

APPLICATION FORM COVER SHEET  
ADEMARKS ONLY

No. 0651



b settl

101978176

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

Name of conveying party(ies):

Specialty Brands of America, Inc.

Individual(s)

Association

General Partnership

Limited Partnership

X Corporation-State MA

Other

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

Nature of conveyance:

Assignment

Merger

Security Agreement

Change of Name

Other Trademark Mortgage

Execution Date: October 31, 2001

2. Name and address of receiving party(ies)

Name: Madison Capital Funding LLC, as Agent

Internal Address: Suite 1200

Street Address: 303 W. Madison St.

City: Chicago State: IL ZIP: 60606

Individual(s) citizenship

Association

General Partnership

Limited Partnership

Corporation-State

Other

If assignee is not domiciled in the United States, a domestic representative designator is attached:  Yes  No

(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached?  Yes  No

Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

Additional numbers attached?  Yes  No

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

Name: Laura Konrath

Internal Address: Winston & Strawn

33rd Floor

Street Address: 35 West Wacker Drive

City: Chicago State: IL ZIP: 60601

6. Total number of applications and registrations involved: 26

7. Total fee (37 CFR 3.41).....\$ 665.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

N/A

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

02/07/2002 AMWED1 00000253 1665516

DO NOT USE THIS SPACE

01 FCI:481  
03/18/02

Signature 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.

Laura Konrath

Name of Person Signing

Signature

12/18/01

Date

Total number of pages including cover sheet, attachments, and document: 26

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents & Trademarks, Box Assignment

TRADEMARK  
REEL: 002440 FRAME: 0211

SCHEDULE AU.S. TRADEMARK REGISTRATIONS

<u>Trademark Description</u>	<u>U.S. Serial/Registration No.</u>	<u>Date Registered</u>
100% Pure and Design	1,665,516	19-Nov-1991
100% Pure and Maple Leaf Design	1,726,020	20-Oct-1992
Cary's	1,473,400	19-Jan-1988
Cary's	740,285	06-Nov-1962
Cary's	831,170	27-Jun-1967
Dixie Fry	722,057	26-Sept-1961
Eclipse	1,493,391	21-Jun-1988
Happy Jack	523,786	11-Apr-1950
Hunterdon Farms	1,186,048 (will be cancelled)	12-Jan-1982
Maple Orchards	1,688,448	19-May-1992
New York Flatbreads	1,852,524	06-Sep-1994
O.T.C.	206,118	24-Nov-1925
The Original Trenton Cracker	1,507,410	04-Oct-1988
Trenton	200,061	23-Jun-1925
Vermont Maple Orchards	1,685,806	05-May-1992
Spring Tree (margarine)	2,229,064	02-Mar-1999
Albero	2,205,836	24-Nov-1998
Red Leaf Farms	2,013,499	05-Nov-1996
Design Only (maple syrup)	1,891,269 (will be cancelled)	25-Apr-1995
BonJour (processed edible nuts)	1,883,073 (will be cancelled)	07-Mar-1995
BonJour (maple syrup)	1,840,755 (cancelled)	21-Jun-1994
Spring Tree (cocoa powder, carob powder and maple syrup)	1,847,810	02-Aug-1994
Design Only (processed edible nuts)	1,917,385 (will be cancelled)	05-Sep-1995
Canoleo (margarine)	1,852,510	06-Sep-1994
Northern Nectar	1,843,100	05-Jul-1994
Old Fashion Maple Crest (maple syrup)	2,126,592	06-Jan-1998

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**TRADEMARK MORTGAGE**

THIS TRADEMARK MORTGAGE (this "Mortgage"), made as of the 31<sup>st</sup> day of October, 2001 by and between Specialty Brands of America, Inc., a Massachusetts corporation (together with its successors, the "Company") and Madison Capital Funding LLC, as agent ("Agent") for the Lenders referred to below.

W I T N E S S E T H

WHEREAS, pursuant to that certain Credit Agreement dated as of December 2, 1999 among the Company, certain lenders (the "Lenders") and Banc of America Commercial Finance Corporation (the "Original Agent") (as the same may hereafter be amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), Original Agent and the Lenders have agreed to make certain loans to the Company, and to extend certain other financial accommodations to or for the benefit of the Company;

WHEREAS, pursuant to a certain Security Agreement dated as of December 2, 1999 between the Original Agent and the Company (as the same may hereafter be amended, supplemented or otherwise modified from time to time, the "Security Agreement") the Company has granted to the Original Agent, for the ratable benefit of the Original Agent and the Lenders, a continuing security interest in certain of the Company's assets, including, without limitation, the Trademarks (as defined below); and

WHEREAS, pursuant to that certain Assignment and Assumption and Omnibus Amendment Agreement dated as of the date hereof among the Original Agent, Agent and Company, Original Agent has assigned to Agent, and Agent has assumed, all of Original Agent's rights and obligations under the Credit Agreement and the other Financing Documents.

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

1. Incorporation of Security Agreement; Credit Agreement Definitions. The Security Agreement and the provisions thereof are hereby incorporated herein in their entirety by this reference thereto. Capitalized terms used but not defined herein shall have the respective meanings given thereto in the Credit Agreement.

