

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL
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CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Why Wrap? Incorporated		02/24/2004	CORPORATION: GEORGIA

RECEIVING PARTY DATA	
Name:	United States Postal Service
Street Address:	475 L'Enfant Plaza SW
City:	Washington
State/Country:	DISTRICT OF COLUMBIA
Postal Code:	20260
Entity Type:	Government Agency: DISTRICT OF COLUMBIA

PROPERTY NUMBERS Total: 3		
Property Type	Number	Word Mark
Registration Number:	2435909	MR. ZIP
Registration Number:	2435910	MS. ZIP
Registration Number:	2435913	ZIP

CORRESPONDENCE DATA	
Fax Number:	(602)734-3750
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	602.262.5311
Email:	TRADEMARKS@LRLAW.COM
Correspondent Name:	Michael T. Hallam
Address Line 1:	40 N. Central Avenue
Address Line 2:	Suite 1900
Address Line 4:	Phoenix, ARIZONA 85004

ATTORNEY DOCKET NUMBER:	38494-137
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NAME OF SUBMITTER:	Karen I. Wildman
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Total Attachments: 6 source=settleme#page1.tif

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SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into as of February 24, 2004 (the “Effective Date”), between the United States Postal Service, an Independent Establishment of the Executive Branch of the Government of the United States (“USPS”), and Why Wrap? Incorporated, a Georgia corporation (“Why Wrap”).

WHEREAS, the USPS has been using various ZIP marks and formatives, including, but not limited to, MR. ZIP, in connection with the delivery of mail and related goods and services since at least as early as 1963 and has developed valuable goodwill in these marks.

WHEREAS, Why Wrap owns federal trademark registrations for the following marks in connection with shipping boxes, envelopes, and other mailing and gift containers made of paper and corrugated board (collectively, the “ZIP Marks”):

<u>Mark</u>	<u>Registration Number</u>
MR. ZIP	2,435,909
ZIP	2,435,913
MS. ZIP	2,435,910

WHEREAS, USPS has filed the following cancellation petitions against the registrations of the ZIP Marks: Cancellation Nos. 92040912 (MR. ZIP), 92042226 (ZIP), 92041701 (MS. ZIP) (collectively, the “Actions”):

WHEREAS, USPS and Why Wrap desire to settle their differences in relation to the Actions.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DISMISSAL:** The USPS shall dismiss the Actions within ten (10) business days of the Effective Date.
2. **ASSIGNMENT OF THE ZIP MARKS:** Concurrently with the execution of this Agreement, the parties shall execute the Trademark Assignment in the form set forth in Exhibit A (“Trademark Assignment”). Why Wrap agrees and acknowledges that the USPS may record the Trademark Assignment with the United States Patent and Trademark Office (“PTO”) following execution of this Agreement. Why Wrap agrees to cooperate with the USPS and to execute any documents reasonably necessary to effect the assignment of the ZIP Marks and Registration Nos. 2,435,909 (MR. ZIP), 2,435,910 (MS. ZIP), 2,435,913 (ZIP).
3. **PAYMENT.** In consideration for the assignment of the ZIP Marks and registrations and the other terms and conditions of this Agreement, the USPS shall pay Why Wrap the sum of \$37,000.00, which shall include \$25,000 for

assignment of the ZIP Marks and registrations and \$12,000 for unusable inventory.

