

11-18-1999

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Med 11-12-99



To the Honorable Commissioner of

101204116

attached original documents or copy thereof.
address of receiving party(ies):

1. Name of conveying party(ies):

Ace Beauty Co.

Bank of America, N.A., as Administrative
Agent for itself and other Lenders

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

Internal Address: _____
800 Market Street

Street Address _____

City: St. Louis State MO Zip: 63101

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Collateral Assignment and Security Agreement
- Merger
- Change of Name

Individual(s) citizenship: _____

Association National Banking Association

General Partnership _____

Limited Partnership _____

Corporation State _____

Other _____

Execution Date: 11/4/99

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 patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No(s):
2150481

Additional numbers attached? Yes No

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

Name: Terri Branson

Internal Address: Lewis, Rice & Fingersh, L.C.

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed
- Authorized to be charged to deposit account

Street Address: 500 N. Broadway, Suite 2000

City: St. Louis State: MO Zip: 63102

8. Deposit account number: _____

(Attach duplicate copy of this page if paying by deposit account)

11/17/1999 DC0ATES 00000156 2150481

DO NOT USE THIS SPACE

01 FC:481

40.00 DP

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.

Terri Branson

11/5/99

Name of Person Signing

Signature

Date

Total number of pages comprising cover sheet: 1

TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

This TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT (this "Agreement") is entered into as of November 4, 1999, by and between Ace Beauty Co., a Florida corporation, ("Assignor") and Bank of America, N.A., as Administrative Agent for the ratable benefit of itself and each of the other Lenders ("Assignee").

In consideration of the mutual agreements below and other sufficient consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **General.** Unless the context of this Agreement clearly requires otherwise, (i) references to the plural include the singular and vice versa, (ii) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, (iii) references to one gender include all genders, (iv) "including" is not limiting, (v) "or" has the inclusive meaning represented by the phrase "and/or", (vi) the words "hereof", "herein", "hereby", "hereunder" and similar terms in this Agreement refer to this Agreement as a whole, including its Exhibits, and not to any particular provision of this Agreement, (vii) the word "Section" or "section" and "Page" or "page" refer to a section or page, respectively, of this Agreement unless it expressly refers to something else, (viii) reference to any agreement, document, or instrument, including this Agreement, any other Loan Document and any agreement, document or instrument defined herein, means such agreement, document, or instrument as it may have been or may be amended, restated, extended, renewed, replaced, or otherwise modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, and includes all attachments thereto and instruments incorporated therein, if any, and (ix) general and specific references to any Law means such Law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time. Section captions are for convenience only and do not affect the interpretation or construction of this Agreement.

2. **Defined Terms.** All capitalized terms not otherwise defined herein have the meanings given them in that certain Amended and Restated Credit Facilities Agreement dated July 26, 1999, as amended through the date hereof, among Assignor, Bank of America, N.A., as Administrative Agent for the ratable benefit of itself and each of the other Lenders ("Administrative Agent"), and the Lenders (as it may be amended, restated, extended, renewed, replaced, and/or otherwise modified from time to time, the "Loan Agreement"). Capitalized terms used and not otherwise defined herein or in the Loan Agreement have the meanings given them in the UCC.

3. **Collateral Assignment of Trademark Collateral.** As security for the full and prompt payment and performance of all of the Loan Obligations (collectively, the "Secured Obligations"), Assignor hereby grants, collaterally assigns and conveys to Assignee a Security Interest in Assignor's entire right, title and interest in and to the Trademark Collateral. As used herein, "Trademark Collateral" means: all of Assignor's right, title and interest in and to all of its now owned or existing, filed and unfiled, and hereafter acquired or arising, filed and unfiled, trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service mark applications and licenses, including each name, mark, registration, and application listed on Schedule A attached hereto and made a part hereof (as the same may be amended pursuant hereto from time to time), and (i) renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, (iv) all rights, title, and interests corresponding thereto throughout the world (except that Assignor is not obligated to register the Trademark Collateral in any country other than the United States), and (v) the good will of Assignor's business connected with the use of each item of Trademark Collateral, and symbolized by, the Trademark Collateral.

4. **Representations and Warranties.** Assignor represents and warrants as follows:

4.1. Schedule A contains a complete and accurate list of all trademarks, trade names, service marks, trademark and service mark registrations, and applications for trademark or service mark registrations owned by Assignor.

4.2. Assignor is the sole and exclusive owner of the Trademark Collateral, free and clear of any Security Interests, charges, known claims of infringement upon the rights of third parties and Encumbrances, except as otherwise disclosed in Schedule A.

4.3. Assignor has not granted any license, release, covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Trademark Collateral, except as contemplated in the Loan Agreement or as otherwise disclosed in Schedule A.

