

TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (the “Agreement”) is made and effective as of _____, 2009 (“Effective Date”) by and between No Moda Studio (the “Licensor”) and SOBO Concepts LCC (the “Licensee”). The Licensor and the Licensee may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Licensor (i) has registered or (ii) has applied for the registration of those certain trademarks and/or service marks listed on Schedule 1 attached hereto and made a part hereof (collectively, the “Licensed Marks”)

WHEREAS, the Licensee is engaged in creation, production, and sale of apparel, accessories and various promotional items (the “Licensee Business”); and

WHEREAS, the Licensee wants to use the Licensed Marks in connection with the Licensee Business and to produce the licensed products and services listed on Schedule 2 attached hereto and made a part hereof (collectively, the “Licensed Products or Services”); and

WHEREAS, subject to the terms and conditions of this Agreement, the Licensor is willing to permit the Licensee to use the Licensed Marks in connection with the Licensee Business for the mutual benefit of the Parties; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW, THEREFORE, in consideration of the covenants and premises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. GRANT OF LICENSE.

Effective as of the Effective Date and subject to the terms and conditions of this Agreement, the Licensor hereby grants to the Licensee, and the Licensee hereby accepts, a non-transferable license in and to the Licensed Marks, solely in connection with the Licensee Business. The Licensee shall make no other use of the Licensed Marks.

2. NO ASSIGNMENT OR TRANSFER.

The Licensee hereby acknowledges and agrees that the rights granted to the Licensee by and obtained by the Licensee as a result of or in connection with this Agreement are license rights only, and that nothing contained in this Agreement constitutes or shall be construed to be an assignment of any or all of the Licensor’s rights in the Licensed Marks.

3. CONSIDERATION.

- (a) Royalties. The Licensee shall pay to the Licensor a continuing royalty of ten percent (10%) of Gross Sales, of all Licensed Products or Services sold by the Licensee or any of its subsidiaries, divisions, or affiliates. As used in this Agreement, Gross Sales shall mean the Licensee's billing price to customers or distributors, including the royalty amount less:
- i. Customary trade discounts actually given;
 - ii. Returns; and
 - iii. Transportation charges on returns.
- (b) All designs produced and sold by licensee shall be supplied by licensor in a format acceptable to licensee.
- i. Designs must be supplied in either Tiff or PNG formats
 - ii. Designs may have a maximum dimension of 12 ¼ x 15 ¾ inches
- (c) If the Licensee sells any Licensed Products directly to Licensor for its own use, Licensor will pay a preferential negotiated price for those goods but will not earn a Royalty on those Gross Sales.

4. MAINTENANCE OF RECORDS AND AUDIT RIGHTS.

- (a) Books and Records. The Licensee will keep accurate books of account and records covering all transactions relating to or arising out of this Agreement. The Licensee will permit the Licensor and its nominees, employees, accountants, agents, and representatives to (i) have reasonable access to and inspect such books and records during normal business hours on reasonable notice, and (ii) to conduct an audit of all such books and records. The Licensee will maintain in good order and condition all such books and records for a period of two (2) years after the expiration of the Term or an earlier termination of this Agreement pursuant to Section 14 or, in the event of a dispute between the Parties, until such dispute is resolved, whichever date is latest. Receipt or acceptance by the Licensor of any sums paid by the Licensee hereunder will not preclude the Licensor from exercising its rights hereunder.
- (b) Underpayment of Royalties. If an inspection or examination referred to in subsection 4(a) above discloses, or a Party otherwise discovers, an underpayment of any royalties or other fees due, the amount of such underpayment plus interest thereon from the date of underpayment to and including the date of payment in full at Ten percent (10%) in effect on the date payment was due will be paid by the Licensee to the Licensor not later than thirty (30) days after determination thereof. If an underpayment of 5% or \$5000 is found, then the licensee will pay the Licensor's audit costs.

- (c) Overpayment of Royalties. If an inspection or examination referred to in subsection 4(a) above discloses, or a Party otherwise discovers, an overpayment of any royalties or other fees due, the amount of such overpayment will be credited against future payments owed by the Licensee, unless the period for which the overpayment was made is the final period covered by this Agreement, in which case the amount of the overpayment will be paid by the Licensor to the Licensee within thirty (30) days after determination thereof.

