

MRO 6-22-98

06-23-1998

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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab settings



To the Honorable Commissioner of Patents

100745720

attached original documents or copy thereof.

1. Name of conveying party(ies):
Beverages & More, Inc.

- Individual(s)
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: April 30, 1998

2. Name and address of receiving party(ies):

Name: LaSalle National Bank
 Internal Address:
 Street Address: 135 South LaSalle Street
 City: Chicago State: IL ZIP: 60603

- Individual(s) citizenship
- Association National banking association
- General Partnership
- Limited Partnership
- Corporation-State
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from Assignment)

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

75/259,638
75/376,998
75/391,835

B. Trademark registration No.(s)

1,032,205 1,967,347
1,056,239 1,970,483
1,036,104

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Anamaria Elejalde, Esq.
 Internal Address: Seyfarth, Shaw, Fairweather & Geraldson
 Street Address: 55 East Monroe Street
 Suite 4200
 City: Chicago State: IL ZIP: 60603

6. Total number of applications and registrations involved: 8

7. Total fee (37 CFR 3.41): \$ 215.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

19-1351

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Anamaria Elejalde
Name of Person Signing

A. Elejalde
Signature

June 18, 1998
Date

Total number of pages comprising cover sheet: 1

OMB No. 0651-0011 (exp. 4/94)

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Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

06/23/1998 DNGUYEN 00000064 75259638

01 FC:481 40.00 DP
02 FC:482 175.00 DP

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TRADE MARK
REEL: 1743 FRAME: 0872

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "**Agreement**") is dated as of April 30, 1998 and is made by BEVERAGES & MORE, INC., a Delaware corporation (the "**Borrower**"), in favor of and for the benefit of LASALLE NATIONAL BANK, a national association (the "**Bank**").

RECITALS

WHEREAS, the Borrower and the Bank have entered into that certain Secured Credit Agreement of even date herewith (as hereafter amended, supplemented, restated or otherwise modified from time to time, the "**Credit Agreement**") pursuant to which the Bank has agreed to make Revolving Loans to, and to issue Letters of Credit for the benefit of, the Borrower, subject in each case to the terms and conditions of the Credit Agreement; and

WHEREAS, to secure the repayment of all amounts under the Credit Agreement and the Related Documents, the Borrower has granted to the Bank a valid security interest in and to all of its now existing and hereafter acquired general intangibles, including, without limitation, all of its now existing and hereafter arising trade secrets, patents and patent applications, trademarks and use-based trademark applications, tradenames and copyrights.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Bank to make Revolving Loans and to issue the Letters of Credit, the parties hereto agree as follows:

1. Definitions. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement.
2. Grant of Security Interest. To secure the payment and performance of all indebtedness and other obligations and liabilities of the Borrower to the Bank of every kind and description, whether direct or indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising under or in connection with the Credit Agreement and the Related Documents, the Borrower hereby grants to the Bank a security interest in all of the Borrower's rights, titles and interests in the United States and throughout the world, in and to (a) all of its currently owned or hereafter acquired trademarks, registrations of trademarks and used-based applications for trademark registration pending before the United States Patent and Trademark Office ("PTO"), together with the goodwill of the business symbolized by such trademarks, including without limitation, those United States trademark registrations and used-based applications for trademark registrations listed on Parts I and II of Schedule A attached hereto and made a part hereof, (b) all income, royalties,

damages and payments now and hereafter due and/or payable under or based on such trademarks, and (c) all rights to sue, collect and retain damages and payments for past and future infringements and violation of the rights thereof (such trademarks, registrations of trademarks and use-based applications for trademark registrations being herein the "Trademarks"). The marks listed in Part III of Schedule A are marks that are the subject of pending intent-to-use applications (each an "ITU Application" and collectively the "ITU Applications"). At such time, if any, that the Borrower begins making use in interstate commerce of any such mark, (1) the Borrower shall convert the applicable ITU Application to a use-based application by filing an Amendment to Allege Use or Statement of Use with the PTO and providing notice of such filing to the Bank, and (2) upon notice from the PTO of the acceptance of such Amendment to Allege Use or Statement of Use, such mark and corresponding use-based application shall automatically become one of the Trademarks and fully subject to the security interest of the Bank hereunder.

3. Representations and Warranties. The Borrower represent and warrants to and covenants with the Bank that:

(a) The Borrower is the present owner of the entire right, title and interest in and to the Trademarks described in Schedule A hereto and, to the best of its knowledge, has good and indefeasible title thereto.

