

Form PTO-1594 (Rev. 06/04)
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U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

Seattle Gourmet Foods, Inc.

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

Citizenship (see guidelines) Washington

Execution Date(s) 10-18-2004

Additional names of conveying parties attached? Yes No

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: The Bon, Inc.

Internal Address: _____

Street Address: Third Avenue and Pine Streets

City: Seattle

State: WA

Country: U.S.A. Zip: 98181

- Association Citizenship _____
- General Partnership Citizenship _____
- Limited Partnership Citizenship _____
- Corporation Citizenship Ohio
- Other _____ Citizenship _____

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,747,275

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

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

Name: Benton J. Gaffney

Internal Address: Davis Wright Tremaine, LLP

Street Address: 1501 Fourth Avenue
Suite 2600

City: Seattle

State: WA Zip: 98101-1688

Phone Number: 206-903-3961

Fax Number: 206-628-7699

Email Address: bengaffney@dwt.com

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 40.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number 04-0258

Authorized User Name Kristine Fyfe

9. Signature: Kristine Fyfe

Signature

10/19/04

Date

Kristine Fyfe

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 7

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

CH \$40.00 040258 1747275

'275 TRADEMARK LICENSE AGREEMENT

This '275 Trademark License Agreement ("License Agreement") is effective as of October 18th, 2004 (the "Effective Date"), by and between Seattle Gourmet Foods, Inc., (hereinafter "Licensor"), a Washington corporation, with its principal place of business at 19016 72nd Avenue S., Kent, Washington 98032, and The Bon, Inc., (hereinafter "Licensee"), an Ohio corporation, with its principal place of business at Third Avenue and Pine Street, Seattle, Washington 98181.

RECITALS

A. Licensor and Licensee are parties to a civil action pending in King County, Washington Superior Court, *Seattle Gourmet Foods, Inc., a Washington corporation, Plaintiff, v. The Bon, Inc., an Ohio corporation, Defendant*, No. 03-2-24937-8 SEA (the "Litigation").

B. Concurrent with the execution of this License Agreement, the parties are entering into a settlement agreement (the "Settlement Agreement") to resolve the claims and issues that are the subject of the Litigation.

C. Licensor is the owner of United States Trademark Registration No. 1,747,275 for bakery goods, namely, cookies and breads, coffee and tea, ice cream, ice cream syrups and candy (the "'275 Mark").

D. It is the desire and intention of the parties that the Licensee be given the exclusive right to use the '275 Mark in association with the goods identified in Recital C above, in the states of Washington, Oregon, Idaho, and Montana (hereinafter referred to as the "Exclusive Territory") with the exception that Licensor may continue selling its products bearing the '275 Mark to Meier & Frank for sale at its department stores located in Oregon, and a non-exclusive right to use such marks in Wyoming.

NOW, THEREFORE, in consideration of the above and other valuable consideration, the parties hereto agree as follows:

1. License and Registration. Licensor grants to Licensee an exclusive, perpetual, royalty-free, personal and nontransferable (except as set forth in Section 10) license to use the '275 Mark in the Exclusive Territory, and a non-exclusive, perpetual, royalty-free, personal and nontransferable (except as set forth in Section 10) license to use such marks in Wyoming, in connection with the manufacture, sale, distribution and promotion of the goods identified in the federal registration for the '275 Mark (hereinafter referred to as the "Goods") without the right to sublicense others (except as set forth in Section 10); provided, however, that notwithstanding anything to the contrary herein, Licensor may sell those products bearing the '275 Mark within the Exclusive Territory as permitted by Paragraph 8 of the Settlement Agreement, and may continue using the '275 Mark in connection with the sale, promotion, and distribution of its products through Meier & Frank or its successor in interest within the State of Oregon. The '275 Mark shall not be used by the Licensee in association with any goods or services other than the Goods without the express written consent of the Licensor. Licensor will promptly record this

License Agreement with the U.S. Patent and Trademark Office at Licensee's expense (which shall not include Licensor's attorneys' fees).

