

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM599306

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
8Up Brands LLC		09/12/2020	Limited Liability Company: INDIANA
RECEIVING PARTY DATA			
Name:	Bass Pro Intellectual Property, L.L.C.		
Street Address:	2500 E. Kearney Street		
City:	Springfield		
State/Country:	MISSOURI		
Postal Code:	65898		
Entity Type:	Limited Liability Company: MISSOURI		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	5049180	8UP	
Registration Number:	5240805	8UP BAIT BOX	
CORRESPONDENCE DATA			
Fax Number:			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Email:	bkwefile@hdp.com		
Correspondent Name:	Harness, Dickey, & Pierce, P.L.C.		
Address Line 1:	7700 Bonhomme Avenue		
Address Line 2:	Suite 400		
Address Line 4:	St. Louis, MISSOURI 63105		
NAME OF SUBMITTER:	Bryan K. Wheelock		
SIGNATURE:	/Bryan K.Wheelock/		
DATE SIGNED:	09/24/2020		
Total Attachments: 11			
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SETTLEMENT AND TRADEMARK PURCHASE AGREEMENT

This Settlement and Trademark Purchase Agreement (the "Agreement") is entered by and between 8Up Brands LLC, an Indiana limited liability company ("Seller"), and Bass Pro Intellectual Property, L.L.C., a Missouri limited liability company ("Buyer"). Seller and Buyer may hereafter be referred to collectively as the "Parties," and each individually as a "Party." This Agreement is effective as of the latest date of execution by the Parties below (the "Effective Date").

RECITALS

WHEREAS, Seller is the owner of certain rights, including U.S. federal and state trademark registrations, for the mark 8UP;

WHEREAS, Seller alleges that Buyer has used the 8UP mark on various fish attractant scents and other fishing products without permission, and has asserted certain claims against Buyer relating thereto (the "Dispute");

WHEREAS, Seller desires to sell, assign, convey, transfer and deliver to Buyer, and Buyer desires to purchase and acquire from Seller, the Trademarks (as such term is hereinafter defined) upon the terms, in the manner, and subject to the conditions set forth in this Agreement;

WHEREAS, it is the intent of the Parties that this Agreement shall resolve, fully and forever, any and all claims of Seller against Buyer related to the Dispute.

NOW THEREFORE, in consideration of the mutual covenants, agreements, and undertakings in this Agreement, and on behalf of each of the Parties, and their respective parent, subsidiaries and affiliated entities (collectively, "related entities"), the Parties agree as follows:

1. Sale and Purchase.

1.1. Sale and Purchase of Trademarks. Seller hereby sells, assigns, conveys, transfers and delivers to Buyer, and Buyer hereby purchases and acquires from Seller, free and clear of all security interests, liens, options, claims, debts, charges, restrictions or other encumbrances or restrictions on transfer of any kind whatsoever (collectively, "Encumbrances"), all of Seller's right, title and interest worldwide in and to the trademark 8UP, including without limitation all trademarks, trade names, trade dress, and service marks therefor, in each case whether registered or unregistered, and whether domestic or foreign, all registrations and applications therefor, all common law rights therein, all domain names, handles, hashtags, and other cyberspace names therefor, and all goodwill that is connected with the use of, or symbolized by, the same, together with all rights and causes of action accrued, accruing and to accrue under and by virtue of the same, including without limitation the right to sue and recover for past infringement and receive all damages, payments and costs and fees associated therewith, and including without limitation the registered trademarks listed on **Exhibit A** attached hereto (collectively, the "Trademarks").

1.2. Assignment and Further Assurances. Simultaneously with the execution and delivery of this Agreement, Seller shall execute and deliver to Buyer the Trademark Assignment attached hereto as **Exhibit B** (the "Trademark Assignment"). Seller agrees to promptly execute or cause to be executed any further documents as may be necessary, and to take any and all

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further actions requested by Buyer, as may be required or desirable in order to perfect and fully vest the right, title and interest in the Trademarks being conveyed to Buyer pursuant to this Agreement and fully consummate the transactions contemplated hereby (collectively, "Ancillary Documents"). Without limiting the generality of the foregoing, if after the Effective Date, Buyer or Seller become aware of any Trademarks that were not specifically identified in the Exhibits attached to this Agreement as of the Effective Date and included in the Trademark Assignment, Seller shall promptly take any and all actions requested by Buyer as may be required or desirable in order to give effect to and perfect the assignment of such Trademarks to Buyer.

