

07-24-2001

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)



U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

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101782261

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

1. Name of conveying party(ies):
Brown & Haley

- 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 see attached
- Merger
- Change of Name

Execution Date: December 17, 1999

2. Name and address of receiving party(ies)
Name: Banc of America Commercial Finance Corporation, through Its Commercial Funding Division
Address: 36th Floor

Street Address: 1177 Avenue of the Americas
City: New York State: NY Zip: 10036

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State New York
- 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 registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

See Attached

Additional number(s) attached Yes No

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

Name: Malcom C. Lindquist

Internal Address: _____

Street Address: P. O. Box 1317

City: Tacoma State: WA Zip: 98401

6. Total number of applications and registrations involved: 33

7. Total fee (37 CFR 3.41).....\$ 960.00

- Enclosed - includes expedited handling fee of \$120
- Authorized to be charged to deposit account

8. Deposit account number: free OK

(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.

Malcolm C. Lindquist
Name of Person Signing

Signature

7/13/2001
Date

23

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

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

Box 3 – Nature of conveyance:

Other: Corrective Assignment to change conveyance from Assignment to **Security Agreement** (previously recorded at Reel 002148, Frames 0078 through 0102 – *please delete the prior record*).

Box 4.B- Trademark Registration Nos:

0,191,430
0,641,498
0,641,499
0,822,393
0,834,846
0,905,608
1,037,692
1,078,011
1,156,555
1,179,421
1,231,271
1,243,812
1,253,117
1,266,502
1,595,621
1,623,868
1,664,285
1,676,024
1,688,447
1,693,381
1,693,399
1,693,400
1,766,065
1,928,092
1,933,046
1,955,209
1,958,366
2,044,856
2,096,571
2,191,144
2,196,160
2,220,622
2,261,232

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

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OPR/FINANCE

Malcolm C. Lindquist
Attorney at Law
P.O. Box 1317
Tacoma, WA 98401-1317

09-27-2000



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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 Brown & Halcy

12/17/1999

Formerly _____

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

Receiving Party

Mark if additional names of receiving parties attached

Name Banc of America Commercial Finance Corporation, through its Commercial Funding Division

DBA/AKA/TA _____

Composed of _____

Address (line 1) 1177 Avenue of the Americas

Address (line 2) 36th Floor

Address (line 3) New York

NY

10036

City

State/Country

Zip Code

- Individual General Partnership Limited Partnership
- Corporation Association
- Other _____

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.)

Citizenship/State of Incorporation/Organization State of New York

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01/08/2000 10:07:23 00000069 191:30

01 FC:481
02 FC:482
03 FC:928

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15.00

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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 (0481-0077), Washington, D.C. 20503. See OMB Information Collection Budget Package 0481-0027, Patent and Trademark Administration Practice. DO NOT SEND REQUESTS FOR A SEPARATE ASSIGNMENT FORMS TO THE ADDRESS.

Mail documents to be recorded with required cover sheet to
Commissioner of Patents and Trademarks, Box Assignm

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"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="191,430"/> | <input type="text" value="1,179,421"/> | <input type="text" value="834,846"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="1,231,271"/> | <input type="text" value="1,958,366"/> | <input type="text" value="905,608"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="2,191,144"/> | <input type="text" value="2,096,571"/> | <input type="text" value="1,766,065"/> |

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.

Malcolm C. Lindquist, Attorney

1-7-2001

Name of Person Signing

Signature

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year
12/17/1999

Name Brown & Haley

Formerly _____

Individual General Partnership Limited Partnership Corporation Association

Other _____

Citizenship State of Incorporation/Organization State of Washington

Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name Banc of America Commercial Finance Corporation, through its Commercial Funding Division

DBA/AKA/TA _____

Composed of _____

Address (line 1) 1177 Avenue of the Americas

Address (line 2) 36th Floor

Address (line 3) New York NY 10036
City State/Country Zip Code

Individual General Partnership Limited Partnership

Corporation Association

Other _____

Citizenship/State of Incorporation/Organization State of Washington

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 the Assignment.)

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)

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| 1,933,046 | 1,955,209 | 1,156,555 |
| 641,498 | 2,261,232 | 2,196,160 |
| 1,928,092 | 1,676,024 | 1,693,400 |
| 2,220,622 | 641,499 | 1,693,399 |
| 1,664,285 | 1,253,117 | 1,037,692 |
| 1,266,502 | 1,595,621 | 2,044,856 |

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name Brown & Haley

12/17/ 1999

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization State of Washington

Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name Banc of America Commercial Finance Corporation, through its Commercial Funding Division

DBA/AKA/TA

Composed of

Address (line 1) 1177 Avenue of the Americas

Address (line 2) 36th Floor

Address (line 3) New York NY 10036
City State/Country Zip Code

Individual General Partnership Limited Partnership 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 the Assignment.)
 Corporation Association

Other

Citizenship/State of Incorporation/Organization State of New York

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)

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**TRADEMARK AND TRADE NAME COLLATERAL ASSIGNMENT
AND SECURITY AGREEMENT**

This Trademark and Trade Name Collateral Assignment and Security Agreement, dated as of December 17, 1999, is made by **BROWN & HALEY**, a Washington corporation with its chief executive office located at 110 East 26th Street, Tacoma, Washington, 98421 ("**Borrower**"), in favor of **BANC OF AMERICA COMMERCIAL FINANCE CORPORATION, THROUGH ITS COMMERCIAL FUNDING DIVISION**, 1177 Avenue of the Americas, 36th Floor, New York, New York, 10036, and its successors, assigns, and other legal representatives ("**Secured Party**").

