

MAD
7-27-98

08-03-1998

FORM PTO-1594

(Rev. 6-93)

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

RE



SHEET

Y

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks, 100780147, the attached original documents or copy thereof.

1. Name of conveying party(ies):

Sal & Vinnie's Sicilian Steakhouse, Inc.

- ☐ Individuals ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporate-State
☐ Other

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

3. Nature of conveyance:

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

Execution Date: July 21, 1998

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

Name: BankBoston, N.A., as Agent

Internal Address:

Street Address: 100 Federal Street

City: Boston State MA ZIP 02110

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☐ Corporation-State
☒ Other national bank

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ yes ☐ no

(Designation must be a separate document from assignment) Additional name(s) & address(es) attached? ☐ yes ☐ no

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

A. Trademark Application No(s)

B. Trademark Registration No(s)

See Exhibit A hereto.

Additional numbers attached? ☐ Yes ☐ No

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

Name: Sarah N.A. Camougis

Internal Address: Edwards & Angell, LLP

Street Address: 101 Federal Street

City: Boston State MA ZIP 02110

6. Total number of applications and registrations involved

2

7. Total fee (37 CFR 3.41)..... \$65.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit Account Number:

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

07/28/1998 SSNITH 00000012 2152406

DO NOT USE THIS SPACE

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25.00 OP

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.

Sarah N.A. Camougis

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document

12

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

Commissioner of Patents & Trademarks, Box Assignments

Washington, D.C. 20231

1763 FRAME: 0131

U.S. FORMS 1594-I

EXHIBIT A

DATED AS OF July 21, 1998

1. TUSCANY BALLROOM & DESIGN, (Service Mark), Reg. No. 2,152,406,
dated 4/21/98.
2. SAL & VINNIE'S SICILIAN STEAKHOUSE & DESIGN, (Service Mark), Reg.
No. 2, 147, 767, dated 3/31/98.

TRADEMARK SECURITY AGREEMENT

This Agreement is between Sal & Vinnie's Sicilian Steakhouse, Inc., a Massachusetts corporation (the "Debtor"), located at 14 Audobon Road, Wakefield, MA 01880 and BankBoston, N.A., located at 100 Federal Street, Boston, Massachusetts 02110, as administrative agent (in such capacity, together with its successors and assigns in such capacity, the "Agent") for the benefit of the various financial institutions who are now or hereafter become Banks (the "Banks" and collectively with the Agent, the "Secured Parties") under, and as defined in, the Credit Agreement dated as of July 21, 1998 as from time to time in effect (the "Credit Agreement"), between the NE Restaurant Company, Inc., the Debtor, its affiliates and the Secured Parties and Chase Bank of Texas, N.A., as Documentation Agent. Terms defined in the Credit Agreement and not otherwise defined herein are used herein with the meanings so defined.

1. Grant of Security Interest. The Debtor hereby grants to the Agent for the benefit of the Secured Parties and its successors and assigns, to secure the payment and the performance of the Obligations, a security interest in the items referred to below, whether now owned or hereafter acquired, and all proceeds thereof (collectively, the "Collateral"):

1.1. All of the right, title and interest of the Debtor in and to all trademarks (collectively, the "Marks"), registrations for the Marks (collectively, the "Registrations") and all trademark applications for the Marks (collectively, the "Applications"). Such Registration and Applications shall include without limitation all existing United States registrations and applications of the Debtor described in Exhibit A hereto.

1.2. The goodwill of the business of the Debtor symbolized by each of the Marks.

1.3. All right, title and interest of the Debtor in and to any cause of action that has heretofore arisen or that may arise with respect to unconsented use or infringement of the Marks, the Registrations or the Applications.

2. Further Assurances. The Debtor shall execute, or use its reasonable efforts at its reasonable expense to cause to be executed, such further documents as may be reasonably requested by the Agent in order to effectuate fully the grant of security interest set forth in Section 1 hereof.

3. Agreement to Assign Collateral. The Debtor shall execute and deliver to the Agent for the benefit of the Secured Parties on the date of this Agreement a written Assignment of Trademarks to the Agent in substantially the form attached hereto as Exhibit B (the "Assignment"). The Agent shall hold the Assignment in escrow, and the Assignment shall have no legal effect and shall not be binding on the Debtor, until the occurrence and continuance of an Event of Default, at which time the Agent, on behalf of the Secured Parties, may file the Assignment with the U.S. Patent and Trademark Office and, upon such filing, the Assignment shall take effect as a legal document binding upon the Debtor.

