

01-15-2002



Form PTO-1594 RI
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)

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

101946279

Tab settings

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Humpty Dumpty Snack Foods USA, Inc. 1/3/02

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

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

2. Name and address of receiving party(ies)
Name: Bank of Montreal
Internal
Address: _____
Street Address: 100 King Street West, 11th FL
City: Toronto, Ontario State: _____ Zip: M5X 1A1 CANADA

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

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: November 21, 2001

4. Application number(s) or registration number(s):
A. Trademark Application No.(s) _____

Additional number(s) attached Yes No

B. Trademark Registration No.(s) 1423053; 1428625;
1506179; 1890017; 1919990; 1980361

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: William L. Worden, Esq.
Internal Address: Pierce Atwood

Street Address: One Monument Square

City: Portland State: ME Zip: 04101-1110

6. Total number of applications and registrations involved: 6

7. Total fee (37 CFR 3.41).....\$ 165.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
500282

DO NOT USE THIS SPACE

9. Signature.
William L. Worden
Name of Person Signing

Signature

1/03/02
Date

13

01/14/2002 08:28:00 00000676 1423053
01 FC:481 40.00 DP
02 FC:482 125.00 DP

Total number of pages including cover sheet, attachments, and document.
Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

TRADEMARK
REEL: 002423 FRAME: 0145

DESIGNATION OF DOMESTIC REPRESENTATIVE

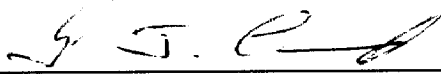
WHEREAS, Humpty Dumpty Snack Foods USA, Inc., the owner of the mark HUMPTY DUMPTY, Registration No. 1,423,053 (the "Mark"), has granted a security interest in the Mark to Bank of Montreal (the "Secured Party"), pursuant to a Trademark Security Agreement dated November 21, 2001.

NOW, THEREFORE, pursuant to Section 1(e) of the Trademark Act, 15 U.S.C. § 1051(e), the undersigned Secured Party hereby designates the following named person as the United States resident upon whom notices or process affecting the Mark may be served:

William L. Worden, Esq.
Pierce Atwood
One Monument Square
Portland, ME 04101-1110

Date: December 14, 2001

BANK OF MONTREAL

By: 
Printed
Name: GORDON J. CARD
Title: SENIOR MANAGER

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT ("Agreement") is given as of November 21, 2001, by Humpty Dumpty Snack Foods USA, Inc., a corporation duly incorporated under the laws of the State of Maine ("Debtor"), with a mailing address of 88 Pleasant Hill Road, Scarborough, ME 04074, to Bank of Montreal ("Secured Party"), with a mailing address of 100 King Street West, 11th Floor, Toronto, Ontario M5X 1A1, Canada (Attn: Senior Manager, Corporate Finance).

WITNESSETH.

WHEREAS, Secured Party has entered into a loan agreement with the Debtor's sole stockholder, Humpty Dumpty Snack Foods Inc. (the "Borrower"), pursuant to which the Secured Party has agreed to loan the Borrower the aggregate sum of Twenty-One Million Two Hundred Fifty thousand Dollars in lawful funds of Canada (CDN \$21,250,000) (the "Loan"); and

WHEREAS, the Debtor has executed and delivered to the Secured Party a guaranty of the Borrower's obligations to the Secured Party in respect of the Loan (the "Debtor Guaranty"); and

WHEREAS, the Debtor has agreed to grant to the Secured Party a security interest in its United States registered trademarks as security for the Debtor Guaranty.

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, the Debtor agrees as follows:

1. Defined Terms.

- (a) The words "hereof," "herein" and "hereunder" and words of like import and when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section references are to this Agreement unless otherwise specified.
- (b) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Incorporation of Premises. The premises set forth above are incorporated into this Agreement by this reference hereto and are made a part hereof.

