

07-07-2005

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

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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.

6-30-05

1. Name of conveying party(ies):

U.S. BANK NATIONAL ASSOCIATION F/K/A FIRST BANK NATIONAL ASSOCIATION PO BOX 3487 OSHKOSH WI 54903-3487

- 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 RELEASE

Execution Date: 06/23/05

2. Name and address of receiving party(ies)

Name: BYERYL'S, INC.

Internal Address:

Address:

Street Address: 3948 W 50TH ST STE B102

City: EDINA State: MN Zip: 55424

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State MN 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) 1173720; 1231243; 1175538; 1878760; 1179416; 1192340; 1187013

Additional number(s) attached Yes No

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

Name: PATTI SCHUMACHER

Internal Address: U.S. BANK N.A.

PO BOX 3487

OSHKOSH WI 54901

Street Address: 400 CITY CENTER

City: OSHKOSH State: WI Zip: 54903

6. Total number of applications and registrations involved:

7

7. Total fee (37 CFR 3.41) \$ 190.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

STACY BONINCONTRI

Name of Person Signing

Signature

JUNE 23, 2005

Date

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

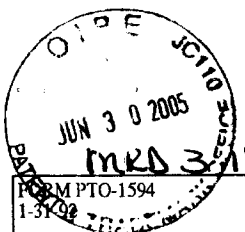
14

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

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TRADEMARK REEL: 003189 FRAME: 0030




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U.S. DEPARTMENT OF COMMERCE

 Patent and Trademark Office

FORM PTO-1594

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

1. Name of conveying party(ies):
Byerlys, Inc

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: February 27, 1996

2. Name and address of receiving party(ies):
 Name: First Bank National Association
 Internal Address: _____
 Street Address: 600 Second Avenue South
 City: Minneapolis State: MN ZIP: 55402

Individual(s) citizenship _____
 Association National Banking Association
 General Partnership _____
 Limited Partnership _____
 Corporation-State _____
 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)
1173720; 1231243, 1175538, 1878760, 1179416, 1192340
1187013,

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
 Name: Laura L. Bjorklund
 Internal Address: Dorsey and Whitney LLP
 Street Address: 220 South Sixth Street
 City: Minneapolis State: MN ZIP: 55402

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

7. Total fee (37 CFR 3.41):..... \$190.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
04-1420
 (Attach duplicate copy of this page if paying by deposit account)

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 050 BL 03/22/96 1173720 0 481 110.00 CK

 050 BL 03/22/96 1173720 0 482 150.00 CK

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.

Laura L. Bjorklund Laura L. Bjorklund 3-12-96
 Name of Person Signing Signature Date

Total number of pages comprising cover sheet:

OMB No. 0671-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to TRADEMARK

REEL: 003189 FRAME: 0031

65

RELEASE OF COLLATERAL ASSIGNMENT OF TRADEMARKS

THIS RELEASE dated as of **June 23, 2005** (this "Release") is made by U.S. Bank National Association, a National Association, acting in its capacity as the secured party (in such capacity, the "Assignee") under that certain Collateral Assignment of Trademarks, dated as of **February 27, 1996** and recorded in the records of the United States Patent and Trademark Office (as amended, supplemented or modified and in effect from time to time, the "Assignment"), among **Byerly's, Inc.**, (the "Assignor") and the Assignee;

W I T N E S S E T H:

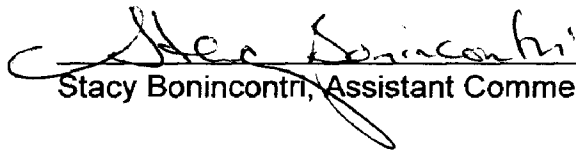
WHEREAS, pursuant to the Assignment which was recorded in the records of the United States Patent and Trademark Office, the Assignor granted to the Assignee a continuing security interest in all of the Assignor's United States Intellectual Property Collateral including those set forth on the attached schedules;

WHEREAS, the Assignee wishes to: (i) terminate the Collateral Assignment of Trademarks against the Intellectual Property Collateral including those identified in the attached schedules hereto, recorded with the United States Patent and Trademark Office; (ii) release all of its security interest covering the Intellectual Property Collateral including those listed in the attached schedules; (iii) restore all right, title and interest in and to the Intellectual Property Collateral including those listed the attached schedules, to Assignor; and (iv) to dissolve any and all liens and encumbrances respecting the Intellectual Property Collateral including those listed in the attached schedules.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignee does hereby release its security interest in the Intellectual Property Collateral including those set forth on the attached schedules hereto, and discharges, quit claims and relinquishes unto **Byerly's, Inc.**, (in each case without recourse and without any representation or warranty) any and all rights, title and interest it has in and the security interest granted to Assignee in the Intellectual Property Collateral including those listed in the attached schedules.

