE PET mark to Premier; and

  
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- e) Never challenge or take any position adverse to the ownership interest of Premier, its successors or assigns in and to the PREMIERE PET mark.

2. Premier agrees to:

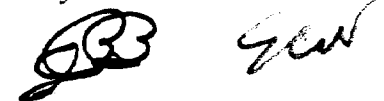
- a) Dismiss Cancellation No. 29,975 upon receipt of a fully executed copy of the Assignment provided as Exhibit A and the consent to dismissal provided as Exhibit C;
- b) Record all assignment documents;
- c) Grant to Dallas a non-exclusive, non-transferrable, non-severable royalty free license to use the mark PREMIERE PET for a period not to exceed three years as provided in Exhibit B to permit Dallas to exhaust its remaining inventory of goods and packaging bearing the mark PREMIERE PET for pet beds, pet clothing, pet furniture and other pet related products;
- d) Refrain from filing or joining in any suit for infringement against Dallas based on its use of the PREMIERE PET mark on pet beds, pet clothing, pet furniture or other pet related products provided that the terms of this agreement are complied with; and
- e) Pay Dallas Twelve Thousand Dollars (\$12,000) upon receipt of the fully executed copy of the Assignment provided as Exhibit A and the consent to dismissal provided as Exhibit C.

3. Each of the parties hereto agrees that its actions are in compromise of a contested matter, and each party is making concessions based on the representations and promises set forth in this agreement which, if not fulfilled, will be to the detriment of their business. Accordingly, time is of the essence in compliance with the terms and conditions hereof, and that entry of immediate injunctive relief by any court with jurisdiction to enforce the terms of this agreement would be appropriate if any terms are breached. This will be without prejudice to obtain other remedies, including damages for breach of contract, trademark infringement or other claims.

4. Provided that the terms of this agreement are complied with, the parties mutually release one another from any and all alleged liability arising out of Dallas' use of the mark PREMIERE PET and any claims or counterclaims arising out of Premier's use of the PREMIER and PREMIER PET PRODUCTS marks and its enforcement of its rights in those marks.

5. Indemnification.

- a) Dallas shall defend and indemnify Premier from, and hold Premier harmless against, all claims, losses, damages, expenses and judgments, however arising, incurred by the indemnitee on account of Dallas' sale or production of pet beds and any other product of Dallas bearing the PREMIERE PET mark and/or breach of this agreement by Dallas. This



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indemnification shall not be deemed to be exclusive of any right to contribution or any other rights that any indemnitee may be entitled to under any agreement, law or equity.

- b) Premier shall defend and indemnify Dallas from, and hold Dallas harmless against, all claims, losses, damages, expenses and judgments, however arising, included by the indemnitee on account of Premier's sale or of pet products or wholesale distributorship services for pet products and any other product or service of Premier bearing the PREMIER or PREMIER PET PRODUCTS mark and/or breach of this agreement by Premier. This indemnification shall not be deemed to be exclusive of any right to contribution or any other rights that any indemnitee may be entitled to under any agreement, law or equity.

6. This agreement will be binding on the parties and their respective officers, employees, agents, subsidiaries, affiliates, licensees, successors and assigns, Each person who executes this agreement on behalf of a party represents that he or she has the authority of the party to do so. This agreement, and the Exhibits appended hereto, set forth the full agreement of the parties relating to the subject matter of this agreement, and shall be effective as of the date first set forth above. Any revisions or modifications must be in writing and signed by both parties.

Premier Pet Products, Inc.

By *Evan Wooton*  
Evan Wooton  
President

Date: *November 8, 2002*

Dallas Manufacturing Company, Inc.

By *J. Bruce Beinkmann*  
Name: *J. Bruce Beinkmann*  
Title: *PRESIDENT*

Date: *November 27, 2002*

**ASSIGNMENT OF TRADEMARK and TRADEMARK REGISTRATION**

Whereas Dallas Manufacturing Company, Inc., a Texas corporation with a principal business address of <sup>4215 MCGREW ROAD, DALLAS, TEXAS 75244</sup> ~~4011 Joseph Hardin Drive, Suite A, Dallas, Texas 75236~~ ("Assignor") has used the mark PREMIERE PET (the "Mark") in connection with pet related products including pet beds, pet clothing and pet furniture and is the owner of the trademark PREMIERE PET for pet beds which is the subject of U.S. Trademark Registration No. 1,916,492; and

Whereas Premier Pet Products, Inc. is a Virginia corporation with a principal business address of 406 Branchway Road, Richmond, Virginia 23236 ("Assignee") and is desirous of acquiring all of Assignee's right, title and interest to the Mark.

Now, therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor hereby assigns to Assignee all of its right, title and interest in and to the Mark, together with the good will of that portion of the business to which the Mark applies, and U.S. Trademark Registration No. 1,916,492 therefor.

The record of this assignment shall be entered in the records of the United States Patent and Trademark Office. This assignment is effective *nunc pro tunc* as of September 30, 2002.

Dallas Manufacturing Company, Inc.

By: J. Baxton BenNoman  
Name: J. Baxton BenNoman  
Title: PRESIDENT

Date: November 27, 2002

Exhibit A

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