



To the Honorable Commissioner of Patents and Trademarks

102448918

copies or copy thereof.

1. Name of conveying party(ies): Cimpl's, Inc.

Individual(s)  Association  Limited Partnership

General Partnership  Corporation - South Dakota  Other

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

Name and address of receiving party(ies)  
Name: Tri-Star Foods, Inc.  
Internal Address: \_\_\_\_\_  
Street Address: 8823 Zealand Avenue North, Suite E  
City: Brooklyn Park State: MN ZIP: 55445

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

3. Nature of conveyance:

Assignment  Merger  Security Agreement  Change of Name  Other

Execution Date: December 14, 1996

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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

943,354

Additional numbers attached?  Yes  No

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

Name: Stuart R. Hemphill

Internal Address: Dorsey & Whitney LLP

Street Address: Suite 1500, 50 South Sixth Street

City: Minneapolis State: MN ZIP: 55402-1498

6. Total Number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$40.00

Enclosed  Authorized to be charged to deposit account

8. Deposit account number: 04-1420

(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.

Stuart R. Hemphill [Signature] May 8, 2003  
Name of person Signing Signature Date

Total number of pages comprising cover sheet: 1

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

05/14/2003 6TOM11 00000088 943354

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BOX ASSIGNMENT  
Director - U.S. Patent and Trademark Office  
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

## AGREEMENT

This Agreement (the "Agreement") is entered into this 14th day of December \_\_\_\_\_ 1996 (the "Effective Date") by and between Cimpl's, Inc. ("Cimpl's"), a South Dakota corporation having a business address of Post Office Box 80, Yankton, South Dakota 57078 and Tri-Star Foods, Inc. ("Tri-Star"), a Minnesota corporation having a business address of 8823 Zealand Avenue North, Suite E, Brooklyn Park, Minnesota 55445.

WHEREAS, Cimpl's is in the business of meat packing and processing;

WHEREAS, Tri-Star is in the business of wholesale meat distribution;

WHEREAS, Cimpl's uses and is the owner of all right title and interest in certain trademarks identified on the attached Exhibit A, together with all registrations therefor (the "Marks");

WHEREAS, Cimpl's desires to sell and assign the Marks including all goodwill connected therewith, to Tri-Star; and

WHEREAS, Tri-Star desires to acquire the Marks including all goodwill connected therewith, in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the above premises, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows.

1. Assignment. Cimpl's hereby sells, assigns, transfers and conveys to Tri-Star all rights, title and interest in and to the Marks and any registrations therefor, together with that part of the good will of the business associated with the use of and symbolized by the Marks, to be held and enjoyed by Tri-Star as fully and entirely as said interest could have been held and enjoyed by Cimpl's if this sale, assignment and transfer had not been made.

2. Past Infringements. Cimpl's further sells, assigns, transfers and conveys to Tri-Star the entire right, title and interest in and to any and all causes of action and rights of recovery for past infringement of the Marks.

3. Additional Documentation. Cimpl's hereby covenants and agrees to cooperate with Tri-Star so that Tri-Star may enjoy to the fullest extent the rights, title and interest herein conveyed. Such cooperation shall include prompt execution of all papers prepared at the expense of Tri-Star which are deemed necessary or desirable by Tri-Star to perfect in it the rights, title and interest herein conveyed.

4. Consideration. In consideration for the assignments set forth in paragraphs 1 and 2 above, Tri-Star agrees to have Cimpl's co-pack all sausage products Tri-Star sells in connection with the Marks for a period of five (5) years from

and after the Effective Date of this Agreement, which shall not be less than 100,000 pounds of sausage products. The price Tri-Star shall pay to Cimpl's for each pound of sausage product Cimpl's co-packs shall be \$0.20 per pound. In the event that Tri-Star does not co-pack with Cimpl's the 100,000 pounds of sausage products, then Tri-Star shall pay to Cimpl's for the assignment of its Marks and related interest, the sum of \$20,000. However, this sum shall be reduced by the actual price paid by Tri-Star for each pound of sausage product Cimpl's co-packs. The parties agree that this sum bears a reasonable relationship to the damages that Cimpl's and Tri-Star estimate may be incurred by Cimpl's by reason of Tri-Star's failure to co-pack the above stated minimum. The parties further agree that this amount is not unreasonable under the circumstances existing at the time this Agreement was made and Tri-Star further represents, warrants and covenants that this provision is valid and binding on Tri-Star and enforceable in accordance with its terms.

