

02-12-2007

DEPARTMENT OF COMMERCE
Patent and Trademark Office

RECORD
TRA



103371964

To the Director of the U. S. Patent and Trademark Office

at the new address(es) below.

2-2-07

1. Name of conveying party(ies):

Freezer Queen Foods Inc.

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

Citizenship (see guidelines) U.S.

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: Home Market Foods, Inc.

Internal

Address: _____

Street Address: 140 Morgan Drive

City: Norwood

State: MA

Country: U.S. Zip: 02062

- Association Citizenship _____
- General Partnership Citizenship _____
- Limited Partnership Citizenship _____
- Corporation Citizenship Delaware
- 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)

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

Execution Date(s) November 18, 2004

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

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)

2133013; 2537356

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: Neal L. Slifkin

Internal Address: Harris Beach PLLC

Street Address: 99 Garnsey Road

City: Pittsford

State: NY Zip: 14534

Phone Number: (585) 419-8636

Fax Number: (585) 419-8812

Email Address: _____

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 65.00

- 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 08-0865

Authorized User Name _____

9. Signature:

Neal L. Slifkin
Signature

2/1/07
Date

Neal L. Slifkin

Name of Person Signing

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

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

02/09/2007 DBYRME 00000003 2133013

01 FC:8521
02 FC:8522

(40.00 OP
25.00 OP)



02-02-2007

U.S. Patent & TMO/TM 1/Mail Recpt Dt. #32

TRADEMARK
REEL: 003482 FRAME: 0359

TRADEMARK ASSIGNMENT AGREEMENT

THIS TRADEMARK ASSIGNMENT AGREEMENT (this "Agreement") dated as of November 19, 2004, by and among FREEZER QUEEN FOODS INC. a corporation organized under the laws of the State of Delaware (the "Assignor"), and HOME MARKET FOODS, INC., a corporation organized under the laws of the State of Delaware (the "Assignee").

WITNESSETH:

RECITALS.

A. Assignor owns and uses certain Trademarks (as herein defined) and Trademark Licenses (as herein defined) which are registered in the United States Patent and Trademark Office, or, if not so registered, are the subject of applications for registration filed in the United States Patent and Trademark Office, all as more fully described on Schedule I attached hereto and by reference made part hereof; and

B. Pursuant to the terms of the Asset Purchase Agreement between Assignor and Assignee dated September 24, 2004, ("Asset Purchase Agreement") the Assignor has agreed to convey: (a) all of the Assignor's goodwill, Intellectual Property, including all of the Trademarks (as herein defined)

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. For purposes of this Agreement and in addition to terms defined elsewhere in this Agreement, all capitalized terms not otherwise defined herein shall have the meaning as defined in the Asset Purchase Agreement, and the following term shall have the meaning herein specified (such meaning to be equally applicable to both the singular and plural forms of the terms defined):

"Trademarks" means all of the following: (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, logos, other source or business identifiers, and general intangibles of like nature, all registrations thereof, and all applications for registrations thereof including, without limitation, those listed on Schedule I attached hereto together with all the rights, benefits and privileges derived therefrom and the goodwill of the business symbolized thereby, (ii) all reissues, extensions or renewals thereof and (iii) all proceeds of the foregoing.

2. Pursuant to the terms of the Asset Purchase Agreement, the Assignor hereby assigns, grants and conveys to the Assignee, all of its rights, title and interest in, to and under the following (collectively, the "Property"):

(a) all goodwill of the Business;

(b) all Intellectual Property;

(c) all Trademarks; and

(d) all products and proceeds of the foregoing, including, without limitation, any claim by the Assignor against third parties for infringement of any of the Trademarks or breach of any of the Trademark Licenses.

3. In addition, pursuant to the terms of the Asset Purchase Agreement, the Assignor covenants, represents and warrants that as of the date of this Agreement:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(b) Each of the Trademarks is valid and enforceable;

(c) To the Assignor's knowledge, there is no outstanding claim, pending or threatened in writing, that the use by the Assignor of any of the Trademarks infringes the intellectual property rights of any third person;

(d) The Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, (including without limitation pledges, assignments, licenses, and covenants by the Assignor not to sue third persons); and

(e) The Assignor has the right to enter into this Agreement and perform its terms.

4. The Assignor hereby represents, covenants and warrants that, as evidenced by the letter dated November 5, 2004 from Shlesinger, Arkwright & Garvey LLP to Freezer Queen Foods Inc., which is incorporated by reference herein, and a copy of which is attached hereto: (a) it has applied to the United States Patent and Trademark Office ("PTO") for registration of the following Trademarks (collectively, the "Freezer Queen Marks") : (i) FREEZER QUEEN, for frozen entrees consisting primarily of meat, fish, poultry or vegetables, in International Class 29; and for frozen entrees consisting primarily of pasta or rice, in International Class 30 ("the FQ Application"); and (ii) FREEZER QUEEN & DESIGN, for frozen entrees consisting primarily of meat, fish, poultry or vegetables, in International Class 29; and for frozen entrees consisting primarily of pasta or rice, in International Class 30 ("the Design Application") and (B) such applications are now pending

before the PTO. Assignor agrees that until there is a final resolution of the matters pending in these applications:

