



04-14-2003

DS

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 9/31/2002) Tab settings



102418491

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):

Johnston Industries, Inc.

4.8.03

- Individual(s) Association General Partnership Limited Partnership Corporation-State Delaware 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: April 4, 2003

2. Name and address of receiving party(ies)

Congress Financial Corporation

Name: (Southern), as Agent

Internal Address: Suite 1500

Street Address: 200 Galleria Parkway

City: Atlanta State: GA Zip: 30339

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

See Exhibit A

B. Trademark Registration No.(s)

See Exhibit A

Additional number(s) attached Yes No

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

Name: Tamolyn Johnson-Galloway, Paralegal

Internal Address: Parker, Hudson, Rainer

& Dobbs LLP

Street Address: 1500 Marquis Two Tower

285 Peachtree Center Avenue, N.E.

City: Atlanta State: GA Zip: 30303

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41): \$ 90.00

- 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.

Tamolyn Johnson-Galloway

Name of Person Signing

Signature

04/07/2003

Date

Total number of pages including cover sheet, attachments, and document: 11

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

04/11/2003 LMUELLER 00000041 1393312

01 FC:0521 02 FC:0522

40.00 50.00

TRADEMARK REEL: 002710 FRAME: 0652

EXHIBIT A

Domestic and Foreign Trademarks

Trademarks

<u>Trademark</u>	<u>Jurisdiction</u>	<u>Registration Number</u>
Dymetrol (Licensed from DuPont Filaments)	U.S.	1393312

Trademark Applications

<u>Trademark</u>	<u>Jurisdiction</u>	<u>Serial No.</u>
CHEF CHECK	U.S.	78/096914
CHEF CHECK SOMETHING'S GOOD IN THE KITCHEN and design	U.S.	78/096935

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is made this 4th day of April, 2003, among **CONGRESS FINANCIAL CORPORATION (SOUTHERN)**, a Georgia corporation, in its capacity as agent (together with its successors in such capacity, "Agent") for itself and the Lenders (as defined herein), and **JOHNSTON INDUSTRIES, INC.**, a Delaware corporation having an office at 2401 Brookstone Centre Parkway, Suite 200, Columbus, Georgia 31904 (the "Company").

RECITALS:

The Company has entered into that certain Post-Petition Loan and Security Agreement dated as of March 10, 2003, by and among the Company, the other borrowers noted therein, the various financial institutions party thereto ("Lenders") and Agent (as at any time amended, the "Loan Agreement"), wherein Lenders have agreed to make loans and other extensions of credit to the Company, subject to the terms and conditions of the Loan Agreement.

The Company has, pursuant to the Loan Agreement, granted to Agent, for the benefit of itself and Lenders, a lien upon and security interest in, among other things, the Company's now existing and hereafter acquired inventory, machinery, equipment, equipment formulations, manufacturing procedures, quality control procedures and product specifications relating to products sold under the Trademarks (as defined herein).

The Company has, pursuant to the Loan Agreement, agreed to execute and deliver this Agreement to Agent, for the benefit of itself and Lenders.

NOW, THEREFORE, for Ten Dollars (\$10.00) and other valuable consideration, and in consideration of the premises, the Company hereby agrees with Agent as follows:

1. All capitalized terms used herein, including those used in the Recitals hereto, unless otherwise defined shall have the meanings ascribed to them in the Loan Agreement.

2. To secure the prompt payment and performance of the Obligations, the Company hereby pledges, assigns and grants to Agent, for the benefit of itself and Lenders, a continuing security interest in and Lien upon all of the following property of the Company, whether now owned or existing or hereafter acquired (collectively, the "Collateral"):

(a) all trademarks, trademark registrations and trade names and all trademark applications that have been filed based on use or for which a verified statement of use has been filed, including, without limitation, each trademark and application listed on Exhibit A

attached hereto and made a part hereof (as the same may be amended from time to time), and (i) all renewals thereof, (ii) all income, royalties, damages and payments now or hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements or dilution thereof or injury to the associated goodwill, (iii) the right to sue for past, present and future infringements or dilution thereof or injury to the associated goodwill, and (iv) all rights corresponding to (i)-(iv) above throughout the world (all of the foregoing trademarks, trademark registrations, trade names and applications, together with the items described in clauses (i)-(iv), are hereinafter collectively referred to as the "Trademarks");

(b) the goodwill of the Company's business connected with and symbolized by each Trademark; and

(c) all proceeds and products of the foregoing.

