

08-30-2002

FORM PTO-1594  
(Rev. 6-93)



SHEET

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

102206766

To the Honorable Commissioner of Patents and Trademarks, attached original documents or copy thereof.

1. Name of conveying party(ies):

Nella Oil Company  
2349 Rickenbacker Way  
Auburn, CA 95602

AUG 20 2002  
8/26/02

- Individual(s)       Association
- General Partnership       Limited Partnership
- Corporation-State
- Other California Joint Venture

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

3. Nature of conveyance:

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

Execution Date: July 1, 2002

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

Name: Comerica Bank-California

Internal Address: \_\_\_\_\_

Street Address: 333 West Santa Clara Street

City: San Jose State: CA ZIP 95113

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State \_\_\_\_\_
- Other Bank

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

None.

B. Trademark Registration No.(s)

<u>1,920,583</u>	<u>1,934,041</u>	<u>2,233,526</u>
<u>2,220,184</u>	<u>2,218,399</u>	

Additional numbers attached?  Yes  No

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

Name: Cooley Godward LLP

Internal Address: Attn: Ankey To

Street Address: One Maritime Plaza, 20<sup>th</sup> Floor

City: San Francisco State: CA ZIP 94111

6. Total number of applications and registration involved: 5

7. Total fee (37 CFR 3.41):..... \$140.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 03-3115

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

08/29/2002 6T0N11 00000174 1920583

DO NOT USE THIS SPACE

01 EC:481 40.00 DP  
02 FC:482 100.00 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.

Ankey To

August 20, 2002  
Date

Total number of pages including cover sheet, attachments, and document: 14

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

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT ("*Agreement*") is made as of July 1, 2002, by and among NELLA OIL COMPANY, a California joint venture, FLYERS, LLC, a California limited liability company (individually, each a "*Grantor*", and separately and collectively, "*Grantors*"), and COMERICA BANK-CALIFORNIA, as agent for and on behalf of Lenders (defined below) ("*Agent*").

## RECITALS

A. Lenders have agreed to lend to Grantors certain funds (the "*Loans*"), and Grantors desire to borrow such funds from Lenders pursuant to the terms of that certain Senior Secured Credit Agreement dated as of even date herewith by and among Grantors, the Lenders named therein ("*Lenders*") and Agent (as the same may from time to time be amended, modified, supplemented or restated, the "*Credit Agreement*").

B. Pursuant to the terms of that certain Security Agreement dated as of even date herewith by and among Grantors, as grantors thereunder, and Agent (as the same may from time to time be amended, modified, supplemented or restated, the "*Security Agreement*"), Grantors have granted to Agent, for and on behalf of Lenders, a security interest in all of Grantor's right, title and interest in, to or under all of each Grantor's assets.

C. In order to induce Lenders to make the Loans, Grantors have agreed to assign certain intangible property to Agent, for and on behalf of Lenders, for purposes of securing the obligations of Grantors to Lenders.

NOW, THEREFORE, the parties hereto agree as follows:

1. **DEFINITIONS.** All capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to them in the Security Agreement.

2. **GRANT OF SECURITY INTEREST.** As collateral security for the prompt and complete payment and performance of all of Grantors' present or future indebtedness, obligations and liabilities to Lenders and Agent under the Credit Agreement and the other Loan Documents (as defined in the Credit Agreement), Grantors hereby assign, transfer, convey and grant a security interest to Agent, as collateral security, in and to each Grantor's entire right, title and interest in, to and under the following, now or hereafter existing, created, acquired or held by any Grantor (all of which shall collectively be called the "*Intellectual Property Collateral*"):

(a) Any and all Copyrights and Copyright Licenses, including, without limitation, those set forth on **Exhibit A** attached hereto and incorporated herein by this reference;

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products;

(c) Any and all design rights which may be available to any Grantor;

