

RECORDATION F
TRADEMA

06-25-1999

RTMENT OF COMMERCE

Patent and Trademark Office



101077923

copy thereof.

To the Honorable Commissioner of Patents and Trademarks: Please

92-6-22-99

1. Name of conveying party(ies):

HARRY LONDON CANDIES, INC.
5353 Lauby Road
North Canton, Ohio 44720

- Individual(s)
- General Partnership
- Corporate-State - Ohio
- Other
- Association
- Limited Partnership

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

3. Nature of conveyance:

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

Execution Date: June 21, 1999

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

A. Trademark Application No. (s)

B. Trademark Registration No. (s):

1,918,956; 1,823,041; 1,309,265; 1,161,204; 1,925,686; 1,927,891;
2,091,794; 2,058,089; 2,062,014; 2,117,089; 2,094,628; and
1,805,481

Additional numbers attached? Yes No

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

Name: Mae Smith, Legal Assistant
Internal Address:
McDonald, Hopkins, Burke & Haber Co., L.P.A.
2100 Bank One Center
Street Address: 600 Superior Avenue, E.
City: Cleveland State: Ohio Zip: 44114-2653

6. Total number of applications and registrations involved: 13

7. Total fee (37 CFR 3.41): \$ 340.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

8-10-1999 10-48927 0000009 1.3755

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing is true and correct and any attached copy is a true copy of the original document.

HARRY LONDON CANDIES, INC.

By: Ronald W. Ocusek
Name of Person Signing

Signature

June 21, 1999
Date

Total number of pages comprising cover sheet: 1

PATENT, TRADEMARK, COPYRIGHT AND LICENSE SECURITY AGREEMENT

This Agreement, dated as of June 21, 1999, is made by and between **HARRY LONDON CANDIES, INC.**, an Ohio corporation whose address and principal place of business is 5353 Lauby Road, North Canton, Ohio 44720 (the "Debtor"), and **KEY CORPORATE CAPITAL INC.**, as Agent for the Lenders identified in the Credit Agreement (as hereinafter defined), whose address and principal place of business is 127 Public Square, Cleveland, Ohio 44114 (the "Secured Party").

Recitals

The Debtor and the Secured Party have entered into a Credit Facility and Security Agreement dated as of June __, 1999 (as the same may hereafter be amended, supplemented or restated from time to time, the "Credit Agreement") setting forth the terms on which the Secured Party may now or hereafter make certain loans or other financial accommodations to or for the account of the Debtor.

As a further condition of making any loan or financial accommodation under the Credit Agreement or otherwise, the Secured Party has required the execution and delivery of this Agreement by the Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Credit Agreement and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Credit Agreement that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Credit Agreement) which the Debtor may now or at any time hereafter owe to the Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Obligations (as defined in the Credit Agreement).

"Patents" means all of the Debtor's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including, without limitation, the right to sue for past infringement and damages therefor, and

licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the patents listed on attached Exhibit A.

"Trademarks" means all of the Debtor's right, title and interest in and to trademarks, service marks, collective membership marks, the respective goodwill associated with each, and licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on attached Exhibit B.

"Copyrights" means all of the Debtor's copyrights, copyright registrations and copyright applications, all as presently existing or hereafter arising or acquired, including, without, limitation, the marks listed on attached Exhibit C.

"License" means all of the Debtor's rights, title and interest in and to license agreements (to the extent such license agreements may be assigned without violating the terms of any such license agreements) with respect to any of the Patents or the Trademarks or any other patent, trademark, services mark or any application or registration thereof or any other tradename or tradestyle between the Debtor and any other party, whether the Debtor is a licensor or a licensee under any such license agreement, including, without limitation, the license agreements listed on attached Exhibit D.

"Intellectual Property" means, collectively, the Patents, Trademarks, Copyrights and Licenses, all products and proceeds thereof and the goodwill of the Debtor's business connected with and/or symbolized by the Intellectual Property.

2. Security Interest. The Debtor hereby irrevocably pledges and assigns to, and grants the Secured Party a security interest, with power of sale to the extent permitted by law (the "Security Interest"), in the Intellectual Property to secure payment of the Obligations.

