

07-01-2004

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings



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

102825783

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

1. Name of conveying party(ies): R&R OPERATING PARTNERSHIP, L.P. 6.21.04
2. Name and address of receiving party(ies): Name: SOVEREIGN BANK F.S.B. Internal Address: CENTRE SQUARE EAST Street Address: 1500 MARKET STREET City: PHILADELPHIA State: PA Zip: 19102
3. Nature of conveyance: [X] Security Agreement
Execution Date: 6/15/04

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) SEE ATTACHED
Additional number(s) attached [] Yes [] No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: TONYA CHAPPLE Internal Address: C/O CSC Street Address: 80 STATE STREET City: ALBANY State: NY Zip:
6. Total number of applications and registrations involved: 21
7. Total fee (37 CFR 3.41): \$565.00 [X] Enclosed [] Authorized to be charged to deposit account
8. Deposit account number:

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.
TONYA CHAPPLE Name of Person Signing
[Signature] Signature
06/17/04 Date

06/30/2004 NGETACHE 00000079 76455912 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

06-21-2004 TRADEMARK REEL: 003001 FRAME: 0347

Schedule A to Trademark Security Agreement

<u>TRADEMARK</u>	<u>APPLICATION OR REGISTRATION NO.</u>	<u>COUNTRY</u>	<u>FILING DATE</u>
C&D Distributing	76455912	USA	10/4/2002
Cheerleader USA	2846015	USA	5/25/2004
Bartons Dessert Classics	76519878	USA	6/5/2003
Bartons Gem Classics	76519875	USA	6/5/2003
Bartons Toppers	76519876	USA	6/5/2003
Dessert Classics	76519879	USA	6/5/2003
Gem Classics	76519877	USA	6/5/2003
New Yorker	76321257	USA	10/4/2001
Pecandies	76548589	USA	10/2/2003
Rocking Chair Confections	76159574	USA	3/5/2002
Almond Kisses	74101083	USA	11/12/1996
Americana	690,644	USA	12/29/1959
Bartonettes	74382800	USA	7/12/1994
Bartons Bonbonniere	74382743	USA	11/28/1995

<u>TRADEMARKS</u>	<u>APPLICATION/ REGISTRATION NO.</u>	<u>COUNTRY</u>	<u>FILING DATE</u>
Barton's	72015441	USA	10/28/1958
Bonbonniere	75379820	USA	10/13/1998
Cherrydale Farms (Stylized)	74310841	USA	9/7/1993
Cherrydale Farms	73580602	USA	9/9/1986
Ewe's View and Design	75902260	USA	12/26/2000
Firefighter's	74039792	USA	12/11/1990
Haddington Farms Confections	75645854	USA	6/13/2000
Lollycones	71682777	USA	4/24/1956

TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement ("Agreement") is made this 15th day of June, 2004, by **R&R OPERATING PARTNERSHIP, L.P.**, a Pennsylvania limited partnership, having an address at 1035 Mill Road, Allentown, PA 18106 ("Borrower") and delivered to **SOVEREIGN BANK F.S.B.** having a mailing address of Centre Square East, 1500 Market Street, Philadelphia, Pennsylvania 19102 ("Lender").

BACKGROUND

A. This Agreement is being executed contemporaneously with that certain Loan and Security Agreement of even date herewith by and between Borrower and Lender (as it may be supplemented, restated, superseded, amended or replaced from time to time, the "Loan Agreement"), under which Borrower is granting Lender a lien on and security interest in substantially all assets of Borrower. All capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

B. Borrower has adopted, used and is using (or has filed applications for the registration of) the trademarks, servicemarks and tradenames listed on Schedule "A" attached hereto and made part hereof (all such marks or names hereinafter referred to as the "Trademarks").

C. Pursuant to the Loan Agreement, Lender is acquiring a lien on and security interest in the Trademarks and the registration thereof, together with all the goodwill of Borrower associated therewith and represented thereby, as security for all of the Obligations (as defined in the Loan Agreement), and Lender desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Loan Agreement, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Obligations, Borrower grants to Lender a lien on and security interest in all of Borrower's present and future right, title and interest in and to the Trademarks, together with all the goodwill of Borrower associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Borrower hereby covenants and agrees to maintain the Trademarks that are material to the operation of Borrower's business or sale of its Inventory in full force and effect until all of the Obligations are indefeasibly paid and satisfied in full.