(d) Any and all Patents and Patent Licenses, including, without limitation, those set forth on **Exhibit B** attached hereto and incorporated herein by this reference;

(e) Any and all Trademarks and Trademark Licenses, and the entire goodwill of the business of any Grantor connected with and symbolized by all such Trademarks, including, without limitation, those set forth on **Exhibit C** attached hereto and incorporated herein by this reference;

(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All other licenses or other rights to use any of the Intellectual Property Collateral, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(h) All amendments, renewals and extensions of any of the Intellectual Property Collateral; and

(i) All proceeds and products of the foregoing, including, without limitation, all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

The security interest granted hereunder is granted in conjunction with the security interests granted to Agent under the Security Agreement. The rights and remedies of Agent and Lenders with respect to the security interest granted hereby are in addition to those set forth in the Security Agreement, the Credit Agreement and the other Loan Documents, and those which are now or hereafter available to Agent or Lenders as a matter of law or equity. Each right, power and remedy of Agent provided for herein or in the Security Agreement, the Credit Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein and the exercise by Agent of any one or more of the rights, powers or remedies provided for in this Agreement, the Security Agreement, the Credit Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person, including any Lender or Agent, of any or all other rights, powers or remedies.

3. **AUTHORIZATION AND REQUEST.** Each Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this security interest.

4. **COVENANTS AND WARRANTIES.** Each Grantor represents, warrants, covenants and agrees as follows:

(a) Each Grantor is now the sole owner of the Intellectual Property Collateral in which it purports to own;

(b) Performance of this Agreement does not conflict with or result in a breach of any agreement to which any Grantor is a party or by which any Grantor is bound;

(c) During the term of this Agreement, no Grantor will not sell, transfer, assign or otherwise encumber any interest in the Intellectual Property Collateral, other than with respect to Permitted Liens;

(d) Each of the Patents is valid and enforceable, and there is no Intellectual Property Collateral which has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property Collateral violates the rights of any third party;

(e) Grantors shall promptly advise Agent of any material changes in the composition of the Intellectual Property Collateral, including but not limited to any subsequent ownership right of any Grantor in or to any Intellectual Property not specified in this Agreement;

(f) Grantors shall (i) protect, defend and maintain the validity and enforceability of the Intellectual Property Collateral, (ii) use their best efforts to detect infringements of the Intellectual Property Collateral and promptly advise Agent in writing of material infringements detected, and (iii) not allow any of the Intellectual Property Collateral to be abandoned, forfeited or dedicated to the public without the prior written consent of Agent, which consent shall not be unreasonably withheld;

(g) Grantors shall promptly register the most recent version of each Grantor's Copyrights necessary for the ordinary conduct of each Grantor's business, if not so already registered and shall, from time to time, execute and file such other instruments, and take such further actions as Agent or Lenders may reasonably request from time to time to perfect or continue the perfection of Agent's interest in the Intellectual Property Collateral;

(h) This Agreement, creates, and in the case of after-acquired Intellectual Property Collateral, will create at the time any Grantor first has rights in such after-acquired Intellectual Property Collateral, in favor of Agent, for and on behalf of Lenders, a valid and perfected, first priority security interest in the Intellectual Property Collateral in the United States securing the payment and performance of the Secured Obligations upon making the filings referred to in **Section 4(i)** below, subject only to Permitted Liens;

(i) Except for, and upon, the filings with, as applicable, (1) the United States Patent and Trademark Office, (2) the Register of Copyrights and (3) the UCC Division of the applicable office of the Secretary of State, necessary to perfect the security interests created hereunder, and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any United States governmental authority or United States regulatory body is required either (a) for the grant by any Grantor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by any Grantor in the United States or (b) for the perfection in the United States or the exercise by Agent of its rights and remedies hereunder;

(j) All information heretofore, herein or hereafter supplied to Agent by or on behalf of Grantors with respect to the Intellectual Property Collateral is accurate and complete in all material respects;

