

Docket: 2007-1806(IT)G

BETWEEN:

VELCRO CANADA INC.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on May 17, 2011, at Toronto, Ontario
Before: Associate Chief Justice E.P. Rossiter

Appearances:

Counsel for the Appellant: Louise Summerhill
and Marni Pernica
Counsel for the Respondent: Margaret Nott
and Amit Ummat

JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 taxation years are allowed, and the reassessments are referred back to the Minister of National Revenue for reconsideration and reassessment in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 24th day of February, 2012.

“E.P. Rossiter”

Rossiter A.C.J.

Citation: 2012TCC57
Date: 20120224
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VELCRO CANADA INC.,

Appellant,

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Respondent.

REASONS FOR JUDGMENT

Rossiter A.C.J.

Introduction

[1] Velcro Canada Inc. (“VCI”) was in the business of manufacturing and selling fastening products mainly for the auto industry. VCI paid royalties under a License Agreement to Velcro Industries BV (“VIBV”), previously a resident of the Netherlands, for the use of Velcro Brands Technology. In 1995, VIBV became a resident of the Netherlands Antilles and in October, 1995 assigned the License Agreement to Velcro Holdings BV (“VHBV”), a subsidiary resident of the Netherlands. Canada does not have a tax treaty with Netherlands Antilles. Between 1996 and 2004, VCI paid royalties to VHBV which in turn paid approximately 90% of that amount over to VIBV. Any royalties paid by VCI to VIBV would be subject to a withholding tax of 25%. Canada does have a tax treaty with the Netherlands and under that treaty, VCI withheld and remitted a reduced rate of tax of 10% of the royalties paid to VHBV for the 1996 to 1998 taxation years and nil for 1999 and subsequent taxation years. VHBV is of the view that it is the beneficial owner of the royalties, the Respondent has the contra view that VIBV is the beneficial owner, and VCI therefore should have withheld and remitted a tax of 25% of the royalties paid to VHBV, as required by the Canada-Netherlands Convention (“Convention”).

Facts:

[2] VCI was in the business of manufacturing and selling Velcro® fasteners mainly for the auto industry. VIBV was the owner of Velcro Brands and technology and entered into a License Agreement with VCI in 1987 (“License Agreement”) so that VCI could use the Velcro® brand fastener technology in Canada.

[3] From 1987 to October 1995, VCI paid royalties to VIBV and withheld tax at the applicable rate pursuant to the Convention. A reorganization of the Velcro group of companies occurred on October 26, 1995 with VIBV becoming a resident of Netherlands Antilles. On October 27, 1995, VIBV signed an Assignment Agreement (“Assignment Agreement”) with VHBV whereby VIBV assigned to VHBV its rights and obligations under the original License Agreement so that VCI would pay royalties to VHBV under the original License Agreement but subject to the Assignment Agreement.

[4] As VHBV was a resident of the Netherlands, VCI continued to withhold tax from royalties at the rate of 10% pursuant to the Convention. The royalty rate was changed from 10 percent to zero in December 1998, which resulted in VCI ceasing to withhold any tax from the royalties.

[5] VIBV and VCI entered into a new License Agreement (“New License Agreement”) effective October 1, 2003, which superseded the License Agreement. Also, effective October 1, 2003, VIBV and VHBV entered into a new Assignment, Assumption and License Agreement (“New Assignment Agreement”). The terms and conditions of the New License Agreement and the New Assignment Agreement are similar to the License Agreement and Assignment Agreement.

[6] The licensing agreements granted VCI the right to use VIBV’s intellectual property to manufacture and sell fastening products in exchange for royalty payments, with VIBV maintaining ownership of the intellectual property. Specifically, VCI obtained the right to manufacture, sell, and distribute the licensed products, and the right to use the licensed trademarks to promote, sell, and distribute those products. VCI’s rights were exclusive in Canada and non-exclusive in other countries, as described in the agreements.

[7] The royalties owed under the licensing agreement were calculated on the net sale of the products. In the first agreement, different rates were applied depending on whether the licensed products were considered “established technology” (5%) or “new technology products” (7.5%). There was no such distinction under the second agreement, with the rate set at 5% of net sales for all licensed products. Royalties

were to be paid quarterly under the first licensing agreement and monthly under the second agreement, with both agreements allowing the parties to agree to other timing for payments. The licensing agreements prevented VCI from conducting research and development using the licensed products, and required VCI to take any steps necessary to preserve VIBV's rights over the intellectual property, including advising VIBV of any potential misuse or infringement. VIBV's right to assign the licensing agreements was specifically outlined, while VCI was precluded from assigning the agreement without first obtaining VIBV's written consent.

[8] The "License Agreement" of October 1, 1987 is attached as Appendix A. Particular reference should be made to:

Article II	A.	Licenses
Article III	A.	Term
Article IV	A.	Amount of Royalties owing
Article IV	B.	Time and Method of Payment
Article V		Rights in License Technology and Licensed Trademarks
Article XI		Assignment
Schedule C		Royalty Rates

[9] The "Assignment Agreement" of October 27, 1995 is attached as Appendix B. Particular reference should be made to:

Article 1.	Assignment and License
Article 2.	Assumption
Article 3.	Rights retained by VIBV
Article 4.	Enforcement of Obligations under Subject Agreement
Article 5.	Third Party Beneficiary
Article 6.	Royalties
Article 7.	Payment Terms
Article 8.	Books and Records; Audit.
Article 9.	Termination
Article 10	Further Assurances

[10] Attached as Appendix C is a letter from VIBV to VCI dated September 29, 1997 in relation to the License Agreement.

[11] Attached as Appendix D is the new License Agreement effective October 1, 2003.

[12] Attached as Appendix E is the New Assignment Agreement dated October 1, 2003. Particular reference should be made to Article 6, Royalties.

[13] The first assignment agreement between VIBV and VHBV was effective October 27, 1995, the day after VIBV moved its seat to Netherlands Antilles. Under both assignment agreements, VHBV was assigned the right to grant licenses for VIBV's intellectual property to VCI, and to collect royalty payments from VCI as payments for these licenses. VHBV contracted to enforce the terms of the licensing agreement and to take any steps necessary if VCI breached the contract's terms. The ownership of the intellectual property, however, remained with VIBV, and VIBV was specified as the express third party beneficiary, with the right to enforce the licensor's rights if VHBV failed to do so. To ensure that VHBV respected the terms of the assignment agreements, VIBV had the right to inspect VHBV's books and records throughout the agreements and for three years after its termination.

[14] In exchange for the rights granted under the assignment agreements, VHBV agreed to pay VIBV an arm's length percentage of net sales of the licensed products within 30 days of receiving royalty payments from VCI. The assignment agreements specified that the arm's length percentage was subject to the approval of Dutch tax authorities.

[15] The Canada Revenue Agency ("CRA") issued Notices of Assessment in 2006 with respect to 2002/2003 with penalties. Notices of Objection were filed. Additional Notices of Assessment were issued for 1995 through 2001 inclusive, plus 2004. The assessed amounts of non-resident tax plus penalties for each year are as follows:

Year	Non-Resident Tax	Penalty
1995	\$ 270,634	\$ 27,063
1996	\$ 231,787	\$ 23,179
1997	\$ 325,043	\$ 32,504
1998	\$ 448,844	\$ 44,884
1999	\$1,083,890	\$106,389
2000	\$1,299,000	\$129,900
2001	\$1,225,505	\$122,552
2002	\$1,362,484	\$136,248
2003	\$1,596,401	\$158,940
2004	<u>\$ 740,350</u>	<u>\$ 74,035</u>
	\$8,583,938	\$855,694

The assessments/reassessments were confirmed and the Appellant appealed.

[16] CRA had assessed the mandatory penalties under subsection 227(8) of the *Income Tax Act* (“Act”). The parties are in agreement that the imposition of the penalties will follow the result. Also initially there was an issue with respect to the possibility of some statute barment, but the parties are now in agreement that no issues are statute barred. Also the parties have agreed that the 1995 assessment dated October 25, 1996 shall be referred back to the Minister of National Revenue for reconsideration and recalculation on the basis that VIBV was a resident of the Netherlands in 1995 and therefore entitled to the benefit of the treaty.

Issue:

[17] Was VHBV the beneficial owner of the royalties from VCI from 1996 through to 2004 and if so, therefore entitled to a reduced withholding rate under the convention?

Position of the Parties:

[18] Position of the Appellant:

The Appellant takes the position that VHBV was the beneficial owner of the royalties from VCI for 1996 through 2004 and as such is entitled to the reduced rate of withholding tax under the convention.

The position of the Appellant is based upon:

1. The test of “beneficial owner” from *Prévost Car Inc. v. R.*, 2008 TCC 231, affirmed in 2009 FCA 57.
2. The Convention, Article 3, section 2;
Income Tax Convention Interpretation Act, section 3;
The Tax Court of Canada's decision in *Prévost*, paragraphs 95 and 100, and paragraphs 14 and 15 from the Federal Court of Appeal's decision upholding *Prévost*:
3. The application of the definition of “beneficial owner” from *Prévost* in terms of
 - “possession”
 - “use”
 - “control”
 - “risk”

4. The lack of existence of evidence of an agency or nominee relationship or that VHBV is a conduit.

[19] Position of the Respondent:

The Respondent takes the position that VIBV rather than VHBV is the beneficial owner of the royalties from VCI between 1996 and 2004, and therefore VHBV is not entitled to the reduced rate under the Convention. The Respondent alleges that the assessments are correct in relation to VCI for failing to withhold and remit the withholding tax of 25% of royalties paid to VHBV under section 12 of the *Act* since VHBV was not the beneficial owner of the royalties paid to it by VCI.

[20] The position of the Respondent is based upon three arguments:

1. VHBV does not beneficially own the royalties;
2. VHBV is an agent or conduit;
3. VHBV did not exercise the “incidences of ownership” as required by *Prévost, supra*.

Applicable Statutes:

[21] The Convention between Canada and the Kingdom of the Netherlands is applicable because it addresses the issue of royalties. Article 12 of the Convention addresses royalties as follows:

1. Royalties: Royalties arising in one of the States and paid to a resident of the other State may be taxed in that other State.
2. However, such royalties may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10% of the gross amount of the royalties.
3. Notwithstanding the provisions of paragraph 2:
 - (a) copyright royalties and other like payments in respect of a deduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films and work on film, videotape or other means of reproduction for use in connection with television broadcasting; and
 - (b) royalties for the use of or the right to use computer software or any patent or for information concerning industrial, commercial or scientific experience

(but not including any such information provided in connection with the rental or franchise agreement) arising in a State and paid to a resident of the other State who is the beneficial owner of the royalties shall be taxable only in that other State.

[22] The particular relevant sections of the *Act* are sections 212, 215 and 227 with the remainders of the sections not quoted herein included in Appendix E.

212. (1) Tax -- Every non-resident person shall pay an income tax of 25% on every amount that a person resident in Canada pays or credits, or is deemed by Part I to pay or credit, to the non-resident person as, on account or in lieu of payment of, or in satisfaction of,

....

Rents, royalties, etc.

(d) rent, royalty or similar payment ...

...

215. (1) Withholding and remittance of tax -- When a person pays, credits or provides, or is deemed to have paid, credited or provided, an amount on which an income tax is payable under this Part...the person shall ... deduct or withhold from it the amount of the tax and forthwith remit that amount to the Receiver General on behalf of the non-resident person on account of the tax ...

...

215. (6) Liability for tax -- Where a person has failed to deduct or withhold any amount as required by this section from an amount paid or credited or deemed to have been paid or credited to a non-resident person, that person is liable to pay as tax under this Part on behalf of the non-resident person the whole of the amount that should have been deducted or withheld, and is entitled to deduct or withhold from any amount paid or credited by that person to the non-resident person or otherwise recover from the non-resident person any amount paid by that person as tax under this Part on behalf thereof.

...

227. (8) Penalty -- Subject to subsection 227(8.5), every person who in a calendar year has failed to deduct or withhold any amount as required by subsection 153(1) or section 215 is liable to a penalty of

(a) 10% of the amount that should have been deducted or withheld; or

....

227. (9) Penalty -- Subject to subsection 227(9.5), every person who in a calendar year has failed to remit or pay as and when required by this Act or a regulation an amount deducted or withheld as required by this Act or a regulation or an amount of tax that the person is, by section 116 or by a regulation made under subsection 215(4), required to pay is liable to

a penalty...

Analysis:

The Organization for Economic Cooperation and Development Publications

[23] The Treaty is based on the Organization for Economic Cooperation and Development's ("OECD") Model Tax Convention on Income and Capital 1977 ("1977 Model"). In 1986, the OECD Council adopted the OECD Conduit Companies Report ("Conduit Report"). As acknowledged by the Federal Court of Appeal in *Prévost v. R.*, *supra*, the model conventions provide a guide to the interpretation and application of existing conventions. The Federal Court of Appeal, in *Prévost*, *supra*, asserted that later commentaries can also act as guides, with certain limitations, stating the following at paragraph [11]:

The same may be said with respect to later commentaries, when they represent a fair interpretation of the words of the Model Convention and do not conflict with Commentaries in existence at the time a specific treaty was entered and when, of course, neither treaty partner has registered an objection to the new Commentaries.

There are several points to be made about the Models, their Commentary and the Conduit Report:

1. Discussing beneficial ownership, agents, nominees, and, later, conduit companies, paragraph 4 in the 1977 Commentary and paragraphs 4 and 4.1 of the updated Commentary to Article 12 are substantively similar (with some sentences being identical) to the same commentary in Article 10, oft-cited in *Prévost*.

2. While the Respondent highlights the fact that VIBV consistently ensured it retained the ownership of the Licensed IP, in light of the comment in paragraph 8.2 of the updated Commentary it is unclear what the Respondent intends to achieve by pointing that fact out, as the updated commentary establishes that payments cannot be properly characterized as royalty payments if full ownership is transferred:

8.2 -- Where a payment is in consideration for the transfer of the full ownership of an element of property referred to in the definition, the payment is not in consideration "for the use of, or the right to use" that property and cannot therefore represent a royalty.

