

6-25-01

06-25-2001

Form PTO-1594  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)  
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U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):  
PCL Packaging, Inc.  
 Individual(s)       Association  
 General Partnership       Limited Partnership  
 Corporation-State - Delaware  
 Other \_\_\_\_\_  
Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
Name: Bank of America Canada, as Agent  
Internal  
Address: \_\_\_\_\_  
Street Address: 200 W. Front St. West, Ste. 2700  
City: Toronto ~~State: Canada~~ ~~zip: M5V3L2~~  
 Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State \_\_\_\_\_  
 Other Canadian Chartered Bank  
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

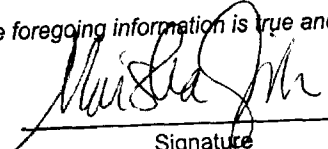
3. Nature of conveyance:  
 Assignment       Merger  
 Security Agreement       Change of Name  
 Other \_\_\_\_\_  
Execution Date: June 15, 2001

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)  
B. Trademark Registration No.(s)  
2319986 and 1694457  
Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Maisha Gibson  
Internal Address: Goldberg Kohn Bell Black  
Rosenbloom & Moritz, Ltd.  
Street Address: 55 E. Monroe Street  
Suite 3700  
City: Chicago State: IL Zip: 60603

6. Total number of applications and registrations involved: ..... 2  
7. Total fee (37 CFR 3.41).....\$ 65.00  
 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            6/22/01  
Name of Person Signing      Signature      Date

Total number of pages including cover sheet, attachments, and document: 14

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

TRADEMARK  
REEL: 002318 FRAME: 0304

## COLLATERAL TRADEMARK SECURITY AGREEMENT

THIS COLLATERAL TRADEMARK SECURITY AGREEMENT ("Trademark Security Agreement") made as of the 15<sup>th</sup> day of June, 2001 by PCL PACKAGING, INC., having an office at 33500 Lockheed Avenue, Pueblo, Colorado 81001 ("Company") in favor of BANK OF AMERICA CANADA, as Agent, (in such capacity "Agent"), having an office at 200 Front Street West, Suite 2700, Toronto, Ontario M5V 3L2 for itself and the benefit of the banks and other financial institutions or entities (the "Lenders") from time to time parties to the Loan and Security Agreement dated April 7, 1999 (including as the same has been and may in the future be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), among Company, PCL Packaging Corporation (successor to PCL Plastics Corporation and PCL & Eastern Packaging Limited) (together with Company, "Borrowers"), Agent and the Lenders.

### WITNESSETH:

WHEREAS, Agent, the Lenders and Borrowers have entered into the Loan Agreement providing for Lenders to make certain Loans and extend other financial accommodations to Borrowers (capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Loan Agreement);

WHEREAS, Company has granted a security interest to Agent in certain of its assets pursuant to the Security Agreement dated April 7, 1999 by Company in favor of Agent (the "Security Agreement");

WHEREAS, it is a condition precedent to the effectiveness of the Fourth Amendment to the Loan Agreement that Company shall have granted the security interest contemplated by this Trademark Security Agreement; and

NOW, THEREFORE, in consideration of the premises and in order to induce Lenders to enter into the Fourth Amendment to the Loan Agreement, Company hereby agrees with Agent and its successors, transferees and assigns as follows:

1. Grant of Security Interest. To secure the prompt and complete payment, observance and performance of all of the Secured Obligations (as defined in the Security Agreement), Company hereby grants, mortgages, pledges and hypothecates to and creates a security interest in favor of, Agent, and its successors, transferees and assigns, for itself and for the benefit of all Lenders, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale as hereinafter provided, to the extent permitted by law, with respect to all of the following property of Company, whether now owned or existing or hereafter acquired or arising (collectively, the "Collateral"):
  - (a) all of Company's rights, title and interests in its trademarks and trademark registrations and all rights and interests under trademark license agreements,