(k) No Grantor shall enter into any agreement that would materially impair or conflict with Grantors' obligations hereunder without Agent's prior written consent, which consent shall not be unreasonably withheld. Grantors shall not permit the inclusion in any material contract to which any Grantor becomes a party of any provisions that could or might in any way prevent the creation of a security interest in any Grantor's rights and interests in any property included within the definition of the Intellectual Property Collateral acquired under such contracts; and

(l) Upon any executive officer of any Grantor obtaining actual knowledge thereof, Grantors will promptly notify Agent in writing of any event that materially adversely affects the value of any Intellectual Property Collateral, the ability of any Grantor to dispose of any Intellectual Property Collateral or the rights and remedies of Agent in relation thereto, including the levy of any legal process against any of the Intellectual Property Collateral.

5. **AGENT'S RIGHTS.** Agent shall have the right, but not the obligation, to take, at Grantors' sole expense, any actions that Grantors are required under this Agreement to take but which Grantors fail to take, after three (3) Business Days' written notice to Grantors. Grantors shall reimburse and indemnify Agent for all costs and reasonable expenses incurred in the exercise of its rights under this **Section 5**.

6. **INSPECTION RIGHTS.** Grantors hereby grant to Agent and its employees, representatives and agents the right to visit, during reasonable hours upon prior written notice to Grantors, any of Grantors' plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Intellectual Property Collateral, and to inspect the products and quality control records relating thereto upon written notice to Grantors and as often as may be reasonably requested.

7. **FURTHER ASSURANCES; ATTORNEY IN FACT.**

(a) On a continuing basis, Grantors will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may be requested by Agent, to perfect Agent's security interest in all Intellectual Property Collateral, and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Agent the grant or perfection of a security interest in all Intellectual Property Collateral.

(b) Each Grantor hereby irrevocably appoints Agent as each Grantor's attorney-in-fact, with full authority in the place and stead of each Grantor and in the name of each Grantor, from time to time in Agent's discretion, to take any action and to execute any instrument which Agent may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its discretion, this Agreement without first obtaining Grantors' approval of or signature to such modification by amending **Exhibit A, Exhibit B or Exhibit C** hereof, as appropriate, to include reference to any material right, title or interest in any Intellectual Property Collateral acquired by any Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property Collateral in which the applicable Grantor no longer has or claims any right, title or interest, (ii) to file, in its discretion, one or more financing or

continuation statements and amendments thereto, relative to any of the Intellectual Property Collateral without the signature of any Grantor where permitted by law, and (iii) to transfer the Intellectual Property Collateral into the name of Agent or a third party to the extent permitted under the UCC; *provided*, that Agent agrees that it shall not exercise its powers as attorney-in-fact under this **Section 7(b)(iii)** except upon the occurrence and during the continuation of an Event of Default.

**8. EVENTS OF DEFAULT.** The occurrence of any "Event of Default" as defined in the Credit Agreement shall constitute an "*Event of Default*" under this Agreement.

**9. REMEDIES.** Upon the occurrence and during the continuance of an Event of Default, Agent shall have the right to exercise all the remedies of a secured party under the UCC, including, without limitation, the right to require Grantors to assemble the Intellectual Property Collateral and any tangible property in which Agent has a security interest and to make it available to Agent at a place designated by Agent. Agent shall have a nonexclusive, royalty free license or other right, solely pursuant to the provisions of this **Section 9**, to use, without charge, the Intellectual Property Collateral and any property of a similar nature as it pertains to the Intellectual Property Collateral, to the extent necessary to permit Agent to exercise its rights and remedies pursuant to this **Section 9**, including, without limitation, the completion of production, advertising for sale and the sale of any Intellectual Property Collateral and, in connection with Agent's exercise of its rights hereunder, each Grantor's rights under all licenses and all franchise agreements shall inure to the benefit of Agent. Grantors will pay any expenses (including reasonable attorneys' fees) incurred by Agent in connection with the exercise of any of Agent's rights under this Agreement, including, without limitation, any expense incurred in disposing of the Intellectual Property Collateral. All of Agent's rights and remedies with respect to the Intellectual Property Collateral shall be cumulative.

