

07-15-2004

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/2005)



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

RE 102791782
TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

JUGO JUICE INTERNATIONAL INC.

7.8.04

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

Citizenship (see guidelines) CANADA

Execution Date(s) APRIL 5, 2004

Additional names of conveying parties attached? Yes No

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: SPEAR'S FOOD SERVICE COMPANY

Internal Address:

Address:

Street Address: 7825 E. HARRY

City: WICHITA

State: KANSAS

Country: U.S.A. Zip: 67207

Association Citizenship

General Partnership Citizenship

Limited Partnership Citizenship

Corporation Citizenship U.S.A.

Other Citizenship

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)

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other LICENCE AGREEMENT

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,766,053

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

JUGO JUICE

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

Name: D. DOAK HORNE

Internal Address: SUITE 1400

Street Address: 700 - 2ND ST. S.W.

City: CALGARY

State: ALBERTA Zip: T2P 4V5

Phone Number: (403) 298-1994

Fax Number: (403) 263-9193

Email Address: doak.horne@guidings.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 40.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number 502956
Authorized User Name D. DOAK HORNE

9. Signature:

D. Doak Horne
Signature

July 7, 2004
Date

D. DOAK HORNE
Name of Person Signing

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

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to: Document Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450



07-08-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

TRADEMARK
REEL: 003007 FRAME: 0752

07/15/2004 6T0M11 00000116 30E956 2766053 40.00 BA 01 FC:6521

NON-EXCLUSIVE, ROYALTY-FREE TRADEMARK LICENCE AGREEMENT

(Effective this 5th day of April, 2004)

BETWEEN:

JUGO JUICE INTERNATIONAL INC. a corporation
organized under the laws of the Province of Alberta, having a head
office or principal place of business at Bay A8, 416 Meridian Road
SE, Calgary, Alberta T2A 1X2

(hereinafter referred to as the "Licensor")

- and -

SPEAR'S FOOD SERVICE COMPANY, a corporation
organized under the laws of the State of Kansas, one of the United
States of America, having a registered office or principal place of
business at 7825 E. Harry, Wichita, Kansas, 67207

(hereinafter referred to as the "Licensee")

WHEREAS Licensor is the registered owner of United States Trademark Registration No. 2766053 to JUGO JUICE for use in association with the services of "Restaurant Services, namely, a "juice bar" issued September 23, 2003 and previously owned by the Licensee hereto and assigned to the Licensor by Licensee by way of an Assignment document executed April, 2004 wherein Licensee assigned all its right, title, and interest in such trademarks JUGO JUICE and JUGO and any and all goodwill attached thereto, and any and all trademark registrations therefor (hereinafter "the Trademarks") to the Licensor;

WHEREAS Licensor, by virtue *inter alia* of the aforesaid assignment document executed April 2004, is the owner of all right, title, and interest, including any and all trade dress rights and goodwill, in the trademarks JUGO and JUGO JUICE in the United States;

WHEREAS Licensee wishes to continue to use the above Trademarks in the State of Kansas, one of the United States of America, on the terms and conditions set out herein;

NOW THEREFORE, in consideration of the mutual promises and covenants between the parties, and the payment of ONE DOLLAR (\$1.00) paid by Licensor to Licensee, the receipt and sufficiency of which is hereby acknowledged by the latter, Licensor and Licensee agree as follows:

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Initials

Jugo Juice International Inc.

Spear's Food Service Company

TRADEMARK
REEL: 003007 FRAME: 0753

1. Definitions

- 1.1 "Trademarks" or "Licensed Trademarks" shall mean the trade marks "JUGO JUICE" and "JUGO", and any and all goodwill in relation to and limited to the trademarks JUGO JUICE and JUGO and any and all trademark registrations which may have issued throughout the world, including US Trademark Registration 2766053 for JUGO JUICE, and any and all pending trademark applications for JUGO JUICE and JUGO . "Trademarks" shall not include and is not intended to include, any representation as to colour.
- 1.2 "Licensed Territory" shall mean the State of Kansas, USA, and only the state of Kansas.
- 1.3 "Licensed Services" shall mean the provision of restaurant services and retail sale of beverages and food products.
- 1.4 "Licensed Wares" shall mean beverages, namely fruit-based and vegetable-based non-alcoholic beverages, and sandwiches.
- 1.5 "Notice" shall mean written notice in accordance with the provisions of Article 7 set out herein.

