

06-18-2002

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
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102125831

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):
SUBCO FOODS OF WISCONSIN, INC. *6-1000*

- Individual(s)
- General Partnership
- Corporation-State
- Other Wisconsin
- 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: March 11, 2002

2. Name and address of receiving party(ies)

Name: AMERICAN NATIONAL BANK AND

Internal Address: TRUST COMPANY OF CHICAGO

Street Address: 120 South LaSalle Street

City: Chicago State: IL Zip: 60603

- Individual(s) citizenship
- Association NATIONAL BANKING 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

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

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s) _____

1,862,685 and 1,775,408

Additional number(s) attached Yes No

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

Name: Elayna T. Pham

Internal Address: McBride Baker & Coles

Street Address: 500 West Madison, 40th Fl

City: Chicago State: IL Zip: 60661

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:

13-0045

DO NOT USE THIS SPACE

9. Signature.

Elayna T. Pham
Name of Person Signing

Signature

6/3/2002
Date

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

06/17/2002 6TDM11 00000210 1862685

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

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

TRADEMARK
REEL: 002526 FRAME: 0914

TRADEMARK MORTGAGE

THIS TRADEMARK MORTGAGE (this "Mortgage") made as of this 11th day of March, 2002, by **SUBCO FOODS OF WISCONSIN, INC.**, a Wisconsin corporation, having an address at 1150 Commerce Drive, West Chicago, Illinois 60185 ("Mortgagor"), in favor of **AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO**, a national banking association, its successors and assigns, with an office at 21 North Randall Street, Elk Grove Village, Illinois 60007 ("Mortgagee"):

WITNESSETH:

WHEREAS, Mortgagor, Carolyn's Kitchen of Wisconsin, LLC, a Wisconsin limited liability company ("Carolyn's Kitchen") (Mortgagor and Carolyn's Kitchen are hereinafter collectively referred to as the "Borrower"), and Mortgagee are parties to a certain Loan and Security Agreement (the "Loan Agreement") and other related loan documents of even date herewith (collectively, with the Loan Agreement, the "Loan Documents"), which Loan Documents provide (i) for Mortgagee, from time to time, to extend credit to or for the account of the Borrower, and (ii) for the grant by Mortgagor to Mortgagee of a security interest in all of Mortgagor's assets, including, without limitation, its trademarks, trademark applications and other intellectual property;

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, Mortgagor agrees as follows:

1. **Incorporation of Loan Documents.** The Loan Documents and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Loan Documents.

2. **Mortgage of Trademarks.** To secure the complete and timely satisfaction of all of Borrower's Obligations (as defined in the Loan Agreement), Mortgagor hereby grants, bargains, assigns, mortgages, pledges, sells, creates a security interest in, transfers and conveys to Mortgagee, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale, to the extent permitted by law, upon the occurrence of an Event of Default, in all of Mortgagor's right, title and interest in and to all of its now existing and hereafter created or acquired:

(a) trademarks, trademark registrations, trademark applications, trade names and tradestyles, brand names, service marks, service mark registrations and service mark applications, including, without limitation, the trademarks, trade names, brand names, service marks and applications and registrations thereof listed on **Exhibit A** attached hereto and hereby made a part hereof, and (i) renewals or extensions thereof, (ii) all income, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names and tradestyles, brand names, service marks and applications and registrations thereof, together with the items described in clauses (i)-(iv) of this

subsection 2(a), are sometimes hereinafter referred to individually as a "Trademark" and, collectively, as the "Trademarks"; and

(b) the goodwill of Mortgagor's business connected with and symbolized by the Trademarks.

