04-22-2002

4-8-02

Form PTO-1594 (Rev. 6-93) RECO EET U.S. DEPARTMENT OF COMMERCE

OMB No. 0651-0011 (exp. 4/94) 102063168 Patent and Trademark Office

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

1. Name of conveying party(ies):

Excelline Foods, Inc.

☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation: State of California
☐ Other _____

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

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

Wells Fargo Bank, National Association
Sixth and Marquette
Minneapolis, MN 55479

☐ Individual(s) ☒ Association
☐ General Partnership ☐ Limited Partnership
☐ Corporation: State of
☐ 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)

3. Nature of conveyance:

☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other _____
Execution Date: _____

4. Application number(s) or trademark number(s), and identification or description of the mark(s):

A. Trademark Application No(s). and description

B. Trademark Registration No(s). and description

1,931,509 (EXCELLINE)

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

Richard M. Berman
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901
612/766-6907

6. Total number of applications and registrations involved: 01

7. Total fee (37 CFR 3.41) $40.00

☒ Enclosed
☒ Authorized to be charged to deposit account for underpayment

8. Deposit Account number: 06-0029

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.

Richard M. Berman
Name of person signing

Signature

March 28, 2002
Date

Total number of pages including cover sheet, attachments, and document: 12

Mail documents to be recorded with required cover sheet information to:
Director – U.S. Patent and Trademark Office, Box Assignments
Washington, D.C. 20231

16056-243047

M2:20452650.01(F&B 9/28/00)

04/19/2002 LMUELLER 00000115 1931509
01 FC:481 40.00 OP

TRADEMARK SECURITY AGREEMENT

This Agreement, dated as of March 26, 2002, is made by and between Excelline Foods, Inc., a California corporation (the "Debtor"), and Wells Fargo Bank, National Association, a national banking association (the "Secured Party").

Pursuant to a Credit Agreement of even date herewith (as the same may be amended, supplemented or restated from time to time, the "Credit Agreement"), the Secured Party may extend credit accommodations to Excelline Acquisition, Inc., a Delaware corporation (the "Borrower").

As a condition to extending credit to the Borrower, the Secured Party has required the execution and delivery of the Debtor's Guaranty of even date herewith, guaranteeing the payment and performance of all obligations of the Borrower arising under or pursuant to the Credit Agreement (as the same may be amended, supplemented or restated from time to time, the "Guaranty").

As a further condition to extending credit to the Borrower under the Credit Agreement, the Secured Party has required the execution and delivery of this Agreement by the Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Credit Agreement and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the recitals hereto or in the Credit Agreement that are not otherwise defined herein shall have the meanings given to them in the recitals and the Credit Agreement. In addition, the following terms have the meanings set forth below:

"Additional Security Agreement" means the Debtor's Security Agreement of even date herewith in favor of the Secured Party, granting the Secured Party a security interest in the Debtor's personal property.

"Affiliate" means (a) any director or officer of the Debtor, (b) any Person who, individually or with his immediate family, directly or indirectly beneficially owns or holds 5% or more of the voting interest of the Debtor, or (c) any corporation, partnership or other Person in which any Person or group of Persons described above directly or indirectly owns a 5% or greater equity interest; provided, that, under no circumstances shall the Secured Party be considered an Affiliate.

"Obligations" means (i) the Obligations (as defined in the Credit Agreement), and (ii) each and every debt, liability and obligation of every type and description

which the Debtor may now or at any time hereafter owe to the Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, or absolute or contingent, including without limitation all obligations under the Guaranty.

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all of the Debtor's right, title and interest in and to: (i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, (iv) and licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit A.

2. Security Interest. The Debtor hereby irrevocably pledges and assigns to, and grants the Secured Party a security interest (the "Security Interest"), with power of sale to the extent permitted by law, in the Trademarks to secure payment of the Obligations. As set forth in the Additional Security Agreement, the Security Interest is coupled with a security interest in substantially all of the Debtor's personal property.

3. Representations, Warranties and Agreements. The Debtor represents, warrants and agrees as follows:

(a) ***Existence; Authority.*** The Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and this Agreement has been duly and validly authorized by all necessary corporate action on the part of the Debtor.

(b) ***Trademarks.*** Exhibit A accurately lists all federally registered Trademarks owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of such Trademarks and all applications and registrations pertaining thereto as of the date hereof. If after the date hereof, the Debtor owns or controls any federally registered Trademarks not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and registrations pertaining to the federally registered Trademarks, then the Debtor shall promptly provide written notice to the Secured Party with a replacement Exhibit A, which upon acceptance by the Secured Party shall become part of this Agreement.

(c) ***Affiliates.*** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by the Debtor, constitute Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then the Debtor shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to the Debtor; or

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(ii) notify the Secured Party of such item(s) and cause such Affiliate to execute and deliver to the Secured Party a trademark security agreement substantially in the form of this Agreement.

(d) ***Title.*** The Debtor has good and marketable title to each Trademark listed on Exhibit A, free and clear of all Liens except Permitted Liens. The Debtor (i) will have, at the time the Debtor acquires any rights in Trademarks hereafter arising, good and marketable title to each such Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Trademarks free and clear of all Liens except Permitted Liens.

(e) ***No Sale.*** Except as permitted in the Credit Agreement, the Debtor will not assign, transfer, encumber or otherwise dispose of the Trademarks, or any interest therein (except non-exclusive licenses thereof entered into in the ordinary course of the Debtor's business), without the Secured Party's prior written consent.

