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Tab settings

To the Honorable Commissioner of Patents... 102024244

Attached original documents or copy thereof.

3-20-02

1. Name of conveying party(ies):

APIO, Inc.

3-20-02

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

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

3. Nature of conveyance:

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

Execution Date: Nov. 29, 1999

2. Name and address of receiving party(ies):

Name: Bank of America, N.A., as
Administrative Agent
Internal Address: Attn: Apio Acct. Officer
CA5-106-02-01
Street Address: 530 Lytton Ave.

City: Palo Alto State: CA ZIP: 94301-1539

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other national banking association

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

(Designations must be a separate document from Assignment)

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

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

See attached Exhibit A

B. Trademark registration No.(s)

see Attached Exhibit A

Additional numbers attached? Yes No

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

Name: Sheppard, Mullin, Richter & Hampton LLP

Internal Address: Attn: J. Cravitz

Street Address: 333 S. Hope St., 48th Floor

City: Los Angeles State: CA ZIP: 90071

6. Total number of applications and registrations involved:

11

7. Total fee (37 CFR 3.41): \$ 290.00

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

03/21/2002 DBYRNE 00000007 2291561
 01 FC:481 40.00 DP
 02 FC:482 250.00 DP

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.

Steven L. Miller, Esq.
Name of Person Signing

March 18, 2002
Date

Total number of pages comprising cover sheet:

14

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
 Box Assignments
 Washington, D.C. 20231

TRADEMARK

EXHIBIT A
TO
RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TRADEMARK	SERIAL OR REGISTRATION NUMBER
Pacific West Great White	2,291,561
Song Hee	2,459,364
Value Fresh	2,412,439
Cal Ex	2,423,247
Great White	2,286,649
Pacific West	2,079,117
Snack Pak	2,149,908
Eat Smart	75/863,153
Casino	76/107,410
APIO	76/118,012
Health Topper	76/197,175

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT, dated as of November 29, 1999, is made by APIO, INC., (formerly known as Bush Acquisition Corporation), a Delaware corporation, as Grantor ("Grantor"), in favor of Bank of America, N.A., as the Administrative Agent under the Loan Agreement referred to below for the ratable benefit of each of the Lenders which are parties to the Loan Agreement from time to time, as Secured Party, with reference to the following facts:

RECITALS

A. Pursuant to that certain Loan Agreement of even date herewith entered into among Grantor, the Lenders and Issuing Lender from time to time parties thereto and Bank of America, N.A., as the Administrative Agent (as such agreement may from time to time be amended, extended, renewed, supplemented or otherwise modified, the "Loan Agreement"), the Lenders have agreed to provide Grantor with certain credit facilities.

B. The Loan Agreement provides, as a condition of the availability of such credit facilities, that Grantor shall enter into this Agreement and shall grant security interests to Secured Party as herein provided.

AGREEMENT

NOW, THEREFORE, in order to induce Lenders to extend the aforementioned credit facilities to Grantor, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor hereby represents, warrants, covenants and agrees as follows:

1. Definitions. This Agreement is the Trademark Security Agreement referred to in the Loan Agreement. Terms defined in the Loan Agreement and not otherwise defined in this Agreement shall have the meanings defined for those terms in the Loan Agreement. As used in this Agreement, the following terms shall have the meanings respectively set forth after each:

"Agreement" means this Trademark Security Agreement, and any extensions, modifications, renewals, restatements, supplements or amendments hereof.

"Collateral" means and includes all of the following: (a) all of Grantor's now-existing, or hereafter acquired, right, title, and interest in and to all of Grantor's trademarks, trade names, trade styles, and service marks; all prints and labels on which said trademarks, trade names, trade styles, and service marks appear, have appeared, or will appear, and all designs and general intangibles of a like nature; all applications, registrations, and recordings relating to the foregoing in the United States Patent and Trademark Office ("USPTO") or in any similar office or agency of the United States, any State thereof, or any political subdivision thereof (provided that no "intent to use" application filed by Grantor with the USPTO relating to the foregoing shall constitute part of the Collateral unless and until Grantor files a "declaration of use" with respect to such application and the USPTO accepts such declaration), and all reissues, extensions, and renewals thereof, including those trademarks, trade names, trade styles, service marks, terms, designs, and applications described in Schedule 1 hereto (the "Trademarks"); (b) the goodwill of the business symbolized by each of the Trademarks, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing the Trademarks; (c) all licenses and sublicenses of trademarks, trade names, trade styles and service marks, to the extent that there exists no prohibition as a matter of law on the transfer thereof for security as contemplated by this Agreement, and (d) any and all proceeds of any of the foregoing, including any claims by Grantor against third parties for past, present and future infringement of the Trademarks or any licenses with respect thereto, provided that the term "**Collateral**", as used in this Agreement, shall not include gaming licenses or liquor licenses which are not transferable without the consent of Governmental Authorities.

