

12-24-2003



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

102632824 TRADEMARK

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): DON SEBASTIANI & SONS INTERNATIONAL WINE NEGOCIANTS

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: DECEMBER 23, 2003

2. Name and address of receiving party(ies)

Name: Comerica Bank Internal Address: 275 Battery Street

Street Address: Suite 1100

City: San Francisco State: CA Zip: 94111

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) Please refer to attached Exhibit A.

Additional number(s) attached Yes No

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

Name: Buchalter, Nemer, Fields & Younger

Internal Address: c/o Neil J. Rubenstein, Esq.

Street Address: 333 Market Street 25th Floor

City: San Francisco State: CA Zip: 94105

6. Total number of applications and registrations involved: 15

7. Total fee (37 CFR 3.41): \$ 390.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Neil J. Rubenstein Name of Person Signing

Signature

December 23, 2003 Date

Total number of pages including cover sheet, attachments, and document: 9

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

TRADEMARK REEL: 002884 FRAME: 0933

Exhibit A

Trademarks

Mark	Serial Number	Application Date	Registration Number	Registration Date	Name Under Which Registered*
Pepperwood Grove	76-280170	07/03/01	2547328	03/12/02	Cecchetti
Pepperwood Grove	76-278921	07/02/01	2547321	03/12/02	Cecchetti
Pepperwood Grove	74-504989	03/25/94	1888785	04/11/95	Cecchetti
Mia's Playground	78-315159	10/17/03	Pending	Pending	Don Sebastiani & Sons
Screw Kappa Nappa	78-295744	09/03/03	Pending	Pending	Don Sebastiani & Sons
Three Loose Screws	78-286-748	08/13/03	Pending	Pending	Don Sebastiani & Sons
Zia Mia	78-284730	08/07/03	Pending	Pending	Don Sebastiani & Sons
A Kwine Es	78-221651	03/04/02	Pending	Pending	Don Sebastiani & Sons
Smoking Loon	78-219882	02/27/03	Pending	Pending	Don Sebastiani & Sons
Used Automobile Parts	78-217835	02/22/03	Pending	Pending	Don Sebastiani & Sons
Gino Davino	78-209759	01/31/03	Pending	Pending	Don Sebastiani & Sons
Ashbury Wine Company	78-206310	01/23/03	Pending	Pending	Don Sebastiani & Sons
Fusee	78-098031	12/12/01	2670474	12/31/02	Don Sebastiani & Sons
Apoyo	78-086507	10/02/01	2670454	12/31/02	Don Sebastiani & Sons
Aquinas	78-073871	07/13/01	2698818	03/18/03	Don Sebastiani & Sons

* Cecchetti is Cecchetti Sebastiani Cellar, Inc.

Don Sebastiani & Sons is Don Sebastiani & Sons International Wine Negotiants



INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (the "Agreement") is made as of December 23, 2003, by and between Don Sebastiani & Sons International Wine Negotiants, a California corporation ("Grantor"), and Comerica Bank ("Secured Party").

RECITALS

A. Secured Party has agreed to lend to Grantor certain funds (the "Loan"), and Grantor desires to borrow such funds from Secured Party pursuant to the terms of that certain Loan and Security Agreement, dated as of December 23, 2003, (the "Loan Agreement"). All initially capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement).

B. In order to induce Secured Party to enter into the Loan Agreement, Grantor has agreed to grant a security interest in certain intangible property to Secured Party for purposes of securing the obligations of Grantor to Secured Party.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Secured Party, Grantor hereby grants a security interest and mortgage to Secured Party, as security, in and to Grantor's entire right, title and interest in, to and under the following (all of which shall collectively be called the "Intellectual Property Collateral"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held (collectively, the "Copyrights");

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Grantor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same (collectively, the "Patents");

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Trademarks");

(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights; and

(h) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(i) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Authorization and Request. Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this security agreement.

3. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is now the sole owner of the Intellectual Property Collateral, except for non-exclusive licenses granted by Grantor to its customers in the ordinary course of business;

(b) Performance of this Agreement does not conflict with or result in a breach of any agreement to which Grantor is party or by which Grantor is bound;

(c) During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Intellectual Property Collateral, except for non-exclusive licenses granted by Grantor in the ordinary course of business or as set forth in this Agreement;

(d) No part of the Intellectual Property Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property Collateral violates the rights of any third party;

(e) Grantor shall promptly give Secured Party written notice of any applications or registrations of any additional intellectual property rights filed with the United States Patent and Trademark Office, including the date of such filing and the registration or application numbers, if any.

(f) Grantor shall deliver to Secured Party within thirty (30) days of the last day of each fiscal quarter, a report signed by Grantor, in form reasonably acceptable to Secured Party, listing any applications or registrations that Grantor has made or filed in respect of any patents, copyrights or trademarks and the status of any outstanding applications or registrations.