5. Placement of Orders. Tri-Star shall order co-packing services from Cimpl's during the Term of this Agreement by means of written orders. Cimpl's shall, by written notice to Tri-Star, confirm or reject each order within three (3) business days from the date such order is received. Notwithstanding paragraph 4 above, in the event that Cimpl's is unable to co-pack all of Tri-Star's demand for the sausage products sold in connection with the Marks within a reasonable period of time following Tri-Star's order, Tri-Star shall be free to co-pack such sausage itself or utilize the services of a third party to co-pack any amounts of sausage product that Cimpl's is unable to co-pack.

6. Nature and Quality of Services. Cimpl's shall co-pack all sausage products ordered by Tri-Star in accordance with accepted practices within the meat packing industry and the quality of all meat packing services shall be at least consistent with Cimpl's current quality standards.

7. Delivery. Unless otherwise agreed in writing, all deliveries of the sausage products co-packed by Cimpl's at the request of Tri-Star shall be shipped to Tri-Star F.O.B. Tri-Star's warehouse in Brooklyn Park, Minnesota, or other location within the metropolitan Minneapolis area designated by Tri-Star. In the event Tri-Star designates a delivery location outside of the metropolitan Minneapolis area, then Tri-Star agrees to pay for any and all additional shipping and transportation costs. All risk of loss and delay for the sausage products shall pass to Tri-Star upon their delivery at Tri-Star's warehouse. Except as otherwise agreed, Cimpl's shall bear all costs of shipping such sausage products to the F.O.B. point, and shall obtain and maintain during the Term of this Agreement transportation and storage insurance covering such sausage products until delivery to the F.O.B. point.

8. Term and Termination. The term of this Agreement (the "Term") shall commence on the Effective Date, or the date that Tri-Star executes this Agreement, whichever is later, and continue for a period of five years. The expiration, termination or cancellation of this Agreement shall not revoke or otherwise effect the assignments

set forth in paragraphs 1 and 2 above. Notwithstanding the foregoing, this Agreement may be terminated in accordance with the following provisions:

(a) Either party shall be entitled to cancel this Agreement for any cause whatsoever upon providing the other party with ninety (90) day's written notice of the cancellation. In the event of cancellation by Tri-Star without cause, it shall pay to Cimpl's liquidated damages in the amount set forth in paragraph 4. In the event of cancellation by Cimpl's without cause, Tri-Star shall be entitled to retain the Marks assigned herein without any further consideration; and

(b) Either party may terminate this Agreement at any time upon written notice to the other party if the other party is in material breach of this Agreement and has not cured such breach within thirty (30) days of receipt of written notice thereof from the first party. In the event that Tri-Star terminates this Agreement for a material breach on the part of Cimpl's, Tri-Star shall be entitled to retain the Marks assigned herein without any further consideration. In the event that Cimpl's terminates this Agreement for a material breach on the part of Tri-Star, Tri-Star shall pay to Cimpl's the liquidated damages in the amount set forth in paragraph 4.

