

FORM PTO-1594 (Rev. 6-93)

REC

06-27-2001



SHEET

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

OMB No. 0651-0011 (exp. 4/94)

Tab settings

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

1. Name of conveying party(ies):

Pescor, Inc.

6-5-01

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

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

2. Name and address of receiving party(ies)

Name: Bank of America, N.A.

Internal Address:

Street Address: 231 South LaSalle

City: Chicago State: IL ZIP: 60697

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: May 14, 2001

4. Application number(s) or patent number

A. Trademark Application No.(s)

75/823,914

75/823,913



06-05-2001

U.S. Patent & TMO/TM Mail Rpt. Dt. #40

Trademark Registration No.(s)

Additional numbers attached? Yes No

US PATENT & TRADEMARK OFFICE JUN 15 A 8:55 RECEIVED TRADEMARK FEE PROCESS.

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

Name: Ann T. Cole

Internal Address: Miles & Stockbridge

Street Address: 10 Light Street

City: Baltimore State: MD ZIP: 21202

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: 20-0052

(Attach duplicate copy of this page if paying by deposit account)

06/26/2001 LNUELLER,00000234 200052 75023914

DO NOT USE THIS SPACE

01 FC:481 40.00 CH
02 FC:482 25.00 CH

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.

Ann T. Cole

Name of Person Signing

Ann T. Cole
Signature

6/1/2001
Date

Christine E. Wilson

Total number of pages including cover sheet, attachments, and document: 13

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

TRADEMARK REEL: 002320 FRAME: 0809

COLLATERAL ASSIGNMENT OF TRADEMARKS AS SECURITY

THIS COLLATERAL ASSIGNMENT OF TRADEMARKS AS SECURITY (this "Assignment") is made as of this 14th day of May, 2001, by PESCOR, INC., a corporation organized and existing under the laws of the State of Delaware (the "Assignor"), in favor of BANK OF AMERICA, N.A., a national banking association, in its capacity as a collateral agent for itself, the "BofA Lenders", the "GE Agent", and the "GE Lenders" (as those terms are hereinafter defined), together with its successors and assigns (the "Collateral Agent"); Witnesseth:

RECITALS

A. Berry Plastics Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Borrower"), NIM Holdings Limited, a company organized and existing under the laws of England and Wales ("NIM Holdings"), Berry Plastics UK Limited, a company organized and existing under the laws of England and Wales ("Berry UK"), Bank of America, N.A., a national banking association ("Bank of America"), Fleet Capital Corporation, a corporation organized and existing under the laws of the State of Rhode Island ("Fleet"), General Electric Capital Corporation, a corporation organized and existing under the laws of the State of New York ("GE"), Heller Financial, Inc., a corporation organized and existing under the laws of the State of Delaware ("Heller"), PNC Bank, National Association, a national banking association ("PNC"), LaSalle Business Credit, Inc, a corporation organized and existing under the laws of the State of Delaware ("LaSalle"), and The Provident Bank, a banking corporation organized and existing under the laws of the State of Ohio ("Provident") (collectively, the "BofA Lenders" and individually, a "BofA Lender") and Bank of America, N.A., a national banking association, in its capacity as both collateral and administrative agent for the BofA Lenders and as lead arranger (the "BofA Agent"), are parties to that certain Third Amended and Restated Financing and Security Agreement dated as of May 9, 2000, as amended by (i) that certain First Amendment to Third Amended and Restated Financing and Security Agreement dated as of July 14, 2000 (the "First Amendment"), (ii) that certain Second Amendment to Third Amended and Restated Financing and Security Agreement dated as of September 6, 2000 (the "Second Amendment"), and (iii) that certain Third Amendment to Third Amended and Restated Financing and Security Agreement of even date herewith (the "Third Amendment") (as amended, restated, supplemented or otherwise modified, the "BofA Credit Agreement"). Under and subject to the provisions of the BofA Credit Agreement, the Lenders agreed to establish in favor of the Borrower, Berry UK and NIM Holdings certain revolving credit, letter of credit and term loan facilities.

