

AMENDMENT TO TRADEMARK CONSENT AGREEMENT

This Amendment to Trademark Consent Agreement is entered by and between Stewart's Product Licensing, Inc., a New Jersey corporation with a principal place of business at 93 Fostertown Road, Lumberton, New Jersey 08048 ("Applicant"), and Stewart Candy Company, a Georgia corporation with a principal place of business at 600 Haines Ave., Waycross, Georgia 31501 ("Registrant").

WHEREAS, the Applicant and Registrant entered into a Trademark Consent Agreement ("2018 Agreement") on February 1, 2018, and a copy of the 2018 Agreement is attached as Exhibit A;

WHEREAS, in the 2018 Agreement, the parties agreed that there was no likelihood of confusion between Registrant's use and registration of the STEWART mark for hard and soft candies, and Applicant's use and registration of the STEWART'S SODA CHEWS mark and logo for soda-flavored salt water taffy;

WHEREAS, in the 2018 Agreement, Registrant also expressly consented to registration and use of the STEWART'S SODA CHEWS mark and STEWART'S SODA CHEWS logo, which are the subject matters of U.S. Application Serial Nos. 86/761,463 and 86/756,913, respectively, for candy, namely, taffy;

WHEREAS, in the 2018 Agreement, the parties also agreed "to enter into and sign such further documents and agreements as may be necessary to effect and further the intent of [the 2018 Agreement]";

WHEREAS, on December 7, 2018, Registrant's U.S. Registration No. 3,421,088 of the STEWART mark for candy was canceled due to Registrant's inadvertent failure to file a timely renewal of such registration;

WHEREAS, on December 18, 2018, Registrant filed a new application to register the STEWART mark for candy, which application was assigned Serial No. 88/233,976 ("Registrant's New Application");

WHEREAS, on March 14, 2019, the USPTO suspended Registrant's New Application until Applicant's Application Serial No. 86/761,463 ("Applicant's 463 Application") registers or is abandoned;

WHEREAS, on July 3, 2019, Registrant submitted a response in which Registrant alleged that based on the provisions of the 2018 Agreement and the decades of coexistence without actual confusion, Registrant's New Application should be allowed;

WHEREAS, on August 14, 2019, the USPTO maintained its suspension of Registrant's New Application and noted that the 2018 Agreement "references a different registration that was abandoned" and that "the consent agreement should reference the applicant's current application";

WHEREAS, the parties desire to amend the 2018 Agreement to effect and further the intent of the 2018 Agreement and to clarify its terms;

NOW, THEREFORE, in consideration of the promises and agreements set forth in the 2018 Agreement and this Amendment, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties amend the 2018 Agreement as follows:

1. Applicant hereby consents to Registrant's use and registration of the mark STEWART for candy, which mark is the subject matter of Registrant's New Application. Applicant also consents to future applications to register the STEWART mark filed by Registrant, provided any such application fully complies with the terms of this Amendment and the 2018 Agreement.

2. Registrant shall not use the term "STEWART'S" as a trademark to identify any good or service and shall not use the term "SODA" or "CHEWS" with the term STEWART as a trademark to identify any good or service.

3. When marketing and selling any candy product, Applicant shall always use the full word mark STEWART'S SODA CHEWS, and shall never use the term "STEWART'S" or "STEWART" alone on or in connection with any candy product

4. Registrant consents to future applications to register the STEWART'S SODA CHEWS mark filed by Applicant, provided any such application fully complies with the terms of this Amendment and the 2018 Agreement.

5. The parties confirm and agree that except as modified and supplemented by this Amendment, all other provisions of the 2018 Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized representatives as of the effective date first written above.

STEWART'S PRODUCT LICENSING, INC.

By: Michael W. Fessler

Name: MICHAEL W. FESSLER

Title: PRESIDENT

Date: 9-19-19

STEWART CANDY COMPANY

By: James E. Stewart, Jr.

Name: James E. Stewart, Jr.

Title: Chairman of Board Stewart Candy Co.


Date: 9-19-19

TRADEMARK CONSENT AGREEMENT

This Trademark Consent Agreement ("Agreement") is made by and between Stewart's Product Licensing, Inc., a New Jersey corporation with a principal place of business at 93 Fostertown Road, Lumberton, New Jersey 08048 ("Applicant"), and Stewart Candy Company, a Georgia corporation with a principal place of business at 600 Haines Ave., Waycross, GA 31501 ("Registrant") (each a "Party" and collectively the "Parties").

Registrant owns U.S. Trademark Registration No. 3,421,088 for the mark STEWART in International Class 30 for "candy";



On September 15, 2015 Applicant applied to register the mark  with the U.S. Patent and Trademark Office for "candy, namely, taffy" in International Class 30, as shown in U.S. Trademark Application Serial No. 86/756,913, and on September 18, 2015 applied to register the mark STEWART'S SODA CHEWS for "candy, namely, taffy" in International Class 30, as shown in U.S. Trademark Application Serial No. 86/761,463 (together, "Applicant's Marks");

The U.S. Patent and Trademark Office rejected registration of Applicant's Marks based on a likelihood of confusion with Registrant's U.S. Registration No. 3,421,088 for STEWART;

Applicant's STEWART'S products and Registrant's STEWART candy product have coexisted in the marketplace for many years without confusion; and

After considering the marketplace realities, the Parties agree that there is no likelihood of confusion caused by the concurrent registration and use of their respective marks and they wish to avoid any conflict with the other Party's use and registration of its marks;

Therefore, in consideration of the mutual terms, covenants and conditions set forth herein, the Parties agree as follows:

1. The Parties believe and agree that consumer confusion is unlikely to occur from the concurrent use and registration of their respective marks in accordance with the terms and conditions of this Consent Agreement. The Parties base this conclusion on the visual differences between each Party's mark and the differences between each Party's candy products – Registrant's hard and soft candies and Applicant's soda-flavored salt water taffy.

2. Therefore, Registrant consents to Applicant's use and registration of Applicant's Marks for Applicant's applied-for goods as reflected in U.S. Trademark Application Serial Nos. 86/756,913 and 86/761,463.

3. The Parties agree to work together to address and avoid any possible future consumer confusion. In the unlikely event that either Party becomes aware of any actual confusion, each party agrees that it will notify the other Party in writing and agree on steps to eliminate or avoid such confusion.

4. The Parties agree to enter into and sign such further documents and agreements as may be necessary to effect and further the intent of this Consent Agreement.

5. This Consent Agreement shall inure to the benefit of and be binding upon and enforceable against each Party and its respective parents, subsidiaries, affiliates, successors and assignees.

6. This Consent Agreement constitutes the entire agreement and may not be modified except in a writing signed by both Parties. If any one or more of the clauses of this Consent Agreement is found to be invalid or unenforceable, the validity of the remaining clauses shall not be affected and the Parties agree to replace the clauses with valid and enforceable clauses through mutual agreement in writing.

7. Each Party represents that the person signing on its behalf below is authorized to bind the Party and make this a binding and enforceable agreement.

STEWART'S PRODUCT LICENSING, INC.

By: Michael W. Fessler

Name: Michael W. Fessler

Title: President

Date: February 1, 2018

STEWART CANDY COMPANY

By: James E. Stewart, Jr.

Name: James E. Stewart, Jr.

Title: Chairman of the Board

Date: February 1, 2018