

08-24-2001

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)



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

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Y. 2001

MONTEREY, INC. - Wisconsin
CORP.

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

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)

Name: M.F. New York

Internal Address: SUITE 704

Street Address: 463 7th AVE

City: NY State: NY Zip: 10018

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State _____
- Other L.L.C.

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)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

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

Execution Date: 2/9/2001

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2285450 -
2062687

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: CHARLES DETRIZIO

Internal Address: KING + SPADING

Street Address: 1185 6th Ave

City: NY State: NY Zip: 10036

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41).....\$ 70.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

DAVID VISCOME, ESQ
Name of Person Signing

[Signature]
Signature

7/5/01
Date

Total number of pages including cover sheet, attachments, and document: 1

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

08/23/2001 GTQ11: 00000262 2285450

01 FC:481 40.00 OP
02 FC:482 25.00 OP

TRADEMARK
REEL: 002354 FRAME: 0620

is only transferring any rights of Buyer regarding the Mark "Denali" as used in connection with apparel and Seller is reserving to Seller all rights and trademark registrations with respect to the name "Denali" in all other respects, including, but not limited to, the use of the same in connection with home furnishings;

- E. The Agreement of Lease, dated as of February 24, 1995, by and between The Arsenal Company and the Seller, as amended by the Amendment to Lease and Rider Agreement, dated as of June 28, 1995, and by the Notification Agreement, dated as of June 3, 1998, pursuant to which the Seller is the Lessee of certain showroom and other space located at 463 7th Avenue, Suites 702 and 704, New York, New York (the "New York Showroom Lease");
- F. All telephone and telecopier numbers and post office boxes utilized by the Seller in connection with the operation of the Subject Business at the premises that is subject to the New York Showroom Lease (all collectively the "Telephone, Telecopier and Post Office Boxes");
- G. The items used in the design sample shop in Janesville, Wisconsin as listed on the attached Schedule 1(g) (the "Janesville Design Equipment"); and
- H. The Assigned Contracts (as hereinafter defined).

Except as specifically set forth in this section 1, Buyer is acquiring no other assets of the Seller or the Subject Business.

Notwithstanding anything in this Agreement to the contrary, Seller is not transferring all of Seller's assets utilized by Seller regarding the Subject Business. For example, by way of illustration and not by way of limitation, Seller is not transferring to Buyer any Accounts Receivable or deposits in banks or other institutions (other than the Security Deposit under the New York Showroom Lease).

1.2 Bill of Sale and Assignment Agreement. On the Closing Date, (a) Seller will execute and deliver to Buyer the Bill of Sale in substantially the form attached as Exhibit A and (b) each of Seller and Buyer shall execute and deliver to the other party hereto the Assignment and Assumption Agreement, substantially in the form attached hereto as Exhibit B (the "Assignment Agreement").

1.3 Taxes. Any unpaid personal property tax regarding the Transferred Assets arising or accruing on or before December 31, 2000 shall be paid by Seller. Any unpaid personal property tax regarding the Transferred Assets arising or accruing on or after January 1, 2001 shall be paid by Buyer. Sales tax arising with respect to the transfer of the Transferred Assets hereunder, if any, shall be paid by Buyer. Seller agrees promptly following Closing to file with the Wisconsin Department of Revenue form S-211 indicating Buyer's intent to resell the Finished Goods Inventory and NonFinished Goods Inventory so as to qualify the sale of the same as exempt from sales tax. Buyer shall be responsible to file any other notice or document or to obtain any other approval or pay any tax assessed by the State of New York with respect to the transfer of the Transferred Assets hereunder.

ARTICLE 2

2.1 Liabilities. Except as provided in this Agreement, Buyer is not assuming (a) any Liability of Seller of any kind, nature or type whatsoever, not related to the Subject Business, (b) any Liability arising from, or in connection with, the Transferred Assets (or the ownership, holding, use or operation thereof by the Seller

or any affiliate or independent contractor thereof) arising on or before December 31, 2000, or the Subject Business (or the Seller's operation thereof) arising on or before December 31, 2000, or (c) any other Liability (any such Liability set forth in the foregoing clause (a), (b), or (c), an "Excluded Liability").

