

S-11-00



101374747

original documents or copy thereof.

To the Honorable Commissioner of Patents and

1. Name of conveying party(ies):
 Top Tobacco L.P.

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

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

2. Name and address of receiving party(ies):
 Name: Glenwood Finance LLC
 Internal Address: _____
 Street Address: 2301 Ravine Way
 City: Glenview State: IL ZIP: 60023

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

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:
 Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: April 1, 2000

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

A. Trademark Application No.(s)

B. Trademark registration No.(s)
2,293,958
1,813,971
1,843,847
1,922,338

Additional numbers attached? Yes No 1,771,755

5. Name and address of party to whom correspondence concerning document should be mailed:
 Name: Antony McShane
 Internal Address: Katten Muchin Zavis
Suite 1600
 Street Address: 525 West Monroe Street
 City: Chicago State: IL ZIP: 60661

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)

06/06/2000 JSHABAZZ 00000012 2293958
 01 FC:481 40.00 OP
 02 FC:482 100.00 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.

Deborah Wing  5/11/00
 Name of Person Signing Signature Date

Total number of pages comprising cover sheet: 1



05-11-2000



U.S. Patent & TMO/™ Mail Rcpt. Dt. #40

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT ("Agreement") made as of the 1st day of April, 2000, by and between Top Tobacco L.P., a Delaware limited partnership, with an office at 204 Top Tobacco Road, Lake Waccamaw, North Carolina 28450 (the "Borrower"), and Glenwood Finance LLC with its principal office located at 2301 Ravine Way, Glenview, IL 60023 ("Lender").

WITNESSETH:

WHEREAS, the Borrower has entered into a Credit Agreement of even date herewith (as amended or otherwise modified from time to time, the "Credit Agreement") with the Lender pursuant to which the Lender has agreed to make loans to the Borrower.

WHEREAS, as a condition precedent, among other things, to Lender entering into the Credit Agreement, Lender has required the Borrower to execute and deliver a Security Agreement of even date herewith and this Agreement, in each case, in order to secure the prompt and complete payment, observance and performance of all of the obligations, indebtedness and liabilities of the Company owing to the Lender under and in connection with the Credit Agreement any document, agreement and instructions extended and delivered in connection therewith, including the obligations under this Agreement (the "Secured Obligations"); and

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower agrees as follows:

1. Defined Terms:

(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Credit Agreement shall have the meaning specified for such term in the Credit Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Incorporation of Premises. The premises set forth above are incorporated into this Agreement by this reference hereto and are made a part hereof.

3. Incorporation of the Security Agreement. The Security Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

4. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Secured Obligations, Borrower hereby grants to Lender a security interest in, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of Borrower's:

(a) now owned or existing and hereafter acquired or arising trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on Schedule A attached hereto and made a part hereof, together with any good will connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, service mark applications, and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, and (iv) all of Borrower's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in clauses (i)-(iv) in this paragraph 4(a), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and

(b) rights under or interest in any trademark license agreements or service mark license agreements with any other party, whether Borrower is a licensee or licensor under any such license agreement, together with any goodwill connected with and symbolized by any such trademark license agreements or service marks license agreements, including, without limitation, those trademark license agreements and service mark license agreements listed on Schedule B attached hereto and made a part hereof, and the right to prepare for sale and sell any and all Inventory now or hereafter owned by Borrower and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses").

5. Restrictions on Future Agreements. Borrower will not, without Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Borrower further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect affect the validity or enforcement of the rights transferred to Lender under this Agreement or the rights associated with those Trademarks or Licenses.

