

Roggenburk, Laurie

From: Matsuki, Fumiko
Sent: Monday, March 06, 2000 4:20 AM
To: Roggenburk, Laurie
Subject: Attached memo to MHM re Dentsu/Williams

Will you please forward to Mr. McCormack the attached my memo dated March 6 re Dentsu/Williams and the relating contract draft. Total pages of the draft are 11.

Best regards,



Dentsu306.doc



FW WilliamsAquarius
Agreement...



MEMORANDUM

1-7-18 MOTOAKASAKA
MINATO-KU, TOKYO 107-0051 JAPAN
813-3470-1612 FAX: 813-3470-6477
E-mail: fmatzuki@imgworld.com

TO: Mark H. McCormack

FROM: Fumiko Matsuki

FAX NO:

DATE: March 6, 2000

COMPANY/FIRM OR IMG OFFICE
LOCATION: IMG Cleveland

FOR DISTRIBUTION:
NOT FOR DISTRIBUTION:
TOTAL PAGES (INCL. THIS PAGE): 1

Re: Dentsu/Williams

Please refer to the attached K draft re Williams/Coca Cola. I was informed that K is in Dentsu's hands for their signature and will be signed accordingly. And just today, Dentsu paid \$750,000 in full to our Account.

TJ advised that TV commercial is going to start on March 8. Then, he will collect videotape of the film for you. I will send the tape to you when I receive it.

Best regards

AGREEMENT

THIS AGREEMENT, made and entered into as of this 17th day of February, 2000, by and between SERENA WILLIAMS, an individual citizen and resident of the United States (hereinafter called "Serena") and VENUS WILLIAMS, an individual citizen and resident of the United States (hereinafter called "Venus") each having an address at IMG Center, 1360 East 9th Street, Cleveland, Ohio 44114 (Serena and Venus hereinafter jointly referred to as "Players") and DENTSU INC. of 1-11 Tsukiji, Chuo-ku, Tokyo 104-8426, Japan (hereinafter referred to as "Dentsu"), on its own behalf and on behalf of its client, COCA-COLA (JAPAN) COMPANY, LIMITED. having an address at 6-3 Shibuya 4-chome, Shibuya-ku Tokyo 150-0002, Japan, (hereinafter referred to as "Coca-Cola");

WITNESSETH:

WHEREAS, Coca-Cola represents that Coca-Cola is actively involved in the advertisement, promotion, production, distribution and sale of an isotonic drink which is advertised, promoted and distributed under the "Aquarius" brand name (the "Endorsed Product" as hereinafter more fully described);

WHEREAS, Dentsu and Coca-Cola desire to obtain on behalf of Coca-Cola the right to use the name, photograph, likeness and endorsement of the female professional tennis players Serena Williams and Venus Williams (the "Players") in connection with the advertisement, promotion and sale of the Endorsed Product;

WHEREAS, Players have designated and appointed International Management Group (Overseas) Inc., Tokyo Branch of 7-18, Moto Akasaka 1-chome, Minato-ku, Tokyo 107-0051 Japan ("IMG-Tokyo") as the authorized agent on behalf of Players in connection with certain matters as hereinafter set forth in this Agreement; and

WHEREAS, Players are willing to grant such rights to Dentsu and Coca-Cola upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises and conditions herein contained, the parties do hereby agree as follows:

1. Definitions. As used herein, the following terms shall be defined as set forth below:

- (a) "Players Endorsement" shall mean the name, likeness, photograph, image and endorsement of each of the Players, and any combination of any of the foregoing.
- (b) "Endorsed Product" shall mean that isotonic beverage (which shall be non-alcoholic) which is produced, advertised,

distributed and sold by Coca-Cola under the "AQUARIUS" brand name.

- (c) "Use Period" shall mean the period beginning on March 5, 2000 and continuing until September 5, 2000.
- (d) "Contract Period" shall mean the period beginning on the date of execution of this Agreement and ending on the final date of the Use Period.
- (e) "Contract Territory" shall mean and be limited to Japan not including United States military bases and installations.

2. Grant of Rights. (a) Players hereby grants to Dentsu (solely on behalf of Dentsu's client, Coca-Cola), during the term of the Contract Period hereof, subject to all of the terms and conditions of this Agreement, the exclusive right to use the Players Endorsement for the advertising and promotion of the Endorsed Product (including, without limitation, but subject to Players' prior approval as herein described, the right to have Players hold, drink and comment on the Endorsed Product) in all media (including, without limitation, point of purchase materials and, with the prior express written consent of Players, premiums and giveaways, but excluding advertisements on home video) throughout the Contract Territory during the Contract Period. Such rights shall be limited to the generic category ("isotonic beverages") of the Endorsed Product.