IN WITNESS WHEREOF, the Assignee has caused this Release to be duly executed and delivered by its officer thereunto duly authorized as of the day and year first above written.


U.S. Bank National Association
f/k/a First Bank National Association

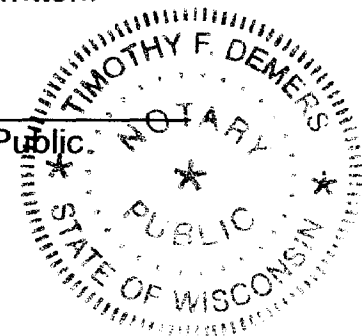

Stacy Bonincontri, Assistant Commercial Officer

STATE OF WISCONSIN)SS.
COUNTY OF WINNEBAGO)

On this June 23, 2005, before me appeared Stacy Bonincontri to me personally known, who being by me duly sworn did say that he/she is Assistant Commercial Officer of U.S. Bank National Association, f/k/a First Bank National Association, a national banking association, and that said instrument was signed and sealed in behalf of said association, by authority of its Board of Directors: and said title acknowledged said instrument to be the free act and deed of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and State aforesaid, the day and year first above written.


Timothy F Demers, Notary Public
My term expires: 05/06/07



Customer: #1735055734 Cost Center: #0001243

COLLATERAL ASSIGNMENT OF TRADEMARKS

This Collateral Assignment of Trademarks (the "Assignment"), dated as of February 27, 1996, is made and given by BYERLY'S, INC., a Minnesota corporation (the "Assignor") to FIRST BANK NATIONAL ASSOCIATION, a national banking association (the "Assignee").

RECITALS

A. The Assignor and the Assignee have entered into a Credit Agreement dated as of February 27, 1996 (as the same may hereafter be amended, supplemented, extended, restated, or otherwise modified from time to time, the "Credit Agreement"; terms capitalized and used herein without being defined shall have the meanings given them in the Credit Agreement) pursuant to which the Assignee agreed to extend to the Assignor certain credit accommodations.

B. The Assignor has pledged and granted to the Assignee a security interest in the property described in a Security Agreement dated as of February 27, 1996 (as the same may be amended, supplemented, extended, restated or otherwise modified from time to time, the "Security Agreement") by and between Assignor and Assignee, which property includes general intangibles, including, without limitation, applications for patents, applications for trademarks, trademarks, trade names, copyrights, patents, inventions and trade secrets.

C. In order to induce the Assignee to enter into the Credit Agreement and extend the credit accommodations to the Assignor thereunder, and in order to secure the payment and performance of (i) all liabilities and obligations of the Assignor to the Assignee arising under the Credit Agreement, the Chanhassen Loan Agreement or any Interest Rate Agreement, whether now existing or hereafter arising; and (ii) all liabilities and obligations of the Assignor to the Assignee and the Banks under the Security Agreement or any other Loan Document (as such term is defined in the Credit Agreement and in the Chanhassen Loan Agreement), whether now existing or hereafter at any time arising; (the liabilities and obligations set forth in the preceding clauses (i) and (ii) being hereinafter referred to as the "Liabilities"), the Assignor is willing to enter into this Assignment.

NOW, THEREFORE, in consideration of the premises and to induce the Assignee to extend credit accommodations under the Credit Agreement, the parties hereto agree as follows:

1. The Assignor does hereby assign all of its right, title and interest in and to all of the present trademarks and trade names and the registrations and applications therefor owned by the Assignor (the "Trademarks"), including but not limited to those set forth on Schedule I hereto, and including, without limitation, all proceeds thereof together with the right to recover for past, present and future infringements, all rights corresponding thereto throughout the world and all renewals and extensions thereof, together with the goodwill of the business associated with said Trademarks, said Trademarks to be held and enjoyed by the Assignee, and for its legal representatives, successors and assigns, as fully and entirely as the same would have been held by the Assignor had this Assignment not been made. The foregoing assignment shall be effective only upon the occurrence of an Event of Default under the Credit Agreement and upon written notice by the Assignee to the Assignor of the acceptance by the Assignee of this Assignment, which written notice shall constitute conclusive proof of the matters set forth therein.