2. Quality of Goods. The Goods associated with the '275 Mark shall be of good quality so as to be consistent in quality with those associated with Licensor's use of the '275 Mark as of the Effective Date. Licensor agrees that all Goods previously sold, and those sold through December 31, 2004, by Licensee under the Frango trademark have been of the required quality.

3. Inspection and Control. The Licensee shall permit representatives of the Licensor to inspect the Goods on the premises of the Licensee at all reasonable times on prior written notice. The Licensee shall, upon request of the Licensor, submit to the Licensor or to its representatives, samples of all new Goods that it sells or intends to sell in association with the '275 Mark for the purpose of determining compliance with this License Agreement. The quality of Goods will be deemed acceptable to Licensor unless, acting in good faith and in a commercially reasonable manner, Licensor provides Licensee with specific written objection within two (2) weeks of the time of inspection. Any such written objection shall specify in detail the basis thereof. Licensee shall have a period of time reasonable under the circumstances, and in any case not less than thirty (30) days, to make any necessary corrections.

4. Use of '275 Mark.

(a) Licensee shall use the '275 Mark in a manner consistent with Licensee's past and future use of the FRANGO trademark or other mark or device otherwise used by Licensee for food products. Upon Licensor's written request, Licensee shall provide the Licensor with representative samples of all literature, web pages, documents, packages, labels, labeling, and promotional materials prepared by or for the Licensee bearing the '275 Mark.

(b) Licensee shall not (i) alter the nature or design of the '275 Mark in any way from the form or forms approved by Licensor; (ii) except for use in connection with the FRANGO trademark or the trade names or trademarks (including those received from Licensor by assignment) of Licensee or those of its affiliates, shall not use the '275 Mark in the creation of a composite mark or name or associate it with another mark or name used by the Licensee without Licensor's express written consent, which shall not be unreasonably withheld; or (iii) seek to register, directly or indirectly, or use any trademark or trade name that is confusingly similar to the '275 Mark, including without limitation any use or application which includes as a dominant feature "FREDERICK & NELSON". Licensor agrees that the following is permissible and does not violate the provisions contained in the previous sentence: (iv) Licensee's use of the term "FREDERICK & NELSON" (including use of that term as part of the '043 Mark) in a manner, lettering or typeface different from the manner, lettering or typeface used in the registration of the '275 Mark, so long as Licensee includes in any such usage the legend set forth in subpart (e) below; and (vi) Licensee's use of the '043 Mark, "F&N", "the Original Frederick & Nelson", and script lettering therefor as used in the mark covered by United States Trademark Registration No. 2,187,043, which is concurrently being assigned to Licensee. Licensee agrees that it acquires no ownership interest in the '275 Mark by virtue of this Agreement or Licensor's consent to Licensee's use of the '275 Mark as a composite mark or in connection with another mark or name used by Licensee.

(c) Except to the extent set forth herein, Licensee shall not use the '275 Mark for any purposes other than those set forth in Section 1. Without limiting the generality of the foregoing, Licensee shall not sell to retail customers outside the Exclusive Territory or Wyoming any Goods bearing the '275 Mark. Licensee shall notify any wholesale customer to whom it sells confectionery products bearing the '275 Mark that it may resell such products only inside the Exclusive Territory. However, notwithstanding anything in this License Agreement, the Settlement Agreement, the Trademark Assignment, the '043 License Agreement or the AALA, The Bon shall be permitted to make incidental sales of products using the '275 Mark to retail customers located outside the Exclusive Territory as set forth in Paragraph 9 of the Settlement Agreement.

(d) Except as permitted by Paragraph 8 of the Settlement Agreement, Licensor agrees as follows: (i) Licensor will not use the '275 Mark or any mark which contains as a dominant feature F&N (the "Restricted Marks") in connection with sales to retail customers within the Exclusive Territory of any Goods; (ii) Licensor will notify any wholesale customer to whom Licensor sells Goods bearing the Restricted Marks of Licensee's exclusive and perpetual license herein, and that such Goods may be resold at retail only outside the Exclusive Territory; and (iii) Licensor will prominently place on all marketing materials potentially available within the Exclusive Territory (e.g., catalogs and web sites) a statement that Goods sold by Licensor in connection with the Restricted Marks are available only for retail sale outside the Exclusive Territory.

