

06-27-2002

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/200) Tab settings



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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): Promotions Unlimited Corporation b-18-02
Individual(s) Association
General Partnership Limited Partnership
Corporation-State
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: U.S. Bank National Association
Internal Address: Attention: Travis Burns
Street Address: 30 North Michigan Avenue
City: Chicago State: IL Zip: 60602
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
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other
Execution Date: 06/11/02

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s) 2408236, 1784377, 1730983
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Ungaretti & Harris
Internal Address: Attention: Joseph Voss
Street Address: 3500 Three First National Plaza
City: Chicago State: IL Zip: 60602

6. Total number of applications and registrations involved: 3
7. Total fee (37 CFR 3.41) \$ 90
Enclosed
Authorized to be charged to deposit account
8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.
Joseph L. Voss
Name of Person Signing
Signature
Date 6/18/02
Total number of pages including cover sheet, attachments, and document: 10

06/27/2002 6TON11 00000028 2408236

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

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TRADEMARK REEL: 2532 FRAME: 0353

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT ("Agreement") is made June 11, 2002, by and between Promotions Unlimited Corporation, an Illinois corporation ("Grantor"), and U.S. Bank National Association, as Agent for all Lenders (as defined in the Loan Agreement) ("Agent").

### WITNESSETH:

**WHEREAS**, Grantor and Agent have entered into a Loan and Security Agreement of even date herewith (as the same hereafter may be amended or restated from time to time hereinafter is referred to as the "Loan Agreement");

**WHEREAS**, Agent has required Grantor to execute and deliver this Agreement (i) in order to secure the prompt and complete payment, observance and performance of all of the obligations of Grantor under the Loan Agreement and any documents related thereto (the "Obligations") and (ii) as a condition precedent under the Loan Agreement;

**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, Grantor agrees as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Loan Agreement shall have the meaning specified for such term in the Loan Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa unless otherwise specified.

2. Incorporation of Recitals. The recitals set forth above are incorporated into this Agreement by this reference thereto and are made a part hereof.

3. Incorporation of the Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

4. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Grantor hereby grants to Agent, a security interest in, with power of sale to the extent permitted by applicable law and the provisions of this

Agreement, all of Grantor's right, title and interest in and to Grantor's United States and foreign patents, trademarks, tradenames, service marks, copyrights, applications, any of the foregoing now or hereafter owned and or used by Grantor and all licenses that allow the use of any patents, trademarks, service marks, copyrights, or applications of others (collectively "Intellectual Property Rights") now owned or existing and hereafter acquired or arising consisting of:

(i) trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on Schedule A attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof (d) the goodwill of Grantor's business symbolized by the foregoing and connected therewith, and (e) all of Grantor's rights corresponding thereto throughout the world, but specifically excluding all of Borrower's right, title and interest in and to the "Ben Frankln" trademarks, as more fully described on Schedule 4.1 of the Loan Agreement (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in clauses (a)-(e) in this Section 4(i), are sometimes hereinafter individually referred to as a "Trademark" and/or collectively referred to as the "Trademarks"), and

(ii) rights under or interest in any trademark license agreements or service mark license agreements with any other party, whether Grantor is a licensee or licensor under any such license agreement, including without limitation, those material trademark license agreements and service mark license agreements listed on Schedule B attached hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademark license agreements or service mark license agreements, and the right to prepare for sale and sell any and all Inventory now or hereafter owned by Grantor and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 4, the Licenses shall not include any license agreement in effect as of the date hereof which by its terms prohibits the grant of the security contemplated by this Agreement; provided, however, that upon the termination of such prohibitions for any reason whatsoever, the provisions of this Section 4 shall be deemed to apply thereto automatically.

5. Security Agreement. This Agreement has been executed and delivered by the Grantor for the purpose of registering the security interest of the Agent in the Intellectual Property Rights with the United States Patent and Trademark Office and corresponding offices in other countries of the world, if applicable. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interest granted to the Agent under the

Loan Agreement. The Loan Agreement (and all rights and remedies of the Agent thereunder) shall remain in full force and effect in accordance with its terms.