3. Paragraph 7 of both the 1977 and the 2003 Commentary cite a single example with facts similar to the case at bar:

... the beneficial owner of royalties arising in a Contracting State is a company resident in the other Contracting State; all or part of its capital is held by shareholders resident outside that other State; its practice is not to distribute its profits in the form of dividends; and it enjoys preferential taxation treatment (private investment company, base company). ...

The Commentary then poses the question as to whether it is justifiable to extend the Article's tax exemptions to the party who is the source of the royalties and then recommends that countries may want to agree to special exemptions when negotiating that take into account the situation described.

4. In discussing the denial of the tax benefits to conduit companies in Articles 10 to 12 and what traits a conduit might have, the Conduit Report states at paragraph 14(b):

The provisions would, however, apply also to other cases where a person enters into contracts or takes over obligations under which he has similar functions to those of a nominee or agent. Thus a conduit company can normally not be regarded as the beneficial owner if, though the formal owner of certain assets, it has very narrow powers which render it a mere fiduciary or an administrator acting on account of the interested parties (most likely the shareholders of the conduit company).

[24] In *Prévost*, the Federal Court of Appeal specifically affirmed the following statement by Chief Justice Rip:

[100] ... When corporate entities are concerned, one does not pierce the corporate veil unless the corporation is a conduit for another person and has absolutely no discretion as to the use or application of funds put through it as conduit, or has agreed to act on someone else's behalf pursuant to that person's instructions without any right to do other than what that person instructs it, for example, a stockbroker who is the registered owner of the shares it holds for clients.

(emphasis added)

After affirming the above paragraph, the Federal Court of Appeal went on to assert:

[15] ... The Crown, it seems to me, is asking the Court to adopt a pejorative view of holding companies which neither Canadian domestic law, the international community nor the Canadian government through the process of objection, have adopted.

The Federal Court of Appeal's statement is also supported by the Committee on Fiscal Affairs' warnings of the dangers of readily looking through corporations which is "incompatible with the principle of the legal status of corporate bodies, as recognized in the legal systems of all OECD Member countries...". At paragraph 24(i) of the Conduit Report.

Prévost v. R.

[25] The issue in this particular case comes down to the application of the "beneficial ownership test". The Appellant and the Respondent are in agreement that the test to be applied is the "beneficial ownership test" and it comes from *Prévost v. R.*, supra, upheld by the Federal Court of Appeal. That case turned upon the interpretation of the term "beneficial owner" found in Article 10 of the Treaty. Similar to that Article is Article 12 which requires the recipient of the payments in question to be a resident of the other contracting state and a "beneficial owner" of the royalty payments for the benefits of the Article apply. The Federal Court of Appeal expressly accepted Chief Justice Rip's formulation in *Prévost* of the phrase's definition, going so far as to say it

... captured the essence of the concepts as it emerges from the review of the general, technical and legal meanings of the terms ...

and emphasized that this formulation also accords with what is stated in the OECD Commentaries and in the Conduit Report. The Federal Court of Appeal repeatedly referred to paragraph [100] of Chief Justice Rip's decision in *Prévost*, quoting the following:

[100] In my view the "beneficial owner" of dividends is the person who receives the dividends for his or her own use and enjoyment and assumes the risk and control of the dividend he or she received. The person who is beneficial owner of the dividend is the person who enjoys and assumes all the attributes of ownership. In short the dividend is for the owner's own benefit and this person is not accountable to anyone for how he or she deals with the dividend income. ... Where an agency or mandate exists or the property is in the name of a nominee, one looks to find on whose behalf the agent or mandatory is acting or for whom the nominee has lent his or her name. When corporate entities are concerned, one does not pierce the corporate veil unless the corporation is a conduit for another person and has absolutely no discretion as to the use or application of funds put through it as conduit, or has agreed to act on someone else's behalf pursuant to that person's instructions without any right to do other than what that person instructs it, for example, a stockbroker who is the registered owner of the shares it

holds for clients. This is not the relationship between PHB.V. and its shareholders. (emphasis added)

[26] Also, I would note the comments of Chief Justice Rip in *Prévost* at paragraph [98] thereof wherein he stated:

[98] In common law, a trustee, for example, holds property for the benefit of someone else. The trustee is the legal owner but does not personally enjoy the attributes of ownership, possession, use, risk and control. The trustee is holding the property for someone else and that, ultimately, it is that someone else who has the use, risk and control of the property. Also, in common law, one person may have a life interest in property and another may have a remainder interest in the same property. The owner of the life interest receives income from the property and owns the income; the owner of the remainder interest owns the capital of the property. There is no division of property in common law as there is in civil law. The word "beneficial" distinguishes the real or economic owner of the property from the owner who is merely a legal owner, owning the property for someone else's benefit, i.e., the beneficial owner.

Beneficial Ownership:

[27] As affirmed by the Federal Court of Appeal in *Prévost, supra*, when asserting who is the beneficial owner of the items being considered (e.g. a payment of dividends or royalties), one must determine who has received the payments for his/her own use and enjoyment and assumed the risk and control of the payment he/she received. Here the focus is on the attributes of ownership of the payment/item to be considered.

[28] In the scenario such as the one before the Court, where it must be considered whether the recipient can be considered a conduit, one must take a close look at where the right to use and the enjoyment and assumption of risk and control of the payments lie. VHBV signed agreements that it would make payments to VIBV equal to a certain percentage of the net sales within 30 days of receiving payments from VCI. The respondent argues that this case can be distinguished from *Prévost* because of VHBV's contractual obligation to make payments to VIBV within a specified timeframe. In *Prévost*, the Court found that there was no automatic or pre-determined flow of funds, and emphasized that the corporation resident in the Netherlands was not a party to the shareholders' agreement. Upon evaluating the facts in relation to the use and application by VHBV of the funds received from VCI it is also clear that despite a contractual obligation to make payments to VIBV, there was no automatic flow of funds in this case.

[29] From *Prévost*, there are really four elements in considering the attribution of beneficial ownership and those are: (a) possession; (b) use; (c) risk; and (d) control. The question therefore is, did VHBV have possession, use, risk and control of the royalties from VCI, considering, (a) the License Agreement; (b) the Assignment Agreement; (c) the New License Agreement; (d) the new Assignment Agreement; (e) the flow of funds; and (f) the financial statements and bank statements of VHBV. These are the key instruments or documents that one must look to determine who has the possession, use, risk and control of the royalties in question. Also, it is important to emphasize that, as Chief Justice Rip in *Prévost* noted, the Court is not likely to pierce the corporate veil unless the corporation has no discretion with regard to the use and application of the funds. The Court will look at whether the party in question exercised or held the attributes of beneficial ownership in regards to the royalty payments.

[30] The Appellant presented detailed evidence to the Court outlining the flow of royalty payments from VCI to VHBV, the use of these funds by VHBV, and VHBV's subsequent payments to VIBV of the amounts owed under the assignment agreements. The Appellant presented Peter Pelletier, a corporate officer for Velcro Companies as a witness for the Appellant. I found him to be quite credible, and particularly helpful. At the time of his testimony, Mr. Pelletier was the treasurer and chief financial officer for the Velcro Group Corp., which is responsible for consolidating the financial reporting of all Velcro companies and then providing this information to Velcro Industries N.V. (VINV), a publicly traded corporation during the time period in issue. Mr. Pelletier had extensive and detailed knowledge of the Velcro Companies drawn from his various positions with the companies over the years, and he had an intricate role in the corporate reorganization of the Velcro Companies in 1995. He was direct and frank in giving his detailed evidence. Mr. Pelletier's demeanor, manner of presentation, and depth of knowledge all gave a strong indication of his intricate involvement in the finances of the Velcro Companies. He gave his evidence in both direct and cross-examination in a calm, knowledgeable and effective fashion. Mr. Pelletier answered all questions directly giving detailed explanations where required. He did not attempt to avoid answering questions or couch his answers in a manner that would leave one dubious. He was honest and forthright in his evidence, and I found him to be a person of veracity and credible.

[31] Mr. Pelletier explained that VIBV is the holder of all intellectual property rights for the Velcro brands and incurs the research and development expenses in the development of new products and applications. He described the license

agreement between VIBV and VCI as similar to many of the licensing agreements that VIBV had with manufacturing and sales entities in other countries. Mr. Pelletier described the purpose of VIBV's assignment of the licensing agreement to VHBV as being to transfer the management of licensing royalty streams to VHBV. While VIBV remained the owner of the intellectual property, VHBV assumed VCI's rights and obligations under the licensing agreement. VIBV, however, maintained the right to enforce VCI's contractual obligations if VHBV failed to do so.

[32] Amaco Management Services B.V. ("Amaco"), an arm's length corporation, conducted in large part the management of VHBV, including financial services. Mr. Pelletier explained that VHBV's board of directors met as needed, with no scheduled meetings and no meeting minutes maintained. All resolutions were by unanimous consent. He summarized VHBV's three main activities as a) holding shares in subsidiaries, b) providing lending services to subsidiaries, and c) managing royalty streams, with the royalties being the largest income and expense items. VHBV's tax returns, prepared and filed in Amsterdam, supported Mr. Pelletier's description of VHBV's activities, listing, amongst other items, investments in subsidiary companies, loans due from subsidiaries, interest income from loans to subsidiaries, and royalty and dividends from subsidiaries.

[33] Mr. Pelletier described the flow and utilization of the royalty payments during the years at issue before the Court, with VHBV's bank records supporting his testimony. From 1996 to 2004, VHBV received royalty payments in Canadian currency from VCI equal to the percentage of net sales under the licensing agreement, minus the 10% tax withheld and remitted by VCI until 1999, as required under the Convention. Upon receipt, these royalty payments were intermingled into VHBV's other accounts and used for a variety of VHBV's purposes, at VHBV's sole discretion. The funds were not segregated and then paid directly to VIBV; rather, the royalties were transferred into various other accounts under different currencies, and those accounts were used to fund VHBV's general activities, including investment loans, operational expenses, and professional fees. When VHBV made its payments due under the assignment agreement, they were neither automatic nor from a segregated account kept solely for the royalty funds. VHBV reached into the accounts where the royalty payments had intermingled with other funds and been used for general VHBV purposes, and transferred from those accounts the amounts due, minus the percentage withheld as approved by the Dutch tax authorities for transfer pricing purposes.

[34] In looking at the beneficial ownership issue one must apply the test as set out by Chief Justice Rip, and in doing so, one must look to the meaning of individual words, that is, “possession”, “use”, “risk” and “control”. These words have ordinary meanings.

[35] When one looks to the word “possession” in *Black’s Law Dictionary*, it speaks in terms of “having or holding property in one’s power” or “the exercise of dominion over property”. How did VHBV exercise dominion over the royalties received from VCI? There are a number of ways that VHBV exercised dominion over the royalties:

1. Through the interaction between the license agreements and the assignment agreements, VHBV had the right to receive the royalties.
2. The royalties were deposited into an account, in Canadian funds, owned by VHBV.
3. VHBV had exclusive possession and control over these accounts.
4. The royalties themselves were not subrogated from other monies of VHBV. The royalties were intermingled and moved with other monies flowing in and out of VHBV accounts.
5. The amounts typically went from Canadian dollars into U.S. dollar accounts and were sometimes converted the next day or later at some other time.
6. VHBV converted the money eventually and moved it into the U.S. account.
7. When the money was in VHBV accounts, the monies earned interest which was earned to the credit of VHBV and not someone else or some other entity.
8. Various charges were deducted from VHBV’s accounts and these are items which VHBV was liable for, including telephone bills, professional fees, and loan payments. These payments came out of the accounts of VHBV.
9. Sometimes the money went into a U.S. deposit account and at other times, into a Dutch currency account and it appears that there was really an unrestricted flow of funds from and between the accounts.
11. VHBV did not have to seek instructions on every step of the application of the funds from someone else.
12. There was co-mingling of the funds with the general funds of VHBV.
13. The royalty payment received by VHBV from VCI was one amount, while the amount paid by VHBV to VIBV was a different amount. The royalties did not simply go in and come out in an automated fashion.

[36] The term “use” in *Black’s Law Dictionary* makes reference to the application or employment of something: “a long continued possession or employment of a thing for which it is adapted”.

[37] Did VHBV “use” the royalties in the ordinary sense? Did it apply the royalty payments to its own benefit? Reference may be made to the facts referred to in paragraph [35] in discussing the issue of possession. The cash flow statements introduced by the Appellant during the course of trial show that the royalties were co-mingled with other monies and used to do a variety of things:

- (a) pay bills and fees;
- (b) re-pay loans;
- (c) earn interest income for the benefit of VHBV;
- (d) invest in new enterprises;
- (e) make payments under legal obligations.

[38] Nothing in the License Agreement, New License Agreement, Assignment Agreement or New Assignment Agreement prevents VHBV from using the royalties – they were not segregated in any way, they were co-mingled with other funds and they were used on an operational basis as VHBV saw fit. There were no restrictions on the use of the funds – VHBV only had to meet certain contractual obligations with respect to monies it contractually owed to VIBV.

[39] In *Black’s Law Dictionary*, “risk” refers to “the chance of injury, damage or loss” or “liability for injury, damage or loss that occurs”. Reference here would be to economic loss.

[40] VHBV did assume some risk in relation to the royalties. There was currency risk in that the monies were received by VHBV in Canadian funds, converted eventually to U.S. funds or Dutch funds. Nothing in any of the agreements referred to shifting any currency risk to anyone else from VHBV. The royalties were the assets of VHBV. They were available to creditors and were shown as such on their financial statements. VHBV reported these funds as assets on their financial statements and therefore were at risk of seizure or availability to creditors, with no priority given to VIBV as a creditor. There was also no indemnification in any of the agreements to reduce the risks and exposure of VHBV.

[41] Finally reference can be made to “control” and the definition of control as found in the *Black’s Law Dictionary* is “to exercise power or influence over”.

[42] Many of the comments referred to in the interpretation of the phrases “possession”, “use” and “risk”, equally apply to “control”. It was noted that the royalties did not just flow through VHBV but, at the discretion of VHBV, the

payments were co-mingled with other funds of VHBV and were subject to the risk of creditors the same as its other assets. VHBV exercised its control, subjecting the funds to increases or decreases by virtue of earning interest or losing value because of the risk of currency exchange and using the funds, in part, to pay other outstanding obligations of VHBV.