2.2 Assigned Contracts. At Closing, Seller shall, pursuant to the terms of the Assignment Agreement, assign and transfer to Buyer all of its right, title and interest in and to the following assigned contracts (the "Assigned Contracts") and Buyer will hold Seller harmless from and against any and all damages, losses, deficiency, actions, demands, judgments, costs and expenses (including reasonable attorney's and accountant's fees) with respect to any and all obligations and liabilities initially arising after December 31, 2000 under any of the Assigned Contracts and Buyer's commitments under this section shall survive the Closing:

- A. New York Showroom Lease.
- B. The Telephone, Telecopier and Post Office Boxes.
- C. All operational costs arising after December 31, 2000 regarding the Showroom and other space located at 463 7th Avenue, Suites 702 and 704, New York, New York (the "New York Showroom"), including but not limited to electrical charges, water charges, real estate tax contribution, janitorial service and all other similar charges and services.
- D. Buyer agrees immediately after Closing to enter into a new lease with Minolta Business Solutions ("Minolta") or take other appropriate and commercially reasonable action so as to relieve Seller of any liability arising after December 31, 2000 with respect to the photocopier machine lease by and between Seller and Minolta ("Photocopier Lease"). Alternatively, if Buyer elects in writing to Seller prior to Closing not to continue to use the Photocopier, then Seller will notify Minolta that the Photocopier will be returned and Seller will be responsible for the return charges and lease cancellation fees while Buyer shall be responsible for and will immediately reimburse Seller for the rental charges under the Photocopier Lease and operational charges with respect to the Photocopier from January 1, 2001 through the date the Photocopier is returned. Buyer acknowledges that Seller does not have the unilateral right to outright assign this lease to Buyer and Buyer acknowledges that Buyer has been in contact with Minolta with respect to a new lease or an outright purchase of this Photocopier.

As used in this Agreement, the term "New York Showroom Operational Costs" shall include the items set forth in clause C above and the Operational Charges set forth in clause D above and also all charges, costs and expenses arising after December 31, 2000 with respect to the New York Showroom Lease and also the Telephone, Telecopier, Post Office Boxes and the Photocopier Lease.

ARTICLE 3

3.1 Purchase Price. The purchase price for the Transferred Assets will be an amount equal to \$824,040.51 (The "Purchase Price"). The parties will allocate the Purchase Price among the Transferred Assets in accordance with Schedule 3.1 attached. Buyer and Seller agree that they will report this transaction for income tax purposes in accordance with such allocation and not otherwise take any position inconsistent with such allocation. The Purchase Price shall be decreased by the amount paid by Buyer and received by Seller for Finished Goods Inventory and NonFinished Goods Inventory purchased by Buyer from

Seller prior to the Closing (such amount, the "Purchase Price Adjustment"). As of the signing of this Agreement, Buyer has not purchased any Finished Goods Inventory from Seller.

3.2 Payment of the Purchase Price. Buyer will pay the Purchase Price to Seller at Closing as follows:

- A. Cash.** By Buyer initiating a wire transfer to Seller in the amount of \$65,000 before the end of the business day on February 9, 2001 so that it is received by Seller no later than the end of business on February 12, 2001 (the "Initial Payment") and by Buyer's delivery of a certified check or wire transfer payable to Seller in the amount of \$624,040.51 minus (x) the Initial Payment, minus (y) the Purchase Price Adjustment, if any, minus (z) the Extension Payment (as hereinafter defined), if made; and
- B. Promissory Note.** \$200,000 by Buyer's execution and delivery of Buyer's Promissory Note, in the original aggregate principal amount thereof, which Note shall be in substantially the same form as Exhibit C attached hereto and incorporated herein.

Seller acknowledges that effective as of such payment of the Purchase Price, all right, title and interest in, to, and under, the Transferred Assets, including, but not limited to, with respect to all amounts due to or to be received under the Assigned Contracts, will not be owned by Seller.

3.3 Pre-Closing New York Showroom Operational Costs. Buyer shall pay to Seller so that Seller has received the wire transfer by February 19, 2001 for the following amounts related to the following items, none of which shall be refundable to Buyer even if this transaction fails to close:

Vendor Name	Date	Invoice No.	Amount
Adams Company	01/01/2001	010101	\$12,095.05
Adams Company	02/02/2001	020101	\$11,219.88
Snowbird	12/31/2000	SB2201268	\$ 91.50
Minolta	12/07/2000	0623480010102	\$ 250.04
All in One	01/17/2001	085838	\$ 170.13
All in One	01/08/2001	085605	<u>\$ 159.30</u>
		TOTAL	\$23,985.90

Buyer will also pay when due and before Closing any and all other New York Showroom Operational Costs arising after December 31, 2000.

Notwithstanding any other provision hereof, Buyer shall have no responsibility for any New York Showroom Operational Costs that have been requested by Seller subsequent to December 31, 2000 unless Buyer has consented to the same (the "Excluded Costs").

