

09-25-2003

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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

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

1. Name of conveying party(ies): CUMBERLAND FARMS, INC.

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 09/10/2003

2. Name and address of receiving party(ies)

Name: TRANSAMERICA BUSINESS CAPITAL CORPORATION, as Agent

Street Address: 555 Theodore Fremd Avenue

City: Rye State: NY Zip: 10580

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State of Delaware 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) See Schedule B Attached Hereto

B. Trademark Registration No.(s) See Schedule B Attached Hereto

Additional number(s) attached Yes No

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

Name: Otterbourg, Steindler, Houston & Rosen, P.C.

Attn: Preston R. Cappello

Street Address: 230 Park Avenue

City: New York State: NY Zip: 10169

6. Total number of applications and registrations involved: 22

7. Total fee (37 CFR 3.41) \$ 565.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Preston R. Cappello Name of Person Signing

Signature: Preston R. Cappello Date: September 24, 2003

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

09/26/2003 GTON11 00000019 2411356

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

01 FC:8521 40.00 OP 02 FC:8522 525.00 OP

Trademarks and Trademark Applications

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Expiration Date</u>
CAPPA COOLA (CLASS 30)	2,411,356	12/05/2000	12/05/2010
CAPPA COOLA AND DESIGN (CLASS 30)	2,507,690	12/13/2001	11/13/2007
COFFEE CUP CHARACTER AND DESIGN (CLASS 35)	2,454,545	05/29/2001	05/29/2007
HEATBEATER (CLASS 32)	2,601,605	07/30/2002	07/30/2008
HEATBEATER (CLASS 29 & 30)	2,583,242	06/18/2002	06/18/2008
THE AGENTS	2,273,302	08/24/1999	08/24/2005
C Design (CLASS 32)	2,691,446	02/25/2003	02/25/2013
CLOVERFIELD & DESIGN (CLASS 30)	2,173,073	07/14/1998	07/14/2008
CUMBERLAND FARMS (CLASS 42)	1,261,294	12/13/1983	12/13/2003
CUMBERLAND FARMS & TREE LOGO (CLASS 42)	1,285,634	07/10/1984	07/10/2004
CUMBERLAND FARMS & DESIGN (CLASS 30)	907,638	02/09/1971	02/09/2011
CUMBY'S ULTIMATE SCOOP (CLASS 30)	2,701,837	04/01/2003	04/01/2013
FUEL FOR THE NEXT CENTURY (CLASS 4)	2,465,154	07/03/2001	07/03/2011
CUMBERLAND FARMS (STYLIZED) (CLASS 30)	813,569	08/23/1966	08/23/2006
TREE DESIGN (CLASS 29,30)	1,365,785	10/15/1985	10/15/2005

<u>Trademark Application</u>	<u>Application/Serial Number</u>	<u>Application Date</u>
CUMBERLAND FARMS (CLASS 30)	78/218988	02/26/2003
CUMBY'S (CLASS 30)	76/249707	05/01/2001
CUMBY'S (CLASS 35)	78/236312	04/10/2003

CUMBY'S CHILL ZONE (CLASS 35)	76/407778	05/14/2002
CUMBY'S ITALIAN ICE (CLASS 30)	78/192486	12/09/2002
CUMBY'S SNACKS (CLASS 30)	78/201767	01/09/2003
NEWPORT (CLASS 32)	76/126454	09/12/2000

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT, made and entered into as of September 10, 2003 (this "Agreement"), by Cumberland Farms, Inc., a Delaware corporation ("Borrower") in favor of Transamerica Business Capital Corporation, as agent (in such capacity, the "Agent") for the Lenders referred to below.

## W I T N E S S E T H :

WHEREAS, the Borrower, the lenders from time to time parties thereto (the "Lenders"), Fleet National Bank, as syndication agent, Wachovia Bank, National Association, as documentation agent, and the Agent are entering into the Second Amended and Restated Loan and Security Agreement dated as of even date herewith (as amended, supplemented or otherwise modified from time to time, the "Loan Agreement"; capitalized terms which are used herein and not otherwise defined shall have the meanings given to them in the Loan Agreement); and

WHEREAS, it is a condition precedent to the effectiveness of the Loan Agreement that the Borrower shall have executed and delivered this Agreement.

NOW, THEREFORE, in consideration of the premises hereof and to induce the Agent and the Lenders to enter into the Loan Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

## AGREEMENT

### SECTION 1. Security for Obligations.

(a) Security Interest in Patents. To secure the full and prompt payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the Obligations, Borrower hereby grants and conveys to the Agent, for the ratable benefit of the Lenders, a valid security interest in all of its right, title and interest in the United States and throughout the world in, to and under all of the now owned and hereafter acquired United States and foreign patents and all patent and design patent applications, and all issues, reissues, re-examinations, continuations, continuations-in-part or divisions thereof (hereinafter collectively referred to as the "Patents") and all proceeds thereof. All registered and unexpired patents and all currently pending patent applications with the U.S. Patent and Trademark Office (the "PTO") in which Borrower has an ownership interest are listed on Schedule A. Borrower hereby further

grants, assigns and conveys to the Agent, for the ratable benefit of the Lenders, a valid security interest in all of the right, title and interest of Borrower in and to all proceeds, income, royalties, damages and payments now or hereafter due and payable under or in respect of all Patents and in and to all rights during the term of this Agreement to sue, collect and retain damages and payments for past or future infringements of the Patents.