4.4. The Trademark Collateral is subsisting and has not been adjudged invalid or unenforceable, and, to Assignor's knowledge, each item comprising the Trademark Collateral is valid and enforceable in the United States.

4.5. Assignor is duly authorized to execute and deliver this Agreement to Assignee, and this Agreement constitutes the legal, valid and binding obligation of Assignor, enforceable against Assignor in accordance with its terms.

5. Further Assurances.

5.1. Assignor agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary in order (i) to continue, perfect, amend or protect the assignment and the Security Interest granted hereby or (ii) to enable Assignee to exercise and enforce its rights and remedies hereunder with respect to any part of the Trademark Collateral. Without limiting the generality of the foregoing, Assignor will execute and file such financing or continuation statements, amendments hereto, and such other instruments or notices as may be necessary or desirable, or as Assignee may reasonably request, in order to perfect and preserve the assignment and Security Interest granted hereby.

5.2. Assignor hereby authorizes Assignee to file one or more financing or continuation statements, and amendments thereto (and hereto as to Schedule A), relative to all or any part of the Trademark Collateral, or subsequent additions thereto, without the signature of Assignor where permitted by law. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Trademark Collateral or any part thereof is sufficient as a financing statement where permitted by law.

5.3. Assignor agrees that, should it obtain an ownership interest in any trademark, service mark, trade name, trademark or service mark registration, or application for trademark or service mark registration which is not now identified in Schedule A, (i) Assignor will give prompt written notice thereof to Assignee, (ii) the provisions of Section 3 will automatically apply to any such mark, registration, or application, and (iii) any such mark, registration, or application, together with the good will of the business connected with the use of the mark and symbolized by it, will automatically become part of the Trademark Collateral.

5.4. With respect to any Trademark Collateral necessary to the conduct of Assignor's business, Assignor agrees to take all necessary steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, or in any court, to maintain each registered trademark, service mark, and trademark or service mark registration, and to pursue each application for trademark or service mark registration now or hereafter included in the Trademark Collateral, including the filing of applications for renewal, the payment of maintenance fees, and participation in opposition, interference and infringement proceedings. To the extent necessary or desirable to the conduct of its business, Assignor agrees to take corresponding steps with respect to each new or other registered trademark, service mark, trademark or service mark registration to which Assignor is now or later becomes entitled. Assignor will be relieved of the obligations of this Section 5.4 upon the prior written consent of Assignee, which consent will not be unreasonably withheld.

5.5. If Assignor becomes aware that any item of the Trademark Collateral is infringed or misappropriated by a third party, Assignor will promptly notify Assignee and will promptly sue for infringement or misappropriation and for recovery of all damages caused by such infringement or

misappropriation, or, with the prior written consent of Assignee, which consent will not be unreasonably withheld, will take such other actions as Assignor deems appropriate under the circumstances to protect such Trademark Collateral.

5.6. Assignor will continue to use reasonable and proper statutory notice in connection with its use of each registered trademark or service mark.

6. Transfers and Other Security Interests. Assignor will not: (i) sell, assign (by operation of law or otherwise), grant a license in or with respect to, or otherwise dispose of any of the Trademark Collateral, except as permitted by the Loan Agreement, (ii) create or suffer to exist any Security Interest or other charge or Encumbrance upon or with respect to any of the Trademark Collateral except as otherwise disclosed in Schedule A, or as otherwise permitted by the Loan Agreement, or (iii) take any other action in connection with any of the Trademark Collateral that would impair the value of the interests or rights of Assignor thereunder.

7. Assignee Appointed Attorney-in-Fact. Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, with full authority in Assignor's place, stead and on behalf of Assignor and in Assignor's names or otherwise, from time to time in Assignee's reasonable discretion, to take any action and to execute any instrument that Assignee deems reasonably necessary to accomplish the purposes of this Agreement, including for so long as there is an Existing Default: (i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Trademark Collateral, (ii) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (i) above, and (iii) to file any claims, take any action, or institute any proceedings that Assignee may deem necessary for the collection of any of the Trademark Collateral or otherwise to enforce the rights of Assignee with respect to any of the Trademark Collateral.

8. Assignee May Perform. If Assignor fails to perform any of the obligations contained herein, Assignee may perform, or cause performance of, such obligations, and the expenses of Assignee incurred in connection therewith will be payable by Assignor pursuant to the terms of this Agreement.

9. Assignee's Duties. The powers conferred on Assignee hereunder are solely to protect its interest in the Trademark Collateral and do not impose any duty upon Assignee to exercise any such powers or to pay any royalties or related charges with respect to the Trademark Collateral. Except for the accounting for moneys actually received by it hereunder, Assignee has no duty as to any Trademark Collateral, or as to the taking of any steps to preserve rights against other parties or any other rights pertaining to any Trademark Collateral.

