

07-12-1999

COVER SHEET
ONLY

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office



Tab settings

To the Honorable Commissioner

101088877

and the attached original documents or copy thereof.

1. Name of conveying party(ies):

Henry Thayer Company
1 Fresenius Road
Westport, CT 06880

7-9-99

- 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: 6/29/99

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

Name: First International Bank, N.A.

Internal Address:

Street Address: 280 Trumbull Street

City: Hartford State: CT ZIP: 06103

- 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

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

A. Trademark Application No.(s)

B. Trademark registration No.(s)

1,453,892 1,097,168
1,262,819 1,093,555
1,089,029

Additional numbers attached? Yes No

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

Name: Stephen Oppenheim, Esq.

Internal Address: Updike, Kelly & Spellacy, P.C.

Street Address: One State Street

P.O. Box 231277

City: Hartford State: CT ZIP: 06123-1277

6. Total number of applications and registrations involved:

5

7. Total fee (37 CFR 3.41) \$ 140.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

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

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.

Stephen Oppenheim, Esq.

Name of Person Signing:

Signature:

6/29/99

Date:

Total number of pages comprising cover sheet:

1

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

07/12/1999 DNGUYEN 00000174 1453892

01 FC:481
02 FC:482

40.00 DP
100.00 DP

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 min document to be recorded, including time for reviewing the document and gathering the data and completing and reviewing the sample cover sheet. Send comments regarding this burden to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

PATENT AND TRADEMARK SECURITY AGREEMENT

This Agreement, dated as of June 29, 1999, is made by and between HENRY THAYER COMPANY, a Delaware corporation whose address and principal place of business is 1 Fresenius Road, Westport, Connecticut 06880 and FIRST INTERNATIONAL BANK, N.A., a national banking institution having a principal place of business at 280 Trumbull Street, Hartford, Connecticut 06103 (the "Secured Party").

Recitals

The Debtor and the Secured Party have entered into two loan transactions of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, collectively, the "Loan") evidenced by, *inter alia*, a U.S. Small Business Administration Note executed by the Debtor in the original principal amount of \$350,000.00 and a Commercial Revolving Promissory Note executed by the Debtor in the original principal amount of up to \$50,000 (collectively, the "Note"; the Note, along with any documents evidencing, governing and/or securing the Loan are herein collectively referred to as the "Loan Documents").

As a further condition to making the Loan or other financial accommodation, the Secured Party has required the execution and delivery of this Agreement by the Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Loan Documents that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document which the Debtor may now or at any time hereafter owe to the Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Loan.

"Patents" means all of the Debtor's right, title and interest in and to all (i) now existing or hereafter arising or acquired patents, patent applications and patentable inventions, and the United States and foreign country registrations therefor (including but not limited to, those listed on Exhibit A attached hereto and made a part hereof); (ii) common law rights with respect to each; (iii) right to sue in Secured Party's own name or joined with the Debtor, for past, present or future infringements thereof; (iv)

any continuations, divisions, substitutes, reissues, renewals and/or extensions thereof; (v) rights corresponding to any of the foregoing throughout the world, all whether now existing or hereafter arising; (vi) all rights to income, royalties, profits, awards, damages, or other rights relating thereto; and (vii) proceeds of any of the foregoing.

“Trademarks” means all of the Debtor’s right, title and interest in and to trademarks, service marks, collective membership marks, the respective goodwill associated with each, and licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

Without limiting the generality of the foregoing, the Debtor hereby further grants, assigns and conveys to Secured Party an exclusive license under and to the Patents and Trademarks for the purpose of enforcing all of Secured Party's rights and remedies under this document and the Loan Documents. Any right to sue shall be discretionary and not an obligation of Secured Party.

2. Security Interest. The Debtor hereby irrevocably pledges and assigns to, and grants the Secured Party a security interest, with power of sale to the extent permitted by law (the “Security Interest”), in the Patents and in the Trademarks to secure payment of the Obligations.

3. Representations, Warranties and Agreements. The Debtor hereby represents, warrants and agrees as follows:

(a) ***Existence; Authority***. The Debtor is a corporation, having full power to and authority to make and deliver this Agreement. The execution, delivery and performance of this Agreement by the Debtor have been duly authorized by all necessary action of the Debtor’s stockholders and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or its articles of incorporation or bylaws or any agreement presently binding on it. This Agreement has been duly executed and delivered by the Debtor and constitutes the Debtor’s lawful, binding and legally enforceable obligation. The correct name of the Debtor is HENRY THAYER COMPANY. The authorization, execution, delivery and performance of this Agreement do not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.

