

MRO 10.21.99

10-25-1999

FORM PTO-1594 (Substitute)

RECORDATI
TRA



101180707

DEPARTMENT OF COMMERCE
Patent and Trademark Office

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

1. Name of conveying party(ies):
BOSTON CHICKEN, INC.

Individual Association
 General Partnership Limited Partnership
 Corporation - Delaware
 Other: _____

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

2. Name and address of receiving party(ies):
Name: H. J. HEINZ COMPANY
Address: 600 Grant Street

City: Pittsburgh State: PA Zip: 15219

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other License Agreement

Execution Date: June 8, 1999

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

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

4. Application number(s) or patent number(s)
A. Trademark Application No(s).
75/239,487 75/259,689 75/763,454

Additional numbers attached? Yes No (See attached)

B. Trademark Registration No(s).
1,828,415 1,997,941 2,066,383 1,628,747

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Raymond A. Miller
REED SMITH SHAW & McCLAY LLP
Address: P.O. Box 488

City: Pittsburgh State: PA Zip: 15230

6. Total number of applications and registrations involved: 22

7. Total fee (37 CFR 2.6(b)(6)): \$965.00

Enclosed
 Authorized to be charged to deposit account
 Charge any deficiency to deposit account

8. Deposit account number:
18-0582

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true and copy of the original document.

Raymond A. Miller [Signature]
Name of Person Signing Signature

October 15, 1999
Date

Total number of pages including cover sheet, attachments, and document: 57

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

10/21/99 0000353 0000353 0000353
40.00 DP
965.00 DP

TRADEMARK PGHLB 0488939.01-JLBURTNE
October 14, 1999 4:15 PM
REEL: 001978 FRAME: 0634

Boston Chicken, Inc. and H.J. Heinz Company

1.A Additional Conveying Party(ies) Name(s) To Be Recorded

4.A Additional Trademark Application Serial Numbers To Be Recorded

75/094,055

75/283,557

4.B Additional Trademark Registration Numbers To Be Recorded

1,517,660	1,819,092	1,865,024	1,888,637	1,963,578	1,940,179
1,982,175	2,102,511	2,031,466	2,031,465	2,005,962	1,776,661
1,615,277	1,792,089	1,795,404	1,833,955	1,847,986	1,854,946
1,859,018	1,860,130	1,867,314	1,878,751	1,942,467	1,996,529
2,139,128	2,153,221	2,156,874	2,161,437	1,191,424	

LICENSE AGREEMENT
between
BOSTON CHICKEN, INC.
and
H. J. HEINZ COMPANY

THIS AGREEMENT, made and entered into as of this ___ day of June, 1999, by and between BOSTON CHICKEN, INC., a Delaware corporation ("BCI") with offices located at 14123 Denver West Parkway, P.O. Box 4086, Golden, CO 80401-4086 and H. J. HEINZ COMPANY, a Pennsylvania corporation ("HEINZ") with offices located at 600 Grant Street, Pittsburgh, PA 15219.

WITNESSETH:

WHEREAS, BCI is the owner of all right, title and interest in and to the trademarks listed on Exhibit A hereto; and,

WHEREAS, HEINZ is presently engaged in the business of manufacturing, processing, packaging, distributing, promoting, marketing and selling various food products and desires to obtain an exclusive license for all rights to the use of the Trademarks in connection therewith; and,

WHEREAS, BCI desires to grant such exclusive license to HEINZ, all in accordance with the terms and conditions of this Agreement; and,

NOW, THEREFORE, in consideration of the mutual promises herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. Definitions. As used herein, in the preambles, the text below and the Exhibits attached to this Agreement, and supplementing when applicable any other definitions of the same terms set forth herein, the following terms shall have the following meanings (such meanings to be equally applicable to both singular and plural forms of the terms defined):

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TRADEMARK

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(x) "Symbols" shall mean configurations or renderings of the Trademarks and other derivations thereof including those specified in Section 7.

(y) "Territory" means the entire world.

(z) "Trademarks" shall mean the trademarks and service marks specified in Exhibit A, as such Exhibit may be amended from time to time by mutual agreement by the parties, including all U.S. and foreign registrations for such trademarks and service marks and all pending applications for such trademarks and service marks.

