

TRADE MARK LICENCE AGREEMENT
Ethical Consumer Best Buy Logo

THIS AGREEMENT is made on the.....

BETWEEN:-

(1) ECRA Publishing Ltd having its registered office at Unit 21, 41 Old Birley St, Manchester, M15 5RF ("The Licensor"); and

(2)the person(s), firm, partnership or the company whose address is.....
..... ("the Licensee").

Annual license period Commencement Date:.....

RECITALS

(A) The Licensor is the company that runs and publishes Ethical Consumer magazine.

(B) ECRA Publishing has granted the Principal Licence to the Licensee to use the Ethical Consumer Best Buy trade mark subject to terms and conditions.

(C) The Licensor wishes to permit the Licensee to use the Ethical Consumer Best Buy Logo Trade Mark in respect of the products (defined below) on the terms of this Agreement.

OPERATIVE PROVISIONS

1. Definitions

1.1 In this Agreement:

"the Commencement Date" should be at least one week after the contract date so that a website landing page (see Schedule 3 below) can be created.

"Registered Trade Marks" mean the UK Registered Trade Marks registered or being registered in the name of ECRA Publishing.

"Principal Licence" means the Licence dated as above and below between
..... and the Licensor.

"the Products" means the goods and/or services specified in Schedule 1 in relation to which the Trade Marks are to be used by the Licensee.

"the Territory" means the World or Europe or individual country- as specified by the licensee in Schedule 1.

“the Trade Marks” means the Registered Trade Marks (if any) the applications for registrations and the UK unregistered trade marks in the name of or in favour of ECRA Publishing and listed in Schedule 2.

“Year” means each period of twelve calendar months commencing on the Commencement Date or any anniversary of the commencement date.

2. Rights granted and territory

- 2.1 The Licensors grants to the Licensee on the terms set out in this Agreement a non-exclusive licence to use the Trade Marks in the Territory on or in relation to the Products.
- 2.2 This Licence is personal to the Licensee and the grant does not include any right to grant sub-licences.

3. Duration

- 3.1 This Agreement shall commence on the Commencement Date and shall continue in force unless terminated under clause 9.
- 3.2 All licence agreements will be automatically renewed for a further 12 months period unless either party has given notice, 30 days prior to the end of the agreement that he/she wishes to terminate the agreement.

4. Changes in circumstances

- 4.1 The Licensee shall immediately notify the Licensors in writing of any potentially material change to the process of manufacture, ingredients and other materials used and the packaging and storage of the Products. See Schedule 4 for Guidance Notes on this subject. Our best buy ratings are best in sector awards and each sector will have different criteria. The criteria used for rating each product appear in the text and tables of each report on the www.ethiscore.org website.
- 4.2 The Licensee will immediately notify the licensor in writing of any change to the ownership or control of the company.
- 4.3 The Licensors from time to time may undertake background research on the Licensee whereupon, depending on the results of the research, the following year's licence will or will not be issued by the Licensors.

- 4.4 Where there are substantial changes in circumstances under 4.1 to 4.3 above, the Licensor reserves the right to cancel the license, withdraw permission for future use of the logo, make clarifications on the website, and refund license payments proportional to the part of a year remaining.

5. Use of the trade marks

- 5.1 The Licensee shall use the Trade Marks only on the product or products specified in Schedule 1. Use of the Best Buy logo on a website or in other marketing literature is permitted provided that the logo is clearly associated with the product to which it has been awarded. The Licensor may require the licensee to amend any reference to the logo where it could be seen to imply that the logo is awarded to a whole company or to a product or range of products not explicitly listed in Schedule 1. See Schedule 4 for Guidance Notes on this subject.
- 5.2 The Licensee shall, if requested by the Licensor, submit designs for the products and of all printed material using the Trade Marks to the Licensor for approval as to the manner and the context of the intended use of the Trade Marks and shall not make use of any such designs or materials if they are then not approved, which approval shall not be unreasonably withheld. The Licensee shall however be responsible for ensuring that all other requirements relating to labelling packaging advertising marking and other such matters are complied with.
- 5.3 The use of the Trade Marks by the Licensee shall at all times promote and maintain their distinctiveness, style and reputation as determined by the Licensor and the Licensee shall forthwith upon demand of the Licensor cease any use not consistent therewith.
- 5.4 The Licensee shall not use any mark or name confusingly similar to the Trade Marks in respect of any corporate business or trading name or style of the Licensee.