(g) Grantor shall promptly execute, deliver or file such additional instruments and documents and take such further actions as Secured Party may reasonably request from time to time to perfect, continue the perfection or maintain the priority of Secured Party's security interest in the Intellectual Property Collateral;

(h) Secured Party may audit Grantor's Intellectual Property Collateral to confirm compliance with this Section 3, provided such audit may not occur more often than twice per year, unless an Event of Default has occurred and is continuing. Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Section 3 to take but which Grantor fails to take within fifteen (15) days of notice thereof to Grantor. Grantor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 3.

(i) This Agreement creates in favor of Secured Party, and in the case of after acquired Intellectual Property Collateral, at the time Grantor first has rights in such after acquired Intellectual Property Collateral this Agreement will create in favor of Secured Party, a valid and perfected first priority security

interest in the Intellectual Property Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan Agreement upon making the filings referred to in clause (i) below;

(j) All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Grantor with respect to the Intellectual Property Collateral is accurate and complete in all material respects;

(k) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Secured Party's prior written consent, which consent shall not be unreasonably withheld. Grantor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Grantor's rights and interests in any property included within the definition of the Intellectual Property Collateral acquired under such contracts; and

(l) Upon any executive officer of Grantor obtaining actual knowledge thereof, Grantor will promptly notify Secured Party in writing of any event that materially adversely affects the value of any Intellectual Property Collateral, the ability of Grantor to dispose of any Intellectual Property Collateral or the rights and remedies of Secured Party in relation thereto, including the levy of any legal process against any of the Intellectual Property Collateral.

(m) The companies known as Don Sebastiani & Sons International Wine Negotiants and Cecchetti Sebastiani Cellar have merged. The surviving entity has the name Don Sebastiani & Sons International Wine Negotiants. The surviving entity owns the Intellectual Property registered in the names of both entities.

4. Secured Party's Rights. Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Agreement to take but which Grantor fails to take, after fifteen (15) days' notice to Grantor. Grantor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 4.

5. Inspection Rights. Grantor hereby grants to Secured Party and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Grantor, any of Grantor's plants and facilities that manufacture, install or store products (or that have done so during the prior six month period) that are sold utilizing any of the Intellectual Property Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Grantor and as often as may be reasonably requested.

6. Further Assurances; Attorney-in-Fact.

(a) On a continuing basis, Grantor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Secured Party, to perfect Secured Party's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Intellectual Property Collateral.

(b) Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem

necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit A, thereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Grantor no longer has or claims any right, title or interest, (ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Intellectual Property Collateral without the signature of Grantor where permitted by law, and (iii) after the occurrence of an Event of Default, to transfer the Intellectual Property Collateral into the name of Secured Party or a third party to the extent permitted under the California Uniform Commercial Code.

7. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement:

(a) An Event of Default occurs under the Loan Documents; or

(b) Grantor breaches any warranty or agreement made by Grantor in this Agreement and, as to any breach that is capable of cure, Grantor fails to cure such breach within five (5) days of the occurrence of such breach.

8. Remedies. Upon the occurrence and continuance of an Event of Default, Secured Party shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require Grantor to assemble the Intellectual Property Collateral and any tangible property in which Secured Party has a security interest and to make it available to Secured Party at a place designated by Secured Party. Secured Party shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Secured Party to exercise its rights and remedies upon the occurrence of an Event of Default. Grantor will pay any expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with the exercise of any of Secured Party's rights hereunder, including without limitation any expense incurred in disposing of the Intellectual Property Collateral. All of Secured Party's rights and remedies with respect to the Intellectual Property Collateral shall be cumulative.

9. Indemnity. Grantor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to transactions between Secured Party and Grantor, whether under this Agreement or otherwise (including without limitation reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Secured Party's gross negligence or willful misconduct.

10. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

11. Attorneys' Fees. If any action relating to this Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

12. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

14. California Law and Jurisdiction; Jury Waiver. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Grantor and Secured Party consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. GRANTOR AND SECURED PARTY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN DOCUMENTS, THIS AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

GRANTOR:

Address of Grantor:

135 West Napa Street, 2nd Floor
Sonoma, California 95476

Attn: Richard Conley

DON SEBASTIANI & SONS INTERNATIONAL
WINE NEGOCIANTS, a California corporation,
formerly known as Cecchetti Sebastiani Cellar, Inc.

By: 

Name: Richard K Conley

Title: Treasurer

SECURED PARTY

Address of Secured Party:

275 Battery Street, Suite 1100
San Francisco, California 94111
Fax Number: (415) 954-5020

COMERICA BANK

By: 

Name: Misako Noda

Title: Vice President

Exhibit A

Trademarks

Mark	Serial Number	Application Date	Registration Number	Registration Date	Name Under Which Registered*
Pepperwood Grove	76-280170	07/03/01	2547328	03/12/02	Cecchetti
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