[43] The Respondent asserts that VHBV is not the beneficial owner of the royalties, and make reference to the incidences of beneficial ownership. They refer to the use and enjoyment of the royalties, but it is not 100% of the royalties amount that are paid to VIBV but only approximately 90%. The other 10% is subject to the discretionary use, enjoyment, and control of VHBV, assuming it is using the exact same funds, which is not necessarily the case because of the co-mingling of royalty funds with the general funds of VHBV. VHBV also uses, enjoys, and controls funds through currency exchanges and possible investment of some of the royalty payments. Also, VHBV assumes the risk of the royalty payments and certainly the control as is indicated by (a) the co-mingling of the funds with its other assets; (b) being subject to fluctuating currency rates; and (c) the fact that VHBV can invest the funds and earn interest income, and use some of the funds if not all of the funds, to meet its other financial obligations; these facts are all attributes of risk assumption.

[44] VHBV did have an obligation to pay a certain amount of money to VIBV which was equivalent to 90% of the royalties received. The funds paid were not necessarily the same funds as the royalty payments received because the original payments were co-mingled with other assets of VHBV. The funds paid to VIBV were not necessarily in the same dollar because if the funds were converted from Canadian dollars to U.S. dollars or to Dutch currency, it may have been a different amount because of the currency exchange.

[45] Despite the Respondent's assertion to the contrary, there was no pre-determined flow of funds. What there is is a contractual obligation by VHBV to pay to VIBV a certain amount of monies within a specified time frame. These monies are not necessarily identified as specific monies, they may be identified as a percentage of a certain amount received by VHBV from VCI, but there is no automated flow of specific monies because of the discretion of VHBV with respect to the use of these monies.

[46] The Respondent asserts that VHBV was a mere agent for VIBV and refers to *Roberge Transport Inc. v. R.*, 2010 TCC 155. At paragraph [53], the definition of agency was provided by the Court as follows:

[53] The following definition of agency, by Gerald Fridman, has been quoted and applied in a number of Canadian cases:

Agency is the relationship that exists between two persons when one, called the agent, is considered in law to represent the other, called the principal, in such a way as to be able to affect the principal's legal position by the making of contracts or the disposition of property.

[47] In other words, if you do not have the ability to affect the legal position, then the agency enquiry ends. This is the same interpretation that was given to the phrase “agency” in *Merchant Law Group v. R.*, 2010 FCA 206 when the Federal Court of Appeal stated:

[17] It is settled at common law that for an agency relationship to exist the agent must be able to affect the principal's legal position with third parties by entering into contracts on the principal's behalf or by disposing of the principal's property ... *and Reynolds on Agency*, 17th ed. (London: Sweet & Maxwell, 2001) at paragraph 1-001. In the words of Professor Fridman, citing *Royal Securities Corp. Ltd. v. Montreal Trust Co.*, [1967] 1 O.R. 137 at 155 (H.C.J.) aff'd [1967] 2 O.R. 200 (C.A.), "the law of agency will apply only when the acts of one person on behalf of another make a difference to that other's legal position, that is to say, his or her rights against, and liabilities towards, others. The grant of the right to exercise another person's legal powers, thereby potentially affecting the grantor's legal position, is an essential feature of agency."

...

[22] This Court has previously recognized that an essential quality of agency is whether the putative agent has the capacity to affect the legal position of the principal. Thus, in *Glengarry Bingo*, once the Court determined that the putative agent did not have the capacity to affect the legal position of its alleged principal, the Court found it unnecessary to address any of the other factors indicative of an agency relationship. The absence of the ability to affect the legal position of the alleged principal conclusively determined that there was no agency relationship. See: *Glengarry Bingo* at paragraph 32. The Court then went on to explain, at paragraph 33, that:

The most common example of how an agent might affect the legal position of its principal is by entering a contract on the principal's behalf. It is clear here that GBA was not authorized to enter contracts with third parties on behalf of the members. For instance, GBA could not have entered into a contract for purchase of bingo equipment on behalf of its Members. It was only empowered to bind itself. In the contract of purchase, GBA bound itself; it did not purport to act for its Members nor did it expose them to risk. The

fact that the Members were insulated from risk is demonstrated by the reaction of ABS when GBA was in arrears on its equipment payments: ABS made no attempt to seek compensation from the Members and the Members did not entertain the idea that they might be liable. These events illustrate that GBA could not effect the legal position of its Members, which demonstrates that an essential element of agency was not present. [Emphasis added.]

[23] Other cases have considered the importance of the ability of an agent to affect the legal position of the principal and the assumption of risk by the principal, and reach the same conclusion. See, for example, *Kinguk Trawl Inc. v. Canada* (2003), 301 N.R. 89 (F.C.A.) at paragraphs 35-36, *Parkland Crane Service Ltd. v. Canada*, [1994] G.S.T.C. 58 (T.C.C.) at pages 58-10, 58-11, and *Shvartsman v. Canada*, [2002] T.C.J. No. 148 at paragraph 12.

[48] VHBV did not have the capacity to affect the legal position of VIBV and therefore was not a legal agent. In the Assignment Agreements there was a provision that VHBV could not amend the subject agreement or waive the enforcement of any provision without the express prior written consent of VIBV and further, there was no amendment or waiver of the agreement or any provision thereof to be affected unless it was assigned by the party against whom the enforcement of such an amendment or waiver was sought. Further, VHBV could not assign the agreements without the prior written consent of VIBV. If you are going to be able to affect the legal position you should be able to assign or amend and VHBV could do neither.

[49] Notwithstanding that VHBV was obligated to enforce the licensing agreements and notify VIBV of any breaches and take steps to remedy the breach unless directed otherwise by VIBV, and notwithstanding that VIBV had the right to inspect and audit VHBV's books and that VHBV was contractually required under the assignment and license agreements to take such action as VIBV may reasonably request to secure and protect the rights of VIBV, the key to an agency relationship is that the agent has the ability to affect the legal position of the other. This is not the case with respect to VIBV in relation to VHBV.

[50] In terms of nominee, *Black's Law Dictionary* refers to a "nominee" as "a person designated to act in place of another, usually in a limited way". There was no evidence presented to the Court that VHBV acted in a limited way on the facts. In fact, VHBV acted on its own account at all times subject to the assignment agreements.

[51] In terms of a conduit, the *Canadian Oxford Dictionary* defines “conduit” as “a channel or pipe that contains liquids”, “a person or organization ... through which anything is conveyed (the mediator was a conduit for communication for the parties)”. There is nothing in the agreements to suggest that VHBV was a mere channel. The financial statements fail to show that VHBV is a mere agent, nominee or conduit – quite the contrary. For the Court to find that VHBV was a conduit, there would have to have been no discretion with respect to the funds.

[52] VHBV obviously has some discretion based on the facts as noted above regarding the use and application of the royalty funds. It is quite obvious that though there might be limited discretion, VHBV does have discretion. According to *Prévost*, there must be “absolutely no discretion” – that is not the case on the facts before the Court. It is only when there is “absolutely no discretion” that the Court take the draconian step of piercing the corporate veil.

[53] The Respondent also argues that because VIBV was an express third party beneficiary to the assignment agreement, VHBV’s right to receive the royalty payments was not absolute. The assignment agreements state that VIBV is entitled to exercise the rights of VHBV and enforce the obligations of the VCI under the license agreements and to enforce such rights at its sole discretion. When the effect of this clause is walked through step by step, one can see that the use and enjoyment and the assumption of risk and control of the funds continued to lie with VHBV. For example, in the event that VCI missed a payment and VHBV did not immediately act to enforce VCI’s obligations to pay, VIBV could exercise their rights under the assignment agreements and take VCI to court to enforce its obligation to pay. Nevertheless, VCI’s obligation is to VHBV under the license agreements. If the court calls for the enforcement of VCI’s obligations to pay, the payment would go to VHBV. VIBV could then sue VHBV for payment under the assignment agreements (if such a payment had not been made by VHBV as a consequence) but it would be for payment of the amount owed with VHBV maintaining the discretion as to the source, from its general accounts, of the payments. VIBV has no legal control over the right to specific funds paid by VCI to VHBV. In fact, this scenario is analogous to the facts in *Prévost* and like in *Prévost* where such an agreement (in that case a shareholders’ agreement) does not automatically pass on the dividends or royalties to the contracting party, without any discretion on the part of VHBV (or *Prévost* in that case), it cannot be said to shift the beneficial ownership of the payment over to the third party.

[54] In considering several cases cited since the Federal Court of Appeal in *Prévost*, the only case that engages in a significant discussion of beneficial

ownership is *Alberta Power (2000) Ltd. v. Canada*, 2009 TCC 412. I am loathe to quote myself, but I believe that the following comments in *Alberta Power (2000) Ltd.* show the difference in the Respondent's and the Appellant's perspectives:

[63] In *Matchwood Investments Ltd. v. R.*, 1998 CarswellNat 1486, [1998] 4 C.T.C. 2492, a case regarding a taxpayer who took a mortgage in order to claim a capital gains reserve but was subsequently found not to have obtained beneficial ownership of the property until the deed was registered, McArthur J. of this Court stated the following regarding was (*sic*) is a "beneficial owner":

10 The Minister submits that the Appellant who was the mortgagee in possession in 1994 did not obtain beneficial ownership of the property until the execution and registration of the Quit Claim Deed to him in April 1995. In paragraph 12 of the Reply to the Notice of Appeal the Respondent uses the word "interest" rather than "ownership" as provided for in the Act. These reasons may be different if the word "interest" was correct. In this regard I refer to the definition of "beneficial interest" in the *Mozley and Whiteleys Law Dictionary* and to the *Dictionary of Canadian Law*, *Carswell Second Edition*. I will deal with the words "beneficial ownership". While the Appellant re-acquired possession of the property in 1994 it did not obtain title or ownership until 1995 when it was granted a Quit Claim Deed. It is unfortunate this Deed was not available to be placed in evidence. While it is agreed that it was registered in 1995 there was no evidence as to when it was executed, although it would appear that it was also executed in 1995. The *Dictionary of Canadian Law*, *Second Edition* defines "beneficial owner" in part:

... the real owner of the property even though it is in someone else's name they quote *Csak vs. Aumon* (1990) 69 DLR at 567 and at 570 Lane J. stated: 'A person who has the right to drill into a unit of minerals and produce therefrom oil and gas or potash ...'

[55] Similar to the Respondent in *Matchwood Investments*, it appears the Respondent in the case at bar is also taking the position that VIBV's interest (as an express third party beneficiary) is synonymous with beneficial ownership. This is not the case. The person who is the beneficial owner is the person who enjoys and assumes all the attributes of ownership. Only if the interest in the item in question gives that party the right to control the item without question (e.g. they are not accountable to anyone for how he or she deals with the item) will it meet the threshold set in *Prévost*. In *Matchwood*, the Court found that the taxpayer did not have such rights until the deed was registered; likewise, VIBV is not a party to the license agreements (having fully assigned it, along with its rights and obligations,

to VHBV). It no longer has such rights and thus does not have an interest that amounts to beneficial ownership.

[56] I realize that I have been repetitious in reviewing some of the facts of this case, but I felt that was necessary to indicate how the facts relate to the incidences of beneficial ownership as discussed by Chief Justice Rip in *Prévost*.

[57] For the reasons given above I believe that the beneficial ownership of the royalties rests in VHBV and not in VIBV and as such, the appeal is allowed and the matter is referred back to the Minister of National Revenue for reconsideration and reassessment on that basis and further, the 1995 assessment dated October 25, 1996 is referred back to the Minister for reconsideration and recalculation on the basis that VIBV was a resident of the Netherlands in 1995 and therefore entitled to the benefit of that treaty.

[58] The parties may speak to or make written submissions on costs within 30 days of the date of this Judgment.

Signed at Ottawa, Canada, this 24th day of February, 2012.

“E.P. Rossiter”

Rossiter A.C.J.

CITATION: 2012TCC57
COURT FILE NO.: 2007-1806(IT)G
STYLE OF CAUSE: VELCRO CANADA INC. v. HER
MAJESTY THE QUEEN
PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: May 17, 2011
REASONS FOR JUDGMENT BY: Associate Chief Justice E.P. Rossiter
DATE OF JUDGMENT: February 24, 2012

APPEARANCES:

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Counsel for the Respondent: Margaret Nott and Amit Ummat

COUNSEL OF RECORD:

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For the Respondent: Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Canada

APPENDIX A

LICENSE AGREEMENT

THIS AGREEMENT made as of the first day of October 1987, by and between VELCRO INDUSTRIES B.V., a limited liability company organized under the laws of the Kingdom of the Netherlands (hereafter the "Licensor") and VELCRO CANADA LTD., a limited liability company organized under the laws of Canada (hereafter the "Licensee"),

WITNESSETH:

WHEREAS Licensor owns certain patents, trademarks, trade secrets, copyrights and other proprietary properties the use of which it wishes to license to Licensee under the terms and conditions of this Agreement;

WHEREAS Licensee wishes to obtain such a license pursuant to such terms and conditions; and

WHEREAS Licensor and Licensee are parties to one or more license agreements and both parties desire to enter into a new license agreement to supersede any and all such earlier agreements;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

f. Definitions

A. "Confidential Information" shall mean all data or information (and any tangible evidence, record or representation thereof), whether prepared, conceived or developed by or for any one or more of the "Velcro Companies" (as hereafter defined) or received by any one or more of the Velcro Companies from an outside source, which is not generally known outside of the Velcro Companies and which is maintained in confidence by the Velcro Companies. Without limiting the generality of the foregoing, Confidential Information shall include

(1) any idea, improvement, invention, innovation, development, technical data, design, formula, device, pattern, concept, computer program, model, diagram, equipment, tool, training or service manual, product specification, plan for a new or revised product or service, compilation of information or work in process, and any and all revisions and improvements relating to any of the foregoing (in each case whether or not reduced to tangible form); and

(2) the name of any customer, employee, prospective customer or consultant; any sales or marketing material, plan or survey; any business plan or opportunity; any product or development plan or specification; any business proposal, financial record, or business record; and all other non-public records and information relating to the present or proposed business of any one or more of the Velcro Companies.

