

01-30-2001



101598474

Re:
1-30-01

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment
- License
- Security Agreement
- Nunc Pro Tunc Assignment
Effective Date
Month Day Year
- Merger
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

TRADEMARK

REEL: 002223 FRAME: 0600

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text" value="75679874"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="2337818"/>	<input type="text" value="2235373"/>	<input type="text" value="2341544"/>
<input type="text" value="2292816"/>	<input type="text" value="2325049"/>	<input type="text" value="2363463"/>
<input type="text" value="2324447"/>	<input type="text" value="2304234"/>	<input type="text" value="2345688"/>

Number of Properties

Enter the total number of properties involved. #

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment:

Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.

Lisa Robison

1/29/01

Name of Person Signing

Signature

Date Signed

**RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY**

FORM PTO-1618C
Expires 06/30/99
OMB 0651-0027

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other

Citizenship/State of Incorporation/Organization

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11-17-2000



101520251

10-30-00

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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Name Execution Date
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TRADEMARK
REEL: 002223 FRAME: 0603

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Deposit Account Number:

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Authorization to charge additional fees:

Yes

No

Statement and Signature

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Lisa Robison

Name of Person Signing

Lisa Robison

Signature

1/29/01

~~1/26/00~~

Date Signed

**RECORDATION FORM COVER SHEET
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TRADEMARKS ONLY**

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TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS AGREEMENT is made as of the 18th day of October, 2000, between KAN.PAK, LLC, having a mailing address at 1016 South Summit Street, Arkansas City, Kansas 67005 ("Assignor") and HSBC BUSINESS CREDIT (USA) INC. formerly known as HSBC BUSINESS LOANS, INC., having a mailing address at 2405 Grand Avenue, Suite 900, Kansas City, Missouri 64108 ("Secured Party").

RECITALS

A. Assignor has executed and delivered its Revolving Credit Note, Term Loan A Note, Term Loan B Note, Capex A Note and Capex B Note (collectively the "Notes") to the Secured Party in the aggregate principal amount of \$11,670,000.00, pursuant to that certain Amended and Restated Loan and Security Agreement dated as of May 30, 2000, between Assignor and the Secured Party as amended by that certain First Amendment to Amended and Restated Loan and Security Agreement dated as of October 18, 2000 (as it may be further amended, restated, supplemented or otherwise modified and in effect from time to time, the "Loan Agreement").

B. The parties now wish to amend the Loan Agreement by entering into that certain First Amendment to Amended and Restated Loan Agreement (the "Amendment") to facilitate the purchase of certain assets, including the Trademarks. In order to induce the Secured Party to execute and deliver the Amendment, Assignor has agreed to assign to Secured Party certain trademark rights. This Trademark Collateral Assignment and Security Agreement is being executed contemporaneously with the Amendment under which the Secured Party is granted a lien on and security interest in, among other things, equipment, inventory, accounts, books, records, product specifications, good will, customer lists and trade secrets ("Other Assets") relating to products sold under the Trademarks, whereby Secured Party 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 under the Loan Agreement, in order that the owner of the Trademarks may continue the manufacture of products to be sold under the Trademarks and maintain substantially the same product specifications and quality as maintained by Assignor.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, Assignor hereby agrees with Secured Party as follows:

1. Assignment. To secure the complete and timely satisfaction of all obligations of Assignor to Secured Party under the Loan Agreement (the "Obligations"), Assignor hereby grants, assigns and conveys to Secured Party the entire right, title and interest in and to the trademark applications and trademarks listed in **Schedule "A"** hereto (as the same may be amended pursuant thereto from time to time), including without limitation all renewals thereof, all proceeds thereof (such as, by way of example, license royalties and 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.

2. Representations, Warranties and Covenants of Assignor. Assignor covenants and warrants that:

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

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

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

(d) 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, registered user agreements and covenants by Assignor not to sue third persons;

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

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

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

3. Inspection Rights. Assignor hereby grants to Secured Party and its employees and agents the right to visit Assignor's 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. Assignor shall do any and all acts required by Secured Party to ensure Assignor's compliance with paragraph 2(g).

4. Further Assurance. Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with Assignor's obligations under this Agreement, without Secured Party's prior written consent. The Assignor further agrees that at any time and from time to time, at the expense of the Assignor, the Assignor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Secured Party may request, in order to perfect and protect the collateral assignment granted or purported to be granted hereby or to enable, the Secured Party to exercise its rights and remedies hereunder.

5. Additional Trademarks. If, before the Obligations shall have been satisfied in full, Assignor shall obtain rights to any new trademarks, the provisions of paragraph 1 shall automatically apply thereto and Assignor shall give Secured Party prompt written notice thereof.

6. Modification by Secured Party. Assignor authorizes Secured Party to modify this Agreement by amending Schedule A to include any future trademarks and trademark applications covered by paragraphs 1 and 5 hereof, without the signature of Assignor if permitted by applicable law.

7. Grant of License to Assignor. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Loan Agreement), Secured Party hereby grants to Assignor the exclusive, nontransferable right and license to use 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 paragraph 7, without the prior written consent of Secured Party.

