



Tuesday, October 2, 2012

2:30 PM - 4:00 PM

**906 – Let's Go to the Videotape: What You
Should Know about Licensing Music, Videos
and Photos**

Jaime Heins

Associate General Counsel
Burton

William Heller

Senior Vice President and General Counsel
New York Football Giants, Inc.

Danielle Van Lier

Senior Counsel, Intellectual Property & Contracts
SAG-AFTRA

Faculty Biographies

Jaime Heins

Jaime Heins is associate general counsel for Burton Snowboards, a Burlington, VT, a snowboard company solely dedicated to creating and perfecting a full range of the best snowboarding equipment and apparel. Founded in 1977, Burton has fueled the growth of snowboarding worldwide through its groundbreaking product lines, its team of top snowboarders and its grassroots efforts to get the sport accepted at resorts. Privately held and headquartered in Burlington, with international offices in Innsbruck, Tokyo and Sydney, Burton is the world's leading snowboard company and owns other top board sports brands, including Channel Islands Surfboards, Analog Clothing, Gravis Footwear, anon Optics, R.E.D. Protection, Forum Snowboards, Foursquare, and Special Blend.

Mr. Heins manages transactional legal matters for Burton and its global family of brands, including drafting, review and negotiation of professional athlete, sponsorship, licensing and related commercial agreements. Mr. Heins also provides counsel to Burton with respect to mergers and acquisitions, intellectual property, real estate, employment and litigation matters.

Previously, Mr. Heins served as a project manager for Toll Brothers, Inc., a publicly traded real estate development company. Mr. Heins also held associate positions with Hughes Hubbard & Reed, LLP in New York and Eggleston & Cramer, Ltd. in Burlington, VT.

Mr. Heins received his BA from Tulane University and his JD from the University of Pennsylvania Law School.

William Heller

William J. Heller serves the New York Football Giants as its senior vice president and general counsel. As the team's chief legal officer, Mr. Heller is involved in all aspects of the Giants' business, running the gamut from labor and employment, to sponsorships, naming rights, licensing, entertainment and other contracts, to assistance with the legal aspects of the football operations. He reports directly to the team's president and CEO, John K. Mara.

Prior to his tenure at the Giants and throughout his legal career, Mr. Heller practiced at major law firms based in New Jersey and handled cases nationwide. Mr. Heller tried federal and state court cases involving intellectual property, commercial and employment matters, among other things, for clients ranging from Fortune 500 companies to family-owned entities. Mr. Heller is recognized among *Chambers USA* "leaders in their field" 2006-2010 editions. He is also recognized as a New Jersey Super Lawyer for 2006-2010 and is listed in the 2007-2010 issues of the *Best Lawyers in America*.

Mr. Heller frequently appears as a guest on the Bloomberg TV and radio in the fields of intellectual property, information technology and data privacy, and frequently serves as a guest lecturer at law schools in New York and New Jersey.

Mr. Heller was graduated from Rutgers University, AB, economics with high distinction and Phi Beta Kappa, and the University of Pennsylvania Law School, JD.

Danielle Van Lier


Danielle Van Lier began working at the former Screen Actors Guild and is now senior counsel, intellectual property and contracts at SAG-AFTRA. She is responsible for managing SAG-AFTRA's third-party contracts and intellectual property, as well as other efforts to protect the rights of SAG-AFTRA and its members. Ms. Van Lier has co-authored several amicus curiae briefs to various courts, including the U.S. Supreme Court, the Ninth Circuit Court of Appeals and the California Supreme Court, on issues related to rights of publicity, copyright and the California Talent Agencies Act.

Ms. Van Lier is also an adjunct professor of entertainment law and sports law at Western State University College of Law.

Before joining Screen Actors Guild, Ms. Van Lier practiced law in Los Angeles, focusing on a variety of litigation matters, and has also worked with independent production companies and Internet ventures. Prior to entering practice, she served as a legislative fellow in the U.S. House of Representatives where her work focused on intellectual property, Internet issues, international law and other matters. Ms. Van Lier helped found, and serves on the board of directors of, Saving Wildlife International, a nonprofit wildlife education company.

Ms. Van Lier earned her JD from Washington University School of Law in St. Louis, where she served on the *Journal of Urban and Contemporary Law* and completed coursework toward a MA in East Asian studies. She received a BA in Japanese language, literature and cultural studies from the University of California at Santa Barbara.

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Let's Go to the Videotape: What You Should Know about Licensing Music, Videos and Photos (Session 906)

Jaime Heins
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Agenda

- What kind of rights do you need to consider when using A/V content?
- Common scenarios – what rights are implicated?

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What kind of rights do you need to consider when using A/V content?

- Copyright
 - Owner's exclusive rights, including:
 - Reproduction
 - Derivative works
 - Distribution
 - Public Performance
 - Fair use
- Trademark/Service mark
 - Federal or state
 - Registered or unregistered marks may be protected
 - Unfair competition
 - Dilution
 - Fair Use


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What kind of rights do you need to consider when using A/V content?

- Rights of Publicity
 - Varies state-by-state
 - Can be common law or statutory
 - Compare - unfair competition
 - Federal Lanham Act claims
- Entertainment unions
 - Reuse rights
 - Residuals

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Common scenarios – What rights are implicated?

- I want to use a movie...
 - To show my staff at a company gathering
 - To include clips:
 - In an ad campaign
 - On a video scoreboard
 - In a company presentation
 - Don't overlook –
 - Rights of publicity issues
 - Guild issues

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Common scenarios – What rights are implicated?

- I want to use this really cool photo I found...
 - In a company newsletter
 - In a marketing brochure/ad campaign
 - Ex. 1 – photo taken by an employee
 - Ex. 2 – photo on the internet/on display somewhere
 - Ex. 3 – photo of a famous person
 - Don't overlook –
 - Rights of publicity issues
 - Trademark/Lanham Act issues


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Common scenarios –
What rights are implicated?

- I want to use a viral video I saw online
 - To promote my product
 - Ex. 1 – the video was made by a fan about my product
 - Ex. 2 – the video is about a competitor's product
 - Ex. 3 – the video is of a really cute kitten / of an epic fail
 - Internally for staff motivation
 - I want to post a link to it on the company Facebook page

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Common scenarios –
What rights are implicated?

- I want to use music –
 - On my company website
 - In a marketing campaign / commercial
 - Rights may differ depending on type of music
 - I want to use the latest hit song
 - I want original music
- I want to create a viral video
 - I want to run a contest for user-generated content
 - I want to hire a production team

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Common scenarios – What rights are implicated?

- Someone else is/wants to –
 - Use my product in a movie/tv show
 - Creating online videos about my product/
company
 - Are they positive
 - Are they negative?

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Ok, I get that I need a license to use that content – Now what?

- Key license terms
 - License grant
 - Scope of license
 - Territory
 - Markets
- Additional permissions needed?
 - Rights of publicity
 - Entertainment unions
- Term/Termination
- Marking / ©/TM notice
- Fees

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Litigation Issues in IP Licensing

Drafting Tips to Increase the Chance of Success in IP Litigation

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Goals

Avoid Litigation, but if you get into litigation, position yourself for the best possible solution short of trial

If you have to try the case, win.

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Grant Clause

- **Not enough to say:**
 - “Licensor grants . . .”.
 - Or even “Subject to the terms of this Agreement, . . .”
- **Reason:**
 - Jacobson v. Katzer, 535 F. 3d 1373 (Fed. Cir. 2008)
 - Contractual covenants , relegating you to a mere breach of contract action, versus
 - Conditions that give you a cause of action for infringement

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From Jacobson:

- **The heart of the argument on appeal concerns whether the terms of the Artistic License are conditions of, or merely covenants to, the copyright license. Generally, a "copyright owner who grants a nonexclusive license to use his copyrighted material waives his right to sue the licensee for copyright infringement" and can sue only for breach of contract. [Citations omitted]. If, however, a license is limited in scope and the licensee acts outside the scope, the licensor can bring an action for copyright infringement. [Citations omitted].**
- **Thus, if the terms of the Artistic License allegedly violated are both covenants and conditions, they may serve to limit the scope of the license and are governed by copyright law. If they are merely covenants, by contrast, they are governed by contract law. [Citations omitted].**


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Grant Clause

Subject to and conditioned upon Licensee's continued compliance with all of the terms and conditions of this Agreement, License hereby grants to Licensee the limited [exclusive/nonexclusive] right and license . . .


