

MRP

FORM PTO-1084

(Part, 9-83)

OMB No. 0561-0011 (exp. 4/94)

12-4-98

REC

12-08-1998



HEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab settings

To the Honorable Commissioner of Pat.

100917551

Send original documents or copy thereof.

1. Name of conveying party(ies):

Luther's Bar-B-Q, 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: November 24, 1998

2. Name and address of receiving party(ies)

Name: Merrill Lynch Business Financial Services, Inc.

Internal Address:

Street Address: 33 West Monroe Street

City: Chicago State: IL ZIP: 60603

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State IL
- 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): See Attached

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

Additional numbers attached? Yes No

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

Name: Federal Research Corp.

Internal Address:

Street Address: 400 Seventh St NW

Suite 101

City: Washington State: DC ZIP: 20004

12/07/1998 INVENTEN 00000081 1160400

6. Total number of applications and registrations involved: 17

7. Total fee (37 CFR 3.41).....\$ 440.00

- 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:482 400.00 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.

Pamela J. Sandberg
Name of Person Signing

[Signature]
Signature

11/30/98
Date

Total number of pages including cover sheet, attachments, and document: 16

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments

TRADEMARK
REEL: 1824 FRAME: 0841

EXHIBIT B TO PATENT, TRADEMARK AND LICENSE SECURITY AGREEMENT

Trademarks, Trade Names and Services Marks

AVD LUTHER'S	REGD	CLASS	FILED	ISSUED	RENEWED	RENEWAL DUE	REMARKS
003	LUTHER'S (United States)	Restaurant services. (I.C. 42)	196,289 December 11, 1978	1,160,400 July 7, 1981			Registered. Sec. 8 & 15 Declaration accepted. Renewal due July 7, 2001.
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007	LUTHER'S HAMBURGERS BAR-B-Q and Design (United States)	Restaurant services. (I.C. 42)	500,555 September 21, 1984	1,338,514 May 28, 1985			Registered. Sec. 8 & 15 Declaration accepted. Renewal due May 28, 2005.

Current as of August 20, 1998
If Updated (see page 1)

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015	THE BEST RESTAURANT IN YOUR NEIGHBORHOOD (United States)	Restaurant services. (I.C. 42)	74/516,073 April 21, 1994	N/A	Pending. Opposed by Applebee's. (Opp. No. 105,528)
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Current as of August 20, 1998
H-1234(123456789)

AWD/NO. (LUTH)	TITLE (GOVERNMENT)	CLASSIFICATION (L.C.)	STATUS (L.C.)	STATUS (L.C.)	STATUS (L.C.)
032	Bobby Q. Luther Character (United States)	Restaurant services (L.C. 42)	N/A	N/A	Unfiled
033	Bobby Q. Luther 3D Sculpture (U.S. Copyright)	N/A	N/A	N/A	Unfiled
034	Great Returns Grub Gang Card Artwork (U.S. Copyright)	N/A	N/A	N/A	Unfiled
035	Cowboy Scene Artwork (U.S. Copyright)	N/A	N/A	N/A	Unfiled

Current as of August 20, 1998
H:\374417\179811.doc

FOR RECORDER'S USE ONLY**PREPARED BY AND WHEN
RECORDED MAIL TO:**

Steven Bright, Esq.
Pearlstein Bright & Schwartz,
Ltd.
33 North LaSalle Street
35th Floor
Chicago, Illinois 60602

**PATENT, TRADEMARK AND LICENSE SECURITY AGREEMENT -
LUTHER'S BAR-B-Q, INC.**

THIS PATENT, TRADEMARK AND LICENSE SECURITY AGREEMENT (the "Security Agreement") made as of November 24, 1998, by LUTHER'S BAR-B-Q, INC., with offices at 2611 FM 1960 West, B-101, Houston, TX ("Grantor"), in favor of MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC., with offices at 33 West Monroe Street, Chicago, Illinois 60603 ("MLBFS"):

WITNESSETH:

