



Wednesday, October 21
9:00 am–10:30 am

609 Best Practices for Training the Marketing Department

Philip D. Calderone

Vice President, General Counsel and Secretary
Banfi Vintners

Suzanne Cruse

Vice President, General Counsel
Kozy Shack Enterprises, Inc.

Frederic Haber

Vice President and General Counsel
Copyright Clearance Center, Inc.

Suzanne Schorlemer Bailey

Corporate Counsel
HEB

Faculty Biographies

Philip D. Calderone

Philip D. Calderone is the vice president, general counsel and secretary of Banfi Vintners, a leading importer of wines from Chile, Italy and Australia and an award-winning producer of wines in Montalcino, Tuscany. He is responsible for alcoholic beverage law compliance nationwide, drafting and negotiating contracts, HR legal compliance and training, real estate transactions, sales and marketing support, supplier relations and solving family business problems as the liaison among family shareholders.

Prior to his work with Banfi, Mr. Calderone worked as the first in-house counsel at the New York Institute of Technology. He began his legal career as a litigation associate at Winthrop, Stimson, Putnam & Roberts.

Mr. Calderone serves on the board of the St. Johnland Nursing Center in Kings Park, NY, plays the piano for patients each month, and is active in the pre-cana and music ministries of his parish church.

He received his BA from the University of Virginia and his JD from Washington and Lee University Law School.

Suzanne Cruse

Vice President, General Counsel
Kozy Shack Enterprises, Inc.

Frederic Haber

Frederic Haber is vice president and general counsel of Copyright Clearance Center (CCC), Inc., a not-for-profit corporation that grants permissions and licenses in the United States to corporations, universities and other organizations and individuals for the use of the copyrighted works of publishers, authors and other copyright rights holders in text-based materials, and collects and distributes royalties for those uses. Most recently, CCC has begun to expand its licensing services into images and “user-generated content.” As CCC’s general counsel, Mr. Haber is responsible for all legal affairs of the company, including the legal aspects of its copyright licensing businesses.

Prior to joining CCC, Mr. Haber was a senior attorney at R.H. Macy & Co., Inc. with primary responsibility for the legal affairs of its private-label design and manufacturing division and for all licensing and intellectual property matters. He also provided general representation for the chain in various trade regulation fields. Before joining Macy’s, Mr. Haber was of counsel to the New York City-based law firm of Weil, Gotshal & Manges, practicing intellectual property, trade regulation and antitrust law. There, his clients, which he represented in litigation, commercial and counseling matters, were concentrated in the publishing and retailing fields.

Mr. Haber holds bachelors, masters and law degrees from schools of Harvard University.

Suzanne Schorlemer Bailey

Suzanne Schorlemer Bailey is corporate counsel for HEB Grocery Company, LP which is based in San Antonio, Texas. H-E-B, one of the largest privately held companies in the U.S., operates supermarket, gourmet food, and "Plus!" stores in Texas and Mexico. Ms. Bailey oversees the corporate legal needs of the marketing/advertising and Own Brand (private label) teams. As part of her responsibilities, Ms. Bailey handles negotiations for sponsorship, endorsement, promotions, advertising agency and private label supply agreements, reviews advertisements, sweepstakes and promotions, and serves on the company's social media governance committee.

Prior to joining H-E-B, Ms. Bailey specialized in estate planning and estate administration at Oppenheimer, Blend, Harrison & Tate, Inc. in San Antonio. Before that, Ms. Bailey served as staff attorney of the Bexar County Probate Court.

Ms. Bailey has been active in bar organizations both locally and nationally, having served on the cabinet of the ABA's Young Lawyers Division and as president of the San Antonio Young Lawyers Association. She was an ABA business law fellow.

Ms. Bailey graduated from the University of Texas at Austin with a BBA and received her JD from St. Mary's University School of Law.

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General Rule

Advertising may not be false or misleading or make unsubstantiated claims.

- From point of view of a typical consumer
- Both as to express and implied claims
- By statement or omission

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Claim Substantiation

- Substantiation requires that the advertiser has a reasonable basis for the claim
- Must be able to substantiate claims **before** the advertisement is published or the commercial is broadcast

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What Rules Apply?

- **Consumer Law**
 - FTC Act, Related Regulations and Guidelines
 - Deceptive Trade Practices Act (Federal and State)
 - Better Business Bureau Code of Advertising (both national and local)
- **Trademark/Unfair Competition**
 - Lanham Act
 - State Torts/Statutes

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What Rules Apply?

- **Industry Specific Regulations**
 - State Insurance Code
 - Food & Drug Administration
 - Federal Banking and Credit Regulations
 - State Alcoholic Beverage Commission Code
 - FCC Acts
 - U.S. Department of Agriculture Laws and Regulations

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What Rules Apply?

- **Solicitations**
 - CAN-SPAM ACT (e-mail advertising)
 - Telemarketing Sales Rule
- **Marketing to Children**
 - COPPA (Child Online Privacy Protection Act)
 - Children's Food and Beverage Advertising Initiative
- **Self-Regulatory Principles for Online Behavioral Advertising**

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Who Will Complain?

- Federal Trade Commission (FTC)
- Federal Communications Commission (FCC)
- State Attorneys General
- U.S. Food and Drug Administration (FDA)
- U.S. Department of Agriculture (USDA)
- Better Business Bureaus – local
- National Advertising Division of the BBB (national)
- Competitors
- Local Media "Troubleshooters"
- Customers
- Consumer Groups

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Copyright Hypothetical #1

"I have a recent Consumer Reports Magazine favorable review of one of our products, published in the December issue – just in time for the holidays. It's outstanding! I'm gonna photocopy it and send it around to our sales force and distributors, OK? Actually, it reproduces really well – I'm going to scan it and email it to everyone, OK?"

And there's this one REALLY outstanding paragraph – it puts us head and shoulders above our competition! I'm going to build a marketing piece that highlights that quote for distribution at next month's trade show and on our Website. And of course – don't worry – I'll attribute it to the writer at Consumer Reports so they don't think we're stealing their stuff."

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Copyright: Yours and Theirs

- Copyright (automatically) protects creative works
- Creative works come in many forms and formats in the Marketing Department
- Legal's task is to provide the organization with the tools to handle the complexity of copyright
- Don't forget – Marketing both creates copyrightable works for the company ('on offense') AND uses others' copyrighted works in a variety of ways ('on defense')
- So also don't forget the Golden Rule – think about whether you would object if the tables were turned

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Copyright: On Offense

- The company should proactively protect the content it creates
- Keep track of the most important content created
- Place copyright notices on all of your content sent outside
- Register the ©s in your more important content
- Use well-crafted agreements in "work for hire" arrangements
- Protect your database(s)
- Understand the global implications of copyright

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Copyright: On Defense

- The company should proactively create awareness and compliance among employees through information and policy
- Create, maintain, and teach your employees about your Corporate Copyright Policy
- Use forms
- Identify your company policy on Fair Use
- Be aware of licensing all around you (print, electronic, open source, Creative Commons)
- Contributory and vicarious liability for copyright infringement can reach the company
- DMCA "safe harbor" for online postings

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Copyright Hypothetical #2

"We made a marketing video, and used an old song by the Doors: **Light My Fire**. We want to use this at our upcoming national sales meeting, then e-mail our marketing video to all sales associates and our customers, and then post it on our website. No problem, right? The leader of the group, Jim Morrison, is dead, my Mother told me. Give us the green light, Phil. This will really light a fire under our brands."

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Copyright Issue Spotting

- **Who has rights, requiring a license?**
 - The Composers of "Light My Fire"?
 - The Publisher of "Light My Fire"
 - The Doors?
 - The Record Company who recorded the song?
- **License(s) needed for:**
 - Sales Conference?
 - Distribution by e-mail to Sales Force and Customers?
 - Posting on the Company website?