(b) ***Patents***. Exhibit A accurately lists all Patents owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of registrations pertaining to the Patents as of the date hereof.

(c) ***Trademarks***. Exhibit B accurately lists all Trademarks owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all registrations pertaining thereto as of the date hereof.

(d) **Title.** The Debtor has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all security interests, liens and encumbrances, except the Security Interest. The Debtor (i) will have, at the time the Debtor acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all security interests, liens and encumbrances, except the Security Interest, and (ii) will keep all Patents and Trademarks free and clear of all security interests, liens and encumbrances except the Security Interest.

(e) **No Sale.** The Debtor will not sell or otherwise dispose of the Patents or Trademarks, or any interest therein, without the Secured Party's prior written consent.

(f) **Defense.** The Debtor will at its own expense, and using its best efforts, protect and defend the Patents and Trademarks against all claims or demands of all persons other than the Secured Party.

(g) **Maintenance.** The Debtor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to register and all affidavits and renewals possible with respect to issued registrations. The Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit in support thereof, without first providing the Secured Party: (i) sufficient written notice to allow the Secured Party to timely pay any such maintenance fees or annuity which may become due on any of said Patents or Trademarks, or to file any affidavit with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit, should such be necessary or desirable.

(h) **Secured Party's Right to Take Action.** If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (g), immediately upon the occurrence of such failure, without notice or lapse of time), or if the Debtor notifies the Secured Party that it intends to abandon a Patent or Trademark, the Secured Party may (but need not) perform or observe such covenant or agreement on behalf and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure.

(i) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable

attorneys' fees) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (h) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the highest rate then applicable to any of the Obligations.

(j) ***Power of Attorney.*** To facilitate the Secured Party's taking action under subsection (h) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Debtor under this Section 3, or, necessary for the Secured Party, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Loan and the payment and performance of all Obligations (as defined therein).

4. **Debtor's Use of the Patents and Trademarks.** The Debtor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Loan Documents, shall occur; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may exercise any or all remedies available under the Loan Documents.

(b) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

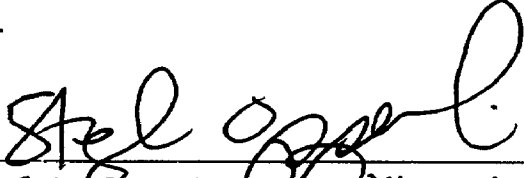
(c) The Secured Party may enforce the Patents and Trademarks and any licenses thereunder, and if Secured Party shall commence any suit for such enforcement, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

7. Miscellaneous. This Agreement has been duly and validly authorized by all necessary action, corporate or otherwise. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of the State of Connecticut without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

STATE OF CONNECTICUT)
) ss. Hartford
COUNTY OF HARTFORD)

Before me, the undersigned, this 29th day of June, 1999, personally appeared David Cantor, known to me to be a Vice President of FIRST INTERNATIONAL BANK, N.A., and that he as such officer, signer and sealer of the foregoing instrument, acknowledged the execution of the same to be his free act and deed individually and as such officer, and the free act and deed of said corporation.

In Witness Whereof, I hereunto set my hand.



STEPHEN JOSEPH
Commissioner of the Superior Court
Notary Public
~~My Commission Expires:~~

EXHIBIT A

UNITED STATES ISSUED PATENTS

<u>Title</u>	<u>Patent Number</u>	<u>Issue Date</u>
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FOREIGN ISSUED PATENTS

<u>Title</u>	<u>Country</u>	<u>Patent Number</u>	<u>Issue Date</u>
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EXHIBIT B

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS

AND COLLECTIVE MEMBERSHIP MARKS

REGISTRATIONS

	<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
1.	Coughmasters	1,453,892	August 25, 1987
2.	Two Trees	1,262,819	January 3, 1984
3.	Thayers	1,089,029	April 11, 1978
4.	See Schedule A	1,097,168	July 25, 1978
5.	See Schedule B	1,093,555	June 20, 1978

APPLICATIONS

COLLECTIVE MEMBERSHIP MARKS

UNREGISTERED MARKS

SCHEDULE A



SCHEDULE B

