

Form PTO-1594 (Rev. 01-09)  
OMB Collection 0661-0027 (exp. 02/28)

09-25-2009

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



R: 6/25/09

To the Director of the U. S. Patent &

Documents or the new address(es) below.

103575217

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) 6/18/09

- Assignment
- Security Agreement
- Other As the assignment at 3734/0721 WHICH
- Merger
- Change of Name

4. Application number(s) or registration number(s) and

A. Trademark Application No.(s) ERRONEOUSLY  
AFFECTS TITLE

Identification or description of the Trademark.  
B. Trademark Registration No.(s)  
1820789, 1925643, 2159177, 2283410, 2716873, 2795127, 2404337,  
2960129, 2721299, 3038963, 3038963

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: jholda@ober.com

6. Total number of applications and registrations involved:

11

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 290.00

TO BE DETERMINED

- Authorized to be charged to deposit account
- Enclosed

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 (703) 271-0140, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

09/25/2009 DBYRNE  
Sale Ref: 00000031  
01 FC:8521  
02 FC:8522  
00000013 503391 1925643  
DAH: 503391 1925643  
40.00 DA  
250.00 DA

SCHEDULE OF TRADEMARKS

<u>Trademark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
NEW SQUARE	1925643	10-10-1995
MORNING SELECT	1820739	2-8-1994
AHAVA	3038963	1-10-2006
OF GOLAN	2960129	6-7-2005
BEST MOOO	2795127	12-16-2003
ACHUZA	2283410	10-5-1999
THE HEIGHT OF GOOD TASTE	2404337	11-14-2000
YOU CAN'T CHOOSE A BETTER MILK	2159177	5-19-1998
SLIM U	2716873	5-20-2003
FRUIT YOGLICIOUS	3349275	12-4-2007
GIDEON	2721299	6-3-2003

RECORDED: 03/07/2008 00.1

TRADEMARK  
REEL: 003734 FRAME: 0224

TRADEMARK  
REEL: 004069 FRAME: 0066

**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. 08-60934-6 (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 (5<sup>th</sup> 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

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	NUNC PRO TUNC ASSIGNMENT
EFFECTIVE DATE:	02/20/2008

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Ahava Food Corp.		03/06/2008	CORPORATION:

**RECEIVING PARTY DATA**

Name:	Ahava of California, LLC
Street Address:	908 Rose Avenue
City:	Venice
State/Country:	CALIFORNIA
Postal Code:	90291
Entity Type:	LIMITED LIABILITY COMPANY:

**PROPERTY NUMBERS Total: 11**

Property Type	Number	Word Mark
Registration Number:	1925643	NEW SQUARE
Registration Number:	1820739	MORNING SELECT
Registration Number:	3038963	AHAVA
Registration Number:	2960129	OF GOLAN
Registration Number:	2795127	BEST MOOO
Registration Number:	2283410	ACHUZA
Registration Number:	2404337	THE HEIGHT OF GOOD TASTE
Registration Number:	2159177	YOU CAN'T CHOOSE A BETTER MILK
Registration Number:	2716873	SLIM U
Registration Number:	3349275	FRUIT YOGLICIOUS
Registration Number:	2721299	GIDEON

**CORRESPONDENCE DATA**

**900101018**

**TRADEMARK  
 REEL: 003734 FRAME: 0221**

**TRADEMARK  
 REEL: 004069 FRAME: 0069**

**OP \$290.00 1925643**

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Email: walker.christina@arentfox.com, klein.sheldon@arentfox.com,  
tmdocket@arentfox.com

Correspondent Name: Christina R. Walker

Address Line 1: 1050 Connecticut Avenue, NW

Address Line 4: Washington, DISTRICT OF COLUMBIA 20036

ATTORNEY DOCKET NUMBER:

021288.00000

NAME OF SUBMITTER:

Christina R. Walker

Signature:

/Christina R. Walker/

Date:

03/07/2008

Total Attachments: 2

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**TRADEMARK**  
**REEL: 003734 FRAME: 0222**

**TRADEMARK**  
**REEL: 004069 FRAME: 0070**

# TRADEMARK ASSIGNMENT

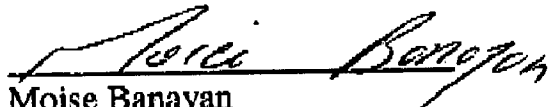
WHEREAS, AHAVA FOOD CORP., a New York corporation, having its principal place of business at 110 Beard Street, Brooklyn, New York 11231 (hereinafter "Assignor"), has adopted, used and is using the trademarks listed in the attached Schedule of Trademarks (the "Marks"); has registered the Marks in the United States Patent and Trademark Office under the registration numbers listed in the Schedule of Trademarks; and is the sole owner of the entire right, title and interest in and to the Marks and the registrations therefor, together with the good will of the business symbolized by the Marks; and

WHEREAS, AHAVA OF CALIFORNIA, LLC, a California limited liability company, having its principal place of business at 908 Rose Avenue, Venice, California 90291 (hereinafter "Assignee"), desires to acquire the entire right, title and interest in and to the Marks, together with the good will of the business symbolized thereby and the registrations therefor.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby sell, assign and transfer to said Assignee, and its successors and assigns, *nunc pro tunc*, as of February 20, 2008, the entire right, title and interest in and to the Marks, together with the good will of the business symbolized thereby, and the United States Trademark registrations therefor, as listed in the attached Schedule of Marks.

AHAVA FOOD CORP.

By:

  
Moise Banayan  
President

Date: 03/06/08

RPP/246900.1

TRADEMARK  
REEL: 003734 FRAME: 0223

RECORDED: 06/25/2009

TRADEMARK  
REEL: 004069 FRAME: 0071