A Tale of Chocolate: The Bitter, the Sweet, the Dark and the Light[1]

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This case was written for the purposes of classroom discussion. The author does not intend to illustrate either effective or ineffective handling of managerial situations.

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A Tale of Chocolate: The Bitter
Part I – Legal Control

Our core value is Reverence for Life […] We believe all life is precious and deserving of our respect, kindness and care, and this Reverence for Life ethic is at the heart of each our business practices.

– Endangered Species Chocolate Company[2]

Endangered Species Chocolate Co. Logo[3]

Jon Stocking kept coming back to the same question. How did he lose control over The Endangered Species Chocolate Company (ESCC) that he had taken from a start-up to an industry-leader in only ten short years?

Meanwhile, Indiana businessman Wayne Zink considered his company's recent acquisition of ESCC and the subsequent termination of Jon Stocking's employment as ESCC's president. After Zink's limited liability company assumed the majority partner position of the company that operated ESCC, operations were moved from Oregon to Indiana and Jon Stocking was released from his duties. Stocking perceived his ouster as a hostile takeover of his business, but Zink, a successful entrepreneur and philanthropist, did not see things that way.

Background

Jon Stocking and the beginning of ESCC On a trip to the zoo in 1992, Jon Stocking's four-year old daughter asked, "Daddy, why are the elephants tied up?"[4] He tried to explain human encroachment on natural habitat, but she persisted. "Yeah, but what are you going to do about the elephant? You didn't tell me that."[5] Stocking described this conversation as the catalyst that led to the beginning of ESCC.

Stocking was an environmentalist who, as a young man on a fishing boat, had solidified his views and environmental commitment as he witnessed the drowning of marine mammals and sharks in tuna nets.[6] He believed in fair trade, which allowed farmers to

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[2]Leveling the playing field (last modified July 14, 2006) (visited July 23, 2006) http://www.chocolatebar.com/shop/. [hereinafter *Playing field*]

[3]Endangered Species Chocolate (visited July 23, 2006) http://www.chocolatebar.com/shop/.

[4]Kristian Foden-Vencil, *A Gift for your Organic Valentine* (visited October 14, 2006) http://www.publicbroadcasting.net/opb/.

[5]*Id.*

[6] *Id.*

earn a fair price for their crop and workers to earn a fair wage.[7] Since fair trade meant farmers earned higher amounts on their crops, additional land did not need to be cleared to plant more crops. In short, Stocking believed that fair trade led to the preservation of natural habitat and environment. He also believed in organic farming methods so that the use of pesticides in the environment could be avoided.[8]

Stocking had been trained as a chef in Europe, where he learned the fine craft of chocolate making.[9] After the conversation with his daughter, he resolved to create an organic chocolate company with a message.[10]

From ESCC's modest beginnings in 1993, which Stocking initially built from credit card debt,[11] he grew the business to become a leading U.S. natural foods industry chocolate company.[12] Along the way, he established a fair trade cacao cooperative in Costa Rica, where all farmers shared in the profits.[13] Also, the ESCC donated 10% of its net profits to various environmental groups including the Jane Goodall Institute, Defenders of Wildlife, National Wildlife Federation, and the American Cetacean Society.[14]

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[7] *Id*.

[8] *Id*.

[9] *Id*.

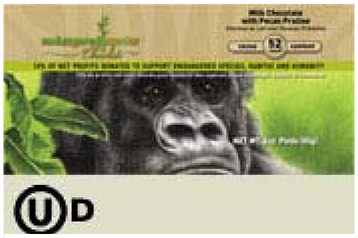
[10] *Id*.

[11] Christina Williams, *Bitter Chocolate,* OREGON BUSINESS, Sept. 2005, at 13, 13.

[12] Complaint, Jon Stocking; Holly Stocking; Jon Stocking Enterprises, Inc., d/b/a The Endangered Species Chocolate Company; and Stocking Feet, LLC v. The Raintree Group, LLC, d/b/a The Endangered Species Chocolate Company; DZ Enterprises, LLC; Randy Deer; and Wayne Zink, *filed in* The Circuit Court of the State of Oregon for the County of Jackson, case no. 052054-L-3 [hereinafter, *Complaint*], para. 14. (Readers should note that the allegation of a fact in a pleading – such as a complaint, answer or any other type of pleading – does not necessarily mean that those facts are true. Those facts are simply alleged and/or believed by one side of the dispute.)

[13] Foden-Vincel, *supra* note 4.

[14] *Complaint*, *supra* note 12, at para. 13.



One of several chocolate bar wrapper designs

In 2004, ESCC had 22 employees and was located in Talent, Oregon.[15] ESCC produced chocolate products made from organic and all-natural ingredients, and its chocolate bar wrappers portrayed endangered animals in their natural habitats.[16] Information about those animals and their habitats was also printed on the wrappers to raise social awareness.[17]

During Stocking's leadership, ESCC had been recognized as one of Oregon's top 100 fastest growing private companies between 2000 and 2004.[18] ESCC reached profitability in 2001, and grew from $1.2 million in sales in 2000 to approximately $5 million in 2004,[19] with profits of $700,000 that year.[20] ESCC was awarded Oregon's Lighthouse Award for growth and the 2004 Cliff Adler Heart in Business Award for business integrity and ethics in the natural foods market.[21]

Jon Stocking Enterprises, Inc. operated (d/b/a) as The Endangered Species Chocolate Company.[22]

Wayne Zink and ESCC Zink was a promoter[23] and entrepreneur. During his career, he had started many successful businesses in Indiana and Arizona, including public relations firms and beauty products lines, and he had been involved in television production.[24] He was a philanthropist and supporter of the arts.[25] "It's time for good

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15 Foden-Vincel, *supra* note 4.

16 *Complaint*, *supra* note 12, at para. 13. The image of the chocolate bar wrapper was taken from Endangered Species Chocolate, *supra* note 3.

17 *Complaint*, *supra* note 12, at para. 14.

18 *Id.*

19 *Complaint*, *supra* note 12, at para. 14; *see also*, Williams, *supra* note 11, at 14.

20 Williams, *supra* note 11, at 14.

21 *Complaint*, *supra* note 12, at para. 15.

22 *Complaint, supra* note 12, at para 3; *and*, *Answer*, *infra,* note 28, at para. 3.

23 A promoter is "a person who puts together a business, particularly a corporation, including the financing. Usually the promoter is the principal shareholder or one of the managerial team […]." Law.com Dictionary (visited July 17, 2006) http://dictionary.law.com

24 Bio: Wayne Zink, CEO, entrepreneur, philanthropist (visited July 29, 2006) http://www.bjmpr.com/newsroom/esc/homepage.html [hereinafter *Zink Bio*].

25 *Id.*

people to do good things in assertive ways," was printed on his stationery.[26] Zink had become attracted to ESCC because of its mission to protect endangered species,[27] though he possessed no expertise in chocolate-making or the natural foods market.[28]

Different perceptions[29] of events leading to alleged ouster[30] and litigation

In 2004, Zink[31] approached Stocking concerning his interest in purchasing all or part of ESCC.[32] As a result of their meeting, Stocking believed that with his expertise and Zink's capital resources, ESCC could reach $25 million in sales within five years.[33] Stocking believed that his place in the company would be secure since Zink had no expertise in chocolate or the natural foods market.[34] All parties agreed that Stocking would transfer his expertise and knowledge of chocolate and the natural foods market to

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[26] Williams, *supra* note 11, at 14.

[27] *Zink Bio*, *supra* note 24.

[28] *Complaint, supra* note 12, at para 16; *and* Defendants' Answer, Counterclaims, Affirmative Defenses, and Demand for a Jury Trial, Jon Stocking; Holly Stocking; Jon Stocking Enterprises, Inc., d/b/a The Endangered Species Chocolate Company; and Stocking Feet, LLC v. The Raintree Group, LLC, d/b/a The Endangered Species Chocolate Company; DZ Enterprises, LLC; Randy Deer; and Wayne Zink, *filed in* United States District Court District of Oregon, Medford, case no. CV05-3057-CO [hereinafter, *Answer*], para. 16. [*Note* that defendants removed case, which resulted in the change in venue from the Oregon state court where the *Complaint* was filed to the United States District Court where the *Answer* was filed.]

[29] This case illustrates a common phenomenon of litigation, in which parties are, legally speaking, adverse to one another. When plaintiffs and defendants disagree upon the facts of events giving rise to litigation, their accounts of what transpired can appear completely contradictory. Readers should understand that the pleadings, such as the plaintiff's complaint and the defendant's answer and counter-claim, form the basis of the factual dispute to be litigated. Where the plaintiff and defendant agree, those facts need not be litigated. The author of this case professes no knowledge about the veracity of either side's perceptions of events leading to the legal dispute. The factual differences are presented only as a real-life example of litigation in business, and how different parties may perceive the same events quite differently. Students should not interpret the order of the presentation of these facts in this case as indicative of which party's account of the events leading to litigation is correct. The author expressly disclaims knowledge of the truth or falsity of the facts contained herein.

[30] "Ouster n. 1) the […] dispossession (putting out) of a rightful owner […]. This often arises between partners (in a restaurant or store) […], when one co-owner […] forces out the other, changes locks or makes occupancy intolerable. 2) removal of someone from a position or office against his/her expectations or will. Law.com Dictionary (visited July 17, 2006) http://dictionary.law.com

[31] The legal dispute involved several plaintiffs and defendants. *See Complaint*, supra, note 12, and *Answer* supra, note 28. For simplicity, however, "Stocking" is used in the narrative to identify the plaintiffs and "Zink" is used to identify the defendants, though certain allegations, claims, and defenses may not have been averred, raised, or asserted by those particular parties in the actual litigation.

[32] *Complaint, supra* note 12, at para 17; *and Answer*, *supra,* note 28, at paras. 17 & 19.

[33] *Complaint, supra* note 12, at para 20.

[34] *Complaint, supra* note 12, at para. 16 & 21; *and*, *Answer*, *supra,* note 28, at paras. 16 & 21.

