

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM827768

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Consent Agreement		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
MAYAPPLE BABY, LLC		07/15/2023	Limited Liability Company: NEW YORK
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	MAGIC SLIDERS LLC		
<b>Street Address:</b>	520 White Plains Road		
<b>Internal Address:</b>	Suite 500		
<b>City:</b>	Tarrytown		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	10591		
<b>Entity Type:</b>	Limited Liability Company: DELAWARE		
<b>PROPERTY NUMBERS Total: 4</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Serial Number:</b>	97428469	SLIMFIT	
<b>Serial Number:</b>	97428490	SLIM FIT	
<b>Serial Number:</b>	97437856	HEFTY- FIT	
<b>Serial Number:</b>	97437809	HEFTYFIT	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	9142689974		
<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>			
<b>Phone:</b>	212-332-3332		
<b>Email:</b>	plattneal@gmail.com		
<b>Correspondent Name:</b>	Neal R. Platt		
<b>Address Line 1:</b>	767 Third Avenue		
<b>Address Line 2:</b>	24th Floor		
<b>Address Line 4:</b>	New York, NEW YORK 10017		
<b>NAME OF SUBMITTER:</b>	Neal R. Platt		
<b>SIGNATURE:</b>	/NealRPlatt/		
<b>DATE SIGNED:</b>	07/28/2023		
<b>Total Attachments: 8</b>			

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## ***CONSENT TO USE AGREEMENT***

**THIS CONSENT TO USE AGREEMENT**, made as of July 15, 2023 between **MAGIC SLIDERS LLC**, a limited liability company organized and existing under the laws of the State of Delaware having offices at Suite 500, 520 White Plains Road, Tarrytown, New York 10591 (“Magic Sliders”), and **MAYAPPLE BABY, LLC**, a limited liability company organized and existing under the laws of the State of New York, having an office at 64 Sterling Street, Brooklyn, New York 11225 (“Mayapple Baby”);

### ***WITNESSETH:***

**WHEREAS**, on February 11, 2022, Magic Sliders filed application Serial No. 97/263919 (“Magic Sliders’ Application”) to register the mark MAGIC FIT (“Magic Sliders’ Applied-For Mark”) on the Principal Register of the U.S. Patent and Trademark Office (“USPTO”) in connection with numerous products (often described as floor- and furniture-protection products) (all such products may sometimes be referred to in this Agreement as “Magic Sliders’ Applied-For Products”), including but not limited to “bumpers, namely, bumper guards for furniture”;

**WHEREAS**, on May 25, 2022, Mayapple Baby filed four applications to register trademarks, namely, Serial No. 97/437809 for HEFTYFIT, Serial No. 97/437856 for HEFTY-FIT, Serial No. 97/428469 for SLIMFIT, and Serial No. 97/428490 for SLIM-FIT (each such application being a “Mayapple Baby Application”; together, the “Mayapple Baby Applications”; and each such applied-for mark being a “Mayapple Baby Applied-For Mark”) on the Principal Register of the USPTO in connection with “bumper guards for furniture” (such products may be referred to in this Agreement as “Mayapple Baby’s Applied-For Products”);

**WHEREAS**, each of Magic Sliders’ Applied-For Mark and Mayapple Baby’s Applied-For Marks may sometimes be referred to hereinafter as an “Applied-For Mark” or together as “Applied-For Marks”, and Magic Sliders’ Applied-For Products and Mayapple Baby’s Applied-For Products may be referred to sometimes hereinafter individually as an “Applied-For Product” and together as “Applied-For Products”;

**WHEREAS**, a Notice of Allowance was issued by the USPTO on March 28, 2023 in respect of Magic Sliders’ Application, but no Statement of Use has yet been filed in respect of Magic Sliders’ Application;

**WHEREAS**, the USPTO has suspended further action in connection with the Mayapple Baby Applications on grounds of an anticipated likelihood of confusion between the parties' respective Applied-for Marks as used on their respective Applied-For Products;