2. Grant of License

- 2.1 Licensor hereby grants to Licensee, subject to the terms and conditions of this Agreement, a non-exclusive, royalty-free licence to use the Trademarks in the Licensed Territory in association with the Licensed Wares and Licensed Services
- 2.2 Licensor may itself, or via other licensees, continue to use the Trademarks in the United States, and may further grant one or more licenses to others to use the Trademarks in the United States, but not in the Licensed Territory.
- 2.3 Notwithstanding anything herein to the contrary, the license granted herein to Licensee is of a personal nature between Licensee and Licensor, and is non-transferrable and non-assignable.

3. Use of Trademarks and trademarks generally

- 3.1 The Licensor acknowledges that the present use of the Trademarks by the Licensee in the manner presently being used by the Licensor as of the Date hereof is acceptable to the Licensor as such use meets the character and quality standards of the Licensor. If the Licensee changes such usage in any manner, it agrees to use the Trademarks in association with the Licensed Wares and the Licensed Services in the same manner as presently used by Licensor in connection with the Licensor's provision of Wares and Services in Canada in association with the above Trademarks.
- 3.2 Whenever Licensee uses, promotes or displays its Licensed Wares and/or Licensed Services, it shall do so in association with, and only with, the Trademarks, until such time

as this Agreement shall terminate or be terminated, whereupon and in which case, Licensee agrees that it will immediately cease all use of the Trademarks.

4. Marking and Approvals

4.1 Whenever and wherever Licensee in future uses, promotes or displays its restaurant services including but not limited to such uses as on newly printed menus, napkins, placemats, coasters, signage, or future advertising (radio, newspaper, flyers, brochures, etc.), Licensee shall provide a notice to the effect that Licensee is an authorized user of the Trademarks. In particular, and without limiting the foregoing, on all future printed matter and signage where the Trademarks are displayed, Licensee shall provide in association with each instance of display of the Trademarks, a legend as follows:

(i) JUGO JUICE TM

TM Trademark of Jugo Juice International Inc., and used under license

OR

(ii) JUGO TM

TM Trademark of Jugo Juice International Inc., and used under license

4.2 The above requirement shall not extend to requiring the Licensee to change the existing menus and signage to identify the above legend.

4.3 Licensor may, from time to time, by written Notice to Licensee, advise Licensee of other alternative marking requirements in respect of display of the Trademarks.

4.4 Except as otherwise set out herein, Licensee shall not proceed with any modification to the Licensed Trademarks and the form of the above legends without the prior written approval of Licensor.

4.5 Notwithstanding anything herein to the contrary, no representations of the Licensed Trademarks shall be displayed without Licensor's prior written approval, not to be unreasonably withheld or delayed. Prior to printing of any advertisements, flyers, or the like, Licensee shall furnish Licensor, free of cost, for Licensor's written approval, not to be unreasonably withheld or delayed, representative samples of each of the Trademarks on the printed medium. Licensor agrees promptly to examine all submitted samples, packaging, enclosures, promotional materials and advertisements. Licensor shall give Licensee written approval or written disapproval within fourteen (14) days after receipt of samples or other materials. Licensee shall cure all defects within thirty (30) days after receipt of any reasonable objection by Licensor. If Licensee does not receive written notice of disapproval within fourteen (14) days after receipt of samples or other material, Licensor shall be deemed to have approved the same.

4.6 After samples have been approved by Licensor, Licensee shall not depart therefrom in any material respect without Licensor's prior written approval, not to be unreasonably withheld or delayed. During the term of this Agreement, Licensee will submit representative samples of napkins, signage, invoices, at least once during each calendar year, for quality, style and trademark control.

5. Quality of Licensed Services, and Quality Control

5.1 The Licensor acknowledges that the provision of the Licensed Wares and Licensed Services by the Licensee as of the Date hereof is in compliance with the character and quality standards of the Licensor. Any change in the provision of the Licensed Wares and the Licensed Services by the Licensee shall be in accordance with specifications and other quality standards which are at least equal to the specifications and quality of Licensed Wares and Licensed Services currently being provided by Licensor in Canada, or which may be set from time to time by the Licensor.

5.2 Notwithstanding anything herein to the contrary, the Licensed Wares and Licensed Services shall be provided by the Licensee in accordance with all applicable laws, including all municipal, state/provincial, local, and/or federal bylaws, regulations, and standards, including all health, fire, and building code standards, bylaws, or regulations, and if licensed for liquor, all liquor control regulations.

