

06-30-2003



Form PTO-1594 (Rev. 10/02) OMB No. 0651-0024 (exp. 6/30/2005)

RECORD & TRACK

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DEPARTMENT OF COMMERCE Patent and Trademark Office

Tab settings

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

1. Name of conveying party(ies):

WPB Acquisition, LLC

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

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

3. Nature of conveyance:

- Assignment, Merger, Security Agreement, Change of Name, Other

Execution Date: 05/23/2003

2. Name and address of receiving party(ies)

Name: State of Wisconsin Investment Board

Internal Address: PO Box 7842, Madison, WI 53707-7842

Street Address: 121 East Wilson Street

City: Madison State: WI Zip: 53702

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State, Other government entity

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) 76/368,779

B. Trademark Registration No.(s) 2,624,941

Additional number(s) attached Yes No

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

Name: Thomas P. Solheim

Internal Address: Solheim Billing & Grimmer, SC

P.O. Box 1644

Madison, WI 53701-1644

Street Address: One S. Pinckney St., #301

City: Madison State: WI Zip: 53703

6. Total number of applications and registrations involved:

9

7. Total fee (37 CFR 3.41) \$ 240.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Thomas P. Solheim Name of Person Signing

Signature

6/23/03 Date

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

06/27/2003 ECOOPER 00000084 76368779

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 200.00 OP

TRADEMARK REEL: 002766 FRAME: 0307

**CONTINUATION SHEET  
TO  
RECORDATION FORM COVER SHEET  
TRADEMARKS**

**Conveying Party: WPB Acquisition, LLC  
Receiving Party: State of Wisconsin Investment Board**

<b>4.     <u>Application Numbers</u></b>	<b><u>Registration Numbers</u></b>
73/547,761	1,379,241
74/423,904	1,933,726
75/574,179	2,292,758
73/227,496	1,194,490
76/357,887	2,642,741
538,153	314,132
73/227,498	1,228,901
538,753	331,775

# TRADEMARK ASSIGNMENT AND SECURITY AGREEMENT

THIS TRADEMARK ASSIGNMENT AND SECURITY AGREEMENT (the "Agreement") is made as of May 23, 2003 (the "Effective Date"), by and between WPB ACQUISITION, LLC, a Wisconsin limited liability company (the "Debtor"), and STATE OF WISCONSIN INVESTMENT BOARD ("SWIB" or "Secured Party").

COPY

## RECITALS

WHEREAS, Debtor is the owner of certain trademark registrations, trademark applications, and/or common law trademarks (herein referred to as "the Trademarks");

WHEREAS, the Debtor concurrently herewith is borrowing from the Secured Party the principal sum of \$1,500,000.00 pursuant to the terms of the Note Purchase Agreement between the Secured Party and the Debtor dated as of the date hereof ("Note Purchase Agreement"), said borrowing being evidenced by the Subordinated Secured Notes of the Secured Party, dated as of the date hereof, to the Secured Party in the principal amount of \$1,500,000.00 (the "Notes"); and

WHEREAS, the Debtor has agreed to enter into this Agreement in order to induce the Secured Party to enter into the Note Purchase Agreement and to accept the Note issued by the Debtor thereunder.

## AGREEMENT

NOW, THEREFORE, for valuable consideration, the recipient and sufficiency of which is hereby acknowledged, and in consideration of the covenants and agreements set forth herein, Debtor and Secured Party mutually agree as follows:

1. Definitions of Trademarks. The term "Trademarks" shall mean those trademark registrations, trademark applications, and/or common law trademarks listed in Appendix A attached hereto and made a part hereof, as well as: (a) all common law rights therein; (b) all goodwill associated therewith; (c) all renewals thereof; (d) all rights of action, powers and benefits accrued thereto, including the right to sue for and collect damages and payments for past or future infringements thereof.

2. Definitions. Except as to those terms otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the respective meanings ascribed to them in the Note Purchase Agreement.

3. Security Interest in and Assignment of the Assigned Trademarks. In order to secure the due and punctual payment of the Notes, and the performance of all other obligations of the Debtor owing to the Secured Party from time to time (including, without limitation, obligations pursuant to the Note Purchase Agreement) (collectively the "Obligations"), the Debtor hereby grants to the Secured Party a continuing security interest in and to, and hereby sells, assigns, and transfers to Secured Party, all of Debtor's right, title and interest in and to the Trademarks. The security interest and assignment of the Trademarks granted by Debtor to Secured Party in this Agreement is granted free and clear of all leases, liens, security interests,

rights of first refusal, options or similar restrictions, except for the permitted liens described in attached Appendix B ("Permitted Liens"). The security interests granted and the assignment made pursuant to this Section 3 are for security purposes only.

4. Use of Trademark. Notwithstanding anything to the contrary contained herein, unless an Event of Default (as defined in the Note Purchase Agreement) has occurred and is continuing, the Debtor may continue to exploit, license, use, enjoy and protect the Trademarks and the Secured Party shall from time to time promptly execute and deliver, upon written request of the Debtor, any and all instruments, certificates or other documents, in the form so requested, necessary or appropriate in the reasonable judgment of the Debtor to enable the Debtor to continue to exploit, license, use, enjoy and protect the Trademarks.

