

05-05-2006

Form PTO-1594 (Rev. 07/05)
OMB Collection 0651-0027 (exp. 6/30/2008)

DEPARTMENT OF COMMERCE
Patent and Trademark Office

RECORD
TRA



103232578

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):

David M. Morgan

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

Citizenship (see guidelines) USA

Additional names of conveying parties attached? Yes No

3. Nature of conveyance /Execution Date(s) :

Execution Date(s) 12-6-05

- Assignment Merger
- Security Agreement Change of Name
- Other _____

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Excel Distribution LLC

Internal Address: _____

Street Address: 4703 112 st

City: Lubbock

State: TX

Country: USA Zip: 79424

- Association Citizenship _____
- General Partnership Citizenship _____
- Limited Partnership Citizenship _____
- Corporation Citizenship USA
- 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

A. Trademark Application No.(s)

Identification or description of the Trademark.

B. Trademark Registration No.(s)

2345399, 2345166, 2351779

Additional sheet(s) attached? Yes No

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

Kootie Killer Trademarks

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

Name: Excel Distribution LLC

Internal Address: Attn: Jeff Hudnall

Street Address: 5236 80th St.

City: Lubbock

State: TX Zip: 79424

Phone Number: 806-799-8618

Fax Number: 806-748-0433

Email Address: jeff@excelcandles.com

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 90.00

- 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 _____

Authorized User Name _____

9. Signature: David M. Morgan

Signature
David M. Morgan

12-6-05
Date

Total number of pages including cover sheet, attachments, and document: 1

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK

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ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT (this "Agreement") is made this 16 day of AUG 2005 among EXCEL DISTRIBUTING, LLC, a Texas limited liability company, ("Purchaser"), and DAVID M. MORGAN, Individually, and EDM TECHNOLOGIES, INC. ("EDM"), an Ohio corporation (collectively "Seller"). Capitalized terms used herein shall have the meaning ascribed to such terms as described in this Agreement.

RECITALS

WHEREAS, DAVID M. MORGAN ("Morgan") is the sole member and owns 100% of the total issued and outstanding interest of EDM; and

WHEREAS, MORGAN, Individually and EDM own all right, title and interest in and to the KOOTIE KILLER™ business ("KK Business") which includes:

- (i) KOOTIE KILLER™ product line, including a waterless hand sanitizing soap and soap products, hair shampoo products, clothing products, bath products (collectively "KK Products");
- (ii) the following trademarks (1) Kootie Killer Reg. No. 2,345,166; Serial No. 75666021; (2) Kootie Killer Reg. No. 2,351,779, Serial No. 75723372; and (3) Kootie Killer Reg. No. 2,345,399, Serial No. 75718638 (collectively "KK Trademarks");
- (iii) the KOOTIE KILLER™ website, URL www.kootiekiller.com, and all source codes, passwords, and flash file information ("KK website");
- (iv) existing inventory of KK Products ("KK Inventory")
- (v) all marketing and manufacturing rights to the KK Products ("KK Marketing and Manufacturing Rights");
- (vi) any and all rights in or to existing or potential contracts relating to the purchase and sale of KK Products ("KK Contracts"); and
- (vii) any other tangible or intangible right or interest associated with the development, production, manufacture, use or sale of the KK Products ("KK Rights").

All of the above (i) through (vii) collectively referred to as the "KK Assets".

WHEREAS, Seller desires to sell to Purchaser and Purchaser desires to purchase from Seller, on the terms and subject to the conditions set forth herein, all of the KK Assets of Seller used exclusively in connection with the KK Business.

NOW, THEREFORE, Seller and Purchaser agree as follows:

WHEREAS, the parties hereto desire to enter into this Acquisition Agreement pursuant to which Purchaser will acquire from MORGAN and MORGAN shall sell to Purchaser all of its KK Assets and KK business operations, and MORGAN and EDM shall provide certain representations, warranties and indemnities, upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual promises, representations, warranties and covenants hereinafter set forth, the parties hereto agree as follows:

ARTICLE I
COVENANTS AND UNDERTAKINGS.

1.1 Purchase and Sale of Assets.

1.1.1 Subject to the terms and conditions hereinafter set forth, MORGAN shall, and MORGAN shall cause EDM to, at the Closing, sell, assign, transfer, convey and deliver to Purchaser, and Purchaser shall purchase from Seller for the Purchase Price, the KK Assets free and clear of all Liens.

1.1.2 Subject to Section 2.1.3, the KK Assets purchased hereunder shall be the following:

(a) All KK Products; (b) all KK Trademarks; (c) the KK Website; (d) all KK Inventory; (e) All KK Marketing and Manufacturing Rights; (f) all KK Contracts; (g) all KK Rights; (h) all of the contracts, leases, licenses and other agreements relating to the KK Assets (collectively, the "Assigned Contracts"); (i) all licenses, authorizations and permits (including certificates of occupancy) issued by any governmental agency relating to the KK Business or the KK Assets; (j) all intangible property rights related to the KK Business; and (k) all trade secrets, and customer lists with respect to the KK Business owned by Seller and all books and records incident to the KK Business.

1.2 Purchase Price.

1.2.1 In consideration of the sale, transfer, conveyance, assignment and delivery of the KK Assets and the Non-Competition and Non-Disclosure Agreement of MORGAN and EDM, Purchaser shall, in full payment for the KK Assets and the Non-Competition and Non-Disclosure Agreement, (i) pay the amount of THIRTY-EIGHT THOUSAND, SEVEN HUNDRED AND NO/100 DOLLARS (\$38,700.00) (the "Purchase Price"); and (ii) pay MORGAN a continuing royalty ("Continuing Royalty") equal to three percent (3%) of Purchaser's Gross Sales. The Purchase Price shall be paid in cash at Closing, subject to the following deductions:

(a) the sum of \$2,500.00 of the Purchase Price shall be paid by Purchaser directly to Homer Hillis for the benefit of Seller to compensate Homer Hillis for his efforts on behalf of MORGAN related to this transaction and Agreement; and

(b) the sum of \$6,200.00 of the Purchase Price shall be paid by Purchaser directly to Avia Candle Co., Inc. for the benefit of Seller to compensate Avia Candle Co., Inc. for its efforts on behalf of MORGAN related to this transaction and Agreement; and

(c) the remaining balance of the Purchase Price of \$30,000.00 shall be paid in cash at Closing.

