

*Statute File*

MARCIA WEEKS  
CHAIRMAN

RENZ D. JENNINGS  
COMMISSIONER

DALE H. MORGAN  
COMMISSIONER



JAMES MATTHEWS  
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION  
Office: (602) 542-4242  
FAX: (602) 542-3583

May 21, 1991

*44-1843(7)*

Ms. Patricia Sheridan  
Chadbourne & Parke  
30 Rockefeller Plaza  
New York, NY 10012

RE: American Brands, Inc. No-Action Letter  
A.R.S. § 44-1843 (7)

Dear Ms. Sheridan:

On the basis of the facts set forth in your letter of March 13, 1991, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS  
Director of Securities

DRH:MGB:ck

Enclosures

# CHADBOURNE & PARKE

30 ROCKEFELLER PLAZA  
NEW YORK, N. Y. 10112

(212) 408-5100  
TELEX 620520  
TELECOPIER (212) 541-5369

March 13, 1991

1101 VERMONT AVENUE, N. W.  
WASHINGTON, D. C. 20005  
(202) 289-3000  
TELEX 904256  
TELECOPIER (202) 289-3002

601 SOUTH FIGUEROA STREET  
LOS ANGELES, CALIFORNIA 90017  
(213) 892-1000  
TELECOPIER (213) 622-9865

CHADBOURNE, PARKE & AFRIDI  
P. O. BOX 9262-DUBAI, U.A.E.  
TELEPHONE 011-9714-373-825  
TELECOPIER 011-9714-378-741  
ALSO IN ABU DHABI & SHARJAH

CHADBOURNE, HEDMAN, RAABE  
& ADVOCATES CCCP  
A SOVIET JOINT VENTURE  
KRASNOPRESNENSKAYA NAB. 12  
MEZHOUNARODNAYA 2, ROOM 1421  
MOSCOW, U.S.S.R. 123610  
TEL./FAX: 7-095-253-1651 (INT'L)  
253-1421 (LOCAL)

\*NOT ADMITTED IN NEW YORK  
WRITER'S DIRECT NUMBER

EDMUND S. MUSKIE  
DONALD L. DEMING  
DONALD SCHAPIRO  
PETER M. WARD  
MICHAEL B. WEIR  
WILLIAM M. BRADNER, JR.  
DAVID R. TILLINGHAST  
EDWARD C. MCLEAN, JR.  
STUART D. BAKER  
ZACHARY SHIMER  
NICHOLAS B. ANGELL  
GEORGE E. ZEITLIN  
NORMAN SINRICH  
WILLIAM J. GEEN  
DONALD I. STRAUER  
DAVID D. BROWN, III  
LAWRENCE NIRENSTEIN  
STANLEY S. ARKIN  
RICHARD M. LEDER  
DANIEL J. O'NEILL  
MALCOLM E. MARTIN  
EDWARD P. SMITH  
WILLIAM J. CALISE, JR.  
EUGENE R. SULLIVAN, JR.  
DONALD S. RICE  
WHITNEY I. GERARD  
WILLIAM P. MILLS, JR.  
WILLIAM S. D'AMICO\*  
RICHARD J. NEY  
BERNARD W. MCCARTHY  
MORTON E. GROSZ  
MARCIA E. CARPENI  
LESLIE JOHN SCHREYER  
HENRY J. OECHELER, JR.  
PHILIP D. BEAUMONT  
W. VAN ORDEN GNICHTEL  
CHARLES K. O'NEILL  
RIGDON H. BOYKIN  
THOMAS E. BEZANSON  
STEPHEN L. BUCHMAN  
JOHN B. O'SULLIVAN

STUART A. ROSENTHAL  
WILLIAM E. HOLLAND\*  
JEROME C. KATZ  
KEITH MARTIN  
PETER R. KOLYER  
CHARLES E. HORD, III  
THOMAS C. MERIAM  
JAMES R. WALPOLE\*  
CORNELIUS J. GOLDEN, JR.  
LORRAINE MASSARO  
NANCY W. PIERCE  
PETER N. HILLMAN  
STEVEN L. WILLIAMSON  
WILLIAM G. CAVANAGH  
MARK E. BROSSMAN  
RICHARD SONKIN  
ANDREW C. CORONIOS  
CHAIM WACHSBERGER  
ROBERT F. SHAPIRO\*  
LAURENCE D. JACKSON\*  
RUSSELL S. FRYE\*  
EMILY F. JOHNSON  
ROBERT J. HAUSEN  
DAVID M. RAIM  
JOHN J. SARCHIO  
THOMAS J. HALL  
PETER K. INGERMAN  
NANCY M. PERSECHINO  
TINA L. STARK  
JEFFREY M. KAPLAN  
KENNETH P. COLEMAN  
THOMAS E. RILEY  
ROBERT J. BOHME  
RONALD E. RICHMAN  
THOMAS E. HIRSCH, III  
JOHN T. BAECHE  
A. ROBERT COLBY  
THOMAS M. EWING  
JAY R. HENNEBERRY  
BRUCE G. SHEFFLER

Corporation Commission  
Securities Division  
1200 West Washington Street, 2nd Floor  
Phoenix, Arizona 85007

