

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	INTELLECTUAL PROPERTY LICENSE AND PURCHASE OPTION AGREEMENT

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Owen Ryan		06/22/2004	INDIVIDUAL: UNITED STATES
Brand Name Management, Inc.		06/22/2004	CORPORATION: NEW YORK

RECEIVING PARTY DATA

Name:	FruitStorm, Inc.
Street Address:	100 First Street
Internal Address:	Suite 100-240
City:	San Francisco
State/Country:	CALIFORNIA
Postal Code:	94105
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 4

Property Type	Number	Word Mark
Registration Number:	1484499	CRAYONS
Serial Number:	78403741	CRAYONS
Registration Number:	2162345	CRAYONS
Registration Number:	1503174	CRAYONS

CORRESPONDENCE DATA

Fax Number: (720)566-4099
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: (720) 566-4000
 Email: trademarks@cooley.com
 Correspondent Name: Andrew Hartman, Esq. C/o Cooley Godward
 Address Line 1: 380 Interlocken Crescent
 Address Line 2: Suite 900
 Address Line 4: Broomfield, COLORADO 80021

ATTORNEY DOCKET NUMBER:	304734-100 FRUITSTORM	TRADEMARK
-------------------------	-----------------------	------------------

CH \$115.00 1484499

NAME OF SUBMITTER:

Joshua A. Smith

Total Attachments: 28

source=SFX435_Page_01#page1.tif
source=SFX435_Page_02#page1.tif
source=SFX435_Page_03#page1.tif
source=SFX435_Page_04#page1.tif
source=SFX435_Page_05#page1.tif
source=SFX435_Page_06#page1.tif
source=SFX435_Page_07#page1.tif
source=SFX435_Page_08#page1.tif
source=SFX435_Page_09#page1.tif
source=SFX435_Page_10#page1.tif
source=SFX435_Page_11#page1.tif
source=SFX435_Page_12#page1.tif
source=SFX435_Page_13#page1.tif
source=SFX435_Page_14#page1.tif
source=SFX435_Page_15#page1.tif
source=SFX435_Page_16#page1.tif
source=SFX435_Page_17#page1.tif
source=SFX435_Page_18#page1.tif
source=SFX435_Page_19#page1.tif
source=SFX435_Page_20#page1.tif
source=SFX435_Page_21#page1.tif
source=SFX435_Page_22#page1.tif
source=SFX435_Page_23#page1.tif
source=SFX435_Page_24#page1.tif
source=SFX435_Page_25#page1.tif
source=SFX435_Page_26#page1.tif
source=SFX435_Page_27#page1.tif
source=SFX435_Page_28#page1.tif

INTELLECTUAL PROPERTY LICENSE AND PURCHASE OPTION AGREEMENT

This Intellectual Property License and Purchase Option Agreement (this "*Agreement*") is made as of June 22, 2004 (the "*Effective Date*"), by and between Owen Ryan, an individual having his principal residence at 455 West 23rd Street, Apartment 5E, New York, NY 10011 ("*Ryan*"), FruitStorm, Inc., a Delaware corporation having its principal place of business at 100 First Street, Suite 100-240, San Francisco, CA 94105 ("*FruitStorm*"), and Brand Name Management, Inc., a New York corporation ("*BNMI*").

RECITALS

WHEREAS, FruitStorm desires to license from Ryan the Licensed IP (defined in Section 1.8) for use in the design, development, promotion, manufacture, sale, marketing and distribution of the Products (defined in Section 1.12) and on the terms and conditions set forth in this Agreement; and

WHEREAS, FruitStorm desires to obtain the Options (defined in Section 1.10) to purchase the Licensed IP on the terms and conditions set forth in this Agreement; and

WHEREAS, Ryan desires to grant FruitStorm a license to the Licensed IP and the Options to purchase the Licensed IP on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Certain Definitions.

1.1. "*Adjustment Amount*" means the amount set forth in Schedule III attached hereto in the column entitled "Adjustment Amount" opposite the applicable Licensed Mark.

1.2. "*Affiliate*" of a party means any Person that directly or indirectly controls, is controlled by, or is under common control with such party, where "control" means the power, directly or indirectly, to control the affairs of (but only as long as such person meets these requirements).

1.3. "*Schedule I Licensed IP*" means all Intellectual Property Rights of Ryan and BNMI in and related to the marks and other property identified on Schedule I attached hereto.

1.4. "*Schedule II Licensed IP*" means all Intellectual Property Rights of Ryan and BNMI in and related to the marks and other property identified on Schedule II attached hereto.

1.5. "*Intellectual Property Rights*" means any and all of the following, including all tangible embodiments thereof, by whatever name or term known or designated, and whether now known or hereafter arising throughout the universe: (i) rights associated with works of

1.

FS DA
OR
BNMI

authorship, including but not limited to copyrights and moral rights; (ii) trade secret rights; and (iii) other intellectual and industrial property rights of every kind and nature and however designated, including, but not limited to, rights in trademarks, logos, trade names, trade dress, product formulations, product packaging, promotional copy, promotional slogans and messages, patents, domain names, web pages, URLs, service marks or any other proprietary marks, "rental" rights and rights to remuneration with respect to the foregoing, whether arising by operation of law, contract, license, or otherwise.

1.6. "**License**" means the license granted by Ryan to FruitStorm as set forth in Section 2.1.

1.7. "**Licensed Marks**" means the trademark component of the Licensed IP set forth under the title "Trademarks & Copyrights" on Schedules I and II attached hereto.

1.8. "**Licensed IP**" means the Schedule I Licensed IP and the Schedule II Licensed IP.

1.9. "**Net Sales**" means the gross sales of FruitStorm from the sale of the Products less applicable cancellations, discounts, credits, rebates, refunds, returns, product recalls and recall related costs, consumer, retail trade and distributor allowances, taxes, and export or import duties. Sales shall only be recognized in accordance with accounting principles generally accepted in the United States ("GAAP").

1.10. "**Options**" means the options granted by Ryan to FruitStorm in Section 3.

1.11. "**Person**" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or governmental body.

1.12. "**Products**" means all beverages, syrups, concentrates and other preparations for making beverages, candy, lollipops, chewing gum, frozen fruit bars, ice cream, flavored ices, frozen yogurts and frozen custards utilizing the Licensed IP.

