

11-06-1998

FORM PTO-1618A
Expires 06/30/99
OMB 0651 0027



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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

MRO 11-2-98

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
- Merger Effective Date
Month Day Year
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

- Individual General Partnership Limited Partnership Association
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

11/05/1998 DNGUYEN 00000126 1157763

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Refund Ref: 11/05/1998 DNGUYEN 0000063607

01 FC:481 40.00 OP
02 FC:482 75.00 OP

CHECK Refund Total: \$45.00

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Mail documents to be recorded with required cover sheet(s) in TRADEMARK
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Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

703 415 1555

Name

Christopher E. Kondracki

Address (line 1)

Specialized Patent Services

Address (line 2)

2001 Jefferson Davis Highway, Suite 505

Address (line 3)

Arlington, VA 22202

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

7

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

1,157,763	1,180,620	1,222,834
1,738,819	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

4

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 160.00

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

19-3545

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Christopher E. Kondracki

11/2/98

Name of Person Signing

Signature

Date Signed

October 28, 1998

THIS AGREEMENT is made between

BankBoston Retail Finance Inc. (in such capacity, the "**Agent**"), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as agent for a syndicate of Lenders (the "**Lenders**")

and

Drug Emporium of Michigan, Inc. (hereinafter, the "**Guarantor**"), a Delaware corporation with offices at 155 Hidden Ravines Drive, Powell, Ohio 43065

in consideration of the mutual covenants contained herein and benefits to be derived herefrom,

WITNESSETH:

1. **BACKGROUND:** The Agent, the Lenders, and Drug Emporium, Inc., a Delaware corporation (the "Borrower") have entered in a certain Loan and Security Agreement of even date (as such agreement may be modified, supplemented, amended or restated from time to time, hereinafter, the "**Loan Agreement**") pursuant to which a credit facility has been established in favor of the Borrower. The Guarantor has executed and delivered a Guaranty of even date in favor of the Agent and the Lenders pursuant to which the Guarantor has guaranteed all Liabilities of the Borrower to the Agent and the Lenders. In order to secure such Guaranty the Guarantor has executed and delivered to the Agent and the Lenders a Security Agreement (as such agreement may be modified, supplemented, amended or restated from time to time, hereinafter, the "**Security Agreement**") under which the Guarantor's Liabilities are to be secured by certain of the Guarantor's assets, including all Marks. (Terms used herein which are defined in the Security Agreement are used as so defined).

2. **GRANT OF SECURITY INTEREST:** To secure the Liabilities, the Guarantor hereby

creates a security interest in favor of the Agent (for the ratable benefit of the Agent and the Lenders), with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default) in and to the following and all proceeds thereof (collectively, the "**TM Collateral**"):

(a) All of the Guarantor's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks and service mark applications including, without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, and service mark applications.

(b) All renewals of any of the foregoing.

(c) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.

(d) The right to sue for past, present and future infringements and dilutions of any of the foregoing.

(e) All of Guarantor's rights corresponding to any of the foregoing throughout the world.

3. **PROTECTION OF MARKS BY GUARANTOR:** The Guarantor shall undertake the following with respect to each items respectively described in Sections 2(a) and 2(b) (collectively, the "**Marks**"):

(a) Pay all renewal fees and other fees and costs associated with maintaining the Marks and with the processing of the Marks.

(b) At the Guarantor's sole cost, expense, and risk, pursue the prompt, diligent, processing of each Application for Registration which is the subject of the security interest created herein and not abandon or delay any such efforts.

(c) At the Guarantor's sole cost, expense, and risk, take any and all action which Guarantor deems desirable to protect the Marks, including, without limitation, but subject to Guarantor's discretion, the prosecution and defense of infringement actions.

4. **GUARANTOR'S REPRESENTATIONS AND WARRANTIES:** The Guarantor represents and warrants that:

(a) **EXHIBIT A** includes all of the registered trademarks, Federal trademark applications, registered service marks and Federal service mark applications now owned by the

Guarantor.

(b) All TM Collateral is and shall remain, free and clear of all liens, Encumbrances, or security interests to any Person other than to the Agent.

(c) The Guarantor shall give the Agent written notice (with reasonable detail) within Ten (10) days following the occurrence of any of the following:

(i) The Guarantor's obtaining rights to, and filing applications for registration of, any new trademarks, or service marks, or otherwise acquires ownership of any newly registered trademarks, registered service marks, trademark applications, or service mark applications, (other than the Guarantor's right to sell products containing the trademarks of others in the ordinary course of Guarantor's business).

(ii) The Guarantor's becoming entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor (other than Guarantor's right to sell products containing the trademarks of others in the ordinary course of Guarantor's business).

(iii) The Guarantor's entering into any new trademark license agreement or service mark license agreement.

5 AGREEMENT APPLIES TO FUTURE MARKS:

(a) The provisions of this Security Agreement shall automatically apply to any such additional property or rights described in 4(c), above, all of which shall be deemed to be and treated as "Marks" within the meaning of this TM Security Agreement.

