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TRADEMARK



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Conveyance Type

Resubmission (Non-Recordation)

Document ID #

Correction of PTO Error

Reel # Frame #

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Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/KA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
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 Assignment.)

Corporation Association

Other

Citizenship/State of Incorporation/Organization

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REEL: 002318 FRAME: 0082

Representative Name and Address

Enter for the first Receiving Party only.

Respondent Name and Address

Area Code and Telephone Number

703-415-1555

Name

Christopher E. Kondracki

Address (line 1)

2001 Jefferson Davis Hwy.

Address (line 2)

Suite 505

Address (line 3)

Arlington, VA 22202

Address (line 4)

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

11

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)

1,975,566		

Number of Properties

Enter the total number of properties involved.

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 40.00

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:

19-3545

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.

Christopher E. Kondracki

Name of Person Signing

Signature

7/5/01

Date Signed

**TRADEMARK AND TRADEMARK
APPLICATIONS SECURITY AGREEMENT**

August 21, 1997

This Trademark and Trademark Application Security Agreement (the "TM Security Agreement") is made as of the 21st day of August, 1997 by Asher Candy Acquisition Corporation, a Wyoming corporation with its principal executive offices at 1815 Gilford Avenue, New Hyde Park, New York 11040, (the "Borrower"), and Gordon Brothers Capital Corporation (the "Lender"), a Delaware corporation with its principal executive offices at 150 East 58th Street, New York, New York 10155.

RECITALS

WHEREAS, pursuant to a certain Loan and Security Agreement of even date (as such agreement may be modified, supplemented, amended or restated from time to time, hereinafter, the "Loan Agreement"), made between the Borrower and the Lender, the Lender has agreed to make certain loans (hereinafter, the "Loans") available to the Borrower;

WHEREAS, under the Loan Agreement, the Borrower has created a security interest in the Borrower's assets to secure the Liabilities (as defined in the Loan Agreement and used herein as so defined);

WHEREAS, as a condition, among others, to the establishment of the credit facility contemplated by the Loan Agreement, and to further secure the Liabilities, the Borrower has executed this TM Security Agreement.

NOW THEREFORE, For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Borrower and the Lender agree as follows:

1. Terms used herein which are defined the Loan Agreement are used as so defined.
2. To secure the Liabilities, the Borrower hereby creates a security interest in favor of the Lender, with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default (as defined in the Loan Agreement and used herein as so defined) not then duly waived as provided in the Loan Agreement), in and to the following and all proceeds thereof:
 - (1) All of the Borrower's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks,

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registered service marks and service mark applications including, without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, and service mark applications.

(b) All renewals of any of the foregoing.

(c) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.

(d) The right to sue for past, present and future infringements and dilutions of any of the foregoing.

(e) All of Borrower's rights corresponding to any of the foregoing throughout the world.

All of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications described in Subsection 2.(a), together with the items respectively described in Subsections 2.(b) through and including 2.(e) are hereinafter individually and/or collectively referred to as the "Marks".

3. Until this TM Security Agreement is terminated in writing by a duly authorized officer of the Lender, the Borrower shall undertake the following with respect to each Mark:

(a) Subject to Section 12 herein, pay all renewal fees and other fees and costs associated with maintaining the Marks and with the processing of the Marks.

(b) Subject to Section 12 herein, at Borrower's sole cost, expense, and risk, pursue the prompt, diligent, processing of each Application for Registration which is the subject of the foregoing assignment and not abandon or delay any such efforts.

(c) Subject to Section 12 herein, at Borrower's sole cost, expense, and risk, take any and all action which Borrower deems desirable to protect the Marks, including, without limitation, but subject to

Borrower's discretion, the prosecution and defense of infringement Actions.

in the event of

- (a) the Borrower's failure, within Five (5) days of written notice from the Lender, to cure any failure by the Borrower to perform any of the Borrower's obligations set forth in Section 3, above; and/or
- (b) the occurrence of any Event of Default not duly waived as provided in the Loan Agreement.

The Lender acting in its own name or in that of the Borrower may (but shall not be required to) act in the Borrower's place and stead and/or in the Lender's own right in connection therewith.

5. The Borrower represents and warrants that:

- (a) EXHIBIT A includes all of the registered trademarks, Federal trademark applications, registered service marks and Federal service mark applications now owned by the Borrower.
- (b) No liens, claims or security interests have been granted in any Mark by the Borrower to any Person other than to the Lender.

6. In order to further secure the Liabilities:

- (a) The Borrower shall give the Lender written notice (with reasonable detail) within Ten (10) days following the occurrence of any of the following:
 - (i) The Borrower obtains rights to, and files applications for registration of, any new trademarks, or service marks, or otherwise acquires ownership of any newly registered trademarks, registered service marks, trademark applications, or service mark applications, (other than Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).
 - (ii) The Borrower becomes entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, registered service marks, service mark applications, service mark licenses or

service mark license renewals whether as licensee or licensor (other than Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).

(ii) The Borrower enters into any new trademark license agreement or service mark license agreement.