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Copyright Issues

There are two categories of music rights owners:

1. The owners of the musical works: the composers and their publishers; and
2. The owners of sound recordings in which musical works are embedded.

There are several types of licenses to clear a copyrighted musical work:

1. Mechanical License
2. Master Use Rights
3. Synchronization License
4. Blanket License

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Copyright Licenses

Master use rights are required for the reproduction and/or distribution of previously recorded material. The rights must be obtained from the owner of the master recording, usually the record company that created the master recording.

A **synchronization license** is a license of written authorization from the publisher to use published music in combination with visual images such as TV, video, websites, etc.

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Copyright Licenses

The Master Use License:
Light My Fire was recorded on Elektra records, now owned by The Warner Music Group.
 → Search Warner Music Group website for e-mail contact or license request form.

The Synchronization License:
 The Harry Fox Agency [www.harryfox.com] handles mechanical licenses for songs, and you would use them if you wanted to commission a new performance of a piece of copyrighted music. Since 2002, HFA no longer provides synchronization license services.
 → Search the following publisher websites for your piece of music:

- www.ascap.com
- www.bmi.com
- www.sesac.com
- www.copyright.gov

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Copyright Licenses

From the ASCAP website, we search and find this entry:

17. **LIGHT MY FIRE** (Title Code: 420138596) Writers:
DENSMORE JOHN PAUL
KRIEGER ROBERT A.
MANZAREK RAYMOND D.
MORRISON JIM.

Performers (excerpt):
DOORS
JOSE FELICIANO

Publishers/Administrators:
 DOORS MUSIC COMPANY
 C/O RUMINATING MUSIC
 ATTN: RANDALL WIXEN
 24025 PARK SORRENTO
 SUITE 130
 CALABASAS, CA, 91302
 Tel. (818) 591-7355

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Synch License Request

From the Publisher's website, www.wixenmusic.com, we can obtain a Synchronization License Request:

Synchronization License Request

PLEASE READ
 In order to process the volume of requests we get, priority will be given to those forms that are easily legible and entirely filled in. For more information on licensing, please read the links on our website (www.wixenmusic.com). They are very helpful and written to make this process easier for you.

Date of Request 6/15/2009 Your Email pcalderone@Banti.com
 Your Name Philip D. Calderone Company Name Banti Vintners
 Address 1111 Cedar Swamp Road
 City Old Brookville State NY Zip Code 11545
 Phone # 516-626-9200 Fax # 516-626-9218

Type of Request (check box) Motion Picture Film Festival TV
 Video/DVD Commercial Advertising Other

Production Title Banti Marketing Video
 Brief Synopsis In-house video for sales force and customers, to create excitement about the company's brands.

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Synch License Request

Song Title Light My Fire
 Writers John Paul Densmore, Robert A. Krieger, Raymond D. Manzarek, Jim Morrison
 Publishers Doors Music Company Parody Lyrics Yes No (If yes, attach parody lyrics)
 (Master) Re-recording / Cover Artist (Circle One) Artist The Doors

Type of Use (check box) Background Vocal Background Instrumental
 Visual Vocal Visual Instrumental Other

Number of Uses one Duration of Use(s) 45 seconds
 Territory U.S. & Canada Term 1 year Media TV; e-mail copy; website
 Scene Description of Use While company brands appear on screen, recording of song heard in background. Proposed Fee \$500.00
 Genre (Comedy, Drama, etc.) Sales Promotion Video Budget \$2,500.00
 Producer Banti Vintners Writer Marketing Dept Director Marketing Dept
 Main Cast Members n/a Release Date July 1, 2009
 Other Music/Songs none

Once this form is complete please MAIL to: Or FAX to:
 Wixen Music Publishing, Inc.
 24025 Park Sorrento, Suite 130 (818) 591-7178
 Calabasas, CA 91302

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Synch License Request

Response from Warner Music Group came by telephone. On June 30, 2009 I received a call from Kimberly Cancelosi. She said:

"Your proposed use is a mixed Marketing, industrial use. Not a strict commercial use. Because this is The Doors, they are really picky and very expensive. Clear your publishing rights first, and then come back to me."

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Synch License Request

AXIED **Wixen Music Publishing, Inc.**
24025 Park Sorrento, Suite 130, Calabasas, CA 91302-4003
FAX ONLY: (818) 591-7178

July 14, 2009

Attn: Philip Banfi Marketing Video FAX: 818-626-8218 51662692

Re: "Light My Fire" / Wixen Music Publishing o/b/o Doors Music Co.
Synch request. In House Video for Sales Force - Banfi Vintners

Dear Professional:

In reference to your request to use the composition mentioned above in your upcoming project.

I regret to inform you that after careful consideration, your offer is respectfully declined. No reason is specified, but the decision is final.

Thank you for your interest and good luck.
Best Regards,
Kelly Gonzales


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Copyright Closing Thoughts

1. Music rights clearance is a complicated business.
2. If the song and performer are famous, chances are the license fees may be over budget for your Marketing Department.
3. If you need to go down this long and winding road, it may be prudent to hire outside clearance specialists.
4. Good overview of the world of music publishing, plus additional resources, available at: www.musicbizacademy.com.

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 **How Not To Clear Music**

1. Don't tell us you only have one day to clear the use. And don't call us every two days to see if we have an answer yet. We will contact you as soon as we know if the requested use has been approved.
2. Don't tell us how low your budget is. If your request is approved, we will quote based on our perception of the fair market value.
3. Don't expect us to educate you in the clearance process or copyright law because you've never cleared anything before. You should know what you're doing before you contact us. Consider hiring a clearance professional (see links).
4. Don't expect approval on a request just because you're a bona fide good-deed-doing charity. Many of our clients get dozens of charitable requests per week and they cannot all be approved.
5. Don't ever send us a letter stating that if you don't hear from us, you will assume that the use has been approved. This will prompt an immediate and permanent denial.
6. Don't change our forms or the terms of a license unless you have sent us a written request asking to do so, and we have approved such request.
7. Please don't chat-up our telephone receptionist. It has zero bearing on whether your request will be approved, or the speed in which it will be considered.
8. No means no. It is not an invitation to appeal a decision or send further information that you meant to send in your original request. If you call our client or his or her manager or attorney directly to appeal their decision after they have already denied the request through this office, or if you waste our time arguing a quote or usage decision, we may take that into consideration when considering any future requests you might make.

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 **How To Clear Music**

1. Allow adequate time (at least two weeks) to obtain approvals. In many instances, we have to track down a touring songwriter for approval of your request, and this can take time.
2. Provide us with complete **written** details of the proposed use. For books, tv shows, and films we will require plot descriptions, and text pages showing the in-context placement of the proposed use. Your request may be sent by FAX or mail. Because it is in our clients' best interests, we maintain a paper trail of license requests, negotiations, and issued licenses. Therefore, we do not clear rights on-line.
3. If we send you a license or an offer to license, and you wish to change the proposed terms, please send your counter-offer in writing.

Source: wixenmusic.com

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 **Trademark Hypothetical # 1**

“Our marketing group has come up with a private label for one of our regional customers. We did our own TESS search, and we think our brand name is different enough from a similar brand name. We want to keep this under wraps, so we can blow our competitors away when we roll out the product. We've already got a small agency doing the label designs for us. Can you please sign off right away?”

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Issue Spotting

Terms of the private label/contract manufacturing contract
 Indemnification of customer increases risk and decreases autonomy in management of claim (liability for third party IP claims)

Likelihood of confusion considerations

- Similarity of trademarks in their appearance, meaning, sound, etc.
- The products or services (function, use)
- The consumers who buy the products or services (professional vs. average buyers)
- The channels of trade/method of sale (wholesale vs. retail)
- Conditions under which sales are made (impulse vs. careful)
- Strength of the trademarks

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Issue Spotting

Ownership of all IP work
 Creative rights agreement should contain written assignment of all IP rights in the brand name/label design back to the company.

