

10-26-2004



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Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/2005)

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

102867155

2-1204

REC... COVER SHEET
TRADEMARKS ONLY

10-2004

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):
PNC Bank, National Association
Mailstop P1-POPP-BL-7
249 Fifth Ave., One PNC Plaza
Pittsburgh, PA 15222
 Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other Financial Institution

Citizenship (see guidelines) _____

Execution Date(s) October 15, 2004

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

2. Name and address of receiving party(ies) Yes
Additional names, addresses, or citizenship attached? No
Clark Foods, d|b|a
Name: American, Beverage Marketers

Internal _____
Address: _____

Street Address: 810 Progress Boulevard

City: New Albany,

State: Indiana

Country: USA Zip: 47150

Association Citizenship _____
 General Partnership Citizenship _____
 Limited Partnership Citizenship _____
 Corporation Citizenship _____
 Other _____ Citizenship _____

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s) _____

1967422 and 1010022

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

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

Name: PNC Bank, National Association

Internal Address: Mailstop P1-POPP-BL-7

Street Address: 249 Fifth Ave., One PNC Plaza

City: Pittsburgh

State: PA Zip: 15222

Phone Number: (412) 768-6613

Fax Number: (412) 705-2132

Email Address: _____

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 65.00

Authorized to be charged by credit card
 Authorized to be charged to deposit account
 Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____
Authorized User Name _____

9. Signature: Charlotte Armstrong
Signature

October 15, 2004
Date

Charlôtte Armstrong
Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 8

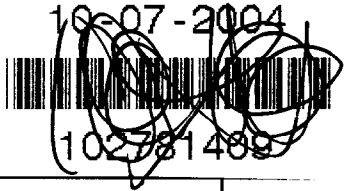
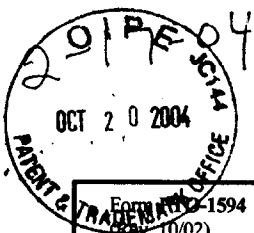
Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

10/25/2004 ECUOPER 0000067 1967422

01 FC:8521
02 FC:8522

40.00
25.00

TRADEMARK
REEL: 003068 FRAME: 0060



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

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)
Tab settings → → → ▼
To the Honorable Commission

Send original documents or copy thereof.

1. Name of conveying party(ies):
Clark Foods, Inc. d|b|a American Beverage Marketers

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

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

2. Name and address of receiving party(ies)

Name: PNC BANK, NATIONAL ASSOCIATION
Internal Address: Mailstop PL-POPP-BL-7
Street Address: 249 Fifth Ave Once PNC Plaza
City: Pittsburgh State: PA Zip: 15222

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State _____
 Other Financial Institution

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

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: January 22, 2004

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)
See Attached

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: PNC BANK, N.A.
Internal Address: Mailstop PL-POPP-BL-7

Street Address: 249 Fifth Ave Once PNC Plaza

City: Pittsburgh State: PA Zip: 15222

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41).....\$ 65.00

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.

Charlotte M. Armstrong Charlotte M. Armstrong 02-11-04
Name of Person Signing Signature Date

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

02/17/2004 LNWELLER 00000231 ARMSTRONG C
01 FC:0521 40.00 DP
02 FC:0522 25.00 DP

TRADEMARK
REEL: 003068 FRAME: 0061

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cc # 4090116 ccm
PNCBANK

Rider to Amended and Restated Security Agreement – Trademarks

THIS RIDER TO AMENDED AND RESTATED SECURITY AGREEMENT (“Rider”) is executed as of this 22nd day of January, 2004, by and between **CLARK FOODS, INC. d/b/a AMERICAN BEVERAGE MARKETERS** (the “Grantor”) with an address at 810 Progress Boulevard, New Albany, Indiana 47150 and **PNC BANK, NATIONAL ASSOCIATION** (the “Bank”), with an address at 500 West Jefferson Street, Louisville 40202. This Rider is incorporated into and made part of that certain Amended and Restated Security Agreement (“**Security Agreement**”) between the Grantor and the Bank dated January 22, 2004, and also into certain other financing documents and security agreements executed by and between the Grantor and the Bank or by and between the Borrower (as defined in the Security Agreement) and the Bank (all such documents including this Rider being collectively referred to as “**Loan Documents**”). All capitalized terms not otherwise defined in this Rider shall have the same meanings ascribed to such terms in the other Loan Documents.

The Grantor has adopted, used and is using the trademarks, service marks and trade names listed on Schedule “A” attached hereto and made part hereof (all such marks or names hereinafter referred to as the “**Trademarks**”).