1.3. No Assumption of Liabilities. Buyer does not hereby assume, and shall not in any way be liable or responsible for, any of the liabilities and obligations of Seller arising from or relating to the Trademarks or any business conducted in relation thereto, nor any other liabilities or obligations of Seller. Seller acknowledges and agrees that it shall retain all such liabilities and obligations, and that such liabilities and obligations retained solely by Seller include, without limitation, any taxes, levies, assessments or charges imposed on Seller and all transfer taxes arising out of the sale of the Trademarks.

2. Consideration and Payment.

2.1. Purchase Price. The purchase price for the Trademarks is three hundred and fifty thousand U.S. dollars (U.S. \$350,000.00) (the "Purchase Price").

2.2. Payment of Purchase Price. Within fifteen (15) business days of the Parties' full execution of this Agreement and Seller's delivery of the executed Trademark Assignment to Buyer, Buyer shall pay the Purchase Price to Seller via check payable to NuStar Enterprises LLC and Manchel Law, and mailed with tracking to Brett A. Manchel, 1064 N. Milwaukee Ave. 2W, Chicago, IL, 60642.

3. Representations and Warranties. Seller hereby represents and warrants to Buyer as follows:

3.1. Authority to Execute and Perform Agreement. Seller has the full legal right and power and all authority and approval required to enter into, execute and deliver this Agreement and the Trademark Assignment and to perform fully its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Trademark Assignment by Seller, and the consummation by Seller of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action, and no other proceedings on the part of Seller are necessary to authorize this Agreement and the Trademark Assignment or to consummate the transactions so contemplated. This Agreement and the Trademark Assignment have all been duly executed and delivered and are the valid and binding obligations of Seller enforceable against Seller in accordance with their terms.

3.2. Intellectual Property.

(a) The Trademarks listed in Exhibit A constitute all of the trademarks, trade names, service marks, trade dress, domain names and other intellectual property for the 8UP

mark (and all registrations or applications therefor and all common law rights therein), whether registered or unregistered, that are owned by Seller, including all goodwill associated therewith.

(b) Seller has good and marketable title to, and is the sole legal and beneficial owner of, all right, title and interest in and to all of the Trademarks, free and clear of any Encumbrances.

(c) All of the Trademarks are valid, subsisting, and enforceable. None of the Trademarks violate or infringe any intellectual property or other proprietary right of any person or entity, or violate any applicable laws or regulations. No person or entity has alleged that any of the Trademarks infringes the rights of such person or entity.

(d) There are no outstanding licenses, consents or rights granted by Seller or any third party to any person or entity with respect to the Trademarks in whole or in part.

3.3. No Breach. Seller's execution, delivery and performance of this Agreement and the Trademark Assignment, and the consummation of the transactions contemplated hereby and thereby, will not violate, conflict with or otherwise result in the breach or violation of any of the terms and conditions of, result in a modification of the effect of or constitute (or with notice or lapse of time or both would constitute) a default under (a) any contract or agreement to which Seller is a party or by or to which Seller or any of its assets or properties are bound or subject; or (b) any statute or any regulation, order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory body against, binding upon or applicable to Seller or upon the securities, properties or business of Seller.

3.4. Litigation. There are no outstanding orders, judgments, injunctions, awards or decrees of any court, governmental or regulatory body or arbitration tribunal against or involving any of the Trademarks or of Seller. Seller is not now, nor during the three years prior to the date hereof has been, a party to or threatened with any actions, suits, claims, protests, investigations, litigation or judicial, administrative or arbitration inquiry or proceeding relating to any of the Trademarks.

