

Fill in this information to identify the case:

Debtor 1 TradeGlobal, LLC

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: District of Nevada

Case number 19-15960-MKN

Official Form 410**Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Nespresso USA, Inc.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Sven T. Nylén</u> Name <u>71 South Wacker Drive, Suite 1600</u> Number Street <u>Chicago IL 60606</u> City State ZIP Code Contact phone <u>312-624-6388</u> Contact email <u>snylen@beneschlaw.com</u>	Where should payments to the creditor be sent? (if different) <u>Ian Skipsey</u> Name <u>111 W 33rd Street, 5th Floor</u> Number Street <u>New York NY 10120</u> City State ZIP Code Contact phone <u>646-376-4903</u> Contact email <u>Ian.Skipsey@nespresso.com</u>
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	
	Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____
7. How much is the claim?	At least \$20 million (see attached Addendum). Does this amount include interest or other charges? <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. See attached Addendum
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No☐ Yes. Check one:☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.☐ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 01/14/2020
MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name	<u>Ian Skipsey</u>		
	First name	Middle name	Last name
Title	<u>Vice President of Finance</u>		
Company	<u>Nespresso USA, Inc.</u>		
	Identify the corporate servicer as the company if the authorized agent is a servicer.		
Address	<u>111 W 33rd St, 5th Floor</u>		
	Number	Street	
	<u>New York</u>		<u>NY</u> <u>10120</u>
	City	State	ZIP Code
Contact phone	<u>646-376-4903</u>		Email <u>Ian.Skipsey@nespresso.com</u>

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

Jagged Peak, Inc.,

☒ Affects this Debtor.

In re:

TradeGlobal, LLC, a Delaware limited liability company,

☒ Affects this Debtor.

In re:

TradeGlobal North America Holding, Inc., a Delaware corporation.

☒ Affects this Debtor.

Case No.: BKS-S-19-15959-MKN

Chapter 11

LEAD CASE

Jointly Administered with:

Case No.: BKS-S-19-15960-MKN

Chapter 11

Case No.: BKS-S-19-15961-MKN

Chapter 11

ADDENDUM TO PROOFS OF CLAIM OF NESPRESSO USA, INC.

1. This Addendum is submitted with and incorporated in the Proofs of Claim filed by Nespresso USA, Inc. (“Nespresso”) in these chapter 11 bankruptcy cases (the “Chapter 11 Cases”) of the above-captioned debtors (collectively, the “Debtors”).

BASIS FOR CLAIM

2. Nespresso and Jagged Peak, Inc. (“Jagged Peak”) are parties to that certain *Master Warehousing and Logistics Services Agreement*, dated as of January 1, 2018 (the “Services”).

Agreement”).¹ The Services Agreement provides that Nespresso maintain a deposit with Jagged Peak on account of freight and postage costs (the “Deposit”) so that Jagged Peak’s working capital would not be impacted by the significant freight and postage costs associated with the services provided to Nespresso. The Services Agreement provides that the Deposit is subject to adjustment at the end of each calendar quarter.

3. Under the Services Agreement, Jagged Peak is responsible for coordinating freight carrier services for Nespresso. Nespresso is party to contracts with certain freight carriers (the “Direct Contract Carriers”) together with other U.S. Nestlé entities. As with all other freight carriers providing services in connection with Nespresso’s supply chain, Jagged Peak is responsible for coordinating with the Direct Contract Carriers and paying their invoices as a pass-through expense under the Services Agreement. Nespresso, however, is the party that is contractually obligated to the Direct Contract Carriers.

4. In early September 2019, in response to Jagged Peak’s request for assistance with its liquidity problems, Nespresso agreed to pay Jagged Peak’s outstanding and going forward invoices earlier than as required under the Services Agreement in exchange for certain discounts on going forward invoices (the “Discounts”).