6. New Trademarks and Licenses. Borrower represents and warrants that (a) the Trademarks listed on Schedule A include all of the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned by Borrower, (b) the Licenses listed on Schedule B include all of the trademark license agreements and service mark license agreements pursuant to which Borrower is the licensee or licensor thereunder and (c) no other liens, claims or security interests have been granted by Borrower to any other Person in such Trademarks and Licenses. If, prior to the termination of this Agreement, Borrower shall (i) obtain rights to any new trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (ii) become entitled to the benefit of any trademarks, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor, or (iii) enter into any new trademark license agreement or service mark license agreement, the provisions of paragraph 4 above shall automatically apply thereto. Borrower shall give to Lender written notice of events described in clauses (i), (ii) and (iii) of the preceding sentence on a quarterly basis. Borrower hereby authorizes Lender to modify this Agreement by amending Schedule A to include any future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and by amending Schedule B to include any future trademark license agreements and service mark license agreements, which are Trademarks or Licenses under paragraph 4 above or under this paragraph 6.

7. Royalties. Borrower hereby agrees that the use by Lender of the Trademarks and the Licenses as authorized hereunder in connection with the exercise of its remedies under paragraph 16 shall be coextensive with Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Lender to Borrower.

8. Right to Inspect; Further Assignments and Security Interests. The Lender may at all reasonable times (and at any time when an Event of Default exists) have access to, examine, audit, make copies (at Borrower's expense) and extracts from and inspect Borrower's premises and examine Borrower's books, records and operations relating to the Trademarks and the Licenses, including, without limitation, Borrower's quality control processes; provided that, in conducting such inspections and examinations, Lender shall use reasonable efforts not to unnecessarily disturb the conduct of Borrower's ordinary business operations. From and after the occurrence of an Event of Default, Borrower agrees that Lender, or a conservator appointed by Lender, shall have the right to establish such reasonable additional product quality controls as Lender or such conservator, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by Borrower under the Trademarks and the Licenses. Borrower agrees (a) not to sell or assign its interest in, or grant any license under, the Trademarks or the Licenses without the prior and express written consent of Lender which consent will not be unreasonably withheld, (b) to maintain the quality of said products as of the date hereof, and (c) not to change the quality of such products in any material respect without Lender's prior and express written consent which consent will not be unreasonably withheld.

9. Termination of Lender's Security Interest. This Agreement is made for collateral security purposes only. Upon payment in full of all of the Secured Obligations, this Agreement shall terminate and Lender shall promptly execute and deliver to the Borrower, at Borrower's expense, all termination statements and other instruments as may be necessary or proper to

terminate Lender's security interest in the Trademarks and the Licenses, subject to any disposition thereof which may have been made by Lender pursuant to this Agreement or the Credit Agreement.

10. Duties of Borrower. Borrower shall have the duty, to the extent desirable in the normal conduct of Borrower's business, to: (a) prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, and (b) make application for trademarks or service marks. Borrower further agrees (i) not to abandon any Trademark or License without the prior written consent of Lender and (ii) to use its best efforts to maintain in full force and effect the Trademarks and Licenses, that are or shall be necessary or economically desirable in the operation of Borrower's business. Any expenses incurred in connection with the foregoing shall be borne by Borrower.

11. Lender's Right to Sue. From and after the occurrence of an Event of Default, Lender shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and Licenses and, if Lender shall commence any such suit, Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement. Borrower shall, upon demand, promptly reimburse Lender for all costs and expenses incurred by Lender in the exercise of its rights under this paragraph 11 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for Lender).

12. Waivers. Lender's failure, at any time or times hereafter, to require strict performance by Borrower of any provision of this Agreement shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith nor shall any course of dealing between Borrower and Lender have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of Borrower contained in this Agreement shall be deemed to have been suspended or waived by Lender unless such suspension or waiver is in writing signed by an officer of Lender and directed to Borrower specifying such suspension or waiver.

13. Lender's Exercise of Rights and Remedies upon an Event of Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence of an Event of Default, Lender may exercise any of the rights and remedies provided in this Agreement, the Credit Agreement and any Related Documents.

14. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part hereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

15. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in paragraphs 4 and 6 hereof or by a writing signed by the parties hereto.

