

# TRADEMARK ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

SECURITY INTEREST

## CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Martini Park, LLC		02/20/2008	LIMITED LIABILITY COMPANY: DELAWARE

## RECEIVING PARTY DATA

Name:	Fifth Street Finance Corp.
Street Address:	445 Hamilton Avenue
Internal Address:	12th Floor
City:	White Plains
State/Country:	NEW YORK
Postal Code:	10601
Entity Type:	CORPORATION: DELAWARE

## PROPERTY NUMBERS Total: 5

Property Type	Number	Word Mark
Registration Number:	3255218	MARTINI PARK
Registration Number:	3322719	MARTINI PARK
Registration Number:	3333603	MARTINI PARK
Serial Number:	77219663	MEET ME AT THE PARK
Serial Number:	77219654	THERE'S A NEW PARK IN TOWN

## CORRESPONDENCE DATA

Fax Number: (617)526-9899  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 6175269628  
 Email: cslattery@proskauer.com  
 Correspondent Name: Christine Slattery  
 Address Line 1: Proskauer Rose LLP  
 Address Line 2: One International Place  
 Address Line 4: Boston, MASSACHUSETTS 02110

TRADEMARK

900103151

REEL: 003751 FRAME: 0130

CH \$140.00 3255218

ATTORNEY DOCKET NUMBER:	28514/014
NAME OF SUBMITTER:	Christine Slattery
Signature:	/Christine Slattery/
Date:	04/02/2008
<p>Total Attachments: 10</p> <p>source=Martini Park TM Agreement#page1.tif</p> <p>source=Martini Park TM Agreement#page2.tif</p> <p>source=Martini Park TM Agreement#page3.tif</p> <p>source=Martini Park TM Agreement#page4.tif</p> <p>source=Martini Park TM Agreement#page5.tif</p> <p>source=Martini Park TM Agreement#page6.tif</p> <p>source=Martini Park TM Agreement#page7.tif</p> <p>source=Martini Park TM Agreement#page8.tif</p> <p>source=Martini Park TM Agreement#page9.tif</p> <p>source=Martini Park TM Agreement#page10.tif</p>	

## TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (this "Trademark Security Agreement") is made this 20th day of February, 2008, among Pledgors listed on the signature pages hereof (collectively, jointly and severally, "Pledgors" and each individually "Pledgor"), and Fifth Street Finance Corp. (together with its successors, the "Secured Party").

### WITNESSETH

WHEREAS, pursuant to that certain Credit Agreement, dated as of February 20, 2008 (as amended, restated, supplemented, or otherwise modified from time to time, including all schedules thereto, the "Credit Agreement") among MARTINI PARK, LLC, a Delaware limited liability company ("Borrower"), Martini Park of Dallas LLC a Delaware limited liability company ("OpCo I"), Martini Park of Chicago, LLC, an Illinois limited liability company ("OpCo II"), Martini Park of Dallas, LLC, a Texas limited liability company ("OpCo III"), Martini Park of San Francisco, LLC, a California limited liability company ("OpCo VI"), Martini Park of Phoenix, LLC, an Arizona limited liability company ("OpCo V"), Martini Park of Houston LLC, a Delaware limited liability company ("OpCo VI"), Martini Park of Cherry Creek, LLC, a Colorado limited liability company ("OpCo VII"), Martini Park of Kansas City, LLC, a Missouri limited liability company ("OpCo VIII"), MP Beverages, Inc., a Texas corporation ("OpCo IX" together with the Borrower and OpCo I, OpCo II, OpCo III, OpCo IV, OpCo V, OpCo VI, OpCo VII, OpCo VIII the "Pledgors" and each, individually, a "Pledgor"), and the Secured Party, the Secured Party has agreed to make certain financial accommodations available to Pledgors from time to time;

WHEREAS, the Secured Party is willing to make the financial accommodations to Pledgors as provided for in the Credit Agreement, but only upon the condition, among others, that Pledgors shall have executed and delivered to Secured Party that certain Pledge and Security Agreement, dated as of February 20, 2008 (including all annexes, exhibits or schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Security Agreement"); and

WHEREAS, pursuant to the Security Agreement, Pledgors are required to execute and deliver to Secured Party this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Pledgor and Secured Party hereby agrees as follows:

1. DEFINED TERMS. All capitalized terms used but not otherwise defined herein have the meanings given to them in the Security Agreement or the Credit Agreement.