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Defense & Indemnification

- **Two separate obligations – as in the insurance field (and courts construe the provisions like an insurance policy)**
- **Commonly refers to:**
 - Claims, suits and causes of action
 - Reasonable attorneys fees
- **Rarely mentions what happens if the party with the obligation to defend and indemnify breaches that obligation**

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Defense and Indemnity Clause

Each Party (the “Indemnifying Party”) hereby agrees to defend, indemnify, save and hold harmless the other Party (the “Indemnified Party”), and . . . from any and all threatened or actual third party claims of any kind, and all losses, damages, settlements, judgments, liabilities, costs, and expenses (including, but not limited to, the reasonable fees of attorneys, consultants and expert witnesses and all related costs and expenses) arising out of or relating to (a) any negligent act or omission by the Indemnifying Party or any of its officers, directors, employees, or agents, or the conduct of the Indemnifying Party’s business that violates the rights of any third parties; and/or (b) the inaccuracy of, or default or breach of, any of the terms, obligations, covenants, representations and/or warranties made by the Indemnifying Party in this Agreement. As the Parties intend complete indemnification, the reasonable attorneys fees and costs of any proceeding to enforce this Section 8 also shall be reimbursed in full.

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Interplay Between Limitation of Liability and Other Clauses

- **Many IP Licenses Contain Limitation of Liability Clauses, but fail to exclude from the limitation:**
 - Defense and Indemnity Obligations
 - Breach of Confidentiality or Data Security Provision
 - IP Infringement
- **Easy Answer:**

“Except for claims arising under [LIST THE SECTIONS], . . .”.

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Sample Clause

EXCEPT FOR LIABILITY UNDER A CLAIM SUBJECT TO INDEMNIFICATION, OR BREACH OF THE CONFIDENTIALITY OR DATA SECURITY PROVISIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR REVENUE, OR LOSS OF GOODWILL, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR NOT, AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES.

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Modernize your Counterparts Clause

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile signature, which signature shall be deemed to be an original. An electronic, PDF or facsimile copy of the executed Agreement or counterpart shall be deemed, and shall have the same legal force and effect as, an original document.


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Jurisdiction and Venue

This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey, without reference to its conflicts of law rules. The state and federal courts located within the State of New Jersey shall be the exclusive venue, forum and jurisdiction for the resolution of all disputes between the Parties. Both Parties irrevocably submit to exclusive venue and personal jurisdiction in the federal and state courts in New Jersey for any dispute arising under this Agreement and waive all objections to jurisdiction and venue of such courts.


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Discussion

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Additional Resources

YOU'VE SELECTED:

Resource Type: Primers [Remove]

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NARROW YOUR RESULTS BY:

KEYWORD Go

PRACTICE AREA

- Commercial (44)
- Compliance & Ethics (37)
- Corporate, Securities & Governance (48)
- Employment & Labor (31)
- Energy/Public Utility (3)
- Environmental (11)
- Financial Services (10)
- Government (55)
- Insurance (3)
- Intellectual Property (11) ↖
- International (55)
- Law Department Management (45)
- Litigation (20)
- Media/Publishing (6)
- Real Estate (4)
- Technology (24)

RESOURCE SUB TYPE

- InfoPAKs (96)
- Primer (48)

VALUE CHALLENGE TOPIC

PRIMERS
InfoPAKs and other in-depth comprehensive guides.

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ACC Value Challenge Practices for the Small Law Department
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This InfoPAK takes a unique, practitioner-focused approach to exploring the ACC Value Challenge Initiative ("AVC") of reconnecting cost and value within the context of small law departments. Using ...

International Private Acquisitions Transactional Guide
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This InfoPAK explores various elements of a cross-border company acquisition, including an overview of acquisition structures, an analysis of underlying legal, tax and accounting considerations, ...

Data Protection: Multi-Jurisdictional Guide
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ACC Newsstand
Selections from ACC's daily email newsletter

MAR 26, 2012
Board reverses examiner's rejection as based on mere conclusory statements
MAR 26, 2012
Carlyle Investment Management LLC et al. v. Carlyle Capital Corporation Limited, 2011 U.S. Dist. Lexis 85710 (Delaware, August 4, 2011)

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Analog Clothing A Division of Burton Snowboards

Synchronization and Performing Rights License

<p>The following Synchronization and Performing Rights License (the "Agreement") confirms our mutual understanding and agreement regarding the use by Analog Clothing and its affiliates ("Licensee") of the musical composition(s) (identified below), including the music and/or lyrics thereof in any arrangement, orchestration or language (the "Material"). The terms of Licensee's use are set forth below under the heading "Terms of Use."</p>	
<p>Musical Composition(s) subject to this Agreement</p>	<p>Licensor provides all rights in the Material for the following composition(s):</p> <p>[insert]</p>
<p>Name and contact information of owner of the Material being licensed ("Licensor")</p>	<p>[name] [address]</p> <p>Telephone: Facsimile: Contact Person:</p>
<p>Details of any party other than the Licensor (including any publisher) that has rights in or over the Material</p>	<p>[name] [address]</p> <p>Telephone: Facsimile: Contact Person:</p>
<p>Licensee:</p>	<p>Analog Clothing</p> <p>_____</p> <p>_____</p> <p>Telephone: Facsimile: Contact Person:</p>
<p>Program</p>	<p>Any project(s) or entertainment program(s) developed, created or produced during the three consecutive months commencing following the date set forth below. Licensor will be notified of all Program(s) created, produced or developed in which the Material is used.</p>
<p>Approved Media</p>	<p>DVD All forms of TV, including but not limited to Pay Per View Theatrical Motion Pictures/Films Internet, including but not limited to Video downloads Video on demand All other audio/visual devices or mediums, whether currently existing or subsequently invented or devised</p>
<p>Territory</p>	<p>Worldwide</p>



<p>Period of use (“Term”)</p>	<p>Perpetuity, including, but not limited to, for the duration of all copyrights in the Material(s) including any renewals, extensions or reversions thereof now or hereafter provided</p>
<p>Compensation</p>	<p>In consideration of the rights granted to Licensee hereunder, Licensee will provide the following:</p> <ul style="list-style-type: none"> • Licensee will include the Musical Composition(s) (either streaming or downloadable) in the “Quik Cuts” section of the Licensee’s website for a minimum of a one month period of time; • If provided by Licensor, Licensee (through one of its affiliates) may display the Musical Composition(s) in synchronization with a music video by the performing band/artist for a one month period of time; provided however, that Licensee has received all of the necessary rights and releases with respect to such music video and its publication and broadcast by a third party; and • Licensee will identify the performing artist/band, the Musical Composition(s) and the location of the performing artist/band’s website (including a “purchase” link that will direct traffic to a website to purchase the performing artist/band’s music) in the music section of the Licensee’s website for a one to three month period of time, and when applicable, in the “Music Identification” section of Licensee’s website, for each Program that features the performing band/artist’s Musical Composition(s).