Ability of small agency to indemnify you and customer?

- Creative rights agreement should include an indemnification, however
- An indemnification by the small agency protects only if there are assets or
- insurance to pay for both your company AND customer claims/damages

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Basic Trademark Application Steps

- Search the mark on www.uspto.gov and the Internet
- Check for similar marks in the same or similar classes of goods
- Third party comprehensive search for common law usage, websites, USPTO filings
- File on the Principal Register first

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ACC Association of Corporate Counsel **Basic Trademark Application Steps**

- If necessary, amend to the Supplemental Register.
- Use TM while the mark is pending.
- The federal registration symbol, ®, may be used once the mark is actually registered in the USPTO.

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ACC Association of Corporate Counsel **Sample Food Label Review Checklist**

- ✓ Layout correct (as per Design Guidelines)
- ✓ Nutritional facts panel matches specifications
- ✓ Ingredients list matches specifications
- ✓ Any claims e.g., "low fat" are legal
- ✓ Product identity statement and subtitle
- ✓ Correct quantity
- ✓ Logos design & position
- ✓ If used, photo of product is accurate representation of product or "serving suggestion"

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ACC Association of Corporate Counsel **Sample Food Label Review Checklist**

- ✓ Distributed by, Statement of Origin and product guarantee address are correct
- ✓ Cooking/preparation guidelines in correct format and easy to understand
- ✓ Allergy advice is correct, e.g., nut warnings, etc.
- ✓ Caution information is correct, where applicable, e.g. bones, choking warnings, etc.
- ✓ Logos, e.g., organic, kosher, are accurate and are substantiated by appropriate certifications
- ✓ Recipe suggestions, where applicable
- ✓ Safe handling instructions, e.g., eggs, meat
- ✓ Enjoy by date is correct position/format
- ✓ Storage instructions are correct

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Trademark Hypothetical #2

"Marketing designed a co-promotion with the METS, and we are going to advertise our brand with theirs, using both logos, in point-of-sale material and on the Internet. Their brand director told me everything was fine on the phone. It will be great: America's #1 baseball team paired with America's #1 Pudding!"

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Issue Spotting

- Rights to use METS name & logo?
 - Does the advertising agreement contain a grant of rights?
 - Representations and warranties should include the right to execute deliver and perform the advertising agreement, especially if team logo is not 100% owned by the team.
 - Indemnification should cover any IP infringement

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Issue Spotting

- Cross promotion usually means METS can use Kozy Shack logo.
- Each party should provide the other with logos and provide that any other use must be approved in writing.
- How long can this ad run?
 - The grant of rights needs to have a specific term
- Is #1 pudding in America substantiated?
 - Third party providers use scan data to that can substantiate sales in dollars among competitors

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Promotions Hypothetical

"We're running a contest, with point-of-sale entry forms, tear pads, and all the same stuff on the Internet. We'll be supporting the contest with print and Internet ads also, showing that our product is better/safer/cheaper/harder/softer (??whatever??) than the competition. Can you check the contest rules real quick? We need to release the creative for print at 4:30 p.m. Same ones as we used about 5-6 years ago."

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Types of Promotions

- **Sweepstakes**
 - Random selection
 - Drawings
 - Instant win or match games
- **Contests**
 - Involve skill, e.g. photo or essay contest
 - Winner selected by judges
 - Must establish selection criteria

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Sweepstakes

- **Cannot require purchase**
 - Violates anti-lottery laws
 - Cannot *imply* purchase requirement either
- **Evaluated practically**

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Promotions Disclosures

- NO PURCHASE NECESSARY
- Directive to Official Rules
- Promotion period dates
- How to enter without a purchase ("AMOE")
- Odds of winning
- Major eligibility restrictions
- Prize value
- Drawing date/location
- Winner list

...and make them unavoidable

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Rules


- Eligibility
 - Age (usually over 18)
 - Residence?
 - Employees and promotion partners?
- Promotion period
- How to enter
- How winners selected
 - Odds of winning
- Prizes
- Releases and other terms

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Execution of Promotions



Plans for

- In-store management
- Prize fulfillment
- Winners list

Retain records of:

- Winner names
- Sponsors and promotional agencies involved
- Number of entries
- Date prizes awarded
- Prizes awarded/value
- Method of selecting winners

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Promotions - Considerations

- **Prizes and values**
 - \$600 or above → Must issue Form 1099
 - Liability issues related to prize
- **Use of Third Party's Logos or Trademarks**
 - Walt Disney
 - NCAA – Final Four, March Madness
- **Promoted Products**
 - Vendor requirements: Disney - nutrition, Pepsi/Coke - children
- **Execution of Promotion**
 - Entry box and/or mail-in entries
 - Online entries
- **Cannot have an incentive to purchase alcohol or tobacco**

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Promotions - Considerations

- **Releases**
 - Winner
 - If travel prize, obtain one from winner's travel companion(s) too
 - On behalf of a minor winner
- **Various State Laws**
 - Some states require registration of sweepstakes
 - Some state require bond to be posted

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Promotions Protocol

All of the following should be submitted to legal for review:

- **Official Rules**
- **Creative elements**
 - Point of sale/print/radio, TV and online media
- **Trademarks**
 - Game name/other elements as necessary

Provide all deadlines so that we can respond in a timely manner.

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	SUMMARY
<ul style="list-style-type: none">▪ Teach Marketing to come to you EARLY▪ Teach Marketing what to do and then trust (but verify)▪ Get outside counsel to teach YOU▪ Legal horror stories are REALLY effective	
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**Villadco, Inc. / Chef Paul Prudhomme's
Tie-In Promotion Agreement**

This will serve as a Letter of Agreement between **Villadco, Inc., a New York corporation, with offices at 1111 Cedar Swamp Rd., Old Brookville, NY 11545, on behalf of its Stonehaven Brand(s) (hereinafter "Villadco")** and **Chef Paul Prudhomme's** a Texas corporation, with offices at P.O. Box 870125, El Paso, Texas 88587, on behalf of its Magic Seasoning Blends (hereinafter "Magic Seasoning Blends") relative to a joint promotion between **Stonehaven and Magic Seasoning Blends.**

It is agreed that **Villadco** will design and print approximately **100,000 neck hangers** featuring recipes utilizing Magic Seasoning Blends and a coupon for Magic Seasoning Blends, and these neck hangers will be placed on bottles of **Stonehaven Brand** by Villadco's affiliate, the **Banfi Vintners Company** Sales Force.

Neck hangers will be distributed to grocery stores in the Southeast, West and Southwest marketing areas over an either week period beginning **February 2006 and concluding on September 30, 2006**

It is agreed that **Villadco** will manage and fund the design, printing and placement of the neck hangers, and Prudhomme will be responsible for the coupon redemption, and supply the recipes and associated photograph/image.

Prudhomme will have the right to review the creative process beginning with rough layout through the approval of a proof prior to printing.

Prudhomme will provide all relevant coupon information, including UPC code, expiration date, coupon copy, coupon value, a logo and package shot to be used in the design of the neck hanger. The **value of the coupon will be \$1.00/off any two (2) Magic Seasoning Blends.**

The promotion shall not be conditioned upon the consumer's purchase or use of Stonehaven Brands where such a requirement would be unlawful, and a statement to that effect shall appear on Promotional Materials whenever required by applicable law or regulation, or agreed by the parties hereto.

Villadco and Chef Paul Prudhomme each acknowledge and agree that nothing herein grants either company any right, title, or interest in or to Intellectual Property owned by the other.

