

07-13-1998

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U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks

original documents or copy thereof.

100764179

## 1. Name of conveying party(ies):

South Beach Beverage Company, L.L.C., a  
Connecticut limited liability company

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☐ Corporation-State  
☒ Other limited liability company

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

## 3. Nature of conveyance:

- ☒ Collateral ☐ Merger  
☒ Assignment ☐ Change of Name  
☒ Security Agreement  
☐ Other \_\_\_\_\_

Execution Date: May 29, 1998

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

Name: BankBoston, N.A.Street Address: 100 Pearl StreetCity: Hartford State: CT ZIP: 06103Country: United States of America

- ☐ Individual(s) citizenship \_\_\_\_\_  
☒ Association  
☐ General Partnership  
☐ Limited Partnership  
☐ Corporation-State  
☐ Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached: N/A ☐ Yes ☐ No  
(Designation must be a separate document from Assignment)  
Additional name(s) & address(es) attached: N/A ☐ Yes ☐ No

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

## A. Trademark Application No.(s)

SEE ATTACHED EXHIBIT A

## B. Trademark registration No.(s)

SEE ATTACHED EXHIBIT AAdditional numbers attached? ☒ Yes ☐ No

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

Name: James C. Schulwolf, Esq.Pepe & Hazard, LLPStreet Address: Goodwin Square225 Asylum StreetCity: Hartford State: CT ZIP: 06103

## 6. Total number of applications and registrations involved:.....

117. Total fee (37 CFR 3.41)..... \$ 295.00☒ Enclosed☐ Authorized to be charged to deposit account

## 8. Deposit account number:

N/A

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

07/10/1998 DCDATES 00000178 2065837

01 FC:481 40.00 OP  
02 FC:482 250.00 OP  
03 FC:483 5.00 OP

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.

BRIAN C. BAUMMER

Name of Person Signing

Signature

JULY 7, 1998

Date

Total number of pages comprising cover sheet: 2

Do not detach this portion

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

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

EXHIBIT A

Schedule A to a Trademark Collateral Assignment dated May 29, 1998,  
between South Beach Beverage Company, L.L.C. and BankBoston, N.A.

Application or <u>Mark No.</u>	<u>Country</u>	Registration or <u>Filing Date</u>	Expiration <u>Date</u>
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**TRADEMARK REGISTRATIONS**

<u>MARK</u>	<u>REG. NO.</u>	<u>REG. DATE</u>
DRAIN THE LIZARD	2,065,837	May 27, 1997
DESIGN OF LIZARD	2,076,309	July 1, 1997

**TRADEMARK APPLICATIONS**

<u>MARK</u>	<u>SER. NO.</u>	<u>FILING DATE</u>
ELIXIR	75-417,678	January 14, 1998
HERBAL INFUSION	75-417,677	January 14, 1998
WISDOM	75-417,672	January 14, 1998
QI ESSENTIALS	75-417, 669	January 14, 1998
DRIVE	75-417,668	January 14, 1998
ADRENALINE	75-417, 667	January 14, 1998
EUPHORIA	75-417,666	January 14, 1998
DESIGN OF BOTTLE W/LIZARD	75-001,760	October 5, 1995
KARMA	75-418,007	January 14, 1998

OCEAN DRIVE - SERIAL NUMBER - 75-001,973      ABANDONED

**COLLATERAL ASSIGNMENT OF  
TRADEMARKS AND SECURITY AGREEMENT**

THIS AGREEMENT is made on the 29<sup>th</sup> day of May, ~~1998~~ 1998 between **SOUTH BEACH BEVERAGE COMPANY, L.L.C.**, a Connecticut limited liability company having a mailing address at 40 Richards Avenue, Norwalk, Connecticut 06854 ("Assignor") and **BANKBOSTON, N.A.** having a mailing address at 100 Pearl Street, Hartford, Connecticut 06103 ("Lender").