Zink.[35] Stocking also believe that he was to transfer his socially responsible corporate leadership to Zink.[36]

After Stocking and Zink decided to become partners, Stocking Feet, LLC, a limited liability company whose members were Jon Stocking and his wife,[37] and DZ Enterprises, LLC, a limited liability company whose members were Wayne Zink and his business partner, Randy Deer,[38] partnered to form The Raintree Group, LLC (Raintree), which would continue to do business as The Endangered Species Chocolate Company.[39] According to Raintree's operating agreement, DZ Enterprises assumed 51% ownership and Stocking Feet, LLC maintained 49% ownership.[40] The operating agreement gave day-to-day management control of the company to Zink, and DZ Enterprises and its appointed representatives.[41]

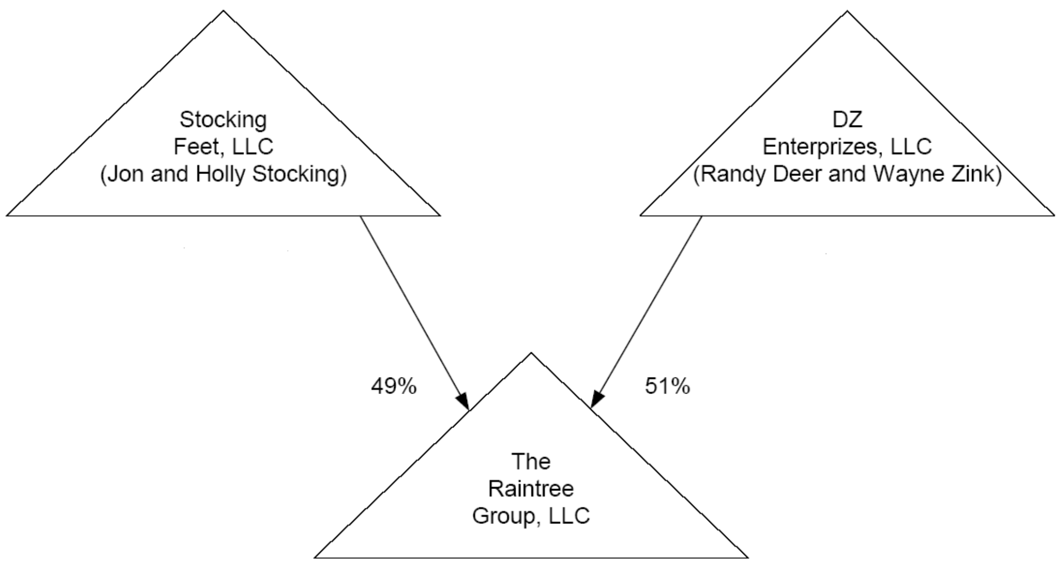

Figure 1- Ownership of The Raintree Group, LLC[42]

[35] *Complaint, supra* note 12, at para 21; *and*, *Answer*, *supra,* note 28, at para. 21.

[36] *Complaint, supra* note 12, at para 21.

[37] *Complaint, supra* note 12, at para 4.

[38] *Complaint, supra* note 12, at para 7; *and*, *Answer*, *supra,* note 28, at para. 7.

[39] *Complaint, supra* note 12, at para 22; *and*, *Answer*, *supra,* note 28, at para. 22.

[40] *Complaint, supra* note 12, at para 25; *and*, *Answer*, *supra,* note 28, at para. 25.

[41] *Complaint, supra* note 12, at para 26; *and*, *Answer*, *supra,* note 28, at para. 26.

[42] Defendants' Opposition to Motion to Remand,, Jon Stocking; Holly Stocking; Jon Stocking Enterprises, Inc., d/b/a The Endangered Species Chocolate Company; and Stocking Feet, LLC v. The Raintree Group, LLC, d/b/a The Endangered Species Chocolate Company; DZ Enterprises, LLC; Randy Deer; and Wayne Zink, *filed in* United States District Court District of Oregon, Medford, case no. CV05-3057-CO [hereinafter, *Opposition to Motion to Remand*] at § II.

Stocking also entered into a 13-page employment agreement with Raintree (Appendix I), which he believed assured him continued employment as president of ESCC for at least five years, including annual compensation and bonuses.[43]

Because Zink believed that Stocking had not performed according to the employment agreement, Stocking's employment was terminated a few months after DZ Enterprises, LLC assumed the majority interest in Raintree d/b/a ESCC.[44]

Stocking's point-of-view According to Stocking, though arrangements had been made for Zink to meet the ESCC staff in Oregon on January 25, 2005, to assure them that "things would be 'business as usual,'" Zink arrived, unannounced, the day before at 8 am, gathered the accounting staff for a meeting, and informed the staff that Stocking was no longer the head of the company and that any of his requests should be denied.[45] Zink also allegedly told Stocking that "It is over. It is done. You had a cute little chocolate culture here. But it is over."[46] Zink's accompanying employee allegedly said to Stocking, "You don't run this company anymore. You work for me."[47]

During the next few months, Stocking believed that he was marginalized because Zink intended to oust him from the business from the very beginning of negotiations, despite assurances to the contrary.[48] Stocking claimed that his email and telephone access were cut off.[49] He said that he was prevented from routine daily operational involvement with the company, including access to ESCC's financial information.[50] He claimed that after being asked to develop new products, the requests would be cancelled.[51] Stocking was also accused of failing to provide new employees with recipes.[52] However, he maintained that the recipes were "explicitly clear" and that the new owner "had them before, during and after the hundreds of hours" [Stocking] spent training the

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[43] *Complaint, supra* note 12, at paras. 26 & 84; *and*, *Answer*, *supra,* note 28, at para. 26; and *Employment Agreement*, § 2.

[44] *Answer*, *supra* note 28, at paras. 140-142.

[45] *Complaint, supra* note 12, at paras. 29-30.

[46] *Complaint, supra* note 12, at para 31.

[47] *Complaint, supra* note 12, at paras. 30-31.

[48] *Complaint, supra* note 12, at paras. 28 & 31.

[49] *Complaint, supra* note 12, at paras. 32 & 66.

[50] *Complaint, supra* note 12, at para. 32.

[51] *Id.*

[52] *Id.*

new production manager.[53] Stocking also alleged that after he relinquished majority ownership, he was subject to constant monitoring by an armed guard, who was ordered to observe Stocking's activities while on ESCC property.[54]

Stocking wanted his company back, or he wanted to be "properly compensated."[55]

Zink's point-of-view According to Zink, after arriving in Oregon on an afternoon flight on January 24, 2005, the day before the scheduled meeting, he called ESCC and asked the receptionist whether it would be alright to stop by to make copies that day.[56] After the receptionist agreed, Zink and his staff arrived, met with the sole accountant, and left within two hours, returning, as planned, on January 25.[57] Though Zink admitted to hiring security, he averred that the security guard's presence was only for general business purposes and employee security and safety.[58] Zink denied that he intended to oust Stocking from the beginning of negotiations.[59] Rather, he believed that Stocking had utterly failed to perform under his employment contract with Raintree.[60] After Stocking's termination, Zink moved operations from the 5,000 square foot facility in Oregon to a 43,000 square-foot LEED registered facility in Indiana, which was a more central location for distribution of ESCC's product.[61] By summer 2006, ESCC had 48 employees.[62]

Zink claimed that Stocking failed to devote the requisite time to ESCC after the transfer of ownership, and that Stocking worked less than 20 hours per week.[63] Zink argued that Stocking failed to train the new production manager and failed to produce recipes that could be followed.[64]

Indiana ESCC facility

[53] Williams, *supra* note 11, at 14.

[54] *Complaint, supra* note 12, at para. 32.

[55] Williams, *supra* note 11, at 14.

[56] *Answer*, *supra,* note 28, at para. 29.

[57] *Answer*, *supra,* note 28, at para. 29 – 30.

[58] *Answer*, *supra,* note 28, at para. 32.

[59] *Answer*, *supra,* note 28, at para. 28.

[60] *Answer*, *supra* note 28, at paras. 140-142.

[61] LEED is registration by the U.S. Green Building Association. The photograph of ESCC Indiana facility was taken from ESCC website (visited July 17, 2006) http://www.chocolatebar.com

[62] Endangered Species Chocolate Celebrates One Year in Indianapolis (visited July 17, 2006) http://www.bjmpr.com/newsroom/esc/homepage.html.

[63] *Answer*, *supra* note 28, at para. 140; Williams, *supra* note 11, at 14.

Zink explained,

> "There is a list of ingredients. One says 'two squeezes of mint.' What's a squeeze? We've spent hundreds of hours and thousands of dollars to work that out. […] The nature of Jon's lawsuit is narrative […] It's fiction and fantasy."[65]

If Zink proved that the termination of Stocking was justified, he could buy out Stocking's remaining 49% share of the company for book value, "what many would [have] consider[ed] a fire-sale price."[66]

Legal claims made by Stocking Stocking made a number of legal claims against Zink. These claims included damages for conversion[67] of personal property – a desk, credenza, art produced by Stocking's children, stereo components, books, personal files, tax statements, display tables, and cabinets – that had been at ESCC's Oregon facility at the time of Stocking's termination.[68] Additionally, Stocking sued for damages resulting from intrusion on seclusion, because he believed that his personal mail had been rerouted to the Indiana offices, where it had been opened and examined before being returned to Stocking in Oregon.[69]

Stocking also made a statutory wage claim. According to Stocking's interpretation of the employment agreement with Raintree, he believed that he would earn $12,500 gross per month. Stocking alleged that his wages had been paid erratically, irregularly and incompletely, and sometimes arrived without any explanation or itemization. He also claimed that he was not reimbursed for incurred business expenses of $22,000.[70]

Stocking also sued for intentional infliction of emotional distress. According to him, Zink induced Stocking to sell the majority ownership of ESCC with expensive travel, gifts, and complimentary email suggesting that Stocking was "brilliant".[71] According to

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[64] *Id.*

[65] Williams, *supra* note 11, at 14.