2. License Grants.

2.1. **License.** Subject to the terms and conditions of this Agreement, each of Ryan and BNMI hereby grants to FruitStorm an exclusive, worldwide, non-transferable (except as permitted under Section 9.1), royalty-free license (subject to the license fee set forth under Section 2.2 below) under their respective rights in and to the Licensed IP, currently held or hereafter acquired, to make, have made by a third-party manufacturer solely for FruitStorm, use, modify, create derivative works of, sell, offer to sell, display (subject to Section 8), import, export, and distribute the Products. Notwithstanding the foregoing, prior to the exercise of the Options as provided by Section 3.3, Ryan shall have the right to use the Licensed Marks solely for the purposes of satisfying his obligations under Sections 3.7.1 and 3.7.2.2, which may require bona fide use of the Licensed Marks. The license granted to FruitStorm with respect to the Schedule I Licensed IP shall automatically terminate upon the earlier of the expiration or exercise of the Schedule I Option (as defined below). In the event FruitStorm fails to exercise

2.

FS
OR
BNMI

the Schedule I Option within the Schedule I Option Period, then the license to the Schedule II Licensed IP shall automatically terminate upon the expiration of the Schedule I Option. In the event FruitStorm exercises the Schedule I Option within the Schedule I Option Period, then the license with respect to the Schedule II Licensed IP shall automatically terminate upon the earlier of the expiration or exercise of the Schedule II Option (as defined below).

2.2. License Fee. In exchange for the license granted to FruitStorm pursuant to Section 2.1, FruitStorm is paying Ryan the **REDACTED** concurrently with the execution of this Agreement.

2.3. Sublicense. FruitStorm may not sublicense the rights granted to it under Section 2.1 to any third party except to FruitStorm's Affiliates. Any such sublicense shall be in writing and on terms substantially equivalent to those set forth in this Agreement; provided, however, that Ryan will be a third-party beneficiary of any such sublicense and FruitStorm shall provide a copy of each such sublicense to Ryan within ten (10) days after its execution. Notwithstanding the foregoing, nothing in this Section 2.3 shall restrict FruitStorm's ability to sublicense the rights granted hereunder in connection with the manufacture and distribution of the Products; provided, however, any such sublicense shall be limited to the rights granted pursuant to Section 2.1.

2.4. Recordation. The parties agree that within ninety (90) days after the date hereof, this Agreement (or such short form filing as shall be mutually agreed upon by the parties hereto) shall be filed with the U.S. Patent and Trademark Office, the U.S. Copyright Office and any domain name registrar, as appropriate. Ryan agrees that he and each of his Affiliates will fully cooperate with FruitStorm to effect such filing.

3. Options.

3.1. Option Grant. For the relevant option periods as specified in Section 3.2, Ryan hereby grants to FruitStorm Options to purchase the Licensed IP (by means of assignment or perpetual paid-up license, as determined by FruitStorm in its sole discretion) in accordance with the terms and conditions of this Agreement.

3.2. Option Periods. FruitStorm's right to exercise the Options shall commence on the Effective Date and conclude at: **REDACTED**

Effective Date (the "*Initial Schedule I Option Period*"); provided, however, that FruitStorm shall have the right to extend the period during which it may exercise the Schedule I Option for an

REDACTED paid to Ryan on or prior to the last day of the Initial Schedule I Option Period (such extended period (if any) together with the Initial Schedule I Option Period being referred to as the "*Schedule I Option Period*"), and (ii) with respect to the Schedule II Licensed IP (the "*Schedule II Option*"), on the same day of the fifty-fourth month next following the Effective Date (the "*Schedule II Option Period*" and, together with the Schedule I Option Period, the "*Option Periods*").

3.3. Exercise of Options.

REDACTED

REDACTED

3.4. Purchase Obligation.

REDACTED

REDACTED

REDACTED

REDACTED

4.

REDACTED

3.5. **Termination of Options.**

3.5.1. **Schedule I Option.** If FruitStorm fails to exercise the Schedule I Option on or before the expiration of the Schedule I Option Period, then:

3.5.1.1 The Schedule I Option and the Schedule II Option shall each automatically expire at the end of such Schedule I Option Period and thereafter be of no further force or effect.

3.5.1.2 Upon (i) any license, sale or assignment of the Licensed IP by Ryan or his Affiliates to a third party (a "*Third-Party Transaction*"), or (ii) any other use of the Licensed IP that

REDACTED

3.5.1.3 The rights and obligations of the parties hereto under this Agreement shall terminate immediately upon the expiration of the Schedule I Option Period, except as provided by Section 7.4.

3.5.2. **Schedule II Option.** If FruitStorm exercises the Schedule I Option on or before the expiration of the Schedule I Option Period, but fails to exercise the Schedule II Option on or before the expiration of the Schedule II Option Period, the Schedule II Option shall automatically expire at the end of such Schedule II Option Period and be of no further force or effect.

3.6. Property Assignment.

3.6.1. Effective only upon exercise by FruitStorm of the Schedule I Option and/or the Schedule II Option as set forth in Section 3.3, Ryan hereby assigns, sells, transfers, delivers and conveys to FruitStorm all his rights, title and interest in and to the Schedule I Licensed IP and/or the Schedule II Licensed IP, as applicable, together with all powers, rights, privileges and goodwill appertaining thereto, and FruitStorm hereby accepts and agrees to accept the same. It is expressly understood by the parties hereto that the ownership of the Schedule I Licensed IP and the Schedule II Licensed IP remains in Ryan and shall not transfer unless and until FruitStorm exercises the Schedule I Option and the Schedule II Option, respectively. Within ninety (90) days after the Effective Date, Ryan will execute and deliver to DSI Technology Escrow Services ("*DSI*") in accordance with the provisions of Section 3.9 below, and at no cost to FruitStorm, any and all documents and instruments, including fully executed and notarized assignment forms (or such license or other documents as may be necessary for FruitStorm to acquire its interest in the Licensed IP pursuant to Section 3.3), to be prepared by FruitStorm and approved by Ryan (which approval shall not be unreasonably withheld), and perform any other acts reasonably necessary for FruitStorm to perfect and/or record any of the rights which are granted to FruitStorm under Section 3.3. FruitStorm, in its sole discretion, may elect to acquire its interest in the Licensed IP hereunder by means of perpetual paid-up license rather than assignment.

