

TRADEMARK ASSIGNMENT

Electronic Version v1.1
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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
Summit Health, Inc.		07/29/2004	CORPORATION: CALIFORNIA

RECEIVING PARTY DATA	
Name:	Les Mills International Limited
Street Address:	150 Victoria Street West
Internal Address:	Level 2, Rainger House
City:	Auckland
State/Country:	NEW ZEALAND
Entity Type:	COMPANY: NEW ZEALAND

PROPERTY NUMBERS Total: 1		
Property Type	Number	Word Mark
Registration Number:	2488690	BODY JAM

CORRESPONDENCE DATA	
Fax Number:	(310)907-2039
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Email:	panik@agsk.com
Correspondent Name:	Paul Anik, Esq.
Address Line 1:	1620 26th Street
Address Line 2:	Fourth Floor, North Tower
Address Line 4:	Santa Monica, CALIFORNIA 90404

ATTORNEY DOCKET NUMBER:	13407-204881
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DOMESTIC REPRESENTATIVE	
Name:	Pail Anik, Esq.
Address Line 1:	1620 26th Street
Address Line 2:	Fourth Floor, North Tower
Address Line 4:	Santa Monica, CALIFORNIA 90404

OP \$40.00 2488690

NAME OF SUBMITTER:

Paul Anik

Total Attachments: 6

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DEED OF ASSIGNMENT

THIS DEED ("Agreement") made this 29th day of July 2004 in respect of an assignment effective as of the 1st day of August 2004 (the "EFFECTIVE DATE").

BETWEEN: **SUMMIT HEALTH, INC.**, a California corporation, of 4702 Balboa Blvd., Encino, CA 91316, United States of America

AND: **AMY HENDEL**, t/a ONE ON ONE FITNESS, a fitness consultant and US citizen, of 4702 Balboa Blvd., Encino, CA 91316, United States of America

(collectively the "ASSIGNOR");

AND: **LES MILLS INTERNATIONAL LIMITED**, a New Zealand company having its registered office at Level 2, Rainger House, 150 Victoria Street West, Auckland, New Zealand (the "ASSIGNEE").

WHEREAS:

- A. The ASSIGNOR has developed and owns all rights in a lifestyle program that is and has been promoted under the brand BODY JAM, including a United States trade mark registration and the domain name www.bodyjam.com.
- B. The ASSIGNOR has agreed to assign all rights it may have in or relating to the BODY JAM brand to the ASSIGNEE as of the EFFECTIVE DATE.
- C. The parties wish to record the terms of their agreement as follows.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

- 1.1. In this Agreement, unless the context requires otherwise:
 - a. the "TRADE MARK" means United States Trade Mark Registration No. 2488690 **BODY JAM**, registered in Class 41 in relation to "Educational services and training related to health and physical fitness; namely, conducting lectures, classes, programs and demonstrations for exercises."
 - b. the "DOMAIN NAME" means the domain name www.bodyjam.com; and
 - c. the "INTELLECTUAL PROPERTY" means all rights in the TRADE MARK and all rights in the DOMAIN NAME

2. WARRANTIES AS TO OWNERSHIP

- 2.1. The ASSIGNOR warrants that it is the sole and exclusive owner of the INTELLECTUAL PROPERTY.