5. TERM OF AGREEMENT.




Unless otherwise terminated pursuant to Section 13 below, this Agreement and the license granted hereunder shall be for a term of one (1) year from the Effective Date (the “Term”). This Agreement shall renew for an additional one-year term automatically every year thereafter, unless either Party gives written notice to the other Party pursuant to Section 13 below of its intent to terminate the Agreement.

6. OWNERSHIP AND USE OF LICENSED MARKS.

- (a) Ownership of Licensed Marks. The Licensee hereby acknowledges that the Licensor is the owner of the Licensed Marks and all rights therein and that nothing in this Agreement shall give the Licensee any right, title, or interest in or to the Licensed Marks, except pursuant to the license granted hereunder.
- (b) Limitation on Licensee’s Actions. The Licensee agrees that it will not do anything inconsistent with the Licensor’s ownership of the Licensed Marks, and will not claim adversely to the Licensor, or assist any third party in attempting to claim adversely to the Licensor, with regards to such ownership. The Licensee further agrees that it will not challenge the Licensor’s title to the Licensed Marks, oppose any registration or re-registrations thereof, or challenge the validity of this Agreement or the licenses granted herein or hereunder. Furthermore, the Licensee will not register or attempt to register any trade name or trademark that, in whole or in part, incorporates or is confusingly similar to the Licensed Marks.
- (c) Assistance in Protecting Goodwill. The Licensee agrees that all use by the Licensee of the Licensed Marks inures to the benefit of the Licensor and that it will cooperate fully with the Licensor in securing and maintaining the goodwill of the Licensor in the Licensed Marks. To that end, the Licensee agrees that it will not misuse the Licensed Marks, take any action that would bring the Licensed Marks into public disrepute, use the Licensed Marks, or any mark or name confusingly similar thereto, in its corporate or trade name, or take any action that would tend to destroy or diminish the goodwill in the Licensed Marks.

- (d) Notification of Infringement. The Licensee shall promptly notify the Licensor of (i) any claim, demand, or cause of action based on or arising from any third-party unauthorized use of the Licensed Marks or any confusingly similar marks, (ii) any infringement or instance of unfair competition of which the Licensee may become aware involving any of the Licensed Marks, or (iii) any challenge to the Licensee's use of any of the Licensed Marks; provided, however, that the Licensee shall not institute any proceedings for infringement of the Licensed Marks without the prior written approval of the Licensor.
- (e) No Unrelated Use. The Licensee shall not use the Licensed Mark in connection with any business unrelated to the Licensee Business without the prior written approval of the Licensor.
- (f) No Use of Other Trademarks. The Licensee shall have no right or license to use any trademark, service mark, or trade name of the Licensor that is not listed on Schedule 1 hereto.

7. QUALITY STANDARDS.

- (a) Established Standards. The Licensee agrees that the nature and quality of all products sampled, sold, or otherwise disposed of by the Licensee and covered by the Licensed Marks shall conform to the standards established by and under the control of the Licensor (collectively, the "Quality Standards"). The Quality Standards shall be reasonable, no greater than the quality standards imposed by the Licensee's customers generally, and at least equal in quality to the products (in the aggregate) sold by the Licensee prior to the Effective Date.
- (b) Review of Associated Products. The Licensee shall, provide samples to the Licensor of any products sampled, sold, or otherwise disposed of by the Licensee that include the Licensed Marks. Alternatively, the Licensor may request the Licensee to ensure that such products conform to the Quality Standards. To this end, the Licensee shall permit reasonable inspection of its facilities during business hours by an authorized representative of the Licensor, for that representative to inspect the Licensee's operations, methods of manufacture, materials used, storage and packing areas, and the like, associated with the manufacture of products that include the Licensed Marks. Any inspections conducted by the Licensor to ensure that the Quality Standards provided herein have been satisfied shall be at the expense of the Licensor.
- (c) Representative Samples Required.  The Licensee shall deliver to the Licensor, and without charge to the Licensor, representative samples of any product containing the Licensed Marks prior to final production to enable the Licensor to ensure that such Licensed Marks are used only in a manner set forth on Schedule 1.

