

11-03-2000

ET

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



To the Honorable Commissione

101504666

shd original documents or copy thereof **DKT. 0223.ASG**

1. Name of conveying party(ies):

Sleep Country USA, Inc.

10-24-00

- Individual(s)
- General Partnership
- Corporation-State
- 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: September 29, 2000

2. Name and address of receiving party(ies)

Name: U.S. Bank National Association

Internal Address: U.S. Bank Place - MPFP0702

Street Address: 601 Second Avenue South

City: Minneapolis State: Minnesota ZIP: 55402-4302

- Individual(s) _____
- Association A national banking association
- General Partnership _____
- Limited Partnership _____
- Corporation-State _____
- 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 trademark number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s): 1,785,946 and 1,844,912

4

Additional numbers attached? Yes No

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

Name: Devan V. Padmanabhan

Internal Address: Dorsey & Whitney LLP

Street Address: 220 South Sixth Street

City: Minneapolis State: MN ZIP 55402

6. Total Number of applications and registrations involved:

2

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

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

04-1420

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

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.

Devan V. Padmanabhan
Name of person Signing

Devan V. Padmanabhan
Signature (38,262)

Oct 23, 2000
Date

Total number of pages comprising cover sheet: 1

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

11/02/2000 DBYRNE 00000215 1785946

Do not detach this portion

01 FC:481
02 FC:482

40.00 DP
25.00 MP

Documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

COLLATERAL ASSIGNMENT OF TRADEMARKS

THIS COLLATERAL ASSIGNMENT OF TRADEMARKS (the "Collateral Assignment"), dated as of September 29, 2000 is by and between SLEEP COUNTRY USA, INC., a Delaware corporation (the "Assignor") and U.S. BANK NATIONAL ASSOCIATION, a national banking association (the "Assignee").

WITNESSETH

WHEREAS, the Assignor and the Assignee have entered into a Credit Agreement dated as of September 29, 2000 (the "Credit Agreement"), pursuant to which the Assignee has agreed to extend certain credit accommodations to the Assignor under the terms and conditions set forth therein (all terms capitalized and used herein without being defined shall have the meaning given them in the Credit Agreement);

WHEREAS, the Assignor has pledged and granted to the Assignee a security interest in the property described in a Security Agreement dated as of September 29, 2000 (the "Security Agreement") by and between Assignor and Assignee, which property includes general intangibles, including, without limitation, applications for patents, applications for trademarks, trademarks, trade names, domain names, copyrights, patents, inventions and trade secrets;

WHEREAS, the Assignor owns certain businesses which have adopted and used the trademarks, domain names, and trade names set forth in Exhibit A attached hereto, and the trademarks so listed are registered or application has been made for such registration as noted in Exhibit A in the United States Patent and Trademark Office; and

WHEREAS, the Assignor expects to derive benefits from the extension of credit accommodations to it by the Assignee and finds it advantageous, desirable and in its best interest to execute this Collateral Assignment to the Assignee in order to secure the payment and performance of (a) all indebtedness, liabilities and obligations of the Assignor to the Assignee of every kind, nature or description under the Credit Agreement, including the Assignor's obligation on any promissory note or notes under the Credit Agreement and any note or notes hereafter issued in substitution or replacement thereof, (b) all liabilities of the Assignor under this Agreement, and (c) in all of the foregoing cases whether due or to become due, and whether now existing or hereafter arising or incurred (the "Liabilities").

NOW, THEREFORE, in consideration of the premises and to induce the Assignee to extend credit accommodations to the Assignor under the Credit Agreement, the parties hereto agree as follows:

