

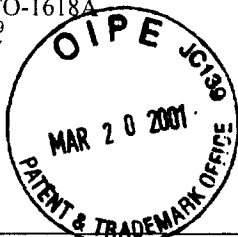
03-27-2001

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



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

101649306



### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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

69-021.5

#### 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
- Merger
- Change of Name
- Other \_\_\_\_\_

Effective Date  
Month Day Year  
03072001

#### Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name BestSweet, Inc.

03162001

Formerly Beacon Sweets, Inc.

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other \_\_\_\_\_
- Citizenship/State of Incorporation/Organization New Jersey

#### Receiving Party

Mark if additional names of receiving parties attached

Name Coast Business Credit a Division of Southern Pacific Bank

DBA/AKA/TA \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) 12121 Wilshire Boulevard

Address (line 2) Suite 1400

Address (line 3) Los Angeles

CA

90025

City

State/Country

Zip Code

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

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

03/27/2001 DBYRNE 00000041 75729672

01 FC:481  
02 FC:482

40.00  
250.00

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

03/27/2001 DBYRNE 000013257

CHECK RETURN LABEL: \$150.00

TRADEMARK  
REEL: 002258 FRAME: 0416

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name Coast Business Credit a Division of Southern Pacific Bank

Address (line 1) 12121 Wilshire Boulevard

Address (line 2) Suite 1400

Address (line 3) Los Angeles, CA 90025

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number (714) 288-8538

Name JEROME D. STARK, PC

Address (line 1) 60 Plaza Square

Address (line 2) Suite 200

Address (line 3) Orange, CA 92866

Address (line 4)

**Pages**

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

# 12

**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)

75729672

1948858

1637733

2011344

76090458

2211982

1920033

2172058

76090458

2012735

2235319

**Number of Properties**

Enter the total number of properties involved.

# 11

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 440.00

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.

Jerome D. Stark

Name of Person Signing



Signature

03162001

Date Signed

# Trademark Security Agreement



This Agreement ("Agreement"), as of March 7, 2001 is entered into between BestSweet, Inc., a New Jersey corporation, ("Grantor") and Coast Business Credit®, a division of Southern Pacific Bank, a California corporation (Coast") in light of the following:

A. Grantor, BestSweet, Inc., a New Jersey corporation and Coast entered into a Loan and Security Agreement dated March 7, 2001 ("Loan Agreement") and other instruments, documents, agreements contemplated thereby or related thereto and Amendments (collectively, the "Loan Documents"); and

B. Grantor is the owner of certain intellectual property identified below, in which Grantor is granting a security interest to Coast.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other goods and valuable consideration, the parties hereto mutually agree as follows:

## 1. DEFINITIONS AND CONSTRUCTION.

**1.1 Definitions.** The following terms, as used in this Agreement have the following meanings:

"Code" means the Uniform Commercial Code, amended and supplemented from time to time, and any successor statute.

"Collateral" means:

(i) Each of the trademarks and rights and interest which are capable of being protected as trademarks (including trademarks, service marks, designs, logos, indicia, tradenames, corporate names, company names, business names, fictitious business names, trade styles, and other source or business identifiers, and applications pertaining thereto), which are presently, or in the future may be, owned or created by Grantor, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(ii) All of Grantor's right to the trademarks and trademark registrations listed on Exhibit A, attached hereto, as the same may be updated from time to time;

(iii) All of Grantor's right, title and interest to register trademark claims under any state or federal trademark law or regulation of foreign country and to apply for, renew, and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Grantor or in the name of Coast for past, present, and future infringements of the trademarks, registrations, or trade rights and all rights (but not obligations) corresponding thereto in the United States and any foreign countries, and the associated goodwill;

(iv) All general intangibles relating to the foregoing; and

(v) All proceeds of any and all of the foregoing (including without limitation, license royalties and proceeds of infringement suits) and to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

"Obligations" means: all obligations, liabilities, and indebtedness of Grantor to Coast, whether direct, indirect, liquidated or contingent, and whether arising under this Agreement, the Loan Agreement, any

other of the Loan Documents or otherwise, including all costs and expenses described in Section 11.8 hereof.

