

11-05-2003

FORM PTO-1594

(Rev. 10-02)

11/3/03



102592619

SHEET  
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U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

To the Honorable Commissioner of

the attached original documents or copy thereof.

1. Name of conveying party(ies):

Giles Ventures Partners, LLC  
d/b/a Nutripeak

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State of Delaware
- Other Limited Liability Corporation-State of Delaware

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

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other \_\_\_\_\_

Execution Date: October 10, 2003

2. Name and address of receiving party(ies):

Name: ESU, Inc.

Internal Address: \_\_\_\_\_

Street Address: 3750 Park Central Blvd.

City: N. Pompano Beach State: FL ZIP: 33064

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State of Florida
- Other \_\_\_\_\_

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) and address(es) attached?  Yes  No

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 2,217,734

Additional Numbers attached?  Yes  No

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

Name: Kenneth D. Suzan

Hodgson Russ LLP

Internal Address: Intellectual Property Law Section

Street Address: One M&T Plaza, Suite 2000

City: Buffalo State: NY ZIP: 14203-2391

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:  
08-2442

(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.*

Kenneth D. Suzan  
Name of Person Signing

Kenneth D. Suzan  
Signature

October 31, 2003  
Date

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

11/04/2003 ECGDPER 0000000 2217734

6

2003 NOV - 3 17  
COPY/FINANCE

**Mail documents to be recorded with required cover sheet information to:  
Mail Stop Assignment Recordation Services, Director of the U.S. Patent and Trademark Office  
P.O. Box 1450, Alexandria, VA 22313-1450**

**AGREEMENT TO SALE AND ASSIGN SERVICE MARK**

This Agreement to Sale and Assign Service Mark (hereinafter, the "Agreement") is made effective as of October 10, 2003 (the "Effective Date") by and between ESU, Inc., ("ESU"), a Florida corporation, having its principal place of business at 3750 Park Central Blvd., N. Pompano Beach, Florida 33064, and Giles Ventures Partners, LLC D/B/A Nutripeak, a Delaware limited liability corporation, ("GVP"), having its principal place of business at 4847 Charlton Lane, Charlotte, North Carolina, 28210.

WHEREAS, GVP is the current owner of a certain Service Mark (as defined below in Article 1.0) and the goodwill associated with this mark; and

WHEREAS, ESU desires to purchase the Service Mark from GVP.; and

WHEREAS, ESU in conjunction with entering into this Agreement has also entered into a Service Mark License Agreement, of even date herewith, with GVP (the "License Agreement") which provides a license to GVP for its continuing use of the Service Mark for presentation on its website and, at GVP's discretion, on certain product labels, advertising media, shipping containers or distribution displays.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, GVP and ESU hereby agree as follows:

**1.0 DEFINITIONS**

"Service Mark" shall mean that service mark which is registered with the United States Patent and Trademark Office and identified as registered trademark #2217734 with a registration date of January 12, 1999, and the goodwill associated therewith.

"Sports Nutrition Depot" is the word mark covered by the subject Service Mark.

"USPTO" shall mean the United States Patent and Trademark Office in Washington, DC.

**2.0 SALE AND ASSIGNMENT OF SERVICE MARK**

In consideration of thirty thousand and 00/100 dollars (\$30,000), GVP hereby sells, transfers, and assigns the Service Mark to ESU. Such purchase price to be paid by certified check tendered by ESU to GVP upon execution of this Agreement. Upon execution of this Agreement by both parties and tendering and acceptance of the purchase price, the parties shall execute that certain Bill of Sale and Assignment of Service Mark,

MIA#2272841.1

attached hereto as "Exhibit A" (hereinafter, the "Bill of Sale"). Such consideration is understood to also cover GVP's legal expenses incurred in the course of this transaction.

GVP agrees to reasonably assist ESU, at ESU's expense, in filing the necessary Service Mark Assignment forms with the USPTO to assign the Service Mark to ESU. Such assistance shall consist of providing any supporting documentation that may be required to verify the history and usage of the Service Mark, as well as any details required to document the sale and assignment of the Service Mark to ESU, and executing any documents required by the USPTO to convey and assign the Service Mark to ESU.

GVP further agrees to reasonably assist ESU, at ESU's expense, against any claim of a prior right to the Service Mark asserted by a third party by providing any supporting documentation that may be required to verify the history and usage of the Service Mark.

### 3.0 RECOGNITION OF OWNERSHIP

Upon execution of this Agreement, GVP will recognize and acknowledge ESU's exclusive ownership and title to the Service Mark and the goodwill associated therewith and shall not at any time do or permit to be done any action or thing that will in any way impair the rights of ESU in and to the Service Mark.

It is understood that GVP shall not acquire and shall not claim any title to the Trademark adverse to ESU by virtue of the License Agreement.