5. Filing of Financing Statements and Other Instruments. The Debtor: (i) will, at its expense, execute, deliver, file and record (in such manner and form as the Secured Party shall reasonably require), or permit the Secured Party to file and record, such financing statements, assignments, continuation statements and other instruments and documents (including without limitation this Agreement) in such offices (including without limitation the United States Patent and Trademark Office and the United States Copyright Office) as the Secured Party may reasonably deem necessary or appropriate in order to perfect and preserve the rights and interests granted to the Secured Party hereunder; (ii) hereby authorizes the Secured Party to file and record such instruments and documents and any other instruments or documents related thereto without the signature of the Debtor where permitted by law; and (iii) agrees to do such further acts and things, and to execute and deliver to the Secured Party such additional instruments and documents, as the Secured Party may reasonably require to carry into effect the purposes of this Agreement or to better assure and confirm unto the Secured Party its respective rights, powers and remedies hereunder; provided, however, that the Secured Party shall give the Debtor notice of any action taken or to be taken by the Secured Party pursuant to this Section 5. All of the foregoing are to be at the sole cost of the Debtor. Any costs of the foregoing incurred by the Secured Party shall be payable by the Debtor within five (5) days of demand by the Secured Party, and shall constitute so much additional Obligations. The Debtor hereby appoints the Secured Party as the Debtor's attorney-in-fact to execute and file, in the name and on behalf of the Debtor, any additional Financing Statements as the Secured Party may reasonably request.

6. Representations and Warranties. Debtor expressly represents and warrants that:

a. Debtor owns the entire right, title and interest in and to each of the Trademarks.

b. To the knowledge of Debtor, the Trademarks do not infringe on any intellectual property rights of others in any material respect.

c. There are no claims, demands or proceedings instituted, pending or to the knowledge of Debtor, threatened in writing by any third party pertaining to or challenging Debtor's rights to the Trademarks, or the right to use such Trademarks in the Business (as such term is defined in the Note Purchase Agreement).

d. Debtor knows of no facts that would render any of the Trademarks unenforceable or subject to a third party infringement action. Secured Party represents that it has the power to enter into this Agreement and perform the obligations assumed hereunder.

e. The Debtor's rights in such Trademarks are and shall remain free and clear of any lien, pledge, security interest, encumbrance, license, assignment, collateral assignment or charge of any kind, including without limitation any filing of or agreement to file a financing statement as Debtor under the Uniform Commercial Code or any similar statute, except for the lien and security interest created by this Agreement and except for the Permitted Liens. Except for the Permitted Liens, the Debtor has not made a previous assignment, conveyance, transfer or agreement in conflict herewith. The Debtor further represents and warrants to the Secured Party that Appendix A hereto is a true and correct list of all Trademarks owned or used by the Debtor as of the date hereof and that Appendix A is true and correct with respect to the matters set forth therein as of the date hereof.

f. The Debtor has full power to grant a security interest in and assign all the Trademarks pursuant to this Agreement.

g. The Debtor has made all necessary filings and recordations to protect its interest in the Trademarks.

h. Upon filings and the acceptance thereof in the appropriate offices under the Uniform Commercial Code and in the United States Patent and Trademark Office and the United States Copyright Office, this Agreement will create a valid and duly perfected lien and security interest in the Trademarks located in the United States subject only to the lien and security interest created by this Agreement and the Permitted Liens.

7. Covenants of the Debtor. The Debtor hereby covenants and agrees that:

a. Except for Permitted Liens, the Debtor will defend the Trademarks and the security interests therein against all claims and demands of all Persons at any time claiming any adverse interest with respect thereto.

b. The Debtor will, promptly following its becoming aware thereof, notify the Secured Party of (A) any final adverse determination in any proceeding in the United States Patent and Trademark Office or United States Copyright Office with respect to any of the Trademarks or (B) the institution of any proceeding or any adverse determination in any federal, state, local or foreign court or administrative bodies regarding the Debtor's claim of ownership in or right to use any of the Trademarks, its right to register any such Trademarks or its right to keep and maintain such registration.

c. The Debtor will not sell or offer to sell or otherwise assign, transfer or dispose of, or grant any option with respect to any of the Trademarks or any interest therein (other than licenses to use the Trademarks which are granted in the ordinary course of the Debtor's business) without the prior written consent of the Secured Party.

d. The Debtor authorizes the Secured Party to modify this Agreement by amending Appendix A hereto to include any future Trademarks.

8. Grant of License to Trademarks. Without in any way limiting the scope of the lien and security interest created hereby, the Debtor hereby grants to the Secured Party an irrevocable, nonexclusive license and right to use all of the Trademarks in the processing, production, marketing, distribution or sale by the Secured Party of all or any part of its collateral for the Obligations in connection with any foreclosure or other realization on such collateral. The license and rights granted the Secured Party hereby shall be exercisable without the payment of any royalty, fee, charge or any other compensation to the Debtor or any other party. Such license and rights shall include reasonable access to all records in which any of the licensed items may be recorded or stored. Such license and rights shall be absolute and unconditional to the extent used for the purpose stated above.