3.6.2. BNMI agrees to take all actions necessary to assign, sell, transfer, deliver and convey to FruitStorm all its rights, title and interest in and to the Licensed IP, together with all powers, rights, privileges and goodwill appertaining thereto within thirty (30) days thereof.

3.7. Ryan's Obligations to Protect the Licensed IP.

3.7.1. Maintenance of the Licensed IP. During the Option Periods, Ryan and BNMI shall (i) maintain the trade secret portions of the Licensed IP in confidence in the same manner that Ryan treats his other trade secrets, but with not less than a reasonable degree of care; (ii) promptly pay all renewal fees, annuity payments, and similar payments and perform other actions necessary to maintain the Licensed IP in good standing, including, but not limited to, renewing all registrations on the Licensed Marks; provided, however, that upon exercise of the relevant Option to which such Licensed IP relates, FruitStorm shall reimburse Ryan for any amounts expended pursuant to this subsection (ii) up to a maximum aggregate amount of **REDACTED** and (iii) refrain from assigning or transferring any ownership interest in any Licensed IP and from encumbering (including granting any security interest, option, lien, license or encumbrance) or hypothecating any Licensed IP in any manner. During the Option Periods, FruitStorm shall maintain the trade secret portions of the Licensed IP in confidence in the same manner that FruitStorm treats its other trade secrets, but with not less than a reasonable degree of care.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

7.

REDACTED

REDACTED

REDACTED

REDACTED

3.7.4. Obligations Regarding International Marks. Ryan shall comply with each of the following conditions with respect to each of the International Marks:

3.7.4.1 on or prior to October 15, 2004, Ryan shall have performed a trademark search for registrations of trademarks similar to the

8.

FS DA
OR SC
BNMI OC

Licensed Marks in the applicable country or countries and the results of such search shall be delivered to FruitStorm;

3.7.4.2 prior to the exercise of the relevant Option to which such International Mark relates, Ryan shall have filed a trademark application with the applicable foreign trademark office, covering, but not limited to, the same trademark description and class of goods and services as were covered by the original trademark application with respect to such International Mark (the "*New Mark*"); and

3.7.4.3 the registration with respect to the New Mark is issued.

FruitStorm shall withhold an amount equal to the applicable Adjustment Amount until such time as Ryan has complied with the requirements set forth in Section 3.7.4.3 above and provided evidence of the same to FruitStorm.

3.7.5. **Quality Control.** The nature and quality of all Products sold by FruitStorm, and all advertising and promotional uses and all other related uses of the Licensed Marks by FruitStorm shall conform to Ryan's standards, including specifically, but not limited to, Ryan's standards and current practices regarding operations and activities, business reputation, unacceptable activities, maintenance, advertising and access for inspection. FruitStorm further agrees to provide representative samples of advertising and other promotional material bearing the Licensed Marks to Ryan, with the exception of written prospective investor presentation materials, for approval at least five (5) days before such materials are to be distributed, displayed or otherwise used. Any samples bearing the Licensed Marks submitted to and not disapproved by Ryan within five (5) days after his receipt of such items shall be deemed to have been approved for purposes of this Section 3.7.5. The obligations set forth in this Section 3.7.5 shall expire (i) with respect to the Products utilizing the Schedule I Licensed IP, on the earlier of exercise or expiration of the Schedule I Option, and (ii) with respect to the Products utilizing the Schedule II Licensed IP, on the earlier of the exercise or expiration of the Schedule II Option.

3.8. **FruitStorm's Obligations to Ryan.** FruitStorm represents, warrants and covenants that, prior to exercise of the applicable Option, (i) solely to the extent of its actual knowledge thereof, it will inform Ryan of any infringements with respect to the Licensed IP to which such Option relates, and (ii) it will take no action, nor cause or encourage any other person to take any action in hindrance, derogation or limitation of, or to attack, deny or oppose any filing with respect to, any of the Licensed IP owned by Ryan or BNMI, as applicable, by reason of an action for abandonment for non-use, infringement, or otherwise.

3.9. **Document Escrow.** Within ninety (90) days after the Effective Date, Ryan and FruitStorm shall enter into a mutually acceptable escrow agreement (the "*Escrow Agreement*") with DSI, and Ryan will deposit executed assignments of the Licensed IP in the form attached hereto as EXHIBIT A (collectively, the "*Conveyance Documents*") into escrow (the "*Escrow*"). FruitStorm shall be responsible for all fees payable to DSI in connection with

initiating and maintaining the Escrow. The Escrow shall terminate automatically in the event (i) this Agreement is terminated for any reason prior to the exercise of the Options, (ii) the Options expire or are terminated for any reason, or (iii) FruitStorm has exercised the Options, and, in each event, the Conveyance Documents will be released to the appropriate party in accordance with the Escrow Agreement.

3.10. **Product Prices.** FruitStorm will be entirely free to determine the prices and fees for each Product at FruitStorm's sole discretion.

3.11. **Sales Reports.** Within seventy-five (75) days after the end of each calendar year in respect of which there is a payment obligation pursuant to Section 3.4, FruitStorm will submit to Ryan a written sales report that reflects in reasonable detail the Net Sales for the Products delivered during such year.

3.12. **Taxes.** In addition to any other payments due under this Agreement, FruitStorm agrees to pay, indemnify and hold Ryan harmless from any sales, use, royalty, withholding, excise, import or export, value added or similar tax or duty, and any other tax not based on Ryan's net income, including any penalties and interest, and all government permit or license fees and all customs and similar fees, levied upon the delivery and distribution of the Products during the term of this Agreement and any costs associated with the collection or withholding of any of the foregoing items.

4. **Representations and Warranties.**

4.1. **Ryan's and BNMI's Representations and Warranties as of the Effective Date.** Except as otherwise set forth on the Schedule of Exceptions attached hereto, each of Ryan and BNMI represents and warrants that as of the Effective Date:

4.1.1. BNMI is a corporation duly organized and validly existing under the laws of the State of New York.

4.1.2. Each of Ryan and BNMI has the full right, power and authority to enter into and perform this Agreement.

4.1.3. BNMI and Ryan have the full right, power and authority to license the Licensed IP to Ryan and FruitStorm, respectively.

4.1.4. There is no security interest, option, lien, license, or encumbrance of any nature outstanding with respect to any of the Licensed IP.