16. Cumulative Remedies; Power of Attorney. All of Lender's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. From and after the occurrence of an Event of Default and the giving of written notice by Lender to Borrower of Lender's intention to enforce its rights and claims against Borrower, Borrower hereby irrevocably designates, constitutes and appoints Lender (and all Persons designated by Lender in its sole and absolute discretion) as Borrower's true and lawful attorney-in-fact, and authorizes Lender and any of Lender's designees, in Borrower's or Lender's name, from and after the occurrence of an Event of Default, to (a) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for Lender in the use of the Trademarks or the Licenses (b) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone on commercially reasonable terms, (c) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone on commercially reasonable terms, and (d) take any other actions with respect to the Trademarks or the Licenses as Lender deems in its best interest. Lender shall take no action pursuant to subparagraphs (a), (b), (c) or (d) of this paragraph 16 without taking like action with respect to the entire goodwill of Borrower's business connected with the use of, and symbolized by, such Trademarks or Licenses. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all of the Secured Obligations shall have been paid in full. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under the Credit Agreement, but rather is intended to facilitate the exercise of such rights and remedies. Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks or the Licenses may be located or deemed located

17. Successors and Assigns. This Agreement shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns. Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession to the extent that any of the foregoing are considered to be a successor or assign of or for the Borrower; provided, however, that Borrower shall not voluntarily assign or transfer its rights or obligations hereunder without Lender's prior written consent.

18. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the internal laws (as opposed to conflicts of law provisions) and decisions of the State of Illinois.

19. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Credit Agreement.

20. Lender's Duty. Lender shall not have any duty with respect to the Trademarks or the Licenses. Without limiting the generality of the foregoing, Lender shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks or the Licenses against any other parties, but may do so at its option, and all expenses incurred in connection therewith shall be for the sole account of Borrower and added to the Secured Obligations secured hereby.

21. Section Titles The section titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement
as of the ____ day of April, 2000.

TOP TOBACCO L.P.

By: Top Tobacco Management Corp.,
its General Partner



Name:

Title:

Accepted and agreed to as of the
____ day of April, 2000, by:

GLENWOOD FINANCE LLC

By:



Name: *Seth I. Goldberg*

Title: ~~Manager~~ *Exec. VP*

STATE OF IL.)
)
COUNTY OF COOK)

SS

The foregoing Trademark Security Agreement was executed and acknowledged before me this 1 day of April, 2000, by DONALD R. LEVIN, personally known to me to be the GENERAL PARTNER of Top Tobacco Management Corp., the General Partner of Top Tobacco L.P.

(SEAL)



Elsie Martinez
Notary Public
COOK County, IL.

My commission expires: 4-19-02

STATE OF IL.)
)
COUNTY OF COOK)

SS

The foregoing Trademark Security Agreement was executed and acknowledged before me this 1 day of April, 2000, by SETH GOLD, personally known to me to be the Manager of Glenwood Finance LLC.

(SEAL)



Elsie Martinez
Notary Public
COOK County, IL.

My commission expires: 4-19-02

Schedule A
to
Trademark Security Agreement

Dated as of April 1, 2000

Trademarks

| <u>Mark</u> | <u>Reg. No.</u> |
|-------------------------|-----------------|
| TOP and Design | 2,293,958 |
| Classic Canadian | 1,922,338 |
| Four Aces | 1,843,847 |
| Design (Leaf and Crown) | 1,771,755 |
| Top Canadian Crown | 1,813,971 |

Schedule B
to
Trademark Security Agreement

Dated as of March ____, 2000

Licenses

License Agreement dated as of March ____, 2000 by and between Top Tobacco L.P. and Republic Tobacco L.P.

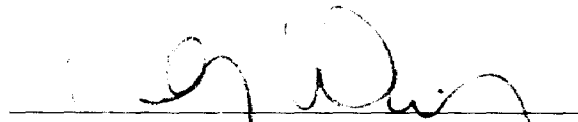
"Express Mail" mailing label number: EK560289994US

Date of Deposit: May 11, 2000

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

May 11, 2000

Date


Deborah A. Wing

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