(aa) "Trade Dress" means all product names, packaging designs, shapes, graphics, layout, ornamental appearance, configurations, vignettes, coloration, "mock-up", and all other elements of the packaging and labeling, all of the foregoing in relation to each other; and to include everything a prospective purchaser perceives by visual sense

REDACTED

2. Grant of License.

(a) BCI hereby grants to HEINZ the Exclusive, non-assignable (subject to Section 24(b) herein) right, license and authority to use all of the Trademarks and Trade Dress and Symbols

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7. Symbols/Trade Dress.

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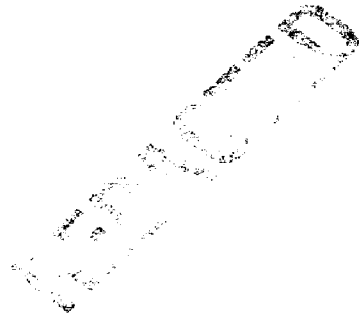
ii)

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REDACTED

27. Notices. All notices requests, consents and other communications given or required to be given under this Agreement shall be in writing and delivered personally or sent by United States Registered or Certified Mail, Return Receipt Requested, postage prepaid, or sent via e-mail or facsimile (with a confirmation copy delivered by mail) as follows:

- (a) If to BCI, to:
Boston Chicken, Inc.
14123 Denver West Parkway
P.O. Box 4086
Golden, CO 80406-4086
Attn: CFO
Fax: (303) 216-5550
with a copy to General Counsel

- (b) If to H. J. Heinz Company:
H. J. Heinz Company
600 Grant Street
Pittsburgh, PA 15219
Attn: President
Fax: (412) 237-3463
with a copy to General Counsel

28.

29.

RECEIVED

30.

31. Applicable Law. This Agreement shall be governed, enforced, applied and interpreted under the laws of the Commonwealth of Pennsylvania applicable to

agreements to be performed therein, which laws shall prevail in the event of any conflicts of law.

32. Entire Agreement. This Agreement, the documents referred to herein, the Exhibits attached hereto and the other agreements executed contemporaneously herewith shall supersede and cancel any and all prior or existing agreements, understandings, representations or statements, if any, either oral or in writing, between the Parties with respect to the subject matter hereof; including the License Agreement dated April 22, 1999 (except for that certain Confidentiality Agreement dated July 21, 1998) and contain the entire agreement of, and all of the covenants and agreements between, the Parties with reference to the subject matter hereof. No amendment, change or variance from this Agreement shall be valid or binding on either Party unless it is made in writing, specifies with particularity the nature of such modification or amendment, and is signed by the Parties.

33. Headings. The headings and subheadings contained in this Agreement are without substantive significance and are not to be used for the interpretation or construction of this Agreement. Rather they have been placed herein solely for the convenience of the Parties.


34.

REDACTED

IN WITNESS WHEREOF, the Parties hereto intending to be legally bound have caused this License Agreement to be executed as of the date first above written.

H. J. HEINZ COMPANY

By: _____
Name:
Title:

BOSTON CHICKEN, INC.
By: 
Name: MICHAEL R. DANIELS
Title: SENIOR VICE PRESIDENT

IN WITNESS WHEREOF, the Parties hereto intending to be legally bound have caused this License Agreement to be executed as of the date first above written.

H. J. HEINZ COMPANY

By: Richard H. Wamhoff

Name: Richard H. Wamhoff

Title: Executive Vice President

Global Manufacturing/Supply Chain &

BOSTON CHICKEN, INC.

Frozen Foods

By: _____

Name: _____

Title: _____

EXHIBIT A

TRADEMARKS

TRADEMARK

STATUS

BOSTON BASICS

Registered domestically only, class 42

BOSTON CARVER

Registered domestically in class 30; some international registrations as well

BOSTON CARVER SANDWICHES
(design)

Registered domestically in class 30.