2. GRANT OF SECURITY INTEREST IN TRADEMARK COLLATERAL. Each Pledgor hereby grants to Secured Party a continuing first priority security interest, subject only to the Liens in favor of the Secured Party, in all of such Pledgor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired (collectively, the "Trademark Collateral"), subject to the Permitted Encumbrances:

(a) all of its Trademarks and Trademark Licenses to which it is a party including those referred to on Schedule I hereto;

(b) all goodwill, procedures, quality control standards, designs, look and feel, trade dress and other General Intangibles with respect to the foregoing;

- (c) all renewals of registered Trademarks;
- (d) all post-grant rights, oppositions, cancellation proceedings related to the foregoing;
- (e) all goodwill of the business connected with the use of, and symbolized by, each Trademark and each Trademark License; and
- (f) all products and proceeds of the foregoing, including any claim by such Pledgor against third parties for past, present or future (i) infringement or dilution of any Trademark or any Trademark licensed under any License or any common law unfair competition rights or (ii) injury to the goodwill associated with any Trademark or any Trademark License under any intellectual property license agreement or any applicable law.

3. **SECURITY FOR OBLIGATIONS.** This Trademark Security Agreement and the security interest created hereby secure the payment and performance of all the Obligations, whether now existing or arising hereafter. Without limiting the generality of the foregoing, this Trademark Security Agreement secures the payment of all amounts which constitute part of the Obligations and would be owed by Pledgors, or any of them, to Secured Party, whether or not they are unenforceable or not allowable due to the existence of a proceeding described in Sections 6.1(f) or (g) of the Credit Agreement involving any Pledgor.

4. **SECURITY AGREEMENT.** The security interests granted pursuant to this Trademark Security Agreement are granted in conjunction with the security interests granted to Secured Party pursuant to the Security Agreement. Each Pledgor hereby acknowledges and affirms that the rights and remedies of Secured Party with respect to the security interest in Collateral consisting of Trademarks made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

5. **REPRESENTATIONS AND WARRANTIES.** Each Pledgor represents and warrants to Lender that: (a) a true and correct list of all existing Collateral consisting of Trademark Collateral is set forth on Schedule I, (b) the Trademark Collateral listed in Schedule I is subsisting and has not been judged invalid or unenforceable, in whole or in part, and all of such Trademark Collateral is valid and enforceable, and (c) no material infringement or unauthorized use presently is being made of any of the Trademark Collateral by any third party and the past, present and contemplated future use of such Collateral by Pledgors has not, does not and will not violate any right, privilege or license agreement of or with any third party or give such third party any right to terminate any such license agreement.

6. **AUTHORIZATION TO SUPPLEMENT.** If any Pledgor shall obtain rights to any new trademarks, the provisions of this Trademark Security Agreement shall automatically apply thereto. Pledgors shall give prompt notice in writing to Secured Party with respect to any such new trademarks or renewal or extension of any trademark registration. Without limiting Pledgors' obligations under this Section 6, Pledgors hereby authorize Secured Party unilaterally to modify this Agreement by amending Schedule I to include any such new trademark rights of Pledgors. Notwithstanding the foregoing, no failure to so modify this Trademark Security Agreement or amend Schedule I shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all Trademark Collateral, whether or not listed on Schedule I.

7. **COUNTERPARTS.** This Trademark Security Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument. In proving this Trademark

Security Agreement or any other Loan Document in any judicial proceedings, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom such enforcement is sought. Any signatures delivered by a party by facsimile transmission or by e-mail transmission shall be deemed an original signature hereto.