[66] *Id.*

[67] "Conversion n. a civil wrong (tort) in which one converts another's property to his/her own use […] Conversion includes treating another's goods as one's own, holding onto such property which accidentally comes into the convertor's (taker's) hands […]."Law.com Dictionary (visited July 17, 2006) http://dictionary.law.com

[68] *Complaint, supra* note 12, at para. 37.

[69] *Complaint, supra* note 12, at paras. 44 – 45.

[70] *Complaint, supra* note 12, at paras. 48 – 59.

[71] *Complaint, supra* note 12, at paras. 62 – 76.

Stocking, his new partners said that they wanted to honor all Stocking had done for wildlife conservation; that Stocking would continue to run day-to-day operations; that they would remain in the background and defer to Stocking's expertise.[72] Stocking alleged that despite assurances that the transition would go smoothly, the day before a scheduled meeting to make polite preliminary introductions to the Oregon ESCC staff, Zink "burst" into ESCC's chocolate factory unannounced and seized control.[73] Stocking believed his email, telephone, and access to financial information were cut off, his personal mail was rerouted and reviewed, and his personal office was rifled in an attempt to marginalize his position in ESCC.[74] Stocking believed installation of the armed guard at the factory to follow him everywhere he went was arranged for the same purpose.[75] Furthermore, Stocking claimed that on a day when he was scheduled for surgery – an event that his employers knew about – his employer arranged to terminate him in a dramatic fashion. According to Stocking's complaint, two men in a white SUV with a light bar mounted on top followed Stocking's wife home from the hospital, pulled into her driveway behind her and surrounded her in a menacing manner.[76] Then, allegedly, they thrust termination papers for Stocking into her hands and ordered her never to visit the chocolate factory again.[77] Stocking also claimed that his personal property was destroyed by his new employer, including artwork made by his children.[78]

Stocking also brought a claim for fraud, because he believed that Zink had never intended to allow Stocking to continue to run ESCC.[79] He believed that assurances of a long-lasting and prosperous business relationship were made only to gain control of ESCC, and that those assurances had never been sincere.[80] In short, Stocking believed that deception had been used to gain majority ownership of ESCC.

Stocking also pled other claims, including an action for nonpayment of rent on the Oregon chocolate factory facility for one of the months after Raintree acquired majority ownership and before it was moved to Indiana.[81] Stocking also alleged tortious bad faith, breach of fiduciary duties, and civil racketeering.[82]

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[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.*

[79] *Complaint, supra* note 12, at paras. 84 – 90.

[80] *Id.*

[81] *Complaint, supra* note 12, at paras. 78 – 81.

Legal claims made by Zink Zink believed that Stocking had made fraudulent representations concerning ESCC to induce Zink to purchase the majority ownership interest.[83] He believed that Stocking had misrepresented certain critical facts about ESCC concerning whether all tax returns had been filed and taxes paid, whether ESCC had complied with all regulations and operated properly, and whether ESCC had material liabilities.[84]

Zink also believed that Stocking had utterly failed to perform his duties under his employment agreement.[85] Zink maintained that Stocking had been properly compensated pursuant to the employment agreement prior to Stocking's termination,[86] despite his belief that Stocking had not devoted his business time to his duties at ESCC, failed to develop new products and failed to deliver recipes to Raintree, all in contravention to the employment agreement.[87] Further, Zink believed that Stocking had disparaged the business and financial reputation of Raintree and DZ Enterprises.[88]

Zink also argued that because Stocking had registered several ESCC bills and accounts in Stocking's personal name, it was necessary for ESCC staff to examine all of the mail, to ensure that all ESCC mail was being addressed properly.[89]

Zink asked the court for a declaratory judgment to prevent Stocking from receiving the employment bonus and to declare that Stocking's employment was terminated for cause.[90] Finally, Zink denied the other claims alleged.

Part I – Discussion Questions

1.1. How did Jon Stocking lose control of ESCC? How could he have retained control of the business? Discuss the benefits and disadvantages to common business forms.

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[82] *Complaint, supra* note 12, at paras. 99 – 121.

[83] *Answer*, *supra* note 28, at para. 137.

[84] *Id.*

[85] *Answer*, *supra* note 28, at paras. 140-142.

[86] *Answer*, *supra* note 28, at paras. 50 – 55.

[87] *Answer*, *supra* note 28, at paras. 140-142.

[88] *Answer*, *supra* note 28, at paras. 140 & 147.

[89] *Answer*, *supra* note 28, at paras. 45 – 45.

[90] *Answer*, *supra* note 28, at prayer, para. 4.

1.2. Under the employment agreement, does it matter whether Jon Stocking was terminated for cause? Explain.

1.3. Discuss strategies that Stocking and Zink may have employed to minimize the risk of litigation resulting from their association. Should business owners or managers routinely employ such strategies? What if negotiations are “friendly”?

1.4. What intellectual property issues exist in this case? At what point in time should trade secrets be divulged to new partners or owners of a business? What risks exist if trade secrets are divulged too early? What problems may arise if trade secrets are not divulged before a change in ownership?

A Tale of Chocolate – The Sweet
Part II – Social Responsibility & Ethics in Business

Wayne Zink, CEO of ESCC, had an important decision to make. ESCC had operated for several years as a company committed to sustainable supply-side practices. ESCC had historically obtained its cacao from fair trade certified suppliers, but Zink was rethinking that decision. Though he was committed to the rights of cacao farmers to be able to earn a fair price for their crop, he was not convinced that fair trade certification was the only means to ensure that outcome. Though fair-trade certification was an important label in the natural foods industry, where ESCC primarily operated, Zink noted many problems with fair trade certification. For one thing, he believed that the payment required for the fair trade certification could be better spent to directly help the cacao farmers and communities in which they lived, rather than simply paying for the certification. Also, he was troubled by the difference between the actual practice of fair trade certification and the general public's perception of fair trade. Was fair trade certification a vehicle to allow farmers of supply-side crops to earn a better wage? Or, was it simply a marketing device used by businesses operating in the natural foods industry? Zink needed to decide whether ESCC's money could be put to better use than continuing to pay for fair-trade certification. He believed a better alternative might be simply to ensure that the cacao obtained by ESCC was ethically traded.[91]

Fair Trade vs. Ethical Trade of Cacao


Cacao pod

Chocolate comes from the cacao tree, a shade-loving tree that produces large pods of beans. The beans are removed from the pods, fermented, dried, ground, cooked, and transformed into familiar chocolate products.


Ripe cacao beans in the pod

When Jon Stocking controlled ESCC, the cacao used by ESCC was purchased from a fair trade cooperative in Costa Rica. As former majority owner Jon Stocking explained,

> "What we've done is […] we've gone into Costa Rica […] we've established a cooperative or an employee owned business, where everyone shares in the profits. It's not a middle man, it's not a head farmer […] it's not someone who owns the land."[92]

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[91] Telephone interview with Wayne Zink, CEO, Endangered Species Chocolate Company (July 24, 2006).
[92] Foden-Vencil, *supra* note 4.

Not all cacao farmers in Costa Rica belonged to a fair trade cooperative, however. For instance, Marco Wettstein was an independent cacao farmer who owned approximately ten hectares of land in Puerto Viejo Limón, Costa Rica. He described a primary problem that faced Costa Rican cacao farmers.[93]

> "In 1978, the [frosty pod] fungus arrived. Many believed it came from Ecuador by boat, because, at the time, it did not appear in any other neighboring regions, like Panama. Now, it's everywhere. Before then, a lot of people had been employed in cacao, but the fungus destroyed the economy. Many cacao plantations were abandoned. Originally, cacao was produced in Central America, but, now, 80% of it is produced in West Africa, where the fungus has not yet reached."

Image 1 –The brown beans are rotted from frosty pod.

Wettstein was referring to Monilia, commonly known as frosty pod, a serious fungus infection that caused cacao crop loss, in bad years, of up to 50%.

Image 2 – Cacao beans drying in the sun

> "Cacao used to be grown in the flat lands, but now no one grows it there because that's where the banana producers operate. The cacao trees produce between sea level and 500 meters and require shade to produce year-after-year. People who try to grow it in full sun will see a good crop for about two years, and then the tree will not produce well again. Most cacao farmers reclaim old cacao plantations, like I did. The new trees emerge from shoots from the bottom of the trees. When I see those shoots coming from an old tree, I encourage that growth, and I chop down the old tree. That way, I get a new tree that will produce well."

Wettstein did not believe that the local fair trade cooperative offered any advantages to him. In fact, he believed that its cacao was inferior to his crop, and he did not believe he could earn as much money if he participated in the cooperative. In fact, he paid more money than the local fair trade cooperative for other cacao farmers' crops, which he combined with his cacao to produce a final chocolate product. He sold this product to the local market and he conducted tours of his plantation for income. He did not intend to expand his business, because he believed if he did so,

[93]Interview with Marco Wettstein, Owner, Chocorart, at his plantation in Puerto Viejo Limón, Costa Rica (July 20, 2006).

he would no longer be a cacao farmer, which is what he wanted to be. Instead, his time would be occupied with the day-to-day realities of operating a large business.

Though Costa Rica cacao growers had been economically devastated by the frosty pod fungus and the resulting shift in demand to suppliers in West Africa, Wettstein remained optimistic.

> “We have a very fragile ecosystem here. People know this, and like to grow organically, if possible. We have developed a market for organic cacao, as a result, and now that’s where the demand is. Costa Rica cacao is mostly organic.”

Fair trade organizations existed to ensure fair payment for farmers’ crops, which ensured that farmers and their families earned a fair wage, kept the crop money in the communities where the farmers grew their crops, and provided expanded opportunities for farmers’ families and the communities in which the crops grew, such as allowing school-age children to attend school rather than work in agriculture. Several fair trade organizations existed.

