

5-3-99

RECOF  
T

05-03-1999



TEET

U.S. DEPARTMENT OF  
Patent and Trademark

Tab settings

101024999

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

1. Name of conveying party(ies):  
Beverage Canners International Corporation

- Individual(s)
- General Partnership
- Corporation-State (DE)
- 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: April 21, 1999

2. Name and address of receiving party(ies)

Name: Heller Financial, Inc.

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

Street Address : 500 West Monroe Street

City: Chicago State: IL Zip: 6066

Individual(s) citizenship \_\_\_\_\_

Association \_\_\_\_\_

General Partnership \_\_\_\_\_

Limited Partnership \_\_\_\_\_

Corporation State Delaware

Other \_\_\_\_\_

If assignee is not domiciled in the United States, a designation is attached:  Yes  No  
(Designations must be a separate document from assignment)  
Additional name(s) & address(es) attached?  Yes  No

5-3-99

4. Application number(s) or trademark

A. Trademark Application No.(s)

B. Trademark Registration

1,915,283

Additional numbers attached?  Yes  No

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

Name: \_\_\_\_\_

Internal Address: Federal Research Corp.

Street Address: 400 Seventh St NW

Suite 101

City: Washington Stat. DC ZIP 20004

6. Total number of applications and registrations 1

7. Total fee (37 CFR 3.41) \$ 40.00

Enclosed

Authorized to be charged to deposit

8. Deposit account number: \_\_\_\_\_

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

05/04/1999 DCDATES 00000028 1915283

DO NOT USE THIS SPACE

01 FC:481

40.00.00

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.

Nancy A. Butler

Name of Person

Nancy Butler

Signature

April 28, 1999

Date

Total number of pages including cover sheet, attachments, and 11

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

TRADEMARK  
REEL: 1890 FRAME: 0263

## TRADEMARK ASSIGNMENT AND SECURITY AGREEMENT

**WHEREAS, BEVERAGE CANNERS INTERNATIONAL CORPORATION**, a corporation formed under the laws of Delaware ("**BCIC**"), located at 3595 N.W. 110th Street, Miami, Florida 33167, has adopted, used and is using, among others, the marks, together with the goodwill of the business symbolized by the marks, for which there are registrations or pending applications in the United States Patent and Trademark Office under the numbers shown in Schedule A-1 ("**Schedule A-1 Marks**") and Schedule A-2 ("**Schedule A-2 Marks**") (such Schedule A-1 Marks and Schedule A-2 Marks, collectively, together with the goodwill of the business symbolized by such marks, and all applications therefor, being hereinafter referred to as the "**Schedule A Marks**") and Schedule B (such marks, together with the goodwill of the business symbolized by such marks, and all applications therefor, being hereinafter referred to as the "**Schedule B Marks**"), respectively, in each case attached hereto and by this reference made a part hereof; and

**WHEREAS, BCIC**, certain of its affiliates, as borrowers, and Heller Financial, Inc., a Delaware corporation (in its individual capacity, "**Heller**"), as lender, have previously entered into a certain Loan and Security Agreement dated as of November 28, 1994, as amended (such Loan and Security, as amended through but not including the date hereof, being hereinafter referred to as the "**Original Loan Agreement**");

**WHEREAS**, pursuant to the Original Loan Agreement, BCIC has previously executed in favor of Heller that certain Trademark Collateral Security Agreement dated as of November 28, 1994 (the "**Original Trademark Security Agreement**"), evidencing the assignment unto Heller of, and the grant to Heller of a security interest in, the Schedule A Marks;

**WHEREAS**, pursuant to the Original Trademark Security Agreement, BCIC has previously executed in favor of Heller that certain Trademark Assignment of Security dated as of November 28, 1994 (the "**Original Trademark Assignment**"), evidencing the aforementioned assignment unto Heller of, and grant to Heller of a security interest in, the Schedule A-1 Marks;

**WHEREAS**, the Original Trademark Assignment was recorded in the United States Patent and Trademark Office on December 19, 1994, in the Trademark Division at Reel No. 1264, Frame 0051.