- 2.2. The ASSIGNOR further warrants that it is not aware of
- a. any allegation by any third party that the ASSIGNOR's use of the TRADE MARK and/or the INTELLECTUAL PROPERTY infringes the rights of that third party, or any other party; or
 - b. any third party whose rights might be infringed by the use of the TRADE MARK and/or the INTELLECTUAL PROPERTY by the ASSIGNEE.
- 2.3. Except as stated in this clause 2, no other representations or warranties are given by the ASSIGNOR.
3. ASSIGNMENT
- 3.1. The ASSIGNOR assigns to the ASSIGNEE the INTELLECTUAL PROPERTY as of the EFFECTIVE DATE together with:
- a. the goodwill associated with the TRADE MARK as registered in the United States of America;
 - b. the right to sue for damages and other remedies in respect of any infringement or misuse of any of the INTELLECTUAL PROPERTY which occurred before or occurs after the EFFECTIVE DATE and to retain any damages obtained as a result of any such action; and
 - c. all statutory and common law rights attaching to the INTELLECTUAL PROPERTY.
- 3.2. The ASSIGNOR exclusively retains all rights, title and interest in and to its business and services and the goodwill related thereto, apart from the INTELLECTUAL PROPERTY. The ASSIGNOR retains all rights, title and interest in and to any and all remaining inventory that displays the TRADE MARK and is permitted to sell, transfer and convey such inventory for a period of three (3) months commencing from the EFFECTIVE DATE. The ASSIGNEE understands and agrees that the ASSIGNOR is permitted at all times to continue to promote, market, sell, perform, expand, modify and other exploit all commercial rights related to the ASSIGNOR's current business and services, but under a brand other than the TRADE MARK.
- 3.3. THE ASSIGNOR IS NOT RESPONSIBLE FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES, LOSS OF PROFITS OR BUSINESS SUSTAINED BY THE ASSIGNEE AND ARISING UNDER OR FROM THIS AGREEMENT, WHETHER OR NOT ADVISED OF SUCH POSSIBILITY, AND WHETHER OR NOT BASED ON ANY CLAIM OF BREACH, TORT, OR ANY OTHER BASIS. THE ASSIGNOR'S MAXIMUM LIABILITY UNDER OR ARISING FROM THIS AGREEMENT SHALL IN NO CASE EXCEED THE TOTAL PAYMENTS RECEIVED BY THE ASSIGNEE PURSUANT TO THIS AGREEMENT.
- 3.4. THE ASSIGNEE IS NOT RESPONSIBLE FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES, LOSS OF PROFITS OR BUSINESS SUSTAINED BY THE ASSIGNOR AND ARISING UNDER OR FROM THIS AGREEMENT, WHETHER OR NOT ADVISED OF SUCH POSSIBILITY, AND WHETHER OR NOT BASED ON ANY CLAIM OF BREACH, TORT, OR ANY OTHER BASIS. THE ASSIGNEE'S MAXIMUM LIABILITY UNDER OR ARISING FROM THIS AGREEMENT SHALL IN NO CASE EXCEED THE TOTAL PAYMENTS MADE OR

DUE TO BE PAID (IF NOT PREVIOUSLY PAID UNDER CLAUSE 4) TO THE ASSIGNOR PURSUANT TO THIS AGREEMENT.

4. PAYMENT

- 4.1. In consideration of the assignment contained in clause 3.1, and the ASSIGNOR's other obligations under this Agreement, the ASSIGNEE agrees to pay to the ASSIGNOR a sum of one hundred thousand United States dollars (US\$100,000), in two instalments of fifty thousand United States dollars (US\$50,000) each.
- 4.2. Both instalments will be wire transferred to the escrow agent, which wire transfer and escrow shall be at the sole cost and expense of ASSIGNEE, to the following account within two (2) New Zealand business days of receipt by the ASSIGNEE's attorneys of the copies of this Agreement correctly executed by the ASSIGNOR:

Alan J. Sedley Client Trust Account

Account No.: 8579776355

Bank: Wells Fargo Bank, 20642 Ventura Boulevard, Woodland Hills, California USA 91364.

Routing No.: 121000248

Bank Swift Code: WFBUS6S

- 4.3. The escrowed amounts will be released by the escrow agent as follows:
- a. *First instalment: Two (2) New Zealand business days after receipt by the escrow agent of a copy of an email from the ASSIGNOR's attorney to the ASSIGNEE's attorney confirming delivery of the correctly executed copies of the Agreement to the ASSIGNEE's attorney, providing the escrow agent is not in receipt of any objection by email from the ASSIGNEE's attorney within that period.*
 - b. *Second instalment: Two (2) New Zealand business days after receipt by the escrow agent of a copy of an email from the ASSIGNOR's attorney to the ASSIGNEE's attorney confirming that the TRADE MARK and the DOMAIN NAME are both registered in the name of the ASSIGNEE through acknowledgment on the appropriate government and internet provider websites, providing the escrow agent is not in receipt of any objection by email from the ASSIGNEE's attorney within that period with a detailed supporting basis.*
 - c. *Any instalment may otherwise be released by the escrow agent by either (i) mutual emailed instructions of release by the respective attorneys for the ASSIGNOR and the ASSIGNEE, or (ii) by order of a court following final legal process.*
 - d. *Any objections or disputes between the ASSIGNOR and the ASSIGNEE as to release of any instalments by the escrow agent shall be attempted to be resolved between the parties within five (5) United States weekdays, or either party is then permitted to pursue legal action. The prevailing party of any such legal action shall be entitled to seek an award for reasonable attorneys' fees and legal costs.*

4.4. If full payment is not received by the ASSIGNOR as specified herein, then the ASSIGNOR is entitled, with written notice, to immediately revoke the assignments and conveyances stated in this Agreement.

5. **ASSIGNOR'S OBLIGATIONS**

5.1. The ASSIGNOR will execute such further documents and do such further acts as the ASSIGNEE may reasonably require from time to time by way of further assurance of the rights herein assigned.

5.2. In particular, the ASSIGNOR will promptly assist in the transference of the DOMAIN NAME in the manner prescribed by the appropriate internet registrar.

