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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Proceeding | 91203057 |
| Party | Plaintiff Churchill Downs Incorporated |
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|----------------------------------|
| CHURCHILL DOWNS INCORPORATED |) | |
| |) | |
| Opposer |) | |
| |) | |
| vs. |) | |
| |) | OPPOSITION NO. 91,203,057 |
| COMMEMORATIVE DERBY PROMOTIONS, INC. |) | |
| |) | |
| Applicant |) | |
| <hr style="width: 40%; margin-left: 0;"/> |) | |

MOTION TO SUSPEND PROCEEDING

Opposer, Churchill Downs Incorporated (“Opposer”) hereby moves, pursuant to TBMP § 510.02(a), that this opposition proceeding be suspended on the ground that the parties are engaged in a civil action that will have a bearing on the case. Applicant moves that this proceeding be suspended until final determination of that action through settlement or by final judgment and resolution of any appeal.

An action styled *Churchill Downs Incorporated. v. Commemorative Derby Promotions, Inc. et al*, Cause No. 1:12-CV-517-JEC, is currently pending in the U.S. District Court for the Northern District of Georgia. A true and correct copy of the Complaint in the federal court action is submitted with this Motion.

In the federal court action, Plaintiff, Churchill Downs Incorporated, the Opposer here, seeks relief against Commemorative Derby Promotions, Applicant here, and its principal officer. The federal court action is based *inter alia* on Opposer's claims of trademark infringement and unfair competition under Section the Lanham Act, 15 U.S.C. § 1051 *et seq.* relating to Applicant's use of the mark sought to be registered here as well as Opposer's claim of ownership of the mark.

Thus, the resolution of the issues in the pending litigation is expected to affect this proceeding. Because resolution of the issues referenced above, among others, in the federal court action will have a direct effect on the resolution of this opposition proceeding, Applicant respectfully requests that this proceeding be suspended.

/jackawheat/
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ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE AND MAILING

I hereby certify that a true copy of this correspondence entitled MOTION TO SUSPEND PROCEEDING in Opposition No. 91,203,057, *Churchill Downs Incorporated v. Commemorative Derby Promotions, Inc.* is this 9th day of March, 2012 being submitted electronically to the U.S. Patent and Trademark Office through the ESTTA system, and deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Donald L. Cox
William H. Mooney
LYNCH, COX, GILMAN & GOODMAN, P.S.C.
500 West Jefferson Street, Suite 2100
Louisville, Kentucky 40202

ATTORNEYS FOR APPLICANT

/jackawheat/

Jack A. Wheat

CH138:0CH10:871949:1:LOUISVILLE

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CHURCHILL DOWNS INCORPORATED,

Plaintiff,

vs.

COMMEMORATIVE DERBY
PROMOTIONS, INC., and
LEONARD LUSKY,

Defendants.

CIVIL ACTION FILE
NO. _____

COMPLAINT

Comes the Plaintiff, Churchill Downs Incorporated (hereafter “Churchill Downs”), with this Complaint against Defendants, Commemorative Derby Promotions, Inc. (hereafter “CDP”) and Leonard Lusky (hereafter “Lusky”) (collectively the “Lusky Defendants”). For its Complaint, Churchill Downs states as follows:

PRELIMINARY STATEMENTS

1. This action is brought by Churchill Downs against CDP and its sole, or principal owner, officer and manager, Leonard Lusky, under the federal Lanham Act, 15 U.S.C. § 1051 *et seq* along with pendent and ancillary claims under state statutory law, including the Uniform Deceptive Trade Practices Act as enacted in

this jurisdiction, O.C.G.A. § 10-1-370 *et seq*, and O.C.G.A. § 23-2-55, as well as the common law, to remedy unlawful deceptive trade practices and unfair competition committed through commercial use of symbols associated with or referring to Churchill Downs by the Lusky Defendants in their advertising, marketing, and promotional merchandise, as well as claims to remedy the infringement by the Lusky Defendants of the CHURCHILL DOWNS, KENTUCKY DERBY, JOCKEY CLUB, and KENTUCKY JOCKEY CLUB trademarks and service marks owned by Churchill Downs.

2. This action also includes claims of trademark counterfeiting and trademark dilution brought under the pertinent provisions of the Lanham Act, namely 15 U.S.C. § 1116(d) and 15 U.S.C. § 1125(c).

3. This action also includes pendent and ancillary claims to remedy violations by CDP of its now terminated “Churchill Downs Incorporated Standard Retail Product License Agreement,” (the “License Agreement”), including violation of the provision prohibiting CDP from “the manufacture, advertising, use, distribution and sale” of any products utilizing any “designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs]” and any “similar marks” following termination of the License Agreement (hereafter referred to as “Offending Products” or “Offending

Behaviors”). A true copy of the License Agreement, marked as Plaintiff’s Exhibit 1, is attached hereto and incorporated herein by this reference.

4. This action also includes pendent and ancillary claims to remedy violation of the provision of the License Agreement prohibiting CDP from applying for trademark registrations in its name of any “designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs]” and to remedy violation by CDP of the associated provision of the License Agreement requiring it to transfer to Churchill Downs ownership of any filing made by or on behalf of CDP to register any such indicia “or any similar mark.”

SUBJECT MATTER JURISDICTION

5. This Court has original jurisdiction to adjudicate the Lanham Act claims in this action pursuant to 15 U.S.C. § 1121 and 28 U.S.C. § 1338, and pendent and ancillary jurisdiction to adjudicate the state statutory and common law claims associated therewith.

PERSONAL JURISDICTION AND VENUE

6. Litigation relating to this dispute was previously instituted by Churchill Downs in Louisville, Kentucky because all of the parties are resident of

Louisville and all of the offenses and breaches which brought rise to the litigation were centered in Louisville, Kentucky.

7. Notwithstanding, in the prior litigation the Lusky Defendants proceeded with a Motion to Dismiss contending that this action should be litigated in Georgia as provided for in a forum selection clause in the breached License Agreement which is the subject of some claims of this lawsuit, Plaintiff's Exhibit 1. In response, Churchill Downs explained to the Louisville Court that application of the forum selection clause was not necessary because all of the parties were domiciliaries of that forum, and all of the offenses and breaches which brought rise to this litigation were centered in Louisville, Kentucky.

8. Notwithstanding, the Lusky Defendants were adamant that this matter should be litigated in Georgia and noting Kentucky's deference to forum selection clauses, the Louisville Court agreed, dismissing without prejudice the prior lawsuit holding that this matter must be litigated in Georgia.

9. Accordingly, the Lusky Defendants are deemed as a matter of law to have waived any objection, and to have consented to the propriety of personal jurisdiction over them and venue in this court to litigate these claims.

THE FACTS

10. Churchill Downs is a corporation duly organized and existing under the laws of the Commonwealth of Kentucky with its principal place of business located at 700 Central Avenue, Louisville, Kentucky 40208.

11. Churchill Downs is, among other things, actively involved in the business of presenting thoroughbred horseracing events and is the current owner, and successor in interest to the prior owners and operators, of the horseracing facility known as Churchill Downs located on Central Avenue in Louisville, Kentucky.

12. Churchill Downs Incorporated, previously known as Churchill Downs, Incorporated, and before that known as Churchill Downs-Latonia, Incorporated, and before that known as Churchill Downs, became incorporated in 1928.

13. Churchill Downs, was formally incorporated as the successor in interest of the owner and operator of the Churchill Downs horseracing facility owned and operated by the Kentucky Jockey Club.

14. In about 1918 or 1919, the Kentucky Jockey Club became the successor in interest to the owner and operator of the Churchill Downs horseracing facility, acquiring same from an investment group headed by Matt J. Winn which,

in about 1902, became the successor in interest to an entity known as the New Louisville Jockey Club which, in about 1894, acquired the horseracing facility then known as the Louisville Jockey Club and also known as Churchill Downs.

15. In about 1874, Colonel M. Lewis Clark acquired from his uncles John and Henry Churchill the land where the Churchill Downs horseracing facility is located, and created the horseracing facility naming it the Louisville Jockey Club.

16. By about 1883, the Louisville Jockey Club horseracing facility was becoming known as Churchill Downs.

17. The Churchill Downs horseracing facility is generally famous throughout the United States and is recognized around the world by persons in the horseracing industry, and fans thereof, as one of the more famous horseracing facilities in the world.

18. Churchill Downs is the organizer, promoter and producer of the annual running of the thoroughbred horserace known as the "Kentucky Derby" which has continually been presented by Churchill Downs and its predecessors in interest at the Churchill Downs formerly known as Louisville Jockey Club horseracing facility each year since the establishment of the race in 1875.

19. The Kentucky Derby is generally regarded as the most famous thoroughbred horserace in the United States, if not the world.

20. Churchill Downs regularly capitalizes on the fame, historical notoriety, and heritage of Churchill Downs and the Derby, including the use of marketing materials discussing and chronicling the history of the horseracing facility and the Derby, including ongoing uses of “Jockey Club,” “Louisville Jockey Club,” and “Kentucky Jockey Club” in its marketing materials to identify Churchill Downs and the Derby, capitalizing on the fame, historical notoriety, and heritage of Churchill Downs and the Derby and to distinguish Churchill Downs and the Derby from other horseracing facilities and events.

21. Further capitalizing on its fame, historical notoriety, and heritage, Churchill Downs is the organizer, promoter and producer of the annual running of the thoroughbred horserace known as the “Kentucky Jockey Club,” a major stakes race which has continually been presented by Churchill Downs at the Churchill Downs horseracing facility each year since the establishment of that race in about 1920.

22. The Kentucky Jockey Club race is generally regarded by persons in the horseracing industry in the United States as a major thoroughbred horse stakes race.

23. Churchill Downs is actively involved directly, and through licensed vendors, with the production and sale of souvenir merchandise commemorating the

Churchill Downs horseracing facility as well as various of the better known horse races held at said facility, namely, souvenir merchandise such as, but not limited to, clothing, including shirts, sweaters, jackets and headwear, glassware and party supplies, art prints and posters, and other collectibles.

24. Continuously for over a century, the mark, CHURCHILL DOWNS, has been commercially promoted by Churchill Downs in commerce to the extent that the mark serves to identify goods and services originating from Churchill Downs or goods or services affiliated, connected or associated with, or otherwise sponsored or approved by Churchill Downs so as to distinguish those items from goods and services of others not associated with Churchill Downs.

25. Churchill Downs is the owner of a registration with the United States Patent & Trademark Office of the mark, CHURCHILL DOWNS, namely registration no. 1,557,889 issued on September 26, 1989.

26. Continuously for over a century, the mark, KENTUCKY DERBY, has been commercially promoted by Churchill Downs in commerce to the extent that the mark serves to identify goods and services originating from Churchill Downs or goods or services affiliated, connected or associated with, or otherwise sponsored or approved by Churchill Downs so as to distinguish those items from goods and services of others not associated with Churchill Downs.