3. The Company represents and warrants to Agent and Lenders that:

(a) Each of the Trademarks is subsisting and has not been adjudged invalid or unenforceable, in whole or in part;

(b) Upon filing of this Agreement in the United States Patent and Trademark Office, this Agreement will create a legal and valid perfected lien upon and security interest in the Collateral (other than foreign trademarks), enforceable against the Company and all third Persons in accordance with its terms;

(c) No claim has been made that the use of any of the Trademarks does or may violate the rights of any third Person;

(d) The Company has the unqualified right to enter into this Agreement and perform its terms; and

(e) The Company is the sole and exclusive owner of the entire right, title and interest in and to all of the Collateral, free and clear of any Liens other than Permitted Liens.

4. The Company covenants and agrees with Agent and Lenders that:

(a) The Company will maintain the quality of the products associated with the Trademarks, at a level consistent with or superior to the quality at the time of this Agreement, and will provide Agent, upon request, with a certificate to that effect in the form attached hereto as Exhibit B executed by an officer of the Company;

(b) The Company will not lower the level of quality of the products associated with the Trademarks without Agent's prior written consent; and

(c) Where applicable, the Company has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Trademarks and has made, and will continue to make, all appropriate filings with the United States Patent and Trademark Office and all applicable foreign government offices to maintain the Trademark registrations in existence, including, without limitation, filing an affidavit of use with the United States Patent and Trademark Office and all applicable foreign government offices for each Trademark as required by Applicable Law to maintain the registration thereof without loss of protection therefor.

5. The Company hereby grants to Agent and Lenders and their respective employees and agents the right upon prior notice to the Company, and subject only to any obligations of confidentiality to which the Company, its employees and agents are then subject with respect thereto, to visit the Company's plants and facilities which manufacture, inspect or store products sold under any of the Trademarks and to inspect the products and quality control records relating thereto at reasonable times during regular business hours. The Company shall do any and all acts required by Agent and Lenders to ensure the Company's compliance with paragraph 4(c) of this Agreement.

6. The Company agrees that, until this Agreement is terminated in accordance with the Loan Agreement, it will not enter into any license agreement relating to any of the Trademarks, except non-exclusive licenses to customers of the Company in the regular and ordinary course of the Company's business as presently conducted and for reasonable and customary compensation, and shall not enter into any agreement that is inconsistent with the Company's duties under this Agreement.

7. If, before this Agreement is terminated in accordance with the Loan Agreement, the Company shall obtain rights to any new trademarks, or become entitled to the benefit of any trademark application or trademark or any renewal of any Trademark, the provisions of paragraph 2 hereof shall automatically apply thereto, and the Company shall give to Agent prompt notice thereof in writing.

8. The Company authorizes Agent to modify this Agreement by amending Exhibit A to include any future trademarks and trademark applications within the definition of Trademarks under paragraph 2 or paragraph 7 hereof.

9. At any time an Event of Default exists, Agent shall have, in addition to all other rights and remedies given it by this Agreement and the other Loan Documents, all rights and remedies under Applicable Law and all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, Agent may immediately, for its benefit and the benefit of Lenders, without demand of performance and without notice (except as described in the next sentence, if required by Applicable Law), or demand whatsoever to the Company, each of which the Company hereby waives, collect directly any payments due the Company in respect of the Collateral, or sell at public or private sale or otherwise realize upon all or from time to time, any of the Collateral. The Company hereby agrees that seven (7) days written notice to the Company of any public or private sale or other disposition of any of the Collateral shall be reasonable notice;

provided, however, that no such notice shall be required hereunder if not otherwise required by Applicable Law. At any such sale or disposition, Agent may, to the extent permitted by Applicable Law, purchase the whole or any part of the Collateral sold, free from any right of redemption on the part of the Company, which right the Company hereby waives and releases. After deducting from the proceeds of such sale or other disposition of the Collateral all costs and expenses incurred by Agent in enforcing its rights hereunder (including, without limitation, all attorneys' fees), Agent shall apply the remainder of such proceeds to the payment of the Obligations in accordance with the terms of the Loan Agreement. If any deficiency shall arise, the Company and each guarantor of the Obligations shall remain jointly and severally liable to Lenders therefor.