(b) Security Interest in Trademarks. To secure the full and prompt payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the Obligations, Borrower hereby grants and conveys to the Agent, for the ratable benefit of the Lenders, a valid security interest in all of its right, title and interest in the United States and throughout the world in, to and under all of its now owned and hereafter acquired trademarks, service marks and trade names, and all similar designations of source or origin (whether or not such name is the subject of a registration or an application for registration), and all registrations and applications to register the same, and all renewals thereof, and the goodwill of the business relating thereto (hereinafter collectively referred to as the "Trademarks") and all proceeds thereof. All trademark registrations and all currently pending trademark applications for registration with the PTO in which Borrower has an ownership interest are listed on Schedule B. Borrower hereby further grants to the Agent, for the ratable benefit of the Lenders, a valid security interest in all of its right, title and interest in and to (i) all proceeds, income, royalties, damages and payments now and hereafter due and payable under or in respect of all Trademarks, (ii) all rights during the term of this Agreement to sue, collect and retain for the Agent's and the Lenders' ratable benefit damages and payments for past or future infringements of the Trademarks and (iii) all rights under or interest in any trademark license agreements or service mark license agreements with any other party, whether Borrower is a licensee or licensor under any such license agreement.

(c) Security Interest in Copyrights. To secure the full and prompt payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the Obligations, Borrower hereby grants to the Agent, for the ratable benefit of the Lenders, a valid security interest in all of its right, title and interest in the United States and throughout the world in, to and under all of its now owned and hereafter acquired copyrights, and all registrations and applications to register the same, all renewals thereof (hereinafter collectively referred to as the "Copyrights"), any written agreement, naming Borrower as licensor or licensee, granting any right under any copyright in any work which is or may be subject to copyright protection pursuant to Title 17 of the U.S. Code, and all physical things embodying such works (including, without limitation, copies thereof) created or otherwise used in the business of Borrower and all proceeds thereof. All copyright registrations and all currently pending copyright applications for registration with the United States Copyright Office in which Borrower has an ownership interest are listed on Schedule C. Borrower hereby further grants to the Agent, for the ratable benefit of the Lenders, a valid security interest in all of its right, title and interest in and to all proceeds, income, royalties, damages and payments now and hereafter due and payable under or in respect of all Copyrights and in and to all rights during the term of this Agreement to sue, collect and retain for the Agent's and the Lenders' ratable benefit damages and payments for past or future infringements of the Copyrights.

(d) Security Interest in Proprietary Information. To secure the full and prompt payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the Obligations, Borrower hereby grants to the Agent, for the ratable benefit of the Lenders, a valid security interest in all of its right, title and interest in the United States and throughout the world in, to and under all of its now owned and hereafter acquired inventions, discoveries, trade secrets, improvements, processes, methods, formulae, applications, ideas, know-how, customer lists, corporate and other business records, license rights, advertising materials, operating manuals, sales literature, drawings, specifications, descriptions, name plates, catalogues, confidential information, engineering contracts, proprietary information, and goodwill (and all other assets which uniquely reflect such goodwill) (collectively, the "Proprietary Information" and, together with the Patents, the Trademarks, the Copyrights and all other assets described above and described below in this clause (d), the "Intellectual Property Collateral"), and to all income, royalties, damages and payments now and hereafter due and/or payable therefor or in respect thereof and all proceeds thereof.

(e) Certain Exclusions from Grant of Security Interests. Anything in this Agreement to the contrary notwithstanding, the foregoing grant, assignment, transfer, and conveyance of security interests shall not extend to, and the term "Intellectual Property Collateral" shall not include, any item of Intellectual Property Collateral described in Section 2(a), (b), (c) and (d) above that is now or hereafter held by Borrower as licensee, solely in the event and to the extent that: (i) as the proximate result of the foregoing grant, assignment, transfer, or conveyance of security interests, Borrower's rights in or with respect to such item of Intellectual Property Collateral would be forfeited or would become void, voidable, terminable, or revocable, or if Borrower would be deemed to have breached, violated, or defaulted the underlying license or other agreement that governs such item of Intellectual Property Collateral pursuant to the restrictions in the underlying license or other agreement that governs such item of Intellectual Property Collateral; (ii) any such restriction shall be effective and enforceable under applicable law, including the Uniform Commercial Code (the "UCC"); and (iii) any such forfeiture, voidness, voidability, terminability, revocability, breach, violation, or default cannot be remedied or prevented by Borrower using its reasonable efforts (but without any obligation to make any material expenditures of money or to commence legal proceedings); provided, however, that the foregoing grant, assignment, transfer, and conveyance of security interests shall extend to, and the term "Intellectual Property Collateral" shall include (y) any and all proceeds of such item of Intellectual Property Collateral and (z) upon any such licensor or other applicable party's consent with respect to any such otherwise excluded item of Intellectual Property Collateral being obtained, thereafter such item of Intellectual Property Collateral as well as any proceeds thereof that might theretofore have been excluded from such grant, assignment, transfer, and conveyance of security interests and the term "Intellectual Property Collateral".

