

12-18-2003

OF COMMERCE

TRADEMARKS



102626292

OMB No. 0651-0011 (exp. 4/94)

Tab settings == == 12.1.03

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

1. Name of conveying party(ies):
JARRITOS, INCORPORATED
1477 Lomaland, Suite E-5
El Paso, Texas 79935

Individuals(s) Association
 General Partnership Limited Partnership
 Corporation-State **Delaware**
 Other _____

2. Name and address of receiving party(ies)
Name: **CALIFORNIA COMMERCE BANK.**
Internal Address:
Street Address: **2029 Century**
City: **Los Angeles** State: **California** ZIP: **90067**

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State **Minnesota**
 Other _____

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

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 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

Execution Date: **September 23, 2003**

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

A. Trademark Application No.(s)
Aguas Frescas De Mi Tierra (App No. 76/415,562)

Additional numbers attached? Yes No

B. Trademark Registration No.(s)
Jarritos (Reg No. 2,360,415)

5. Name and address of party to whom correspondence concerning document should be mailed:
Mr. Michael Wright
Name: **Buchalter, Nemer, Fields & Younger**
Internal Address:

Street Address: **601 South Figueroa Street, 24th Floor**
City: **Los Angeles** State: **California** ZIP: **90017**

6. Total number of applications and registrations involved: **7**

7. Total fee (37 CFR 3.41) \$ **190⁰⁰**

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: **20-0052**
(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 of the original document.

Christine E Wilson
MR. MICHAEL WRIGHT

[Signature]

November 20, 2003
Date

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

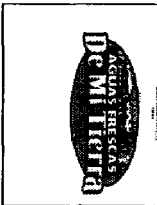
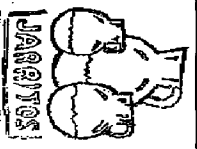
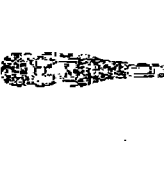


12-01-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #64

10/17/2003
MUELLER 00000285 200052 7615562
\$200.00
\$50.00 DA

TRADEMARK SCHEDULE A

OWNER	TRADEMARK	CLASS/DESCRIPTION	COUNTRY	STATUS	APP NO.	REG NO.	DRAWING
Jarritos, Inc.	AGUAS FRESCAS DE MI TIERRA	IC 32/non-carbonated tropical beverages made with natural flavors from fruit, grains, spices, herbs and botanicals	U.S.	PENDING	76/415,562		
Jarritos, Inc.	DE MI TIERRA (STYLIZED OR WITH DESIGN)	IC35/ non-carbonated, non-alcoholic tropical beverage made with natural flavors from fruits, grains, spices, herbs and botanicals	U.S.	PENDING	78243419		
Jarritos, Inc.	JARRITOS	IC 32 /soft drinks	U.S.	REGISTERED	75/809,105	2,360,415	TYPED
Jarritos, Inc.	JARRITOS	IC 32/mineral water	U.S.	REGISTERED	75/157,681	2,173,641	TYPED
Jarritos, Inc.	JARRITOS (3 JUG DESIGN)	IC 32/ soft drinks	U.S.	REGISTERED	73/274,177	1,191,311	
Jarritos, Inc.	JARRITOS (BOTTLE DESIGN)	IC 32 /soft drinks	U.S.	REGISTERED	74/080,042	1,858,805	
Jarritos, Inc.	MINERAGUA	IC 32/Bottled drinking water with minerals	U.S.	REGISTERED	75/179,199	2,201,924	TYPED

California Commerce Bank

Intellectual Property Security Agreement

Grantor: Jarritos, Incorporated,
a Delaware corporation

Address: c/o TIPP Distributors, L.P.
1477 Lomaland, Suite E-5
El Paso, Texas 79935

Date: September 23, 2003

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT ("Agreement") is entered into on the above date between CALIFORNIA COMMERCE BANK, a California banking corporation ("Bank"), with offices at 2029 Century Park East, 42nd Floor, Los Angeles, California 90067, and the grantor named above ("Grantor"), whose chief executive office is located at the above address with respect to the following:

