

02-18-2005

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

REC



102943986

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):

Matterhorn Ice Cream, Inc.

Execution Date(s) February 10, 2005

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

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Government Interest Assignment
☐ Executive Order 9424, Confirmatory License
☐ Other _____

2. Name and address of receiving party(ies)

Name: Pacific Mezzanine Fund, L.P.

Internal Address: _____

Street Address: 2200 Powell Street

Suite 1250

City: Emeryville

State: CA

Country: USA

Zip: 94608

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application or patent number(s):

☐ This document is being filed together with a new application.

A. Patent Application No.(s)

B. Patent No.(s)

D429053

Additional numbers attached? ☐ Yes ☒ No

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

Name: William C. Wardwell

Internal Address: _____

Street Address: 877 W. Main Street, 10th Floor

City: Boise

State: Idaho

Zip: 83702

Phone Number: (208) 344-6000

Fax Number: (208) 342-3829

Email Address: WWAR@HTEH.com

6. Total number of applications and patents involved:

1

7. Total fee (37 CFR 1.21(h) & 3.41) \$ 40

- ☐ Authorized to be charged by credit card
☐ Authorized to be charged to deposit account
☒ Enclosed
☐ None required (government interest not affecting title)

8. Payment Information

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature:

William C. Wardwell

Signature

Feb 10, 2005

Date

William C. Wardwell

Total number of pages including cover sheet, attachments, and documents:

Name of Person Signing

Documents 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, V.A. 22313-1450

PATENT
REEL: 016256 FRAME: 0162

EXHIBIT A

TO

FINANCING STATEMENT

DEBTOR: Matterhorn Ice Cream, Inc.
115 E. Plymouth
Caldwell, Idaho 83605

SECURED PARTY: Pacific Mezzanine Fund, L.P.
Attn: Nathan Bell
2200 Powell Street, Suite 1250
Emeryville, CA 94608

DESCRIPTION OF THE COLLATERAL

This Financing Statement covers, without limitation, all right, title, claim, estate and interest of the Debtor in and to all property, wherever located, and interests of the Debtor, tangible or intangible, whether now owned and existing or hereafter acquired or arising (such property and interests in property being collectively referred to herein as the "Collateral"), including without limitation the following:

(a) Any and all rights to payment for goods sold or leased or for services rendered, including any such rights evidenced by Chattel Paper (as that term is defined below), whether due or to become due and whether or not earned by performance (excluding any such rights evidenced by Notes Receivable (as that term is defined below)) (the "Accounts");

(b) Any and all negotiable instruments, promissory notes, acceptances, drafts, checks, letters of credit (whether or not the letter of credit is evidence by a writing), certificates of deposit and other writings that evidence a right to the payment of money by any other Person (the "Notes Receivable"); "Person" means an individual, a corporation, a partnership, a trust, an unincorporated organization or any other entity or organization, including a government or any agency or political subdivision thereof;

(c) Any and all chattel paper (whether tangible or electronic), including writings that evidence both a monetary obligation and a security interest in or lease of specific goods (the "Chattel Paper");

(d) Any and all rights to payment of money not listed above and any and all rights, titles, interests, securities, Liens and guaranties evidencing, securing, guaranteeing payment of or in any way relating to any Receivables (other than those liens permitted by the Loan Agreement in connection with the Senior Indebtedness); "Lien" means any lien, mortgage, pledge, security interest, charge, or encumbrance of any kind (including any conditional sale or other title retention agreement or any lease in the nature thereof); "Receivables" means Accounts, Notes Receivable, Chattel Paper and other rights to the payment of money;

(e) Any and all goods that may at any time be held for sale or lease or furnished under any contract of service, or are sold, leased or furnished under any contract of service, or constitute raw materials, work-in-process, parts, supplies or materials that are or might be used or consumed in a business or in connection with the manufacture, selling or leasing of such goods ("Inventory");