5. Pursuant to that certain *Amended Order Pursuant to 11 U.S.C. § 105, 363, and 365: (A) Approving the Sale of Substantially all Assets of Jagged Peak, Inc. Free and Clear of Liens Encumbrances, Claims and Interests, (B) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, (C) Waiving the Requirements of Bankruptcy Rules 6004(h) and 6006(d), and (D) Granting Related Relief* [ECF No. 345] (the

¹ Regardless of its rejection, the Services Agreement is confidential and proprietary and, therefore, not attached hereto. The Services Agreement will be made available to the official committee of unsecured creditors upon request subject to an appropriate non-disclosure agreement.

“Jagged Peak Sale Order”), the Bankruptcy Court approved a sale of substantially all of the assets constituting the Jagged Peak business to ID Logistics.

6. On December 11, 2019 (the “Sale Closing Date”), the sale to ID Logistics was consummated and the Services Agreement between Nespresso and Jagged Peak was rejected. In connection with the sale, Nespresso entered into a new services agreement with ID Logistics (the “IDL Agreement”). The terms of the IDL Agreement are less favorable than the Services Agreement from the perspective of Nespresso, and require Nespresso to pay a significant upfront initiation fee in connection therewith.

AMOUNT OF CLAIMS

7. **Liquidated Claim Amounts:** Nespresso asserts liquidated claims, in an amount of not less than **\$13,303,749.33**, which consist of the following:

- a. Deposit Held by Debtors: **\$3,933,193.00** as of September 16, 2019 (the “Petition Date”).²
- b. Direct Contract Carrier Liability: **\$4,354,256.00** as of the Petition Date.³
- c. Prepetition Early Payment Discounts: **\$60,800.13** as of the Petition Date
- d. Postpetition Early Payment Discounts: **\$127,874.24** arising from Jagged Peak invoices issued after the Petition Date through the Sale Closing Date.
- e. Penalties for KPI Failures Under Services Agreement: **\$726,373.78** for which Nespresso was entitled to credits.
- f. IDL Agreement Initiation Fee: **\$3,600,000.00**
- g. Attorneys’ Fees: Nespresso has paid or incurred **\$501,252.18** from the Petition Date through December 31, 2019.

² This amount is confirmed by an email from the Debtors’ CFO dated September 26, 2019.

³ This liability is on account of prepetition services provided by Direct Contract Carriers for which Nespresso had already paid to Jagged Peak but Jagged Peak did not pay to the Direct Contract Carriers. Invoices reflecting these amounts are voluminous, and also potentially include sensitive pricing information, but will be provided to the official committee of unsecured creditors upon request subject to an appropriate non-disclosure agreement.

8. **Unliquidated Claim Amount:** Nespresso also asserts the following unliquidated claims:

- a. **Rejection Damages:** Nespresso has suffered damages as a result of breaches of the Services Agreement. Currently, Nespresso estimates over \$7 million in increased costs under the IDL Agreement in calendar year 2020 alone.
- b. **Going Forward Attorneys' Fees:** Nespresso continues to incur legal fees in connection with the Chapter 11 Cases.

9. Section 12.3 of the Services Agreement includes a limitation of liability provision that limits the liability of any party thereto to \$20 million, subject to certain exceptions. Assuming such limitation applies, Nespresso's claim is **at least \$20 million** in light of the foregoing liquidated and estimated unliquidated amounts. Nevertheless, Nespresso reserves the right to dispute the applicability of this damages cap based on misrepresentations made to Nespresso prior to the Petition Date such that Nespresso may assert damages in excess of \$20 million.

ASSERTION OF CLAIMS AGAINST ALL DEBTORS

10. The Deposit was misappropriated for the purposes of financing the Chapter 11 Case and, therefore, benefitted each of the Debtors. Therefore, Nespresso asserts its claims against each of the above-captioned Debtors. Nespresso reserves all rights in this regard, including the right to seek substantive consolidation of the Debtors' bankruptcy estates.

