

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	Trademark Security Agreement

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Koi Spa International, LLC		01/26/2007	LIMITED LIABILITY COMPANY: NEW JERSEY
Can Do, LLC		01/26/2007	LIMITED LIABILITY COMPANY: NEW JERSEY

**RECEIVING PARTY DATA**

<b>Name:</b>	Commerce Bank, N.A.
<b>Street Address:</b>	1900 Market Street
<b>City:</b>	Philadelphia
<b>State/Country:</b>	PENNSYLVANIA
<b>Postal Code:</b>	19103
<b>Entity Type:</b>	National Association:

**PROPERTY NUMBERS Total: 2**

Property Type	Number	Word Mark
Registration Number:	2957630	KOI SPA
Registration Number:	2508820	CAN DO

**CORRESPONDENCE DATA**

Fax Number: (202)756-9299  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 6099876807  
 Email: matthew.mayer@thomson.com  
 Correspondent Name: Buchanan Ingersoll & Rooney PC  
 Address Line 1: 700 Alexander Park  
 Address Line 2: Suite 300, Peter P. Ackourey, Esq.  
 Address Line 4: Princeton, NEW JERSEY 08540

<b>ATTORNEY DOCKET NUMBER:</b>	0055910/000027
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**CH \$65.00 2957630**

NAME OF SUBMITTER:	Matthew Mayer
Signature:	/Matthew Mayer/
Date:	03/02/2007

**Total Attachments: 18**

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## TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("**Agreement**") is made as of the 26<sup>th</sup> day of January, 2007, by **SMP INVESTMENTS LLC, CAN DO, LLC, CAN DO-SHORT HILLS LLC, CAN DO-EDGEWATER, LLC, CAN DO-PRINCETON LLC, KOI SPA INTERNATIONAL, LLC, KOI SPA-EDGEWATER, LLC, and KOI SPA-PRINCETON, LLC**, each a New Jersey limited liability company, with an address c/o Can Do Fitness Club, 1211 Hamburg Turnpike, Suite 229, Wayne, NJ 07470 (each, a "**Borrower**" and collectively, "**Borrowers**") and delivered to **COMMERCE BANK, N.A.** having a mailing address of 1900 Market Street, Philadelphia, Pennsylvania 19103 ("Lender").

### BACKGROUND

A. This Agreement is being executed contemporaneously with that certain Construction Loan Agreement of even date herewith between Borrowers and Lender (as it may be supplemented, restated, superseded, amended or replaced from time to time, the "**Loan Agreement**"), and a certain Security Agreement of even date herewith by Borrowers in favor of Lender (as it may be supplemented, restated, superseded, amended or replaced from time to time, the "**Security Agreement**") under which Borrowers are granting Lender a lien on and security interest in, among other things, Borrowers' trademarks, servicemarks and tradenames. Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

B. Borrowers have adopted, used and are using (or have filed applications for the registration of) the trademarks, servicemarks and tradenames listed on Schedule A attached hereto and made part hereof (all such marks or names hereinafter referred to as the "**Trademarks**").

C. Pursuant to the Loan Agreement and Security Agreement, Lender is acquiring a lien on, security interest in and a license to use the Trademarks and the registration thereof, together with all the goodwill of Borrowers associated therewith and represented thereby, as security for all of Borrowers' Obligations, and Lender desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Loan Agreement, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure Borrowers' Obligations, each Borrower grants to Lender a lien on and security interest in all of such Borrower's present and future right, title and interest in and to the Trademarks, together with all the goodwill of such Borrower associated with and represented

by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Each Borrower hereby covenants and agrees to maintain the Trademarks in full force and effect until all of Borrowers' Obligations are indefeasibly paid and satisfied in full and Lender has no remaining commitment to extend credit to any Borrower.

