

08-13-2002

Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

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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.

1. Name of conveying party(ies): 8-8-02

Seven Up Bottling Company of San Francisco

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State-California
- 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 15, 2002

2. Name and address of receiving party(ies)

Name: Citicorp USA, Inc.

Internal

Address: _____

Street Address: 153 East 53rd Street

City: New York State: NY Zip: 10043

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Delaware
- 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)

2164597 2105906
~~2186748~~ 2299578

Additional number(s) attached Yes No

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

Name: Rebecca C. Ambriz, Paralegal

Internal Address: Sonnenschein Nath & Rosenthal

8000 Sears Tower

Street Address: 233 South Wacker Drive

City: Chicago State: IL Zip: 60606

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....\$ 115.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: _____

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

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Rebecca C. Ambriz

Name of Person Signing

Rebecca C. Ambriz
Signature

8/8/02
Date

10

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

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

08/12/2002 AAHMED1 00000121 2164597

01 FC:481
02 FC:482

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75.00 OP

TRADEMARK
REEL: 002561 FRAME: 0709

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is made as of the 15th of February, 2002, by and between SEVEN UP BOTTLING COMPANY OF SAN FRANCISCO, a California Corporation ("Borrower"), with its chief executive office located at 1981 Broadway Street, Suite 215, Walnut Creek, CA 94596 and CITICORP USA, INC., a Delaware corporation ("Lender"), with its principal office located at 153 East 53rd Street, New York, NY 10043.

W I T N E S S E T H:

WHEREAS, Borrower and Lender are parties to that certain Loan and Security Agreement dated as of February 15, 2002 as amended, modified, restated and supplemented from time to time, (the "Loan Agreement"), pursuant to which the Lender has agreed to make certain credit facilities available to the Borrower; and

WHEREAS, as a condition, among others, the Lender has required Borrower to execute and deliver this Agreement in order to secure the prompt and complete payment, observance and performance of all of the "Obligations" (as defined in the Loan Agreement);

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Loan Agreement shall have the meaning specified for such term in the Loan Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Incorporation of Premises. The premises set forth above are incorporated into this Agreement by this reference hereto and are made a part hereof.

3. Incorporation of the Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

4. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Borrower hereby grants to the Lender a security interest in, as and by way of a first mortgage and security interest having priority over

all other security interests, with power of sale to the extent permitted by applicable law, all of Borrower's:

(a) now owned or existing and hereafter acquired or arising trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on Schedule A attached hereto and made a part hereof, together with any good will connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, service mark applications, and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, and (iv) all of Borrower's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in clauses (i)-(iv) in this Paragraph 4(a), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and

(b) rights under or interest in any trademark license agreements or service mark license agreements with any other party, whether Borrower is a licensee or licensor under any such license agreement, together with any goodwill connected with and symbolized by any such trademark license agreements or service marks license agreements, including, without limitation, those trademark license agreements and service mark license agreements listed on Schedule B attached hereto and made a part hereof, and the right to prepare for sale and sell any and all Inventory now or hereafter owned by Borrower and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses").

5. Restrictions on Future Agreements. Borrower will not, without Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Borrower further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect affect the validity or enforcement of the rights transferred to Lender under this Agreement or the rights associated with those Trademarks or Licenses.

6. New Trademarks and Licenses. Borrower represents and warrants that (a) the Trademarks listed on Schedule A include all of the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned by Borrower, (b) the Licenses listed on Schedule B include all of the trademark license agreements and service mark license agreements pursuant to which Borrower is the licensee or

licensor thereunder and (c) no other liens, claims or security interests have been granted by Borrower to any other Person in such Trademarks and Licenses. If, prior to the termination of this Agreement, Borrower shall (i) obtain rights to any new trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (ii) become entitled to the benefit of any trademarks, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor, or (iii) enter into any new trademark license agreement or service mark license agreement, the provisions of Paragraph 4 above shall automatically apply thereto. Borrower shall give to Lender written notice of events described in clauses (i), (ii) and (iii) of the preceding sentence on a quarterly basis. Borrower hereby authorizes Lender to modify this Agreement by amending Schedule A to include any future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and by amending Schedule B to include any future trademark license agreements and service mark license agreements, which are Trademarks or Licenses under Paragraph 4 above or under this Paragraph 6.

7. Royalties. Borrower hereby agrees that the use by Lender of the Trademarks and the Licenses as authorized hereunder in connection with the exercise of its remedies under Paragraph 16 shall be coextensive with Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Lender to Borrower.