"Secured Obligations" means any and all present and future Obligations of any type or nature of Grantor to the Administrative Agent, the Lenders, and any one or more of them, arising under or relating to the Loan Documents or any one or more of them, whether due or to become due, matured or unmatured, liquidated or unliquidated, or contingent or noncontingent, including Obligations of performance as well as Obligations of payment, and including interest that accrues after the commencement of any bankruptcy or insolvency proceeding by or against Grantor.

"Secured Party" means the Administrative Agent who shall receive and hold the security interests granted hereunder for the ratable benefit of each of the Lenders which are parties to the Loan Agreement from time to time. Subject to the terms and conditions of the Loan Agreement, any right, remedy, privilege, or power of Secured Party shall be exercised by the Administrative Agent.

2. Security Agreement. For valuable consideration, Grantor hereby grants and assigns to Secured Party a security interest, to secure the prompt and indefeasible payment and performance of the Secured Obligations, and each of them, in and to all of the presently existing and hereafter acquired Collateral. This Agreement is a continuing and irrevocable agreement and all the rights, powers, privileges and remedies hereunder shall apply to any and all Secured Obligations, including those arising under successive transactions which shall either continue the Secured Obligations, increase or decrease them and notwithstanding the bankruptcy of Grantor or any other event or proceeding affecting Grantor.

3. Representations, Warranties and Covenants. All representations, warranties, affirmative and negative covenants and other provisions contained in any Loan Document that are applicable to Loan Documents generally are fully applicable to this Agreement and are incorporated herein by this reference as though set forth herein in full. In addition, Grantor hereby represents, warrants and agrees that:

(a) All of the existing Collateral is valid and subsisting and in full force and effect, and Grantor owns the sole, full, and clear title thereto, and the right and power to grant the security interests granted hereunder. Grantor will, at its expense, perform all acts and execute all documents reasonably necessary to maintain the existence of the Collateral as valid, subsisting, and registered trademarks, including, without limitation, the filing of any renewal affidavits and applications provided that Grantor may abandon or not renew such trademark if in its good faith judgment, the particular mark is not material to its business. The Collateral is not subject to any Liens, claims, mortgages, assignments or licenses of any nature whatsoever, whether recorded or unrecorded, except as permitted by the Loan Agreement.

(b) As of the date hereof, none of Grantor or its Subsidiaries, if any, has any Trademarks registered, or subject to pending applications, in the USPTO, or any similar office or agency in the United States, other than those described in Schedule 1.

(c) Neither Grantor nor any Subsidiary of Grantor shall file any application for the registration of a trademark with the USPTO or any similar office or agency in the United States, or State therein, unless Grantor or such Subsidiary has informed Secured Party of such action in advance or informs Secured Party promptly thereafter. Upon request of Secured Party, Grantor shall execute and deliver to Secured Party any and all agreements, instruments, documents, and such other papers as may be reasonably requested by Secured Party to evidence the grant and assignment

of a security interest to Secured Party of such trademark (other than mere "intent to use" filings). Grantor authorizes Secured Party to modify this Agreement by amending Schedule 1 to include any new trademark or service mark, and any trademark or service mark renewal of Grantor applied for and obtained hereafter.

(d) Neither Grantor nor any Subsidiary of Grantor has abandoned any of the Trademarks, and neither Grantor nor any Subsidiary of Grantor will do any act, or omit to do any act, whereby the Trademarks may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable. Grantor shall notify Secured Party promptly if it knows, or has reason to know, of any reason why any application, registration, or recording may become abandoned, canceled, invalidated, or unenforceable.