W I T N E S S E T H:

WHEREAS, Borrower and Secured Party are parties to a Loan and Security Agreement, dated as of the date hereof (the "Loan Agreement"), and certain supplements, agreements, documents, and instruments entered into pursuant thereto (collectively, with the Loan Agreement, the "Loan Documents"), pursuant to which Secured Party may make certain loans and credit accommodations to Borrower; and

WHEREAS, Secured Party's willingness to enter into the Loan Documents and make the loans and credit accommodations available thereunder is subject to the condition, among others, that Borrower execute and deliver this Trademark and Trade Name Collateral Assignment and Security Agreement;

NOW, THEREFORE, in consideration of the foregoing, Borrower hereby agrees for the benefit of Secured Party as follows:

1. **DEFINITIONS.**

1.1 All capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefor in the Loan Agreement. In addition, the following terms shall have the meanings set forth in this Section 1 or elsewhere in this Security Agreement referred to below:

"Proceeds" shall mean any consideration received from the sale, exchange, license, lease, or other disposition or transfer of any right, interest, asset, or property which constitutes Trademark Collateral, any value received as a consequence of the ownership, possession, use, or practice of any Trademark Collateral, and any payment received from any insurer or other person or entity as a result of the destruction or the loss, theft, or other involuntary conversion, of whatever nature, of any right, interest, asset, or property which constitutes Trademark Collateral.

"PTO" shall mean the United States Patent and Trademark Office.

"Trade Name" shall be any the trade name utilized by **BROWN & HALEY**.

"Trademarks" shall mean all of the following now or hereafter owned or used by the Borrower:

(a) all trademarks of the United States or any other country, and all applications for trademarks of the United States or any other country;

(b) all re-issues, continuations, divisions, continuations-in-part, renewals, or extensions thereof;

(c) the trademarks disclosed or claimed therein, including the right to make, use, practice, and/or sell or license or otherwise transfer or dispose of the trademarks disclosed or claimed therein; and

(d) the right (but not the obligation) to make and prosecute applications for such Trademarks.

Trademarks shall include, but not be limited to, those set forth on Schedule A attached hereto.

"Trademark Collateral" shall mean all of the Borrower's right, title, and interest in and to all of the Trademarks, the Trademark License Rights, and the Trademark Rights, and all additions, improvements, and accessions thereto, all substitutions for and replacements of, and all products and Proceeds (including insurance proceeds) of any and all of the foregoing, and all books and records and technical information and data describing or used in connection with any and all such rights, interests, assets, or property.

"Trademark License Rights" shall mean any and all past, present, or future rights and interests of the Borrower pursuant to any and all past, present, and future licensing agreements in favor of the Borrower, or to which the Borrower is a party, pertaining to any Trademarks or Trademark Rights, owned or used by third parties in the past, present, or future, including the right in the name of the Borrower or Secured Party to enforce, sue, and recover for any past, present, or future breach or violation of any such agreements.

"Trademark Rights" shall mean any and all past, present, or future rights in, to, and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law, or otherwise, including but not limited to the following: all such rights arising out of or associated with the Trademarks; the right (but not the obligation) to register claims under any federal, state, or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or bring cancellation

proceedings in the name of the Borrower or the Secured Party for any and all past, present, and future infringements of or any other damages or injury to the Trademarks or the Trademark Rights, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present, or future infringement, damage, or injury; and the Trademark License Rights.

2. GRANT OF SECURITY; COLLATERAL ASSIGNMENT.

2.1 Grant of Security Interest. As collateral security for the complete and timely performance and satisfaction of all Obligations, the Borrower hereby unconditionally grants to Secured Party a continuing security interest in and first priority lien on the Trademark Collateral and the Trade Name, and Borrower hereby pledges, mortgages, and hypothecates the Trademark Collateral and the Trade Name to Secured Party.

2.2 Collateral Assignment.

(a) In addition, and not by way of limitation of, the grant, pledge, mortgage, and hypothecation of the Trademark Collateral and the Trade Name provided in Section 2.1, to secure the complete and timely payment, performance, and satisfaction of all Obligations, the Borrower hereby grants, assigns, transfers, and conveys to Secured Party, **BY WAY OF COLLATERAL SECURITY**, the Borrower's entire right, title and interest in and to the Trademark Collateral and in the Trade Name. The foregoing grant, assignment, transfer, and conveyance shall be referred to from time to time herein as the "Section 2.2 Assignment." **SECURED PARTY ASSUMES NO LIABILITY OR RESPONSIBILITY ARISING IN ANY WAY BY REASON OF ITS HOLDING SUCH COLLATERAL SECURITY EXCEPT RESULTING FROM ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

