

5-12-03

05-12-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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

102444667

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

1. Name of conveying party(ies):

Amerifit Nutrition, Inc. 166 Highland Park Drive Bloomfield, CT 06002

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other Mortgage, Assignment and Security Agreement (Trademarks)

Execution Date: 4/30/03

2. Name and address of receiving party(ies)

Name: Webster Bank

Internal

Address:

Street Address: CityPlace II, 185 Asylum St.,

City: Hartford State: CT Zip: 06103-3494

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State

Other a federal savings bank

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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

see attached

Additional number(s) attached Yes No

75 939 139

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

Name: John J. Murphy, Esq.

Internal Address:

Street Address: Mayo, Gilligan & Zito, LLP

100 Great Meadow Road

City: Wethersfield State: CT Zip: 06109

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41): \$ 40.00

- 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.

PETER J. VITULLI

[Signature]

4/30/03

Name of Person Signing

Signature

Date

President of Amerifit Nutrition, Inc.

8

05/12/2003 00000169 73939139

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

01 FC:8521

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

TRADEMARK REEL: 002729 FRAME: 0376

Domestic Trademark List by Client

Monday, April 28, 2003

Client: AMF Amerifit Nutrition, Inc.

Case Number/Subcase Trademark

Application Country Name	Publication Number/Date	Registration Number/Date	Status Number/Date	Next Renewal
AMF-0011-T/ United States of America	75/939139 09-Mar-2000	20-Feb-2001	2528460 08-Jan-2002	Registered 08-Jan-2012

Licensed:

Class(es): 5

Agent Name:

Owner Name: Amerifit Nutrition, Inc.

Attorney(s): GAP

Agent Ref:

Client Ref:

**MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT  
(TRADEMARKS)**

**THIS MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT - TRADEMARKS** (the "Mortgage") made this 30<sup>TH</sup> day of April, 2003, between **AMERIFIT NUTRITION, INC.**, a Delaware corporation with an office and principal place of business located at 166 Highland Park Drive, Bloomfield, Connecticut 06002 (the "Assignor"), and **WEBSTER BANK**, a federal savings bank chartered under the laws of the United States of America with an office at CityPlace II, 185 Asylum Street, Hartford, Connecticut 06103-3494 (the "Secured Party").

**WHEREAS, AMERIFIT, INC.**, a Delaware corporation with an office and principal place of business located at 166 Highland Park Drive, Bloomfield, Connecticut 06002, a subsidiary of Assignor, (the "Borrower") and Secured Party have entered into a certain Revolving Loan Agreement of even date herewith (the "Loan Agreement") evidencing a certain revolving credit loan in the principal amount not to exceed **FOUR MILLION AND 00/100 DOLLARS (\$4,000,000.00)** (the "Loan"); and

**WHEREAS**, Assignor has guaranteed to Loan pursuant to the Guaranty Agreement executed and delivered by Assignor (the "Guaranty"); and

**WHEREAS**, the Assignor is the sole and exclusive owner of the United States Trademarks and trademark applications and all other corresponding trademarks and trademark applications in any states or foreign countries as set forth on Schedule A annexed hereto and made a part hereof (the "Trademark Rights"); and

**WHEREAS**, pursuant to the Security Agreement of even date herewith between the Assignor and the Secured Party (the "Security Agreement"), the Assignor has granted the Secured Party a security interest in, among other things, the Trademark Rights, on the terms and conditions set forth in the Loan Agreement and the Security Agreement; and

**WHEREAS**, it is a condition precedent to the obligation of the Secured Party to make the Loan that the Assignor shall execute and deliver this Mortgage;

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions set forth in the Loan Agreement and the Security Agreement, the Assignor hereby agrees with the Secured Party as follows:

1. The Assignor hereby assigns, conveys and transfers to the Secured Party, its successors and assigns, on the terms and conditions set forth in the Loan Agreement, and as security for the Note and the obligations and liabilities of the Assignor to Secured Party under the Guaranty and of the Borrower to the Secured Party under the Loan Agreement, the Loan Agreement and any and all other documents, instruments and agreements executed and delivered pursuant thereto and in connection therewith, whether now existing or hereafter arising, a first lien upon and security interest in all of the Assignor's right, title, and interest in, to and under the Trademark Rights, together with (i) all reissues or extensions thereof and (ii) all claims for damages by reason of past or future infringement of the Trademark Rights with the right to sue for and collect said damages and the right to collect all royalties under any license agreements with respect to any

of the Trademark Rights, whether now or hereafter granted (hereinafter sometimes collectively referred to as the "Collateral").

2. The Assignor represents and warrants unto the Secured Party that the Assignor has not heretofore assigned, transferred or encumbered its right, title and interest in, to and under the Collateral.

3. The Assignor represents and warrants that it knows of no impediments to the validity and/or enforceability of any or all of the Trademark Rights.

4. The Assignor represents and warrants that the Trademark Rights are all the trademarks (domestic and foreign) used by the Assignor or in connection with its business.

5. The Assignor covenants and agrees with the Secured Party that, so long as this Mortgage shall remain in effect:

(a) The Assignor shall pay all fees necessary for the issuance, maintenance, renewal or reissuance of the Trademark Rights and shall do all such other acts and things necessary for maintaining the Trademark Rights.

(b) The Assignor shall endeavor to detect and prevent any infringement of the Trademark Rights, including, in the exercise of its reasonable legal and business judgment, the bringing of infringement suits to enforce the Trademark Rights. The Assignor shall inform the Secured Party of any actual or suspected infringement of the Trademark Rights of which it has knowledge and of any action contemplated or taken by the Assignor in response to such infringement. The Secured Party shall have the right, in consultation with the Assignor, to require the Assignor to take such action as the Secured Party may reasonably determine to be required to enforce such Trademark Rights.