4. Additional Covenants and Agreements.

4.1. Cessation of Seller's Use. Upon the execution and delivery of this Agreement and the payment of the Purchase Price in accordance with Section 2 hereof, Seller shall immediately halt and refrain worldwide from any and all use of the Trademarks. Without limiting the generality of the foregoing, Seller agrees not to use, directly or indirectly, in whole or in part, any of the Trademarks, nor to use, create or develop any names or marks that are confusingly similar thereto or likely to dilute the same, nor shall Seller take any other action, or omit to take any action, which would impair the rights conveyed to Buyer pursuant to this Agreement. For the avoidance of doubt, Seller hereby irrevocably and unconditionally waives and relinquishes any right that it may have to use any of the Trademarks, in or of names or marks, or in any other way whatsoever in connection with or in relation to any enterprise, product or service. For the sake of clarity, this section shall not be deemed to prohibit Seller from taking actions required in order to perform its obligations under this Agreement or the Trademark Assignment strictly in accordance therewith.

4.2. Change of Company Name. Within thirty (30) days after the Effective Date, Seller, at its sole cost and expense, shall cause to be filed with the appropriate government office a Certificate of Amendment of its Articles of Organization, or other similar document, and shall execute such documents and all other papers and perform such further acts as may be reasonably required or desirable, to effect the change of Seller's name as registered in Indiana and in each jurisdiction in which it does business to names that do not include any of the Trademarks.

4.3. Mutual Release. Contingent on the Parties' fulfillment of the payment terms hereof, Seller, on behalf of itself, its parent, subsidiary and affiliated entities, and all successors and assigns, hereby fully and completely releases, acquits, discharges and holds harmless Buyer, and its officers, directors, employees, representatives, attorneys, parent, affiliate and subsidiary entities, and its successors and assigns, from any and all known and unknown claims, potential claims, complaints, grievances, liabilities, obligations, promises, damages, causes of action, demands, costs, royalties and expenses whatever, existing now or in the future, whether legal or equitable, under any local, state or federal law, common or statutory arising from any claims related to the Dispute on or before the Effective Date, and Buyer on behalf of itself, its parent, subsidiary and affiliated entities, and all successors and assigns, hereby fully and completely releases, acquits, discharges and holds harmless Seller, and its officers, directors, employees, representatives, attorneys, parent, affiliate and subsidiary entities, and its successors and assigns, from any and all known and unknown claims, potential claims, complaints, grievances, liabilities, obligations, promises, damages, causes of action, demands, costs, royalties and expenses whatever, existing now or in the future, whether legal or equitable, under any local, state or federal law, common or statutory arising from any claims related to the Dispute on or before the Effective Date other than what has been allowed for by the terms of this Agreement.

4.4. No Admission. Neither Party admits liability or culpability with respect to the matters addressed herein. Neither Party shall represent that this resolution signifies any factual or legal admissions.

4.5. Non-Disparagement. Seller shall not at any time on or after the Effective Date, directly or indirectly, orally or in writing, in any manner disparage, criticize or make negative comments to any person or entity other than Buyer concerning (a) Buyer or any of its parent, subsidiaries, affiliates, employees, directors, owners or other related persons, (b) any business, retail location, product, service or activity owned or operated by Buyer or any of its parent, subsidiaries, affiliates or related parties, or (c) any of the Trademarks. Seller shall ensure that its parent company, subsidiaries, affiliates, employees, directors, owners or other related persons comply with the provisions of this section.

4.6. Confidentiality. The Parties agree that the terms of this Agreement shall be confidential, including without limitation the statements made in negotiating this Agreement, the terms of the Agreement, and the settlement monies paid in connection with the Agreement. The Parties agree that either may disclose the confidential information referred to herein in accordance with a judicial or other governmental order, provided that the disclosing Party either (i) gives the other Party reasonable notice prior to such disclosure to allow the other Party a reasonable opportunity to seek a protective order or equivalent, or (ii) obtains written assurance from the applicable judicial or governmental entity that it will afford the confidential information the highest level of protection afforded under applicable law or regulation. The restrictions on

use and disclosure provided herein shall not apply to confidential information that is or becomes generally available to the public other than as a result of a disclosure or breach of any confidentiality obligation by a Party.