For example, the Asociación de Pequeños Productores de Talamanca (APPTA) was a certified fair trade cacao cooperative operating in the Talamanca region of Costa Rica, near Wettstein.[94] Founded in 1987 by a non-governmental organization, it encouraged sustainable agricultural practices among its more than 1,000 cacao producing members.[95] As noted by Wettstein, most Talamanca cacao farmers already used organic farming methods. APPTA encouraged those methods, but also sought to develop additional organic techniques – including the use of a natural fungicide from Monilia-resistent cocoa pods to maintain cacao production, which was very important to this region.[96] APPTA believed that its organic cacao commanded higher prices than non-organic cacao or organic cacao not operating as certified fair trade, which resulted in a better standard of living for APPTA’s members.[97] However, not all agreed with that assessment. For example, Wettstein reported that he paid cacao farmers US $3 per kilo of cacao beans, but APPTA only paid US $2.[98] Organic production of cacao in the cooperative totaled 150 tons in 1998 and 140 tons in 1999, while conventional methods

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[94] Fair Trade Certified Chocolate Campaign (July 29, 2006) www.globalexchange.org/cocoa [hereinafter *FT Campaign*].

[95] *Id.*

[96] *Id.*

[97] *Id.*

[98] Wettstein, *supra* note 93.

in the region produced 20 tons in 1998 and 15 tons in 1999.[99] APPTA sales to the U.S. Fair Trade market guaranteed a minimum price of $0.80 per pound.[100]

Other examples of Fair Trade organizations were the Confederacion Nacional de Cacaocultores Dominicanos (Conacado Co-op) in the Dominican Republic and Saro Agro Allied Ltd. of Nigeria, which both had very similar goals as the APPTA. Some of ESCC chocolate was certified Fair Trade by TransFair USA, which guaranteed fair prices.[101]

Through summer 2006, ESCC's entire cacao supply had been Fair Trade Certified™ through TransFair USA.[102] Under Stocking's leadership, the cacao had been obtained from Costa Rica. Under Zink's control, ESCC began sourcing its supply of cacao from Nigeria, and it continued to source its organic cacao from the Dominican Republic.[103] According to ESCC, the Nigerian government hoped to triple production in cacao, a major cash crop, over the next three years from 180,000 tons in 2005 to 600,000 tons by 2008 and increase subsidies by $1.1 million.[104]


WHAT IS ETHICALLY TRADED?

ETHICALLY TRADED means we source our cacao fruit from small family-owned farms in Nigeria that thrive in the forest, which in turn provides natural preservation for the species that live there. This practice also ensures economic well-being for the communities in which the farms are located.

ECSS's definition of Ethically Traded

Ethically traded cacao beans[105] were procured from family-owned properties, harvested by adult workers who were paid a fair wage, and shade grown.[106]

Part II – Discussion Questions

2.1. Discuss the ethics of taking business away from a fair trade cacao cooperate and giving it to ethically-traded producers of cacao. Who are the

[99] *FT Campaign, supra* note 94

[100] *Id.*

[101] Endangered Species Chocolate (visited July 17, 2006) http://www.chocolatebar.com

[102] Leveling the Playing Field (last modified July 14, 2006) (visited July 23, 2006) http://www.chocolatebar.com/shop/.

[103] *Id.*

[104] Nigeria Fact Sheet (visited July 17, 2006) http://www.bjmpr.com/newsroom/esc/homepage.html *citing* the BBC.

[105] Ethically traded image taken from ESCC's website (visited July 17, 2006) http://www.chocolatebar.com

[106] Our Story (visited July 17, 2006) http://www.bjmpr.com/newsroom/esc/homepage.html

stakeholders? What responsibilities do profit-seeking businesses have to their suppliers? If responsibilities exist, to whom are the responsibilities owed?

2.2. What are the differences between fair trade certification and products that are ethically traded? Does the ESCC definition of “ethically traded” comport with others’ uses for that term? Which is better? Why?

2.3. What conclusions can be made if a product is not labeled as “ethically traded” or “fair trade certified”? Any? Explain.

2.4. Given your answer to Discussion Question #3, why would a company choose fair trade certification or the designation of “ethically traded”?

2.5. If ESCC wishes to switch suppliers, does it have a duty to disclose that issue to its consumers? Why or why not?

When Jon Stocking owned ESCC, he donated ten percent of its net profits to various environmental causes including the Jane Goodall Institute, Defenders of Wildlife, National Wildlife Federation, and the American Cetacean Society.[107] Under his leadership, the chocolate bar wrappers included the phrase "10% of Profits Donated to Protect Endangered Species".

Under Zink's control, ESCC continued to donate 10% of its net profits. Its targeted charities were those organizations devoted to conservation of species, habitat, and humanity.[108] Under Zink's ownership, the chocolate bar wrappers stated "10% of Net Profits Donated to Support Endangered Species, Habitat and Humanity". The wrappers contained substantially the same depictions of endangered animals as when Stocking controlled the company. The endangered animals portrayed included the manatee, black rhinoceros, African elephants, tigers, gorillas, dolphins, grizzly bears, macaws, chimpanzees, leopards, Northern Sea otters, harp seals, polar bears, grey wolves, panda bears, sea turtles, bats, orangutans, black panthers, sandhill cranes, Karner Blue butterflies, snow leopards, koala bears, zebras, giraffes, and puffins.[109]

In 2006, Chimp Haven and the National Wildlife Federation were each guaranteed $25,000 by ESCC, even if profits were less than expected (for example, if ESCC decided to increase its investment in equipment).[110] Additionally, The Nigerian Co-op Sponsorship was also named as a beneficiary non-profit organization for 2006.[111] "As part of its mission and 10 percent commitment, a team of [ESCC] employees traveled to Nigeria […] to dedicate water pumps and educational materials to two cacao farming villages […]."[112] ESCC also confirmed ethically traded farming practices in the villages.[113] For example, the crop was harvested by adults in humane working conditions who were paid a fair wage by the owner/farmer.[114] The ESCC team consisted of Zink and three other members of the ESCC organization.

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[107] Foden-Vencil, *supra* note 4; *Complaint, supra* note 12, at para. 13.

[108] Endangered Species Chocolate names organizations to receive support in 2006 (visited July 17, 2006) http://www.bjmpr.com/newsroom/esc/homepage.html [hereinafter *ESCC names organization to support*].

[109] Endangered Species Chocolate (visited July 30, 2006) http://www.chocolatebar.com

[110] *Id.*

[111] Endangered Species Chocolate (visited July 17, 2006) http://www.chocolatebar.com

[112] *ESCC names organization to support*, *supra* note 108.

[113] 6,000 miles from home, Endangered Species Chocolate finds its roots (visited July 17, 2006) http://www.bjmpr.com/newsroom/esc/homepage.html [hereinafter 6,000 miles from home].

[114] *Id.*

> "The ethical trade of our cacao is something we know is happening. We have seen the farms and met the farmers. Ethical trade is their way of life, their way of doing business, just as it is with [ESCC]. That, to me, is the most important thing. The farmers […] are in total control of their economic destiny. These farmers have free will to sell their cacao to whom they want, when they want, depending on world market prices. Neither the government nor any third party sets prices. The farmers' villages are flourishing and their economic well being is very clear to us."[115]

The Nigerian Project was described as a long-term commitment by ESCC to the cacao farming villages that supplied the ESCC cacao. In 2006, ESCC "contributed more than $52,000 to purchase and install[ed] heavy-duty UNICEF water pumps and suppl[ied] much needed school textbooks, desks, chairs, and chalkboards to more than 4,000 schoolchildren […]"[116] Zink further explained,

> "We are thrilled to be partnering with two fine organizations that are fully committed to the care and preservation of species and habitat […] and through the Nigerian project, we've provided direct support that will enhance the lives of human beings. […] We want to fund specific projects within specific organizations, so we can assure our customers that when they buy Endangered Species Chocolate they are supporting reputable groups that are undertaking outstanding work. […] As Endangered Species Chocolate grows each year, our chocolate products will work even harder to fund endangered species recovery projects, conserve habitats and honor human life. […] We see this as a long-term commitment that ties in perfectly with our commitment to confirm that all beans used in our products are naturally shade grown and harvested under fair labor conditions on family-owned properties. These are the very villages that are growing the beans used in our chocolate. We are pleased to help improve the quality of life for those who live there.""[117]

ESCC's donation to Chimp Haven, a nonprofit organization located in Louisiana, was earmarked for its medical treatment clinic and enrichment kitchen. Its mission was "to provide a permanent retirement sanctuary for chimpanzees […]."[118] Chimp Haven described the chimpanzees who came to live there as "retired from biomedical research, entertainment, or no longer wanted for pets." Chimp Haven was founded by people from the pharmaceutical, zoo, business, animal protection, and primatological communities.[119]

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[115] 6,000 miles from home, *supra* note 113.

[116] *ESCC names organization to support*, *supra* note 108.

[117] *Id.*

[118] *Id.*

[119] Chimp Haven (visited July 24, 2006) http://www.chimphaven.org

The National Wildlife Federation (NWF) intended to use ESCC's donation to support its mission "to inspire Americans to protect wildlife for our children's future."[120] ESCC's gift was earmarked for the NWF's Backyard Wildlife Habitat and Green Hour programs.[121] The Backyard Wildlife Habitat (BWH) program encouraged wildlife habitat in yards, and the NWF would certify yards as official BWH sites if basic habitat elements were present. The Green Hour program existed to encourage children to spend at least one hour outside each day to play and learn, and the NWF provided suggestions for outside learning and playing activities.

ESCC believed that a donation to three organizations during 2006, instead of five organizations as had been previously supported, would result in a greater impact on each.

Part III – Discussion Questions

3.1. If ESCC wishes to change its donation strategy, does it have a duty to disclose that issue to its consumers? Why or why not?

3.2. Discuss the differences between the charities supported by ESCC under Stocking's leadership versus those under Zink's leadership.

3.3. What does ESCC sell? Does ESCC have an ethical responsibility to support charities devoted to the conservation or protection of the endangered species depicted on its products? Why or why not?

3.4. Are "retired" chimps an endangered species? Is humanity an endangered species? Discuss.

3.5. Discuss the ESCC team's travel expenses to Nigeria as part of the company's 10% commitment to the support of organizations devoted to conservation of species, habitat, and humanity.

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[120] *ESCC names organization to support*, *supra* note 108.

