

09-22-2000

Form PTO-1594
Rev. 6-83

REC



SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

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

8.39.00

Tab settings

101465973

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

1. Name of conveying party(ies):

FRESH FOODS, INC.

- Individual(s)
- General Partnership
- Corporation-State - North Carolina
- 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: May 24, 2000

2. Name and address of receiving party(ies)

Name: FLEET CAPITAL CORPORATION

Internal Address: Attn: Southeast Loan Administration

Street Address: 6100 Fairview Road, Suite 200

City: Charlotte State: NC ZIP: 28210

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Rhode Island
- 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)

See Schedule A, attached

B. Trademark Registration No.(s)

See Schedule B, attached

Additional numbers attached? Yes No

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

Name: Carruthers & Roth, P.A.

Internal Address: Attn: Linda K. Sullivan

Street Address: 235 North Edgeworth Street

City: Greensboro State: NC ZIP: 27401

09/21/2000 DNGUYEN 00000204/75816574

6. Total number of applications and registrations involved: 48

7. Total fee (37 CFR 3.41).....\$ 1,215.00

- 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
1175.00 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.

Linda K. Sullivan
Name of Person Signing

Carruthers & Roth, P.A.
By: [Signature]
Signature

8-23-00
Date

16

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

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

TRADEMARK
REEL: 002132 FRAME: 0712

**SCHEDULE A
TO TRADEMARKS ONLY COVER SHEET**

Trademark Applications

MARK	SERIAL NUMBER	FILING DATE
CAFETERIA ADVENTURES	75/816,574	10/06/1999
HEARTHSIDE SELECT	75/676,610	04/07/1999
MAIN STREET DINER	75/928,450	02/25/2000
PIERRE SELECT	75/617,210	01/08/1999
PIERRE SELECT	75/617,209	01/08/1999
ROCKIN' BURGER	75/641,475	02/18/1999

**SCHEDULE B
TO TRADEMARKS ONLY COVER SHEET**

Trademark Registrations

MARK	SERIAL NUMBER	REGISTRATION NUMBER	REGISTRATION DATE
BREAKFAST ON THE GO! And Design	74/695,460	2,005,805	10/08/1996
CAFÉ PIERRE	74/364,057	1,876,055	01/24/1995
COMMODITY MAGIC	73/496,943	1,331,238	04/16/1985
DINE 'N' WITH	74/507,554	1,912,699	08/15/1995
FASTBITES	75/513,223	2,261,726	07/13/1999
FAST CHOICE	75/076,168	2,052,455	04/15/1997
FAST CHOICE	75/076,172	2,152,895	04/21/1998
FRENCH TOAST BOAT	73/766,865	1,554,935	09/05/1989
FRENCH TOAST BOAT and Design	73/774,889	1,626,155	12/04/1990
GLOBAL GRILL	75/208,171	2,112,383	11/11/1997
GOLDDIGGER	73/173,253	1,121,101	06/26/1979
GOLDDIGGER BEEF NUGGET	73/711,223	1,521,147	01/17/1989
HAM N GO	75/641,478	2,345,081	04/25/2000
H.E.L.P.S. HEALTHCARE ENTRÉE LOW PREP SOLUTIONS	75/392,520	2,273,614	08/31/1999
HOT DIGGITY SUBS	73/464,251	1,388,435	04/01/1986
HOT DIGGITY SUBS and Design	73/464,161	1,387,648	03/25/1986
LEAN MAGIC	74/140,493	1,677,773	03/03/1992
LIKE MOM'S and Design	73/720,859	1,517,327	12/20/1988
LINK-N-DOG	74/507,074	1,917,400	09/05/1995
MICRO-WICHES	73/703,228	1,505,035	09/20/1988
PIERRE CLASSICS	75/076,169	2,052,456	04/15/1997
PIERRE MAIN STREET DINER	74/613,401	2,016,292	11/12/1996
PIZZA PARLOR SANDWICH	73/366,680	1,270,140	03/13/1984

MARK	SERIAL NUMBER	REGISTRATION NUMBER	REGISTRATION DATE
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PIZZA PARLOR SUB	74/521,385	1,926,623	10/10/1995
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TWO-FERS	73/822,571	1,599,764	06/05/1990
WONDERBITES	74/291,428	1,781,595	07/13/1993

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT ("Agreement"), is made and entered into this 24th day of May, 2000, between FRESH FOODS, INC., a North Carolina corporation ("Borrower"), and FLEET CAPITAL CORPORATION, a Rhode Island corporation ("Lender").