6. Ownership of the trade marks

- 6.1 The Licensor warrants that it has the right to grant Licences of the Trade Marks under the terms of the Principal Licence and that it had authority to and does not require the consent of any third party to enter into this Agreement and that it is not aware that any of the Trade Marks or the use of any of them on or in relation to the Products in the Territory which infringes the rights of any third party but gives no warranty as to the validity of the registrations of the Registered Trade Marks.
- 6.2 The Licensor shall pay all renewal fees necessary to maintain the registrations of the Registered Trade Marks on the Register of Trade Marks ("the Register") during the term of this Agreement.
- 6.3 The Licensee undertakes not to do or permit to be done any act which would or might jeopardise or invalidate any registration of the Registered Trade Marks not to do any act which might assist or give rise to an application to remove any of the Registered Trade Marks from the Register or which might prejudice the right or title of the Licensor to any of the Trade Marks.
- 6.4 The Licensee will on request give to the Licensor or its authorised representative any information as to its use of the Trade Marks which the Licensor may require and will (subject to provisions of clause 7 below) render any assistance reasonably required by the Licensor in maintaining the registrations of the Registered Trade Marks.
- 6.5 The Licensee will not make representation or do any act which may be taken to indicate that it has any right or interest in or to be the ownership or use of any of the Trade Marks except under terms of this Agreement and acknowledges that nothing contained in this Agreement shall give the Licensee any right title or interest in or to the Trade Marks save as granted hereby.

Where the Licensor in its absolute discretion determines that the Licensee shall be recorded as a registered user of the Registered Trade Marks, the Licensee shall assist the Licensor as may be necessary (including by executing any necessary documents) in recording the Licensee as a registered user of the Registered Trade Marks on the Register (including such of the applications as mature into registrations during the period of this Agreement) and the Licensee hereby agrees that such entry may be cancelled by the Licensor on termination of this Agreement for whatever reason and that it will assist the

Licensors so far as may be necessary to achieve such cancellation including by executing any necessary documents.

7. Infringements

- 7.1 The Licensee shall as soon as it becomes aware thereof give the Licensor in writing full particulars of any use or proposed use by any other person firm or company of a trade name trade mark or get-up of goods or mode of promotion or advertising which amounts or might amount either to infringement of the Licensor's rights in relation to the Trade Marks or to passing-off.
- 7.2 If the Licensee becomes aware that any other person firm or company alleges that the Trade Marks are invalid or that use of the Trade Marks infringes any rights of another party or that the Trade Marks are otherwise attacked or attackable the Licensee shall immediately give the Licensor full particulars in writing thereof and shall make no comment or admission to any third party in respect thereof.
- 7.3 The Licensor shall have the conduct of all proceedings relating to the Trade Marks and shall in its sole discretion decide what action if any to take in respect of any infringement or alleged infringement of the Trade Marks or passing-off or any other claim or counter claim brought or threatened in respect of the use or registration of the Trade Marks.
- 7.4 The Licensee shall not be entitled to bring any action for infringement under s30 of the Trade Marks Act 1994 and the Licensor shall not be obliged to bring or defend any proceedings in relation to the Trade Marks if it decides in its sole discretion not to do so.
- 7.5 The Licensee will at the request of the Licensor give full co-operation to the Licensor in any action claim or proceedings brought or threatened in respect of the Trade Marks and the Licensor shall meet any reasonable expenses incurred by the Licensee to third parties in giving such assistance.

8. Sales and Licence Fee

- 8.1 In consideration of the grant made in this Agreement the Licensee shall on the date hereof pay the Licensor a licence fee of (not including VAT) annually unless terminated under clause 9 below.

9. Termination

- 9.1 Either party may terminate this agreement with 6 months notice in writing. Where the termination is made by the Licensee, no fees will be repayable for any termination made before the full licence term.
- 9.2 The Licensor may terminate this Agreement summarily without prejudice to its other remedies forthwith by notice in writing to the Licensee if the Licensee:
- 9.2.1 commits a breach of this Agreement (including but not limited to any breach of Clauses 4.1 and 4.2) provided that if the breach is capable of remedy the notice shall only be given if the Licensee shall not have remedied the same within one month of having been given notice in writing specifying the breach and requiring it to be remedied; or
- 9.2.2 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed of its assets or ceases for any reason to carry on business or takes or suffers any similar action which in opinion of the Licensor means that the Licensee may be unable to pay its debts.
- 9.2.3 does not pay the License fee referred to at Clause 8.1 when due.
- 9.3 The Licensee may terminate this Agreement by giving 90 days notice in writing if the Licensor does not take any action it ought reasonably to take to protect the Trade Marks under the provision of clause 7.3 above within six months of the circumstances giving rise to the need for such action coming to the attention of the Licensor.
- 9.4 Upon the termination of this Agreement for whatever reason the Licensor shall be entitled to retain the licence fee paid pursuant to Clause 8.1 but termination shall not otherwise affect the accrued rights of the parties arising in any way out of this Agreement as at the date of termination and in particular but without limitation the right to recover damages from the other.