[121] Endangered Species Chocolate (visited July 17, 2006) http://www.chocolatebar.com

Integrating Discussion Questions

1. Does Raintree have any ethical obligation to Jon Stocking and/or any of the Oregon employees? Why or why not?

2. Is it necessary for the principals of a business to have the same values as the business? Why or why not? If the principals' values and the values of the business differ (e.g., as stated in a mission statement), should consumers be made aware of that fact? Explain.

3. Discuss the ethics of packaging and marketing a business image or product image that differs from the beliefs of its principals.

Teaching Note

A Tale of Chocolate: The Bitter, the Sweet, the Dark and the Light

Case Synopsis

The Endangered Species Chocolate Company (ESCC) was located in Oregon from 1993 – 2005, but moved to Indiana in 2005 when ownership changed hands. This case explores the company's mission, values, support of sustainable supply-side practices, support of charities, and legal issues involved with control of the business. It also explores the duties owed to customers based upon customers' perceptions and expectations of company products and practices, fair trade versus ethical trade, and the legal implications of changes in business form.

This case examines the underlying issues of social responsibility in business including the significance of business ethics and values, environmental stewardship, and sustainable supply-side practices. It illustrates important ethical dilemmas presented by ESCC's interactions with the natural environment, and its employees, customers, and natural environment.

Research Methods

This case was developed through the use of public court records, secondary sources, field research of cacao plantations in Costa Rica – including interviews with farmers and fair trade representatives – and a telephone conversation with the current CEO of ESCC.

Teaching Objectives

The teaching objectives include:

1. Examination of ethical implications of business decisions that affect employees, suppliers, customers, and other stakeholders;

2. Application and analysis of contract law as it applies to employment situations;

3. Introduction to legal issues and concepts of business law including employment contracts, business form – including legal risks inherent in change of ownership;

4. Analysis of fair trade certification versus "ethically traded" products;

5. Analysis of businesses' ethical obligations to customers as a result of customer expectations based upon marketing of business image and products; and,

6. Development of analytical and writing skills necessary to arrive at and convey a recommendation or support an argument.

Courses and Levels for Which the Case is Intended

The case is suitable for undergraduate instruction in business law, international business, environmental studies, ethics, social entrepreneurship, business strategy, and corporate social responsibility.

Teaching Plan and Suggestions

This case consists of three distinct sections. Each section builds upon the prior sections, so instructors should present the material in the order in which it is presented. However, the sections can be used independently if instructors provide adequate background information. Ethical dilemmas are inherent in issues raised in all sections. The first section focuses on the legal control of ESCC and the resulting litigation. The second section addresses fair trade certification versus "ethically traded" products. The third section centers on the ethical responsibilities of a business resulting from creating consumers' expectations. An epilogue is contained in this teaching note, and it should be distributed after the lessons from the teaching case are exhausted.

General Activities and Strategies Students should read the case prior to class. Subsequent class discussion will help students focus their attention on the critical decisions facing the business as well as the many different choices available to the principals. Class discussion should not be intended to provide definitive answers, but to facilitate in-depth analysis and the development of business strategies. Use of the discussion questions will foster students' understanding of the relevant issues. Students may be required to submit written responses to the discussion questions, or to prepare written answers to bring to class for interactive discussion of the case.

Instructors may wish to provide supplemental material concerning employment law – particularly at-will employment versus contractual employment, corporate social responsibility, fair trade, ethical trade, decision-making, legal dispute resolution, and strategy. Students should have a basic understanding of these issues prior to addressing the questions presented by this case.

For a business strategy focus, students should be encouraged to externalize (in writing or in small group discussions) the various options available to the business and principals by identifying and evaluating the advantages and disadvantages of each alternative course of action.

Students could write a decision memorandum or legal analysis regarding an important decision that must be made by the company. Students may write from the point-of-view of legal counsel, outside business strategist/consultant, or as an insider, such as a principal of the business. The decision memorandum should contain a specific course of action and arguments adequate to support their recommendation. Excellent decision memoranda should contain a solid recommendation based upon careful analysis of the options, evaluation of the decision’s impact on all stakeholders, arguments and counterarguments defending the position taken, and consideration of public perceptions and opinions. (Adequate attention to legal concerns and existing legal structure must be included if the case is used in a law class.)

For a legal focus, excellent papers will make a solid recommendation to the decision-maker, which will be based upon clear identification of the issue, correct statement of the rule of law (if applicable), careful analysis of the facts, and a supportable conclusion, in accordance with the IRAC (or TRAC) method of legal analysis.

Alternatively, students may be asked to write a letter from the point-of-view of ESCC to the Oregon employees to advise them of the decision that business operations will be moving to Indiana. Excellent letters will explain the chosen course of action, reflect an understanding of the impact this decision will have upon existing employees, thoroughly explain the future course of action and the consequences, and be written in plain terms. Letters should also reflect general cognizance of the legal environment of business.

Sufficient information has been included in the case to provide the necessary support for the various issues presented, but students may also be encouraged to conduct outside research, particularly if they lack fundamental exposure to the specific issues described in this case (e.g., fair trade versus ethical trade). Outside research may also be used very effectively to assist students in identifying and analyzing the various charitable organizations mentioned in this case, to provide a basis for analysis of a business donation strategy or simply to answer the Discussion Questions related to choice of charities already contained in this case.

This case lends itself well to cross-disciplinary teaching approaches. While the case can be used successfully in the individual specific disciplines of business law, international business, ethics, environmental studies, social entrepreneurship, business strategy, and corporate social responsibility, a multi-disciplinary approach can tease out the richness of the case by exploring competing stakeholders’ claims, globalization, environmental impacts of business on the natural environment, “green” marketing, consumer behavior and how choices made by consumers impact business behavior and the environment.

For a warm-up exercise, instructors may wish to have their students play a college-level game of “telephone”. This exercise will allow students to see, first-hand, how the same event may be perceived quite differently by different people. Instructors can use any optical perception exercise, choose students to engage in a short skit that the rest of the class will watch, or simply show a short television or movie scene. Since this case provides an excellent example of wildly different factual claims resulting from the same events that gave rise to the litigation, students may initially believe that one party is being less than honest in their pleadings. However, if students participate in a college-level modified version of “telephone,” they may quickly realize how different people can perceive the same event very differently. Instructors should stress that different perceptions are normal, and that not everyone sees the same thing when looking at the same picture. If this exercise is used in a law class, use it to lead to a discussion of general litigation, including the purpose of pleadings, litigation, and when summary judgment would be appropriate.

Instructors may wish to emphasize the unique challenges faced by a rapidly growing and successful business with a strong environmental and ethical philosophy, so that students fully develop their understanding of these challenges while recognizing the possibilities that exist – beyond profits – in the international business community.

Two specific teaching plans have been included for illustrative purposes, but instructors are encouraged to develop different modules from the facts presented to customize their own teaching plans. Also, the teaching ideas contained in the General Activities and Strategies section may be used entirely in lieu of the teaching plans listed below.

Plan 1 *Business Law or International Business Class* (50-80 minutes)

1. Before class begins, students should write a decision memorandum or legal analysis as described in General Activities and Strategies. Students should be divided into two different groups representing different courses of action (e.g., ESCC should continue to use fair trade certification or it should abandon fair trade certification and pursue “ethically traded” supplies). To ensure that different outcomes are sufficiently represented, prior to class, the instructor may wish to pre-assign outcomes that students must support. Students should meet with their groups to discuss their recommendations and their support. (10-20 minutes)

2. Students should participate in a formal debate. (30–45 minutes)

3. Analyze the outcome of debate. Clarify and extrapolate points raised in the debate that warrant further discussion. (10–15 minutes)

Plan 2 *Environmental Studies, Ethics, Strategy, Social Entrepreneurship or Corporate Social Responsibility Class* (50-80 minutes)

1. Brief summary of Case (5-10 minutes)

2. Stakeholders' Analysis: This case lends itself very well to role playing (30-50 minutes): Students should be divided into groups representing each of the different stakeholders (e.g., different charities, ESCC principals, and customers). Allow a few minutes for preparation of arguments before starting the role playing exercise.

3. Debriefing session (15-20 minutes)

Summary of Discussion Questions

Part I – Discussion Questions

1.1. How did Jon Stocking lose control of ESCC? How could he have retained control of the business? Discuss the benefits and disadvantages to common business forms.

1.2. Under the employment agreement, does it matter whether Jon Stocking was terminated for cause? Explain.

1.3. Discuss strategies that Stocking and Zink may have employed to minimize the risk of litigation resulting from their association. Should business owners or managers routinely employ such strategies? What if negotiations are "friendly"?

1.4. What intellectual property issues exist in this case? At what point in time should trade secrets be divulged to new partners or owners of a business? What risks exist if trade secrets are divulged too early? What problems may arise if trade secrets are not divulged before a change in ownership?

Part II – Discussion Questions

2.1. Discuss the ethics of taking business away from a fair trade cacao cooperate and giving it to ethically-traded producers of cacao. Who are the stakeholders? What responsibilities do profit-seeking businesses have to their suppliers? If responsibilities exist, to whom are the responsibilities owed?

2.2. What are the differences between fair trade certification and products that are ethically traded? Does the ESCC definition of “ethically traded” comport with others’ uses for that term? Which is better? Why?

2.3. What conclusions can be made if a product is not labeled as “ethically traded” or “fair trade certified”? Any? Explain.

2.4. Given your answer to Discussion Question #3, why would a company choose fair trade certification or the designation of “ethically traded”?

2.5. If ESCC wishes to switch suppliers, does it have a duty to disclose that issue to its consumers? Why or why not?

Part III – Discussion Questions

3.1. If ESCC wishes to change its donation strategy, does it have a duty to disclose that issue to its consumers? Why or why not?

3.2. Discuss the differences between the charities supported by ESCC under Jon Stocking’s leadership versus those under Wayne Zink’s leadership.

3.3. What does ESCC sell? Does ESCC have an ethical responsibility to support charities devoted to the conservation or protection of the endangered species depicted on its products? Why or why not?