2. Grant and Reaffirmation of Grant of Security Interest. To secure the complete and timely payment and satisfaction of the Secured Obligations (as such term is defined in the Security Agreement), the Company hereby grants to the Agent, and hereby reaffirms its prior grant pursuant to the Security Agreement of, a continuing security interest in the Company's entire right, title and interest in and to all of its now owned or existing and hereafter acquired or arising trademarks, trademark licenses, rights in intellectual property, goodwill, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, all General Intangibles (as such term is defined in the Security Agreement) related thereto, and all

applications (other than "intent to use" applications until a verified statement of use is filed with respect to such applications) in connection therewith, including, without limitation, the trademarks and applications listed on Schedule A attached hereto and made a part hereof and renewals thereof, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"), all rights corresponding to any of the foregoing throughout the world and the goodwill of the Company's business connected with the use of and symbolized by the Trademarks.

3. Warranties and Representations. The Company warrants and represents to Agent that:

i. no Trademark has been adjudged invalid or unenforceable by a court of competent jurisdiction nor has any such Trademark been cancelled, in whole or in part and each such Trademark is presently subsisting;

ii. each Trademark is valid and enforceable;

iii. the Company 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, including without limitation licenses, shop rights and covenants by the Company not to sue third persons;

iv. the Company has no notice of any suits or actions commenced or threatened with reference to any Trademark; and

v. the Company has the unqualified right to execute and deliver this Mortgage and perform its terms.

4. Restrictions on Future Agreements. The Company agrees that until the Secured Obligations shall have been satisfied in full and the Security Agreement shall have been terminated, the Company shall not, without the prior written consent of Agent, 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 the Company 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 adversely affect the validity or enforcement of the rights transferred to Agent under this Mortgage.

5. New Trademarks. The Company represents and warrants that the Trademarks listed on Schedule A constitute all of the federally registered Trademarks now owned by the Company. If, before the Secured Obligations shall have been satisfied in full and the Security Agreement has been terminated, the Company shall (i) become aware of any existing Trademarks of which the Company has not been previously informed or (ii) become entitled to the benefit of any Trademarks, which benefit is not in existence on the date hereof, the provisions of this Mortgage above shall automatically apply thereto and the Company shall give

the Agent prompt written notice thereof. The Company hereby agrees that, upon the Agent's written request, the Company will execute and deliver to the Agent one or more supplements to this Mortgage, each in form and content substantially similar to this Mortgage, in respect of any and all newly created or acquired federally registered Trademarks owned by the Company.

6. Royalties; Term. The term of the security interests granted herein shall extend until the earlier of (i) the expiration of each of the Trademarks and (ii) the payment in full of the Secured Obligations and the termination of the Security Agreement in accordance with its terms. The Company agrees that upon the occurrence and during the continuance of an Event of Default, the use by the Agent of all Trademarks shall be worldwide, except as limited by their terms, and without any liability for royalties or other related charges from Agent to the Company.

7. Product Quality. The Company 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 Agent, upon Agent's request from time to time, with a certificate of an officer of the Company certifying the Company's compliance with the foregoing. Upon the occurrence and during the continuance of an Event of Default, the Company agrees that Agent, or a conservator appointed by Agent, shall have the right to establish such additional product quality controls as Agent, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by the Company under the Trademarks.

8. Release of Mortgage. This Mortgage is made for collateral purposes only. Upon payment in full of the Secured Obligations and termination of the Security Agreement, Agent shall take such actions as may be necessary or proper to terminate the security interests created hereby and pursuant to the Financing Documents.

9. Expenses. All expenses reasonably incurred in connection with the performance of any of the agreements set forth herein shall be borne by the Company. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Agent in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademarks or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks shall be borne by and paid by the Company and shall be charged against the Secured Obligations.

10. Duties of Companies. The Company shall have the duty (i) to file and prosecute diligently any trademark applications pending as of the date hereof or hereafter until the Secured Obligations shall have been paid in full and the Security Agreement has been terminated, (ii) to preserve and maintain all rights in the Trademarks, as commercially reasonable and (iii) to ensure that the Trademarks are and remain enforceable, as commercially reasonable, in each case unless the board of directors of the Company determines in good faith that any such Trademark is no longer used or useful in the business of the Company. Any expenses incurred in connection with the Company's obligations under this Section 10 shall be borne by the Company.

11. Agent's Right to Sue. During the continuance of an Event of Default, each Agent shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and, if Agent shall commence any such suit, the Company shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents required by Agent in aid of such enforcement and the Company shall promptly, upon demand, reimburse and indemnify Agent for all costs and expenses incurred by Agent in the exercise of its rights under this Section 11.

12. Waivers. No course of dealing between the Company and Agent, nor any failure to exercise, nor any delay in exercising, on the part of Agent, any right, power or privilege hereunder or under the Financing Documents 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.

13. Severability. The provisions of this Mortgage 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 Mortgage in any jurisdiction.