B. The Borrower, GE Capital, in its capacity as a lender, and GE Capital, in its capacity as an agent (the "GE Agent") are parties to that certain Loan and Security Agreement dated as of July 14, 2000, as amended by that certain First Amendment to Loan and Security Agreement of even date herewith (as amended, restated, modified, substituted, extended, and renewed from time to time, the "GE Loan Agreement"). The GE Agent and the "Lenders" as defined in the GE Loan Agreement are hereinafter referred to collectively as the "GE Lenders". Under and subject to the provisions of the GE Loan Agreement, the GE Lenders agreed to establish in favor of the Borrower a certain term loan facility. The BofA Lenders and the GE Lenders are

hereinafter referred to collectively as the "Lenders". The BofA Agent, the BofA Lenders, the GE Agent, the GE Lenders and the Borrower, among others, have entered into an Intercreditor Agreement dated July 14, 2000 (as amended, restated, modified, substituted, extended, and renewed from time to time, the "Intercreditor Agreement"), which Intercreditor Agreement governs, among other things, the respective Lien priorities of the Collateral Agent for the benefit of the BofA Agent, the BofA Lenders, the GE Agent and the GE Lenders.

C. The Assignor has adopted, used and is using certain trademarks as listed on SCHEDULE A attached hereto and made a part hereof and has applied for or has pending the trademarks also as listed on SCHEDULE A (collectively, the "Trademarks").

D. Payment and performance of the obligations, liabilities and indebtedness under and in connection with the BofA Credit Agreement and the GE Loan Agreement (the "Obligations") are secured by certain security agreements contained in the BofA Credit Agreement, the GE Loan Agreement and certain other financing documents (collectively, the "Financing Documents") under which the Assignor has granted to the Collateral Agent, a Lien on, and security interest in, certain assets of the Assignor associated with or relating to products sold under any one or more of the Trademarks and under which the Collateral Agent is entitled to foreclose or otherwise deal with the Trademarks under the terms and conditions set forth in the BofA Credit Agreement, GE Loan Agreement and the Intercreditor Agreement.

D. The Collateral Agent desires to have the interest of the Collateral Agent in such Trademarks confirmed by a document identifying the same and in such form that it may be recorded in the United States Patent and Trademark Office.

E. As collateral security for the Obligations, whether arising under the Financing Documents or otherwise, the Assignor has agreed to assign to the Collateral Agent the Trademarks and the goodwill of the business associated therewith.

NOW THEREFORE, with the foregoing Recitals being deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

ARTICLE I ASSIGNMENT

In consideration of and pursuant to the terms of the BofA Credit Agreement and GE Loan Agreement and each of the other Financing Documents, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure all of the Obligations, the Assignor hereby grants, assigns and conveys to the Collateral Agent all of its present and future right, title and interest in and to, and grants to the Collateral Agent a security interest in, Lien on, and collateral assignment of the Trademarks, together with all the goodwill of the Assignor associated with and represented by the Trademarks and any registration therefor, and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits and all rights corresponding thereto throughout the world.

The foregoing grant, security interest and assignment is a present grant of a collateral assignment and, upon the occurrence of an Event of Default and notice to the Assignor from the Collateral Agent, and subject to the filing with and notice to the United States Patent and Trademark Office, shall become an absolute assignment in favor of the Collateral Agent or in favor of such person as the Collateral Agent may designate, and may be the subject of such confirmatory instruments as the Collateral Agent may elect, which instruments shall be conclusive evidence of the Event of Default and absolute assignment.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE COLLATERAL SHALL NOT INCLUDE ANY TRADEMARKS (OTHER THAN REGISTERED TRADEMARKS) TO THE EXTENT THE GRANT OF AN ASSIGNMENT AND SECURITY INTEREST PURSUANT HERETO IN THE ASSIGNOR'S RIGHT, TITLE AND INTEREST IN SUCH ITEM OF PROPERTY IS PROHIBITED BY ANY APPLICABLE CONTRACTUAL OBLIGATION OR REQUIREMENT OF LAW OR WOULD GIVE ANY OTHER PERSON THE RIGHT TO TERMINATE ITS OBLIGATIONS WITH RESPECT TO SUCH ITEM (IT BEING UNDERSTOOD AND AGREED, HOWEVER, THAT NOTWITHSTANDING THE FOREGOING, ALL RIGHTS TO PAYMENT FOR MONEY DUE OR TO BECOME DUE PURSUANT TO ANY SUCH EXCLUDED ITEM OF PROPERTY SHALL BE SUBJECT TO THE SECURITY INTERESTS CREATED HEREBY AND IT BEING FURTHER UNDERSTOOD AND AGREED THAT ANY SUCH EXCLUDED ITEM SHALL BE INCLUDED AS PART OF THE TRADEMARKS IF AND TO THE EXTENT ANY APPLICABLE PROHIBITION ON THE COLLATERAL ASSIGNMENT OF SUCH ITEM SHALL BE UNENFORCEABLE UNDER THE APPLICABLE UNIFORM COMMERCIAL CODE AS NOW OR HEREAFTER IN EFFECT.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 Trademark Existence.