ESU shall bear the costs of processing, preparing, and filing with the USPTO all forms and documents necessary to effectuate the assignment herein agreed to. Upon execution of this Agreement, ESU shall be responsible for filing any required Service Mark maintenance forms with the USPTO and acknowledges that ESU must file for reapproval of the Service Mark with the USPTO between the fifth and sixth anniversary of the registration date.

### 4.0 INFRINGEMENT

GVP shall inform ESU promptly of any infringements or of any acts of unfair competition affecting the Service Mark that come to its attention.

### 5.0 MISCELLANEOUS

Governing Law/ Jurisdiction. Subject to the Arbitration provision below, this Agreement and the legal relations between the parties shall be governed by and interpreted in accordance with the laws of the State of Florida. The parties hereto agree to submit to the jurisdiction of the federal and state courts of the State of Florida with respect to the breach or interpretation of this Agreement or the enforcement of any and all rights, duties, liabilities, obligations, powers and other relations between the parties arising under this Agreement, and agree that they will not resort to the courts or other

governmental agencies of any other jurisdiction for the resolution of such dispute or controversy.

Arbitration. Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be submitted to and be finally resolved by arbitration, to be conducted by the American Arbitration Association ("AAA"), with such arbitration to be held in Ft. Lauderdale, Florida in accordance with the AAA's Commercial Arbitration Rules and Expedited Procedures, then in effect. Each party hereby irrevocably agrees that summons, notices, and other communications related to the arbitration procedure shall be deemed served and accepted by the other party five (5) working days after having been mailed by first class registered mail, return receipt requested, postage prepaid, to the other party or if actually received by the other party. The arbitration shall be conducted by one arbitrator selected by the AAA. Any award or decision rendered in such arbitration shall be final and binding on both parties, and judgment may be entered thereon in any court of competent jurisdiction if necessary. Each party shall pay any and all expenses incurred by such party in connection with such arbitration proceeding, unless otherwise determined by the arbitrator. The foregoing notwithstanding, either party may seek injunctive relief from or against any actions of the other relating to this Agreement.

Amendment. If any provision of this Agreement is declared invalid or unenforceable under the laws or regulations of any nation or state, the remaining provisions of this Agreement shall remain in full force and effect, the invalid or unenforceable provision or provisions being deemed severed.

Entire Agreement. This Agreement shall be binding on both parties and its successors and assigns. This Agreement and the Bill of Sale constitute the complete and only agreement between the parties regarding the sale and assignment of the Service Mark and supercede and cancel any and all previous agreements, oral or written, between the parties. This Agreement can be amended only by a written document executed by both parties to this Agreement.

Notices. All notices under this Agreement shall be delivered by (i) depositing the notice in the mail, return receipt requested, addressed to the recipient below at the address in the foregoing or to any other address that the recipient may designate by providing notice, (ii) overnight delivery service addressed to the recipient at the address in the foregoing or to any other address that the recipient may designate by notice or (iii) hand delivery to the individual recipient designated below or to any other individual as the recipient may designate by providing notice.

Consultation with Counsel; No Representations. Each Party agrees and acknowledges that it has had a full and complete opportunity to consult with counsel of its own choosing concerning the terms, enforceability and implications of this Agreement, and that no Party has made any representations or warranties to the other concerning the terms, enforceability or implications of this Agreement other than as are reflected in this Agreement.

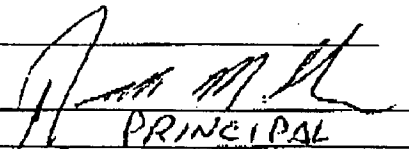
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TRADEMARK  
REEL: 002857 FRAME: 0347

Giles Ventures Partners, LLC

DATE Oct 10, 2003

By:   
Name: PRINCIPAL  
Title: RANDALL M GILES

DATE October 10, 2003


ESU, Inc. By:   
Name: ANDY SETTLER  
Title: C.O.O.

EXHIBIT A



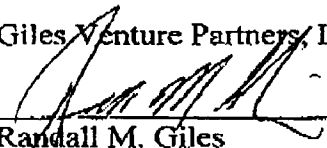


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**BILL OF SALE AND ASSIGNMENT OF SERVICE MARK**

Giles Venture Partners, LLC, a Delaware limited liability corporation ("GVP"), having its principal place of business at 4847 Charlton Lane, Charlotte, NC 28210 for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, transfers and assigns to ESU, Inc., a Florida corporation ("ESU"), with its principal place of business at 3750 Park Central Blvd., N. Pompano Beach, FL 33064 all right, title and interest GVP has or may have in and to the trademark "Sports Nutrition Depot" (registered trademark #2217734), including all goodwill associated therewith, as of OCTOBER 10, 2003 the effective date of this transaction.

Giles Venture Partners, LLC



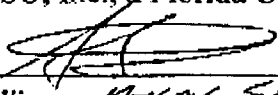
Randall M. Giles

Principal GVP

Date: Oct 10, 2003

Agreed and Approved:

ESU, Inc., a Florida Corporation



By: ANDY SETTLER

Title: C.O.O.

Date: 10-10-03

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