3. Security Interest in Trademarks and Service Marks. To secure the complete and timely payment, performance and satisfaction of all of Debtor's indebtedness, liabilities and obligations to the Secured Party under the Guaranty (collectively, the "Obligations"), Debtor hereby grants to the Secured Party a security interest in all of Debtor's trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark

applications listed on Schedule A attached hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, service mark applications, and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, and (iv) all of Debtor's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in clauses (i) - (iv) in this Section 3, are sometimes hereinafter individually and/or collectively referred to as the "Trademarks").

4. **Royalties.** Debtor hereby agrees that the use by the Secured Party of the Trademarks as authorized hereunder in connection with the exercise of its remedies under Section 12 shall be coextensive with Debtor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Secured Party to Debtor.

5. **Right to Inspect; Further Assignment and Security Interests.** The Secured Party may at all reasonable times, and at any time when Debtor defaults on the Obligations (a "Default"), have access to, examine, audit, make copies and extracts from and inspect Debtor's premises and examine Debtor's books, records and operations relating to the Trademarks; provided that, in conducting such inspections and examinations, the Secured Party shall use reasonable efforts not to unnecessarily disturb the conduct of Debtor's ordinary business operations. From and after the occurrence of a Default, Debtor agrees that the Secured Party, or a conservator appointed by the Secured Party, shall have the right to establish such reasonable additional product quality controls as the Secured Party or such conservator, in their sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by Debtor under the Trademarks. Debtor agrees (a) not to sell or assign its interest in, or grant any license under, the Trademarks without the prior and express written consent of the Secured Party, (b) to maintain the quality of said products as of the date hereof, and (c) not to change the quality of such products in any material adverse respect without the Secured Party's prior and express written consent.

6. **Representation and Warranty.** Debtor hereby represents and warrants to the Secured Party that there are no contractual obligations of the Debtor that may require any authorization, consent or approval or other action for (1) the due execution and delivery of this Agreement, (ii) performance by the Debtor of its duties and obligations arising with respect to this Agreement, except for actions to maintain the Trademarks, (iii) the grant and attachment of the security interests granted in this Agreement (the "Security Interests") in the Trademarks, and (iv) the enforcement of the Security Interests in the Trademarks.

7. **Termination of Secured Party's Security Interest.** This Agreement is made for collateral security purposes only. This Agreement and Secured Party's security interest in the Trademarks shall continue in full force and effect as long as any Obligations shall be owed to the Secured Party or otherwise remain outstanding. Upon payment or performance in full of the

Obligations, this Agreement shall terminate and the Secured Party shall promptly execute and deliver to Debtor, at Debtor's expense, all termination statements and other instruments as may be necessary or proper to terminate the Secured Party's security interest in the Trademarks, subject to any disposition thereof which may have been made by the Secured Party pursuant to this Agreement.

8. **Duties of Debtor.** Debtor shall have the duty, to the extent desirable in the normal conduct of Debtor's business, to: (a) prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, and (b) make application for trademarks or service marks. Debtor further agrees not to abandon any Trademark without the prior written consent of the Secured Party, to file renewals of all Trademarks when required, file all instruments and documents required to register any Trademark in other jurisdictions when the nature of its business so requires and to use its best efforts to maintain in full force and effect the Trademarks that are or shall be necessary or, in Debtor's commercial judgment, economically desirable in the operation of Debtor's business.

Any expenses incurred in connection with the foregoing shall be borne by Debtor.

9. **Secured Party's Right to Sue.** From and after the occurrence of a Default, the Secured Party shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and, if the Secured Party shall commence any such suit, Debtor shall, at the request of the Secured Party, do any and all lawful acts and execute any and all proper documents required by the Secured Party in aid of such enforcement. Debtor shall, upon demand, promptly reimburse the Secured Party for all costs and expenses incurred by the Secured Party in the exercise of its rights under this Section 8 (including, without limitation, reasonable fees and expenses of attorneys for the Secured Party).