1. Subject to the terms and conditions of this Collateral Assignment, the Assignor does hereby assign all of its right, title and interest in and to all of the present trademarks, domain names, and trade names and the registrations and applications therefor owned by the Assignor (the "Trademarks"), including but not limited to those set forth on Exhibit A, and including, without limitation, all proceeds thereof together with the right to recover for past, present and future infringements, all rights corresponding thereto throughout the world and all renewals and extensions thereof, together with the goodwill of the business associated with said Trademarks, said Trademarks to be held and enjoyed by the Assignee or its designee for its use and behalf, and for the legal representatives, successors and assigns of the Assignee or its designee, as fully and entirely as the same would have been held by the Assignor had this Collateral Assignment not been made. The foregoing assignment shall be effective only upon the occurrence and during the continuance of an Event of Default under the Credit Agreement and upon written notice by the Assignee to the Assignor of the acceptance by the Assignee of this Collateral Assignment; unless and until such acceptance, this Collateral Assignment shall have no effect. After the occurrence and continuation of an Event of Default under the Credit Agreement, the Assignee shall be entitled to transfer the Trademarks pursuant to an Assignment of Trademarks substantially in the form of Exhibit B. The Assignor hereby irrevocably authorizes the Assignee to date undated Assignments of Trademarks and otherwise complete such Assignments at the time of transfer and agrees to sign whatever documents are necessary to transfer ownership of Assignor's domain names from Assignor to the new owner. Notwithstanding the foregoing provisions of this Section 1, the Assignee acquires no security interest or other rights in the United States for any Trademark that is the subject of an intent-to-use application before the U.S. Patent and Trademark Office until such time as a verified amendment to allege use or statement of use is filed for such application or the Assignee arranges for an assignment of such Trademarks from the Assignee to a purchaser that would satisfy the requirements of Section 10 of the Lanham Act, 15 U.S.C. Section 1060. At the time that Assignee seeks to transfer all other Trademarks pursuant to Exhibit B, it may also complete Exhibit C with respect to any U.S. intent-to-use applications and, provided that Exhibit C satisfies the conditions of the preceding sentence, Assignor agrees that it will promptly execute and return the same to Assignee.

2. The Assignor hereby covenants and warrants that:

(a) except for applications pending, the Trademarks listed on Exhibit A have been duly issued and are registered and subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(b) each of the Trademarks and listed on Exhibit A is valid and enforceable;

(c) no claim has been made to the Assignor or, to the knowledge of the Assignor, to any other person, that use of any of the Trademarks does or may violate the rights of any third person and no claim has been made by the Assignor that any other person is infringing upon the rights of the Assignor under the Trademarks;

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

(e) the Assignor will be, until the Liabilities shall have been satisfied in full and the Loan Documents shall have been terminated, in substantial compliance with any statutory notice requirements relating to its use of the Trademarks;

(f) except as set forth in Exhibit D, the Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks listed on Exhibit A, free and clear of any liens, charges and encumbrances, including without limitation, licenses and covenants by the Assignor not to sue third persons;

(g) the Trademarks listed on Exhibit A are all of the trademark registrations and applications therefor now owned by the Assignor;

(h) the Assignor has marked with an asterisk each U.S. intent-to-use trademark application listed on Exhibit A for which a verified amendment to allege use or statement of use has not been filed; and

(i) the Assignor will, at any time upon reasonable request, communicate to the Assignee, its successors and assigns, any facts relating to the Trademarks or the history thereof as may be known to the Assignor or its officers, employees and agents, and cause such officers, employees and agents to testify as to the same in any infringement or other litigation at the request of the Assignee.

3. The Assignor agrees that, until the rights of the Assignee in the Trademarks are terminated pursuant to Section 6, it will not enter into any agreement that is in conflict with its obligations under this Collateral Assignment.

4. If, before the Liabilities shall have been satisfied in full, the Assignor shall obtain rights to any new trademark, domain name, or trade name, or become entitled to the benefit of any trademark application, registration, trademark, domain name, or trade name or any renewal or extension of any trademark registration or domain name, such shall be included in the definition of "Trademarks" as used in this Collateral Assignment (except for purposes of Section 2 hereof), Section 1 hereof shall automatically apply thereto, and the Assignor shall submit annual reports to the Assignee each year not later than December 31st notifying Assignee of (i) any new trademarks, domain names, or trade names adopted, acquired, or applied for during the previous year and (ii) any changes to the status of any previously listed Trademarks, including without limitation U.S. trademark applications for which verified amendments to allege use and statements of use have now been filed. If the Assignee does not receive such a report within fifteen days after the deadline, then the Assignee is authorized to obtain updated information on the Trademarks from the appropriate trademark registrars or third party providers at the Assignor's expense. The Assignor authorizes the Assignee to modify this Collateral Assignment by amending Exhibit A to include any future trademark, domain name or trade name.

5. The Assignor agrees not to sell, assign or encumber its interest in, or grant any license with respect to, any of the Trademarks, except for the licenses listed on Exhibit D attached hereto.