Terms of use:

1. The Licensor grants to the Licensee and its successors, assigns and licensees and affiliates a non-exclusive, irrevocable and unconditional licence, privilege and authority to use the Material, including the synchronization, performance and other rights in connection therewith, in and in connection with the Program in the Territory during the Term. For the avoidance of doubt, this includes, without limitation, the right to fix, dub, re-record, re-produce, copy, edit, or perform the Material (or excerpts therefrom), synchronise and overlay the Material in whole or part within the Program, to produce, distribute, broadcast, transmit, communicate, sell, rent, giveaway, and otherwise exploit the Program in the Approved Media, and to use the Material in connection with the advertisement, publicity and promotion of the Program, Licensee, Licensee's business-related activities, brands and logos in any manner whether now known or hereafter devised, including but not limited to, trailers, teasers, commercials, audio video trailers, press kits, clips, excerpts and in any other promotions-related manner, in Licensee's sole and absolute discretion. Notwithstanding anything herein to the contrary, Licensee shall not be obligated to use the Material in the Program.
2. The Licensee agrees that, if the Master is used in the Program(s), credit will be given in end titles of the Program(s). The characteristics of such credits shall be left to Licensee's sole and absolute discretion. No casual or inadvertent failure by Licensee or any failure by a third party to comply with the provisions of this paragraph shall constitute a breach of this Agreement.
3. The Licensee agrees that it will only use the Material in connection with the Program and in accordance with the terms of this Agreement.
4. In consideration for the rights detailed above being granted, the Licensee agrees to pay to the Licensor the Compensation (identified above) within 60 days after the execution of this Agreement. The Licensor agrees that the use of the Material in connection with the Program will not give rise to any further payment or liability, other than the Compensation.
5. The Licensor represents and warrants and further agrees, for the benefit of Licensee and its successors, assigns and licensees and affiliates that:
 - (a) it is the owner of the Material and has all necessary rights and entitlements to enter into and grant the rights set out in this Agreement;
 - (b) it is responsible for all payments to third parties, including, without limitation, to each Artist, composer, lyricist, performer, publisher and producer of the Material, and that it has or will make such payments;
 - (c) it has obtained all necessary clearances to use the Material for the Program including, but not limited to, obtaining required consents from third parties relating to synchronization and performance rights;
 - (d) it has obtained any and all necessary permissions for the use of the Material from any union or guild having jurisdiction over Licensee's use of the Material as provided herein, and for all payments, if any, required to be paid under applicable collective bargaining agreements with respect to the so-called "re-use" of the Material in the Program;
 - (e) the Material is duly copyrighted under the U.S. Copyright laws;
 - (f) that Licensor has the legal right to grant this license, and that Licensor owns and controls 100% of all right, title and interest in and to the Material(s) including, but not limited to, all copyrights and renewals, extensions and reversions of copyright now or hereafter provided;
 - (g) the use of the Material for the Program will not infringe the Intellectual property rights or any other rights of any kind of any other party;
 - (h) the Material is not obscene, defamatory or otherwise unlawful;
 - (i) it will indemnify and hold the Licensee and its successors, assigns and licensees and affiliates, harmless from and against any and all claims, liabilities, losses, expenses, costs, damages or obligations (including reasonable

attorney’s fees) which may be incurred by the Licensee or its affiliates, if at all, (i) as a result of claims, demands, actions, causes of action, suits or proceedings brought by any party relating to use of the Material, or any portion thereof, in the Program, (ii) as a result of the Licensee’s reliance upon this Agreement or any breach hereof by Licensor, or (iii) any breach by Licensor of any of the representations and warranties set forth in this Section 5, whether or not litigation is commenced;

- (j) it releases the Licensee and its affiliated companies and their respective officers, employees, agents and contractors from any and all claims arising out of injury or damage to the Licensor as a result of or by reason of, the inclusion of the Material in the Program; and
- (k) it agrees not to bring or be party to any legal action or claim against the Licensee, based upon or arising out of the Licensee’s use of the Material, the inclusion of the Material in or the exploitation of the Program, on any legal theory, including but not limited to, personal injury, rights of privacy and publicity, or defamation.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflicts of law. The parties consent to the sole and exclusive jurisdiction and venue in the Federal or State courts in Orange County, California, and agree that all disputes based on or arising out of this Agreement shall only be submitted to and determined by said courts, which shall have sole and exclusive jurisdiction. If either Licensee or Licensor commences any proceeding to enforce or interpret this Agreement or any provision hereof, the prevailing party will be entitled to have and recover from the losing party such prevailing party's reasonable attorneys' fees and costs incurred in connection therewith.

7. Licensee freely may assign, license or delegate any or all of its rights or obligations hereunder or any interest herein without the consent of or notice to Licensor. In the event of any assignment, license or delegation by Licensee, this Agreement shall remain binding upon Licensor and inure to the benefit of Licensee’s assign, licensee or delegate.

8. This Agreement may be signed in counterparts or via facsimile, each of which shall be deemed an original, but all of which, taken together, will constitute one and the same original document.

By signing below the parties confirm that they have read, understand and agree to be bound by the terms of this Agreement.

Dated for reference purposes as of _____, 20__.

Licensor:

 Name:
 Title:
 Date:

**Licensee:
Analog Clothing**

 Name:
 Title:



SYNCHRONIZATION & PERFORMANCE LICENSE AGREEMENT

This Master Use, Synchronization and Performance License Agreement (the “**Agreement**”) is made as of the ____ day of _____ 20__ (the “**Effective Date**”)

BETWEEN: **The Burton Corporation**
80 Industrial Pkwy.,
Burlington, Vermont 05401
(including its affiliates, referred to herein as the “**Producer**”)

AND: _____

(individually and collectively referred to herein as the “**Licensor**”)

WHEREAS:

- A. The Producer has a need for music to be used in promotional web videos (collectively, the “**Picture**”);
- B. The Licensor is the sole and exclusive owner of the music, titles, arrangement and copyright in that certain musical work entitled “_____” (the “**Composition**”), written by _____ (individually and collectively, the “**Songwriter**”) as more particularly described on Exhibit A attached hereto and incorporated herein by reference;
- C. The Producer wishes to use the Composition in connection with the Picture;

THEREFORE, for good and valuable consideration receipt of which is hereby acknowledged, the parties hereto agree as follows:

1 LICENSE FEE

1.1 Provided that the Composition or any portion thereof is used in the Picture, Producer shall pay to the Licensor a fee in the amount of \$_____.00 USD (the “**License Fee**”), for the rights as outlined in Section 2.1 below. Producer shall have no obligation hereunder in the event that the Composition or any portion thereof is not included in the completed Picture.

1.2 **Additional Compensation.** Provided that the Composition or any portion thereof is used in the Picture, Licensor grants the right to and Producer, at its sole discretion, may include the following in the Music Credits section of the Producer’s web site:

- (a) A hyperlink to the primary web site(s) of the Artist and/or Artist’s record label, as more particularly set forth on Exhibit A;

(b) An image containing the album cover and/or single artwork associated with the commercial release of the Master of the Composition; and

(c) A hyperlink to a web site where the Master of the Composition may be purchased for download (e.g., iTunes, etc.), as more particularly set forth on Exhibit A.

In addition, provided that the Composition or any portion thereof is used in the Picture, Producer will credit the Artist Name, Song Title and web site URL in the Picture. No casual or inadvertent failure by Licensee or any failure by a third party to comply with the provisions of this paragraph shall constitute a breach of this Agreement.

2 LICENSE GRANT

2.1 The Licensor hereby grants to the Producer the worldwide, non-exclusive, irrevocable right and license for a term of **three (3)** years from the Effective Date (the "Term"), to use the Composition, in whole or in part, in synchronization and timed relation with the Picture including, without limitation, the following rights:

(a) to edit, and recombine the Composition, and portions or elements thereof, in conjunction only with the Picture;

(b) to exhibit, broadcast, publicly perform, reproduce, communicate, transmit and commercially exploit the Composition as embodied in the Picture via the Internet (in whole or in part, including clips and excerpts of the Picture). The "**Internet**" means a publicly accessible worldwide system of interconnected computer networks (including private communications networks such as virtual private networks and the world wide web). The rights granted hereunder shall include so-called "streaming" delivery and/or "downloadable" formats for viewing on personal computers, portable, handheld, wireless, mobile or other devices or platforms now known or hereafter created (e.g., downloads through services such as iTunes for retransmission on portable devices such as an Ipad or a mobile phone), but shall not include any other rights to download an audio-only version of the Composition whether digitally or otherwise. For the avoidance of doubt, the Licensor hereby grants a public performance license to perform the Composition on the Internet as embodied in the Picture;

(c) to exhibit, publicly perform, communicate, transmit and commercially exploit the Composition as embodied in the Picture, in movie theatres (theatrical exhibition), at film festivals, as well as "in-store", athletic competitions, and other public events, provided the exhibition is promotional in nature (no admission fee is charged to view the Picture);

(d) to, reproduce, distribute and commercially exploit the Composition as embodied in the Picture via DVD provided they are promotional in nature and free to the public (not sold);

(e) to exhibit, broadcast, publicly perform, reproduce, communicate, transmit and exploit the Composition as embodied in the Picture for in-context

promotional use solely for the purposes of advertising, marketing and promoting the Picture in any and all media; and

(f) to authorize and permit others to authorize the exercise of all or any of the foregoing rights and licenses, at the sole election of the Producer and its assignees and licensees, or to refrain therefrom.