(f) Any and all equipment and other goods (excluding Inventory), including the following personal property: machinery, machine tools, office machinery (including computers, typewriters and duplicating machines), motor vehicles, trailers, rolling stock, motors, pumps, controls, tools, parts, works of art, furniture, furnishings and trade fixtures, all athletic equipment and supplies and all molds, dies, drawings, blueprints, reports, catalogs and computer programs related to any of the above (together with all related property described in Section (I) below, the "Equipment");

(g) Any and all fixtures, including machinery, equipment or appliances for generating, storing or distributing air, water, heat, electricity, light, fuel or refrigeration, for ventilating or sanitary purposes, elevators, safes, laundry, kitchen and athletic equipment, trade fixtures, and telephone, television and other communications equipment (the "Fixtures");

(h) Any and all documents, whether or not negotiable, including bills of lading, warehouse receipts, trust receipts and the like (the "Documents");

(i) Any and all stocks, bonds, general and limited partnership interests, limited liability company interests, joint venture interests and other securities, subscription rights, options, warrants, puts, calls and other rights with respect thereto, and investment and brokerage accounts (the "Securities");

(j) Any and all general intangibles (including payment intangibles), contract rights and other property described below (together with any property listed under Section (d) above, the "General Intangibles"), including the following:

(i) deposit and other accounts, including demand, time savings, passbook and like accounts maintained with any bank, savings and loan association, credit union, brokerage or other institution, health-care-insurance receivables, and any and all money, instruments and other property from time to time deposited therein or credited thereto, or received, receivable or otherwise distributed therefrom, in respect thereof or in exchange therefor, including all interest accruing thereon;

(ii) insurance policies and all rights and claims therein or thereunder (including prepaid and unearned premiums), including insurance against casualty (including by fire, flood or earthquake) or liability (including against environmental cleanup costs), title insurance, business interruption insurance and builders risk insurance, whether covering personal or real property;

(iii) any rights, claims, judgments, awards, orders or decrees arising out of or in connection with any judicial action, litigation, arbitration, mediation or other proceedings;

(iv) any and all leases of real or personal property, licensing agreements, and other contracts, and all guarantees, warranties, royalties, license fees and rights under such contracts;

(v) any and all Governmental Approvals, including permits, licenses, certificates of use and occupancy (or their equivalents) and zoning and other approvals, and tax and other refunds, compensation, awards, payments and relief given or made by any Governmental Authority (including condemnation awards) (the "Approvals"); "Governmental Approval" means an authorization, consent, approval, permit, license, registration or filing with, any Governmental Authority; "Governmental Authority" means any nation, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any government authority, agency, department, board, commission or instrumentality of the United States, any State of the United States or any political subdivision thereof, and any tribunal or arbitrator(s) of competent jurisdiction;

(vi) deposits, surety and other bonds, and choses and things in action;

(vii) computer programs, computer software (including all source and object codes, all media of any type or nature on which such source or object codes are reproduced, copied, stored or maintained), technology processes other documentation, proprietary information, patents, patent applications, copyrights, copyright applications, trademarks, trademark applications, service marks, trade and other names, trade secrets, customer lists, the entire goodwill of or associated with the business now or hereafter conducted by the Debtor, and other proprietary rights (which means and includes any and all patents, trademarks, service marks, trade names, copyrights, trade secrets, proprietary information, source codes and other proprietary rights and processes), including the intellectual property rights listed on Schedule 2.1.10.7 (the "Intellectual Property Collateral");

(k) Any and all books and records (including ledgers, correspondence, credit files, computer software, computer storage media and electronically recorded data) pertaining to the Debtor or any of the foregoing and all equipment receptacles, containers and cabinets therefor;

(l) Any and all accessions, appurtenances, components, repairs, repair parts, spare parts, renewals, improvements, replacements, substitutions and additions to, of or with respect to any of the foregoing;

(m) Any and all rights, remedies, powers and privileges of the Debtor with respect to any of the foregoing; and