- (d) Other Specifications. The Licensor shall have the right to impose on the Company, as necessary, other specifications or requirements not provided for under this Section to maintain control over the Licensee Business to ensure the requisite Quality Standards with respect to products manufactured by the Licensee that include the Licensed Marks.

8. MARKING ON PRODUCTS.

- (a) Designation that Marks are Licensed. Licensee shall be responsible for printing licensor's brand name in a neck tag design supplied by licensor. Any additional branding, such as hangtags, gift-with-purchases or other branding elements shall be supplied by licensor.
- (b) Format and Appearance. The Licensor retains the right to specify, from time to time, the format in which the Licensee may use and display the Licensed Marks, and the Licensee shall use or display the Licensed Marks only in formats approved by the Licensor. The Licensee agrees that it will not use any colorable imitation of any of the Licensed Marks, or any variant form (including variant design forms, logos, colors, or type styles) of the Licensed Marks not specifically approved by the Licensor.

9. LICENSOR'S REPRESENTATIONS AND WARRANTIES.

The Licensor hereby represents and warrants to the Licensee that it:

- (a) is the licensor of all right, title, and interest in and to the Licensed Marks;
- (b) has not assigned or transferred the Licensed Marks or agreed to do so;
- (c) has full power and authority to enter into this Agreement and to make the grant of license as provided in Section 1;
- (d) is not aware of any violation, infringement, or misappropriation of any third party's rights (or any claim thereof) by the Licensed Marks;
- (e) is not aware of any third-party consents, assignments, or licenses that are necessary to perform under this Agreement;
- (f) was not acting within the scope of employment of any third party when conceiving, creating, or otherwise performing any activity with respect to the Licensed Marks listed in Schedule 1 hereto and purportedly licensed in Section 1;
- (g) will facilitate efforts of the Licensee to sell the licensed product by providing prominent links on the www.nomoda.org home page to the No Moda & 100tifico sections of Surropa.com.

- (h) will promote the availability of the SOBO created Licensed products in other No Moda marketing materials, when applicable;
- (i) will not sell No Moda or 100tifico to any other online retailers in the United States.



The Licensor agrees to immediately notify the Licensee in writing if any facts or circumstances arise that would make any of the representations in this Agreement inaccurate.

10. LICENSEE'S REPRESENTATIONS AND WARRANTIES.

The Licensee hereby represents and warrants to the Licensor that it:

- (a) has full power and authority to enter into this Agreement; and
- (b) has sufficient resources to complete the transaction contemplated by this Agreement and the authority to commit such resources for the purposes of such transaction

The Licensee agrees to immediately notify the Licensor in writing if any facts or circumstances arise that would make any of the representations in this Agreement inaccurate.


11. DOCUMENTATION.

- (a) Recordation of Agreement. The Licensor will, as soon as is reasonably possible following a request from the Licensee, provide the Licensor with a complete copy of all documentation (in any format) relating to the Licensed Marks for the Licensee's own use, to meet record-keeping requirements of the Licensee, or to allow the Licensee to exercise its rights granted pursuant to this Agreement. The Licensor will also, on request:
 - i. execute and deliver, or cause to be executed and delivered, to the Licensee any additional papers, including any separate licenses of the Licensed Marks, reasonably necessary to record the license in the United States []; and
 - ii. generally do all other lawful acts reasonable and necessary to record the Agreement in the United States [].
- (b) Licensee Assistance in Maintaining Licensed Marks. The Licensee shall on request give to the Licensor or its authorized representatives any information as to its use of the Licensed Marks which the Licensee may reasonably require and will render any (non-monetary) assistance reasonably required by the Licensor in maintaining the applications, registrations, and/or common law rights of the Licensed Marks.

- (c) A termination of any registration pursuant to (i) or (ii) will be terminated by Licensee, at Licensee's expense, in the event of a termination of this License Agreement.