3.4. Are “retired” chimps an endangered species? Is humanity an endangered species? Discuss.

3.5. Discuss the ESCC team’s travel expenses to Nigeria as part of the company’s 10% commitment to the support of organizations devoted to conservation of species, habitat, and humanity.

Integrating Discussion Questions

1. Does Raintree have any ethical obligation to Jon Stocking and/or any of the Oregon employees? Why or why not?

2. Is it necessary for the principals of a business to have the same values as the business? Why or why not? If the principals’ values and the values of the business differ (e.g., as stated in a mission statement), should consumers be made aware of that fact? Explain.

3. Discuss the ethics of packaging and marketing a business image or product image that differs from the beliefs of its principals.

Answers to Discussion Questions

Part I – Discussion Questions

1.1. How did Jon Stocking lose control of ESCC? How could he have retained control of the business? Discuss the benefits and disadvantages to common business forms.

Stocking lost control of ESCC by agreeing to enter into a partnership with a partner who would assume the majority interest (51%). If Stocking did not want to lose control of ESCC, he should have retained majority interest.

Stocking initially owned and operated ESCC through his shareholder interest in a closely-held corporation, but he directed his closely-held corporation to sell ESCC assets to a newly formed limited liability company of which his interest was a minority position.

Stocking could have taken his corporation public. This would have required careful planning to comply with SEC regulations, and such a plan could ultimately result in him losing control of ESCC.

Business forms:

<u>General Partnership:</u>

Advantages General partnerships may be established without any legal formalities whatsoever. In fact, this is a default business form for people engaged in business for profit. Partnerships enjoy flow through taxation. Each partner pays taxes on his or her income from the partnership.

Disadvantages General partnerships require complete trust among partners for reasons that extend beyond control issues. General partners can be held personally liable for actions taken by their partners and must personally absorb the losses of the partnership. Partners can bind one other in agreements to third parties.

<u>Limited Partnership:</u>

Advantages Limited partners of Limited Partnerships (LLP) avoid some of the personal liability issues because they invest money in the partnership but they do not assume liability for partnership obligations. Limited Partnerships also enjoy flow through taxation.

Disadvantages Limited partners who engage in management activities may lose their limited liability status.

Limited Liability Company:

Advantages Members of an LLC limit their liability only to their investment. Members pay taxes only on the LLC income. There is no double taxation.

Disadvantages Minor disadvantages exist only. Most disadvantages to this business form can be overcome by a carefully crafted LLC agreement.

Corporation:

Advantages Shareholders are not individually liable for corporate obligations, but they may lose their investment. Corporations exist in perpetuity unless formally or administratively dissolved.

Disadvantages The corporate form requires complicated ongoing formalities to avoid "piercing of the corporate veil," which could result in personal liability among shareholders (particularly of closely-held corporations). Double taxation is a reality for C-corporations, but can be avoided by IRS election to be treated as a Subchapter S-Corporation.

1.2. Under the employment agreement, does it matter whether Jon Stocking was terminated for cause? Explain.

Under Stocking's employment agreement with Raintree, whether he was terminated for cause influences Stocking's equity interest in the company and his right to future salary-related compensation.

Section 7.3 of the employment contract specifically states that Stocking's employment could be terminated with or without cause. Students should recognize that typically, a primary advantage of entering into an employment contract is that termination for cause is required, thus creating a clear advantage over employment-at-will situations where "cause" is not required.

Students should discuss how they might avoid a similar situation when they are faced with negotiating an employment contract.

1.3. Discuss strategies that Stocking and Zink may have employed to minimize the risk of litigation resulting from their association. Should business owners or managers routinely employ such strategies? What if negotiations are "friendly"?

Stocking and Zink could have both, independently, recorded all negotiations electronically. Either or both of them could have kept a detailed business journal (much like a personal diary, but for business). During negotiations, conversations, and telephone calls, the parties could have memorialized each discussion in a letter, sent the letter to the other party, and asked the other party to indicate any parts of the letter with which they disagreed. Such tactics are routinely employed by practicing attorneys with not only opposing counsel, but also with their clients. Since most negotiations begin in a “friendly” manner, memorializing conversations, telephone calls, and all manner of negotiations is always a prudent business practice. Chronological files could have been kept by both parties. Business records created routinely in the course of business are admissible in court in most jurisdictions as evidence, as an exception to the hearsay rule.

1.4. What intellectual property issues exist in this case? At what point in time should trade secrets be divulged to new partners or owners of a business? What risks exist if trade secrets are divulged too early? What problems may arise if trade secrets are not divulged before a change in ownership?

Trade secrets in the form of recipes are an important form of intellectual property of ESCC. At some point, the new owners will expect that the trade secret will be divulged. However, before the actual transaction occurs, the owner of the trade secrets may be reluctant to divulge the trade secrets. After all, if an owner of trade secrets does not take precautions to protect the trade secrets (e.g., by voluntarily disclosing them to a third party), there will be no legal recourse if the deal to transfer ownership is not successful.

Students should be encouraged to consider when and how trade secrets should be divulged in such a situation. Also, students should also consider whether trade secrets, such as the chocolate recipes in this case, substantially affect the value of ESCC. If the prior owner failed to deliver the recipes to the new owners, what recourse would the new owners have? If an owner divulged trade secrets too early, what legal recourse would that owner have?

Part II – Discussion Questions

2.1. Discuss the ethics of taking business away from a fair trade cacao cooperate and giving it to ethically-traded producers of cacao. Who are the stakeholders? What responsibilities do profit-seeking businesses have to their suppliers? If responsibilities exist, to whom are the responsibilities owed?

Students should identify cacao producers and fair trade cooperatives as primary stakeholders in this question. Consumers are also stakeholders, to the extent that they make purchasing decisions based upon the source of the cacao and its fair trade certification status. This question lends itself well to an externalization exercise, such as “pro” and “con” lists for each of the issues raised.

2.2. What are the differences between fair trade certification and products that are ethically traded? Does the ESCC definition of “ethically traded” comport with others’ uses for that term? Which is better? Why?

Fair trade certification requires observance by an oversight body, such as a fair trade cooperative and inspector. Ethically traded does not have such an oversight body. “Ethically trade” is a somewhat more loosely-defined term; indeed, it can be used by anyone, because no certification process exists. Students should research other products that are labeled “ethically traded” and compare ESCC’s definition with other definitions that they find. This exercise will form the basis for evaluating what, exactly, is being sold to the consumer by the use of the terms “fair trade” and “ethically traded”.

This question may also be used as a basis to discuss potential conflicts of interest (e.g., without an oversight certification body, how can consumers be certain that the company’s idea of “ethically traded” comports with the consumers’?), and what the principals of companies that engage in ethical trade can do to ensure that their practices are perceived in a positive light. For example, ESCC prepares fact sheets and publishes that information on its website. Interested consumers can read about ESCC’s ongoing activities with the suppliers of ethically traded cacao. In short, transparency is an important tool that business owners can use.

2.3. What conclusions can be made if a product is not labeled as “ethically traded” or “fair trade certified”? Any? Explain.

Hard-line conclusions cannot be drawn from the absence of labels. Students should be encouraged to research beyond the labels of products to determine exactly who benefits from the use of such labels, and whether the products truly reflect the ideals embodied by those labels. Students should also recognize the marketing opportunities provided by those designations. This should lead to a rich discussion about whether such designations might be fairly used to market a product even if products only reach minimum standards to carry such a label, or if only part of a product reaches those standards. Students should also discuss situations such as that represented by Wettstein in this case, who does not participate in fair trade certification but is very content with his business.

2.4. Given your answer to Discussion Question #3, why would a company choose fair trade certification or the designation of “ethically traded”?

Students should be encouraged to look beyond the consumers' viewpoint of these designations and explore the marketing and business strategies that such labels provide.

2.5. If ESCC wishes to switch suppliers, does it have a duty to disclose that issue to its consumers? Why or why not?

Students should discuss consumer expectations based upon company image, values, and mission. In this case, the product being sold is not just chocolate. Instead, it is chocolate and a promise of charitable support and sustainable supply-side practices. If the product offered for sale contains such intangibles, companies should fully disclose to consumers the "entire" product. Students should be reminded of the definition of fraud – which is the use of deception to acquire money or property – and be asked whether companies who sell intangibles must disclose all of its routine business decisions (e.g., such as switching suppliers) in order to avoid charges of fraud.

Part III – Discussion Questions

3.1. If ESCC wishes to change its donation strategy, does it have a duty to disclose that issue to its consumers? Why or why not?

Refer to the answer for Discussion Question 2.5.

3.2. Discuss the differences between the charities supported by ESCC under Jon Stocking's leadership versus those under Wayne Zink's leadership.

The charities supported by ESCC under Stocking's leadership were devoted to the preservation and conservation of endangered species. The charities under Zink's leadership are devoted to a broader range. Students should note the difference in language on the chocolate bar wrappers, which embodied the shift in donation policy.

For example, Chimp Haven exists to supply a home for chimpanzees no longer used for biomedical research, entertainment, or as pets. Chimpanzees that have existed in such situations may not have ever lived in the wild. Students should be asked to consider whether that matters. Though chimpanzees in the wild are in danger of extinction, reports of surplus chimpanzees for biomedical research exist. Also, students should be asked to consider whether Chimp Haven's existence – while noteworthy in that it provides an enriched environment for needy chimpanzees – implicitly allows for the continued use of primates in biomedical research facilities or entertainment. If so, would consumers of ESCC's products be interested in this? Similarly, the National Wildlife Federation will use the 2006 ESCC donations for educational programs, none of which are devoted to endangered species, though tangential benefits to endangered species may exist. The Nigerian Project appears to benefit human beings in Nigeria, though, again, tangential benefits may exist to endangered species. Since ESCC divulges information concerning donation recipients and programs for which the donations will be used on its website, does the burden lie with the consumers to investigate these issues?

3.3. What does ESCC sell? Does ESCC have an ethical responsibility to support charities devoted to the conservation or protection of the endangered species depicted on its products? Why or why not?

See the answer to Discussion Question 2.5. Students should be encouraged to consider consumer expectations and the ethical duties created by the use of chocolate bar wrappers that depict animals that may not all be directly benefiting from the ESCC donations to charitable causes.

