

02-01-2002

HEET

Docket No.:

ILY



Tab settings → → → ▼

To the Honorable Commissioner of F

101968361

the attached original documents or copy thereof.

1. Name of conveying party(ies):

Saratoga Spring Water Company

1-17-02

7

- Individual(s)
- General Partnership
- Corporation-State Delaware
- Other

- Association
- Limited Partnership

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

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

Execution Date: December 28, 2001

2. Name and address of receiving party(ies):

Name: Cephas Capital Partners, L.P.

Internal Address:

Street Address: 16 West Main Street

City: Rochester State: NY ZIP: 14614

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership New York
- Corporation-State
- Other

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

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

A. Trademark Application No.(s)

See attached Schedule B

B. Trademark Registration No.(s)

See attached Schedule B

Additional numbers  Yes  No

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

Name: Neal L. Slifkin, Esq.

Internal Address: HARRIS BEACH LLP

Street Address: 99 Garnsey Road

City: Pittsford State: NY ZIP: 14534

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

12

7. Total fee (37 CFR 3.41):.....\$ \$315.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

08-0865

01/31/2002 LMUELLER 00000017 71117283

DO NOT USE THIS SPACE

01 FC:481 40.00 OP  
02 FC:482 275.00 OP

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.

Neal L. Slifkin

Name of Person Signing

Signature

1/15/02

Date

Total number of pages including cover sheet, attachments, and

10

**SCHEDULE B  
(Trademarks)**

<b>MARK</b>	<b>SER. #</b>	<b>REG. #</b>
SARATOGA VICHY	71/117283	129867
SARATOGA and RACETRACK DESIGN	73/762803	1,580,394
SARATOGA (word only)	73,200471	1,256,330
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SARATOGA SPRING WATER	75/139784	2,129,959
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SV DESIGN	71/421101	372822
SARATOGA SPLASH	75/141211	2,131,922
EVERYTHING ELSE IS JUST WATER	75/381176	2,233,022
S (stylized)	73/246469	1,198,188
MAN DESIGN	74/614904	2,022,888
SARATOGA SODA	75/662774	Pending

## CONTINGENT PATENT, TRADEMARK, AND LICENSE ASSIGNMENT

THIS CONTINGENT PATENT, TRADEMARK, AND LICENSE ASSIGNMENT ("*Assignment*") is made by SARATOGA SPRING WATER COMPANY, a Delaware corporation having its principal office and place of business at 11 Geyser Road, Saratoga Springs, New York 12866 ("*Assignor*"), in favor of CEPHAS CAPITAL PARTNERS, L.P., a New York limited partnership having its principal office and place of business at 16 W. Main Street, Rochester, New York 14614 ("*Assignee*");

THIS AGREEMENT IS SUBJECT TO THE TERMS OF A SUBORDINATION AGREEMENT DATED, DECEMBER 28, 2001 AMONG ASSIGNOR, SSW ACQUISITION CORP., ASSIGNEE, AND KEYBANK, N.A.

WITNESSETH:

WHEREAS, Assignor and Assignee are parties to a certain Note and Warrant Purchase Agreement of even date herewith (as the same may hereafter be amended, supplemented, amended and restated, renewed or otherwise modified from time to time, the "*Financing Agreement*"), which Financing Agreement provides (i) for the Assignee to, from time to time, extend credit to or for the account of Assignor and (ii) for the grant by Assignor to Assignee of a security interest in certain of Assignor's assets, including, without limitation, its patents, patent applications, service marks, service mark applications, service names, trademarks, trademark applications, trade names, goodwill and licenses;

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, Assignor agrees as follows:

1. Assignment of Patents. To secure the complete and timely satisfaction of all of the liabilities and obligations of every kind or nature of Assignor to Assignee under or related to the Financing Agreement and all notes, agreements, and documents delivered in connection therewith, including as extended, modified, or replaced from time to time (the "*Obligations*"), Assignor hereby grants, assigns and conveys to Assignee all of the Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed patents and patent applications, and the inventions and improvements described and claimed therein, including those listed on Schedule A attached hereto and made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "*Patents*").