6. The Assignor agrees that it will authorize, execute and deliver to Assignee all documents prepared by Assignee to facilitate the purposes of this Collateral Assignment, including, but not limited to, documents required to record Assignee's interest in any appropriate office in any domestic or foreign jurisdiction. At the time the annual report is prepared in accordance with Section 4, Assignor agrees to provide Assignee with an updated Exhibit A for filing with the U.S. Patent and Trademark Office. If the Assignee does not receive the updated Exhibit A within fifteen days after the deadline, then Assignee is authorized to prepare and record Exhibit A at the Assignor's expense. At such time as the Credit Agreement and the other Loan Documents shall have been terminated in accordance with their terms, the Assignee shall on demand of the Assignor execute and deliver to the Assignor all termination statements and other instruments as may be necessary or proper to terminate this Collateral Assignment and assign to the Assignor all the Assignee's rights in the Trademarks, subject to any disposition thereof which may have been made by the Assignee pursuant hereto or pursuant to the Loan Documents. All documents prepared and all actions taken by the Assignee pursuant to this Collateral Assignment shall be at Assignor's expense.

7. The Assignor shall have the duty, through counsel reasonably acceptable to the Assignee, (i) to prosecute diligently any pending Trademark application as of the date of this Collateral Assignment or thereafter until the Credit Agreement and the Loan

Documents shall have been terminated in accordance with their terms; provided, that the Assignor may abandon any such application upon thirty days' written notice to the Assignee, (ii) to make application on those trademarks and trade names which are unregistered but capable of being registered and which a prudent person would reasonably cause to be registered and (iii) to preserve and maintain all rights in all Trademarks which a prudent person would reasonably preserve and maintain. Any expenses incurred in connection with applications that constitute Trademarks shall be borne by the Assignor. The Assignor shall not abandon any application presently pending that constitutes a Trademark without the written consent of the Assignee.

8. The Assignee shall have the right but shall in no way be obligated to bring suit in its own name to enforce or to defend the Trademarks and any license thereunder if the Assignor has failed to bring such suit in circumstances in which a prudent person would have brought such suit. The Assignor shall at the request of the Assignee do any and all lawful acts and execute any and all proper documents required by the Assignee in aid of such enforcement or defense (including, without limitation, participation as a plaintiff or defendant in any proceeding) and, if Assignor has failed to bring such suit in circumstances in which a prudent person would have brought such suit, the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee for all reasonable costs and expenses incurred by the Assignee in the exercise of its rights under this Section.

9. This Collateral Assignment shall also serve to evidence the security interest in the Trademarks granted by the Assignor to the Assignee pursuant to the Security Agreement.

10. No course of dealing between the Assignor and the Assignee, failure to exercise, nor any delay in exercising, on the part of the Assignee, with respect to any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. All of the Assignee's rights and remedies with respect to the Trademarks, whether established hereby, by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

12. This Collateral Assignment is subject to modification only by a writing signed by the parties, except as provided in Section 4 hereof.

13. This Collateral Assignment shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Assignor and the Assignee.

14. Upon payment in full of all Liabilities (other than the Assignor's unmatured indemnity obligations under any Loan Document) and the expiration or termination of any obligation of the Assignee to extend credit accommodations to the Assignor this Collateral Assignment shall terminate and all rights to the Trademarks shall revert to the Assignor.

15. THIS COLLATERAL ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS (WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PRINCIPLES THEREOF) OF (I) THE UNITED STATES OF AMERICA AS TO RIGHTS AND INTERESTS HEREUNDER WHICH ARE REGISTERED OR FOR THE REGISTRATION OF WHICH APPLICATION IS PENDING WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE AND (II) THE STATE OF MINNESOTA IN ALL OTHER RESPECTS. WHENEVER POSSIBLE, EACH PROVISION OF THIS COLLATERAL ASSIGNMENT AND ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS COLLATERAL ASSIGNMENT OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO SHALL BE HELD TO BE PROHIBITED OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE ONLY TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS COLLATERAL ASSIGNMENT OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO. IN THE EVENT OF ANY CONFLICT WITHIN, BETWEEN OR AMONG THE PROVISIONS OF THIS COLLATERAL ASSIGNMENT, ANY OTHER LOAN DOCUMENT OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR THEREBY OR RELATING HERETO OR THERETO, THOSE PROVISIONS GIVING THE ASSIGNEE THE GREATER RIGHT SHALL GOVERN.