(b) The Trademarks are free and clear of all security interests, liens and encumbrances, except Permitted Liens.

(c) The Borrower has not granted any licenses, rights or privileges in or to the Trademarks to any party except the Bank.

(d) To the best of the Borrower's knowledge, the Borrower may use the Trademarks that are the subject of registrations described in Schedule A free and clear of the infringement of the rights of others.

(e) Except as set forth in Schedule 3(e) hereto, as of the Closing Date the Borrower has not commenced and has not threatened to commence against any Person, and there is not pending, any suit or other proceeding seeking to enforce or alleging a violation of any of the Trademarks or any of the Borrower's rights therein.

(f) No Person has commenced or, to the best of the Borrower's knowledge, has threatened to commence any suit or other proceeding alleging that any of the Trademarks is unenforceable or violates any right or interest of such Person.

(g) The Trademarks on Schedule A constitute all of the United States registrations and applications for the Trademarks owned by the Borrower.

(h) The Borrower has not and will not make any agreement or assignment in conflict with this Agreement.

(i) To the best of the Borrower's knowledge, the trademark applications set forth in Schedule A have been duly and properly filed, the trademark registrations set forth in said Schedule have been issued, and the Trademarks shown as having been registered or for which applications for registration have been filed are valid and enforceable.

4. Maintenance and Enforcement of Trademarks. The Borrower shall not take any action, nor permit any action to be taken by others subject to the Borrower's control, including licensees, or fail to take any action regarding any matter of which the Borrower has knowledge, which would affect the validity and enforcement of any of the Trademarks, or impair the value of any of the Trademarks or the goodwill of the business associated therewith, except that the Borrower may discontinue or abandon the use of any of the Trademarks and any applications and registrations therefor if it determines that, in its reasonable business judgment, such discontinuance or abandonment is desirable or necessary. Subject to the other provisions of this Agreement, the Borrower shall assume and continue, at its own cost and expense, through counsel of its own choice and acceptable to the Bank, full and complete responsibility for the prosecution, issuance, enforcement, maintenance, renewal or any other actions in connection with the Trademarks.

5. Notice of Proceedings. The Borrower promptly shall notify the Bank, in writing, of any suit, action or proceeding which relates to, is concerned with or affects any of the Trademarks or alleges infringement of another trademark by any of the Trademarks, if in either case an adverse decision could reasonable be expected to have a material adverse effect on any of the Trademarks or on the Borrower's rights therein, and the Borrower shall, on written request of the Bank, deliver to the Bank a copy of all pleadings, papers, orders and decrees heretofore and hereafter filed in any such suit, action or proceeding, and shall keep the Bank fully advised in writing of the progress of any such suit or proceeding.

6. New Applications and Registrations. Not less frequently than semi-annually, the Borrower shall provide the Bank with a listing of all new applications for trademarks and of newly issued registrations for which application was made previously, each of which new applications and registrations shall be subject to the terms and conditions of the Credit Agreement and this Agreement, and in the case of a use-based application or registration, shall come within the term "Trademarks" as set forth herein. Each new ITU Application shall come within the term "Trademarks" when the conditions for ITU Applications set forth in Paragraph 2 above are met. In addition, the Borrower shall provide the Bank, on request, such documents and instruments, each in a form acceptable to counsel for the Bank, as may be necessary to grant to the Bank, and to perfect, a valid enforceable security interest in such new applications and registrations.

7. Documents Relating to Trademarks. Upon written request by the Bank, the Borrower shall deliver to the Bank copies of any trademark applications and other documents concerned with or related to the adoption, use, prosecution, protection, maintenance, renewal, enforcement or issuance of the Trademarks.

8. Conduct of Business to Protect Goodwill. In order to protect and continue the goodwill of the business associated with and symbolized by the Trademarks, and to avoid deception to the public as to the nature and quality of the goods on which the Trademarks are employed by the Borrower, the Borrower shall conduct its business in accordance with the requirements of production, quality and service of the goods in the market as in the past, and shall at all times use its best efforts to maintain the quality of the goods sold or distributed on which the Trademarks are employed commensurate with at least the same or better quality and past practices of the Borrower.

9. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this Agreement:

(a) if the Borrower fails to perform, keep or observe any term, provision, condition or covenant contained in this Agreement which the Borrower is required to be performed, kept or observed and such failure is not cured within 21 days after written notice thereof from the Bank to the Borrower;

(b) if any representation or warranty made by the Borrower herein is breached or is false or misleading in any material respect; or

(c) the occurrence of an "Event of Default" under the Credit Agreement.

