

06-14-2001

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

RE



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

101749628

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

1. Name of conveying party(ies):

Aspen Pet Products, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation-State -Delaware Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: December 8, 2000

2. Name and address of receiving party(ies)

Name: Heller Financial, Inc., as Agent

Internal Address:

Street Address: 500 West Monroe

City: Chicago State: Illinois Zip: 60661

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

2267420

Additional number(s) attached Yes No

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

Name: Maisha Gibson, Paralegal

Internal Address:

Goldberg, Kohn, et al

Street Address: 55 E. Monroe St.,

37th Floor

City: Chicago State: Illinois Zip: 60603

6. Total number of applications and registrations involved:

24

7. Total fee (37 CFR 3.41) \$ 615.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(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.

Maisha Gibson

Name of Person Signing

Maisha Gibson Signature

June 6, 2001

Date

10

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

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

06/14/2001 6TDN11 00000157 2267420

01 FC:481 40.00 OP 02 FC:482 575.00 OP

TRADEMARK REEL: 002315 FRAME: 0390

6-1301

ASSIGNED TO THE UNITED STATES PATENT AND TRADEMARK OFFICE JUN 13 12:40 PM '01

SCHEDULE ATRADEMARK REGISTRATIONSUnited States

<u>Trademark Description</u>	<u>Registration No.</u>	<u>Date Registered</u>
Fresh N' Floss	2267420	08/03/99
Volcanite	1718516	09/22/92
Sand Castle & Design	1380490	01/28/86
Ultra Clump	1693794	06/09/92
BoodaBox	1715861	09/15/92
Booda Bones	1797843	10/12/93
Zero Max	2057946	04/29/97
Booda Guy	1898210	06/06/95
Booda Gal	1900005	06/13/95
Look	1896157	05/30/95
Chew Gal	1985987	07/09/96
Aspen Pet	2159992	05/26/98
Aspen Pet Products	2196983	10/20/98
Booda Velvets	2160067	05/26/98
Ultra Clump	2230165	03/09/99
Booda	2249682	06/01/99
Banana Pet	2372308	08/01/00

<u>Trademark Description</u>	<u>Registration No.</u>	<u>Date Registered</u>
Cashmere	2314796	2/1/00
Kitty Klean Snuffy's*	2199153	10/27/98
Alphavet 10	1805321	
Sand Castle & Design	1380490	1/28/86
Walkabout	76144665	10/11/00
Cider Mill	76242848	4/18/01
Tree Logo (Design)	76242783	4/18/01

\*Owner has the right to use the phrase "Kitty Klean" under the condition it is used in close proximity to the word "Snuffy's" pursuant to the agreement by and between Societe des produits Nestle, S.A. and Snuffy's Distributing Co., Inc., dated July 20, 1998.

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (the "Agreement") made as of this 8th day of December, 2000 by Aspen Pet Products, Inc., a Delaware corporation ("Grantor") in favor of Heller Financial, Inc., a Delaware corporation, in its capacity as Agent for the Lenders party to the Credit Agreement (defined below) ("Grantee"):

### W I T N E S S E T H

WHEREAS, Grantor, Grantee and Lenders are parties to a certain Credit Agreement of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement") pursuant to which Lenders have agreed to make loans and other financial accommodations available to Grantor; and

WHEREAS, pursuant to the terms of the Security Agreement of even date herewith between Grantor and Grantee (as the same may be amended or otherwise modified from time to time, the "Security Agreement"), Grantor has granted to Grantee, for the benefit of Lenders, a security interest in substantially all of the assets of Grantor including all right, title and interest of Grantor in, to and under all now owned and hereafter acquired Trademarks (as defined in the Security Agreement), together with the goodwill of the business symbolized by Grantor's Trademarks, and all products and proceeds thereof, to secure the payment of all amounts owing by Grantor under the Credit Agreement;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

1. Incorporation of Credit Agreement and Security Agreement. The Credit Agreement and Security Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Security Agreement.

2. Grant and Reaffirmation of Grant of Security Interests. To secure the complete and timely payment and satisfaction of the Obligations, Grantor hereby grants to Grantee, and hereby reaffirms its prior grant pursuant to the Security Agreement of, a continuing security interest in Grantor's entire right, title and interest in and to the following (all of the following items or types of property being herein collectively referred to as the "Trademark Collateral"), whether now owned or existing or hereafter created or acquired:

(i) each Trademark listed on Schedule 1 annexed hereto, together with any reissues, continuations or extensions thereof, and all of the goodwill of the business connected with the use of, and symbolized by, each Trademark; and

(ii) all products and proceeds of the forgoing, including without limitation, any claim by Grantor against third parties for past, present or future

(a) infringement or dilution of any Trademark, or (b) injury to the goodwill associated with any Trademark.

3. Warranties and Representations. Grantor warrants and represents to Grantee that:

(i) Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Trademark, free and clear of any liens, charges and encumbrances other than Permitted Encumbrances, including without limitation licenses and covenants by Grantor not to sue third persons;

(ii) Grantor has no notice of any suits or actions commenced or threatened with reference to any Trademark; and

(iii) Grantor has the unqualified right to execute and deliver this Agreement and perform its terms.