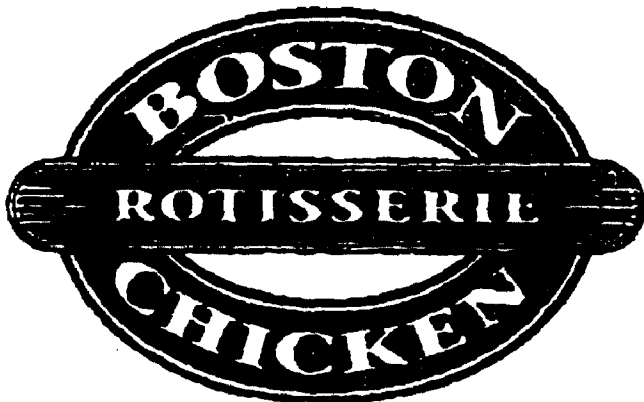


BOSTON CHICKEN

Registered domestically in classes 29, 30 and 42, among others. Broad international registration.

BOSTON CHICKEN ROTISSERIE
(design)

Registered domestically, classes 29 and 42; broad international registration



TRADEMARK

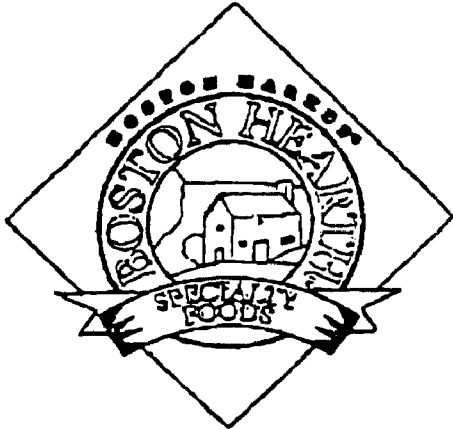
STATUS

CHICKEN DESIGN
(design)

Registered in US in classes 29, 30 and 42



BOSTON HEARTH SPECIALTY FOODS Domestic application in process, classes 29 and 30
(and design)



BOSTON KITCHEN

Mark not actually used but ITU applications filed.

BOSTON MARKET

Domestic registrations in classes 29 and 42, among others. Numerous international registrations as well.

TRADEMARK

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TRADEMARK

BOSTON MARKET (and design)



BOSTON MARKET HOME
STYLE MEALS (and design)



BOSTON MARKET KIDS
(design)



CHICKEN CARVER

THE FRESHEST THING GOING

STATUS

Domestic registrations in classes 29 and 42 only;
extensive international registrations.

Registered domestically in classes 29 and 42.

Approved for publication in class 42

Registered domestically in class 30.

Registered domestically in class 42.

TRADEMARK

REEL: 001978 FRAME: 0671

EXHIBIT B

TRADEMARK USE GUIDELINES

See Attached

GUIDELINES FOR PROPER TRADEMARK USE

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5.

TRADEMARK

| REEL: 001978 FRAME: 0674

EXHIBIT C

REDACTED

See Attached

REGISTERED

REACTED

EXHIBIT D

NONDISTURBANCE AGREEMENT

See Attached

NONDISTURBANCE AGREEMENT

THIS NONDISTURBANCE AGREEMENT ("Agreement") is made as of this 8th day of June, 1999, by and among H.J. HEINZ COMPANY, a Pennsylvania corporation ("Heinz"), GENERAL ELECTRIC CAPITAL CORPORATION (in the representative capacities referred to below, together with its successors in such representative capacities, "GECC"), and BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION (in the representative capacities referred to below, together with its successors in such representative capacities, "BOA"; GECC and BOA are collectively referred to herein as the "Agents").

Recitals:

A. Boston Chicken, Inc., a Delaware corporation ("BCI"), and Heinz have entered into a License Agreement dated as of June 8, 1999 (as amended from time to time, the "License Agreement"), whereby among other things BCI has granted to Heinz an exclusive license to use certain Trademarks and Trade Dress (as such terms are respectively defined in the License Agreement) which are owned by BCI.