10. Remedies. For so long as there is an Existing Default, in addition to all other rights and remedies of Assignee under the Loan Agreement, at law or in equity:

10.1. Assignee may exercise in respect of the Trademark Collateral, in addition to other rights and remedies provided for herein or otherwise available to Assignee or the Lenders, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Trademark Collateral) and also may: (i) as provided in Section 7, exercise any and all rights and remedies of Assignor under or otherwise in respect of the Trademark Collateral, (ii) require Assignor to, and Assignor hereby agrees that it will at its expense and upon request of Assignee, assemble all or any part of the documents embodying the Trademark Collateral as directed by Assignee and make them available to Assignee at a place to be designated by Assignee which is reasonably convenient to both Assignee and Assignor, (iii) license, sell or otherwise dispose of the Trademark Collateral or any part thereof, in one or more lots, at public or private sale, at any of Assignee's offices or elsewhere, for cash, credit or other consideration, and upon such other terms as are commercially reasonable. In the event of any sale, assignment, or other disposition of any of the Trademark Collateral, the good will of the business connected with and symbolized by any Trademark Collateral subject to such disposition will be included, and Assignor will supply to Assignee or its designee Assignor's know-how and expertise relating to the provision of services associated with any Trademark Collateral subject to such disposition, and Assignor's customer lists and other records relating to such Trademark Collateral, and to the distribution of such services. To the extent notice to Assignor of the time and place of any public sale or the time after which any private sale is to be made is required to be reasonable, ten (10) Business Days constitutes reasonable notice. Assignee will not

be obligated to make any sale of any Trademark Collateral regardless of notice of sale having been given. Assignee may adjourn any public or private sale therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Assignee may bid and become a purchaser at any such sale, if public, and upon any such sale Assignee may collect, receive, and hold and apply, as provided herein, the proceeds thereof to the payment of the Secured Obligations, and assign and deliver some or all of the Trademark Collateral to the purchaser at any such sale. The proceeds from any such sale will be applied in accordance with the terms of the Loan Agreement.

10.2. All payments received by Assignor under or in connection with any of the Trademark Collateral will be received in trust for the benefit of the Lenders, will be segregated from other funds of Assignor, and will be immediately paid over to Assignee in the same form as so received (with any necessary endorsement).

11. Releases. In the event all of the Secured Obligations have been fully and irrevocably paid, all of the Commitments have been canceled or terminated, each of Letters of Credit have expired, and Assignee has no other commitment to extend credit or make advances to or for the account of Borrower, and Assignee has received a written request from Assignor in connection therewith to execute and deliver all applicable releases, deeds, assignments, and other instruments as may be necessary or proper to re-vest in Assignor full title to the Trademark Collateral (collectively, the "Releases"), Assignee will, at Assignor's sole cost and expense (and Assignor will promptly reimburse Assignee for any fees and expenses, including legal fees and expenses, incurred in connection with the preparation, review, filing or recording of any such Releases) execute and deliver such Releases to the Person and address designated by Assignor in its notice within a commercially reasonable time after Assignee's receipt of such notice.

12. Survival of Provisions. All representations, warranties, and covenants of Assignor contained herein survive the execution and delivery of this Agreement, and terminate only upon the full and irrevocable payment of all of the Secured Obligations, cancellation or termination of all of the Commitments, expiration of all of the Letters of Credit, and when Assignee has no other commitment to extend credit or make advances to or for the account of Borrower.

13. Miscellaneous.

13.1. Notices. All notices, consents, requests and demands to or upon the respective parties hereto are to be given or made in the manner required by and shall be deemed given or made as specified in the Section of the Loan Agreement entitled "Notices". No notice given to or demand made on Assignor by Assignee or the Lenders in any instance entitles Assignor or Borrower to notice or demand in any other instance.

13.2. Amendments and Waivers. No amendment to, waiver of, or departure from full compliance with any provision of this Agreement, or consent to any departure by Assignor herefrom, will be effective unless it is in writing and signed by authorized officers of Assignor and Assignee; provided, however, that any such waiver or consent will be effective only in the specific instance and for the purpose for which given. No failure by Assignee or any Lender to exercise, and no delay by Assignee or any Lender in exercising, any right, remedy, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise by Assignee or such Lender of any right, remedy, power or privilege hereunder preclude any other exercise thereof, or the exercise of any other right, remedy, power or privilege.

13.3. Rights Cumulative. Each of the rights and remedies of Assignee and the Lenders under this Agreement is in addition to all of their other rights and remedies under applicable Law, and nothing in this Agreement may be construed as limiting any such rights or remedies.