2. Security Interest in Trademark, Goodwill, and Licenses. To secure the complete and timely satisfaction of all of the Obligations, Assignor hereby grants and conveys to Assignee a lien and security interest in all of the Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

(i) trademarks, trademark registrations, trade names and trademark applications, service marks, service mark registrations, service names and service mark applications, including, without limitation, the trademarks, trademark registrations, trade names and trademark applications, service marks, service mark registrations, service names and service mark applications listed on Schedule B, attached hereto and made a part thereof, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of which foregoing trademarks, service marks, trademark and service mark registrations, trade names, service names and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "*Trademarks*");

(ii) the goodwill of Assignor's business including but not by way of limitation such goodwill connected with and symbolized by the Trademarks (the "*Goodwill*"); and

(iii) license agreements with any other party relating to intellectual property or proprietary rights of any kind or nature, whether Assignor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Schedule C attached hereto (the "*Licenses*").

3. Restrictions on Future Assignments. Assignor agrees that until the Obligations shall have been satisfied in full and the Financing Agreement shall have been terminated, Assignor will not, without Assignee's prior written consent, enter into any agreement relating to the Patents, Trademarks, Goodwill, or Licenses which would limit or restrict the rights of Assignee hereunder and Assignor further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity or enforcement of the rights transferred to Assignee under this Assignment. Notwithstanding the foregoing, Assignor may enter into any and all agreements with holders of Senior Indebtedness as defined in the Financing Agreement.

4. New Patents and Trademarks. Assignor represents and warrants that the Patents, Trademarks, and Licenses listed on Schedules A, B, and C, respectively, constitute all of the patents, service marks, trademarks, applications and licenses now owned by Assignor. If, before the Obligations shall have been satisfied in full, Assignor shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, trade names, service marks, service mark registrations, service names, or licenses, or (ii) become entitled to the benefit of any patent, service mark or trademark application, service mark, service mark registration, trademark, trademark registration, or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of this Assignment shall automatically apply thereto and Assignor shall give to

Assignee prompt written notice thereof. Assignor hereby authorizes Assignee as attorney in fact to modify this Assignment by amending Schedules A, B, and C, as applicable, to include any future patents, patent applications, service marks, service mark registrations, service mark applications, service names, trademarks, trademark registrations, trademark applications, trade names and licenses which are Patents, Trademarks or Licenses, as applicable, under Sections 1 and 2 above or under this Section 4, and to file or refile this Assignment with the United States Patent and Trademark Office.

5. Representations and Warranties. Assignor represents and warrants to and agrees with Assignee that:

(i) the Patents (to the extent issued), Trademarks, and Licenses are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(ii) to the best knowledge of Assignor, each of the Patents, Trademarks, and Licenses is valid and enforceable;

(iii) Assignor is the owner of the Patents, Trademarks, and to the extent indicated therein, Licenses, and has the power and authority to make, and will continue to have authority to perform, this Assignment according to its terms;

(iv) to the best knowledge of Assignor, this Assignment does not violate and is not in contravention of any other agreement to which Assignor is a party or any judgment or decree by which Assignor is bound and does not require any consent under any other agreement to which Assignor is a party or by which Assignor is bound; and

(v) there has been no prior sale, pledge, encumbrance, assignment or other transfer or disposition of any of the Patents, Trademarks, or Licenses or any part thereof, and the same are free from all liens, charges and encumbrances of any kind, including but not limited to licenses, shop rights and covenants not to sue third persons, other than liens permitted by the Financing Agreement.

Notwithstanding anything to the contrary contained herein, however, Assignor has or may grant rights to holders of Senior Indebtedness as defined in the Financing Agreement and the rights of Assignee and such holders shall be subject to the Intercreditor Agreement described in the Financing Agreement.

6. Royalties/Term. Assignor hereby agrees that the use by Assignee of all Patents, Trademarks and Licenses as described above shall be worldwide and without any liability for royalties or other related charges from Assignee to the Assignor. The term of the assignments granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks and Licenses assigned hereunder, or (ii) the Obligations have been paid in full and the Financing Agreement has been terminated.

7. Grant of License to Assignor. Unless and until an "Event of Default" (as defined in the Financing Agreement) shall have occurred, Assignee hereby grants to Assignor a

nontransferable right and license to use the Trademarks and Licenses, and to make, have made, use and sell the inventions disclosed and claimed in the Patents for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this Section 7 without the prior written consent of Assignee except in favor of holders of the Senior Indebtedness as defined in the Financing Agreement. From and after the occurrence of an Event of Default, Assignor's license with respect to Patents, Trademarks, and Licenses as set forth in this Section 7 shall terminate forthwith, and Assignee shall have, in addition to all other rights and remedies given it by this Assignment, those 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 Patents, Trademarks, and Licenses may be located, including, but not by way of limitation, the location of Assignee's headquarters.