(b) The provisions of this TM Security Agreement shall automatically apply to any such additional property or rights described in 6.(a). Above, all of which shall be deemed to be and treated as "Marks" within the meaning of this TM Security Agreement.

(c) The Borrower hereby authorizes the Lender to modify this agreement by amending EXHIBIT A to include any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, provided, however, the modification of said EXHIBIT shall not be a condition to the creation or perfection of the security interest created hereby.

7. Upon the occurrence of any Event of Default not then duly waived by the Lender as provided in the Loan Agreement, the Lender may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with respect to the Marks, in addition to which the Lender, subject to the terms of the Loan Agreement, may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Lender that an Event of Default has occurred and not been duly waived by the Lender as provided in the Loan Agreement and that the Lender is authorized to exercise such rights and remedies.

8. The Borrower hereby irrevocably constitutes and designates the Lender as and for the Borrower's attorney in fact, effective with and upon the Lender's first exercise (the "First Exercise") of such powers following the occurrence of any Event of Default not then duly waived by the Lender as provided in the Loan Agreement:

- (a) To exercise any of the rights and powers referenced in Section 3.
- (b) To execute all and singular such instruments, documents, and papers as the Lender determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Marks.

The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until the within TM Security Agreement is terminated by a duly authorized officer of the Lender, but shall be exercisable only following the occurrence of an Event of Default not then duly waived by the Lender as provided in the Loan Agreement.

- 9. Any use by the Lender of the Marks as authorized hereunder in connection with the exercise of the Lender's right and remedies under the within TM Security Agreement and the Loan Agreement shall be coextensive with Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Lender to the Borrower. Such use by the Lender shall be permitted only with and upon the First Exercise following the occurrence of an Event of Default not then duly waived by the Lender as provided in the Loan Agreement.
- 10. Lender hereby acknowledges that the Borrower shall continue to have the exclusive right, prior to notice from the Lender following the occurrence of an Event of Default not then duly waived by the Lender as provided in the Loan Agreement, to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by Borrower to protect the Marks against encroachment by third parties; provided, however, that Borrower first notifies Lender in writing of its intention to sue for enforcement of the trademarks against a particular party. All costs arising in connection with any infringement shall be borne by Borrower.
- 11. Following the payment and satisfaction of all Liabilities, and the termination of any obligation of the Lender to provide loans or financial accommodations under the credit facility contemplated by the Loan Agreement, this TM Security Agreement shall terminate and the Lender shall

execute and deliver to Borrower all such instruments as the Borrower reasonably may request to release any encumbrance in favor of the Lender created hereby or pursuant hereto, subject, however, to any disposition thereof which may have been made by Lender pursuant hereto or pursuant to the Loan Agreement.

12. Notwithstanding anything to the contrary contained in this TM Security Agreement, the Borrower shall have the right, prior to the occurrence of any Event of Default not then duly waived by the Lender, to abandon such Marks which it deems to be immaterial or not useful to its business.
13. Neither anything contained in the within TM Security Agreement or in the Loan Agreement nor any act, omission, or circumstance may be construed as directly or indirectly conveying to the Lender any rights in and to the Marks, which rights are effective except following the occurrence of any Event of Default not then duly waived by the Lender (and in such circumstances, only with and upon the First Exercise).
14. This TM Security Agreement is intended to be supplemental of the Loan Agreement. All provisions of the Loan Agreement shall apply to the Marks and the Lender shall have the same rights with respect to any and all Marks granted the Lender to secure the Liabilities hereunder as thereunder. In the event of a conflict between this TM Security Agreement and the Loan Agreement, the terms of this TM Security Agreement shall control with respect to the Marks and the Loan Agreement with respect to all other collateral.

IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this Loan Agreement to be executed by officers duly authorized so to do on the date first above written.

Asher Candy Acquisition Corporation
(The "Borrower")

Gordon Brothers Capital Corporation
(The "Lender")

By: [Signature]

By: [Signature]

Title: Chairman

Title: Vice President

State of New York
County of, ss

Then personally appeared before me L. M. LEVIE who acknowledged that such person is the duly authorized CHAIRMAN of Asher Candy Acquisition Corporation and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 21st day of August, 1997.

[Signature]
Notary Public
My Commission Expires May 4, 1999

State of New York
County of

Then personally appeared before me PATRICK C. LAGRANGE who acknowledged that such person is the duly authorized VICE PRESIDENT of ~~Asher Candy Acquisition Corporation~~ Gordon Brothers Capital Corporation, and that such person executed the foregoing instrument on its behalf.

Witness my hand and seal this 21st day of August, 1997.

[Signature]
Notary Public
My Commission Expires May 4, 1999

EXHIBIT A

Borrower's now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks, and Federal trade mark applications:

<u>REGISTERED MARK</u>	<u>REG. NO.</u>	<u>DATED</u>
ASHER	1,856,869	October 4, 1994
GOURMET CANES with Design	1,771,711	May 18, 1993
TIGER TAILS	1,766,099	April 30, 1993
ASHWER with Design	1,975,556	May 28, 1996

Asher + Design 1,975,566

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