Notwithstanding the foregoing, the term "Confidential Information" shall not apply to information which the Velcro Companies have voluntarily disclosed to the public without restriction, or which has otherwise lawfully entered the public domain.

B. "Established Technology" shall mean all patents, trade secrets, copyrights, Confidential Information, know-how, and other forms of intellectual or industrial property owned by or licensed to Licensor in the "Manufacturing Territory" (as hereafter defined) or elsewhere, excepting those that constitute "New Technology" (as hereafter defined).

C. "Net Sales" shall mean bona fide amounts invoiced by Licensee, before deduction of sales taxes, commissions, or discounts, regardless of whether such amounts are actually collected by Licensee. Any and all intra-company sales and sales between Licensee and its subsidiaries and affiliates shall, for purposes of this definition, be included as part of "Gross Sales" at not less than the amounts invoiced in arm's length transactions for sales of "Licensed Products" (as hereafter defined) having comparable specifications, qualities and quantities.

D. "Licensed Products" shall mean all products that embody or are made through the use of "Licensed Technology" and all products that are sold under or in connection with "Licensed Trademarks" (both as hereafter defined).

E. "Licensed Technology" shall mean all "Established Technology" and all "New Technology". Upon the expiration of any patent or the determination by a court or other competent authority that a patent is invalid or unenforceable, such patent shall cease to be "Licensed Technology," "Established Technology" or "New Technology" for purposes of this Agreement.

F. "Licensed Trademarks" shall mean all trademarks, service marks, trade names and other indicia of origin registered to Licensor or Licensee in any one or more jurisdictions within the Sales Territory or used by Licensor or Licensee in connection with any product that embodies or is made using Licensed Technology or any business related to Licensed Technology.

G. "Manufacturing Territory" shall mean the countries in which Licensee is listed as Manufacturer on the attached Schedule A, as such Schedule may be amended from time to time by the parties.

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H. "New Technology" shall mean all patents, trade secrets, confidential information, know-how, and other forms of intellectual or industrial property owned by or licensed to Licensor in the Manufacturing Territory or elsewhere which relate to any product, device or process identified on the attached Schedule B. Schedule B may be amended from time to time by agreement of the parties to reflect further developments of New Technology.

I. "New Technology Products" shall mean all Licensed Products that embody or that are made using any part of the New Technology. Where a Licensed Product partially embodies, or is made or sold in part with, both Established Technology and New Technology, it shall be considered a New Technology Product.

J. "New Trademarks" shall mean all Licensed Trademarks that are first used by or first registered to Licensee.

K. "Sales Territory" shall mean the countries in which Licensee is listed as a Product Supplier, Product Importer or Product Distributor on the attached Schedule A, as such Schedule may be amended from time to time by the parties.

L. "Velcro Companies" shall mean Velcro Industries N.V. and all of its subsidiaries and affiliates.

II. Licenses

A. During the term of this Agreement, and subject to all the terms and conditions stated herein, Licensor hereby grants Licensee:

1. The exclusive right to manufacture Licensed Products in the Manufacturing Territory;
2. The right to sell Licensed Products to Licensor's authorized importer or importers (if any) or, if there are no such importers, directly to end users, in each country (if any) in which Licensee is listed as a Product Supplier on Schedule A, as such Schedule may be amended from time to time by the parties;
3. The right to import and resell Licensed Products to Licensor's authorized distributor or distributors (if any) or, if there are no such distributors, directly to end users, in each country (if any) in which Licensee is listed as a Product Importer on Schedule A, as such Schedule may be amended from time to time by the parties; and
4. The right to distribute and sell Licensed Products in each country (if any) in which Licensee is listed as a Product Distributor on Schedule A, as such Schedule may be amended from time to time by the parties.

B. Licensee's rights pursuant to Section II.A.1-4 shall be exclusive or nonexclusive as indicated on Schedule A hereto, as such Schedule may be amended from time to time by the parties and subject to any exclusive rights that have been granted to any other entity by Licensor.

C. This Agreement does not grant to Licensee any right to use the Licensed Technology for the purpose of research or development.

III. Term

A. This Agreement shall commence on the date first written above and shall extend for five years thereafter. The Agreement shall be automatically renewed for additional five year terms thereafter unless:

- 1. Licensee ceases to be a wholly-owned subsidiary of, or under common ownership with, the Licensor;
- 2. Either party gives the other party written notice of termination 30 days prior to the expiration of the then-current term of this Agreement;
- 3. The parties agree in writing to terminate the Agreement; or
- 4. This Agreement is terminated pursuant to Section X

B. Immediately upon termination or expiration of this Agreement for any reason:

- 1. All rights and licenses granted hereunder shall cease;
- 2. Licensee shall cease any and all exercise of the rights and licenses granted hereunder;
- 3. Licensee shall make available to Licensor, upon Licensor's request, all records, files and memoranda relating to the manufacture, sale and distribution of the Licensed Products;
- 4. Licensor may cancel any registration of the license granted hereunder and any registration of Licensee as a Registered User made pursuant to Section V.B. hereof, and shall have the full cooperation of Licensee in effecting such cancellations; and
- 5. Licensee shall offer to sell to Licensor at appraised fair market value (i) all machinery and equipment then in the possession of Licensee which is covered by any existing patent, trade secret or other proprietary information of Licensor, including without limitation looms, cutting machines and extrusion equipment; and (ii) all or any part of Licensee's inventories of

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Licensed Products and raw materials used in the production of Licensed Products. Licensor may purchase at such appraised fair market value any portion or all of the items described above, in Licensor's sole and absolute discretion. For the purpose of this paragraph, "appraised fair market value" means fair market value as determined by an independent appraiser or appraisers mutually acceptable to Licensor and Licensee, or, if the parties cannot so agree, as settled by final and binding arbitration in accordance with the provisions of Section XII F. hereof.

C. The provisions of this Agreement regarding the ownership and protection of Licensed Technology and Confidential Information shall survive any non-renewal, expiration or termination of this Agreement, regardless of the cause, reason or circumstances of such non-renewal, expiration or termination.

IV. Royalties

A. Amount of Royalties Owed

1. In exchange for the technology and/or trademark licenses granted hereunder, Licensee shall pay to Licensor the following royalties:

(a) a royalty at the royalty rate set forth in Schedule C, Part I on Licensee's Net Sales of all Licensed Products excepting New Technology Products; and

(b) a royalty at the royalty rate set forth in Schedule C, Part II on Licensee's Net Sales of all New Technology Products.

2. All taxes, tariffs, duties or imposts imposed by any government or political subdivision upon Licensee or upon the payment of royalties hereunder shall be borne exclusively by Licensee and shall not be deducted from the payments made to Licensor hereunder. To the extent that any such deduction may be required by the law of any jurisdiction, the royalty payable hereunder shall be increased by an amount sufficient to pay for such deduction.

3. In addition to any payment required by Section IV.A.1. above, the Licensor and Licensee will undertake an annual review within ninety (90) days after the close of each year of this Agreement of the income, expenses and profits generated from the Licensee's use of Licensed Technology and, to the extent it is determined by the Licensor and the Licensee that the royalties provided in Section IV.A.1. are not "commensurate with the income attributable" to the Licensed Technology within the meaning of Section 482 of the U.S. Internal Revenue Code of 1985, as amended (the "Code") and in accordance with applicable regulations promulgated thereunder, additional payments of royalties will be made by the Licensee to the Licensor.

4. With respect to Licensee's sales of Licensed Products to any "executive agency" as that term is defined in 48 C.F.R. § 101, the amounts owing pursuant to Section IV.A.1. hereof shall be reduced to the same extent that such executive agency shall expressly determined such payments to be "unreasonable" within the meaning of the Federal Acquisition Regulations.

B. Time and Method of Payment

1. Licensee shall pay all royalties quarter-annually, within fifteen days following the end of each quarter of Licensee's fiscal year, or at such other times as the parties may from time to time agree.

2. All royalty payments shall be made in such currency and at such place as may be specified by Licensor from time to time.

3. Licensee shall keep true and accurate books of accounts showing all operations that are subject to this agreement. Licensor shall have the right to inspect, or to cause an accountant or other authorized agent or agents to inspect, Licensee's books and records to verify that Licensee has paid all royalties owing to Licensor.

F. Rights in Licensed Technology and Licensed Trademarks

A. All rights in the Licensed Technology and Licensed Trademarks, including without limitation patent, copyright, trademark rights, and trademark rights, shall at all times belong to Licensor. Licensee shall not under any circumstances assert rights in the Licensed Technology or Licensed Trademarks, or in any part thereof, nor shall Licensee take any action that could in any way diminish, alter or affect adversely Licensor's rights in the Licensed Technology and Licensed Trademarks.

B. Licensee shall cooperate in the execution of any documents, and the taking of any other action, that Licensor reasonably requests to create, record or perfect Licensor's sole and exclusive ownership of the Licensed Technology and Licensed Trademarks, including without limitation to the foregoing: execution and filing of appropriate documents to qualify Licensee as a Registered User in any jurisdictions in which such qualification is necessary or desirable; practice of invention and filing of documents in any jurisdictions in which working of patents is required or desirable; and taking any and all actions necessary to apply for or obtain patents, trademark registrations or copyright registrations. Licensee shall advise Licensor of any actions that Licensor has not taken but that would, in the judgment of Licensee, be necessary or advisable to create, record, or perfect, Licensor's rights in the Licensed Technology and Licensed Trademarks.

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C. Licensor shall have the sole and exclusive discretion with respect to, and shall bear all expenses related to, the prosecution of all applications, payment of all annuities, the filing of all extensions and renewals, and all other acts necessary to obtain, protect or maintain rights in the Licensed Technology and Licensed Trademarks during the term of this Agreement. Licensor shall reimburse Licensee for any such expense that may be reasonably incurred by Licensee.

VI. Protection of Licensed Technology and Licensed Trademarks

Licensee shall promptly advise Licensor of any misuse or infringement or possible infringement of the Licensed Technology or Licensed Trademarks of which Licensee becomes aware. Licensor shall decide in its sole and exclusive discretion what action to take or not to take in response to any such misuse or infringement, and Licensee shall take no action in response to any such misuse or infringement unless instructed to do by Licensor. Any action so taken by Licensee to protect the Licensed Technology or Licensed Trademarks shall be deemed taken on behalf of and for the benefit of Licensor. All expenses incurred in connection with any action taken to protect or enforce rights in the Licensed Technology or Licensed Trademarks shall be borne exclusively by Licensor. Licensor shall reimburse Licensee for any such expense that may be reasonably incurred by Licensee.

VII. Warranty, Disclaimer, Indemnification and Limitation of Liability

A. Licensor warrants that the Licensed Technology does not infringe the patent, copyright, trade secret, or other proprietary right of any other party.

B. LICENSOR DISCLAIMS ANY AND ALL WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN SECTION VII.A., INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND ANY AND ALL IMPLIED WARRANTIES.

C. Licensee shall promptly inform Licensor of any claim or threatened claim that any part of the Licensed Technology or any Licensed Trademark infringes any claimed right of any other party. Licensor shall have the right to defend or to settle, in its sole and exclusive discretion, any such claim or threatened claim. Licensor shall indemnify and hold Licensee harmless from and against any final, non-appealable award of damages that may be entered against Licensee in connection with any such claim, provided that: (a) Licensor is notified promptly in writing by Licensee of each notice and communication regarding such claim and is given the authority, information and assistance necessary or advisable to defend and respond to such claim, and (b) Licensor shall have the sole and exclusive control of the defense of any such claim and of all negotiations for its settlement or compromise.

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D. The provisions of Section VII state Licensor's sole, exclusive and entire liability to Licensee for any claim relating to the Licensee's use of the Licensed Technology or Licensed Trademarks, including without limitation claims of patent, copyright, trade secret, or other proprietary rights infringement. In no event shall Licensor be liable for special, indirect or consequential damages, even if Licensor has been advised of the possibility of the same. Licensor's liability hereunder with respect to any one claim shall not exceed Licensee's actual, out-of-pocket losses incurred in connection with such claim, and Licensor's cumulative liability hereunder shall not at any time exceed the cumulative amount that Licensee has paid to Licensor hereunder.

VIII. Confidential Information

A. Licensee acknowledges all Confidential Information is a valuable asset of Licensor, the value of which would be substantially diminished or destroyed by unauthorized disclosure.

B. Licensee shall not disclose any Confidential Information to vendors, customers, or other persons without the prior, written consent of Licensor.

C. Licensee shall enter into written confidentiality or nondisclosure agreements and, where appropriate, noncompetition agreements satisfactory to Licensor with Licensee's employees, with vendors to Licensee, and with anyone else to whom Confidential Information is or may be disclosed. Such agreements shall be in a form satisfactory to Licensor.

D. Licensee shall take all other actions reasonably necessary or advisable to protect and maintain Licensor's rights in all Confidential Information. These actions shall include, without limitation:

1. Establishment and maintenance of security procedures at all of Licensee's locations at which Confidential Information is kept or used;

2. Informing Licensee's employees that confidential Information is confidential, proprietary and secret;

3. Informing Licensee's employees on a periodic basis of the importance of maintaining the secrecy of all Confidential Information; and

4. Such other actions as Licensor may reasonably request to maintain the secrecy of all Confidential Information.

IX. Obligations Regarding Licensed Trademarks

A. Licensee's use of the Licensed Trademarks shall at all times be in accordance with the standards for trademark usage that

are established from time to time by Licensor. These include, without limitation, the following:

1. Licensee shall use the Licensed Trademarks only in connection with products made using the Licensed Technology and such other products as may be approved by Licensor from time to time; and

2. All products manufactured, distributed or sold by Licensee under or in connection with the Licensed Trademarks shall meet or exceed the standards of quality established from time to time by Licensor.

B. Licensor may inspect Licensee's products and premises upon reasonable notice to ensure compliance with the foregoing requirements.

C. All New Trademarks shall be the property of Licensor. Any New Trademark that is first registered to or otherwise owned by Licensee, and all goodwill of the business associated with any such New Trademark, shall be, and hereby is, transferred and assigned to Licensor. Licensee agrees to execute any documents, and to take any other acts, reasonably requested by Licensor to effect such transfer and assignment and otherwise to create, record or perfect Licensor's rights in New Trademarks.