**WHEREAS**, Mayapple Baby has requested that Magic Sliders enter into a consent-to-use agreement pursuant to which Magic Sliders would: (1) refrain from using Magic Sliders' Applied-For Mark on "bumpers, namely, bumper guards for furniture"; (2) abandon such portion of Magic Sliders' Application as seeks to register Magic Sliders' Applied-For Mark in connection with "bumpers, namely, bumper guards for furniture"; and (3) consent in writing to the USPTO's granting of the Mayapple Baby Applications in respect of such goods;

**WHEREAS**, Magic Sliders and Mayapple Baby believe that their simultaneous use of their respective Applied-For Marks consistently with the terms of this Agreement will not create a likelihood of confusion, and believe that they can continue to use their respective Applied-For Marks while avoiding any likelihood of confusion between their respective goods;

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. *Purpose of this Agreement.* It is the intent of Magic Sliders and Mayapple Baby, by entering into this Agreement:

- (a) to avoid any likelihood of confusion between their respective goods and services arising out of their respective use of their respective Applied-For Marks in connection with their respective Applied-For Products; and
- (b) if possible, to permit both Magic Sliders and Mayapple Baby to obtain geographically unrestricted registrations of their respective Applied-For Marks on the Principal Register in connection with their respective Applied-For Products.

2. *Mutual Release for Certain Past Conduct.* Except as expressly set forth in this Agreement, execution and delivery of this Agreement will forever compromise and

release any and all past claims between Magic Sliders and Mayapple Baby, and their respective officers, directors, and shareholders, arising out of any past acts or omissions in connection with either such parties' past use of its Applied-For Mark prior to the date of this Agreement.

3. *Magic Sliders' Representations and Warranties.* Magic Sliders hereby represents and warrants that:

- (a) all of the above recitals are true to the best of its knowledge and belief;
- (b) it has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby;
- (c) all proceedings required to be taken by Magic Sliders to authorize the execution, delivery, and performance of this Agreement have been properly taken; and
- (d) this Agreement constitutes a valid and binding obligation of Magic Sliders.

4. *Mayapple Baby's Representations and Warranties.* Mayapple Baby hereby represents and warrants that:

- (a) all of the above recitals are true to the best of its knowledge and belief;
- (b) beginning sometime in July 2022, Mayapple Baby has been using Mayapple Baby's Applied-For Marks in connection with Mayapple Baby's Applied-For Products;
- (c) Mayapple Baby has no intention of selling or licensing any good or service under the word "magic," any mark containing such word, nor any mark or phrase confusingly similar to MAGIC SLIDERS (any such mark or phrase may be referred to in this Agreement as a "MAGIC Formative");

- (d) it has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby;
- (e) all proceedings required to be taken by Mayapple Baby to authorize the execution, delivery, and performance of this Agreement have been properly taken; and
- (f) this Agreement constitutes a valid and binding obligation of Mayapple Baby.

5. *No Amendment of Identification of Goods Needed in the Mayapple Baby Applications.* Nothing in this Agreement shall be deemed to require Mayapple Baby to amend the present description of goods in the Mayapple Baby Applications nor any registration resulting therefrom.

6. *Discontinuance of Magic Sliders' Application in Respect of "Bumpers, Namely, Bumper Guards for Furniture."* Magic Sliders shall not use its Applied-For Mark on or in connection with "bumpers, namely, bumper guards for furniture," and shall file a notice with the USPTO discontinuing Magic Sliders' Application in respect of "bumpers, namely, bumper guards for furniture," *provided*, however, that Magic Sliders may continue such application with respect to some or all other Magic Sliders' Applied-For Products as Magic Sliders may choose from time to time at its sole option.

7. *Magic Sliders' Consent to the Mayapple Baby Applications.* Provided that Mayapple Baby shall not expand the goods and services identified in any such applications, Magic Sliders hereby irrevocably consents to the USPTO's grant of Principal Registrations as applied for in the Mayapple Baby Applications, and shall neither oppose any of Mayapple Baby Applications nor petition to cancel any resulting registrations.

8. *Mayapple Baby's Consent to Magic Sliders' Application.* Provided that Magic Sliders shall not expand the goods and services identified in such application, Mayapple Baby hereby irrevocably consents to the USPTO's grant of a Principal Registration as applied for in Magic Sliders' Application, and shall neither oppose Magic Sliders' Application nor petition to cancel any resulting registration.