(b) Unless and until there shall have occurred and be continuing an Event of Default and Secured Party has notified the Borrower that the license granted hereunder is terminated, Secured Party hereby grants to the Borrower the sole and exclusive, non-transferable, royalty-free, worldwide right and license under the Trademark Collateral to make, have made for it, use, sell, and otherwise practice the Trademarks for the Borrower's own benefit and account and for none other, with the right to prosecute and maintain Trademarks in the PTO and in foreign countries; provided, however, that the foregoing right and license shall be no greater in scope than, and limited by, the rights assigned to Secured Party by the Borrower hereby. The Borrower agrees not to sell, assign, transfer, or sub-license any of its rights or interests in the license granted to the Borrower in this Section 2.2(b), without the prior written consent of Secured Party; provided, however, that so long as no Event of Default shall have occurred and be continuing, the Borrower may license the Trademark Collateral in any lawful manner that is in the ordinary course of its business and is otherwise not inconsistent with the provisions of this Security Agreement or the Loan

Documents. Any such sub-licenses granted on or after the date hereof shall be terminable by Secured Party upon termination of the Borrower's license hereunder.

2.3 **License.** In addition to, and not by way of limitation of, all other rights of Secured Party and obligations of the Borrower pursuant to this Security Agreement and the other Loan Documents, upon the effectuation of a Section 2.2 Assignment, the Secured Party shall hold a fully-paid-up, worldwide right and license to make, use, practice, and sell (or license or otherwise transfer) the Trademark Collateral, for the exclusive purpose of, and to the extent necessary and sufficient for, the full and complete enjoyment and exercise of and realization upon the rights, remedies, and interests of Secured Party pursuant to this Security Agreement and the other Loan Documents.

2.4 **Supplement to Loan Documents.** The parties expressly acknowledge and agree that they have simultaneously executed and delivered the Loan Documents pursuant to which the Borrower unconditionally granted to Secured Party a continuing security interest in and first priority lien on the Collateral (including the Trademark Collateral). In no event shall this Security Agreement, the Section 2.2 Assignment of the Trademark Collateral hereunder, or the recordation of this Security Agreement (or any document hereunder) with the PTO, or any other governmental or public office or agency, adversely effect or impair, in any way or to any extent, the other Loan Documents, the security interest of Secured Party in the Collateral (including the Trademark Collateral) pursuant to the other Loan Documents, the attachment and perfection of such security interest under the Code, or the present or future rights and interests of Secured Party in and to the Collateral under or in connection with this Security Agreement, the other Loan Documents, and/or the Code. Any and all rights and interests of Secured Party in and to the Trademark Collateral (and any and all obligations of the Borrower with respect to the Trademark Collateral) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of Secured Party (and the obligations of the Borrower) in, to, or with respect to the Collateral (including the Trademark Collateral) provided in or arising under or in connection with the other Loan Documents.

3. **REPRESENTATIONS, WARRANTIES, AND COVENANTS OF THE BORROWER.** The Borrower represents and warrants to, and covenants and agrees with, Secured Party as follows:

3.1 **Schedules of Trademarks and Licenses.** Set forth on Schedule A hereto is a true and complete list of all Trademarks (excluding any trademarks for which trademark applications have not yet been filed). Set forth on Schedule A hereto is a true and complete list of all license or other agreements pursuant to which any person (other than the Borrower) has the right to use or have any right, title, or interest in any of the Trademarks and/or Trademark Registrations applicable thereto. All licenses and other agreements applicable to the Trademarks are the valid and binding obligations of all of the parties thereto, enforceable against each of such parties in accordance with their respective terms (*provided that*, with respect to any such parties other than the Borrower and its affiliates, such representation and warranty is made to the best of the Borrower's knowledge and belief).

3.2 **Title.** Except as set forth in Schedule A hereto, the Borrower is and will, subject to license, continue to be the sole and exclusive owner of the entire legal and beneficial right, title, and interest in and to the Trademarks and the Trademark Collateral (other than the ownership and other rights reserved by the owners of the Licensed Trademarks), free and clear of any lien, charge, security interest, or other encumbrance, except for the security interest and conditional assignment created by this Agreement and the other Loan Documents, except for liens and encumbrances explicitly permitted pursuant to the Loan Documents. The Borrower will defend its right, title, and interest in and to the Trademarks and the Trademark Collateral against any and all claims of any third parties.

3.3 **Validity and Enforceability.** The Trademarks and Trademark Rights related thereto are subsisting, have not been adjudged invalid or unenforceable, and are valid and enforceable; and the Borrower has not received any written claim by any third party that any of the Trademarks and Trademark Rights related thereto are invalid or unenforceable.

3.4 **Exclusive Right to Use.** To the best of the Borrower's knowledge and belief, except to the extent "Roca" is a common family name or otherwise as set forth in Schedule A, the Borrower has, and shall continue to have, the exclusive right to practice, make, sell, and use all the Trademarks, throughout the countries of issue, free and clear of any liens, charges, encumbrances, claims or rights of any third party, or restrictions on the rights of the Borrower to protect or enforce any of its Trademark Rights against any third party.