This agreement represents the entire agreement between the parties, and can only be modified in writing by both parties.

This agreement cannot be assigned by either party.

The parties will hold each other harmless for any claims or damages regarding their respective products and performance of their respective obligations hereunder.

If this letter of agreement meets with your approval, please sign and return a copy to me for countersignature.

Villadco, Inc.
1111 Cedar Swamp Rd
Old Brookville, NY 11545

Chef Paul Prudhomme

_____ Date: _____

_____ Date: _____

Marketing Manager

Marketing Manager

Exhibit A to Promotion Agreement between Chef Paul Prudhomme and Villadco, Inc.

1. Banfi will:
 - a. Pay for the design, production, and distribution of the following Promotional Materials for the **Stonehaven** Feb-March promotion:
 - a. case card
 - b. product displays
 - c. sell sheets to promote the Promotion to the trade
 - d. **Distribute 100,000** bottle neck hanger coupons offering savings on **Magic Seasoning Blends** as the parties may agree. The coupon shall be written by Villadco, and shall provide for at least a \$1.00 discount on two of Magic Seasoning Blends, and shall include other "value-added" information, such as recipes, or other content as may be agreed upon by the parties.
 - b. submit the final artwork to **Prudhomme** for approval of the use of Co-Sponsor's Intellectual Property thereon.
 - c. allow **Prudhomme** use of Stonehaven logo or intellectual property for use in sales material communications to Brokers.
2. **Prudhomme** will:
 - a. Offer a coupon value of \$1.00 off two of Magic Seasoning Blends
 - b. redeem all coupons at Prudhomme's sole expense
 - c. provide Banfi with Prudhomme standard, legal text, coupon, OCR numbers, digital artwork, digital logos, and four color photography relating to Magic Seasoning Blends and recipes to be promoted

Villadco, Inc.

Chef Paul Prudhomme

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

BANFI B to B Website Logo

Welcome to the Banfi B to B Website, a resource for industry members to find and use materials and images designed for the promotion of Banfi Products. In order to continue, you must read and acknowledge acceptance of the following terms and conditions.

I am 21 years of age or older.

I am not 21 years of age.

Banfi [and related Supplier] Websites: Terms and Conditions of Use

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The Sponsor of this website is Banfi Vintners, its affiliates, related companies, shareholders, officers, directors, employees, representatives and agents, with principal offices located at 1111 Cedar Swamp Road, Old Brookville, New York 11545 (hereinafter "Banfi").

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website@banfi.com

I Accept

I Do Not Accept

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Banfi will collect and store the name of the domain and host from which you access the Internet, the browser software and operating system of your computer, the Internet protocol (IP) address of your computer and the Internet address of the site from which you linked directly to Banfi’s site. We will also record the date and time you accessed Banfi’s site.

“Cookies” are text files placed in your computer’s browser to store certain preferences and information, which may enhance your browsing experience on Banfi websites. Cookies may be used to personalize your website experience, such as recognizing you by name when you return. Banfi does not use Cookies to track or collect personal identification information from website users. If you desire, instructions for your browser will allow you to make certain settings on your computer to warn you before a Cookie is stored, block all Cookies or erase Cookies from your hard drive.

Other information is collected when you volunteer to identify yourself, and provide requested information:

You may choose to write to us, or fill out certain forms or online data requests, which provide your name, address, telephone number, e-mail address, credit card information regarding a reservation at Banfi’s restaurants in Italy, and related information. Banfi uses this information to respond to your questions and requests, and in some cases to pass the information through to Banfi’s Suppliers for appropriate action. Similar information may be used to accept your entry into a particular sweepstakes or other consumer promotion. Banfi may also use such data for market and consumer studies regarding product types, demographics and consumer preferences.

All of the consumer and customer data collected by Banfi is stored on a secured server to protect against unauthorized use and access. If you contact us regarding identity theft or some other form of unauthorized use, Banfi may disclose pertinent information to law enforcement agencies and other third parties with responsibility and authority to investigate such a claim. Banfi does not sell or license personal information to third parties.

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All users of Banfi websites consent to this Policy. You may update or change information about yourself, or forward any other questions or concerns about this Policy by contacting Banfi at info@banfi.com.

The Basics of Copyright – Fact Sheet

What is Copyright?

The purpose of copyright law is to provide authors and other creators (and those who obtain rights through such persons) with an incentive to create and share creative works by granting them exclusive rights to control how their works may be used. Among the exclusive rights granted to those authors are the rights to reproduce, distribute, publicly perform and publicly display a work. These rights provide authors (and other copyright holders to whom authors convey rights) control over the use of their creations, and an ability to benefit, monetarily and otherwise, from the exploitation of their works. Copyright also protects the right to “make a derivative work,” such as a movie from a book; the right to include a piece in a collective work, such as publishing an article in a book or journal; and the rights of attribution and integrity for “authors” of certain works of visual art.

If you are not a copyright holder in a work, you must ordinarily obtain permission prior to re-using or reproducing someone else’s copyrighted work in a business context. Acknowledging the source of a work is not a substitute for obtaining permission. However, permission generally is not necessary, even in a business context, for actions that do not implicate the exclusive rights of the copyright holder, such as reviewing, reading or borrowing a book or photograph.

What is Protected by Copyright?

The rights granted under the U.S. Copyright Act (embodied in Title 17 of the U.S. Code) are intended to benefit “authors” of “original works of authorship,” including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural and audiovisual creations. This means that virtually any creative work that you may come across in readable or viewable format is almost certainly protected by copyright. This includes books, magazines, journals, newsletters, maps, charts, photographs, graphic materials; unpublished materials, such as analysts' reports and consultants' advice; and non-print materials, including Web sites, computer programs and other software, databases, sound recordings, motion pictures, video files, sculptures and other artistic works.

What is NOT Protected by Copyright?

Not everything is protected by copyright. This includes: works that are not “fixed”; titles, names and slogans; ideas, facts and data; listings of ingredients or contents; natural or self-evident facts; and works in the public domain (including works of the U.S. government). Some of these things may, however, be protected under other laws (e.g., patent, trademark) or by contract. It is important to be sure that no other form of protection restricts the use of such materials before using them.

How Long Does Copyright Protection Last?

In the U.S., a work created on or after January 1, 1978 is ordinarily protected for a term equal to the author's life plus 70 years after the author's death. This is called the “life-plus-70” rule. Works created by companies or other types of organizations have a copyright term of 95 years. For works created before 1978, the duration of protection depends on a number of factors. For comprehensive information on duration, see: <http://www.copyright.gov/circs/circ1.html#hlc>.

Fair Use

Fair use is a defense under U.S. law that may be raised by the defendant in a copyright infringement case. Fair use recognizes that certain types of use of other people's copyright protected works do

not require the copyright holder's authorization. The fair use doctrine is codified in Section 107 of the U.S. Copyright Act. To determine whether a particular use qualifies as fair use, the statute requires a fact- and circumstance-specific analysis of the use, based upon at least four factors:

1. The purpose and character of the use (for example, whether for commercial or noncommercial use);
2. The nature of the copyright-protected work (is it primarily factual or highly creative?);
3. The amount and substantiality of the portion used (or is it "the heart of the work"?); and
4. The effect of the use upon the market or potential market for or value of the copyright-protected work.

All four factors must be considered and weighed against each other as part of each fair use analysis. Although some businesspeople see fair use as extending to cover many of their copying activities, the scope of the fair use doctrine in the business environment is much narrower than most people assume. Further, fair use is an ambiguous notion and the law does not state exactly how, or how much of, a work may be used without obtaining permission. As a consequence, even copyright law experts often have a difficult time predicting the outcome of a court's fair use analysis.