WITNESSETH:

WHEREAS, Borrower proposes to enter into a certain Loan and Security Agreement, dated of even date herewith (the Loan and Security Agreement, as it may hereafter be amended, modified, supplemented or restated from time to time, being herein called the "Loan Agreement"), with Lender pursuant to which Lender will make loans and extend credit to Borrower, all as more particularly described therein; and

WHEREAS, as a condition precedent to Lender's entering into the Loan Agreement and making loans and extending credit to Borrower pursuant thereto, Lender has required the execution of this Agreement by Borrower in favor of Lender.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Borrower agrees with Lender as follows:

1. Defined Terms. All capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Loan Agreement.

2. Grant of Security Interest. As security for the payment and performance of the Obligations, Borrower hereby assigns, grants, transfers and conveys to Lender, for security purposes, all of Borrower's right, title and interest in, to and under the following property, in each case whether now existing or hereafter acquired or arising and whether registered and unregistered and wherever the same may be located (the "Trademark Collateral"):

(a) all state (including common law), federal and foreign trademarks, service marks and trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, domain names, designs and general intangibles of like natures, now existing or hereafter adopted or acquired, together with and including all licenses therefor held by Borrower (unless otherwise prohibited by any license or related licensing agreement under circumstances where the granting of the security interest would have the effect under applicable law of the termination or permitting termination of the license for breach and where the licensor has elected such termination remedy), and all registrations and recordings thereof, and all applications filed or to be filed in connection therewith, including registrations and applications in the United States Patent and Trademark Office, any State of the United States or any other country or any political subdivision thereof, and all extensions or renewals thereof, including any of the foregoing identified on

Schedule A hereto (as the same may be amended, modified or supplemented from time to time), and the right (but not the obligation) to register claims under any state or federal trademark law or regulation or any trademark law or regulation of any foreign country and to apply for, renew and extend any of the same, to sue or bring opposition or cancellation proceedings in the name of Borrower or in the name of Lender for past, present or future infringement or unconsented use thereof, and all rights arising therefrom throughout the world (collectively, the "Trademarks");

(b) all claims, causes of action and rights to sue for past, present or future infringement or unconsented use of any Trademarks and all rights arising therefrom and pertaining thereto;

(c) all general intangibles related to or arising out of any of the Trademarks and all the goodwill of Borrower's business symbolized by the Trademarks or associated therewith; and

(d) all proceeds of any and all of the foregoing Trademark Collateral, including, without limitation, license royalties, rights to payment, accounts receivable, proceeds of infringement suits and all payments under insurance or any indemnity, warranty or guaranty payable by reason or loss or damage to or otherwise with respect to the foregoing Trademark Collateral.

3. Representations, Warranties and Covenants of Borrower. Borrower represents, warrants and covenants that:

(a) The Trademark Collateral is, to the best of its knowledge, subsisting and has not been judged invalid or unenforceable;

(b) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Trademark Collateral;

(c) Borrower has used, and will continue to use for the duration of this Agreement, as reasonable and practicable, proper statutory notice in connection with its use of the Trademark Collateral;

(d) Borrower will ensure that the quality of the products associated with the Trademark Collateral is maintained, generally at a level consistent with the quality as of the effective date of this Agreement, subject to the introduction of new products from time to time, and product modifications in the ordinary course of business; and

(e) Borrower has the unqualified right to enter into this Agreement and perform its terms and has entered and will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants herein contained.

4. Visits and Inspections. Borrower hereby grants to Lender and its employees and agents the right to visit any plants and facilities which manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours. Borrower shall do any and all acts required by Lender to ensure Borrower's compliance with paragraph 3(d) of this Agreement.

5. Restrictions on Future Agreements. Borrower agrees that, until all of the Obligations have been satisfied in full and the Loan Agreement has been terminated in writing, it will not without Lender's prior written consent, enter into any agreement which is inconsistent with Borrower's duties under this Agreement, and Borrower further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licenses, or fail to take any action, which would affect the validity and enforcement of the rights granted to Lender under this Agreement.

6. After-Acquired Trademark Rights. If, before the Obligations have been satisfied in full, Borrower shall obtain rights to any new trademarks, or become entitled to the benefit of any trademark application or trademark for any renewal of any Trademark, the provisions of paragraph 2 hereof shall automatically apply thereto, and Borrower shall give to Lender prompt notice thereof in writing. Borrower authorizes Lender to modify this Agreement by amending Schedule A to include any future trademarks and trademark applications which are Trademark Collateral under paragraph 2 hereof or this paragraph 6.

7. Borrower's Rights Prior to Event of Default. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Loan Agreement), Borrower shall continue to own, and may use and enjoy the Trademark Collateral in connection with its business operations, but only in a manner consistent with the presentation of their current substance, validity and registration.

8. Remedies Upon Event of Default. If an Event of Default shall have occurred and be continuing, Lender shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and, specifically, those of a Lender under the Code. Notice of any sale or other disposition of the Trademark Collateral shall be deemed reasonable and sufficient if given the Borrower at least ten (10) days before the time of any intended public or private sale or other disposition of any of the Trademark Collateral is to be made.