3. Borrower represents, warrants and covenants to Lender that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(b) All of the Trademarks (other than application for the registration thereof which have been filed or for names which are not used as marks) are registered, valid and enforceable;

(c) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances including, without limitation, pledges, assignments, licenses (other than to Borrower and Lender hereunder) and covenants by Borrower not to sue third persons;

(d) Borrower has the unqualified right, power and authority to enter into this Agreement and perform its terms;

(e) Borrower has complied with, and will continue for the duration of this Agreement to comply with the requirements set forth in 15 U.S.C. §1051-1127 and any other applicable statutes, rules and regulations in connection with its use of the Trademarks except where failure to comply would not have a material adverse effect on Borrower or its assets;

(f) Borrower has no notice of any suits or actions commenced or threatened against it, or notice of claims asserted or threatened against it, with reference to the Trademarks; and

(g) Borrower has used and will continue to use for the duration of this Agreement, consistent standards of quality in services or products leased or sold under the Trademarks and hereby grants to Lender and its employees and agents the right (with no obligation of any kind upon Lender to do so) to visit, upon reasonable notice, Borrower's affiliates, franchises or management locations and to inspect the use of the Trademarks and quality control records relating thereto at reasonable times during regular business hours to ensure Borrower's compliance with this paragraph 3(g).

4. Borrower further covenants that:

(a) Until all of the Obligations are indefeasibly paid and satisfied in full, Borrower will not enter into any agreement, including, without limitation, license agreements or options, which are inconsistent with Borrower's obligations under this Agreement, Borrower's obligations under the Loan Agreement or which restrict or impair Lender's rights hereunder.

(b) If Borrower acquires rights to any new Trademarks, the provisions of this Agreement shall automatically apply thereto and such trademarks shall be deemed part of the

Trademarks. Borrower shall give Lender prompt written notice thereof along with an amended Schedule "A."

5. So long as this Agreement is in effect and so long as Borrower has not received notice from Lender that an Event of Default has occurred under the Loan Agreement and that Lender has not elected to exercise its rights hereunder: (i) Borrower shall continue to have the exclusive right to use the Trademarks; and (ii) Lender shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Borrower agrees not to sell, grant any option, assign or further encumber its rights and interest in the Trademarks to any entity or person other than Lender without the prior written consent of Lender.

7. Anything herein contained to the contrary notwithstanding, if and while an Event of Default exists under the Loan Agreement, Borrower hereby covenants and agrees that Lender, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in the jurisdiction set forth in Section 10.9 of the Loan Agreement, may take such action permitted hereunder, in its exclusive discretion, to foreclose upon the Trademarks covered hereby. For such purposes, while an Event of Default exists, Borrower hereby authorizes and empowers Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its exclusive discretion, as Borrower's true and lawful attorney-in-fact, with the power to endorse Borrower's name on all applications, documents, papers and instruments necessary for Lender to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else including, without limitation, the power to execute a Trademark Assignment in the form attached hereto as Exhibit 1. Borrower hereby ratifies all that such attorney or agent shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney or agent. This power of attorney shall be irrevocable for the life of this Agreement, the Loan Documents, and until all of the Obligations are indefeasibly paid and satisfied in full.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. All rights and remedies herein granted to Lender shall be in addition to any rights and remedies granted to Lender under the Loan Documents. In the event of an inconsistency between this Agreement and Loan Agreement, the language of this Agreement shall control.

10. Upon Borrower's performance of all of the obligations under the Loan Documents and after all of the Obligations are indefeasibly paid and satisfied in full, Lender shall, at Borrower's expense, execute and deliver to Borrower all documents reasonably necessary to terminate Lender's security interest in the Trademarks.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, in each case in accordance with the terms of this Agreement, shall be borne and paid by Borrower on demand by Lender and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the otherwise applicable rate prescribed in the Loan Agreement.

12. Subject to the terms of the Loan Agreement, Borrower shall have the duty to prosecute diligently any application and/or registration with respect to any Trademarks pending as of the date of this Agreement or thereafter that are material to the operation of Borrower's business or sale of its Inventory, until the Obligations are indefeasibly paid and satisfied in full, to preserve and maintain all rights in the Trademarks that are material to the operation of Borrower's business or sale of its Inventory, and upon reasonable request of Lender, Borrower shall make federal application on registerable but unregistered Trademarks belonging to Borrower and licensed to Borrower. Any reasonable expenses incurred in connection with such applications shall be borne exclusively by Borrower. Borrower shall not abandon any Trademarks that are material to the operation of Borrower's business or sale of its Inventory without the prior written consent of Lender.