**BACKGROUND.** Assignor has executed and delivered its revolving promissory note (the "Note") to the Lender in the aggregate principal amount of up to \$6,000,000.00 pursuant to a certain Loan Agreement dated as of even date herewith between Assignor and the Lender (as amended from time to time, the "Loan Agreement"). In order to induce the Lender to execute and deliver the Loan Agreement, Assignor has agreed to assign to Lender certain trademark rights. This Collateral Assignment of Trademarks is being executed contemporaneously with a Security Agreement under which the Lender is granted a lien on and security interest in, among other things, machinery, equipment formulations, manufacturing procedures, quality control procedures and product specifications of the Assignor ("Other Assets") relating to products sold under the Trademarks which (as defined below), whereby Lender shall have the right to foreclose on the Trademarks and the Other Assets in the event of the occurrence and continuance of an Event of Default under the Loan Agreement, in order that the owner of the Trademarks may continue the manufacture of products to be sold under the Trademarks and maintain substantially the same product specifications and quality as maintained by Assignor.

NOW, THEREFORE, in consideration of the premises, Assignor hereby agrees with Lender as follows:

1. To secure the complete and timely satisfaction of all Obligations (as defined in the Loan Agreement), Assignor hereby grants, assigns and conveys to Lender the entire right, title and interest in and to the trademark applications and trademarks listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), including without limitation all renewals thereof, all proceeds of infringement suits, the right to sue for past, present and future infringements (subject to paragraph 14 below) and all rights corresponding thereto throughout the world (all of the foregoing are collectively called the "Trademarks"), and the good will of the business to which each of the Trademarks relates.

2. Assignor covenants and warrants that:

- (a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

- (b) To the best of Assignor's knowledge, each of the Trademarks is valid and enforceable;
- (c) No claim has been made that the use of any of the Trademarks does or may violate the rights of any third person;
- (d) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses, registered user agreements and covenants by Assignor not to sue third persons;
- (e) Assignor has the unqualified right to enter into this Agreement and perform its terms;
- (f) Assignor has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Trademarks; and
- (g) Assignor has used, and will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture of products sold under the Trademarks.

3. Assignor hereby grants to Lender and its employees and agents the right to visit Assignor's plants and facilities which manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto with reasonable notice at reasonable times during regular business hours. Assignor shall do any and all acts required by Lender to ensure Assignor's compliance with paragraph 2(g).

4. Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement, including without limitation a license agreement, which is inconsistent with Assignor's obligations under this Agreement, without Lender's prior written consent, provided that Assignor may grant non-exclusive licenses of some or all of the Trademarks for use on and in connection with promotional goods, which licenses shall explicitly refer to this Agreement and state that the rights granted thereunder are subject to Lender's rights hereunder.

5. If, before the Obligations shall have been satisfied in full, Assignor shall obtain rights to any new trademarks, the provisions of paragraph 1 shall automatically apply thereto and Assignor shall give Lender prompt written notice thereof.

6. Assignor authorizes Lender to modify this Agreement by amending Schedule A to include any future trademarks and trademark applications covered by paragraphs 1 and 5 hereof.

7. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Loan Agreement), Lender hereby grants to Assignor the exclusive, nontransferable right and license to use the Trademarks on and in connection with products sold by Assignor, for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this paragraph 7, without the prior written consent of Lender.

8. If any Event of Default shall have occurred and be continuing, Assignor's license under the Trademarks, as set forth in paragraph 7, shall terminate forthwith, and the Lender shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located and, without limiting the generality of the foregoing, the Lender may immediately, without demand of performance and without other notice (except as set forth below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, all or from time to time any portion of the Trademarks, or any interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds after payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Assignor. Notice of any sale or other disposition of the Trademarks shall be given to Assignor at least five (5) days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Lender or its successors and assigns may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

9. At such time as Assignor shall completely satisfy all of the Obligations, this Agreement shall terminate and Lender shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to vest in Assignor full title to the Trademarks, subject to any disposition thereof which may have been made by Lender pursuant hereto.

10. Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorney's fees and legal expenses incurred by Lender in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks (subject to the provisions of paragraph 14 below), shall be borne and paid by Assignor on demand by Lender and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the highest rate prescribed in the Loan Agreement.