10. The Company hereby makes, constitutes and appoints Agent and any officer or agent of Agent as Agent may select as the Company's true and lawful attorney-in-fact, with full power to do any or all of the following at any time an Event of Default exists: to endorse the Company's name on all applications, documents, papers and instruments necessary for Agent to continue the registration of or to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to any other Person, or to assign, pledge, convey or otherwise transfer title in or dispose of the Collateral to any other Person. The Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated in accordance with the Loan Agreement.

11. At such time as this Agreement is terminated in accordance with the Loan Agreement, Agent shall execute and deliver to the Company, without representation, warranty or recourse and at the Company's expense, all releases and other instruments necessary to terminate Agent's security interest in the Collateral, subject to any disposition thereof which may have been made by Agent pursuant to the terms of this Agreement, the Loan Agreement or any other Loan Document.

12. Any and all fees, costs and expenses, of whatever kind or nature, (including, without limitation, reasonable attorneys' fees and legal expenses), incurred by Agent or any Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including, without limitation, all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining, or preserving the Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to the Collateral, shall be borne and paid by the Company (it being the intent of the Company and Agent that the Company shall be responsible for the payment of all sums, fees, costs and expenses, including, without limitation, all renewal fees with respect to the Trademarks) or, if paid by Agent, shall be paid by the Company **on demand** to Agent and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate per annum in effect from time to time for Base Rate Loans under the Loan Agreement.

13. The Company shall use reasonable commercial efforts to detect any infringers of the Trademarks and shall notify Agent in writing of any infringements detected. The Company shall have the duty, through counsel acceptable to Agent, to prosecute diligently any trademark

112768_1

application of the Trademarks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full and the Commitments under the Loan Agreement shall have been terminated, to file and prosecute opposition and cancellation proceedings, to file and prosecute lawsuits to enforce the Trademarks and to do any and all acts which are deemed necessary or desirable by Agent to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with such applications or proceedings shall be borne by the Company. The Company shall not abandon any pending trademark application that is filed based on use or as to which a verified statement of use has been filed or Trademark without the prior written consent of Agent.

14. Without limiting the obligations of the Company described in paragraph 13 hereof, after Agent's receipt of notice from the Company as provided in paragraph 13, or if Agent reasonably believes the act of any Person constitutes an infringement of any Trademark or a violation of any right of the Company or Agent therein, or an unlawful or unauthorized use thereof, Agent shall have the right (but shall not be obligated) to take such steps and institute such suits or proceedings as Agent shall deem necessary or advisable in its own name, or in the name of the Company or in the names of Agent and the Company jointly, to enforce the Trademarks and any license thereunder or to protect the rights of the parties thereunder, in which event the Company shall at the request of Agent do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Agent to aid such enforcement, and the Company shall promptly, **upon demand**, reimburse and indemnify Agent for all costs and expenses incurred in the exercise of Agent's rights under this paragraph 14. Nothing herein shall be deemed to prohibit the Company from bringing any such suit in its own name at any time that an Event of Default does not exist, if Agent declines to institute such suit.

15. If the Company fails to comply with any of its obligations hereunder, to the extent permitted by Applicable Law, Agent may do so in the Company's name or in Agent's name, but at the Company's expense, and the Company agrees to reimburse Agent in full for all expenses, (including, without limitation, attorneys' fees and legal expenses), incurred by Agent or any Lender in prosecuting, defending or maintaining the Trademarks or Agent's interest therein pursuant to this Agreement.

16. No course of dealing between the Company and Agent or any Lender, nor any failure to exercise, nor any delay in exercising, on the part of Agent or any Lender, any right, power or privilege hereunder or under the Loan 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.