**WHEREAS**, pursuant to that certain Amended and Restated Loan and Security Agreement dated as of October 31, 1997 (as amended, restated, supplemented and otherwise modified and in effect from time to time, the "**Loan Agreement**"), Heller, in its respective capacities as the lender under the Original Loan Agreement and as agent (Heller, in such capacity, the "**Agent**") for itself and the other lenders from time to time under the Loan Agreement, including, without limitation, First Union Bank f/k/a CoreStates Bank, N.A. ("**First Union**"), and BCIC and certain

of its affiliates (each a "**Borrower**" and collectively the "**Borrowers**") have agreed to amend and restate the Original Loan Agreement in its entirety in order to, among other things, (a) join Agent and First Union as parties thereto and (b) evidence the assignment and delegation by Heller to Agent of all of Heller's rights, remedies, duties and other obligations under each of the Loan Documents, including, without limitation, the Original Trademark Security Agreement;

**WHEREAS**, pursuant to the Loan Agreement, BCIC has previously executed in favor of Agent that certain First Amendment to Trademark Collateral Security Agreement dated as of October 31, 1997 (the "**First Amendment**", together with the Original Trademark Security Agreement, the **Trademark Security Agreement**, as the same may be amended, restated, supplemented or otherwise modified from time to time), evidencing the assignment unto Agent of, and the grant to Agent of a security interest in, the Schedule A-2 Marks;

**WHEREAS**, pursuant to the Trademark Security Agreement, BCIC has previously executed in favor of Agent that certain Trademark Assignment and Security Agreement (the "**Trademark Assignment**"), evidencing the aforementioned assignment unto Agent of, and grant to Agent of a security interest in, the Schedule A-2 Marks;

**WHEREAS**, the Trademark Assignment was recorded in the United States Patent and Trademark Office on November 13, 1997, in the Trademark Division at Reel No. 1654, Frame 0032.

**WHEREAS**, BCIC has acquired Acappella Natural Spring Water, Inc., a Florida corporation ("**Acappella**") as a wholly-owned subsidiary and received an assignment of the Schedule B Marks;

**WHEREAS**, pursuant to the certain Assumption and Joinder Agreement of even date herewith, and Agent has agreed to (i) join Acappella as a "Borrower" under the Loan Agreement and (ii) waive the Event of Default arising as a result of the acquisition by BCIC of Acappella;

**WHEREAS**, Lender has required, as a condition, among others, to the execution and delivery of the Assumption Agreement, that BCIC execute and deliver this Agreement to Lender;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. BCIC hereby pledges and assigns and grants to Agent, for the benefit of Lenders, a security interest in, as and by way of a first security interest having priority over all other security interests with power of sale to the extent permitted by applicable law all of BCIC's now owned or existing and hereafter acquired or arising ( a word or words are left out) United States registered trademarks shown in Schedule B attached hereto and made a part hereof (the "Trademarks") together with the goodwill of the business symbolized by the Trademarks and all proceeds of same to secure the prompt and complete payment, performance and observance when

due (whether at stated maturity, by acceleration or otherwise) of all Obligations (as defined in the Loan Agreement).

2. This Agreement is intended to create an assignment of the Trademarks and goodwill of the business for collateral purposes only. Subject to the security interest in the Trademarks and goodwill created by this Agreement, BCIC shall continue to own and utilize the Trademarks and goodwill and to control the nature and quality of the goods manufactured or sold and the services rendered under the Trademarks. Upon payment and performance of all Obligations (as defined in the Loan Agreement), the security interest of Agent in the Trademarks and goodwill will be released.

3. BCIC represents and warrants that: (a) BCIC lawfully possesses and owns the Trademarks free from all liens, security interests, claims and encumbrances except those in favor of Lender; (b) BCIC has made no prior assignments or transfers and has granted no other security interests in the Trademarks; (c) BCIC will not, without the prior written consent of Agent, sell, assign, grant a security interest in or otherwise transfer the Trademarks; and (d) BCIC knows of no infringements with respect to the Trademarks.

4. BCIC agrees to: (i) not abandon any Trademark without the prior written consent of Agent and (ii) use its best efforts to maintain in full force and effect the Trademarks that are or shall be necessary or economically desirable in the business operations of BCIC or any of its Subsidiaries. Any expenses incurred in connection with the foregoing shall be borne by the BCIC and its Subsidiaries. BCIC shall not have any duty with respect to the Trademarks.

5. Upon the occurrence of any Event of Default (as defined in the Loan Agreement), Agent shall have all of the rights and remedies set forth in the Loan Agreement and all of the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable state or federal laws. In addition to the foregoing and all other rights and remedies of Agent, upon the occurrence of an Event of Default, Agent shall have the immediate right to (ii) establish such reasonable additional product quality controls as Agent or its agent, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by BCIC or any of its Subsidiaries under the Trademarks or in connection when such Trademarks are used and (iii) sell, assign and transfer to itself or to any other person: all right, title and interest in and to the Trademarks; the goodwill of the business symbolized by the Trademarks; BCIC's entire inventory of labels and decals not then affixed to its products; and ownership of the right to operate and control the business under the Trademarks. Agent shall credit the proceeds of any such sale or transfer against the Liabilities (as defined in the Loan Agreement).