The bottom line is that fair use requires an appropriate risk assessment as to whether re-use under certain circumstances may be considered fair use. In order to minimize copyright risk, many companies' policies permit uses of, for example, short quotes from works, but otherwise direct compliance with permission procedures and/or involvement of the company's Copyright Officer to help make fair use determinations.

Copyright and Foreign Works

The U.S. is one of more than 160 members of the major international copyright treaty, the Berne Convention. As such, when one uses a copyright-protected work from almost any country in the U.S., U.S. copyright law applies to the use of that work. Similarly, the copyright laws of other participating countries apply to the use of U.S. works in those countries. While the Berne Convention establishes certain general rules that render the laws of participating countries consistent to some degree, there are differences from country to country, and most other countries take a much narrower view of circumstances that might be considered fair use in the U.S. A company's counsel or Copyright Officer should be consulted if there are questions regarding the use of materials by employees or others outside the U.S. Licensing intermediaries such as Copyright Clearance Center (for text), the Harry Fox Agency (for music) or the Motion Picture Licensing Corporation (for movies) offer agreements that allow the use of materials from other countries as well as the use of materials across borders, which can simplify the permission process a great deal.

Copyright and Digital Works

Any non-digital content that is protected by copyright is also protected in a digital form. For example, print books are protected by copyright law, as are electronic books. A print letter is protected by copyright law, as is an e-mail letter. In both cases, the copyright is generally owned by the author, regardless of who possesses the letter. Whenever you wish to use material found on a website, it is always important to review and understand the terms of use for that site because those terms will tell you what use, if any, you can make of the materials you find there. When obtaining permission to use works on the Web (such as posting them on a corporate website), always attempt to obtain worldwide rights, as most Web uses of content are on a global basis.

WINNER'S AGREEMENT AND RELEASE

I, [REDACTED], being duly sworn, represent that I entered the *Concha y Toro "Ultimate Shopping Cart" Sweepstakes* ("Sweepstakes") in accordance with the Official Rules and sponsored by Excelsior Wine and Spirits ("Sponsor"). Before entering, I read and understood all of the Official Rules. I am not, nor is any member of my immediate family, employed by Sponsor, any of their subsidiaries, affiliates, promotion or advertising agencies. I am a legal resident of New Jersey, 21 years of age or older. Therefore, I represent that I was eligible to enter the Sweepstakes and am eligible to be a Winner ("Winner").

I have been informed that I am the Winner of a Mini Cooper automobile, already driven as part of the promotion for the Sweepstakes. As a previously driven vehicle, the Winner must agree to take delivery of the Mini Cooper "as is" and only those manufacturer's warranties currently active and in force at the time the Mini Cooper is delivered to the Winner will apply. All aftermarket advertisements, logos, trademarks and other trade indicia placed on the vehicle by or at the request of the Sponsor shall be removed from the Mini Cooper (with only original equipment trade indicia remaining) before title passes and the Mini Cooper is officially delivered to the Winner (at the Winner's residence or other location mutually agreed by the Sponsor and Winner on or about January 25, 2009).

All taxes, fees, expenses and other charges related to claiming and taking possession of the Mini Cooper will be the sole responsibility of the Winner including, but not limited to: federal, state and local sales, luxury and other taxes; dealer preparation and destination charges; license, registration and title fees; insurance; fuel; and maintenance. The approximate, expected retail value ("ARV") of the Mini Cooper at the time of delivery to the Winner on or about January 25, 2009 is \$18,400. The Sponsor reserves the right to adjust the ARV of the Mini Cooper, in its sole discretion, at the time of delivery to the Winner.

Other than any manufacturer's warranty that may apply, the Mini Cooper will be awarded "as is" with no warranty or guarantee either expressed or implied. Except as otherwise stated herein, no substitutions or cash alternatives will be allowed except at the sole discretion of the Sponsor who reserves the right to substitute a Grand Prize (or portion thereof) of comparable value. The Winner of Grand Prize will be issued an IRS Tax Form 1099 stating the value of the Grand Prize for 2009 tax filing purposes. If the actual Prize costs less than stated approximate retail value, the Winner is not entitled to the difference in cash.

In compliance with the Official Rules, I agree that, in consideration of my receipt of my prize, I hereby release and forever discharge Sponsor, its parent, subsidiary and affiliated companies, their respective affiliates, subsidiaries, divisions, advertising and promotion agencies, shareholders, officers, directors, employees, members, agents and assigns and any entities or individuals associated with the development, fulfillment of or supply to this Sweepstakes

(collectively "Sponsor & Others") from and against any and all claims, demands, losses and liabilities of any nature whatsoever which the undersigned may now or hereafter be entitled to assert, including, but not limited to any death, property damage, injury, loss of employment or other harm or loss of any nature whatsoever caused or contributed to by my possession, use or participation in any of the prizes awarded in this Sweepstakes.

I acknowledge that Sponsor & Others have not arranged for and does not carry insurance of any kind for my benefit or that of my heirs, relative to this prize; and that I am solely responsible for obtaining life, travel, or any other insurance for my own protection.

I understand that all federal, state, local income or other taxes resulting from the receipt of the prize are my responsibility and Sponsor & Others shall not be responsible for any portion of such liability. I further understand that I shall receive a federal tax form 1099 stating that the retail value of the prize is up to \$18,400, for the year in which I am awarded the prize.

I hereby agree that Sponsor & Others, shall have without further obligation to me, the right to use my name, likeness and prize information for promotional purposes without compensation.

I understand that if I make any false statements herein, I will automatically be disqualified.

(SIGNATURE)	(SOCIAL SECURITY NUMBER)	(DATE)
(ADDRESS)	(CITY/STATE)	(ZIP CODE)
(DAYTIME PHONE NUMBER)	(EVENING PHONE NUMBER)	

(Check box and sign below if declining prize)

I WISH TO DECLINE ACCEPTANCE OF THE ENTIRE PRIZE STATED ABOVE

(SIGNATURE)	(DATE)
-------------	--------

PLEASE HAVE THIS DOCUMENT SIGNED, NOTARIZED AND RETURNED TO:

Excelsior Wine and Spirits
 Attn:
 1111 Cedar Swamp Road
 Old Brookville, NY 11545
 Phone
 Fax

Sworn To Before Me This

_____ Day of _____, 2009

 Notary Public

RECEIPT AND RELEASE

I, [REDACTED], do hereby acknowledge receipt of the following motor vehicle (the "Vehicle") from Sponsor:

2009

Mini Cooper

VIN # XXXXXXXXXXXXXXX

AS A SUPPLEMENT TO THE WINNER'S AGREEMENT AND RELEASE EXECUTED BY ME ON JANUARY ,2009. AS THE OFFICIAL WINNER OF THE 'CONCHA Y TORO "ULTIMATE SHOPPING CART" SWEEPSTAKES,' I HEREBY EXECUTE THIS RECEIPT AND RELEASE AND ACCEPT THE VEHICLE "AS-IS" AND "WHERE IS" WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE MANUFACTURER'S WARRANTIES CURRENTLY ACTIVE AND IN FORCE AT THE TIME OF DELIVERY, AS TO SAID VEHICLE'S CONDITION, INCLUDING VBUT NOT LIMITED TO ANY WARANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. I ALSO AGREE TO ASSUME ALL RISK UPON HEREBY TAKING POSSESSION OF SAID VEHICLE.

ACCEPTED AND ACKNOLWEDGED ON _____, 2009

Signature: _____

Name:

December __, 2006

Banfi S.r.l.
Castello Di Poggio Alle Mura
53024 Montalcino (SI), Italy

Banfi Products Corporation
1111 Cedar Swamp Road
Old Brookville, New York 11545

AUTHORIZATION AND RELEASE TO DUPLICATE IMAGE, PHOTOGRAPH, ETC.

