

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

AVI AVRAHAM ZINGER and  
AMERICAN QUALITY PRODUCTS  
LTD.,

Plaintiffs,

-against-

BEN & JERRY'S HOMEMADE, INC.,  
UNILEVER UNITED STATES, INC.  
and CONOPCO, INC.,

Defendants.

**Civ. No. 2:22-cv-01154-ES-JBC**

**Hon. Esther Salas**

ORAL ARGUMENT  
REQUESTED

Motion Day: April 12, 2022

**DECLARATION OF DAVID SCHWARTZ IN SUPPORT OF  
DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

I, DAVID SCHWARTZ, declare as follows:

1. I am Vice President and General Counsel at Unilever United States, Inc. (“UNUS”). I submit this declaration in connection with Defendants’ opposition to Plaintiff’s Motion for Preliminary Injunction in the above-captioned litigation.

2. The statements made herein are based upon my personal knowledge and upon knowledge I have derived from my review of the records and files maintained by UNUS and its affiliates in the ordinary course of business.

3. UNUS is a Delaware corporation headquartered in Englewood Cliffs, New Jersey. UNUS is a holding company that provides management and communications services for its subsidiaries.

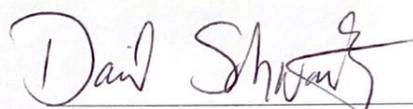
4. Conopco, Inc. (“Conopco”) is a subsidiary of UNUS and a New York corporation headquartered in Englewood Cliffs, New Jersey. Conopco manufactures and sells food, personal care products and household products.

5. Ben & Jerry’s Homemade, Inc. (“B&J”) is a subsidiary of Conopco and a Vermont corporation headquartered in Burlington, Vermont. B&J manufactures, distributes and sells ice cream.

6. Attached hereto as **Exhibit A** is a true and correct copy of the amendment made and entered into on April 4, 2013, between B&J and American Quality Products, Ltd., to the License Agreement, dated January 8, 2004.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 27, 2022

  
\_\_\_\_\_  
David Schwartz

# **Exhibit A**

**SECOND AMENDMENT  
TO BEN & JERRY'S AND AMERICAN QUALITY PRODUCTS  
LICENSE AGREEMENT**

This 2nd Amendment (this "Amendment") is made and entered into on April 4, 2013 (the "Effective Date"), by and among the following parties:

- ◆ BEN & JERRY'S HOMEMADE, INC. ("Ben & Jerry's");
- ◆ AMERICAN QUALITY PRODUCTS, LTD. ("Licensee"); and

RECITALS:

A. BEN & JERRY'S' and LICENSEE are parties to a License Agreement dated January 8, 2004 ( the "License Agreement") as amended by a letter agreement dated June 24, 2005 extending the term.

B. Ben & Jerry's and Licensee wish to extend the term of the License Agreement and amend certain terms of the License Agreement.

C. All capitalized terms not otherwise defined in this Amendment shall have the same meanings given in the License Agreement.

NOW THEREFORE, the parties, in consideration of the undertakings and commitments of each party to other parties set forth herein and in the License Agreement, hereby mutually agree as follows:

1. Section 4.1 of the License Agreement is hereby amended to extend the term through and including December 31, 2017, provided that:

1.1 Licensee has satisfied all of its monetary obligations and all other outstanding obligations to Ben & Jerry's and its affiliates prior to the Effective Date;

1.2 Licensee has furnished evidence satisfactory to Ben & Jerry's that all insurance coverage required under the License Agreement has been retained and will remain in effect and,

2. Additional Revisions to the License Agreement.

Definitions:

Gross Turnover/Gross Sales shall be deleted in its entirety and substituted with the following:

*"Turnover - means the gross invoiced amount for Products (as defined hereunder) sold by Licensee or any of its Affiliates to third party customers minus: actual*

*returns, applicable damages, coupons, or trade allowances, but regardless of any taxes other than purchase tax and value added tax. For the purpose of this definition, a sale shall not be deemed to have occurred when Products are transferred or "sold" by Licensee to its Affiliate or to Unilever for resale, but only upon the resale by Licensee or any of its Affiliates to a third party. Turnover shall also include any other income from any source relating to the Licensed Business or the Products, including without limitation, any income from sub-licensing or franchising the Licenses Business or any part thereof."*