1.2.2 The Continuing Royalty shall be paid within thirty (30) days of the end of each calendar quarter, beginning with the third (3rd) calendar quarter for 2005. The Continuing Royalty shall be equal to three percent (3%) of the quarterly gross sales (less returns and prepaid freight) received by Purchaser for sales of KK Products purchased under this Agreement. Specifically excluded from the Continuing Royalty calculation shall be any product(s) sold by Purchaser ("Excluded Products") that do not bear the Kootie Killer™ name. The Continuing Royalty payment shall be accompanied by a quarterly statement setting forth in reasonable detail, the basis for the Continuing Royalty quarterly computation.

1.3 Time and Place of Closing. The Closing of the transactions contemplated by this Agreement (the "Closing") shall take place simultaneously with the execution and delivery hereof on or before August 15, 2005, but effective as of 12:01 a.m. on August 17, 2005 (the "Closing Date"), or at such other date or time as the parties may agree.

ARTICLE II ASSUMPTION OF OBLIGATIONS AND LIABILITIES

2.1 Except for Purchaser's assumption as of the Closing Date of the obligations of Seller to accrue from and after the Closing Date under the Assigned Contracts actually assigned to Purchaser in accordance with this Agreement, by entering into this Agreement and consummating the transactions contemplated hereby, Purchaser is not assuming or agreeing to pay or otherwise become liable for any indebtedness, obligations or liabilities of MORGAN or EDM of any type or nature whatsoever, and except as aforesaid, Purchaser shall not assume any such liabilities or obligations nor shall Purchaser become liable on any such debts, liabilities or obligations relating to the operation of the KK Business prior to the Closing Date. Without limiting the generality of the foregoing: Purchaser shall not assume (a) any indebtedness, obligation or liability for any litigation matter or other third party claim arising from the conduct of the KK Business prior to the Closing Date, regardless of whether or not such matter is disclosed on any exhibit hereto; (b) any liability for any legal fees or expenses of MORGAN or EDM incurred for any reason whatsoever; (c) any liability for any claims by employees or former employees of MORGAN or EDM concerning acts or omissions of MORGAN or EDM occurring prior to the Closing Date; and (d) any liabilities of MORGAN or EDM for any income or other tax obligations or for any employee benefit obligations.

2.2 Payment of Taxes. MORGAN and EDM shall pay all stamp, sales, use, employment, property, ad valorem, income, realty transfer, franchise, net worth, intangible, excise, license or other taxes, additions to tax, penalties and interest, whether Federal, state, local, foreign or other, imposed on or required to be collected by MORGAN and EDM, and Purchaser will pay all such taxes, additions to tax, penalties and interest, whether imposed on or required to be collected by Purchaser, in respect of any and all transfers pursuant to the terms of this Agreement.

2.3 Consents and Approvals. MORGAN and EDM agree to obtain the waiver, consent and approval of all persons or entities whose waiver, consent or approval is required in order to consummate the transactions contemplated by this Agreement (including, without limitation, the consent of any landlord, lessor, customer, licensor or supplier of Seller, if required).

2.4 Non-Competition and Non-Disclosure Agreements. MORGAN and EDM agree to execute and deliver, at the Closing, a Non-Competition and Non-Disclosure Agreement substantially in the form attached hereto as Exhibit 1.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF MORGAN AND EDM

Seller hereby represents and warrants to Purchaser that, for purposes of this Article 4, a representation or warranty "to the knowledge of Seller," "to the best of Seller's knowledge" or similar phrase shall mean the actual knowledge or the knowledge that a reasonable owner would or should have had in the exercise of their duties and responsibilities as owners of the KK Business and shall include MORGAN.

3.1 Organization. EDM is an Ohio corporation, duly organized, validly existing and in good standing under the laws of the State of Ohio.

3.2 Authority; Binding Effect. MORGAN and EDM each have the power and authority to own the KK Assets and to carry on the KK Business as it is now conducted and to execute and deliver this Agreement and the other instruments, agreements and documents to be executed and delivered by them hereunder and to perform their obligations hereunder and thereunder. Such execution, delivery and performance have been duly authorized by all necessary action on the part of Seller and do not and will not: (i) contravene the articles of incorporation or bylaws of EDM; (ii) conflict with, result in a breach of, or entitle any party (with due notice or lapse of time or both) to terminate, accelerate or call a default with respect to, any agreement or instrument to which EDM or MORGAN is a party or by which EDM and/or MORGAN or any of its properties or assets are bound; or (iii) result in the creation or imposition of any security interest, pledge, lien, claim, restriction, encumbrance, restraint on transfer, charge, assessment or other title defect of any nature whatsoever upon the KK Business or KK Assets. Seller is not a party to, or subject to or bound by, any judgment, order, injunction or decree of any court or governmental authority which may restrict or interfere with the performance of this Agreement or such other instruments, agreements and documents as are to be executed by Seller hereunder. This Agreement is, and each other instrument, agreement and document to be executed by Seller hereunder will be when executed and delivered, a valid and binding obligation of Seller enforceable in accordance with their respective terms.

3.3 Capitalization. MORGAN owns, beneficially and of record, all of the issued and outstanding membership interest of EDM, free and clear of all liens, claims, charges, security interests and encumbrances. The authorization of no other person or entity is required in order to consummate the transactions contemplated herein by virtue of any such person or entity having an equitable or beneficial interest in Seller.