Gentlemen:

This will confirm that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned artist, photographer or other creative artist ("Creative Artist") hereby grants to Banfi S.r.l. and Banfi Products Corporation, their respective parents, subsidiaries and affiliated corporations, successors, assigns and licensees, employees, distributors and agents, with offices at Castello di Poggio Alla Mura, 53024 Montalcino (SI), Italy and 1111 Cedar Swamp Road, Old Brookville, New York 11545 (collectively "BANFI"), a Release of all rights to photograph, record, reproduce or otherwise use the below mentioned materials as well as all artwork names, trademarks, service marks, trade names, copyrights, logos and related materials associated therewith (the "MATERIALS") in and in connection with Banfi's exhibition, exploitation and promotion of the Materials without limitation as to time, territory or medium:

(Written Description of Tapestry, photo, artwork, etc. comprising The Materials)

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Accepted and agreed to on the _____ of December, 2006.

Creative Artist

By: _____
Signature

Printed Name; Title

Non-Monetary Product Placement and Sponsorship Agreement

In exchange for a sufficient supply of _____, for the spec Television Pilot production tentatively titled “_____” (“the Show”), or by any other name, of which receipt of such is hereby acknowledged by the producers, the producers agree to make best efforts to grant visibility for the above mentioned product(s) on camera whenever possible and when appropriate regarding story line and/or show content. The representative of said product(s), whose initials and signature is indicated below, agrees, in order for such product placement efforts to be executed by the producer, to irrevocably grant to _____ Productions, LLC. (“The company”) and their affiliates, licensees, assignees, heirs and successors, permission and the right to display such product(s) on camera within segments deemed suitable, and neither derogatory nor offensive to the above mentioned product(s), by the producer.

The rights hereby granted to the company include perpetual, exclusive, unconditional and unencumbered right to use, edit, reproduce, distribute, telecast, publish and otherwise exhibit the product and any image of such, worldwide in any and all forms of media known or hereafter devised.

The product representative hereby releases the company and its principals as officers and individuals, indemnify and hold them harmless from and against any liability based on any personal, property, residual, re-use or other right which has or may have by virtue of any such use of these product(s), or as a result of the exhibition, telecast, publication or distribution of the show inclusive of these product(s) and waive any right whatsoever to bring suit, claims, damages, seek injunctive relief, or bring any other action in law or in equity growing out of the use of this product(s) on camera within the show.

I represent that other than the good and valuable considerations made in exchange for the referenced product placement and/or sponsorship as outlined within, there will be no additional consideration or other compensations required, expected or due to either party for the product(s) placement referred to within including but not limited to residual payments, reuse fees, royalties, profit participation, production costs and any similar fees and expenses if any and represent that the company under the terms and conditions of this release will not infringe upon or violate the right of anyone and that the product(s) referred to are controlled by representative to the extent necessary to assign all such rights to the company.

Furthermore, my initials on the first page of this document and my signature on the second of this two page agreement verifies that I have read this prior to signing it, and that I acknowledge and fully understand it and have the full right and legal capacity to sign it on behalf of this product(s). Moreover, it is my understanding that _____ will be credited in the Pilot show’s ending credits as Sponsor and/or Promotional Consideration Provided by and/or Special Thanks To. Placement and size at the company’s discretion. Company will also make best efforts to include such product(s) and/or credit on any poster, paid print advertising, Website and other press and promotional materials prominently displaying the product(s).

Page 2 of 2
(Page 1 initialed and attached)

Date

Signature of Product Representative

Print Name of Product Representative

Address of which to correspond with company or person affiliated with Product(s)

Telephone/Fax/Email Contact Numbers of Product Representative

To be filled out by the Product Representative:

As you would like it to appear, what exactly is the product that should be placed and credited.

(Do Not Write Below this line without Producer's consent)

Additional terms and conditions if any: _____

Signature of Producer is necessary below for any additional terms or conditions noted above to be a valid part of this agreement.

Only if applicable:

Producer

Signature

January __, 2009

Banfi S.r.l.
Castello Di Poggio Alle Mura
53024 Montalcino (SI), Italy

Banfi Products Corporation
1111 Cedar Swamp Road
Old Brookville, New York 11545

AUTHORIZATION AND RELEASE TO PUBLISH IMAGE, PHOTOGRAPH, ETC.

Ladies and Gentlemen:

This will confirm that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned consumer and her wedding photographer ("Consumer") hereby grant to Banfi S.r.l. and Banfi Products Corporation, their respective parents, subsidiaries and affiliated corporations, successors, assigns and licensees, employees, distributors and agents, with offices at Castello di Poggio Alla Mura, 53024 Montalcino (SI), Italy and 1111 Cedar Swamp Road, Old Brookville, New York 11545 (collectively "BANFI"), a Release of all rights to publish the below mentioned materials as well as all artwork names, trademarks, service marks, trade names, copyrights, logos and related materials associated therewith (the "Materials") in and in connection with publicity for Banfi's international wine business and on its Website in perpetuity:

**Photographs of Consumer, Ms. [REDACTED], with product ROSA REGALE, at her wedding.
(Written Description of photo, artwork, etc. comprising The Materials)**

The undersigned Consumer guarantees that the consent of no other person, film, corporation, guild, labor organization or other entity is required to enable BANFI to use the Materials as described herein and that such use by BANFI will not violate or infringe upon the trademark, trade name, copyright, artistic, and/or other rights of any third parties. Absent violation of this Authorization, Consumer shall not be entitled to enjoin, restrain or interfere with the publication of the Materials as described above.

It is understood that BANFI will not denigrate The Materials, have them appear in an unflattering light, or use The Materials in any way which can cause damage to BANFI or the Consumer.

Accepted and agreed to on the _____ of January, 2009.

Consumer

By: _____
Signature

Ms. [REDACTED]
Printed Name

Wedding Photographer

By: _____

Printed Name

May ___, 2009

By Fax: 516-636-9218

Philip D. Calderone, Esq.
Vice President, Banfi Vintners
1111 Cedar Swamp Road
Old Brookville, New York 11545

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Photographs of Castello Banfi, Montalcino, Italy Interiors and Exteriors

You guarantee that the consent of no other person, film, corporation, guild, labor organization is required to enable PRODUCER to use the Materials as described herein and that such use by the PRODUCER will not violate or infringe upon the trademark, trade name, copyright, artistic, and/or other rights of any third parties.

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Accepted and agreed to in _____ on the ____ of May, 2009.

[insert name of Production Company or Producer]

By: _____
[insert printed name] _____, Producer

BANFI VINTNERS

By: _____
Philip D. Calderone, Vice President

November 10, 2008

Mr. [REDACTED]
Senior Vice President, Marketing
[REDACTED] Importers
2400 S.W. 145th Avenue, Second Floor
[REDACTED]

Dear Mr. [REDACTED]:

I enclose a copy of the recent print advertisement your company placed in the October 2008 issue of the Beverage Media. Under the federal and state truth-in-advertising regulations which govern our industry, it is difficult to understand the ranking claims made in this advertising.

- The advertisement claims the following ranking of Chilean wine brands: Gato Negro, No. 2; Casillero del Diablo, No. 3; Santa Rita, No. 4; Walnut Crest, No. 5. The quoted source is "Total US Food current 26 weeks ending 07/26/08".

With respect, we believe the ranking claims are false and misleading. Using your source and taking its most favorable measure for your products, unit volume, the rankings should be Gato Negro, No. 2; Casillero del Diablo, No. 3; Walnut Crest, No. 4; Santa Rita, No. 5.

I would appreciate the courtesy of a written reply which explains the ranking claim made in your advertising. Thank you for your kind attention to this matter.