3.5 **After-Acquired Trademark Collateral.** The Borrower agrees that, upon its commencement of use of or acquisition of any right, title, or interest in or to any Trademark or Trademark Right, other than the Trademarks or Trademark Rights set forth on Schedule A, hereto (including any reissues, continuations, divisions, continuations-in-part, renewals, or extensions thereof, or any variations or new versions of any such scheduled Trademarks or Trademark Rights), the provisions of this Security Agreement shall

automatically apply thereto; and the Borrower shall promptly notify Secured Party thereof (and for this purpose, Secured Party agrees that the Borrower may satisfy such notification obligation by providing to Secured Party, upon the use of a new trademark or upon the reasonable request of the Secured Party, up-to-date, amended and/or supplemented Schedule A). Secured Party shall be authorized to amend such Schedule A, as appropriate, to include such additional Trademarks and Trademark Rights, without the necessity for the Borrower's approval of or signature to such amendment, and the Borrower shall do all such other acts (at its own expense) deemed reasonably necessary or appropriate by Secured Party to implement or preserve Secured Party's interest therein (including, but not limited to, executing and delivering and recording in all places where this Security Agreement or notice hereof is recorded, an appropriate counterpart of or other instrument pursuant to this Security Agreement). Such additional Trademarks and Trademark Rights shall be automatically included in the "Trademarks" and "Trademark Rights" as defined herein, and all representations and warranties of the Borrower set forth herein shall be deemed to be restated by the Borrower as of the date of any such amendment of or supplement to Schedule A, with the full force and effect as though made on such date.

3.6 **Maintenance Trademark Collateral**. The Borrower shall take any and all actions (including, but not limited to, institution and maintenance of suits, proceedings or actions) as are necessary or appropriate to properly maintain, protect, preserve, care for, and enforce the Trademark Collateral. Without limiting the generality of the foregoing, the Borrower shall pay when due such fees, taxes, and other expenses which shall be incurred or which shall accrue with respect to any of the Trademark Collateral. The Borrower shall not abandon or dedicate to the public any of the Trademarks or related Trademark Rights, nor do any act nor omit to do any act if such act or omission is of a character that tends to cause or contribute to the abandonment or dedication to the public of any Trademark or related Trademark Rights or loss of or adverse effect on any rights in any Trademark or related Trademark Rights, except in the ordinary course of its business in situations where the Borrower has ceased using the Trademarks or Trademark Rights, and the Trademark Collateral has no continuing value.

3.7 **Enforcement of Licenses**. The Borrower shall do all things which are necessary or appropriate to ensure that such licensee of any Trademark, in its use of any or all of the Trademark Collateral in its business, shall (a) comply fully with all applicable license agreements, and (b) satisfy and perform all the same obligations set forth herein (with respect to the Borrower's use of the Trademark Collateral) as fully as though such obligations were set forth with respect to such licensee's use of the licensed Trademark Collateral.

3.8 **No Infringements**. To the best of the Borrower's knowledge and belief, except as set forth on Schedule A hereto, there is at present no material infringement or unauthorized or improper use of the Trademarks or related Trademark Rights. The Borrower shall use efforts consistent with past practices to detect any such infringement or unauthorized or improper use. In the event of any such infringement or unauthorized or improper uses by

any third party has been reasonably established by the Borrower, the Borrower shall promptly notify Secured Party.

3.9 **Filing for Perfection of Interest.** Borrower shall cause this Security Agreement to be recorded with the PTO.

3.10 **Collections.** Except as otherwise provided in the Loan Documents, the Borrower shall continue to collect, at its own expense, all amounts due or to become due to the Borrower in respect of the Trademark Collateral or any part thereof; *provided, however*, that Borrower shall cause all such amounts to be paid over to the lock box account maintained by Borrower for the benefit of Secured Party in accordance with the Loan Documents.

3.11 **Remedies Upon Default; Secured Party's Right to Perform Borrower's Obligations.** If the Borrower shall fail to do any act which is has covenanted to do hereunder or if any representation or warranty of the Borrower shall be breached, Secured Party, in its own name or that of the Borrower (in the sole discretion of Secured Party) may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and any cost or expense incurred by Secured Party in so doing shall be added to the principal amount of the Obligations and shall bear interest at the rate applicable to overdue principal under the Loan Documents. The Borrower shall cooperate with Secured Party in any such act or remedy.

4. **RIGHTS UPON AN EVENT OF DEFAULT.**

4.1 **Actions on Trademarks and Trademark Collateral.** If any Event of Default shall have occurred and be continuing, then Secured Party shall have the right, as the true and lawful agent of the Borrower, with power of substitution for the Borrower and in the Borrower's name, Secured Party's name, or otherwise, for the use and benefit of Secured Party, (i) to notify any and all obligors with respect to the Trademark Collateral or any part thereof; (ii) upon notice from Secured Party, to receive, endorse, assign, and/or deliver any and all notes, acceptances, checks, drafts, money orders, or other evidences of payment relating to the Trademark Collateral or any part thereof; (iii) to demand, collect, sue for, and receive payment of, for its own use and account, and give receipt for and give discharges and releases of, all or any of the Trademark Collateral and all amounts due or to become due in respect of the Trademark Collateral; (iv) to sign the name of the Borrower on any invoice relating to any of the Trademark Collateral; (v) to commence and prosecute any and all suits, actions, or proceedings, at law or in equity, in any court of competent jurisdiction to collect or otherwise realize on all or any of the Trademark Collateral or to enforce any rights or remedies in respect of any Trademark Collateral; (vi) to settle, compromise, compound, adjust, or defend any actions, suits, or proceedings relating to or pertaining to all or any of the Trademark Collateral; (vii) to license, or to the extent permitted by any applicable law, sublicense, whether general, special, or otherwise, and whether on an exclusive or non-exclusive basis any of the Trademark Collateral throughout the world, for such term or terms,