B. The Agents, and each of them, as agent, collateral agent or in other representative capacities, now have, and may hereafter acquire, interests in the Trademarks and Trade Dress by way of security interest, assignment or other encumbrance (such interests, now existing or hereafter arising, being referred to as the "Agent Interests"). Such Agent Interests include, without limitation, interests arising pursuant to

(a) Debtor in Possession Credit Agreement, dated as of October 5, 1998, as amended from time to time, among BCI and others, as borrowers, the lenders signatory thereto, as lenders, GECC, as Administrative Agent and a lender, and BOA, as collateral agent and as lender, and agreements executed ancillary thereto,

(b) Secured Revolving Credit Agreement, dated as of December 9, 1996, as amended from time to time, between BCI, as borrower, and BOA and others, as lenders, and agreements executed ancillary thereto,

(c) Master Lease No. 2, dated as of December 9, 1996, as amended, between BCI, as lessee, and GECC, as lessor, and agreements executed ancillary thereto, and

(d) Amended and Restated Facilities Agreement, dated as of December 9, 1996, as amended, between BCI, BOA, GECC, and others, and agreements executed ancillary thereto.

C. Heinz desires to be assured of the continued benefit of the Trademarks under the terms and conditions of the License Agreement.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agents, BCI and Heinz, intending to be legally bound, hereby agree as follows:

1. So long as the License Agreement is in effect, the Agents will not exercise their rights in respect of the Agent Interests (including, without limitation, in connection with any voluntary or involuntary acquisition of BCI's right, title or interest under the License Agreement) in a manner that would materially impair or interfere with the rights of Heinz under the License Agreement.

2. Agents hereby (a) consent to the entry into the License Agreement by BCI and performance by BCI of its obligations thereunder and (b) acknowledge that BCI and Heinz are entering into the License Agreement pursuant to which Heinz will possess certain rights in certain Trademarks and Trade Dress owned by BCI.

3. Agents and BCI each shall from time to time promptly (a) execute and deliver all further instruments and agreements and (b) take all further actions, in each case as may be reasonably necessary or appropriate or as Heinz may reasonably request in order to give full effect to this Agreement or to preserve or protect the rights of Heinz hereunder. The parties hereto hereby consent to the filing and recording by Heinz of a copy of this Agreement (or a memorandum relating thereto, redacted copy hereof, or other notice relating to the contents hereof, in each case in a form approved by each of the Agents, which approval shall not be withheld unreasonably) with the U.S. Patent and Trademark Office and such other public filing and recording offices as Heinz may deem reasonably appropriate from time to time.

4. This Agreement may not be modified except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and assigns. This Agreement shall not be binding on Agents after any amendment to or modification of (a) any term or provision of the License Agreement that materially impairs the rights or materially increases the obligations of BCI unless such amendment or modification is made with the prior written consent of each of the Agents, which consent shall not be withheld unreasonably, and (b) any term or provision of the License Agreement that materially impairs the rights of either of the Agents.

5. All notices or other communications which are required or permitted hereunder to be given to any party shall be in writing and shall be deemed sufficiently given if delivered (a) personally, (b) by telecopy or other similar facsimile transmission, or (c) by registered or certified mail, return receipt requested, to the address or facsimile number of such party specified under its signature below, or to such other address or facsimile number as the addressee may have specified in a notice duly given to the sender as provided herein.

6. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania. This Agreement may be executed in any number of counterparts and all of such counterparts shall together constitute one and the same instrument. This Agreement is the complete and final agreement of the parties with respect to the subject matter hereof and all prior and contemporaneous agreements and communications shall have no significance or evidentiary effect.

WITNESS the due execution hereof the day and year first above written.

H.J. HEINZ COMPANY

By: _____
Title: _____

Address for notices:

600 Grant Street
Pittsburgh, Pennsylvania 15219
Attn: President
with a copy to General Counsel
Facsimile No.: (412)456-1035

GENERAL ELECTRIC CAPITAL
CORPORATION, in the representative
capacities referred to herein

By: _____
Title: _____

Address for notices:

777 Long Ridge Road
Building B, 1st Floor
Stamford, Connecticut 06927
Attn: Daniel P. Gioia
Facsimile No.: (203)316-7989

BANK OF AMERICA NATIONAL
TRUST AND SAVINGS ASSOCIATION,
in the representative capacities referred to
herein

By: _____
Title: _____

Address for notices:

231 South LaSalle Street
Chicago, Illinois 60697
Attn: David A. Johanson
Facsimile No.: (312)974-9102

ACKNOWLEDGMENT

The foregoing Nondisturbance Agreement is hereby acknowledged and consented to by the undersigned.