6. New Trademarks and Licenses. Grantor represents and warrants as of the date hereof that (a) the Trademarks listed on Schedule A include all of the Intellectual Property Rights consisting of trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, (b) the Licenses listed on Schedule B include all of the Intellectual Property Rights consisting of material trademark license agreements and service mark license agreements under which Grantor is the licensee or licensor and (c) no liens, claims or security interests in such Trademarks and Licenses have been granted by Grantor to any Person other than Agent except as permitted under the Loan Agreement. If, prior to the termination of this Agreement, Grantor shall (i) obtain rights to any new trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (ii) become entitled to the benefit of any trademarks, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor or (iii) enter into any new trademark license agreement or service mark license agreement, which in any such case, shall involve or constitute Intellectual Property Rights, the provisions of Section 4 above shall automatically apply thereto. Grantor shall use its best efforts to give to Agent written notice of events described in clauses (i), (ii) and (iii) of the preceding sentence promptly after the occurrence thereof. Grantor hereby authorizes Agent to modify this Agreement unilaterally (i) by amending Schedule A to include any future Intellectual Property Rights consisting of trademarks, registered trademarks, trademark applications, service marks, registered service marks and servicemark applications and by amending Schedule B to include any future Intellectual Property Rights consisting of trademark license agreements and service mark license agreements, which are Trademarks or Licenses under Section 4 above or under this Section 6 and (ii) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule A or B thereto, as the case may be, such future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, and trademark license agreements and service mark license agreements.

7. Royalties. Grantor hereby agrees that the use by Agent of the Trademarks and Licenses as authorized hereunder in connection with Agent's exercise of its rights and remedies under Section 15 or pursuant to the Loan Agreement shall be coextensive with Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Agent to Grantor.

8. Further Assignments and Security Interests. From and after the occurrence of, and during the continuation of, an Event of Default, Grantor agrees that Agent, or a conservator appointed by Agent, shall have the right to establish such reasonable additional product quality controls as Agent or such conservator, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by Grantor under the Trademarks and the Licenses or in connection with which such Trademarks and Licenses are used. Grantor agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the

Licenses without the prior and express written consent of Agent (which consent will not be unreasonably withheld), (ii) to maintain the quality of such products as of the date hereof, and (iii) not to change the quality of such products in any material respect without Agent's prior and express written consent (which consent will not be unreasonably withheld).

9. Nature and Continuation of Agent's Security Interest; Termination of the Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall terminate only when the Obligations have been paid in full. When this Agreement has terminated, Agent shall promptly execute and deliver to Grantor, at Grantor's expense, all termination statements and other instruments as may be necessary or proper to terminate Agent's security interest in the Trademarks and the Licenses, subject to any disposition thereof which may have been made by Agent pursuant to this Agreement or the Loan Agreement.

10. Duties of Grantor. Grantor shall have the duty, to the extent material to the normal conduct of Grantor's business, to: (i) prosecute diligently any trademark application or service mark application that is part of the Trademarks pending, as of the date hereof or hereafter until the termination of this Agreement; and (ii) make application for trademarks or service marks. Grantor further agrees (i) not to abandon any Trademark or License material to Grantor's normal business without the prior written consent of Agent and (ii) to use its best efforts to maintain in full force and effect the Trademarks and the Licenses that are or shall be material to the operation of Grantor's business. Any expenses incurred in connection with the foregoing shall be borne by Grantor. Neither Agent nor any of the Lenders shall have any duty with respect to the Trademarks and Licenses. Without limiting the generality of the foregoing, Agent shall not be under an obligation to take any steps necessary to preserve rights in the Trademarks or Licenses against any other parties, but Agent may do so at its option from and after the occurrence of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of Grantor and shall be added to the Obligations secured hereby.