3.4 Assets. The KK Assets to be conveyed to Purchaser hereunder constitute substantially all the properties and assets used or held for use in connection with the KK Business.

3.5 Ownership of Assets.

3.5.1 Seller has good and marketable title to all of the KK Assets, in each case free and clear of all liens, claims, charges, options, forfeitures, rights of seizure, rights of tenants or other encumbrances (collectively "Liens")

3.5.2 Except pursuant to this Agreement, neither MORGAN nor EDM is a party to any contract or obligation whereby an absolute or contingent right to purchase, obtain or acquire any rights in any of the KK Assets or any of the KK Business has been granted to anyone.

3.6 Consents. Except as to the KK Trademarks, no consent, approval, authorization or order of, or registration, qualification or filing with, any governmental or judicial authority or other person (including without limitation any party to any Contract) is required for the execution or delivery by Seller of this Agreement and the other instruments, agreements and documents to be executed or delivered by Seller hereunder or the performance of their obligations hereunder or thereunder.

3.7 Litigation; Compliance with Law.

3.7.1 Litigation. No lawsuit, action, administrative proceeding, arbitration proceeding, governmental investigation, or other legal or equitable proceeding of any kind is pending or threatened against Seller that might adversely affect the value of or title to the KK Assets or the operation of the KK Business.

3.7.2 Compliance with Law. To the best of Seller's knowledge, the KK Business and the operation of the KK Assets have been conducted in material compliance with all applicable statutes, codes, ordinances, regulations, requirements and orders of governments and governmental bodies ("Laws"), including all tax Laws.

3.8 Liabilities and Obligations of Seller. Seller has no liability or obligation (whether absolute, contingent, known or unknown, accrued or otherwise, including without limitation, any liability which might result from an audit of its tax returns by any appropriate authority) owed on or for the KK Assets except for the liabilities and obligations of Seller disclosed or reserved against in the Financial Statements applicable to Seller, to the extent and in the amounts so disclosed or reserved against.

3.9 Taxes. MORGAN and EDM have paid or, in the case of taxes not yet due and payable, will timely pay all taxes, additions to tax, penalties and interest, if any, required to be paid by such parties with respect to the operation of the KK Business. There is not and there will not be, any liability for federal, state, foreign, local or other income, sales, stamp, use, excise, employment, property, franchise, ad valorem, license or other taxes, assessments, fees, charges, additions to tax, penalties or interest arising out of (including any liability for failure to withhold any such amount), or attributable to, or affecting the KK Assets or the conduct of the KK Business through the Closing Date, or attributable to the conduct of the operations of EDM or MORGAN at any time, for which Purchaser will have any liability for payment or otherwise or which will become a Lien or other encumbrance or will attach to the KK Assets or the operations of the KK Business.

3.10 Litigation. There is no suit, action, proceeding (legal, administrative or otherwise), claim or investigation pending or threatened against, or affecting Seller or that affects the KK Assets or the KK Business. To the best of Seller's knowledge, there exists no basis or grounds for any other such suit, action, proceedings, claim or investigation.

3.11 Licenses and Permits; Compliance With Law. Seller holds all licenses, trademarks, certificates, permits, franchises and rights from all appropriate federal, state, county, municipal or other public authorities necessary for the conduct of the KK Business and the use of the KK Assets.

3.12 Approvals. No filing or registration with, and no consent, approval, authorization, license, permit, certificate or order of any governmental authority is required by any applicable Law or by any applicable judgment, order or decree or any applicable rule or regulation of any governmental authority, to permit EDM or MORGAN to execute, deliver or perform this Agreement or any instrument or agreement required hereby to be executed by such party at the Closing.

3.13 Exhibits. All Exhibits attached hereto are true, correct and complete as of the date of this Agreement, and will be true, correct and complete as of the Closing Date. A matter disclosed on one Exhibit shall not be deemed to be constructively listed or disclosed on another Exhibit.

ARTICLE IV CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER.

The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, all or any of which may be waived to the extent permitted by Law, in whole or in part, by Purchaser for purposes of consummating such transactions, but without prejudice to any other right or remedy which Purchaser may have hereunder as a result of any misrepresentations by, or breach of any covenant or warranty of EDM or MORGAN contained in this Agreement, the other Transaction Documents or any other certificate or instrument furnished by EDM or MORGAN hereunder:

4.1 Representations True at Closing. The representations and warranties made by EDM and MORGAN in this Agreement, the Exhibits hereto or any other Transaction Documents shall be true

and correct on the Closing Date hereunder with the same force and effect as though such representations and warranties had been made on and as of such time.

4.2 Covenants of EDM and MORGAN. EDM and MORGAN shall have duly performed all of the covenants, acts and undertakings to be performed by them on or prior to the Closing Date.

4.3 No Injunction Etc. No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed before any court, governmental agency or legislative body to enjoin, restrain, prohibit, or obtain substantial damages in respect of, or which is related to, or arises out of, this Agreement or the consummation of the transactions contemplated hereby, or which is related to or arises out of the KK Business or the KK Assets, if such action, proceeding, investigation, regulation or legislation, in the reasonable judgment of Purchaser, would make it inadvisable to consummate such transactions.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller that:

5.1 Authority; Binding Effect. Purchaser has the power and capacity to execute and deliver this Agreement and the other instruments, agreements and documents to be executed and delivered by him hereunder and to perform his obligations hereunder and thereunder. Such execution, delivery and performance by Purchaser does not and will not: (i) conflict with, result in a breach of, or entitle any party (with due notice or lapse of time or both) to terminate, accelerate or call a default with respect to, any agreement or instrument to which Purchaser is a party or by which Purchaser or any of its properties or assets are bound; or (ii) result in any violation by Purchaser of any law, rule, regulation, code or ordinance applicable to Purchaser. Purchaser is not a party to, or subject to or bound by, any judgment, order, injunction or decree of any court or governmental authority which may restrict or interfere with the performance of this Agreement or such other instruments, agreements and documents as are to be executed by Purchaser hereunder. This Agreement is, and each other instrument, agreement and document to be executed by Purchaser hereunder will be when executed and delivered, a valid and binding obligation of Purchaser enforceable in accordance with their respective terms.