9. Power of Attorney. Borrower hereby makes, constitutes and appoints Lender and any officer or agent of Lender as Lender may select as Borrower's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall occur and be continuing: to endorse Borrower's name on all applications, documents, papers and instruments necessary for Lender to use the Trademark Collateral, or to grant or issue any exclusive or nonexclusive license under the Trademark Collateral to anyone else as necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademark Collateral to anyone else. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be

done by virtue hereof. This power of attorney shall be irrevocable until all of the Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated in writing.

10. Release of Security Interest. At such time as all of the Obligations shall have been satisfied and paid in full, Lender shall execute and deliver to Borrower all releases, termination statements, and other instruments as may be necessary or proper to release or reflect the release of Lender's security interest in the Trademark Collateral, including all documentation necessary to reflect such release in the United States Patent and Trademark Office.

11. Costs and Expenses. Any and all fees, costs and expenses, of whatever kind or nature arising or incurred after the Closing Date, including reasonable attorneys' fees and legal expenses, incurred by Lender in connection with the filing or recording of any documents other than this Agreement (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 Trademark Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademark Collateral, shall be borne and paid by Borrower on demand by Lender and until so paid shall be added to the amount of the Obligations and shall bear interest at the rate prescribed in the Loan Agreement.

12. Litigation and Proceedings

(a) Borrower shall have the duty, through counsel acceptable to Lender, to prosecute diligently any trademark application of the Trademarks pending as of the date of this Agreement or thereafter, other than those discontinued or abandoned in the ordinary course of business, until the Obligations shall have been paid in full and to preserve and maintain all rights in trademark applications and trademarks of the Trademarks in the ordinary course of business. Any expenses incurred in connection with such an application shall be borne by Borrower. Borrower shall not abandon any right to file a trademark application, or any pending trademark application or trademark, other than those discontinued or abandoned in the ordinary course of business, without the consent of Lender, which consent shall not be unreasonably withheld.

(b) Lender shall have the right, but shall in no way be obligated, to bring suit in its own name, as the holder of a security interest in the Trademark Collateral, to enforce the Trademarks, and any license thereunder, in which event Borrower shall at the request of Lender do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Lender in aid of such enforcement and Borrower shall promptly, upon demand, reimburse and indemnify the Lender for all costs and expenses incurred in the exercise of its rights under this paragraph 12. Nothing herein shall be deemed to prohibit Borrower from bringing any such suit in its own name at any time that an Event of Default does not exist, if Lender declines to institute suit.

13. Lender May Perform. If Borrower fails to comply with any of its obligations hereunder, Lender may do so in Borrower's name or in Lender's name, but at Borrower's

expense, and Borrower agrees to reimburse Lender in full for all expenses, including reasonable attorney's fees, incurred by Lender in prosecuting, defending or maintaining the Trademarks or Lender's interest therein pursuant to this Agreement.

14. Severability. 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 thereof, 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 is subject to modification only by a writing signed by the parties, except as provided in paragraph 6 hereof.

16. Binding Effect; Benefits. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

17. Notices. All notices, requests and demands to or upon a party hereto, to be effective, shall be in writing and shall be sent by certified or registered mail, return receipt requested, by personal delivery against receipt, by overnight courier or by facsimile transmission and, unless expressly provided herein, shall be deemed to have been validly served, given or delivered immediately when delivered against receipt, three (3) Business Days after deposit in the mail, postage prepaid, or, in the case of facsimile transmission, when received (if on a Business Day and, if not received on a Business Day, then on the next Business Day after receipt), addressed as follows:

- (i) If to the Lender, at: Fleet Capital Corporation
6100 Fairview Road, Suite 200
Charlotte, North Carolina 28210
Attention: Southeast Loan Administration
Facsimile No.: 704-553-6738

With a copy to: Carruthers & Roth, P.A.
235 North Edgeworth Street
Post Office Box 540 (27402)
Greensboro, North Carolina 27401
Attention: Kenneth M. Greene, Esq.
Facsimile No.: 336-273-7885

(ii) If to Borrower, at: Fresh Foods, Inc.
9990 Princeton Road
Cincinnati, Ohio 45246
Attention: Chief Financial Officer
Facsimile No.: 513-682-7158

With a copy to: Battle, Winslow, Scott & Wiley, P.A.
2343 Professional Drive
Post Office Box 7100
Rocky Mount, North Carolina 27804
Attention: T. Stewart Gibson, Esq.
Facsimile No.: 252-937-8100

And an additional copy to: McGuire, Woods, Battle & Boothe LLP
One James Center
901 East Cary Street
Richmond, Virginia 23219-4030
Attention: Anjanette Plichta Stinson, Esq.
Facsimile No.: 804-698-2236

or to such other address as each party may designate for itself by notice given in accordance with this Section 17. Any written notice or demand that is not sent in conformity with the provisions hereof shall nevertheless be effective on the date that such notice is actually received by the noticed party.