on such conditions, and in such manner as Secured Party shall determine (other than in violation of any then existing licensing arrangements to the extent that waivers or other adequate provision cannot be secured therefor); and (viii) generally to make, use, practice, sell, assign, transfer, pledge, make any agreement with respect to, or otherwise deal with all or any of the Trademark Collateral, and to do all other acts and things necessary to carry out the purposes of this Security Agreement and the Loan Documents, as fully and completely as though Secured Party were the absolute owner of the Trademark Collateral for all purposes; provided, however, that except as provided for by law or the Code or its equivalent in other jurisdictions, nothing herein contained shall be construed as requiring or obligating Secured Party to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by Secured Party, or to present or file any claim or notice, or to take any action with respect to the Trademark Collateral or any part thereof, or the moneys due or to become due in respect thereof, or any property covered thereby, and no action taken by Secured Party or omitted to be taken with respect to the Trademark Collateral or any part thereof shall give rise to a defense, counterclaim, or offset in favor of the Borrower's claim or action against Secured Party. Whether or not Secured Party shall have so notified any obligors, the Borrower shall, at its expense, cooperate with Secured Party and render all reasonable assistance to Secured Party in enforcing claims against such obligors. It is understood and agreed that the appointment of Secured Party as the agent of the Borrower for the purposes set forth above in this Section 4.1 is coupled with an interest and is irrevocable.

4.2 **Other Remedies Upon Default**. Upon the occurrence and during the continuation of an Event of Default, then, forthwith upon notice by Secured Party to the Borrower, in addition to all other rights and remedies of Secured Party, whether under law, the other Loan Documents, or otherwise (all such rights and remedies being cumulative, not exclusive, and enforceable alternatively, successively, or concurrently, without notice to or consent by the Borrower, except as expressly provided otherwise herein), Secured Party's rights and remedies with respect to the Trademark Collateral shall include, but not be limited to, the following, without payment of royalty or compensation of any kind to the Borrower, except as expressly provided herein:

(a) The Borrower's license with respect to the Trademarks as set forth in Section 2.2(b) shall terminate, and the Borrower shall immediately cease and desist from the practice, manufacture, use, and sale (or license or other transfer) of the Trademarks.

(b) Secured Party may, to the same extent that the Borrower has the right to do so immediately prior to such notice, license or sublicense, whether general, special, or otherwise, and whether on an exclusive or non-exclusive basis, any of the Trademark Collateral, throughout the world, for such term or terms, on such conditions, and in such manner as Secured Party shall, in its sole discretion, determine.

(c) Secured Party may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right, but not the obligation to

enforce) against any licensor, licensee, or sublicensee all Trademark License Rights of the Borrower, and take or refrain from taking any such action.

(d) Secured Party may, on one or more occasions at any time, with or without legal process and with or without previous notice or demand for performance, take possession of all tangible manifestations or embodiments of the Trademark Collateral and documentation relating thereto and all business records, documents, and files with respect to the Trademark Collateral and, without liability for trespass, to enter any premises where such tangible manifestations or embodiments, business records, documents, and files with respect to the Trademark Collateral may be located for the purpose of taking possession of or removing such tangible manifestations or embodiments, business records, documents, and files.

(e) In general, Secured Party may exercise, in respect of the Trademark Collateral, all of the rights and remedies provided under the other Loan Documents or otherwise, including, without limitation, all rights and remedies of a secured party on default under the Uniform Commercial Code (whether or not such Code applies to the affected Trademark Collateral).

4.3 **No Obligation of Secured Party.** Nothing herein shall be construed as obligating Secured Party to take any of the foregoing actions at any time.

4.4 **Costs and Application of Proceeds.** The Borrower agrees to pay when due all costs incurred in any license, assignment, sale, transfer, or other disposition of all or any portion of the Trademark Collateral to or by the Secured Party, including any taxes, fees, and reasonable attorneys' fees, and all such costs shall be added to the Obligations. Secured Party may apply the Proceeds actually received from any such license, assignment, sale, transfer, other disposition, or other collection or realization, to the out-of-pocket costs and expenses thereof, including, without limitation, attorneys' fees and all legal, travel, and other expenses which may be incurred or paid by Secured Party in protecting or enforcing its rights upon or under this Security Agreement, the Trademark Collateral, the Collateral, or the Obligations, and any proceeds remaining shall be held by Secured Party as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to Secured Party pursuant to Section 6) to the Obligations; and the Borrower shall remain liable and will pay the Secured Party on demand any deficiency remaining, together with interest thereon at a rate equal to the highest rate then payable on the Obligations and the balance of any expenses unpaid.