- 9.5 Upon the termination of this Agreement for whatever reason the Licensee shall immediately cease to make any use of the Trade Marks, except to sell existing labelled stock, and to use stock of labels up to 6 months after termination.
- 9.6 All provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect thereafter.

10. Assignment

- 10.1 The Licensors may assign the benefit and burden of this Agreement to any party (including but not limited to a party to which it may assign the Trade Marks) and shall use its reasonable endeavours to procure that such assignee (if the Licensee so requires) shall grant a licence direct to the Licensee on the same terms mutatis mutandis as those contained in this Agreement.
- 10.2 The Licensee shall not assign transfer sub-contract or in any other manner make over the benefit and/or burden of this Agreement without the prior written consent of the Licensors. Consent will not be unreasonably withheld.
- 10.3 In the event of an assignment this Agreement shall be binding upon such successor or assignee and the name of a party appearing herein shall be deemed to include the names of any such successor or assignee.

11. Force majeure

- 11.1 Neither party shall be in breach of this Agreement if there is any total or partial failure of performance by it of its duties and obligations under this Agreement occasioned by any act of God fire act of government or state war civil commotion insurrection embargo prevention from or hindrance in obtaining any raw materials energy or other cause beyond the control of either party. If either party is unable to perform its duties and obligations under this Agreement as a direct result of the effect of one or more of such causes such party shall give written notice to the other of such inability stating the cause in question. The operation of this Agreement shall be suspended during the period (and only during the period) in which the cause continues to have effect. Forthwith upon the cause ceasing to have effect the party relying upon it shall give written notice thereof to the other. If the cause continues to have effect for a period of more than 180 days the party not claiming relief under this clause shall have the right to terminate this Agreement upon giving 30 days written notice of such termination to the other party but such notice shall not take effect if the other party

gives notice within that period that the cause has ceased to prevent the operation of this Agreement.

12. Illegality

- 12.1 If any provision of term of this Agreement shall become or be declared illegal invalid or unenforceable for any reason whatsoever such term or provision shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement provided always that if such deletion substantially affects or alters the commercial basis of this Agreement the parties shall negotiate in good faith to amend and modify the provisions and terms of this Agreement as may be necessary or desirable in the circumstances.

13. Entire agreement/Amendment/Press Releases/ Costs

- 13.1 This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements between them relating to the subject matter of this Agreement. Neither party shall be entitled to rely on any agreement understanding or arrangement, which is not expressly, contained in this Agreement and no change may be made to it except in writing signed by duly authorised representatives of both parties.
- 13.2 No failure or delay on the part of either of the parties to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy preclude the further exercise of any right or remedy as the case may be. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 13.3 The text of any press release or advertisement by the Licensee concerning the subject matter of this Agreement shall be copied to the Licensor prior to or within a reasonable time of publication. The Licensor may require amendments to such communications which the Licensee will not unreasonably withhold. See Schedule 4 for Guidance Notes on this subject.
- 13.4 Each of the parties shall be responsible for its respective legal and other costs incurred in relation to the preparation of this Agreement.

14. Notice

- 14.1 Any notice or other document to be given under this Agreement shall be in writing and shall

be deemed to have been duly given if left at or sent by hand or by registered post or by telex facsimile or other electronic media to a party at the address telex or facsimile number set out below for such party or such other address as one party may from time to time designate by written notice to the other.

14.2 Any such notice or other document shall be deemed to have been received by the addressee two working days following the date of dispatch if the notice or other document is sent by registered post or simultaneously with the delivery or transmission if sent by hand or if given by telex facsimile or other electronic means.

14.3 The Licensor's address for service is the address appearing at the head of this Agreement.

14.4 The Licensee's address for service is the address appearing at the head of this Agreement.

15. Interpretation

15.1 The headings in this Agreement are inserted only for convenience and shall not affect its construction.

15.2 Where appropriate words denoting a singular number only shall include the plural and vice versa.

15.3 Reference to any statute or statutory provision includes a reference to the statute or statutory provision as from time to time amended extended or re-enacted.

16. Governing law and jurisdiction

16.1 The validity construction and performance of this Agreement shall be governed by English law and shall be subject to the exclusive jurisdiction of the High Court of Justice in England.

Signed: on behalf of ECRA Publishing Ltd (The Licensor)

PRINT NAME:

Date:

Signed: on behalf of The Licensee

PRINT NAME:

Date:

...