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

NOW, THEREFORE, with the foregoing background deemed incorporated by reference and made part hereof, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Grant of Security Interest. In consideration of and pursuant to the terms of the Loan Documents, and for other good, valuable and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, and to secure payment and performance of the Obligations, the Grantor grants a lien and security interest to the Bank in all its present and future right, title and interest in and to the Trademarks, together with all the goodwill and other tangible assets of the Grantor associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Representations and Warranties. The Grantor represents, warrants and covenants that: (a) the Trademarks are subsisting and have not been abandoned, suspended, voluntarily terminated or canceled by the Grantor, have not been adjudged invalid or unenforceable, and to the best of the Grantor’s knowledge, there is no reason why the Trademarks should be adjudged invalid or unenforceable; (b) each of the Trademarks as registered in the United States is valid and enforceable in the United States; (c) the Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses and covenants by the Grantor not to sue third persons; (d) the Grantor has the unqualified right to enter into this Rider and perform its terms; (e) the Grantor has used, and will continue to use for the duration of this Rider, proper notice, as required by 15 U.S.C. §§ 1051-1127 in connection with its use of the Trademarks in the United States; (f) the Grantor has used, and will continue to use for the duration of this Rider, consistent standards of quality in products leased or sold under the Trademarks; and (g) the Grantor will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any of the United States Trademarks may become invalidated, abandoned, unenforceable, avoided, avoidable or otherwise

diminished in value, and shall notify the Bank immediately if it knows of any reason or has any reason to know of any grounds under which any of the foregoing may occur.

3. Verification of Quality Control. Upon the occurrence and during the continuance of an Event of Default, the Grantor hereby grants to the Bank and its employees and agents the right to visit the Grantor's locations which lease, sell, or store products under any of the Trademarks and to inspect the products and quality control records relating thereto at reasonable times during regular business hours to ensure the Grantor's compliance with paragraph 2(f).

4. Covenants. The Grantor further covenants to the Bank that until all of the Obligations have been satisfied in full: (a) the Grantor shall maintain the registration of the Trademarks in the United States in full force and effect; and (b) the Grantor will not enter into any agreements which are inconsistent with the Grantor's obligations under this Rider or which restrict or impair the Bank's rights hereunder; provided, however, that notwithstanding anything to the contrary contained in this Agreement, the Grantor shall have the right to enter into agreements in the ordinary course of business with respect to the Trademarks.

5. Exclusive Use of Trademarks. So long as this Rider is in effect and so long as the Grantor has not received notice from the Bank that an Event of Default has occurred under the Loan Documents and that the Bank has elected to exercise its rights to assignment hereunder, the Grantor shall continue to have the exclusive right to use the Trademarks including licenses thereof, and the Bank shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Negative Pledge. The Grantor agrees not to sell, assign (by operation of law or otherwise) or further encumber its rights and interest in the Trademarks without prior written consent of the Bank. The Grantor shall defend the registration of the Trademarks in the United States against and shall take other action as is necessary to remove any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the United States Trademarks, and will defend the right, title and interest of the Bank in and to any of the Grantor's rights under the United States Trademarks against the claims or demands of all persons whatsoever.

7. Remedies Upon Default. (a) Anything herein contained to the contrary notwithstanding, if and while the Grantor shall be in default hereunder or an Event of Default exists under the Loan Documents, the Grantor hereby covenants and agrees that the Bank, as the holder of a security interest under the Uniform Commercial Code, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks covered hereby.

(b) For such purposes, and in the event of the Grantor's default hereunder or an Event of Default under the Loan Documents and while such default or Event of Default exists, the Grantor hereby authorizes and empowers the Bank to make, constitute and appoint any officer or agent of the Bank as the Bank may select, in its exclusive discretion, as the Grantor's true and lawful attorney-in-fact, with the power to endorse the Grantor's name on all applications, documents, papers and instruments necessary for the Bank to use the United States Trademarks or to grant or issue any exclusive or non-exclusive license under the United States Trademarks to anyone else, or necessary for the Bank to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Rider and the Loan Documents, and until all the Obligations are satisfied in full.

(c) The Grantor expressly acknowledges that this Rider shall be recorded with the Patent and Trademark Office in Washington, D.C.

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

9. Inconsistent with Security Agreement. All rights and remedies herein granted to the Bank shall be in addition to any rights and remedies granted to the Bank under the Loan Documents. In the event of an inconsistency between this Rider and the Security Agreement, the language of the Security Agreement shall control. The terms and conditions of the Security Agreement are hereby incorporated herein by reference.

10. Termination of Agreement. Upon payment and performance of all Obligations under the Loan Documents, the Bank shall execute and deliver to the Grantor all documents necessary to re-vest all rights in and to the Trademarks in the Grantor and/or terminate any interest of the Bank therein.

