

Tab settings = = =

mtd
10-22-99

RE

10-28-1999



101183503

SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Y T-763/99

D

Attached original documents or copy thereof.

To the Honorable Commissioner of F

1. Name of conveying party(ies):

ASIAN AMERICAN PARTNERS

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

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

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

Execution Date: OCTOBER 18, 1999

2. Name and address of receiving party(ies)

Name: CONGRESS FINANCIAL CORPORATION

Internal Address: _____

Address: 1133 AVENUE OF THE AMERICAS

NEW YORK State: NY ZIP: 10036

Individual(s) citizenship _____

- General Partnership
- Limited Partnership
- Corporation-State Delaware
- 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):

A. Trademark Application No.(s)

75/643,913
75/427,181

B. Trademark Registration No.(s)

1,350,760	1,607,030	1,245,358
1,858,984	1,724,663	
2,132,402	1,693,120	
1,428,449	2,117,883	
	2,142,674	

Additional numbers attached? Yes No

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

Name: JAMES E. SHLESINGER, ESQ.

SHLESINGER, ARKWRIGHT & GARVEY LLP
Internal Address: _____

Street Address: 3000 SOUTH EADS STREET

City: ARLINGTON State: VA ZIP: 22202

10/27/1999 DNGUYEN 00000163 75643913

6. Total number of applications and registrations involved: _____

12

7. Total fee (37 CFR 3.41).....\$ \$ 315.00

Enclosed

Authorized to be charged to deposit account

(ONLY IF ANY INSUFFICIENCY)

8. Deposit account number: 19-2105

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

01 FC:481
02 FC:482

40.00 OP
275.00 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.

James E. Shlesinger
Name of Person Signing

James E. Shlesinger
Signature

Oct. 22, 1999

Date

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

10

**SECURITY AGREEMENT
(TRADEMARKS)**

SECURITY AGREEMENT (TRADEMARKS), dated as of October 18, 1999, between ASIAN AMERICAN PARTNERS, a Delaware general partnership with offices at 1001 Washington Street, Conshohocken, Pennsylvania 19428 ("Debtor"), and CONGRESS FINANCIAL CORPORATION, a Delaware corporation with an office at 1133 Avenue of the Americas, New York, New York 10036 ("Secured Party").

W I T N E S S E T H:

WHEREAS, Secured Party and Debtor have entered into a Loan and Security Agreement dated the date hereof (together with all supplements and amendments thereto and all extensions, renewals, restatements and replacements thereof, the "Loan Agreement," and such Loan Agreement together with all agreements, instruments and documents now or hereafter entered into or delivered in connection therewith, collectively, the "Financing Agreements"), pursuant to which Secured Party may make loans and advances and provide other financial arrangements to Debtor, subject to the terms and provisions of the Financing Agreements;

WHEREAS, Debtor grants to Secured Party a security interest in certain of its personal property pursuant to the Loan Agreement;

WHEREAS, Debtor owns all right, title, and interest in and to, among other things, certain United States and foreign trademarks, trademark registrations, and trademark applications and trade names, including, but not limited to, those set forth on Exhibit 1 hereto (the "Trademarks");

WHEREAS, in order to secure Debtor's Obligations (as defined in the Loan Agreement) to Secured Party, Debtor has agreed to grant to Secured Party a security interest in the Trademarks and the goodwill and certain other assets with respect to the Trademarks, as further specifically set forth herein, and Secured Party has requested Debtor to enter into this Agreement to evidence such security interest.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for valuable consideration received and to be received, as security for the full payment and performance of the Obligations, and to induce Secured Party to make loans and advances to Debtor, Debtor hereby grants to Secured Party a security interest in the following property of Debtor:

- (a) the Trademarks;

- (b) all registrations of the Trademarks in any state of the United States and any foreign countries and localities;
- (c) all trade names, trademarks and trademark registrations hereafter adopted or acquired and used by Debtor, including, but not limited to, those which are based upon or derived from the Trademarks or any variations thereof (the "Future Trademarks");
- (d) all extensions, renewals, and continuations of the Trademarks and Future Trademarks and the registrations referred to in clause (b) above;
- (e) all rights to sue for past, present and future infringements of the Trademarks and Future Trademarks;
- (f) all packaging, labeling, trade names, service marks, logos, and trade dress including or containing the Trademarks and Future Trademarks, or a representation thereof, or any variation thereof;
- (g) all licenses and other agreements under which Debtor is licensor, and all fees, rents, royalties, proceeds or monies thereunder, relating to the Trademarks and Future Trademarks, and the use thereof; and
- (h) all goodwill of Debtor's business connected with, symbolized by or in any way related to the items set forth in clauses (a) through (g) above.

