

RECORDATION FORM COVER SHEET  
**TRADEMARKS ONLY**

10-07-1998



100845345

Tab settings     10-2-98

To the Honorable Commissioner of Patents and Trademarks: Please record the attached

1. Name of conveying party(ies):

SIMCO SALES SERVICE OF PENNSYLVANIA, INC.

- Individual(s)
- General Partnership
- Corporation-State Pennsylvania
- 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: August 20, 1998

2. Name and address of receiving party(ies)

Name: CONGRESS FINANCIAL CORPORATION

Internal Address: \_\_\_\_\_

Street Address: 1133 Avenue of the Americas

City: New York State: NY ZIP: 10036

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State California
- 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 patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

SEE ATTACHED

Additional numbers attached?  Yes  No

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

Name: KELLEY DRYE & WARREN, LLP

Internal Address: MS. MARIEE PILKINGTON

LEGAL ASSISTANT

Street Address: 101 PARK AVENUE

City: NEW YORK State: NY ZIP: 10178

10/06/1998 SSMITH 00000017 2050202

6. Total number of applications and registrations involved: 11

7. Total fee (37 CFR 3.41).....\$ 290.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

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

01 FC:481 40.00 OP  
02 FC:482 250.00 OP

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.

LORI POTTS

Name of Person Signing

Signature

9/25/98

Date

Total number of pages including cover sheet, attachments, and document: 9

LIST OF ASSIGNOR'S TRADEMARKS

<u>No.</u>	<u>Mark</u>	<u>Date Issued</u>
2,050,282	Chocolate Dunk	4/8/97
2,023,220	Pop Culture	12/17/96
2,018,865	Chunkster	11/26/96
1,864,351	Nirvana Flav-O-Rama	11/22/94
1,848,313	Rolling Meadow	8/2/94
1,805,472	Mickey's Finest	11/16/93
1,764,749	Megawich	4/13/93
1,355,681	Choco Taco [and Design]	8/20/85
1,304,008	Choco-O-Taco	11/6/84
1,283,750	Jack & Jill Ice Cream [and Design]	6/26/84
1,099,739	Jack & Jill	8/15/78

**SECURITY AGREEMENT  
(TRADEMARKS)**

SECURITY AGREEMENT (TRADEMARKS), dated as of August 20, 1998, between SIMCO SALES SERVICE OF PENNSYLVANIA, INC., a Pennsylvania corporation with offices at 3100 Marwin Avenue, Bensalem, Pennsylvania 19020 ("Assignor"), and CONGRESS FINANCIAL CORPORATION, a California corporation with an office at 1133 Avenue of the Americas, New York, New York 10036 ("Assignee").

W I T N E S S E T H:

WHEREAS, Assignee, Assignor and Simco Manufacturing Co., Inc. ("SMC", and together with Assignor, "Borrowers") have entered into a Loan and Security Agreement dated the date hereof (together with all supplements and amendments thereto and all extensions, renewals, restatements and replacements thereof, the "Loan Agreement," and such Loan Agreement together with all agreements, instruments and documents now or hereafter entered into or delivered in connection therewith, collectively, the "Financing Agreements"), pursuant to which Assignee may make loans and advances and provide other financial arrangements to Borrowers, subject to the terms and provisions of the Financing Agreements;

WHEREAS, Assignor grants to Assignee a security interest in certain of its personal property pursuant to the Loan Agreement;

WHEREAS, Assignor owns all right, title, and interest in and to, among other things, certain United States and foreign trademarks, trademark registrations, and trademark applications and trade names, including, but not limited to, those set forth on Exhibit 1 hereto (the "Trademarks");

WHEREAS, in order to secure Borrowers' Obligations (as defined in the Loan Agreement) to Assignee, Assignor has agreed to grant to Assignee a security interest in the Trademarks and the goodwill and certain other assets with respect to the Trademarks, as further set forth herein, and Assignee has requested Assignor to enter into this Agreement to evidence such security interest.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for valuable consideration received and to be received, as security for the full payment and performance of the Obligations, and to induce Assignee to make loans and advances to Borrowers, Assignor hereby grants to Assignee a security interest in the following property of Assignor:

- (a) the Trademarks;
- (b) all registrations of the Trademarks in any state of the United States and any foreign countries and localities;
- (c) all trade names, trademarks and trademark registrations hereafter adopted or acquired and used by Assignor, including, but not limited to, those which are based upon or derived from the Trademarks or any variations thereof (the "Future Trademarks");
- (d) all extensions, renewals, and continuations of the Trademarks and Future Trademarks and the registrations referred to in clause (b) above;
- (e) all rights to sue for past, present and future infringements of the Trademarks and Future Trademarks;
- (f) all packaging, labeling, trade names, service marks, logos, and trade dress including or containing the Trademarks and Future Trademarks, or a representation thereof, or any variation thereof;
- (g) all licenses and other agreements under which Assignor is licensor, and all fees, rents, royalties, proceeds or monies thereunder, relating to the Trademarks and Future Trademarks, and the use thereof; and
- (h) all goodwill of Assignor's business connected with, symbolized by or in any way related to the items set forth in clauses (a) through (g) above.

