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FORM PTO-1618A

Expires 06/30/99  
OMB 0651-0027

101594766

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

1.11.01

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**☒

New

☐

Resubmission (Non-Recordation)

Document ID #

☐

Correction of PTO Error

Reel #

Frame #

☐

Corrective Document

Reel #

Frame #

**Conveyance Type**☐

Assignment

☐

License

☒

Security Agreement

☐

Nunc Pro Tunc Assignment

☐

Merger

☐

Change of Name

☐

Other

Effective Date  
Month Day Year**Conveying Party**☐

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Humpty Dumpty Snack Foods USA, Inc.

11152000

Formerly

☐

Individual

☐

General Partnership

☐

Limited Partnership

☒

Corporation

☐

Association

☐

Other

☒

Citizenship/State of Incorporation/Organization

Maine

**Receiving Party**☐

Mark if additional names of receiving parties attached

Name

Her Majesty the Queen in right of the Province of New Brunswick, by

~~RECEIVING PARTY~~

the Minister of Investment and Exports

Composed of

Address (line 1)

Room 574, Centennial Building

Address (line 2)

670 King Street

Address (line 3)

Fredricton

City

New Brunswick, Canada

State/Country

E3B 5H1

Zip Code

☐

Individual

☐

General Partnership

☐

Limited Partnership

☒

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

☐

Corporation

☐

Association

☒

Other

Provincial Government

☒

Citizenship/State of Incorporation/Organization

Canada

**FOR OFFICE USE ONLY**

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01 FC:481  
02 FC:48240.00 OP  
125.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231**TRADEMARK**  
**REEL: 002220 FRAME: 0423**

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

☐ Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="1423053"/>	<input type="text" value="1919990"/>	<input type="text"/>
<input type="text" value="1428625"/>	<input type="text" value="1980361"/>	<input type="text"/>
<input type="text" value="1890017"/>	<input type="text" value="1506179"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed ☒

Deposit Account ☐

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes ☒

No ☐

**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. Charges to deposit account are authorized, as indicated herein.

William L. Worden, Esq.

Name of Person Signing



Signature

1/11/01

Date Signed

## **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

# TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT ("Agreement") is given as of November 15, 2000, 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 Her Majesty the Queen in right of the Province of New Brunswick, as represented by the Minister of Investment and Exports, as collateral agent (the "Collateral Agent"), with a mailing address of Room 574, Centennial Building, 670 King Street, Fredericton, New Brunswick, Canada E3B 5H1.

## WITNESSETH:

WHEREAS, P.E.I. Lending Agency and Her Majesty the Queen in right of the Province of New Brunswick, as represented by the Minister of Investment and Export (collectively the "Lenders"), have entered into loan agreements with the Debtor's sole stockholder, Humpty Dumpty Snack Foods Inc. (the "Borrower"), pursuant to which the Lenders have agreed to loan the Borrower the aggregate sum of Three Million Dollars (\$3,000,000.00) (the "Loans") and provide the Borrower with a loan guaranty in the amount of Five Hundred Thousand Dollars (\$500,000) (the "Agency Guaranty"); and

WHEREAS, the Debtor has executed and delivered to the Lenders a guaranty of the Borrower's obligations to the Lenders in respect of the Loans and the Agency Guaranty (the "Debtor Guaranty"); and

WHEREAS, the Debtor has agreed to grant to the Collateral Agent 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 Patents, 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 Lenders under the Guaranty (collectively, the "Obligations"), Debtor hereby grants to the Collateral Agent 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 Collateral Agent 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 Collateral Agent to Debtor.

5. **Right to Inspect; Further Assignment and Security Interests.** The Collateral Agent 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 Collateral Agent 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 Collateral Agent, or a conservator appointed by the Collateral Agent, shall have the right to establish such reasonable additional product quality controls as the Collateral Agent 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 Collateral Agent, (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 Collateral Agent's prior and express written consent.

6. **Termination of Secured Party's Security Interest.** This Agreement is made for collateral security purposes only. This Agreement and Collateral Agent's security interest in the Trademarks shall continue in full force and effect as long as any Obligations shall be owed to the Lenders or otherwise remain outstanding. Upon payment or performance in full of the Obligations, this Agreement shall terminate and the Collateral Agent 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 Collateral Agent's security interest in the Trademarks, subject to any disposition thereof which may have been made by the Collateral Agent pursuant to this Agreement.

7. **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 Lenders, 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.

8. **Collateral Agent's Right to Sue.** From and after the occurrence of a Default, the Collateral Agent 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 Collateral Agent shall commence any such suit, Debtor shall, at the request of the Collateral Agent, do any and all lawful acts and execute any and all proper documents required by the Collateral Agent in aid of such enforcement. Debtor shall, upon demand, promptly reimburse the Collateral Agent for all costs and expenses incurred by the Collateral Agent in the exercise of its rights under this Section 8 (including, without limitation, reasonable fees and expenses of attorneys for the Collateral Agent).

9. **Waivers.** Collateral Agent'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 Collateral Agent thereafter to demand strict compliance and performance therewith, nor shall any course of dealing between Debtor and the Collateral Agent 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 Collateral Agent unless such suspension or waiver is in writing signed by an officer of the Collateral Agent and directed to Debtor specifying such suspension or waiver.

10. **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.

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

12. **Cumulative Remedies; Power of Attorney.** All of the Collateral Agent'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 Collateral Agent to Debtor of the Collateral Agent's intention to enforce their rights and claims against Debtor, Debtor hereby irrevocably designates, constitutes and appoints the Collateral Agent (and all persons designated by the Collateral Agent in its sole and absolute discretion) as Debtor's true and lawful attorneys-in-fact, and authorizes the Collateral Agent and any of the Collateral Agent's designees, in Debtor's or the Collateral Agent'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 Collateral Agent 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 Collateral Agent in good faith deem 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 Collateral Agent, but rather is intended to facilitate the exercise of such rights and remedies. The Collateral Agent 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.

13. **Successors and Assigns.** This Agreement shall be binding upon Debtor and its successors and assigns, and shall inure to the benefit of the Collateral Agent 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 Collateral Agent's prior written consent.

14. **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.

15. **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.

16. **Collateral Agent's Duties.** Except as provided for in applicable law, the Collateral Agent 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.

17. **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.

18. **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.


19. **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  
U S A , INC.

By: 

Gerald P. Schmalz  
President



Witness