2.2 The Licensor hereby grants to the Producer an option (the “**Option**”) to sell downloads of the Composition as embodied in the Picture via iTunes, limited to a maximum of [REDACTED],000 units sold within the Term. The execution of the Option shall be at the Producer’s sole discretion. In the event that Producer exercises the Option, Producer shall pay to the Licensor a fee in the amount of \$ [REDACTED].00 USD (the “**Option Fee**”),

2.3 The Licensor hereby grants to the Producer and its assignees and licensees the non-exclusive right and license to use and reproduce, and to permit others to use and reproduce, the professional name of the Songwriter, and the professional name(s) and/or logo(s) of the Artist, solely in connection with the advertising, marketing and promotion of the Picture in all forms of media.

2.4 All rights in and to the Master and Composition which are not specifically granted to the Producer herein are reserved to the Licensor. Without limiting the generality of the foregoing, this Agreement does not grant to the Producer any right or authority to manufacture or sell any mechanical contrivance or other device capable of reproducing the Master and Composition, in whole or in part, independently of or separately from the visual elements of the Picture; or to use the Master and Composition for any other purpose not provided for herein.

3 REPRESENTATIONS AND WARRANTIES; INDEMNITY

3.1 The Licensor hereby represents and warrants to the Producer that:

(a) the Licensor is the lawful owner or agent of the owner of one hundred percent (100%) of all rights (including all copyrights) in and to the Composition and has the full right and authority to enter into this Agreement and to grant to the Producer all of the rights and licenses herein granted, including but not limited to all necessary authority from the Artist, Songwriter, and any third party record label, publisher or other entity entitled to Artist’s or Songwriter’s services;

(b) the undersigned is duly authorized to accept payment on behalf of all parties comprising Licensor.

(c) there exists no adverse claim or demand against the Composition of which the Licensor is aware;

(d) Producer shall not be required to make any payment to any third party in connection with the rights granted hereunder, including but not limited to the Artist, Songwriter or and any third party record label, publisher or other entity entitled to Artist’s or Songwriter’s services; and

(e) the exploitation and use of the Composition by Producer hereunder shall neither violate nor infringe upon any civil, personal, or proprietary rights of any person including, without limitation, trademarks, trade names, copyrights and rights of privacy and publicity.

3.2 (a) The Licensor hereby indemnifies, defends and holds the Producer (and any party deriving rights from the Producer including, without limitation, the Producer's affiliates, assignees and licensees and their respective officers, directors, agents, and employees,) harmless from and against any and all claims, demands, liabilities, losses, causes of action and costs, including legal costs, arising out of, relating to or in connection with (i) any breach or alleged breach by the Licensor of its obligations hereunder; (ii) any action and/or claim for actual or alleged infringement of any trademark, copyright or other property right (including, but not limited to, misappropriation of trade secrets) based on any service or other materials furnished to Producer by Licensor pursuant to the terms of this Agreement or the use thereof by Producer; and (iii) any payment of any kind or nature to any third party arising out of the rights granted hereunder, including but not limited to Artist, Songwriter, and/or any record label, music publisher or other entity entitled to Artist's or Songwriter's services.

(b) The Licensor hereby further indemnifies, defends and holds the Producer (and any party deriving rights from the Producer including, without limitation, the Producer's affiliates, assignees and licensees and their respective officers, directors, agents, and employees,) harmless from and against any and all claims, demands, liabilities, losses, causes of action and costs, including legal costs, arising out of, relating to or in connection with any reuse fees or other monetary amounts due to American Federation of Television and Radio Artists (AFTRA), American Federation of Musicians (AFofM), British Musicians Unions (BMU) or any other musicians union, guild or performing rights society (e.g., ASCAP, SESAC, BMI) worldwide.

3.3 In no event shall Licensor, Songwriter or Artist be entitled to seek injunctive or any other equitable relief for any breach or non-compliance with any provision of this Agreement.

4 ASSIGNMENT

4.1 The Producer shall be entitled to assign all or a portion of the rights and licenses granted herein for the purposes of authorizing or permitting the exhibition, broadcast, transmission, advertising, marketing, promotion, performance or reproduction of the Picture, and portions thereof, and shall be entitled to assign this Agreement in its entirety to any person, firm or corporation acquiring ownership of or production rights to the Picture.

5 GENERAL PROVISIONS

5.1 The provisions of this Agreement are binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, executors, administrators and assigns.

5.2 The Licensor and the Producer each hereby undertake and agree to execute, acknowledge and deliver to the other such further documents, instruments and assurances as either party may reasonably require in order to convey, vest in, and secure all of the rights and property herein granted. Producer and Licensor will cooperate and otherwise work together in good faith to fulfill the purpose, objectives and requirements of this Agreement.

5.3 This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of Vermont without regard to Vermont's conflict of laws principles. The parties hereby consent to the exclusive jurisdiction and venue of the federal and state courts of the State of Vermont. This Agreement will not be governed by the United Nations Convention for the International Sale of Goods.

5.4 Producer shall accord to Licensor appropriate credit in the Picture with respect to the use of the Composition consistent with the information provided by the Licensor in Exhibit A hereto, provided all aspects of such credit shall be at Producer's discretion. Any casual or inadvertent failure by Producer to comply with the provisions of this Section 5.4, and any failure of persons other than Producer to comply with such provisions, shall not constitute a material breach of this Agreement by Producer; provided, however, that Producer shall upon notice of any such failure, use reasonable efforts to prospectively cure such failure in all future positive prints of the Picture.

5.5 This Agreement constitutes the entire understanding of the parties with respect to this subject matter. No other agreement, written or oral, express or implied, exists between the parties with respect to the Composition. Any amendment, alteration, modification or waiver of this Agreement must be in writing, signed by both parties. If any provision of this Agreement is found to be invalid, such provision will be severed to the minimum extent necessary for the remaining provisions to be enforceable. This Agreement may be signed in counterparts and fax and photocopies may be used as an original. Any and all warranties, provisions, rights and obligations of the parties herein described and agreed to be performed subsequent to the termination of this Agreement shall survive the termination of this Agreement. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement. Any formal notice, demand or communication which a party may desire or be required to give to another party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally, via facsimile or sent via internationally recognized overnight courier service. A party shall have the right to

designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

5.6 The exchange of copies of this Agreement and of signature pages by facsimile transmission or other electronic means from which a paper replica can be generated shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties on any document referenced herein so transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the Effective Date.

THE BURTON CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

LICENSOR

Authorized Signatory on behalf of all parties comprising Licensor **[DELETE UNLESS THERE IS MORE THAN ONE PARTY]**

By: X _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

COMPOSITION, SONGWRITER, DETAILS

“ _____ ”

Written by: _____

Published by: _____

Memorandum

Eric "Smooth-E" Bernstein is an up-and-coming hip hop artist from Malibu. Smooth-E got his start by DJing at parties, particularly Bar Mitzvahs, in and around Malibu. During these events, he typically also plays or performs his own original music. Although he has not yet signed a recording contract but he is in talks with several labels and is highly sought after for his DJ services.