9. Termination of Security Interests and Licenses; Release of Trademarks; Revival of Obligations. Upon the repayment and performance in full of all of the Obligations, the security interest and license granted to the Secured Party shall terminate and all rights in the Trademarks shall revert to the Debtor. Upon any such termination of the security interests and licenses or release of the Trademarks, the Secured Party will, at the Debtor's expense, promptly execute and deliver to the Debtor such documents as the Debtor shall reasonably request to evidence the termination of the security interests and licenses or the release of such Trademarks, as the case may be. Said execution and delivery shall include an instrument in form recordable in the United States Patent and Trademark Office or the United States Copyright Office, as the case may be, by which the Secured Party shall terminate, release and without representation, recourse or warranty, reassign to the Debtor all rights in each Trademark, including each registration thereof and application therefor, conveyed and transferred to the Secured Party pursuant to this Agreement. If any payment applied by the Secured Party to Obligations is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Debtor or any other obligor), the Obligations to which such payment was applied shall for the purposes of this Agreement be deemed to have continued in existence, notwithstanding such application, and this Agreement shall be enforceable as to such Obligations as fully as if such application had never been made, notwithstanding the surrender of any Note, termination of any financing statement, or cancellation of any instrument or document.

10. General Provisions.

a. Severability. It is expressly agreed that if any term or provision of this Agreement is invalid or unenforceable in any jurisdiction, then such provision in such jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

b. No Waiver. Failure of any party at any time to require performance of any provision of this Agreement shall not affect the right of any party to require full performance thereafter; a waiver by any party of a breach of any provision of this

Agreement shall not constitute a modification of this Agreement or prevent that party from again enforcing such term or condition in the future with respect to subsequent events.

c. Relationship of the Parties. The relationship established between the parties by this Agreement shall be solely that of debtor and secured party. Neither party hereto shall have any right or shall attempt to enter into contracts or commitments on behalf of the other party or to bind the other party in any respect whatsoever.

d. Counterparts; Facsimile Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one document. This Agreement may be signed by facsimile, and facsimile signatures shall be binding, but the parties shall provide each other with originally signed copies of the Agreement as soon as possible thereafter.

e. Captions. The captions in this Agreement are intended solely as a matter of convenience and shall be given no effect in the construction or interpretation of this Agreement.

f. Recitals. The parties agree that the recitals prior to Section 1 of this Agreement are true and correct and are hereby incorporated herein by this reference.

g. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin, USA.

h. Further Assurances. Upon request by Secured Party, Debtor shall take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or appropriate to confirm Secured Party's ownership of the Trademarks and to otherwise effectuate the transactions contemplated by this Agreement.

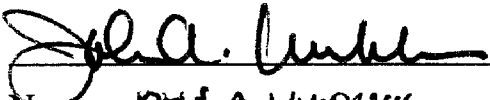
IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date first written above.

DEBTOR:

SECURED PARTY:

WPB ACQUISITION, LLC

STATE OF WISCONSIN INVESTMENT BOARD

By:   
Name: JOHN A. WONDOLICK  
Title: CHIEF EXECUTIVE OFFICER

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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DEBTOR:

SECURED PARTY:

WPB ACQUISITION, LLC

STATE OF WISCONSIN INVESTMENT BOARD

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name: \_\_\_\_\_

Name: Monica A. Jaehrig

Title: \_\_\_\_\_

Title: Portfolio Manager



APPENDIX A

LIST OF THE ASSIGNED TRADEMARKS

<b>Trademark Name</b>	<b>Country</b>	<b>Application Number</b>	<b>Application Date</b>	<b>Registration Number</b>	<b>Registration Date</b>
ATWATER CAREY	U.S.	76/368,779	8-Feb-02	2,624,941	24-Sept-02
BAITMATE	U.S.	73/547,761	15-Jul-85	1,379,341	21-Jan-96
LIVE	U.S.	74/423,904	11-Aug-93	1,933,726	7-Nov-95
NON SCENTS	U.S.	75/574,179	20-Oct-98	2,292,758	16-Nov-99
POTABLE AQUA	U.S.	73/227,496	15-Aug-79	1,194,490	27-Apr-82
POTABLE AQUA	U.S.	76/357,887	11-Jan-02	2,642,741	29-Oct-02
POTABLE AQUA and Design	Canada	538,153	12-Mar-85	314,132	9-May-86
STING-EZE	U.S.	73/227,498	15-Aug-79	1,228,901	1-Mar-83
STING-EZE and Design	Canada	538,753	22-Mar-85	331,775	11-Sept-87

APPENDIX B

PERMITTED LIENS

Security interest granted to TCF National Bank pursuant to the Security Agreement dated as of May 23, 2003 between WPB Acquisition, LLC and TCF National Bank.