

09-09-2003

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



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

102545094

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

1. Name of conveying party(ies):

8:14.03

Luberski, Inc.

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

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

2. Name and address of receiving party(ies)

Name: T.H.K., INC.

Internal Address:

Street Address: 11541 Woodside Avenue

City: Santee State: CA Zip: 92071

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 05/13/2003

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2,089,606

Additional number(s) attached Yes No

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

Name: Kathleen A. Pasulka

Internal Address: Brown, Martin, Haller & McClai

Street Address: 1660 Union Street

City: San Diego State: CA Zip: 92101

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:

02.4070

DO NOT USE THIS SPACE

9. Signature.

09/08/2003 LRIELLER 00000077 2009546

01 FC:0521

40.00 SP Kathleen A. Pasulka

Name of Person Signing

Signature

Signature

8-13-03

Date

Total number of pages including cover sheet, attachments, and document: 10



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

08-14-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

TRADEMARK REEL: 002818 FRAME: 0959

TRADEMARK ASSIGNMENT AND AGREEMENT

This Agreement is made as of 5/13, 2003, at Fullerton, California, between LUBERSKI, INC., a California corporation doing business as Hidden Villa Ranch ("HVR"), and T.H.K. INC., a California corporation ("THK").

1. **Recitals.** By Security Agreement dated July 30, 2002 ("Security Agreement"), Marketing Group USA, Inc., a Nevada corporation ("MGU"), granted a security interest and lien on certain of its assets to HVR. MGU is in default under the Security Agreement and as a result HVR is entitled under the Security Agreement and the California Corporations Code to foreclose upon and sell, lease, or license the collateral the subject of the Security Agreement. A part of the assets comprising the collateral under the Security Agreement is that certain trademark "NEW YORK NEW YORK" (the "Mark") for use in connection with cigarettes in International Class 034, and federal registration of the Mark, Registration Number 2089606 issued by the United States Patent and Trademark Office on August 19, 1997 (the "Registration"), and that part of the goodwill and portion of MGU's business that is connected with the use of and symbolized by the Mark. THK desires to acquire the foregoing described collateral. In addition, another part of the collateral the subject of the Security Agreement is the inventory of New York New York cigarettes set forth as of February 21, 2003, in that certain "Inventory Report" attached as Exhibit "A" hereto. Said inventory of New York New York cigarettes is hereinafter called the "New York New York Inventory." The amount of New York New York Inventory has been reduced since February 21, 2003.

2. **Assignment of Mark** Subject to the terms of this Agreement, HVR pursuant to its rights under the Security Agreement hereby sells and assigns to THK, its successors and assigns, all of MGU's right, title, and interest in and to the Mark, together with that part of the goodwill and portion of MGU's business that is connected with the use of and symbolized by the Mark in the United States of America, and the Registration. Concurrent with the execution of this Agreement and payment of the initial Fifty Thousand Dollar (\$50,000) payment specified in Section 3 below, and the execution and delivery of the Security Agreement referenced in Section 8 below, HVR and THK shall as evidence of the foregoing execute a "Trademark Assignment Under Security Agreement" in the form attached as Exhibit "B" to this Agreement. The foregoing assignment does not carry any rights to the Mark and goodwill associated therewith outside of the United States, which is specifically reserved and is not a part of this Assignment. Accordingly, THK agrees that it will not, directly or indirectly, make, use, distribute or sell cigarettes outside the boundaries of the United States, which cigarettes are sold using the Mark in any manner, including but not limited to use in any product package, product box, or product literature to promote and advertise the cigarettes.

3. **Fixed Payment.** THK shall pay to HVR a non-refundable fixed payment of Three Hundred Thousand Dollars (\$300,000), payable as follows: upon execution of this Agreement, a payment of Fifty Thousand Dollars (\$50,000) shall be due and payable; on or before April 1, 2004, a payment of One Hundred Twenty-five Thousand Dollars (\$125,000) shall be due and payable; and on or before April 1, 2005, a payment of One Hundred Twenty-five Thousand Dollars (\$125,000) shall be due and payable.