The Assignor represents and warrants to the Collateral Agent, and shall be deemed to represent and warrant to the Collateral Agent at the time a Loan is made or a Letter of Credit is issued, that based on the records of the United States Patent and Trademark Office and any state trademark offices and on the Assignor's knowledge:

2.1.1 The registered Trademarks are subsisting and have not been adjudged invalid or unenforceable in the United States or in the jurisdictions in which they are registered.

2.1.2 Each of the registered Trademarks is valid and enforceable in the United States or in the jurisdictions in which it is registered.

2.1.3 Except as set forth on SCHEDULE B to this Assignment, the Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Trademarks, in the United States or in the jurisdictions in which it is registered, each of the Trademarks is free and clear of any Liens (other than Permitted Liens), licenses, and other encumbrances including, without limitation, covenants by the Assignor not to sue third persons.

2.1.4 The Assignor has the right to enter into this Assignment and perform its terms.

ARTICLE III
COVENANTS AND AGREEMENTS

Section 3.1 New Agreements, Trademarks and Consents.

The Assignor covenants that until all the Obligations have been paid and performed in full, all Commitments have been terminated or have expired and all Letters of Credit have been cancelled or have expired:

3.1.1 It will not enter into any agreement, including without limitation, license agreements that would have a material adverse effect on the Collateral Agent's rights under this Assignment.

3.1.2 It will exercise reasonable supervision over each of its present and future employees, agents and consultants which will enable the Assignor to comply with the covenants herein contained.

3.1.3 If the Assignor acquires rights to any new Trademarks, the provisions of this Assignment shall automatically apply thereto and the Assignor shall give the Collateral Agent prompt written notice thereof along with an amended SCHEDULE A.

3.1.4 The Assignor shall, at the Collateral Agent's request, obtain consents to this Assignment where the Assignor's right to assign any Trademarks requires such consent.

Section 3.2 Maintenance.

3.2.1 Except as permitted by the provisions of the BofA Credit Agreement and the GE Loan Agreement, the Assignor hereby covenants and agrees to maintain the Trademarks in full force and effect until all of the Obligations are satisfied in full, all Commitments have been terminated or have expired and all Letters of Credit have been cancelled or have expired.

3.2.2 Except as permitted by the provisions of the BofA Credit Agreement and GE Loan Agreement, the Assignor shall have the duty to (a) prosecute diligently any trademark application that is part of the Trademarks pending as of the date of this Assignment or thereafter to the extent the value of such application in the Assignor's business justifies such prosecution until the Obligations shall have been satisfied in full, all Commitments have been terminated or have expired and all Letters of Credit have been cancelled or have expired, (b) preserve and maintain all rights in such applications and/or Trademarks including but not limited to the payment of registration and renewal fees, if any and (c) upon reasonable written request of the Collateral Agent, to make federal application for registration of registerable but unregistered trademarks to the extent the value of such application in the Assignor's business justifies such application for registration. Any reasonable expenses incurred in connection with such applications shall be part of the Enforcement Costs. The Assignor shall

not abandon any Trademark or any pending application for trademark registration, unless the value of such Trademark or application in the Assignors' business does not justify the actions required to avoid such abandonment, without the consent of the Collateral Agent.