27. Churchill Downs is the owner of multiple registrations with the United States Patent & Trademark Office of the mark, KENTUCKY DERBY and variations thereof including registration of the mark, THE KENTUCKY DERBY, namely registration no. 1,534,197 issued on April 11, 1989; registrations of the mark, KENTUCKY DERBY, including registration no. 3,697,785 issued on October 20, 2009, registration no. 3,734,992 issued on January 5, 2010, registrations no. 3,740,846 and 3,740,853, both issued on January 19, 2010, registration no. 3,832,492 issued on August 10, 2010, registration no. 3,981,908 issued on June 21, 2011, and registration no. 3,994,346 issued on July 12, 2011; registration of the mark, KENTUCKY DERBY PARTY, namely registration no. 3,994,347 issued on July 12, 2011; and registration of the mark, BRING THE DERBY HOME, namely registration no. 3,747,619 issued on February 9, 2010. Each of these marks are collectively referred to herein as the “KENTUCKY DERBY marks.”

28. Regularly for many decades, the mark, LOUISVILLE JOCKEY CLUB has been commercially utilized by Churchill Downs in commerce to the extent that the designation serves to identify goods and services originating from Churchill Downs or goods or services affiliated, connected or associated with, or

otherwise sponsored or approved by Churchill Downs so as to distinguish those items from goods and services of others not associated with Churchill Downs.

29. Regularly for many decades, the mark, KENTUCKY JOCKEY CLUB has been commercially utilized by Churchill Downs in commerce to the extent that the designation serves to identify goods and services originating from Churchill Downs or goods or services affiliated, connected or associated with, or otherwise sponsored or approved by Churchill Downs so as to distinguish those items from goods and services of others not associated with Churchill Downs.

30. Churchill Downs is the owner of an application for registration with the United States Patent & Trademark Office of the mark, KENTUCKY JOCKEY CLUB, namely application serial no. 85/247,600 filed on February 21, 2011 based upon priority use of the mark dating back as early as 1926. Said application has been approved for registration with the United States Patent & Trademark Office and a registration is expected to forthwith issue.

31. To the best of Plaintiff's knowledge and belief, Defendant Commemorative Derby Promotions, Inc. ("CDP") is a corporation duly organized and existing under the laws of the Commonwealth of Kentucky with its principal place of business located at 2800 Altagate Court, Louisville, Kentucky 40206.

32. CDP is, at least in part, engaged in the business of the production and sale of souvenir merchandise commemorating horseraces and race tracks, namely, souvenir merchandise such as, but not necessarily limited to, clothing, including shirts and headwear, glassware, art prints and posters, and other collectibles.

33. On or about April 5, 2007, Defendant Lusky, on behalf of Defendant CDP executed a Churchill Downs Incorporated Standard Retail Product License Agreement (the "License Agreement"). SEE Exhibit 1 attached hereto and incorporated herein by this reference.

34. Pursuant to section 2 of the License Agreement, CDP was granted permission to "manufacture, advertise, distribute and sell" various articles containing licensed indicia in the nature of "designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs]."

35. By the express terms thereof, specifically section 2(c), it was agreed the License Agreement "shall expire December 31, 2010, unless terminated sooner or renewed." The License Agreement was neither terminated sooner than the specified expiration date, nor renewed, and thus did expire on December 31, 2010.

36. At all times pertinent to the issues involved in this lawsuit, Defendant, Leonard Lusky has been the sole, or principal owner, officer and manager of CDP.

37. At all times pertinent to this Complaint, Lusky has had the right and ability to supervise the actions complained of in each of the Counts brought herein and actually directed, controlled and participated in as the moving force behind the actions complained of and has had direct financial interest in the proceeds of same.

38. Lusky has knowingly failed to prevent the actions complained of in each of the Counts brought herein and his knowing failure to do so has resulted in his direct financial benefit from the complained of actions.

39. Lusky participated in, knew of, planned, and approved the actions complained of in each of the Counts brought herein.

40. The actions complained of herein have caused damage to Churchill Downs, in the nature of lost royalties or other income or diverted sales for which Churchill Downs should have benefited and have resulted in financial benefit to the Lusky Defendants which should be disgorged from them and transferred to Churchill Downs.

41. To the best of the knowledge and belief of Churchill Downs, the actions complained of in each of the Counts brought herein were committed by the Lusky Defendants knowingly, intentionally, willfully, wantonly, maliciously, or otherwise with reckless disregard of the property rights and interests of Churchill

Downs and similar disregard of the obligations imposed upon CDP under the License Agreement.

42. Pursuant to section 7(g) of the License Agreement, CDP expressly acknowledged and agreed that “its breach or threatened breach of [the License Agreement] will result in immediate and irremediable damage . . . and that money damages alone would be inadequate to compensate [Churchill Downs]. Therefore, in the event of a breach or threatened breach . . . [Churchill Downs] may, in addition to other remedies, immediately obtain and enforce injunctive relief prohibiting the breach or threatened breach or compelling specific performance.” Further, “Licensee [CDP] shall reimburse . . . [Churchill Downs] for their reasonable attorney’s fees and other expenses.”

43. Churchill Downs has incurred and will continue to incur appreciable amounts of attorneys’ fees to remedy the Lusky Defendants’ breaches of the License Agreement including the actions complained of in each of the Counts brought herein.

44. Continuation of any of the actions complained of in each of the Counts brought herein, as well as the failure of CDP to take the appropriate steps to specifically perform its obligations under the License Agreement, will cause

Churchill Downs to incur irreparable injury for which there is no adequate remedy at law.

COUNT I:

**BREACH OF POST-TERMINATION RESTRICTIONS
OF LICENSE AGREEMENT:
DEFENDANTS' UNAUTHORIZED PROMOTIONAL
COMMERCIALIZATION OF INDICIA ASSOCIATED WITH
CHURCHILL DOWNS**

45. The allegations of paragraphs numbered 1-35 and 40-44 of this Complaint are hereby incorporated into this Count by this reference.

46. Pursuant to section 16 of the License Agreement, CDP expressly agreed, subject to a limited sell off right not pertinent to the issues of this lawsuit that “[a]fter expiration or termination of [the License Agreement] for any reason, Licensee [CDP] shall immediately discontinue the manufacture, advertising, use, distribution and sale of all Licensed Articles, Packaging and Advertising Materials, the use of all Licensed Indicia [defined by section 1(a) of the License Agreement as ‘designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs]’], and all similar marks.”

47. Notwithstanding expiration of the License Agreement, CDP continues to manufacture, advertise, use, distribute and sell previously licensed articles or

slight variations thereof, including, but not necessarily limited to, the previously licensed “Dirt Shirt.”

48. Further, following expiration of the License Agreement, CDP has also expanded its product line to include other products containing “designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs],” and “similar marks.”

49. Further, notwithstanding expiration of the License Agreement, CDP continues to utilize “designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs],” and “similar marks” in its marketing and advertising activities.

50. These Offending Behaviors following expiration of the License Agreement specifically include, but are not limited to, ongoing utilization by CDP in its marketing and advertising activities of the marks, CHURCHILL DOWNS, KENTUCKY DERBY and the “similar mark,” DERBY.

51. These Offending Behaviors following expiration of the License Agreement also include ongoing utilization by CDP in its marketing and advertising activities of the designation LOUISVILLE JOCKEY CLUB, a “trademark[], service mark[], ... and symbol[] associated with or referring to [Churchill Downs].”

52. Further, notwithstanding expiration of the License Agreement, CDP continues to market its products as Churchill Downs and/or Kentucky Derby merchandise and its advertising and marketing activities are replete with references to, or suggestions the products are Kentucky Derby products.

53. Indeed, notwithstanding expiration of the License Agreement, CDP continues to suggest and advertise its products are officially licensed Kentucky Derby products.

54. Unless the continuation of the Offending Behaviors is enjoined, Churchill Downs will suffer irreparable injury for which there is no adequate remedy at law.

COUNT II:

**UNLAWFUL DECEPTIVE TRADE PRACTICES
AND UNFAIR COMPETITION**

55. The allegations of paragraphs numbered 1-54 of this Complaint are hereby incorporated into this Count by this reference.

56. The primary market context in which the Offending Products are advertised and sold is directed towards customers seeking Churchill Downs and/or Kentucky Derby merchandise.

57. Defendant engages in this line of business in direct competition with Churchill Downs.

58. The uses by the Lusky Defendants on their products and in their advertising and marketing endeavors of “designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs],” including the word, “Derby,” “Louisville Jockey Club,” and “similar marks” is intended by them as specific references to the Kentucky Derby and/or Churchill Downs.

59. The uses by the Lusky Defendants on their products and in their advertising and marketing endeavors of “designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs],” including the word, “Derby,” “Louisville Jockey Club,” and “similar marks” is intended by them to identify or call to the mind of target customers the Kentucky Derby and/or Churchill Downs.

60. Intended customers for the Offending Products recognize the products to be references to Churchill Downs and/or the Kentucky Derby.

61. Intended customers for the Offending Products recognize the products to be Kentucky Derby commemorative promotional products.

62. The Lusky Defendants are intentionally capitalizing on the fame of the Kentucky Derby.

63. The Lusky Defendants are intentionally capitalizing on the desire of fans of the Kentucky Derby to acquire commemorative merchandise to wear or display to demonstrate the consumer's interest in or support for the Kentucky Derby.

64. The Lusky Defendants are intentionally capitalizing on the desire of fans of the Kentucky Derby to acquire commemorative merchandise to wear or display to identify with the Kentucky Derby.

65. In doing so, the Lusky Defendants are passing off, or palming off their products as Kentucky Derby commemorative promotional products.

66. In doing so, the Lusky Defendants are passing off, or palming off their products as products produced by or on behalf of Churchill Downs, or licensed Churchill Downs products.

67. The Lusky Defendants intend for potential customers of the Offending Products to identify the products with the Kentucky Derby and/or Churchill Downs.

68. In the retail marketplace, the Offending Products are often displayed side-by-side officially licensed Churchill Downs and/or Kentucky Derby merchandise.

69. In the retail marketplace, the Offending Products are often interspersed within displays containing officially licensed Churchill Downs and/or Kentucky Derby merchandise.

70. A reason consumers purchase the Offending Products is because of customer identification of the products as references to the Kentucky Derby and/or Churchill Downs.

71. The identification with the Kentucky Derby and/or Churchill Downs in association with the Offending Products is a reason customers purchase the products.

72. Target customers for the Offending Products would not purchase the products but for the customer identification of the products with the Kentucky Derby and/or Churchill Downs.

73. There would be appreciably less demand among target customers for the Offending Products if the product did not reference either the Kentucky Derby or Churchill Downs

74. The Offending Behaviors generate sales for the Lusky Defendants based upon exploitation of the reputation or goodwill of Churchill Downs and/or the Kentucky Derby and are intended by the Lusky Defendants to do so.

75. The Offending Behaviors capitalize on the reputation and good will of Churchill Downs and/or the Kentucky Derby, and are intended by the Lusky Defendants to do so.