All of the foregoing items set forth in clauses (a) through (h) are hereinafter referred to collectively as the "Collateral."

Assignor hereby covenants with Assignee as follows:

1. Assignor's Obligations. Assignor agrees that, notwithstanding this Agreement, it will perform and discharge and remain liable for all its covenants, duties, and obligations arising in connection with the Collateral and any licenses and agreements related thereto. Assignee shall have no obligation or liability in connection with the Collateral or any licenses or agreements relating thereto by reason of this Agreement or any payment received by Assignee relating to the Collateral and Assignee shall not be required to perform any covenant, duty or obligation of Assignor arising in connection with the Collateral or any license or agreement related thereto or to take any other action regarding the Collateral or any such licenses or agreement.

2. Representations and Warranties. Assignor represents and warrants to Assignee that: (a) Assignor is the beneficial and record owner of the Collateral, and no adverse claims have been made with respect to its title to or the validity of the Collateral; (b) the Trademarks are the only trademarks, trademark registrations, trademark applications and trade

names in which Assignor has any or all right, title and interest; (c) none of the Collateral is subject to any mortgage, pledge, lien, security interest, lease, charge, encumbrance or license (by Assignor as licensor), except for the licenses listed on Exhibit 1 hereto; and (d) when this Agreement is filed in the United States Patent and Trademark Office (the "Trademark Office") and the Assignee has taken the other actions contemplated by the Loan Agreement and in this Agreement, this Agreement will create a legal and valid perfected and continuing lien on and security interest in the Collateral in favor of Assignee, enforceable against Assignor and all third parties, subject to no other mortgage, lien, charge, encumbrance, or security or other interest.

3. Covenants. Assignor will maintain and renew all items of Collateral and all registrations of the Collateral and will defend the Collateral against the claims of all persons. Assignor will maintain the same standards of quality (which Assignee has reviewed) for the goods and services in connection with which the Trademarks are used as Assignor maintained for such goods and services prior to entering into this Agreement. Assignee shall have the right to enter upon Assignor's premises at all reasonable times to monitor such quality standards. Without limiting the generality of the foregoing, Assignor shall not permit the expiration, termination or abandonment of any Trademark or Future Trademark without the prior written consent of Assignee. If, before the Obligations have been satisfied in full and the Financing Agreements have been terminated, Assignor shall obtain rights to or be licensed to use any new trademark, or become entitled to the benefit of any trademark application or trademark registration, the provisions of Section 1 hereof shall automatically apply thereto and Assignor shall give Assignee prompt notice thereof in writing.

4. Use Prior to Default. Effective until Assignee's exercise of its rights and remedies upon an Event of Default under and as defined in the Financing Agreements (an "Event of Default"), Assignee hereby grants to Assignor the right to use the Collateral in the ordinary course of its business, subject to the terms and covenants of the Financing Agreements and this Agreement.

5. Remedies Upon Default. Whenever any Event of Default shall occur and be continuing, Assignor's rights pursuant to Section 4 hereof shall, at Assignee's option, terminate and be null and void, and Assignee shall have all the rights and remedies granted to it in such event by the Financing Agreements, which rights and remedies are specifically incorporated herein by reference and made a part hereof, and any and all rights and remedies of law available to Assignee. Assignee in such event may collect directly any payments due to Assignor in respect of the Collateral and, subject to any limitations imposed under any license agreements constituting part of the Collateral, may sell, license, lease, assign, or otherwise dispose of the Collateral in the manner set forth in the Financing Agreements. Assignor agrees that, in the event of any such disposition of the Collateral upon any such Event of Default, it will duly execute, acknowledge, and deliver all documents necessary or advisable to record title to the Collateral in any transferee or transferees thereof, including, without limitation, valid, recordable assignments of the Trademarks and Future Trademarks. In the event Assignor fails or refuses to execute and deliver such documents, Assignor hereby irrevocably appoints Assignee as its attorney-in-fact, with power of substitution, to execute, deliver, and record any such documents on Assignor's behalf. Notwithstanding any provision hereof to the contrary, during the continuance of an Event of Default, Assignor may sell merchandise or services bearing the

Trademarks and Future Trademarks in the ordinary course of its business and in a manner consistent with its past practices, until it receives written notice from Assignee to the contrary. The preceding sentence shall not limit any right or remedy granted to Assignee with respect to Assignor's inventory under the Financing Agreements or any other agreement now or hereinafter in effect.

6. Power of Attorney. Concurrently with the execution and delivery hereof, Assignor shall execute and deliver to the Assignee, in the form of Exhibit 2 hereto, five (5) originals of a Special Power of Attorney for the implementation of the assignment, sale or other disposal of the Trademarks and Future Trademarks pursuant to Section 5. Assignee hereby agrees that it shall not exercise the rights granted in such Special Power of Attorney prior to an Event of Default. Assignor hereby releases Assignee from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by Assignee under the powers of attorney granted therein, other than actions taken or omitted to be taken through the bad faith, willful misconduct or gross negligence of Assignee, as determined by a final, non-appealable order of a court of competent jurisdiction.