ARTICLE 4

4.1 Time and Place of Closing. The closing of the purchase and sale contemplated in this Agreement ("Closing") will take place at 1725 East Delavan Drive, Janesville, Wisconsin on February 28, 2001 (the "Closing Date") or at such other time and place as the parties will mutually agree, subject to the fulfillment at or prior to the Closing of each of the conditions set forth in this Article 4 and Article 7 hereof to the reasonable satisfaction of each of the Buyer and the Seller. Buyer shall have the right to amend and

extend the Closing Date (which amended and extended Closing Date shall thereafter by the "Closing Date" as used herein) set forth in the first sentence of this paragraph to March 14, 2001, by paying to Seller on or before February 28, 2001 a nonrefundable earnest money payment to Seller in the amount of \$64,000 (the "Extension Payment"), which amount will be applied to the Purchase Price at the time of Closing.

4.2 Seller's Deliveries at Closing. At Closing, the Seller will deliver to Buyer the following documents duly executed by the Seller:

- A. The Bill of Sale, substantially in the form attached hereto as Exhibit A; and
- B. The Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit B.

4.3 Buyer's Deliveries at Closing. At Closing, Buyer will deliver the cash Purchase Price in the manner described in Section 3.1 above and the following documents duly executed by Buyer:

- A. The Assignment and Assumption Agreement, substantially in the form attached hereto as Exhibit B; and
- B. The Promissory Note, substantially in the form attached hereto as Exhibit C.

4.4 Conditions to Obligations of the Buyer. In addition to the fulfillment of the conditions set forth in Sections 4.2 and 4.3 hereof, the obligation of Buyer to consummate the transactions contemplated by this Agreement and the other instruments and agreements contemplated hereby (the "Transaction Documents") to which it is a party on and following (as applicable) the Closing Date is subject to the fulfillment at or prior to the Closing of each of the following additional conditions to the reasonable satisfaction of the Buyer.

- A. The representations and warranties of the Seller set forth herein and in the Transaction Documents shall be true and correct in all material respects at and as of the Closing Date.
- B. All waivers, consents and other approvals of third parties with respect to the transactions contemplated hereby and by the Transaction Documents shall have been obtained.

4.5 Failure To Close. Within five days following the signing this Agreement, Buyer shall deliver to Seller a key to the New York Showroom. If the transactions contemplated by this Agreement do not close on or before the Closing Date, and the reason for such closing not occurring by the Closing Date is not the breach of this Agreement by Seller, then Buyer will no later than two business days following the Closing Date or earlier termination voluntarily vacate the New York Showroom and remove Buyer's personal property therefrom and leave all of Seller's personal property in the New York Showroom.

ARTICLE 5

5.1 Representations and Warranties of Seller. In order to induce the Buyer to enter into this Agreement and to purchase the Transferred Assets and engage in the other transactions contemplated hereby and by the Transaction Documents to which it is a party, Seller represents and warrants to Buyer the following facts, which are true and correct on the date hereof and will be true and correct as of the Closing Date and each shall survive the Closing:

- A. Authorization for Agreement.** The execution, delivery and performance of this Agreement and the Transaction Documents by Seller and the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate proceedings on the part of Seller and this Agreement is and any documents or instruments executed by Seller pursuant hereto will be the legal, valid and binding obligation of Seller enforceable in accordance with its terms.
- B. Corporate.** The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin. The Seller has full corporate power and authority (i) to own its assets (including the Transferred Assets) and carry on its business as now being conducted and (ii) to consummate or cause to be consummated the transactions and to fulfill or cause to be fulfilled all obligations contemplated by this Agreement and the Transaction Documents.
- C. No Violation, Breach or Conflict.** To the best of Seller's president's knowledge and except as otherwise referred to in this Agreement, the execution and delivery by the Seller of this Agreement and each Transaction Document, the consummation of the transactions contemplated hereby and thereby by Seller and the compliance by Seller with the terms and provisions hereof and thereof shall not (i) conflict with, result in a breach or violation of, or require any consent under the certificate of incorporation or other governing documents of Seller, any lease or other contract or instrument to which Seller is a party or by which Seller is bound or to which Seller or any Transferred Asset is subject, (ii) constitute a default under, or grounds for termination of, any such lease, other contract or instrument, (iii) result in the creation or imposition of any lien upon the Transferred Assets or any revenues or other asset of Seller pursuant to the terms of any such lease, other contract or instrument or otherwise or (iv) conflict with, constitute a default under, or result in a breach or violation of or grounds for termination of, any governmental or third-party approval or license to which Seller or any Transferred Asset is subject or by which Seller may be bound.
- D. Transferred Assets.** To the best of Seller's president's knowledge and except as otherwise referred to in this Agreement, Seller solely owns, leases or has the legal right to use all the Transferred Assets, and, with respect to the Assigned Contracts, is a party to and enjoys the right to the benefits of such Contracts in accordance with their respective terms. To the best of Seller's president's knowledge and except as otherwise referred to in this Agreement, Seller solely owns and has good, marketable and insurable title to, or has valid and subsisting leasehold interests or licensee rights in, the Transferred Assets, all free and clear of all liens.
- E. Compliance with Laws.** Seller has not received any notice that it or the Transferred Assets are not in compliance in all material respects with, all applicable laws.

