

12-04-2002

12-402



Form PTO-1594  
(Rev. 10/02)  
OMB No. 0651-0027 (exp. 6/30/2005)  
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U.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

102301799

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

1. Name of conveying party(ies):

Virginia Honey Company, Inc.

12-4-02

- Individual(s)
- General Partnership
- Corporation-State
- 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: 15 August 2001

2. Name and address of receiving party(ies)

Name: Bank One, NA (successor in interest to  
Internal American National Bank & Trust)  
Address:

Street Address: 120 S. LaSalle Street

City: Chicago State: IL Zip: 60603

- 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  
(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)

2,221,834; 2,517,789; 2,342,293; 1,968,298;  
2,007,671

Additional number(s) attached  Yes  No

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

Name: Mary E. Dicig

Internal Address: Schwartz, Cooper, Greenberger  
& Krauss, Chtd.

Street Address: 180 N. LaSalle Street  
Suite 2700

City: Chicago State: IL Zip: 60601

6. Total number of applications and  
registrations involved: .....

5

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

- 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

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.

Mary E. Dicig  
Name of Person Signing

Mary Dicig  
Signature

12/3/02  
Date

Total number of pages including cover sheet, attachments, and document: 10

12/05/2002 6TON11 00000037 2221874

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

01 FC:8521  
02 FC:8522

40.00 OP  
100.00 OP

TRADEMARK  
REEL: 002627 FRAME: 0099

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement") is made as of the 15th day of August, 2001 by and between VIRGINIA HONEY COMPANY, INC., a Virginia corporation ("Borrower") and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Lender").

## WITNESSETH:

WHEREAS, the Borrower and Vita Food Products, Inc., a Nevada corporation have entered into that certain Amended and Restated Loan Agreement dated as of August 15, 2001 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "Loan Agreement"), with the Lender, pursuant to which the Lender has agreed to make loans to, and for the account of, the Borrower;

WHEREAS, the Loan Agreement grants to Lender a continuing security interest in substantially all of the Borrower's assets, including, without limitation, its intellectual property, but it is a condition precedent for the Lender to make any additional loans pursuant to the Loan Agreement that the Borrower execute and deliver this 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, Borrower agrees as follows:

1. **Definitions.** The Loan Agreement and the provisions thereof are hereby incorporated herein in their entirety by this reference thereto. Capitalized terms used but not defined herein shall have the respective meanings given thereto in the Loan Agreement.

2. **Assignment for Security.** To secure the complete and timely payment and satisfaction of the Liabilities, Borrower hereby grants to Lender a continuing security interest in Borrower's entire right, title and interest in and to all of its now owned or existing and hereafter acquired or arising:

(a) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, all patentable inventions and those patents and patent applications listed on **Schedule A** attached hereto and made a part hereof and the reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Patents");

(b) copyrights, rights and interests in copyrights, works protectable by copyrights, copyright registrations and copyright applications, including, without limitation, the copyright registrations and applications listed on **Schedule B** attached hereto and made a part hereof and all renewals of any of the foregoing, all income, royalties, damages and payments now and hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Copyrights");

(c) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, the trademarks and applications listed on **Schedule C** attached hereto and made a part hereof and renewals thereof, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(d) all rights corresponding to any of the foregoing throughout the world and the goodwill of Borrower's business connected with the use of and symbolized by the Trademarks.

In addition to, and not by way of limitation of, all other rights granted to Lender under this Agreement, Borrower hereby assigns, transfers and conveys to Lender all of the Patents, Copyrights and Trademarks, together with the rights and goodwill described in clause (d) above to the extent necessary to enable Lender and any successor or assign, effective upon the occurrence of any Default, to realize on such property and to enjoy the benefits thereof. This right and assignment shall inure to the benefit of Lender and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and assignment is granted free of charge, without requirement that any monetary payment whatsoever (including, without limitation, any royalty or license fee) be made to Borrower or any other Person by Lender (except that if Lender shall receive proceeds from the disposition of any such property, such proceeds shall be applied to the Liabilities), and the Lender shall have the right to use, without charge, the Borrower's Patents, Copyrights and Trademarks, or any property of a similar nature, in completing production of, advertising for sale and selling any Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to the Lender's benefit until the Liabilities are paid.