9. Ownership of Marks. Cimpl's hereby warrants and represents that to the best of its knowledge and belief it is the exclusive owner of the mark Peter's Delicious, registered with the U.S. Patent and Trademark Office, Registration No. 943,354 as set forth in Exhibit A, and that no other person, firm, corporation, or association has the right to use the mark in commerce. Tri-Star's decision to purchase or take assignment of the Marks identified in Exhibit A are based upon its own independent evaluations and patent and trademark searches. Tri-Star has not relied, in entering into this Agreement, upon any other oral or written information from Cimpl's or any of its employees, affiliates, agents, legal counsel or representatives. Cimpl's makes no representation or warranty, either expressed or implied, with respect to its ownership of any rights relating to Minnesota Registration No. 7416.

10. Conflicting Agreements. Cimpl's hereby warrants and represents that it has not entered into any assignments, contracts or other understandings with third parties which would conflict with the rights herein granted.

11. Confidential Information. From time to time during the Term of this Agreement, the parties may transfer from one to another confidential and proprietary information, including without limitation information relating to markets, customers, products, trade secrets, procedures, methods, distributors or business in general (the "Confidential Information"). Except as may be provided by this Agreement, the party receiving Confidential Information from the other party shall have no right to disclose or use such Confidential Information for its own benefit or the benefit of any third party unless such Confidential Information is: (a) in the receiving party's possession prior to receipt of the Confidential Information; (b) at the date of this Agreement, or hereafter

becomes, part of the public knowledge or literature as a result of acts other than acts, if any, of the receiving party or its personnel involving any violation of their obligations under this Agreement; or (c) is available to the receiving party through a legitimate source other than the disclosing party and entirely independently of any disclosure by the disclosing party hereunder. The burden of proof concerning any of the above exceptions (a) through (c) shall be upon the receiving party.

12. Indemnification by Cimpl's. Cimpl's agrees to indemnify and hold harmless Tri-Star, including its officers, agents, directors, and employees, against any and all claims, actions, proceedings, expenses, damages and liabilities (including but not limited to any governmental investigations, complaints and actions) and reasonable attorneys' fees, arising out of or in connection with (i) any breach of this Agreement by Cimpl's, including its representations, warranties and covenants, (ii) the packing services provided by Cimpl's, and (iii) any claim or action for personal injury, death or other cause of action involving product liability claims arising from or relating to any of the sausage products packed by Cimpl's.

13. Indemnification by Tri-Star. Tri-Star agrees to indemnify and hold harmless Cimpl's, including its officers, agents, directors, and employees, against any and all claims, actions, proceedings, expenses, damages and liabilities (including but not limited to any governmental investigations, complaints and actions) and reasonable attorneys' fees, arising out of or in connection with (i) any breach of this Agreement by Tri-Star, including its representations, warranties and covenants, and (ii) any claim or action for personal injury, death or other cause of action involving product liability claims arising solely from Tri-Star's failure to properly store any of the sausage products packed by Cimpl's from and after delivery at the F.O.B. point.

14. Insurance. Cimpl's and Tri-Star agree to obtain and maintain for two years following the Term of this Agreement or its cancellation, whichever is sooner, general liability insurance covering claims arising under the indemnification provisions as set forth in paragraphs 12 and 13 above, which insurance shall be in amounts and of a type customarily maintained by companies similarly situated, providing at least \$1,000,000 in coverage per occurrence. Upon execution of this Agreement, the parties shall provide to each other a certificate of insurance naming the other party, including its officers, directors, agents and employees, as additional insureds on such insurance coverage.

15. Notices. For purposes of all notices and other communications required or permitted to be given hereunder, the addresses of the parties hereto shall be as indicated below. All notices shall be in writing and shall be deemed to have been duly given if sent by facsimile, the receipt of which is confirmed by return facsimile, or sent by first class registered or certified mail or equivalent, return receipt requested, addressed to the parties at their addresses set forth below:

If to Cimpl's:

Cimpl's, Inc.  
P.O. Box 80  
Yankton, South Dakota 57078  
Attn: Jim Leonard

If to Tri-Star:

Tri-Star Foods, Inc.  
8823 Zealand Avenue North, Suite E,  
Brooklyn Park, Minnesota 55445  
Attn: Patrick Kulkay

16. Entire Agreement. This Agreement, including the attached Exhibit A, which is incorporated herein by reference, contains the entire understanding and agreement of the parties with respect to the subject matter contained herein, supersedes all prior oral or written understandings and agreements relating thereto except as expressly otherwise provided, and may not be altered, modified or waived in whole or in part, except in writing, signed by duly authorized representatives of the parties.

17. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to any law, the remaining provisions shall remain in full force and effect as if said provision never existed.

18. Assignment: Successors and Assigns. Either party shall have the right to assign or otherwise transfer its rights and obligations under this Agreement provided that any such assignee agrees to be bound by all of the terms and conditions of this Agreement. The terms, covenants and provisions of this Agreement shall inure to the benefit of Tri-Star, its successors, assigns, and/or legal representatives, and shall be binding upon Cimpl's, its successors, assigns and/or other legal representatives.

19. Agency. The parties are separate and independent legal entities. Nothing contained in this Agreement shall be deemed to constitute either party as an agent, representative, partner, joint venturer or employee of the other party for any purpose. Neither party has the authority to bind the other or to incur any liability on behalf of the other, nor to direct the employees of the other.

20. Governing Law: Venue. The validity, construction, and performance of this Agreement shall be governed by the laws of the state of Minnesota and all claims and/or lawsuits in connection with agreement must be brought in Minnesota.

IN WITNESS WHEREOF, the parties have executed and delivered this instrument as of the date(s) set forth below.

Date: December 14, 1996.

CIMPL'S, INC.

By Dave Frankfort

Title: Vice President

State of South Dakota )  
                                  )ss  
County of Yankton )

On this 14 day of December, 1996, before me, the undersigned officer, personally appeared Dave Frankfort of Cimpl's, Inc., a corporation, and that he or she as Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

[Signature]

Notary Public  
My commission expires: 8/1/2000

(Seal)

TRI-STAR FOODS, INC.

By: [Signature]  
Patrick Kulkay, President

State of Minnesota )  
                                  )ss  
County of Hennepin )

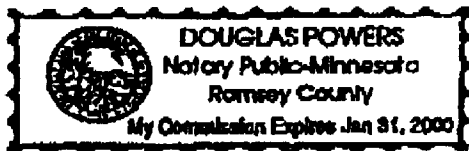
On this 31 day of December, 1996, before me, the undersigned officer, personally appeared Patrick Kulkay of Tri-Star Foods, Inc., a corporation, and that he as President, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

[Signature]

Notary Public  
My commission expires: 1-31-2000

(Seal)



**EXHIBIT A**

<b>State or Country</b>	<b>Mark</b>	<b>Reg. No.</b>	<b>Date</b>	<b>Goods</b>
U.S.	Peter's Delicious & Design	943,354	9/19/72	Sausage and Processed Pork Products
MN	Peter's Delicious & Design	7,416	9/11/81	Table Ready Meat Products



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April 22, 2003

## BOX ASSIGNMENT

Director - U.S. Patent and Trademark Office  
Washington, D.C. 20231

Re: Recordation of Assignment of Trademark Registration from Cimpl's, Inc. to Tri-Star Foods, Inc.  
Our File: 22,077

Dear Sir or Madam:

Enclosed herewith in connection with the recordal of the assignment of Trademark Registration No. 943,354 from Cimpl's, Inc. (South Dakota corporation) to Tri-Star Foods, Inc. are the following documents:

1. Assignment regarding Trademark Registration No. 943,354;
2. Recordation Form Cover Sheet;
3. Check in the amount of \$40.00 to cover the recording fee; and
4. Return postcard.

Please stamp the date of receipt on the postcard and return the card to the undersigned.

Sincerely,

  
Stuart R. Hemphill

SRH:EAP:djt;pjb  
Enclosures

RECORDED: 05/13/2003

TRADEMARK  
REEL: 002733 FRAME: 0420