4. Royalty. THK shall pay to HVR, as additional consideration for this Agreement, royalties in an amount equal to Five Thousand Dollars (\$5,000) per "Container" of cigarettes sold which in any manner use the Mark in any product package, product box, or product literature to promote and advertise such cigarettes (the "New York New York Cigarettes"), prorated for any partial Container, sold (whether by THK or any other party) under the Mark for the period commencing April 1, 2005, and continuing through March 31, 2008. The foregoing royalty is in addition to the payments required under section 3 of this Agreement. For purposes of this Agreement, a Container consists of seven hundred fifty (750) master cases of New York New York Cigarettes with each master case containing sixty (60) cartons of New York New York Inventory.

5. Interest on Default. If THK is in default in any payment due under this Agreement, the amount in arrears will bear interest from the date of default until the amount is paid in full, at a rate equal to ten percent (10%) per annum. This interest will be compounded annually from the date of default and shall be payable on demand.

6. Required Reports.

6.1 THK shall render to HVR monthly reports on or before the tenth day of each month, commencing on May 10, 2005, and continuing through April 10, 2008, showing separately: (i) the total quantity of New York New York Cigarettes produced during the preceding calendar month; (ii) the total quantity of Containers (or portions thereof) sold during the preceding calendar month; (iii) the amount owed to HVR for the preceding calendar month under this Agreement; and such additional information as HVR shall reasonably request.

6.2 THK shall render to HVR a similar report within thirty (30) calendar days after termination of this Agreement, covering the period from the last date covered by the last preceding report to the date of termination.

6.3 HVR shall have the right, at all reasonable times during usual business hours and at HVR's cost, to bring in any consultants and personnel it deems appropriate, including certified public accountants, to inspect THK's facilities and audit THK's books and records to ensure integrity and compliance with the royalty provisions of this Agreement. If the results of any such audit include a payment deficiency, then, within thirty (30) calendar days after receipt of the audit report, THK shall remit to HVR: (i) the amount of such deficiency; (ii) interest from the date the deficiency was initially due until the date of payment, with interest at the rate of ten percent (10%) per annum; and (iii) if the results of such an audit indicate a payment deficiency greater than five percent (5%), an amount equal to the cost of such audit, including the cost of any independent accountant retained by HVR for the purpose of conducting the audit. HVR shall have the right to make copies of any records or documents it deems reasonably necessary to accomplish HVR's legitimate business objectives. Any work product resulting from such audits will belong to HVR and may be shared with THK at HVR's discretion.

7. Purchase of New York New York Inventory. As further consideration for this Agreement, THK agrees to purchase all of the New York New York Inventory by purchasing a minimum of at least five hundred (500) master cases of the New York New York Inventory per month during months of April, May, and June of 2003. The New York New York Inventory is currently located in warehouses in or around New Orleans, Louisiana, but may, at HVR's discretion, be moved to other locations. The sales price will be Seven Dollars (\$7.00) per

carton FOB the warehouse where the New York New York Inventory is located. Until such time as all of the New York New York Inventory has been purchased by THK as required by this section, HVR shall be entitled to sell any part of or all of the remaining New York New York Inventory, for its own account, to its customers. To the extent sold by HVR, THK's obligation to purchase and HVR's obligation to sell the New York New York Inventory shall be reduced by the New York New York Inventory sold by HVR. In no event is HVR obligated to sell any part of the New York New York Inventory, and HVR's failure to sell any part of the New York New York Inventory shall in no way limit THK's obligation to purchase the New York New York Inventory as required by this section.

8. **Security.** To secure THK's obligations under this Agreement, THK agrees to execute concurrently herewith a Security Agreement, in form and content acceptable to HVR, granting a lien on all of THK's assets.

9. **Guaranty.** Upon execution of this Agreement, and as a condition of this Agreement for HVR's benefit, Thamin Kalasho and Haitham L. Kalasho shall execute a continuing guaranty or guaranties in favor of HVR, guaranteeing all of THK's obligations under this Agreement.