## SECTION 2. Representations, Warranties and Covenants of Borrower.

(a) Borrower is and will continue to be the owner of all of the Intellectual Property Collateral, free from any adverse claim, security interest, lien or

encumbrance in favor of any Person except for the security interest granted under the Loan Documents, except as set forth on Schedule D attached hereto and made a part hereof, except for Liens, licenses and other encumbrances permitted by the Loan Agreement and except as otherwise expressly permitted pursuant to this Section 2.

(b) None of the Intellectual Property Collateral is or shall become subject to any lien, security interest or other encumbrance in favor of any Person other than the Agent, except as set forth on Schedule D attached hereto and made a part hereof and except for any Liens, licenses and other encumbrances permitted by the Loan Agreement, and Borrower agrees not to license, transfer, convey or encumber any interest in or to its Intellectual Property Collateral except for non-exclusive licenses granted in the ordinary course of business and on commercially reasonable terms. Any license of the Intellectual Property Collateral granted after the Closing Date by Borrower (each, a "License") shall be in writing and shall not prohibit Borrower from assigning, transferring, selling, sublicensing or otherwise disposing of all or any of its right, title and interest thereunder to the Agent or its designees in accordance with Section 4 hereof.

(c) Except for Liens, licenses and other encumbrances permitted by the Loan Agreement and except as disclosed in Schedule D hereto, Borrower has not made any previous assignment, transfer or agreement in conflict herewith or constituting a present or future assignment, transfer, or encumbrance of any of its Intellectual Property Collateral.

(d) Except as disclosed in Schedule D hereto, there is no financing statement or other document or instrument now signed or on file in any public office granting a security interest in or otherwise encumbering any part of the Intellectual Property Collateral, except those showing the Agent as secured party. So long as any Obligations or Letters of Credit remain outstanding or any Commitments remain in effect, Borrower will not execute, and there will not be on file in any public office, any such financing statement or other document or instruments, except financing statements filed or to be filed in favor of the Agent and except as permitted in accordance with Section 2(a) or Section 2(b) above.

(e) Subject to any limitation stated therein or in connection therewith, all information furnished to the Agent and the Lenders concerning the Intellectual Property Collateral and proceeds thereof is and will be accurate and correct in all material respects.

(f) Except as disclosed in Schedule D hereto, all Intellectual Property Collateral consisting of applications for Patents and for registrations of Trademarks and Copyrights has been duly and properly filed and all Intellectual Property Collateral consisting of issued or granted Patents and of registrations of Trademarks and Copyrights (including, without limitation, any and all renewals, reissues, continuations or divisions thereof, as the case may be) has been duly and properly maintained except where the abandonment or dedication to the public of any of such Patents, Trademarks, or Copyrights of Borrower is deemed to be in the best interests of Borrower in the exercise of its reasonable business judgment.

(g) Promptly upon the receipt by Borrower of an official filing receipt indicating that a patent application or an application for registration of a trademark has been received from Borrower by the PTO or an application for registration of a copyright has been received from Borrower by the U.S. Copyright Office and upon the issuance of any patent or of any trademark or copyright registration, Borrower shall provide Agent with prompt written notice thereof and, promptly upon the request of the Agent, shall take all actions and execute and deliver to the Agent all documents necessary or reasonably appropriate to perfect a first priority security interest in such patent, trademark or copyright application or such patent or trademark or copyright registration, and Borrower shall quarterly, or if an Event of Default has occurred and is continuing, more frequently as the Agent shall reasonably request, execute and deliver to the Agent such instruments as are necessary or reasonably appropriate to perfect, protect or establish the first priority lien or security interest granted hereunder to be recorded in the PTO with respect to all United States patent applications filed by it or patents issued to it during the prior calendar quarter or preceding period, as the case may be, and with respect to all trademark applications for registration filed by it or trademark registrations issued to it during the prior calendar quarter. Borrower shall quarterly, or if an Event of Default has occurred and is continuing, more frequently as the Agent shall request, execute and deliver to the Agent such instruments as are necessary or reasonably appropriate to perfect, protect or establish the first priority lien or security interest granted hereunder to be recorded in the U.S. Copyright Office with respect to United States copyright applications for registration filed by it or copyright registrations issued to it during the prior calendar quarter or preceding period, as the case may be.

(h) Except for dispositions of the Intellectual Property Collateral permitted by the Loan Agreement, Borrower shall not take any action, or permit any action to be taken by others subject to Borrower's control, including any such licensees, or fail to take any action, or permit others subject to Borrower's control, including any such licensees, to fail to take any action, subject to the provisions of Section 2(g), which would, in the case of any such actions or failures to act taken singly or together, adversely affect the validity, grant and enforceability of the security interest granted to the Agent herein; provided, however, that, so long as no Event of Default shall have occurred and be continuing, Borrower may take or fail to take such actions in the ordinary course of business, when deemed to be in the best interest of Borrower in the exercise of its reasonable business judgment, and is otherwise not explicitly prohibited by this Agreement. Notwithstanding the foregoing, Borrower shall be permitted to abandon or dedicate to the public any of the Trademarks, Patents, Copyrights or other Intellectual Property Collateral in accordance with the terms of Section 2(1).