Smooth-E has developed a unique "signature" style. He typically wears oversized jeans with blue and white suspenders over a white t-shirt and a blue baseball cap turned sideways over his spikey frosted blond hair. His most noticeable accessory is a large, rhinestone encrusted "E" on a thick silver chain. Smooth-E's music is also unique, incorporating traditional Hebrew folk music with modern hip hop rhythms. Two of his songs, "It's My Bar Mitzvah, Yo!" and "L'Chaim! I'll Drink to That!", are available for download on his FaceSpace page. He also offers CDs of his original songs for sale on his FaceSpace page and at the events where he DJs.

"Smoothee Hut", a chain of smoothie shops based in Los Angeles runs a corporate website. When someone visits the website, an animated video starts playing. The video features a cartoon image of a blonde male, wearing baggy, oversized jeans, blue and white suspenders over a white t-shirt, and a blue baseball cap turned sideways. The character also has a large sparkly "3" hanging from a thick chain around its neck. An instrumental hip hop tune that sounds much like Smooth-E's song, "It's My Bar Mitzvah, Yo" played over the video. The video does not include any dialogue, but it does have a text component. At the end of the video, the message "Be cool like Smoothee, try the new \$3 smoothies at Smoothee Hut" splashes across the screen.

The owner of Smoothee Hut, Roger Simpson, is a resident of Malibu. Smooth-E has seen Mr. Simpson at several of the events where he has DJed and performed. Mr. Simpson had approached him at one event to discuss the possibility of recording an original song for a Smoothee commercial, but no deal was ever concluded.

Has Smoothee Hut done anything wrong?

PHOTOGRAPHER/VIDEOGRAPHER AGREEMENT

This Agreement is entered into this ____ day of _____ 2002 between The Burton Corporation, having a principal place of business at 80 Industrial Parkway, Burlington, Vermont, 05401, USA (“Burton”) and _____, having a principal residence at _____ (“Photographer”).

WHEREAS, Burton desires to engage the services of Photographer to photograph snowboard riders; and Photographer desires to photograph snowboard riders upon the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration for the mutual covenants and conditions contained herein, the parties agree as follows:

1. Services: Photographer will travel to the designated location on the designated date and photograph snowboard riders in accordance with Burton’s instructions as outlined on Exhibit A attached hereto. Photographer will supply all equipment necessary to take the photographs/video footage (collectively, the “Images”) and deliver the Images and film negatives to Burton on the specified delivery date in Exhibit A. Each Image and film negative will be labeled as to snowboard rider, location and photographer’s credit.
2. Rights Assigned to Burton: Photographer acknowledges and agrees that each Image created at the request of Burton pursuant to this Agreement is and will be deemed to be a work made for hire as defined in the U. S. Copyright Act of 1976, as amended, 17 U. S. C. §101, and will be exclusively owned by Burton. If for any reason an Image is not deemed to be a work made for hire, the Photographer hereby irrevocably assigns all right, title and interest in perpetuity worldwide in and to the Image, including the copyright and all other rights relating to the Image to Burton.

It is agreed and acknowledged that this Agreement confers on Burton the exclusive right to display, exhibit, distribute, reproduce or authorize reproduction of the Images for all purposes, and to make derivative works, in any medium now known or later created. Photographer acknowledges and agrees that, consistent with Burton’s ownership of the copyrights in the Images, any copyright notices on the Images or reproductions of the Images will be in the name of Burton.

Photographer will not take other photographs/video footage at a Burton photo shoot for its own or a third party’s commercial use. Further, Photographer will not make use of the Images or any reproductions of the Images, except as expressly permitted by Burton in writing. Photographer will not create or participate in the creation of any photographs/video footage similar in subject to the Images for any third party.

3. Photographer Representations and Warranties. Photographer warrants and represents to Burton that the Services performed under this Agreement will be performed in a professional and workmanlike manner. Photographer further represents and warrants

to Burton that each Image is an original work of authorship or is derived from a preexisting work as to which he owns or has licensed the rights, and to the best of Photographer's knowledge does not infringe the rights of any third party. Photographer will defend and indemnify Burton and its affiliates, successors and assigns, and hold Burton and its affiliates, successors and assigns, harmless from and against any and all allegations, claims, demands, actions, causes of action, proceedings (whether threatened or pending), orders, damages, losses, liabilities, costs and expenses, including reasonable attorney's fees and other legal expenses, and judgments of any kind of nature (collectively, "Claims"), incurred by Burton arising out of or relating to the use of an Image (except to the extent such Claim alleges that Burton's trademarks infringe a third party's proprietary right) in the event of any breach of representation, warranty or covenants made by Photographer in this Agreement.

4. Compensation: In full consideration for the Services provided by Photographer during the term of this Agreement and the transfer of rights in the Images as set forth herein, Burton will pay to Photographer a total sum of USD \$_____.

In addition, Burton will reimburse Photographer for photograph/video film processing and shipping costs up to USD \$_____ and reasonable travel expenses, which must be approved in advance by Burton, up to USD \$_____. Photographer will submit requests for reimbursement with copies of receipts within sixty (60) days of the date the expenses were incurred, otherwise Photographer forfeits his right to reimbursement. Photographer will be responsible for all other costs and expenses associated with performing the Services.

Burton will also provide Photographer with Burton products reasonably necessary to perform the Services. Photographer acknowledges and agrees that any products supplied by Burton are for Photographer's use only. Photographer will not permit a third party to use the products at anytime and Photographer will not sell the products to any third party.

5. Term. This Agreement will be in effect until _____, 200_, unless earlier terminated in accordance with Sections 6 or 7.

6. Default. If either party defaults in the performance of a material obligation under this Agreement and fails to cure such default within two (2) days after receipt of a written notice given by the other party demanding that the default be cured, the non-defaulting party may terminate this Agreement immediately upon giving a written notice of termination.

7. Termination. In the absence of a Default, either party may terminate this Agreement with thirty (30) days prior written notice given to the other party.

8. Rights on Termination. Upon termination of this Agreement, Photographer will deliver to Burton all Images and works in progress relating to unprocessed Images and Burton will pay to Photographer any amounts owing under this Agreement for such

processed and unprocessed Images. Sections 2 and 9-16 will survive termination or expiration of this Agreement.

9. Assumption of the Risk and Release. Photographer is fully aware of the dangers of snowboarding and photographing/videoing extreme sports, including serious injury and/or death, and agrees to assume all risks of personal injury connected with the performance of the Services under this Agreement. Photographer further agrees to hold Burton harmless for any injuries he may suffer in the performance of the Services under this Agreement and to **RELEASE FROM LIABILITY** Burton, its officers, agents, employees, directors, shareholders, affiliated entities, subsidiaries, insurers and representatives from any and all loss, damage, injury, death or expense that Photographer may suffer or incur, or that Photographer's next of kin may suffer or incur, as a result of Photographer's performance of the Services under this Agreement, due to any cause whatsoever.

10. Relationship of Parties. Both parties agree that Photographer acts entirely in the capacity of an independent contractor and that this Agreement is not an employment agreement, nor does it constitute a joint venture or partnership between the parties. Neither party has the right to bind the other to any agreement with a third party or to incur any obligation or liability on behalf of the other party or to make any warranty on behalf of the other party.

11. Assignment. Photographer may not assign, delegate, transfer or pledge its rights, interests and/or obligations under this Agreement, in whole or in part, without the prior written consent of Burton. Subject to the foregoing, this Agreement will inure to the benefit of, and be binding upon, the parties and their respective successors and assigns.

12. Non-waiver of Rights. Failure of either party to enforce any of the provisions of this Agreement or failure to exercise any election provided for herein will in no way be considered to be a waiver of such provisions or elections or in any way affect the validity of this Agreement or any part hereof, or the right of either party to enforce each and every provision.

13. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will remain in full force and effect and will in no way be affected, impaired or invalidated.

14. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Vermont, exclusive of Vermont's conflict of laws provisions. The parties hereby consent to the jurisdiction and venue of the federal and state courts of the State of Vermont.