(e) Grantor will render any assistance, as Secured Party may reasonably determine is necessary, to Secured Party in any proceeding before the USPTO, any federal or state court, or any similar office or agency in the United States, or any State therein, to protect Secured Party's security interest in the Trademarks.

(f) Grantor assumes all responsibility and liability arising from the use of the Trademarks, and Grantor hereby indemnifies and holds the Administrative Agent and each of the Lenders harmless from and against any claim, suit, loss, damage, or expense (including reasonable attorneys' fees) arising out of any alleged defect in any product manufactured, promoted, or sold by Grantor (or any Affiliate or Subsidiary thereof) in connection with any Trademark or out of the manufacture, promotion, labeling, sale, or advertisement of any such product by Grantor or any Affiliate or Subsidiary thereof.

(g) Grantor shall promptly notify Secured Party in writing of any adverse determination in any proceeding in the USPTO or domestic Governmental Agency, court or body, regarding Grantor's ownership of any of the Trademarks. In the event of any material infringement of any of the Trademarks by a third party, Grantor shall promptly notify Secured Party of such infringement and shall diligently pursue damages or an injunction for such infringement.

(h) Grantor shall, at its sole expense, do, make, execute and deliver all such additional and further acts, things, assurances, and instruments, in each case in form and substance reasonably satisfactory to Secured Party, relating to the creation, validity, or perfection of the security interests provided for in this Agreement under 35 U.S.C. Section 261, 15 U.S.C. Section 1051 et seq., the Uniform Commercial Code or other Law of the United States, the State of California, or of any other States as

Secured Party may from time to time reasonably request, and shall take all such other action as the Secured Party may reasonably require to more completely vest in and assure to Secured Party its security interest in any of the Collateral, and Grantor hereby irrevocably authorizes Secured Party or its designee, at Grantor's expense, to execute such documents, and file such financing statements with respect thereto with or without Grantor's signature, as Secured Party may reasonably deem appropriate. In the event that any recording or refileing (or the filing of any statement of continuation or assignment of any financing statement) or any other action, is required at any time to protect and preserve such security interest, Grantor shall, at its sole cost and expense, cause the same to be done or taken at such time and in such manner as may be reasonably necessary and as may be reasonably requested by Secured Party. Grantor further authorizes Secured Party to have this or any other similar security agreement recorded or filed with the Commissioner of Patents and Trademarks or other appropriate federal, state or government office.

(i) Upon the occurrence and during the continuance of an Event of Default, Secured Party is hereby irrevocably appointed by Grantor as its lawful attorney and agent, with full power of substitution to execute and deliver on behalf of and in the name of Grantor, such financing statements and other documents and agreements, and to take such other action as Secured Party may reasonably deem necessary for the purpose of perfecting, protecting or effecting the security interests granted herein and effected hereby, and any mortgages or Liens reasonably necessary or desirable to implement or effectuate the same, under any applicable Law, and Secured Party is hereby authorized to file on behalf of and in the name of Grantor, at Grantor's sole expense, such financing statements, documents and agreements in any appropriate governmental office.

(j) Secured Party may, in its sole and reasonable discretion, pay any amount, or do any act which Grantor fails to pay or do as reasonably required hereunder to preserve, defend, protect, maintain, record, amend, or enforce the Secured Obligations, the Collateral, or the security interest granted hereunder, including, but not limited to, all filing or recording fees, court costs, reasonable collection charges, and reasonable attorneys' fees. Grantor will be liable to Secured Party for any such payment, and any amount so paid shall be an expense reimbursable by Grantor under Section 11.3 of the Loan Agreement.

4. Events of Default. Any "Event of Default" as defined in the Loan Agreement shall constitute an Event of Default hereunder.

5. Rights and Remedies. Upon the occurrence and during the continuance of any such Event of Default, in addition to all other rights and remedies of Secured Party, whether provided under Law, the Loan Agreement or otherwise, Secured Party may enforce its security interest hereunder which may be exercised without notice to, or consent by, Grantor, except as such notice or consent is expressly provided for hereunder. Upon such enforcement:

(a) Secured Party may use any of the Trademarks for the sale of goods, completion of work in process, or rendering of services in connection with enforcing any security interest granted to Secured Party by Grantor or any Subsidiary of Grantor.