All of the foregoing items set forth in clauses (a) through (h) are hereinafter referred to collectively as the "Collateral."

Debtor hereby covenants with Secured Party as follows:

1. Debtor's Obligations. Debtor agrees that, notwithstanding this Agreement, it will perform and discharge and remain liable for all its covenants, duties, and obligations arising in connection with the Collateral and any licenses and agreements related thereto. Secured Party shall have no obligation or liability in connection with the Collateral or any licenses or agreements relating thereto by reason of this Agreement or any payment received by Secured Party relating to the Collateral and Secured Party shall not be required to perform any covenant, duty or obligation of Debtor arising in connection with the Collateral or any license or agreement related thereto or to take any other action regarding the Collateral or any such licenses or agreement.

2. Representations and Warranties. Debtor represents and warrants to Secured Party that: (a) Debtor is the beneficial and record owner of the Collateral, and there are no adverse claims existing with respect to its title to or the validity of the Collateral; (b) the Trademarks are the only trademarks, trademark registrations, trademark applications and trade names in which Debtor has any or all right, title and interest; (c) none of the Collateral is subject to any mortgage, pledge, lien, security interest, lease, charge, encumbrance or license (by Debtor

as licensor); and (d) when this Agreement is filed in the United States Patent and Trademark Office (the "Trademark Office") and the Secured Party has taken the other actions contemplated by the Loan Agreement and in this Agreement, this Agreement will create a legal and valid perfected and continuing lien on and security interest in the Collateral in favor of Secured Party, enforceable against Debtor and all third parties, subject to no other mortgage, lien, charge, encumbrance, or security or other interest.

3. Covenants. Debtor will maintain and renew all items of Collateral and all registrations of the Collateral to the extent it deems such maintenance and renewal to be commercially advantageous and will defend the Collateral against the claims of all persons. Debtor will maintain the same standards of quality (which Secured Party has reviewed) for the goods and services in connection with which the Trademarks are used as Debtor maintained for such goods and services prior to entering into this Agreement. Secured Party shall have the right to enter upon Debtor's premises at all reasonable times (upon prior written notice as set forth in the Loan Agreement) to monitor such quality standards. Without limiting the generality of the foregoing, Debtor shall not permit the expiration, termination or abandonment of any Trademark or Future Trademark without the prior written consent of Secured Party; provided, however, that no such consent is required if Debtor deems such expiration, termination or abandonment to be commercially advantageous. If, before the Obligations have been satisfied in full and the Financing Agreements have been terminated, Debtor shall obtain rights to or be licensed to use any new trademark, or become entitled to the benefit of any trademark application or trademark registration, the provisions of Section 1 hereof shall automatically apply thereto and Debtor shall give Secured Party prompt notice thereof in writing.

4. Use Prior to Default. Effective until Secured Party's exercise of its rights and remedies upon an Event of Default under and as defined in the Financing Agreements (an "Event of Default"), Secured Party hereby grants to Debtor the right to use the Collateral in the ordinary course of its business, subject to the terms and covenants of the Financing Agreements and this Agreement.

