

NHL -SAMPLE ENDORSEMENT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of January, _____ by and between Nestle, a corporation doing business in California (hereinafter "COMPANY"), and PLAYER, an individual residing in Texas (hereinafter "PLAYER").

WHEREAS, PLAYER is recognized and widely known throughout the world as an outstanding hockey player;

WHEREAS, PLAYER's name, fame, likeness, image and endorsement (hereinafter the "Total Image of PLAYER"), by virtue of his ability and success, has acquired a secondary meaning in the mind of the purchasing public important to the advertisement and promotion of products; and

WHEREAS, COMPANY is engaged in various activities, including the manufacturing and selling of various food products and desires to market, distribute and sell its products incident to the utilization of the Total Image of PLAYER at various functions as hereinafter defined (the "Function" or "Functions");

WHEREAS, COMPANY is desirous of acquiring the rights (hereinafter the "Rights") to the Total Image of PLAYER in connection with the Functions both in respect to COMPANY activities and those of other companies approved by PLAYER (including Coca

Cola); and

WHEREAS, COMPANY and PLAYER desire to conclude an agreement by which COMPANY acquires the Rights to utilize the Total Image of PLAYER at the Functions subject to the terms contained herein.

NOW, THEREFORE, both COMPANY and PLAYER, each intending to be legally bound, and for good and valuable consideration, hereby agree as follows:

1. License. During the term of this Agreement, PLAYER grants COMPANY the right and license to use the Total Image of PLAYER for the Functions as said term is hereinafter defined. The utilization of the Total Image of PLAYER in regard to any type of promotion is subject to the prior written approval of PLAYER as hereinafter noted in Paragraph Four (4). COMPANY acknowledges that other third parties have contractual agreements concerning the Total Image of PLAYER; COMPANY cannot use the Total Image of PLAYER in any way except as stated in this Agreement. For use of the Dallas Stars team logo incident to the Total Image of PLAYER, the provisions of Paragraph Three (3) herein shall control.

For purposes of this Agreement, the term "Function" or "Functions" as noted herein will be limited to the following activities of PLAYER:

- (1) One (1) photo shoot with children (two children only) lasting approximately 1 1/2 hours;
- (2) One (1) appearance at hockey rink in the Dallas area for a one (1) hour clinic; and
- (3) PLAYER meeting the Dallas sweepstakes winner at a time and place mutually agreed

to by Company and PLAYER.

2. Term of the Agreement. This Agreement shall be only for the Functions noted herein, the last Function to be completed by July 31, 1993.
3. Utilization of Team Logo. The utilization of the Dallas Stars logo shall be at the sole risk and obligation of the COMPANY, the COMPANY being fully responsible for satisfying all legal responsibilities incident to said utilization with both the Dallas Stars and National Hockey League and will fully indemnify PLAYER for any damages or costs incident to any unauthorized action.
4. COMPANY's Right of Advertising. Subject to the prior approval of PLAYER as hereinafter provided, COMPANY shall have the Right to use the Total Image of PLAYER with respect to the Functions in the form of television and printed media advertising, and with respect to the printed material such as posters, stickers and brochures. Company is authorized to use a photo of PLAYER for purposes of this Agreement in any grocery store in the Dallas, Texas area. COMPANY cannot, however, without the prior approval of PLAYER, use live playing action footage of PLAYER.

Since the value of the Total Image of PLAYER is immeasurable, COMPANY has to obtain prior written approval from PLAYER with respect to all forms of advertising and promotions bearing the name and likeness of PLAYER specified in this Paragraph Four (4) before it is released or published or used in any manner, said approval not to be unreasonably withheld. COMPANY shall submit to PLAYER and his designated representative all its advertising plans, samples and text (including coloring, photos, and final "ready" proofs), the advertising materials to be sent per the notice provisions of Paragraph Twelve (12) herein. PLAYER or his designated representative, shall respond to COMPANY within twenty one (21) days after receipt of the proposed advertising plans. If PLAYER does not reply to COMPANY within twenty one (21) days after receipt,

the approval will be considered to be given by PLAYER to COMPANY.

COMPANY will not, by any action or inaction, engage in any conduct that will impair the marketability of PLAYER's name, likeness, image, endorsement and reputation. No advertising, promotional, or information material, or the Function itself, shall contain or be included in close association with any materials which are obscene, pornographic, illegal or offensive to a significant segment of the population to which they will be exposed.

5. Royalty. In consideration for granting the Rights to the COMPANY, PLAYER shall receive the sum of _____ and 00/100 Dollars (\$_____.00). Payment of _____ and 00/100 US Dollars (\$_____) shall be made on the day this Agreement is signed by PLAYER and the remaining amount of _____ and 00/100 US Dollars (\$_____) shall be paid to PLAYER by February 28, 1994.

COMPANY shall have no right of offset against the payments owed to PLAYER. The consideration stated herein shall not be reduced by taxes, expenses and other charges imposed by law at the national and local levels. No income tax withholding shall be done by COMPANY on the amount paid.

Past due payments hereunder shall bear interest at the rate of one and one half percent (1.5%) per month or the maximum interest permissible by law, whichever is less.