8. **FURTHER ACTS.** On a continuing basis, Pledgors shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by Lender to carry out the intent and purposes of this Trademark Security Agreement, or for assuring, confirming or protecting the grant or perfection of the security interest granted or purported to be granted hereby, to ensure each Pledgor's compliance with this Trademark Security Agreement or to enable Lender to exercise and enforce its rights and remedies hereunder with respect to the Trademark Collateral, including any documents for filing with the United States Patent and Trademark Office (the "PTO") or any applicable state office. Lender may record this Agreement, an abstract thereof, or any other document describing Lender's interest in the Trademark Collateral with the PTO, at the expense of Pledgors. In addition, Pledgors authorize Lender to file financing statements describing the Trademark Collateral in any UCC filing office deemed appropriate by Lender. If Pledgors refuse to execute and deliver, or fail timely to execute and deliver, any of the documents they are requested to execute and deliver by the Lender in accordance with the foregoing, Lender shall have the right, in the name of Pledgors and each Pledgor hereby irrevocably constitute and appoint Lender (and any of Lender's officers or employees or agents designated by Lender) as Pledgor's true and lawful attorney-in-fact with full power and authority, (i) to sign the name of each of the Pledgors on all or any of the such documents or instruments and perform all other acts that Lender deems necessary or advisable in order to perfect or continue the perfection of, maintain the priority or enforceability of or provide notice of the security interest in the Trademark Collateral held by Lender, and (ii) to execute any and all other documents and instruments, and to perform any and all acts and things for and on behalf of each of the Pledgors, which Lender may reasonably deem necessary or advisable to maintain, preserve and protect the Trademark Collateral and to accomplish the purposes of this Trademark Security Agreement, including (A) upon the occurrence of any Event of Default, to defend, settle, adjust or institute any action, suite or proceeding with respect to the Trademark Collateral, (B) upon the occurrence of any Event of Default, to assert or retain any rights under any license agreement for any of the Trademark Collateral, including any rights of Pledgors arising under Section 365(n) of the United States Bankruptcy Code 11 U.S.C. § 101 et seq., as amended, and (C) upon the occurrence of any Event of Default, to execute any and all application, documents, papers and instruments for Lender to use the Trademark Collateral, to grant or issue any exclusive or non-exclusive license with respect to any Trademark Collateral, and to assign, convey or otherwise transfer title in or dispose of the Trademark Collateral. The power of attorney set forth in this Section 8, being coupled with an interest, is irrevocable so long as this Agreement shall not have terminated.

9. **EVENTS OF DEFAULT.** Upon the occurrence of an Event of Default, the Lender shall have all rights and remedies available to it under the Credit Agreement, Security Agreement and applicable law (which rights and remedies are cumulative) with respect to the security interest in any of the Trademark Collateral. Pledgors agree that such rights and remedies include the right of the Lender to sell or otherwise dispose of the Trademark Collateral pursuant to the UCC. Pledgors hereby agree that Lender shall at all times have such royalty-free licenses, to the extent permitted by law, for any Trademark Collateral that is reasonably necessary to permit the exercise of any of the Lender's right or remedies upon or after the occurrence of an Event of Default with respect to (among other things) any tangible asset of Borrower in which Lender has a security interest, including Lender's right to sell inventory of the Borrower. In addition to and without limiting any of the foregoing, upon the occurrence and during the continuance of an Event of Default, Lender shall have the right, but shall in no way be

obligated to, bring suit or take such other action as Lender deems necessary or advisable, in the name of Pledgors or Lender, to enforce or protect any of the Trademark Collateral (including, without limitation, asserting any rights under any license agreement for any of the Trademark Collateral), in which event Pledgors shall, at the request of the Lender, do any and all lawful acts and execute any and all documents required by Lender in aid of such enforcement. To the extent that Lender shall elect not to bring suit to enforce such Trademark Collateral, Pledgors, in the exercise of its reasonable business judgment, agree to use all reasonable measures and their diligent efforts, whether by action, suit, proceeding or otherwise, to prevent the infringement, misappropriation or violation thereof by others and for that purpose agree diligently to maintain any action, suit or proceeding against any third party necessary to prevent such infringement, misappropriation or violation.

10. CONSTRUCTION. Unless the context of this Trademark Security Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the terms "includes" and "including" are not limiting. The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Trademark Security Agreement or any other Loan Document refer to this Trademark Security Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Trademark Security Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Trademark Security Agreement unless otherwise specified. Any reference in this Trademark Security Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). Any reference herein or in any other Loan Document to the satisfaction or repayment in full of the Obligations shall mean the repayment in full in cash of all Obligations other than unasserted contingent indemnification Obligations. Any reference herein to any Person shall be construed to include such Person's successors and permitted assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record and any Record so transmitted shall constitute a representation and warranty as to the accuracy and completeness of the information contained therein.