76. The tendency of the Offending Behaviors is to deceive or mislead the public into believing the Offending Products are Kentucky Derby commemorative promotional products

77. The tendency of the Offending Behaviors is to deceive or mislead the public into believing the Offending Products are produced by or on behalf of Churchill Downs, or are licensed Churchill Downs products.

78. Target consumers of the Offending Products are likely to be confused into believing the products are Kentucky Derby commemorative promotional products.

79. Target consumers of the Offending Products are likely to be confused into believing the products are produced by or on behalf of Churchill Downs, or are licensed Churchill Downs products.

80. The uses by the Lusky Defendants on their products and in their advertising and marketing endeavors, without the consent of Churchill Downs, of “designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs],” including the word, “Derby,”

“Louisville Jockey Club,” and “similar marks,” are uses in commerce likely to cause confusion, or to cause mistake, or to deceive as to an affiliation, connection or association of the Lusky Defendants or products, with Churchill Downs, or otherwise likely to cause confusion, or to cause mistake, or to deceive as to the origin with Churchill Downs or sponsorship or approval by Churchill Downs of the Offending Products.

81. The effect of the Offending Behaviors is to divert from Churchill Downs to the Lusky Defendants the benefit of sale of Kentucky Derby and/or Churchill Downs commemorative promotional products.

82. The foregoing Offending Behaviors are committed in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

83. The foregoing Offending Behaviors are committed in violation of the Uniform Deceptive Trade Practices Act as enacted in Georgia, O.C.G.A. § 10-1-370 *et seq.*

84. The foregoing Offending Behaviors are committed in violation of the O.C.G.A. § 23-2-55.

85. The foregoing Offending Behaviors are committed in violation of the common law.

86. As a consequence of the foregoing, the Lusky Defendants are unjustly enriched by unlawfully benefiting from the good will and reputation of Churchill Downs and the Kentucky Derby.

87. Unless the continuation of Defendant's Offending Behaviors is enjoined, Churchill Downs will suffer irreparable injury for which there is no adequate remedy at law.

COUNT III:

INFRINGEMENT OF "CHURCHILL DOWNS" MARK

88. The allegations of paragraphs numbered 1-25 and 31-81 of this Complaint are hereby incorporated into this Count by this reference.

89. The Lusky Defendants are commercially utilizing the designation CHURCHILL DOWNS without the consent of Churchill Downs in connection with the sale, offering for sale, distribution and advertising of the Offending Products.

90. The commercial context in which the Lusky Defendants' are so using the designation CHURCHILL DOWNS are so similar to Plaintiff's registered mark, CHURCHILL DOWNS as to cause confusion, or to cause mistake, or to deceive.

91. Said actions of Defendants thus constitute violations of section 32 of the Lanham Act, 15 U.S.C. § 1114.

92. Unless these actions are enjoined, Churchill Downs will suffer irreparable injury for which there is no adequate remedy at law.

COUNT IV:

INFRINGEMENT OF “KENTUCKY DERBY” MARKS

93. The allegations of paragraphs numbered 1-23, 26-27, and 31-81 of this Complaint are hereby incorporated into this Count by this reference.

94. The Lusky Defendants are commercially utilizing the designations KENTUCKY DERBY and DERBY without the consent of Churchill Downs in connection with the sale, offering for sale, distribution and advertising of the Offending Products.

95. The commercial context in which the Lusky Defendants’ are so using the designation KENTUCKY DERBY and DERBY are so similar to Plaintiff’s registered Kentucky Derby Marks as to cause confusion, or to cause mistake, or to deceive.

96. Said actions of Defendants thus constitute violations of section 32 of the Lanham Act, 15 U.S.C. § 1114.

97. Unless these actions are enjoined, Churchill Downs will suffer irreparable injury for which there is no adequate remedy at law.

COUNT V:

**OFFENDING USE OF
“LOUISVILLE JOCKEY CLUB” MARK**

98. The allegations of paragraphs numbered 1-23 and 28-81 of this Complaint are hereby incorporated into this Count by this reference.

99. The Lusky Defendants are commercially utilizing the designation LOUISVILLE JOCKEY CLUB without the consent of Churchill Downs in connection with the sale, offering for sale, distribution and advertising of the Offending Products.

100. The commercial context in which the Lusky Defendants’ are so using the designation LOUISVILLE JOCKEY CLUB are so similar to Plaintiff’s marks, JOCKEY CLUB, LOUISVILLE JOCKEY CLUB and KENTUCKY JOCKEY CLUB so as to be likely to cause confusion, or to cause mistake, or to deceive as to an affiliation, connection or association of the Lusky Defendants, or either of them, with Churchill Downs, or otherwise likely to cause confusion, or to cause mistake, or to deceive as to the origin with Churchill Downs or sponsorship or approval by Churchill Downs of the Offending Products.

101. Said actions of Defendants thus constitute violations of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

102. Further, if registration of the KENTUCKY JOCKEY CLUB mark of Churchill Downs issues, as anticipated, the offending uses of LOUISVILLE JOCKEY CLUB will constitute violation of section 32 of the Lanham Act, 15 U.S.C. § 1114.

103. Unless these actions are enjoined, Churchill Downs will suffer irreparable injury for which there is no adequate remedy at law.

COUNT VI:

TRADEMARK COUNTERFEITING

104. The allegations of paragraphs numbered 1-27 and 31-81 of this Complaint are hereby incorporated into this Count by this reference.

105. The Offending Behaviors include uses by or on behalf of the Lusky Defendants in association with the sale, or offering for sale, or distribution of goods of spurious designations that are identical with or substantially indistinguishable from federally registered marks owned by Churchill Downs in a manner constituting trademark counterfeiting in violation of section 34 of the Lanham Act, 15 U.S.C. § 1116(d).

106. Unless these actions are enjoined, Churchill Downs will suffer irreparable injury for which there is no adequate remedy at law.

COUNT VII:

TRADEMARK DILUTION

107. The allegations of paragraphs numbered 1-81 of this Complaint are hereby incorporated into this Count by this reference.

108. The Churchill Downs marks in issue are distinctive and famous within the meaning of section 43(c) of the Lanham Act as amended, 15 U.S.C. § 1125(c) and became so prior to the commencement of the Offending Behaviors of the Lusky Defendants.

109. The Offending Behaviors cause dilution of the famous Churchill Downs marks in violation of section 43(c) of the Lanham Act as amended, 15 U.S.C. § 1125(c).

110. Unless these actions are enjoined, Churchill Downs will suffer irreparable injury for which there is no adequate remedy at law.

COUNT VIII:

**BREACH OF LICENSE AGREEMENT:
DEFENDANTS' ATTEMPT TO OBTAIN TRADEMARK
REGISTRATIONS IN ITS NAME OF CHURCHILL DOWNS SYMBOLS
AND SIMILAR MARKS**

111. The allegations of paragraphs numbered 1-33 and 42-44 of this Complaint are hereby incorporated into this Count by this reference.

112. Pursuant to section 7(a) of the License Agreement, Plaintiff's Exhibit 1, CDP expressly acknowledged and agreed that it would "not, at any time, file any trademark application with the United States Patent and Trademark Office for the Licensed Indicia" which was defined in section 1 of the License agreement as "designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to [Churchill Downs]" and further acknowledged and agreed this prohibition was not limited to the narrower list of indicia referenced in Appendix A to the License Agreement.

113. Further in section 7(a) of the License Agreement, CDP agreed that "[a]ny trademark or copyright registration obtained or applied for that contains the Licensed Indicia or any similar mark shall be immediately transferred to [Churchill Downs] without compensation."

114. Pursuant to section 18 of the License Agreement, CDP expressly acknowledged and agreed that the obligations contained in section 7 of the License Agreement “shall survive the termination or expiration of” the License Agreement.

115. Notwithstanding the prohibition against such filings, and the obligation to assign to Churchill Downs any filings so made, on January 27, 2011, CDP filed an application with the United States Patent and Trademark Office, namely application serial number 85/227918, for registration of the mark, KENTUCKY JOCKEY CLUB, a mark identical to, or confusingly similar to Churchill Downs marks.

116. Reminding CDP that pursuant to section 7(a) of the License Agreement “[a]ny trademark or copyright registration obtained or applied for that contains the Licensed Indicia or any similar mark shall be immediately transferred to [Churchill Downs] without compensation,” Churchill requested that CDP assign Churchill Downs the application for registration of the mark, KENTUCKY JOCKEY CLUB, and CDP initially refused to do so, and did not do so until litigation was instituted to compel such compliance, forcing Churchill Downs to incur attorneys fees and other expenses to compel said compliance.

117. Further in violation of section 7(a) of the License Agreement, on January 18, 2011, CDP filed an application with the United States Patent and

Trademark Office, namely application serial number 85/219903, for registration of the mark, LOUISVILLE JOCKEY CLUB, a mark identical to, or confusingly similar to Churchill Downs marks.

118. Reminding CDP that pursuant to section 7(a) of the License Agreement “[a]ny trademark or copyright registration obtained or applied for that contains the Licensed Indicia or any similar mark shall be immediately transferred to [Churchill Downs] without compensation,” Churchill has requested that CDP assign Churchill Downs the application for registration of the mark, LOUISVILLE JOCKEY CLUB, and CDP has refused to do so.

119. Unless CDP specifically performs its obligation to transfer the application for registration of LOUISVILLE JOCKEY CLUB, Churchill Downs will suffer irreparable injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Churchill Downs prays for relief against Defendants, Commemorative Derby Promotions, Inc. and Leonard Lusky, jointly and severally, as follows:

A. Orders temporarily, preliminarily and permanently enjoining Defendants and all of their officers, agents, servants, employees, and those persons in active concert or participation with them, from making any use of the

designations CHURCHILL DOWNS, KENTUCKY DERBY or LOUISVILLE JOCKEY CLUB, or any other designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to Churchill Downs, or any other confusingly similar marks or indicia and further requiring Defendants to immediately recall any product bearing such designations and to immediately eliminate said mark or any other confusingly similar marks and indicia from its products, marketing brochures, promotional materials, other publications and documents, and any related goods or services;

B. Orders temporarily, preliminarily and permanently enjoining Defendants and all of their officers, agents, servants, employees, and those persons in active concert or participation with them, from making any use of the designation DERBY, or any other confusingly similar marks or indicia in association with commemorative merchandise or other uses in any marketing context in which it is apparent the use of the term DERBY or any other confusingly similar marks or indicia would be recognized as a reference to the KENTUCKY DERBY and further requiring Defendants to immediately recall any product bearing any such designation and to immediately eliminate said mark or any other confusingly similar marks and indicia from its products, marketing brochures, promotional materials, other publications and documents, and any related goods or services;

C. An Order requiring Defendants to deliver up for destruction all labels, signs, prints, packages, wrappers, receptacles, advertisements, and goods in their possession or control bearing the designations CHURCHILL DOWNS, KENTUCKY DERBY, DERBY or LOUISVILLE JOCKEY CLUB, or any other confusingly similar marks or indicia along with all plates, molds, matrices, and other means of making the same;