D. Licensor shall reimburse Licensee for Licensee's direct and indirect costs of the development of New Trademarks, including without limitation the costs and expenses, if any, incurred by Licensee in obtaining or maintaining the registration of any New Trademark in any jurisdiction.

X. Termination

A. This Agreement may be terminated by Licensor:

1. If Licensee defaults in any of its obligations hereunder;
2. If Licensor ceases to own 100% of Licensee's common stock; or
3. If Licensee becomes involved in voluntary or involuntary bankruptcy or similar proceedings.

B. Any termination under Section X shall be effective immediately upon Licensor's giving written notice thereof to Licensee.

XI. Assignment

A. Licensor may assign this Agreement, and its rights and obligations hereunder, at any time and, upon such assignment, Licensor shall provide notice to Licensee. Following any such

assignment, Licensor's assignee shall have all the rights and obligations of Licensor, including the right of assignment under this Section XI.A.

B. Licensee shall not assign this Agreement, or any part thereof, without the prior express written consent of Licensor.

II. General

A. This Agreement, together with all Schedules hereto, constitutes the entire agreement of the parties with respect to the subject matter, superseding all negotiations and prior agreements.

B. The failure of Licensor to enforce its rights or remedies under any part of this Agreement shall not waive its right to enforce the same part at a different time, or to enforce other parts of this Agreement.

C. If any provision of this Agreement is unenforceable, it shall be severed from the balance of the Agreement, which shall remain in full force and effect. To the extent that any provision of this Agreement may be deemed excessively broad in duration, scope or any other aspect, it shall be enforced to the maximum extent consistent with applicable law.

D. The Agreement shall be binding upon the parties and their respective successors and permitted assigns.

E. This Agreement may be executed in two or more counterparts, each of which shall be considered an original.

F. Any difference, dispute or claim that may arise under this Agreement shall be submitted to binding arbitration. Such arbitration shall be held in accordance with the UNCITRAL Arbitration Rules then in effect by three (3) arbitrators appointed in accordance with such rules. Such arbitration shall take place in the English language. The decision of such arbitration shall be binding on both parties, and a judgment on an award rendered may be entered in any court of competent jurisdiction.

G. Licensor and Licensee are independent contractors and are not, and shall not represent themselves as, principal and agent, partners or joint venturers.

IN WITNESS WHEREOF, the parties have through their duly authorized representatives placed their respective names and seals as of the date first written above:

(SEAL)

VELCRO INDUSTRIES B.V.

By: *[Signature]*
Derk A. J. Hooqenkamp

VELCRO CANADA LTD.

(SEAL)

By: *[Signature]*
Dir Shi Wang

Seen for legalization of the signature of Mr. D.A.J. Hooqenkamp, by me, Jan Alaid Edward Kohing, civil-law notary, officiating in Amsterdam.

Amsterdam, March 20, 1989.



SCHEDULE A

<u>Manufacturer</u>	<u>Product Supplier</u>	<u>Product Importer</u>	<u>Product Distributor</u>
Exclusive	No	Exclusive	Exclusive

Note: The signed v
of this agree
contained a
version of S.
See file with
original as
added USA-ROOM

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SCHEDULE B
NEW TECHNOLOGY

"New Technology" means technology (including patents, utility model patents and design patents granted subsequent to December 31, 1986, and technical information, trade secrets and Confidential Information) not commercially practiced by or licensed to Licensee prior to November 1, 1988 and which is not anticipated by technology licensed by Licensor to Licensee prior to November 1, 1988. Routine developments of technology licensed by Licensor to Licensee prior to November 1, 1988 shall not be regarded as New Technology even though they were not commercially practiced by or licensed to Licensee until after November 1, 1988.

SCHEDULE C

ROYALTY RATES

(Royalty rate for Established Technology Products: 5%

ii. Royalty rate for New Technology Products: 7 1/2%

SCHEDULE D

CANADA

<u>Trademark</u>	<u>Registration No.</u>
VELCRO	116367
VELCRO (Linked L & C)	113869
VELFOAM	231353
VELSTICK	187225
VELCOIN	188738
VELSTRAP	148602
VEL-SQUARE	236876
VELCRO WITH V DESIGN	254143
VELCRO WITH FLYING V DESIGN	30685
VELOK	236875
DESIGN OF HOOK & LOOP	175979
SOFT HARDWARE	186626
POP-IN	192742
POP-ON	238422
POP-MATE	192743
HI-GARDE	231556
EDGECLIP	265304
ORGANIZERS	238421
TOUCH 'N HOLD	259638
HI AIR	162429
TEXACRO	322321
DESIGN OF TWO FIGURES	323199

LICENSEE'S NOTARIZATION

I, _____, a Notary Public, certify:

On this ____ day of _____, 19____, before me personally appeared _____ to me known and known to me to be the person who signed the attached instrument as _____ of VELCRO CANADA LTD. a corporation duly organized and legally existing under the laws of _____, whose home office is located at _____

I further certify that said individual is duly authorized to sign the attached instrument in the name of said corporation and that the purposes for which said instrument are granted are within the scope of the objects or activities of said corporation.

Notary Public: _____

APPENDIX B

ASSIGNMENT, ASSUMPTION AND LICENSE AGREEMENT

This Assignment, Assumption and License Agreement effective October 27, 1995 between Velcro Industries B.V. ("VIBV"), a private limited liability company organized and existing under the laws of the Netherlands located at Castorweg 22-24, Curacao, Netherlands Antilles, and Velcro Holdings B.V. ("VHBV"), a Netherlands private limited liability company located at Hoekse roede 6, 1102 BR Amsterdam, The Netherlands.

WHEREAS, VIBV has entered into the agreement relating to the licensing of patents, technology, trade secrets, know-how and marks described hereto on Exhibit A (the "Subject Agreement");

WHEREAS, VIBV wishes to assign and delegate, and VHBV wishes to obtain and assume, certain rights and obligations under the Subject Agreement; and

WHEREAS, the parties wish to provide for the payment of royalties by VHBV to VIBV;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VIBV and VHBV hereby agree as follows:

1. *Assignment and License.* VIBV hereby assigns, sets over, transfers and conveys, and VHBV hereby accepts, the Subject Agreement and all rights of VIBV under the Subject Agreement, other than the rights retained by VIBV as set forth in Section 3 of this Agreement.

VIBV hereby grants to VHBV the right to grant sublicenses under the patents, technology, trade secrets, know-how and marks owned by VIBV and identified in the Subject Agreement, solely pursuant to the licenses set forth in the Subject Agreement.

2. *Assumption.* VIBV hereby delegates, and VHBV hereby assumes, all obligations and duties of VIBV under the Subject Agreement.

3. *Rights Retained by VIBV.* VIBV is and shall remain owner of all right, title and interest in and to all patents, patent applications, technology, trade secrets, know-how, marks, registrations of marks, applications for the registration of marks, goodwill and other proprietary rights licensed under this Agreement or the Subject Agreement. Nothing in this Agreement shall be construed to assign, set over, transfer or convey any right relating to the ownership of any of the foregoing to VHBV. Without limiting the generality of the foregoing, all rights in such marks and all rights under the Subject Agreement respecting such marks shall remain at all times the sole property of VIBV, and all use of such marks by VHBV or any party to the Subject Agreement shall inure to the benefit of VIBV. VHBV agrees to assist in application for such patents and registration of such marks in the name of VIBV in any country where VIBV may so request, in renewal and maintenance of such patents and such registrations and in such recording of VHBV or the third party to the Subject Agreement as a user as VIBV may request. Nothing in this Agreement shall be construed as granting VHBV a license under any other patent, technology, trade secret, know-how, mark or other proprietary right of VIBV or a license to grant licenses, other than pursuant to the Subject Agreement.

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4. *Enforcement of Obligations under Subject Agreement.* VHBV shall diligently observe all terms and conditions of the Subject Agreement. VHBV shall promptly inform VIBV of any breach or attempted breach of the terms and conditions of the Subject Agreement by any party thereto or the unauthorized disclosure by any party thereto of confidential information, and shall, unless directed otherwise by VIBV, take appropriate steps to remedy any such breach or unauthorized disclosure. Without limiting the generality of the foregoing, VHBV shall police the use of the patents, technology, trade secrets, know-how, and marks licensed under the Subject Agreement so as to maintain VIBV's high standards of quality in the goods or services in connection with which any of the foregoing proprietary rights are used, and VHBV shall enforce the obligations of any party to the Subject Agreement regarding the creation, recordation, securing, perfection or protection of the rights of VIBV under the Subject Agreement, including rights regarding assisting VIBV in registration of marks in the name of VIBV in any country where VIBV may so request, in renewal and maintenance of such registration and in such recording of such party as a user as VIBV may request. VHBV shall take such action as VIBV may direct in order to exercise any right to audit under the Subject Agreement or to take any action regarding the infringement or alleged infringement of the proprietary right of any third party by VHBV or any party to the Subject Agreement or the infringement by any third party of any proprietary right of VIBV.

5. *Third Party Beneficiary.* The parties hereby agree that VIBV is an express third party beneficiary of the provisions of the Subject Agreement assigned to VHBV and VIBV shall be entitled to exercise the rights of the licensor and enforce the obligations of the licensee under Subject Agreement. VIBV shall have the right to enforce such rights under the Subject Agreement on its own behalf in its sole discretion. VHBV shall provide VIBV with such assistance as VIBV requests in connection with the enforcement of any such rights.

6. *Royalties.* VHBV shall collect royalties from the third party licensee under the Subject Agreements and VHBV shall pay to VIBV an arm's length percentage of "Net Sales" of "Licensed Products" as those terms are defined in the first Article of the Subject Agreement, subject to approval by the appropriate Netherlands taxing authorities. Each party agrees to separately notify the other of all tax rulings related to royalties and the Subject Agreement.

7. *Payment Terms.* All amounts owing under this Agreement shall be paid to VIBV within thirty days of receipt of payment by VHBV by check or wire transfer to a bank account designated by VIBV, in the currency in which the royalties are received by VHBV. VHBV shall pay all import duties, fees, sales, use, value added or other taxes or governmental charges of any kind assessed upon or in connection with the transactions contemplated by this Agreement as required by Netherlands law. To the extent that any such duties, taxes or charges are paid by VHBV by way of withholding or deduction of, for or on account of VIBV, such payments shall be deducted by VHBV from the amount owed under this Agreement.

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8. **Books and Records; Audit.** Throughout the term of this Agreement and for a period of three years thereafter, VHBV shall maintain books and records sufficient to determine the amounts owing hereunder and VHBV's compliance with the terms and conditions of this Agreement. VIBV shall have the right to inspect and audit all such books and records to ensure compliance with the terms of this Agreement. Any such audit shall be conducted only by VIBV, a representative of VIBV, or an independent auditor designated by VIBV, and all audits shall be conducted during regular business hours. In the event that during such audit it is determined that the unpaid fees owed to VIBV exceed five percent (5%) of the fees actually paid by VHBV to VIBV since the time of the previous audit (or the beginning of this Agreement if such audit is the first audit hereunder), then VHBV shall pay the costs of such audit.

9. **Termination.** VIBV may terminate this Agreement, for any reason, or for no reason, thirty (30) days following VIBV's written notice to VHBV and upon VIBV's assumption of all rights, duties, obligations and liabilities under the Subject Agreement. In addition, this Agreement shall terminate automatically and without notice upon termination of the Subject Agreement. Termination shall be effective without notice to or action by any court or other legal authority. Upon termination of this Agreement, all rights in and all obligations under the Subject Agreement shall revert to VIBV.

10. **Further Assurances.** VHBV shall take such actions as VIBV may reasonably request in order to secure, perfect or protect the rights of VIBV under this Agreement or any Subject Agreement, including, without limitation, executing such documents as VIBV may request in connection with rights in patents, technology, trade secrets, know-how, marks, and other proprietary rights under the Subject Agreement or any reversionary interest of VIBV following termination of this Agreement.

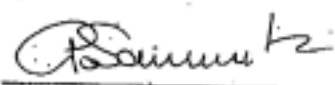
11. **Amendment and Waiver.** VHBV shall not amend the Subject Agreement, or waive the enforcement of any provision thereof, without the express, prior written consent of VIBV. No amendment or waiver of this Agreement, or any provision thereof, shall be effective unless signed by the party against whom enforcement of such amendment or waiver is sought.

12. **Severability.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement in such jurisdiction, but this Agreement shall be reformed and construed in such jurisdiction so as to be valid, legal, and enforceable to the maximum extent permitted in such jurisdiction.

13. **Successors and Assigns.** This Agreement shall be unconditionally assignable by VIBV. VHBV shall not assign this Agreement or any right thereunder without the prior written consent of VIBV. This Agreement shall inure to the benefit of VIBV and its successors and assigns, and shall be binding upon VHBV and its successors and assigns.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as an instrument under seal.

VELCRO INDUSTRIES B.V.



By: Pauwla van Sambeek-Ronde
Date: 13 February 1996
Managing Director

VELCRO HOLDINGS B.V.



By: Derk A. J. Hoogenkamp
Date: Feb. 13, 1996
Managing Director

EXT

Exhibit A

1. License Agreement, dated October 1, 1987, by and between VIBV and Velcro Canada Ltd., a limited liability company organized under the laws of Canada, as amended by the parties from time to time.

APPENDIX C



September 29, 1997

Velcro Canada Inc.
114 East Drive
Brampton, Ontario L6T 1C1
Canada

Attention: Mr. Roy Verstraete

RE: License Agreement between Velcro Industries B.V. and Velcro
Canada effective October 1, 1987 - Patents, Trademarks,
Trade Name VELCRO and other proprietary property.

Dear Mr. Verstraete:

As you know, under Section III-A. of our License Agreement, its initial term expires September 30, 1997. Neither company has given notice to the other that the Agreement will expire as of that date. Consequently, the third five-year term will commence on October 1, 1997.