3. Each Borrower represents, warrants and covenants to Lender that:

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

(b) All of the Trademarks (other than application for the registration thereof which have been filed) are registered, valid and enforceable;

(c) Borrowers are the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances including, without limitation, pledges, assignments, licenses (other than to Borrowers and Lender hereunder) and covenants by Borrowers not to sue third persons;

(d) Borrowers have the unqualified right, power and authority to enter into this Agreement and perform its terms;

(e) Borrowers have complied with, and will continue for the duration of this Agreement to comply with, the requirements set forth in 15 U.S.C. §1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Trademarks except where failure to comply would not have a Material Adverse Effect on a Borrower or its Property;

(f) Borrowers have no notice of any suits or actions commenced or threatened against it, or notice of claims asserted or threatened against it, with reference to the Trademarks; and

(g) Borrowers have used and will continue to use for the duration of this Agreement, consistent standards of quality in services or products leased or sold under the Trademarks and hereby grants to Lender and its employees and agents the right (with no obligation of any kind upon Lender to do so) to visit Borrowers' affiliates, franchises or management locations and to inspect the use of the Trademarks and quality control records relating thereto at reasonable times during regular business hours to ensure Borrowers' compliance with this paragraph 3(g).

4. Each Borrower further covenants that:

(a) Until all the Borrowers' Obligations are indefeasibly paid and satisfied in full, no Borrower will enter into any agreement, including, without limitation, license agreements or options, which are inconsistent with Borrowers' obligations under this Agreement,

Borrowers' obligations under the Loan Agreement or which restrict or impair Lender's rights hereunder.

(b) If any Borrower acquires rights to any new Trademarks, the provisions of this Agreement shall automatically apply thereto and such trademarks shall be deemed part of the Trademarks. Borrowers shall give Lender prompt written notice thereof along with an amended Schedule A.

5. So long as this Agreement is in effect and so long as Borrowers have not received notice from Lender that an Event of Default has occurred and is continuing under the Loan Agreement, the Security Agreement or any other Loan Document, and that Lender has elected to exercise its rights hereunder: (i) Borrowers shall continue to have the exclusive right to use the Trademarks; and (ii) Lender shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Each Borrower agrees not to sell, grant any option, assign or further encumber its rights and interest in the Trademarks to any entity or person other than Lender without the prior written consent of Lender.

7. Anything herein contained to the contrary notwithstanding, if and while an Event of Default exists under the Loan Agreement, the Security Agreement or any other Loan Document, each Borrower hereby covenants and agrees that Lender, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect from time to time, in the State of New Jersey, may take such action permitted hereunder, in its exclusive discretion, to foreclose upon the Trademarks covered hereby. For such purposes, while an Event of Default exists, each Borrower hereby authorizes and empowers Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its exclusive discretion, as such Borrower's true and lawful attorney-in-fact, with the power to endorse such Borrower's name on all applications, documents, papers and instruments necessary for Lender to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else including, without limitation, the power to execute a Trademark Assignment in the form attached hereto as Exhibit 1. Each Borrower hereby ratifies all that such attorney or agent shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney or agent. This power of attorney shall be irrevocable for the life of this Agreement, the Security Agreement and the other Loan Documents, and until all Borrowers' Obligations are indefeasibly paid and satisfied in full and Lender has no remaining commitment to extend credit to any Borrower. Borrowers shall execute such further powers of attorney documentation as Lender may require to effectuate the provisions of this paragraph 7, in form and substance satisfactory to Lender.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and Security Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. All rights and remedies herein granted to Lender shall be in addition to any rights and remedies granted to Lender under the Loan Documents. In the event of an inconsistency between this Agreement and the Loan Agreement or Security Agreement, the language of this Agreement shall control.

10. Upon Borrowers' performance of all of the obligations under the Loan Documents and after all Borrowers' Obligations are indefeasibly paid and satisfied in full and Lender has no remaining commitment to extend credit to any Borrower, Lender shall, at Borrowers' expense, execute and deliver to Borrowers all documents reasonably necessary to terminate Lender's security interest in the Trademarks.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, in each case in accordance with the terms of this Agreement, shall be borne and paid by Borrowers on demand by Lender and until so paid shall be added to the principal amount of Borrowers' Obligations to Lender and shall bear interest at the otherwise applicable rate prescribed in the Loan Agreement.