5.2 Consents. No consent, approval, authorization or order of, or registration or filing with, any governmental or judicial authority or other person is required for the execution or delivery of Purchaser of this Agreement and the other instruments, agreements and documents to be executed or delivered by Purchaser hereunder or the performance of his obligations hereunder.

5.3 Litigation. There are no orders outstanding and no actions or proceedings pending or, to the knowledge of Purchaser, threatened against, relating to or affecting Purchaser which could reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

ARTICLE VI

SUBSEQUENT SALE OR CESSATION OF THE KK BUSINESS BY PURCHASER

6.1 Purchaser agrees that should Purchaser at any time subsequent to the Closing, (i) sell the KK Business and KK Trademarks or (ii) sell the KK Business and license the KK Trademarks, Purchaser shall pay MORGAN an amount equal to the greater of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) or ten percent (10%) of the net sales price (i.e. after deductions for all typical expenses of sale) for a sale under (i) or (ii) above. Such amount shall be paid to MORGAN within thirty (30) days of the close of the transaction(s) set forth above. In conjunction with such payment, Purchaser shall provide MORGAN with a statement detailing the transaction. Notwithstanding the above calculation, in the event Purchaser develops and sells Excluded Products, the net sale price shall be adjusted *prior to* performing the calculation above as follows: "Total Purchase Product Sales" (KK Products and Excluded Products) shall be determined for a period of up to thirty-six (36) months prior to a sale under 6.1(i) or 6.1(ii) above. A ratio ("Ratio") shall be determined, the numerator of which shall equal KK Product Sales and the denominator of which shall equal Total Purchaser Product Sales, for up to such 36 month period of time. The Ratio shall be converted to a percentage (the "Percentage"). The amount payable to Morgan shall be calculated according to the following equation: $\text{Percentage} \times \text{Net Sales Price} \times 10\% = \text{Total Due Morgan}$ (provided such Total Due Morgan exceeds \$50,000.00, otherwise Morgan shall be paid \$50,000.00.) For example, Company is sold for \$1,000,000.00 (net sales price). Within the 36 months prior to the sale, 70% of the Total Product Sales consist of KK Products. Morgan should be paid $70\% \times \$1,000,000.00 \times 10\% = \$70,000.00$.

6.2 In the event Purchaser subsequent to Closing, voluntarily or involuntarily, (i) ceases KK Business operations; or (ii) has no KK sales of any type for 2 consecutive quarters (six consecutive months), upon demand by MORGAN, Purchaser agrees to transfer, at MORGAN's sole cost and expense, the KK Trademarks and KK Website to MORGAN. Upon completion of such transfer, each party to this Agreement shall be released from any continuing obligations or agreements set forth herein, specifically the Continuing Royalty obligation of Purchaser and the Non-Compete of Seller. Nothing however shall be construed to release any party to the Agreement for breaches of the Agreement which have occurred prior to the cessation of the KK Business referenced herein. In the event that Purchaser ceases the KK Business and ceases KK Product sales under the provisions of this paragraph, MORGAN shall have the right to resume sales of KK Products.

ARTICLE VII

CLOSING.

7.1 Time and Place of Closing. The Closing shall be held a place and date as agreed to in writing by MORGAN and Purchaser.

7.2 Transactions at Closing. At the Closing, each of the following transactions shall occur:

7.2.1 EDM's and MORGAN's Performance. At the Closing, EDM and MORGAN shall deliver to Purchaser the following:

- (a) a Bill of Sale and Assignment Agreement as shall be required or as may be appropriate in order to vest effectively in Purchaser good and marketable title to the KK Assets free and clear of all Liens substantially in the form of Exhibit 2 hereto (it is acknowledged by both Purchaser and Seller that a portion of the Purchase Price shall be used to pay off those debts and obligations set forth above);
- (b) a Certificate of the members and officers of EDM substantially in the form of Exhibit 3 hereto;
- (c) executed copies of the Non-Competition and Non-Disclosure Agreement;
- (d) physical possession of the KK Assets, and specifically the KK Inventory, where located; and
- (e) such other evidence of the performance of all covenants and satisfaction of all conditions required of EDM and MORGAN by this Agreement, at or prior to the Closing, as Purchaser or its counsel may reasonably require.

ARTICLE VIII
SURVIVAL OF REPRESENTATIONS AND INDEMNIFICATION,
AGREEMENTS AND CERTAIN OTHER MATTERS

8.1 Survival of Representations and Warranties; Indemnification.

8.1.1 Survival of Representations and Warranties. All representations, warranties, agreements, covenants and obligations made or undertaken by EDM or MORGAN in this Agreement or in any document, instrument or agreement executed and delivered pursuant hereto are material, have been relied upon by Purchaser and shall survive the Closing hereunder, and shall not merge in the performance of any obligation by any party hereto.