A. Grantor and Bank are, contemporaneously herewith, entering into that certain Loan and Security Agreement ("Loan Agreement"), and other instruments, documents and agreements contemplated thereby or related thereto (collectively, together with the Loan Agreement, the "Credit Documents"); and

B. Grantor is the owner of certain intellectual property, identified below, in which Grantor, to secure the Loan and Security Agreement, is granting a security interest to Bank.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other good and valuable consideration, the parties hereto mutually agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions.** The following terms, as used in this Agreement, have the following meanings:

"Code" means the California Uniform Commercial Code, as amended and supplemented from time to time, and any successor statute.

"Collateral" means all of Grantor's right to the trademarks and trademark registrations listed on Schedule A, attached hereto, as the same may be updated hereafter from time to time (including all rights in any future trademarks or trademark registrations that may be owned, created, acquired, or used (whether pursuant to a license or otherwise) by Grantor derived from, arising out of, or otherwise related to those listed on Schedule A), in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Grantor or in the name of Bank for past, present, and future infringements of such trademarks, registrations, or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill; and all proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

"Obligations" means all obligations, liabilities, and indebtedness of Grantor to Bank, whether direct, indirect, liquidated, or contingent, and whether arising under this Agreement, the Loan Agreement, any of the other Credit Documents, or otherwise, including all costs and expenses described in Section 11.8 hereof.

1.2 Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and other similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any initially capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Any reference herein to any of the Credit Documents includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Bank or Grantor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by Grantor, Bank, and their respective counsel, and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of Bank and Grantor.

2. GRANT OF SECURITY INTEREST.

2.1 Grant of Security Interest. Grantor hereby grants to Bank a first-priority security interest in all of Grantor's right, title, and interest in and to the Collateral to secure the Obligations.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Grantor hereby represents, warrants, and covenants that:

3.1 Collateral. A true and complete schedule setting forth all federal, state and foreign trademark registrations owned or controlled by Grantor or licensed to Grantor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule A;

3.2 Validity; Enforceability. Each of the trademarks is valid and enforceable, and Grantor is not presently aware of any past, present, or prospective claim by any third party that any of the trademarks are invalid or unenforceable, or that the use of any trademarks violates the rights of any third person, or of any basis for any such claims;

3.3 Title. Grantor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the trademarks, and trademark registrations, free and clear of any liens, charges, and encumbrances, including pledges, assignments, licenses, shop rights, and covenants by Grantor not to sue third persons;

3.4 Notice. Grantor has used and will continue to use proper statutory notice in connection with its use of each of the trademarks;

3.5 Quality. Grantor has used and will continue to use consistent standards of high quality (which may be consistent with Grantor's past practices) in the manufacture, design, sale, and lease of products and the delivery of services under or in connection with the trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks;

3.6 Perfection of Security Interest in the United States. Except for the filing of a financing statement with the Secretary of State of Texas and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by Grantor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by Grantor or for the perfection in the United States or the exercise by Bank of its rights hereunder to the Collateral in the United States.

3.7 Perfection of Security Interest Outside of the United States. Regarding the Collateral located outside of the United States, Grantor agrees to (a) execute any necessary documents or agreements respecting each of the countries listed on the schedules attached hereto the laws of which so provide, to perfect a security interest in the Collateral, in substantially the same terms, as the security interest created through this agreement, and (b) carry out the filings, if applicable as possible, before the competent local administrative or governmental authorities of such countries, to establish a security interest in the Collateral in substantially the same terms as the security interest created through this agreement, provided however that all such documents and filings shall be in a manner consistent and in accordance with the applicable laws of each country, and shall also be executed in form and substance satisfactory to Bank.