5. **LIABILITIES, INDEMNITY AND COSTS.**

5.1 **Liability for Uses of Trademark Collateral.** The Borrower shall be liable for any and all uses or misuses of and the practice, manufacture, sales (or other transfers or dispositions) of any of the Trademark Collateral by the Borrower and its affiliates and for

any failure to take reasonable measures to avoid and prevent the improper use, practice or sale (or other transfer or disposition) of the Trademark Collateral by any other party (including but not limited to any licensee of the Trademarks), any failure to use or practice the Trademarks in accordance with this Security Agreement, or any other claim, suit, loss, damage, expense or liability of any kind or nature (except those resulting from any gross negligence or willful misconduct of Secured Party) arising out of or in connection with the Trademark Collateral or the production, marketing, delivery, sale, license or other transfer or disposition of the goods and services provided under or in connection with or which use, practice or incorporate any of the Trademarks or the Trademark Collateral prior to the termination of the Borrower's license pursuant to Section 4.2(a). The Borrower shall also be exclusively liable for any claim, suit, loss, damage, expense or liability arising out of or in connection with the fault, negligence, acts or omissions of the Borrower (regardless of whether such fault, negligence, acts or omissions occurred or occur prior to or after such license termination).

5.2 **License Agreement Obligations.** Nothing in this Security Agreement shall relieve the Borrower from any performance of any covenant, agreement or obligation of the Borrower under any license agreement now or hereafter in effect licensing any part of the Trademark Collateral, or from any liability to any licensee or licensor under any such license agreement or to any other party, or shall impose any liability on Secured Party for any act or omission of the Borrower in connection with any such license agreement.

5.3 **Indemnification.** The Borrower shall indemnify and hold harmless Secured Party from and against, and shall pay to Secured Party on demand, any and all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations or liabilities of any kind or nature (except those resulting from Secured Party's gross negligence or willful misconduct) arising in any way out of or in connection with this Security Agreement, the Trademark Collateral, custody, preservation, use, practice, operation, sale, license (or other transfer or disposition) of the Trademark Collateral, any alleged infringement of the intellectual property rights of any third party, the production, marketing, provision, delivery and sale of the goods and services provided under or in connection with or using or practicing any of the Trademarks or the Trademark Collateral, the sale of, collection from or other realization upon any of the Trademark Collateral, the failure of the Borrower to perform or observe any of the provisions hereof, or matters relating to any of the foregoing. The Borrower shall also indemnify and hold harmless Secured Party from and against any and all claims, actions, suits, judgments, penalties, losses, damages, costs, disbursements, expenses, obligations or liabilities arising out of or in connection with any fault, negligence, act or omission of the Borrower (regardless of whether such fault, negligence, act or omission occurred or occurs prior to or after such license termination). The Borrower shall make no claim against Secured Party for or in connection with the exercise or enforcement by Secured Party of any right or remedy granted to it hereunder, or any action taken or omitted to be taken by Secured Party hereunder (except for the gross negligence or willful misconduct of Secured Party).

6. **POWER OF ATTORNEY.**

6.1 **Grant.** The Borrower hereby grants to Secured Party, and any officer or agent of Secured Party as Secured Party may designate in its sole discretion, a power of attorney, thereby constituting and appointing Secured Party (and Secured Party's designee) its true and lawful attorney-in-law and attorney-in-fact, effective upon the occurrence and during the continuation of an Event of Default, for the purpose of assigning, selling, licensing, or otherwise disposing of all right, title, and interest of the borrower in and to any of the Trademark Collateral. The Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

6.2 **Irrevocable.** The foregoing power of attorney is coupled with an interest and is irrevocable until this Security Agreement shall terminate.

6.3 **Release.** The Borrower hereby releases Secured Party from any claims, causes of action, and demands at any time arising out of or in connection with any actions taken or omitted to be taken by Secured Party under the power of attorney granted herein (except for the gross negligence or willful misconduct of Secured Party).

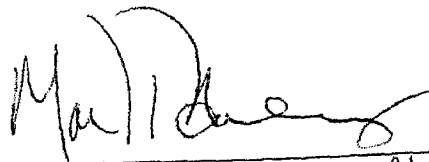
7. **GENERAL PROVISIONS.**

7.1 **Loan and Security Agreement Controls.** This Security Agreement is supplemental to the Loan Agreement, the terms of which, including, without limitation, the notice and governing law provisions, the waiver of jury trial, consent to service of process and jurisdiction, and prohibitions of non-written waivers, the Borrower expressly accepts, confirms, and acknowledges are incorporated herein by reference. In the event of any irrevocable conflict between the provisions of this Security Agreement and the Loan Agreement, the provisions of the Loan Agreement shall govern.

7.2 **Specific Enforcement.** Due to the unique nature of the Trademark Collateral and in order to preserve its value, the Borrower agrees that the Borrower's agreements, duties, and obligations under this Security Agreement shall be subject to specific enforcement and other appropriate equitable orders and remedies.

IN WITNESS WHEREOF, Borrower has caused this Security Agreement to be executed by its duly authorized officer as of the date first written above.

BROWN & HALEY

X By: 
Name: Mark T. Haley
TITLE Chairman & CEO

Title: _____

BANC OF AMERICA COMMERCIAL FINANCE CORPORATION, THROUGH ITS COMMERCIAL FUNDING DIVISION

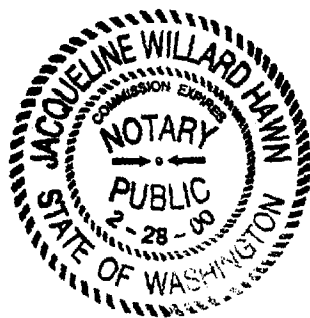
By: Brad Hall
Name: Brad Hall
Title: Senior Vice President

STATE OF WASHINGTON)
)
County of Pierce) ss.