7. Cumulative Remedies. The rights and remedies provided herein are cumulative and not exclusive of any other rights or remedies provided by law. The rights and remedies provided herein are intended to be in addition to and not in substitution of the rights and remedies provided by the Financing Agreements or any other agreement or instrument delivered in connection therewith.

8. Amendments and Waivers. This Agreement may not be modified, supplemented, or amended, or any of its provisions waived at the request of Assignor, without the prior written consent of Assignee. Assignor hereby authorizes Assignee to modify this Agreement by amending Exhibit 1 hereto to include any Future Trademarks or additional licenses.

9. Waiver of Rights. No course of dealing between the parties to this Agreement or any failure or delay on the part of any such party in exercising any rights or remedies hereunder shall operate as a waiver of any rights and remedies of such party or any other party, and no single or partial exercise of any rights or remedies by one party hereunder shall operate as a waiver or preclude the exercise of any other rights and remedies of such party or any other party. No waiver by Assignee of any breach or default by Assignor shall be deemed a waiver of any other previous breach or default or of any breach or default occurring thereafter.

10. Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto; provided, however, that no interest herein or in or to the Collateral may be assigned by Assignor without the prior written consent of Assignee; and, provided further, that the Assignee may assign the rights and benefits hereof to any party acquiring any interest in the Obligations or any part thereof.

11. Further Acts. Assignor shall have the duty to prosecute diligently any application for the Trademarks and Future Trademarks as of the date of this Agreement or

thereafter, until the Obligations shall have been paid in full, and to make applications on material Future Trademarks in any country where Assignor does material business and to preserve and maintain all rights in the Trademarks and the other Collateral. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a trademark application or registration for any trademark, nor abandon any such pending trademark application or registration, without the consent of Assignee (such consent shall not be unreasonably withheld or delayed).

12. Enforcement. Upon an Event of Default, Assignee shall have the right but shall in no way be obligated to bring suit in its own name to enforce the Trademarks, Future Trademarks, and any license under any of the foregoing, in which event Assignor shall at the request of Assignee do any and all lawful acts and execute any and all proper documents that may be reasonably requested by Assignee in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Assignee or its agents for all costs and expenses incurred by Assignee in the exercise of its rights under this Section 12.

13. Re-Assignment. At such time as Assignor shall completely satisfy all of the Obligations, and the Financing Agreements have been terminated, other than upon enforcement of Assignee's remedies under the Financing Agreements after an Event of Default, Assignee will execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to release Assignor's lien in the Collateral, subject to any dispositions thereof which may have been made by Assignee pursuant hereto.

14. Severability. If any clause or provision of this Agreement shall be held invalid or unenforceable, in whole or in part, in any jurisdiction, such invalidity or unenforceability shall attach only to such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect any other clause or provision in any other jurisdiction.

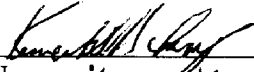
15. Notices. All notices, requests and demands to or upon Assignor or Assignee under this Agreement shall be given in the manner prescribed by the Loan Agreement.

16. Governing Law. This Agreement shall be governed by and construed, applied, and enforced in accordance with the federal laws of the United States of America applicable to trademarks and the laws of the State of New York, except that no doctrine of choice of law shall be used to apply the laws of any other state or jurisdiction.

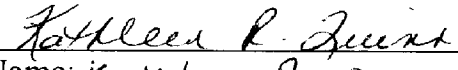
17. Financing Agreement. This Agreement is one of the Financing Agreements.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

SIMCO SALES SERVICE OF PENNSYLVANIA, INC.,  
Assignor

By:   
Name: Kenneth Schwartz  
Title: VP/GM

CONGRESS FINANCIAL CORPORATION, Assignee

By:   
Name: Kathleen R. Quinn  
Title: SVP

TRADEMARK

REEL: 1795 FRAME: 0776



STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

On the 20<sup>th</sup> day of August \_\_\_ 1998 before me personally came Kenneth Schwartz, to me known, who being by me duly sworn, did depose and say that he is the VP/CM of SIMCO SALES SERVICE OF PENNSYLVANIA, INC., the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Lisa Danczewski  
Notary Public

**LISA DANCZEWSKI**  
Notary Public, State of New York  
No. 01DA5047783  
Qualified in Kings County  
Commission Expires August 14, 1999

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF NEW YORK )

On the 20 day of August 1998, before me personally came Kathleen Quinn, to me known, who being by me duly sworn, did depose and say that he is a SVP of CONGRESS FINANCIAL CORPORATION, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.

Lisa Danczewski  
Notary Public

**LISA DANCZEWSKI**  
Notary Public, State of New York  
No. 01DA5047783  
Qualified in Kings County  
Commission Expires August 14, 1999