3.4. Are "retired" chimps an endangered species? Is humanity an endangered species? Discuss.

Refer to the answer to Discussion Question 3.2 for initial thoughts on this question. This discussion question may be used as the basis for a debate.

3.5. Discuss the ESCC team's travel expenses to Nigeria as part of the company's 10% commitment to the support of organizations devoted to conservation of species, habitat, and humanity.

Students should recognize the potential conflicts of interest and discuss how those conflicts might be minimized.

Integrating Discussion Questions

1. **Does Raintree have any ethical obligation to Jon Stocking and/or any of the Oregon employees? Why or why not?**

A general discussion of stakeholder interests is appropriate here. Also, students should recognize different business philosophies, such as the traditional capitalist approach (i.e., business is in the business to make money) and emerging ideas of greater responsibilities of business (i.e., varying forms of social responsibility). Students should be asked to consider whether a business can be socially responsible in some of its actions (e.g., donations to charity, commitment to "ethically traded" products) and strictly capitalistic in others (e.g., employee relations).

2. **Is it necessary for the principals of a business to have the same values as the business? Why or why not? If the principals' values**

and the values of the business differ (e.g., as stated in a mission statement), should consumers be made aware of that fact? Explain.

Student should be encouraged to distinguish business values from personal values. This question can be used as the basis for a class debate.

3. **Discuss the ethics of packaging and marketing a business image or product image that differs from the beliefs of its principals.**

See the answer to Discussion Question 2.5. This question can also be used as the basis for a class debate.

Appendix I – employment agreement (excerpt)

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "Agreement") is entered into effective as of the 12th day of January, 2005 (the "Effective Date") by and between The Raintree Group, LLC, an Indiana limited liability company (the "Company"), located at 9292 North Meridian Street, Suite 110, Indianapolis, Indiana 46260 and Jon Stocking, an Oregon resident (the "Employee").

WITNESSETH:

WHEREAS, the Company has entered into certain agreements between itself, the Employee, and Jon Stocking Enterprises, Inc. (d/b/a The Endangered Species Chocolate Company), an Oregon corporation, ("JSEI") which require the Company and the Employee to enter into an employment agreement with certain terms and conditions that are reflected in this Agreement (the "Transaction Agreements"); and

WHEREAS, the Company desires to employ the Employee, and to be assured of his services on the terms and conditions hereinafter set forth; and

WHEREAS, the Employee is willing to accept such employment on such terms and conditions;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and intending to be legally bound hereby, Company and Employee hereby agree as follows:

Section 1. **Employment**. Upon the terms and subject to the conditions set forth in this Agreement, the Company hereby employs the Employee and the Employee hereby accepts such employment from the Company.

Section 2. **Term**. Subject to Section 7 hereof, the Company shall employ Employee for a five (5) year period commencing on the Effective Date (the "Initial Term"). Unless terminated earlier as provided in this Agreement, the Employee may renew this Agreement (the "Renewal Option") for an additional two (2) year period (the "Renewal Term") by providing notice to the Company, no sooner than ninety (90) days and no later than sixty (60) days prior to the expiration of the Initial Term, that the Employee intends to exercise the Renewal Option ("Notice of Intent to Renew"). Upon receipt by the Company of the Notice of Intent to Renew, the Employee's employment shall continue on the same terms and conditions as are set forth herein for the Renewal Term without further action by the Company or the Employee. At the conclusion of the Renewal Term, or if the Renewal Option is not exercised, at the conclusion of the Initial Term, the employment of the Employee shall be terminated, unless the Company and the Employee enter into a subsequent new Employment Agreement.

Section 3. **Employee Duties.**

3.1. During the term of this Agreement, Employee shall have the duties and responsibilities of President set forth in the Amended and Restated Operating Agreement of the Company (the "Operating Agreement"), and such other duties and responsibilities as may be assigned to Employee from time to time by the Board of Managers of the

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Company (the "Board"). It is understood that such other duties and responsibilities shall be reasonably related to Employee's position.

3.2. Employee shall devote substantially all of his business time, attention, knowledge and skills faithfully, diligently and to the best of his ability, in furtherance of the business and activities of the Company. The principal place of performance by the Employee of his duties hereunder shall be the Company's office in Talent, Oregon, although the Employee may be required to travel outside of the area where the Company's Oregon office is located in connection with the business of the Company.

Section 4. **Compensation.** All amounts paid Employee are subject to the withholding of applicable federal, state, and local taxes.

4.1. **Annual Salary.** During the term of this Agreement, Company shall pay Employee an annual salary (the "Salary") in amounts corresponding to the table below, payable in equal bi-weekly installments, or at such other times as may mutually be agreed upon between Company and Employee. Nothing paid or provided to the Employee under any provision of this Agreement shall be deemed to be in lieu of the Salary of the Employee, with each such item being in addition to the Salary of the Employee.

Year One	$150,000
Year Two	$175,000
Year Three	$200,000
Year Four	$225,000
Year Five	$250,000
Year Six*	$275,000
Year Seven*	$275,000

* subject to the exercise of the Renewal Option defined in Section 2 of this Agreement.

4.2. **Sign On Bonus.** Upon execution of this Agreement, Employee shall receive a one-time sign-on bonus of $150,000.

4.3. **Annual Bonus.** In addition to the foregoing, Employee shall receive an annual bonus of $125,000 per year for product development and marketing for the first three years of his employment (the "Annual Bonus"). Before any of the Annual Bonus is paid, it will be applied to reduce any outstanding balance on the Loan (as defined in Section 5.2 of this Agreement). The Annual Bonus shall be payable within 90 days of the end of Company's fiscal year. Employee will sign a wage assignment agreement to facilitate repayment of the Loan from the Bonus.

4.4. **Other Matters.** All other matters relating to the employment of Employee by the Company not specifically addressed in this Agreement shall be subject to the general policies regarding employees of Company in effect from time to time.

Section 5. Benefits.

5.1. **Employee Benefit Plans**. During the term of this Agreement, Employee shall have the right to receive or participate in all existing and future benefits and benefit plans that Company may from time to time institute during such period for its executive officers and for which Employee is eligible. In addition, during the term of this agreement, Employee shall be afforded vacation days, paid holidays, and sick leave days in accordance with Company policies at the same level as employees holding similar executive positions. Nothing paid to Employee under any plan or arrangement presently in effect or made available in the future shall be deemed to be in lieu of the Salary or any other obligation payable to Employee pursuant to this Agreement.

5.2. **Loan**. On the date of this Agreement, the Company will loan Employee $375,000 at an interest rate per annum equal to the then-current prime rate of interest charged by Bank One, Indianapolis, Indiana or its successor plus one-half of one percent (.5%) (the "Loan"). The Loan will have a three-year term and will be secured by a pledge to the Company of all equity interests in Stocking, LLC or the Company now owned or hereafter acquired by Employee and/or Employee's spouse.

5.3. **Medical Care**. The Company will provide medical care for Employee and Employee's immediate family.

5.4. **Company Vehicle**. The Company will provide Employee with a company vehicle with a manufacturer's suggested retail price of up to $40,000 for his use in connection with the execution of his employment duties.

5.5. **"Key Man" Insurance**. Employee agrees to cooperate with and assist the Company (at the Company's expense) in maintaining and keeping in full force and effect the so-called "Key Man" insurance policy on the Employee for the benefit of the Company. Such cooperation shall include, but not be limited to, submitting to any physicals or other health assessments reasonably requested by the insurance company.

5.6. **Additional Benefits**. To the extent that the following activities are consistent with and undertaken in support of the Company's marketing and promotional efforts, the Company will permit Employee to undertake an annual ecological trek, a periodic ecological speaking trip with Jane Goodall, and an annual cocoa bean inspection trip as part of his duties under this Agreement.

Section 6. Travel Expenses. All travel and other expenses incident to the rendering of services reasonably incurred on behalf of the Company by the Employee during the term of this Agreement shall be paid by the Company, including business class air travel for Employee's non-domestic travel that is directly related to Company business. The Board must pre-approve any such expenses totaling in excess of $500 in any one month. If any such expenses are paid in the first instance by the Employee, the Company shall reimburse him therefor within thirty (30) days of presentation of appropriate receipts for any such expenses.

Section 7. **Termination.** Employee's employment under this Agreement may be terminated without any breach of this Agreement only in the following circumstances (each a "Termination"):

7.1. **Death.** The Employee's employment under this Agreement shall terminate upon his death.

7.2. **Disability.** If, as a result of the Employee's incapacity due to physical or mental illness, the Employee shall have been absent from his duties under this Agreement for ninety (90) consecutive days, or 180 total days, during any twelve (12) month period, the Company may terminate the Employee's employment under this Agreement.

7.3. **Termination by the Company.** The Company may terminate the Employee's employment under this Agreement at any time with or without Cause. For purposes of this Agreement, the Company shall have "Cause" to terminate the Employee's employment under this Agreement upon (a) a failure by the Employee to render services to the Company in accordance with this Agreement that continues for a period of twenty (20) consecutive days after written notice has been provided to him by the Company; (b) any action or omission by the Employee involving willful misconduct or gross negligence relating to his duties to the Company (including embezzlement or fraud; (c) the Employee's conviction of a felony or a crime of moral turpitude; (d) the Employee's willful disregard of the rules or policies of the Company which failure is not cured within twenty (20) days after written notice by the Company; or (e) the Employee's intentional breach of any of the provisions of this Agreement unless cured (if curable) within twenty (20) days after written notice by the Company.

7.4. **Resignation by the Employee.** The Employee may terminate his employment under this Agreement at any time for any reason by delivering a Notice of Termination to the Company at least thirty (30) days prior to the Date of Termination.

7.5. **Sale or Transfer of Ownership Interest.** The Company may terminate the Employee's employment if neither Stocking Feet, LLC nor Jon Stocking hold, directly or indirectly, an ownership interest in the Company.

7.6. **Legal Requirements.** Nothing contained in this Agreement shall impair, affect or change any requirements otherwise imposed upon the Company by applicable statute, law, rule, regulation or other legal requirement.