(b) During the Contract Period, Players will not grant to any third party (anyone other than Coca-Cola) the right or license to use the Players Endorsement anywhere in the Contract Territory in connection with any non-alcoholic beverages.

(c) Players agrees Dentsu and Coca-Cola shall have the right to conduct a press conference (which may be held prior to March 8) announcing the relationship between Players and Coca-Cola, and at such press conference, Dentsu and Coca-Cola may play a short video on the "making of" the television commercial featuring Venus and Serena (produced pursuant to this Agreement) to those in attendance at the press conference only.

3. Services of Players. (a) Players hereby agrees to make available to Dentsu the services of Players for their participation in one filming and still photography session for each Player, such sessions to be arranged by Dentsu. The parties acknowledge that filming of Venus was conducted on February 10, 2000 and that the results thereof are satisfactory. Filming of Serena shall be conducted February 22, 2000 at a convenient location in Miami, Florida. Each day of filming shall consist of six (6) hours of the Player's time plus two (2) hours break and rest time. Filming of Serena must be scheduled to permit Serena to depart Miami for Los Angeles by an evening flight on the day of filming.

(b) In connection with each filming session, Dentsu agrees to provide each Player with round-trip first class air-fare (if required), accommodations (if required), ground transportation and meals reasonably required by each Player in connection with each filming session. For each filming session for each Player, Dentsu shall provide round-trip airfare (if required), accommodations (if required), ground transportation and meals reasonably required by one commercial representative travelling with each Player in connection with each filming session (such expenses not to exceed US\$1,500 in total for both filming sessions).

(c) If, due to illness, injury or for any other reason attributable to Serena, the filming of Serena shall not be conducted on February 22, then the filming session of Serena shall be rescheduled for the earliest mutually convenient non-conflicting date following February 22.

(d) The consideration described in Paragraph 5 below shall, for purposes of the rules of any union having jurisdiction over the production of the television commercials produced pursuant to the provisions of this Paragraph 3, be allocated twenty percent (20%) to the making and use of such television commercials, and eighty percent (80%) to the making and use of magazine and newspaper advertisements, in-store point of purchase advertisements, and other non-broadcast advertisements.

4. Premium Promotions. If Dentsu desires to conduct any advertising or promotional program concerning Endorsed Product that involves premium products, then Dentsu agrees that before commencing such program, Dentsu shall deliver to Players a written summary setting forth all of the terms and conditions of such proposed program (including, in particular, any premium articles proposed to be distributed as a part of such program), and Dentsu agrees that Players shall have the right to approve or disapprove, in advance, in their sole discretion, the contents of such proposed premium program.

5. Contract Fee. As consideration to Players for the grant to Coca-Cola of the rights and services hereinbefore described, Dentsu shall pay to IMG-Tokyo, on behalf of Players, a contract fee in the amount of Seven Hundred Fifty Thousand United States dollars (US\$750,000) together with such consumption tax, if any, as may be payable in connection therewith. Such amount shall be paid in full on or before March 4, 2000 in the manner described in Paragraph 6 below. The parties hereby acknowledge and agree that the contract fee shall be allocated eight-five percent (85%) as consideration (that is, a royalty) for advertising rights, including trademarks and copyrights, to the use of the Players Endorsement in advertising and promotional materials published and distributed in Japan, and the remaining fifteen percent (15%) as consideration for the filming services of the Players described in Paragraph 3 above.

6. Payments. All payments to be made by Dentsu and Coca-Cola to Players pursuant to this Agreement shall be paid to IMG-Tokyo, on behalf of Players, to such bank account and to such bank as shall be notified by IMG-Tokyo to Dentsu in advance. Dentsu shall provide Players a written receipt evidencing payment of withholding tax in connection with all amounts paid hereunder to IMG-Tokyo on behalf of Players. Past due payments hereunder shall bear interest at the rate of (i) one and one-half percent (1.5%) per month, or (ii) the maximum interest rate permissible under law, whichever is less. If payment is not made in a timely manner by Dentsu, then Coca-Cola agrees that Coca-Cola shall make payment of the unpaid amount within five (5) business days after notification to Coca-Cola of non-payment by Dentsu.