12. Subject to the terms of the Loan Agreement and Security Agreement, Borrowers shall have the duty to prosecute diligently any application and/or registration with respect to the Trademarks pending as of the date of this Agreement or thereafter, until Borrowers' Obligations are indefeasibly paid and satisfied in full and Lender has no remaining commitment to extend credit to any Borrower, to preserve and maintain all rights in the Trademarks, and upon reasonable request of Lender, Borrowers shall make federal application on registerable but unregistered Trademarks belonging to Borrowers and licensed to Borrowers. Any reasonable expenses incurred in connection with such applications shall be borne exclusively by Borrowers. Borrowers shall not abandon any Trademarks without the prior written consent of Lender.

13. Each Borrower shall have the right to bring suit in its own name to enforce the Trademarks, in which event Lender may, if Borrowers reasonably deem it necessary, be joined as a nominal party to such suit if Lender shall have been satisfied, in its sole discretion, that it is not thereby incurring any risk of liability because of such joinder. Borrowers shall promptly, upon demand, reimburse and indemnify Lender for all damages, costs and expenses, including reasonable attorneys' fees and costs, incurred by Lender in the fulfillment of the provisions of this paragraph.

14. Upon the occurrence and during the continuance of an Event of Default under the Loan Agreement, Security Agreement or any other Loan Document, Lender may, without any obligation to do so, complete any obligation of Borrowers hereunder, in Borrowers' name or in Lender's name, but at the expense of Borrowers.

15. No course of dealing between any Borrower and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Documents, or by any other future agreements between any Borrower and Lender or by law, shall be cumulative and may be exercised singularly or concurrently.

16. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

17. THIS AGREEMENT, AND ALL MATERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND ALL RELATED AGREEMENTS AND DOCUMENTS, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF NEW JERSEY. THE PROVISIONS OF THIS AGREEMENT AND ALL OTHER AGREEMENTS AND DOCUMENTS REFERRED TO HEREIN ARE TO BE DEEMED SEVERABLE, AND THE INVALIDITY OR UNENFORCEABILITY OF ANY PROVISION SHALL NOT AFFECT OR IMPAIR THE REMAINING PROVISIONS WHICH SHALL CONTINUE IN FULL FORCE AND EFFECT.

18. Each Borrower hereby irrevocably consents to the non-exclusive jurisdiction of the Courts of the State of New Jersey or the United States District Court for the District of New Jersey in any and all actions and proceedings whether arising hereunder or under any other agreement or undertaking. Each Borrower waives any objection which any Borrower may have based upon lack of personal jurisdiction, improper venue or forum non conveniens. Each Borrower irrevocably agrees to service of process by certified mail, return receipt requested to the address of the appropriate party set forth on the signature page hereto.

19. EACH BORROWER (AND LENDER BY ITS ACCEPTANCE HEREOF) HEREBY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION, PROCEEDING OR COUNTERCLAIM ARISING WITH RESPECT TO RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO OR UNDER THE LOAN DOCUMENTS OR WITH RESPECT TO ANY CLAIMS ARISING OUT OF ANY DISCUSSIONS, NEGOTIATIONS OR COMMUNICATIONS INVOLVING OR RELATED TO ANY PROPOSED RENEWAL, EXTENSION, AMENDMENT, MODIFICATION, RESTRUCTURE, FORBEARANCE, WORKOUT, OR ENFORCEMENT OF THE TRANSACTIONS CONTEMPLATED HEREUNDER OR UNDER THE LOAN DOCUMENTS.

[SIGNATURES TO FOLLOW ON SEPARATE PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Security Agreement, the day and year first above written.