5.3 When requested by Licensor, and with reasonable notice from Licensor, Licensee shall permit Licensor's representatives to freely inspect the premises of Licensee, for the purposes of determining whether the quality standards are being met.

6. Term and Termination

6.1 This Agreement shall continue in full force and effect until terminated as set out herein, or until expiry in accordance with its terms.

6.2 This Licence shall expire September 1, 2005 or upon Licensee advising that it no longer intends and will not use the mark, whichever occurs earlier, unless otherwise extended by mutual agreement of the parties.

6.3 In the event the monetary payments required to be paid by Jugo Juice International, Inc. pursuant to the Trademark Assignment entered between the parties dated April __, 2004 are not timely paid, the term of this License and the rights granted to Spear's Food Service Company by this Agreement shall be extended until the date that is thirty(30) days following the date when the final payment is made as required by said Trademark Assignment. It is the agreement of the parties that this license shall continue for so long as any payments required to be made pursuant to said Trademark Assignment remain unpaid and for a period of thirty(30) days following the date of full and complete payment.

6.4 Notwithstanding the foregoing, Licensor shall have the right to terminate this Agreement, and this Agreement shall be terminated, effective thirty (30) days after giving written

notice of termination, should the Licensee breach any material obligation of this License Agreement, including and not limited to, the requirements of paragraph 4 and 5 above should the breach by the Licensee not be completely cured or resolved to the Licensor's satisfaction within thirty (30) days of the date of the Notice of such breach.

- 6.5 For the purposes of sub-paragraph 6.3 herein, a material obligation shall be construed as including, but not limited to, any of the obligations imposed on the Licensee pursuant to paragraphs 4 and 5 above.
- 6.6 Where Licensee breaches the Agreement and accordingly a right arises to the Licensor pursuant to subpara. 6.3 to terminate this Agreement but Licensor does not do so, and Licensee does not cure the breach, such forbearance by the Licensor shall not be deemed to be a waiver of Licensor's right to terminate this Agreement in accordance with subpara. 6.3 above.
- 6.7 Upon the termination of this Agreement by Licensee for breach of sub-para. 6.3 above, Licensee shall immediately cease any and all use of the Trademarks and discontinue the provision of all Licensed Wares and Licensed Services in association with the Trademarks. If applicable, Licensee shall also immediately change its business name to delete the Trademarks, or any of them, from its name.

7. Notice

- 7.1 Any notice required or permitted to be given hereunder shall, in order to be effective, be given in writing, and shall be delivered by any of the following means, namely i) hand delivered; ii) faxed at the respective addresses listed below; or iii) by mailing same by registered mail, postage prepaid, and directed to the other party at:

-In the case of the Licensor:

JUGO JUICE INTERNATIONAL INC.

Bay A8, 416 Meridian Road SE
Calgary, Alberta T2A 1X2

Attn: Mr. Derek Brock/Mr. Jason Cunningham
Fax: (403) 207-5875
e:mail: DerekBrock@JugoJuice.com
JasonCunningham@JugoJuice.com

-In the case of the Licensee:

SPEAR'S FOOD SERVICE COMPANY

7825 E. Harry, Suite 109
Wichita, Kansas
67207

Attn: Randy Spear, Vice President
Tel: 316-990-6322

7.2 Notice given pursuant to sub-para. 7.1 above, if hand delivered or sent by fax, shall be effective and deemed to be received at the date and time thereof, and if sent by registered mail, shall be effective and deemed received seven(7) days from the date of sending of such notice.

8. Acknowledgment of Ownership, and undertaking not to do anything inconsistent with Licensor's Rights of Ownership

8.1 Licensee acknowledges the Licensor's title in and the validity of the Trademarks. Licensee agrees that its use of the Trademarks and any goodwill established thereby shall enure to the sole benefit of the Licensor.

8.2 Licensee undertakes, covenants, and agrees that it will not, at any time during the period that this Agreement shall be in force, or any time thereafter, represent that it has any ownership interest in the Trademarks, or do or cause to be done any act or thing directly or indirectly contesting or in any way attacking the validity of the Trademarks and/or impairing the right, title and interest of the Licensing in and to the Trademarks.

8.3 In no way limiting the generality of subpara. 8.2 above, Licensee agrees that it will not use as a corporate name, or change its corporate name, or incorporate a business under a name that consists of, or is confusing with, any of the Trademarks.