6. Appearances. All appearances will be of at a time mutually agreed upon by the PLAYER and COMPANY, taking into account the PLAYER's playing schedule and other prior commitments. All appearances shall be coordinated between PLAYER and his designated representative.
7. Indemnity. COMPANY agrees to defend, protect, indemnify and hold harmless PLAYER, and his

authorized agents, employees and representatives, both separately and jointly, from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including attorney's fees, arising out of, or in any way connected with (a) actions or omissions of COMPANY or any claims or actions for personal injury, death, property damage or other course of action involving the Function or (b) advertising actions or promotional material of the COMPANY.

COMPANY also agrees to procure and maintain in full force and effect a standard liability insurance policy for each Function and name PLAYER as the co-beneficiary thereof, said insurance to be for the face amount of at least One Million and 00/100 Dollars (\$1,000,000.00) and be approved in format and language by PLAYER at least thirty (30) days prior to a particular Function. Player must receive a copy of the insurance certificate before he is obligated to appear at a particular Function.

8. Termination. If either party shall fail to observe or perform any of the obligations contained herein for said party, including the timely payment of the consideration stated herein in Paragraph Five (5), the non-defaulting party shall have the right to terminate this Agreement if such default is not cured within five (5) days after the non-defaulting party shall have given the defaulting party written notice specifying such default.

At termination of this Agreement, all Rights granted to COMPANY shall immediately revert to PLAYER in every respect and PLAYER and PLAYER shall have the authority to use these Rights in any manner.

The termination rights set forth in this Paragraph Eight (8) shall not constitute the extensive remedy of the non-defaulting party hereunder, however, and if a default is made by either party hereunder, the other may resort to such other remedies as said party would have been entitled to if this clause had been omitted from this Agreement.

9. Retention of Rights. Subject to the provisions of Paragraph One (1) herein, during the Term of this Agreement COMPANY agrees that PLAYER shall retain all rights in and to the Total Image of PLAYER, and PLAYER shall not be prevented from using, or permitting and licensing others to use the Total Image of PLAYER in connection with the promotion, advertisement or sale of any product other than the Product noted herein.
10. Rights of COMPANY. COMPANY is authorized by PLAYER to raise, at its discretion, all claims of this Agreement in its own name and its own expense against a third party if PLAYER elects not to raise these claims itself, provided prior written notice thereof is given to PLAYER and PLAYER approves said action by COMPANY, said approval not to be unreasonably withheld. PLAYER will use its best endeavors to support COMPANY in this matter.
11. Transferability; Sublicense. The Rights granted herein are nontransferable and nonassignable by COMPANY. COMPANY may not assign, sell, sublicense or otherwise transfer its rights of this Agreement to another entity or party without the prior written approval of PLAYER. In such case of any authorized assignment, COMPANY shall continue to be, however, responsible for the performance of the contractual provisions contained in this Agreement. PLAYER may not assign or otherwise transfer rights to this Agreement unless prior written approval is given by COMPANY. PLAYER shall continue to be, however, responsible for the contractual provisions contained in this Agreement.

Notwithstanding the previous provisions, however, PLAYER can assign its rights relating to the receipt of royalty payments to another party without the consent of COMPANY.

12. Notice; Delivery Addresses. All notices and other communications from either party to the other hereunder shall, unless otherwise specifically provided herein, be given in writing at the

respective address of PLAYER and COMPANY as provided in this Paragraph Twelve (12), unless either party at any time or times designates another address for itself by notifying the other party thereof by certified mail or express courier mail, in which case all notices to such party shall thereafter be given at its most recently so designated address. Notice shall be deemed satisfied (a) on the date of receipt when sent via a bonafide commercial courier, or (b) on the date sent in the form of a properly paid and addressed certified letter.

Notice shall be sent to both of the following addresses:

TO COMPANY: Nestle
800 North Brand Boulevard
Glendale, California 91203
Attn: Don Dobie, Director of Sales
Planning and Operations

TO PLAYER: PLAYER

13. Choice of Law. This Agreement shall be construed by the laws of the State of California. The exclusive place of jurisdiction shall be Santa Monica, California.
14. Waiver. The failure of PLAYER at any time to demand strict performance by the other of any of the terms, covenants or conditions set forth herein shall not be construed as a continuing waiver or relinquishment thereof, and either party may, at any time, demand strict and complete performance by the other of said terms, covenants and conditions.
15. Employment Status. PLAYER's relationship with COMPANY shall be that of an independent contractor, and nothing contained in this Agreement shall be construed as establishing an employer/employee relationship, partnership or joint venture between PLAYER and COMPANY.
16. Confidentiality. It is hereby agreed that the

specific terms and conditions of this Agreement, including, but not limited to, the financial terms and the duration, are strictly confidential, and shall not be divulged to any third parties without the prior written consent of both COMPANY and PLAYER, unless otherwise required by law.

17. Miscellaneous.

- A. This Agreement contains the full and complete understanding of the parties hereto, supersedes all prior agreements and understandings whether written or oral pertaining hereto, and cannot be modified except by a written instrument signed by each party hereto.
- B. The descriptive headings of the several sections and paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.
- C. Any provisions herein found by a court to be void or unenforceable shall not affect the validity or enforceability of any other provisions.
- D. Statements and definitions noted in the Preamble (i.e., WHEREAS) of this Agreement shall be given full legal effect.

AGREED the day and year first noted herein.

COMPANY

PLAYER

Nestle

By _____
its _____

PLAYER