WHEREAS, LUTHER'S ACQUISITION CORP. ("Customer") and MLBFS are parties to that certain **WCMA REDUCING REVOLVER LOAN AND SECURITY AGREEMENT NO. 443-07F71** (said agreement and all other financing agreements between Customer and MLBFS now and from time to time hereafter entered into, as amended, and as may be further amended, modified and/or restated from time to time shall hereinafter be collectively referred to as the "Loan Agreements"), which Loan Agreements provides: (i) for MLBFS to extend credit to or for the account of Customer; and (ii) for the grant by Grantor to MLBFS of a security interest in all of Grantor's assets, including, without limitation, its patents, patent applications, trademarks, trademark applications, trade names, service marks, service mark applications, goodwill and licenses;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

1. Incorporation of Loan Agreements. The Loan Agreements and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

2. Patents, Trademarks and Licenses Security Agreement. To secure the complete and timely satisfaction of all of the "Obligations" (as defined in the Loan Agreements), Grantor hereby grants, bargains, assigns, pledges, sells, creates a security interest in, transfers and conveys to MLBFS a first security interest having priority over all other security interests in all of Grantor's right, title and

**TRADEMARK
REEL: 1824 FRAME: 0846**

interest in and to all of its now existing and hereafter created or acquired:

- (i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on Exhibit A attached hereto and hereby made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, damages and payments now and hereafter due or payable under or with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d) of this subsection 2(i), are sometimes hereinafter referred to individually as a "Patent" and, collectively, as the "Patents");
- (ii) trademarks, trademark registrations, trademark applications, trade names, service marks, service mark registrations and service mark applications, including, without limitation, the trademarks, trade names, service marks and applications and registrations thereof listed on Exhibit B attached hereto and hereby made a part hereof, and (a) renewals or extensions, thereof, (b) all income, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names, service marks and applications and registrations thereof, together with the items described in clauses (a) - (d) of this subsection 2(ii), are sometimes hereinafter referred to individually as a "Trademark" and, collectively, as the "Trademarks");
- (iii) to the extent assignable, all license agreements with respect to any of the Patents or the Trademarks or any other patent, trademark, service mark or any application or registration thereof or any other trade name between Grantor and any other party, whether Grantor is a licensor or licensee under any such license agreement (all of the foregoing license agreements and Grantor's rights thereunder are hereinafter referred to collectively as the "Licenses"); and
- (iv) the goodwill of Grantor's business connected with, and symbolized by, the Trademarks.

3. Warranties and Representations. Grantor warrants and represents to MLBFS

that:

- (i) to the best of Grantor's knowledge, the Patents, Trademarks and Licenses have not been adjudged invalid or unenforceable and have not been canceled, in whole or in part, and the Patents, trademark applications and trademark registrations identified on

Exhibits A and B attached hereto and the Licenses are presently subsisting;

- (ii) to the best of Grantor's knowledge, each of the Patents and Trademarks and Licenses identified on Exhibits A and B attached hereto is valid and enforceable;
- (iii) to the best of Grantor's knowledge, Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, Trademarks and Licenses, free and clear of any liens, charges and encumbrances, including, without limitation, licenses, shop rights and covenants by Grantor not to sue third persons;
- (iv) Grantor has adopted, used and is currently using all of the Trademarks listed on Exhibit B attached hereto in its form as of the date of this Security Agreement;
- (v) Grantor has no written notice of any suits or actions commenced or threatened with reference to the Patents, Trademarks or Licenses other than that certain trademark opposition proceeding currently pending before the United States Patent and Trademark Office's Trademark Trial and Appeal Board brought by Appleby's and concerning Grantor's pending trademark application for "THE BEST RESTAURANT IN YOUR NEIGHBORHOOD" (SN 74/516,073); and
- (vi) Grantor has the unqualified right to execute and deliver this Security Agreement and perform its terms and has entered or will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants contained herein.

4. Restrictions on Future Agreements. Grantor agrees that until the Obligations shall have been satisfied in full, Grantor shall not sell or assign its interest in, or grant any license under, the Patents, Trademarks or Licenses, or enter into any other agreement with respect to the Patents, Trademarks or Licenses which is inconsistent with Grantor's obligations under this Security Agreement, without the prior written consent of MLBFS, and Grantor further agrees that it shall not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to MLBFS under this Security Agreement; provided, however, that nothing in this Section 4 shall be deemed to limit Grantor's ability to grant or obtain rights under license agreements pertaining to the Patents, Trademarks or Licenses entered into by Grantor after the date hereof in the ordinary course of Grantor's business, which license agreements and Grantor's rights thereunder shall constitute Licenses and be subject to the terms of this Security Agreement. Grantor and MLBFS mutually acknowledge that Grantor may wish to license the use of some or all of the Patents in foreign countries. MLBFS hereby consents to such licenses in foreign countries done in the ordinary course of business.