7. Approval of Endorsed Product. (a) Dentsu agrees that Players shall have the right to approve or disapprove the nature and quality of the Endorsed Product and to approve or disapprove any endorsement, trademark or trade name used in connection therewith. Players represents that Players has sampled the Endorsed Product, and Players has approved (for the purposes of this paragraph) the nature and quality of the Endorsed Product. Players represents that Players has approved (for purposes of this paragraph) use of Coca-Cola's "Aquarius" trademark on and in connection with the Endorsed Product.

(b) With respect to all containers and packaging for the Endorsed Product, such as, for example, beverage cans, bottles and packaging for cans or bottles sold in a multi-pack, Coca-Cola shall submit to Players, at the address set forth in Paragraph 9 below, a sample of such packaging, and Players agrees that each such item of sample packaging shall be promptly examined and either approved or disapproved. Coca-Cola will be notified promptly of approval or disapproval. Players agrees that it will not unreasonably disapprove any samples submitted, and if any are disapproved, Coca-Cola will be notified of the specific reasons for disapproval in each case. Players agrees that any item submitted for approval hereunder shall be deemed to have been approved hereunder by Players if the same has not been disapproved in writing within ten (10) business days after receipt thereof.

8. Advertising Approval. (a) Coca-Cola agrees that Players shall have the right to approve or disapprove in advance the contents, appearance and presentation of any and all advertising materials which incorporate the Players Endorsement or which make reference in any way to the Players. Coca-Cola agrees that it will not produce, publish or in any manner distribute any such advertising materials which have not been approved in advance by Players in accordance with the provisions set forth below. Before producing, publishing or distributing any advertising materials hereunder, Coca-Cola shall submit to IMG-Tokyo, at the address of IMG-Tokyo set forth in Paragraph 9 below, for its examination and approval or disapproval, a sample thereof together with text, coloring and a copy of any photograph proposed to be used. IMG-Tokyo agrees that it will promptly examine and either approve or disapprove such sample advertising material, and that IMG-Tokyo will

promptly notify Coca-Cola of its approval or disapproval. IMG-Tokyo agrees that it will not unreasonably disapprove any sample advertising and, if any is disapproved, that Coca-Cola will be advised of the specific reasons in each case. IMG-Tokyo agrees that any item submitted for approval hereunder shall be deemed to have been approved hereunder by IMG-Tokyo if the same is not disapproved in writing within ten (10) business days after receipt thereof.

(b) Notwithstanding the foregoing, in recognition of the short production schedule for television commercials produced pursuant to this Agreement, the Players agree that, with respect to approval by Players of television commercials hereunder, such examination and approval or disapproval thereof shall be made based on storyboards and through on-site approvals given at each filming venue.

9. Notices and Submissions. (a) All notices or submissions to be made or delivered by Coca-Cola to Players pursuant to this agreement shall be delivered to the address of Players' authorized agent, as follows:

International Management Group
(Overseas) Inc., Tokyo Branch
7-18, Moto Akasaka 1-chome
Minato-ku, Tokyo 107
Japan

Attention: T. Joyama

With a copy of all notices (only) to be sent in addition to the following address:

Garvey, Schubert & Barer
Eighteenth Floor
1191 Second Ave.
Seattle, Washington 98101-2939

Attention: Keven J. Davis

All such materials shall be delivered to Players free of all charges such as, for example, shipping charges or customs charges. In the event that any such charges are paid by Players, Coca-Cola agrees to make prompt reimbursement.

(b) All notices or materials to be delivered by Players to Dentsu and/or Coca-Cola pursuant to this agreement shall be delivered to the address of Dentsu as follows:

Dentsu Inc.
1-11 Tsukiji
Chuo-ku, Tokyo 104-8426
Japan

Attention: Koichi Inokawa

10. Trademarks. Should Players, at any time or times during the Contract Period, desire to register a trademark or trademarks which include the Players Endorsement, or which relate in any manner to Players, Coca-Cola shall execute any and all documents which Players reasonably believes to be necessary or desirable for registration or protection of such trademark or trademarks in the name of Players. Upon registration of any such trademark, Players shall grant to Coca-Cola a license for the use of such registered trademark on or in connection with the advertisement, promotion and sale of Endorsed Product, which license shall be coextensive and coterminous with the rights granted thereunder with respect to Players Endorsement and shall require no increase in the payments set forth but shall contain such additional provisions as Players reasonably believes are necessary for the protection of such trademark registered in the name of Players. Coca-Cola agrees that it will not file, during the Contract Period or thereafter, any application for trademark registration or otherwise obtain or attempt to obtain ownership of any trademark or trade name in any country of the world which consists of the Players Endorsement or any mark, design or logo intended to make reference to Players or to identify Players. Coca-Cola agrees that the Players Endorsement shall not be used as a trademark in connection with Endorsed Products and, as such, no part of the Players Endorsement shall be affixed or attached to containers for the Endorsed Product or to packaging for such containers.

