

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

KENNETH B. WIESEN,)
)
Applicant,)
)
v.)
)
TOOTSIE ROLL INDUSTRIES, INC.)
)
Registrant.)

Cancellation No. 92040463

AGREED MOTION TO SUSPEND PROCEEDINGS

Assistant Commissioner for Trademarks
Box TTAB
2900 Crystal Drive
Arlington, VA 22202-3513

Sweeney Candy Co., LLC, a Delaware limited liability company, as successor in interest to Tootsie Roll Industries, Inc. ("Registrant"), by its undersigned counsel, makes this Agreed Motion to Suspend Proceedings and states as follows:

1. On February 18, 2003, Tootsie Roll Industries, Inc., a Virginia corporation, transferred and assigned to Sweeney Candy Co., LLC all of its intellectual property rights relating to the trademarks subject to the above referenced cancellation proceeding. Notice of such assignment for purposes of recordation was filed with the Commissioner of Patents and Trademarks on February 26, 2003. A copy of such notice is attached hereto.

2. Kenneth B. Wiesen ("Applicant") and counsel for Registrant have agreed, subject to the approval of the Honorable Trademark Trial and Appeal Board, that the above referenced opposition proceeding be suspended for six (6) months, including the date on which Registrant's answer is due, with either of the parties having the option to reinstate sooner upon written notice.

3. The reason for this requested suspension is that the parties continue in good faith to negotiate a possible settlement. Accordingly, it is believed that the suspension will enable the parties to finalize the settlement and submit an agreed order of dismissal of this cancellation proceeding.

3. Should this cancellation proceeding be reinstated, either by written request of a party or action by the Board, the parties jointly request that a new deadline be set for close of the discovery period, as well as for the subsequent testimony and remaining periods.

4. Applicant has consented to the relief sought herein.

5. This extension is being sought in the interest of justice and not solely for the purposes of delay. The motion is submitted in triplicate to facilitate the Board's consideration.

DATED THIS 20th day of May, 2003

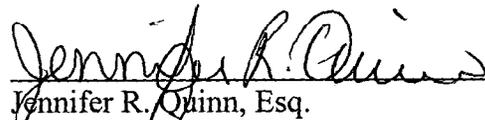
Respectfully submitted,


Jennifer R. Quinn
Ungaretti & Harris
3500 Three First National Plaza
Chicago, Illinois 60602-4283
Phone: 312/977-4400
Fax: 312/977-4405

ATTORNEYS FOR REGISTRANT

CERTIFICATE OF SERVICE

The undersigned, Jennifer R. Quinn, an attorney, hereby certifies that she caused a copy of the foregoing Agreed Motion to Suspend Proceedings dated May 20, 2003, to be served on Applicant, Kenneth B. Wiesen, 1 Old Country Road, Carle Place, New York 11545, by depositing copies of the same first class mail, postage prepaid, this 20th day of May, 2001.



Jennifer R. Quinn, Esq.
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Chicago, Illinois 60602
(312) 977-4400

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& HARRIS

COPY

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VIA FEDERAL EXPRESS

05-20-2003

U.S. Patent & TMOfr/TM Mail Rcpt Dt. #22

February 26, 2003

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

Re: Trademark Assignment

Ladies and Gentlemen:

Enclosed is an Assignment Agreement pursuant to which Tootsie Roll Industries, Inc. has assigned to Sweeney Candy Co., LLC all of its right, title and interest in and to the trademarks "B BONOMO Stylized" and "TURKISH TAFFY Stylized".

The enclosed documents consist of the following:

1. An Assignment Agreement;
2. A Recordation Form Cover Sheet; and
3. A check in the amount of \$65.00 in payment of the applicable filing fee.

Please acknowledge your receipt of the enclosed documents and check by stamping the enclosed postcard and returning it to the undersigned. Please contact the undersigned at (312) 977-4124 with any questions or comments regarding the enclosed documents.

Respectfully submitted,



Jennifer Quinn
Attorney for Sweeney Candy Co., LLC

Encl. (check enclosed)

cc: Gerard H. Sweeney
Gary I. Levenstein
Angela S. Williams

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Tootsie Roll Industries, Inc.