D. Orders temporarily, preliminarily and permanently enjoining Defendants and all of their officers, agents, servants, employees, and those persons in active concert or participation with them, from any other activities likely to cause confusion, or to cause mistake, or to deceive as to an affiliation, connection or association of the Defendants, or any of their products, with Churchill Downs, or the Kentucky Derby, or otherwise likely to cause confusion, or to cause mistake, or to deceive as to the origin with Churchill Downs or sponsorship or approval by Churchill Downs of such activities;

E. An Order requiring the Defendants to execute any documentation necessary to assign ownership to Churchill Downs Incorporated of the application pending with the United States Patent & Trademark Office to register the mark, LOUISVILLE JOCKEY CLUB, application serial no. 85/219903, or in the alternative, an order appointing some other officer of this Court to execute same;

F. Should said application for registration referenced just above mature into a registration prior to the effecting the relief requested just above, an Order requiring the Defendants to execute any documentation necessary to assign ownership to Churchill Downs Incorporated of any registration resulting from the application pending with the United States Patent & Trademark Office to register to register the mark, LOUISVILLE JOCKEY CLUB, application serial no. 85/219903, or in the alternative, an order appointing some other officer of this court to execute same;

G. An order requiring Defendants to file with the Court, and serve upon Plaintiff's counsel within thirty (30) days of any injunctions entered in this matter, a comprehensive written report, under oath, setting forth in detail the manner, form and extent of Defendants' compliance with any such injunction;

H. An award to Plaintiff of any damages incurred as a result of Defendants' violation of the Plaintiff's rights, including an accounting of Defendants' profits earned in association with said activities, with prejudgment interest thereon;

I. Trebling of said sums pursuant to 15 U.S.C. § 1117(b);

J. An award to Plaintiff of punitive damages in an amount deemed appropriate by the finder of fact;

K. Award to Plaintiff of statutory damages of not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods sold, offered for sale, or distributed, as the Court considers just, and if the Court finds that the use of the counterfeit mark was willful, an enhancement of any such awards to not more than \$2,000,000 per counterfeit mark per type of goods sold, offered for sale, or distributed, as the Court considers just pursuant to 15 U.S.C. § 1117(c);

L. An assessment against Defendants of the costs of this action including the Plaintiff's reasonable attorneys' fees; and

M. Any further relief to which Churchill Downs may appear entitled.

Respectfully submitted, this 17th day of February, 2012.

s/Donald R. Andersen

Donald R. Andersen

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Facsimile: 502.587.6391
Counsel for Plaintiff

CERTIFICATE OF FONT AND SIZE

By signature below, counsel hereby certifies that this Certificate of Interested Persons is a computer generated document, with one-inch margins on the left side of each page and one-and-one-half inch margins on the top of each page, and typed in Times New Roman, font size 14, as required by Local Rule 5.1, NDGa.

s/Donald R. Andersen

Donald R. Andersen
Counsel for Plaintiff

EXHIBIT "1"

**CHURCHILL DOWNS INCORPORATED
STANDARD RETAIL PRODUCT LICENSE AGREEMENT**

This is an Agreement between Commemorative Derby Promotions, Inc. ("Licensee"), a corporation organized under the laws of Kentucky, having a principal place of business at 2515 Ransdell Avenue, Louisville, Kentucky 40204, and Licensing Partners International LLC ("LPI"), a Delaware limited liability company, having a principal place of business at 290 Interstate North, Suite 200, Atlanta, Georgia 30339, as agent on behalf of Churchill Downs Incorporated ("CDI").

WHEREAS, CDI has the right to license for commercial purposes the use of the Licensed Indicia (as defined below); and

WHEREAS, CDI has authorized LPI as agent to administer its trademark licensing program; and

WHEREAS, CDI has authorized LPI to enter into this Agreement on its behalf to license the use of certain Licensed Indicia; and

WHEREAS, Licensee desires to manufacture, advertise, distribute and sell Licensed Articles (as defined below) containing certain Licensed Indicia, and CDI, through LPI, is willing, subject to certain conditions, to grant this license.

NOW, THEREFORE, in consideration of the parties' mutual covenants and undertakings, and other good and valuable consideration the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, as used in this Agreement, the following terms shall have the following respective meanings:

(a) "Licensed Indicia" means the designs, trademarks, service marks, logographics, copyrights and symbols associated with or referring to CDI, including those set forth on Appendix A and/or any attachments thereto.

(b) "Licensed Articles" means the products listed in Appendix C which contain CDI Marks.

(c) "Territory" means the United States of America and its territories and possessions, the Commonwealth of Puerto Rico, and United States military bases abroad. Licensee shall not advertise, distribute or sell Licensed Articles outside the Territory, or to any person or entity that Licensee knows or should reasonably know intends or is likely to advertise, redistribute or resell Licensed Articles outside the Territory.



(d) "Net Sales" means the total gross sales of all Licensed Articles distributed or sold at the greater of Licensee's invoiced selling price or Licensee's regular domestic wholesale warehouse price, including the royalty amount, less lawful quantity trade discounts actually allowed and taken as such by customers and shown on the invoice, less any credits for returns actually made as supported by credit memoranda issued to customers, and less sales taxes and prepaid transportation charges on Licensed Articles if shipped by Licensee. There shall be no other deductions allowed including, without limitation, deductions for direct or indirect costs incurred in the manufacturing, distributing, selling, importing or advertising (including cooperative and other advertising and promotional allowances) of the Licensed Articles, nor shall any deductions be allowed for non-collected or uncollectable accounts, commissions, cash or early payment discounts, close-out sales, distress sales, sales to employees, or any other costs.

(e) "Premiums" means any products, including Licensed Articles, bearing any Licensed Indicia featured alone or in combination with the indicia of any third party, that Licensee sells or gives away for the purposes of (i) promoting, publicizing or increasing the sale of its own products or services; or (ii) promoting, publicizing or increasing the sale of the products or services of any third party. Premiums include, without limitation, combination sales, incentives for sales force, and trade or consumer promotions such as sweepstakes.

(f) "Distribution Channels" means the channels of trade in which Licensee may advertise, distribute and sell the Licensed Articles in the Territory. The Distribution Channels authorized herein are indicated in Appendix D, which may also identify Distribution Channels that are not authorized in this Agreement. Licensee shall not advertise, distribute or sell Licensed Articles to any third party that Licensee knows or should reasonably know intends or is likely to advertise, redistribute or resell Licensed Articles outside the authorized Distribution Channels.

2. GRANT OF LICENSE

(a) Grant: Upon execution of this Agreement, and subject to its terms and conditions, CDI through LPI, grants Licensee the nonexclusive, revocable, nontransferable rights to manufacture, advertise, distribute and sell the Licensed Articles listed in Appendix C, containing the Licensed Indicia shown in Appendix A, in the Distribution Channels indicated in Appendix D, in the Territory, during the Term. Licensee shall exercise such rights in accordance with all LPI and CDI guidelines, policies and requirements provided to Licensee, which shall be deemed part of the Agreement.

(b) Rights Reserved: Nothing in this Agreement shall be construed to prevent LPI or CDI from granting any other licenses or rights for use of the Licensed Indicia. CDI retains all rights to use and license the respective Licensed Indicia.

(c) Term: This Agreement shall begin effective as of last date of signature below and shall expire December 31, 2010, unless terminated sooner or renewed in the manner provided in this Agreement.

(d) **Renewal:** Upon expiration, if Licensee has complied with all terms and conditions of this Agreement during the preceding Term or renewal period, Licensee shall be considered for renewal of this Agreement. Renewal is at the discretion of CDI in consultation with LPI. Licensee recognizes and agrees that LPI and CDI have no express or implied obligation to renew the Agreement. LPI and CDI will have no liability to Licensee for any expenses incurred by Licensee in anticipation of any renewal of the Agreement.

(e) **Limitations on License:** This license is subject to the following limitations and obligations, as well as other limitations and obligations set forth in the Agreement:

(1) Licensee shall not use the Licensed Indicia for any purpose other than as authorized in this Agreement. Any proposed additions to the Licensed Articles and/or new designs shall be submitted to LPI in writing or via electronic system designated by LPI and samples shall be submitted to LPI for prior approval, as provided in Section 9. Licensee shall, upon notice by LPI, immediately recall any unauthorized products or designs from the marketplace, and destroy them or submit them to LPI, at LPI's option and at Licensee's expense.

(2) Licensee shall advertise, distribute and sell Licensed Articles only in the authorized Distribution Channels. LPI and CDI shall have the right to determine whether a particular retail account falls within a particular Distribution Channel. Unless specified in Appendix D, Licensee shall have no right to advertise, distribute or sell Licensed Articles directly to consumers.

(3) Licensee must receive LPI's prior written authorization to use any Distributor of any Licensed Article. A "Distributor" shall mean any party whose business includes purchasing manufactured products from any other third party and shipping such products to retailers without changing such products. Licensee will remain primarily obligated to LPI and CDI under this Agreement notwithstanding LPI's approval of a Distributor and Licensee shall ensure that any approved Distributor complies with all applicable terms and conditions of the Agreement including, without limitation, providing such Distributor with instructions relating to the distribution of the Licensed Articles and the Distribution Channels for the Licensed Articles. If an approved Distributor engages in conduct that would be a default under the Agreement if Licensee engaged in such conduct, Licensee shall be deemed in default and shall fully cooperate with LPI to ensure that such conduct ceases promptly.

(4) Licensee shall not provide any method of application of Licensed Indicia for any third party unless LPI authorizes Licensee to provide said application under the terms of an authorized manufacturer's or supplier's agreement.

(5) Licensee shall not contract with any third party for the production of Licensed Articles or application of Licensed Indicia by that party ("Manufacturer") without LPI's prior written authorization. In the event that Licensee desires to have a Manufacturer produce one or more Licensed Article, or any component thereof, Licensee shall provide LPI with the name, address, telephone number and principal contact of the proposed Manufacturer.

LPI must approve any Manufacturer, and the Manufacturer must execute an authorized manufacturer's or supplier's agreement provided by LPI prior to use of the Licensed Indicia. In addition, Licensee shall take the steps necessary to ensure the following: Manufacturer shall produce the Licensed Articles only as and when directed by Licensee, which remains fully responsible for ensuring that the Licensed Articles are manufactured in accordance with the terms herein including approval and royalty payment; Manufacturer shall not advertise, distribute or sell Licensed Articles to any person or entity other than Licensee; and Manufacturer shall not delegate in any manner whatsoever its obligations with respect to the Licensed Articles. Licensee's failure to comply with this Section may result in termination of this Agreement and/or confiscation and seizure of Licensed Articles. LPI and CDI hereby reserve the right to terminate the engagement of any Manufacturer at any time.