**1.2 Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and other similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any initially capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Any reference herein to any of the Loan Documents include and all alterations, amendments, extensions, modifications, renewals, or supplemental thereto or thereof, as applicable.

## 2. GRANT OF SECURITY INTEREST

Grantor hereby grants to Coast a first-priority security interest in all Grantor's right, title, and interest in and to the Collateral to secure the Obligations.

## 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

Grantor hereby represents, warrants, and covenants that to the best of its knowledge without specific inquiry:

**3.1 Trademarks.** A true and complete schedule setting forth federal and state trademark registrations owned or controlled by Grantor together with a summary description and information in respect of or issuance thereof and expiration dates is set forth on Exhibit A;

**3.2 Validity; Enforceability.** Each of the trademarks is valid and enforceable and Grantor is not presently aware of any past, present, or prospective claim by any third party that any of the trademarks are invalid or unenforceable, the use of any trademarks violates the rights of any third person, or of any basis such claims;

**3.3 Title.** Grantor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the trademarks, and trademark registrations, free and clear of any, charges, and encumbrances, including pledges, assignments, licenses, and covenants by Grantor not to sue third persons;

**3.4 Notice.** Grantor has used and will continue to use proper statutory notice in connection with its use of each of the trademarks;

**3.5 Quality.** Grantor has used and will continue to use consistent standards of high quality (which may be consistent with Grantor's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks (if such continuation is economically feasible and in accordance with the Grantor's business plan);

## 4. AFTER-ACQUIRED TRADEMARK RIGHTS.

If Grantor shall own or create any new trademarks, or become entitled to the benefit of any trademark application or trademark for any reissue, division, or continuation, of any trademark, the provisions of this Agreement shall automatically apply thereto. Grantor shall give prompt notice in writing to Coast with respect to such new trademarks, or renewal or extension of any trademark registration. Grantor shall bear any expenses incurred in connection with future trademark applications and trademark registrations; provided, however that nothing herein contained shall be deemed to require Grantor to renew or extend or apply or register any currently owned or created trademarks, created by Grantor in the future.

## 5. LITIGATION AND PROCEEDINGS.

Grantor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other action for infringement or other damages as are in its reasonable business judgment necessary to protect as to those trademarks which, in Grantor's sole discretion it desires to protect. Grantor shall provide to Coast any information with respect thereto as reasonably requested by Coast. Coast shall provide at Grantor's expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following Grantor's becoming aware thereof, Grantor shall notify Coast of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Offices or any United States, state, or foreign court regarding Grantor's claim of ownership in any of the trademarks, its right to apply for the same, or its right to keep and maintain such trademark rights.

## 6. POWER OF ATTORNEY

Grantor grants Coast power of attorney, having the full authority, and in the place of Grantor and in the name of Grantor, from time to time following and during the continuance of an Event of Default in Coast's reasonable discretion, to take any action and to execute any instrument which Coast may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of this Agreement endorse Grantor's name on all applications, documents, papers, and instruments necessary for Coast to use or maintain the Collateral; to ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral; to file any claims or take any action or institute any proceedings that Coast may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce Coast's rights with respect to any of the Collateral and to assign, pledge, convey, or otherwise transfer title in or dispose of the Collateral to any person.

## 7. RIGHT TO INSPECT.

Grantor grants to Coast and its employees and agents the right to visit Grantor'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 upon reasonable advance notice.

## 8. EVENTS OF DEFAULT.

Any of the following events shall be an Event of Default:

**8.1 Loan Agreement.** An Event of Default shall occur as defined in the Loan Agreement;

**8.2 Misrepresentation.** Any representation or warranty made herein by Grantor or in any document furnished to Coast by Grantor under this Agreement if incorrect in any material respect when made or when reaffirmed; and

**8.3 Breach.** Grantor fails to observe or perform any covenant, condition, or agreement to be observed or performed pursuant to the terms hereof which materially and adversely affects Coast.