4. Restrictions on Future Agreements. Grantor agrees that until the (a) Obligations shall have been satisfied in full (other than contingent indemnification obligations to the extent no unsatisfied claim has been asserted), (b) either termination of all Letters of Credit (including termination of all of Lenders' obligations under Letters of Credit) or delivery by Grantor of cash Collateral or other Collateral, including back up letters of credit issued in favor of Agent, satisfactory to Agent covering all obligations of Lenders with respect to all Letters of Credit and (c) the Commitments shall have been terminated, Grantor shall not, without the prior written consent of Grantee, sell or assign its interest in, or grant any license under, any Trademark or enter into any other agreement with respect to any Trademark, and Grantor further agrees that it shall not take any action or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity or enforcement of the rights transferred to Grantee under this Agreement.

5. Product Quality. Grantor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with commercially reasonable business practices, and (ii) to provide Grantee, upon Grantee's request from time to time, with a certificate of an officer of Grantor certifying Grantor's compliance with the foregoing. Upon the occurrence of an Event of Default, Grantor agrees that Grantee, or a conservator appointed by Grantee, shall have the right to establish such additional product quality controls as Grantee, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Grantor under the Trademarks.


6. Grantee's Right to Sue. After an Event of Default, Grantee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and, if Grantee shall commence any such suit, Grantor shall, at the request of Grantee, do any and all lawful acts and execute any and all proper documents required by

Grantee in aid of such enforcement and Grantor shall promptly, upon demand, reimburse and indemnify Grantee for all costs and expenses incurred by Grantee in the exercise of its rights under this Section 6.

7. Cumulative Remedies; Power of Attorney. Grantor hereby acknowledges and affirms that the rights and remedies with respect to the Trademarks, whether established hereby or by the Security Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Grantor hereby authorizes Grantee upon the occurrence of an Event of Default, to make, constitute and appoint any officer or agent of Grantee as Grantee may select, in its sole discretion, as Grantor's true and lawful attorney-in-fact, with power to (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for Grantee in the use of the Trademarks or (ii) take any other actions with respect to the Trademarks as Grantee deems to be in the best interest of Grantee, or (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone. Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until payment in full of the Obligations (other than contingent indemnification obligations to the extent no unsatisfied claim has been asserted), termination of all Commitments under the Credit Agreement and either termination of all Letters of Credit (including termination of all of Lenders' obligations under Letters of Credit) or delivery by Borrower of cash Collateral or other Collateral, including back up letters of credit issued in favor of Agent, satisfactory to Agent covering all obligations of Lenders with respect to all Letters of Credit. Grantor hereby further acknowledges and agrees that the use by Grantee of the Trademarks shall be worldwide, except as limited by their terms, and without any liability for royalties or related charges from Grantee to Grantor.

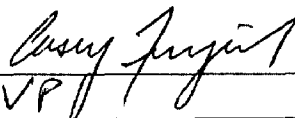
IN WITNESS WHEREOF, Grantor has duly executed this Agreement as of the date first written above.

ASPEN PET PRODUCTS, INC.

By   
Its Vice President

Agreed and Accepted  
As of the Date First Written Above

HELLER FINANCIAL, INC., as Agent

By   
Its VP

**SCHEDULE A**

**TRADEMARK REGISTRATIONS**

United States

<u>Trademark Description</u>	<u>Registration No.</u>	<u>Date Registered</u>
Fresh N' Floss	2267420	08/03/99
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Booda Bones	1797843	10/12/93
Zero Max	2057946	04/29/97
Booda Guy	1898210	06/06/95
Booda Gal	1900005	06/13/95
Look	1896157	05/30/95
Chew Gal	1985987	07/09/96
Aspen Pet	2159992	05/26/98
Aspen Pet Products	2196983	10/20/98
Booda Velvets	2160067	05/26/98
Ultra Clump	2230165	03/09/99
Booda	2249682	06/01/99
Banana Pet	2372308	08/01/00



Cashmere 2314796 02/01/00

Kitty Klean Snuffy's\* 2199153 10/27/98

Alphavet 10 1805321

Canada

Fresh N'Floss TMA517712 10/12/99

Mighty Link TMA525036 03/15/00

Europe

Ultra Clump 648675 10/05/99

Booda 987933 03/21/00

California & Maryland

Sand Castle & Design  
(California) 77488 06/12/85 (issue date)

Dog Head Design  
(Maryland) 90-7208

Kitty Klean 90-7029

\* The Borrower has the right to use the phrase "Kitty Klean" under the condition it is used in close proximity to the word "Snuffy's" pursuant to the agreement by and between Societe des Produits Nestle, S.A. and Snuffy's Distributing Co., Inc., dated July 20, 1998.

**TRADEMARK APPLICATIONS**

United States

Trademark Application  
Description

Date Applied

Walkabout

10/11/00

Canada

Aspen Pet 03/21/00

Booda 11/10/98

Japan

Booda 11/12/98

**UNREGISTERED TRADEMARKS**

Cider Mill

Brenton Farms

Tree logo (design)

**UNREGISTERED TRADE NAMES**

Unregistered Trade Name

Cider Mill Farms<sup>1/</sup>

Alpen

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<sup>1/</sup> Cider Mill Farms Company, Inc. does not have the sole and exclusive use of this name. Cider Mill Company, Inc. in Carlisle, Massachusetts from which Cider Mill Farms Company, Inc. purchased assets retains the use of the name Cider Mill Company and is currently active.