4.1.5. Ryan and BNMI have each maintained the trade secret portion of their respective rights in the Licensed IP in confidence in the same manner that Ryan and BNMI treat their other trade secrets, but with not less than a reasonable degree of care.

4.1.6. Ryan has no actual knowledge of any third-party Intellectual Property Rights that are infringed by the Products and/or the Licensed IP.

4.1.7. Neither Ryan nor BNMI has received written notice of any pending or threatened claims of infringement or misappropriation of any third party's Intellectual Property Rights with respect to the Products and/or the Licensed IP.

4.1.8. To Ryan's actual knowledge, no proceeding is pending or threatened, nor has any claim been made, which challenges or challenged the legality, validity, or enforceability of any of the Licensed IP.

4.1.9. All maintenance fees, annuity payments and similar payments have been made, and all other actions have been performed, in each case that are necessary to maintain the Licensed IP, and neither Ryan nor BNMI has actual knowledge of any impairment of any of the Licensed IP.

4.2. **Ryan's Representations and Warranties as of the Exercise Dates.** Except as otherwise set forth on any supplements to the Schedule of Exceptions attached hereto, on each of the Schedule I Exercise Date and the Schedule II Exercise Date, Ryan represents and warrants that:

4.2.1. Ryan has full right, power, and authority to assign the Licensed IP to FruitStorm.

4.2.2. There is no security interest, option, lien, license, or encumbrance of any nature outstanding with respect to any of the Licensed IP.

4.2.3. All Persons holding rights to or interests in the Licensed IP have unconditionally and irrevocably assigned all of their right, title, and interest in and to the Licensed IP to Ryan (or directly to FruitStorm) and have entered into all other contracts with Ryan necessary for Ryan to comply with the terms of this Agreement.

4.2.4. Ryan has maintained the trade secret portion of the Licensed IP in confidence in the same manner that Ryan treats its other trade secrets, but with not less than a reasonable degree of care.

4.2.5. All maintenance fees, annuity payments and similar payments have been made, and all other actions have been performed, in each case that are necessary to maintain the Licensed IP, and Ryan has no actual knowledge of any impairment of any of the Licensed IP.

4.3. **FruitStorm's Representation and Warranty.** FruitStorm represents and warrants that as of the Effective Date:

4.3.1. FruitStorm is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware.

4.3.2. FruitStorm has full legal right, power and authority to enter into and perform this Agreement.

4.3.3. FruitStorm has not incurred or guaranteed any indebtedness for money borrowed or any other liabilities (other than with respect to indebtedness or liabilities incurred in the ordinary course of business), which have not been previously disclosed to Ryan.

4.3.4. FruitStorm intends to utilize the Licensed IP solely in connection with the manufacture and sale of food and beverages and for presentation to prospective investors, suppliers, distributors and other potential business partners.

5. Indemnities.

5.1. Indemnification by Ryan. Ryan will indemnify, defend, and hold harmless FruitStorm, FruitStorm's Affiliates and the officers, directors, managers, members and agents of FruitStorm and FruitStorm Affiliates (collectively, the "*FruitStorm Indemnitees*") from and against any claim, action, suit, or proceeding (each a "*Claim*") brought or threatened against the FruitStorm Indemnitees by a third party to the extent the Claim arises out of or results from (i) any third-party claim that the Licensed IP infringes any Intellectual Property Rights; or (ii) any third-party claim that any product sold or delivered by Ryan to a customer (other than a Product provided to Ryan by FruitStorm for resale or redistribution) results in bodily injury or injury to property due to any design or manufacturing defect. Ryan will pay all damages, costs, or fines resulting from any such Claim. A FruitStorm Indemnitee shall: (i) give Ryan prompt written notice of any Claim (but the failure to so notify Ryan will not relieve Ryan from any liability which it may otherwise have to such FruitStorm Indemnitee under this Agreement, except to the extent of any prejudice actually resulting from such failure); (ii) grant Ryan sole control over the defense and settlement of such Claim; (iii) provide Ryan with full cooperation for the defense of same; and (iv) not enter into any settlement or compromise of any Claim without Ryan's prior written approval. If any Product is found to infringe any third party's Intellectual Property Rights, Ryan will use his best efforts, at Ryan's expense, to procure for the FruitStorm Indemnitees the right to continue exercising their rights provided under this Agreement with respect to such Product.

5.2. Right to Retain Counsel. Ryan agrees that the FruitStorm Indemnitees shall have the right to retain counsel and participate in the defense of any Claim set forth in Section 5.1 at their expense and to assist in any settlement negotiation, provided that Ryan shall maintain sole control over the defense of the Claim. Notwithstanding the above, Ryan cannot settle or compromise a Claim in any manner that does not unconditionally release the FruitStorm Indemnitees.

5.3. Exception to Ryan Indemnities. Ryan shall not have any obligation to indemnify the FruitStorm Indemnitees from and against any Claim that is based upon modifications to the Product made by or on behalf of FruitStorm to the extent such modification is the object of the Claim.

5.4. Indemnification by FruitStorm. FruitStorm will indemnify, defend, and hold harmless Ryan and Ryan's Affiliates and agents (collectively, the "*Ryan Indemnitees*") from and against any Claim brought or threatened against the Ryan Indemnitees by a third party to the extent the Claim arises out of or results from (i) any third-party claim that any Product

made or sold by or for FruitStorm infringes any Intellectual Property Rights (except to extent the Claim arises out of or results from a third-party claim that the Licensed IP infringes such party's Intellectual Property Rights, in which case it shall be subject to Ryan's indemnification obligations under Section 5.1) or (ii) any third-party claim that any Product sold or delivered by Ryan to a customer (other than products provided to FruitStorm by Ryan for sale or distribution) results in bodily injury or injury to property due to any design or manufacturing defect of any Products made or sold by or for FruitStorm other than the Products delivered by Ryan to a customer prior to the Effective Date. A Ryan Indemnitee shall: (i) give FruitStorm prompt written notice of any such Claim (but the failure to so notify FruitStorm will not relieve FruitStorm from any liability which it may otherwise have to such Ryan Indemnitee under this Agreement, except to the extent of any prejudice actually resulting from such failure); (ii) grant FruitStorm sole control over the defense and settlement of such Claim; (iii) provide FruitStorm with full cooperation for the defense of same; and (iv) not enter into any settlement or compromise of any Claim without FruitStorm's prior written approval.