Section 4.2 of the License Agreement shall be deleted in its entirety and substituted with the following:

*"4.2 Licensee may renew the rights granted hereunder for one (1) additional Consecutive term of five (5) years (the "3<sup>rd</sup> Renewal Term") if the following conditions are met prior to commencement of the 3<sup>rd</sup> Renewal Term.*

- 4.2.1 Licensee shall give Ben & Jerry's written notice of Licensee's election to renew at least nine (9) months, but not more than twelve (12) months, prior to the end of the Initial Term; and*
- 4.2.2 Licensee shall not have any past due monetary obligations or other outstanding obligations to Ben & Jerry's or its Affiliates; and*
- 4.2.3 Licensee shall not be in default of any material provision of this Agreement, or successor hereto, or any other agreement between Licensee and Ben & Jerry's or its Affiliates or any lease or sublease for the premises of any Retail Shop or other facility ("Premises"). Licensee shall have substantially complied with all the terms and conditions of such agreements during the terms thereof; and*
- 4.2.4 Licensee shall execute a general release, in a form prescribed by Ben & Jerry's of any and all claims against Ben & Jerry's and its Affiliates, and their respective present and former officers, directors, agents, and employees; and*
- 4.2.5 Licensee shall make or provide for, in a manner satisfactory to Ben & Jerry's, such renovation and modernization of the manufacturing facility (ies) and/or of any location used in the wholesale component of the Licensed Business, and any open and operating Retail Shop, as Ben & Jerry's may reasonable require, including installation of new equipment and renovation of existing fixtures, replacement of obsolete signage, furnishings and décor in order to accommodate the then current technology relative to the manufacture of the Local Proprietary Products, the Wholesale Distribution of Products and the design and image of the then current Retail Shops; and*

4.2.6 *Licensee shall comply with the then current Ben & Jerry's qualification and training requirements for operators of Retail Shops outside of the U.S. so long as the said qualifications and requirements have actually substantially been enforced, to the extent required, by Ben & Jerry's, in the previous twelve (12) months, upon other Ben & Jerry's licensees outside of the U.S and Canada."*

(b) Section 4.7 of the License Agreement shall be deleted in its entirety and substituted with the following:

*"4.7 BEN & JERRY'S may, in its sole discretion, require Licensee to pay a renewal fee the ('Renewal Fee") in US dollars equal to 10% of the greater of: (i) 50% of Licensee's Net Income generated from the Products or other rights pursuant to this Agreement for the last year of 1<sup>st</sup> Renewal Term or (ii) 1.25% of Licensee's Turnover from all sources of income of Licensee generated from the Products or other rights pursuant to this Agreement for the last year of the 1<sup>st</sup> Renewal Term. Payments shall be made in accordance with Section 12."*

(c) Section 12.1 of the License Agreement shall be deleted in its entirety and substituted with the following:

*"12.1 there shall be no royalties paid or due to Ben & Jerry's or Unilever with respect to any of Ben & Jerry's Products manufactured or sold in the Territory by the Licensee or any of its Affiliates during the Initial Term. During the Renewal Term, Licensee shall pay Ben & Jerry's an annual royalty fee equal to 3% of the Turnover."*

(d) Section 12.5.1 of the License Agreement shall be deleted in its entirety and substituted with the following:

*"12.5.1 Each month during the Term of this Agreement, Licensee shall contribute to its own marketing budget (the Marketing Budget") a sum equal to not less than two (2) percent of Licensee's Turnover from the sale of all Products through the Wholesale Distribution Channels and the Retail Shops for the preceding month. Licensee understands and acknowledges that such required expenditure is a minimum requirement only, and that Licensee may, and is encouraged to expend additional funds for marketing and*

*promotion. Licensee agrees to include the proposed expenditures for this fund in the annual Business Plan."*

**3. Effect.** This Amendment constitutes an integral part of the License Agreement between the parties hereto, and the terms of this Amendment shall be controlling with respect to the subject matter hereof. Except as modified or supplemented by this Amendment, the terms of the License Agreement are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate on the date first above written.

**AMERICAN QUALITY PRODUCTS, LTD**

**BEN & JERRY'S HOMEMADE, INC.**

**AMERICAN QUALITY**  
By **PRODUCTS LTD**

By: 

Name: Avi Zinger

Name: Jostein Solheim

Title: Licensee

Title: Chief Executive Officer