trade names and trademark applications for which registrations have been issued or applied for in the United States Patent and Trademark Office or Trademarks Office of the Canadian Intellectual Property Office, or used in the United States, Canada or any state, province, territory or possession thereof, including, without limitation, the trademarks, trademark registrations and applications listed on Annex A attached hereto and made a part hereof and the trademark license agreements (both as licensee and licensor), other than those trademark license agreements with independently owned and operated companies with whom Company or its Subsidiaries has entered into commercial real estate brokerage affiliation agreements, listed on Annex B attached hereto and made a part hereof and (i) all renewals thereof, (ii) all income, royalties, damages and payments now or hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof but excluding attorneys' fees and court costs payable to Company in respect thereto, (iii) the right to sue for past, present and future infringements thereof, and (iv) all of Company's rights corresponding thereto throughout the world (all of the foregoing trademark, trademark registrations, and interests under trademark license agreements, trade names and applications, together with the items described in clauses (i) through (iv) in this subparagraph (a), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and

(b) the goodwill of Company's business connected with the Trademarks.

2. Collateral Purposes. Notwithstanding the terms and provisions of Section 1 above, this grant shall be for collateral purposes only. Unless an Event of Default shall have occurred and be continuing, Company shall retain the right to use the Collateral, for Company's own benefit and account. Upon the occurrence and during the continuance of any Event of Default, Company's rights to use the Collateral as set forth in this paragraph shall terminate automatically without any requirement of notice to Company of such termination, and the Agent shall thereupon have, in addition to all other rights and remedies given it by this Agreement, those allowed by the federal laws of the United States and Canada and the rights and remedies of a secured party under the Uniform Commercial Code, the *Personal Property Security Act* (or the Civil Code of Quebec), as applicable, as enacted in any jurisdiction in which any of the Collateral may be located.
3. Restrictions on Future Agreements. Company agrees that during the existence and continuation of an Event of Default and until all of Borrowers' Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated, Company will not, without Agent's prior written consent, abandon any Trademark or enter into any agreement, except with Company's Affiliates, including, without limitation, any license agreement, which is inconsistent with Company's obligations under this

Trademark Security Agreement if such actions would materially adversely affect the fair market value of the Collateral or the benefits of this Trademark Security Agreement granted to Agent including, without limitation, the priority or perfection of the security interest granted herein or the remedies of Agent hereunder, and Company further agrees that during the existence and continuation of an Event of Default it will 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 or granted to Agent under this Trademark Security Agreement and any such agreement or action if it shall take place shall be null and void and of no effect whatsoever.

4. New Trademarks. Company represents and warrants that the Trademarks listed on Annex A and on Annex B constitute all of the trademarks and applications now owned by or licensed to or by Company for which registrations have been issued or applied for in the Trademarks Office of the Canadian Intellectual Property Office and/or the United States Patent and Trademark Office. If, before Borrowers' Obligations have been satisfied in full and the Loan Agreement terminated, Company shall (i) obtain rights to any new trademarks, trademark registrations or applications or trade names used in the United States, Canada or any state, province, territory or possession thereof, or (ii) become entitled to the benefit of any trademarks, trademark registrations or applications or trade names used in the United States Canada or any state, province, territory or possession thereof, the provisions of Section 1 above shall automatically apply thereto and Company shall give to Agent prompt written notice thereof. Company hereby authorizes Agent to modify this Trademark Security Agreement by amending Annex A and Annex B to include any future trademarks, trademark applications and trademark license agreements which are Trademarks, as applicable, under Section 1 above or under this Section 4.
5. Additional Representations and Warranties. Company hereby represents, warrants, covenants and agrees that:
  - (a) It has the full right and power to grant the security interest in the Collateral made hereby.
  - (b) Except to its Affiliates and for Permitted Liens, it has made no previous assignment, transfer or agreements in conflict herewith or constituting a present or future assignment, transfer, or encumbrance on any of the Collateral, except for the license agreements to use such Trademarks granted to licensees described on Annex B.
  - (c) (i) There is no financing statement or other document or instrument now signed or on file in any public office covering any part of the Collateral, except those showing Agent as secured party or related to Permitted Liens, and (ii) so long as any of Borrowers' Obligations remain outstanding under the Loan Agreement or the Loan Agreement has not terminated, and (ii) it

will not execute, and it shall not permit there to be on file in any public office, any such financing statement or other document or instruments, except financing statements on file or to be filed in favor of Agent or related to Permitted Liens.