13. Borrower shall have the right to bring suit in its own name to enforce the Trademarks, in which event Lender may, if Borrower reasonably deems it necessary, be joined as a nominal party to such suit if Lender shall have been satisfied, in its sole discretion, that it is not thereby incurring any risk of liability because of such joinder. Borrower shall promptly, upon demand, reimburse and indemnify Lender for all damages, costs and expenses, including reasonable attorneys' fees and costs, incurred by Lender in the fulfillment of the provisions of this paragraph.

14. Upon the occurrence of an Event of Default under the Loan Agreement, Lender may, without any obligation to do so, complete any obligation of Borrower hereunder, in Borrower's name or in Lender's name, but at the expense of Borrower.

15. No course of dealing between Borrower and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Documents, or by any other future agreements between Borrower and Lender or by law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

17. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

18. This Agreement shall be governed by and construed in conformity with the laws of the jurisdiction set forth in Section 10.9 of the Loan Agreement, without regard to its otherwise applicable principles of conflicts of laws.

19. Borrower agrees to the jurisdiction of the state and federal courts of the jurisdiction set forth in Section 10.9 of the Loan Agreement and to service by certified mail, return receipt requested at the address of the Borrower.

20. **Borrower (and Lender by its acceptance hereof) hereby waives any and all rights it may have to a jury trial in connection with any litigation, proceeding or counterclaim arising with respect to rights and obligations of the parties hereto or under the Loan Documents or with respect to any claims arising out of any discussions, negotiations or communications involving or related to any proposed renewal extension, amendment, modification, restructure, forbearance, workout, or enforcement of the transactions contemplated by the Loan Documents.**

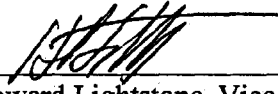
Signatures on Next Page

IN WITNESS WHEREOF, the parties hereto have executed this Trademark Security Agreement, under seal, the day and year first above written.

BORROWER:

R&R OPERATING PARTNERSHIP, L.P., a
Pennsylvania limited partnership by its general
partner

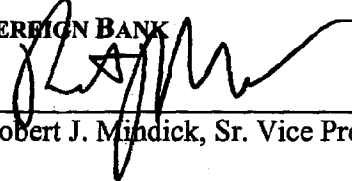
R&R OPERATING CORP., a Pennsylvania
corporation

By: 
Howard Lightstone, Vice President

Address: 1035 Mill Road
Allentown, PA 18106

Approved and Accepted:

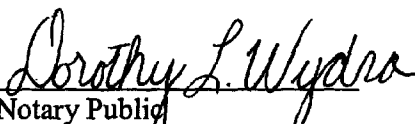
SOVEREIGN BANK

By: 
Robert J. Mindick, Sr. Vice President

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :
COMMONWEALTH OF PENNSYLVANIA :SS
COUNTY OF PHILADELPHIA :

On this 15th day of June, 2004, before me personally appeared Howard Lightstone, to me known and being duly sworn, deposes and says that he/she is the Vice President of R&R Operating Corp., the corporation which is the sole general partner of R&R Operating Partnership, L.P. described in the foregoing Agreement; that he/she knows the seal of the corporation; that the seal so affixed to the Agreement is such corporate seal; that he/she signed the agreement and affixed the seal of the corporation thereto as such officer pursuant to the authority vested in him/her by law; that the within Agreement is the voluntary act of such corporation; and he/she desires the same to be recorded as such.


Notary Public
My Commission Expires:

NOTARIAL SEAL
DOROTHY L. WYDRA, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 31, 2006

Schedule A to Trademark Security Agreement

<u>TRADEMARK</u>	<u>APPLICATION OR REGISTRATION NO.</u>	<u>COUNTRY</u>	<u>FILING DATE</u>
C&D Distributing	76455912	USA	10/4/2002
Cheerleader USA	2846015	USA	5/25/2004
Bartons Dessert Classics	76519878	USA	6/5/2003
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Bartons Toppers	76519876	USA	6/5/2003
Dessert Classics	76519879	USA	6/5/2003
Gem Classics	76519877	USA	6/5/2003
New Yorker	76321257	USA	10/4/2001
Pecandies	76548589	USA	10/2/2003
Rocking Chair Confections	76159574	USA	3/5/2002
Almond Kisses	74101083	USA	11/12/1996
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Bartonettes	74382800	USA	7/12/1994
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<u>TRADEMARKS</u>	<u>APPLICATION/ REGISTRATION NO.</u>	<u>COUNTRY</u>	<u>FILING DATE</u>
Barton's	72015441	USA	10/28/1958
Bonbonniere	75379820	USA	10/13/1998
Cherrydale Farms (Stylized)	74310841	USA	9/7/1993
Cherrydale Farms	73580602	USA	9/9/1986
Ewe's View and Design	75902260	USA	12/26/2000
Firefighter's	74039792	USA	12/11/1990
Haddington Farms Confections	75645854	USA	6/13/2000
Lollycones	71682777	USA	4/24/1956