Dear Sir or Madam:

We have been asked to advise American Brands, Inc., a Delaware corporation ("American"), with respect to the applicability of the Arizona Securities Act (the "Act") to two employee benefit plans of American, the American Brands, Inc. 1990 Long-Term Incentive Plan (the "1990 Plan") and the American Brands, Inc. Long-Term Incentive Plan for Key Employees of Subsidiaries (the "Plan for Subsidiaries" and with the 1990 Plan, the "Plans"). The 1990 Plan was adopted by American's Board of Directors on November 28, 1989 and approved by its stockholders at their May 8, 1990 meeting. The Plan for Subsidiaries was adopted by American's Board of Directors on October 31, 1989. Stockholder approval of the Plan for Subsidiaries was not required. No awards under the Plans have been received by residents of Arizona as of the date hereof.

As counsel for American, we are writing to request your confirmation of our views that under the Act (1) the

options and stock appreciation rights granted and the Common Stock, par value \$3.125 per share of American ("Common Stock"), deliverable pursuant to awards made under the Plans are exempt from registration, (2) American need not be registered as a dealer in connection with the Plans and (3) officers and directors of American need not be registered as salesmen in connection with the Plans.

The Plans provide for the granting by American to key employees of American and its wholly-owned subsidiaries (the "Company") of awards comprised in whole or in part of shares of Common Stock, and which may be restricted stock, performance awards, other stock-based awards (for example, deferred stock awards) or any combination of the above. The Plans are substantially similar, except that only the 1990 Plan provides for the granting to key employees of the Company of options to purchase shares of Common Stock and stock appreciation rights. The option price per share upon the exercise of any stock option awarded under the 1990 Plan shall not be less than the fair market value of the Common Stock on the date of grant. The term of each option will be ten years from the date of grant unless a shorter term is specified in the option. No awards may be made under the 1990 Plan after December 31, 1995, but the terms of awards theretofore granted may extend beyond that date. The Plans define a key employee as "any person, including an officer or director, in the regular full-time employment of the Company who, in the opinion of the [committee administering the Plan under which an award is to be made], is or is expected to be primarily responsible for the management, growth or protection of some part or all of the business of the Company." Officers and directors of American are eligible to receive awards only under the 1990 Plan and officers and directors of subsidiaries are eligible to receive awards under both Plans.

The Company will not be obligated to deliver any shares of Common Stock awarded under the Plans until the shares have been listed or approved for listing upon official notice of issuance on the New York Stock Exchange, Inc. No commission or other remuneration will be paid or given directly or indirectly for soliciting any prospective participants in the Plans.

Pursuant to the terms of the Plans, no award or portion thereof may be assigned or transferred by the employee to whom granted otherwise than by will or the laws of descent and distribution.

It is our view that the options and stock appreciation rights granted and the shares of Common Stock deliverable pursuant to awards made under the Plans are exempt from registration under the Act pursuant to Section 44-1843(7) which exempts any security listed or approved for listing upon the issuance thereof upon the New York Stock Exchange, and any warrant or right to purchase or subscribe to the foregoing. It is our view that Section 44-1843(7) also exempts American from registration as a "dealer" and the officers and directors of American who serve on the respective committees administering the Plans from registration as "salesmen" under Section 44-1842 of the Act.

We note that Section 44-1848(A) of the Act empowers the Corporation Commission to require registration of dealers and salesmen effecting transactions in securities exempt under Section 44-1843(7) of the Act notwithstanding such exemption. Section 44-1848(C)(2), however, states that the provisions of Section 44-1848(A) do not apply to transactions involving stock and stock options issued pursuant to an employee stock option plan. In addition, we note that Regulation R14-4-104(A)(1) of the Act states, in relevant part:

"No dealer or salesman shall, however, be required to register for the purpose of selling or offering to sell that portion of an offering of securities so listed, designated or approved for listing [on the New York Stock Exchange] which is directed to securities holders or employees of an issuer when the offering is made by the issuer, or is made by a dealer or salesman acting without compensation. . ."

Based on the foregoing, we respectfully request your confirmation that transactions in connection with the Plans will not require registration under Section 44-1841 of the Act of the options and stock appreciation rights granted and the shares of Common Stock deliverable pursuant to awards made under the Plans, or of American as a "dealer," or of any officer or director of American as a "salesman" under Section 44-1842 of the Act. It is our conclusion that no further action is required under the Act in connection with the Plans.

Enclosed herewith is a check in the amount of \$200 payable to the Securities Division, Arizona Corporation Commission and the following documents:

1. A copy of the 1990 Plan; and
2. A copy of the Plan for Subsidiaries.

Corporation Commission

-4-

March 13, 1991

Also enclosed are a duplicate copy of this letter and a postage-paid, self-addressed envelope. Please acknowledge receipt of this request by stamping and dating the duplicate copy of this letter and returning it to us in the enclosed envelope.

Please contact either Patricia Sheridan at (212) 408-1056 or Margaret O'Brien of this office at (212) 408-5132 collect if you have any questions or desire any further information.

Very truly yours,

*Chadbourne + Parke*

Enclosures .

VIA FEDERAL EXPRESS