3.2.3 Prior to an Event of Default, the Assignor shall have the right to bring suit in its own name to enforce the Trademarks, in which event the Collateral Agent may, if necessary, at its own expense, be joined as a nominal party to such suit if the Collateral Agent shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. If suit is brought subsequent to an Event of Default, the Assignor shall promptly, upon demand, reimburse and indemnify the Collateral Agent for all damages, costs and reasonable expenses, including attorneys' fees, as they arise incurred by the Collateral Agent in the fulfillment of the provisions of this paragraph.

3.2.4 If the Assignor fails to comply with any of its obligations hereunder in any material respect, the Collateral Agent may do so in the Assignor's name or in the Collateral Agent's name, but at the Assignor's expense, and the Assignor hereby agrees to reimburse and indemnify the Collateral Agent in full for all reasonable expenses, including reasonable attorneys' fees, incurred by the Collateral Agent in protecting, defending and maintaining the Trademarks.

3.2.5 The Assignor will continue to use, for the duration of this Assignment, proper statutory identification in connection with its use of the Trademarks.

3.2.6 The Assignor will continue to meet for the duration of this Assignment, consistent standards of quality in its manufacture of products sold under the Trademarks comparable to the standards met by Assignor prior to the date of this Assignment.

Section 3.3 Fees and Expenses.

The Assignor agrees to pay to the Collateral Agent upon demand as part of the Enforcement Costs, any and all reasonable fees, costs and expenses, of whatever kind or nature, including reasonable attorney's fees and legal expenses incurred by the Collateral Agent in connection with the preparation of this Assignment and of all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining or preserving the Trademarks, or in enforcing the Collateral Agent's rights therein or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne and paid by the Assignor on demand by the Collateral Agent.

ARTICLE IV EVENTS OF DEFAULT; RIGHTS AND REMEDIES

Section 4.1 Assignor Use.

Prior to an Event of Default (a) the Assignor shall have an exclusive nontransferable right and license to use the Trademarks and (b) the Collateral Agent shall have no right to use the Trademarks or issue any exclusive or non-exclusive license under the Trademarks, or assign,

pledge or otherwise transfer title in the Trademarks to any other party. Except as otherwise permitted by the BofA Credit Agreement and GE Loan Agreement, the Assignor agrees not to sell or assign its interest in, or grant any sublicense under, except in the ordinary course of the Assignor's business and only if such sublicensee is provided notice that the sublicense is subject to the terms of this Assignment, or allow any Lien (other than Permitted Liens) to attach to the license granted to the Assignor in this Section, without the prior written consent of the Collateral Agent.

Section 4.2 Certain Collateral Agent Rights.

The Assignor hereby covenants and agrees that the Collateral Agent, as assignee hereunder and as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in the State of Maryland, and under any other applicable law, following an Event of Default, upon notice to the Assignor, may terminate the license set forth in Section 4.1 and may take such other action permitted hereunder or under the other Financing Documents or permitted by applicable Laws, in its exclusive discretion, to foreclose upon the Trademarks covered hereby. For such purposes, and in the event of an Event of Default hereunder or in the Obligations, the Assignor upon the occurrence of an Event of Default hereby authorizes and empowers the Collateral Agent to make, constitute and appoint any officer of Collateral Agent as the Collateral Agent may select, in its exclusive discretion, (with full power of substitution and delegation, in its exclusive discretion), as the Assignor's true and lawful attorney-in-fact, with the power, without notice to the Assignor, to endorse the Assignor's name on all applications, documents, papers and instruments in the name of the Collateral Agent or in the name of the Assignor or otherwise, for the use and benefit of the Collateral Agent to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for the Collateral Agent to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. This power of attorney shall be irrevocable for the life of this Assignment, the BofA Credit Agreement and GE Loan Agreement, the Financing Documents and other obligations and until all of the Obligations to the Collateral Agent are satisfied in full and all Commitments and Letters of Credit have been terminated or otherwise have expired.

Section 4.3 Rights and Remedies.

All rights and remedies herein granted to the Collateral Agent shall be in addition to any rights and remedies granted to the Collateral Agent under the Financing Documents.

Section 4.4 Re-Vesting of Assignor's Rights.

Upon the full payment and performance of all of the Obligations (except for contingent indemnity and expense reimbursement obligations for which no claim has been made) and termination or expiration of all Commitments and all Letters of Credit, the Collateral Agent shall, upon the Assignor's request and at the Assignor's expense, execute and deliver to the Assignor all documents reasonably necessary to terminate this Assignment and re-vest in the Assignor full title to the Trademarks.