2. The Assignor hereby covenants and warrants that:

(a) to the best of the Assignor's knowledge, the Trademarks and listed on Schedule I hereto are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) to the best of the Assignor's knowledge, each of the Trademarks and listed on Schedule I hereto is valid and enforceable;

(c) no claim has been made to the Assignor or, to the knowledge of the Assignor, to any other person, that use of any of the Trademarks does or may violate the rights of any third person and no claim has been made by the Assignor that any other person is infringing upon the rights of the Assignor under the Trademarks;

(d) the Assignor has the unqualified right to enter into this Assignment and perform its terms;

(e) the Assignor will be, until the Liabilities shall have been satisfied in full and the Loan Documents shall have been terminated, in substantial compliance with statutory notice requirements relating to its use of the Trademarks;

(f) to the best of the Assignor's knowledge, the Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks listed on Schedule I hereto, free and clear of any liens, charges and encumbrances, including without limitation, licenses

and covenants by the Assignor not to sue third persons, except for the licenses listed on Schedule II hereto;

(g) the Trademarks listed on Schedule I hereto are all of the Trademarks Registrations and applications therefor now owned by the Assignor; and

(h) the Assignor will, at any time upon request, communicate to the Assignee, its successors and assigns, any facts relating to the Trademarks or the history thereof as may be known to the Assignor or its officers, employees and agents, and cause such officers, employees and agents to testify as to the same in any infringement or other litigation at the request of the Assignee.

3. The Assignor agrees that, until the rights of the Assignee in the Trademarks are terminated pursuant to Section 6, it will not enter into any agreement that is inconsistent with its obligations under this Assignment, except for licenses entered into in the ordinary course of business in a manner consistent with the Assignor's past practices that do not prohibit the assignment of the Assignor's rights therein to the Assignee.

4. If, before the Liabilities shall have been satisfied in full, the Assignor shall obtain rights to any new trademark or trade name, or become entitled to the benefit of any trademark application, registration, trademark or trade name or any renewal or extension of any trademark registration, such shall be included in the definition of "Trademarks" as used in this Assignment. Section 1 hereof shall automatically apply thereto and the Assignor shall give to the Assignee prompt notice thereof in writing. The Assignor authorizes the Assignee to modify this Assignment, without the consent of the Assignor, by amending Schedule I hereto to include any future trademark or trade name.

5. The Assignor agrees not to sell, assign or encumber its interest in, or grant any license with respect to, any of the Trademarks, except for the licenses listed on Schedule II hereto or otherwise with the Assignee's prior written consent.

6. The Assignor agrees that it will authorize, execute and deliver to Assignee all documents requested by Assignee to facilitate the purposes of this Assignment, including but not limited to documents required to record Assignee's interest in any appropriate office in any domestic or foreign jurisdiction. At such time as the Security Agreement, shall have been terminated in accordance with their terms, the Assignee shall on demand of the Assignor execute and deliver to the Assignor all termination statements and other instruments as may be necessary or proper to terminate this Assignment and assign to the Assignor all the Assignee's rights in the Trademarks, subject to any disposition thereof which may have been made by the Assignee pursuant to this Assignment or the Loan Documents.

7. The Assignor shall have the duty, through counsel reasonably acceptable to the Assignee, (i) to prosecute diligently any pending Trademark application as of the date of this Assignment or thereafter until the Credit Agreement, the Chanhassen Loan Agreement, all Interest Rate Agreements, and the Loan Documents shall have been terminated in accordance with their terms; provided, that, subject to the final sentence of this Section 7, the Assignor may abandon any such application upon thirty days' written notice to the Assignee, (ii) to make application on those trademarks and tradenames which are unregistered but capable of being registered and which a prudent person would reasonably cause to be registered and (iii) to preserve and maintain all rights in all Trademarks which a prudent person would reasonably preserve and maintain. Any expenses incurred in connection with applications that constitute Trademarks shall be borne by the Assignor. The Assignor shall not abandon any application presently pending that constitutes a Trademark without the written consent of the Assignee.