5. New Patents, Trademarks and Licenses. Grantor represents and warrants that, to the best of Grantor's knowledge, the Patents and Trademarks listed as of the date of this Security Agreement on Exhibits A and B attached hereto, respectively, constitute all of the Patents and Trademarks now owned by Grantor and subject to Federal registration and applications. If, before Grantor's Obligations shall have been satisfied in full, Grantor shall (i) become aware of any existing Patents, Trademarks or Licenses of which Grantor has not previously informed MLBFS, (ii) to its

knowledge obtain rights to any new patentable inventions, Patents, Trademarks or Licenses, or (iii) to its knowledge become entitled to the benefit of any Patents, Trademarks, or Licenses or any improvement on any Patent, the provisions of this Security Agreement shall automatically apply thereto and Grantor shall give to MLBFS prompt written notice thereof. Grantor hereby authorizes MLBFS to modify this Security Agreement by amending Exhibits A and B attached hereto, as applicable, to include any such Patents and Trademarks.

6. Royalties; Terms. The term of the security interests granted herein shall extend until the earlier of: (i) the expiration of each of the respective Patents, Trademarks and Licenses pledged hereunder; or (ii) the Obligations have been paid in full. Upon the occurrence of an Event of Default (as defined in the Loan Agreements), Grantor agrees that the use by MLBFS of all Patents, Trademarks and Licenses shall be coextensive with Grantor's rights in the world and without any liability for royalties or other related charges from MLBFS to the Grantor.

7. MLBFS's Right to Inspect. MLBFS shall have the right upon the giving of reasonable notice in accordance with the terms of the Loan Agreements, at any time and from time to time during normal business hours and prior to payment in full of the Obligations, to inspect Grantor's premises and to examine Grantor's books, records and operations, including, without limitation, Grantor's quality control processes. Grantor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with or exceeding the quality of said products as of the date hereof, and (ii) to provide MLBFS, upon MLBFS' request from time to time, with a certificate of an officer of Grantor certifying Grantor's compliance with the foregoing. Upon the occurrence of an Event of Default, Grantor agrees that MLBFS, or an agent appointed by MLBFS, shall have the right to establish such additional product quality controls as MLBFS, or said agent, in its sole reasonable judgment, may deem necessary to assure maintenance of the quality of products sold, leased or licensed by Grantor under the Trademarks.

8. Release of Security Agreement. This Security Agreement is made for collateral purposes only. Upon payment in full of the "Obligations" (as defined in the Loan Agreements), MLBFS shall execute and deliver to Grantor all releases and other instruments, and shall take such other actions, as may be reasonably necessary or proper to fully release the security interest of MLBFS in Patents, Trademarks and Licenses, subject to any disposition thereof which may have been made by MLBFS pursuant hereto or pursuant to the Loan Agreements.

9. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Grantor. All reasonable fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and costs, incurred by MLBFS 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 in protecting, maintaining or preserving the Patents, Trademarks and Licenses, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, Trademarks and Licenses, shall be borne by and paid by Grantor on demand by MLBFS and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate prescribed in the Loan Agreements.

10. Duties of Grantor. Grantor shall have the duty (i) to prosecute diligently any patent, trademark or service mark applications pending as of the date hereof or thereafter until the Obligations shall have been paid in full, (ii) to make application on unpatented but patentable (to Grantor's knowledge) inventions and on trademarks and service marks, as appropriate, and to the extent commercially reasonable and consistent with the corporation's prior practices and (iii) to preserve and maintain all rights in the Patents, Trademarks and Licenses. Any expenses incurred in connection with Grantor's obligations under this Section 10 shall be borne by Grantor. Grantor shall not to its knowledge abandon any right to file a patent, trademark or service mark application, or any pending patent application, or any other Patent, Trademark or License without the consent of MLBFS.