11. Responsibility and Liability. The Grantor assumes all responsibility and liability arising from the use of the Trademarks, and hereby indemnifies and holds the Bank and each director, officer, employee, affiliate and agent thereof, harmless from and against any claim, suit, loss, damage or expense (including attorneys' fees and expenses) arising out of any alleged defect in any product manufactured, promoted or sold by the Grantor in connection with any of the Trademarks or otherwise arising out of the Grantor's operation of its business from the use of the Trademarks. In any suit, proceeding or action brought by the Bank under any License for any sum owing thereunder, or to enforce any provisions of such License, the Grantor will indemnify and keep the Bank harmless from and against all expense, loss or damage suffered by reason of any defense, set off, recoupment, claim, counterclaim, reduction or liability whatsoever of the obligee thereunder or arising out of a breach of the Grantor of any obligation thereunder or arising out of any agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from the Grantor, and all such Obligations of the Grantor shall be and remain enforceable against and only against the Grantor and shall not be enforceable against the Bank.

12. Bank's Rights. The Bank may, in its sole discretion, pay any amount or do any act required of the Grantor hereunder or requested by the Bank to preserve, defend, protect, maintain, record or enforce the Grantor's obligations contained herein, the Obligations of the Grantor to the Bank, the Trademarks, or the right, title and interest granted the Bank herein, and which the Grantor fails to do or pay, and any such payment shall be deemed an advance by the Bank to the Grantor and shall be payable on demand together with interest thereon at the default rate specified in the Loan Documents.

13. Protection of the Trademarks. The Grantor agrees that if it learns of any use by any person or any term or design likely to cause material confusion with any United States Trademark, or of any material claim of any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the United States Trademarks, the Grantor shall promptly notify the Bank of such use, lien, security interest, claim, right or other encumbrance and, if requested by the Bank (after consultation with the Grantor), shall join with the Bank, at the Grantor's reasonable expense, in such action as the Bank, in its reasonable discretion, may deem advisable for the protection of the Bank's interest in and to the United States Trademarks, it being understood that the foregoing shall not preclude the Grantor from bringing an action against a person for the protection of the Grantor's interest in and to such United States Trademarks.

14. Additional Remedies. Upon the occurrence of an Event of Default under the Loan Documents, the Bank may, without any obligation to do so, complete any obligation of the Grantor hereunder, in the Grantor's name or in the Bank's name, but at the Grantor's expense, and the Grantor hereby agrees to reimburse the Bank in full for all reasonable expenses, including reasonable attorney's fees, incurred by the Bank in protecting, defending and maintaining the United States Trademarks.

15. Governing Law. THIS RIDER WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE BANK'S OFFICE

INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES, EXCEPT THAT THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA SHALL GOVERN TO THE EXTENT APPLICABLE.

16. **Counterparts.** This Rider may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

WITNESS the due execution hereof as a document under seal, as of the date first written above.

WITNESS / ATTEST:

CLARK FOODS, INC. d/b/a AMERICAN BEVERAGE MARKETERS

Thomas B Clark

By: George Wagner

Print Name: THOMAS B. CLARK

Print Name: George Wagner

Title: CFO
(Include title only if an officer of entity signing to the right)

Title: President

PNC BANK, NATIONAL ASSOCIATION

By: Chester A. Misbach, Jr.

Print Name: Chester A. Misbach, Jr.

Title: Senior Vice President

STATE OF Kentucky
COUNTY OF Jefferson

)
)
) SS:

On this, the 22 day of January, 2004, before me, a Notary Public, the undersigned officer, personally appeared George Wagner III, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he/she executed the same for the purposes therein contained.

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

Robin L. Amundsen
Notary Public

My commission expires: 10/17/2007

Print Name (Delaware and Indiana only)

County of Residence (Indiana only)

STATE OF Kentucky
COUNTY OF Jefferson

)
)
) SS:

On this, the 22 day of January, 2004, before me, a Notary Public, the undersigned officer, personally appeared Chester A. Mistbach, Jr., who acknowledged himself/herself to be the Senior Vice President of PNC BANK, NATIONAL ASSOCIATION and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said bank as such officer.

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

Robin L. Amundsen
Notary Public

My commission expires: 10/17/2007

Print Name (Delaware and Indiana only)

County of Residence (Indiana only)

SCHEDULE A TO RIDER TO SECURITY AGREEMENT - TRADEMARKS

<u>TRADEMARK</u>	<u>APPLICATION OR REGISTRATION NO.</u>	<u>COUNTRY</u>	<u>REGISTRATION OR FILING DATE</u>
Finest Call	395004614-1967422	United States	09-06-94
Master of Mixes	484002598-1010022	United States	05-06-75

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AUG 20 2004