(d) Subject to any limitations stated therein or in connection therewith, all information furnished to Agent or the other Lenders concerning the Collateral and proceeds thereof, for the purpose of obtaining credit or an extension of credit, is, or will be at the time the same is furnished, accurate and correct in all material respects.

6. Intentionally Deleted.

7. Required Consents. If any agreement to which Company is presently a party contains a provision that prohibits or limits Company's rights to grant a security interest or provides that any Collateral specified herein may not be pledged, hypothecated, assigned or otherwise encumbered without the leave, license, consent or approval (collectively, the "Consent") of the other party to such agreement, the security interest created hereby shall be conditioned upon such Consent having been obtained. Company hereby represents that all agreements requiring such Consents are listed in Annex C to this Trademark Security Agreement.

8. Royalties; Terms. Company hereby agrees that any rights to use granted hereunder by Agent and its successors, transferees and assigns with respect to all Collateral as described above shall be worldwide (to the extent Company has such rights) and without any liability for royalties or other related charges from Agent or Lenders, ratably, to Company. The term of the security interest granted herein shall extend until the earlier of (i) the expiration or termination of each of the Trademarks covered hereby or (ii) all Borrowers' Obligations have been paid in full and the Loan Agreement has been terminated.

9. Agent's Right to Inspect. Agent shall have the right, upon reasonable notice and from time to time, to inspect Company's premises and to examine Company's books, records and operations. Unless Agent reasonably determines that to do so would be adverse to its interests, Agent will give Company reasonable advance notice and make any inspections during Company's normal business hours.

10. Release of Security Interest.

(a) This Trademark Security Agreement is made for collateral purposes only. Upon payment in full of all of Borrowers' Obligations and termination of the Loan Agreement, Agent shall, at Company's sole cost and expense, execute and deliver to Company all termination statements, releases, assignments and other instruments as may be necessary or proper to re-vest in Company full title to the Collateral granted hereby, subject to any disposition thereof which

may have been made by Agent pursuant hereto or pursuant to the Security Agreement.

- (b) Upon any sale, assignment, lease or other disposition of all or any part of the Collateral permitted by the Security Agreement or in connection with the sale, assignment, lease or other disposition of assets permitted by the Security Agreement, with application of the proceeds thereof made in accordance with the Security Agreement, Agent acknowledges and agrees that the security interest in the Collateral granted hereby shall be released and that it shall execute and deliver to Company all termination statements and other documents and instruments as may be necessary or desirable to fully release the security interest in such Collateral granted hereby.

11. Duties of Company. During the existence and continuation of an Event of Default Company agrees: (a) Company shall have the duty (i) to prosecute diligently any Trademark application that is part of the Trademarks pending as of the date hereof or thereafter until all Borrowers' Obligations shall have been paid in full and the Loan Agreement shall have been terminated, (ii) to make application for Trademarks as appropriate and (iii) to preserve and maintain all rights in trademark applications, trademarks, trade names, interests under trademark license agreements and trademark registrations that are part of the Trademarks, in each case to the extent such items are still used or useful in the business of Company, or the failure to do so would materially adversely effect the fair market value of the Collateral or the benefits of this Trademark Security Agreement granted to Agent including, without limitation, the priority or perfection of the security interest granted herein or the remedies of Agent hereunder; (b) any expenses incurred in connection with such applications shall be borne by Company; (c) Company agrees to retain a registered Trademark attorney approved by Agent for the filing and prosecution of all such applications and other proceedings at the time of such filing or prosecution; and (d) Company shall not abandon any right to file a trademark application or any pending trademark application without the consent of Agent.

If Company fails to comply with any of the foregoing duties, Agent may do so in Company's name to the extent permitted by law, but at Company's expense, and Company hereby agrees to reimburse Agent in full for all expenses, including the reasonable fees and disbursements of counsel incurred by Agent in protecting, defending and maintaining the Collateral.

In the event that Company shall fail to pay when due any fees required to be paid by it hereunder, or shall fail to discharge any lien or security interest prohibited hereby, or shall fail to comply with any other duty hereunder, Agent may, but shall not be required to, pay, satisfy, discharge or bond the same for the account of Company, and all moneys so paid out shall be Secured Obligations repayable on demand, together with interest at the rate of interest applicable to Loans under the Loan Agreement.