7.7. **Attorneys' Fees** If the Employee is terminated by the Company for Cause, or resigns for Good Reason (as defined herein), and, Cause or Good Reason is challenged through the existence of legal proceedings, the prevailing party shall be entitled to recover its attorneys' fees and costs, in addition to any other relief to which the prevailing party may be entitled.

Section 8. **Notice of Termination.**

Any termination of the Employee's employment by the Company or by the Employee (other than termination by reason of the Employee's death) shall be communicated by written

Notice of Termination to the other party to this Agreement. For purposes of this Agreement, a "Notice of Termination" shall mean a notice which shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Employee's employment under the provision so indicated.

Section 9. **Date of Termination.** The "Date of Termination" shall mean (a) if the Employee's employment is terminated by his death, the date of his death, (b) if the Employee's employment is terminated pursuant to Section 7.2 above, the date on which the Notice of Termination is given, (c) if the Employee's employment is terminated pursuant to Section 7.3 above, the date specified in the Notice of Termination after the expiration of any cure periods and (d) if the Employee's employment is terminated for any other reason, the date on which a Notice of Termination is given after the expiration of any cure and/or notice periods.

Section 10. **Compensation and Buy-Back Provisions Upon Termination or During Disability.**

10.1. **Termination upon Death.** If the Employee's employment shall be terminated by reason of his death, the Company shall pay to such person as he shall designate in writing filed with the Company, or if no such person shall be designated, to his estate, a lump sum amount equal to the lesser of (x) twelve (12) months' Salary, or (y) the balance of the Salary remaining under the terms of this Agreement, in addition to any payments the Employee's spouse, beneficiaries or estate may be entitled to receive pursuant to any pension or employee benefit plan or similar plan or policy then maintained by the Company. The Company shall, in accordance with the Operating Agreement, also have the option to purchase all of the Company equity interests held by Employee, Employee's spouse or Stocking Feet, LLC at a purchase price equal to the Fair Market Value of the interests. Such payments shall fully discharge the Company's obligations with respect to Section 4.

10.2. **Disability.** The Employee shall continue to receive his Salary during any period that the Employee fails to perform his duties hereunder as a result of incapacity due to physical or mental illness. If the Employee's employment is terminated pursuant to Section 7.2 of this Agreement, the Company shall pay to Employee or to such person as he shall designate in writing filed with the Company, a lump sum amount equal to the lesser of (x) twelve (12) months' Salary, or (y) the balance of the Salary remaining under the terms of this Agreement.. The Company shall, in accordance with the Operating Agreement, also have the option to purchase all of the Company equity interests held by Employee, Employee's spouse or Stocking Feet, LLC at a purchase price equal to the Fair Market Value of the interests. Such payments shall fully discharge the Company's obligations with respect to Section 4 of this Agreement.

10.3. **Termination by Employer for Cause.** If the Employee's employment shall be terminated for Cause, the Company shall pay the Employee his unpaid and earned Salary through the Date of Termination, at the rate in effect at the time Notice of Termination is given, and the Company shall, in accordance with the Operating Agreement, have the option to buy back all of the Company equity interests held by

Employee, Employee's spouse or Stocking Feet, LLC at the purchase price and on the terms described in the Operating Agreement. Such payment shall fully discharge the Company's obligations with respect to Section 4 of this Agreement.

10.4. **Resignation by Employee other than for Good Reason.** If the Employee's employment shall be terminated by the Employee without Good Reason (as hereinafter defined), the Company shall pay the Employee his unpaid and earned Salary through the Date of Termination, at the rate in effect at the time Notice of Termination is given, and the Company shall, in accordance with the Operating Agreement, have the option to buy back all of the Company equity interests held by Employee, Employee's spouse or Stocking Feet, LLC at the purchase price and on the terms described in the Operating Agreement. Such payment shall fully discharge the Company's obligations with respect to Section 4 of this Agreement.

10.5. **Termination by Company other than for Cause; Resignation by Employee for Good Reason.** If the Employee's employment shall be terminated by the Company for reasons other than for Cause, or if the Employee shall resign his employment for Good Reason, the Company shall pay the Employee his unpaid and earned Salary through the Date of Termination, at the rate in effect at the Date of Termination. In addition, the Company shall, at the Company's option, pay Employee a lump sum amount equal to the twenty-four (24) months' Salary or continue to pay the Employee his Salary plus interest at a rate equal to the then-current prime rate of interest charged by Bank One, Indianapolis, Indiana or its successor plus one-half of one percent (.5%) for the twenty-four (24) months following the Date of Termination pursuant to this Section 10.5. Should the Company choose to continue to pay the Employee his Salary for the twenty-four (24) months following the Date of Termination, the Company will, within fifteen (15) days of Termination, grant Employee a security interest in the Company's assets. Such security interest shall be subordinate to any bank indebtedness existing at the time of Termination and any bank indebtedness arising thereafter. The full amount of such severance will become immediately due and payable upon: (i) a change in ownership or voting control of the Company in excess of 50%, (ii) the institution of bankruptcy proceedings against the Company, (iii) the Company's insolvency, or (iv) the sale of all or substantially all of the assets of the Company. Finally, the Company shall, in accordance with the Operating Agreement, have the option to buy back all of the Company equity interests held by Employee, Employee's spouse or Stocking Feet, LLC at the purchase price equal to the Fair Market Value of the interests and on the terms described in the Operating Agreement. Such payments shall fully discharge the Company's obligations with respect to Section 4 of this Agreement.

10.6. **Good Reason.** For purposes of this Agreement, "Good Reason" shall mean the resignation of the Employee's employment with the Company by the Employee because of: (a) the assignment to the Employee, without the Employee's consent, of any duties or responsibilities which are materially inconsistent with his position as President of the Company which is not cured within thirty (30) days of receipt by the Company of written notice from the Employee of such assignment of inconsistent duties or responsibilities; or (b) any material breach by the Company or any successor of any provision of this Agreement which breach is not cured within thirty (30) days of receipt by the Company of written notice of such breach from the Employee; or (c) any change without Employee's consent in the location of the Company's office where Employee is required to perform his duties to a location more than fifty (50) miles from the Company's current office in Talent, Oregon. A mere change in title or reporting responsibilities shall not be taken into account to determine if the Employee has Good Reason to terminate the Employee's employment hereunder. The Employee agrees to respond within ten (10) days of the delivery of any request for consent to a proposed change in the Employee's duties and responsibilities or a consent otherwise contemplated by this paragraph. If the Employee does not respond within such ten (10) day period, he shall be deemed to have consented to the proposed change. If the Employee does not consent to any proposed change, the Company may withdraw such proposed change by written notice to the Employee delivered within ten (10) days after receipt of the Employee's response to the Company's request for consent.

10.7. **Mitigation.** The amount of any payment provided for in this Section 10 shall be reduced by any compensation earned by the Employee as the result of employment by another company or business following the Date of Termination.

Section 11. Confidentiality; Noncompetition.

11.1. The Company and the Employee acknowledge that the services to be performed by the Employee under this Agreement are unique and extraordinary and, as a result of such employment, the Employee will be in possession of Confidential Information relating to the business practices of the Company. The term "Confidential Information" shall mean any and all information (oral and written) relating to the Company or any of its affiliates, or any of their respective activities, other than such information which can be shown by the Employee to be in the public domain (such information not being deemed to be in the public domain merely because it is embraced by more general information which is in the public domain) other than as the result of breach of the provisions of this Section 11.1, including, but not limited to, information relating to: recipes, trade secrets, personnel lists, financial information, research projects, services used, pricing, customers, customer lists and prospects, product sourcing, marketing, selling and servicing. The Employee agrees that, except as may be required for the performance of his duties for the Company, he will not, during or for a period of five (5) years after the termination of employment, directly or indirectly, use, communicate, disclose or disseminate to any person, firm or corporation any Confidential Information regarding the clients, customers or business practices of the Company acquired by the Employee during his employment by Company, without the prior written consent of Company; provided, however, that the Employee understands that Employee will be prohibited from misappropriating any trade secret (as defined for purposes of Indiana law) at any time during or after the termination of employment.

11.2. During Employee's employment with the Company and for a period of three (3) years immediately after the termination of such employment Employee will not, within the "Restricted Area", engage, have an interest in or render any services to any Competitors (whether as owner, manager, operator, licensor, licensee, lender, partner, stockholder, joint venturer, employee, consultant or otherwise) competitive with the

Epilogue

The legal case concerning control of ESCC was settled out of court. The terms of the settlement were confidential. DZ Enterprises retains control of ESCC and Wayne Zink is its CEO.

ESCC reported in 2006 that it has experienced a more than 200% growth in conventional grocery store distribution, and more than 100% growth in both natural organic and in e-commerce sales.[1] It further reported that it has "firmly secured its number one position over the past year"[2] and that its staff has grown to 48 employees.[3] ESCC maintains profitability and produces more than 30 different chocolate products.[4]

Under Zink's control, ESCC no longer purchases its cacao from Costa Rica, but remains committed to purchasing ethically-traded cacao from Nigeria. It also continues to purchase organic cacao from the Dominican Republic. In 2006, ESCC began to use the money previously designated for fair trade certification to directly support the farmers in the Dominican Republican fair trade cooperative, which ESCC believes will continue to ensure the farmers a fair wage for their crop.[5]

Another Oregon chocolatier and businessman, Jeff Shepherd, founder of Lillie Belle Farms, summed up the lesson he learned from witnessing the ESCC ownership struggle. "If you're going to sell your company, either sell 100% or sell less than 50%".[6]

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[1] Endangered Species Chocolate celebrates one year in Indianapolis (visited July 17, 2006) http://www.bjmpr.com/newsroom/esc/homepage.html

[2] *Id.*

[3] *Id.*

[4] *ESCC names organization to support, supra* note **Error! Bookmark not defined.**.

[5] *Playing field, supra* note **Error! Bookmark not defined.**.

[6] Williams, *supra* note **Error! Bookmark not defined.**, at 14.