

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: NEOPODS, NEOSTIKS, NEOCAPSULES, NEO and **NEO**
Applicant: British American Tobacco
(Brands) Limited

US Serial No.: 87/075,066; 87/493,269;
87/677781; 87/665,890; 79/212,769

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Consent Agreement


This CONSENT AGREEMENT (“Agreement”) is made and effective this 26th day of March 2018 by and between J. Cortès Cigars, Naamloze Vennootschap, a joint stock company of Belgium with a principal place of business at Pannenbakersstraat 1, B-8552 MOEN, Belgium (hereinafter “J. Cortès”); and British American Tobacco (Brands) Limited, a limited company of the United Kingdom with a principal place of business at Globe House, 4 Temple Place, London WC2R2PG, United Kingdom (hereinafter “BATBL”). J. Cortès and BATBL are hereinafter jointly referred to as “Parties.”

WHEREAS, J. Cortès is the owner of U.S. Registration No. 3,283,286 for the trademark “NEOS” for “Raw or manufactured tobacco; cigars and cigarillos” in Class 34 and U.S. Registration No. 4,769,044 for NEO ELECTRONIC CIGARETTES for “electronic cigarettes” (“the NEOS Registrations”).

WHEREAS, BATBL is the owner of U.S. Trademark Application Serial No. 87/075,066 for NEOPODS and U.S. Trademark Application Serial No. 87/493,269 for



NEOSTIKS both for “Tobacco; tobacco substitutes, not for medical purposes with all of the foregoing for the purpose of being heated but not burnt; electronic devices and their parts for the purpose of heating tobacco, comprising a handheld rechargeable device that user can insert rolled tobacco to smoke, in International Class 34.” in International Class 34; U.S. Trademark Application Serial No. 87/677781 for NEOCAPSULES for “tobacco, raw or manufactured; tobacco products; tobacco substitutes not for medical purposes; all of the foregoing for the purpose of being heated but not burnt; tobacco products for the purpose of being heated; electronic devices and their parts for the purpose of heating cigarettes or tobacco, comprising a handheld rechargeable device that user can insert rolled tobacco to smoke, in International Class 34”; U.S. Trademark Application Serial No. 87/665,890 for NEO for “Tobacco; tobacco substitutes, not for medical purposes with all of the foregoing for the purpose of being heated but not burnt; electronic devices and their parts for the purpose of heating tobacco, comprising a handheld rechargeable device that user can insert rolled tobacco to smoke, in International Class 34” in International Class 34; and International Registration (designating the United States) No. 1356586/ U.S. Trademark

Application Serial No. 79/212,769 for NEO (Stylized) [] for “Tobacco, raw or manufactured; tobacco products; tobacco substitutes (not for medical purposes); all for purpose of being heated but not burnt; electronic devices and their replacement parts for the purpose of heating tobacco, comprising a handheld rechargeable device that user can insert rolled tobacco to smoke, in International Class 34.” in International Class 34 (hereinafter “the NEO Applications”).¹

¹ The NEO Applications are currently undergoing review by the United States Patent and Trademark Office, and the above description of goods of each NEO Application reflect the proposed changes that have preliminary been accepted by the Examining Attorneys. These amendments will be filed in conjunction with this letter of consent. Any further amendments as



WHEREAS, the United States Patent and Trademark Office has refused registration of the NEOPODS, NEOSTIKS, NEOCAPSULES, NEO and NEO (Stylized) applications in view of the NEOS Registrations.

WHEREAS, J. Cortès and BATBL have exchanged information about their respective goods and the channels of trade in which they operate, and have determined that on the one hand, J. Cortès's goods that are the subject of the NEOS Registrations are limited to raw or manufactured tobacco, cigars, cigarillos, and electronic cigarettes ("J. Cortes' Goods"), whereas on the other hand, BATBL's goods that are the subject of the NEO Applications are primarily limited to tobacco products and components used for heating but not burning tobacco ("BATBL's Goods").

WHEREAS J. Cortès, as confirmed below, currently does not sell tobacco products that are heated but not burned under the NEOS or NEO ELECTRONIC CIGARETTES marks.

WHEREAS, on February 9, 2015, BATBL and J. Cortès entered into a coexistence agreement regarding the use and registration of the mark NEO and marks derived therefrom (hereinafter the "Coexistence Agreement").

WHEREAS, BATBL is permitted by the Coexistence Agreement "to register and use the 'NEO' trade mark and marks derived therefrom (but not 'NEOS') as a main brand and/or a sub-brand name on tobacco products and components used for heating but not burning tobacco (including tobacco products used in this way) falling within classes 9, 11, and 34".

WHEREAS, BATBL has agreed in the Coexistence Agreement not to use the NEO trade mark and marks derived therefrom for "cigars, cigarillos, and electronic cigarettes",

required by the Examining Attorneys to the description of goods will not affect the substance of this agreement.



and the BATBL Goods are expressly limited to those that involve heating but not burning tobacco or tobacco substitutes.

WHEREAS the Parties agree that in view of the foregoing, including the differences between the goods in the NEOS Registrations on the one hand, and the goods in the NEO Applications on the other hand, and the difference between the Parties' respective marks, it is their reasoned determination that there is no likelihood that consumers have been or will be confused by the use and registration of the mark shown in the NEO Applications.

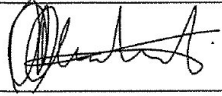
NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

1. J. Cortès consents to the registration of the NEO Applications and to the use of the NEO marks in connection with the goods identified in the NEO Applications.
2. BATBL confirms that it does not now and will not in the future sell any cigars, cigarillos, electronic cigarettes or tobacco or tobacco substitutes other than for the purpose of being heated but not burned under its NEO marks in the USA.
3. BATBL confirms that it does not now and will not in the future sell any cigars or cigarillos for the purpose of being heated but not burned under its NEO marks.
4. J. Cortès confirms that it currently does not sell any of the goods identified in the NEO Applications under its NEOS or NEO ELECTRONIC CIGARETTES marks in the USA.
5. The Parties agree that they will cooperate in taking any reasonable action to avoid confusion and to correct any instances of likelihood of confusion which may come to their attention.



J. Cortès Cigars, Naamloze Vennootschap

Date: March 19th, 2018

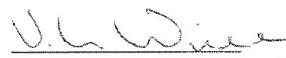
By: 

Name: Frederik Vandermarliere

Title: CEO
Representative of Fumoir BVBA
Represented by Eigen Kweek BVBA

British American Tobacco (Brands) Limited

Date: 26th March 2018

By: 

Name: VICTORIA WISENER

Title: Authorised Attorney