15. Arbitration. Each dispute arising out of or in connection with this Agreement or question regarding the interpretation hereof which cannot be settled amicably within one (1) month from the date of the notification of either party to the other of such dispute or

question (except for petitions seeking orders for specific performance or grants of equitable relief in matters relating to the proprietary interests of either party) will be determined in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Rules”). All such arbitration proceedings will be held in Burlington, Vermont. The prevailing party in any such arbitration will be entitled to the recovery of its reasonable attorney’s fees. THE PARTIES TO THIS AGREEMENT UNDERSTAND THIS SECTION 15 CONTAINS AN AGREEMENT TO ARBITRATE. AFTER SIGNING THIS AGREEMENT, EACH PARTY UNDERSTANDS IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THIS SECTION 15, UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL OR CIVIL RIGHTS. INSTEAD, EACH PARTY AGREES TO SUBMIT SUCH DISPUTE TO IMPARTIAL ARBITRATORS IN ACCORDANCE WITH THIS SECTION 15.

16. Entire Agreement. This Agreement, including any exhibits or schedules attached hereto, constitutes the entire agreement between the parties and supersedes any previous agreement between the parties. This Agreement may not be altered, modified, amended or changed in whole or in part, except by writing executed by both parties.

THE BURTON CORPORATION

PHOTOGRAPHER

By: _____
 Its Duly Authorized Agent

By: _____
 Its Duly Authorized Agent

Name:

Name:

Title:

Title:

Date:

Date:

Exhibit A

Photo-Shoot Details

Date:

Location:

Snowboard Riders:

Special Instructions:

Delivery Date:

CLIP LICENSE AGREEMENT

Subject to the terms and conditions set forth in this Clip License Agreement dated _____, 20__ (the "Agreement"), **THE BURTON CORPORATION** d/b/a **BURTON SNOWBOARDS** ("Licensor"), 80 Industrial Parkway, Burlington, VT 05401 hereby grants to **SHAUN WHITE ENTERPRISES, INC.**, _____ ("SWE") a limited, revocable, non-exclusive license to use certain clips and footage owned and/or controlled by Licensor as specifically described in Exhibit A attached hereto (collectively, "**Footage**").

1. **PERMITTED USE:** SWE shall have the right to use the Footage as follows ("Permitted Use"):
 - (a) Inclusion in and as part of SWE's shaunwhite.com website in a streaming (i.e. non-downloadable) format only.
 - (b) Use of any Footage shall not exceed two minutes (0:02:00) unless otherwise mutually.
 - (c) Use of any Footage shall be limited to the universe ("Territory").
 - (d) Use of any Footage shall not include music and/or commentator voices.
 - (e) SWE shall use the Footage in a careful and proper manner and will not make any alterations, modifications, or additions to the Footage.
 - (f) SWE shall ensure that the Footage will not be edited in any way that portrays the subject of the Footage, the Licensor or Licensor's trademarks in a defamatory manner or a manner that is not consistent with the original intent of the Footage.
 - (g) The Footage may not be used in a pornographic, defamatory or otherwise illegal manner, whether directly or in context or juxtaposition with other materials.
 - (h) Any changes to the Footage, usage and distribution beyond what is specifically outlined herein must be approved by Licensor in writing.
 - (i) In connection with SWE's use of the Footage, Licensor will receive a courtesy credit (if possible) as follows: "**Footage courtesy of Burton Snowboards**".

2. **TERM:** The Term of this Agreement shall begin on _____ and continue until _____ (the "Term").

3. **LIMITATIONS:** Use of the Footage is limited to the Permitted Use. Licensor represents and warrants that it owns or controls the Footage, and/or has all rights necessary to enter into this Agreement. Licensor shall obtain all necessary authorizations, consents, releases and approvals from all persons who appear or perform in the Footage, and from any other entities which control rights in or to the Footage. All applicable right, title and interest to the Footage, including the copyrights and/or trademarks therein, shall at all times be and remain with their applicable owner.

The representations and warranties made by Licensor in this Agreement apply only to the Footage as delivered by Licensor and will be invalid if the Footage is used by SWE in any manner not specifically authorized in this Agreement or if SWE is otherwise in breach of this Agreement.

4. **LICENSE FEE:** The Permitted Use of the Footage is granted for a total license fee of \$_____ U.S. Dollars ("License Fee").

5. **INDEMNIFICATION:** Provided that the Footage is only used in accordance with this Agreement and SWE is not otherwise in breach of this Agreement, Licensor shall indemnify, defend and hold SWE and its affiliated entities harmless from and against all claims, losses, costs, damages (excluding punitive damages), liabilities and expenses, including reasonable attorney's fees, arising out of any claim which may arise directly by reason of SWE's use of the Footage in accordance with this Agreement. The foregoing states Licensor's entire indemnification obligation under this Agreement and SWE's sole and exclusive remedy for any alleged or actual breach of the representations and warranties set forth in Section 3 above.

SWE shall defend, indemnify and hold Licensor including its subsidiaries and affiliates and their respective officers, directors, employees, representatives and agents harmless from and against any and all damages (except punitive damages), liabilities, costs, actions, claims and expenses (including reasonable attorneys' fees and permitted and authorized costs), arising out of, in connection with or as a result of (i) claims by third parties relating to SWE's use of any footage outside the scope of this Agreement; and (ii) breach by SWE of its obligations set forth in Section 1.

6. **ASSIGNMENT:** SWE shall not assign, transfer, pledge or hypothecate this Agreement, or any interest therein, or sublet or lend the Footage or any part thereof, or permit the Footage to be used by anyone other than SWE. SWE shall have no right, title or interest herein or thereto except as expressly set forth in this Agreement.

7. **LICENSOR'S COPYRIGHT OWNERSHIP:** SWE acknowledges that its use of the Footage will not affect Licensor's continued and separate copyright ownership of the Footage and SWE represents and warrants that it shall take necessary and appropriate steps to protect Licensor's copyrights and trademarks.

- 8. **MISCELLANEOUS:** This writing constitutes the entire understanding of the parties with respect to this subject matter. No other agreement, written or oral, express or implied, exists between the parties with respect to the Footage. Any amendment, alteration, modification or waiver of this License must be in writing, signed by both parties. If any provision of this License is found to be invalid, such provision will be severed to the minimum extent necessary for the remaining provisions to be enforceable. This License will be governed by, enforced under and construed in accordance with the laws of the State of California applicable to agreements executed and to be fully performed therein (without regard to California's conflict of laws provisions). This License may be signed in counterparts and fax and photocopies may be used as an original. Any and all warranties, provisions, rights and obligations of the parties herein described and agreed to be performed subsequent to the termination of this Agreement shall survive the termination of this Agreement. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision, and such invalid provision shall be deemed to be severed from the Agreement. Any formal notice, demand or communication which a party may desire or be required to give to another party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally, via facsimile or sent via internationally recognized overnight courier service. A party shall have the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

AGREED AND ACCEPTED BY:

AGREED AND ACCEPTED BY:

THE BURTON CORPORATION

SHAUN WHITE ENTERPRISES, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

DESCRIPTION OF FOOTAGE

LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of _____, by and between _____, with a place of business at _____ ("Licensor") and _____, with a place of business at _____ (hereafter, "Licensee").

RECITALS

Whereas Licensee designs, develops, manufactures and distributes _____ products; and

Whereas, Licensor owns the legal right, title and interest to certain illustrations and images and has the right to license such images for use on _____ products; and

Whereas, Licensor and Licensee now desire to enter into a relationship wherein Licensee shall license Licensor's images for use on Licensee's products as set forth on Exhibit A attached hereto and incorporated herein by reference ("Licensed Products").

Now therefore, the parties agree as follows:

AGREEMENT

Grant of License

Licensor hereby grants to Licensee an exclusive, worldwide, fully-paid up license to use the Artwork on Licensed Products during the Term. Licensor shall have the right to feature and display the Artwork, solely in its context as a Licensed Product, in Licensee's catalogs, advertising materials, in-store POP, packaging, merchandising, website and other channels used in connection with the sale of the Licensed Products. Any additional usage beyond the scope of this Agreement must be negotiated by the parties for additional terms and fees.

Licensor shall retain all ownership of the Artwork.

License Fee

In consideration for Licensor's license grant as described above, Licensee agrees to pay to Licensor a one-time license fee in the amount of _____ Dollars (USD \$_____.00) (the "License Fee") payable net thirty (30) days upon Licensee's receipt of Licensor's invoice.