I certify that I know or have satisfactory evidence that Mark T. Haley is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledge it as the CEO of **BROWN & HALEY**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 17, 1999.

Jacqueline W. Maun
NOTARY PUBLIC
Print Name: Jacqueline W. Maun
My appointment expires: 2/28/00



STATE OF NEW YORK)
) ss.
County of New York)

I certify that I know or have satisfactory evidence that Dean Han is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledge it as the Senior Vice Pres of **BANC OF AMERICA COMMERCIAL FINANCE CORPORATION, THROUGH ITS COMMERCIAL FUNDING DIVISION**, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: December 17, 1999.



[Signature]
NOTARY PUBLIC
Print Name: Malcolm Lincoln
My appointment expires: 5-20-2000

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EXHIBIT "A"

BROWN & HALEY

TRADEMARK APPLICATIONS/ISSUANCES

United States Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|--|-------------------|
| 191,430 | Almond Roca | 11/11/24 |
| 1,231,271 | Almond Roca | 03/15/83 |
| 2,191,144 | Almond Roca | 09/22/98 |
| 1,179,421 | Almond Roca & Design | 11/24/81 |
| 1,958,366 | America's Finest Confection | 02/27/96 |
| 2,096,571 | Belgian Cremes | 09/16/97 |
| 834,846 | Brown & Haley | 09/05/67 |
| 905,608 | Brown & Haley Almond Roca | 01/05/71 |
| 1,766,065 | Brown & Haley Belgian Cremes | 04/20/93 |
| 1,688,447 | Brown & Haley Selections | 05/19/92 |
| 1,933,046 | Brown & Haley Stylized | 11/07/95 |
| 641,498 | Canterbury | 02/12/57 |
| 1,928,092 | Cherubs Design | 10/17/95 |
| 2,220,622 | Chocolate Sweeties | 01/26/99 |
| 1,664,285 | For All the Sweet Moments in Life | 11/12/91 |
| 1,266,502 | Gremlins | 02/07/84 |
| 1,078,011 | Heart of Roca | 11/22/77 |
| 1,955,209 | King of My Heart & Design | 02/06/96 |
| 2,261,232 | Miscellaneous Design (Flame Head Logo) | 07/13/99 |
| 1,676,024 | Mountain | 02/18/92 |
| 641,499 | Mountain | 02/12/57 |
| 1,253,117 | Mountain Chew | 10/04/83 |
| 1,595,621 | Mountains | 05/08/90 |
| 1,693,381 | Queen of My Heart & Design | 06/09/92 |
| 1,156,555 | Roca | 06/02/81 |
| 2,196,160 | Roca | 10/13/98 |
| 1,693,400 | Roca Bar European White | 06/09/92 |
| 1,693,399 | Roca Bits | 06/09/92 |
| 2,037,692 | Roca Nuggets | 02/11/97 |
| 2,044,856 | Roca Nuts | 03/11/97 |
| 1,243,812 | Signature | 06/28/83 |
| 1,623,868 | Signature Collection | 11/26/90 |
| 822,393 | Smart Card | 01/17/67 |

Austria Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 74,586 | Almond Roca | 06/04/73 |

Australia Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|---|-------------------|
| B460114 | Almond Roca America's Finest Confection | 02/17/87 |
| B154669 | Almond Roca Label | 07/02/59 |
| B193774 | Roca | 03/31/65 |

Brunei Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|-----------------|-------------------|
| 11,700 | Almond Roca | 08/02/82 |
| 12,025 | Brown and Haley | 08/02/82 |
| 11,699 | Roca | 08/02/82 |

Myanmar Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 4/1532/95 | Almond Roca | 07/06/95 |
| 4/1531/95 | Roca | 07/06/95 |

Benelux Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|---------------------------|-------------------|
| 317014 | Almond Roca | 01/26/73 |
| 317013 | Brown & Haley Almond Roca | 01/26/73 |
| 320603 | Label | 01/26/73 |

Canada Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|---------------|-------------------|
| 278,325 | Almond Roca | 03/31/83 |
| 157,480 | Brown & Haley | 07/05/68 |
| 300,870 | Gremlins | 03/15/85 |
| 229,710 | Heart of Roca | 08/18/78 |
| 155,141 | Mountain | 01/19/88 |
| 277,798 | Roca | 03/18/83 |

Switzerland Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 344,268 | Almond Roca | 02/07/66 |

China Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-----------|-------------------|
| 169875 | Roca | 01/15/83 |

Community Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 42028 | Almond Roca | 04/01/96 |
| 41988 | Roca | 04/01/96 |

Germany Trademark

| Registration No. | Trademark | Registration Date |
|------------------|------------------------------------|-------------------|
| 845,628 | Almondroca | 01/25/67 |
| 1,065,200 | Brown & Haley Almond Roca & Design | 06/29/84 |

Denmark Trademark

| Registration No. | Trademark | Registration Date |
|------------------|--------------------------|-------------------|
| 472/65 | Almond Roca | 02/13/65 |
| 622/65 | Almond Roca Picture Mark | 03/06/65 |

