

Trademark License for Sales of Finished Plants of ‘Radrazz’ Variety of Knock Out[®] Roses in the U.S. & Canada

RECEIVING PARTY’S ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH HEREIN IS A CONDITION PRECEDENT TO THE GRANT OF THIS LICENSE TO USE THE CONARD-PYLE COMPANY’S (“CP”) TRADEMARKS IN CONNECTION WITH THE PLANTS DELIVERED IN THIS SHIPMENT. RECEIVING PARTY SHOULD CAREFULLY REVIEW THE TERMS OF THIS AGREEMENT BEFORE USING CP’S TRADEMARKS IN CONNECTION WITH THESE PLANTS. RECEIVING PARTY’S USE OF THE LICENSED TRADEMARKS IN CONNECTION WITH ANY OF THE PLANTS INCLUDED IN THIS SHIPMENT SHALL CONSTITUTE AND DEMONSTRATE ACCEPTANCE OF THE TERMS OF THIS AGREEMENT BY RECEIVING PARTY.

This trademark license agreement (“Agreement”) accompanies a shipment of live plants (“Shipment”) of the ‘Radrazz’ shrub rose variety (“Variety”), which have been delivered to the Receiving Party by or on behalf of The Conard-Pyle Company (“CP”) of 8 Federal Road, Suite 6, West Grove, Pennsylvania 19390, and/or its Star[®] Roses and Plants (“SRP”) business.

CP is the owner of certain trademarks and trade dress throughout the United States and Canada that it uses and licenses in connection with the distribution and sale of plants of the ‘Radrazz’ shrub rose variety, including, but not limited to, U.S. Trademark Registration Nos. 2818948 and 3713266 and Canadian Trademark Registration No. TMA634083 for KNOCK OUT[®], U.S. Trademark Registration Nos. 4134326, 5848962 and 4628476 and Canadian Trademark Registration No. TMA928531 for THE KNOCK OUT FAMILY OF ROSES[®], U.S. Trademark Registration Nos. 899445 and 2295321 for STAR[®], and U.S. Trademark Registration No. 4378915 and Canadian Trademark Registration No. TMA889928 for STAR ROSES & PLANTS[®] (“Licensed Trademarks”).

Pursuant to this Agreement, CP hereby grants to the Receiving Party a nonexclusive, nontransferable license to use the Licensed Trademarks throughout the United States and Canada (“Licensed Territory”) in connection with the distribution and/or sale of the plants of the Variety included within this Shipment, pursuant to the following terms, conditions, and limitations:

Receiving Party agrees to maintain certain quality standards. In order to ensure that the plants bearing the Licensed Trademarks that are being offered for sale by Receiving Party are healthy, free of pests and disease, meet or exceed generally accepted industry quality specifications, and meet the reasonable standards fixed by CP for such trademarked products, Receiving Party will have the right to use the Licensed Trademarks only in connection with the sale of plants from this Shipment that are free of pests and disease and of No.1 or No.1 ½ Grade, as defined by the Grades and Standards originally established by the American Association of Nurserymen at the time of their sale or distribution under the Licensed Trademarks. Further, CP will have the right to prohibit the use of the Licensed Trademarks in connection with the sale of plants included within this Shipment that do not, in CP’s opinion and at CP’s sole discretion, meet its standards. If Receiving Party uses the Licensed

Trademarks in connection with plants included within this Shipment, or has used the Licensed Trademarks on any prior shipment delivered to Receiving Party by or on behalf of CP within the past 12 months, Receiving Party will give CP and its duly authorized agents access for inspection to all fields, greenhouses, and other premises and to all records pertaining to plants of the Licensed Varieties, during ordinary business hours of any business day for the purpose of ensuring the maintenance of quality standards required by CP and the compliance with the other terms of this Agreement. CP will endeavor, but is not required, to give at least three (3) business days' notice for any such inspection.

Receiving Party agrees to pot each plant bearing the Licensed Trademarks in a Branded Container. Receiving Party will only have the right to use the Licensed Trademarks in connection with the sale of plants from this Shipment that have been potted in CP's mandatory branded container ("Branded Container"), which bears certain trademarks and/or trade dress elements of CP, including, but not limited to, the pot color and one or more of the Licensed Trademarks. Receiving Party will not use or otherwise associate the Licensed Trademarks with any plants from this Shipment that are not potted in a Branded Container. It is the sole responsibility of Receiving Party to arrange for the purchase of Branded Containers. Receiving Party should contact Pam Pfeiffer at (800) 458-6559 x 238 or via email at ppfeiffer@conard-pyle.com with any questions regarding compliance with this requirement, including approved sources of the specified containers. The sole exception to this requirement is if Receiving Party sells the plants in a trade #5 container or larger, in which case Receiving Party may select any type of pot from any vendor, provided that the container exhibits no graphic designs or writing, and provided that the container has a minimum actual volume of 3.5 gallons or more.