(i) Borrower shall promptly notify the Agent, in writing, of any suit, action, proceeding, claim or counterclaim brought against Borrower that would reasonably be expected to adversely affect the Intellectual Property Collateral in any material respect, and shall, on request, deliver to the Agent a copy of all pleadings, papers, orders or decrees theretofore and thereafter filed in any such suit, action or proceeding, and shall keep the Agent duly advised in writing of the progress of any such suit.



(j) In the event of any material infringement of the Intellectual Property Collateral by others or in the event of any other conduct materially detrimental to the Intellectual Property Collateral by others known or brought to the attention of Borrower, Borrower shall as promptly as practicable notify the Agent in writing at the address set forth in the Loan Agreement of such infringement or other conduct and the full nature and extent of such infringement or other conduct known to Borrower.

(k) If requested by the Agent, Borrower shall provide the Agent a complete report with respect to its Patents, Trademarks and Copyrights and all licenses thereof granted by Borrower. Upon request by the Agent, Borrower shall deliver to counsel for the Agent copies of any such Patents, Trademarks and Copyrights and other documents concerned with or related to the prosecution, protection, maintenance, enforcement and issuance of the Intellectual Property Collateral.

(l) Except where the abandonment or dedication to the public of any of the Intellectual Property Collateral is deemed to be in the best interest of Borrower in the exercise of its reasonable business judgment, Borrower shall notify the Agent in writing at the address set forth in the Loan Agreement at least 30 days prior to any proposed voluntary abandonment of any of its Patents, Trademarks and Copyrights and obtain the prior written consent of the Agent, on behalf of the Required Lenders or all of the Lenders, as the case may be.

(m) During the term of this Agreement, Borrower agrees:

(i) whenever any of the registered Trademarks are used by or on behalf of Borrower to, if reasonably practicable and to the extent consistent with past practice, affix or cause to be affixed a symbol or notice that the mark is a registered trademark or service mark, which symbol or notice shall be in a form accepted or required by the trademark marking laws of each country in which the mark is so used and registered; and

(ii) whenever any of the underlying works covered by registered Copyrights are used by or on behalf of Borrower to (only to the extent required under the laws of the relevant countries, jurisdictions, territories, or international accords) affix or cause to be affixed a notice that said underlying works are so covered, which notice shall be in a form accepted or required by the copyright laws of such country in which said underlying works are so used and registered.

(n) Borrower agrees, upon the reasonable request by the Agent, during the term of this Agreement:

(i) to execute, acknowledge and deliver all additional instruments and documents necessary or appropriate to effect the purposes and intents of this Agreement, in a form reasonably acceptable to counsel for the Agent;

(ii) to do all such other acts as may be necessary or appropriate in order to carry out the purposes and intents of this Agreement, and to create, evidence, perfect (except to the extent not perfectible by using commercially reasonable efforts pursuant to the laws of the relevant country, jurisdiction or territory) and continue the security interests of the Agent, for the ratable benefit of the Lenders, in its Intellectual Property Collateral; and

(iii) Without limiting the generality of the foregoing, Borrower:

(A) authorizes the Agent, in the Agent's sole discretion after ten (10) Business Days prior notice to Borrower, to modify this Agreement without first obtaining Borrower's approval of or signature to such modification by amending Schedule A, B or C hereof to include a reference to any right, title or interest in any existing Copyright, Patent or Trademark acquired or developed by Borrower after the execution hereof, or to delete any reference to any right, title or interest in any Copyright, Patent or Trademark in which Borrower no longer has or claims any right, title or interest; and

(B) hereby authorizes the Agent, in the Agent's sole discretion, to file one or more financing or continuation statements or other notices of security interest, and after ten (10) Business Days prior notice to Borrower, amendments thereto, relative to all or any portion of the Intellectual Property Collateral without the signature of Borrower where permitted by law.

(o) Borrower represents and warrants to the Agent that:

(i) the security interests granted to the Agent hereunder in United States patents and patent applications (the "U.S. Patents") and in the United States trademark registrations and applications for registration (the "U.S. Trademarks"), upon the filing of appropriate filings with the PTO and the proper filing of appropriate UCC financing statements, shall constitute a first priority, perfected security interest in the U.S. Patents and U.S. Trademarks; provided, however, that future recordation, filing or registration of such security interest may be required to perfect such security interest in U.S. Patents and U.S. Trademarks acquired by Borrower after the date hereof;

(ii) the security interests granted to the Agent hereunder in the United States registered Copyrights and Copyright applications for registration (the "U.S. Copyrights"), upon the filing of appropriate filings with the United States

Copyright Office and the proper filing of appropriate UCC financing statements, shall constitute a first priority, perfected security interest in the U.S. Copyrights; provided, however, that future recordation, filing or registration of such security interest may be required to perfect such security interest in U.S. Copyrights registered or acquired by Borrower after the date hereof; and

(iii) the security interests granted to the Agent hereunder in the Proprietary Information located in the United States, upon the filing of any appropriate filings with the PTO or United States Copyright Office and the proper filing of appropriate UCC financing statements, shall constitute a first priority, perfected security interest in such Proprietary Information, to the extent that a first security interest can be created through such filings; provided, however, that future recordation, filing or registration of such security interests may be required to perfect such security interest in the Proprietary Information created, registered or acquired by Borrower after the date hereof.