8.4 In no way limiting the foregoing, during the course of this License Agreement, and following any termination of this License Agreement, Licensee agrees that it shall not do anything inconsistent with the validity of the Trademarks, or inconsistent with Licensor's ownership of the Trademarks. Without limitation, Licensee shall not;

- (a) use any of the Trademarks, or any word, words or design confusing with any of the Trademarks, either as a trademark or a trade name, or as an element in a trademark or a trade name (for the purposes herein, use by Licensee of JUICE alone shall not of itself, be held to be confusing with JUGO JUICE, but if used with another word or words which the combined effect would be confusingly similar with JUGO JUICE, considering all the elements of S.6(5) of the Canadian Trade Marks Act, such shall be deemed to be confusingly similar)
- (b) oppose any trademark applications filed by the Licensor for the Trademarks;
- (c) participate in any legal challenges to expunge any trademark registrations for the Trademarks by the Licensor;
- (d) do anything inconsistent with the Licensor being able to enforce, protect, or maintain registrations to the Trademarks;

- (e) apply to register the Trademarks, or any marks confusing with or confusingly similar to, the Trademarks, in its name or in the name of a non-arm's length company to the Licensee; (for the purposes herein, use by Licensee of JUICE alone shall not of itself be held to be confusing with JUGO JUICE, but if used with another word or words which the combined effect would be confusingly similar with JUGO JUICE, considering all the elements of S.6(5) of the Canadian Trade Marks Act, such shall be deemed to be confusingly similar.
- (f) do anything to challenge the right of Licensees of the Licensor to use the Trademarks in territories other than the Licensed Territory.

8.5 The terms and obligations of subparagraphs 3.2, 6.5, 8.2, and 8.3 shall extend and continue to remain in force despite the termination of this Agreement.

9. Additional Material Grounds Giving rise to Right to Terminate

9.1 In the event that any of the following should occur, namely:

- (a) a secured creditor of the Licensee should give notice of its intention to exercise any of the rights accorded it pursuant to default provisions under a security agreement, debenture, mortgage, or other security-type document entered into between the Licensee and such secured creditor;
- (b) a judgement of a Court of law issues against the Licensee, requiring payment of an amount in excess of \$50,000.00 (US.);
- (c) a sheriff, bailiff, or other party shall execute a writ of seizure or sale against the Licensee;
- (d) a petition of bankruptcy should be filed against the Licensee;
- (e) makes an assignment for the benefit of creditors; or
- (f) if any action is commenced against Licensee to cause its assets to be placed under trusteeship or receivership or liquidated for the benefit of creditors;

then the Licensor shall have the right to immediately terminate this Agreement.

9.2 It is assumed that none of the individual provisions set out in subpara. 9.1 above offend any of the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, but if so, such shall not result in unenforceability or invalidity of all of subpara. 9.1, and all remaining provisions of sub-para. 9.1 above shall continue to be enforceable.

10. Infringement of Trademarks by Third Parties

10.1 Licensor may, but is not obliged to, commence or prosecute any claims or suits for infringement of its rights in the Trademarks, and may on its own behalf oppose any

applications for registration for a confusingly similar trademark which has or may be filed in the United States Patent and Trademark Office.

- 10.2 Licensee shall notify Licensor forthwith of any activities which Licensee believes to be infringements of the Trademarks or otherwise impairs the distinctiveness of the Trademarks. Licensor shall have the sole right to determine whether or not any action should be taken by Licensor on account of such activity and shall have sole discretion to make accommodations or settlement of any controversies relating thereto, in a manner not incompatible with the grant of license to Licensee hereunder. Licensee shall cooperate with Licensor in any legal proceedings, including but not limited to legal proceedings which Licensor may institute concerning infringement, opposition proceedings instituted by the Licensor or by third parties in respect of the Trademarks or related matters, or challenges by third parties to the validity of the Trademark registrations. Nothing herein shall entitle the Licensor to demand the Licensee to initiate legal proceedings or be a named party with the Licensor to legal proceedings.
- 10.3 In the event the Licensor in its discretion elects not to commence or prosecute any claims or suits of infringement in the United States, or oppose registration of a confusing trademark in the United States, or defend any action for impeachment or expungement of any of the Trademarks, the Licensee may proceed on its own behalf, and in its own name, and at its own expense, commence or prosecute any such claims or suits of infringement, oppose any registration in the United States of a confusing trademark, or defend any action for impeachment or expungement of one or more of the Trademarks. In the event that the Licensee should join the Licensor as a defendant in prosecuting any such action, Licensee shall reimburse Licensor for any and all costs occasioned thereby. Any monetary recovery made by the Licensee in respect of such actions shall be exclusively the property of the Licensee, subject to, if the Licensor is named as a defendant, a first charge on such monies in favour of the Licensor to be reimbursed to the extent of its expenses.