**10. INDEMNITY.** Grantors, jointly and severally, agree to defend, indemnify and hold harmless Agent and Lenders and each of their officers, employees, and agents against: (a) all obligations, demands, claims and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement and (b) all losses or expenses in any way suffered, incurred, or paid by Agent or any Lender as a result of or in any way arising out of, following or consequential to transactions between Agent and/or Lenders and Grantor, whether under this Agreement or otherwise (including, without limitation, reasonable attorneys' fees and expenses), except for losses arising from or out of Agent's or Lenders' gross negligence or willful misconduct.

**11. SUCCESSORS AND ASSIGNS.** This Agreement and all obligations of Grantor hereunder shall be binding upon the successors and assigns of Grantor, and shall, together with the rights and remedies of Agent hereunder, inure to the benefit of Agent, for and on behalf of Lenders, any future holder(s) of any Notes and their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the Secured Obligations or any portion thereof or interest therein shall in any manner affect the security interest created herein and granted to Agent hereunder.

**12. REINSTATEMENT.** This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any 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 any Grantor's property and assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

**13. TERMINATION OF THIS AGREEMENT.** Subject to **Section 12** above, this Agreement shall terminate upon the payment and performance in full of the Secured Obligations.

**14. NO FAILURE OR DELAY.** No failure or delay on the part of Agent or Lenders, in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof.

**15. AMENDMENTS.** Except as otherwise provided herein, this Agreement may be amended only by a written instrument signed by both parties hereto.

**16. COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which when so delivered shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. Each such Agreement shall become effective upon the execution of a counterpart hereof or thereof by each of the parties hereto and telephonic notification that such executed counterparts has been received by each Grantor and Agent.

**17. CALIFORNIA LAW AND JURISDICTION; JURY WAIVER.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Grantors and Agent consent to the exclusive jurisdiction of any state or federal court located in California. GRANTORS AND AGENT EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE CREDIT AGREEMENT, THIS AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

**18. CONFLICT.** In the event of a conflict between any term and/or provision contained in this Agreement with any term and/or provision contained in the Security Agreement, the term and/or provision of this Agreement shall govern.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**GRANTORS**

**NELLA OIL COMPANY,**  
a California joint venture

By W. D. Smith  
Printed Name: Walter D. Smith  
Title: Member

Address of Grantor

2349 Rickenbacker Way  
Auburn, California 95602  
Attn: Rick Teske  
Tel: (530) 885-0401  
Fax: (530) 885-5851

**FLYERS, LLC,**  
a California limited liability company

By W. D. Smith  
Printed Name: Walter D. Smith  
Title: member

Address of Grantor

2349 Rickenbacker Way  
Auburn, California 95602  
Attn: Rick Teske  
Tel: (530) 885-0401  
Fax: (530) 885-5851

[INTELLECTUAL PROPERTY SECURITY AGREEMENT]



AGENT

COMERICA BANK-CALIFORNIA

By

Printed Name:

Title:

Address of Agent

Embarcadero Center West  
275 Battery Street, Suite 1100  
San Francisco, California 94111-3305  
Attn: Scott A. Myers  
Tel: (415) 954-5043  
Fax: (415) 954-5020

**EXHIBIT A**  
**COPYRIGHTS**

**NELLA OIL COMPANY**

1. **REGISTERED:** List titles below or indicate "None"

<b>COPYRIGHT</b>	<b>REGISTRATION DATE</b>
<b>NONE</b>	

2. **UNREGISTERED:** List titles below or indicate "None"

**NONE**

3. **APPLICATIONS IN PROCESS:** List titles, applicable dates, application numbers, etc. below or indicate "None"