5. Remedies Upon Default. Whenever any Event of Default shall occur and be continuing, Debtor's rights pursuant to Section 4 hereof shall, at Secured Party's option, terminate and be null and void, and Secured Party shall have all the rights and remedies granted to it in such event by the Financing Agreements, which rights and remedies are specifically incorporated herein by reference and made a part hereof, and any and all rights and remedies of law available to Secured Party. Secured Party in such event may collect directly any payments due to Debtor in respect of the Collateral and, subject to any limitations imposed under any license agreements constituting part of the Collateral, may sell, license, lease, assign, or otherwise dispose of the Collateral in the manner set forth in the Financing Agreements. Debtor agrees that, in the event of any disposition of the Collateral upon any such Event of Default, it will duly execute, acknowledge, and deliver all documents necessary or advisable to record title to the Collateral in any transferee or transferees thereof, including, without limitation, valid, recordable assignments of the Trademarks and Future Trademarks. In the event Debtor fails or refuses to execute and deliver such documents, Debtor hereby irrevocably appoints Secured Party as its attorney-in-fact, with power of substitution, to execute, deliver, and record any such documents on Debtor's behalf. Notwithstanding any provision hereof to the contrary, during the

continuance of an Event of Default, Debtor may sell merchandise or services bearing the Trademarks and Future Trademarks in the ordinary course of its business and in a manner consistent with its past practices, until it receives written notice from Secured Party to the contrary. The preceding sentence shall not limit any right or remedy granted to Secured Party with respect to Debtor's inventory under the Financing Agreements or any other agreement now or hereinafter in effect.

6. Power of Attorney. Concurrently with the execution and delivery hereof, Debtor shall execute and deliver to the Secured Party, in the form of Exhibit 2 hereto, five (5) originals of a Special Power of Attorney for the implementation of the assignment, sale or other disposal of the Trademarks and Future Trademarks pursuant to Section 5. Debtor and Secured Party hereby agree that Debtor shall deliver the foregoing Special Powers of Attorney to Debtor's counsel, Joel P. Perilstein, Esq., as escrow agent, to hold in escrow pursuant to a letter agreement dated of even date herewith among Secured Party, Debtor and escrow agent. Secured Party hereby agrees that it shall not exercise the rights granted in such Special Power of Attorney prior to an Event of Default. Debtor hereby releases Secured Party from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by Secured Party under the powers of attorney granted therein, other than actions taken or omitted to be taken through the bad faith, willful misconduct or gross negligence of Secured Party, as determined by a final, non-appealable order of a court of competent jurisdiction.

7. Cumulative Remedies. The rights and remedies provided herein are cumulative and not exclusive of any other rights or remedies provided by law. The rights and remedies provided herein are intended to be in addition to and not in substitution of the rights and remedies provided by the Financing Agreements or any other agreement or instrument delivered in connection therewith.

8. Amendments and Waivers. This Agreement may not be modified, supplemented, or amended, or any of its provisions waived at the request of Debtor, without the prior written consent of Secured Party. Debtor hereby authorizes Secured Party to modify this Agreement by amending Exhibit 1 hereto to include any Future Trademarks or additional licenses.

9. Waiver of Rights. No course of dealing between the parties to this Agreement or any failure or delay on the part of any such party in exercising any rights or remedies hereunder shall operate as a waiver of any rights and remedies of such party or any other party, and no single or partial exercise of any rights or remedies by one party hereunder shall operate as a waiver or preclude the exercise of any other rights and remedies of such party or any other party. No waiver by Secured Party of any breach or default by Debtor shall be deemed a waiver of any other previous breach or default or of any breach or default occurring thereafter.

10. Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto; provided, however, that no interest herein or in or to the Collateral may be assigned by Debtor without the prior written consent of Secured Party; and, provided further, that the Secured Party may assign

the rights and benefits hereof to any party acquiring any interest in the Obligations or any part thereof.

11. Further Acts. To the extent that Debtor deems it commercially advantageous to do so, Debtor shall have the duty to prosecute diligently any application for the Trademarks and Future Trademarks as of the date of this Agreement or thereafter, until the Obligations shall have been paid in full, and to make applications on material Future Trademarks in any country where Debtor does material business and to preserve and maintain all rights in the Trademarks and the other Collateral. Any expenses incurred in connection with such applications shall be borne by Debtor. Debtor shall not abandon any right to file a trademark application or registration for any trademark, nor abandon any such pending trademark application or registration, without the consent of Secured Party (such consent shall not be unreasonably withheld).