5.5. **Right to Retain Counsel.** FruitStorm agrees that the Ryan Indemnitees shall have the right to retain counsel and participate in the defense of the Claims set forth in Section 5.4 at the Ryan Indemnitee's expense and to assist in any settlement negotiation, provided that FruitStorm shall maintain sole control over the defense of the Claim. Notwithstanding the above, FruitStorm cannot settle or compromise a Claim in any manner that does not unconditionally release the Ryan Indemnities.

6. **Improvement Rights.** "*FruitStorm Improvement*" shall mean any idea, design, concept, technique, invention, discovery, improvement, derivative work, enhancement, modification, or extensions, whether or not patentable or registrable and whether or not relating to a Product, conceived, created, made, reduced to practice, developed, or invented by one or more employees or agents or independent contractors of FruitStorm. As between FruitStorm and Ryan, FruitStorm will own all FruitStorm Improvements.

7. **Term and Termination.**

7.1. **Term.** The term of this Agreement shall commence on the Effective Date and continue until the earlier of (i) the date as of which both of the Options have been exercised or have expired, or (ii) the date as of which this Agreement is terminated pursuant to this Section 7.

7.2. **Termination for Breach.** If either party breaches any material provision of this Agreement and fails to cure such breach within thirty (30) calendar days following written notice from the non-breaching party specifying such breach, then such non-breaching party may terminate this Agreement, effective upon written termination notice at any time after the conclusion of the thirty (30) calendar day period.

7.3. **Effect of Termination Prior to Exercise of Option.** If this Agreement is terminated before FruitStorm has exercised either of the Options, the license granted to FruitStorm under Section 2.1 will automatically terminate.

7.4. **Survival.** Sections 1, 3.5.1.2, 3.8, 4, 5, 6, 8 and 9 and any outstanding payment obligations (whether by FruitStorm or Ryan) will survive any termination or expiration of this Agreement. The representations and warranties set forth in Sections 4.1.2, 4.1.3, 4.2.1, 4.2.2 and 4.2.3 shall survive for a period of five (5) years following the date on which they are made. All other representations and warranties set forth in Section 4 not otherwise provided for by the preceding sentence shall survive for a period of two (2) years following the date on which they are made. The representations, warranties, covenants and obligations of Ryan, BNMI and their respective Affiliates, and the rights and remedies that may be exercised by FruitStorm, shall not be limited or otherwise affected by or as a result of any information furnished to, or any investigation made by or knowledge of, any of FruitStorm or any of its representatives.

8. **Confidentiality.**

8.1. **Confidential Information Defined.** "*Confidential Information*" shall mean any information that either party (the "*Disclosing Party*") designates as being confidential or which, under the circumstances of disclosure ought to be treated as confidential by the other party (the "*Receiving Party*"). Confidential Information includes, without limitation, information that relates to the Disclosing Party's research, development, marketing, or other business activities, and may include, without limitation, data, know-how, trade secrets, formulae, processes, designs, sketches, photographs, business plans, drawings, specifications, samples, reports, customer lists, pricing information, personnel information, business studies, inventions and ideas. All Confidential Information relating to the Products will be considered confidential information of FruitStorm upon FruitStorm's exercise of either of the Options, and Ryan shall comply with the confidentiality obligations provided in this Section 8 with respect to the same.

8.2. **Trust and Confidence Obligation.** The Receiving Party agrees to maintain all Confidential Information of the Disclosing Party in trust and confidence. The Receiving Party agrees not to use Confidential Information other than for the benefit of the Receiving Party and for the express purposes of this Agreement, and not to publish, disclose, or disseminate the Confidential Information to third parties.

8.3. **Exceptions.** The Receiving Party shall have no confidentiality obligation with respect to information which (i) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (ii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality, and such can be shown by documentary evidence; and (iii) is independently developed by or for the Receiving Party by individuals without access to the Confidential Information and such independent development can be shown by documentary evidence. Confidential Information may be disclosed by the Receiving Party pursuant to a valid order created by a court or government agency, provided that the Receiving Party provides prior written notice to the Disclosing Party of such obligation sufficiently timely to enable and assist the Disclosing Party to oppose such disclosure and to obtain a secrecy order with respect thereto.

8.4. **Agreement Confidential.** Neither Ryan nor BNMI will disclose the financial terms or conditions of this Agreement to any third party (other than its attorneys, accountants and other professional advisors under a duty of confidentiality) without the prior written consent of

FruitStorm, except as required by law (including filings to Securities Exchange Commission), or to a third party under a duty of confidentiality in connection with a proposed merger or a proposed sale of all or part of such party's business.

9. **General Provisions.**

9.1. **Assignment of Agreement.**

9.1.1. Neither party may assign or transfer its rights or delegate its duties under this Agreement (i) while any payment obligation pursuant to Section 3.4 remains outstanding or (ii) prior to the exercise of each of the Options, unless such Options are otherwise terminated as provided by Section 3.5, without obtaining (x) the written consent of the other party and (y) the assignee's express agreement to assume the payment obligations set forth under Section 3.4, if any. Notwithstanding the foregoing and subject to Section 9.1.2, either party may, without the prior consent of the other party, assign, transfer, or delegate any rights or duties under this Agreement to any third party in connection with a corporate reorganization, consolidation, merger or sale of assets (including a sale of one or more of the assets related to this Agreement) or stock provided said third party (i) agrees to assume all of the assigning party's obligations hereunder, including the payment obligations set forth under Section 3.4, if any, and (ii) has a financial condition, as evidenced by a current balance sheet, and current income and cash flow statements, after the transaction in question, at least as good as the assignor's financial condition at the time of the assignment.

9.1.2. Any attempted assignment, transfer, or delegation in derogation of this Section 9.1 shall be null and void. Subject to the foregoing, this Agreement shall inure to the benefit of the parties, their successors, heirs, beneficiaries and permitted assigns.

9.2. **Expenses.**

REDACTED

9.3. **Web-Site Development.** FruitStorm shall develop, with input from Ryan, a web-site targeted at consumers, the trade, and prospective investors.

9.4. **Exclusivity.** Ryan shall not use any trademark, logo, trade name, trade dress, product formulation, product packaging, promotional copy, promotional slogan or message, patent, domain name, web page, URL, service mark or any other proprietary mark confusingly similar to the Licensed IP, or any confusingly similar derivation.