4. AFTER-ACQUIRED TRADEMARK RIGHTS.

4.1 After-Acquired Trademark Rights. If Grantor shall obtain rights to any new trademarks in

connection with those listed on Schedule A attached hereto, the provisions of this Agreement shall automatically apply thereto. Grantor shall give prompt notice in writing to Bank with respect to any such new trademarks, or renewal or extension of any trademark registration. Grantor shall bear any expenses incurred in connection with such future trademark registrations.

5. LITIGATION AND PROCEEDINGS.

5.1 Litigation and Proceedings. Grantor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other action for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Grantor shall provide to Bank any information with respect thereto requested by Bank. Bank shall provide at Grantor's expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following Grantor's becoming aware thereof, Grantor shall notify Bank of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state, or foreign court regarding Grantor's claim of ownership in any of the trademarks, its right to apply for the same, or its right to keep and maintain such trademark rights.

6. POWER OF ATTORNEY.

6.1 Power of Attorney. Grantor grants Bank power of attorney, having the full authority, and in the place of Grantor and in the name of Grantor, from time to time following ten (10) days written notice of an Event of Default and in Bank's discretion, to take any action and to execute any instrument which Bank may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of this Agreement: to endorse Grantor's name on all applications, documents, papers, and instruments necessary for Bank to use or maintain the Collateral; to ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral; to file any claims or take any action or institute any proceedings that Bank may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce Bank's rights with respect to any of the Collateral and to assign, pledge, convey, or otherwise transfer title in or dispose of the Collateral to any person.

7. RIGHT TO INSPECT.

7.1 Right to Inspect. Grantor grants to Bank and its employees and agents the right to visit Grantor's plants and facilities which manufacture, inspect, or store products sold or leased under any of the trademarks, and to

inspect the products and quality control records relating thereto at reasonable times during regular business hours.

8. EVENTS OF DEFAULT.

Any of the following events shall be an Event of Default:

8.1 Loan Agreement. An Event of Default shall occur as defined in the Loan Agreement;

8.2 Misrepresentation. Any representation or warranty made herein by Grantor or in any document furnished to Bank by Grantor under this Agreement is incorrect in any material respect when made or when reaffirmed; and

8.3 Breach. Grantor fails to observe or perform any covenant, condition, or agreement to be observed or performed pursuant to the terms hereof which materially and adversely affects Bank.

9. SPECIFIC REMEDIES.

Upon the occurrence of any Event of Default, Bank shall have, in addition to, other rights given by law or in this Agreement, the Loan Agreement, or in any other Credit Document, all of the rights and remedies with respect to the Collateral of a secured party under the Code, including the following:

9.1 Notification. Bank may notify licensees to make royalty payments on license agreements directly to Bank;

9.2 Sale. Bank may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Bank deems advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Grantor sixty (60) days prior to such disposition. Bank agrees that any Affiliate (as defined in the Loan Agreement) may participate in any such public or private sale so long as such participation does not violate any provisions of the Code. Grantor shall be credited with the net proceeds of such sale only when they are actually received by Bank, and Grantor shall continue to be liable for any deficiency remaining after the Collateral is sold or collected. If the sale is to be a public sale, Bank shall also give notice of the time and place by publishing a notice one time at least thirty (30) days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held. To the maximum extent permitted by applicable law, Bank may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public

sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any collateral payable by Bank at such sale.

10. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

10.1 Choice of Law. The validity of this Agreement, its construction, interpretation and enforcement, and the rights of the parties hereunder and concerning the Collateral, shall be determined under, governed by and construed in accordance with the internal laws of the State of California, without regard to principles of conflicts of laws.

10.2 WAIVER OF JURY TRIAL. BANK AND GRANTOR, AND EACH OF THEM, HEREBY IRREVOCABLY WAIVE ANY RIGHT WHICH THEY MAY HAVE TO A JURY TRIAL IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THIS AGREEMENT OR THE OBLIGATIONS. THE FOREGOING WAIVER OF TRIAL BY JURY IS KNOWINGLY, INTENTIONALLY AND VOLUNTARILY MADE BY THE BANK AND GRANTOR AND GRANTOR ACKNOWLEDGES THAT NEITHER BANK, NOR ANY PERSON ACTING ON BEHALF OF BANK, HAS MADE ANY REPRESENTATION OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. GRANTOR ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO CONSULT INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER, AND THAT GRANTOR HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH ITS COUNSEL.