3. **Reports of Applications.** The Patents, Copyrights and Trademarks constitute all of the federally registered patents, copyrights and trademarks, and applications therefor now owned by Borrower. Within twenty days of any registrations or applications, Borrower shall provide Lender with a list of all new federally registered patents, copyrights and trademarks and federal applications for letters patent, copyright registrations and trademark registrations, if any, which new patents, copyrights trademarks and applications shall be subject to the terms and conditions of the Loan Agreement and this Agreement.

4. **Captions.** Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

5. **Governing Law; Rights Cumulative.** This Agreement shall be a contract made under and governed by the internal laws of the State of Illinois applicable to contracts made and to be performed entirely within such State. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Lender under either the Loan Agreement or applicable law, but rather is intended to supplement and facilitate the exercise of such rights and remedies. All of the rights and remedies of the Lender with respect to the Patents, Copyrights and Trademarks and rights under Section 2(d) above, whether established hereby, by the Loan Agreement or by any other agreements, or by applicable law, shall be cumulative and may be exercised singularly or concurrently. NOTWITHSTANDING ANY PROVISION HEREIN CONTAINED TO THE CONTRARY, LENDER SHALL NOT HAVE THE RIGHT TO USE AND ENFORCE THE PATENTS, COPYRIGHTS AND TRADEMARKS UNLESS AND UNTIL THE OCCURRENCE OF A DEFAULT, AND UNTIL THE OCCURRENCE OF A DEFAULT BORROWER SHALL HAVE ALL OF SUCH RIGHTS.

6. **Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement.

7. **Successors and Assigns.** This Agreement shall be binding upon the Borrower and Lender and their respective successors and assigns, and shall inure to the benefit of the Borrower and Lender and the successors and assigns of the Lender.

8. **Severability.** Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, this Agreement shall be construed as not containing such provision and the invalidity of such provision shall not affect the validity of any other provisions hereof, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

9. Forum Selection and Consent to Jurisdiction.

(a) EXCEPT AS PROVIDED BELOW, THE BORROWER AND THE LENDER AGREE THAT ALL DISPUTES BETWEEN THEM ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT AND THE ANCILLARY AGREEMENTS, WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, MAY, IN LENDER'S SOLE AND EXCLUSIVE DISCRETION BE RESOLVED BY STATE OR FEDERAL COURTS LOCATED IN COOK COUNTY, ILLINOIS, BUT EACH OF THE BORROWER AND THE LENDER ACKNOWLEDGES THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF COOK COUNTY, ILLINOIS. THE BORROWER WAIVES IN ALL DISPUTES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT CONSIDERING THE DISPUTE.

(b) OTHER JURISDICTIONS. THE BORROWER AGREES THAT THE LENDER SHALL HAVE THE RIGHT TO PROCEED AGAINST THE BORROWER OR ITS PROPERTY IN A COURT IN ANY LOCATION TO ENABLE THE LENDER TO REALIZE ON SUCH PROPERTY, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF THE LENDER. THE BORROWER AGREES THAT IT SHALL NOT ASSERT ANY PERMISSIVE COUNTERCLAIMS IN ANY PROCEEDING BROUGHT IN ACCORDANCE WITH THIS PROVISION BY THE LENDER TO REALIZE ON SUCH PROPERTY, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER. THE BORROWER WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT IN WHICH THE LENDER HAS COMMENCED A PROCEEDING DESCRIBED IN THIS SUBSECTION.

10. WAIVER OF JURY TRIAL. THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY THERETO. THE BORROWER HEREBY EXPRESSLY ACKNOWLEDGES THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ACCEPT THE LOAN AGREEMENT AND TO MAKE THE LOANS.

