

**AGREEMENT**

This agreement is made effective this 21 day of December, 1990 between the parties Philip Morris Incorporated a corporation organized and existing under the laws of the Commonwealth of Virginia, with its principal place of business at 120 Park Avenue, New York, New York 10017, hereinafter referred to as "Philip Morris", and Philadelphia Chewing Gum Corporation a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business in Havertown, Pennsylvania 19083, hereinafter referred to as "Philadelphia".

**WITNESSETH:**

WHEREAS, Philip Morris sells MARLBORO cigarettes, in packaging bearing the MARLBORO (word) and MARLBORO "Roof" Design, often, and originally in red, trademarks as shown in Exhibit A hereto;

WHEREAS, Philip Morris is the owner of the following registrations on the principal register in the United States Patent and Trademark Office:

<u>Reg. No.</u>	<u>Mark</u>	<u>Goods</u>
68,502	MARLBORO	Cigarettes
938510	MARLBORO Red Roof Package Design	Cigarettes

WHEREAS, Philadelphia manufactures, markets and distributes

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candy products, one of which is known as Magic Colors bubble gum, which is sold in paper-wrapped, elongated cylinders placed in packages resembling those of cigarettes. Up to September 30, 1990, one of which said packages, a copy of which is annexed as Exhibit B, incorporated the distinctive elements of the MARLBORO package design, including simulation of the trademark MARLBORO in the form of MARLBRO, replication of the "Roof" Design in red, and identical placement of such elements as the brand name (which appears in the same distinctive type face), a coat of arms and a horizontal red stripe;

WHEREAS, Philip Morris made written demand that Philadelphia cease the production of its MARLBRO bubble gum cigarettes and Philadelphia agreed to do so by September 30, 1990;

WHEREAS, based on information that it received and upon its further investigation, Philip Morris came to believe that Philadelphia was in violation of the agreement to cease its mentioned conduct;

WHEREAS, Philadelphia maintains that it has in all ways complied with the agreement to cease its conduct by September 30, 1990;

WHEREAS, the parties now seek to settle the conflict on an amicable basis, to make clear the agreement between them and to set forth the agreement in a formal undertaking,

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NOW THEREFORE, in consideration of the premises and mutual promises hereinafter made, the parties agree as follows:

1. Philadelphia, its officers, agents, servants, employees, attorneys, and all other persons in concert or participation with them have ceased, since September 30, 1990, the manufacture of, and hereafter, will not use the names or trademarks MARLBORO, MARLBRO, the MARLBORO "Roof" Design or any other name or trademark confusingly similar thereto on or in connection with the manufacturing, packaging, marketing, advertising, displaying, offering for sale, or selling of bubble gum cigarettes, candy cigarettes, or any other confectionary or similar product.

2. Philadelphia will deliver up to Philip Morris for destruction within 45 days from the date hereof, all existing inventory of its bubble gum cigarettes or any other confectionary or similar product that bears the name or trademarks MARLBORO, MARLBRO, the MARLBORO "Roof" Design or any other name or trademark which would be confusingly similar thereto.

3. Philadelphia will deliver up to Philip Morris for destruction within 20 days from the day hereof all of its printing plates, engravings, matrixes and any other objects, devices, or materials used to print MARLBORO, MARLBRO, the MARLBORO "Roof" Design, or any other name or trademark confusingly similar thereto on packaging, labels, brochures, and any other advertising or promotional material.

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4. Philadelphia will deliver up to Philip Morris for destruction within 20 days from the date hereof all of its packaging, labels, artwork, brochures and advertising or promotional material that bears the name or trademarks MARLBORO, MARLBRO, the MARLBORO "Roof" Design, or any other name or trademark confusingly similar thereto.

5. Nothing herein shall prevent or impair Philadelphia's continued manufacturing, packaging, marketing, advertising, displaying, offering to sell or selling its bubble gum, candy, confectionary or other similar products in any form, under any name or trademark other than MARLBORO, MARLBRO, the MARLBORO "Roof" Design or any other name or trademark confusingly similar thereto.

6. Philadelphia shall publish half page advertisements in the next available issue of Candy Industry and of Candy Wholesaler magazines in the form annexed hereto as Exhibit C.

7. Philadelphia recognizes Philip Morris' rights in and to the MARLBORO and MARLBORO "Roof" Design trademarks, trade dress and copyrights therein.

8. Provided that Philadelphia fully complies with the terms of the agreement, Philip Morris will not institute any litigation against Philadelphia or its shareholders, officers, directors, employees and agents with respect to the subject matter of this agreement.

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9. In the event that Philip Morris proves to the satisfaction of the Court that Philadelphia has substantially breached this agreement, Philadelphia hereby agrees not to contest Philip Morris' request to the Court for an award for attorneys' fees, together with and in addition to any damages, fines or penalties that may be awarded or imposed by the Court.

10. The failure of either party to object to any breach or breaches of any provision of this agreement by the other party is not to be construed to be a waiver of that or those or any succeeding breach or breaches of such provision or a waiver of that provision or any other provision of this agreement.

11. Philadelphia shall deliver up all items for destruction to:

Philip Morris Management Corp.  
100 Park Avenue, 6th Floor  
New York, New York 10017

Attention: Trademark Department

12. This Agreement reflects the entire understanding between the parties, and replaces all prior agreements or understandings, oral or written. It may not be changed or modified except by writing signed by the party to be charged with any such change or modification.

13. This agreement is to be governed by and construed in accordance with the laws of the State of New York and any proceeding brought by either party shall be filed in the United

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States District Court for the Southern District of New York and both parties agree that jurisdiction and venue is proper there and both parties agree to submit to the jurisdiction of said court.

14. This agreement shall run to and be binding upon the parties, their successors, assignees, attorneys, agents, affiliates, and all other persons in concert with any of them.

Date: \_\_\_\_\_

PHILIP MORRIS INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

Date: \_\_\_\_\_

PHILADELPHIA CHEWING GUM CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

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