10. **Indemnification.** THK shall indemnify, defend, and hold harmless HVR and its officers, directors, shareholders, employees, agents, and representatives (collectively, "Indemnitee") against any and all liability, claims, costs, damages, attorneys' fees, and expenses incurred by Indemnitee in any way whatsoever arising from or related to the production, sale, or consumption of cigarettes, whether based on product liability or negligence, or otherwise.

11. **Representations and Warranties.** THK acknowledges that HVR's ability to enter into this Agreement as a secured party under the Security Agreement to license is limited by MGU's right, title and interest in the Mark and New York New York inventory. That is, HVR may not grant rights greater than the rights of MGU in the Mark and New York New York Inventory. Accordingly, HVR makes no warranty relating to title, possession, quiet enjoyment, or the like in this Agreement as to the Mark and the New York New York Inventory.

12. **Events of Default.** Each of the following will constitute an event of default under this Agreement:

12.1 THK fails to pay royalties or any other amounts due under this Agreement, and such default continues for ten (10) days after such payment is due;

12.2 THK fails to perform or observe any term, covenant, or undertaking in this Agreement to be performed and observed by THK, and such default continues for thirty (30) days after such performance is due.

13. **Notices.**

13.1 All notices, requests, demands, or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

13.1.1 **Personal Delivery.** When personally delivered to the recipient. Notice is effective on delivery.

13.1.2 First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice. Notice is effective two mail delivery days after deposit in a United States Postal Service office or mailbox.

13.1.3 Certified Mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if delivery is confirmed by a return receipt.

13.1.4 Telex or Facsimile Transmission. When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice. Notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery; or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or fax shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day.

Addresses for purposes of giving notice are as follows:

HVR: Hidden Villa Ranch
Attention: Nick Jioras
310 N. Harbor Blvd., Suite 205
Fullerton, CA 92932

THK: T.H.K. INC.
1246 E. Main Street
El Cajon, CA 92109

13.2 Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

13.3 Any party may change its address or telex or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

14. Headings. The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and will not affect the construction or interpretation of any of its provisions. Unless the context clearly requires otherwise:

14.1 Plural and singular numbers will each be considered to include the other;

14.2 The masculine, feminine, and neuter genders will each be considered to include the others;

14.3 "Shall," "will," "must," "agree," and "covenants" are each mandatory;

14.4 "May" is permissive;

14.5 "Or" is not exclusive; and

14.6 "Includes" and "including" are not limiting.

15. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement will be considered, or will constitute, a waiver of any other provision, and no waiver will constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

16. **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

17. **Parties in Interest.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns; nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement; and no provision will give any third persons any right of subrogation or action against any party to this Agreement.

18. **Successors.** This Agreement will be binding on, and will inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors, and assigns.

19. **Attorneys' Fees.** If any legal action, arbitration, or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties will be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which they may be entitled.

20. **Nature and Survival of Representations.** All representations, warranties, covenants, and agreements of the parties contained in this Agreement, or in any instrument, certificate, opinion, or other writing provided for in it, will survive the Closing.

21. **Choice of Law.** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws.

22. **Place of Execution.** The parties agree that this Agreement is made in Fullerton, California.

23. **Authority.** Each of the persons executing this Agreement on behalf of a corporate party hereby represents and warrants to all other parties that they each hold the offices set forth opposite their names and have the authority to execute this Agreement on behalf of their respective corporations for which they are signing this Agreement.