4. Foreclosure. Upon the occurrence and during the continuance of an Event of Default, in addition to all other rights and remedies granted by this Agreement and the Assignment, the Agent, at the Secured Parties' direction, may exercise the rights and remedies of a secured party enacted in any of the jurisdictions in which the Collateral may be located. Without limiting the generality of the foregoing, upon the occurrence and during the continuance of an Event of Default, without demand or notice (except as set forth next below), all of which are waived, and without advertisement, the Agent may sell at public or private sale or otherwise realize upon, in The Commonwealth of Massachusetts or elsewhere, all or from time to time any of the Collateral, or any interest which the Debtor may have therein. Notice of any sale or other disposition of the Collateral shall be given to the Debtor at least ten (10) days before the time of any intended public or private sale or other disposition of the Collateral is to be made, which the Debtor agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of any Obligation or any Secured Party may, to the extent permissible under applicable law, purchase the whole or any part of the Collateral (including associated goodwill) free from any right or redemption on the part of the Debtor, which right is waived and released. After deducting from the proceeds of sale or other disposition of the Collateral and associated goodwill all expenses (including reasonable expenses for brokers' fees and legal services), the balance of such proceeds shall be applied toward the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Debtor.

5. Defeasance. Upon payment in full of the Obligations and termination of the commitments therefor, the Agent shall, at the Debtor's expense, release the security interest in the Collateral granted under this Agreement and execute and deliver such instruments and other documents and take such further actions as may be necessary to carry out such release, including cancellation of this Agreement by written notice to the U.S. Patent and Trademark Office and delivery back to the Debtor of the Assignment upon request of the Debtor.

6. Covenants. The Debtor covenants and agrees as follows:

6.1. The Debtor shall not abandon any Marks, Registrations or Applications included in the Collateral except such Marks, Registrations or Applications, the abandonment of which could not reasonably be expected to have a Materially Adverse Effect.

6.2. The Debtor shall maintain all rights held by the Debtor relating to the Marks, Registrations and Applications except such Marks, Registrations or Applications which the failure to maintain could not reasonably be expected to have a Materially Adverse Effect.

6.3. Until all of the Obligations shall have been paid in full and termination of the commitments therefor, the Debtor shall not enter into any agreement (including a license agreement) which conflicts with the Debtor's obligations under this Agreement other than agreements that could not reasonably be expected to affect the value of the Collateral, without the Agent's prior written consent (which consent will not be unreasonably withheld or delayed).

6.4. If the Debtor shall obtain rights to any new registerable trademarks, the provisions of Section 1 shall automatically apply thereto and at least annually the Debtor shall give to the Agent written notice thereof, shall execute an amendment to Exhibit A including such registrations and applications and shall take any other action reasonably necessary to record the Secured Parties' interest in such trademarks with the U.S. Patent and Trademark Office.

6.5. The Debtor has used, and will continue to use, proper statutory notice in connection with its use of the Collateral to the extent commercially practicable and customary within the relevant industry.

7. Representations and Warranties of Title. The Debtor represents and warrants that:

7.1. Exhibit A sets forth as of the date hereof all United States Registrations and Applications owned by the Debtor.

7.2. As of the date hereof, the Collateral set forth on Exhibit A is subsisting and has not been adjudged invalid or unenforceable.

7.3. As of the date hereof, no claim has been made that the use of any of the Collateral violates the rights of any third person and the Debtor is not aware of any basis for any such claim to be asserted.

7.4. The Debtor is the sole and exclusive owner of the entire right, title and interest in and to the Collateral, free and clear of any Liens, including without limitation, pledges, assignments, licenses, registered user agreements and covenants by the Debtor not to sue third persons (other than any of the foregoing entered into in the ordinary course of business or other Permitted Liens).

7.5. The Debtor has the full power and authority to enter into this Agreement and perform its terms.

8. General.

8.1. No course of dealing between the Debtor and the Agent or the Secured Parties, nor any failure to exercise, nor any delay in exercising on the part of the Agent or the Secured Parties, any right, power or privilege hereunder or under the Credit 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 right, power or privilege.

8.2. All of the Agent's rights and remedies with respect to the Collateral, whether established hereby or by the Credit Agreement, or by any other agreement or by law shall be cumulative and may be exercised singularly or concurrently.

8.3. If any clause or provision of this Agreement 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.

8.4. This Agreement is subject to modification only by a writing signed by the parties, except as otherwise provided in Section 6.4 hereof.

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

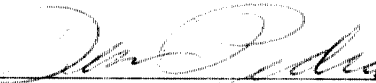
8.6. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws (other than the conflict of laws rules) of The Commonwealth of Massachusetts.

8.7. This Agreement is a Loan Document (as defined in the Credit Agreement) and may be executed in any number of counterparts, which together shall constitute one instrument.