8.1.2 *INDEMNITY.* PURCHASER IS NOT AND IS NOT TO BE DEEMED TO BE A SUCCESSOR OF SELLER, ITS BEING UNDERSTOOD THAT PURCHASER IS ACQUIRING ONLY THE KK ASSETS PURSUANT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT PURCHASER HAS NOT AND DOES NOT HEREBY ASSUME OR AGREE TO ASSUME ANY LIABILITY OR OBLIGATION WHATSOEVER OF SELLER OTHER THAN THOSE SPECIFICALLY DESIGNATED IN THIS AGREEMENT

EDM AND MORGAN AGREE, IN CASH AND IMMEDIATELY UPON DEMAND, JOINTLY AND SEVERALLY, TO INDEMNIFY AND HOLD PURCHASER AND EACH OF PURCHASER'S OFFICERS, DIRECTORS, MEMBERS AND AFFILIATES, AS SUCH TERM IS DEFINED IN RULE 12B-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED (EACH OF THE ABOVE, INCLUDING PURCHASER, A "PURCHASER PARTY"), HARMLESS AGAINST ANY AND ALL DEMANDS, CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS,

JUDGMENTS, LOSSES, LIABILITIES, OBLIGATIONS, DAMAGES (INCLUDING WITHOUT LIMITATION CONSEQUENTIAL AND OTHER INDIRECT DAMAGES), COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES, COURT COSTS AND COSTS OF INVESTIGATION) AND ACTIONS (COLLECTIVELY, "CLAIMS"), DIRECTLY OR INDIRECTLY RESULTING FROM, RELATING TO OR ARISING IN CONNECTION WITH (I) ANY MISREPRESENTATION OR BREACH OF ANY REPRESENTATION OR WARRANTY OF EDM OR MORGAN CONTAINED IN THIS AGREEMENT OR IN ANY ANCILLARY DOCUMENT; (II) ANY BREACH OF ANY COVENANT OR AGREEMENT OF EDM OR MORGAN CONTAINED IN THIS AGREEMENT OR IN ANY ANCILLARY DOCUMENT; (III) ANY EVENT, CONDITION OR THING ACCRUING PRIOR TO THE CLOSING DATE; (IV) ANY EVENT, CONDITION OR THING ACCRUING ON OR AFTER THE CLOSING DATE (OTHER THAN THE ASSUMED LIABILITIES) PROVIDED SUCH EVENT, CONDITION, OR THING ACCRUES OUT OF OR IS BASED UPON ACTIONS OR OPERATIONS OF SELLER OCCURRING PRIOR TO THE CLOSING DATE; AND (V) THE INDEMNIFICATION RIGHTS SET FORTH IN THIS ARTICLE TEN. THE RIGHT OF INDEMNIFICATION IS IN ADDITION TO ANY OTHER RIGHT AVAILABLE TO PURCHASER, INCLUDING THE RIGHT TO SUE EDM AND/OR MORGAN FOR A MISREPRESENTATION, BREACH OF WARRANTY, OR BREACH OF COVENANT UNDER THIS AGREEMENT.

8.1.3 *Procedure for Indemnification of Third-Party Claims.*

a. In the event that a third-party Claim shall be made or threatened against any Purchaser Party that could result in the liability of MORGAN and/or EDM (the "Indemnifying Parties") under their joint and several indemnification obligations hereunder (each a "Third Party Claim"), Purchaser shall give promptly to the Indemnifying Parties written notice thereof. Purchaser shall be entitled, but shall have no obligation, to assume the defense of any such Third Party Claim at the sole cost and expense of the Indemnifying Parties by giving notice of such election to the Indemnifying Parties either as part of the written notice of the Third Party Claim or within thirty (30) days following the delivery of such written notice to the Indemnifying Parties. Upon its assumption of the defense of a Third Party Claim, Purchaser may defend or settle such Third Party Claim in such manner as Purchaser may deem appropriate, and any and all such actions taken by Purchaser or at its direction in connection with the defense or settlement of a Third Party Claim shall be fully binding upon the Indemnifying Parties. The Indemnifying Parties further agree, at their sole cost and expense, to cooperate fully with Purchaser and to provide to Purchaser all Books and Records, and full access to such officers, employees, agents and other Persons, as Purchaser may deem necessary or desirable in connection with the defense or settlement of such Third Party Claim. Purchaser's failure to notify the Indemnifying Parties of its election to defend a Third Party Claim within the required time period set forth above shall be deemed to constitute Purchaser's waiver of its right to defend such Third Party Claim, in which event the

Indemnifying Parties shall assume the defense of the Third Party Claim at their sole cost and expense in accordance with clause (b) below.

b. If the Indemnifying Parties assume the defense of a Third Party Claim, they shall be obligated to take in a timely and professional manner, and through counsel acceptable to Purchaser, all steps necessary or desirable in connection with the defense or settlement thereof with (should Purchaser so elect and at Seller's sole cost and expense) Purchaser's participation in such defense or settlement; *provided, however*, that in no event shall the Indemnifying Parties have the power or authority to consent to the entry of any judgment or award, or enter into any settlement, without Purchaser's prior specific prior written consent.

8.1.4 *Notification by EDM and MORGAN.* As promptly as possible after becoming aware thereof, the Indemnifying Parties shall notify Purchaser of the existence or occurrence of any event, condition or thing that could result in liability of the Indemnifying Parties under their joint and several indemnification obligations hereunder, whether or not the involving a Third Party Claim.

8.1.5 *Right of Off-Set.* Without limiting any other rights or remedies to which Purchaser or any other Purchaser Party may be entitled under this Agreement, under any Ancillary Document, or otherwise under law, in the event that Purchaser, in its good faith judgment, believes that it or any other Purchaser Party is entitled to indemnity pursuant to Article 7.3 hereof, Purchaser shall be entitled to off-set any and all amounts that Purchaser may owe to EDM or to MORGAN against the amount of any such indemnity claim. Purchaser shall notify Seller promptly in the event that Purchaser exercises its off-set right hereunder, but the failure to provide such notice, or to provide such notice promptly, shall not impair in any way the effectiveness of such off-set.

8.1.6 *Discharge of Retained Liabilities.* Seller shall discharge in full and in a timely manner and in accordance with the provisions of this Agreement any and all of the Retained Liabilities.

