

01-28-2000

004

FORM PTO-1594

(Rev. 8-93)

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

12.28.99 RECORDATI  
K  
TRAD



U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Tab settings

101252833

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

1. Name of conveying party(ies):

Suprema Specialties, Inc. (a NY corp.)  
Suprema Specialties West, Inc. (a CA corp.)  
Suprema Specialties Northeast, Inc.  
(a NY corp.)

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

Additional name(s) of conveying party(ies) att



2. Name and address of receiving party(ies)

Name: Fleet Bank, N.A.  
Internal Address:  
Street Address: 208 Harristown Road  
City: Glen Rock State: NJ ZIP: 07452

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other a national banking association

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:

12-28-1999

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

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

Execution Date: December 16, 1998

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

SN 74-167, 430  
SN 74-366, 794

Additional numbers attached?  Yes  No

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

Name: Tonya Chapple  
Internal Address: c/o CSC

Street Address: 80 State St

City: Albany State: NY ZIP: 12207

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41).....\$ 65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

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

01 FC:481  
02 FC:482

40.00 OP  
25.00 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.

Kristine M. Dennis  
Name of Person Signing

*Kristine M. Dennis*  
Signature

10/14/99  
Date

Total number of pages including cover sheet, attachments, and document: 14

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

TRADEMARK  
REEL: 002012 FRAME: 0747

TRADEMARK COLLATERAL ASSIGNMENT

This TRADEMARK COLLATERAL ASSIGNMENT (the "Assignment") dated December 16, 1998, is made by SUPREMA SPECIALTIES, INC., a New York corporation (the "Borrower"), SUPREMA SPECIALTIES WEST, INC. ("Suprema West"), a California corporation, and SUPREMA SPECIALTIES NORTHEAST, INC., a New York corporation ("Suprema Northeast") (Borrower, Suprema West and Suprema Northeast are collectively referred to as the "Assignor"), in favor of FLEET BANK, N.A., a national banking association, as agent under that certain Loan Agreement hereinafter referred to, as Assignee (the "Assignee").

W I T N E S S E T H :

WHEREAS, pursuant to a certain Second Amended and Restated Revolving Loan, Guaranty and Security Agreement dated as of the date hereof among the Assignor, the Assignee and the banks signatory thereto (the "Banks") (the Second Amended and Restated Revolving Loan, Guaranty and Security Agreement as same may hereafter, be modified, amended or restated, is hereinafter referred to as the "Loan Agreement"), the Banks have severally agreed to make loans to the Borrower in the aggregate principal amount of up to \$35,000,000, as evidenced by certain Secured Revolving Notes dated the date hereof made by the Borrower in favor of the Banks; and

WHEREAS, one of the conditions precedent to the obligation of the Assignee and the Banks to enter into the Loan Agreement and increase and maintain the credit facilities as described in the Loan Agreement, is the assignment and pledge by the Assignor to the Assignee, for the benefit of the Assignee and the Banks, of a continuing security interest in, among other property of the Assignor, all of the Trademarks of the Assignor, whether now owned or hereafter acquired; and

WHEREAS, the Borrower has, pursuant to the terms of the Loan Agreement, and does hereby grant to the Assignee a continuing Lien on and security interest in inventory, machinery, equipment formulations, manufacturing procedures, quality control procedures and product specifications ("Other Assets") relating to products sold under the Trademarks, whereby the Assignee shall have the right to foreclose on the Trademarks and the Other Assets in the event of the occurrence and continuance of an Event of Default.

NOW, THEREFORE, in consideration of the premises and in order to induce the Assignee to maintain the credit facilities

described in the Loan Agreement, the Assignor hereby agrees with the Assignee as follows:

1. Capitalized Terms. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

2. Assignment. Assignor hereby grants, assigns and conveys to the Assignee the entire right, title and interest in and to the trademarks, trade names, service marks, and trademark and service mark applications listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), including, without limitation, all renewals thereof, all proceeds of infringement suits, the right to sue for past, present and future infringements and all rights corresponding thereto throughout the world (all of the foregoing are collectively called the "Trademarks"), and the good will of the business to which each of the Trademarks relates.

3. Security for Obligations. The security interests and Liens granted herein secure the Obligations, the reimbursement and repayment of the Letter of Credit to Fleet, the Master Agreement Obligations owing to Fleet, and the Fleet Mortgage Loan, all as described in the Loan Agreement.