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

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

2. Name and address of receiving party(ies)
Name: Sweeney Candy Co., LLC
Internal
Address: _____
Street Address: 2 Craig Lane
City: Haverford State: PA Zip: 19041

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State _____
 Other limited liability company - DE

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: February 18, 2003

4. Application number(s) or registration number(s):
A. Trademark Application No.(s) _____

Additional number(s) attached Yes No

B. Trademark Registration No.(s) 0777494;
0746286

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Jennifer R. Quinn
Internal Address: Ungaretti & Harris

Street Address: 3500 Three First National
Plaza
City: Chicago State: IL Zip: 60602

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41).....\$ 65.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: _____

DO NOT USE THIS SPACE

9. Signature.
Jennifer R. Quinn *Jennifer R. Quinn* February 26, 2003
Name of Person Signing Signature Date

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

ASSIGNMENT AGREEMENT

This is an Assignment Agreement (this "Agreement") between Tootsie Roll Industries, Inc., a corporation organized and existing under the laws of the state of Virginia and having a place of business at 7401 South Cicero Avenue, Chicago, Illinois 60629, hereafter "Tootsie Roll," and Sweeney Candy Co., LLC, a Delaware limited liability company, having an address at 2 Craig Lane, Haverford, Pennsylvania 19041, hereafter "Sweeney Candy"

Sweeney Candy is interested in buying, and Tootsie Roll is interested in selling, without representations or warranties other than those expressly set forth herein, such intellectual property rights as Tootsie Roll may own relating to the TURKISH TAFFY (as defined below) and BONOMO (as defined below) trademarks.

Now therefore, for good and variable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

1. Tootsie Roll will and does hereby sell, transfer and assign to Sweeney Candy such intellectual property rights as it may own or possess relating to the trademarks "Turkish Taffy" assigned Registration No. 0777494 ("TURKISH TAFFY") by the United States Patent and Trademark Office ("USPTO") and "b Bonomo" assigned Registration No. 0746286 by the USPTO ("BONOMO"), together with the goodwill associated therewith and symbolized by said trademarks. Such intellectual property rights shall include only the trademarks TURKISH TAFFY and BONOMO, such formulas and recipes relative to the manufacture of BONOMO and TURKISH TAFFY candy that are currently available without representations as to suitability for commercial purposes or use, copies of such advertising and promotional material for BONOMO and TURKISH TAFFY as may be readily available in the archive records of Tootsie Roll, copies of third party correspondence relating to these trademarks received in the past year, all correspondence and records relating to the current cancellation proceedings, hereinafter identified, and all of Tootsie Roll's right, title and interest, legal and equitable, in and to any claims, causes of action for past, present or future infringements of the trademarks and for unfair competition and any related claims Tootsie Roll may against any third parties, all hereinafter identified as the "Intellectual Property Rights."

2. Tootsie Roll makes no representations or warranties relative to the validity or enforceability of the BONOMO and TURKISH TAFFY trademarks, either under common law or under any registration herein assigned. Nor does Tootsie Roll make any representation or

warranty as to the continued goodwill associated with the trademarks BONOMO and/or TURKISH TAFFY, alone or in combination. Tootsie Roll makes no representations or warranties with respect to the current utility, originality or exclusivity of any recipe or formula or the worth utility of any documents or other materials herein assigned, transferred or given over to Sweeney Candy.

3. Sweeney Candy shall pay to Tootsie Roll Fifty Thousand and No/100 Dollars (\$50,000) (the "Purchase Price"). The Purchase Price shall be paid in full by wire transfer to an account designated in writing by Tootsie Roll.

4. Tootsie Roll expressly represents that it is currently involved in a cancellation pending before the USPTO entitled Weisen v. Tootsie Roll Industries, Inc., under Cancellation No. 92040463, and that there is no representation or warranty with respect to the ultimate disposition of such cancellation proceeding. Sweeney Candy in turn represents that it has satisfied itself with respect to the state of the cancellation proceedings and recognizes the risks inherent in such proceedings.

5. ~~Tootsie Roll agrees to execute an assignment document in the form hereto attached as Appendix A~~ ^{for an appropriate} ~~for purposes of recording this Assignment in the USPTO of Registration Nos. 0777494 and 0746286. Tootsie Roll represents and warrants that it is the owner of these registrations and that the assignment in the form hereto attached as Appendix A will, pursuant to standard USPTO procedures, when recorded, complete transfer of such rights as Tootsie Roll may have in the trademarks set forth above in the name of Sweeney Candy. Tootsie Roll represents and warrants that it has not entered into any agreements or executed any assignments that are inconsistent with its assignment of the aforesaid trademarks and registrations therefore to Sweeney Candy.~~ ^{This shall serve as the}

[Handwritten signature and initials]

6. Tootsie Roll agrees, at no expense to itself, to make available in Chicago, at reasonable times during business hours and for reasonable lengths of time, its personnel for purposes of providing historical information relative to the BONOMO and TURKISH TAFFY trademarks. Tootsie Roll further agrees to execute or have executed such additional documents as may properly be required to effect the express terms and conditions of this Agreement.