(e) All advertising and packaging for Goods sold by Licensee under the '275 Mark shall bear the legend, "Frederick & Nelson is a registered trademark of Seattle Gourmet Foods, Inc. and is used under license" or such other legend as is reasonably required in writing by Licensor or its successor.

5. Indemnity. The Licensor assumes no liability to the Licensee or to third parties with respect to the Goods manufactured, distributed, or sold by the Licensee in association with the '275 Mark. The Licensee hereby indemnifies and holds harmless the Licensor against all losses, damages, accounts in settlement and expenses, including attorneys' fees, incurred as a result of or related to claims of third persons involving the manufacture, use or sale of the Goods.

6. Term and Termination. Except as otherwise provided herein, the license granted under this License Agreement shall remain in full force perpetually. However, if the Licensee makes any assignment of assets or business for the benefit of creditors, or if a trustee or receiver is appointed to administer or conduct its business or affairs, or if it is adjudged in any legal proceeding to be either a voluntary or involuntary bankruptcy, then all the rights granted herein shall forthwith cease and terminate without prior notice or legal action by the Licensor. In the event that the foregoing clause is held to be unenforceable under the bankruptcy laws, then the trustee in bankruptcy shall be able to maintain this License Agreement only if the trustee abides by all of the provisions herein; and failure of the trustee to do so shall be a material breach of this License Agreement.

7. Opportunity to Negotiate for Repurchase of Rights to the '275 Mark. If Licensee chooses to cease to use the '275 Mark, it shall so notify Licensor in writing within thirty (30) days of such decision. Within thirty (30) days of receipt of such notice, Licensor may make a

written offer to Licensee to repurchase and extinguish Licensee's rights under the this Trademark License Agreement. Licensee, in its sole discretion, may (a) reject such offer for any or no reason, (b) accept such offer, or (c) provide Licensor with a written counteroffer. However, nothing in this Agreement requires or should be construed to require Licensee to enter into any negotiation with Licensor regarding the '275 Mark. To the extent any obligations may exist at law or otherwise concerning good faith negotiations, Licensor specifically waives any right to assert any such obligations.

8. Ownership and Maintenance of '275 Mark.

(a) Licensor represents, warrants and covenants (i) that it is the sole owner of all right, title and interest in and to the '275 Mark as to those Goods on which the Licensor or Licensee is using the '275 Mark as of the Effective Date, and that no person not a party to this License Agreement has any interest in or to the '275 Mark as to such Goods; (ii) that the registrations for the '275 Mark are valid as to those Goods on which the Licensor or Licensee is using the '275 Mark as of the Effective Date and have not been cancelled; and (iii) that Licensor has taken and will now and in the future take all steps necessary to maintain the registration for the '275 Mark as valid as to those Goods as to which they are in use on the Effective Date or thereafter by Licensor or Licensee (including without limitation making all necessary filings and paying all required fees to the U.S. Patent and Trademark Office).

(b) Licensee acknowledges that Licensor is the owner of the entire right, title and interest in and to the '275 Mark and the goodwill associated therewith as of the Effective Date. Licensee will not at any time do, or cause to be done, any act or thing in any way impairing or tending to impair any right, title, and interest therein or the value thereof, and will not at any time challenge the validity of the '275 Mark, dispute or contest the Licensor's exclusive ownership of the '275 Mark, or otherwise take or permit any other act inconsistent with Licensor's ownership of the '275 Mark. The Licensee shall not in any manner represent that it has any ownership in the '275 Mark, including any registration therefor, or aid, abet or encourage the infringement of any of Licensor's rights in the '275 Mark.