13.4. Successors and Assigns. This Agreement binds Assignor and its successors and assigns and inures to the benefit of Assignee, and the Lenders, and Assignee's and each of the Lender's successors, transferees, participants and assignees. Assignor may not delegate or transfer any of its obligations under this Agreement without the prior written consent of Assignee. With respect to Assignor's successors and assigns, such successors and assigns include any receiver, trustee or debtor-in-possession of or for Assignor.

13.5. Severability. Any provision of this Agreement which is prohibited, unenforceable or not authorized in any jurisdiction is, as to such jurisdiction, ineffective to the extent of such prohibition, unenforceability or nonauthorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction unless the ineffectiveness of such provision would result in such a material change as to cause completion of the transactions contemplated hereby to be unreasonable.

13.6. Governing Law; No Third Party Rights. This Agreement is to be governed by and construed and interpreted in accordance with the internal Laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflicts of law principles. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns, and no other Person has any right, benefit, priority or interest under, or because of the existence of, this Agreement.

13.7. Counterparts. This Agreement may be executed by the parties hereto on any number of separate counterparts, and all such counterparts taken together constitute one and the same instrument. It is not necessary in making proof of this Agreement to produce or account for more than one counterpart signed by the party to be charged.

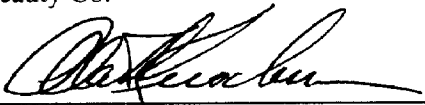
13.8. Counterpart Facsimile Execution. For purposes of this Agreement, a document (or signature page thereto) signed and transmitted by facsimile machine or telecopier is to be treated as an original document. The signature of any Person thereon, for purposes hereof, is to be considered as an original signature, and the document transmitted is to be considered to have the same binding effect as an original signature on an original document. At the request of any party hereto, any facsimile or telecopy document is to be re-executed in original form by the Persons who executed the facsimile or telecopy document. No party hereto may raise the use of a facsimile machine or telecopier or the fact that any signature was transmitted through the use of a facsimile or telecopier machine as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this Section.

13.9. Reinstatement. This Agreement and any and all assignments and Security Interests created or evidenced hereby will continue to be effective or be reinstated, as the case may be, as though such payments had not been made, if at any time any amount received by Assignee in respect of the Secured Obligations is rescinded or must otherwise be restored or returned by Assignee, including upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Assignor or upon the appointment of any intervenor or conservator of, or trustee or similar official for, Assignor, any substantial part of its assets, or otherwise.

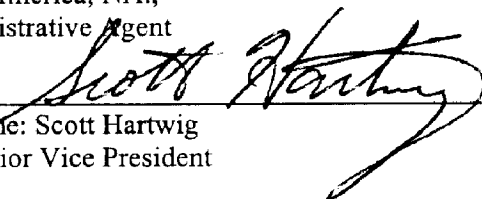
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first above written.

Ace Beauty Co.

By: 
Print Name: Alan D. Kerschner
Title: Vice President

Bank of America, NA.,
as Administrative Agent

By: 
Print Name: Scott Hartwig
Title: Senior Vice President

[ACKNOWLEDGMENTS FOLLOW]

STATE OF MISSOURI)
) SS.
16th OF ST. LOUIS)

On this 4th day of November, 1999, before me personally appeared Alan D. Kerschner, to me personally known, who, being by me duly sworn, did say that he is the Vice President of Ace Beauty Co., a Florida corporation, and that said instrument was signed in behalf of said corporation, by authority of its board of directors; and said Alan D. Kerschner acknowledged said instrument to be the free act and deed of said corporation.

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

Terri L. Branson
Notary Public

My Commission expires:
Terri L. Branson
Notary Public - Notary Seal
State of Missouri
St. Charles County
My Commission Exp. 03/01/2001

STATE OF MISSOURI)
) SS.
City OF ST. LOUIS)

On this 4th day of November, 1999 before me personally appeared Scott Hartwig, to me personally known, who, being by me duly sworn, did say that he is a Senior Vice President of Bank of America, N.A., a national banking association, and that said instrument was signed in behalf of said association by authority of its Board of Directors; and said Scott Hartwig acknowledged said instrument to be the free act and deed of said association.

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

Terri L. Branson
Notary Public

My Commission expires:
Terri L. Branson
Notary Public - Notary Seal
State of Missouri
St. Charles County
My Commission Exp. 03/01/2001

SCHEDULE A

ISSUED TRADEMARK REGISTRATIONS

<u>MARK</u>		<u>REG. NO.</u>	<u>APP. DATE</u>	<u>FIRST USE</u>	<u>COUNTRY/ STATE</u>
Ace Beauty Company Since 1939		2150481	4/14/98	9/1/96	USA
Ace Beauty		T96000000777	7/8/96	9/1/39	Florida
Ace		T96000000646	6/7/96	9/1/39	Florida