3. Representations, Warranties and Agreements. The Debtor hereby represents, warrants and agrees as follows:

a. *Existence; Authority*. The Debtor is a corporation, having full power and authority to make and deliver this Agreement. The execution, delivery and performance of this Agreement by the Debtor have been duly authorized by all necessary action of the Debtor's board of directors and, if necessary, its stockholders, and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or its articles of incorporation or bylaws or any agreement presently binding on it. This Agreement has been duly executed and delivered by the Debtor and constitutes the Debtor's lawful, binding and legally enforceable obligation. The correct name of the Debtor is Harry London Candies, Inc. The authorization, execution, delivery and

performance of this Agreement does not require notification to, registration with or consent or approval by any federal, state or local regulatory body or administrative agency.

b. **Intellectual Property.** Exhibits A, B, C and D accurately list all Patents, Trademarks, Copyrights and Licenses owned or controlled by the Debtor as of the date hereof and accurately reflect the existence and status of registrations pertaining to the Intellectual Property as of the date hereof.

c. **Title.** The Debtor has absolute, sole and exclusive title to the Intellectual Property listed on Exhibits A, B, C and D free and clear of all security interests, liens and encumbrances, except the Security Interest. The Debtor (i) will have, at the time the Debtor acquires any rights in Intellectual Property hereafter arising, absolute title to the Intellectual Property free and clear of all security interests, liens and encumbrances, except the Security Interest, and (ii) will keep all of the Intellectual Property free and clear of all security interests, liens and encumbrances except the Security Interest.

d. **No Sale.** The Debtor will not sell or otherwise dispose of the Intellectual Property, or any interest therein, without the Secured Party's prior written consent.

e. **Defense.** The Debtor will at its own expense, and using its best efforts, protect and defend the Intellectual Property against all claims or demands of all persons other than the Secured Party.

f. **Intellectual Property is Valid and Enforceable.** None of the Intellectual Property has been adjudged invalid or unenforceable nor has any of the Intellectual Property been canceled, in whole or in part and all of the Intellectual Property is presently subsisting. To the best knowledge of the Debtor, all of the Intellectual Property is properly filed, issued and valid.

g. **Maintenance.** The Debtor will, at its own expense, maintain the Intellectual Property to the extent reasonably advisable in its business including, but not limited to, filing all applications to register and all affidavits and renewals possible with respect to issued registrations. The Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Intellectual Property, nor fail to file any required affidavit in support thereof, without first providing the Secured Party: (i) sufficient written notice, as provided in the Credit Agreement, to allow the Secured Party to timely pay any such maintenance fees or annuity which may become due on any of said Intellectual Property or to file any affidavit with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit, should such be necessary or desirable.

h. **The Secured Party's Right to Take Action.** If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure

continues for a period of ten (10) calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (g), immediately upon the occurrence of such failure, without notice or lapse of time), or if the Debtor notifies the Secured Party that it intends to abandon any material Intellectual Property, the Secured Party may (but need not) perform or observe such covenant or agreement on behalf and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure.

i. ***Costs and Expenses.*** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Secured Party on demand the amount of all monies expended and all costs and expenses (including reasonable attorneys' fees) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (h) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the highest rate then applicable to any of the Obligations.

j. ***Power of Attorney.*** To facilitate the Secured Party's taking action under subsection (h) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements and other agreements and writings required to be obtained, executed, delivered or endorsed by the Debtor under Section 3, or necessary for the Secured Party, after an Event of Default to enforce or use the Intellectual Property or to grant or issue any exclusive or non-exclusive license under the Intellectual Property to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Intellectual Property to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Credit Agreement as provided therein and the payment and performance of all Obligations (as defined therein).

4. **The Debtor's Use of the Intellectual Property.** The Debtor shall be permitted to control and manage the Intellectual Property, including the right to exclude others from making, using or selling items covered by the Intellectual Property and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as

defined in the Credit Agreement, shall occur; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, the Secured Party may, at its option, take any or all of the following actions:

a. The Secured Party may exercise any or all remedies available under the Credit Agreement.

b. The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Intellectual Property.

c. The Secured Party may enforce the Intellectual Property and any licenses thereunder, and if the Secured Party shall commence any suit for such enforcement, the 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.

d. The Secured Party may use the Intellectual Property on a worldwide basis, except as limited by the terms of such Intellectual Property, without liability for royalties or other related charges from the Secured Party to the Debtor.

7. New Intellectual Property. The Debtor represents and warrants that the Intellectual Property listed on Exhibits A, B, C and D, respectively, constitutes all of the Intellectual Property now owned by the Debtor. If, before all liabilities and obligations pursuant to the Credit Agreement shall have been satisfied in full, the Debtor shall (i) become aware of any existing Intellectual Property of which the Debtor has not previously informed the Debtor, (ii) obtain rights to any new patentable Intellectual Property, or (iii) become entitled to the benefit of any Intellectual Property which benefit is not in existence on the date hereof, the provisions of this Agreement above shall automatically apply thereto and the Debtor shall give to the Secured Party prompt written notice thereof. The Debtor hereby authorized the Secured Party to modify this Agreement by amending Exhibits A, B, C and D, as applicable, to include any such Intellectual Property.