10.3 VENUE, JURISDICTION AND PROCESS. THE PARTIES AGREE THAT ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE INTERPRETATION, PERFORMANCE OR BREACH OF THIS AGREEMENT, SHALL BE INSTITUTED IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA OR ANY COURT OF THE STATE OF CALIFORNIA LOCATED IN LOS ANGELES COUNTY, AND EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OR VENUE THAT IT MAY HAVE UNDER THE LAWS OF THE STATE OF CALIFORNIA OR OTHERWISE IN THOSE COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. EACH PARTY AGREES TO ACCEPT SERVICE OF PROCESS IN ANY SUCH ACTION, SUIT OR PROCEEDING IN THE

MANNER PROVIDED FOR IN SECTION 11.3 OF THE LOAN AGREEMENT.

11. GENERAL PROVISIONS

11.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by Grantor and Bank.

11.2 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Grantor may not assign this Agreement or any rights or duties hereunder without Bank's prior written consent and any prohibited assignment shall be absolutely void. Bank may assign this Agreement and its rights and duties hereunder and no consent or approval by Grantor is required in connection with any such assignment.

11.3 Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each section applies equally to this entire Agreement.

11.4 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Bank or Grantor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

11.5 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

11.6 Amendments in Writing. This Agreement can only be amended by a writing signed by both Bank and Grantor.

11.7 Counterparts; Telefacsimile Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not

affect the validity, enforceability, and binding effect of this Agreement.

11.8 Fees and Expenses. Grantor shall pay to Bank on demand all costs and expenses that Bank pays or incurs in connection with the negotiation, preparation, consummation, administration, enforcement, and termination of this Agreement, including: (a) reasonable attorneys' and paralegals' fees and disbursements of counsel to Bank; (b) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) for any amendment, supplement, waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby; (c) costs and expenses of lien and title searches; (d) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office, or for filing financing statements, and continuations, and other actions to perfect, protect, and continue the security interest created hereunder; (e) sums paid or incurred to pay any amount or take any action required of Grantor under this Agreement that Grantor fails to pay or take; (f) costs and expenses of preserving and protecting the Collateral; and (g) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) paid or incurred to enforce the security interest created hereunder, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made or threatened against Bank arising out of the transactions contemplated hereby (including preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement or the Credit Documents regarding costs and expenses to be paid by Grantor. The parties agree that reasonable attorneys' and paralegals' fees and costs incurred in enforcing any judgment are recoverable as a separate item in addition to fees and costs incurred in obtaining the judgment and that the recovery of such attorneys' and paralegals' fees and costs is intended to survive any judgment, and is not to be deemed merged into any judgment.

11.9 Notices. Except as otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing and shall be governed by the provisions of Section 11.3 of the Loan Agreement.

11.10 *Integration.* This Agreement, together with the other Credit Documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

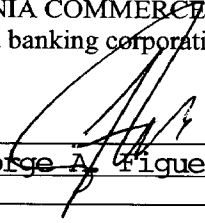
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

BANK:

CALIFORNIA COMMERCE BANK,
a California banking corporation

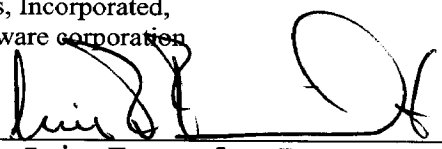
By: 
Name: Alex Loza
Title: Vice President

CALIFORNIA COMMERCE BANK,
a California banking corporation

By: 
Name: Jorge A. Figueroa M.
Title: _____

GRANTOR:

Jarritos, Incorporated,
a Delaware corporation

By: 
Name: Luis Fernandez I.
Title: Chief Executive Officer