8. Default. If any Event of Default shall have occurred and be continuing, Assignor's license under the Trademarks, as set forth in paragraph 7, shall terminate forthwith, and the Secured Party shall have, in addition to all other rights and remedies given it by this Agreement, those 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 may be located and, without limiting the generality of the foregoing, the Secured Party may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, all or from time to time any of the Trademarks, or any interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Assignor. Notice of any sale or other disposition of the Trademarks shall be given to Assignor at least five (5) days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of any of the Notes or Secured Party may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

9. Termination of Assignment. At such time as Assignor shall completely satisfy all of the Obligations, this Agreement shall terminate and Secured Party 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 Secured Party pursuant hereto.

10. Expenses. Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Secured Party in

connection with the preparation of this Agreement 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 Secured Party and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate prescribed in the Loan Agreement for amounts past due.

11. Preservation of Trademark Rights. Assignor shall have the duty, through counsel acceptable to Secured Party, to prosecute diligently any trademark applications of the Trademarks pending as of the date of this Agreement 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 the Trademarks shall be borne by Assignor. The Assignor shall not abandon any Trademark without the consent of the Secured Party, which consent shall not be unreasonably withheld. Assignor shall have the right, with the prior written consent of Secured Party, which will not be unreasonably withheld, to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Trademarks, in which event Secured Party may, if necessary, be joined as a nominal party to such suit if Secured Party 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 Secured Party for all damages, costs and expenses, including attorney's fees, incurred by Secured Party in the fulfillment of the provisions of this paragraph 11.

12. Secured Party Appointed Attorney-In-Fact. In the event of the occurrence of an Event of Default under the Loan Agreement, Assignor hereby authorizes and empowers Secured Party to make, constitute and appoint any officer or agent of Secured Party as Secured Party may select, in its exclusive discretion, as Assignor's true and lawful attorney-in fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Secured Party to use the Trademarks, or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Secured Party to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Agreement.

13. Secured Party May Act. If Assignor fails to comply with any of its obligations hereunder, Secured Party may do so in Assignor's name or in Secured Party's name, but at Assignor's expense, and Assignor hereby agrees to reimburse Secured Party in full for all expenses, including reasonable attorney's fees, incurred by Secured Party in protecting, defending and maintaining the Trademarks.

14. No Waiver. No course of dealing between Assignor and Secured Party, nor any failure to exercise, nor any delay in exercising, on the part of Secured Party, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any

single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

15. Rights Cumulative. All of Secured Party's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

16. 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.

17. Modification. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 6.


18. Inurement. 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.

19. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Missouri.

WITNESS the execution hereof as of the day and year first above written.

ASSIGNOR:

KAN-PAK, LLC, a Delaware limited liability company

By: 
Name: Dennis J. Cohlma
Title: Managing Member

SECURED PARTY:

HSBC BUSINESS CREDIT (USA) INC.,
a Delaware corporation formerly known as HSBC
BUSINESS LOANS, INC.

By: 
Name: M. CATHERINE DRAPER
Title: VICE PRESIDENT

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 18th day of October, 2000, personally appeared Deanis J. Cohlman to me known personally, and who, being by me duly sworn, deposes and says that (s)he is the Managing Member of KAN-PAK, LLC, a Delaware limited liability company, and that the foregoing instrument was signed on behalf of said company under proper authority, and said Deanis J. Cohlman acknowledged said instrument to be the free act and deed of said company.



John J. Spataro
Notary Public

My Commission Expires: Jan 5, 2004

STATE OF Missouri)
) SS.
COUNTY OF Jackson)

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 24 day of October, 2000, personally appeared M. Catherine Draper to me known personally, and who, being by me duly sworn, deposes and says that (s)he is the Vice President of HSBC BUSINESS CREDIT (USA), INC. and that the foregoing instrument was signed on behalf of said corporation under proper authority, and said M. Catherine Draper acknowledged said instrument to be the free act and deed of said corporation.



Virginia A. Doerflinger
Notary Public

My Commission Expires:
9/20/2003

SCHEDULE A

TRADE SLOGANS

<u>Trade Slogan</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Owner</u>
Flavor Advantage ®	2,337,818	04/04/2000	NPF Product Group, Inc.
A Real Fruit Mix ®	2,292,816	11/16/1999	MK Holdings, Inc.
Makes Everyday Foods Functional ®	2,324,447	02/29/2000	Native Planet Foods, Inc.

BRAND NAMES

<u>Brand Name</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Owner</u>
Frutazza ®	2,235,373	10/06/1997	MK Holdings, Inc.
Miss Karen's ®	2,325,049	03/07/2000	NPF Product Group, Inc.
Pima Naturals ®	2,304,234	12/28/1999	MK Holdings, Inc.

MARKS

<u>Brand Name</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Owner</u>
Native Planet Foods	75/679,874	Pending	Native Planet Foods, Inc.
Frutazza and design®	2,341,544	04/11/2000	NPF Product Group, Inc.
Miss Karen's and design ®	2,363,463	07/04/2000	Native Planet Foods, Inc.
Pima Naturals and design ®	2,345,688	4/25/2000	NPF Product Group, Inc.