Ethical Consumer Best Buy logo: Schedule 1

Company Name:

Price agreed:

The above agreement is in relation to the following product(s):

Product Name:

Best Buy in Ethical Consumer magazine issue number and date:

Product sales in last financial year.....

Territory agreed:.....

Product Name:

Best Buy in Ethical Consumer magazine issue number and date:

Product sales in last financial year.....

Territory agreed:.....

Product Name:

Best Buy in Ethical Consumer magazine issue number and date:

Product sales in last financial year.....

Territory agreed:.....

Product Name:

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Product Name:

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Product sales in last financial year.....

Territory agreed:.....

Product Name:

Best Buy in Ethical Consumer magazine issue number and date:

Product sales in last financial year.....

Territory agreed:.....

Ethical Consumer conducts research from time to time for the Co-operative Bank's annual Ethical Consumerism Report (tracking the rate of growth in sales of ethical products). Please contact us if you do not wish us to data in this agreement to help that research. The report aggregates sector sales, and the sales of individual companies remain confidential at all times.

Schedule 2



Schedule 3: Sample ethiscore website landing page

[product name – ethiscore XX] was a Best Buy in the Ethical Consumer magazine [sector] report published in ECXX [date]. It was approved to use the Best Buy logo on this product on [date].

Ethical Consumer magazine ranks companies and their products against a range of ethical issues and then recommends the best performing as sector Best Buys.

To read the full report check the ethical consumer report index. You may need to subscribe to the ethiscore website.

Schedule 4: Guidance Notes

Changes in circumstances (This refers to para 4.1)

The licensee needs to tell us of any changes to the products awarded the logo because the changes may affect the product's Best Buy status. For example, if the product stopped being organic then it would get a lower rating and ethiscore and may no longer be recommended by Ethical Consumer magazine as a Best Buy. Similarly, if a product changed its packaging from, for example, glass bottles to plastic ones, the product may lose its Best Buy status, or if it started being formulated with parabens etc.

Details of why products are given extra positive points are given in the article accompanying the product report or in the Product Notes on the www.ethiscore.org website.

Use of the logo (This refers to the Trade Mark Licence Agreement para 5.1)

The Best Buy logo is licensed for use with specific products, it does not accredit companies as a whole. This is because Ethical Consumer magazine's Best Buy recommendations relate to product areas rather than companies and our rating system can give a different score to different products produced by the same company. For example a company may produce an organic and a non-organic version of a product. The organic version may have been recommended as a Best Buy, while the non-organic version has not.

You should only use the logo on marketing, advertising, point of sale or packaging materials clearly associated with the product that has been awarded the Best Buy. You should not give the impression that the Best Buy logo applies to the company as a whole. For example, you should not use the Best Buy logo on a website home page that has no reference to the licensed product. Nor should you use the logo in such a way as to imply that the Best Buy recommendation applies to products that are not specifically licensed. For example, if you are using the Best Buy logo on an advert for a number of different products, the logo should be clearly associated with only those products that are licensed to use the logo.

Products that are licensed for use with the Best Buy logo are listed in Schedule 1 of the contract.

When Ethical Consumer licences a product for use with the Best Buy logo it will be agreed if the licence applies to a range of products that are essentially the same as one another and have an identical 'ethiscore' rating. For example, a company may sell a range of

Fairtrade coffees, sourced from different countries. The licence would be to the company's "Fairtrade Coffee," rather than being restricted to the company's Fairtrade Kenyan Coffee, but not to its Fairtrade Ethiopian Coffee. However, this does not automatically extend the licence to products that are just similar. For example, a company may have its Organic Soap Bars licensed to use the Best Buy logo – this does not mean, however, that the company can use the Best Buy logo for its Organic Liquid Soap. This is because there may be additional environmental or ethical issues relevant to liquid soaps that have not been assessed when bars of soap were researched by Ethical Consumer and Best Buy recommendations made.

Informing Ethical Consumer of Advertisements, Marketing Material and Press Releases

(This refers to the Trade Mark Licence Agreement para 13.3)

There is no need to inform Ethical Consumer every time that your company uses the Best Buy logo on packaging or advertising. However, you do need to contact us within reasonable time if you intend to publish any advertisements, marketing material or press releases concerning the Best Buy logo license award. For example, if you intend to issue a press release saying "Ethical Consumer award our fruit juice Best Buy" you need to send us the press release to approve.

However, if you are publishing a web page marketing your licensed fruit juice with the Best Buy logo on it, you do not have to contact us.

This is because we may require amendments if the Best Buy recommendation is being misrepresented; for example if the press release implies that the company, rather than the product is accredited a Best Buy.