Samples

Licensee shall give Licensor, free of charge and on a one-time basis, _____ samples of the Licensed Products featuring the Artwork for Licensor's personal use when such Licensed Products become available for delivery to Licensee's retail distribution channels.

Term

This Agreement shall commence as of the date set forth above and will remain in effect until _____ (the "Initial Term"). After expiration or termination of the license under this Agreement, Licensee may sell Licensed Products which are on hand in the form of existing inventory or in process at the time of such expiration or termination, for a period of twelve (12) months therefrom (the "Sell Through Term"). The Initial Term and the Sell Through Term are collectively referred to herein as the "Term".

Exclusivity

Licensor may not license the Artwork to any entity or individual in the snowboard industry other than Licensee during the Term without the prior written consent of Licensee, which consent shall not be unreasonably withheld or delayed. Licensor may not publish, distribute or otherwise offer for viewing by the public (via any media whatsoever, including but not limited to, the Internet) the Licensed Products (including any representations of the Artwork on the Licensed Products) prior to _____. Artist's failure to comply with this paragraph and maintain the confidentiality of the Artwork until _____ shall be deemed to be a material breach of this Agreement.

Artwork

Artwork will be provided by Licensor to Licensee as agreed upon by the parties. Artwork is [DESCRIBE ARTIST AND ARTWORK] graphics and illustrations as set forth on Exhibit B attached hereto and incorporated herein by reference (the "Artwork").

Good Will

Licensee recognizes the value of the good will associated with the Artwork and acknowledges that the Artwork and all rights therein including the good will pertaining thereto belong exclusively to Licensor.

Sell Through Rights

Licensee shall retain the right to sell off existing inventory during the Sell Through Term as described above.

Indemnification; Representations and Warranties

Licensee shall indemnify, defend and hold Licensor harmless from and against any loss, expense, or damage occasioned by any third party claim, demand, suit, or recovery arising out of Licensee's negligence or willful conduct.

Licensee agrees to defend and indemnify Licensor, its officers, directors, agents, and employees, against all costs, expenses and losses (including reasonable attorney's fees and costs) incurred through claims of third parties against Licensor based on the manufacture or sale of the Licensed Products including, but not limited to, actions founded on product liability.

Licensor warrants that it has all necessary rights to grant Licensee the licensed Artwork described in this Agreement and Licensee's use of such Artwork as permitted by this Agreement will not infringe upon any copyright, trademark, publicity, privacy, moral or other legal right of any third party.

Licensor agrees to indemnify, defend and hold Licensee including its affiliates, subsidiaries, successors and assigns, and their respective officers, directors, employees, representatives and agents harmless from any claims, actions, losses, expenses or damages sustained by Licensee arising from Licensor's breach of its representations or warranties as contained within this Agreement, including without limitation, any actual or alleged patent, copyright, trademark or other intellectual property infringement claims, domestic or foreign, relating to the Artwork. If any action shall be brought against Licensee in respect to which indemnity may be sought from Licensor, Licensee shall promptly notify Licensor in writing, specifying the nature of the action and the total monetary amount sought or other such relief as is sought therein. Licensor shall cooperate with Licensee at Licensor's expense in all reasonable respects in connection with the defense of any such action. Licensee shall have the right to employ separate counsel and participate in the defense thereof at its own expense.

With the exception of the parties' indemnity obligations herein, in no event shall either party be liable to the other party for any incidental, consequential, indirect, or punitive damages (including but not limited to lost profits) regardless of whether such liability is based on breach of contract, tort, strict liability,

breach of warranties, failure of essential purpose or otherwise and even if advised of the possibility of such damages.

Other Provisions

This Agreement shall not be deemed to create any joint venture, association, company, or partnership between the parties. It is intended that each of the parties hereto shall be independent of the other and that neither party hereto shall have any right or authority to bind the other.

This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of _____ without regard to _____'s conflicts of law principles. The parties hereby consent to the exclusive jurisdiction and venue of the appropriate state or federal courts sitting in the State of _____ with respect to any dispute concerning this Agreement.

The parties may not assign, delegate, transfer or pledge its rights, interests and/or obligations under this Agreement, in whole or in part, without the prior written consent of the other party. Subject to the foregoing, this Agreement will inure to the benefit of, and be binding upon, the parties and their respective successors and assigns.

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Any and all warranties, provisions, rights and obligations of the parties herein described and agreed to be performed subsequent to the termination of this Agreement shall survive the termination of this Agreement.

Any formal notice, demand or communication which a party may desire or be required to give to another party shall be in writing and shall be deemed sufficiently given or rendered if delivered via nationally recognized overnight courier service. A party shall have the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

This Agreement constitutes the entire agreement between the parties with respect to this subject matter and shall not be modified, amended, or changed in any way except by written agreement signed by both parties hereto.

This Agreement is not binding unless signed by Licensor and the Licensee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the respective dates set forth below:

LICENSOR

LICENSEE

By: _____
Its Duly Authorized Agent
Name:
Title:
Date:

By: _____
Its Duly Authorized Agent
Name:
Title:
Date:

EXHIBIT A
LICENSED PRODUCTS

EXHIBIT B
LICENSED ARTWORK

MASTER USE LICENSE AGREEMENT

This Master Use License Agreement (the “**Agreement**”) is made as of the ____ day of _____ 20__ (the “**Effective Date**”)

BETWEEN: **The Burton Corporation**
80 Industrial Pkwy.,
Burlington, Vermont 05401
(including its affiliates, referred to herein as the “**Producer**”)

AND: _____

(individually and collectively referred to herein as the “**Licensor**”)

WHEREAS:

- A. The Producer has a need for music to be used in promotional web videos (collectively, the “**Picture**”);
- B. The Licensor is the sole and exclusive owner of the copyright in that certain master sound recording (the “**Master**”) containing the Composition “_____” as performed by _____ (individually and collectively, the “**Artist**”); and
- C. The Producer wishes to use the Master in connection with the Picture;

THEREFORE, for good and valuable consideration receipt of which is hereby acknowledged, the parties hereto agree as follows:

1 LICENSE FEE

1.1 Provided that the Master or any portion thereof is used in the Picture, Producer shall pay to the Licensor a fee in the amount of \$____.00 USD (the “**License Fee**”), for the rights as outlined in Section 2.1 below. Producer shall have no obligation hereunder in the event that the Master or any portion thereof is not included in the completed Picture.

1.2 **Additional Compensation.** Provided that the Master or any portion thereof is used in the Picture, Licensor grants the right to and Producer, at its sole discretion, may include the following in the Music Credits section of the Producer’s web site:

- (a) A hyperlink to the primary web site(s) of the Artist and/or Artist’s record label, as more particularly set forth on Exhibit A;
- (b) An image containing the album cover and/or single artwork associated with the commercial release of the Master; and

(c) A hyperlink to a web site where the Master may be purchased for download (e.g., iTunes, etc.), as more particularly set forth on Exhibit A.

In addition, provided that the Master or any portion thereof is used in the Picture, Producer will credit the Artist Name, Song Title and web site URL in the Picture. No casual or inadvertent failure by Licensee or any failure by a third party to comply with the provisions of this paragraph shall constitute a breach of this Agreement.