(b) Secured Party may grant such license or licenses relating to the Collateral for such term or terms, on such conditions and in such manner, as Secured Party shall, in its sole discretion, deem appropriate. Such license or licenses may be general, special, or otherwise, and may be granted on an exclusive or nonexclusive basis throughout all or part of the United States of America and its territories and possessions.

(c) Secured Party may assign, sell, or otherwise dispose of the Collateral, or any part thereof, either with or without special conditions or stipulations, except that Secured Party agrees to provide Grantor with five (5) days' prior written notice of any proposed disposition of the Collateral. Grantor expressly waives any right to receive notice of any public or private sale of any Collateral or other security for the Secured Obligations except as expressly provided in this Section 5(c). Secured Party shall have the power to buy the Collateral, or any part thereof, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in Secured Party's sole discretion, deem appropriate or proper to complete such assignment, sale, or disposition. In any such event, Grantor shall be liable for any deficiency.

(d) In addition to the foregoing, in order to implement the assignment, sale or other disposition of any of the Collateral pursuant to Section 5(c) hereof, Secured Party may, at any time, execute and deliver, on behalf of Grantor, and each of them, pursuant to the authority granted in powers of attorney, one or more instruments of assignment of the Trademarks (or any application, registration, or recording relating thereto), in form suitable for filing, recording, or registration. Grantor agrees to pay Secured Party, on demand, all reasonable costs incurred in any such transfer of the Collateral, including, but not limited to any taxes, fees, and reasonable attorneys' fees.

(e) Secured Party may first apply the proceeds actually received from any such use, license, assignment, sale, or other disposition of Collateral first to the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all reasonable legal, travel, and other expenses which may be incurred by Secured Party. Thereafter, Secured Party may apply any remaining proceeds to such of the Secured Obligations as provided in the Loan Agreement. Grantor shall remain liable to Secured Party for all reasonable expenses or Secured Obligations remaining unpaid after the application of such proceeds, and Grantor will pay Secured Party, on demand, any such unpaid amount, together with interest at the rate(s) set forth in the Loan Agreement.

(f) Upon request of Secured Party, Grantor shall supply to Secured Party, or Secured Party's designee, Grantor's knowledge and expertise relating to the manufacture and sale of the products and services bearing the Trademarks and Grantor's customer lists and other records relating to the Trademarks and the distribution hereof.

Nothing contained herein shall be construed as requiring Secured Party to take any such action at any time. All of Secured Party's rights and remedies, whether provided under Law, the Loan Agreement, this Agreement, or otherwise shall be cumulative, and none is exclusive of any right or remedy otherwise provided herein or in any of the other Loan Documents, at law or in equity. Such rights and remedies may be enforced alternatively, successively, or concurrently.

Secured Party or Designee will keep such confidential information, lists or records provided hereunder in confidence in accordance with Section 11.16 of the Loan Agreement.

6. Confidentiality. The parties hereto acknowledge the provisions of Section 11.16 of the Loan Agreement and the terms thereof are hereby incorporated herein by this reference for the purpose of being applicable to the parties hereto.

7. Costs and Expenses. Grantor will pay any and all charges, costs and taxes incurred in implementing or subsequently amending this Agreement, including, without limitation, recording and filing fees, appraisal fees, stamp taxes, and reasonable fees and disbursements of Secured Party's counsel incurred by Secured Party, and the reasonable allocated cost of in-house counsel to Secured Party, in connection with this Agreement, and in the enforcement of this Agreement and in the enforcement or foreclosure of any Liens, security interests or other rights of the Secured Party under this Agreement, or under any other documentation heretofore,

now, or hereafter given to Secured Party in furtherance of the transactions contemplated hereby.

8. Continuing Effect. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Grantor for liquidation or reorganization, should Grantor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Grantor's assets.

9. Release of Grantor. This Agreement and all Secured Obligations of Grantor hereunder shall be released when all Secured Obligations have been paid in full in cash or otherwise performed in full and when no portion of the Commitments remain outstanding. Upon such release of Grantor's Secured Obligations hereunder, Secured Party shall return and reassign any Collateral to Grantor, or to the Person or Persons legally entitled thereto, and shall endorse, execute, deliver, record and file all instruments and documents, and do all other acts and things, reasonably required for the return of the Collateral to Grantor, or to the Person or Persons legally entitled thereto, and to evidence or document the release of Secured Party's interests arising under this Agreement, all as reasonably requested by, and at the reasonable expense of, Grantor.