(6) Licensee shall comply, and ensure that all Manufacturers comply, with the labor code requirements established by CDI and set forth in Appendix E. Licensee agrees to cooperate in providing LPI and/or CDI with reasonable access to facilities, employees and records so that LPI and/or CDI may determine if Licensee and its Manufacturers are in compliance with the labor code requirements. LPI and/or CDI shall give Licensee reasonable written notice of any changes in labor code requirements. Licensee, upon receipt of the notice, is responsible for complying with the new labor code requirements.

(7) Any Licensed Articles manufactured at a location outside of the Territory shall be taken into the possession of Licensee prior to being distributed or sold in the Territory.

(8) Licensee shall have no right to delegate any responsibility to any Sublicensee of any Licensed Article without the prior written approval of LPI. A "Sublicensee" shall mean any third party that manufactures any Licensed Article, ships such product to retailers, and invoices retailers directly.

(9) Licensee shall not use any of the Licensed Articles as Premiums unless Licensee receives prior written authorization through LPI pursuant to a separate agreement with LPI. Licensee shall not provide Licensed Articles as Premiums to any third party whom Licensee knows or should reasonably know intends to use the Licensed Articles as Premiums.

(10) Upon CDI's request, Licensee shall sell any of the Licensed Articles to CDI at Licensee's normal wholesale prices and may charge to CDI its normal shipping and handling charges.

3. MARKETING EFFORTS / PERFORMANCE

(a) Marketing Efforts: Licensee recognizes that marketing efforts for Licensed Articles are important to the success of this program and Licensee, if requested, will assist LPI with such efforts by its participation.

(b) **Performance:** Licensee shall manufacture, distribute, sell and maintain inventory of sufficient quantities of Licensed Articles to meet the reasonable market demand in the Distribution Channels.

(c) **Promotional Samples:** Upon production, Licensee shall deliver to LPI on behalf of CDI at least two units of each Licensed Article, at no cost to LPI. Upon request by LPI on behalf of CDI from time to time during the Term, Licensee also shall provide LPI \$500.00 in value (based on initial wholesale price points) of Licensed Articles each year of the Term at no cost to LPI or CDI to be used by LPI or CDI for promotional purposes. LPI or CDI shall have the right to purchase additional Licensed Articles at most favored customer wholesale pricing levels, at any time during the Term or any renewals.

4. MODIFICATION OF APPENDICES

(a) The Licensed Indicia shown in Appendix A, the Licensed Articles listed in Appendix C, and the Distribution Channels indicated in Appendix D may be changed by LPI when and if such changes are directed by LPI and CDI.

(b) Through periodic advisory bulletins or notices, including, without limitation, notification through online publications or via email, LPI will give Licensee written reasonable notice of any changes to appendices or policies. Licensee, upon receipt of the bulletins or notices, is responsible for distributing them promptly to the appropriate party(s) and complying with the modified appendices and policies.

(c) Licensee recognizes and agrees that certain changes to Appendices A, C, or D may affect Licensee's rights hereunder. Licensee agrees that such rights shall cease on the effective date of the notice of such changes, in accordance with the terms of the notice. In such event, those provisions of Section 16 regarding disposal of inventory shall become effective.

5. PAYMENTS

(a) **Rate.** Licensee agrees that it shall pay to LPI the applicable royalty charges listed in Appendix B. Unless otherwise specified, the royalties due ("Royalty Payments") shall be based upon Net Sales, as defined in Section 1(d), of all Licensed Articles sold during the Term and any renewal, and during any period allowed pursuant to Section 16.

(b) For purposes of determining the Royalty Payments, sales shall be deemed to have been made when Licensed Articles are billed, invoiced, shipped, or paid for, whichever occurs first.

(c) **Advance Royalty Payments.** Licensee shall pay to LPI the amounts listed by Contract Year, or period thereof, as a non-refundable advance to be credited against Licensee's annual Minimum Guarantee, as set forth in Appendix B.

(d) **Minimum Guarantee.** Licensee guarantees that its aggregate Royalty Payments paid to LPI under this Agreement shall not be less than the amount set forth for each Contract Year, or period thereof, as set forth in Appendix B.

(e) **No Cross Collateralization.** Any Royalty Payment for a unit of Licensed Article sold shall only be applied against the Minimum Guarantee for such Licensed Article for the Contract Year, or period thereof, as provided in Appendix B, in which the unit of such Licensed Article was sold (i.e., any shortfall in, or payment in excess of, the Minimum Guarantee for a Contract Year, or period thereof, as provided in Appendix B, shall not affect, or be offset or credited against, the Minimum Guarantees for any other Contract Year, for any other Licensed Article or for any other LPI license). If Minimum Guarantees are stated separately for different categories of Licensed Articles or for different territories, Royalty Payments resulting from Net Sales of a category of Licensed Article or in a particular territory shall be applied only against the Minimum Guarantee for such category of Licensed Article or territory.

(f) **Seconds, Irregulars.** Royalty Payments shall be paid by Licensee to LPI on all Licensed Articles (including, without limitation, any seconds, irregulars, etc. permitted pursuant to the provisions of Section 9(b) of this Agreement) distributed or sold by Licensee or any of its affiliated or subsidiary companies even if not billed or billed at less than the regular Net Sales price for such Licensed Articles, and payment shall be computed based upon the regular Net Sales price for such Licensed Articles distributed or sold to the trade by Licensee or, if such regular Net Sales pricing is not available, as determined by LPI's evaluation of comparable prices charged the trade for similar products.

~~(g) **Distribution.** In the event Licensee distributes or sells Licensed Articles at a special price directly or indirectly to itself, including without limitation, any affiliate or subsidiary of Licensee, to any other person, firm or corporation related in any manner to Licensee or its officers, directors or major stockholders, or through a Distributor (such distribution arrangements being subject to prior written approval by LPI), Licensee shall pay royalties with respect to such distribution or sales based upon the regular Net Sales price for such Licensed Articles distributed or sold to the trade by Licensee or, if such regular Net Sales pricing is not available, as determined by LPI's evaluation of comparable prices charged the trade for similar products.~~

(h) **FOB Sales.** If a customer of Licensee purchases Licensed Articles FOB the manufacturing source or participates in other arrangements which result in such customer paying less for the Licensed Articles than Licensee's regular selling price to the trade (such FOB Sales or other arrangements being subject to prior written approval by LPI), Licensee shall pay royalties with respect to such distribution or sales based upon the regular Net Sales price for such Licensed Articles distributed or sold to the trade by Licensee or, if such regular Net Sales pricing is not available, as determined by LPI's evaluation of comparable prices charged the trade for similar products.

6. ROYALTY STATEMENT AND PENALTIES

(a) On or before the twentieth (20th) day of each month, Licensee shall submit to LPI, in a format provided or approved by LPI, a full and complete statement, certified by an officer of the Licensee to be true and accurate, showing the quantity, description, and Net Sales (including itemization of any permitted deductions and/or exemptions) of the Licensed Articles distributed and/or sold during the preceding month, listed by Licensed Article. Such report shall include any additional information kept in the normal course of business by the Licensee which is appropriate to enable an independent determination of the amount due hereunder. All Royalty Payments then due LPI shall be made simultaneously with the submission of the statements, and such payments shall be made with United States currency. If no sales or use of the Licensed Articles were made during any reporting period, Licensee shall provide LPI a written statement to that effect as part of the report.

(b) Licensee shall pay LPI an additional charge of one and one-half percent (1.5%) per month, compounded on a monthly basis, or the maximum rate allowed by law, if lower, on any payment due under the Agreement that remains unpaid after such payment becomes due.

(c) LPI's receipt or acceptance of any statements or Royalty Payments, or the cashing of any royalty checks, shall not preclude LPI from questioning the correctness thereof at any time. Upon discovery of any verifiable inconsistency or mistake in such statements or payments, Licensee shall immediately rectify such inconsistency or mistake.

(d) Licensee shall, unless otherwise directed in writing by LPI, send all payments and statements to LPI on behalf of CDI to LPI, 290 Interstate North, Suite 200, Atlanta, Georgia 30339, or transmit the same via electronic format approved by LPI, or otherwise as directed by LPI.

7. OWNERSHIP OF CDI MARKS AND PROTECTION OF RIGHTS

(a) Licensee acknowledges and agrees, and shall cause any Manufacturer to acknowledge and agree, that CDI owns the Licensed Indicia, modifications of the Licensed Indicia, as well as any other Licensed Indicia adopted for use, that each of the Licensed Indicia is valid, and that CDI has the exclusive right to use and license the use of the Licensed Indicia. Licensee acknowledges, and shall cause any Manufacturer to acknowledge, the validity of the trademark and copyright registrations CDI owns, obtains or acquires for the Licensed Indicia. Licensee shall not, at any time, file any trademark application with the United States Patent and Trademark Office, Copyright Office or with any other governmental entity either in the Territory or elsewhere for the Licensed Indicia, regardless of whether such Licensed Indicia are shown in Appendix A. Licensee shall not use any of the Licensed Indicia or any similar mark as, or as part of, a trademark, service mark, trade name, copyright, fictitious name, company or corporate name anywhere in the world. Any trademark or copyright registration obtained or applied for that contains the Licensed Indicia or any similar mark shall be immediately transferred to CDI without compensation.

(b) Licensee shall not oppose or seek to cancel or challenge, in any forum, including, but not limited to, the United States Patent and Trademark Office or Copyright Office, any application or registration of the Licensed Indicia. Licensee shall not object to, or file any action or lawsuit because of, any use by CDI of the Licensed Indicia for any goods or services, whether such use is by CDI directly or through licensees or authorized users.

(c) Licensee recognizes, and shall cause any Manufacturer to recognize, the great value of the good will associated with the Licensed Indicia and acknowledges that such good will belongs to CDI, and that such Licensed Indicia have inherent and/or acquired distinctiveness. Licensee shall not, during the term of this Agreement or thereafter, dispute or contest the property rights of CDI or contest the validity of this Agreement, or use the Licensed Indicia or any similar mark in any manner other than as licensed hereunder.

(d) Licensee agrees to assist CDI and LPI in the protection of the rights of CDI in and to the Licensed Indicia and shall provide, at reasonable cost to be borne by CDI and LPI any evidence, documents, and testimony concerning the use by Licensee of the Licensed Indicia, which LPI or CDI may request for use in obtaining, defending, or enforcing rights in any Licensed Indicia or related application or registration. Licensee shall notify LPI in writing of any infringements by others of the Licensed Indicia of which it is aware. LPI and CDI shall have the right to determine whether any action shall be taken on account of any such alleged infringements. Licensee shall not institute any suit or take any action on account of any such alleged infringements without first obtaining the written authorization of CDI and LPI. Licensee agrees that it is not entitled to share in any proceeds received by CDI or LPI (by settlement or otherwise) in connection with any formal or informal action brought by CDI, LPI or other entity.

(e) Nothing in this Agreement gives Licensee any right, title, or interest in the Licensed Indicia except the right to use the Licensed Indicia in accordance with the terms of this Agreement. Licensee's use of the Licensed Indicia shall inure to the benefit of CDI.