[Remainder of the page is intentionally blank; signature page on next page]

IN WITNESS WHEREOF, the parties hereto have duly executed this Intellectual Property Security Agreement as of the date first above written.

VIRGINIA HONEY COMPANY, INC., a Virginia corporation

By: Clark L. Feldman  
Its: EXECUTIVE VICE PRESIDENT  
Print Name: CLARK L. FELDMAN

Address: 2007 Industrial Park Road  
Martinsburg, West Virginia 25401

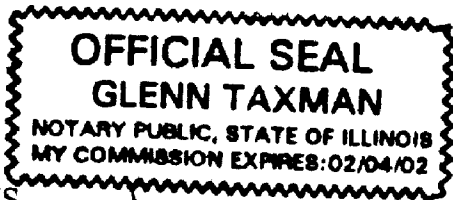
Accepted and Agreed to:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
120 S. LaSalle Street  
Chicago, Illinois 60603

By: \_\_\_\_\_  
Robert A. Clarke, Assistant Vice President

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

The foregoing Intellectual Property Security Agreement Assignment was executed and acknowledged before me this 15<sup>th</sup> day of August, 2001 by Clark L. Feldman personally known to me to be the Exec. VP of VIRGINIA HONEY COMPANY, INC., a Virginia corporation, on behalf of such corporation.



Glenn Taxman  
Notary Public

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF COOK        )

The foregoing Intellectual Property Security Agreement Assignment was executed and acknowledged before me this \_\_\_\_ day of August, 2001 by Robert A. Clarke, personally known to me to be an Assistant Vice President of American National Bank and Trust Company of Chicago, a national banking association, on behalf of such bank.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, the parties hereto have duly executed this Intellectual Property Security Agreement as of the date first above written.

VIRGINIA HONEY COMPANY, INC., a Virginia corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Address: 2007 Industrial Park Road  
Martinsburg, West Virginia 25401

Accepted and Agreed to:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
120 S. LaSalle Street  
Chicago, Illinois 60603

By: *Robert A. Clarke*  
Robert A. Clarke, Assistant Vice President

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

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\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing Intellectual Property Security Agreement Assignment was executed and acknowledged before me this 21<sup>st</sup> day of August, 2001 by Robert A. Clarke, personally known to me to be an Assistant Vice President of American National Bank and Trust Company of Chicago, a national banking association, on behalf of such bank.

*Latrice Cooper*  
Notary Public

T:\M1418\949572001 FacilityIP Security Agmt (VAH)-C.wpd



TRADEMARK  
REEL: 002627 FRAME: 0105

**SCHEDULE A**

**PATENTS**

U.S. Patent No.

Date Issued

Related Foreign Patents

None

**PATENT APPLICATIONS**

U.S. Patent Application No.

Date Applied

None



**SCHEDULE B**

**COPYRIGHT REGISTRATIONS**

Registration No.

Date

none

**COPYRIGHT APPLICATIONS**

Copyright Description

Copyright Application No.

Date Applied

none

**SCHEDULE C**

**TRADEMARK REGISTRATIONS**

<u>Mark</u>	<u>Registration No.</u>	<u>Serial No.</u>	<u>Registration Date</u>
	2221834	75466957	February 2, 1999
Killer Bee	2342293	75466956	April 18, 2000
Virginia Brand	1968298	75659438	April 16, 1996
Virginia Brand	2007671	74659437	October 15, 1996

**TRADEMARK APPLICATIONS**

<u>Mark</u>	<u>Trademark Application No.</u>	<u>Date Applied</u>
Texas Brand	75478457	May 4, 1998

COPY

INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement") is made as of the 15th day of August, 2001 by and between VIRGINIA HONEY COMPANY, INC., a Virginia corporation ("Borrower") and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Lender").