## 9. SPECIFIC REMEDIES.

Upon the occurrence and during the continuance of any Event of Default, Coast shall have, in addition to, other rights given by law or in this Agreement, the Loan Agreement any other Loan Document, all of the rights and remedies with respect to the Collateral of a secured party under the Code, including the following:

**9.1 Notification.** Coast may notify licensees to make royalty payments on license agreements directly to Coast;

**9.2 Sale.** Coast may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as are commercially reasonable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Grantor ten (10) days prior to such disposition. Grantor shall be credited with the net proceeds of such sale only when they are actually received by Coast, and Grantor shall continue to be liable for any deficiency (and entitled to any surplus) remaining after the Collateral is sold or collected. If the sale is to be a public sale, Coast shall also give notice of the time and place by publishing a notice one time at least ten (10) days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held and at least fifteen (15) days before the date of the sale in a publication that serves Grantor's industry on a regional or national basis. To the maximum extent permitted by applicable law, Coast may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any collateral payable by Coast at such sale.

**10. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT; AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA OR, AT THE SOLE AND REASONABLE OPTION OF COAST, IN ANY OTHER COURT IN WHICH COAST SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. EACH OF GRANTOR AND COAST WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS TO BE BROUGHT IN ACCORDANCE WITH THIS SECTION 10. GRANTOR AND COAST HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. GRANTOR AND COAST REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS IRREBUTABLE EVIDENCE OF THE PARTIES WAIVER OF THEIR RESPECTIVE JURY RIGHTS TO A TRIAL BY THE COURT.**

#### **11. GENERAL PROVISIONS.**

**11.1 Effectiveness.** This Agreement shall be binding and deemed effective when executed by Grantor and Coast.

**11.2 Successors and Assigns.** This Agreement shall bind and inure to the benefit of respective successors and assigns of each of the parties; provided however, that Grantor may not assign this Agreement or any rights or duties hereunder without Coast's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned, and any prohibited assignment shall be absolutely void. Coast may assign this Agreement and its rights and duties hereunder and no consent or approval by Grantor is required in connection with any such assignment

**11.3 Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the content, everything contained in each section applies equally to this entire Agreement.

**11.4 Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Coast or Grantor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

**11.5 Severability of Provisions.** Each provision of this Agreement shall be severable from every other provisions of this Agreement for the purpose of determining the legal enforceability of any specific provision.

**11.6 Amendments in Writing.** This Agreement can only be amended by a writing signed by both Coast and Grantor.

**11.7 Counterparts; Telefacsimile Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

**11.8 Fees and Expenses.** Grantor shall pay to Coast on demand all reasonable costs and expenses that Coast pays or incurs in connection with the negotiation, preparation, consummation, administration, enforcement, and termination of this Agreement, including: (a) reasonable attorneys' and paralegals' fees and disbursements of counsel to Coast; (b) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) for any amendment, supplement waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby; (c) costs and expenses of lien and title searches; (d) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office, or for filing financing statements, and continuations, and other actions to perfect, protect and continue the security interest created hereunder; (e) sums paid or incurred to pay any amount or take any action required of Grantor under this Agreement that Grantor fails to pay or take; (f) reasonable costs and expenses of preserving and protecting the Collateral; and (g) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) paid or incurred to enforce the security interest created hereunder, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made or threatened against the Coast arising out of the transactions contemplated hereby (including preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement or the Loan Documents regarding costs and expenses to be paid by Grantor. The parties agree that reasonable attorneys' and paralegals' fees and costs incurred in enforcing any judgment are recoverable as a separate item in addition to fees and costs incurred in obtaining the judgment and that the recovery of such attorneys' and paralegals' fees and costs is intended to survive any judgment, and is not to be deemed merged into any judgment.