17. All of Agent's and each Lender's rights and remedies with respect to the Collateral, whether established by this Agreement, by the Loan Agreement, by the other Loan Documents, by any other agreements or by Applicable Law shall be cumulative and may be exercised singularly or concurrently.

18. 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 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 Agreement in any jurisdiction.

19. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 8 hereof. To the extent that any provisions of this Agreement are inconsistent with the Loan Agreement, the Loan Agreement shall control.

20. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Agent and of each Lender and upon the successors of the Company. The Company shall not assign its rights or delegate its duties hereunder without the prior written consent of Agent.

21. Notice of Agent's acceptance hereof is hereby waived by the Company.

22. THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN ATLANTA, GEORGIA. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF GEORGIA.

23. THE COMPANY AND AGENT EACH WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE COLLATERAL.

WITNESS the execution hereof under seal in Atlanta, Georgia, as of the day and year first above written.

ATTEST:

JOHNSTON INDUSTRIES, INC.
("Company")

By: *James J. Murray*
James J. Murray, Secretary

By: *David L. Case*
Title: *President*

[CORPORATE SEAL]

[Signatures Continued on Following Page.]

Accepted in Atlanta, Georgia:

**CONGRESS FINANCIAL
CORPORATION (SOUTHERN), as Agent
("Agent")**

By:

A handwritten signature in black ink, appearing to be "G.S. [unclear]", written over a horizontal line.

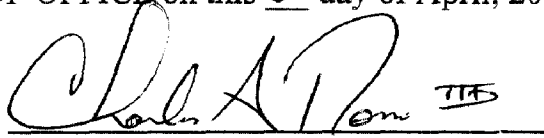
Title: Vice President

STATE OF GEORGIA

COUNTY OF ~~FULTON~~
MUSCOGEE

BEFORE ME, the undersigned authority, on this day personally appeared L. Gene Cone, the President of Johnston Industries, Inc., to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 3rd day of April, 2003..



Notary Public

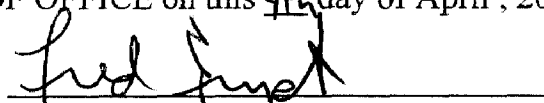
My Commission Expires: 2-2-04

[NOTARIAL SEAL]

STATE OF GEORGIA)
)
COUNTY OF FULTON)

BEFORE ME, the undersigned authority, on this day personally appeared Gary S. Silvers of Congress Financial Corporation (Southern), known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 4th day of April , 2003..



Notary Public

My Commission Expires:
Notary Public, Cobb County, Georgia
My Commission Expires Nov. 8, 2008

[NOTARIAL SEAL]

EXHIBIT A

Domestic and Foreign Trademarks

Trademarks

<u>Trademark</u>	<u>Jurisdiction</u>	<u>Registration Number</u>
Dymetrol (Licensed from DuPont Filaments)	U.S.	1393312

Trademark Applications

<u>Trademark</u>	<u>Jurisdiction</u>	<u>Serial No.</u>
CHEF CHECK	U.S.	78/096914
CHEF CHECK SOMETHING'S GOOD IN THE KITCHEN and design	U.S.	78/096935

EXHIBIT B

CERTIFICATE

The undersigned officer of **JOHNSTON INDUSTRIES, INC.** (the "Company"), DOES HEREBY CERTIFY to **CONGRESS FINANCIAL CORPORATION (SOUTHERN)**, a Georgia corporation, as agent (together with its successors in such capacity, "Agent"), for itself and Lenders (as defined herein), under that certain Post-Petition Loan and Security Agreement (as at any time amended, the "Loan Agreement") dated March 10, 2003, among the financial institutions ("Lenders") that are parties from time to time thereto, the Company, the other borrowers noted therein, and Lenders, that the quality of the products associated with the Trademarks listed on Exhibit A of the Trademark Security Agreement dated April ____, 2003, between the Company and Agent (as amended from time to time to include future trademarks and trademark applications, the "Agreement"), has been maintained at a level consistent with or superior to the quality of such products at the time of the execution of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate, this __ day of _____, _____.

JOHNSTON INDUSTRIES, INC.

By: _____

Title: _____