2 LICENSE GRANT

2.1 The Licensor hereby grants to the Producer the worldwide, non-exclusive, irrevocable right and license for a term of **three (3)** years from the Effective Date (the "Term"), to use the Master, in whole or in part, in synchronization and timed relation with the Picture including, without limitation, the following rights:

(a) to edit, and recombine the Master, and portions or elements thereof, in conjunction only with the Picture;

(b) to exhibit, broadcast, publicly perform, reproduce, communicate, transmit and commercially exploit the Master as embodied in the Picture via the Internet (in whole or in part, including clips and excerpts of the Picture). The "**Internet**" means a publicly accessible worldwide system of interconnected computer networks (including private communications networks such as virtual private networks and the world wide web). The rights granted hereunder shall include so-called "streaming" delivery and/or "downloadable" formats for viewing on personal computers, portable, handheld, wireless, mobile or other devices or platforms now known or hereafter created (e.g., downloads through services such as iTunes for retransmission on portable devices such as an Ipod or a mobile phone), but shall not include any other rights to download an audio-only version of the Master whether digitally or otherwise. For the avoidance of doubt, the Licensor hereby grants a public performance license to perform the Master on the Internet as embodied in the Picture;

(c) to exhibit, publicly perform, communicate, transmit and commercially exploit the Master as embodied in the Picture, in movie theatres (theatrical exhibition), at film festivals, as well as "in-store", athletic competitions, and other public events, provided the exhibition is promotional in nature (no admission fee is charged to view the Picture);

(d) to, reproduce, distribute and commercially exploit the Master as embodied in the Picture via DVD provided they are promotional in nature and free to the public (not sold);

(e) to exhibit, broadcast, publicly perform, reproduce, communicate, transmit and exploit the Master as embodied in the Picture for in-context promotional use solely for the purposes of advertising, marketing and promoting the Picture in any and all media; and

(f) to authorize and permit others to authorize the exercise of all or any of the foregoing rights and licenses, at the sole election of the Producer and its assignees and licensees, or to refrain therefrom.

2.2 The Licensor hereby grants to the Producer an option (the “**Option**”) to sell downloads of the Master as embodied in the Picture via iTunes, limited to a maximum of [REDACTED],000 units sold within the Term. The execution of the Option shall be at the Producer’s sole discretion. In the event that Producer exercises the Option, Producer shall pay to the Licensor a fee in the amount of \$ [REDACTED].00 USD (the “**Option Fee**”),

2.3 The Licensor hereby grants to the Producer and its assignees and licensees the non-exclusive right and license to use and reproduce, and to permit others to use and reproduce, the professional name of the Songwriter, and the professional name(s) and/or logo(s) of the Artist, solely in connection with the advertising, marketing and promotion of the Picture in all forms of media.

2.4 All rights in and to the Master which are not specifically granted to the Producer herein are reserved to the Licensor. Without limiting the generality of the foregoing, this Agreement does not grant to the Producer any right or authority to manufacture or sell any mechanical contrivance or other device capable of reproducing the Master, in whole or in part, independently of or separately from the visual elements of the Picture; or to use the Master for any other purpose not provided for herein.

3 REPRESENTATIONS AND WARRANTIES; INDEMNITY

3.1 The Licensor hereby represents and warrants to the Producer that:

(a) the Licensor is the lawful owner or agent of the owner of one hundred percent (100%) of all rights (including all copyrights) in and to the Master and has the full right and authority to enter into this Agreement and to grant to the Producer all of the rights and licenses herein granted, including but not limited to all necessary authority from the Artist, Songwriter, and any third party record label, publisher or other entity entitled to Artist’s or Songwriter’s services;

(b) the undersigned is duly authorized to accept payment on behalf of all parties comprising Licensor.

(c) there exists no adverse claim or demand against the Master which the Licensor is aware;

(d) Producer shall not be required to make any payment to any third party in connection with the rights granted hereunder, including but not limited to the Artist, Songwriter or and any third party record label, publisher or other entity entitled to Artist’s or Songwriter’s services; and

(e) the exploitation and use of the Master by Producer hereunder shall neither violate nor infringe upon any civil, personal, or proprietary rights of any person including, without limitation, trademarks, trade names, copyrights and rights of privacy and publicity.

3.2 (a) The Licensor hereby indemnifies, defends and holds the Producer (and any party deriving rights from the Producer including, without limitation, the Producer's affiliates, assignees and licensees and their respective officers, directors, agents, and employees,) harmless from and against any and all claims, demands, liabilities, losses, causes of action and costs, including legal costs, arising out of, relating to or in connection with (i) any breach or alleged breach by the Licensor of its obligations hereunder; (ii) any action and/or claim for actual or alleged infringement of any trademark, copyright or other property right (including, but not limited to, misappropriation of trade secrets) based on any service or other materials furnished to Producer by Licensor pursuant to the terms of this Agreement or the use thereof by Producer; and (iii) any payment of any kind or nature to any third party arising out of the rights granted hereunder, including but not limited to Artist, Songwriter, and/or any record label, music publisher or other entity entitled to Artist's or Songwriter's services.

(b) The Licensor hereby further indemnifies, defends and holds the Producer (and any party deriving rights from the Producer including, without limitation, the Producer's affiliates, assignees and licensees and their respective officers, directors, agents, and employees,) harmless from and against any and all claims, demands, liabilities, losses, causes of action and costs, including legal costs, arising out of, relating to or in connection with any reuse fees or other monetary amounts due to American Federation of Television and Radio Artists (AFTRA), American Federation of Musicians (AFofM), British Musicians Unions (BMU) or any other musicians union, guild or performing rights society (e.g., ASCAP, SESAC, BMI) worldwide.

3.3 In no event shall Licensor, Songwriter or Artist be entitled to seek injunctive or any other equitable relief for any breach or non-compliance with any provision of this Agreement.

4 ASSIGNMENT

4.1 The Producer shall be entitled to assign all or a portion of the rights and licenses granted herein for the purposes of authorizing or permitting the exhibition, broadcast, transmission, advertising, marketing, promotion, performance or reproduction of the Picture, and portions thereof, and shall be entitled to assign this Agreement in its entirety to any person, firm or corporation acquiring ownership of or production rights to the Picture.

5 GENERAL PROVISIONS

5.1 The provisions of this Agreement are binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, executors, administrators and assigns.

5.2 The Licensor and the Producer each hereby undertake and agree to execute, acknowledge and deliver to the other such further documents, instruments and assurances

as either party may reasonably require in order to convey, vest in, and secure all of the rights and property herein granted. Producer and Licensor will cooperate and otherwise work together in good faith to fulfill the purpose, objectives and requirements of this Agreement.

5.3 This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of Vermont without regard to Vermont's conflict of laws principles. The parties hereby consent to the exclusive jurisdiction and venue of the federal and state courts of the State of Vermont. This Agreement will not be governed by the United Nations Convention for the International Sale of Goods.

5.4 Producer shall accord to Licensor appropriate credit in the Picture with respect to the use of the Master consistent with the information provided by the Licensor in Exhibit A hereto, provided all aspects of such credit shall be at Producer's discretion. Any casual or inadvertent failure by Producer to comply with the provisions of this Section 5.4, and any failure of persons other than Producer to comply with such provisions, shall not constitute a material breach of this Agreement by Producer; provided, however, that Producer shall upon notice of any such failure, use reasonable efforts to prospectively cure such failure in all future positive prints of the Picture.

5.5 This Agreement constitutes the entire understanding of the parties with respect to this subject matter. No other agreement, written or oral, express or implied, exists between the parties with respect to the Master. Any amendment, alteration, modification or waiver of this Agreement must be in writing, signed by both parties. If any provision of this Agreement is found to be invalid, such provision will be severed to the minimum extent necessary for the remaining provisions to be enforceable. This Agreement may be signed in counterparts and fax and photocopies may be used as an original. Any and all warranties, provisions, rights and obligations of the parties herein described and agreed to be performed subsequent to the termination of this Agreement shall survive the termination of this Agreement. If any provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision and such invalid provision shall be deemed to be severed from the Agreement. Any formal notice, demand or communication which a party may desire or be required to give to another party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally, via facsimile or sent via internationally recognized overnight courier service. A party shall have the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

5.6 The exchange of copies of this Agreement and of signature pages by facsimile transmission or other electronic means from which a paper replica can be generated shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties on any document referenced herein so transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the Effective Date.

THE BURTON CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

LICENSOR

Authorized Signatory on behalf of all parties comprising Licensor **[DELETE UNLESS THERE IS MORE THAN ONE PARTY]**

By: X _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

MASTER AND ARTIST DETAILS

“ _____ ”

Performed by: _____

Courtesy of: _____

Artist/Label URL: _____

Master/Album Purchase URL: _____