ARTICLE 6

6.1 Representations and Warranties of Buyer. In order to induce the Seller to enter into this Agreement, and to sell the Transferred Assets and engage in the other transactions contemplated hereby and by the Transaction Documents to which it is a party, Buyer represents and warrants to Seller the following facts, which are true and correct on the date hereof and will be true and correct as of the Closing Date and each shall survive the Closing:

- A. Authorization for Agreement.** The execution, delivery and performance of this Agreement by Buyer and the transactions contemplated hereby have been duly authorized by all necessary corporate proceedings on the part of Buyer and this Agreement is and any documents or instruments executed by Buyer pursuant hereto

will be the legal, valid and binding obligation of Buyer enforceable in accordance with its terms.

- B. **Corporate.** The Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.
- C. **Inspection.** Buyer is generally familiar with all of the Transferred Assets.
- D. **As Is.** Buyer acknowledges and agrees that the Transferred Assets are being transferred in "AS IS" condition.
- E. **Disclaimer of Implied Warranties.** Buyer acknowledges and agrees that, except for the representations and warranties of Seller set forth herein, the Transferred Assets are being transferred to Buyer without any implied warranties, including, but not limited to, any warranty of fitness for a particular purpose.
- F. **DENALI Indemnification.** Buyer acknowledges that even though Seller has a trademark registration file regarding the DENALI mark, The North Face, Inc. ("North Face") has asserted superior rights with respect to the DENALI mark on clothing and has assumed that Seller will make no further use of the DENALI mark on clothing. Should Buyer continue to use the DENALI mark, Buyer will indemnify and hold harmless Seller and its officers, employees and agents from and against any and all claims and actions, liabilities, damages, costs and expenses (including reasonable attorney's fees) related to, arising out of, or resulting from any obligation or liability with respect to the DENALI mark or use thereof after December 31, 2000. Seller will indemnify and hold harmless Buyer and its officers, employers and agents from and against any and all claims and actions, liabilities, damages, costs and expenses (including reasonable attorneys' fees) related to, arising out of, or resulting from any obligation or liability with respect to the DENALI mark or use thereof prior to January 1, 2001.
- G. **Balance Sheet.** At least two business days prior to Closing, Buyer will provide Seller with a complete copy of the Balance Sheet of Buyer as it will exist as of the Closing Date and the same will be prepared in accordance with generally accepted accounting principals and will fairly reflect the financial condition of Buyer as of the Closing Date. Buyer does not anticipate incurring any obligation or liability except as reflected on the Balance Sheet or except in connection with the performance of this Agreement or in the ordinary course of Buyer's business. Buyer acknowledges that Seller is relying upon the Balance Sheet to accurately reflect Buyer's financial condition with respect to the credit being extended to Buyer under this Agreement. Provided any amount remains unpaid on the Promissory Note attached as Exhibit C as of March 1, 2002, then Buyer will provide Seller with a copy of Buyer's audited financial statements for Buyer's operations for the period ended December 31, 2001.

ARTICLE 7

7.1 Conditions to Obligations of the Seller. In addition to the fulfillment of the conditions as set forth in Sections 4.2 and 4.3 hereof, the obligation of Seller to consummate the transactions contemplated by this Agreement and the other instruments and agreements contemplated by the Transaction Documents is subject to the fulfillment at or prior to the Closing of each of the following additional conditions to the reasonable satisfaction of Seller:

- A. The representations and warranties of Buyer set forth herein and in the Transaction Documents shall be true and correct in all material respects at and as of the Closing Date.
- B. All waivers, consents and other approvals of third parties with respect to the transactions contemplated hereby and by the Transaction Documents shall have been obtained, including, but not limited to, the consent to the assignment by the Landlord under the New York Showroom Lease.