11. Agent's Right to Sue. From and after the occurrence of an Event of Default, Agent shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Trademarks and the Licenses and, if Agent shall commence any such suit, Grantor shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents reasonably required by Agent in aid of such enforcement. Grantor shall, upon demand, promptly reimburse Agent for all reasonable and documented costs and expenses incurred by Agent in the exercise of its rights under this Section 11 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for Agent).

12. Waivers. Agent's failure, at any time or times hereafter, to require strict performance by Grantor of any provision of this Agreement shall not waive, affect or diminish any right of Agent thereafter to demand strict compliance and performance therewith nor shall any course of dealing between Grantor and Agent have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of Grantor contained in this Agreement shall be deemed to have been suspended or waived by

Agent unless such suspension or waiver is in writing signed by an officer of Agent and directed to Grantor specifying such suspension or waiver.

13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement 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 hereof, 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 Agreement in any jurisdiction.

14. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 6 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies: Power of Attorney. Grantor hereby irrevocably designates, constitutes and appoints Agent (and all Persons designated by Agent in its sole and absolute discretion) as Grantor's true and lawful attorney-in-fact, and authorizes Agent and any of Agent's designees, in Grantor's or Agent's name, from and after the occurrence of, and during the continuation of, an Event of Default and the giving by Agent of notice to Grantor of Agent's intention to enforce its rights and claims against Grantor, to (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for Agent in the use of the Trademarks or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone on commercially reasonable terms, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone on commercially reasonable terms, and (iv) take any other actions with respect to the Trademarks or the Licenses as Agent deems in its best interest. Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all of the Obligations shall have been paid in full in cash. Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Agent under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies.

Subject to the limitations set forth herein, or in the Loan Agreement, Agent shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks or the Licenses may be located or deemed located. Upon the occurrence of an Event of Default and the election by Agent to exercise any of its remedies under the Uniform Commercial Code with respect to the Trademarks and Licenses, Grantor agrees to assign, convey and otherwise transfer title in and to the Trademarks and the Licenses to Agent or any transferee of Agent and to execute and deliver to Agent or any such transferee all such agreements, documents and instruments as may be necessary, in Agent's sole discretion, to effect such assignment, conveyance and transfer. All of Agent's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by the Loan Agreement, by any other agreements or by law, shall be

cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence of an Event of Default, Agent may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement and any of the other documents between Grantor and Agent. Grantor agrees that any notification of intended disposition of any of the Trademarks and Licenses required by law shall be deemed reasonably and properly given if given at least ten (10) days before such disposition; provided, however, that Agent may give any shorter notice that is commercially reasonable under the circumstances.

16. Successors and Assigns. This Agreement shall be binding upon Grantor and its successors and assigns, and shall inure to the benefit of Agent and its nominees, successors and assigns. Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Grantor; provided, however, that Grantor shall not voluntarily assign or transfer its rights or obligations hereunder without Agent's prior written consent.

17. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the internal laws (as opposed to conflict of laws provisions) and decisions of the State of Illinois.

18. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

19. Section Titles. The section titles herein are for convenience of only, and shall not affect in any way the interpretation of any of the provisions hereof.

20. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.


21. Entire Agreement. This Agreement represents the final agreement of the Grantor with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Grantor and Agent.

22. No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

[signature page follows]


IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

PROMOTIONS UNLIMITED CORPORATION,  
an Illinois corporation

By:   
Name: Ira Greenberg  
Title: President

Accepted and agreed to as of the day and year first above written.

U.S. BANK NATIONAL ASSOCIATION, as  
Agent and as Lender

By:   
Name: TRAVIS J. BURNS  
Title: VP



**Schedule A**

**Registered Trademark and Service Marks**

<u>Registration Number</u>	<u>Name</u>	<u>Filing Date</u>
2408236	Sezar	July 23, 1999
1784377	Promotions Unlimited Corporation	September 14, 1992
1730983	Little Miss Sezar	February 28, 1992

**Trademark and Service Mark Applications**

None.

**Schedule B**

**License Agreements**

None.