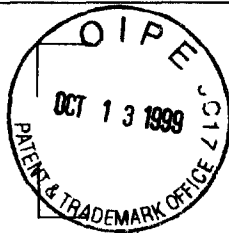


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10-13-99



10-15-1999



RECORDATION OF
TRADEMARKS
101172534

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

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
Effective Date
Month Day Year
- Merger
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year
09 30 99

Name

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/AK/A/T/A

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual General Partnership Limited Partnership
- 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.)

10/15/1999 DNGUYEN 00000043 75498118

FOR OFFICE USE ONLY

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40.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

TRADEMARK

REEL: 001974 FRAME: 0832

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

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

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

#

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)

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

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:

#

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

October 12, 1999

Name of Person Signing

Signature

Date Signed

TRADEMARK AND TRADEMARK APPLICATIONS SECURITY AGREEMENT

This Trademark and Trademark Applications Security Agreement (the "**Trademark Security Agreement**") is made as of the 30th day of September, 1999 by Smokers' Depot LLC, a North Carolina limited liability company with its principal office at 7225 Wrightsville Ave., Suite 300, Wilmington, North Carolina 28403 (the "**Company**"), and BankBoston Retail Finance Inc., a Delaware corporation with an address of 40 Broad Street, Boston, Massachusetts (the "**Secured Party**").

RECITALS

WHEREAS, pursuant to a certain Loan and Security Agreement dated as of September 30, 1999 (as amended from time to time, the "**Loan Agreement**") made between the Company and the Secured Party, the Secured Party has entered into a certain loan arrangement with the Company;

WHEREAS, pursuant to the Loan Agreement, the Company has granted to the Secured Party a security interest in the Company's Collateral (as defined in the Loan Agreement) to secure the Liabilities (as defined in the Loan Agreement) of the Company to the Secured Party;

WHEREAS, to further secure the Liabilities and to more fully vest the security interest granted in the Loan Agreement, the Company has executed this Trademark Security Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company, and the Secured Party agree as follows:

1. All capitalized terms used herein and not otherwise defined have the same meaning herein as in the Loan Agreement.
2. To secure the Liabilities, the Company hereby grants a security interest in favor of, and collaterally assigns to the Secured Party, with power of sale in and to the following and all proceeds thereof:
 - (a) All of the Company's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks, 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 Company's rights corresponding to any of the foregoing throughout the world.

All of the foregoing trademarks, trademark applications, service marks, registered service marks, and service mark applications described in Subsection 2.(a), together with the items respectively described in Subsections 2.(b) through and including 2.(e) are hereinafter individually and/or collectively referred to as the "**Trademarks**".

3. Until this Trademark Security Agreement is terminated in writing by a duly authorized officer of the Secured Party, the Company shall undertake the following with respect to each Trademark:

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

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

(c) At Company's sole cost, expense, and risk, take any and all action which may be reasonably necessary or desirable to protect the Trademarks, including, without limitation, the prosecution and defense of infringement actions.

4. The Company 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 Company.

(b) No liens, claims or security interests have been granted in any Trademark by the Company to any person other than to the Secured Party, and the Trademarks shall hereafter remain free and clear of all liens, Encumbrances, or security interests to any person other than to the Secured Party.

5. In order to further secure the Liabilities:

(a) The Company shall give the Secured Party written notice (with reasonable detail) within ten (10) days following the occurrence of any of the following:

(i) The Company obtains rights to, and files 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 servicemark applications, (other than the Company's right to sell products containing the trademarks of others in the ordinary course of Company's business).

(ii) The Company'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 Company's right to sell products containing the trademarks of others in the ordinary course of Company's business).

(iii) The Company enters into any new trademark license agreement or service mark license agreement.

(b) The provisions of this Trademark Security Agreement shall automatically apply to any such additional property or rights described in Section 5(a) above, all of which shall be deemed to be and treated as "Trademarks" within the meaning of this Trademark Security Agreement.

(c) The Company hereby authorizes the Secured Party to modify this agreement by amending **EXHIBIT A** to include any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, *provided, however*, the modification of said **EXHIBIT** shall not be a condition to the creation or perfection of the security interest created hereby.

6. Prior to the Secured Party's giving of notice to the Company following the occurrence of an Event of Default, the Company 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 Company to protect the Marks against encroachment by third parties, *provided, however*:

(a) The Company first provides the Secured Party with written notice of the Company's intention to so sue for enforcement of any Mark.