10. Additional Powers and Authorization. Secured Party shall be entitled to the benefits accruing to it as Administrative Agent under the Loan Agreement and the other Loan Documents. Notwithstanding anything contained herein to the contrary, Secured Party may employ agents, trustees, or attorneys-in-fact and may vest any of them with any Property (including, without limitation, any Collateral assigned hereunder), title, right or power deemed necessary for the purposes of such appointment.

11. WAIVER OF JURY TRIAL. GRANTOR AND SECURED PARTY EXPRESSLY WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LOAN AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS, OR OTHERWISE. GRANTOR AND SECURED PARTY AGREE THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE

THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY ARE WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT, THE LOAN AGREEMENT OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

12. **GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH AND GOVERNED BY THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF CALIFORNIA.**

13. Miscellaneous.

(a) Grantor and Secured Party may from time to time agree in writing to the release of certain of the Collateral from the security interest created hereby.

(b) Any notice, request, demand or other communication required or permitted under this Agreement shall be in writing and shall be deemed to be properly given if done in accordance with Section 11.6 of the Loan Agreement.

(c) Except as otherwise set forth in the Loan Agreement, the provisions of this Agreement may not be modified, amended, restated or supplemented, whether or not the modification, amendment, restatement or supplement is supported by new consideration, except by a written instrument duly executed and delivered by Secured Party and Grantor.

(d) Except as otherwise set forth in the Loan Agreement or this Agreement, any waiver of the terms and conditions of this Agreement, or any Event of Default and its consequences hereunder or thereunder, and any consent or approval required or permitted by this Agreement to be given, may be made or given with, but only with, the written consent of Secured Party on such terms and conditions as specified in the written instrument granting such waiver, consent or approval.

(e) Any failure or delay by Secured Party to require strict performance by Grantor of any of the provisions, warranties, terms, and conditions contained herein, or in any other agreement, document, or instrument, shall not affect Secured Party's right to demand strict compliance and performance therewith, and any waiver of any default shall not waive or affect any other default, whether prior or subsequent thereto, and whether of the same or of a different type. None of the warranties, conditions, provisions, and terms contained herein, or in any other agreement, document, or instrument, shall be deemed to have been waived by any act or knowledge of Secured Party, its agents, officers, or employees, but only by an instrument in writing, signed by an officer of Secured Party and directed to Grantor, specifying such waiver.

(f) If any term or provision of this Agreement conflicts with any term or provision of the Loan Agreement, the term or provision of the Loan Agreement shall control.

(g) If any provision hereof shall be deemed to be invalid by any court, such invalidity shall not affect the remainder of this Agreement.

(h) This Agreement supersedes all prior oral and written assignments and agreements between the parties hereto on the subject matter hereof.

(i) This Agreement shall be binding upon, and for the benefit of, the parties hereto and their respective legal representatives, successors, and assigns.

(j) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same agreement.

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

"Grantor"

APIO, INC., (formerly known as Bush Acquisition Corporation),
a Delaware corporation

By: *Gary T. Steele*
Name: *Gary T. Steele*
Title: *Chairman*

ACCEPTED AND AGREED
AS OF THE DATE FIRST
ABOVE WRITTEN:

"Secured Party"

BANK OF AMERICA, N.A.,
as Administrative Agent
for and on behalf of the Lenders

By: *John C. Ploegue*
Name: *John C. Ploegue*
Title: *Senior Vice President*

SCHEDULE 1
TO
TRADEMARK SECURITY AGREEMENT

TRADEMARK	SERIAL OR REGISTRATION NUMBER
Pacific West Great White	2,291,561
Song Hee	2,459,364
Value Fresh	2,412,439
Cal Ex	2,423,247
Great White	2,286,649
Pacific West	2,079,117
Snack Pak	2,149,908
Eat Smart	75/863,153
Casino	76/107,410
APIO	76/118,012
Health Topper	76/197,175

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081701

[BofA-Bush
Trademark Security Agreement]