SMP INVESTMENTS LLC

By: [Signature]  
Name: Stuart M. Polevoy  
Title: Manager

CAN DO, LLC

By: [Signature]  
Name: Stuart M. Polevoy  
Title: Manager

CAN DO-SHORT HILLS LLC

By: [Signature]  
Name: Stuart M. Polevoy  
Title: Manager

CAN DO-EDGEWATER, LLC

BY: [Signature]  
NAME: Stuart M. Polevoy  
TITLE: Manager

CAN DO-PRINCETON LLC

By: [Signature]  
Name: Stuart M. Polevoy  
Title: Manager

KOI SPA INTERNATIONAL, LLC

BY: [Signature]  
NAME: Stuart M. Polevoy  
TITLE: Manager

KOI SPA-EDGEWATER, LLC

By: [Signature]  
Name: Stuart M. Polevoy  
Title: Manager

KOI SPA-PRINCETON, LLC

BY: [Signature]  
NAME: Stuart M. Polevoy  
TITLE: Manager

Address for all Borrowers:

c/o Can Do Fitness Club  
1211 Hamburg Turnpike, Suite 229  
Wayne, NJ 07470

**Approved and Accepted:**

COMMERCE BANK, N.A.

By: [Signature: Craig A. Pasko]  
Name: Craig A. Pasko  
Title: Vice President



CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF NEW JERSEY :SS  
COUNTY OF MERCER :

On this 26 day of January, 2007, before me personally appeared Stuart  
Polery, to me known and being duly sworn, deposes and says that he/she is the  
Manager of SMP INVESTMENTS LLC, the company described in the foregoing  
Agreement; that he/she signed the agreement and affixed the seal of the company thereto as such  
officer pursuant to the authority vested in him/her by law; that the within Agreement is the  
voluntary act of such company; and he/she desires the same to be recorded as such.



Notary Public

My Commission Expires:

at the end of N.J.

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF NEW JERSEY :SS  
COUNTY OF MERCER :

On this 26 day of January, 2007, before me personally appeared Stuart  
Poley, to me known and being duly sworn, deposes and says that he/she is the  
Manager of CAN DO, LLC, the company described in the foregoing Agreement;  
that he/she signed the agreement and affixed the seal of the company thereto as such officer  
pursuant to the authority vested in him/her by law; that the within Agreement is the voluntary act  
of such company; and he/she desires the same to be recorded as such.



Notary Public


My Commission Expires:

01-01-2010

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF NEW JERSEY :SS  
COUNTY OF MERCER :


On this 26 day of January, 2007, before me personally appeared Stuart  
Boley, to me known and being duly sworn, deposes and says that he/she is the  
Mayor of CAN DO-SHORT HILLS, LLC, the company described in the  
foregoing Agreement; that he/she signed the agreement and affixed the seal of the company  
thereto as such officer pursuant to the authority vested in him/her by law; that the within  
Agreement is the voluntary act of such company; and he/she desires the same to be recorded as  
such.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires:  
att-at-let of N.J.

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF NEW JERSEY :SS  
COUNTY OF MERCER :

On this 26 day of January, 2007, before me personally appeared Stuart  
Polley, to me known and being duly sworn, deposes and says that he/she is the  
Polley of CAN DO-EDGEWATER, LLC, the company described in the  
foregoing Agreement; that he/she signed the agreement and affixed the seal of the company  
thereto as such officer pursuant to the authority vested in him/her by law; that the within  
Agreement is the voluntary act of such company; and he/she desires the same to be recorded as  
such.



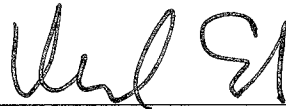
Notary Public  
My Commission Expires:

at - at - 6

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF NEW JERSEY :SS  
COUNTY OF MERCER :

On this 26 day of January, 2007, before me personally appeared STUART  
Roley, to me known and being duly sworn, deposes and says that he/she is the  
Manager of CAN DO-PRINCETON, LLC, the company described in the foregoing  
Agreement; that he/she signed the agreement and affixed the seal of the company thereto as such  
officer pursuant to the authority vested in him/her by law; that the within Agreement is the  
voluntary act of such company; and he/she desires the same to be recorded as such.



Notary Public

My Commission Expires:

MICHAEL EGBELSON  
att- at law of N.J.

