

03-20-2007

REI



103385131

To the Director of the U. S. Patent and Trademark Office, or to the address(es) below.

3-16-07

1. Name of conveying party(ies):

Ben Myerson Candy Co., Inc.

- Individual(s)
- General Partnership
- Corporation- State: California
- Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached?  Yes  No

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

Execution Date(s) November 1, 2006

- Assignment
- Security Agreement
- Other \_\_\_\_\_
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached?  Yes  No

Name: JELLY BELLY CANDY COMPANY

Internal Address: \_\_\_\_\_

Address: \_\_\_\_\_

Street Address: One Jelly Belly Lane

City: Fairfield

State: California

Country: USA

Zip: 94533-6741

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

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

A. Trademark Application No.(s)  
DBYRNE 00000055 1691784

B. Trademark Registration No.(s) 1691784; 1615927; 1580359; 631438; & 1292494

03/19/2007  
01 FC:852  
02 FC:852

40.00 OP  
100.00 OP

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: Charles R. Cypher

Internal Address: Suite 1607

Street Address: 405 - 14th Street

City: Oakland

State: California Zip: 94612

Phone Number: 510-832-4111

Fax Number: 510-832-4115

Email Address: ccypher@cypherlaw.com

6. Total number of applications and registrations involved:

5

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

\$ 140.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed Check No. 13322

8. Payment Information:

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number \_\_\_\_\_  
Authorized User Name \_\_\_\_\_

9. Signature:

Signature

March 14 2007  
Date

Charles R. Cypher, Attorney

Name of Person Signing

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

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

# Assignment and Assumption Agreement

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This Assignment and Assumption Agreement (the "Assignment and Assumption Agreement") is made and entered into as of November 1, 2006, by and among, Ben Myerson Candy Co., Inc., a California corporation ("Assignor"), and Jelly Belly Candy Corporation, a California corporation ("Assignee").

WHEREAS, Assignor and Assignee are parties to that certain Asset Purchase Agreement dated October 4, 2006 (the "Purchase Agreement"), pursuant to which Assignee has purchased substantially all of the assets of Assignor relating to the Candy Division (as that term is defined in the Purchase Agreement); and

WHEREAS, pursuant to the Purchase Agreement, Assignor has agreed to assign certain rights and agreements to Assignee and Assignee has agreed to assume certain obligations of Assignor, as set forth herein, and this Assignment and Assumption Agreement is contemplated by Section 2.7(a)(ii) of the Purchase Agreement;

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

Capitalized terms used but not defined herein shall have the meanings for such terms that are set forth in the Purchase Agreement.

1. Assignment. As of the Operating Date, Assignor assigns, sells, transfers and sets over (collectively, the "Assignment") to Assignee: any and all Intangible Personal Property which is owned, licensed or operated by Sellers related to the Businesses, including but not limited to:
  - 1.1. Assignor's rights under the Seller Contracts, including without limitation Trademark License Agreement dated January 1, 1997, by and between SunKist Growers, Inc. and Assignor, as amended;
  - 1.2. Assignor's rights to manufacture candy for Trader Joe's;

- 1.3. All UPC codes, including Manufacturer's Identification Codes, relating to the Products and the Businesses;
- 1.4. Data, Records, referral sources, research and development or production reports, equipment logs, operating guides and manuals, studies, reports, recipes and processes, creative, advertising or promotional materials, correspondence, personnel records;
- 1.5. Sellers' goodwill including its going concern value, telephone and facsimile numbers, e-mail addresses and listings;
- 1.6. Trade secrets including any and all information belonging to Assignor which is not known to the general public, including but not limited to customer lists, preferences and account information, internal business processes, methods, systems, financial and accounting information, marketing plans, procedures and methods, production processes, systems, formulas, ingredients and product compositions, as well as any and all personnel practices, policies and procedures;
- 1.7. Copyrights, including any and all copyright interest to any published or unpublished works enumerated within Section 102 of the Copyright Act of 1976, including but not limited to any and all Literary Works, Graphical or Sculptural Works, Mask Works, as well as any and all original works of authorship in which the copyright is either owned or licensed by Assignor;
- 1.8. All information concerning product specifications, data, know-how, formulae, recipes, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, Software and computer software and database technologies, systems, structures and architectures;
- 1.9. all information concerning the business and affairs of the Businesses (which includes historical and current stand-alone financial statements, financial projections and budgets, tax returns relating exclusively to the Businesses and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information relating to the Businesses obtained from review of the Businesses documents or property or discussions with BMCC or the Mail Order Business Owners regardless of the form of the communication;