10. **Waivers.** Secured Party's failure, at any time or times hereafter, to require strict performance by Debtor of any provision of this Agreement shall not waive, affect or diminish any right of the Secured Party thereafter to demand strict compliance and performance therewith, nor shall any course of dealing between Debtor and the Secured Party have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of Debtor contained in this Agreement shall be deemed to have been suspended or waived by the Secured Party unless such suspension or waiver is in writing signed by an officer of the Secured Party and directed to Debtor specifying such suspension or waiver.

11. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but 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 hereof, 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.

12. **Modification.** This Agreement cannot be altered, amended or modified in any way, except by a writing signed by the parties hereto.

13. **Cumulative Remedies; Power of Attorney.** All of the Secured Party's rights and remedies with respect to the Trademarks, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. From and after the declaration of a Default and the giving of written notice by the Secured Party to Debtor of the Secured Party's intention to enforce its rights and claims against Debtor, Debtor hereby irrevocably designates, constitutes and appoints the Secured Party (and all persons designated by the Secured Party in its sole and absolute discretion) as Debtor's true and lawful attorneys-in-fact, and authorizes the Secured Party and any of the Secured Party's designees, in Debtor's or the Secured Party's name, from and after the declaration of a Default, to (a) endorse Debtor's name on all applications, documents, papers and instruments necessary or desirable for the Secured Party in the use of the Trademarks, (b) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks, (c) grant or issue any exclusive or nonexclusive license under the Trademarks, and (d) take any other action with respect to the Trademarks as the Secured Party in good faith deems in its best interest. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement is terminated in accordance with Paragraph 9. Debtor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way any other rights and remedies of the Secured Party, but rather is intended to facilitate the exercise of such rights and remedies. The Secured Party shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies 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 Trademarks may be located or deemed located.

14. **Successors and Assigns.** This Agreement shall be binding upon Debtor and its successors and assigns, and shall inure to the benefit of the Secured Party and its successors and assigns. Debtor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession; provided, however, that Debtor shall not voluntarily assign or transfer its rights or obligations hereunder without the Secured Party's prior written consent.

15. **Governing Law.** This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the internal laws (as opposed to conflicts of law provisions) and decisions of the State of Maine.

16. **Notices.** All notices or other communications hereunder shall be in writing and delivered to the parties at the addresses set forth at the beginning of this Agreement.

17. **Secured Party's Duties.** Except as provided for in applicable law, the Secured Party shall not have any duty with respect to the Trademarks and shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks against any other parties, but may do so at their option, and all expenses incurred in connection therewith shall be for the sole account of Debtor and added to the Obligations secured hereby.

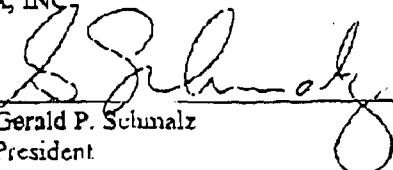
18. **Waiver of Jury Trial.** Each of the parties hereto waives trial by jury in any action or proceeding arising out of or relating to this Agreement.

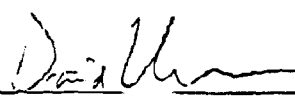
19. **Paragraph Titles.** The paragraph titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

20. **Counterparts.** This Agreement may be executed in any number of counterparts, and by the parties hereto in separate counterparts, each of which shall together constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

HUMPTY DUMPTY SNACK FOODS
USA, INC

By 
Gerald P. Schmalz
President



Witness

SCHEDULE A

Trademarks

<u>Mark</u>	<u>Registration No.</u>	<u>Date of Registration</u>
HUMPTY DUMPTY	1,423,053	December 30, 1986
DESIGN ONLY	1,428,625	February 10, 1987
A TASTE WORTH FALLIN' FOR!	1,890,017	April 18, 1995
BIG LI'L SNACK	1,919,990	September 19, 1995
DOWNEAST	1,980,361	June 18, 1996
MAINE COAST	1,506,179	September 27, 1988