6. BCIC agrees that, in the event Agent exercises its right to sell, assign or transfer the Trademarks after an Event of Default, BCIC shall: (a) promptly change its name so that it no longer uses any words or symbols similar to the Trademarks in its business; and (b) never thereafter, without the written authorization of the owner of owners of the Trademarks, use any of the Trademarks on or in connection with the same type of goods or services or any closely related goods or services either in the United States of America, its territories or possessions or in countries outside the United States.

7. BCIC agrees to execute and deliver to Agent any further documentation or papers, and take all such other actions, as are necessary to carry out the intent and purpose of this Agreement without any charge or expense to Agent or the Lenders.

8. BCIC will defend at its own cost and expense any action, claim or proceeding affecting the Trademarks or the interest of Agent therein. BCIC agrees to reimburse Agent for all costs and expenses incurred by Agent in defending any such action, claim or proceeding.


9. This Agreement shall be in addition to the Loan Agreement and all other present and future instruments, documents and agreements among Borrowers, Agent and Lenders, and it shall not be deemed to affect, modify or limit any of the same or any rights of Agent or Lenders under the Loan Agreement.

**[SIGNATURE PAGE FOLLOWS]**

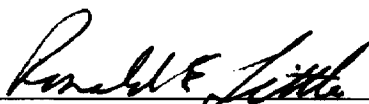
BCIC and Agent each expressly acknowledge and affirm that the rights and remedies of Agent with respect to the assignments and security interests granted hereby as are more fully set forth in the Trademark Security Agreement.

Dated: April 21<sup>st</sup>, 1999

**BEVERAGE CANNERS INTERNATIONAL  
CORPORATION**

By:   
Hy Vaupen  
Executive Vice President

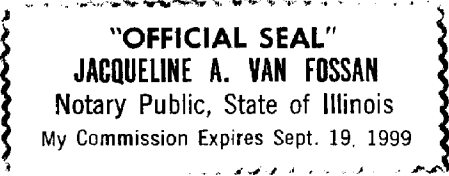
**HELLER FINANCIAL, INC.**, individually and in  
its capacity as Agent

By:   
Ronald E. Little  
Vice President

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK         )

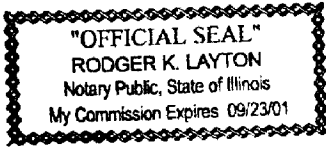
On this 15<sup>th</sup> day of April, 1999, before me personally came Hy Vaupen, to me know, who, being by me duly sworn, did depose and say that he is the Executive Vice President of Beverage Cannery International Corporation, a Delaware corporation, the corporation described in and which executed the foregoing instrument, and that he signed his name thereto by order of the board of directors of said corporation.

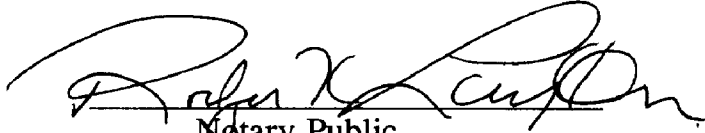
*Jacqueline A Van Fossan*  
\_\_\_\_\_  
Notary Public



STATE OF ILLINOIS        )  
                                      ) SS  
COUNTY OF COOK        )

On this 20<sup>th</sup> day of April, 1999, before me personally came Ronald E. Little, to me know, who, being by me duly sworn, did depose and say that he is a Vice President of Heller Financial, Inc., a Delaware 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.



  
Notary Public



# SCHEDULE A-1

## Registered Marks:

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
TREASURE GROVE	1,889,417	4/11/95
CRYSTAL BAY	1,863,297	11/15/94
CARIBBEAN BREEZE	1,657,570	9/17/91
NATURALLE	1,448,771	7/21/87
THE MONITOR FOR CICS	1,353,436	8/6/85
RITZ	1,533,527	4/4/89
COPA RITZ	1,273,011	4/3/84
SILVER GLACIER	1,096,218	7/11/78
SILVER ROCK	1,091,056	5/9/78
GLACIER ROCK	1,096,217	7/11/78
GLACIER SPRING	1,096,216	7/11/78
R-O WATER DRINK R-O PUREST H2O	1,090,450	5/2/78

**SCHEDULE A-2**

**Registered Marks:**

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
GLACIER PEAK	2,044,438	3/11/97
DR. RITZ	2,044,407	3/11/97
TEA WORLD	1,766,872	4/20/93
NATURALLE	1,353,463	8/6/85

**Pending Marks:**

<u>Mark</u>	<u>Application Number</u>	<u>Application Date</u>
JUST WATER	75,208,770	12/5/96
GLACIER BAY	74-616,493	12/29/94
GLACIER CLEAR	74-616,489	12/29/94
GLACIER MIST	74-616,488	12/29/94
ISLAND BREEZE	74-576,705	9/22/94

**SCHEDULE B**

**Registered Marks:**

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
ACAPPELLA	1,915,283	8/29/95