(p) Borrower shall, concurrently with the execution and delivery of this Agreement, execute and deliver to Agent five (5) originals of a Special Power of Attorney in the form of Annex I annexed hereto for the implementation of the assignment, sale or other disposition of the Intellectual Property Collateral pursuant to Agent's exercise of the rights and remedies granted to Agent hereunder.

**SECTION 3. Indemnity.** Borrower agrees to indemnify the Agent and each Lender from and against any and all claims, losses and liabilities arising out of or resulting from this Agreement (including, without limitation, enforcement of this Agreement and any actions taken pursuant to Section 4 or any failure to act thereunder), except for claims, losses or liabilities resulting from the gross negligence or willful misconduct of the Agent or any Lender.

**SECTION 4. Rights and Remedies Upon an Event of Default.**

(a) If any Event of Default shall have occurred and be continuing, then and in every such case, subject to any mandatory requirements of applicable law then in effect, the Agent, in addition to other rights and remedies provided for herein and any rights now or hereafter existing under applicable law, shall have all rights and remedies as a secured creditor under the UCC in all relevant jurisdictions and may:

(i) personally, or by agents or attorneys, immediately take possession of any tangible item or embodiment of the Intellectual Property Collateral or any part thereof, from Borrower or any other Person who then has possession of any part thereof, with or without notice or process of law, and for that purpose may enter upon Borrower's premises where any of such tangible items or embodiments of the Intellectual Property Collateral is located and remove the same and use in

connection with such removal any and all services, supplies, aids and other facilities of Borrower;

(ii) sell, assign or otherwise liquidate, or direct Borrower to sell, assign or otherwise liquidate, any or all of the Intellectual Property Collateral or any part thereof, and take possession of the proceeds of any such sale or liquidation;

(b) Any collateral repossessed by the Agent under or pursuant to Section 4(a) and any other Intellectual Property Collateral whether or not so repossessed by the Agent, may, upon the occurrence and during the continuance of an Event of Default, be sold, assigned, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Agent may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any such disposition which shall be a private sale or other private proceedings permitted by such requirements shall be made upon not less than 10 days' written notice to Borrower. Any such disposition which shall be a public sale permitted by such requirements shall be made upon not less than 10 days' written notice to Borrower specifying the time and place of such sale and, in the absence of applicable requirements of law, shall be by public auction (which may, at the option of the Agent, be subject to reserve), after publication of notice of such auction not less than 10 days prior thereto in two newspapers in general circulation in the jurisdiction in which such auction is to be held. To the extent permitted by any such requirement of law, the Agent may bid for and become the purchaser of the Intellectual Property Collateral or any item thereof, offered for sale in accordance with this Section without accountability to Borrower (except to the extent of surplus money received). If, under mandatory requirements of applicable law, the Agent shall be required to make disposition of the Intellectual Property Collateral within a period of time which does not permit the giving of notice to Borrower as hereinabove specified, the Agent need give Borrower only such notice of disposition as shall be reasonably practicable in view of such mandatory requirements of applicable law. The Agent shall not be obligated to make any sale of Intellectual Property Collateral regardless of notice of sale having been given. The Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(c) Upon the occurrence and during the continuance of an Event of Default, the Agent shall have the right at any time to make any payments and do any other acts the Agent may deem necessary to protect its security interests in the Intellectual Property Collateral, including, without limitation, the rights to pay, purchase, contest or compromise any encumbrance, charge or Lien which, in the reasonable judgment of the Agent, appears to be prior to or superior to the security interests granted hereunder, and appear in and defend any action or proceeding purporting to affect its security interests in, and/or the value of, the Intellectual Property Collateral. Borrower agrees to reimburse the Agent for all reasonable payments made and expenses incurred under this Agreement including reasonable fees, expenses and disbursements of attorneys and paralegals acting for the Agent, including any of the foregoing payments under, or acts taken to

protect its security interests in, the Intellectual Property Collateral, which amounts shall be secured under this Agreement, and agree that it shall be bound by any payment made or act taken by the Agent hereunder absent the Agent's gross negligence or willful misconduct. The Agent shall have no obligation to make any of the foregoing payments or perform any of the foregoing acts.