Company further agrees that for so long as no Event of Default exists Company will at all times maintain, preserve and protect the Collateral to the extent consistent with prudent and reasonable business practices.

12. Remedies; Right to Sue. Upon the occurrence and during the continuance of an Event of Default, Agent's remedies shall be as set forth in the Security Agreement. In addition to the foregoing, upon the occurrence and during the continuance of an Event of Default, Agent and its successors, transferees and assigns shall have the right, but shall in no way be obligated, to bring suit in their own name to enforce the Trademarks, and any licenses thereunder, and, if Agent or any such other party shall commence any such suit, Company shall, at the request of Agent or such other party, do any and all lawful acts and execute any and all proper documents required by Agent or such other party in aid of such enforcement and Company shall promptly, upon demand, reimburse and indemnify Agent or such other party for all costs and expenses incurred by Agent or such other party in the exercise of their rights under this Section 12. Agent shall have for the benefit of Lenders, in addition to all other rights of Agent and Lenders, the rights and remedies of a secured party under applicable law (UCC, PPSA, Civil Code of Quebec or federal laws of Canada or the United States) in the jurisdiction where the Collateral is located.
13. Waivers. No course of dealing between Company and Agent or any of their respective successors, transferees and assigns, nor any failure to exercise, nor any delay in exercising, on the part of Agent or any such other party, any right, power or privilege hereunder or under the Security Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
14. Severability. The provisions of this Trademark Security Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Trademark Security Agreement in any jurisdiction. If the security interest granted hereunder would be unenforceable under applicable law, such security interest shall be valid and enforceable to the maximum extent that would not cause such security interest to be unenforceable under applicable law and this Agreement shall be deemed to be automatically amended accordingly at all times.
15. Modification. This Trademark Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 4 hereof or by a writing signed by the parties hereto.
16. Cumulative Remedies; Power of Attorney; Effect on Security Agreement. All of the rights and remedies of Agent, the other Lenders and their successors, transferees and assigns with respect to the Collateral, 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. Company hereby authorizes Agent to make, constitute and appoint any officer or agent of Agent as Agent may select, in its sole discretion, as Company's true and lawful attorney-in-fact, with power (i) so long as any Event of Default has occurred and is continuing, to endorse Company's name on all applications, documents, papers and instruments necessary or desirable for Agent in the use of the Collateral, or to grant or issue any exclusive or non-exclusive license under the Collateral to anyone, or to assign, pledge, hypothecate, convey or otherwise transfer title in or dispose of the Collateral to anyone free and clear of any encumbrance upon title thereof created after the date of this Trademark Security Agreement, and (ii) so long as any Event of Default has occurred and is continuing, and from time to time to take any other actions with respect to the Collateral as Agent reasonably deems in its best interests. Agent hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable until all of Borrowers' Obligations shall have been paid in full and the Loan Agreement has been terminated. Company acknowledges and agrees that this Trademark Security Agreement is not intended to limit or restrict in any way the rights and remedies of Agent, the other Lenders or their successors, transferees and assigns under the Security Agreement but rather is intended to facilitate the exercise of such rights and remedies. Agent and such other parties shall have, in addition to all other rights and remedies given it or them by the terms of this Trademark Security Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code and the Personal Property Security Act, each as enacted in any jurisdiction in which the Trademarks may be located. Recourse to security will not be required at any time.

17. Care of Collateral. Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if it takes such action for that purpose as Company shall request in writing, but failure of Agent to comply with any such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Agent to preserve or protect any rights with respect to the Collateral against prior parties, or to do any act with respect to preservation of the Collateral not so requested by Company shall be deemed a failure to exercise reasonable care in the custody or preservation of the Collateral unless such failure is the result of gross negligence or willful misconduct.
18. Certain Rights Regarding Collateral and Borrowers' Obligations. Agent may, upon the occurrence and during the continuance of an Event of Default or upon Agent's exercise of its rights under Section 11.2 of the Loan Agreement, without notice to Company, take all or any of the following actions: (a) transfer all or any part of the Collateral into the name of Agent or its nominee, with or without disclosing that such Collateral is subject to the lien and security interest hereunder, (b) notify the parties obligated on any of the Collateral to make payment to Agent of any amounts due or to become due hereunder, (c) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof, or compromise