(i) Assignor shall continue to use its commercial best efforts to get the FQ Application and the Design Application registered with the PTO.;

(ii) Assignor shall keep Assignee fully apprised of the progress of registration of the Trademarks; and

(iii) Assignor shall:(a) indemnify and hold the Assignee harmless from and against any claims of infringement arising out of the sale or sales by Assignee of product of the type sold as of the date hereof under the brand "Freezer Queen", and (b) pay all costs and fees arising out of any opposition or cancellation action threatened or filed with respect to FQ Application or the registration of the Freezer Queen Marks, and reimburse Assignee for all reasonable attorneys' fees it may incur associated with such opposition or cancellation action. The obligation in this clause (iii) shall terminate at such time as the Freezer Queen Marks shall have become incontestable

5. In the event a final determination is made by the PTO denying the FQ Application, the Purchase Price shall be reduced by an amount equal to the diminution in the value of the Business by reason of such denial (the "Trademark Registration Credit"). If Assignor and Assignee do not agree on the amount of the Trademark Registration Credit, then they shall use their best efforts to reconcile their respective differences, within 20 days of such denial. If unsuccessful, Assignor shall direct its independent public accounting firm, at Assignor's expense, to make a determination, within 20 days of such direction, as to such amount. If the parties do not agree on the Assignor's independent accounting firm's determination within 20 days after the preparation thereof, Assignee shall, at its expense, direct its independent public accounting firm to make a determination of such amount as promptly as possible. In the event the parties have not been able to agree within 20 days following the second such determination, then each such independent public accounting firm shall jointly select a third independent public accounting firm, which shall determine the Trademark Registration Credit and such determination shall, absent manifest error, be binding upon the parties. Assignor shall pay any Assignee the Trademark Registration Credit within ten (10) days following the determination of the amount thereof in accordance with this Section.

6. Notwithstanding anything to the contrary in this Agreement, indemnification, reimbursement or any other payment required to be made by Assignor for any matter, including, without limitation, for costs, expenses, claims, suits, losses, damages or attorneys' fees arising out of any obligation of Assignor owed to Assignee hereunder or a breach of any warranty of Assignor hereunder, or the Trademark Registration Credit as defined in section 5 of this Agreement, (all of the foregoing, collectively, "Indemnified Matters") shall be limited to, and shall not exceed, \$1,000,000 in the aggregate.

7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees. This agreement may be assigned by Assignee in connection with the transfer by Assignee of the Freezer Queen

Marks. Specifically, by way of illustration and not limitation, any subsequent transferee of the Freezer Queen Marks shall be entitled to all of the indemnities and benefits herein set forth. No assignment by Assignor of this Agreement shall relieve Assignor or the undersigned guarantor of its obligations hereunder.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed under seal by its duly authorized officers as of the date first above written.

HOME MARKET FOODS, INC.

By: Wes Atamian
Name: Wes Atamian
Title: President

FREEZER QUEEN FOODS INC.

By: Eugene G. Loney
Name:
Title: VP

The undersigned, being the parent corporation of Assignor, hereby guarantees full performance of Assignor's obligations under this Trademark Assignment Agreement.

JAMES CREAM FOODS, INC.

By: Eugene G. Loney
Name:
Title: VP
Date: 11-18-04

STATE OF New York)
COUNTY OF Schoharie) ss.:

(we) On the 18th day of November, 2004, before me personally came Wes Atamian, to me known, who being by me duly sworn, did depose and say that he is the President of HOME MARKET FOODS, INC., the corporation described in and which executed the foregoing instrument; and that he signed his/her name thereto as the act and deed of such corporation by order of the board of directors of said corporation.

[Signature]
Notary Public

MARK B. WHEELER
Notary Public, State of New York
Qualified in Tompkins County
No. 4748671
Commisison Expires 3/30/07

STATE OF New York)
) SS.:
COUNTY OF Erie)

On the 18th day of November, 2004, before me personally came Eugene Carney, to me known, who being by me duly sworn, did depose and say that he is the Vice President of JAMES CREAM FOODS, INC., the corporation described in and which executed the foregoing instrument; and that he signed his/her name thereto as the act and deed of such corporation by order of the board of directors of said corporation.

Kimberly W. Sayoc
Notary Public

KIMBERLY W. SAYOC
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Mar. 6, 20 06

STATE OF New York)
) SS.:
COUNTY OF Erie)

On the 18th day of November, 2004, before me personally came Eugene Carney, to me known, who being by me duly sworn, did depose and say that he is the Vice President of FREEZER QUEEN FOODS INC, the corporation described in and which executed the foregoing instrument; and that he signed his/her name thereto as the act and deed of such corporation by order of the board of directors of said corporation.