ARTICLE 8

8.1 Conduct Subsequent to Closing.

- A. **Possession of Finished Goods Inventory.** Seller agrees to store up through the date 30 days following the Closing, but in no event later than March 15, 2001 the ("Final Free Storage Date"), at no charge at Seller's facilities in Janesville, Wisconsin, any or all of the Finished Goods Inventory and the NonFinished Goods Inventory purchased at Closing. On or before the date five days prior to the Final Free Storage Date and not later than two business days prior to the date of shipment, Buyer will notify Seller in writing as to the shipping arrangements Buyer has made for the transfer of the possession of said items to Buyer. Buyer will pay all of the freight and costs of shipping of said items. When notified of the shipping arrangements, Seller agrees to box up the Finished Goods Inventory and NonFinished Goods Inventory in accordance with customary industry practices for packaging and shipping said items in bulk boxes for receiving by Buyer and cause such filled boxes to be ready for pick up by no later than the shipping time set forth in and accordance with all other terms of such shipping arrangements. For any of said items not removed from Seller's premises by the Final Free Storage Date and provided such nonremoval is not the result of Seller's failure to perform its obligations under this Section 8.1(A), Buyer will pay Seller a holdover storage amount of \$1,000 per day. Buyer acknowledges that the Finished Goods Inventory have been boxed up since the end of January, 2001 and the longer said items remain boxed up, the more wrinkled they will become. Buyer also acknowledges that there might be some minor discrepancies in the actual counts of the Finished Goods Inventory and/or NonFinished Goods Inventory items and Buyer will accept the same without requesting any set off or deduction provided that the discrepancies do not exceed in the aggregate a value of \$4,500 in accordance with Schedule 1(b) and 1(c). In the event of discrepancies exceeding such value, Seller shall promptly reimburse such amount to Buyer
- B. **Possession of the Janesville Design Equipment.** Seller agrees to store up through the Final Free Storage Date, at no charge, at Seller's facility in Janesville, Wisconsin, the Janesville Design Equipment. On or before the Final Free Storage Date, Buyer will make arrangements to package up and remove the Janesville Design Equipment at Buyer's expense and Buyer will pay all of the freight and costs of shipping. Buyer will notify Seller in writing at least two business days prior to the day on which Buyer intends to pick up these items so that Seller may be involved with the same and so that the parties may mutually agree on what is to be removed.
- C. **Finished Goods Returns.** Buyer agrees to purchase from Monterey and immediately pay for any and all returns (other than any severely damaged products such that they are not resellable even as damaged goods and any DUFFEL products) received by Monterey after Closing of coats shipped by Seller to customers prior to the Closing Date, including, but not limited to, DENALI products and COUNTRY WOODS products at a price of \$10.00 per item.

FEB-09-2001 15:43

KING & SPALDING

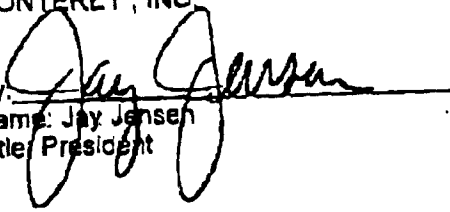
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- F. **Counterparts.** This Agreement may be executed in two or more counterparts each of which shall be deemed an original but all of which together shall constitute but one and the same instrument.
- G. **Headings.** The headings used in this Agreement are for convenience only and shall not constitute a part of this Agreement.
- H. **Accounting and Legal Fees; Expenses.** Buyer and Seller will each bear their own accounting and legal fees and other expenses in connection with the negotiation and execution of this Agreement.
- I. **Severability.** The parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative, the Agreement shall be construed with the invalid or inoperative provision deleted and the rights and obligations of the parties shall be construed and enforced accordingly.
- J. **Notices.** All notices, demands, or other communications given under this Agreement shall be in writing, and shall be either hand-delivered or mailed postage prepaid, to Buyer at 483 7th Avenue, Suite 704, New York, NY 10018 (with a copy to Charles S. Detrizio, Esq., King & Spalding, 1185 Avenue of the Americas, New York, New York 10036), and to Seller at 1725 East Delavan Drive, Janesville, Wisconsin 53545, with a copy to Attorney John W. Holzuter at 303 East Court Street, Janesville, Wisconsin 53545. Either party, by written notice to the other, change the place to which all further notices to said party shall be sent.
- K. **Facsimile Signatures.** Any signed document transmitted by facsimile machine (fax) shall be treated in all manner and respects as an original document and the signature of a party upon a document transmitted by fax shall be considered an original signature and the parties agree to promptly follow up in the fax signature with originally executed documents.

M.P. NEW YORK, LLC

By: 
Name: Donald Eatz
Title: Managing Member

MONTEREY, INC

By: 
Name: Jay Jensen
Title: President