BOSTON CHICKEN, INC.

By: _____

Title: _____

Address for notices:

14123 Denver West Parkway
P.O. Box 4086
Golden, Colorado 80406-4086
Attn.: Chief Financial Officer
with a copy to General Counsel
Fax No.: (303)216-5668

FILED

JUN 8 1999

**KEVIN E. O'BRIEN, CLERK
UNITED STATES
BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

1 40 North Central Avenue
Phoenix, Arizona 85004-4429
2 Facsimile (602) 262-5747
Telephone (602) 262-5311

3 Randolph J. Haines - State Bar No. 005440
Email: rjh@lrlaw.com

4 AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.
1900 Pennzoil Place - South Tower
711 Louisiana
5 Houston, Texas 77002
Telephone (713) 220-5800
Facsimile (713) 236-0822

6 H. Rey Stroube, III-Texas State Bar No. 19422000
S. Margie Venus-Texas State Bar No. 20545900
7 Email: efiler@akingump.com

8 Attorneys for Debtor BCE West, L.P., et al.

9 **UNITED STATES BANKRUPTCY COURT**
10 **DISTRICT OF ARIZONA**

11 In Re:)	Chapter 11
)	
12 BCE WEST, L.P., et al.,)	Case Nos. 98-12547 through
)	98-12570-PHX-CGC
13 Debtors.)	
)	Jointly Administered
14 EID: 38-3196719)	
)	
15)	ORDER GRANTING MOTION
16)	TO ENTER INTO
17)	EXCLUSIVE LICENSE
18)	AGREEMENT [DE 794]

19 The Motion for Authority to Enter into an Exclusive License Agreement (the
20 "Motion") came on for hearing on June 8, 1999. Upon consideration of the pleadings,
21 evidence offered by the parties, and arguments of counsel, the Court hereby makes the
22 following findings of fact and conclusions of law.

23
24 A. The findings and conclusions set forth herein constitute the Court's findings
25 of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this
26

1 proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall
2 later be determined to be a conclusion of law it shall be so deemed and vice versa.

3 B. This Court has jurisdiction to hear and determine the Motion pursuant to 28
4 U.S.C. §§ 157 and 1334.

5 C. Venue of this case in this district is proper pursuant to 28 U.S.C. § 1408(a)
6 and venue of this proceeding is proper pursuant to 28 U.S.C. § 1409(a).

7 D. Determination of the Motion is a core proceeding under 28 U.S.C. §§
8 157(b)(2)(A) and (N). The statutory predicates for the relief requested herein are Sections
9 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004.

10 E. Subject to this Court's approval, (i) on April 22, 1999, debtor Boston
11 Chicken, Inc. ("BCI") and H.J. Heinz Company ("Heinz") entered into a license
12 agreement (the "Prior License Agreement"), and (ii) on June 8, 1999, BCI and Heinz
13 entered into a license agreement (which replaced and superseded the Prior License
14 Agreement). Pursuant to the License Agreement BCI grants Heinz, inter alia, an exclusive
15 license to use in its business and to market certain food products on a world-wide basis
16 utilizing certain Trademarks and Trade Dress (as such terms are respectively defined in
17 the License Agreement) owned by BCI. A copy of the License Agreement has been filed
18 with the Court under seal and is the subject of a protective order entered by the Court in
19 accordance with Section 107(b)(1) of the Bankruptcy Code.
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F. On April 23, 1999, BCI filed the Motion seeking the Court's approval of the License Agreement.

G. Proper, timely, adequate and sufficient notice of the Motion and the hearing on the Motion has been provided in accordance with all applicable law, including without limitation, Section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 6004, and no other or further notice of the Motion, the hearing on the Motion, or of the entry of this Order is required.

H. Approval of the License Agreement is in the best interest of BCI and its estate because, inter alia, the License Agreement will result in substantial present and future royalty payments to BCI, thereby enhancing the financial viability of BCI and facilitating BCI's efforts to reorganize.