12. INDEMNIFICATION.

The Licensor will indemnify the Licensee against and hold it harmless from:

- (a) any claim by a third party that any of the Licensed Marks or their use or reproduction infringes or misappropriates any trademark, trade secret, or other intellectual property; 
- (b) any claim by a third party that this Agreement conflicts with, violates, or breaches any contract, assignment, license, sublicense, security interest, encumbrance, or other obligation to which the Licensor is a party or of which it has knowledge;
- (c) any claim relating to any past, present, or future use, licensing, sublicensing, distribution, marketing, disclosure, or commercialization of any of the Licensed Marks by the Licensor; and
- (d) any litigation, arbitration, judgments, awards, attorneys' fees, liabilities, settlements, damages, losses, and expenses relating to or arising from (a), (b), or (c) above.

13. TERMINATION.

(a) Termination Procedures. This Agreement may be terminated:

- (1) By the Licensor, on provision of ninety (90) days written notice to the other Party, with or without cause. 
- (2) By Licensee on provision of ninety (90) days written notice to the other Party, with or without cause.
- (3) By either Party for a material breach of any provision of this Agreement by the other Party, if the other Party's material breach is not cured within thirty (30) days of receipt of written notice thereof.
- (4) By the Licensor at any time and without prior notice, if:
 - i. The Licensee attempts to assign, sublicense, transfer, or otherwise convey, without obtaining the Licensor's prior written consent, any of the rights granted to the Licensee by or in connection with this Agreement;

- ii. The Licensee fails to obtain the Licensor's approval of the Licensee's use of the Licensed Marks in accordance with Section 7 of this Agreement;
 - iii. The Licensee discontinues the manufacture and sale of the Licensed Products or Services for any period of two (2) consecutive months after the Effective Date;
 - iv. The Licensee uses the Licensed Marks in a manner in violation of, or otherwise inconsistent with, the restrictions imposed by or in connection with Section 8 of this Agreement; or
 - v. The Licensee uses the Licensed Marks in a manner not expressly permitted by this Agreement.
- (b) Effect of Termination. All rights granted by this Agreement including, without limitation, the Licensee's right to use the Licensed Marks, shall end on termination of this Agreement. On termination of this Agreement, the Licensee agrees to promptly discontinue all use of the Licensed Marks and/or any similar trade name(s) that contain the Licensor's name as a part thereof and to refrain from further use of the Licensed Marks in advertising, commercial registers, directories, Internet and websites, telephone listings, and all similar listings.

14. NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

15. NO AGENCY RELATIONSHIP.

This Agreement creates a licensor-licensee relationship between the Parties. Nothing in this Agreement shall be construed to establish a joint venture, agency, or partnership relationship between the Parties.

16. NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective Party as follows:

If to the Licensor:
Christian Escalante
No Moda Studio
4205 Council St. Studio #111
Los Angeles, Ca 90004

If to the Licensee:

Dean Schwartz
SOBO Concepts LLC
7251 NE 2nd Avenue, Suite 111
Miami, FL 33138

17. GOVERNING LAW.



This Agreement shall be governed by the laws of the state of Florida. In the event of any dispute or difference arising out of or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle such disputes or differences. The parties shall consult and negotiate with each other in good faith and understanding of their mutual interest, to reach a just and equitable solution satisfactory to both parties. If they do not reach solution within a period of ninety (90) days, then any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

18. COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

19. SEVERABILITY.

Whenever possible, each provision of this Agreement, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or

rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

20. ENTIRE AGREEMENT.

This Agreement, together with Schedules 1 and 2, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior and contemporaneous agreements and understandings, both written and oral, between the Parties.

21. HEADINGS.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

[SIGNATURE PAGE FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

LICENSOR

Christian Escalante

By: _____

Name:

Title:

LICENSEE

SOBO Concepts LLC

By: _____

Name: Dean Schwartz

Title:

SCHEDULE 1

LIST OF TRADEMARKS AND/OR SERVICE MARKS

Trademark / Service Mark	Registration / Application Number	Date of Filing / Date of Registration
No Moda	Serial No: Registration No.	
100tifico	Serial No: Registration No.	

SCHEDULE 2

LICENSED PRODUCTS AND SERVICES

t-shirts (long sleeve & short sleeve), polos, hoodies, sweatshirts, caps, cell-phone
wallpapers