(f) (1) Acknowledgment: Licensee acknowledges, and shall cause any Manufacturer to acknowledge, that any original designs, artwork or other compilations ("Works") created by it pursuant to this Agreement that contain the Licensed Indicia are "compilations" or "supplementary works" as those terms are used in Section 101 of the Copyright Act, and that the Works will be, and will be treated as having been, specially ordered or commissioned for use as a compilation or supplementary work rendered for, at the instigation and under the overall direction of CDI; and therefore that all the work on and contributions to the Works by Licensee and any Manufacturer, as well as the Works themselves, are and at all times shall be regarded as "work made for hire" by the Licensee for CDI. Without limiting the foregoing acknowledgment or subsequent assignment, Licensee further acknowledges that any rights that Licensee might have under this Agreement do not in any way dilute or affect the interests of CDI in the Licensed Indicia or any derivatives thereof; nor permit Licensee to copy or use the Works or the Licensed Indicia, except as expressly permitted under this Agreement; nor to affix a copyright or trademark notice to any product bearing the Works or the Licensed Indicia, except as expressly permitted under this Agreement.

(2) Assignment: Without curtailing or limiting the foregoing acknowledgment, Licensee assigns, grants and delivers (and agrees further to assign, grant and deliver) exclusively to CDI all rights, titles and interests of every kind and nature whatsoever in and to the Works, and all copies and versions, including all copyrights and all renewals. Licensee further agrees to execute and deliver to CDI and LPI such other and further instruments and documents as CDI or LPI from time-to-time reasonably may request for the purpose of establishing, evidencing and enforcing or defending the complete, exclusive, perpetual and worldwide ownership by CDI of all rights, titles and interests of every kind and nature whatsoever, including all copyrights, in and to the Works, and Licensee appoints LPI as agent and attorney-in-fact, with full power of substitution, to execute and deliver such documents or instruments as Licensee may fail or refuse promptly to execute and deliver, this power and agency being coupled with an interest and being irrevocable.

(g) Licensee acknowledges that its breach or threatened breach of this Agreement will result in immediate and irremediable damage to LPI and CDI and that money damages alone would be inadequate to compensate LPI and CDI. Therefore, in the event of a breach or threatened breach of this Agreement by Licensee, LPI and/or CDI may, in addition to other remedies, immediately obtain and enforce injunctive relief prohibiting the breach or threatened breach or compelling specific performance. In the event of any breach or threatened breach of this Agreement by Licensee or infringement of any rights of CDI, if LPI and/or CDI employ attorneys or incur other expenses, Licensee shall reimburse LPI and/or CDI for their reasonable attorney's fees and other expenses.

8. DISPLAY AND APPROVAL OF LICENSED INDICIA

(a) Licensee shall use the Licensed Indicia properly on all Licensed Articles, as well as labels, containers, packages, tags and displays (collectively "Packaging"), and in all print and online advertisements and promotional literature, and television and radio commercials promoting Licensed Articles (collectively "Advertising Materials"). On all visible Packaging and Advertising Materials, the Licensed Indicia shall be emphasized in relation to surrounding material by using a distinctive type face, color, underlining, or other technique approved by LPI and CDI. Any use of any Licensed Indicia Marks shall conform to the requirements as specified in Appendix A. Wherever appropriate, the Licensed Indicia shall be used as a proper adjective, and the common noun for the product shall be used in conjunction with the Licensed Indicia. The proper symbol to identify the Licensed Indicia as a trademark (i.e., the ® symbol if the Licensed Indicia is registered in the United States Patent and Trademark Office or the ™ symbol if not so registered) and/or copyright legend (i.e., © [Date][Churchill Downs Incorporated]) shall be placed adjacent to each Licensed Indicia.

(b) LPI will provide to Licensee guidance on the proper use of the Licensed Indicia. A true representation or example of any proposed use by Licensee of any of the Licensed Indicia listed, in any visible or audible medium, and all proposed Licensed Articles, Packaging and Advertising Materials containing or referring to any Licensed Indicia, shall be submitted at Licensee's expense to LPI for written approval prior to such use, as provided in Section 9.

Licensee shall not use any Licensed Indicia in any form or in any material disapproved or not approved by LPI.

(c) Licensee shall display on each Licensed Article or its Packaging and Advertising Materials the trademark and license notices required by LPI's written instructions in effect as of the date of manufacture.

(d) The Licensed Indicia authorized for use by Licensee are available by subscription only from J. Patton Sports Marketing, Inc.

9. PROCEDURE FOR APPROVAL

(a) Licensee understands and agrees that it is an essential condition of this Agreement to protect the standards of CDI, and agrees that the Licensed Articles, Packaging, Advertising Materials and/or designs containing the Licensed Indicia shall be of good and consistent quality, subject to the prior written approval and continuing supervision and control of LPI and CDI. Licensee shall submit all Licensed Articles, Packaging, Advertising Materials and/or designs containing the Licensed Indicia to LPI in a timely fashion to ensure that LPI and CDI have adequate time to review such materials prior to the date of their proposed use by Licensee, and Licensee must receive prior written quality control approval by LPI as provided herein.

(b) Prior to the manufacture, use, distribution or sale of any Licensed Article, Packaging, Advertising Materials and/or designs containing the Licensed Indicia, Licensee shall submit to LPI for approval, at Licensee's expense and in the format required by LPI, at least one ~~sample of each proposed Licensed Article, Packaging, Advertising Materials and/or design for~~ CDI and one sample for LPI as the same would be manufactured, used, distributed or sold. If LPI approves in writing or via electronic system the proposed Licensed Article, Packaging, Advertising Materials and/or design, the same shall be accepted to serve as an example of quality for that Licensed Article, Packaging, Advertising Materials and/or design, and production quantities may be manufactured by Licensee in strict conformity with the approved sample. All approvals provided herein are effective only for the Term or renewal period in which Licensee has submitted and LPI has approved the Licensed Articles, Packaging, Advertising Materials and/or designs, unless Licensee is otherwise notified in writing by LPI. Licensee shall not depart from the approved quality standards in any material respect without the prior written approval of LPI. Licensed Articles, Packaging, Advertising Materials and/or designs not meeting those standards, including seconds, irregulars, etc., shall not be distributed or sold under any circumstances without LPI's prior written authorization.

(c) Licensee may only use the Licensed Indicia as shown in Appendix A and approved in the manner set forth herein. Licensee may not modify the Licensed Indicia without the prior written approval of LPI as provided in Section 9(b) above. The use of the Licensed Indicia in conjunction with original artwork supplied by the Licensee requires the express approval of LPI as provided in Section 9(b) above. Licensee may submit sketches of proposed artwork for preliminary approval before submitting finished samples.

(d) The descriptions of the Licensed Articles are set out in Appendix C. Licensee agrees to adhere strictly to the description of each Licensed Article.

(e) At time of renewal, or upon request by LPI at any other time, in addition to any other requirement, Licensee shall submit to LPI such number of each Licensed Article, Packaging, Advertising Materials and/or design manufactured, used, distributed or sold under the Licensed Indicia as may be necessary for LPI to examine and test to assure compliance with the quality and standards for Licensed Articles, Packaging, Advertising Materials and/or designs approved herein. Each item shall be shipped in its usual container or wrapper, together with all labels, tags, and other materials usually accompanying the item. Licensee shall bear the expense of manufacturing and shipping the required number of Licensed Articles, Packaging, Advertising Materials and/or designs to the destination(s) designated by LPI.

(f) If LPI notifies Licensee of any defect in any Licensed Article, Packaging, Advertising Materials and/or designs or of any deviation from the approved use of any of the Licensed Indicia, Licensee shall have fifteen (15) days from the date of notification from LPI to correct every noted defect or deviation. Defective Licensed Articles, Packaging, Advertising Materials and/or designs in Licensee's inventory shall not be used, distributed or sold and shall, upon request by LPI, be immediately recalled from the marketplace and destroyed or submitted to LPI, at LPI's option and at Licensee's expense. However, if it is possible to correct all defects in the Licensed Articles, Packaging, Advertising Materials and/or designs in Licensee's inventory, said items may be distributed or sold after all defects are corrected to the satisfaction of LPI, which shall be indicated in writing. LPI and/or its authorized representatives shall have the right at reasonable times without notice to inspect Licensee's plants, warehouses, storage facilities and operations related to the production of Licensed Articles.

(g) Licensee shall comply with all applicable laws, regulations, standards and procedures relating or pertaining to the manufacture, use, advertising, distribution or sale of the Licensed Articles. Licensee shall comply with the requirements, including reporting requirements, of any regulatory agencies (including, without limitation, the United States Consumer Product Safety Commission, Federal Trade Commission, or Food and Drug Administration) which shall have jurisdiction over the Licensed Articles. Both before and after Licensed Articles are put on the market, Licensee shall follow reasonable and proper procedures for testing Licensed Articles for compliance with laws, regulations, standards and procedures, and shall permit LPI and/or its authorized representatives, upon reasonable notice, to inspect its and its Manufacturer's testing, manufacturing and quality control records, procedures and facilities and to test or sample Licensed Articles for compliance with this Section. Licensed Articles found by LPI at any time not to comply with applicable laws, regulations, standards and procedures shall be deemed disapproved, even if previously approved by LPI, and shall not be shipped and/or shall be subject to recall unless and until Licensee can demonstrate to LPI's satisfaction that such Licensed Articles have been brought into full compliance.

(h) Licensee shall inform LPI in writing of any complaint regarding the Licensed Articles promptly upon Licensee's receipt of such complaint.

(i) Any unauthorized or unapproved use by Licensee of any Licensed Indicia shall constitute grounds for immediate termination of this Agreement and also may result in action against Licensee for trademark infringement and/or unfair competition, other applicable claims, and collection of monetary damages.

10. DISPLAY OF OFFICIAL LABEL

(a) Licensee shall, prior to advertising, distribution or sale of any Licensed Article, affix to each Licensed Article, its Packaging and Advertising Materials an "Official Licensed Product" tag or label in the form prescribed by LPI ("Official Label"). In addition, Licensee shall affix Licensee's name to each Licensed Article, its Packaging and Advertising Materials. It is acceptable for Licensee's name to appear on the Official Label subject to prior written approval by LPI. Licensee shall obtain Official Labels from one or more suppliers authorized by LPI to provide those labels.

(b) Licensee is responsible for affixing the Official Label to each Licensed Article, its Packaging and Advertising Materials. Licensee shall not provide Official Labels to any third party for any purpose whatsoever, without prior written approval by LPI.

(c) Licensee agrees to defend, indemnify and hold harmless LPI, CDI, and those Indemnified Parties set forth in Section 13(a) from all liability claims, costs or damages, including but not limited to any liability for the conversion or seizure of any of the Licensed Articles not containing the Official Label and/or Licensee's name as required by this Section. This provision is in addition to and in no way limits Section 13.