or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto and (d) take control of any proceeds of the Collateral. Agent may, furthermore, from time to time, whether before or after any of Borrowers' Obligations shall become due and payable, without notice to Company, take all or any of the following actions: (a) retain or obtain a security interest in any property, in addition to the Collateral, to secure any of Borrowers' Obligations, (b) retain or obtain the primary or secondary liability of any party or parties, in addition to Company with respect to any of Borrowers' Obligations, (c) extend or renew for any period (whether or not longer than the original period) or exchange any of Borrowers' Obligations or release or compromise any obligation of any nature of any party with respect thereto, (d) surrender, release or exchange all or any part of any property, in addition to the Collateral, securing any of Borrowers' Obligations, or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect to any such property, and (e) resort to the Collateral for payment of any of Borrowers' Obligations, if and to the extent permitted by the Loan Agreement, whether or not it shall have resorted to any other property securing Borrowers' Obligations or shall have proceeded against any party primarily or secondarily liable on any of Borrowers' Obligations.

19. Binding Effect; Benefits. This Trademark Security Agreement shall be binding upon Company and its respective successors and assigns, and shall inure to the benefit of Agent and its respective successors, transferees and assigns. No realization by Agent of its rights under this Agreement shall entitle Company, by subrogation or otherwise, to any payment by PCL Packaging Corporation ("PCL Canada") or from or out of any property of PCL Canada, and Company irrevocably waives any right or remedy against PCL Canada or any property of PCL Canada including, without limitation, any right of contribution or reimbursement by reason of any realization by Agent of its rights under this Agreement. The provisions of this paragraph shall survive the termination of this Agreement or the release or discharge of Company from liability hereunder. Company, Agent and Lenders hereby agree that PCL Canada is and shall be a third party beneficiary of the provisions of this paragraph.
20. Governing Law. This Trademark Security Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and applicable federal trademark law.
21. Notice. The provisions of the Security Agreement shall govern in respect of notices or communications contemplated hereunder or given in connection herewith.
22. Consent to Jurisdiction; Waiver of Jury Trial. To induce Agent to accept this Trademark Security Agreement, Company irrevocably agrees that this Trademark Security Agreement incorporates herein Section 6.3 of the Security Agreement, with respect to submission to jurisdiction and Section 6.4 of the Security Agreement, with respect to waiver of jury trial.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Trademark Security Agreement as of the day first above written.

**PCL PACKAGING, INC.**

By   
Name R BRUCE WHITE  
Title Secretary

**BANK OF AMERICA CANADA, as Agent**


By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Trademark Security Agreement as of the day first above written.

**PCL PACKAGING, INC.**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**BANK OF AMERICA CANADA, as Agent**

By  \_\_\_\_\_  
Name **Jeffrey D. Burdon** \_\_\_\_\_  
Title **Vice President** \_\_\_\_\_

**ANNEX A**  
**to**  
**Collateral Trademark Security Agreement**

**Trademarks and Applications**

<b>Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>
PCL Plastics Corporation (and Design)	2,319,986	February 22, 2000
FRESH-SAC	1,694,457	June 16, 1992

**ANNEX B**

**to**

**Collateral Trademark Security Agreement**

**Trademark License Agreements**

NONE

**ANNEX C**

**to**

**Collateral Trademark Security Agreement**

**Required Consents**

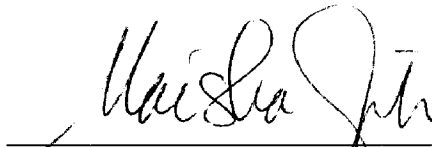
NONE

**CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10**

**“Express Mail” Mailing Label Number:** \_\_\_\_\_

**Date of Deposit:** \_\_\_\_\_

I hereby certify that the enclosed Collateral Trademark Security Agreement with the Recordation Form for Trademarks is being deposited with the United States Postal Service “Express Mail Post Office to Addressee” service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, 1213 Jefferson Davis Highway, Crystal Gateway 4, Arlington, Virginia 22202-3513.



\_\_\_\_\_  
Maisha Gibson