8. Upon the occurrence and during the continuance of an Event of Default, the Assignee shall have the right but shall in no way be obligated to bring suit in its own name, the name of the Assignor, or the name of the Banks to enforce or to defend the Trademarks and any license thereunder if the Assignor has failed to bring such suit in circumstances in which a prudent person would have brought such suit. The Assignor shall at the request of the Assignee do any and all lawful acts and execute any and all proper documents required by the Assignee in aid of such enforcement or defense (including without limitation participation as a plaintiff or defendant in any proceeding) and the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee for all reasonable costs and expenses incurred by the Assignee in the exercise of its rights under this Section.

9. This Assignment shall also serve to evidence the security interest in the Trademarks granted by the Assignor to the Assignee pursuant to the Security Agreement.

10. No course of dealing with the Assignor and the Assignee, failure to exercise, nor any delay in exercising, on the part of the Assignee, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. All of the Assignee's rights and remedies with respect to the Trademarks, whether established hereby, by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

12. This Assignment is subject to modification only by a writing signed by the parties, except as provided in Section 4 hereof.

13. This Assignment shall inure to the benefit of and be enforceable by the Assignee and its successors, transferees and assigns, and be binding upon the Assignor and its successors and assigns.

14. This Assignment and the rights and obligations of the parties hereunder shall be construed in accordance with and governed by the laws (without giving effect to the conflicts of law principles thereof) of (i) any state as to rights or interests hereunder which arise under the laws of such state, (ii) the United States of America as to rights and interests hereunder which are registered or for the registration of which application is pending with the United States Patent and Trademark Office and (iii) the State of Minnesota in all other respects. Whenever possible, each provision of this Assignment and any other statement, instrument or transaction contemplated hereby or relating hereto shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment or any other statement, instrument or transaction contemplated hereby or relating hereto shall be held to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Assignment or any other statement, instrument or transaction contemplated hereby or relating hereto. In the event of any conflict within, between or among the provisions of this Assignment, any other Loan Document or any other statement, instrument or transaction contemplated hereby or thereby or relating hereto or thereto, those provisions giving the Assignee the greater right shall govern.

15. It is hereby acknowledged that the Trademarks are currently subject to the interests of the Collateral Trustee pursuant to the Collateral Trust Documents. Reference is made to the Intercreditor Agreement dated as of February 27, 1996 among the Assignee, the holders of the Senior Notes and the Collateral Trustee, which the Assignor and the Assignee hereby acknowledge governs the manner and extent of the enforcement of the Assignee's remedies hereunder, the sharing of the income and proceeds of the Trademarks and certain other inter-creditor matters. Without limiting the generality of the foregoing, the Assignee acknowledges that some of its rights and remedies are subject to the rights and remedies of the Collateral Trustee, as set forth in the Collateral Trust Documents and the Intercreditor Agreement described above.

IN WITNESS WHEREOF, the Assignor has executed this instrument
as of the date first above written

BYERLY'S, INC.

By *Donald W. Bloom*
Its *Chief Financial Officer*

SCHEDULE I TO
COLLATERAL ASSIGNMENT
OF TRADEMARKS

TRADEMARKS AND APPLICATIONS

SEE ATTACHED

**STATUS OF TRADEMARKS AND SERVICE MARKS FOR
BYERLY'S, INC.**

FEDERAL REGISTRATIONS

<u>MARK</u>	<u>CLASSES</u>	<u>GOODS/SERVICES</u>	<u>STATUS</u>
BYERLY'S	IC 42	Retail food store services	Registered Registration No. 1,173,720 Registered 10/13/81 Renewal Due 10/13/01
BYERLY'S MINNESOTA & Design	IC 29	Food gift packs consisting of meat, cheese, jams and jellies	Registered Registration No. 1,231,243 Registered 03/15/83 Renewal Due 03/15/03
BYERLY'S (STYLIZED)	IC 42	Retail food store services	Registered Registration No. 1,175,538 Registered 10/27/81 Renewal Due 10/27/01
COMPANY HASH BROWNS	IC 29	Hash brown potatoes	Registered Registration No. 1,878,760 Registered 02/14/95 Renewal Due 02/14/05 Section 8 & 15 Due 02/14/01
MISCELLANEOUS DESIGN	IC 30	Candy	Registered Registration No. 1,179,416 Registered 11/24/81 Renewal Due 11/24/01
PARTY LINE	IC 42	Catering Services	Registered Registration No. 1,192,340 Registered 03/16/82 Renewal Due 03/16/02
WOOD'S	IC 30	Candy	Registered Registration No. 1,187,013 Registered 01/19/82 Renewal Due 01/19/02