8.1.7 *Confidentiality of Transaction.* Except to the extent that may be required by law or by legal process, neither EDM nor MORGAN shall disclose to any Person the Purchase Price or any other terms or conditions of this Agreement without in each instance Purchaser's specific prior written consent.

8.1.8 *Further Assurances.* From and after the Closing Date, EDM nor MORGAN will execute, acknowledge and deliver such further assignments, conveyances, documents, instruments of transfer and other assurances that Purchaser reasonably may request for the purpose of assigning, transferring, granting, conveying and confirming to Purchaser, or reducing to Purchaser's possession, any or all of the Purchased Assets.

8.2. Additional Agreements of Purchaser, Seller, and MORGAN.

8.2.1 Expenses of Transfer; Other Payments and Allocations.

a. Fees and Expenses. Each party hereto will bear its own expenses, including the fees of any attorneys, accountants, investment bankers or others engaged by such party, in connection with this Agreement and the transactions contemplated hereby, except as otherwise expressly provided herein.

8.2.2 Agreement Not to Compete. Purchaser and MORGAN agree that MORGAN is an esteemed and honored member of the community in which the KK Business is conducted and that he would have an unfair advantage over Purchaser in the event that he were to compete against Purchaser in the KK Business, whether pursuant to a franchise granted by a manufacturer or otherwise, in a wide area surrounding the KK Business. In order to induce Purchaser to enter into this Agreement, and as a valuable and essential portion of this Agreement, for the consideration described herein above in Section _____, MORGAN agrees that (a) he will not, directly or indirectly, own, operate, manage, control, participate in the ownership, management, operation of control of or be employed by or acquire any interest in or securities of or otherwise become associated with or provide assistance to, as an employee, consultant, director, officer, shareholder, partner, agent, associate, principal, representative or in any other capacity, any business entity engaged in the children's waterless sanitizing soap and shampoo business within the contiguous United States for a period of five (5) years after the Closing.

MORGAN specifically agrees that he will not, directly or indirectly, encourage, promote, financially assist, loan to, give or otherwise render any form of financial or business advice to any person, whether such person be a member of MORGAN's family or otherwise, that is involved in the children's waterless sanitizing soap and shampoo business within the contiguous United States for a period of five (5) years after the Closing.

ARTICLE IX
GENERAL PROVISIONS.

9.1 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be (a) delivered by hand; (b) mailed by registered or certified mail, return receipt requested, first class postage prepaid; or (c) sent by a nationally recognized overnight delivery service (e.g., Federal Express, Airborne Express, United Parcel Service or Express Mail), addressed as follows:

9.1.1 If to MORGAN, to:

DAVID MORGAN
755 ALBANY ST
DAYTON OHIO 45408

9.1.2 If to Purchaser, to:

EXCEL DISTRIBUTING, LLC.
5236 80th Street
Lubbock, Texas 79424

With a copy to:

LAW OFFICE OF MICHAEL H. CARPER, P.C.
1102 Main Street
Lubbock, Texas 79401
Attn: Michael H. Carper

9.1.3 If delivered personally, the date on which a notice, request, instruction or document is delivered shall be the date on which such delivery is made and, if delivered by mail or overnight delivery service, the date on which such notice, request, instruction or document is received shall be the date of delivery.

9.1.4 Any party hereto may change its address specified for notices herein by designating a new address by notice in accordance with this Section 7.1.

9.2 Brokers. Purchaser, on the one hand, and EDM and MORGAN, on the other hand, jointly and severally represent and warrant to each other that no broker or finder has acted for them or any entity controlling, controlled by or under common control with them in connection with this Agreement, and agree to indemnify and hold harmless the other against any fee, loss or expense arising out of any claim by any broker or finder employed or alleged to have been employed by them or such entity.

9.3 Further Assurances. At any time, and from time to time, after the Closing Date, each party will execute such additional instruments and take such actions as may be reasonably requested by the other parties to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement.

9.4 Waiver. Any failure on the part of any party hereto to comply with any of its obligations, agreements or conditions hereunder may be waived by any other party to whom such compliance is owed. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

9.5 Expenses. All expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of this Agreement and the Closing of the transactions contemplated hereby, including, without limitation of the generality of the foregoing, all fees and expenses of agents, representatives, counsel and accountants employed by any such party, shall be borne solely and entirely by the party which has incurred the same.

9.6 Binding Effect; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns.

9.7 Headings. The section and other headings in this Agreement are inserted solely as a matter of convenience and for reference, and are not a part of this Agreement.

9.8 Entire Agreement. This Agreement constitutes the entire agreement among the parties hereto and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, among the parties hereto relating to the transactions contemplated hereby or the subject matter herein. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an agreement in writing signed by the party against whom or which the enforcement of such change, waiver, discharge or termination is sought.

9.9 Governing Law. This Agreement (any and all disputes, controversies, and other Losses among the parties arising out of, or in connection with, the transactions contemplated hereby) shall be governed by and construed in accordance with the laws of the State of Texas.

9.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.11 Pronouns. All pronouns used herein shall be deemed to refer to the masculine, feminine or neuter gender as the context requires.

9.12 Exhibits Incorporated. All Exhibits attached hereto are incorporated herein by reference, and all blanks in such Exhibits, if any, will be filled in as required in order to consummate the transactions contemplated herein and in accordance with this Agreement.

9.13 Termination. This Agreement (except for the provisions of Section 13.7 which shall continue in effect) and the transactions contemplated hereby may be terminated and abandoned at any time prior to the Closing Date by mutual written agreement of all parties hereto;

9.14 Effect of Termination.

9.14.1 Liability in Event of Breach. If this Agreement is terminated by any party hereto on the basis of a material breach of or inaccuracy in any representation or warranty made by the other party hereto, failure of any condition or any material breach of any covenant made herein where such breach, failure or inaccuracy is deliberate or willful, the party whose breach, failure or inaccuracy is the basis of such termination shall be liable to the other parties hereto for all expenses incurred by such other parties in connection with negotiating, preparing and entering into this Agreement and the other agreements contemplated hereby and preparing to carry out the transactions contemplated hereby and by such other agreements.