**11.9 Notices.** Except as otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing and shall be governed by the provisions of Section 11.5 of the Loan Agreement

**11.10 Integration.** This Agreement, together with the other Loan Documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

**EXHIBIT A**  
to Trademark Security Agreement  
between BestSweet, Inc.  
and Coast Business Credit®  
dated March 7, 2001

**SEE ATTACHED TRADEMARK PORTFOLIO  
FOR BestSweet, Inc.  
DATED JULY 2000**



**BEACON SWEETS, INC.**

**Trademark Portfolio**

**July 2000**

- 1. U.S. Trademark Registrations
- 2. U.S. Trademark Applications

FOR FILES MAINTAINED BY:

**ALSTON & BIRD LLP**

BEACON SWEETS, INC.  
 U.S. Trademark Registrations  
 JULY 2000

| Mark/Matter No.                      | Reg. No./Issued         | Goods  | Status   |
|--------------------------------------|-------------------------|--|--|
| CHERRY TIME<br>161438                | 1,948,858<br>01/16/1996 | Candy (Int. 30).   | Affidavit of Use due after<br>January 16, 2001, but before<br>January 16, 2002; renewal due<br>January 16, 2006.       |
| COLOR PA EGGS<br>161465              | 2,711,962<br>12/15/1998 | Confectionaries, namely, candy<br>(Int. 30).                           | Affidavit of Use due after<br>December 15, 2003, but before<br>December 15, 2004; renewal due<br>December 15, 2008.    |
| COVERGOL<br>161435                   | 2,012,715<br>10/29/1996 | Pharmaceuticals, namely, cough<br>suppressants (Int. 5).               | Affidavit of Use due after<br>October 29, 2001, but before<br>October 29, 2002; renewal due<br>October 29, 2006.       |
| ROBOTS<br>161424                     | 1,637,733<br>03/12/1991 | Candy, namely, chocolate-<br>covered peanut butter candy<br>(Int. 30). | Renewal due March 12, 2001.  |
| KINGS & Design<br>161425             | 1,920,033<br>09/19/1995 | Candy (Int. 30).   | Affidavit of Use due after<br>September 19, 2000, but before<br>September 19, 2001; renewal due<br>September 19, 2005. |
| MEAN ROSE<br>161464                  | 2,235,319<br>03/23/1993 | Confectionaries, namely, candy<br>(Int. 30).                           | Affidavit of Use due after<br>March 23, 2004, but before<br>March 23, 2005; renewal due<br>March 23, 2009.             |
| PEANUT Design<br>161421              | 2,011,344<br>10/29/1996 | Chocolate candy (Int. 30).   | Affidavit of Use due after<br>October 29, 2001, but before<br>October 29, 2002; renewal due<br>October 29, 2006.       |
| THE ORIGINAL LONELY WOLVES<br>161466 | 2,172,058<br>01/07/1998 | Confectionaries, namely, candy<br>(Int. 30).                           | Affidavit of Use due after<br>July 7, 2003, but before<br>July 7, 2004; renewal due<br>July 7, 2008.                   |
| CANDY/443563147                      |                         |  |  |

BEACON SWEETS, INC.

U.S. Trademark Applications  
July 2000

| Mark/Matter No.         | Ser. No./Filed           | Goods  | Status   |
|-------------------------|--------------------------|--|--|
| CANDY 30<br>183259      | 75/129,672<br>06/15/1999 | Confectionaries, namely, candy<br>(Int. 30). | Application pending;<br>response to final office Action<br>due September 20, 2000. |
| CHOCY GLEND<br>138990   | 76/090,458<br>07/17/2000 | Candy (Int. 30).                             | Application pending;<br>awaiting filing receipt.                                   |
| LICK IT LATER<br>197841 | 76/090,458<br>07/17/2000 | Candy (Int. 30).                             | Application pending;<br>awaiting filing receipt.                                   |

CLASS/CLASS