3. Warranties and Representations. Mortgagor warrants and represents to Mortgagee that:

(i) to the best of Mortgagor's knowledge, no Trademark has been adjudged invalid or unenforceable nor has any such Trademark been cancelled, in whole or in part and each such Trademark is presently subsisting;

(ii) to the best of Mortgagor's knowledge, each Trademark is valid and enforceable;

(iii) Mortgagor is the sole and exclusive owner of the entire and unencumbered right, title and interest as they may appear in and to each Trademark, free and clear of any liens, charges and encumbrances, including without limitation licenses, shop rights and covenants by Mortgagor not to sue third persons;

(iv) Mortgagor has adopted and it is using, all of the Trademarks;

(v) Mortgagor has no notice of any suits or actions commenced or threatened with reference to the Trademarks; and

(vi) Mortgagor has the unqualified right to execute and deliver this Mortgage and perform its terms.

4. Restrictions on Future Agreements. Mortgagor agrees that until all of Borrower's Obligations shall have been satisfied in full and the Loan Documents shall have been terminated, Mortgagor shall not, without the prior written consent of Mortgagee, sell or assign its interest in, or grant any license or sublicense under the Trademarks, or enter into any other agreement with respect to the Trademarks, and Mortgagor further agrees that it shall not take any action or permit any action to be taken by others subject to its control or fail to take any action which would affect the validity of the rights transferred to Mortgagee under this Mortgage.

5. New Trademarks. Mortgagor represents and warrants that the Trademarks listed on **Exhibit A** constitute all of the Trademarks now owned by Mortgagor. If, before all of Borrower's Obligations shall have been satisfied in full or before the Loan Documents have been terminated, Mortgagor shall (i) become aware of any existing Trademark of which Mortgagor has not previously informed Mortgagee, (ii) obtain rights to any new Trademark, or (iii) become entitled to the benefit of any Trademark which benefit is not in existence on the date hereof, the provisions of this Mortgage above shall automatically apply thereto and Mortgagor shall give to

Mortgagee prompt written notice thereof. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending **Exhibit A** to include any such Trademark.

6. **Royalties; Terms.** The term of the mortgage granted herein shall extend until the earlier of (i) the expiration of each of the Trademarks assigned hereunder, and (ii) the payment in full of all of Borrower's Obligations and the termination of the Loan Documents. Mortgagor agrees that upon the occurrence of an Event of Default, the use by Mortgagee of all Trademarks shall be worldwide, except as limited by their terms, and without any liability for royalties or other related charges from Mortgagee to Mortgagor.

7. **Grant of License to Mortgagor.** Unless and until an Event of Default shall have occurred, Mortgagee hereby grants back to Mortgagor the exclusive, nontransferable right and license to use the Trademarks in the ordinary course of its business. Mortgagor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Mortgagor in this Section 7, without the prior written consent of Mortgagee. From and after the occurrence of an Event of Default, Mortgagor's license with respect to the Trademarks set forth in this Section 7 shall terminate upon receipt by Mortgagor of written notice of such termination from Mortgagee, and Mortgagee shall have, in addition to all other rights and remedies given it by this Mortgage, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as in effect from time to time in the State of Illinois (the "Code").

8. **Release of Mortgage.** This Mortgage is made for collateral purposes only. Upon payment in full of all of Borrower's Obligations and termination of the Loan Documents, Mortgagee shall execute and deliver to Mortgagor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary or proper to re-vest in Mortgagor full title to the Trademark, subject to any disposition thereof which may have been made by Mortgagee pursuant to the Loan Documents.

9. **Expenses.** All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' and paralegals' fees and legal expenses, incurred by Mortgagee 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, counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademark, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademark, shall be borne by and paid by Mortgagor on demand by Mortgagee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the Default Rate.

10. **Duties of Mortgagor.** Mortgagor shall have the duty (i) to file and prosecute diligently any trademark or service mark applications pending as of the date hereof or hereafter until all of Borrower's Obligations shall have been paid in full and the Loan Documents have been terminated, (ii) to preserve and maintain all rights in the Trademarks, and (iii) to ensure that the Trademarks are and remain enforceable. Any expenses incurred in connection with

Borrower's Obligations under this Section 10 shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a trademark or service mark application, or abandon any other Trademark, without the consent of Mortgagee.