5.3. Provided that the ASSIGNOR has been timely and fully paid, and the ASSIGNEE has complied with its other obligations under this Agreement, the ASSIGNOR will not dispute or otherwise directly or indirectly interfere with the ASSIGNEE's ownership and/or use of the INTELLECTUAL PROPERTY at any time in the future, or encourage or assist any other party in doing so.

5.4. The ASSIGNEE is not permitted to file or otherwise lodge this Agreement or commence the transference of the DOMAIN NAME with any government agency, internet provider or any other party until the ASSIGNEE has made full payment of the first payment instalment to the ASSIGNOR as specified in clause 4.2.

5.5. The ASSIGNOR agrees to indemnify the ASSIGNEE for all costs, losses or damages incurred by the ASSIGNEE as a result of breach of the warranties under clauses 2.1 and 2.2, provided that (i) the ASSIGNEE gives written notice of any potential claim or actual claim within five (5) business days of awareness of such matter(s), (ii) the ASSIGNOR is permitted to exclusively defend such claim, (iii) the ASSIGNEE provides reasonable cooperation to the ASSIGNOR, and (iv) the ASSIGNEE will not settle such matter(s) without the prior written consent of the ASSIGNOR. This indemnity obligation shall expire on the first (1st) anniversary date of the EFFECTIVE DATE.

5.6. Except to the extent of the hyperlink(s), the ASSIGNEE agrees not to and is not permitted to identify itself with or otherwise use or exploit the name of Amy Hendel or any of the ASSIGNOR's business or services, without the prior written consent of the ASSIGNOR.

5.7. Except to the extent permitted by clauses 3.2 and 6.3, the ASSIGNOR agrees not to and is not permitted to identify itself with or otherwise use or exploit the name of the ASSIGNEE, any of the ASSIGNEE's business or services, the TRADE MARK, or the DOMAIN NAME, without the prior written consent of the ASSIGNEE.

6. **ASSIGNEE'S OBLIGATIONS**

6.1. On receiving the duly executed copies of this Agreement and the form attached as Schedule A, the ASSIGNEE will promptly arrange for the official registration records for the TRADE MARK and the DOMAIN NAME to be updated to show the ASSIGNEE as the owner of the TRADE MARK and the DOMAIN NAME.

6.2. The ASSIGNEE will pay the reasonable costs associated with the assignment of the INTELLECTUAL PROPERTY from the ASSIGNOR to the ASSIGNEE, including but not limited to the costs of arranging the recordal of the transfer of the TRADE MARK and the DOMAIN NAME from the ASSIGNOR to the ASSIGNEE.

- 6.3. For a term of six (6) months, commencing from the EFFECTIVE DATE, the ASSIGNEE agrees to prominently and continuously display and operate on the ASSIGNEE's successor home webpage to www.bodviam.com and on any other website that the ASSIGNEE uses the DOMAIN NAME, a banner styled hyperlink to the ASSIGNOR's newly identified website, www.healthgal.com. The content of the banner will read as follows: Click here to link to Amy Hendel's new website www.healthgal.com. The banner will be no less than 234 x 60 IMU in dimension.
- 6.4. The parties will use commercially reasonable efforts to complete the technical transition of the DOMAIN NAME to the Assignee and the hyperlink stated in clause 3.3 within twenty (20) days of the EFFECTIVE DATE.

7. MISCELLANEOUS

- 7.1. This Agreement is governed by and construed in accordance with the laws of the State of California, without effect to conflicts of law principles. The Federal and State courts located in the County of Los Angeles, California, United States have exclusive jurisdiction to settle any dispute which may arise in connection with this Agreement.
- 7.2. The terms of this Agreement shall remain confidential except to the extent necessary in order to implement and complete the purposes of this Agreement and to enforce the rights and obligations stated herein.
- 7.3. This Agreement is the exclusive agreement between the parties hereto, and supersedes all prior discussions and agreements, oral and written, regarding the subject matter stated in this Agreement. Any waiver of any provision of this Agreement must be in writing and signed by both parties.

EXECUTED AS A DEED BY THE PARTIES AS FOLLOWS:

SIGNED ON BEHALF OF SUMMIT HEALTH, INC.:

Amy Hendel
Signature

AMY HENDEL, VICE PRESIDENT
Name, Position

[Signature]
Witness

1620 26th STREET, SANTA MONICA, CA 90408
Witness Address

ATTORNEY
Witness Occupation

SIGNED BY AMY HENDEL:

Amy Hendel
Signature

Paul S. [unclear]
Witness

1670 26th Street, Santa Monica CA 90404
Witness Address

ATTORNEY
Witness Occupation

SIGNED ON BEHALF OF LES MILLS INTERNATIONAL LTD.:

Jill Tattersall
Signature

Jill Tattersall CEO
Name, Position

Dave Christianson
Witness

2/25 Windsor Street, Ponsonby, Auckland
Witness Address

Solicitor
Witness Occupation