11. NO JOINT VENTURE OR ENDORSEMENT OF LICENSEE

Nothing in this Agreement shall be construed to place the parties in the relationship of partners, joint venturers or agents, and Licensee shall have no power to obligate or bind LPI or CDI in any manner whatsoever. Neither LPI nor CDI is in any way a guarantor of the quality of any product produced by Licensee. Licensee shall neither state nor imply, directly or indirectly, that the Licensee or its activities, other than under this license, are supported, endorsed or sponsored by LPI or by CDI and, upon the direction of LPI, shall issue express disclaimers to that effect.

12. REPRESENTATIONS

Licensee represents, warrants and agrees that the Licensed Articles, Packaging, Advertising Materials and/or designs shall (i) be of good quality in design, material and workmanship and suitable for their intended purpose, (ii) not cause harm when used with ordinary care, and (iii) not infringe or violate the rights of any third party. Licensee further represents, warrants and agrees that all work on and contribution to the Works shall be by bona fide "employees" of Licensee working "within the scope of employment" as those terms are used in 17 U.S.C. § 101, et. seq. Each party represents and warrants that it has the right and authority

to enter into and perform under this Agreement. **EXCEPT FOR WARRANTIES EXPRESSLY SET FORTH IN THIS PARAGRAPH, LPI AND CDI HEREBY EXPRESSLY DISCLAIM ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED.**

13. INDEMNIFICATION, INSURANCE AND LIMITATION OF LIABILITIES.

(a) Licensee is solely responsible for, and will defend, indemnify and hold harmless LPI, CDI, and each of their respective parents, subsidiaries, affiliated companies and each of their respective officers, directors agents, and employees (collectively "Indemnified Parties") from any claims, demands, causes of action or damages, including reasonable attorney's fees, arising out of (i) any unauthorized use of or infringement of any patent, copyright, trademark or other proprietary right of a third party by Licensee in connection with the Licensed Articles, Packaging, Advertising Materials and/or designs covered by this Agreement, (ii) defects or alleged defects or deficiencies in said Licensed Articles, Packaging, Advertising Materials and/or designs or the use thereof, (iii) false advertising, fraud, misrepresentation or other claims related to the Licensed Articles, Packaging, Advertising Materials and/or designs not involving a claim of right to the Licensed Indicia, (iv) the unauthorized use of the Licensed Indicia or any breach or alleged breach by Licensee of any of its representations, warranties, covenants or obligations contained in this Agreement, (v) libel or slander against, or invasion of the right of privacy, publicity or property of, or violation or misappropriation of any other right of any third party, and/or (vi) agreements or alleged agreements made or entered into by Licensee to effectuate the terms of this Agreement. The indemnifications hereunder shall survive the expiration or termination of this Agreement.

(b) Prior to the first sale or distribution of any Licensed Article, or use of the Licensed Indicia, Licensee shall obtain from an insurance carrier having a rating of at least A-XI by the A.M. Best & Co., and thereafter maintain, Commercial General Liability insurance, including broad form contractual, personal and advertising injury and products liability insurance. Licensee's insurance coverage shall provide adequate protection for the Indemnified Parties as additional insured parties on Licensee's policy against any claims, demands, or causes of action and damages, including reasonable attorney's fees, arising out of any of the circumstances described in Section 13(a) above. Such insurance policy shall not be canceled or materially changed in form without at least thirty (30) days written notice to LPI. Prior to the first sale or distribution of any Licensed Article, or use of the Licensed Indicia, Licensee shall furnish LPI a certificate of such insurance and endorsements in the form prescribed by LPI. Licensee agrees that such insurance policy or policies shall provide coverage of two million dollars (\$2,000,000) for personal and advertising injury, bodily injury and property damage arising out of each occurrence, or Licensee's standard insurance policy limits, whichever is greater. However, recognizing that the aforesaid amounts may be inappropriate with regard to specific classes of goods, it is contemplated that LPI may require reasonable adjustment to the foregoing amounts. Any adjustment must be confirmed in writing by LPI.

(c) IN NO EVENT, SHALL LPI OR CDI BE LIABLE TO LICENSEE OR ANY OTHER PERSON, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF LPI OR CDI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF LPI AND CDI FOR ALL DAMAGES SHALL BE LIMITED TO THE TOTAL AMOUNTS PAID BY LICENSEE TO LPI PURSUANT TO THIS AGREEMENT FOR THE ONE (1) YEAR PERIOD PRIOR TO ANY ACT OR OMISSION GIVING RISE TO ANY POTENTIAL LIABILITY.

14. RECORDS AND RIGHT TO AUDIT

(a) Licensee shall keep, maintain and preserve at its principal place of business during the Term, any renewal periods and at least three (3) years following termination or expiration, complete and accurate books, accounts, records and other materials covering all transactions related to this Agreement in a manner such that the information contained in the statements referred to in Section 6 can be readily determined including, without limitation, customer records, invoices, correspondence and banking, financial and other records in Licensee's possession or under its control. LPI and/or CDI and/or either of their duly authorized representatives shall have the right to inspect and audit all materials related to this Agreement. In addition to the materials required by normal accounting practices, Licensee must retain detail of Licensed Article sales to the invoice number level for audit purposes.

~~(b) Such materials shall be available for inspection and audit (including photocopying) at any time during the Term, any renewal periods and at least three (3) years following termination or expiration during reasonable business hours and upon at least five (5) days notice by LPI and/or CDI and/or either of their representatives. Licensee will cooperate and will not cause or permit any interference with LPI and/or CDI and/or either of their representatives in the performance of their duties of inspection and audit. LPI and/or CDI and/or either of their representatives shall have free and full access to said materials for inspection and audit purposes. Licensee shall pay LPI the amount of any additional costs beyond the cost of the originally scheduled audit incurred by LPI and/or CDI (i) due to a change in a scheduled audit date, which change is made at Licensee's request and approved by LPI and/or CDI, or (ii) if Licensee's books and records are not organized and/or available for audit.~~

(c) Following the conduct of the audit, Licensee shall take immediate steps to timely resolve all issues raised therein, including payment of any monies owing and due. Should an audit indicate either (i) an underpayment of five percent (5%) or more, or (ii) an underpayment of \$5,000 or more, of the monies due LPI, the cost of the audit shall be paid by Licensee. Payment of any audit costs is in addition to the full amount of any underpayment including late payment charges as provided in Section 6(b). Without prejudice to the rights set forth in Section 15 below, Licensee must cure any contract breaches discovered during the audit, provide amended reports if required, and submit the amount of any underpayment including late payment

charges and, if applicable, the cost of the audit and/or cancellation fees within fifteen (15) days from the date Licensee is notified of the audit result.

15. DEFAULT; CORRECTIVE ACTIONS; TERMINATION

(a) Licensee's failure to fully comply with each provision of the Agreement, including but not limited to Licensee's failure to perform as required or breach of any provision, shall be deemed a default under the Agreement. Upon default, LPI and CDI may require the Licensee to take action to correct such default. In the event that Licensee is required to take corrective action, LPI and CDI shall determine the corrective action that Licensee will be required to take for such failure to perform or breach commensurate with the scope and history of Licensee's past performance. Such action may include, without limitation, requiring Licensee to adopt remedial accounting and reporting measures; requiring Licensee to conduct an internal audit; requiring Licensee to train its personnel or permitting LPI to assist therein at Licensee's expense; and requiring Licensee to discontinue the manufacture, advertising, distribution and sale of products bearing the Licensed Indicia. Additionally, in the event any default by Licensee results in damages to LPI or CDI in an amount that would be difficult or impossible to ascertain (including, without limitation, sales of products bearing the Licensed Indicia that have not been approved pursuant to Section 9, sales of Licensed Articles without labeling as required in Section 10, etc.), then LPI, on behalf of CDI, shall be entitled to receive compensation for damages in an amount to be determined by LPI in consultation with CDI. The amount of such compensation payable pursuant to this provision shall not be less than an amount equivalent to the greater of the Advance Payment or \$1,000, per occurrence; provided, however, that nothing contained herein shall limit LPI's or CDI's rights under this Agreement, in law, in equity or otherwise, including, without limitation, the amount of damages LPI and/or CDI may be entitled to. If damages are assessed against the Licensee pursuant to this provision, then Licensee's ability to continue to operate under this Agreement shall be contingent upon payment of such damages in the time allowed by LPI and CDI.

(b) In addition to the right to require corrective action for default as set forth in Section 15(a), LPI and CDI shall have the right to terminate this Agreement without prejudice to any other rights under this Agreement, in law, in equity or otherwise, upon written notice to Licensee at any time should any of the following occur, which shall also be deemed defaults under the Agreement:

(1) Licensee has not begun the bona fide manufacture, distribution, and sale of Licensed Articles within one (1) month of the date of approval of the samples of Licensed Articles.

(2) Licensee fails to continue the bona fide manufacture, distribution, and sale of Licensed Articles during the Term.

(3) Licensee fails to make any payment due or fails to deliver any required statement.

(4) The amounts stated in the periodic statements furnished pursuant to Section 6 are significantly or consistently understated.

(5) Licensee fails to generate royalties during the Term or any renewal period that meet or exceed the amount of the Advance Payments and Minimum Guarantee amounts as provided in Section 5 and Appendix B.

(6) Licensee fails to make available its premises, records or other business information for any audit or to resolve any issue raised in connection with any audit, as required in Section 14.

(7) Licensee fails to pay its liabilities when due, or makes any assignment for the benefit of creditors, or files any petition under any law of bankruptcy, or is adjudicated bankrupt or insolvent, or if any receiver is appointed for its business or property, or if any trustee in bankruptcy shall be appointed.

(8) Licensee attempts to grant or grants a sublicense or attempts to assign or assigns any right or duty under this Agreement to any person or entity without the prior written authorization of LPI.

(9) Licensee distributes or sells any Licensed Articles outside the Territory or the authorized Distribution Channels for such Licensed Articles, or distributes or sells any Licensed Articles to a third party that Licensee knows or should reasonably know intends to distribute or sell such Licensed Articles outside the Territory or the authorized Distribution Channels.

(10) If an entity acquires in a single transaction or through a series of transactions more than fifty percent (50%) ownership or controlling interest in Licensee.

(11) Licensee or any related entity manufactures, distributes or sells any product infringing or diluting the trademark, property or any other right of CDI or any other party.

(12) Licensee fails to deliver to LPI and maintain in full force and effect the insurance referred to in Section 13(b).

(13) LPI, CDI, or any governmental agency or court of competent jurisdiction finds that the Licensed Articles are defective in any way, manner or form.

(14) Licensee commits any act or omission which damages or reflects unfavorably, embarrasses or otherwise detracts from the good reputation of CDI.

(15) Licensee manufactures, distributes or sells Licensed Articles of quality lower than the samples approved, or manufactures, distributes, sells or uses Licensed Articles or

Licensed Indicia in a manner not approved or disapproved by LPI, and fails to cure such default within fifteen (15) days from receipt of written notice from LPI.