Kimberly W. Sayoc
Notary Public

KIMBERLY W. SAYOC
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Mar. 6, 20 06

SCHEDULE I

REGISTERED TRADEMARKS
FREEZER QUEEN FOODS INC.

United States Patent and Trademark Office

<u>Mark</u>	<u>U.S. Registration or Serial No.</u>	<u>Registration Date or Filing Date</u>	<u>Date of Reissue (where applicable)</u>
Freezer Queen	Reg. 719,742	August 8, 1961	canceled - see pending applications below
Family Buffet	Reg. 2537356	February 5, 2002	N/A
Homestyle Taste You Can Trust	Reg. 2133013	January 27, 1998	N/A

PENDING TRADEMARK APPLICATIONS
FREEZER QUEEN FOODS INC

United States Patent and Trademark Office

Trademark	Serial No.	Filing Date
Freezer Queen	76/616,177	10/15/04
Freezer Queen	76/616,176	10/15/04

SPECIAL POWER OF ATTORNEY

STATE OF NEW YORK)
) ss.:
COUNTY OF ERIE)

KNOW ALL MEN BY THESE PRESENT, that Freezer Queen Foods Inc., a corporation formed under the laws of Delaware ("Assignor"), pursuant to a Trademark Assignment Agreement, dated the date hereof (the "Trademark Assignment Agreement"), hereby assigns to Home Market Foods, Inc., all of its rights in the following trademarks, including the goodwill of the business associated therewith:

PENDING TRADEMARK APPLICATIONS
FREEZER QUEEN FOODS INC

United States Patent and Trademark Office

Trademark	Serial No.	Filing Date
Freezer Queen and Design	76/616,177	10/15/04
Freezer Queen	76/616,176	10/15/04

FREEZER QUEEN FOODS INC

By: Eugene G. Carney
Name:
Title: VP

STATE OF New York)
) ss.:
COUNTY OF Erie)

On the 18th day of November, 2004, before me personally came Eugene Carney, to me known, who being by me duly sworn, did depose and say that he is the Vice President of FREEZER QUEEN FOODS INC, the corporation described in and which executed the foregoing instrument; and that he signed his/her name thereto as the act and deed of such corporation by order of the board of directors of said corporation.

Kimberly W. Sayoc
Notary Public

KIMBERLY W. SAYOC
Notary Public, State of New York
Qualified in Erie County 16
My Commission Expires Mar. 6, 20 16

JAMES CREAN FOODS, INC.

SECRETARY'S CERTIFICATE

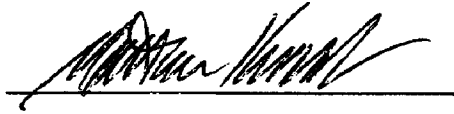
I, Eugene G. Carney, Secretary of James Crean Foods, Inc., a Delaware corporation (the "Company"), hereby certify that Matthew J. Kwasek, Jr. may, on behalf of and in the name of the Company, transact such business as he shall deem advisable upon such terms as he shall deem proper, including, but not limited to, assigning the Company's right, title and interest, if any, in the trademarks FROZEN QUEEN and FREEZER QUEEN.

I further certify that the following person is, on the date hereof, the duly qualified, elected and acting President of the Company and that the signature set forth opposite his name is his true and genuine signature.

Name

Signature

Matthew J. Kwasek, Jr.



IN WITNESS WHEREOF, I have hereunto signed my name as of this 18th day of November, 2004.

Eugene G. Carney
Eugene G. Carney, Secretary

I, Matthew Kwasek, President of the Company, hereby certify that Eugene Carney is, as of the date hereof, the duly qualified, elected and acting Secretary of the Company and that the signature set forth above is his true and genuine signature.

November
IN WITNESS WHEREOF, I have hereunto signed my name as of this 18th day of October, 2004.

Matthew Kwasek
_____, President

ASSIGNMENT AND WAIVER

For value received, the undersigned JAMES CREAN FOODS, INC., a corporation organized under the laws of the State of Delaware ("Assignor"), hereby assigns by conveys, transfers and assigns to Home Market Foods, Inc., a corporation organized under the laws of the State of Delaware ("Assignee"), the Assignor's rights, if any, in the following common law trademarks, together with the goodwill associated therewith, with no representation or warranty on the part of Assignor that it has any enforceable rights in such marks:

FROZEN QUEEN
FREEZER QUEEN

IN WITNESS WHEREOF, this Assignment and Waiver is executed this 18th day of November, 2004.

JAMES CREAN FOODS, INC.

By: Matthew Kwasek
Officer

STATE OF New York)
) ss.:
COUNTY OF Erie)

On the 18th day of NOVEMBER, 2004, before me personally came Matthew Kwasek, to me known, who being by me duly sworn, did depose and say that he is the President of James Crean Foods, Inc., the corporation described in and which executed the foregoing instrument; and that he signed his/her name thereto as the act and deed of such corporation by order of the board of directors of said corporation.

Kimberly W. Sayoc
Notary Public

KIMBERLY W. SAYOC
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Mar. 6, 20 06