Spain Trademark

| Registration No. | Trademark | Registration Date |
|------------------|------------------------------------|-------------------|
| 1,047,838 | Brown & Haley Almond Roca & Design | 10/23/86 |

France Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|---------------------------|-------------------|
| 1221957 | Almond Roca | 12/29/72 |
| 1221959 | Almond Roca Label | 12/29/72 |
| 1221958 | Brown & Haley Almond Roca | 12/29/72 |

United Kingdom Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|------------------------|-------------------|
| 1301206 | Almond Roca | 02/17/87 |
| B832370 | Almond Roca & Design | 03/22/62 |
| B889307 | Almond Roca Containers | 01/14/66 |
| 1407587 | Brown & Haley Stylized | 12/08/89 |
| 1400590 | Roca | 10/06/86 |

Hong Kong Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|---|-------------------|
| 807/1993 | Almond Roca | 08/02/89 |
| B1698/1983 | Almond Roca | 09/12/80 |
| B72/1988 | Almond Roca | 04/24/82 |
| 1700/1983 | Almond Roca in Chinese Characters | 05/15/81 |
| B1699/1983 | Brown & Haley Almond Roca "Label" (Older Form) | 05/15/81 |
| 1320/1965 | Roca | 04/23/65 |

Indonesia Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|---|-------------------|
| 358,670 | Brown & Haley Almond Roca "Label" (Older Form) | 04/14/96 |
| 110,002 | Roca and Design (Box) | 04/13/76 |

Italy Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 714857 | Almond Roca | 07/03/95 |

Japan Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|-------------------------|-------------------|
| 627604 | Almond Roca | 10/28/63 |
| 1857559 | Almond Roca in Katakana | 04/23/86 |
| 1752335 | Roca | 03/25/85 |
| 1752334 | Roca in Katakana | 03/25/85 |

Cambodia Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 2992 | Almond Roca | 05/03/93 |
| 2991 | Roca | 05/03/93 |

South Korea Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|---------------------------|-------------------|
| 204529 | Almond Roca | 11/08/90 |
| 63073 | Roca | 07/16/79 |
| 64779 | Roca in Korean Characters | 09/27/79 |

Malaya Trademark

| Registration No. | Trademark | Registration Date |
|------------------|---|-------------------|
| M/B59090 | Brown & Haley Almond Roca "Label" (Older Form) | 03/03/72 |

Mexico Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 303959 | Almond Roca | 05/21/81 |

Malaysia Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 85/05304 | Almond Roca | 12/05/85 |

Norway Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 63912 | Almond Roca | 05/14/64 |

New Zealand Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-------------------|-------------------|
| B68305 | Almond Roca Label | 03/20/61 |
| B78139 | Roca | 03/26/65 |

Panama Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 056,365 | Almond Roca | 01/20/93 |

Philippines Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|----------------------|-------------------|
| 36,427 | Almond Roca | 01/07/87 |
| 36,426 | Almond Roca & Design | 01/07/87 |
| 36,425 | Roca | 01/07/87 |

Portugal Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|------------------------|-------------------|
| 136,021 | Almond Roca (Stylized) | 09/11/70 |
| 214,843 | Roca | 10/10/88 |

Puerto Rico Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 23,328 | Almond Roca | 12/29/80 |

Saudi Arabia Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|----------------------------------|-------------------|
| 114/74 | Almond Roca & Design | 06/19/83 |
| 116/25 | Almond Roca in Arabic Characters | 11/22/81 |
| 116/24 | Roca | 11/22/81 |

Sweden Trademark

| Registration No. | Trademark | Registration Date |
|------------------|------------|-------------------|
| 112 931 | Almondroca | 05/14/65 |

Singapore Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|---|-------------------|
| 5431/85 | Almond Roca | 12/02/85 |
| B54199 | Brown & Haley Almond Roca "Label" (Older Form) | 03/06/72 |
| B54032 | Roca | 02/17/72 |

Thailand Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|-------------------|-------------------|
| 5346 | Almond Roca | 06/25/82 |
| 229460/TM810 | Almond Roca Label | 06/25/82 |
| 8958 | Roca | 05/17/83 |

Taiwan Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|-----------------------------------|-------------------|
| 34868 | Almond Roca | 04/01/69 |
| 65595 | Almond Roca in Chinese Characters | 10/01/73 |

Vietnam Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|-------------|-------------------|
| 10963 | Almond Roca | 01/28/94 |
| 10962 | Roca | 01/28/94 |

Sarawak Trademarks

| Registration No. | Trademark | Registration Date |
|------------------|---|-------------------|
| 10807 | Brown & Haley Almond Roca "Label" (Older Form) | 03/07/72 |
| 10744 | Roca (Label) | 02/18/72 |

South Africa Trademark

| Registration No. | Trademark | Registration Date |
|------------------|-----------|-------------------|
| 62/3824 | Roca | 11/09/62 |

U.S. Application

| U.S. Serial Number | Trademark | Application Date |
|--------------------|---------------------|-------------------------------|
| 75/551,312 | Profile Head Design | 09/11/98 (first use 06/96) |

State Registrations

| State and Registration Number | Trademark | Registration Date |
|-------------------------------|-------------|-------------------|
| Arkansas 1198 | Roca | 01/29/75 |
| West Virginia 178161 | Roca | 04/30/45 |
| Pennsylvania 0774770 | Almond Roca | 11/27/78 |