4.7. Equitable Remedies. Each Party acknowledges that (a) a breach or threatened breach by such Party of any of its obligations under this Agreement would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) if a breach or a threatened breach by such Party of any such obligations occurs, the other Party will, in addition to any and all other rights and remedies that may be available to such Party at law, at equity, or otherwise in respect of such breach, be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction, without any requirement to (i) post a bond or other security, or (ii) prove actual damages or that monetary damages will not afford an adequate remedy.

4.8. Expenses of Sale. With the exception of any expenses incurred by Buyer as to which Seller is required to indemnify Buyer under Section 4.9 hereof, the Parties to this Agreement shall each bear their respective direct and indirect expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement, the Trademark Assignment, and the transactions contemplated hereby and thereby, including without limitation all fees and expenses of representatives, counsel and accountants. Any and all taxes imposed on Seller resulting from the sale, assignment, transfer and delivery hereunder of the Trademarks shall be paid by Seller.

4.9. Indemnification. Seller shall indemnify, defend and hold harmless Buyer and its parent, subsidiaries, affiliates, directors, officers, employees, and assigns (each, an "Indemnified Party") from and against any losses, liabilities, damages (including incidental and consequential damages), deficiencies, costs, or expenses (including interest, penalties and reasonable attorneys' fees and disbursements) or diminution of value (collectively, "Losses") sustained or incurred by such Indemnified Party relating to, caused by or resulting from:

(a) any breach by Seller of any representation, warranty, covenant, obligation or other provision of this Agreement, any Ancillary Documents or any other certificate, schedule, document, or other writing executed or delivered by Seller pursuant to this Agreement or in relation to the transactions contemplated hereby;

(b) any liability or obligation of the kind referred to in Section 1.3 hereof;

(c) any Encumbrances on the Trademarks, other than any Encumbrances created by Buyer after the Effective Date;

(d) any licenses, consents or rights granted to a third party with respect to the Trademarks, other than any licenses, consents or rights granted by Buyer after the Effective Date;

(e) any actions, suits, claims, protests, investigations, litigation or judicial, administrative or arbitration inquiry or proceeding relating to any of the Trademarks to the extent

arising from facts or circumstances existing on or prior to the Effective Date; and

(f) any fraud, intentional misconduct or negligence by Seller or any of its parent, subsidiaries, affiliates, directors, officers, employees, or assigns.

5. General Provisions.

5.1. Entire Agreement. This Agreement (including its Exhibits) constitutes the entire agreement between Seller and Buyer with regard to the subject matter herein, and supersedes all prior negotiations or agreements, oral or written, concerning same.

5.2. Waivers and Amendments. This Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms and conditions hereof may be waived, only by a written instrument signed by both of the Parties hereto or, in the case of a waiver, by the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any right, power or privilege hereunder, nor any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

5.3. Survival. All of the representations, warranties and covenants of Seller in this Agreement shall survive the execution and delivery hereof, and the consummation of the transactions contemplated hereby, and remain in full force and effect indefinitely.

5.4. Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made on (a) delivery thereof, if by hand; (b) upon receipt, if sent by mail (registered or certified mail, postage prepaid, return receipt requested) or electronic mail with a copy concurrently sent by recognized overnight delivery service; (c) on the second business day following deposit, if sent by a recognized overnight delivery service; or (d) upon transmission, if sent by telecopy or facsimile transmission (in each case with receipt verified by electronic confirmation), in each case as follows:

If to Buyer: Bass Pro Intellectual Property, L.L.C.
2500 E. Kearney Street
Springfield, Missouri 65898
Attn: Legal Department
Legal@basspro.com

with a copy to: Jack S. Barufka
Pillsbury Winthrop Shaw Pittman LLP
1650 Tysons Boulevard, 14th Floor
McLean, VA 22102-4856
jack.barufka@pillsburylaw.com

If to Seller: NuStar Enterprises, LLC
7139 Broadway, 1A
Merrillville, IN, 46410

Attn: Keith Carter

with a copy to:

Brett Manchel
brett@manchellaw.com

provided, that each Party hereto shall promptly notify the other Party hereto of any change in its contact information, which revised contact information shall thereafter be used for the purposes of this section until further revised.