Section 4.5 No Waiver.

No course of dealing between the Assignor and the Collateral Agent, nor any failure to exercise, nor any delay in exercising, on the part of the Collateral Agent, any right, power or privilege hereunder or under the Financing Documents shall operate as a waiver thereof, and all of the Collateral Agent's rights and remedies with respect to the Trademarks, whether established hereby or by the Financing Documents, or by any other future agreements between the Assignor and the Collateral Agent or by law shall be cumulative and may be exercised singularly or concurrently.

ARTICLE V
MISCELLANEOUS

Section 5.1 Severability.

The provisions of this Assignment are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

Section 5.2 Successors and Assigns.

This Assignment shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties and shall specifically inure, without limitation, to the benefit of each Person who may from time to time be the "Collateral Agent" under the BofA Credit Agreement and/or the GE Loan Agreement.

Section 5.3 Modification.

This Assignment is subject to modification only by a writing signed by the parties and shall be subject to the terms, provisions, and conditions set forth in the BofA Credit Agreement, GE Loan Agreement and the Intercreditor Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

Section 5.4 Intercreditor Agreement.

The terms and conditions of this Assignment are subject to the terms and conditions of the Intercreditor Agreement; and, in the event there is any express conflict between the terms and conditions of this Assignment and the terms and conditions of the Intercreditor Agreement, the terms and conditions of the Intercreditor Agreement shall control

Section 5.5 Captions and Headings.

The section headings in this Assignment are for convenience only, and shall not limit or otherwise affect any of the terms hereof.

Section 5.6 Governing Law.

This Assignment shall be governed by and construed in conformity with the laws of the State of Maryland.

IN WITNESS WHEREOF, the Assignor has executed this Assignment, under seal, the day and year first above written.

WITNESS OR ATTEST:

PESCOR, INC.

[Signature]

By: [Signature] (SEAL)
James M. Kratochvil
Executive Vice President

Approved and Accepted:
BANK OF AMERICA, N.A.,
in its capacity as Collateral Agent

By: _____
Name:
Title:

ACKNOWLEDGMENT

STATE OF New York, CITY/COUNTY OF New York, TO WIT:

On this 11th day of May, 2001, before me personally appeared JAMES M. KRATOCHVIL, to me known and being duly sworn, deposes and says that he is the Executive Vice Pres of Pescor, Inc., a Delaware corporation, the Assignor; that he signed the Assignment as _____ of such corporation pursuant to the authority vested in him by law; that the within Assignment is the voluntary act of such corporation; and he desires the same to be recorded as such.

[Signature]
Notary Public

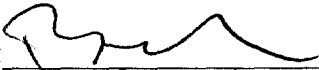
My Commission Expires: JULY 31, 2002

IN WITNESS WHEREOF, the Assignor has executed this Assignment, under seal, the day and year first above written.

WITNESS OR ATTEST: PESCOR, INC.

By: _____ (SEAL)
James M. Kratochvil
Executive Vice President

Approved and Accepted:
BANK OF AMERICA, N.A.,
in its capacity as Collateral Agent

By: 
Name: Benjamin Whitte
Title: Vice President

ACKNOWLEDGMENT

STATE OF _____, CITY/COUNTY OF _____, TO WIT:

On this __th day of _____, 2001, before me personally appeared _____, to me known and being duly sworn, deposes and says that he is the _____ of Pescor, Inc., a Delaware corporation, the Assignor; that he signed the Assignment as _____ of such corporation pursuant to the authority vested in him by law; that the within Assignment is the voluntary act of such corporation; and he desires the same to be recorded as such.

Notary Public

My Commission Expires: _____

SCHEDULE A

LIST OF TRADEMARKS

<u>Registration No.</u>	<u>Serial No.</u>	<u>Trademark</u>	<u>Goods</u>
Pending	75-823,914	Pescor Plastics	Custom manufacturing of molded plastic products, namely plastic, reusable drink cups
Pending	75-823,913	Pescor Plastics, Inc.	Custom manufacturing of molded plastic products, namely plastic, reusable drink cups

SCHEDULE B

NONE