(b) The Guarantor hereby authorizes the Agent to take all such action to protect the Agent's interest in and concerning any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, *provided, however*, the Agent's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

6. GUARANTOR'S RIGHTS TO ENFORCE MARKS: Prior the Agent's giving of notice

to the Guarantor following the occurrence of an Event of Default, the Guarantor shall have the exclusive right to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by Guarantor to protect the Marks against encroachment by third parties, *provided, however*.

(a) The Guarantor first provides the Agent with written notice of the Guarantor's

intention to so sue for enforcement of any Mark.

(b) Any money damages awarded or received by the Guarantor on account of such suit (or the threat of such suit) shall constitute TM Collateral.

(c) Following the occurrence of any Event of Default, the Agent, by notice to the Guarantor may be terminate or limit the Guarantor's rights under this Section 6.

7. **AGENT'S ACTIONS TO PROTECT MARKS:** In the event of

(a) the Guarantor's failure, within Five (5) days of written notice from the Agent, to cure any failure by the Guarantor to perform any of the Guarantor's obligations set forth in Section 3; and/or

(b) the occurrence of any Event of Default, the Agent, acting in its own name or in that of the Guarantor, may (but shall not be required to) act in the Guarantor's place and stead and/or in the Agents' own right in connection therewith.

8. **RIGHTS UPON DEFAULT:** Upon the occurrence of any Event of Default, the Agent may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with respect to the Marks, in addition to which the Agent may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Agent that an Event of Default has occurred and that the Agent is authorized to exercise such rights and remedies.

9. **AGENT AS ATTORNEY IN FACT:**

(a) The Guarantor hereby irrevocably constitutes and designates the Agent as and for the Guarantor's attorney in fact, effective following the occurrence of any Event of Default:

(i) To exercise any of the rights and powers referenced in Sections 3 and 5(b).

(ii) To execute all such instruments, documents, and papers as the Agent determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Marks.

(b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Agent.

(c) The Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 9(a) herein, but if the Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of

power, and shall not be responsible to the Guarantor for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Agent has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

10. **AGENT'S RIGHTS:**

(a) Any use by the Agent of the Marks, as authorized hereunder in connection with the exercise of the Lenders' rights and remedies under this Agreement and under the Security Agreement shall be coextensive with the Guarantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges.

(b) None of this Agreement, the Security Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the Agent any rights in and to the Marks, which rights are effective except following the occurrence of any Event of Default.

11. **INTENT:** It is intended that this Agreement supplement the Security Agreement.

All provisions of the Security Agreement shall apply to the Marks. The Agent shall have the same rights, remedies, powers, privileges and discretions, with respect to the security interests created in the TM Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Security Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Security Agreement with respect to all other Collateral.

12. **CHOICE OF LAWS:** It is intended that this Agreement take effect as a sealed

instrument and that all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Guarantor and the Agent respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

DRUG EMPORIUM OF MICHIGAN, INC.
(The "Guarantor")

BANKBOSTON RETAIL FINANCE INC.
(The "Agent")

By: Michael P. Leach
Name: Michael P. Leach
Title: VP and Treasurer

By: Michael L. Pizette
Name: Michael L. Pizette
Title: Managing Director

THE STATE OF OHIO
COUNTY OF DELAWARE, SS

Then personally appeared before me Michael P. Leach who acknowledged that such person is the duly authorized Vice President and Treasurer of Drug Emporium of Michigan, Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 28 day of October, 1998

Kathleen A. Diersing
, Notary Public
My Commission Expires:
KATHLEEN A. DIERSING
Notary Public, State of Ohio
My Commission Expires June 18, 2003

THE STATE OF OHIO
COUNTY OF DELAWARE, SS

Then personally appeared before me Michael L. Pizette, who acknowledged that such person is the duly authorized MANAGING DIRECTOR of BankBoston Retail Finance Inc. and that such person executed the foregoing instrument on its behalf.

Witness my hand and seal this 28 day of October, 1998..

Kathleen A. Diersing
, Notary Public
My Commission Expires:
KATHLEEN A. DIERSING
Notary Public, State of Ohio
My Commission Expires June 18, 2003

EXHIBIT A

to

TRADEMARK AND TRADEMARK APPLICATIONS SECURITY AGREEMENT

Guarantor's now owned or existing or hereafter acquired or arising registered service marks and initial Federal Service Mark Application, Registered Trademark, and Federal Trademark Application, including without limitation the following:

- Federal-U.S. Registration No. 1,157,763, Principal
 Register, DRUG EMPORIUM, Registration
 Date: June 16, 1981
- Federal-U.S. Registration No. 1,180,620, Principal
 Register, DRUG EMPORIUM PLUS DESIGN,
 Registration Date: December 1, 1981
- Federal-U.S. Registration No. 1,222,834, Principal
 Register, DRUG EMPORIUM, Registration
 Date: January 4, 1983
- Federal-U.S. Registration No. 1,738,819, Principal
 Register, SAVINGS SO BIG YOU NEED A SHOPPING
 CART!, Registration Date: December 8, 1992