9.5. **Further Assurances.** Ryan agrees to provide such assistance and perform such actions as are necessary, prudent or reasonably requested by FruitStorm for purposes of giving legal effect to the license rights, assignments and/or proprietary interests set forth in this Agreement, including, without limitation, by means of executing additional applications,

registrations or other documentation for purposes of establishing or maintaining such license rights, assignments and/or proprietary interests in and to the Licensed IP in any jurisdiction.

9.6. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if each of the signatories had executed the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both parties named below have duly executed a counterpart of this Agreement and caused such counterpart to be delivered to the other party.

9.7. **Construction.** The parties agree that this Agreement has been fully negotiated and jointly drafted between them and that no rule of construction shall be applied against either party in law or equity as the drafter of this Agreement. As used in this Agreement, the words "include" and "including" and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by words "without limitation."

9.8. **Entire Agreement.** This Agreement, together with the Letter Agreement and the exhibits and schedules attached hereto, set forth the entire understanding and agreement of the parties and any and all previous agreements or understandings which are inconsistent with or supplemental to any of the various terms and conditions herein set forth are hereby canceled and rendered null and void. No agreement or understanding to modify this Agreement shall be binding upon either party unless agreed to in writing by an employee of each party authorized to bind such party.

9.9. **Exhibits and Schedules.** All exhibits and schedules to this Agreement to which reference is made in this Agreement are hereby incorporated, in full, into this Agreement as an integral part of this Agreement.

9.10. **Governing Law; Venue.** This Agreement shall be construed in accordance with and all disputes hereunder shall be governed by the laws of the State of New York without reference to that state's choice of law provisions which would result in application of laws of any other jurisdiction. The Supreme Court of New York County, First Department and/or the United States District Court for the Southern District of New York shall have, and each party consents to, exclusive jurisdiction and venue over all controversies relating to the collection of any amounts owed pursuant to Section 3 of this Agreement. The Superior Court of San Francisco County and/or the United States District Court for the Northern District of California (and each appellate court located in the State of California) shall have, and each party consents to, exclusive jurisdiction and venue over all controversies in connection herewith other than as set forth in the preceding sentence. In any action hereunder the prevailing party shall be entitled to his or its reasonable attorney's fees and costs promptly after final judgment.

9.11. **Headings.** Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such Section or in any way affect this Agreement.

9.12. **Remedies.** In the event of any breach of Sections 2 or 3 by Ryan or BNMI, or Section 8 by either party, the parties agree that the non-breaching party will suffer an irreparable

injury, such that no remedy at law will afford it adequate protection against or appropriate compensation for such injury. Accordingly, in addition to remedies available at law, the parties hereby agree that non-breaching party shall be entitled to obtain specific performance of the breaching party's obligations under this Agreement, without bond, as well as such further injunctive relief granted by a court of competent jurisdiction.

9.13. Notices. All notices, including notices of address change, required or permitted to be given hereunder shall be in writing and shall be deemed to have been received (i) when received if hand delivered, (ii) five (5) calendar days after being mailed, postage prepaid, by first class, certified or registered U.S. mail, (iii) the next business day after being sent by U.S. Express Mail or by a major U.S. express document courier, or (iv) when received if sent by confirmed facsimile in each case addressed to the address or the facsimile numbers provided below, as the case may be, or such other address or facsimile number as may be provided in writing by either party for the receipt of notices pertaining to this Agreement. No official notices under this Agreement may be sent via e-mail. Information sent via e-mail shall be for convenience only and shall be non-binding upon the receiving party.

For Ryan or BNMI:

Owen Ryan
455 West 23rd Street
Apartment 5E
New York, NY 10011

With a copy to:

Christopher H. Bartle
96 Spring Street, 8th Floor
New York, NY 10012
Fax: (212) 925-9481

For FruitStorm:

Duncan Seay
100 First Street, Suite 100-240
San Francisco, CA 94105
Fax: (707) 598-1437

With a copy to:

Cooley Godward LLP
Attn: Kenneth Guernsey
One Maritime Plaza, 20th Floor
San Francisco, CA 94111
Fax: (415) 951-3699

17.

FS
OR.
BNMI



9.14. **Relationship of the Parties.** Whenever this Agreement refers to "either party" or "the other party" or otherwise includes references appropriate for an agreement between two parties, Ryan and BNMI together will be deemed to be one and the same party. Each party will act as independent contractor under the terms of this Agreement. Neither party is, and will not be deemed to be, an employee, agent, co-venturer or legal representative of the other for any purpose. Neither party will be entitled to enter into any contracts in the name of, or on behalf of the other, nor will either party be entitled to pledge the credit of the other party in any way or hold itself out as having authority to do so.

9.15. **Severability.** The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision. The provisions of this Agreement are severable and if any one or more such provisions shall be determined to be invalid, illegal or unenforceable, in whole or in part, the validity, legality and enforceability of any of the remaining provisions or portions thereof shall not in any way be affected or impaired thereby and shall nevertheless be binding between the parties hereto. Any such invalid, illegal or unenforceable provision or portion thereof shall be changed and interpreted so as to best accomplish the objectives of such provision or portion thereof within the limits of applicable law or applicable court decisions.

9.16. **Signatories.** Each party represents and warrants that the person signing this Agreement on such party's behalf has been duly authorized and empowered to enter into this Agreement.

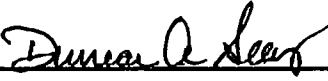
9.17. **Waiver.** A waiver of a breach of any term of this Agreement must be in writing and shall not be construed as a waiver of any succeeding breach of that term or as a waiver of the term itself. A party's performance after the other's breach shall not be construed as a waiver of that breach. No failure or delay by either party to enforce or take advantage of any provision or right under this Agreement shall constitute a subsequent waiver of that provision or right, nor shall it be a waiver of any of the other terms and conditions of this Agreement.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective authorized representatives as of the Effective Date.

OWEN RYAN

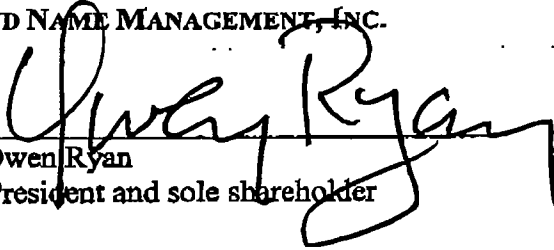

FRUITSTORM, INC.