Receiving Party agrees to attach a mandatory Plant Tag to each plant bearing the Licensed Trademarks.

Receiving Party shall attach CP's mandatory plant tag ("Plant Tag"), bearing such information as variety name and trademark name, as will be determined in CP's sole discretion, to each plant of the Variety sold or delivered hereunder. Receiving Party will not sell or deliver any plants to any customer without this Plant Tag. CP shall furnish Receiving Party with Plant Tags at approximate cost and/or shall identify an approved vendor/source from which Plant Tags can be purchased by Receiving Party, and Receiving Party shall keep a record of inventory, by variety and quantity, of all such Plant Tags, which records are to be available to CP on request.

Receiving Party will include a trademark notice in all catalogs and other printed materials that include or discuss the Variety. Receiving Party shall print in all catalogs and other printed materials distributed by Receiving Party referring to the Variety a notice as follows: "This variety of Knock-Out® brand plants is sold under license from The Conard-Pyle Company"; and furthermore, Receiving Party shall, in all such catalogs, price lists, and literature, including acknowledgments of orders and invoices covering the sale of plants of Licensed Varieties, supplement the Licensed Trademark name for each variety with the botanical variety name. Receiving Party shall also ensure that an appropriate trademark symbol, *e.g.*, ®, is included with each usage of a Licensed Trademark.

Sports and mutants found within the plants included in this Shipment shall be the property of CP. Sports and mutants found within the plants included in this Shipment shall be the property of CP pursuant to the terms of this Agreement. Receiving Party shall report to CP any sports or mutant plants that show a deviation from the typical characteristics of the initial variety found in the plants included within this Shipment immediately after they are discovered or identified. Upon request of CP, Receiving Party shall provide CP all requested material of the sport, bud mutation, or mutant. Licensor, in its sole discretion, may choose to patent and commercialize such Sport or Mutant Plants.

Receiving Party agrees that it will only use the Licensed Trademarks throughout the Licensed Territory, and only in connection with the sale of plants of the Variety that were delivered to the Receiving Party by or on behalf of CP in this Shipment. Further, Receiving party will not use any Licensed Trademarks in advertising, or otherwise, unless it is clearly indicated to be the trademark of CP for the specific Variety of plant to which it applies, and Receiving Party will not use the botanical variety name and trademark names interchangeably and will not make any use that creates the impression or suggestion that a trademark name is a variety name. Failure to do so constitutes grounds for termination of this Agreement.

Jurisdiction, venue, and waiver of jury trial. This Agreement shall be deemed to have been made, delivered, and agreed upon in the State of Pennsylvania in the U.S.A., and shall in all respects be governed by, and all disputes arising hereunder shall be resolved in accordance with, the law, rules, and regulations of Pennsylvania. Rights, remedies, and obligations arising under the laws of the United States shall be governed by such laws. This Agreement shall be enforceable by the parties exclusively in the State or Federal courts in Pennsylvania sitting in the County of Chester, or the United States District Court for the Eastern District of Pennsylvania, as applicable. Receiving Party consents and submits to the venue and personal jurisdiction of such courts for any action, suit, or proceeding arising out of or related to this Agreement, and acknowledges that, by exercising its rights and performing its obligations under this Agreement, it has transacted business in Pennsylvania for purposes of this provision. Notwithstanding the foregoing, CP shall have the right to pursue its equitable and legal rights against Receiving Party in any other court or other governmental forum of CP's choosing capable of affording the relief requested; and the parties may at any time agree to submit all or any part of any dispute to alternative dispute resolution proceedings, binding or non-binding. The parties agree that any proceeding commenced in connection with this Agreement shall be tried without a jury, and expressly waive their rights to a trial by jury.

Enforceability. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns, but shall not be assigned, transferred, or otherwise encumbered, in whole or in part, by Receiving Party without the prior written consent of CP. In the event that any section of this Agreement is found to be invalid by any court of competent jurisdiction, the validity of the remaining sections of this Agreement shall not be affected.

YOUR COMPLIANCE WITH THE ABOVE TERMS AND CONDITIONS ARE A CONDITION PRECEDENT TO THE GRANT OF THIS LICENSE WITH REGARD TO EACH INDIVIDUAL PLANT INCLUDED WITHIN THE SHIPMENT. AS SUCH, SHOULD RECEIVING PARTY FAIL, NEGLECT, OR REFUSE TO SATISFY ANY OF THE ABOVE CONDITIONS WITH REGARD TO ANY PLANT, RECEIVING PARTY SHALL NOT HAVE THE RIGHT TO USE THE LICENSED TRADEMARKS IN CONNECTION WITH THE SALE AND/OR DISTRIBUTION OF THAT PLANT AND MAY BE LIABLE TO CP FOR DAMAGES FOR ANY SUCH UNLICENSED USE OF CP'S TRADEMARKS AND/OR TRADE DRESS.