However, we remind you that under Section III-B, upon termination of our Agreement, for any reason whatsoever:

1. All rights and licenses granted hereunder shall cease;
2. Licensee shall cease any and all exercise of the rights and licenses granted hereunder;
3. Licensee shall make available to Licensor, upon Licensor's request, all records, files and memoranda relating to the sales and distribution of the Licensed Products;
4. Licensor may cancel any registration of the license granted hereunder and any registration of Licensee as a Registered User made pursuant to Section V.B. thereof, and shall have the full cooperation of Licensee in effecting such cancellations; and
5. Licensee shall offer to sell to Licensor at appraised fair market value (i) all machinery and equipment then in possession of Licensee which is covered by any existing patent, trade secret or other proprietary information of Licensor, including without limitation looms, cutting machines and extrusion equipment; and (ii) all or any part of Licensee's inventories of Licensed Products and raw materials used in the production of Licensed Products. Licensor may purchase at such appraised fair market value any portion or all of the items described above, in Licensor's sole and absolute discretion. For the purpose of this paragraph, "appraised market value" means fair market value as determined by an independent appraiser or



September 29, 1997
Page 2

appraisers mutually acceptable to Licensor and Licensee, or, if the parties cannot so agree, as settled by final and binding arbitration in accordance with the provisions of Section XII.F. hereof.

Additionally, upon termination you are required to delete the word VELCRO from your corporation title.

Although the Agreement has automatically renewed for a new five year term pursuant to Section III.A., we respectfully request confirmation of this renewal. Your confirmation of the aforesaid, and understanding of your obligations, will be signified by the return to us of the copy of this letter duly executed by you in the space below provided.

Sincerely,

VELCRO INDUSTRIES B.V.

Pauwla van Sambeek-Ronde
Managing Director

Understood, confirmed and agreed
this 29th day of October, 1997.

VELCRO CANADA INC.

Roy Verstraete
Managing Director

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APPENDIX D

LICENSE AGREEMENT

THIS AGREEMENT is made effective as of the 1st day of October, 2003, by and between VELCRO INDUSTRIES B.V., a private limited liability company organized and existing under the laws of The Netherlands, with its principal place of business at Castorweg 22-24, Curaçao, Netherlands Antilles and registered under number 72161 (the "Licensor"), and VELCRO CANADA INC., a corporation organized under the laws of Canada, located at 114 East Drive, Brampton, Ontario, Canada L6T 1C1 (the "Licensee").

WITNESSETH

WHEREAS Licensor owns certain patents, trademarks, trade secrets, copyrights and other proprietary rights and intellectual properties the use of which it wishes to license to Licensee under the terms and conditions of this Agreement;

WHEREAS Licensee wishes to obtain such a license pursuant to such terms and conditions; and

WHEREAS Licensor and Licensee are parties to one or more license agreements, which prior agreements they have agreed to amend with effect as of October 1, 2003 and Licensor and Licensee now desire to memorialize their agreement as more specifically set forth herein and to replace and supersede any and all such prior agreements with the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. Definitions

A. "Affiliate" shall mean any parent or subsidiary company or other company under direct or indirect common ownership and control. The Velcro Companies are Affiliates of Licensor.

B. "Authorized Delegate" shall mean an Affiliate of Licensor, provided that, and only for so long as, the Affiliate is directly or indirectly authorized by Licensor to use Licensed Trademarks in one or more countries.

C. "Confidential Information" shall mean all data or information (and any tangible evidence, record or representation thereof), whether acquired, prepared, conceived, or developed by or for Licensor or received by or licensed to Licensor by an outside source, which is not generally known outside of the Velcro Companies, and which is maintained in confidence by Licensor and the Velcro Companies. Without limiting the generality of the foregoing, Confidential Information shall include:

1. any idea, improvement, invention, innovation, development, technical data, design, formula, device, pattern, concept, computer program, model, diagram, equipment,

tool, training or service manual, product specification, plan for a new or revised product or service, compilation of information or work in process, and any and all revisions and improvements relating to any of the foregoing (in each case whether or not reduced to tangible form); and

2. the name of any customer, employee, prospective customer or consultant; any sales or marketing material, plan or survey; any business plan or opportunity; any product or development plan or specification; any business proposal, financial record, or business record; and all other non-public records and information relating to the present or proposed business of Licensor or any one or more of the Velcro Companies.

Notwithstanding the foregoing, the term "Confidential Information" shall not apply to information which Licensor or one of the Velcro Companies have voluntarily disclosed to the public without restriction, or which has otherwise lawfully entered the public domain.

D. "Licensed Product" shall mean a product that embodies or is made through the use of "Licensed Technology."

E. "Licensed Technology" shall mean all methods, formula, systems, inventions, discoveries, improvements, and works of authorship or invention, and all patent applications, patents, trade secrets, copyrights, copyright registrations, Confidential Information, know-how, and other forms of intellectual or industrial property, owned by or licensed to Licensor in the "Territories." Upon the expiration of any patent or copyright, or the determination by a court or other competent authority that a patent or copyright is invalid or unenforceable, such patent or copyright, as the case may be, shall cease to be "Licensed Technology" for purposes of this Agreement.

F. "Licensed Trademarks" shall mean all trademarks, service marks, trade names and other indications of origin owned by or registered in the name of Licensor in connection with Licensed Products or any business related to Licensed Technology, and the registrations and applications for registration thereof, including the marks listed in Schedule C.

G. "Net Sales" shall mean the amounts invoiced by Licensee for all of its sales of Licensed Products, less the amounts of any sales tax, VAT, shipping cost, discount, or refunds, regardless of whether such amounts are actually collected by Licensee. In order to avoid duplicate royalty payments, Licensee's sales of Licensed Products to an Authorized Delegate shall not be included in the calculation of Licensee's Net Sales if the Authorized Delegate is obligated to pay a royalty to Licensor with respect to the Authorized Delegate's resale of such Licensed Product. Sales in the Territories by Authorized Delegates shall not be included in the calculation of Licensee's Net Sales. For purposes of calculating "Net Sales," the amount of any sale of a Licensed Product by Licensee to an Affiliate shall be no less than the amount that would be invoiced in an arm's length transaction for sale of such Licensed Product with comparable specifications, qualities and quantities.

H. "Territories" shall mean the Exclusive Territory and Non-Exclusive Territory. "Exclusive Territory" shall mean the country or countries specified in Schedule A hereto. "Non-

Exclusive Territory" shall mean throughout the world, excluding only the country or countries specified in Schedule B hereto.

I. "Velcro Companies" shall mean the third-party, Velcro Industries N.V., its subsidiaries and all other companies under its direct or indirect control.

II. License

A. During the term of this Agreement, and subject to all the terms and conditions hereof, Licensor hereby grants to Licensee a non-transferable license within the Territories to use Licensed Technology to manufacture, sell and distribute Licensed Products and to use Licensed Trademarks in connection with the promotion, sale and distribution of Licensed Products.

B. Licensee's rights under the foregoing license shall be exclusive in the Exclusive Territory and non-exclusive in the Non-Exclusive Territory.

C. Licensee's use of Licensed Trademarks under this license shall inure to the sole benefit of Licensor. Licensee's use of the Licensed Trademarks shall at all times conform to the provisions of Section IX hereof. Any domain name incorporating a Licensed Trademark is subject to this license, and Licensee's registration of such a domain name shall be on behalf of and for the benefit of Licensor.

D. Licensee shall not attempt to transfer, sublicense or assign its rights under this license, in whole or in part, without Licensor's prior written consent, which consent may be withheld at Licensor's sole discretion, except that (i) Licensee may engage third parties as distributors or resellers of Licensed Products, (ii) Licensee may permit third parties to refer to a Licensed Trademark on packaging and in promotional materials solely for the purpose of accurately identifying a Licensed Product that is used with or incorporated into another product, and (iii) Licensee may permit an Authorized Delegate to promote, distribute and sell Licensed Products in the Exclusive Territory. In all cases, Licensee shall remain directly liable for performance of this Agreement by such third parties within the Territories and by any Authorized Delegates within the Exclusive Territory.

E. This Agreement does not grant to Licensee any right to use the Licensed Technology for the purpose of research or development, or to use Licensed Trademarks with any products or services other than Licensed Products.

III. Term

A. The term of this Agreement shall commence on the date first written above and shall extend for five years thereafter. The term shall automatically renew for additional five year terms thereafter, unless:

1. Licensee ceases to be an Affiliate of Licensor;
2. Either party gives the other party written notice of termination 30 days prior to the expiration of the then-current term of this Agreement;

3. The parties agree in writing to terminate this Agreement; or

4. This Agreement is terminated pursuant to Section X below.

B. Effective immediately upon termination or expiration of this Agreement for any reason:

1. All rights and licenses granted hereunder shall cease;

2. Licensee shall cease to manufacture, promote and distribute any and all Licensed Products and cease to otherwise exercise any of the rights and licenses granted hereunder;

3. Licensee shall take all action necessary to transfer to Licensor any registration held by Licensee of a domain name that incorporates a Licensed Trademark;

4. Licensee shall cease all use of the Licensed Trademarks and all domain names incorporating any Licensed Trademarks;

5. Licensee shall make available to Licensor, upon Licensor's request, all records, files and memoranda relating to the manufacture, sale and distribution of the Licensed Products;

6. Licensor may cancel any registration of the license granted hereunder and any registration of Licensee as a registered user or licensee that was made pursuant to Section V.B. hereof. Licensor shall have the full cooperation of Licensee in effecting such cancellations; and

7. Licensee shall offer to sell to Licensor at appraised fair market value (i) all machinery and equipment then in the possession of Licensee which is covered by any Licensed Technology existing, including looms, cutting machines and extrusion equipment; and (ii) all or any part of Licensee's inventories of Licensed Products and raw materials used in the production of Licensed Products. Licensor may purchase at such appraised fair market value any portion or all of the items described above, in Licensee's sole and absolute discretion. For the purpose of this paragraph, "appraised fair market value" means fair market value as determined by an independent appraiser or appraisers mutually acceptable to Licensor and Licensee, or, if the parties cannot so agree, as settled by final and binding arbitration in accordance with the provisions of Section XII. E hereof.

C. The provisions of this Agreement regarding the ownership and protection of Licensed Technology, Licensed Trademarks, and Confidential Information shall survive any non-renewal, expiration or termination of this Agreement, regardless of the cause, reason or circumstances of such non-renewal, expiration or termination, including the provisions of Sections III, V, and VIII hereof.

IV. Royalties

A. Amount of Royalties Owning

1. In exchange for the licenses granted hereunder, Licensee shall pay to Licensor a royalty on all sales by Licensee of Licensed Products in the Territories, in an amount equal to 5% of Net Sales;
2. All withholding taxes, tariffs, duties or imposts imposed by any government upon Licensor with respect to the payment of royalties hereunder, shall be withheld and paid to the government by Licensee on behalf of the Licensor and shall be deducted from the amounts owed to Licensor hereunder.
3. If Licensor engages Licensee to provide any services on behalf of Licensor, or if Licensor purchases any Licensed Products from Licensee, Licensor may, in its discretion, set off amounts owed by Licensee hereunder against the amount of compensation for such services or price of such Licensed Products.

B. Time and Method of Payment

1. Licensee shall pay all royalties monthly, within thirty days following the end of each month of Licensee's fiscal year, or at such other times as the parties may from time to time agree.
2. All royalty payments shall be made in such currency and at such place as may be specified by Licensor from time to time.
3. Licensee shall keep true and accurate books of accounts showing all operations that are subject to this Agreement. Licensor shall have the right to inspect, or to cause an accountant or other authorized agent or agents to inspect, Licensee's books and records to verify that Licensee has paid all royalties owing to Licensor.

V. Rights in Licensed Technology and Licensed Trademarks

- A. All rights in the Licensed Technology and Licensed Trademarks, including patent, copyright, trade secret rights, and trademark rights throughout the Territories, shall at all times belong to Licensor. Licensee shall not under any circumstances assert rights in the Licensed Technology or Licensed Trademarks, or in any part thereof, nor shall Licensee take any action that could in any way challenge, diminish, alter or affect adversely Licensor's rights in the Licensed Technology and Licensed Trademarks. Licensee shall not adopt, use or attempt to register any name, mark or domain name that is similar to, or likely to be confused with, a Licensed Trademark.
- B. Licensee shall cooperate in the execution of any documents, and the taking of any other action, that Licensor reasonably requests to create, record or perfect Licensor's sole and exclusive ownership of the Licensed Technology and Licensed Trademarks, including to the foregoing: execution and filing of appropriate documents to qualify Licensee as a registered user

or licensee in any jurisdictions in which such qualification is necessary or desirable; practice of invention and filing of documents in any jurisdictions in which working of patents is required or desirable; and taking any and all actions necessary to assist Licensor to apply for or obtain patents, trademark registrations or copyright registrations. Licensee shall advise Licensor of any actions that Licensor has not taken but that would, in the judgment of Licensee, be necessary or advisable to create, record, or perfect, Licensor's rights in the Licensed Technology and Licensed Trademarks.

C. Licensor shall have the sole and exclusive discretion with respect to, and shall bear all expenses related to, the prosecution of all applications, payment of all annuities, the filing of all extensions and renewals, and all other acts necessary to obtain, protect or maintain rights in the Licensed Technology and Licensed Trademarks during the term of this Agreement. Licensor shall reimburse Licensee for any such expense that may be reasonably incurred by Licensee.

VI. Protection of Licensed Technology and Licensed Trademarks

Licensee shall promptly advise Licensor of any third-party's misuse or infringement or possible infringement of the Licensed Technology or Licensed Trademarks of which Licensee becomes aware. Licensor shall decide, in its sole and exclusive discretion, what action to take or not to take in response to any such misuse or infringement, and Licensee shall take no action in response to any such misuse or infringement unless instructed to do by Licensor. Any action so taken by Licensee to protect the Licensed Technology or Licensed Trademarks shall be deemed taken on behalf of and for the benefit of Licensor. All expenses incurred in connection with any action taken to protect or enforce rights in the Licensed Technology or Licensed Trademarks shall be borne exclusively by Licensor. Licensor shall reimburse Licensee for any such expense that may be requested by Licensor or otherwise reasonably incurred by Licensee.

VII. Warranty, Disclaimer, Indemnification and Limitation of Liability

A. Licensor warrants that the Licensed Technology and Licensed Trademarks do not infringe the patent, copyright, trade secret, or other proprietary right of any third party in the Territories.

B. LICENSOR DISCLAIMS ANY AND ALL WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN SECTION VI.A., WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OF NON-INFRINGEMENT.