10. Remedies. After the occurrence of and during the continuance of an Event of Default, the Bank shall have all of the rights, remedies and benefits of a secured party under applicable law, including without limitation, all of the rights, remedies and benefits of a secured party under the Uniform Commercial Code, whether or not the Uniform Commercial Code is applicable, and, in addition, the Bank may grant licenses, rights or other privileges in, or otherwise take whatever action with respect to, the Trademarks that the Bank deems necessary or appropriate under the circumstances. The Borrower hereby appoints and designates the Bank as its attorney to take, during the continuance of an Event of Default, in the name of either the Borrower or the Bank, such action as the Bank, in its sole discretion, deems necessary or appropriate under the circumstances to protect the Trademarks and the security interest of the Bank therein, but the Bank shall not be required to take any such action.

11. Fees and Expenses. The Borrower agrees to pay on demand any and all costs, charges, fees and other expenses incurred by the Bank in connection with this Agreement and the enforcement thereof including, without limitation, the fees and expenses of counsel employed by the Bank (i) with respect to the amendment or enforcement of this Agreement

or with respect to the any of the Trademarks, (ii) to represent the Bank in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit or proceeding (whether instituted by the Bank, the Borrower or any other Person) in any way or respect relating to this Agreement or any of the Trademarks or (iii) to enforce any of the Bank's rights hereunder including, without limitation, any action to protect, collect, sell, liquidate or otherwise dispose of any of the Trademarks.

12. Governing Law; Jury Trial; Severability. This Agreement shall be a contract made under and governed by the laws of the State of Illinois, without regard to conflict of laws principles. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All obligations of the Borrower and rights of the Bank shall be in addition to and not in limitation of those provided by applicable law.

THE BORROWER HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO THE BANK'S SOLE AND ABSOLUTE ELECTION, ANY ACTION OR PROCEEDING IN ANY WAY, MANNER OR RESPECT ARISING OUT OF THIS AGREEMENT, OR ARISING FROM ANY DISPUTE OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, SHALL BE LITIGATED ONLY IN THE COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, THE STATE OF ILLINOIS, AND THE BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH CITY AND STATE. THE BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST THE BORROWER BY THE BANK IN ACCORDANCE WITH THIS SECTION.

13. Notices. All notices and other communications hereunder shall be sent in the manner and to the persons set forth in Section 12.2 of the Credit Agreement and when so sent, shall be deemed given at the times provided in said Section.

14. Release of Security Interest. Upon payment in full of all obligations of the Borrower arising under or in connection with the Credit Agreement and the Related Documents and the termination of the Revolving Credit Commitment thereunder, the Bank

agrees to release and take such further action as may be necessary or advisable to evidence such release and termination of its security interest set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

BEVERAGES & MORE, INC.

By: Brian Hudson
President and Chief Executive Officer

ATTEST:

Stan M. L.
Secretary

LASALLE NATIONAL BANK

By: Late Gregory
~~Vice President~~ *can be fixed*

SCHEDULE A

PART I
U.S. REGISTRATIONS

<u>MARK</u>	<u>REGISTRATION NO.</u>	<u>DATE OF REGISTRATION</u>
KAVLANA	1,022,205	October 7, 1975
SENORITA	1,056,239	January 11, 1977
CANADIAN HILL	1,076,104	October 25, 1977
BEVERAGES, & MORE! and Design	1,967,347	April 9, 1996
BEVERAGES, & MORE!	1,970,483	April 23, 1996

PART II
U.S. USE-BASED APPLICATIONS

<u>MARK</u>	<u>APPLICATION NO.</u>	<u>DATE OF APPLICATION</u>
ST. ELMO	75/259,638	March 18, 1997
CLUBBEV!	75/376,998	October 21, 1997
SOMBRA	75/391,833	November 17, 1997

PART III
U.S. INTENT-TO-USE APPLICATIONS

<u>MARK</u>	<u>APPLICATION NO.</u>	<u>DATE OF APPLICATION</u>
VINCELLI	75/319,679	July 7, 1997
WILSON VALLEY	75/319,680	July 7, 1997
COASTAL FOG	75/349,021	August 29, 1997

Schedule 3(e)

Cease and desist letter sent on April 2, 1998 to Spec's Liquor Stores, 2410 Smith Street, Houston, Texas 77006, regarding infringement of the BEVERAGES, & MORE! mark.