9. Enforcement. Licensor acknowledges and agrees that Licensee is entitled to enforce its rights in the '275 Mark, both under this License Agreement and under any applicable law, against any and all persons, including both third parties and Licensor. If Licensee becomes aware of any infringement of the '275 Mark in the Exclusive Territory, it shall immediately give written notice to Licensor of such infringement. At the same time, Licensee shall advise Licensor whether Licensee intends to take steps to prevent the continued infringement and shall have the right to do so if it chooses and to retain all amounts in settlement and damages resulting from such enforcement action. In the event that Licensee elects not to take steps to prevent the continued infringement, Licensor shall have the right to take such steps as it deems necessary in its name and the name of Licensee at Licensor's sole option and expense. In that event, Licensor shall retain all amounts in settlement and damages resulting from such enforcement. Notwithstanding any of the foregoing, the parties may agree in writing to another approach to prosecuting any infringement claim.

10. Successors and Assigns. All of the terms and provisions of this License Agreement shall inure to the benefit of and be binding upon the successors and assigns of the

respective parties. The license granted hereunder, however, shall not be assigned or sublicensed by Licensee to any third party without the written consent of the Licensor, which may be given or withheld at Licensor's reasonable discretion. Any assignment or sublicense made by Licensee without such permission will be void. For purposes of this Section 10, a "third party" excludes any parent, subsidiary or other affiliated entity or division of Licensee (collectively and individually hereafter referred to herein as "Licensee's Affiliated Entities"). Notwithstanding this or any other provision of this License Agreement, any of Licensee's Affiliated Entities shall have the right to assign, sublicense or otherwise transfer rights under this License Agreement to any other of Licensee's Affiliated Entities so long as the entity actually marketing, distributing or selling the Goods using the '275 Mark operates Licensee's department stores in a manner and quality substantially equivalent to the manner and quality with which Licensee is operating at the time of the transfer.

11. Applicable Law. This License Agreement has been made and shall be construed and enforced in accordance with the laws of the State of Washington without giving effect to the conflict of law rules or choice of law rules thereof.

12. Notices. Any notices required or permitted to be given under this License Agreement shall be deemed sufficiently given if mailed by certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at its address shown at the beginning of this License Agreement, or at such other address as may be furnished in writing to the notifying party in accordance with this provision.

13. Integration. This License Agreement, the Trademark Assignment and the Settlement Agreement contain the entire understanding of the parties hereto with respect to the parties' use of the '275 Mark, and supersede all previous agreements and/or negotiations with respect to the parties' rights to the subject matter of this License Agreement, and cannot be amended except by a writing signed by both parties.

14. Notice and Cure. In the event either party believes that the other party has violated any provision of this License Agreement, such party shall promptly provide the other party with written notice specifically describing: (i) the actions or omissions of the other party it believes to violate this License Agreement, (ii) the terms of this License Agreement it believes the other party has violated, and (iii) detailed instructions as to how it believes the other party may cure such violation. The party receiving such notice shall then have 30 days from the date of receiving such written notice to cure such violation. The parties acknowledge and agree that so long as the party receiving such notice cures the violation within this 30-day period, such violation shall not constitute a breach of this License Agreement.

15. Disputes and Attorneys' Fees. The parties agree that the courts of King County, Washington shall have jurisdiction over any and all disputes arising out or relating to this License Agreement, and that the prevailing party shall be awarded its reasonable attorneys' fees and costs. The parties agree that their obligations under this Agreement may be specifically enforced.

16. Nonwaiver. No waiver of any breach of any provision of this License Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other

provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

17. Savings. In the event any provision of this License Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect. If any provision of this License Agreement shall, for any reason, be determined by a court of competent jurisdiction to be excessively broad or unreasonable as to scope or subject, such provision shall be enforced to the extent necessary to be reasonable under the circumstances and consistent with applicable law while reflecting as closely as possible the intent of the parties as expressed herein.

18. Counterparts. This License Agreement may be executed in two or more counterparts, and by means of signatures conveyed by telephonic facsimile transmissions or images attached to e-mails, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this License Agreement has been executed as of the day and year first above written.

LICENSOR:

Seattle Gourmet Foods, Inc.

By David J Taylor
Its President

Name DAVID J. TAYLOR

LICENSEE:

The Bon, Inc.

By Daniel Edelman
Its Chairman & CEO

Name Daniel Edelman