**NONE**

1. **REGISTERED:** List titles below or indicate "None"

COPYRIGHT	REGISTRATION DATE
NONE	

2. **UNREGISTERED:** List titles below or indicate "None"

**NONE**

3. **APPLICATIONS IN PROCESS:** List titles, applicable dates, application numbers, etc. below or indicate "None"

**NONE**

**EXHIBIT B**

**U.S. PATENTS AND PATENT APPLICATIONS**

**NELLA OIL COMPANY**

<b>PATENT</b>	<b>PATENT NUMBER</b>	<b>ISSUE DATE</b>
<b>NONE</b>		

2. **UNREGISTERED:** List titles below or indicate "None"

**NONE**

3. **APPLICATIONS IN PROCESS:** List titles, applicable dates, application numbers, etc. below or indicate "None"

**NONE**

<b>PATENT</b>	<b>PATENT NUMBER</b>	<b>ISSUE DATE</b>
<b>NONE</b>		

2. **UNREGISTERED:** List titles below or indicate "None"

**NONE**

3. **APPLICATIONS IN PROCESS:** List titles, applicable dates, application numbers, etc. below or indicate "None"

**NONE**

**EXHIBIT C**

**U.S. TRADEMARKS AND TRADEMARK APPLICATIONS**

**NELLA OIL COMPANY**

<b>REGISTRATION No.</b>	<b>PENDING APPLICATION No.</b>	<b>MARK</b>	<b>REGISTRATION DATE</b>	<b>FILING DATE</b>
1,920,583		OUT ISLAND JAVA (Coffee)	09/19/1995	12/27/1993
1,934,041		OUT ISLAND JAVA DESIGN (Logo)	11/07/1995	01/27/1994
2,233,526		FLYERS (Petroleum Products)	03/23/1999	07/29/1999
2,220,184		FLYERS (Convenience stores)	01/26/1999	07/29/1999
2,218,399		FLYERS (Gasoline Service Stations)	01/19/1999	07/29/1999
CA 9569		GULF Transportation (Hauling Petro)	03/30/2000	04/08/1980
CA 61352		OLYMPIAN (Lubricating Oils)	03/30/2000	04/08/1980
CA 57506		OLYMPIC (Petroleum Products)	02/17/1998	06/16/1978
CA 6236		OLYMPIC (Gasoline Service Stations)	02/17/1998	02/16/1978
CA 28636		COMMERCIAL FUELING SYSTEMS (Use with Gasoline service stations)	10/30/1996	10/29/1986

**2. UNREGISTERED:** List titles below or indicate "None"

**NONE**

**3. APPLICATIONS IN PROCESS:** List titles, applicable dates, application numbers, etc. below or indicate "None"

**NONE**

August 20, 2002

VIA CERTIFIED MAIL

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

**Re: (036703-1024) Recording of Security Agreement**

Dear Assistant Commissioner:

The following document is being submitted for recording with the U.S. Patent and Trademark Office:

Intellectual Property Security Agreement (the "Security Agreement") dated as of July 1, 2002, whereby **Nella Oil Company**, grants to **Comerica Bank-California**, a security interest in all its trademarks and trademark applications, including, but not limited to, the five (5) trademarks listed on the Trademark Cover Sheet.

Enclosed is a check for \$140.00 to cover the requisite fee to record the Security Agreement. The Commissioner is hereby authorized to charge any underpayment of such fees to Deposit Account No. 03-3115.

After the enclosed Security Agreement has been recorded, please return it to the attention of the undersigned with the certificate of recordation.

Please acknowledge receipt of the letter and accompanying enclosures by date stamping the enclosed self-addressed prepaid green return receipt card and returning to the undersigned.

Sincerely,

Cooley Godward LLP



Ankey To  
Credit Finance Paralegal

Enclosures

cc: Kristie Richardson (w/ encl.)  
Melanie Cass (w/ encl.) (file copy)