11. Assignor shall have the duty, through counsel acceptable to Lender, to prosecute diligently any trademark applications of the Trademarks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full, to make federal application on registrable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings and to do any and all acts which are necessary or desirable to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with the Trademarks shall be borne by Assignor. The Assignor shall not abandon any Trademark without the consent of the Lender, which consent shall not be unreasonably withheld.

12. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Loan Agreement), Assignor shall have the right, with the prior written consent of Lender, which will not be unreasonably withheld, to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Trademarks, in which event Lender may, if necessary, be joined as a nominal party to such suit if Lender shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. Assignor shall promptly, upon demand, reimburse and indemnify Lender for all damages, costs and expenses, including attorney's fees, incurred by Lender in the fulfillment of the provisions of this paragraph 12.

13. In the event of the occurrence of an Event of Default under the Loan Agreement, Assignor hereby authorizes and empowers Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Lender to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Agreement.

14. If Assignor fails to comply with any of its obligations hereunder, Lender may do so in Assignor's name or in Lender's name, but at Assignor's expense, and Assignor hereby agrees to reimburse Lender in full for all expenses, including reasonable attorney's fees, incurred by Lender in protecting, defending and maintaining the Trademarks. Notwithstanding anything contained in this Agreement to the contrary, after an Event of Default shall have occurred and be continuing, the Lender shall notify Assignor ten (10) days prior to bringing any opposition proceedings, cancellation proceedings or lawsuit to enforce or protect the Trademarks. Provided however, if Lender in its reasonable judgment brings such an action despite the Assignor's opposition, Assignor shall remain liable for all of Lender's reasonable attorney's fees, incurred by Lender in protecting, defending and maintaining the Trademarks.

15. No course of dealing between Assignor and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any

right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16. All of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

17. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

18. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 6.

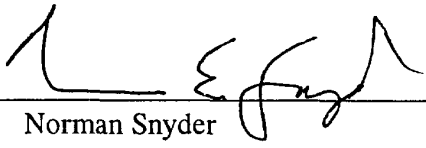
19. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

20. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the internal laws of the State of Connecticut without regard to its conflict of laws provisions.

WITNESS the execution hereof as of the day and year first above written.

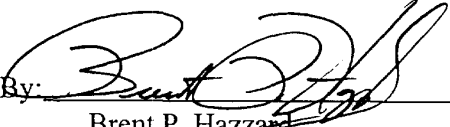
ASSIGNOR

**SOUTH BEACH BEVERAGE COMPANY, L.L.C.**

By:   
Norman Snyder  
Chief Financial Officer

LENDER

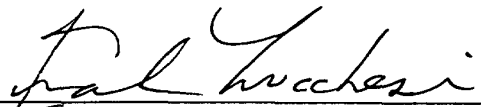
**BANKBOSTON, N.A.**

By:   
Brent P. Hazzard  
Vice President

CERTIFICATE OF ACKNOWLEDGMENT

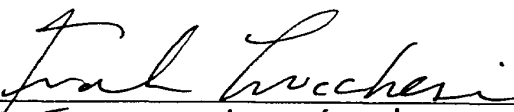
STATE OF CONNECTICUT       )  
  ) ss. Southport  
COUNTY OF FAIRFIELD       )

On this 29<sup>th</sup> day of May, 1998, before me, the undersigned officer, personally appeared Norman Snyder, Chief Financial Officer of South Beach Beverage Company, L.L.C., signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed and the free act and deed of said limited liability company.

  
\_\_\_\_\_  
Frank Lucchesi  
Commissioner of the Superior Court  
~~Notary Public~~  
~~My Commission Expires: \_\_\_\_\_~~

STATE OF CONNECTICUT       )  
  ) ss. Southport  
COUNTY OF FAIRFIELD       )

On this 29<sup>th</sup> day of May, 1998, before me, the undersigned officer, personally appeared Brent P. Hazzard, Vice President of BankBoston, N.A., signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed and the free act and deed of said banking association.

  
\_\_\_\_\_  
Frank Lucchesi  
Commissioner of the Superior Court  
~~Notary Public~~  
~~My Commission Expires: \_\_\_\_\_~~