

02-11-2003



Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005)

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

102361063

Tab settings

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

1. Name of conveying party(ies): Kaiser Foundation Hospitals
Individual(s) Association General Partnership Limited Partnership Corporation-State California Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) Name: Yummy Foods, LLC Internal Address: Street Address: 7119 Santa Monica Blvd City: Hollywood State: CA Zip: 90046
Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other Limited Liability Co. (California)
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: October 25, 2002

4. Application number(s) or registration number(s): A. Trademark Application No.(s) 75625313; 75370685 B. Trademark Registration No.(s) 2411105 2350756 2618450; 2272971; 2317222 2402762
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Diep N. Shoemaker Internal Address: Street Address: Shoemaker Luti LLP 6255 Sunset Blvd., Suite 714 City: Hollywood State: CA Zip: 90028

6. Total number of applications and registrations involved: 8
7. Total fee (37 CFR 3.41): \$ 215.00 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. Diep N. Shoemaker Signature Date 1/31/03

Total number of pages including cover sheet, attachments, and document: 11

02/10/2003 LMUELLER 00000248 75625313 01 FC:8521 40.00 OP 02 FC:8522 175.00 OP

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

TRADEMARK REEL: 002668 FRAME: 0336

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made as of October 25, 2002 by and among Yummy Foods, LLC, a California Limited Liability Company ("Yummy"), on the one hand, and Kaiser Foundation Hospitals, a California nonprofit public benefit corporation ("Kaiser"), on the other hand.

RECITALS

- A. On or about October 1, 2001, Kaiser purchased certain assets of Webvan Group, Inc. ("Webvan"), and Webvan's wholly-owned subsidiary, HomeGrocer.com, Inc. ("HomeGrocer"), pursuant to an Asset Purchase Agreement between Kaiser, Webvan, and HomeGrocer (the "Webvan Purchase").
- B. Pursuant to the Webvan Purchase, Kaiser became sole owner of certain trademarks, logos, domain names and other identity assets related to the tradename "Homegrocer" and/or "Homegrocer.com" (such assets are set forth on Schedule 1.1 attached to this Agreement, and referred to hereafter as the "Identity Assets").
- C. Kaiser desires to sell the Identity Assets to Yummy and Yummy desires to purchase the Identity Assets from Kaiser on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each party to this Agreement, the parties hereby agree as follows:

ARTICLE I

TERMS OF THE PURCHASE AND SALE

Section 1.1. Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement, on October 25, 2002 (the "Closing Date"), Kaiser agrees to sell to Yummy each of the Identity Assets itemized on Schedule 1.1 attached.

Section 1.2. Purchase Price. Yummy shall pay Kaiser Twenty Thousand Dollars (\$20,000) in full consideration for the Identity Assets. Payment of the Purchase Price shall be made by wire transfer or delivery of a cashier's check, as directed by Kaiser. Transfer of the Identity Assets to Yummy is contingent upon full payment of the Purchase Price.

Section 1.3. Further Assurances. Each of the parties agrees to work diligently, expeditiously and in good faith to evidence the transaction contemplated by this Agreement. From time to time after the Closing Date, the parties hereto will execute and deliver such other instruments of sale, transfer, conveyance, assignment, assurance, power of attorney and other such instruments as may be reasonably required by the other parties hereto in order to carry out

the purpose and intent of this Agreement. Yummy shall be responsible for all filing fees, transfer fees, recording fees and other costs as may be required to effect and complete the transfer of the Identity Assets to Yummy.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Kaiser represents and warrants to Yummy as follows:

(a) **Power and Capacity.** Kaiser has the requisite power and authority to execute, deliver and perform its obligations under this Agreement, and this Agreement has been duly executed and delivered by, and constitutes the valid and binding obligation of Kaiser. This Agreement is enforceable against Kaiser, subject to laws of general application relating to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors rights generally.

(b) **No Violations.** The execution, delivery and performance of this Agreement and the consummation of the transaction contemplated hereby do not violate any provision of the articles of incorporation or the bylaws of Kaiser. There is no pending or, to Kaiser's knowledge, threatened action, suit, proceeding or investigation by or before any court, governmental body or agency, to restrain or prevent the consummation of the transaction contemplated by this Agreement or that might affect the right of Yummy to own the Identity Assets.

(c) **Organization and Authority.** Kaiser is a nonprofit, public benefit corporation duly organized, validly existing and in good standing in its jurisdiction of incorporation and is qualified to do business in the State of California.