Very truly yours,
Banfi Vintners

Philip D. Calderone, Vice President
and General Counsel

PDC/pdc
Enclosure.

cc: Ed Barden; Nicholas Solga

Privileged and Confidential Attorney Client Communication

Ioanna:

Legal has completed its search of the Trademark Office's database for the following marks: mi hogar, hogareno, tradicional, familia, mi pueblo, mi villita, la villa, mi sabor, and delicias.

The only one of these marks that is not already registered to another party in either class 30 or 29 and therefore is a possible option as a sub-brand for Kozy Shack is **HOGARENO**. A search of the Trademark Office's database did not turn up any registered or pending marks identical to or similar to "hogareno" in any class.

However, "La Villa" only turned up one hit -- "Portico De La Villa" is registered in class 29 for edible oils and fats. As you can see, the hit is not identical to the mark you are interested in. Therefore, it is possible that we could consider using "LA VILLA" as a sub-brand if the trademark office allows registrations where the same Spanish word said another way is not confusingly similar. La Villita is a "cute" way of saying La Villa. Of course, we would have to research it more in depth if you are interested.

On the flip side, the other marks searched seem to be quite popular, especially in classes 29 and 30. More specifically, below are the highlights of our findings:

"Mi Hogar":

- "Campo Rico El Sabor Del Hogar" is pending registration in classes 29 and 30 for meat, fish, coffee, tea, tapioca; and
- "Trayendole el Sabor de su Hogar" is pending registration in class 35 for ethnic foods;

It is also interesting to note that "Mi Hogar" is pending registration in class 36 for mortgage banking.

"Tradicional"

- "Sabor Tradicional H-E-B" is pending registration in class 30 for coffee, tea, etc.
- "Hill Country Fare Sabor Tradicional" is pending registration in class 30 for tea cocoa, etc;
- "Hill Country Fare Sabor Tradicional" is pending registration in class 29 for meat;
- "Sabor Tradicional H-E-B" is pending registration in class 29 for meat, fish, etc.;
- "Las Tres Primas Fresca Tradicional Sabrosa" is pending registration in class 30 for tortillas and
- "Tradicional" is registered in class 33 for tequila.

"familia"

- "Familia" is registered in class 30 for biscuits, cookies and crackers.

Please note that there were also over 200 hits with the word "familia" in the mark in all classes. When I narrowed down the search to just class 29 and 30, this registered mark turned up.

"Mi Pueblo"

- "Mi Pueblo" is registered in class 30 sauces and salsa;
- "De Mi Pueblo" is pending registration in class 29 for cheese food; and
- "Mi Pueblo" is registered in class 43 for restaurant services.

"Mi Villita"

- "La Villita" is registered in class 29 for dairy products excluding ice cream;
- "La Villita Lacteos" is registered in class 29 for meats; and
- "La Villita" is pending registration in class 29 for cheese.

"Mi Sabor"

As you can see from some of this search and the other search we conducted for you, the use of the word "sabor" is quite popular in connection with food. Below are the more direct hits:

- "El Sabor de mi Tierra" is registered in class 29 for processed fruits and vegetables;
- "Mi Sabor" is pending in classes 29 and 30 for pork and sandwiches;
- "Sabor a Mi" is pending in class for grain beverages; and
- "Sabor de mi Tierra Ecuatoriana" is pending in class 29 for frozen meat.

Please let me know if you would like to consider filing an application with the Trademark Office for "Hogareno" or "La Villa". If so, as with any new trademark filing, we would need to engage Thompson and Thompson to conduct a thorough search of the name in places beyond the Patent and Trademark website. If it comes back "clean", we will file an intent to use the trademark. At that time, we will need Jpegs of the package depicting the trademark.

If you have any questions, please do not hesitate to give me a call.

Jamie Borod

Paralegal
 Kozy Shack Enterprises, Inc.
 83 Ludy Street
 Hicksville, New York 11802
 phone: 516-870-3470
 fax: 516-870-3471
 email: jbod@kozyshack.com

Request #101 has been completed.

Subject Matter: Hispanic Sub brand trade mark
Date completed: 3/6/2008
Priority: Routine
Legal Department: Marketing
Type of Request: Legal Question

End user: Ioanna Alvarez
Phone: 516.870.3222
Department: Marketing
Office: 83 Ludy St.
Email Address: IAlvarez@KOZYSHACK.COM

DESCRIPTION: Hello,

Here are the other sub brand names for the hispanic line.
 Please advice about the status and feasibility of using these as brands

Mi hogar
 Hogareno
 Tradicional

Familia
Mi Pueblo
Mi Villita
La Villa
Mi sabor
Delicias

Thanks

HISTORY LOG:

⌘ 3/6/2008 2:26:58 PM: Jamie Borod - Status changed to Completed, Due Date changed to 3/5/2008, Start Date changed to 3/5/2008

⌘ 3/3/2008 11:19:41 AM: REQUEST RECEIVED.

ENGAGEMENT LETTER FOR MARKETING FREELANCERS
(focus on copyright issues)

[COMPANY letterhead]

[date]

[name XXX YYY]

[address]

[city, state]

Dear XXX [or Mr./Ms. YYY]:

Company (“Company”) hereby engages XXX YYY (“you”), and you agree to be engaged, to prepare written materials to be used as part of Company’s marketing portfolio of written materials, including articles, newsletters and similar materials. This letter agreement applies [[[to all materials prepared by you for Company since January 1, ____, as well as]]] to all materials prepared by you hereafter.

In connection with each assignment, your Company contact will identify for you in writing (in the form of a numbered Exhibit to be attached to this letter agreement) the nature of the materials to be prepared, a deadline, and the compensation to be paid by Company, whether by the project or by the hour, as well as any other applicable information. Your signed agreement to undertake each assignment, or your actually undertaking such assignment, constitutes your agreement to the details provided to you by Company and to the completion of the work as assigned.

You will make any additions to, deletions from, alterations of or revisions to each piece of written materials as Company in its sole judgment determines are necessary to render the materials satisfactory, and otherwise cooperate with Company to that end.

Company shall own all right, title and interest in and to all written materials submitted by you, and all additions, deletions, alterations and revisions thereto, as well as any drafts, notes, concepts or ideas discussed or prepared and reduced to writing in connection therewith. Without limiting the foregoing, you hereby acknowledge that your work and services hereunder and all results thereof are works done under Company’s direction and control and have been specially ordered or commissioned by Company for use as a contribution to a body of Company work that will be edited, illustrated, formatted, published or republished in Company’s sole discretion from time to time. All such work and services shall be considered work made for hire and Company shall own all right, title and interest therein. Company shall be considered the author of the work for purposes of copyright, shall own all the rights in and to the copyrights in the works (including the right to sell or transfer such rights to third parties or to file suit to protect

them), and, as between you and Company, shall have the sole right to register any copyright in the same, which Company may do in its own name or in the name of its nominee(s). To the extent that the work or any materials contained therein are determined not to be a work made for hire, you hereby grant, assign and transfer to Company all right, title and interest that you may have in and to the works prepared for Company. You hereby waive any and all claims that you may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of "droit moral" with respect to the works. You hereby authorize Company to execute on your behalf any documents that may be required to evidence or establish your above transfer or waiver of rights in favor of Company.

Notwithstanding the foregoing, nothing in this document alters the fact that you are an independent contractor, and not an employee or agent of Company, and that you are solely responsible for any unemployment or disability insurance payments, and for any social security, income or other tax or withholdings, deductions or payments which may be required by federal, state or local law with respect to any sums paid to you by Company. You are not entitled to any Company employee benefits of any nature.

Nothing herein alters, or releases you, from any confidentiality agreement that you have signed, or will sign, in connection with work that you perform for Company. A copy of the most recent confidentiality agreement that you have signed (as of the date of this letter) is attached to this letter as Attachment A.