OTHER RESERVATIONS OF RIGHTS

11. Several misrepresentations were made to Nespresso in 2019 prior to the Petition Date by representatives of the Debtors, including the Debtors' corporate parent Singapore Post Limited ("SingPost"). SingPost's relevant conduct was unique and particularized as to Nespresso, and not general to other customers or creditors of the Debtors. The filing of proofs of claim is not and shall not be deemed or construed as a waiver or release by Nespresso of rights against: (i) any

person or entity, including SingPost or other insiders and affiliates of the Debtors; or (ii) any property.

12. The filing of proofs of claim by Nespresso is not and shall not be deemed or construed as: (a) a waiver or release of any other right or claim of Nespresso, of any nature whatsoever, not described above which Nespresso has against the Debtors or any non-debtors; (b) a waiver or release of any rights of Nespresso under any provisions of the Bankruptcy Code or other applicable non-bankruptcy law; (c) an election of any remedy to the exclusion, express or implied, of any other remedy; (d) a consent that Nespresso's claims are debts which are subject to discharge in this or any other bankruptcy proceeding; (e) a ratification or consent to any obligation or liability based upon or arising out of any transaction between Nespresso and the Debtors; (f) a waiver or release of Nespresso's right to a jury trial, or Nespresso's consent to trial by jury conducted by this Bankruptcy Court, as to any and all matters so triable herein, whether or not the same be designated legal or private rights or in any case, controversy or proceeding related thereto, notwithstanding the designation or not of such matters as core proceedings pursuant to 28 U.S.C. § 157 or otherwise; (g) a waiver or release of Nespresso's right to have, or to assert that, any and all final orders in any and all matters or proceedings be entered only after *de novo* review by the United States District Court; (h) a waiver of Nespresso's right to move to withdraw the reference with respect to the subject matter of Nespresso's proofs of claim, any objection thereto, or other proceeding which may be commenced in the Chapter 11 Cases or otherwise involving Nespresso; (i) a choice of law; (j) a waiver or release of, or any limitation on, Nespresso's right to assert that any portion of the claims asserted herein are entitled to treatment as priority claims or as administrative claims under sections 503(b) and 507(a) of the Bankruptcy Code; (k) an admission of any kind; or (l) a waiver of any rights, claims, actions or defenses, setoffs, recoupments or other

matters as to which Nespresso is entitled under any agreements, at law, in equity, or otherwise, regardless of whether expressly referenced herein.

13. Nespresso reserves the right to: (a) amend and/or supplement this proof of claim at any time, including after the applicable bar date, and in any manner; and (b) file additional proofs of claim for any additional claim(s), which may be based on the same or additional documents or grounds of liability or otherwise.

14. All such foregoing rights are hereby expressly reserved by Nespresso, without exemption and with no purpose of confessing or conceding any matter in any way by this filing or by any other participation in these jointly-administered cases.

District of Nevada Claims Register

[19-15960-mkn TRADEGLOBAL, LLC, A DELAWARE LIMITED LIABILITY
COM](#)

Judge: MIKE K. NAKAGAWA

Chapter: 11

Office: Las Vegas

Last Date to file claims: 01/22/2020

Trustee:

Last Date to file (Govt): 03/16/2020

Creditor: (11052320)
Nespresso USA, Inc.
C/O Samuel A. Schwartz, Esq.
Brownstein Hyatt Farber
Schreck, LLP
100 North City Parkway, Suite
1600
Las Vegas, NV 89106

Claim No: 25
Original Filed
Date: 01/14/2020
Original Entered
Date: 01/14/2020

Status:
Filed by: CR
Entered by: SAMUEL A.
SCHWARTZ
Modified:

No amounts claimed

History:

[Details](#) [25-1](#) 01/14/2020 Claim #25 filed by Nespresso USA, Inc., Amount claimed: (SCHWARTZ, SAMUEL)

Description:

Remarks: (25-1) See Attached Addendum

Claims Register Summary

Case Name: TRADEGLOBAL, LLC, A DELAWARE LIMITED LIABILITY COM

Case Number: 19-15960-mkn

Chapter: 11

Date Filed: 09/16/2019

Total Number Of Claims: 1

No Amounts Claimed