9. *No Use or Application to Register by Mayapple Baby of any MAGIC Formative.* Subject solely to the terms of Paragraph 21, Mayapple Baby shall not sell

or license any good or service under any MAGIC Formative nor apply to register any MAGIC Formative as a trademark or service mark anywhere in the world in connection with any good or service.

10. *No Use by Mayapple Baby of any FIT Formative in Respect of Certain Goods or Services.* For purposes of this Agreement, any mark or phrase containing the word “fit,” and any word or phrase confusingly similar to such word, may be referred to as a “FIT Formative”. Subject solely to the terms of Paragraphs 7 & 21, Mayapple Baby shall not, under any FIT Formative, sell or license:

- (a) any floor- or furniture-protection good or service, other than Mayapple Baby’s Applied-For Products; nor
- (b) any good or service of a type then sold by Magic Sliders (including but not limited to Magic Sliders’ Applied-For Goods); nor
- (c) any good or service competitive with any such good or service;

nor shall Mayapple Baby apply to register any FIT Formative as a trademark or service mark anywhere in the world in connection with any such good or service.

11. *Mutual Agreement to Avoid Likelihood of Confusion.* Subject to the rights of each party in its Applied-For Marks in respect of its Applied-for Products, each of Mayapple Baby and Magic Sliders hereby agrees to take such additional steps as may reasonably be required from time to time to avoid a likelihood of confusion in the future in connection with the use by either of them of any FIT Formative.

12. *New Goods or Services.* Subject to the terms of Paragraph 7, neither party shall use a FIT Formative on or in connection with any of the other party’s currently Applied-For Products. In the event that either party shall use a FIT Formative in connection with any product or service of a description different from its own Applied-For Products, where such use might tend to create or foster a likelihood of confusion with a product or service already offered by the other party or falling within the description of such goods or services, then the party offering the new product or service shall take such measures as may be reasonably necessary to avoid such likelihood of confusion. In appropriate cases, such measures may require refraining

completely from the use of the FIT Formative in connection with such new product or service.

13. *Cooperation in Enforcing Trademark Rights Against Others.* In the event that either party shall, from time to time, believe in its sole judgment that its rights in a FIT Formative are being infringed by one or more third parties, the non-aggrieved party will provide such cooperation as may reasonably be requested by the aggrieved party, including, but not limited to, the providing of truthful affidavits and testimony, both at deposition and at trial anywhere in the world. Such cooperation will be provided at the sole cost and expense of the aggrieved party. Under no circumstances will the non-aggrieved party intervene in such dispute on behalf of the third-party putative infringer. In the event that either party is required to defend its rights in a FIT Formative, the other party will cooperate with the defending party in like manner at the sole cost and expense of the defending party.

14. *No Admissions by Any Party.* Neither execution and delivery of this Agreement, nor the performance of any acts in connection with this Agreement, shall be construed at any time or place to be an admission by any party, or counsel for any party, that it or he has performed or failed to perform any act in violation of any law or regulation or the rights of any other party.

15. *Attorneys' Fees.* Each party shall bear its own attorneys' fees in connection with the drafting, negotiation, execution, performance, and recording of this Agreement. If any party shall oppose any application or petition to cancel any registration in violation of the terms hereof, that party shall pay all costs, expenses, and reasonable attorneys' fees incurred by the other party in consequence of such violation.

16. *Integration.* It is hereby understood and agreed by each party that all understandings and agreements between the parties before the date of this Agreement with respect to matters covered by this Agreement are merged into this Agreement, which, together with the documents to be executed and delivered pursuant hereto, alone fully and completely expresses the parties' agreement.

17. *Successors and Assigns; Assignments.* This Agreement is binding on, and shall inure to the benefit of, the parties hereto and their respective agents, successors, assigns, and licensees. No duties under this Agreement shall be delegable, except together with all of the rights to any FIT Formative owned by the assigning party and all of the goodwill appurtenant thereto.



18. *No Third Party Beneficiaries.* Subject to the terms of Paragraph 17 of this Agreement, the parties do not intend by this Agreement to confer any rights upon any person, firm, or corporation not a party hereto.