I. Heinz has acted in good faith in accordance with the standards of applicable law. Heinz is not affiliated with BCI. To the fullest extent applicable, Heinz is a good faith purchaser under Section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby. There is no evidence that any party has engaged in any conduct that would cause or permit any sale or license pursuant to the License Agreement and this Order to be avoided under Section 363(n) of the Bankruptcy Code.

J. Heinz will be acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code in consummating the transactions contemplated by the License Agreement.

1 K. After proper notice and opportunity for hearing, no objections to the Motion
2 or the relief requested therein were filed or otherwise presented to the Court (it being
3 understood that the 1996 Lenders and the DIP Lenders had preserved the right to object to
4 the Motion absent their approval of the final terms of the License Agreement).
5

6 ACCORDINGLY, IT IS THEREFORE ORDERED THAT:

7 1. The terms and provisions of the License Agreement between BCI and Heinz
8 are approved in all respects, and are binding on all parties thereto and their respective
9 successors and assigns, and in accordance with the terms of the License Agreement,
10 including but not limited to, any trustee appointed in these cases and any party acquiring
11 any interest in the License Agreement or the rights and interests that are the subject
12 thereof pursuant to or as a result of a sale of assets in accordance with Section 363 of the
13 Bankruptcy Code, a plan of reorganization or liquidation, foreclosure, abandonment, or
14 any distribution or disposition of property occurring during the pendency of these cases.
15
16

17 2. By this Order, BCI is authorized to enter into the License Agreement and is
18 authorized and directed to execute and deliver all instruments and documents that may be
19 reasonably necessary or desirable to do so, and to take all further actions that may
20 reasonably be requested by Heinz for the purpose of consummating the License
21 Agreement.
22

23 3. Any order authorizing the assignment, transfer, granting, or delivery by BCI
24 of any interest in the License Agreement or the rights and interests that are the subject
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1 thereof (other than with respect to any grant of a security interest or lien with respect
2 thereto) shall confirm that the relevant assignee, transferee, grantee, or recipient shall be
3 bound by all terms and conditions of the License Agreement and shall perform all
4 obligations of BCI under the License Agreement and that Heinz shall have the right to
5 enforce the terms of the License Agreement as against such assignee, transferee, grantee,
6 or recipient; and with respect to any grant of a security interest or lien with respect
7 thereto, such grant shall only be authorized so long as the grantee has executed a
8 nondisturbance agreement in accordance with Section 21(a) of the License Agreement.
9

11 4. The License Agreement, as a postpetition contract, may not be rejected.

12 5. The provisions of this Order shall not be modified or superseded by any
13 subsequent order, including, without limitation, an order confirming a plan of
14 reorganization, approving a sale of assets pursuant to Section 363 of the Bankruptcy
15 Code, granting relief from automatic stay or abandonment with regard to any trademarks,
16 trade names, trade dress or other property that is the subject of the License Agreement, or
17 authorizing any distribution or disposition of property occurring during the pendency of
18 these case.
19


21 6. Unless consented to by Heinz, no subsequent order of the Bankruptcy Court
22 may conflict with the terms or provisions of this Order, and this Order shall survive entry
23 of, and shall govern with respect to any conflict with, any subsequent order, including the
24 terms, conditions and provisions of any proposed plan of reorganization or liquidation.
25
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1 7. Neither the dismissal or conversion of these cases, nor the appointment of a
2 trustee, shall affect in any manner the rights of Heinz under the License Agreement or this
3 Order, and all of the rights and remedies of Heinz under such Order and agreements shall
4 remain in full force and effect as if the case had not been dismissed or converted or a
5 trustee appointed.
6

7 8. In the absence of a stay of this Order prior to the effective date of the
8 License Agreement, to the fullest extent applicable, Heinz shall be entitled to the
9 protections of Section 363(m) of the Bankruptcy Code if this Order or an authorization
10 contained herein is reversed or modified on appeal.
11

12 9. This Order shall terminate and be of no further force or effect upon the
13 termination of the License Agreement.
14

15 Dated: June 8, 1999

16
17 
18 CHARLES G. CASE II
19 United States Bankruptcy Judge
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