1.10 The Trademarks set forth below:

<u>MARK</u>	<u>Registration Number</u>	<u>Registration Date</u>
AMERICA'S FINEST JELLIES®	1691784	9-Jun-92
FRUIT GEMS®	1615927	2-Oct-90
FRUIT FONDUES®	1580359	30-Jan-90
	631438	24-Jul-56
	1292494	28-Aug-84
GOOD NEWS®	656902	7-Jan-58
BIG CHERRY®	1251257	9-Sep-83

and

1.11. The Net Names set forth below:

<u>DOMAIN NAME</u>	<u>Domain-Name Registrar</u>	<u>Expiration Date</u>
SUNKISTCANDY.COM	Network Solutions, LLC	November 27, 2007
CHRISTOPHERSCANDY.COM	Network Solutions, LLC	March 1, 2011

2. Assumption. Assignees assumes all of Assignor's right, title, benefit, privileges and interest in and to, and all of Assignor's burdens, obligations and liabilities in connection with, all of the Intangible Personal Property and all other Assumed Liabilities. Assignee hereby accepts the Assignment and assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants, and to pay and discharge all of the liabilities of Assignor to be observed, performed, paid or discharged from and after the Closing, in connection with the Intangible

Personal Property. Assignee assumes no Retained Liabilities, and the parties hereto agree that all such Retained Liabilities shall remain the sole responsibility of Assignor. Assignee only assumes the Assumed Liabilities set forth on Disclosure Schedule 2.4(a) of the Asset Purchase Agreement.

3. Terms of the Purchase Agreement. The terms of the Purchase Agreement, including but not limited to Assignor's representations, warranties, covenants, agreements and indemnities relating to the Intangible Personal Property and the Assumed Liabilities, are incorporated herein by this reference. Assignor acknowledges and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.
4. Further Actions. Each of the parties hereby covenants and agrees, at its own expense, to execute and deliver, at the request of the other party hereto, such further instruments of transfer and assignment and to take such other action as such other party may reasonably request to more effectively consummate the assignments and assumptions contemplated by this Assignment and Assumption Agreement.
5. Modification. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.
6. Successors and Assigns. No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that Assignee may assign any of its rights and delegate any of its obligations under this Agreement to any subsidiary of Assignee, or any Person controlling Assignee or under common control with Assignee. Further, Assignee may collaterally assign its rights hereunder to any financial institution providing financing to Assignee. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties.
7. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
8. Headings. The headings the sections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

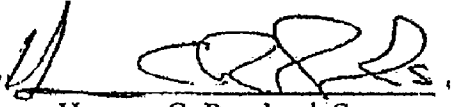
9. Governing Law. This Agreement will be governed by and construed under the laws of the State of California without regard to conflicts-of-laws principles that would require the application of any other law.

10. WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE

- 9. Governing Law. This Agreement will be governed by and construed under the laws of the State of California without regard to conflicts-of-laws principles that would require the application of any other law.
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- 11. Arbitration. Any controversy or claim arising out of or relating to this Agreement or any related agreement shall be settled by arbitration pursuant to the same Arbitration procedures set forth in Section 13.15 of the Asset Purchase Agreement.
- 12. Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement as of the date first above written.

ASSIGNOR:  
  
Ben Myerson Candy Co., Inc.,  
a California corporation  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ASSIGNEE:  
  
Jelly Belly Candy Corporation,  
a California corporation  
  
By:   
Name: Herman G. Rowland, Sr.  
Its: Chairman of the Board

9. Governing Law. This Agreement will be governed by and construed under the laws of the State of California without regard to conflicts-of-laws principles that would require the application of any other law.

10. WAIVER OF JURY TRIAL. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT OR ANY OF THE CONTEMPLATED TRANSACTIONS SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

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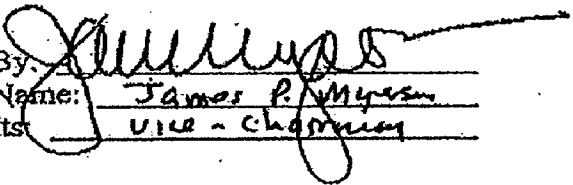
IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement as of the date first above written.

ASSIGNOR:

ASSIGNEE:

Ben Myerson Candy Co., Inc.,  
a California corporation

Jelly Belly Candy Corporation,  
a California corporation

By:   
Name: James P. Myerson  
Its: Vice - Chairman

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_