4. **LICENSE TO USE:** Contingent upon Why Wrap establishing before the effective date of the license and maintaining throughout the term of the license compliance with all standard USPS licensing requirements, USPS shall grant Why Wrap a non-exclusive license to use the ZIP Marks for a period of five (5) years according to the terms and conditions of USPS' standard License Agreement, an example of which is set forth in Exhibit B. The USPS shall not be obligated to execute the License Agreement until Why Wrap has established that it has met all standard USPS licensing requirements. These licensing requirements, which may be changed by USPS in its sole discretion based upon changing circumstances, shall include:
 - a) Why Wrap's submission of an appropriate licensing proposal that
 - (1) meets the requirements or customary practices for submission of such proposals; and
 - (2) proposes a business/marketing strategy and product line that fits well with USPS's business strategy and plans for the ZIP Marks and related aspects of the USPS's business and public relations activities as determined by USPS in its sole discretion.
 - b) Why Wrap meeting all licensing requirements that USPS demands for licensees for licensing proposals of the same general nature as Why Wrap's.
 - c) Why Wrap and USPS otherwise reaching agreement on mutually acceptable terms for the license.
5. **CESSATION OF USE OF MARK:** Except as specifically set forth in Section 4 above and in the License Agreement, Why Wrap, and its officers, agents, servants and employees and all others who act in concert or participation with Why Wrap, shall not directly or indirectly:
 - a) Use the ZIP Marks or any colorable imitation of those marks in any way;
 - b) Contest the validity of the registrations of the ZIP Marks or the USPS' rights in and ownership of the ZIP Marks in any way; or
 - c) Apply for or obtain a state or federal trademark, service mark or trade name registration, domain name registration, or e-mail address for any mark confusingly similar to the ZIP Marks, including, but not limited to, any mark containing the word ZIP.
6. **Destruction of Inventory:** Within ten (10) days of the Effective Date, Why Wrap (a) will destroy all inventory in its possession containing the ZIP Marks

according to USPS's directions or (b) will deliver all inventory in its possession containing to the ZIP Marks to USPS. Within five (5) days of the date of such destruction or the date of delivery of the inventory (as applicable), Why Wrap will certify, in a letter signed by an authorized officer of Why Wrap sent to the USPS's counsel, the destruction of or delivery to USPS of all inventory in its possession containing the ZIP Marks.

7. **RELEASE**: Except for the obligations of this Agreement, and contingent upon Why Wrap's compliance with this Agreement, USPS hereby discharges and releases Why Wrap from any and all claims, debts, promises, obligations, contracts, damages, covenants and demands arising out of or relating to the Actions that exist as of the Effective Date.
8. **RELEASE**: Except for the obligations of this Agreement and contingent upon the USPS's compliance with this Agreement, Why Wrap hereby discharges and releases USPS from any and all claims, debts, promises, obligations, contracts, damages, covenants and demands arising out of or relating to the Actions and USPS's use of the ZIP Marks that exist as of the Effective Date.
9. **ATTORNEYS' FEES**: Each party shall bear its own costs and attorneys' fees arising from the Actions and in connection with the negotiation of this Agreement.
10. **GOVERNING LAWS**: This Agreement shall be governed by and construed in accordance with principles of United States federal common law, or if there is found to be no such common law, then the law of the State of New York.
11. **BINDING EFFECT**: This Agreement shall be to the benefit of, and be binding upon, the parties and their respective (as applicable) successors, assigns, heirs, executors, administrators, officers, directors, employees, agents and representatives.
12. **SEVERABILITY**: In the event that any of the provisions, portions, or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected. The parties agree that they will negotiate in good faith or will permit a court to replace any provision hereof so held unenforceable or invalid with a valid provision that is as similar as possible in substance to the invalid or unenforceable provision.
13. **ENTIRE AGREEMENT**: This Agreement and the Trademark Assignment in Exhibit A constitute the entire agreement between the parties with respect to the subject matter hereof. This Agreement and the provisions thereof shall not be waived or modified except by an instrument in writing of subsequent date hereto executed by all the parties.

14. **COUNTERPARTS AND FACSIMILES**: For the convenience of the parties, this Agreement may be executed by facsimile signatures and in counterparts which shall together constitute the Agreement of the parties as one and the same instrument.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement on the dates indicated below.

UNITED STATES POSTAL SERVICE

By: 
Michael Whisler

Its: Contracting Officer

Date: 2/22/04

WHY WRAP? INCORPORATED

By: _____
H. English Robinson, Jr.

Its: Chairman/CEO/CFO

Date: _____

IN WITNESS WHEREOF, each of the parties hereto have executed this Agreement on the dates indicated below.

UNITED STATES POSTAL SERVICE

By: _____
Michael Whisler

Its: Contracting Officer

Date: _____

WHY WRAP? INCORPORATED

By: H. English Robinson, Jr.
H. English Robinson, Jr.

Its: Chairman/CEO/CFO

Date: 2/24/04

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