(d) **Condition of Acquired Assets.** The Identity Assets are being sold to Yummy "as-is," and the Sellers make no representations or warranties of any kind with respect to the value, condition or marketability of the Identity Assets. Notwithstanding the foregoing, Kaiser represents and warrants that to the best of its reasonable knowledge, the Identity Assets are each in good standing with the United States Patent and Trademark Office or the applicable Internet domain name registrar.

(e) **Title to Acquired Assets.** Kaiser has good and marketable title to the Identity Assets, and when delivered on the Closing Date, will be free and clear of any mortgages, liens, charges or encumbrances.

(f) **Limitation on Yummy's Damages for Breach.** In the event of a breach of one or more of the foregoing Kaiser representations and warranties, the parties agree that the sole and exclusive liability of Kaiser shall be general money damages in an amount to be determined, but under no circumstances shall the amount of such damages exceed the total purchase price of the Identity Assets (\$20,000.00). Yummy shall be responsible for all court costs, attorneys' fees, expert witness fees, and all other expenses that Yummy may incur in any negotiation or arbitration, mediation, or other judicial or administrative proceeding against Kaiser related to any alleged breach of these representations and warranties.

Section 2.2. Yummy represents and warrants to Kaiser, as follows:

(a) **Power and Capacity.** Yummy has the requisite power and authority to execute, deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by, and constitutes the valid and binding obligation of Yummy, subject to laws of general application relating to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws affecting creditors rights generally.

ARTICLE III

MISCELLANEOUS

Section 3.1. Survival of Representations, Warranties and Covenants. The covenants, agreements, representations and warranties entered into or made pursuant to this Agreement shall be continuing and survive the Closing Date.

Section 3.2. Expenses. Each party shall pay its own fees, costs and expenses (including broker's, attorney's and other advisor's fees) relating to the negotiation, documentation, execution or delivery of this Agreement, except as provided for in Section 1.3.

Section 3.3. Binding Effect/Assignment. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. Except as provided herein, no party may assign or transfer any right or obligation hereunder without the prior written consent of the other parties to this Agreement.

Section 3.4. Counterparts. This Agreement may be executed by facsimile signature and in two or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

Section 3.5. Attorney Review. Each party has had a full and complete opportunity to review this Agreement, and make suggestions or changes and seek legal advice. Accordingly, each party understands that this Agreement is deemed to have been drafted jointly by the parties and agrees that the common-law principles of construing ambiguities against the drafter shall have no application hereto. It should be construed fairly and not in favor of or against one party as the drafter hereof.

Section 3.6. Severability. If any term of this Agreement (including, without limitation, the Release or any portion thereof) is invalid, illegal or incapable of being enforced by any rule of law, public policy, or otherwise, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect to the fullest extent available under applicable law. In such event, a court or administrative body interpreting this Agreement shall interpret and apply the terms of this Agreement as if any invalid, illegal or enforceable provision were not a part of this Agreement.

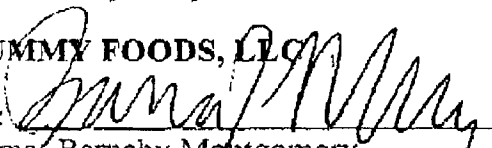
Section 3.7. Confidentiality. Kaiser agrees to take reasonable steps to keep the existence of this Agreement and the identity of Yummy as the buyer of the Identity Assets

EXECUTION COPY

confidential, except to the extent that Kaiser is required by law to disclose the terms of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

YUMMY FOODS, LLC

By: 
Name: Barnaby Montgomery
Title: Member

Address: 7119 Santa Monica Bl.
W. Hollywood, CA
90046

KAISER FOUNDATION HOSPITALS

By: _____
Name: Larry Wilson
Title: Chief Financial Office and Senior Vice-President of Planning and Consulting

By: _____
Name: Peter Hohl
Title: Vice-President, Alliances and Acquisitions

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Name: Barnaby Montgomery
Title: Member

Address: _____

KAISER FOUNDATION HOSPITALS

By: Larry Wilson
Name: Larry Wilson
Title: Chief Financial Office and Senior Vice-President of Planning and Consulting

DATE: 10/23/02

By: _____
Name: Peter Hohl
Title: Vice-President, Alliances and Acquisitions

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YUMMY FOODS, LLC

By: _____

Address: _____

Name: Barnaby Montgomery

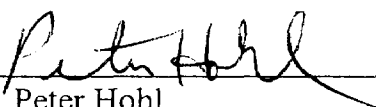
Title: Member

KAISER FOUNDATION HOSPITALS

By: _____

Name: Larry Wilson

Title: Chief Financial Office and Senior Vice-President of Planning and Consulting

By: 

DATE: 10/21/07

Name: Peter Hohl

Title: Vice-President, Alliances and Acquisitions

SCHEDULE 1.1

IDENTITY ASSETS

The Identity Assets include only those assets expressly itemized on this Schedule 1.1.