11. Indemnification of Licensor and Obligations of Licensee

- 11.1 Insofar as the Licensor may ever be held liable to a customer, client, or patron of the Licensee's restaurant, Licensee hereby agrees to indemnify and forever hold Licensor harmless from and against all claims, suits, actions, proceedings, damages, loss or liability, cost or expense (including reasonable attorney fees) arising out of, based upon, related to or in connection with any injuries or damages suffered by said clients/patrons/customers.
- 11.2 Licensee shall obtain and keep in force, at its sole expense, and warrants and represents that it currently has, product liability insurance providing adequate insurance for Licensor against such claims and suits involving product liability in amounts no less than:

-\$1,000,000 (US) per occurrence

-\$2,000,000 (US) in the aggregate

-umbrella excess insurance coverage over such amount, in the amount of \$2,000,000(US)

with respect to bodily injury and/or property damage. Within thirty (30) days after the date hereof, Licensee shall submit to Licensor a certificate of insurance naming Licensor as an insured party and providing and agreeing to provide ten (10) days prior notice to Licensor of any cancellation thereof.

11.3 Provision of a Notice of Termination of insurance coverage pursuant to para. 11.2 above shall constitute a grounds for termination of this License, unless within such 10 days alternate equivalent insurance coverage is not obtained by Licensee, to the satisfaction of the Licensor.

12. Goodwill

12.1 The Licensee recognizes the great value of the publicity and goodwill associated with the Trademarks and, in such connection, acknowledges that such goodwill exclusively belongs to Licensor and that the Trademarks have acquired a secondary meaning in the mind of the purchasing public.

12.2 Licensee further recognizes and acknowledges that a material breach by Licensee of any of its covenants, agreements or undertakings hereunder will cause Licensor irreparable damage, which cannot be readily remedied in damages in any action at law, and may, in addition thereto, constitute an infringement of Licensor's trademarks or copyrights in the Trademarks thereby entitling Licensor to equitable remedies, including an injunction to restrain such breach, costs and reasonable attorney's fees (on a solicitor and client basis).

13. Prohibition of Assignments and Transfers.

13.1 Licensee shall not, except with permission of the Licensor, assign or transfer this Agreement or any of Licensee's rights or duties hereunder or any interest of Licensee herein, nor shall Licensee except with permission of the Licensor, enter into any sublicense for the use of the Trademarks by others. Such permission may be unreasonably withheld.

14. Governing Law; Jurisdiction

14.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Alberta and the laws of Canada as may be applicable thereto.

14.2 In the event of a dispute regarding or arising from this Agreement, its interpretation, or the breach thereof, the Courts of the State of Kansas shall have jurisdiction.

15. Severability

15.1 In the event that one or more provisions of this Agreement shall at any time be found to be invalid or otherwise rendered unenforceable, such provision or provisions shall be

severable from this Agreement, so that the validity of enforceability of the remaining provisions of this Agreement shall not be affected thereby.

16. Waiver by Licensor

16.1 In the event Licensor shall at any time waive any of its rights under this Agreement or the performance by Licensee of any of its obligations hereunder, such waiver shall not be construed as a continuing waiver of the same rights or obligations, or a waiver of any other rights or obligations.

17. Merger

17.1 This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof. No course of prior dealings between the parties and no usage of the trade shall be relevant or admissible to supplement, explain or vary any of the terms to this Agreement. Acceptance of, or acquiescence in a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objections. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

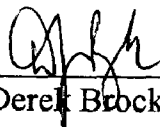
18. Counterparts

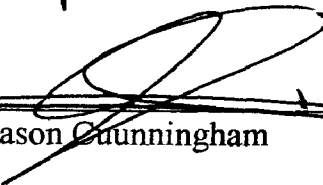
18.1 This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall together constitute one and the same instrument.

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

Signed at Calgary, Alberta
this ___ day of April, 2004


JUGO JUICE INTERNATIONAL INC.

By: 
Derek Brock

By: 
Jason Cunningham

Signed at Wichita, Kansas
this 2nd day of April, 2004

SPEAR'S FOOD SERVICE COMPANY

By:  c/s
Randy Spear
Vice-President

Initials

Jugo Juice International Inc.

Spear's Food Service Company

TRADEMARK