C. Licensee shall promptly inform Licensor of any claim or threatened claim that any part of the Licensed Technology or any Licensed Trademark infringes any claimed right of any third party. Licensor shall have the right to defend or to settle, in its sole and exclusive discretion, any such claim or threatened claim. Licensor shall indemnify and hold Licensee harmless from and against any final, non-appealable award of damages that may be entered

against Licensee in connection with any such claim, provided that: (a) Licensor is notified promptly in writing by Licensee of each notice and communication regarding such claim and is given the authority, information and assistance necessary or advisable to defend and respond to such claim, and (b) Licensor shall have the sole and exclusive control of the defense of any such claim and of all negotiations for its settlement or compromise.

D. The provisions of Section VII state Licensor's sole, exclusive and entire liability to Licensee, and Licensee's sole, exclusive and entire remedy, for any claim relating to the Licensee's use of the Licensed Technology or Licensed Trademarks, including claims of patent, copyright, trade secret, or other proprietary rights infringement or misuse.

E. IN NO EVENT SHALL LICENSOR BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME. LICENSOR'S LIABILITY HEREUNDER WITH RESPECT TO ANY ONE CLAIM SHALL NOT EXCEED LICENSEE'S ACTUAL, OUT-OF-POCKET LOSSES INCURRED IN CONNECTION WITH SUCH CLAIM, AND LICENSOR'S CUMULATIVE LIABILITY HEREUNDER SHALL NOT AT ANY TIME EXCEED THE CUMULATIVE AMOUNT THAT LICENSEE HAS PAID TO LICENSOR HEREUNDER.

VIII. Confidential Information

A. Licensee acknowledges that all Confidential Information is a valuable asset of Licensor, the value of which would be substantially diminished or destroyed by unauthorized disclosure.

B. Licensee shall not disclose any Confidential Information to any vendors, customers, or other persons without the consent of Licensor, excepting only disclosure to one of the Velcro Companies.

C. Licensee shall enter into written confidentiality or nondisclosure agreements and, where appropriate, non-competition agreements with Licensee's employees, with vendors to Licensee, and with anyone else to whom Confidential Information is or may be disclosed. Such agreements shall be in a form and substance satisfactory to Licensor.

D. Licensee shall take all other actions reasonably necessary or advisable to protect and maintain Licensor's rights in all Confidential Information. These actions shall include, without limitation:

1. Establishment and maintenance of security procedures at all of Licensee's locations at which Confidential Information is kept or used;
2. Informing Licensee's employees that Confidential Information is confidential, proprietary and secret;
3. Informing Licensee's employees on a periodic basis of the importance of maintaining the secrecy of all Confidential Information; and

4. Such other actions as Licensor may reasonably request to maintain the secrecy of all Confidential Information.

IX. Obligations Regarding Licensed Trademarks and Licensed Products

A. Licensee's use of the Licensed Trademarks shall at all times be in accordance with the standards for trademark usage that are established from time to time by Licensor. These include, without limitation, the following:

1. Licensee shall use the Licensed Trademarks only on or in connection with products made using the Licensed Technology and such other products as may be approved by Licensor from time to time; and

2. All products manufactured, distributed or sold by Licensee under or in connection with the Licensed Trademarks shall meet or exceed Licensor's standards of quality, as may be established from time to time by Licensor.

B. Licensor may inspect Licensee's products, packaging, advertising, and premises upon reasonable notice to ensure compliance with the foregoing requirements.

C. All benefits and rights arising from use of the Licensed Trademarks by Licensee shall inure to the benefit of Licensor. Licensor shall own all rights in the Licensed Trademarks and the associated goodwill, and Licensee shall not retain or claim any rights therein or challenge Licensor's rights therein.

D. Licensee shall mark Licensed Trademarks with the appropriate symbol TM or © as directed by Licensor. All of Licensee's advertising, promotion, and packaging of Licensed Products shall bear the appropriate Licensed Trademark and the related appropriate patent and trademark legends, each as specified by Licensor, including by way of example, the following: "The mark _____ is owned by Velcro Industries, B.V.," or "U.S. patent no. _____ and patents pending."

X. Termination

A. This Agreement may be terminated by Licensor:

1. if Licensee defaults in any of its obligations hereunder and fails to cure the default within 30 days after notice by Licensor; or

2. if Licensee is insolvent or becomes involved in voluntary or involuntary bankruptcy or similar proceedings.

B. Any termination under Section X shall be effective immediately upon Licensor giving written notice thereof to Licensee.

XI. Assignment

A. Licensor may assign this Agreement, and all of its rights and obligations hereunder, at any time and, upon such assignment, Licensor shall provide notice to Licensee. Following any such assignment, Licensor's assignee shall have all the rights and obligations of Licensor, including the right of assignment under this Section XLA. Without limitation to the foregoing, Licensor may make an assignment to Velcro Holdings B.V. or any other of the Velcro Companies substantially in the form of Exhibit I hereto.

B. Licensee shall not assign this Agreement, or any part hereof, without the prior written consent of Licensor.

XII. General

A. This Agreement, together with all Schedules hereto, constitutes the entire agreement of the parties with respect to its subject matter, superseding all negotiations and prior agreements. The parties intend for this Agreement to supersede and terminate the License Agreement dated October 1, 1987, and all addenda thereto.

B. The failure of Licensor to enforce its rights or remedies under any part of this Agreement shall not waive its right to enforce the same part at a different time, or to enforce other parts of this Agreement.

C. If any provision of this Agreement is unenforceable, it shall be severed from the balance of the Agreement, which shall remain in full force and effect. To the extent that any provision of this Agreement may be deemed excessively broad in duration, scope or any other aspect, it shall be enforced to the maximum extent consistent with applicable law.

D. This Agreement may be executed in two or more counterparts, each of which shall be considered an original.

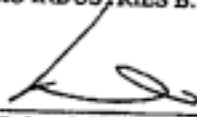
E. Any difference, dispute or claim that may arise under this Agreement shall be submitted to binding arbitration. Such arbitration shall be held in accordance with the UNCTRAL Arbitration Rules then in effect by three (3) arbitrators appointed in accordance with such rules. Such arbitration shall take place in the English language. The decision of such arbitration shall be binding on both parties, and a judgment on an award rendered may be entered in any court of competent jurisdiction.

F. Licensor and Licensee are independent contractors and are not, and shall not represent themselves as, principal and agent, partners or joint venturers.

IN WITNESS WHEREOF, the parties have through their duly authorized representatives executed and delivered this Agreement under seal with effect as of the date first written above:

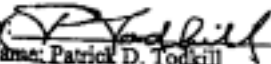
(SEAL)

VELCRO INDUSTRIES B.V.

By: 
Name: Robert J. Huyzen
Title: Managing Director
Date: 15 September 2004

VELCRO CANADA INC.

(SEAL)

By: 
Name: Patrick D. Todkill
Title: President
Date: Sept. 29, 2004

SCHEDULE A

Countries Included in the "Exclusive Territory":

Canada

SCHEDULE B

The "Non-Exclusive Territory" includes countries throughout the world, excluding only the following countries:

Canada

China

European Union, which currently includes Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and United Kingdom.

Mexico

United States

SCHEDULE C

"Licensed Trademarks" include, without limitation, the marks listed on the attached schedule.

VELCRO

VELCOIN

VEL-LOOP

VEL-TAB

VELSTRAP

VELSTRETCH

ONE-WRAP

TEXACRO

ULTRA-MATE

**VELCRO**

EXHIBIT IASSIGNMENT, ASSUMPTION AND LICENSE AGREEMENT

This Assignment, Assumption and License Agreement, effective as of October 1, 2003, between Velcro Industries B.V. ("VIBV"), a private limited liability company organized and existing under the laws of The Netherlands, with its principal place of business at Castorweg 22-24, Curaçao, Netherlands Antilles and registered under number 72161, and Velcro Holdings B.V. ("VHBV"), a Netherlands private limited liability company located at Amsteldijk 166, 1079 LH Amsterdam, The Netherlands.

WHEREAS, VIBV has entered into a certain License Agreement, effective as of October 1, 2003, with Velcro Canada Inc. (the Licensee thereunder) relating to the licensing of Licensed Technology and Licensed Trademarks (the "Subject Agreement");

WHEREAS, VIBV wishes to assign and delegate, and VHBV wishes to obtain and assume, certain rights and obligations under the Subject Agreement; and

WHEREAS, the parties wish to provide for the payment of royalties by VHBV to VIBV;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VIBV and VHBV hereby agree as follows:

1. Assignment and License. VIBV hereby assigns, sets over, transfers and conveys, and VHBV hereby accepts, the Subject Agreement and all rights of VIBV under the Subject Agreement, other than the rights retained by VIBV as set forth in Section 3 of this Agreement. VIBV hereby grants to VHBV the right to grant sublicenses under the patents, technology, trade secrets, know-how, and marks owned by VIBV and identified in the Subject Agreement, solely pursuant to the licenses set forth in the Subject Agreement.
2. Assumption. VIBV hereby delegates, and VHBV hereby assumes, all obligations and duties of VIBV under the Subject Agreement.
3. Rights Retained by VIBV. VIBV is and shall remain owner of all right, title and interest in and to all patents, patent applications, technology, trade secrets, know-how, marks, registrations of marks, applications for the registration of marks, goodwill and other proprietary rights licensed under this Agreement or the Subject Agreement, including the "Licensed Technology" and "Licensed Trademarks," as those terms are defined in the Subject Agreement. Nothing in this Agreement shall be construed to assign, set over, transfer or convey any right relating to the ownership of any of the foregoing to VHBV. Without limiting the generality of the foregoing, all rights in such marks and all rights under the Subject Agreement respecting such marks shall remain at all times the sole property of VIBV, and all use of such marks by VHBV or any party to the Subject Agreement shall inure to the benefit of VIBV. VHBV agrees to assist in application for such patents and registration of such marks in the name of VIBV in any country where VIBV may so request, in renewal and maintenance of such patents and such

registrations, and in such recording of VHBV or the third party to the Subject Agreement as a user as VIBV may request. Nothing in this Agreement shall be construed as granting VHBV a license under any other patent, technology, trade secret, know-how, mark or other proprietary right of VIBV or a license to grant sublicenses, other than pursuant to the Subject Agreement.

4. Enforcement of Obligations Under Subject Agreement. VHBV shall diligently enforce all terms and conditions of the Subject Agreement. VHBV shall promptly inform VIBV of any breach or attempted breach of terms and conditions of the Subject Agreement by any party thereto or the unauthorized disclosure by any party thereto of Confidential Information, and shall, unless directed otherwise by VIBV, take appropriate steps to remedy any such breach or unauthorized disclosure. Without limiting the generality of the foregoing, VHBV shall police the use of the patents, technology, trade secrets, know-how, and marks licensed under the Subject Agreement so as to maintain VIBV's high standards of quality in the goods or services in connection with which any of the foregoing proprietary rights are used, and VHBV shall enforce the obligations of any party to the Subject Agreement regarding the creation, recordation, securing, perfection or protection of the rights of VIBV under the Subject Agreement, including rights regarding assisting VIBV in registration of marks in the name of VIBV in any country where VIBV may so request, in renewal and maintenance of such registrations and in such recording of such party as a user as VIBV may request. VHBV shall take such action as VIBV may direct in order to exercise any right to audit under the Subject Agreement, or to take any action regarding the infringement or alleged infringement of the proprietary right of any third party by VHBV or any party to the Subject Agreement or the infringement by any third party of any proprietary right of VIBV.

5. Third-Party Beneficiary. The parties hereby agree that VIBV is an express third-party beneficiary of the provisions of the Subject Agreement assigned to VHBV, and VIBV shall be entitled to exercise the rights of the licensor and enforce the obligations of the licensee under the Subject Agreement. VIBV shall have the right to enforce such rights under the Subject Agreement on its own behalf in its sole discretion. VHBV shall provide VIBV such assistance as VIBV requests in connection with the enforcement of any such rights.

6. Royalties. VHBV shall collect royalties from the third-party licensee under the Subject Agreement (referred to therein as the "Licensee"). VHBV shall pay to VIBV an amount equal to the royalties collected, less the amount approved by the Netherlands tax authorities to cover VHBV's related costs. Each party agrees to separately notify the other of all tax rulings related to royalties and the Subject Agreement.

7. Payment Terms. All amounts owing under this Agreement shall be paid to VIBV within thirty days of receipt of payment by VHBV by check or wire transfer to a bank account designated by VIBV, in the currency in which the royalties are received by VHBV. VHBV shall pay all fees, sales, use, value added or other taxes or governmental charges of any kind assessed upon or in connection with the transactions contemplated by this Agreement as required by Netherlands law. To the extent that any such taxes or charges are paid by VHBV by way of withholding or deduction for or on account of VIBV, such payments shall be deducted by VHBV from the amount owed under this Agreement.

8. Books and Records; Audit. Throughout the term of this Agreement, and for a period of seven years thereafter, VHBV shall maintain books and records sufficient to determine the amounts owing hereunder and VHBV's compliance with the terms and conditions of this Agreement. VIBV shall have the right to inspect and audit all such books and records to ensure compliance with the terms of this Agreement. Any such audit shall be conducted only by VIBV, a representative of VIBV, or an independent auditor designated by VIBV, and all audits shall be conducted during regular business hours. In the event that during such audit it is determined that the unpaid fees owed to VIBV exceed five percent (5%) of the fees actually paid by VHBV to VIBV since the time of the previous audit (or the beginning of this Agreement if such audit is the first audit hereunder), then VHBV shall pay the costs of such audit.

9. Termination. VIBV may terminate this Agreement for any reason, or for no reason, thirty (30) days following VIBV's written notice of termination sent to VHBV and upon VIBV's assumption of all rights, duties, obligations and liabilities under the Subject Agreement. In addition, this Agreement shall terminate automatically and without notice upon termination of the Subject Agreement. Termination shall be effective without notice to or action by any court or other legal authority. Upon termination of this Agreement, all rights in and all obligations under the Subject Agreement shall revert to VIBV.

10. Further Assurances. VHBV shall take such actions as VIBV may reasonably request in order to secure, perfect or protect the rights of VIBV under this Agreement or any Subject Agreement, including without limitation, executing such documents as VIBV may request in connection with rights in patents, technology, trade secrets, know-how, marks, and other proprietary rights under the Subject Agreement or any reversionary interest of VIBV following termination of this Agreement.