9.15 WAIVER OF JURY TRIAL. IN THE EVENT OF LITIGATION RELATING TO THIS AGREEMENT, THE PARTIES HERETO WAIVE ALL RIGHT TO A TRIAL BY JURY.

9.16 Attorneys' Fees. In the event either party hereto institutes an action or other proceeding to enforce any rights arising under this Agreement, the party prevailing in such action or other

proceeding shall be paid all reasonable costs and attorneys' fees by the other party, such fees to be set by the court and not by a jury and to be included in any judgment entered in such proceeding.

9.17 Specific Performance. Purchaser, in addition to any and all remedies available to it, shall have the right to seek specific performance to enforce Seller's obligations hereunder.

9.18 Time of Essence. It is specifically understood and agreed that time is of the essence of this Agreement as to the performance of each and every one of the terms, covenants, and conditions hereof.

IN WITNESS WHEREOF, each party hereto has executed or caused this Agreement to be executed on its behalf, all on the day and year first above written.

PURCHASER:
EXCEL DISTRIBUTING, LLC, a Texas limited liability company

By: _____
Name: Jeffrey Hudnall
Title: Manager

SELLER:
EDM TECHNOLOGIES, INC., an Ohio corporation

By: David M. Morgan
Name: David M. Morgan
Title: President

David M. Morgan
DAVID M. MORGAN, Individually

NON-COMPETITION AND NON-DISCLOSURE AGREEMENT

This Non-Competition and Non-Disclosure Agreement ("Agreement") is dated as of August 16, 2005, by and among DAVID M. MORGAN, Individually and EDM TECHNOLOGIES, INC. (collectively, "Seller"), and EXCEL DISTRIBUTING, LLC, a Texas limited liability company ("Purchaser"). DAVID M. MORGAN ("MORGAN") and EDM TECHNOLOGIES, INC. are referred to herein individually as an "Obligor" and jointly as "Obligors."

RECITALS

WHEREAS, Purchaser is contemporaneously herewith purchasing the Assets from Seller pursuant to that certain Acquisition Agreement of even date herewith by and among Purchaser, and Seller (the "Purchase Agreement");

WHEREAS, Purchaser would not be willing to purchase the Assets but for the agreement of each Obligor (i) not to participate in any business activity that directly or indirectly competes with the Business, all upon and subject to the terms and conditions set forth below; and

WHEREAS, DAVID M. MORGAN shall receive, directly or indirectly, the Purchase Price or a material portion thereof as consideration for entering into and performing his obligations under this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereto hereby agree as follows:

1. *Defined Terms.* Undefined capitalized terms used herein shall have the meanings respectively ascribed to them in the Acquisition Agreement.
2. *Term.* The term of this Agreement shall be for a period commencing with the date of this Agreement and ending on the fifth (5th) anniversary of such date (the "Term").
3. *Non-Competition.* During the Term, Obligor (a) will not, directly or indirectly, own, operate, manage, control, participate in the ownership, management, operation of control of or be employed by or acquire any interest in or securities of or otherwise become associated with or provide assistance to, as an employee, consultant, director, officer, shareholder, partner, agent, associate, principal, representative or in any other capacity, any business entity that directly or indirectly is engaged in the children's waterless sanitizing soap and shampoo business within the contiguous United States of America for a period of five (5) years from and after the Closing.

MORGAN specifically agrees that he will not, directly or indirectly, encourage, promote, financially assist, loan to, give or otherwise render any form of financial or business advice to any person, whether such person be a member of MORGAN's family or otherwise, that is

involved in the children's waterless sanitizing soap and shampoo business within the contiguous United States of America for a period of five (5) years from and after the Closing.

4. *Non-Disclosure.* Each Obligor acknowledges and agrees that all files, processes, customer and member lists, software, reports, Intellectual Property, and other information of Seller (collectively, "Information") (i) are special and unique assets of extraordinary character, (ii) constitute part of the purchased Assets, and (iii) upon consummation of the Closing, have become the sole and exclusive property of Purchaser. Accordingly, each Obligor agrees that it will not, at any time and in any manner, directly or indirectly, use the Information for any purpose and/or make the Information, or allow the Information to be made, available any Person. Obligors jointly and severally warrant to Purchaser that all copies of all Information have been delivered to Purchaser and that neither Obligor retains any copies in any form of such Information. Each Obligor agrees that, if it discovers any Information in its possession after the date hereof, such Obligor promptly shall notify Purchaser in writing of such discovery and shall deliver all copies of all such Information to Purchaser. Upon Purchaser's request, each Obligor agrees to provide written certification to Purchaser that such Obligor has complied with its obligations under the immediately-preceding sentence.

5. *Reasonableness of Restrictions.* Each Obligor expressly acknowledges and agrees that the restrictions imposed by Sections 3, 4 and 5 above are (i) reasonable as to time, activity and geographic scope; (ii) necessary to enable Purchaser to enjoy fully the benefits of Seller's goodwill, which constitutes part of the Purchased Assets; and (iii) not oppressive.

6. *Unique Nature of Obligations.* The parties hereto recognize that the obligations of Obligors hereunder are special, unique and of extraordinary character. Accordingly, if any Obligor shall breach or fail to perform, or threaten to breach or fail to perform, any term, condition or duty in this Agreement required to be observed or performed by it, then in such event Purchaser shall be entitled specifically to enforce this Agreement without the posting of bond or proof of actual damages, and each Obligor agrees that it shall not oppose such relief. The remedy set forth in this Section is in addition to, and not in lieu of, any other remedies that Purchaser may have at law or in equity.