(n) Any and all proceeds and products of any of the foregoing, whether now held and existing or hereafter acquired or arising (collectively, the "Proceeds"). "Proceeds" shall include (i) whatever is now or hereafter received by the Debtor upon the sale, lease, license, exchange, collection, other disposition or operation of any item of Collateral, whether such proceeds constitute accounts, general intangibles, instruments, securities, documents, letters of credit, chattel paper, deposit accounts, money, goods or other personal property, (ii) any items that are

now or hereafter acquired by the Debtor with any Proceeds of Collateral, (iii) any amounts now or hereafter payable under any insurance policy by reason of any loss of or damage to any Collateral or the business of the Debtor, (iv) all rights to payment for the sale of services or products in connection with the business of the Debtor, (v) all royalties, rights to payment, accounts receivable and proceeds of infringement suits in connection with the Intellectual Property Collateral, and (vi) the right to further transfer, including by pledge, mortgage, license, assignment or sale, any of the foregoing

SCHEDULE 2.1 10.7

Intellectual Property Rights

See following page.

THE MATTERHORN ICE CREAM COMPANY STATUS REPORT

December 20, 2004

PATENT MATTERS:

Our File No.	Title	Serial / Reg No.	Filing / Reg. / Issue Date	Status
MA39.P01	ICE CREAM CONFECTION (ROLLED ICE CREAM SANDWICH)	29/098,959/ Des. 429,053	1/8/99; 8/8/2000	ISSUED. Remains in force 14 years.

TRADEMARK MATTERS:

Our File No.	Title	Serial / Reg No.	Filing / Reg. / Issue Date	Status
MA39.T01	ROLLOCONE	75/617,526/ 2,340,550	1/8/99; 4/11/2000	REGISTERED. Section 8 & 15 Declarations due 4/11/2006; renewal due 4/11/2010.
MA39.T02	MATTERHORN	75/647,012; 2,526,468	2/24/99; 1/8/02	REGISTERED. Sect. 8 & 15 due 1/8/2008; renewal due 1/8/2012
MA39.T03	THE RE-INVENTION OF THE ICE CREAM CONE	75/894,134; 2,410,746	1/22/2000; 12/5/2000	REGISTERED. Section 8 & 15 Declarations due 12/5/2006; renewal due 12/5/2010.
MA39.T04	MATTERHORN (original Kambly SA registration)	73/830,547 1,620,208	10/1/1989 10/30/90	ABANDONED.
MA39.T05	MATTERHORN SUNDAY BAR	74/626,903 1,946,803	1/30/95; 1/9/96	ABANDONED.
MA39.T06	MATTERHORN - A MOUNTAIN OF ICE CREAM	75/626,902 1,945,693	1/30/95; 1/2/96	REGISTERED. Section 8 & 15 Declarations filed 1-2-2002 - awaiting Notice of Acceptance; renewal due 1-2-2006.
MA39.T07	MATTERHORN ICE CREAM COMPANY	74/627,222; 1,958,684	1/30/95; 2/27/96	ABANDONED.
MA39.T08	COOKIE STIX	76/237,079	4/6/01	ABANDONED.

M:\CLIENT FILES\MA39\STATUS-REPRT.WPD

TOTAL P.02

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] Stephen C. Hardesty (208) 344-6000	
B. SEND ACKNOWLEDGMENT TO: (Name and Address) Hawley Troxell Ennis & Hawley P.O. Box 1617 Boise, ID	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Matterhorn Ice Cream, Inc.						
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS 115 E. Plymouth			CITY Caldwell	STATE ID	POSTAL CODE 83605	COUNTRY USA
1d. TAX ID #: SSN OR EIN 31-1673866	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION Corporation	1f. JURISDICTION OF ORGANIZATION Ohio	1g. ORGANIZATIONAL ID #, if any 1099937		<input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME						
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE	COUNTRY
2d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any		<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Pacific Mezzanine Fund, L.P.						
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS 2200 Powell Street, Suite 1250			CITY Emeryville	STATE CA	POSTAL CODE 94608	COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

The Collateral described in the attached Exhibit A to Financing Statement, pursuant to that certain Loan Agreement dated February 10 2005, between Debtor and Secured Party.

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)	7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		All Debtors		Debtor 1	Debtor 2
8. OPTIONAL FILER REFERENCE DATA						