(d) Borrower hereby irrevocably authorizes and appoints the Agent, or any Person or agent the Agent may designate, as Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise, at Borrower's cost and expense, in the Agent's discretion, to, upon the occurrence and during the continuance of an Event of Default, take any action and to execute any instrument that the Agent may deem necessary or advisable to accomplish the purposes and intents of this Agreement and to exercise all of the following powers, which powers, being coupled with an interest, shall be irrevocable until all of the Obligations shall have been paid and satisfied in full:

(i) ask for, demand, collect, bring suit, recover, compromise, administer, accelerate or extend the time of payment, issue credits, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Intellectual Property Collateral;

(ii) receive, take, endorse, negotiate, sign, assign and deliver and collect any checks, notes, drafts or other instruments, documents and chattel paper, in connection with clause (i) above;

(iii) give customers indebted on the Intellectual Property Collateral of Borrower notice of the Agent's interest therein, and/or to instruct such customers to make payment directly to the Agent for Borrower's account and/or to request, at any time from customers indebted on the Intellectual Property Collateral, verification of information concerning the Intellectual Property Collateral and the amounts owing thereon;

(iv) convey any item of Intellectual Property Collateral to any purchaser thereof;

(v) record any instruments under Section 2(g) or (n) hereof;

(vi) make any payments or take any acts under Section 4(c) hereof;  
and

(vii) file any claims or take any action or institute any proceedings that the Agent may reasonably deem necessary or desirable for the collection of any of the Intellectual Property Collateral or otherwise to enforce the rights of the Agent with respect to any of the Intellectual Property Collateral.

The Agent's authority under this Section 4(d) shall include, without limitation, the authority to execute and give receipt for any certificate of ownership or any document, transfer title to any item of Intellectual Property Collateral of Borrower, sign Borrower's name on all financing statements or any other documents deemed necessary or appropriate to preserve, protect or perfect the security interest in the Intellectual Property Collateral and to file the same, prepare, file and sign Borrower's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with any Intellectual Property Collateral of Borrower and prepare, file and sign Borrower's name on a proof of claim in bankruptcy or similar document against any customer of Borrower, and to take any other actions arising from or incident to the rights, powers and remedies granted to the Agent in this Agreement. This power of attorney is coupled with an interest and is irrevocable by Borrower.

(e) All cash proceeds received by the Agent in respect of any sale of, collection from, or other realization upon all or any part of the Intellectual Property Collateral shall be applied by the Agent against the Obligations in such order as the Agent may determine in accordance with the Loan Agreement.

(f) The Agent shall have the right of setoff as provided in the Loan Agreement.

(g) Upon the occurrence and during the continuance of an Event of Default, all income, royalties, payments and damages under or in respect of the Intellectual Property Collateral of Borrower, if any, received thereafter shall be held by Borrower in trust for the benefit of the Agent and the Lenders, separate from Borrower's own property or funds and immediately turned over to the Agent with proper assignments or endorsements. Upon the occurrence and during the continuance of an Event of Default, the Agent shall have the right to notify payors of income, royalties, payments and damages under or in respect of the Intellectual Property Collateral to make payment directly to the Agent to be applied against the Obligations in such order as the Agent may determine in accordance with the Loan Agreement.

(h) Each and every right, power and remedy hereby specifically given to the Agent shall be in addition to every other right, power and remedy specifically given under this Agreement or under the other Loan Documents or now or hereafter existing at law or in equity, or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the Agent. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise of any other or others. No delay or omission of the Agent in the exercise of any such right, power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or any acquiescence therein.

## SECTION 5. Miscellaneous Provisions.

(a) Notices. All notices, approvals, consents or other communications required or desired to be given hereunder shall be in writing and sent by certified or registered mail, return receipt requested, or by overnight delivery service, with all charges prepaid, or by telecopier, if to the Agent, or any of the Lenders, then to Transamerica Business Capital Corporation, 555 Theodore Fremd Avenue, Suite C-301, Rye, New York 10580, Telecopy: (914) 921-0110, Attn.: Mr. Michael S. Burns, with a copy to Transamerica Business Capital Corporation, 9399 West Higgins Road, Suite 600, Rosemont, Illinois 60018, Telecopy: (847) 685-1143, Attn.: General Counsel, and if to Borrower, then to Borrower at 777 Dedham Street, Canton, Massachusetts 02021, Telecopy: (781) 821-5723, Attn.: Ms. Lily H. Bentas, President with a copy to: Cumberland Farms, Inc., 777 Dedham Street, Canton, Massachusetts 02021, Telecopy: (781) 821-5723, Attn.: General Counsel, or, as to any party, at such other address as shall be designated by such person in a written notice to each other party. All such notices and correspondence shall be deemed given (i) if sent by certified or registered mail, three (3) Business Days after being postmarked, (ii) if sent by overnight delivery service, when received at the above stated addresses or when delivery is refused and (iii) if sent by facsimile transmission, when receipt of such transmission is acknowledged.

(b) Headings. The headings in this Agreement are for purposes of reference only and shall not affect the meaning or construction of any provision of this Agreement.

(c) Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect, in that jurisdiction only, such clause or provision, or part thereof, 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.

(d) Amendments, Waivers and Consents. Any amendment or waiver of any provision of this Agreement and any consent to any departure by Borrower from any provision of this Agreement shall not be effective unless the same shall be in writing and signed by Borrower and the Agent (with the consent of the Lenders or the Required Lenders, as required by the Loan Agreement) and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(e) Interpretation. Time is of the essence in each provision of this Agreement of which time is an element. All terms not defined herein or in the Loan Agreement shall have the meaning set forth in the UCC, except where the context otherwise requires. To the extent a term or provision of this Agreement conflicts with the Loan Agreement and is not dealt with herein with more specificity, the Loan Agreement shall control with respect to the subject matter of such term or provision. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant in determining the meaning of this Agreement even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.