By: 

Name: DUNCAN A. SEAY

Title: PRESIDENT & CEO

BRAND NAME MANAGEMENT, INC.

By: 
Owen Ryan
President and sole shareholder

SIGNATURE PAGE

SCHEDULE I



SCHEDULE I LICENSED IP

TRADEMARKS & COPYRIGHTS

All rights to the "CRAYONS®" and "CRAYONS® and Design" trademarks in all classes of goods and services, including, but not limited to:

MARK	COUNTRY	APPLICATION/ REGISTRATION NO.	CLASS/GOODS/ SERVICES
CRAYONS	Canada	Application No. 118941900	Confectionery products, namely candy, lollypops and chewing gum
CRAYONS (the "EU Mark")	European Community	Application No. 1012772 Registration No. 1012772	Class 32: mineral and aerated waters and other non-alcoholic drinks; soft drinks; syrups and other preparations for making beverages
CRAYONS	Japan	Application No. H08-148135	Class 32: [goods description not available]
CRAYONS	Hong Kong	Application No. 11440	Class 32: non-alcoholic beverages and fruit based drinks
CRAYONS (the "Mexico Mark")	Mexico	Application No. 354896 Registration No. 599349	Class 32: soft drinks and non-alcoholic beverages
CRAYONS	Mexico	Application No. ???	Class 30: [goods description not available] Class 32: [goods description not available]
CRAYONS	United States	Application No. 73/675,614 Registration No. 1,484,499	Class 32: beverage products, namely fruit drinks containing water

SCHEDULE I

MARK	COUNTRY	APPLICATION/ REGISTRATION NO.	CLASS/GOODS/ SERVICES
CRAYONS	United States	Application No. 78/403,741	Class 30: food and beverage products, namely dairy products, fruit flavored yogurts, puddings and fruit snacks, jams, jellies and fruit preserves, powdered drinks, cereal bars, fruit and granola bars, fruit-filled breakfast bars and toaster snacks; pasta including macaroni and cheese lunch and dinner meals; prepackaged and powdered gelatin type fruit and desert items; smoothies, fruit drinks, fruit drinks containing water, herbal fruit flavored, soda; cough drops for children, candy, ice cream, frozen snacks and sorbet; prepackaged meals; baked rice snacks made with natural fruit flavors, fruit drinks, frozen fruit bars, bottled water, and beverages enhanced with vitamins and/or flavors.
CRAYONS and Design 	United States	Application No. 74/680,076 Registration No. 2,162,345	Class 30: food products, namely, frozen fruit bars, frozen confections, namely, ice cream, flavored ices, frozen yogurt and frozen custard Class 32: beverage products, namely fruit drinks containing water
CRAYONS and Design  (the "Canada Mark")	CANADA	Application No. 078080400 Registration No. TMA507471	Beverages, namely fruit drinks
LIFE IS COLOR! DRINK UP	United States	Application No. 75/431,816	Class 30: food products, namely, frozen fruit bars, frozen confections, namely, ice cream, flavored ices, frozen yogurt and frozen custard Class 32: beverage products, namely, fruit drinks containing water

The distinctive PhotoShop/scanner generated "fruit swirl" graphic used on the product packaging on cans, bottles, and also on POS display materials.

All Crayons-related research, business plans, advertisements and marketing plans. (Example: January 11, 1995 five page Brand Positioning "White Paper" memo from Owen Ryan to Dwight Jewson, Joe Burke, etc.)

LABEL DESIGNS/ BOTTLE GRAPHICS

SCHEDULE I

Handwritten initials: DJ, DAS

Harumi Ando's prototype straw and conical cap packaging design (Illustration, several versions)

Robbie de Villier's 16 oz bottle labeling exploratory (six separate treatments)

Bryan Cordell/other art director's "Early TetraPack" box drink designs.

Various "Yellow" box drinks graphics treatments and labels (early development & testing phase)

Box drinks display schematics (engineer's drawings)

Harumi Ando 16 oz glass bottle label (Actual: used for initial production)

Cart-O-Can aseptic packaging opportunity (via Mexico or Brussels) for Crayons Fruit Drinks

RESEARCH RELATED

Acupoll Quantitative Consumer Purchase Interest Test Results

Visually Structured Lifestyle Research Technique: Ideal Target Audience "Brand User Matching Device"

Red Bug Elementary School Taste Testing (Kid and Adults, Orlando Florida) (on original Robertet formulations filled by Ball in "blind taste" cans in Colorado facility)

Hand-written one-on-one product evaluation and brand choice interviews conducted for CRAYONS Fruit Drinks by Owen Ryan with 400+ school children ages 8-15 years of age.

PRODUCT FORMULATIONS

IFF (Original)

Robertet (1996-1998)

IFF (2001-2003) 5% juice, 10% juice, carbonated and still)

POINT OF PURCHASE DISPLAYS - VARIOUS ITERATIONS OF IN-STORE AND MERCHANDISING DISPLAYS.

Point of purchase floor displays (various artist sketches & schematics)¹

¹ Display idea encompassing multiple form configuration difference using different graphics treatments

SCHEDULE I



CRAYONS Fruit Drinks customized point of purchase gravity feed horizontal merchandising display. (Photo)

2 for 99 cents In-store cardboard display as used in Molly Stone/Gristedes. (Photo)

SALES PROMOTIONAL AND COMMUNITY PUBLIC RELATIONS INITIATIVES:

"Red Cars Get Washed Free At Publix." (Promotional Announcement)

"Kids Under 18 Can't Vote. Except At Publix." (Promotional and PR Announcement)

"Bright Ideas" Community Outreach Program, proposed for Publix, Northern Florida

"Instant in store caricature & product sampling program (Wal-Mart in-store program)

"Win a limo ride to school for you and your friends". (Wal-Mart, Path Mark Promo.)

"First Ever Refrigerator Art Contest. (Publix/Jacksonville Community Art Museum)

TAG LINES, ADVERTISING HEADLINES, SELLING CONCEPTS, PRODUCT POSITIONING AND BRAND COMMUNICATIONS PLATFORMS.