14. Modification. This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

15. Effect on Other Agreements; Power of Attorney; Cumulative Remedies. The Company acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of the Agent or any Lender under the Credit Agreement or the Security Agreement but rather is intended to supplement and facilitate the exercise of such rights and remedies. The Company hereby authorizes Agent during the continuation of an Event of Default, to make, constitute and appoint any officer or agent of Agent, as Agent may select in its sole discretion, as the Company's true and lawful attorney-in-fact, with power to (i) endorse the Company's name on all applications, documents, papers and instruments necessary or desirable for Agent in the use of the Trademarks, or (ii) take any other actions with respect to the Trademarks as Agent deems to be in the best interest of Agent, 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. The Company 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 the Secured Obligations shall have been paid in full and the Security Agreement has been terminated. All of the rights and remedies of the Agent and each Lender with respect to the Trademarks, whether established hereby, by the Credit Agreement or the Security Agreement, by any other agreements, or by law, shall be cumulative and may be exercised singularly or concurrently. Agent shall have, in addition to all other rights and remedies given it by the terms of this Mortgage and the Financing Documents, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in New York.

16. Binding Effect; Benefits. This Mortgage shall be binding upon the Company and its respective successors and assigns, and shall inure to the benefit of the Agent and its successors and assigns.

17. APPLICABLE LAW; SEVERABILITY. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (OTHER THAN CONFLICT OF LAWS), EXCEPT FOR THE PERFECTION AND ENFORCEMENT OF SECURITY INTERESTS AND LIENS IN OTHER JURISDICTIONS, WHICH SHALL BE GOVERNED BY THE LAWS OF THOSE JURISDICTIONS OR, AS APPLICABLE, BY THE LAWS OF THE UNITED STATES OF AMERICA. WHENEVER POSSIBLE, EACH PROVISION OF THIS MORTGAGE SHALL BE INTERPRETED IN SUCH A MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS MORTGAGE SHALL BE PROHIBITED BY OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE ONLY TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISIONS OR THE REMAINING PROVISIONS OF THIS MORTGAGE.

18. Heading. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

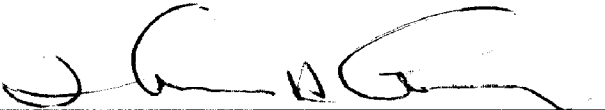
19. Further Assurances. The Company agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Agent shall reasonably request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.

20. Survival of Representations. All representations and warranties of the Company contained in this Mortgage shall survive the execution and delivery of this Mortgage and shall be remade on the date of each borrowing under the Financing Documents.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Mortgage as of the date first above written.

**SPECIALTY BRANDS OF AMERICA, INC.**

By:   
Title: Acting V.P. / Director

**MADISON CAPITAL FUNDING LLC,  
AS AGENT**

By \_\_\_\_\_  
Its \_\_\_\_\_



IN WITNESS WHEREOF, the parties hereto have duly executed this Mortgage as of the date first above written.

**SPECIALTY BRANDS OF AMERICA, INC.**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**MADISON CAPITAL FUNDING LLC,  
AS AGENT**

By Tedward J. C. C. C.  
Its Managing Director

SCHEDULE A

U.S TRADEMARK REGISTRATIONS

<u>Trademark Description</u>	<u>U.S. Serial/Registration No.</u>	<u>Date Registered</u>
100% Pure and Design	1,665,516	19-Nov-1991
100% Pure and Maple Leaf Design	1,726,020	20-Oct-1992
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O.T.C.	206,118	24-Nov-1925
The Original Trenton Cracker	1,507,410	04-Oct-1988
Trenton	200,061	23-Jun-1925
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Albero	2,205,836	24-Nov-1998
Red Leaf Farms	2,013,499	05-Nov-1996
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BonJour (processed edible nuts)	1,883,073 (will be cancelled)	07-Mar-1995
BonJour(maple syrup)	1,840,755 (cancelled)	21-Jun-1994
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Northern Nectar	1,843,100	05-Jul-1994
Old Fashion Maple Crest (maple syrup)	2,126,592	06-Jan-1998

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## CANADIAN TRADEMARK REGISTRATIONS

<u>Trademark Description</u>	<u>Canadian Serial/Registration No.</u>	<u>Date Registered</u>
Bromont	TMA167,965 (cancelled)	27-Feb-1970
Dixie Fry	TMA383,284	19-Apr-1991
Grove Brand	UCA008401 (cancelled)	27-May-1937
Pride of Canada	TMA270,808	02-Jul-1982
A Woodland Scene In Spring With The Square	UCA023825	01-Apr-1946
Maple Grove & Design	TMA387,312 (withdrawn)	02-Aug-1991
Canoleo & Design	TMA448,875	13-Oct-1995
Old Fashion Maple Crest	TMA461,934	25-Aug-1995*
Spring Tree (cocoa powder)	1,053,192 (pending)	31-Mar-00 (date filed)

\*Date licensed by Spring Tree Corporation

## TRADEMARK APPLICATIONS

<u>Trademark Application Description</u>	<u>U.S. Application No.</u>	<u>Date Applied</u>
N/A		

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