11. Amendment and Waiver. VHBV shall not amend the Subject Agreement, or waive the enforcement of any provision thereof, without the express, prior written consent of VIBV. No amendment or waiver of this Agreement, or any provision thereof, shall be effective unless signed by the party against whom enforcement of such amendment or waiver is sought.

12. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement in such jurisdiction, but this Agreement shall be reformed and construed in such jurisdiction so as to be valid, legal, and enforceable to the maximum extent permitted in such jurisdiction.

13. Successors and Assigns. This Agreement shall be unconditionally assignable by VIBV. VHBV shall not assign this Agreement or any right thereunder without the prior written consent of VIBV. This Agreement shall inure to the benefit of VIBV and its successors and assigns, and shall be binding upon VHBV and its successors and assigns.

IN WITNESS WHEREOF, the parties have through their duly authorized representatives executed and delivered this Agreement under seal with effect as of the date first written above:

VELCRO INDUSTRIES B.V.

(SEAL)

By: _____
Name: Robert J. Huyzen
Title: Managing Director
Date:

VELCRO HOLDINGS B.V.

(SEAL)

By: _____
Name: Peter H. Bosse
Title: Managing Director
Date:

Acknowledged and Agreed:

VELCRO CANADA INC.

By: _____
Name: Patrick D. Todkill
Title: President
Date:

(SEAL)

Seen for legalization:

the signature appearing on the attached document of
Mr. ROBERT J. HUYZEN, residing in Curaçao, Netherlands
Antilles, acting in his capacity of managing director of
the limited liability company VELCRO INDUSTRIES B.V.,
established in Curaçao,
by me, Gerard Christoffel Antonius Smeets, a civil-law notary,
residing in Curaçao, on this sixteenth day of September two-
thousand four.



A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be the name of the notary, Gerard Christoffel Antonius Smeets. The signature is written over a faint horizontal line.

APPENDIX E

ASSIGNMENT, ASSUMPTION AND LICENSE AGREEMENT

This Assignment, Assumption and License Agreement, effective as of October 1, 2003, between Velcro Industries B.V. ("VIBV"), a private limited liability company organized and existing under the laws of The Netherlands, with its principal place of business at Castorweg 22-24, Curaçao, Netherlands Antilles and registered under number 72161, and Velcro Holdings B.V. ("VHBV"), a Netherlands private limited liability company located at Amsteldijk 166, 1079 LH Amsterdam, The Netherlands.

WHEREAS, VIBV has entered into a certain License Agreement, effective as of October 1, 2003, with Velcro Canada Inc. (the Licensee thereunder) relating to the licensing of Licensed Technology and Licensed Trademarks (the "Subject Agreement");

WHEREAS, VIBV wishes to assign and delegate, and VHBV wishes to obtain and assume, certain rights and obligations under the Subject Agreement; and

WHEREAS, the parties wish to provide for the payment of royalties by VHBV to VIBV;

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VIBV and VHBV hereby agree as follows:

1. **Assignment and License.** VIBV hereby assigns, sets over, transfers and conveys, and VHBV hereby accepts, the Subject Agreement and all rights of VIBV under the Subject Agreement, other than the rights retained by VIBV as set forth in Section 3 of this Agreement. VIBV hereby grants to VHBV the right to grant sublicenses under the patents, technology, trade secrets, know-how, and marks owned by VIBV and identified in the Subject Agreement, solely pursuant to the licenses set forth in the Subject Agreement.
2. **Assumption.** VIBV hereby delegates, and VHBV hereby assumes, all obligations and duties of VIBV under the Subject Agreement.
3. **Rights Retained by VIBV.** VIBV is and shall remain owner of all right, title and interest in and to all patents, patent applications, technology, trade secrets, know-how, marks, registrations of marks, applications for the registration of marks, goodwill and other proprietary rights licensed under this Agreement or the Subject Agreement, including the "Licensed Technology" and "Licensed Trademarks," as those terms are defined in the Subject Agreement. Nothing in this Agreement shall be construed to assign, set over, transfer or convey any right relating to the ownership of any of the foregoing to VHBV. Without limiting the generality of the foregoing, all rights in such marks and all rights under the Subject Agreement respecting such marks shall remain at all times the sole property of VIBV, and all use of such marks by VHBV or any party to the Subject Agreement shall inure to the benefit of VIBV. VHBV agrees to assist in application for such patents and registration of such marks in the name of VIBV in any country where VIBV may so request, in renewal and maintenance of such patents and such registrations, and in such recording of VHBV or the third party to the Subject Agreement as a user as VIBV may request. Nothing in this Agreement shall be construed as granting VHBV a

license under any other patent, technology, trade secret, know-how, mark or other proprietary right of VIBV or a license to grant sublicenses, other than pursuant to the Subject Agreement.

4. Enforcement of Obligations Under Subject Agreement. VHBV shall diligently enforce all terms and conditions of the Subject Agreement. VHBV shall promptly inform VIBV of any breach or attempted breach of terms and conditions of the Subject Agreement by any party thereto or the unauthorized disclosure by any party thereto of Confidential Information, and shall, unless directed otherwise by VIBV, take appropriate steps to remedy any such breach or unauthorized disclosure. Without limiting the generality of the foregoing, VHBV shall police the use of the patents, technology, trade secrets, know-how, and marks licensed under the Subject Agreement so as to maintain VIBV's high standards of quality in the goods or services in connection with which any of the foregoing proprietary rights are used, and VHBV shall enforce the obligations of any party to the Subject Agreement regarding the creation, recordation, securing, perfection or protection of the rights of VIBV under the Subject Agreement, including rights regarding assisting VIBV in registration of marks in the name of VIBV in any country where VIBV may so request, in renewal and maintenance of such registrations and in such recording of such party as a user as VIBV may request. VHBV shall take such action as VIBV may direct in order to exercise any right to audit under the Subject Agreement, or to take any action regarding the infringement or alleged infringement of the proprietary right of any third party by VHBV or any party to the Subject Agreement or the infringement by any third party of any proprietary right of VIBV.

5. Third-Party Beneficiary. The parties hereby agree that VIBV is an express third-party beneficiary of the provisions of the Subject Agreement assigned to VHBV, and VIBV shall be entitled to exercise the rights of the licensor and enforce the obligations of the licensee under the Subject Agreement. VIBV shall have the right to enforce such rights under the Subject Agreement on its own behalf in its sole discretion. VHBV shall provide VIBV such assistance as VIBV requests in connection with the enforcement of any such rights.

6. Royalties. VHBV shall collect royalties from the third-party licensee under the Subject Agreement (referred to therein as the "Licensee"). VHBV shall pay to VIBV an amount equal to the royalties collected, less the amount approved by the Netherlands tax authorities to cover VHBV's related costs. Each party agrees to separately notify the other of all tax rulings related to royalties and the Subject Agreement.

7. Payment Terms. All amounts owing under this Agreement shall be paid to VIBV within thirty days of receipt of payment by VHBV by check or wire transfer to a bank account designated by VIBV, in the currency in which the royalties are received by VHBV. VHBV shall pay all fees, sales, use, value added or other taxes or governmental charges of any kind assessed upon or in connection with the transactions contemplated by this Agreement as required by Netherlands law. To the extent that any such taxes or charges are paid by VHBV by way of withholding or deduction for or on account of VIBV, such payments shall be deducted by VHBV from the amount owed under this Agreement.

8. Books and Records; Audit. Throughout the term of this Agreement, and for a period of seven years thereafter, VHBV shall maintain books and records sufficient to determine

the amounts owing hereunder and VHBV's compliance with the terms and conditions of this Agreement. VIBV shall have the right to inspect and audit all such books and records to ensure compliance with the terms of this Agreement. Any such audit shall be conducted only by VIBV, a representative of VIBV, or an independent auditor designated by VIBV, and all audits shall be conducted during regular business hours. In the event that during such audit it is determined that the unpaid fees owed to VIBV exceed five percent (5%) of the fees actually paid by VHBV to VIBV since the time of the previous audit (or the beginning of this Agreement if such audit is the first audit hereunder), then VHBV shall pay the costs of such audit.

9. **Termination.** VIBV may terminate this Agreement for any reason, or for no reason, thirty (30) days following VIBV's written notice of termination sent to VHBV and upon VIBV's assumption of all rights, duties, obligations and liabilities under the Subject Agreement. In addition, this Agreement shall terminate automatically and without notice upon termination of the Subject Agreement. Termination shall be effective without notice to or action by any court or other legal authority. Upon termination of this Agreement, all rights in and all obligations under the Subject Agreement shall revert to VIBV.

10. **Further Assurances.** VHBV shall take such actions as VIBV may reasonably request in order to secure, perfect or protect the rights of VIBV under this Agreement or any Subject Agreement, including without limitation, executing such documents as VIBV may request in connection with rights in patents, technology, trade secrets, know-how, marks, and other proprietary rights under the Subject Agreement or any reversionary interest of VIBV following termination of this Agreement.

11. **Amendment and Waiver.** VHBV shall not amend the Subject Agreement, or waive the enforcement of any provision thereof, without the express, prior written consent of VIBV. No amendment or waiver of this Agreement, or any provision thereof, shall be effective unless signed by the party against whom enforcement of such amendment or waiver is sought.


12. **Severability.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement in such jurisdiction, but this Agreement shall be reformed and construed in such jurisdiction so as to be valid, legal, and enforceable to the maximum extent permitted in such jurisdiction.

13. **Successors and Assigns.** This Agreement shall be unconditionally assignable by VIBV. VHBV shall not assign this Agreement or any right thereunder without the prior written consent of VIBV. This Agreement shall inure to the benefit of VIBV and its successors and assigns, and shall be binding upon VHBV and its successors and assigns.

IN WITNESS WHEREOF, the parties have through their duly authorized representatives executed and delivered this Agreement under seal with effect as of the date first written above:

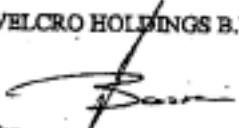
(SEAL)

VELCRO INDUSTRIES B.V.

By: 
Name: Robert J. Huyzen
Title: Managing Director
Date: 15 September 2004


(SEAL)

VELCRO HOLDINGS B.V.

By: 
Name: Peter H. Bosse
Title: Managing Director
Date:

Acknowledged and Agreed:

VELCRO CANADA INC.

By: 
Name: Patrick D. Toddill
Title: President
Date: Sept. 29, 2004

(SEAL)

7

pvr

Seen for legalization:

the signature appearing on the attached document of
Mr. ROBERT J. HUYZEN, residing in Curaçao, Netherlands
Antilles, acting in his capacity of managing director of
the limited liability company VELCRO INDUSTRIES B.V.,
established in Curaçao,

by me, Gerard Christoffel Antonius Smeets, a civil-law notary,
residing in Curaçao, on this sixteenth day of September two-
thousand four.



[Handwritten signature]

CANADA
PROVINCE OF ONTARIO

NOTARIAL CERTIFICATE OF EXECUTION

I, **Christopher Leslie Moon**, a notary public in and for the Province of Ontario, by Royal authority duly appointed, practising at the City of Brampton, in the Regional Municipality of Peel, in the Province of Ontario, certify as follows:

1. I am a witness and was present and saw the following documents executed at Brampton, Ontario on the 29th day of September, 2004:
 - (a) Assignment, Assumption and License Agreement between Velcro Industries B.V. and Velcro Holdings B.V. signed by Patrick D. Todkill.
2. Patrick D. Todkill was identified to me by photo identification and I verily believe that the person whose signature I witnessed is the person of the same name referred to in the document.

In Witness Whereof I have set my hand and affixed my seal notarial at the City of Brampton, in the Regional Municipality of Peel this 29th day of September, 2004

Christopher Leslie Moon,
Notary Public in and for the Province of Ontario

**Davis Webb
Schulze & Moon**
Solicitors and Notaries

24 Queen Street East
Suite 800
Brampton, Ontario, Canada
L7Y 1A3

● NautaDutilh

NOTARIAL CERTIFICATE

Seen by me, Wijnand Hendrik Bossenbroek, civil law notary in Amsterdam, the Netherlands, for legalisation of the signature of:

- Mr Pieter Hendrik BOSSE;

who, according to information obtained from the Trade Register of the Chamber of Commerce of Amsterdam, on the date hereof, is (i) a Managing Director of VELCRO HOLDINGS B.V., established in Amsterdam, and (ii) in said capacity authorized to represent this company acting solely.

Amsterdam, 8 October 2004

This notarial certificate is strictly limited to the legalisation of a signature and the matters stated therein as the same are on record with the above Chamber of Commerce. In this connection it should be noted however that the authority to represent the above company appearing from the Chamber of Commerce records may be limited by matters, such as conflict of interest, *ultra vires* and certain other legal matters, none of which I have investigated for the purpose of the present certificate.

NautaDutilh N.V. has its seat at Rotterdam, The Netherlands and is registered in the Commercial Register in Rotterdam under number 14318323. All services and other work are carried out under a contract for professional services ("overeenkomst van opdracht") with NautaDutilh N.V., subject to the general conditions of NautaDutilh N.V. These general conditions include, among other provisions, a limitation of liability clause and have been filed with the Rotterdam Court of First Instance. They can be consulted at www.nautadutilh.com and will be provided free of charge upon request.
ABN AMRO Bank 45.34.77.999; ING Bank 69.74.64.008; Postbank 57683; Account Name: Kwaliteitskeuring Notarissen Amsterdam NautaDutilh N.V.

APOSTILLE
Convention de La Haye du 5 octobre 1961

- 1. Country: **THE NETHERLANDS**
This public document
- 2. Has been signed by: **mr W.H. Bosscherbroek**
- 3. Acting in the capacity of: **notaris te Amsterdam**
- 4. Bears the seal/stamp of
mr W.H. Bosscherbroek
Certified
- 5. At **Amsterdam**
- 6. The **8 DKT 2004**
- 7. By the registrar of the Court in **Amsterdam**
- 8. No: **08 DKT 2004 0021926**
- 9. Seal/Stamp **Mr. J.M.A. van Loef**