TRADEMARK ASSIGNMENT

WHEREAS, **R&R OPERATING PARTNERSHIP, L.P.**, a Pennsylvania limited partnership ("Grantor"), is the registered owner of the United States trademarks, tradenames and registrations listed on Schedule "A" attached hereto and made a part hereof (the "Trademarks"), which are registered in the United States Patent and Trademark Office; and

WHEREAS, _____ ("Grantee") having a place of business at _____, is desirous of acquiring the Trademarks;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, all of its present and future right, title and interest in and to the Trademarks and all proceeds thereof and all goodwill associated therewith.

IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed as of the ____ day of _____, 200__.

R&R OPERATING PARTNERSHIP, L.P.

Witness: _____

By: _____
As Attorney-in-fact

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :
STATE OF _____ : SS
COUNTY OF _____ :

On this the ____ day of _____, 200__ before me a Notary Public for the said County and State, personally appeared _____ known to me or satisfactorily proven to me to be attorney-in-fact on behalf of **R&R OPERATING PARTNERSHIP, L.P.** ("Grantor"), and he/she acknowledged to me that he/she executed the foregoing Trademark Assignment on behalf of Grantor, and as the act and deed of Grantor for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Individual Notary)

My Commission Expires:

_____, _____

SCHEDULE A TO TRADEMARK ASSIGNMENT

<u>TRADEMARKS</u>	<u>APPLICATION/ REGISTRATION NO.</u>	<u>COUNTRY</u>	<u>REGISTRATION DATE</u>
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POWER OF ATTORNEY

R&R OPERATING PARTNERSHIP, L.P., a Pennsylvania limited partnership ("Grantor"), hereby authorizes **SOVEREIGN BANK, F.S.B.**, its successors and assigns, and any officer or agent thereof (collectively "Grantee") as Grantor's true and lawful attorney-in-fact, with the power to endorse Grantor's name on all applications, assignments, documents, papers and instruments necessary for Grantee to enforce and effectuate its rights under a certain Trademark Security Agreement between Grantor and Grantee dated the date hereof (as it may hereafter be supplemented, restated, superseded, amended or replaced, the "Trademark Agreement"), including, without limitation, the power to use the Trademarks (as defined in the Trademark Agreement), to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks.

This Power of Attorney is given and any action taken pursuant hereto is intended to be so given or taken pursuant to a certain Loan and Security agreement bearing even date herewith between Grantor and Grantee as it may be supplemented, restated, superseded, amended or replaced from time to time.

Grantor hereby unconditionally ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof.

This Power of Attorney shall be coupled with an interest and irrevocable for the life of the Trademark Agreement.

IN WITNESS WHEREOF, the Grantor has executed this Power of Attorney, under seal, this 15th day of June, 2004.

R&R OPERATING PARTNERSHIP, L.P., a
Pennsylvania limited partnership by its general
partner

R&R OPERATING CORP., a Pennsylvania
corporation

Attest: *David S. Baum*,
Assistant Secretary

By: *[Signature]* VP
(Corporate Seal)

Witness: *[Signature]*

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CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :
COMMONWEALTH OF PENNSYLVANIA : SS
COUNTY OF PHILADELPHIA :

On this 15th day of June, 2004, before me personally appeared Howard Lightstone, to me known and being duly sworn, deposes and says that he is a Vice President of **R&R Operating Corp.**, the sole general partner of the Grantor corporation described in the foregoing Power of Attorney; that he knows the seal of the corporation; that the seal so affixed to the Power of Attorney is such corporate seal; that he signed the Power of Attorney and affixed the seal of the corporation thereto as such officer pursuant to the authority vested in him by law; that the within Power of Attorney is the voluntary act of such corporation; and he desires the same to be recorded as such.

Dorothy L. Wydra

Notary Public

My Commission Expires: 10/31/06

NOTARIAL SEAL
DOROTHY L. WYDRA, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 31, 2006

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