(f) Continuing Security Interest. This Agreement shall create a continuing security interest in the Intellectual Property Collateral and shall (i) remain in full force and effect until the payment in full in cash of the Obligations and the termination of the Commitments and all outstanding Letters of Credit, (ii) be binding upon Borrower and its successors and assigns and (iii) inure, together with the rights and remedies of the Agent hereunder, to the benefit of the Agent and the Lenders and their respective successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), any Lender may, in accordance with the terms or the Loan Agreement, assign or otherwise transfer all or any portion of its rights and obligations under the Loan Documents (including, without limitation, all or any portion of any Commitment, any Loans or any Notes held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise, in each case as provided in the Loan Agreement.

(g) Reinstatement. To the extent permitted by law, this Agreement shall continue to be effective or be reinstated if at any time any amount received by the Agent or any of the Lenders in respect of the Obligations is rescinded or must otherwise be restored or returned by the Agent or any of the Lenders upon the occurrence or during the pendency of any bankruptcy, reorganization or other similar proceeding applicable to Borrower, or upon or during the occurrence of any dissolution, liquidation or winding up of Borrower, all as though such payments had not been made.

(h) Survival of Provisions. All representations, warranties and covenants of Borrower contained herein shall survive the Closing Date, and shall terminate only upon the full and final payment and performance of the Obligations secured hereby and termination of the Loan Agreement and the other Loan Documents.

(i) Agent May Perform. If Borrower fails to perform any agreement contained herein in accordance with the terms hereof, the Agent may, upon prior notice to Borrower, itself perform, or cause performance of, such agreement, and the reasonable expenses of the Agent incurred in connection therewith shall be payable by Borrower and shall constitute Obligations secured by this Agreement.

(j) No Duty on Agent. The powers conferred on the Agent hereunder are solely to protect the interest of the Lenders in the Intellectual Property Collateral and shall not impose any duty upon the Agent to exercise any such powers. Except for the safe custody of any tangible items or embodiments of Intellectual Property Collateral in its possession and the accounting for moneys actually received by it hereunder, the Agent shall have no duty as to any Intellectual Property Collateral, as to ascertaining or taking action with respect to matters relative to any Intellectual Property Collateral, whether or not the Agent or any Lender has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Intellectual Property Collateral. The Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Intellectual Property Collateral in its possession or control if such Intellectual Property Collateral is accorded



treatment substantially equal to that which the Agent accords its own similar property. To the extent tangible items or embodiments of the Intellectual Property Collateral are held by a custodian, the Agent shall be deemed to have exercised reasonable care if it has selected the custodian with reasonable care.

(k) Delays; Partial Exercise of Remedies. No delay or omission of the Agent to exercise any right or remedy hereunder, whether before or after the happening of any Event of Default, shall impair any such right or shall operate as a waiver thereof or as a waiver of any such Event of Default. No single or partial exercise by the Agent of any right or remedy shall preclude any other or further exercise thereof, or preclude any other right or remedy.

(l) Release; Termination of Agreement.

(i) The Agent shall release any Lien in favor of the Agent upon the sale, transfer or disposition of any Intellectual Property Collateral permitted to be sold, transferred or disposed of pursuant to Section 7.2(e) of the Loan Agreement in accordance with the terms of such Section.

(ii) Subject to the provisions of Section 5(g) hereof, upon the payment in full in cash of the Obligations and the termination of the Commitments and all outstanding Letters of Credit, this Agreement and the Liens created hereby shall terminate and all rights in the Intellectual Property Collateral shall revert to Borrower. At such time, the Agent shall, upon the request and at the expense of Borrower, (A) execute and deliver to Borrower such documents and shall take such other actions as Borrower shall reasonably request to evidence such termination and (B) reassign and redeliver to Borrower all of the Intellectual Property Collateral hereunder which has not been sold, disposed of, retained or applied by the Agent in accordance with the terms hereof. Such reassignment and redelivery shall be without warranty by or recourse to the Agent, except as to the absence of any prior assignments or encumbrances by the Agent of its interest in the Intellectual Property Collateral.

(m) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same agreement. This Agreement may be delivered by telecopier with the same force and effect if it were a manually executed and delivered counterpart.

(n) GOVERNING LAW. THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT AND ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, EQUITY OR OTHERWISE, SHALL BE GOVERNED BY THE INTERNAL LAWS AND DECISIONS OF THE STATE OF NEW YORK (BUT EXCLUDING ANY PRINCIPLES OF CONFLICTS OF LAW OR OTHER RULE OF LAW THAT WOULD CAUSE THE

APPLICATION OF THE LAW OF ANY JURISDICTION OTHER THAN THE LAWS OF THE STATE OF NEW YORK).

(o) SERVICE OF PROCESS. BORROWER AGREES THAT SERVICE OF PROCESS IN ANY ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL) POSTAGE PREPAID, TO BORROWER AT ITS ADDRESS SET FORTH IN SECTION 5(A). NOTHING HEREIN SHALL AFFECT THE RIGHT OF THE AGENT OR ANY LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF THE AGENT OR ANY LENDER TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF OTHER JURISDICTIONS.