The Fun Company That's Serious About Quality™ (Corporate Tag line and "positioning")

Fruit Taste With A Twist of Fun™

Life Is Color. Drink Up!™

A Bolder, Brighter, Real Fruit Taste™

CONFIDENTIAL BRAND POSITIONING IDEA:

"The Kid in all of us"

"ADULT" POSITIONING STATEMENTS, HEADLINES AND/OR CONCEPTS:

CRAYONS Fruit Drinks: "The Taste That Draws You Back"™ (Advertising and bus poster tag line)

"Maybe childhood's not so far away after all?"™ (Bus Poster with cans)

SCHEDULE I

"Five Ways To Reverse The Aging Process"TM (Bus Poster with cans)

"To Locate Your Inner Child, Open Here"TM (Bus Poster with cans)

When's the last time you tried something young?"TM (Bus Poster with cans)

"Whoever said you can't return to the days of your youth was sadly mistaken"TM (Bus Poster with Cans)

"A time machine for tired, worn out adult taste buds"TM (Bus Poster with cans)

"Instant Passport to the days when the biggest thing on your mind wasn't your mortgage payment."TM (Poster logo with 1970's "daydream" photo of kids at play.)

"Instant Passport to the days when the biggest thing on your mind was recess."

"Rx for tired, worn-out taste buds"TM (Bus Poster with cans)

TRADE AD HEADLINE

"Moms like 'em. They Taste Great. Kids love 'em. Will They Sell? Draw Your Own Conclusions!

INTERNET/WEB

Opening page design and 3 page examples of "look and feel" exploratory for CRAYONS fruit drinks web page. (CyberNY)

TELEVISION, RADIO & BROADCAST

"Life is Color. Drink up": 30 and 60 second radio and TV track. (Music announcer voice over and singers) (In CD form) ©1999 Owen Ryan

OTHER/MISCELLANEOUS

Right of first refusal from Owen Ryan to FruitStorm, Inc. for CRAYONS Fruit Drinks and/or CRAYONS Frozen Novelties to participate as category sponsor in future "Art Literacy Project" school, community or public relations events

SCHEDULE I

884675 v10/SF
Symb10!.DOC

Q
DAI

TRADEMARK
REEL: 002939 FRAME: 0507

SCHEDULE II

SCHEDULE II LICENSED IP

TRADEMARKS & COPYRIGHTS

All rights to the "CRAYONS®" and "CRAYONS® and Design" trademarks in all classes of goods and services, including, but not limited to:

CRAYONS	United States	Application No. 73/675,613 Registration No. 1,503,174	Class 30: fruit products, namely frozen fruit bars
----------------	---------------	--	--

FROZEN JUICE BAR PACKAGING

Original designs (Bryan Cordell)

"Book Opening" Frozen Package Configuration (Gulf States Packaging)

Individual Frozen Novelties labels (four flavors)

SCHEDULE II

SCHEDULE III

ADJUSTMENTS FOR IMPAIRMENT OF LICENSED MARKS

LICENSED MARK	APPLICATION/REGISTRATION #	CLASS/GOODS/SERVICES	ADJUSTMENT AMOUNT
CRAYONS	Application No. 118941900	Confectionery products, namely candy, lollypops and chewing gum	
CRAYONS	Application No. 1012772; Registration No. 1012772	Mineral and aerated waters and other non-alcoholic drinks; soft drinks; syrups and other preparations for making beverages	
CRAYONS	Application No. 78/403,741	Class 30: food and beverage products, namely dairy products, fruit flavored yogurts, puddings and fruit snacks, jams, jellies and fruit preserves, powdered drinks, cereal bars, fruit and granola bars, fruit-filled breakfast bars and toaster snacks; pasta including macaroni and cheese lunch and dinner meals; prepackaged and powered gelatin type fruit and desert items; smoothies, fruit drinks, fruit drinks containing water, herbal fruit flavored, soda; cough drops for children, candy, ice cream, frozen snacks and sorbet; prepackaged meals; baked rice snacks made with natural fruit flavors, fruit drinks, frozen fruit bars, bottled water, and beverages enhanced with vitamins and/or flavors.	
CRAYONS	Application No. 354896; Registration No. 599349	Soft drinks and non-alcoholic beverages	
CRAYONS (1)	Application No. 73/675,614; Registration No. 1,484,499	Beverage products, namely fruit drinks containing water	
CRAYONS and Design (1)	Application No. 74/680,076; Registration No. 2,162,345	Beverage products, namely fruit drinks containing water	
CRAYONS (2)	Application No. 73/675,613; Registration No. 1,503,174	Fruit products, namely frozen fruit bars	
CRAYONS and Design (2)	Application No. 74/680,076; Registration No. 2,162,345	Food products, namely, frozen fruit bars, frozen confections, namely, ice cream, flavored ices, frozen yogurt and frozen custard	
CRAYONS and Design	Application No. 078080400; Registration No. TMA507471	Beverages, namely fruit drinks	
TOTAL ADJUSTMENTS FOR IMPAIRMENT			

REDACTED

- (1) There must be an Impairment of both Licensed Marks prior to an adjustment being made.
- (2) There must be an Impairment of both Licensed Marks prior to an adjustment being made.

SCHEDULE III

R
DAS

EXHIBIT A

REDACTED

REDACTED

REDACTED

EXHIBIT A

BB4675 v10/SF
Symb101.DOC

Q
DAD

Schedule of Exceptions

Section 4.1.4 – In various meetings with prospective investors, partners, acquirors, trade suppliers and customers, some proprietary marketing research, marketing plans, advertising copy and related material was disclosed.

Section 4.1.6 – Concord Matter

Section 4.1.7 –

- 1. Concord Matter**
- 2. The application for “Life Is Color, Drink Up” has been challenged by a letter from Quaker Oats’ general counsel claiming infringement on account of their ownership of the trademark for the phrase, “Life Is A Sport, Drink It Up.”**

Section 4.1.8 –

- 1. Hong Kong – This jurisdiction’s registration, which would have constituted Schedule I Licensed IP, expired in December 2003**
- 2. Mexico – This Schedule I Licensed IP became subject to a cancellation action for non-use as of June 3, 2001. [Ryan is not aware of any current or contemplated cancellation proceeding.]**
- 3. The Schedule II Licensed IP is subject to cancellation for non-use with respect only to Class 30 goods not put into commerce in the United States, which may include ice cream; flavored ices; frozen yogurt; and frozen custard.**