(16) Licensee fails to affix to each Licensed Article, its Packaging and Advertising Materials an Official Label and Licensee's name in the manner provided in Section 10, and fails to cure such default within fifteen (15) days of written notice from LPI.

(17) Licensee commits a default under any other provision of this Agreement, and fails to cure such default within fifteen (15) days of written notice from LPI.

(c) The entire unpaid balance of all Royalty Payments and other amounts owing and due under this Agreement shall immediately become due and payable upon termination or failure to cure a non-payment default.

16. EFFECT OF EXPIRATION OR TERMINATION; DISPOSAL OF INVENTORY

(a) Effect of Expiration or Termination: After expiration or termination of this Agreement for any reason, Licensee shall immediately discontinue the manufacture, advertising, use, distribution and sale of all Licensed Articles, Packaging and Advertising Materials, the use of all Licensed Indicia, and all similar marks, except as provided in Section 16(b), or unless expressly authorized in writing by CDI. Until payment to LPI of any monies due it, LPI shall have a lien on any units of Licensed Articles not then disposed of by Licensee and on any monies due Licensee from any jobber, wholesaler, distributor, or other third parties with respect to sales of Licensed Articles.

(b) Disposal of Inventory: After expiration or termination of this Agreement for any reason, Licensee shall have no further right to manufacture, advertise, use, distribute or sell Licensed Articles, Packaging or Advertising Materials utilizing the Licensed Indicia, but may continue to distribute its remaining inventory of Licensed Articles in existence at the time of expiration or termination for a period of sixty (60) days; provided, however, that Licensee has delivered all statements (including Final Statement) and payments then due, that during the disposal period Licensee shall deliver all statements and payments due in accordance with Section 6, that Licensed Articles are sold at Licensee's regular Net Sales price and within the Distribution Channels, and that Licensee shall comply with all other terms and conditions of this Agreement. Notwithstanding the foregoing, Licensee shall not manufacture, advertise, use, distribute or sell any Licensed Articles, Packaging or Advertising Materials after the expiration or termination of this Agreement because of: (i) departure of Licensee from the quality and style approved by LPI under this Agreement; (ii) failure of Licensee to obtain product or design approval; or (iii) a default under Section 15.

17. FINAL STATEMENT

Upon expiration or termination of this Agreement for any reason, Licensee shall furnish to LPI a statement showing the number and description of Licensed Articles on hand or in

process. Following such expiration or termination, including inventory disposal period, if allowed, LPI may either request Licensee to (i) surrender unsold Licensed Articles, Packaging and Advertising Materials, as well as dies, molds and screens used to manufacture such Licensed Articles and Packaging, or to (ii) destroy all such remaining unsold materials, certifying their destruction to LPI and specifying the number of each destroyed. LPI reserves the right to conduct physical inventories to ascertain or verify Licensee's compliance with the foregoing.

18. SURVIVAL OF RIGHTS

The terms and conditions of this Agreement necessary to protect the rights and interests of LPI and CDI, including, without limitation, Licensee's obligations under Sections 7, 12, 13 and 14, shall survive the termination or expiration of this Agreement. The terms and conditions of this Agreement providing for any other activity following the effective date of termination or expiration of this Agreement shall survive until such time as those terms and conditions have been fulfilled or satisfied.

19. NOTICES

All notices and statements to be given and all payments to be made, shall be given or made to the parties at their respective addresses set forth herein, unless notification of a change of address is given in writing. Unless otherwise provided in the Agreement, all notices shall be sent by certified mail, return receipt requested; facsimile, the receipt of which is confirmed by confirmation document; email, confirmed by email receipt confirmation notice; or nationally recognized overnight delivery service that provides evidence of delivery, and shall be deemed to ~~have been given at the time they are sent.~~

20. CONFORMITY TO LAW AND POLICY

(a) Licensee shall comply with such guidelines, policies, and requirements as LPI may give written notice from time-to-time including, without limitation, guidelines, policies and/or requirements contained in periodic LPI bulletins or notices.

(b) Licensee undertakes and agrees to obtain and maintain all applicable permits and licenses at Licensee's expense.

(c) Licensee shall pay all federal, state and local taxes due on or by reason of the manufacture, distribution or sale of the Licensed Articles.

21. SEVERABILITY

The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

22. NON-ASSIGNABILITY

This Agreement is personal to Licensee. Neither this Agreement nor any of Licensee's rights shall be sold, transferred or assigned by Licensee without LPI's prior written approval, and no rights shall devolve by operation of law or otherwise upon any assignee, receiver, liquidator, trustee or other party. Subject to the foregoing, this Agreement shall be binding upon any approved assignee or successor of Licensee and shall inure to the benefit of LPI, its successors and assigns. This Agreement may be assigned to CDI or to such other party as directed by CDI, at CDI's option and without Licensee's consent, in the event of termination or expiration of LPI's agency relationship with CDI.

23. ENTIRE AGREEMENT / NO WAIVER

This Agreement or any renewal, including appendices, constitutes the entire agreement and understanding between the parties and cancels, terminates, and supersedes any prior agreement or understanding, written or oral, relating to the subject matter hereof between Licensee, LPI and CDI. There are no representations, promises, agreements, warranties, covenants or understandings other than those contained herein. None of the provisions of this Agreement may be waived or modified, except expressly in writing signed by both parties. However, failure of either party to require the performance of any term in this Agreement or the waiver by either party of any breach shall not prevent subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

24. RIGHT TO ENFORCE

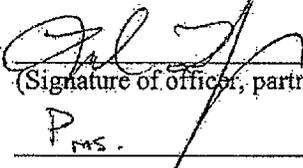
CDI is entitled to enforce its rights in the Licensed Indicia and the terms of this Agreement directly against the Licensee; and CDI is entitled to all the rights and remedies available under this Agreement.

25. MISCELLANEOUS

When necessary for appropriate meaning, a plural shall be deemed to be the singular and singular shall be deemed to be the plural. The attached appendices are an integral part of this Agreement. Section headings are for convenience only and shall not add to or detract from any of the terms or provisions of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state of Georgia, which shall be the sole jurisdiction for any disputes. This Agreement shall not be binding on LPI until signed by LPI, as agent on behalf of CDI.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective as of the last date of signature below.

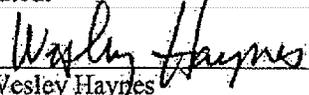
COMMEMORATIVE DERBY PROMOTIONS, INC.

By:  [Seal]
(Signature of officer, partner, or person duly authorized to sign)

Title: Pms.

Date: 4/5/07

LICENSING PARTNERS INTERNATIONAL LLC, as agent on behalf of Churchill Downs Incorporated:

By: 
Wesley Haynes
President

Date: 2/19/07

**APPENDIX A
LICENSED INDICIA**

Churchill Downs Incorporated
Kentucky Derby
Kentucky Oaks

The Licensed Indicia authorized for use by Licensee are available by subscription only from J. Patton Sports Marketing, Inc.

**APPENDIX B
ROYALTY CHARGES**

Royalty Rate

10% of Net Sales of Licensed Products featuring CDI Licensed Indicia

Minimum Guarantee

\$9,000.00

Minimum Guarantee Payment Schedule:

| | |
|--|--|
| Year 1 (Upon signing – December 31, 2006) | \$1,000.00 PAID 04/28/2006 |
| Year 2 (January 1, 2007 – December 31, 2007) | \$1,125.00 due 01/01/2007 \$1,125.00 due 06/01/2007 |
| Year 3 (January 1, 2008 – December 31, 2008) | \$1,125.00 due 01/01/2008 \$1,125.00 due 06/01/2008 |
| Year 4 (January 1, 2009 – December 31, 2009) | \$ 875.00 due 01/01/2009 \$ 875.00 due 06/01/2009 |
| Year 5 (January 1, 2010 – December 31, 2010) | \$ 875.00 due 01/01/2010 \$ 875.00 due 06/01/2010 |

**APPENDIX C
LICENSED ARTICLES**

Poker Chips set
Dirt Shirt
Nostalgia Collection (to be approved by Licensor)

**APPENDIX D
DISTRIBUTION CHANNELS / AUTHORIZED BRANDS**

Licensee: Commemorative Derby Promotions, Inc.

Distribution Channels

Descriptions of Distribution Channels are set forth below. LPI and CDI shall have the right to determine whether a particular retail account falls within a particular Distribution Channel. Licensee is authorized to distribute or sell Licensed Articles only in the Distribution Channel(s) specifically marked below.

 X **Mass.** Sales of Licensed Articles to retailers generally defined by the trade as “mass merchandise” or “discount” stores. Examples include mass merchants, wholesale clubs, off-price stores, grocery stores, drug and convenience stores.

 X **Mid-Tier / Better.** Sales of Licensed Articles to retailers generally defined by the trade as operating in the “Mid-Tier” channel and above. Examples include department stores, sports specialty stores, licensed product fan shops, Internet-only licensed product fan shops, sporting goods stores, and airport/golf/specialty stores.

 X **Official CDI/Kentucky Derby Retail Operations.** Sales of Licensed Articles directly to the official CDI/Kentucky Derby website shop, event merchandiser, and CDI/Kentucky Derby catalogs.

 X **Direct Sales*.** Sales of Licensed Articles directly to the consumer. Examples include sales through Licensee’s own catalog, and/or sales through direct consumer solicitations (e.g., direct mail, direct response advertising, local craft shows).

 X **Related Retail Sales*.** Sales of Licensed Articles directly to a consumer through, or a retail storefront owned and/or operated by Licensee. Note that these type sales are approved on a limited case-by-case basis and only under unique circumstances.

*** Royalties for sales made in the Direct Sales and Related Sales Distribution Channels shall be paid on the final invoice price charged the customer/consumer.**

**APPENDIX E
CODE OF CONDUCT**

All Licensees and all contractors and subcontractors whom they use in the production of Licensed Articles (collectively "Licensees") shall sign a statement under penalty of perjury that they adhere to the following as to employees utilized in the production of Licensed Articles:

Licensees in the United States

Licensees shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly and nondiscrimination standards, as well as appropriate federal laws.

Licensees outside of the United States

For Licensees whose locations for manufacture or assembly are outside the United States, those Licensees shall ensure they comply with the appropriate laws of countries where the facilities are located.

Additional requirements for all Licensees

Licensees shall ensure workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which the labor is performed. All Licensees must comply with the overtime laws and regulations of the country in which their employees are working. ~~All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.~~

No person may be employed who is younger than the legal age for children to work in the country in which the facility is located, or the age for completing compulsory education, if any, whichever is greater. In no case may children under the age of 15 years be employed in the manufacturing process. There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.

The work environment shall be safe and healthy and, at a minimum, be in compliance with relevant local, state and national laws. If residential facilities are provided to workers, those facilities shall be safe and healthy as well.

No worker may be subjected to any physical, sexual, psychological, or verbal harassment or abuse, including corporal punishment, under any circumstances, including, but not limited to, retaliation for exercising his or her right to free speech and assembly.