W I T N E S S E T H:

WHEREAS, the Borrower and Vita Food Products, Inc., a Nevada corporation have entered into that certain Amended and Restated Loan Agreement dated as of August 15, 2001 (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the "Loan Agreement"), with the Lender, pursuant to which the Lender has agreed to make loans to, and for the account of, the Borrower;

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(a) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, all patentable inventions and those patents and patent applications listed on **Schedule A** attached hereto and made a part hereof and the reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Patents");

(b) copyrights, rights and interests in copyrights, works protectable by copyrights, copyright registrations and copyright applications, including, without limitation, the copyright registrations and applications listed on Schedule B attached hereto and made a part hereof and all renewals of any of the foregoing, all income, royalties, damages and payments now and hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Copyrights");

(c) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, the trademarks and applications listed on Schedule C attached hereto and made a part hereof and renewals thereof, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(d) all rights corresponding to any of the foregoing throughout the world and the goodwill of Borrower's business connected with the use of and symbolized by the Trademarks.

In addition to, and not by way of limitation of, all other rights granted to Lender under this Agreement, Borrower hereby assigns, transfers and conveys to Lender all of the Patents, Copyrights and Trademarks, together with the rights and goodwill described in clause (d) above to the extent necessary to enable Lender and any successor or assign, effective upon the occurrence of any Default, to realize on such property and to enjoy the benefits thereof. This right and assignment shall inure to the benefit of Lender and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and assignment is granted free of charge, without requirement that any monetary payment whatsoever (including, without limitation, any royalty or license fee) be made to Borrower or any other Person by Lender (except that if Lender shall receive proceeds from the disposition of any such property, such proceeds shall be applied to the Liabilities), and the Lender shall have the right to use, without charge, the Borrower's Patents, Copyrights and Trademarks, or any property of a similar nature, in completing production of, advertising for sale and selling any Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to the Lender's benefit until the Liabilities are paid.

IN WITNESS WHEREOF, the parties hereto have duly executed this Intellectual Property Security Agreement as of the date first above written.

VIRGINIA HONEY COMPANY, INC., a Virginia corporation

By: Clark L. Feldman  
Its: EXECUTIVE VICE PRESIDENT  
Print Name: CLARK L. FELDMAN

Address: 2007 Industrial Park Road  
Martinsburg, West Virginia 25401

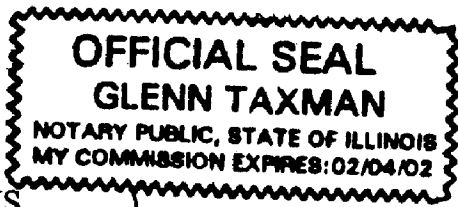
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Robert A. Clarke, Assistant Vice President

STATE OF ILLINOIS )  
 ) SS  
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Glenn Taxman  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

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\_\_\_\_\_  
Notary Public

T:\41419\949572001 FacilityTP Security Agmt (VAH)-02.wpd

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VIRGINIA HONEY COMPANY, INC., a Virginia corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
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By: *Robert A. Clarke*  
Robert A. Clarke, Assistant Vice President

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK        )

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\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK        )

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*Latrice Cooper*  
Notary Public

T:\41419\949572001 Facility\7 Security Agmt (VAH)-2.wpd



**SCHEDULE A**

**PATENTS**

U.S. Patent No.

Date Issued

Related Foreign Patents

None

**PATENT APPLICATIONS**

U.S. Patent Application No.

Date Applied

None

**SCHEDULE B**

**COPYRIGHT REGISTRATIONS**

Registration No.

Date

none

**COPYRIGHT APPLICATIONS**

Copyright Description

Copyright Application No.

Date Applied

none



**SCHEDULE C**

**TRADEMARK REGISTRATIONS**

<u>Mark</u>	<u>Registration No.</u>	<u>Serial No.</u>	<u>Registration Date</u>
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T:\41419\94957\2001 Facility\IP Security Agmt (VAH)-v2.wpd