4. Representations, Warranties and Covenants. Assignor represents, warrants and covenants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) Each of the Trademarks, to the best of Assignor's knowledge, is valid and enforceable;

(c) Except with respect to the rights of Assignor under that certain License Agreement between Assignor and Gerard Cheese Co., L.P. dated March 1, 1993, Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any Liens, charges and encumbrances, including without limitation pledges, assignments, licenses, and covenants by Assignor not to sue third Persons;

(d) Assignor has the unqualified right to enter into this Agreement and perform its terms;

(e) The execution, delivery and performance by Assignor of this Assignment are within Assignor's corporate

powers, have been duly authorized by all necessary corporate action, do not contravene (i) any Requirement of Law, or (ii) any Contractual Obligation affecting Assignor or any of its properties, and do not result in or require the creation of any Lien, security interest or other charge or encumbrance (other than pursuant hereto or pursuant to any of the other Loan Documents) upon or with respect to any of its properties;

(f) No authorization, approval or other action, by, and no notice to or filing with, any Governmental Authority is required either (i) for the grant by Assignor of the interest granted hereby or for the execution, delivery or performance of this Assignment by Assignor, or (ii) for the perfection of or the exercise by the Assignee of its rights and remedies hereunder;

(g) This Assignment is the legal, valid and binding obligation of Assignor enforceable against Assignor in accordance with its terms;

(h) No claim has been made that the use of any of the Trademarks does or may violate the rights of any third Person;

(i) Assignor has used, and will continue to use for the duration of this Assignment, proper statutory notice in connection with its use of the Trademarks; and

(j) Assignor has used, and will continue to use for the duration of this Assignment, consistent standards of quality in its manufacture of products sold under the Trademarks.

5. Intentionally Deleted.

6. No Inconsistent Agreements. Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement (including, without limitation, any license agreement) which is inconsistent with Assignor's obligations under this Assignment, without the Assignee's prior written consent.

7. New Trademarks. If, before the Obligations shall have been satisfied in full, Assignor shall obtain rights to any new trademarks, trade names or service marks, the provisions of Section 2 shall automatically apply thereto and Assignor shall give the to Assignee prompt notice thereof in writing.

8. Modification. Assignor authorizes the Assignee to modify this Assignment by amending Schedule A to include any

future trademarks, trade names, service marks and trademark and service mark applications covered by Sections 2 and 7 hereof.

9. License to Assignor. The Assignee hereby grants to Assignor the exclusive, nontransferable right and license to use the Trademarks and sue in respect of the Trademarks on and in connection with products sold by Assignor, for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this Section 9, without the prior written consent of the Assignee.

10. Remedies. Upon the occurrence of an Event of Default:

(a) The Assignee may, in its sole discretion, terminate by written notice the Assignor's license under the Trademarks as set forth in Section 9, in which case the Assignor's license shall terminate forthwith.

(b) The Assignee may exercise in respect of the Trademarks, in addition to other rights and remedies provided for herein, the Loan Agreement or otherwise available to it, all the rights and remedies of a secured party upon default under the Uniform Commercial Code (the "Code") (whether or not the Code applies to the affected Collateral) and also may, without notice except as specified below, sell the Trademarks or any rights thereunder in one or more parcels at public or private sale, at any of the Assignee's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Assignee may deem commercially reasonable. Assignor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Assignor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Assignee shall not be obligated to make any sale of the Trademarks regardless of notice of sale having been given. The Assignee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

11. Assignee Appointed Attorney-in-Fact. Assignor hereby irrevocably appoints the Assignee as Assignor's attorney-in-fact, with full authority in the place and stead of Assignor and in the name of Assignor or otherwise, from time to time in the Assignee's discretion, to take any action and to execute any instrument that the Assignee may deem necessary or advisable to accomplish the purposes of this Assignment, including, without limitation:

(i) to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to any third Person, and

(ii) to file any claims to take any action or institute any proceedings which the Assignee may deem necessary or desirable to enforce the rights of the Assignee with respect to any of the Trademarks.

12. Termination. At such time as Assignor shall completely satisfy all of the Obligations and the Loan Agreement and the other Loan Documents shall be terminated, this Assignment shall terminate and the Assignee shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Trademarks, subject to any disposition thereof which may have been made by the Assignee pursuant hereto.

13. Indemnity and Expenses. (a) The Assignor agrees to indemnify the Assignee from and against any and all claims, losses and liabilities growing out of or resulting from this Assignment (including, without limitation, enforcement of this Assignment), except claims, losses or liabilities resulting from the Assignee's gross negligence or willful misconduct.

(b) In addition to any costs and expenses to be borne by the Assignor as provided for in the Loan Agreement, any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and disbursements incurred by the Assignee in connection with the preparation of this Assignment and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne and paid by Assignor on demand by the Assignee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the highest rate prescribed in the Loan Agreement.