24. Necessary Acts. The parties shall execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

LUBERSKI, INC., a California
Corporation d/b/a HIDDEN VILLA RANCH

By:



TIMOTHY E. LUBERSKI, President

T.H.K. INC., a California corporation

By:


THAMIN KALASHO, President

By:


Secretary

Acknowledgment Regarding Assignment and Agreement

Marketing Group USA, Inc., a Nevada corporation ("MGU"), hereby represents and warrants to T.H.K. INC., a California corporation ("THK") that the facts set forth in Section 1 of the foregoing Assignment and Agreement are true and correct; that MGU has good and marketable title to the Mark and the New York New York Inventory free and clear of all encumbrances, with the exception of the security interest of Luberski, Inc., a California corporation doing business as Hidden Villa Ranch ("HVR") created by the Security Agreement described in Section 1 of the foregoing Assignment and Agreement and the rights of HVR under that Security Agreement; that HVR has the right and authority under the Security Agreement and applicable law to enter into the foregoing Assignment and Agreement; and that MGU consents to, confirms the foregoing Assignment and Agreement, agrees that it is commercially reasonable and agrees it will not take any action to interfere with the Assignment and Agreement or the transactions contemplated by the Assignment and Agreement. MGU makes the foregoing representations and warranties with knowledge that THK will rely upon them in entering into the foregoing Assignment and Agreement.

MARKETING GROUP USA, INC.

Dated: 5/13, 2003.

By:


DEAN MILLER, President

Exhibit List

Exhibit "A" - Inventory Report as of February 21, 2003

Exhibit "B" - Form of Trademark Assignment Under Security Agreement

EXHIBIT "B"

TRADEMARK ASSIGNMENT UNDER SECURITY AGREEMENT

WHEREAS, by Security Agreement dated July 30, 2002 ("Security Agreement"), Marketing Group USA, Inc., a Nevada corporation ("MGU"), granted a security interest and lien on certain of its assets to Luberski, Inc., a California corporation ("LUBERSKI"). MGU is in default under the Security Agreement and as a result LUBERSKI is entitled under the Security Agreement and the California Corporations Code to exercise its post default remedies and foreclose upon and sell, lease, or license the collateral the subject of the Security Agreement. A part of the assets comprising the collateral under the Security Agreement is that certain trademark "NEW YORK NEW YORK" (the "Mark") for use in connection with cigarettes in International Class 034, and federal registration of the Mark, Registration Number 2089606 issued by the United States Patent and Trademark Office on August 19, 1997 (the "Registration"), and that part of the goodwill and portion of MGU's business that is connected with the use of and symbolized by the Mark. T.H.K., Inc., a California corporation ("THK") desires to acquire the foregoing described collateral.

NOW, THEREFORE, LUBERSKI pursuant to its rights under the Security Agreement hereby sells and assigns to THK, its successors and assigns, all of MGU's right, title and interest in and to the Mark, together with that part of the goodwill and portion of MGU's business that is connected with the use of and symbolized by the Mark in the United States of America, and the Registration. This assignment does not carry any rights to the Mark and goodwill associated therewith outside of the United States, which is specifically reserved and is not a part of this Assignment. Accordingly, THK agrees that it will not, directly or indirectly, make, use, distribute or sell cigarettes outside the boundaries of the United States, which cigarettes are sold using the Mark in any manner, including but not limited to use in any product package, product box, or product literature to promote and advertise the cigarettes.

Dated: 5/13, 2003.

LUBERSKI, INC., a California corporation
doing business as Hidden Villa Ranch

By: [Signature]
Title: CEO

Dated: 5-13, 2003.

T.H.K., INC., a California corporation

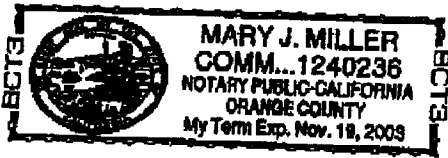
By: [Signature]
Title: President

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF Orange) ss.

On May 13, 2003, before me, Mary J. Miller Notary Public, personally appeared Shamen L. Katsuki, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

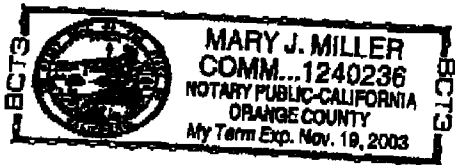


Mary J. Miller
Notary Public

STATE OF CALIFORNIA)
COUNTY OF Orange) ss.

On May 13, 2003, before me, Mary J. Miller Notary Public, personally appeared Sumner E. Lubenche, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.



Mary J. Miller
Notary Public