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

12. **Waivers.** No course of dealing between Mortgagor and Mortgagee, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee, any right, power or privilege hereunder or under the Loan 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. **Cumulative Remedies; Power of Attorney; Effect on Loan Documents.** All of Mortgagee's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Documents, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Mortgagor hereby authorizes Mortgagee upon the occurrence and during the continuance of an Event of Default, to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its sole discretion, as Mortgagor's true and lawful attorney-in-fact, with power to (i) endorse Mortgagor's name on all applications, documents, papers and instruments necessary or desirable for Mortgagee in the use of the Trademarks, or (ii) take any other actions with respect to the Trademarks as Mortgagee deems to be in the best interest of Mortgagee, or (iii) grant or issue any exclusive or non-exclusive license under the Trademark to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademark to anyone. Mortgagor 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 all of Borrower's Obligations shall have been paid in full and the Loan Documents have been terminated. Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee under the Loan Documents but rather is

intended to facilitate the exercise of such rights and remedies. Mortgagee shall have, in addition to all other rights and remedies given it by the terms of this Mortgage and the Loan Documents, all rights and remedies allowed by law and the rights and remedies of a secured party under the Code.

16. **Binding Effect; Benefits.** This Mortgage shall be binding upon Mortgagor and its respective successors and assigns, and shall inure to the benefit of Mortgagee, its successors, nominees and assigns.

17. **Governing Law.** This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois.

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

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

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage in favor of Mortgagee, as of the date first written above.

SUBCO FOODS OF WISCONSIN, INC.,
a Wisconsin corporation

By: Masroor A. Khan
Masroor A. Khan, its President

AGREED AND ACCEPTED AS OF THIS
11th DAY OF MARCH, 2002:

**AMERICAN NATIONAL BANK AND
TRUST COMPANY OF CHICAGO**

By: [Signature]
Its: Vice President

EXHIBIT A
TRADEMARKS

<u>MARK</u>	<u>U.S. REG. NO.</u>
FLAVOR TIME [and design]	1,862,685
ORCHARD PARK [and design]	1,775,408



McBride Baker & Coles

A Law Partnership Including Professional Corporations

Elayna T. Pham

T 312.715.5769 E pham@mbc.com

31 May, 2002

Commissioner of Patents and Trademarks
Box Assignments
Washington DC 20231

Re: SUBCO FOODS OF WISCONSIN, INC., Assignor
AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, Assignee
Recordation of Security Interest

Dear Sir or Madam:

Enclosed for filing are the following:

1. Trademark Mortgage Agreement.
2. Recordation Form Cover Sheet for Trademarks.
3. A check in the amount of \$65.00 made payable to the Commissioner of Patents and Trademarks in payment of the required filing fees.
4. Return Postcard to Acknowledge Receipt.
5. Duplicate copy of this letter. The Commissioner is hereby authorized to charge any additional fee which may be due or credit any overpayment to Deposit Account No. 13-0045.

Sincerely,

Elayna T. Pham

ETP/ac

Enc.



McBride Baker & Coles

A Law Partnership including Professional Corporations

Elayna T. Pham

T 312.715.5769 E pham@mbc.com

31 May, 2002

Commissioner of Patents and Trademarks
Box Assignments
Washington DC 20231

Re: SUBCO FOODS OF WISCONSIN, INC., Assignor
AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, Assignee
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Sincerely,

Elayna T. Pham

ETP/ac

Enc.

Conveying Party: SUBCO FOODS OF WISCONSIN, INC

Documents: Trademark Mortgage Agreement;
Cover Letter; Check; Recordation Form;
Stamped, Self-addressed postcard

Fee: \$65.00



Ann M. Cain
McBride Baker & Coles
500 W. Madison Street
40th Floor
Chicago, Illinois 60661-2511