7. *Severability.* If any court of competent jurisdiction shall find any provision of this Agreement or the application thereof to any Person or circumstance to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. Upon such finding that any term or other provision is invalid or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the greatest extent possible.

8. *Entire Agreement; Modification and Waiver.* This Agreement and the Asset Purchase Agreement together constitute the entire agreement among the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, representations

and understandings of the parties in such regard. No amendment of this Agreement shall be binding unless executed in writing by the party against whom the enforcement of such amendment is sought. No waiver of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement, whether or not similar, nor shall any waiver of any provision of this Agreement in any single instance be deemed a continuing waiver of such provision.

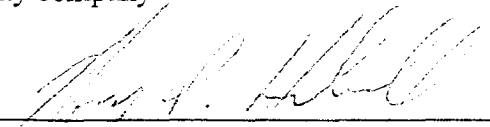
9. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. Signatures exchanged by facsimile shall be deemed to constitute original, manually-executed signatures and shall be fully binding.

10. *Governing Law.* This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Texas or of any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Texas. Each of Seller and MORGAN agrees that any suit, action or proceeding arising out of or related in any way to this Agreement or to the transactions contemplated hereby (whether sounding in contract, tort or otherwise) shall be brought solely in a court of competent jurisdiction sitting in the City of Lubbock, Lubbock County, Texas. Each of Seller and MORGAN hereby irrevocably and unconditionally consents to the jurisdiction of any such court and hereby irrevocably and unconditionally waives any defense of an inconvenient forum to the maintenance of any suit, action or proceeding in any such court, any objection to venue with respect to any such suit, action or proceeding and any right of jurisdiction on account of the place of residence or domicile of any party thereto. Each of Seller and MORGAN agrees that a final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon each of Seller and MORGAN and may be enforced in any other courts to whose jurisdiction Seller and/or MORGAN is or may be subject by suit upon such judgment. EACH OF SELLER AND MORGAN HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY CLAIM (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY ANCILLARY DOCUMENT OR ANY OF THE TRANSACTIONS RESPECTIVELY CONTEMPLATED HEREBY OR THEREBY.

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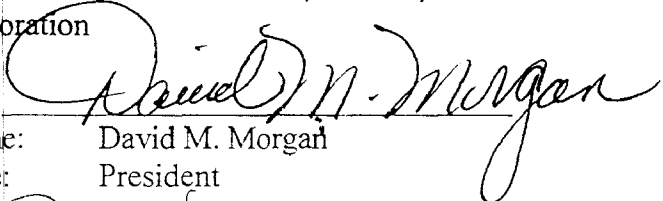
IN WITNESS WHEREOF, the parties have duly executed this Non-Competition and Non-Disclosure Agreement as of the date first above written.

EXCEL DISTRIBUTING, LLC, a Texas limited liability company

By: 
Name: Jeffrey Hudnall
Title: Manager

SELLER:

EDM TECHNOLOGIES, INC., an Ohio corporation

By: 
Name: David M. Morgan
Title: President


DAVID M. MORGAN, Individually

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,351,779

United States Patent and Trademark Office

Registered May 23, 2000

TRADEMARK
PRINCIPAL REGISTER

Kootie Killer

EDM TECHNOLOGIES, INC. (OHIO CORPORATION)
755 ALBANY ST.
DAYTON, OH 45408

FOR: CLOTHING, NAMELY, T-SHIRTS, JACKETS,
SWEAT-SHIRTS, HATS, SHORTS, PANTS, SOCKS, IN
CLASS 25 (U.S. CLS. 22 AND 39).
FIRST USE 2-18-1999; IN COMMERCE 2-18-1999.

THE DRAWING IS LINED FOR THE COLOR(S)
RED, BLUE, PURPLE, ORANGE, GREEN AND YEL-
LOW.

SER. NO. 75-723,372, FILED 6-7-1999.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY

Int. Cl.: 5

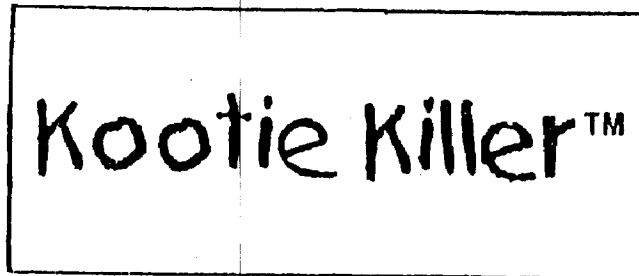
Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

Reg. No. 2,345,166

United States Patent and Trademark Office

Registered Apr. 25, 2000

**TRADEMARK
PRINCIPAL REGISTER**



EDM TECHNOLOGIES, INC. (OHIO CORPORATION)
755 ALBANY ST
DAYTON, OH 45408

THE DRAWING IS LINED FOR THE COLOR(S) RED, BLUE, PURPLE, ORANGE, GREEN AND YELLOW.

FOR: INSTANT HAND GEL SANITIZER, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).
FIRST USE 2-18-1999; IN COMMERCE 2-18-1999.

SER. NO. 75-666,021, FILED 3-23-1999.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51 and 52

Reg. No. 2,345,399

United States Patent and Trademark Office

Registered Apr. 25, 2000

TRADEMARK
PRINCIPAL REGISTER

Kootie Killer

EDM TECHNOLOGIES, INC. (OHIO CORPORATION)
755 ALBANY ST.
DAYTON, OH 45408

FOR: HAIR SHAMPOO, SKIN SOAP, IN
CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 2-18-1999; IN COMMERCE
2-18-1999.

THE MARK IS LINED FOR THE COLORS,
RED, PURPLE GREEN, ORANGE, YELLOW,
AND BLUE.

SER. NO. 75-718,638, FILED 6-1-1999.

LEIGH CAROLINE CASE, EXAMINING ATTORNEY