

12-14-1998

U.S. Department of Commerce  
Patents & Trademark Office  
Attorney Docket No: T8223-6001  
Date: December 9, 1998



100920565

**MRD 12.9.98**

To the Honorable Commissioner of Patents and Trademarks:  
Please record the attached original documents or copy thereof



1. Name of conveying party(ies)

A. Smith Bowman Distillery, Inc.

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other

Additional name(s) of conveying party(ies) attached?

Yes  No

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

Name: First Union National Bank

Address: 7 North Eighth Street

Richmond, Virginia

- 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:

Yes  No  
(Designations must be a separate document from  
Assignment)

Additional name(s) & Address(es) attached?  
 Yes  No

3. Nature of conveyance:

- Assignment
- Merger
- Security Interest Agreement
- Change of Name
- Other

Execution Date: August 31, 1998

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

A. Trademark Application No.(s)

B. Trademark registration No.(s)

SEE ATTACHED LIST

Additional numbers attached?  Yes  No

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

Name: Nikaido, Marmelstein, Murray & Oram LLP

Street Address: Metropolitan Square, 655 15th Street, N.W.,

G Street Lobby - Suite 330

Washington, D.C. 20005

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41)..... \$ 160.00 **E**  
 Enclosed **CK #18209**  
 Authorized to be charged to deposit account

8. Deposit account number: 14-1060

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.

Robert B. Murray  
Name of Person Signing  
Reg. No. 22,980

Signature

December 9, 1998  
Date

Total number of pages comprising cover sheet: 10

12/11/1998 JWP/KINS 00000108 75-21687  
40.00 OP  
100.00 OP  
20.00 OP  
01 EC:481  
02 EC:482  
03 EC:483

## SCHEDULE A

<u>Serial/Registration Number</u>	<u>Mark</u>	<u>Status/Date of Registration</u>
2,062,499	Bowman's	Registered (5/20/97)
75/421,687	VG 90 Logo	Pending
75/421,686	Fox Head Logo	Pending
347,081	Virginia Gentleman	Registered (6/15/37)

The undersigned A. Smith Bowman Distillery, Incorporated, a Virginia corporation, having its offices at One Bowman Drive, Fredericksburg, Virginia 22408 ("Debtor") for value received, hereby grants unto First Union National Bank, a national banking association having its offices at 7 North Eighth Street, Richmond, Virginia ("Creditor") a security interest in the United States trademarks, trademark applications and trademark registrations owned by Debtor listed in Schedule A hereto.

Provided, however, that nothing herein contained shall relieve the Debtor from the performance of any covenant, agreement or obligation on the Debtor's part to be performed under any license or franchise agreement presently in effect or hereafter entered into by the Debtor licensing the use of the Collateral or any such part thereof or from any liability to any licensee under any such license or franchise agreement or other party or impose any liability on Creditor for the acts or omissions of the Debtor in connection with any such license or license agreement. Provided further that this Agreement will not relate to or affect any of Debtor's trademark applications based on intent-to-use the marks until after such time as an Amendment to Allege Use or Statement of Use is filed and accepted by the Patent and Trademark Office and the marks are actually used in commerce.

1. INDEBTEDNESS SECURED:

This Agreement is made pursuant to that certain Credit and Security Agreement dated August 31, 1998, among Creditor, Debtor and Guarantors party thereto (the "Credit Agreement"). Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings assigned to them in the Credit Agreement. As security for the

payment and performance of any and all of the Indebtedness and the performance of all other obligations and covenants of Debtor and Guarantors hereunder and under the other Loan Documents, certain or contingent, now existing or hereafter arising, which are now, or may at any time or times hereafter be owing by Debtor and Guarantors to Creditor, Debtor hereby gives Creditor a continuing security interest in and general Lien upon all of Debtor's right, title and interest in and to any and all trademarks and trademark applications described in Schedule A hereto, the associated goodwill relating thereto and the proceeds of all of the foregoing (the "Collateral"). This Agreement shall continue in full force and effect until terminated in accordance with the provisions of paragraph 9 hereto.

2. REPRESENTATION AND WARRANTIES:

The Debtor hereby represents and warrants that, except for the security interest granted to Creditor hereby, the Debtor is the owner of all Collateral, free and clear of all liens, charges, encumbrances, set-offs, defenses and counterclaims of whatsoever kind or nature and has made and will make no assignment, pledge, mortgage, hypothecation or transfer of any Collateral or of the proceeds thereof; that the execution and delivery of this instrument will not conflict with or contravene any contractual restriction binding on the Debtor, including any license agreement relating to the collateral or any part thereof; that, except as heretofore disclosed to Creditor in writing, there are no legal actions or administrative proceedings pending or threatened before any court or administrative agency involving the Collateral, or any part thereof; and that the Debtor will defend its title to the Collateral against the claims of all persons whatsoever.

3. USE AND OWNERSHIP PRIOR TO DEFAULT:

Unless and until an Event of Default shall occur and be continuing, the Debtor shall retain the legal and equitable title to the Collateral, and shall have the right to use and register the Collateral in the ordinary course of the business of the Debtor, but shall not be permitted to sell, assign, transfer or otherwise encumber the Collateral or any part thereof; provided, however, that nothing herein contained shall prohibit Debtor from failing to renew or otherwise abandoning any item included within the Collateral if, in the Debtor's good faith judgment, the retention of such item is not material to the proper conduct of Debtor's business, except that the Debtor shall not permit the expiration of registration of trademarks, in the United States Patent and Trademark Office, listed in Schedule A hereto, without the prior written consent of Creditor, which consent shall not be unreasonably withheld. In the event Debtor does not receive authorization from Creditor at least one month before any action must be taken in order to register or maintain registration for a mark, Creditor will be deemed to have acquiesced in and authorized Debtor to take appropriate action for the sole purpose of registering or maintaining registration or such mark.

