

Form PTO-1594 (Rev. 01-09)
OMB Collection 0651-0027 (exp. 02/28/09)

08-14-2009

U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office



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add documents or the new address(es) below.

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

1. Name of conveying party(ies):

Ahava Food Corp.

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

Citizenship (see guidelines)

Additional names of conveying parties attached? Yes No

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

Execution Date(s) 03/07/2008

- Assignment
- Security Agreement
- Other False assignment at 3734/0214
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Ahava Food Corp.

Internal

Address:

Street Address: 955 Browsers Point Branch

City: Hewlett Neck

State: NY

Country: USA Zip: 11598

- 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 identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2629824

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: Jonathan M. Holda

Internal Address: Ober Kaler

Street Address: 120 E. Baltimore Street

City Baltimore

State MD Zip: 21202

Phone Number 410-347-7380

Fax Number: 443-263-7580

Email Address: jmholda@ober.com

6. Total number of applications and registrations involved:

1

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

TO BE DETERMINED

- Authorized to be charged to deposit account
- Enclosed Charge Fee

8. Payment Information:

Deposit Account Number 503391

Authorized User Name J. Holda

9. Signature: /Jonathan M. Holda/

Signature

July 14, 2009

Date

Jonathan M. Holda

Name of Person Signing

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

3

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

AFFIDAVIT BY TRUE OWNER OF MARKS

Toobro NY, LLC, a New York limited liability company, (“Assignee” and “True Owner”) owns certain trademarks, service marks, trade names, trade dress, and similar rights, including those certain federally applied-for marks listed on Exhibit A, attached hereto and made a part hereof (collectively, with all applications/registrations and all goodwill associated therewith, “Marks”).

The True Owner acquired its ownership through a previously unrecorded 2005 security agreement (collateral assignment) by Ahava Food Corp. to Signature Bank, a previously unrecorded 2008 assignment by Signature Bank to SB AFLCSLSS, LLC, and a 2009 purchase of all the assets of Ahava Food Corp. and related parties, and the 2009 assignment by SB AFLCSLSS, LLC, to the True Owner, Exhibit A (which is being recorded contemporaneously with this affidavit). True copies of the security agreement, the 2008 assignment, and the 2009 purchase of all assets are Exhibits B, C, and D, attached hereto and made a part hereof. The effectiveness of Signature Bank’s Uniform Commercial Code foreclosure sale is established by the 2007 Forbearance Agreement between Ahava Food Corporation, et al., and Signature Bank and the 2008 Judgment against Ahava Food Corporation, et al., in favor of Signature Bank. True copies thereof are Exhibits E and F, attached hereto and made a part hereof.

The original registrants, or the last correct assignee of record as detailed above, continued to be the true owner of the applications or registrations at issue until the pending 2009 assignment to the True Owner.

The True Owner has also acquired full ownership of Ahava Food Corp., the last bona fide owner of record of the Marks, pursuant to an order (Doc. No. 177) entered February 23, 2009 by the United States Bankruptcy Court for the Northern District of New York in *In re Moise Banayan*, Case No. 08-60954-6 approving the sale by the bankruptcy trustee of the stock in Ahava Food Corp. to the True Owner. The order approving the stock sale (and the underlying motion and asset sale agreement), and the stock certificate and endorsement are Exhibits G and H, attached hereto and made a part hereof.

A false record title was created in 2008 by the transfer of some Marks by Ahava Food Corp. to Ahava of California (“AOC”). A copy of that 2008 assignment is Exhibit I, attached hereto and incorporated by reference. The record is false for at least two reasons.

First, as True Owner, Toobro’s title dates to the 2005 collateral assignment by the then record owner to Signature Bank, which is substantially prior to the 2008 transfer to AOC.

Second, the 2008 transfer to AOC was void as to Signature Bank and its successor, Toobro as the True Owner. The history of the transfers to seek to defeat the

liens of Signature Bank and American Equities Group (AEG)(an earlier lender) was explained in two different bankruptcy cases. In *In re Banayan*, Case No. 08-60954-6 (Bnkr. N.D.N.Y.), Gary Eisenberg's affidavit summarized the hindrance of Signature Bank. (Doc. No. 14). In *In re Ahava of California, LLC*, Case No. 08-20524 (Bnkr. C.D.CA), Joseph F. Fields summarized the hindrance of AEG. (Doc. No. 289)(extensive exhibits filed with court) Both financial institutions claimed the transfers to AOC were fraudulent and void. That the Banayan Bankruptcy Court authorized the sale of all the stock to the True Owner. AOC Bankruptcy Court is found in its January 7, 2009 order (Doc. No. 284) that the AOC bankruptcy case be dismissed as a bad faith filing, that AOC be enjoined from re-filing for one year, effectively returning the dispute to New York. Mr. Banayan and the three dairy facilities are in New York state. The two affidavits and the Bankruptcy Court order are Exhibits J, K and L, attached hereto and incorporated by reference.

Mendy Bistrizky makes this affidavit and is over 18 years of age, is competent to testify as a witness, and has personal knowledge of the facts stated herein from personal communications with Moise Banayan, representatives of AOC and Signature Bank and from examination of the documentation, some of which are attached as exhibits. His business address is 955 Browers Point Branch, Woodmere, New York 11598. He is a manager of the True Owner and is responsible for the Marks and the relationship with AOC. The exhibits to this affidavit are transactional documents for transactions in which he personally participated or copies of court pleadings and court exhibits that he received from counsel or the court file.

A representative of AOC and I have had many communications about the business in many different contexts. AOC is unwilling to file corrective papers. Consequently, the True Owner submits these papers to correct the error (or at least give it public notice) pursuant to Trademark Manual of Examining Procedure (5th Ed.) § 503.06(c).

I SOLEMNLY AFFIRM under the penalties of perjury that on personal knowledge as described herein the matters set forth in this affidavit are true to the best of his knowledge, information, and belief.

Date: June 18, 2009


Mendy Bistrizky