11. Special Right of Termination. (a) Coca-Cola shall have the right to elect to terminate this Agreement at any time if the commercial value of the Players Identification is materially impaired by the occurrence of any of the following:

- (i) if either Player shall commit any act which shocks, insults, and offends the community and ridicules public morals and decency,
- (ii) if either Player is indicted or convicted of any act which constitutes a felony and/or a misdemeanor involving moral turpitude, or
- (iii) if either Player fails an officially sanctioned drug test, is criminally charged with any drug-related offense or is admitted to a drug treatment program.

Any termination pursuant to this paragraph shall become effective on the date of receipt by Players of Coca-Cola's written notification of termination.

(b) If at any time during the Contract Period, either Player dies or suffers any substantial physical disfigurement, then Coca-Cola, at its option, may elect to terminate this Agreement immediately upon written notice thereof to Players.

(c) If Players shall disagree with Coca-Cola concerning the right of Coca-Cola to elect to terminate the Contract Period of this Agreement under the provisions of Paragraph 11(a) or (b) immediately above, then Players shall have right to have such matter submitted for arbitration pursuant to the provisions of Paragraph 22 hereof.

(d) If this Agreement shall be terminated pursuant to the provisions to this Paragraph 11, then the contract fee described in Paragraph 5 above shall be pro-rated up to the date of termination.

12. Indemnity by Coca-Cola. Coca-Cola agrees that Coca-Cola will protect, indemnify, defend and save harmless Serena, Venus, and IMG-Tokyo, and any of them, from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including reasonable attorneys' fees, arising out of, or in any way connected with, any claim or action in which it is alleged that the use or consumption of Endorsed Product has resulted in injury, illness or other personal or property damage to any person, including without limitation any claim in which it is alleged that the manufacture, advertising, promotion, distribution, consumption or sale of the Endorsed Product infringes any copyrights, trademarks, design rights, patent rights, author's rights or other proprietary rights of any third party, and any breach by Coca-Cola of any statutory or regulatory law or order.

13. Indemnity by Players. Players agrees to protect, indemnify and save harmless Dentsu and Coca-Cola, and either of them, from and against any and all expenses, damages, claims, suits, actions, judgments and costs whatsoever, including reasonable attorneys' fees, arising out of, or in any way connected with, any claim or action in which it is alleged that the rights herein granted by Players are in conflict with rights heretofore or hereafter granted by Players to any third party. During the Contract Period, Players agrees that neither Player shall make any comments which are derogatory of Coca-Cola and/or the Endorsed Product. During the Contract Period, Dentsu agrees, on its own behalf and on behalf of Coca-Cola, that neither Dentsu nor Coca-Cola shall make any comments which are derogatory of Players.

14. Termination for Default. If either party at any time during the period of this Agreement shall (a) fail to make any payment of any sum of money herein specified to be made, or (b) fail to observe or perform any of the material covenants, agreements, or obligations hereunder (other than the payment of money), the non-defaulting party may terminate this Agreement as follows: as to (a) if such payment is not made within twenty (20) days after the defaulting party shall have received written notice of such failure to make payment, or as to (b) if such material default is not cured within thirty (30) days after the defaulting party shall have received written notice specifying such material default. Failure to terminate this Agreement pursuant to this section shall not effect or constitute a waiver of any remedies the non-defaulting party would have been entitled to demand in the absence

of this section, whether by way of damages, termination or otherwise. Termination of this Agreement for whatever reason shall be without prejudice to the rights and liabilities of either party to the other in respect of any matter arising under this Agreement.

15. Players Endorsement After Termination. It is understood and agreed that from and after the termination of the Contract Period all of the rights of Coca-Cola and Coca-Cola to the use of the Players Endorsement shall cease, and Coca-Cola and Coca-Cola shall immediately make best efforts to remove from public display as soon as reasonably possible (at least within ninety (90) days) all advertising and/or promotional materials which utilize the Players Endorsement.

16. Non-Commercial Use. Notwithstanding anything to the contrary contained in this Agreement, Players agrees that Dentsu and Coca-Cola shall be entitled, during and after the term of this Agreement, to use any of the advertising and promotional material generated pursuant to this Agreement in (and only in):

- (a) Commercial competitions(s) anywhere in the world provided that the television commercials are not, as part of any such competition(s), broadcast on so-called public or network television for viewing by a general audience with the exception of news broadcast(s); and/or
- (b) "In-house" use in Japan by Coca-Cola bottlers in Japan for the specific purposes of training personnel or for "in-house" promotional purposes or for corporate historical archives.