(p) SUBMISSION TO JURISDICTION. BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(i) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS TO WHICH IT IS A PARTY, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK, NEW YORK AND THE COURTS TO WHICH AN APPEAL THEREFROM MAY BE TAKEN, WHICHEVER AGENT MAY ELECT;

(ii) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(iii) WAIVES THE RIGHT TO ASSERT ANY SETOFF, COUNTERCLAIM OR CROSS-CLAIM IN RESPECT OF, AND ALL STATUTES OF LIMITATIONS WHICH MAY BE RELEVANT TO, SUCH ACTION OR PROCEEDING.

(q) WAIVER OF JURY TRIAL. BORROWER AND THE AGENT HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS, OR ANY OTHER AGREEMENTS OR TRANSACTIONS RELATED HERETO OR THERETO.

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IN WITNESS WHEREOF, the parties have caused this instrument to be executed by persons duly authorized, as of the date first above written.

ASSIGNOR:

CUMBERLAND FARMS, INC.

By: Harry Brenner  
Name: Harry Brenner  
Title: COO

ASSIGNEE:

TRANSAMERICA BUSINESS CAPITAL  
CORPORATION, as Agent

By: Michael S. Burns  
Name: Michael S. Burns  
Title: S.V.P.

Patents and Patent Applications

None

Trademarks and Trademark Applications

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Expiration Date</u>
CAPPA COOLA (CLASS 30)	2,411,356	12/05/2000	12/05/2010
CAPPA COOLA AND DESIGN (CLASS 30)	2,507,690	12/13/2001	11/13/2007
COFFEE CUP CHARACTER AND DESIGN (CLASS 35)	2,454,545	05/29/2001	05/29/2007
HEATBEATER (CLASS 32)	2,601,605	07/30/2002	07/30/2008
HEATBEATER (CLASS 29 & 30)	2,583,242	06/18/2002	06/18/2008
THE AGENTS	2,273,302	08/24/1999	08/24/2005
C Design (CLASS 32)	2,691,446	02/25/2003	02/25/2013
CLOVERFIELD & DESIGN (CLASS 30)	2,173,073	07/14/1998	07/14/2008
CUMBERLAND FARMS (CLASS 42)	1,261,294	12/13/1983	12/13/2003
CUMBERLAND FARMS & TREE LOGO (CLASS 42)	1,285,634	07/10/1984	07/10/2004
CUMBERLAND FARMS & DESIGN (CLASS 30)	907,638	02/09/1971	02/09/2011
CUMBY'S ULTIMATE SCOOP (CLASS 30)	2,701,837	04/01/2003	04/01/2013
FUEL FOR THE NEXT CENTURY (CLASS 4)	2,465,154	07/03/2001	07/03/2011
CUMBERLAND FARMS (STYLIZED) (CLASS 30)	813,569	08/23/1966	08/23/2006
TREE DESIGN (CLASS 29,30)	1,365,785	10/15/1985	10/15/2005

<u>Trademark Application</u>	<u>Application/Serial Number</u>	<u>Application Date</u>
CUMBERLAND FARMS (CLASS 30)	78/218988	02/26/2003
CUMBY'S (CLASS 30)	76/249707	05/01/2001
CUMBY'S (CLASS 35)	78/236312	04/10/2003

CUMBY'S CHILL ZONE (CLASS 35)	76/407778	05/14/2002
CUMBY'S ITALIAN ICE (CLASS 30)	78/192486	12/09/2002
CUMBY'S SNACKS (CLASS 30)	78/201767	01/09/2003
NEWPORT (CLASS 32)	76/126454	09/12/2000

Copyright Registrations

None

Assignments, Transfers, Agreements, Financing Statements, etc.

None



**SPECIAL POWER OF ATTORNEY**

STATE OF NEW YORK                    )  
   ) ss.:  
 COUNTY OF NEW YORK                )

KNOW ALL MEN BY THESE PRESENTS, that Cumberland Farms, Inc. (the "Borrower"), hereby appoints and constitutes, severally, Transamerica Business Capital Corporation, as agent ("Agent"), and each officer thereof, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Borrower:

1. Execution and delivery of any and all agreements, documents, statements, instruments of assignment, certificates or other papers which Agent, in its discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all right, title, and interest of Borrower in and to (a) any patents and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, (b) any trademarks and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing and (c) any copyright and all registrations, recordings, reissues, extensions and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to the foregoing.

This Power of Attorney is made pursuant to an Intellectual Property Security Agreement, dated as of even date herewith, by Borrower in favor of Agent (the "Security Agreement") and is subject to the terms and provisions thereof.

This Power of Attorney being coupled with an interest, is irrevocable until all "Obligations," as such term is defined in the Security Agreement, are paid in full and the Security Agreement is terminated in writing by Agent.

Dated: \_\_\_\_\_, 2003

CUMBERLAND FARMS, INC.

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

Name:

Title:

STATE OF NEW YORK        )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

On this \_\_\_\_ day of \_\_\_\_\_, 2003, before me personally came \_\_\_\_\_, to me known, who being duly sworn, did depose and say, that he/she is the \_\_\_\_\_ of CUMBERLAND FARMS, INC., the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said corporation.

\_\_\_\_\_

Notary Public