19. *No Representations Outside of this Agreement.* The parties declare that, before the execution of this Agreement, they apprised themselves of sufficient relevant data in order that they might intelligently exercise their own judgments in deciding whether to execute and in deciding on the contents of this Agreement. Each party further declares that its decision to execute this Agreement is not predicated on or influenced by any declarations or representations by any other person, party or any predecessors in interest, successors, assigns, officers, directors, employees, agents or attorneys of any such person or party.

20. *No Press Releases or Publicity-Seeking.* No party hereto shall issue a press release disclosing the existence or terms of this Agreement to the popular media, *provided*, however, that nothing in this Agreement shall prohibit any party from disclosing the existence and terms of this Agreement to the USPTO, the Trademark Trial & Appeal Board, any foreign trademark authorities, and any court, nor shall anything in this Agreement prohibit Magic Sliders' recording of copies of this Agreement in the USPTO as set forth in Paragraph 23, below.

21. *Expiration.* In the event that Magic Sliders and its successors, assigns, and licensees, or all the constituent companies of Mayapple Baby and their successors, assigns, and licensees shall cease doing business for more than three (3) years, then such part(ies)' then-continuing rights and obligations under this Agreement shall expire and terminate at such time.

22. *Notices.* Any and all notices or other communications required or permitted to be given under any provision of this Agreement will be in writing and will be deemed to have been duly given when personally delivered or five (5) days after the date mailed, postage prepaid, by first class certified or registered mail, return receipt requested, addressed to the parties at the addresses set forth above (or at such other address as any party may specify by notice to all other parties given as aforesaid), together with copies by email, if to Magic Sliders, to Neal R. Platt, Esq. of the Law Firm of Jack M. Platt, 767 Third Avenue, 24<sup>th</sup> Floor, New York, New York 10017 (to both email addresses: [plattneal@gmail.com](mailto:plattneal@gmail.com) and [jack@jackplattlaw.com](mailto:jack@jackplattlaw.com)), and, if to Mayapple Baby, to Brad Sniderman, Esq., at 23679 Calabasas Road, #558, Calabasas, California 91302 (email address [brad@bmslawpractice.com](mailto:brad@bmslawpractice.com)).


23. *Recordation.* Magic Sliders is hereby irrevocably authorized to record a copy of this Agreement in the USPTO against each of the Mayapple Baby Applications.

24. *Magic Sliders Shall Have No Monetary Liability.* Anything contained in this Agreement to the contrary notwithstanding, Magic Sliders shall have no monetary liability for any reason, whether for money damages, restitution, or otherwise, for any breach or violation of (or in connection with) this Agreement, including but not limited to any breach of representation, warranty, or covenant. Without limiting or qualifying the foregoing sentence, in no event shall Magic Sliders be liable to Mayapple Baby, its successors or assigns for any special, punitive, exemplary, incidental, or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of any obligations of Magic Sliders under this Agreement. Under no circumstances, however, shall the terms of this Paragraph 24 constitute a waiver by Mayapple Baby of any opportunity it may have to seek injunctive relief in respect of any actual or threatened violation of this Agreement by Magic Sliders.

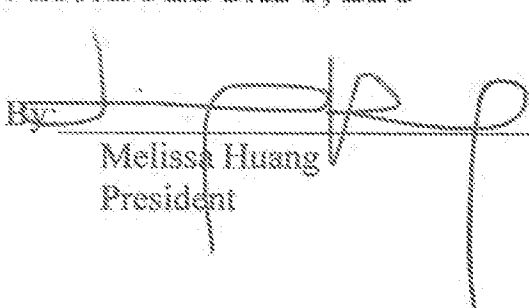
25. *Warranties and Signatures.* Each individual signing this Agreement on behalf of any corporation or firm hereby represents and warrants to all other signatories hereto that he or she is duly authorized and empowered to act on behalf of and sign for the corporation, limited liability company, or firm for whom he or she has signed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

MAGIC SLIDERS LLC

By:   
Antonia Collado  
President

MAYAPPLE BABY, LLC

By:   
Melissa Huang  
President