8. The Secured Party's Right to Inspect. The Secured Party shall have the right, at any time and from time to time during normal business hours (upon not less than two (2) days prior notice to the Debtor) and prior to payment in full of all liabilities and obligations pursuant to the Loan Documents, to inspect the Debtor's premises and to examine the Debtor's books, records and operations, including, without limitation, the Debtor's quality control processes. The Debtor agrees (i) to maintain the quality of any and all products in connection with which the Intellectual Property is used, consistent with the quality of said products as of the date hereof, and (ii) to provide Secured Party, upon Secured Party's request from time to time, with a certificate

of an officer of the Debtor certifying the Debtor's compliance with the foregoing. Upon the occurrence of an Event of Default, the Debtor agrees that Secured Party, or a conservator appointed by Secured Party, shall have the right to establish such additional product quality controls as Secured Party, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by the Debtor under the Intellectual Property. The foregoing notwithstanding, unless and until an Event of Default shall have occurred. Secured Party agrees to hold confidential and not disclose or use any information regarding any of the Intellectual Property unless such disclosure is required by applicable law or court order. This obligation shall survive the termination of this Agreement, the release of the lien herein and such reassignment of the Intellectual Property, as applicable, unless such termination is due to an Event of Default.

9. Release of Agreement. This Agreement is made for collateral purposes only. Upon payment in full of all liabilities and obligations pursuant to the Credit Agreement, Secured Party shall execute and deliver to the Debtor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary or proper to re-vest in the Debtor full title to the Intellectual Property, subject to any disposition thereof which may have been made by Secured Party pursuant to the Credit Agreement.

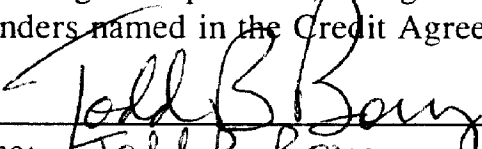
10. Miscellaneous. This Agreement has been duly and validly authorized by all necessary action, corporate or otherwise. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Intellectual Property at all or in any particular manner or order, or to apply any cash proceeds of Intellectual Property in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of the State of Ohio without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and

warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.


THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this Patent, Trademark, Copyright and License Security Agreement as of the date written above.

KEY CORPORATE CAPITAL INC.,
a Michigan corporation, as Agent for the
Lenders named in the Credit Agreement

By: 
Name: Todd B. Boney
Its: Senior Vice President

HARRY LONDON CANDIES, INC.,
an Ohio corporation

By: 
Name: Ronald W. Opper
Its: COO

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this 21st day of June, 1999, by Ronald W. Oczek, the C.O.O. of Harry London Candies, Inc., an Ohio corporation, on behalf of the corporation.

Mae Frances Smith
Notary Public
MAE FRANCES SMITH
Notary Public State of Ohio
Recorded in Cuyahoga County
My Commission Expires May 20, 2002

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this 21st day of June, 1999, by Todd B. Boney, the Senior Vice President of Key Corporate Capital Inc., on behalf of the Agent.

Mae Frances Smith
Notary Public
MAE FRANCES SMITH
Notary Public State of Ohio
Recorded in Cuyahoga County
My Commission Expires May 20, 2002

EXHIBIT A

Patents and Patent Applications

(See Attachment)

ATTACHMENT TO EXHIBIT A

Patents and Patent Applications

<u>Title</u>	<u>Registration No.</u>	<u>Registration Date</u>
Confectionery Design	D396,337	07/28/1998
Confectionery Design	D396,336	07/28/1998

EXHIBIT B

Registered Trademarks and Trademark Application(s)

(See Attachment)

ATTACHMENT TO EXHIBIT B

Registered Trademarks and Trademark Application(s)

Registrations

<u>Title</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Country</u>
Cookie Joys	1,918,956	09/12/1995	USA
Harry London	1,823,041	02/22/1994	USA
Pretzel Joys	1,309,265	12/11/1984	USA
I've Got Hot Lips for You	1,161,204	07/14/1981	USA
Hotlips	1,925,686	10/10/1995	USA
Mocha Melts	1,927,891	10/17/1995	USA
Eagle's Choice	2,091,794	08/26/1997	USA
Heartland	2,058,089	04/29/1997	USA
Heartland Chocolates	2,062,014	05/13/1997	USA
Truffle Fondue	2,117,089	11/25/1997	USA
Mocha Spoons	2,094,628	09/09/1997	USA
Hot Lips	1,805,481	09/27/1985	JAPAN

Application(s)

<u>Title</u>	<u>Serial No.</u>	<u>File Date</u>	<u>Country</u>
Old School	75/126,489	06/27/1996	USA

EXHIBIT C

Copyrights and Copyright Applications

None

EXHIBIT D

Licenses

None