14. Preservation of Rights. Assignor shall have the duty, through counsel reasonably acceptable to the Assignee, to prosecute diligently any Trademarks which constitute applications to obtain or register trademarks, service marks or trade names pending as of the date of this Assignment or thereafter until the Obligations shall have been paid in full, to make federal

application on registrable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings, and to do any and all acts which are necessary or desirable to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with such an application shall be borne by Assignor. The Assignor shall not abandon any right to file a Trademark without the consent of the Assignee, which consent shall not be unreasonably withheld.

15. Enforcement of Rights. Assignor shall have the right, if the Assignee declines to do so, to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Trademarks, in which event the Assignee may, if necessary, be joined as a nominal party to such suit if the Assignee shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. Assignor shall promptly, upon demand, reimburse and indemnify the Assignee for all damages, costs and expenses, including legal fees, incurred by the Assignee pursuant to this Section 15.

16. Assignee May Perform. If Assignor fails to perform any agreement contained herein, the Assignee may itself perform, or cause performance of, such agreement, and the expenses of the Assignee incurred in connection therewith shall be payable by Assignor under Section 13.

17. No Waiver; Remedies. No failure on the part of the Assignee to exercise, and no delay in exercising, any right under this Assignment shall operate as a waiver thereof; nor shall any single or partial exercise of any right under any Loan Document preclude any other or further exercise thereof or the exercise of any other right. The remedies provided in the Loan Documents are cumulative and not exclusive of any remedies provided by law.

18. Amendments, Etc. No amendment or waiver of any provision of this Assignment, nor consent to any departure by Assignor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Assignee and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, except as provided in Section 8.

19. Assignment Absolute. All rights of the Assignee and the Assignee, the assignment and pledge hereunder, and all obligations of the Assignor hereunder, shall be absolute and unconditional, irrespective of:

(i) any lack of validity or enforceability of the Loan Agreement, any other Loan Document or any other document or any other agreement or instrument relating thereto;

(ii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations or any other amendment or waiver of or any consent to any departure from the Loan Agreement;

(iii) any exchange, release or non-perfection of any other Collateral, or any release or amendment or waiver of or consent to departure from this Agreement, or any other Loan Document with respect to all or any of the Obligations; or

(iv) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Assignor, or a third party grantor of a mortgage or security interest.

20. Binding Effect; Governing Law. This Assignment shall be binding upon and inure to the benefit of Assignor and the Assignee, and their successors and assigns, except that Assignor shall have no right to assign its rights under this Assignment or any interest in this Assignment without the prior written consent of the Assignee. This Assignment shall, except to the extent that laws of another state apply to Trademarks or any part thereof, be governed by, and construed in accordance with, the laws of the State of New Jersey.

21. Jurisdiction. The Assignor hereby irrevocably submits to the jurisdiction of any court of the State of New Jersey or Federal court sitting in the State of New Jersey in any action or proceeding arising out of or relating to this Agreement the Assignor hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such court of the State of New Jersey, or to the extent permitted by law, in such federal court. The Assignor hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The Assignor also irrevocably consents to the service of any and all process in any such action or proceeding arising out of or in connection with this Agreement by the mailing of copies of such process to the Assignor at the address and in the manner specified in Section 14 hereof. The Assignor agrees that a final and non-appealable judgment (or a judgment whose time to appeal has expired) in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner



provided by law. THE ASSIGNOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING ANY COUNTERCLAIM) IN ANY COURT ARISING ON, OUT OF, OR IN ANY WAY RELATING TO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS OR ANY AMENDMENT OR SUPPLEMENT HERETO OR THERETO OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

IN WITNESS WHEREOF, the execution hereof under seal as of the day and year first above written.

SUPREMA SPECIALTIES, INC.

By: Mark Cocchiola  
Name: Mark Cocchiola  
Title: President

SUPREMA SPECIALTIES WEST, INC.

By: Mark Cocchiola  
Name: Mark Cocchiola  
Title: President

SUPREMA SPECIALITIES NORTHEAST,  
INC.

By: Mark Cocchiola  
Name: Mark Cocchiola  
Title: President

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NEW JERSEY        )  
                                      :    ss.:  
COUNTY OF MIDDLESEX     )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 16th day of December, 1998, personally appeared Mark Cocchiola to me known personally, and who, being by me duly sworn, deposes and says that he is the President of Suprema Specialties, Inc., Suprema Specialties West, Inc., and Suprema Specialties Northeast, Inc., and that said instrument was signed and sealed on behalf of said corporations by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporations.

  
\_\_\_\_\_  
Notary Public

JO-ANN C. KOODISH  
NOTARY PUBLIC OF NEW JERSEY  
My Comm. Expires on 06/30/00

SCHEDULE A

TRADEMARKS

TRADEMARK

REGISTRATION NO.

Suprema Di Avellino

SN 74-167,430 filed 5/17/91

Di Latto

SN 74-366,794 filed 3/10/93