(c) The Assignor shall, in the exercise of its reasonable legal and business judgment, undertake to defend any attack upon the Trademark Rights and upon the validity and enforceability thereof. The Secured Party shall have the right, in consultation with the Assignor, to require the Assignor to take such action as the Secured Party may reasonably determine to be required to defend the Trademark Rights.

(d) The Assignor shall not, without the written consent of the Secured Party, permit the Trademark Rights to lapse or otherwise abandon the Trademark Rights.

(e) At any time and from time to time, the Assignor shall, upon the request of the Secured Party, execute and deliver such further documents and do such other acts and things as the Secured Party reasonably may require in order to effect the purpose of this Mortgage and of the rights and powers herein granted, including, without limitation, all documents necessary or advisable to record title to the Collateral, including valid, recordable assignments of any or all of the Trademark Rights, and the Assignor does hereby irrevocably appoint the Secured Party, its successors and assigns, as its attorney-in-fact to execute any or all of such documents and to do such other things or acts on behalf of the Assignor, its successors and assigns, and the Assignor confirms all such acts said attorney-in-fact may do pursuant to this authority.

6. Assignor authorizes Secured Party to modify this Agreement by amending Schedule A to include any future trademarks and trademark applications which are Trademark Rights hereunder.

7. Until the occurrence of an Event of Default as defined in the Loan Agreement and the Security Agreement and subject to the provisions of the Loan Agreement and the Security Agreement, the Secured Party hereby acknowledges the Assignor's exclusive right and license to use the Collateral for the Assignor's own benefit and account, to grant licenses and sublicenses on reasonable terms with respect to the Collateral and to generally deal in the ordinary course of business with the Collateral. The foregoing grant of authority shall not permit the Assignor to take any actions prohibited hereunder.

8. Notwithstanding anything to the contrary, nothing herein contained shall relieve the Assignor from the performance of any covenant, agreement or obligation on the Assignor's part to be performed under any license agreement now existing or hereafter executed by the Assignor licensing the use of the Collateral or any part thereof or from liability to any licensee thereunder or other party or impose any liability on the Secured Party for the acts or omissions of the Assignor in connection with any such license or license agreement.

9. This Mortgage shall terminate upon payment in full and satisfaction of the obligations secured hereby and, upon such termination, all rights in the Collateral mortgaged and in which a security interest is granted hereunder shall be reconveyed by the Secured Party to the Assignor and the Secured Party shall promptly execute and deliver to the Assignor such documents or instruments as the Assignor may reasonable request of such termination.

10. This Mortgage shall be binding upon the Assignor, its successors, and assigns and shall inure to the benefit of the Secured Party, its successors and assigns.

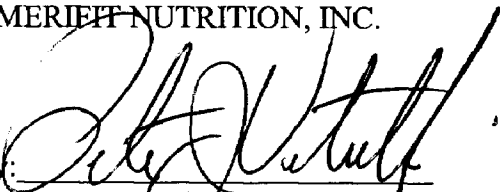
11. This Mortgage may not be amended or modified except with the written consent of the Secured Party.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the Assignor and the Secured Party have caused this Mortgage to be executed by their respective officers thereunto duly authorized on the day and year first above written.

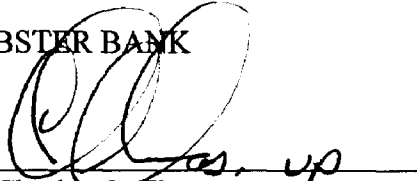
ASSIGNOR:

AMERIFIT NUTRITION, INC.

By:   
Peter J. Vitulli  
Its President  
Duly Authorized

SECURED PARTY:

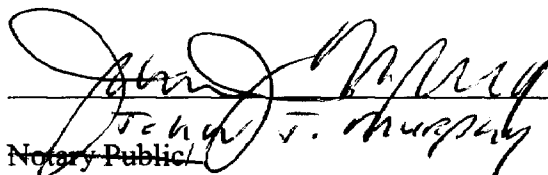
WEBSTER BANK

By:   
Charles C. Thomas  
Its Vice President  
Duly Authorized

STATE OF CONNECTICUT        }  
  } Wethersfield  
COUNTY OF HARTFORD        }

On this the 30<sup>th</sup> day of April, 2003, before me, the undersigned officer, personally appeared Peter J. Vitulli, who acknowledged himself to be the President of AMERIFIT NUTRITION, Inc., a Delaware corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed and the free act and deed of the corporation, by signing the name of the corporation by himself as President.

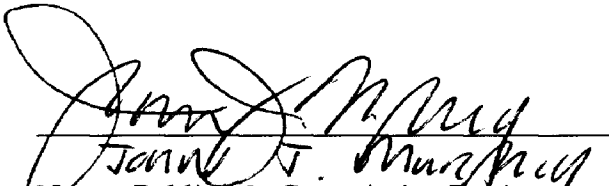
In Witness Whereof I hereunto set my hand.

  
Notary Public  
Commissioner of the Superior Court

STATE OF CONNECTICUT            }  
  }  
  } Wethersfield  
COUNTY OF HARTFORD            }

On this the 30<sup>th</sup> day of April, 2003, before me, the undersigned officer, personally appeared Charles C. Thomas, who acknowledged himself to be the Vice President of Webster Bank, a federal savings bank, and that he, as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed and the free act and deed of the savings bank, by signing the name of the savings bank by himself as Vice President.

In Witness Whereof I hereunto set my hand.

  
~~Notary Public/My Commission Expires:~~  
Commissioner of the Superior Court