11. MLBFS' Right to Sue. Following the occurrence of an Event of Default under the Loan Agreements, MLBFS shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents, Trademarks and Licenses, and, if MLBFS shall commence any such suit, Grantor shall, at the request of MLBFS, do any and all lawful acts and execute any and all proper documents required by MLBFS in aid of such enforcement and Grantor shall promptly, upon demand, reimburse and indemnify MLBFS for all reasonable costs and expenses incurred by MLBFS in the exercise of its rights under this Section 11.

12. Waivers. No course of dealing between Grantor and MLBFS, nor any failure to exercise, nor any delay in exercising, on the part of MLBFS, any right, power or privilege hereunder or under the Loan Agreements 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.

13. Severability. The provisions of this Security 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 Security Agreement in any jurisdiction.

14. Modification. This Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney; Effect on Financing Agreement. All of MLBFS' rights and remedies with respect to the Patents, Trademarks and Licenses, whether established hereby or by the Loan Agreements, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Upon the occurrence of an Event of Default, Grantor hereby authorizes MLBFS to make, constitute and appoint any officer or agent of MLBFS as MLBFS may select, in its sole discretion, as Grantor's true and lawful attorney-in-fact, with power to: (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for MLBFS in the use of the Patents, Trademarks and Licenses; (ii) take any other actions with respect to the Patents, Trademarks and Licenses as MLBFS deems to be in the best interest of MLBFS; (iii) grant or issue any exclusive or non-exclusive license under the Patents, Trademarks or Licenses to anyone; or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks or Licenses to anyone. Grantor will not contest anything that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Obligations shall have been paid in full and have been terminated. Grantor acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of MLBFS under the Loan Agreements but rather is intended to facilitate the exercise of such rights and remedies. MLBFS shall have, in addition to all other rights and remedies given it by the terms of this Security Agreement and the Loan Agreements, all rights and remedies allowed by law and the rights and remedies of a MLBFS under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents, Trademarks or Licenses may be located.

16. Binding Effect; Benefits. This Security Agreement shall be binding upon the Grantor and its respective successors and assigns, and shall inure to the benefit of MLBFS, its successors, nominees and assigns.

17. Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

18. Headings. Section headings used herein are for convenience only and shall not modify the provisions which they precede.

19. Further Assurances. Grantor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as MLBFS shall reasonably request from time to time in order to carry out the purpose of this Security Agreement and agreements set forth herein.

IN WITNESS WHEREOF, Grantor has duly executed this Security Agreement in favor of MLBFS as of the date first written above.

LUTHER'S BAR-B-Q, INC

By: [Signature]
Title: President

ATTEST:

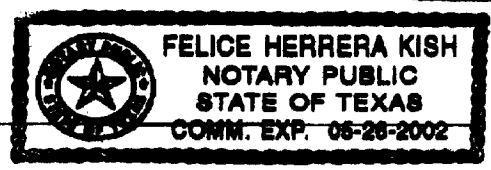
By: [Signature]
Title: Treasurer/Secretary

STATE OF TEXAS)
) SS.
COUNTY OF Harris)

I, Felice Herrera Kish, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Mikael Jolley, President and Kirby Gorton, ~~(Assistant)~~ Secretary of LUTHER'S BAR-B-Q, INC personally are known to me to be the same person whose names are subscribed to the foregoing instrument as such PRESIDENT and ~~(Assistant)~~ Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24 day of November, 1998.

[Signature]
NOTARY PUBLIC



My Commission Expires:

EXHIBIT A TO PATENT, TRADEMARK AND LICENSE SECURITY AGREEMENT

Patents

None

EXHIBIT B TO PATENT, TRADEMARK AND LICENSE SECURITY AGREEMENT

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APP. NO. LUTH.	MARK (CONTINUED)	GOODS/SERVICES (CLASS)	SERIAL NO. (INVENTOR)	REG. NO. (ISSN)	STATUS
032	Bobby Q. Luther Character (United States)	Restaurant services. (I.C. 42)	N/A	N/A	Unfiled
033	Bobby Q. Luther JD, Sculpture (U.S. Copyright)	N/A	N/A	N/A	Unfiled
034	Great Returns Grub Gang Card Artwork (U.S. Copyright)	N/A	N/A	N/A	Unfiled
035	Cowboy Scene Artwork (U.S. Copyright)	N/A	N/A	N/A	Unfiled

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