5.5. Counterparts. This Agreement may be executed in one or more original or facsimile counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

5.6. Successor and Assigns. This Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, each of the Parties and their respective heirs, executors, trustees, administrators, beneficiaries, personal representatives, successors and permitted assigns.

5.7. Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties hereto shall negotiate in good faith to, or the court making such a determination shall, modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the effect that the transactions contemplated hereby are fulfilled to the extent possible.

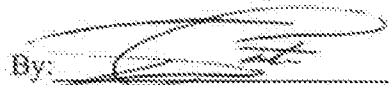
5.8. Governing Law; Forum. This Agreement shall be interpreted, construed and governed exclusively by and in accordance with the laws of the State of Delaware without regard to the conflict of law principles thereof. The Parties hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts located in the State of Delaware with respect to any controversy, claim, action or proceeding arising out of or relating to this Agreement, or the enforcement or breach hereof.

5.9. Acknowledgement. The Parties acknowledge that, in executing this Agreement, they have carefully reviewed or had the opportunity to review its terms with counsel of their choice and are fully aware of the extent of their rights and obligations under this Agreement. The Parties further agree that the language of this Agreement shall not be construed presumptively against any Party.

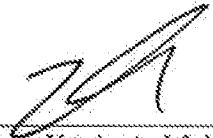
5.10. Attorneys' Fees. In the event it becomes necessary to commence legal action to enforce or otherwise give effect to the terms of this Agreement, the prevailing party, as determined by a court of competent jurisdiction in the litigation, shall be entitled to recover from the other party its reasonable attorneys' fees and expenses actually incurred.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be duly executed below as of the Effective Date.

SUP BRANDS LLC

By: 
Name: Keith Carter
Title: General Manager/Member
Date: September 12th, 2020

BASS PRO INTELLECTUAL PROPERTY, L.L.C.

By: 
Name: Kevin A. Maliszewski
Title: Chief Financial Officer
Date: September 15, 2020

AB

EXHIBIT A**Acquired Trademarks**

Mark	Jurisdiction	Registration Number	Registration Date	Goods/Services
8UP	U.S.	5049180	September 27, 2016	Animal attractant scents; Artificial fishing bait; Fishing lures; Fishing tackle.
8UP BAIT BOX	U.S.	5240805	July 11, 2017	Containers primarily of plastic used to hold, carry, or transport bait, tools, tackle and fishing equipment.
8UP	Indiana	File No. 2016-0519	October 14, 2016	Liquid fish attractants; artificial fishing bait; fishing lures; fishing tackle.
8UP	Illinois	110041	November 22, 2016	Animal attractant scents, artificial fishing bait, fishing lures, fishing tackle.
8UP	Minnesota	916588600048	November 28, 2016	Animal attractant scents; artificial fishing bait; Fishing lures; Fishing tackle
8UP	Tennessee	71770	April 3, 2017	Animal attractant scents, artificial fishing bait, fishing lures, fishing tackle.
8UP	Missouri	S020393	April 17, 2017	Toys and sporting goods

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EXHIBIT B


TRADEMARK ASSIGNMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 8Up Brands LLC, an Indiana limited liability company ("Assignor"), hereby assigns, transfers, and conveys to Bass Pro Intellectual Property, LLC, a Missouri limited liability company ("Assignee"), all right, title, and interest in and to the trademarks set forth on Schedule 1 attached hereto and incorporated herein by reference, together with the goodwill associated therewith and symbolized thereby, and all claims and causes of action with respect to any of the foregoing, including without limitation all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for future infringement or other violation, and all other rights, privileges, and protections of any kind whatsoever of Assignor accruing under any of the foregoing provided by any applicable law, treaty, or other international convention.

Assignor hereby authorizes the Commissioner for Trademarks in the United States Patent and Trademark Office and the Offices of the Secretary of State for the States of Indiana, Illinois, Minnesota, Tennessee, and Missouri to record and register this Assignment of Trademarks upon request of Assignee.

IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed on this 12th day of Sept., 2020 by its duly authorized officer.

8UP BRANDS LLC

By: 

Name: Keith Carter

Title: Manager

SCHEDULE 1
TRADEMARKS

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