17. Assignment. This agreement shall bind and inure to the benefit of Players, and the successors and assigns of Players. The rights granted Coca-Cola hereunder shall be personal to it and shall not without the prior written consent of Players, be transferred or assigned to any other party. In the event of the merger or consolidation of Coca-Cola with any other entity, Players shall have the right to terminate the Contract Period by so notifying Coca-Cola in writing on or before sixty (60) days after Players has received notice of such merger or consolidation.

18. Entire Agreement. This writing constitutes the entire agreement between the parties hereto and may not be changed or modified except by a writing signed by the party or parties to be charged thereby.

19. Joint Venture. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture between Players and Coca-Cola. Neither party shall have any right to obligate or bind the other party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third person.

20. Reservation of Rights. All rights not herein specifically granted to Coca-Cola shall remain the property of Players to be used in any manner Players deems appropriate. Coca-Cola understands that Players has reserved the right to authorize others to use Players Endorsement during the Contract Period in connection with all tangible and intangible items and services other than Endorsed Product itself.

21. Arbitration. (a) Any dispute which arises between the parties concerning the provisions of Paragraph 11(a) or (b) hereof shall be resolved through binding arbitration. In the event of any such dispute, either party may submit such issue to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association, as modified by the provisions of subparagraph (b) following. The venue for such arbitration shall be Los Angeles, California. Any such arbitration proceedings and decisions shall be private and confidential, and both parties agree not to disclose any aspect thereof without the prior written consent of the other party. Either party may bring action at law or in equity to enforce any such arbitration decision or award, including, without limitation, obtaining injunctive relief.

(b) Arbitration proceedings shall take place before three (3) arbitrators each of whom shall be a lawyer. All arbitration proceedings shall be confidential. Neither party shall disclose any information about the evidence produced by the other party in the arbitration proceedings, except in the course of judicial, regulatory, or arbitration proceeding, or as may be demanded by government authority. Before making any disclosure permitted by the preceding sentence, a party shall give the other party reasonable advance written notice of the intended disclosure. Each party bears the burden of persuasion of any claim or counterclaim raised by that party. The arbitration provisions of this Agreement shall not prevent any party from obtaining injunctive relief from a court of competent jurisdiction to enforce the obligations for which such party may obtain provisional relief pending a decision on the merits by the arbitrator. Each of the parties hereby consents to the jurisdiction of the courts of the State of California for such purpose. The arbitrator shall have authority to award any remedy or relief that a court of the State of California could grant in conformity to applicable law, except that the arbitrator shall have no authority to award attorneys' fees or punitive damages. Any arbitration award shall be accompanied by a written statement containing a summary of the issues in controversy, a description of the award, and an explanation of the reasons for the award. The arbitrator's award shall be final, and judgment may be entered upon such award by any court.

22. Governing Law/Jurisdiction. This agreement shall be governed and construed according to the laws of the Japan without regard to conflict of laws. In the event Players shall desire to institute legal proceedings in connection with the interpretation, performance or breach of this Agreement by Dentsu and/or Coca-Cola (other than a claim arising under Paragraph 11 hereof), then Players agrees the Tokyo

District Court shall have the sole and exclusive jurisdiction of any such action. If Dentsu and/or Coca-Cola shall desire to institute legal proceedings with respect to the interpretation, performance or breach of this Agreement by Players (other than a claim arising under Paragraph 11 hereof), then Dentsu agrees, on its own behalf and on behalf of Coca-Cola, that the competent courts, State or Federal, located in the state of Florida, United States of America, shall have the sole and exclusive jurisdiction over any such action.

23. Execution and Delivery Required. This instrument shall not be considered to be an agreement or contract nor shall it create any obligation whatsoever on the part of Players, Dentsu and Coca-Cola, or either of them, unless and until it has been signed by each of Serena and Venus and by a representative of Dentsu and by a representative of Coca-Cola and delivery has been made of a fully signed original. This Agreement shall be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one in the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

VENUS WILLIAMS

DENTSU INC.

By _____

SERENA WILLIAMS

Read and Agreed as to the obligations of Coca-Cola set forth hereinabove:

COCA-COLA (JAPAN) COMPANY, LIMITED

Read and Approved

INTERNATIONAL MANAGEMENT GROUP (OVERSEAS) INC., TOKYO BRANCH

By _____

By _____

Arthur J. Lafave, Jr.
Branch Manager

LD-JSO/jkj