4. REMEDIES ON DEFAULT:

Upon the occurrence of an Event of Default, Creditor shall be entitled to exercise in respect to the Collateral all of the rights and remedies available to a secured party upon default under the Code at that time, and, in addition thereto, the rights and remedies provided for herein and such other rights and remedies as might be provided for by law.

- (a) In the event of sale of the Collateral, or any part thereof, Creditor shall

give the Debtor reasonable notice of the time and place of any public sale thereof or of the time and place of any private sale or that any other intended disposition thereof is to be made. The requirement of reasonable notice shall be met if notice of the sale or other intended disposition is mailed, by Creditor, postage prepaid, to the Debtor at its address set forth on the first page hereof or such other address as the Debtor may by notice have furnished Creditor in writing for such purpose, at least ten days prior to the time of such sale or other intended disposition.

(b) If the Debtor shall fail to do any act or thing which it has covenanted to do hereunder or any representation or warranty of the Debtor shall be breached, Creditor may (but shall not be obligated to) do the same or cause it to be done or remedy any such breach and there shall be added to the liability of the Debtor hereunder the cost or expense incurred by Creditor in doing so, and any and all amounts expended by Creditor in taking any such action shall be repayable to it upon its demand to the Debtor thereof and shall bear interest at the same rate which would apply to such amounts if they were advances under the Credit Agreement, from and including the date advanced to the date of repayment.

(c) Debtor will, in the event of a sale, duly execute and acknowledge all documents necessary or advisable to record title to the Collateral in the name of the purchaser, including valid, recordable assignments of any and or all trademark registration listed in Schedule A hereof, together with the associated goodwill. In the event that the Debtor shall then fail or refuse to execute and deliver any or all documents necessary or advisable to record title to the Collateral in the name of the purchaser,

Debtor does hereby irrevocably appoint Creditor its attorney-in-fact to execute any or all of such documents on Debtors' behalf.

5. APPLICATION OF PROCEEDS:

All proceeds of Collateral shall be applied as follows:

First: to the payment of all expenses incurred by Creditor in connection with such sale, including but not limited to, the expenses of advertising the Collateral to be sold, all court costs and the reasonable fees of counsel to Creditor in connection therewith, and to the repayment of all advances made by Creditor hereunder for the account of the Debtor and the payment of all costs and expenses paid or incurred by Creditor in connection with this Agreement or the exercise of any right or remedy hereunder, to the extent that such advances, costs and expenses shall not theretofore have been reimbursed to Creditor; and

Second: to the payment in full of the Indebtedness, any surplus to be paid to the Debtor, its successors or assigns, or as a court of competent jurisdiction may direct.

6. PURCHASERS OF COLLATERAL:

Upon any sale of Collateral by Creditor hereunder (whether under power of sale herein granted, pursuant to judicial process otherwise), the receipt of Creditor or the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see the application of any part of the purchase money paid over to Creditor or such officer or be answerable in any way for the misapplication or non-application thereof.

7. INDEMNITY:

The Debtor agrees to indemnify and hold harmless Creditor from and against any and all claims, demands, losses, judgments and liabilities (including liabilities for penalties) of whatsoever kind or nature, and to reimburse Creditor for all costs and expenses, including attorneys' fees, growing out of or resulting from this Agreement, or the exercise by Creditor of any right or remedy granted to it hereunder. In no event shall Creditor be liable for any matter or thing in connection with this Agreement, other than to account for monies actually received by it in accordance with the terms hereof.

8. FURTHER ASSURANCES:

The Debtor agrees that it will join with Creditor in executing and, at its own expense, shall file and refile under the Code such financing statements, continuation statements and other documents in such offices as Creditor may deem necessary or appropriate and wherever required or permitted by law in order to perfect and preserve Creditor's security interest in the Collateral, and hereby authorizes Creditor to file financial statements and amendments thereto relative to all or any part of the Collateral without the signature of the Debtor where permitted by law, and agrees to do such further acts and things and execute and deliver to Creditor such additional conveyances, assignments, agreements and instruments as Creditor may require or deem advisable to carry into effect the purpose of this Agreement or to better assure and confirm unto Creditor its rights, powers and remedies hereunder.



9. TERMINATION:

This Agreement, and the security interest of Creditor hereunder, shall terminate when all obligations secured hereby have been fully paid and satisfied and the Credit Agreement and other Loan Documents, including Creditor's obligation to make advances and other financial accommodations to Debtor and Guarantors, have terminated, at which time Creditor shall release to the Debtor Creditor's security interest in the Collateral and, if requested by the Debtor, shall execute and file in each office in which any financing statement or assignment relative to the Collateral, or any part thereof, shall have been filed, a termination statement, assignment or other appropriate instrument releasing Creditor's interest therein, all without recourse upon warranty by Creditor and at the cost and expense of the Debtor.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their duly authorized officers as of the 31st day of August, 1998.

First Union National Bank

A. Smith Bowman Distillery, Incorporated

By: James F. Heatwole  
Name: JAMES F. HEATWOLE  
Title: VICE PRESIDENT

By: John B. Adams, Jr.  
Name: John B. Adams, Jr.  
Title: PRESIDENT & CEO

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