8. Reassignment to Assignor. Upon payment in full of the obligations and termination of the Financing Agreement, Assignee shall execute and deliver to Assignor all assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Patents and Trademarks, subject to any disposition thereof which may have been made by Assignee pursuant hereto or pursuant to the Financing Agreement.

9. Duties of Assignor. Assignor shall have the duty to (i) prosecute diligently any patent application of the Patents made by it and any trademark or service mark application of the Trademarks made by it pending as of the date hereof or thereafter until the Obligations shall have been paid in full, (ii) make application on unpatented but patentable inventions and on trademarks and service marks, as appropriate, and (iii) preserve and maintain all of its rights in patent applications and patents of the Patents and in trademark applications, trademarks, trademark registrations, service mark applications, service marks, and service mark registrations of the Trademarks. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a Patent application or Trademark application, or any pending Patent application, Trademark application, Patent, nor Trademark without the consent of Assignee which will not be unreasonably withheld.

10. Financing Statements/Documents. Assignor authorizes the Assignee to execute and file, and at the request of Assignee, Assignor will join with Assignee in executing one or more financing statements pursuant to the New York version of the Uniform Commercial Code in form satisfactory to Assignee, and will pay the costs of filing and/or recording this Assignment and all financing, continuation and termination statements in all public offices where filing or recording is deemed necessary or desirable by Assignee. Assignor will execute and deliver to Assignee from time to time such supplemental assignments or other instruments, including, but not by way of limitation, additional assignments to be filed with the United States Patent and Trademark office, as Assignee may require for the purpose of confirming Assignee's interest in the Patents, Trademarks and Licenses. Provided that the Senior Indebtedness has been irrevocably paid in full or the holders thereof have no conflicting claim to registration, Assignor hereby authorizes the Commissioner of Patents and Trademarks to issue any and all Patents on said inventions and any and all certificates of registration on all Trademarks to Assignee as assignee of Assignor's entire interest.

11. Assignee's Right to Sue. Assignee shall have the same rights, if any, as Assignor has, but shall in no way be obligated, to bring suit in its own name to enforce the Patents, Trademarks acquired through the execution of any Security Agreement, and Licenses, and, if Assignee shall commence any such suit, Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement and Assignor shall promptly, upon demand and as a part of the obligations, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this Section 11. After first giving Assignee a reasonable opportunity to bring suit in its own name to enforce the Patents, Trademarks, and Licenses, Assignor may bring such suit in its own name.

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

13. Severability. The provisions of this Assignment 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 thereof, 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 Assignment in any jurisdiction.

14. Modification. This Assignment cannot be altered, amended or modified in any way, except as specifically provided in Section 4 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies/Effect on Financing Agreement. All of Assignee's rights and remedies with respect to the Patents and Trademarks, whether established hereby or by the Financing Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Assignee under the Financing Agreement but rather is intended to facilitate the exercise of such rights and remedies.

16. Binding Effect/Benefits. This Assignment shall be binding upon the Assignor and its respective successors and assigns, and shall inure to the benefit of Assignee, its successors and assigns.

17. Governing Law. This Assignment has been delivered and accepted in, and shall be governed by and construed in accordance with the laws of, the State of New York without giving effect to principles of conflicts of laws.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Assignor, by its duly authorized officer, has executed this Assignment as of December 28, 2001.

SARATOGA SPRING WATER COMPANY

By: Adam Madkour

Title: President

STATE OF NEW YORK )  
  )SS.:  
COUNTY OF SARATOGA )

On the 27<sup>th</sup> day of December in the year 2001 before me, the undersigned, a notary public in and for said state, personally appeared Adam Madkour, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Theresa M. Skaine

Notary Public

THERESA M. SKAINE  
Notary Public, State of New York  
Saratoga County #02SK5027889  
Commission Expires May 23, 2002



Accepted at Rochester, New York  
as of December 28, 2001.

CEPHAS CAPITAL PARTNERS, L.P.

By: Chephas LLC, General Partner

By:   
\_\_\_\_\_  
Managing Member

**SCHEDULE A  
(Patents)**

None

**SCHEDULE B  
(Trademarks)**

<b>MARK</b>	<b>SER. #</b>	<b>REG. #</b>
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SARATOGA SODA	75/662774	Pending
SARATOGA SPRING WATER SV & design	0353272 - Canada	TMA193343
SV and design	0353271 - Canada	189923
EAU MINERALE SARATOGA SV and design	0395773 - Canada	TMA228175

**SCHEDULE C**  
**(Licenses)**

None