8. Right to Inspect; Further Assignments and Security Interests. The Lender may at all reasonable times (and at any time when a Default or an Event of Default exists) have access to, examine, audit, make copies (at Borrower's expense) and extracts from and inspect Borrower's premises and examine Borrower's books, records and operations relating to the Trademarks and the Licenses, including, without limitation, Borrower's quality control processes; provided that, in conducting such inspections and examinations, Lender shall use reasonable efforts not to unnecessarily disturb the conduct of Borrower's ordinary business operations. From and after the occurrence and during the continuance of an Event of Default, Borrower agrees that Lender, or a conservator appointed by Lender, shall have the right to establish such reasonable additional product quality controls as Lender or such conservator, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by Borrower under the Trademarks and the Licenses. Borrower agrees (a) to maintain the quality of said products as of the date hereof, and (b) not to change the quality of such products in any material respect without Lender's prior and express written consent which consent will not be unreasonably withheld.

9. Termination of Lender's Security Interest. This Agreement is made for collateral security purposes only. Upon payment in full of all of the Obligations, this Agreement shall terminate and Lender shall promptly execute and deliver to the Borrower, at Borrower's expense, all termination statements and other instruments as may be necessary or proper to terminate Lender's security interest in the Trademarks and the Licenses, subject to any disposition thereof which may have been made by Lender pursuant to this Agreement or the Loan Agreement.

10. Duties of Borrower. Borrower shall have the duty, to the extent desirable in the normal conduct of Borrower's business, to: (a) prosecute diligently any trademark application or

service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, and (b) make application for trademarks or service marks. Borrower further agrees (i) not to abandon any Trademark or License without the prior written consent of Lender and (ii) to use its best efforts to maintain in full force and effect the Trademarks and Licenses, that are or shall be necessary or economically desirable in the operation of Borrower's business. Any expenses incurred in connection with the foregoing shall be borne by Borrower.

11. Lender's Right to Sue. From and after the occurrence of an Event of Default, Lender shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and Licenses and, if Lender shall commence any such suit, Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement. Borrower shall, upon demand, promptly reimburse Lender for all costs and expenses incurred by Lender in the exercise of its rights under this Paragraph 11 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for Lender).

12. Waivers. Lender's failure, at any time or times hereafter, to require strict performance by Borrower of any provision of this Agreement shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith nor shall any course of dealing between Borrower and Lender have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of Borrower contained in this Agreement shall be deemed to have been suspended or waived by Lender unless such suspension or waiver is in writing signed by an officer of Lender and directed to Borrower specifying such suspension or waiver.

13. Lender's Exercise of Rights and Remedies upon an Event of Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence of an Event of Default, Lender may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement and any other Loan Documents.

14. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part hereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

15. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Paragraphs 4 and 6 hereof or by a writing signed by the parties hereto.

16. Cumulative Remedies; Power of Attorney. All of Lender's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

From and after the occurrence and during the continuance of an Event of Default and the giving of written notice by Lender to Borrower of Lender's intention to enforce its rights and claims against Borrower, Borrower hereby irrevocably designates, constitutes and appoints Lender (and all Persons designated by Lender in its sole and absolute discretion) as Borrower's true and lawful attorney-in-fact, and authorizes Lender and any of Lender's designees, in Borrower's or Lender's name, from and after the occurrence and during the continuance of an Event of Default, to (a) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for Lender in the use of the Trademarks or the Licenses, (b) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone on commercially reasonable terms, (c) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone on commercially reasonable terms, and (d) take any other actions with respect to the Trademarks or the Licenses as Lender deems in its best interest. Lender shall take no action pursuant to subparagraphs (a), (b), (c) or (d) of this Paragraph 16 without taking like action with respect to the entire goodwill of Borrower's business connected with the use of, and symbolized by, such Trademarks or Licenses. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all of the Obligations shall have been paid in full. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies. Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks or the Licenses may be located or deemed located.

17. Successors and Assigns. This Agreement shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns. Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession to the extent that any of the foregoing are considered to be a successor or assign of or for the Borrower; provided, however, that Borrower shall not voluntarily assign or transfer its rights or obligations hereunder without Lender's prior written consent.

18. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the internal laws (as opposed to conflicts of law provisions) and decisions of the State of New York.

19. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

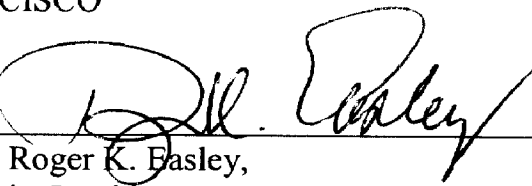
20. Lender's Duty. Lender shall not have any duty with respect to the Trademarks or the Licenses. Without limiting the generality of the foregoing, Lender shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks or the Licenses against any other parties, but may do so at its option, and all expenses incurred in connection therewith shall be for the sole account of Borrower and added to the Obligations secured hereby.

21. Section Titles. The section titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the 15TH day of February, 2002.

SEVEN UP BOTTLING COMPANY OF SAN FRANCISCO

By:

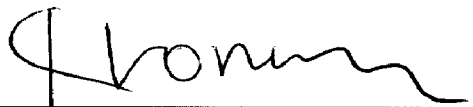


Roger K. Fasley,
its President

Accepted and agreed to as of the 13TH day of February, 2002, by:

CITICORP USA, INC.

By:



Name: *Juan Carlos Lorenzo*

Title: Vice President

Schedule A
to
Trademark Security Agreement

Dated as of February 15, 2002

U.S. Federal Trademark Registrations/Applications

| <u>Mark</u> | <u>Serial No.</u> | <u>Registration Date</u> |
|-------------------|-------------------|--------------------------|
| Aqua Mountain | 2164597 | June 9, 1998 |
| Aqua Ice | 2186748 | September 1, 1998 |
| Orange Blast | 2105906 | October 14, 1997 |
| Railroad Rootbeer | 2299578 | December 14, 1999 |

Schedule B
to
Trademark Security Agreement

Dated as of February 15, 2002

Licenses

1. Distribution Agreement, dated as of June 1, 1996, between Hansen Beverage Company and Seven Up Bottling Company of San Francisco, as Distributor.
2. Bottler's Agreement, dated November 1, 1985, between Royal Crown Cola Co. and Seven Up Bottling Company of San Francisco, as Licensee.
3. Squirt License Agreement, dated as of January 1, 1997, between Dr. Pepper/Seven Up, Inc. and Seven Up Bottling Company of San Francisco, as Licensee.
4. Post-Mix Territory Agreement, dated December 22, 1960, between The Seven-Up Company and Seven Up Bottling Company of San Francisco, as Manufacturer.
5. Canned 7-Up Territory Agreement, dated as of September 20, 1965, between The Seven-Up Company and Seven Up Bottling Company of San Francisco, as Canner.
6. Territory Agreement, dated as of February 18, 1970, between The Seven-Up Company and Seven Up Bottling Company of San Francisco, as Manufacturer.
7. Franchise Agreement, dated as of June 29, 1991, between The Seven-Up Company and Seven-Up Bottling Company of Marysville d/b/a Seven-Up Bottling Company, as Franchisee.
8. Bottling Agreement, dated as of February 1, 1995, between Kernors Inc. and Seven Up Bottling Company, as Bottler.
9. Agreement, dated as of February 9, 1980, between A&W Beverages, Inc. and Seven Up Bottling Company of San Francisco, as Bottler.
10. Canada Dry License Agreement, dated as of March 17, 1986, between Canada Dry Corporation and Seven Up Bottling Company of San Francisco, as Grantee.
11. Canada Dry License Agreement, dated as of January 1, 1997, between Dr. Pepper/Seven Up, Inc. and Seven Up Bottling Company of San Francisco, as Licensee.
12. Big Red Bottler's License Agreement, dated as of August 28, 2001, between Big Red, Inc. and Seven Up Bottling Company of San Francisco, as Licensee.
13. Distribution Agreement, dated as of August 7, 1996, between Clearly Canadian Beverage (U.S.) Corporation and Seven-Up Bottling Company, as Distributor.

Licenses
(continued)

14. Tahitian Treat Trademark License Agreement, dated July 9, 1991, between Cadbury Beverages Inc. and Seven-Up Bottling Company of San Francisco, as Grantee.

15. Trademark License and Bottling Agreement, dated as of March 1, 1998, among Sunkist Soft Drinks U.S.A., Seven Up Bottling Company of San Francisco, as Licensee and Sunkist Growers, Inc.

16. Dr. Pepper/Seven Up, Inc., A&W Bottling Agreement, dated May 3, 1988, between Dr. Pepper/Seven-Up, Inc. and Tonkin Corporation of California, Inc. d/b/a Seven-Up Bottling Company of Sacramento, as Licensee.