11. GOVERNING LAW. This Trademark Security Agreement and the transactions evidenced hereby shall be construed under the internal laws of the State of New York without regard to principals of conflict of law. Pledgors agree that any suit for the enforcement of this Trademark Security Agreement or any of the other Loan Documents may be brought in the courts of New York State or any Federal Court sitting therein and consents to the nonexclusive jurisdiction of such court and service of process in any such suit being made upon any Pledgor by mail at the address of such Pledgor set forth in the Credit Agreement. Pledgors hereby waive any objection that they may now or hereafter have to the venue of any such suit or any such suit is brought in an inconvenient forum.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each Pledgor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.


PLEDGORS:

MARTINI PARK, LLC, a Delaware limited liability company

By:   
Keith Barish, Executive Vice President


MARTINI PARK OF DALLAS, LLC, a Texas limited liability company

By: Martini Park, LLC, a Delaware limited liability company, its Managing Member

By:   
Keith Barish, Executive Vice President

MARTINI PARK OF CHICAGO, LLC, an Illinois limited liability company

By: Martini Park, LLC, a Delaware limited liability company, its Managing Member

By:   
Keith Barish, Executive Vice President

[Trademark Agreement]

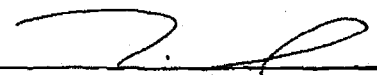
MARTINI PARK OF DALLAS LLC, a  
Delaware limited liability company  
By: Martini Park, LLC, a Delaware limited  
liability company, its Managing Member

By:   
Keith Barish, Executive Vice President

MARTINI PARK OF HOUSTON LLC, a  
Delaware limited liability company  
By: Martini Park, LLC, a Delaware limited  
liability company, its Managing Member

By:   
Keith Barish, Executive Vice President

MARTINI PARK OF SAN FRANCISCO, LLC,  
a California limited liability company  
By: Martini Park, LLC, a Delaware limited  
liability company, its Managing Member

By:   
Keith Barish, Executive Vice President

[Trademark Agreement]




MARTINI PARK OF CHERRY CREEK, LLC,  
a Colorado limited liability company  
By: Martini Park, LLC, a Delaware limited  
liability company, its Managing Member

By:   
Keith Barish, Executive Vice President

MARTINI PARK OF PHOENIX, LLC, an  
Arizona limited liability company  
By: Martini Park, LLC, a Delaware limited  
liability company, its Managing Member

By:   
Keith Barish, Executive Vice President

MARTINI PARK OF KANSAS CITY, LLC, a  
Missouri limited liability company  
By: Martini Park, LLC, a Delaware limited  
liability company, its Managing Member

By:   
Keith Barish, Executive Vice President

[Trademark Agreement]

MP BEVERAGES, INC., a Texas corporation

By:   
William Gregory Arnold, President

[Trademark Agreement]

**SECURED PARTY:**

FIFTH STREET FINANCE CORP.

By: Fifth Street Management LLC  
its Agent

By: Bernard D. Berman  
Name: Bernard D. Berman  
Title: Member

[TRADEMARK SECURITY AGREEMENT]

SCHEDULE I  
to  
TRADEMARK SECURITY AGREEMENT

**Trademark Registrations/Applications**

<b>Pledgor</b>	<b>Country</b>	<b>Mark</b>	<b>Application No./Application Date</b>	<b>Registration No./Registration Date</b>	<b>Due Date</b>
Martini Park, LLC	United States	MARTINI PARK	78/796091 1/20/06	3255218 6/26/07	D – 6/26/13 R – 6/26/17
Martini Park, LLC	United States	MARTINI PARK & Design (B&W)	77/076382 1/4/07	3322719 10/30/07	D – 10/30/13 R – 10/30/17
Martini Park, LLC	United States	MARTINI PARK & Design (Color)	77/076405 1/4/07	3333603 11/13/07	D – 11/13/13 R – 11/13/17
Martini Park, LLC	United States	MEET ME AT THE PARK	77/219663 6/29/07		
Martini Park, LLC	United States	THERE'S A NEW PARK IN TOWN	77/219654 6/29/07		

**Trade Names**

NONE	

**Common Law Trademarks**

NONE

**Trademark Licenses**

NONE