12. Enforcement. Upon an Event of Default, Secured Party shall have the right but shall in no way be obligated to bring suit in its own name to enforce the Trademarks, Future Trademarks, and any license under any of the foregoing, in which event Debtor shall at the request of Secured Party do any and all lawful acts and execute any and all proper documents that may be reasonably requested by Secured Party in aid of such enforcement and Debtor shall promptly, upon demand, reimburse and indemnify Secured Party or its agents for all costs and expenses incurred by Secured Party in the exercise of its rights under this Section 12.

13. Re-Assignment. At such time as Debtor shall completely satisfy all of the Obligations, and the Financing Agreements have been terminated, other than upon enforcement of Secured Party's remedies under the Financing Agreements after an Event of Default, Secured Party will promptly execute and deliver to Debtor all deeds, assignments and other instruments as may be necessary or proper to release Debtor's lien in the Collateral, subject to any dispositions thereof which may have been made by Secured Party pursuant hereto.

14. Severability. If any clause or provision of this Agreement shall be held invalid or unenforceable, in whole or in part, in any jurisdiction, such invalidity or unenforceability shall attach only to such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect any other clause or provision in any other jurisdiction.

15. Notices. All notices, requests and demands to or upon Debtor or Secured Party under this Agreement shall be given in the manner prescribed by the Loan Agreement.

16. Governing Law. This Agreement shall be governed by and construed, applied, and enforced in accordance with the federal laws of the United States of America applicable to trademarks and the laws of the State of New York, except that no doctrine of choice of law shall be used to apply the laws of any other state or jurisdiction.

17. Financing Agreement. This Agreement is one of the Financing Agreements.

SPECIAL POWER OF ATTORNEY

STATE OF)
) :ss
 COUNTY OF)

KNOW ALL MEN BY THESE PRESENTS, THAT ASIAN AMERICAN PARTNERS, a Delaware general partnership with its principal office at 1001 Washington Street, Conshohocken, Pennsylvania 19428 (hereinafter called "Debtor"), hereby appoints and constitutes CONGRESS FINANCIAL CORPORATION, a Delaware corporation (hereinafter called "Secured Party"), its true and lawful attorney, with full power of substitution, and with full power and authority to perform the following acts on behalf of Debtor:

1. For the purpose of assigning, selling, licensing or otherwise disposing of all right, title and interest of Debtor in and to any trademarks, and all registrations, recordings, reissues, continuations, continuations-in-part, and extensions thereof, and all pending applications therefor, and all licenses therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to, the foregoing, to execute and deliver any and all agreements, documents, instruments of assignment or other papers necessary or advisable to effect such purpose; and

2. To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as Secured Party may in its sole discretion determine.

This power of attorney is made pursuant to a Security Agreement (Trademarks) dated the date hereof, between Debtor and Secured Party and takes effect solely for the purposes of Section 5 thereof and is subject to the conditions thereof and may not be revoked until the payment in full of all "Obligations" as defined in such Security Agreement.

Dated: _____, 1999

ASIAN AMERICAN PARTNERS, Debtor

By: BIRCH BROS., INC., its managing general partner

By: _____
 Name:
 Title:

By: RIVERART LTD.

By: BIRCH BROS., INC., its general partner

By: _____
 Name:
 Title:

STATE OF)
) ss:
COUNTY OF)

On the ____ day of _____, 1999 before me personally came
_____, to me known, who being by me duly sworn, did depose and say
that he is the _____ of BIRCH BROS., INC., 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.

EXHIBIT 1

LIST OF DEBTOR'S TRADEMARKS

<u>Registered Trademarks</u>	<u>Registration No.</u>	<u>Date</u>
The Eagle's Eye	1,350,760	7/23/85
The Eagle's Eye Kids (and Design)	1,858,984	10/18/94
Potato Tomato	2,132,402	1/27/98
J. Christopher	1,428,449	2/10/87
Birch Bros.	1,607,030	7/17/90
Robin Sinkler	1,724,663	10/13/92
Alexandra Bartlett	1,693,120	6/9/92
River Art	2,117,883	12/2/97
Suds 'N' Stuff	2,142,674	3/10/98
InStitches	75/643,913	2/19/99
The Eagle's Eye (and Design)	1,245,358	7/12/83
Cloud Cotton	75/427,181	2/2/98