We look forward to a long and fruitful relationship. If at any time you have any questions or comments, please do not hesitate to call AAA BBB, who will serve as your Company contact until further notice, at 800-555-1212.

Very truly yours,

COMPANY

By: _____

Name:

Title:

ACCEPTED AND AGREED:

Printed Name:

Date: _____

EXHIBIT #__

This document is an attachment to, and subject to the terms of, the letter agreement between Company (“Company”)and XXX YYY (“you”), dated [date]. Each party will attach a copy of this Exhibit, when signed, to that party’s own copy of the letter agreement.

General Nature of Assignment: [flyer, letter, marketing collateral piece, puff piece, etc.]

Detailed Description of Work to Be Delivered: [write as much as necessary, including any requirements for intermediate drafts, meetings, etc., as well as nature (style, length, etc.) of written material – include responsibilities (whose?, what?) for obtaining rights from third parties to graphic or other embedded materials]

Deadline(s): [set intermediate deadlines, if any, as well as final deadline]

Compensation: [state total compensation to be paid and whether to be paid for project or by the hour, and state payment method (fraction up front, progress payments, final payment on delivery, on acceptance, on passage of certain number of days after delivery or acceptance, or on a date certain) – also indicate whether timesheet or invoice will be required; whether there are to be a maximum number of hours or maximum dollars; etc.]

Other Details: [if necessary – otherwise, delete this section]

Date: _____

ISSUED BY COMPANY:

ACCEPTED BY YOU:

By: _____

Name:

Title:

Creative Rights Agreement Template

CREATIVE RIGHTS AGREEMENT

This Creative Rights Agreement (“Agreement”), dated this ___ day of _____, 2007, is by BANFI PRODUCTS CORPORATION, a New York corporation, with a principal business address at 1111 Cedar Swamp Road, Old Brookville, New York 11545 (“Banfi”) and _____ **[insert vendor name]**, a _____ **[insert entity status: corporation, partnership, individual, etc.]** with its principal business address at _____ **[insert vendor address]** (“Vendor”). These parties agree that all rights and benefits of Banfi in this Agreement also extend to its affiliated companies, House of Banfi, Villadco, Inc. and Vinum Communications, Inc., and Banfi’s product Suppliers.

From time to time, Banfi may desire Vendor to create or develop advertising or marketing concepts or ideas, brands, trademarks, inventions, original works of authorship, tangible and intangible property, and associated materials (“Works”) for the sole benefit of Banfi and the unencumbered use by Banfi in the course of its business; and Vendor may create such Works for Banfi. Due to their nature as promotional materials created for the sole use and unencumbered benefit of Banfi, it is understood that Banfi requires exclusive ownership of the Works.

In consideration of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties now agree as follows:

1. **SCOPE** This Agreement shall apply to any services performed and Works created by Vendor for Banfi after the date of this Agreement, and whether requested by Banfi via work order, written agreement, telephone, facsimile, email, oral agreement, or other means.
2. **TERM** This Agreement shall commence on the date set forth above, and shall extend until terminated by Banfi upon notice to Vendor.
3. **OWNERSHIP OF WORKS IN BANFI** All rights, title, and interest to the Works created or developed by or for Vendor after the date of this Agreement shall belong to Banfi. All copyrightable Works developed by or for Vendor hereunder shall be considered “works for hire” under the Copyright Act, and as such, all right, title, and interest therein, including copyright, shall belong to Banfi. To the extent that any Works referenced herein do not qualify as “works for hire,” Vendor hereby irrevocably assigns and agrees to irrevocably assign to Banfi and shall require anyone working for Vendor to irrevocably assign to Banfi all rights, title, and interest, including copyright, in and to such Works.

Complete ownership of Works, works for hire and any other work performed by Vendor and its agents for Banfi passes to Banfi upon payment of Vendor's invoices previously approved by Banfi, or upon the mutual settlement of such accounts by Banfi and Vendor. Vendor or its agents may not withhold such ownership rights by non-acceptance of payment. Vendor retains ownership to any material or ideas offered to and rejected by Banfi, and may submit such rejected material or ideas to other clients provided that such submission does not involve the release or disclosure of Banfi's confidential information, business or methods of operation.

4. **VENDOR WARRANTY** Vendor warrants that Works which it delivers to Banfi pursuant to this Agreement are original with Vendor, are unencumbered by ownership claims from any third party, and do not and will not violate the rights of any third party.

5. **INDEMNITY** Vendor agrees to indemnify and hold harmless Banfi, including its affiliates, and all related entities, from any and all costs and expenses, claims, demands, liabilities, damages, and money judgments, including attorneys' fees (whether incurred in a third party action or in an action brought to enforce this Agreement) arising out of or in any way connected with the creation or development of Works by or for Vendor, including, but not limited to, any and all direct or indirect results of the Vendor's breach of the warranty contained in Paragraph 4 hereof. Banfi agrees to indemnify Vendor from all third-party claims which may arise from the use of creative material supplied by Banfi.

6. **INSURANCE** Vendor shall maintain a comprehensive liability insurance policy with limits not below \$1 million per occurrence, \$1 million aggregate liability, and \$1 million of professional liability, with an insurer reasonably acceptable to Banfi, and shall name Banfi and its affiliates as additional insureds under such policy. Prior to providing services to Banfi and at any other time upon Banfi's request, Vendor will provide Banfi with an insurance certificate from its insurer showing Banfi and its affiliates as additional insureds.

7. **NONDISCLOSURE** All information, concepts, ideas, or other materials provided to Vendor by Banfi or which come to be known by Vendor in the course of performing services for Banfi will be maintained by Vendor in complete confidence, will not be disclosed to any third party, and will be used solely for the purpose of performing services for Banfi. All documentation, work papers, or other materials evidencing Vendor's work for Banfi ("Work Product") shall belong to Banfi and shall be similarly maintained in confidence. Vendor will make no use of the Work Product during or after the term of this Agreement except to perform services requested by Banfi. All information and materials received by Vendor from Banfi and/or Work Product will be returned to Banfi upon request and at no additional cost.

8. OTHER CREATIVE Prior to any project initiation on behalf of Banfi, Vendor will disclose and represent any and all usage, talent, photography and other related fees, including but not limited to any extended use fees, for pick-up art, photography, talent and related creative elements. Vendor warrants the accuracy and completeness of such representations, that the inclusion of such other creative elements in a Banfi project shall be without violation of third party rights, and Vendor agrees to indemnify and hold Banfi harmless from any such claims. Upon payment of the quoted fees, Banfi will own the right to use such creative elements for all purposes without further compensation. Banfi retains the right to purchase the limited use of particular creative material, and hereby relies upon Vendor for the proper quotation of such limited use fees.

9. GENERAL This Agreement supersedes all previous representations, understandings, or agreements, oral or written, between the parties concerning the subject matter of this Agreement and contains the entire understanding of the parties with respect to the subject matter hereof. This Agreement shall be governed by and construed in accordance with the laws of the state of New York, excluding its conflicts of laws principles. The terms of this Agreement shall survive its termination.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first written above.

BANFI PRODUCTS CORPORATION

[VENDOR]

By: _____

By: _____

Its: _____

Its: _____

ACC Extras

Supplemental resources available on www.acc.com

Small Law—Counseling the Marketing Department.

ACC Docket. December 2006

<http://www.acc.com/legalresources/resource.cfm?show=14585>

Managing Your Sales Marketing Department.

Program Material. December 2007

<http://www.acc.com/legalresources/resource.cfm?show=19873>

Marketing Stew: A Cookbook For In-house Counsel.

ACC Docket. September 2005

<http://www.acc.com/legalresources/resource.cfm?show=20835>

Please note, these additional resources are provided by the Association of Corporate Counsel and not by the faculty of this session.