9. Agency. The parties hereto, and any person not a party hereto for whose benefit the Agent holds the collateral hereunder, acknowledge that the Agent has been requested to act as agent for the Secured Parties hereunder pursuant to the terms of the Credit Agreement, and that the Agent, to the extent it may so act hereunder, shall exercise all of the rights and remedies hereunder of, and as agent for the benefit of, the Secured Parties and each of them, without limiting the generality of the foregoing, the Agent is authorized to execute and deliver, from time to time, on behalf of the Secured Parties, any and all amendments and modifications to this Agreement and any and all waivers to any conditions herein or any Event of Default hereunder. The parties hereto also acknowledge that the Agent, on behalf of the Secured Parties, is authorized to terminate this Agreement.

Each of the undersigned has caused this Agreement to be signed by its duly authorized officer as of July 21, 1998.

SAL & VINNIE'S SICILIAN STEAKHOUSE,
INC.

By  Dennis Pedra
Title: **President**

BANKBOSTON, N.A., as Agent

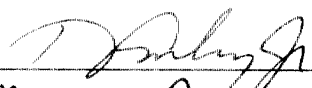
By  Thomas F. Farley, Jr.
Title: **Managing Director**

EXHIBIT A
TO
TRADEMARK AND SERVICE MARK SECURITY AGREEMENT

DATED AS OF July 21, 1998

1. TUSCANY BALLROOM & DESIGN, (Service Mark), Reg. No. 2,152,406,
dated 4/21/98.
2. SAL & VINNIE'S SICILIAN STEAKHOUSE & DESIGN, (Service Mark), Reg.
No. 2, 147, 767, dated 3/31/98.

EXHIBIT B

ASSIGNMENT OF TRADEMARKS

This Assignment of Trademarks (the "Assignment") is between Sal & Vinnie's Sicilian Steakhouse, Inc., a Massachusetts corporation (the "Debtor"), located at 14 Audobon Road, Wakefield, MA 01880 and BankBoston, N.A., located at 100 Federal Street, Boston, Massachusetts 02110, as administrative agent (in such capacity, together with its successors and assigns in such capacity, the "Agent") for the benefit of the various financial institutions who are now or hereafter become Banks (the "Banks") and collectively with the Agent, the "Secured Parties") under, and as defined in, the Credit Agreement dated as of July 21, 1998 as from time to time in effect (the "Credit Agreement"), between NE Restaurant Company, Inc., the Debtor, its affiliates, the Secured Parties and Chase Bank of Texas, N.A., as Documentation Agent. Terms defined in the Credit Agreement and not otherwise defined herein are used herein with the meanings so defined. This Assignment is made pursuant to that certain Trademark Security Agreement dated as of this date (the "Security Agreement") between the Debtor and the Secured Parties.

BACKGROUND

Section 3 of the Security Agreement provides that the Debtor shall execute a written assignment of the items listed in Exhibit A thereto (collectively, the "Collateral"), as amended (attached hereto as Exhibit 1A), and that the Agent, on behalf of the Secured Parties, may file such Assignment upon the occurrence and during the continuance of an Event of Default.

ASSIGNMENT

- I. Assignment. Subject to the occurrence and continuance of an Event of Default, the Debtor hereby assigns to the Agent, for the benefit of the Secured Parties, and its successor and assigns, the items referred to below (collectively, the "Assigned Material"):
 - A. All of the right, title and interest of the Debtor in and to all trademarks (collectively, the "Marks"), the registrations relating to the Marks (collectively, the "Registrations") and all trademark applications relating to the Marks (collectively, the "Registrations"), now owned or hereafter acquired by the Debtor. Such Registrations and Applications shall include without limitation all existing United States registrations and applications of the Debtor described in Exhibit 1A.
 - B. The goodwill of the business of the Debtor symbolized by each of the Marks.
 - C. All right, title and interest of the Debtor in and to any cause of action that has heretofore arisen or that may arise with respect to unconsented use or infringement of the Marks, the Registrations or the Applications.

- II. Further Assurances. The Debtor shall execute, or use its reasonable efforts at its reasonable expense to have carefully executed, any further documents as may be reasonably requested by the Agent in order to fully effectuate this Assignment.
- III. General. The provisions of this Assignment shall be read cumulatively with the provisions of Sections 4, 5, 6, 7 and 8 of the Security Agreement. Upon filing with the USPTO, and not before, this Assignment amends the Security Agreement by deleting Sections 1, 2 and 3 of the Security Agreement, which Sections 1, 2 and 3 shall be of no further force or effect in respect of the Assigned Material. This Assignment is a Loan Document.

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Each of the undersigned has caused this Assignment to be signed by its duly authorized officer as of July 21, 1998.

SAL & VINNIE'S SICILIAN STEAKHOUSE,
INC.

By: _____
Title:

BANKBOSTON, N.A., as Agent

By: _____
Title:

EXHIBIT 1A

TO
TRADEMARK AND SERVICE MARK SECURITY AGREEMENT

DATED AS OF July 21, 1998

1. TUSCANY BALLROOM & DESIGN, (Service Mark), Reg. No. 2,152,406,
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