(f) ***Defense.*** The Debtor will at its own expense and using commercially reasonable efforts, protect and defend the Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

(g) ***Maintenance.*** The Debtor will at its own expense maintain the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to trademark registrations and applications therefor. The Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Trademark material to its business, nor fail to file any required affidavit or renewal in support thereof, without first providing the Secured Party: (i) sufficient written notice, of at least thirty (30) days, to allow the Secured Party to timely pay any such maintenance fees or annuities which may become due on any such Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(h) ***Secured Party's Right to Take Action***. If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of thirty (30) calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (g), immediately upon the occurrence of such failure, without notice or lapse of time), or if the Debtor notifies the Secured Party that it intends to abandon a Trademark material to the Debtor's business, the Secured Party may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take

any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(i) ***Costs and Expenses.*** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Secured Party on demand the amount of all moneys expended and all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (h) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the highest rate then applicable to any of the Obligations.

(j) ***Power of Attorney.*** To facilitate the Secured Party's taking action under subsection (h) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time after the occurrence and during the continuance of (i) any failure by the Debtor to comply with its obligations under Section 3, or (ii) an Event of Default, to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Debtor under this Section 3, or, necessary for the Secured Party to enforce or use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Credit Agreement and the payment and performance of all Obligations (other than unmatured indemnification obligations not yet due and payable).

4. Debtor's Use of the Trademarks. The Debtor shall be permitted to control and manage the Trademarks, including the right to exclude others from making, using or selling items covered by the Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured or unwaived; provided, that, any licenses of any Trademarks granted by the Debtor shall be non-exclusive and granted in the ordinary course of the Debtor's business.

5. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Credit Agreement, shall occur; or (b) an Event of Default, as defined in the Additional Security Agreement, shall occur; or (c) the Debtor shall fail

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promptly to observe or perform any covenant or agreement herein binding on it; or (d) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence and during the continuance of an Event of Default, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Trademarks.

(b) The Secured Party may enforce the Trademarks and any licenses thereunder, and if Secured Party shall commence any suit for such enforcement, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

(c) The Secured Party may exercise or enforce any or all other rights or remedies available to the Secured Party by law or agreement against the Debtor or the Trademarks.

7. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party, and, in the case of amendment or modification, in a writing signed by the Debtor. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices and other communications hereunder shall be in writing and shall be (a) personally delivered, (b) sent by first class United States mail, (c) sent by overnight courier of national reputation, or (d) transmitted by telecopy, in each case addressed or telecopied to the party to whom notice is being given at its address or telecopier number as set forth next to its signature or, as to each party, at such other address or telecopier number as may hereafter be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section. All such notices, requests, demands and other communications shall be deemed to have been given on (i) the date received if personally delivered, (ii) when deposited in the mail if delivered by mail, (iii) the date sent if sent by overnight courier, or (iv) the date of transmission if delivered by telecopy. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Trademarks at all or in any particular manner or order, or to apply any cash proceeds of the Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's

acceptance hereof. This Agreement shall be governed by the internal law of the State of Minnesota without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.

[*Signature Page Follows*]

TRADEMARK
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IN WITNESS WHEREOF, the parties have executed this Trademark Security Agreement as of the date written above.

Address:
20232 Sunburst Street
Chatsworth, CA 91311
Attention: President
Telecopier: 818-701-5904

EXCELLINE FOODS, INC.

By: _____
Name: David A. Posner
Title: Secretary

with a copy to:

Cambridge Capital Partners II LP
77 W. Wacker Drive, 47th Floor
Chicago, IL 60601
Attention: President
Telecopier: 312-425-3601

and:

Katten Muchin Zavis
525 W. Monroe Street
Suite 1600
Chicago, IL 60661
Attention: Saul Rudo, Esq., Ken Miller Esq.
Telecopier: 312-902-1061

N9305-051
Sixth and Marquette
Minneapolis, Minnesota 55479
Attention: Brad Solfest
Telecopier: 612-667-7266

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Brad P. Solfest
Its Vice President

with a copy to:

N9305-051
Sixth and Marquette
Minneapolis, Minnesota 55479
Attention: Heidi Samuels
Telecopier: 612-667-7266

[*Signature Page to Trademark Security Agreement*]

STATE OF Illinois)
)
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 26th day of March, 2002, by David A. Posner, the Secretary of Excelline Foods, Inc., a California corporation, on behalf of the corporation.

Lori A Johnson
Notary Public

LORI A. JOHNSON
Notary Public
State of Illinois

STATE OF Minnesota)
)
COUNTY OF Hennepin)

The foregoing instrument was acknowledged before me this 27 day of March, 2002, by Brad P. Solfest, a Vice President of Wells Fargo Bank, National Association, a national banking association, on behalf of said national banking association.

Mary R Shaw Wilson
Notary Public

MARY R. SHAW WILSON
Notary Public
Minnesota
My Commission Expires Jan. 31, 2006

EXHIBIT A
UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS AND COLLECTIVE MEMBERSHIP MARKS

REGISTRATIONS

Mark	Registration Number	Registration Date
Excelline	1,931,509	October 31, 1995

APPLICATIONS

None.

COLLECTIVE MEMBERSHIP MARKS

None.