

## AGREEMENT

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by and between The Pep Boys Manny, Moe & Jack of California ("Pep Boys"), a California corporation, located and doing business at 3111 West Allegheny Avenue, Philadelphia, Pennsylvania, and Mr. Kent G. Anderson ("Anderson"), an individual doing business at 925 North Griffin, Bismark, North Dakota, 58501.

WHEREAS, Pep Boys is the owner of the trademark FUTURA as well as U.S. registrations therefor, including, 778,767; 1,582,462; and 2,454,578 – two of which are incontestable [hereafter collectively the "FUTURA Registrations"];

WHEREAS, Anderson filed with the United States Patent and Trademark Office several applications for the mark FUTURE in various classes for various goods and services:

Mark	Serial No.	Goods/Services	Application Filing Date	Opposition No.
FUTURE	76/262/483	See Exhibit A	5/25/2001	91157538
FUTURE (Stylized)	76/141,013	See Exhibit B	10/5/2000	91157768
FUTURE	76/188,809	See Exhibit C	1/2/2001	91158277
FUTURE	76/235,435	See Exhibit D	4/5/2001	91158520
FUTURE	76/247,198	See Exhibit E	4/27/2001	91158509
FUTURE	76/299,227	See Exhibit F	8/15/2001	91158786
FUTURE	76/324,919	See Exhibit G	10/15/2001	91159159

These marks, and applications therefor, are collectively referred to herein as "the Anderson Applications."

WHEREAS, Pep Boys has filed a Notice of Opposition with the Trademark Trial and Appeal Board ("Board") of the United States Patent and Trademark Office ("Trademark Office") against the all of the Anderson Applications (the "Oppositions").

WHEREAS, Anderson has filed Answers.

WHEREAS, the Parties wish to resolve the matter without resort to further litigation or other judicial or quasi-judicial proceedings.

NOW, THEREFORE, in consideration of the mutual promises herein, the Parties, intending to be legally bound hereby, agree as follows:

1. Anderson, on behalf of himself, his successors and assigns, and any company in which he now or in the future may own more than 10%, and/or controls, shall not use, or seek to register with any federal, state or other governmental agency, department or other entity, the FUTURE mark, its equivalency in any language (including FUTURA) or any designation comprised in whole or in part of the word FUTURE including its equivalency in any language, in connection with tires, inner-tubes, wheels, automotive aftermarket parts, accessories, and/or services as well as electronic and/or mail order sales of same, and/or retail stores retail outlets, and/or retail automotive aftermarket outlets featuring automotive parts, and accessories (including but not limited to tire stores).

2. Notwithstanding anything to the contrary herein, Anderson shall not use the FUTURE designation, or any designation which includes the term "FUTURE" or its equivalency in any language (with or without other words or designs), in connection with any product sold in the automotive aftermarket including, but not limited to retail stores, catalogs, and/or electronic websites featuring automotive parts, products, accessories and/or services.

- “automobile parts” as related to “promoting and conducting trade shows in the field of . . .”
- “car stereos” as related to “data processing equipment”; and

B) Add the following exclusionary language – “excluding tires, inner tubes, wheels, and/or tire/wheel accessories” after the term “motorcycles” wherever the latter term occurs in the Anderson Applications and/or any applications which might be filed by Anderson for a mark incorporating the term FUTURE (or its equivalency in any language, including FUTURA).

4. Within thirty (30) days of the actual receipt of notification from the Trademark Office that the last of the Amendments to the Anderson Applications (referenced in paragraph 3 of this Agreement) has been accepted, Pep Boys shall withdraw the Opposition without prejudice and Anderson shall provide his written consent to such withdrawal without prejudice.

5. Anderson, on behalf of himself, his successors and assigns, and any company in which he now or in the future may own more than 10%, and/or controls, shall not, directly or indirectly, challenge before any court, adjudicative body, arbitrator, and/or in any judicial or quasi-judicial proceeding, the use and/or registration by or on behalf of Pep Boys of the FUTURA mark, any of the FUTURA Registrations, and/or any mark or registration which incorporates the term FUTURA or its equivalency in any language.

3. Within thirty (30) days of the full execution of this Agreement by the parties, Anderson shall file with the Trademark Office, upon the consent of Pep Boys, Request(s) to Amend which is consistent with the restrictions found in paragraph 1 of this Agreement, including, but not limited to, the following:

A. Delete the following wherever it occurs in the Anderson Applications and/or any other application(s) which have been or might be filed by Anderson for a mark incorporating the term FUTURE (or its equivalency in any language, including FUTURA):

- “automobiles, trucks, sports utility vehicles, vans, motorcycles;”
- “recreational vehicles, namely campers and truck campers.”
- “retail automobile and vehicle parts stores;”
- “automotive and vehicle parts” as related to “discount stores and on-line ordering in the field of . . .;”
- “automobiles” and “motorcycles” as related to “dealerships in the field of . . . ”
- “auto” as related to “insurance administration in the field of . . . ”
- “automobile service car station services”;
- “car cleaning”;
- “vehicles” as related to “cleaning of . . .;”
- “maintenance and repair of vehicles”
- “automotive and vehicle parts” as related to “on-line ordering in the field of . . .;”
- “automobiles” and “automotive” as related to “wholesale and retail store services in the field of . . . ”
- “automotive part [sic] and accessories” and “automobiles” as related to “wholesale and retail store services featuring namely . . . ”
- “automobiles” and “automotive parts and accessories” as related to “distributorship featuring namely . . . ”
- “vehicles” as related to “tracking, locating and monitoring of . . . ”

6. The terms of this Agreement shall be binding upon, and inure to the benefit of, the respective heirs, successors, assigns, parent, subsidiary and affiliated companies of the Parties hereto.

7. This is the entire agreement of the Parties with respect to the subject matter hereof. This Agreement shall not be modified except by prior written agreement of all of the Parties hereto.

8. This Agreement shall be construed pursuant to the laws of the State of Pennsylvania, without resort to its conflicts of laws provisions.

9. Each of the Parties represents that, before the execution of this Agreement, it/he had the benefit of legal counsel of its/his own selection and that it/he has executed this Agreement following consultation with legal counsel; and/or it/he had the opportunity to consult with legal counsel of its/his own selection and declined to do so.

10. In the event that any provision(s) of this Agreement require(s) interpretation, it is agreed by the Parties that all Parties have participated equally in the drafting and preparation of this Agreement and that neither of the Parties shall have this Agreement construed more strictly against it/him than as against the other Party.

**IN WITNESS WHEREOF**, the Parties have hereunto set their respective hands on the date(s) below written.

THE PEP BOYS MANNY, MOE & JACK  
OF CALIFORNIA

KENT G. ANDERSON

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_