Schedule 1.1

Trademark and Service Mark Applications and Registrations for HOMEGROCER, HOMEGROCER.COM, HOMEGROCER.COM & Design and Peach Design

<u>Mark</u>	<u>Country</u>	<u>Class</u>	<u>App. No.</u>	<u>App. Date</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
HOMEGROCER	Australia	I 35, 39, 42	759248	4/09/1998	759248	4/09/1998
HOMEGROCER	Singapore	I 35	4620/98	5/15/1998	T98/04620	5/15/1998
HOMEGROCER	Singapore	I 39	4621/98	5/15/1998	T98/04621	5/15/1998
HOMEGROCER	Singapore	I 42	4619/98	5/15/1998	T98/04619	5/15/1998
HOMEGROCER	Switzerland	I 35, 38, 39, 41, 42	2910/98	4/09/1998	458339	2/02/1999
HOMEGROCER	U.S.	I 35	75/370683	10/09/1997	2272971	8/24/1999
HOMEGROCER	U.S.	I 39	75/370684	10/09/1997	2618450	9/10/2002
HOMEGROCER	U.S.	I 42	75/370685	10/09/1997	Currently checking status with PTO	
HOMEGROCER.COM	China	I 29	9900081005	7/01/1999	1494267	12/21/2000
HOMEGROCER.COM	New Zealand	I 35	290895	4/09/1998	B290895	10/09/2000
HOMEGROCER.COM	New Zealand	I 39	290896	4/09/1998	B290896	10/09/2000
HOMEGROCER.COM	New Zealand	I 42	290897	4/09/1998	B290897	10/09/2000
HOMEGROCER.COM	Peru	I 35	87722-1999	12/23/1999	19829	12/23/1999
HOMEGROCER.COM	Switzerland	I 25, 38,	5445/1999	6/22/1999	469442	3/14/2000

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<u>Mark</u>	<u>Country</u>	<u>Class</u>	<u>App. No.</u>	<u>App. Date</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
		39, 41, 42				
HOMEGROCER.COM	U.K.	I 29, 30, 39, 42	2208512	9/14/1999	1108512	2/25/2000
HOMEGROCER.COM	U.S.	I 39	75/625313	1/22/1999	NOA issued 5/28/2002	
HOMEGROCER.COM	U.S.	I 42	75/626307	1/22/1999	2402762	11/07/2000
HOMEGROCER.COM	Uruguay	I 42			314899	2/29/2000
HOMEGROCER.COM & Design	Australia	I 35, 39, 42	776775	10/28/1998	776775	10/28/1999
HOMEGROCER.COM & Design	Chile	I 42	457999	8/16/1999	563224	3/07/2000
HOMEGROCER.COM & Design	Japan	I 35	H11-063553	7/16/1999	446736	4/20/2001
HOMEGROCER.COM & Design	New Zealand	I 35	300487	10/28/1998	300487	2/08/2001
HOMEGROCER.COM & Design	New Zealand	I 39	300488	10/28/1998	300488	2/08/2001
HOMEGROCER.COM & Design	New Zealand	I 42	300489	10/28/1998	300489	2/08/2001
HOMEGROCER.COM & Design	Paraguay	I 42	16469-1999	8/03/1999	224348	4/25/2000
HOMEGROCER.COM & Design	Switzerland	I 35, 38, 39, 41, 42		11/05/1998	462098	7/11/1999
HOMEGROCER.COM & Design	U.S.	I 35	75/480847	5/07/1998	2317222	2/08/2000
HOMEGROCER.COM & Design	U.S.	I 39	75/480876	5/07/1998	2350756	5/16/2000
HOMEGROCER.COM	U.S.	I 42	75/481417	5/07/1998	2411105	12/05/2000