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

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

7. In the event of
- (a) the Company's failure, within fifteen (15) days of written notice from the Secured Party, to cure any failure by the Company to perform any of the Company's obligations set forth in Section 6; and/or
 - (b) the occurrence of any Event of Default,

the Secured Party, acting in its own name or in that of the Company, may (but shall not be required to) act in the Company's place and stead and/or in the Secured Party's own right in connection therewith.

8. Upon the occurrence of any Event of Default, the Secured Party 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 Trademarks, in addition to which the Secured Party, subject to the terms of the Loan Agreement, may sell, license, assign, transfer, or otherwise dispose of the Trademarks. Any person may conclusively rely upon an affidavit of an officer of the Secured Party that an Event of Default has occurred and that the Secured Party is authorized to exercise such rights and remedies.

9. The Company hereby irrevocably constitutes and designates the Secured Party as and for the Company's attorney in fact, exercisable following the occurrence of any Event of Default:

- (a) To exercise any of the rights and powers referenced in Sections 3 and 6 hereof.
- (b) To execute all and singular such instruments, documents, and papers as the Secured Party 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 Trademarks.

The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until the within Trademark Security Agreement is terminated by a duly authorized officer of the Secured Party.

10. Any use by the Secured Party of the Trademarks as authorized hereunder in connection with the exercise of the Secured Party's right and remedies under this Trademark Security Agreement and the Security Agreement shall be coextensive with Company's rights

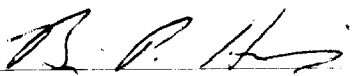
thereunder and with respect thereto and without any liability for royalties or other related charges from the Secured Party to the Company.

11. Following the payment and satisfaction of all Liabilities, and the termination of any obligations of the Secured Party under the Loan Agreement, this Trademark Security Agreement shall terminate and the Secured Party shall execute and deliver to Company, at Company's cost and expense, all such instruments as the Company reasonably may request to release any encumbrance in favor of the Secured Party created hereby or pursuant hereto, subject, however, to any disposition thereof which may have been made by Secured Party pursuant hereto or pursuant to the Loan Agreement.
12. The Company shall, at the request of the Secured Party, do any and all acts and execute any and all documents required by the Secured Party in connection with the protection, preservation, and enforcement of the Secured Party's rights hereunder.
13. The Company shall, upon demand, reimburse the Secured Party for all reasonable costs and expenses incurred by the Secured Party in the exercise of any rights hereunder (including, without limitation, reasonable fees and expenses of counsel).
14. This Trademark Security Agreement is intended to be supplemental of the Loan Agreement. All provisions of the Loan Agreement shall apply to the Trademarks and the Secured Party shall have the same rights with respect to any and all Trademarks granted the Secured Party to secure the Liabilities hereunder as thereunder. In the event of a conflict between this Trademark Security Agreement and the Loan Agreement, the terms of this Trademark Security Agreement shall control with respect to the Trademarks.

IN WITNESS WHEREOF, the Company and the Secured Party respectively have caused this Trademark Security Agreement to be executed by officers duly authorized so to do on the date first above written.

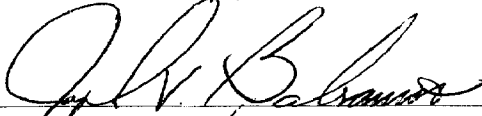
SMOKERS' DEPOT LLC

(The "Company")

By 
Title: PRESIDENT.

BANKBOSTON RETAIL FINANCÉ INC.

(The "Secured Party")

By 
Title: DIRECTOR

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss

Then personally appeared before me Brian P. Harrigan who acknowledged that such person is the duly authorized President of Smokers' Depot LLC and that such person had executed the foregoing instrument on its behalf and that such is the free act and deed of Smokers' Depot LLC.

Witness my hand and seal this 30th day of September, 1999.

David S. Bernad
David S. Bernad, Notary Public
My Commission Expires: 7/10/03

COMMONWEALTH OF MASSACHUSETTS

County of SUFFOLK

Then personally appeared before me Jos V Balsano, who acknowledged that such person is the duly authorized Director of BankBoston Retail Finance Inc., and that such person executed the foregoing instrument on its behalf and such is the free act and deed of BankBoston Retail Finance Inc.

Witness my hand and seal this 30th day of September, 1999.

David S. Bernad
David S. Bernad, Notary Public
My Commission Expires: 7/10/03

EXHIBIT A

<u>Mark</u>	<u>Serial #</u>	<u>Filing Date</u>	<u>Registration #</u>
Smokers' Depot and design	75/498,118	June 8, 1998	Pending

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