18. Governing Law; Consent to Forum. THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF NORTH CAROLINA. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA. AS PART OF THE CONSIDERATION FOR NEW VALUE RECEIVED, AND REGARDLESS OF ANY PRESENT OR FUTURE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF BORROWER OR THE LENDER, BORROWER HEREBY CONSENTS AND AGREES THAT THE STATE AND FEDERAL COURTS OF NORTH CAROLINA SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN BORROWER AND THE LENDER PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. BORROWER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND BORROWER HEREBY WAIVES ANY OBJECTION WHICH BORROWER MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS

ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF BORROWER'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAILED, PROPER POSTAGE PREPAID. NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO AFFECT THE RIGHT OF THE LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW, OR TO PRECLUDE THE ENFORCEMENT BY THE LENDER OF ANY JUDGMENT OR ORDER OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE THIS AGREEMENT IN ANY OTHER APPROPRIATE FORUM OR JURISDICTION.

19. Waiver of Jury Trial. BORROWER WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY (WHICH THE LENDER HEREBY ALSO WAIVES) IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS OR THE COLLATERAL. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE LENDER'S ENTERING INTO THE LOAN AGREEMENT AND EXTENDING CREDIT TO THE BORROWER THEREUNDER AND THAT THE LENDER IS RELYING UPON THIS WAIVER IN ITS FUTURE DEALINGS WITH THE BORROWER. BORROWER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THE FOREGOING WAIVER WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

WITNESS the execution hereof on the day and year first above written.

FRESH FOODS, INC.
("Borrower")

By: David R Clark (SEAL)
Title: Vice Chairman

FLEET CAPITAL CORPORATION
("Lender")

By: James J. Lane
Title: Vice President

STATE OF NORTH CAROLINA

COUNTY OF New Hanover

I, Doana L Vater, a Notary Public of the State and County aforesaid, certify that David R Clark personally appeared before me this day and acknowledged that he is Vice-Chairman ~~President~~ of FRESH FOODS, INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by him in the corporation's name.

WITNESS my hand and official stamp or seal, this 24th day of May, 2000.

Doana L Vater
Notary Public

My Commission Expires: 10/14/2003

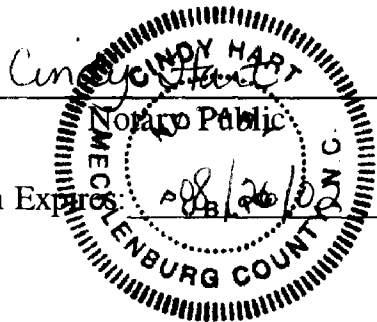
STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Cindy Hart, a Notary Public of the State and County aforesaid, certify that Sharon J. Gurner personally appeared before me this day and acknowledged that she is Vice President of FLEET CAPITAL CORPORATION, a Rhode Island corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by him in the corporation's name.

WITNESS my hand and official stamp or seal, this 13 day of June, 2000.

Cindy Hart
Notary Public
My Commission Expires: 08/26/02



**SCHEDULE A TO
TRADEMARK SECURITY AGREEMENT**

The federally registered United States trademarks and service marks owned by Borrower are indicated in the following table.

MARK	SERIAL NUMBER	REGISTRATION NUMBER	REGISTRATION DATE
BREAKFAST ON THE GO! And Design	74/695,460	2,005,805	10/08/1996
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MARK	SERIAL NUMBER	FILING DATE
CAFETERIA ADVENTURES	75/816,574	10/06/1999
HEARTHSTONE SELECT	75/676,610	04/07/1999
MAIN STREET DINER	75/928,450	02/25/2000
PIERRE SELECT	75/617,210	01/08/1999
PIERRE SELECT	75/617,209	01/08/1999
ROCKIN' BURGER	75/641,475	02/18/1999

The foreign trademarks and service marks owned by Borrower are indicated in the following table.

MARK	COUNTRY	SERIAL NUMBER	REGISTRATION NUMBER	REGISTRATION DATE
PIERRE	Mexico			
PIERRE and Design	Mexico			
RIB-B-Q	Canada	049,496,500	TMA 305,055	07/19/1985
RIB-B-Q and Design	Canada	049,496,600	TMA 305,056	07/19/1985
RIB-B-Q	Japan	34,094/89		
RIB-B-Q and Design	Japan	34,095/89		
RIB-B-Q	Mexico			
RIB-B-Q and Design	Mexico			

The state trademark owned by Borrower is indicated in the following table.

MARK	STATE	REGISTRATION NUMBER	REGISTRATION DATE
PIERRE and Design	Ohio	TM 7315	05/07/1975

Borrower may have common law rights in additional trademarks or service marks.