IN WITNESS WHEREOF, the Assignor has executed this instrument.

SLEEP COUNTRY USA, INC.

BY: 
TITLE: Vice President and Assistant Secretary

EXHIBIT A TO
COLLATERAL ASSIGNMENT OF TRADEMARKS

Sleep Country Trademarks

<u>Trademark</u>	<u>Registration No.</u>	<u>Jurisdiction</u>	<u>Date Claimed</u>
“Sleep Country USA” (name)	1,785,946 021,194	USA Washington	Aug. 3, 1993
“Why Buy a Mattress Anywhere Else?” (motto)	1,844,912 022,703	USA Washington	July 12, 1994

Sleep Country Trademark Applications

<u>Trademark</u>	<u>Serial No.</u>	<u>Jurisdiction</u>	<u>Filing Date</u>
“Rest Assured Guarantee”		USA	Feb. 1, 2000
“We won’t rest until you do.”		USA	To be filed soon.

Sleep Country may have common law trademark rights in the tagline “If you are not picky about color.”

EXHIBIT B TO
COLLATERAL ASSIGNMENT OF TRADEMARKS

ASSIGNMENT OF TRADEMARKS

This Assignment having an effective date of _____, ___ is made by and between SLEEP COUNTRY USA, INC., a corporation of the State of Delaware, located and doing business at [_____], ("Assignor") and _____, a _____, located and doing business at _____ ("Assignee").

WHEREAS, Assignor has adopted and owns certain trademarks which are registered in the U.S. Patent and Trademark Office or which are the subject of pending use-based applications in the U.S. Patent and Trademark Office (hereinafter the "Marks") and,

WHEREAS, Assignee is desirous of acquiring the Marks and registration therefor.

NOW THEREFORE, in consideration of and in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign and transfer unto Assignee, and its successors and assigns, all of its right, title and interest in and to the Marks, and the registrations and applications therefor, together with that part of the good will of the business connected with the use of and symbolized by the Marks, and including Assignor's entire right, title and interest in and to any and all causes of action and rights of recovery for past infringement of the Marks. Assignor hereby covenants that it has full right to convey the entire interest herein assigned, and that it has not executed, and will not execute, any agreements inconsistent herewith. Assignor hereby irrevocably authorizes [_____] to date this undated Assignment and otherwise complete this Assignment at the time of transfer.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this assignment as of the dates identified below.

SLEEP COUNTRY USA, INC. (Assignor)

Date: _____

By _____

Title _____

_____ (Assignee)

Date: _____

By _____

Title: _____

ASSIGNMENT OF TRADEMARKS

This Assignment having an effective date of _____, ___ is made by and between SLEEP COUNTRY USA, INC., a corporation of the State of Delaware, located and doing business at [_____], ("Assignor") and _____, a _____, located and doing business at _____ ("Assignee").

WHEREAS, Assignor has adopted and owns certain trademarks which are the subject of pending intent-to-use applications in the U.S. Patent and Trademark Office (hereinafter the "Marks") and,

WHEREAS, Assignee is desirous of acquiring the Marks and applications therefor.

NOW THEREFORE, in consideration of and in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign and transfer unto Assignee, and its successors and assigns, all of its right, title and interest in and to the Marks, and the applications therefor, together with that part of the good will of the business connected with the use of and symbolized by the Marks, and including Assignor's entire right, title and interest in and to any and all causes of action and rights of recovery for past infringement of the Marks. Assignor hereby covenants that it has full right to convey the entire interest herein assigned, and that it has not executed, and will not execute, any agreements inconsistent herewith. As indicated below, each Mark is the subject of a verified allegation of use under §§ 1(c) or 1(d) of the Lanham Act that has been filed with the U.S. Patent and Trademark Office, or it is being assigned as part of a transfer of the entire business or portion thereof to which the Marks pertain as required by § 10 of the Lanham Act.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this assignment as of the dates identified below.

SLEEP COUNTRY USA, INC. (Assignor)

Date: _____

By _____

Title _____

_____ (Assignee)

Date: _____

By _____

Title: _____