7. Tootsie Roll agrees not to use the trademark BONOMO or TURKISH TAFFY or colorable variations thereof for candy unless Sweeney Candy has abandoned the trademark or trademarks and in such event Tootsie Roll may, if it wishes, make use only of the trademark so

abandoned. Nonuse by Sweeney Candy of the trademark for a period of three (3) years shall constitute a presumption of abandonment, and on the written request by Tootsie Roll thereafter, Sweeney Candy shall reassign to Tootsie Roll all related Intellectual Property Rights.

8. Except and to the extent required by law, Sweeney Candy will not disclose or use, and will direct its representatives not to disclose or use, to the detriment of Tootsie Roll, any confidential information (as defined below) with respect to Tootsie Roll, furnished, by either Tootsie Roll or its representatives, to Sweeney Candy or its representatives at any time, *provided, however*, that the foregoing obligations imposed by this Section 8 shall not apply to the Intellectual Property Rights. For purposes of this paragraph "Confidential Information" means any information about Tootsie Roll stamped "Confidential" or identified in writing as such to Sweeney Candy by Tootsie Roll promptly following its disclosure, unless (a) such information is already known to Sweeney Candy or its representatives or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of Sweeney Candy or its representatives, (b) the use of such information is necessary or appropriate in making or filing or obtaining any consent or approval required for the consummation of this assignment or (c) the furnishing or use of such information is required by or necessary and appropriate in connection with legal proceedings. Upon the written request of Tootsie Roll, Sweeney Candy will promptly return to Tootsie Roll or destroy any confidential information in its possession and certify in writing to Tootsie Roll that it has done so.

9. The terms and conditions of this Agreement, except to the extent necessary to (i) record the assignments and (ii) reach a settlement with Kenneth P. Weisen, shall remain confidential between the parties unless otherwise required by law or unless the parties mutually agree otherwise.

10. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written communications, understandings, representations and warranties, and courses of conduct in dealing between the parties on the subject matter hereof.

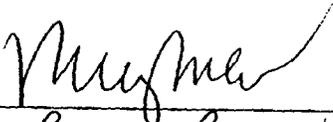
11. This Assignment may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Assignment and all of which when taken together will be deemed to constitute one in the same Agreement.

12. This Agreement will be governed by and construed, interpreted and enforced in accordance with the laws in the state of Illinois.

Executed as of this 18th day of February, 2003,

BY AND BETWEEN:

Tootsie Roll Industries Inc.

By: 
Name: BARRY BOWEN
Title: TREASURER

Sweeney Candy Co., LLC

By: 
Name: GERARD H. SWEENEY
Title: MANAGER

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& HARRIS**

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CHICAGO, IL**

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Check No. **124249**

Date **February 20, 2003**

\$

Pay: **Sixty-five and 00/100** ***** **65.00** *****

Pay to the order of:

Commissioner of Patents & Trademarks

Thomas M. Foley
NOT VALID OVER \$100.00
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Payee: **Commissioner of Patents & Trademarks**

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Vendor ID: **00592**

Check Date: **Feb 20, 2003**

<u>Invoice Num</u>	<u>Invoice Date</u>	<u>Reference</u>	<u>Invoice Amount</u>	<u>Amount Paid</u>	<u>Discount Taken</u>	<u>Payment Amt</u>
0000681	Feb 20/03		\$65.00	\$65.00	\$0.00	\$65.00
Totals:			\$65.00	\$65.00	\$0.00	\$65.00

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& HARRIS

05-20-2003

U.S. Patent & TMOs/TM Mail Rcpt Dt. #22

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JENNIFER R. QUINN
312.977.4124
jrquinn@uhlaw.com

Via Express Mail
#ET906221526US

May 20, 2003

Assistant Commissioner for Trademarks
Box TTAB- No Fee
2900 Crystal Drive
Arlington, Virginia 22202-3513

Re: Agreed Motion to Suspend Proceedings
Cancellation No.: 92040463
Applicant: Kenneth B. Wiesen
Marks: B BONOMO stylized and
TURKISH TAFFY stylized

Ladies and Gentlemen:

In connection with the above identified pending cancellation proceeding, enclosed is an original and two copies of an Agreed Motion to Suspend Proceedings for which we seek the Trademark Trial and Appeals Board's approval.

Please contact me with any questions or comments regarding the enclosed.

Sincerely,


Jennifer R. Quinn

enclosures

cc: Kenneth B. Wiesen
Gerard H. Sweeney
Gary I. Levenstein

TTAB

Vertical stamp or handwritten note on the right margin.