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF NEW JERSEY :SS  
COUNTY OF MERCER :

On this 26 day of January, 2007, before me personally appeared STUART  
Boyer  
MANAGER, to me known and being duly sworn, deposes and says that he/she is the  
foregoing Agreement; that he/she signed the agreement and affixed the seal of the company  
thereto as such officer pursuant to the authority vested in him/her by law; that the within  
Agreement is the voluntary act of such company; and he/she desires the same to be recorded as  
such.



Notary Public

My Commission Expires:

MICHAEL EDLSON  
Conf-at-6 of N.J.

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF NEW JERSEY :SS  
COUNTY OF MERCER :

On this 21<sup>st</sup> day of January, 2007, before me personally appeared STUART  
POLOWSKY, to me known and being duly sworn, deposes and says that he/she is the  
MANAGER of KOI SPA-EDGEWATER, LLC, the company described in the  
foregoing Agreement; that he/she signed the agreement and affixed the seal of the company  
thereto as such officer pursuant to the authority vested in him/her by law; that the within  
Agreement is the voluntary act of such company; and he/she desires the same to be recorded as  
such.



Notary Public  
My Commission Expires:

at - at W - N. T.

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF NEW JERSEY :SS  
COUNTY OF MERCER :

On this 26 day of January, 2007, before me personally appeared STUART  
ROSEN, to me known and being duly sworn, deposes and says that he/she is the  
MANAGER of KOI SPA-PRINCETON, LLC, the company described in the  
foregoing Agreement; that he/she signed the agreement and affixed the seal of the company  
thereto as such officer pursuant to the authority vested in him/her by law; that the within  
Agreement is the voluntary act of such company; and he/she desires the same to be recorded as  
such.



Notary Public  
My Commission Expires:

MICHAEL EBERSON  
att- at- law of N.J.



CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF NEW JERSEY :SS  
COUNTY OF MERCER :

On this 26 day of January, 2007, before me personally appeared Craig Pasco, to me known and being duly sworn, deposes and says that he/she is the VP of COMMERCE BANK, N.A., the company described in the foregoing Agreement; that he/she signed the agreement and affixed the seal of the company thereto as such officer pursuant to the authority vested in him/her by law; that the within Agreement is the voluntary act of such company; and he/she desires the same to be recorded as such.

Mireille A. Polanco

Notary Public

My Commission Expires:

**Mireille A. Polanco**  
**Notary Public of State of NJ**  
**My commission Expires 05/2009**

Schedule A to Trademark Security Agreement

<u>BORROWER</u>	<u>TRADEMARK</u>	<u>APPLICATION OR REGISTRATION NO.</u>	<u>COUNTRY</u>	<u>FILING DATE</u>
Koi Spa International, LLC	Koi Spa	2,957,630	USA	May 14, 2003
Can Do, L.L.C.	Can Do	2,508,820	USA	January 5, 2000

**Exhibit 1 to Trademark Security Agreement**

**TRADEMARK ASSIGNMENT**

WHEREAS, [NAME OF APPLICABLE BORROWER], a \_\_\_\_\_ limited liability company ("**Grantor**"), is the registered owner of the United States trademarks, tradenames and registrations listed on Schedule "A" attached hereto and made a part hereof (the "**Trademarks**"), which are registered in the United States Patent and Trademark Office; and

WHEREAS, \_\_\_\_\_ ("Grantee") having a place of business at \_\_\_\_\_, is desirous of acquiring the Trademarks;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, all of its present and future right, title and interest in and to the Trademarks and all proceeds thereof and all goodwill associated therewith.

IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

[NAME OF APPLICABLE BORROWER]

Witness: \_\_\_\_\_

By: \_\_\_\_\_  
As Attorney-in-fact

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :  
STATE OF \_\_\_\_\_ : SS  
COUNTY OF \_\_\_\_\_ :

On this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me a Notary Public for the said County and State, personally appeared \_\_\_\_\_ known to me or satisfactorily proven to me to be attorney-in-fact on behalf of **[Name of Applicable Borrower]** (“Grantor”), and he/she acknowledged to me that he/she executed the foregoing Trademark Assignment on behalf of Grantor, and as the act and deed of Grantor for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
(Individual Notary)

My Commission Expires:

\_\_\_\_\_, \_\_\_\_\_