

05-16-2001



101718998

5-10-01  
7-24-02

**RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY**

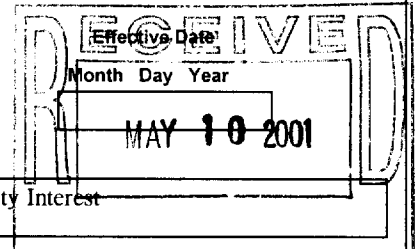
TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**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  Release of Security Interest



**Conveying Party**

Mark if additional names of conveying parties attached Execution Date  
Month Day Year

Name

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

**Receiving Party**

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

- Individual  General Partnership  Limited Partnership  Association
- Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

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.)

05/15/2001  
01 FC:481  
02 FC:482

40.00 OP  
250.00 OP

**FOR OFFICE USE ONLY**

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

**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

(312) 984-3166

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.

#11

**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)

75658398

75797492

2351921

2015437

75658377

75786152

2377045

2110632

75659277

2351923

2234297

**Number of Properties**

Enter the total number of properties involved.

#11

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41):

\$290.00

Method of Payment:

Enclosed  Deposit Account

Deposit Account

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

Deposit Account Number:

#50-1004

Authorization to charge additional fees:

Yes

No

**Statement and Signature**

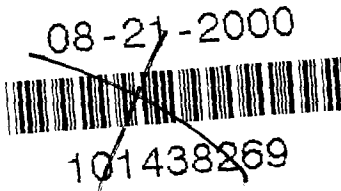
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Wendi E. Sloane  
Name of Person Signing

Signature

5-8-01

Date Signed



5-10-01

7.24.00

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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Name

Execution Date  
Month Day Year

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
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#### Receiving Party

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Name

BA/AKA/TA

Imposed of

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

- Individual  General Partnership  Limited Partnership
- Corporation  Association
- Other

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.)

Citizenship/State of Incorporation/Organization

0 NTHAI1 00000128 75658668

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40.00 OP  
275.00 OP

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 inputting 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. 20503 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 Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS OFFICE.

Mail documents to be recorded with required cover sheet(s) information to:  
U.S. Department of Commerce, Patent and Trademark Office, Box 1016, Washington, D.C. 20540

TRADEMARK  
REEL: 002296 FRAME: 0661

**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" value="75658668"/>	<input type="text" value="75658398"/>	<input type="text" value="75760764"/>	<input type="text" value="2015437"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75658377"/>	<input type="text" value="75659277"/>	<input type="text" value="75797492"/>	<input type="text" value="2110632"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="75658667"/>	<input type="text" value="75760865"/>	<input type="text" value="75786152"/>	<input type="text" value="2234297"/>	<input type="text"/>	<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.

Name of Person Signing \_\_\_\_\_ Signature \_\_\_\_\_ Date Signed \_\_\_\_\_

## TRADEMARK SECURITY AGREEMENT

THIS SECURITY AGREEMENT is entered into as of May 24, 2000, by and between Fresh, Inc., a Massachusetts corporation having its principal place of business at 25 Drydock Avenue, Boston, Massachusetts 02210 (the "**Borrower**"), and Family Bank, FSB, a federally chartered savings bank, with a usual place of business c/o Banknorth Group, Inc., 7 New England Executive Park, Suite 700, Burlington, Massachusetts 01803 ("**Bank**").

NOW THEREFORE, in consideration of the premises, Borrower hereby agrees with Bank as follows:

1. **Grant of Security Interest.** Borrower hereby grants to Bank a first priority security interest in, and conditionally assigns, but does not transfer title to Bank, all of Borrower's right, title and interest in and to the following (collectively, the "**Collateral**") to secure payment and performance of all obligations of Borrower to Bank whether such obligations are direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including without limitation, those liabilities of Borrower to Bank pursuant to a Loan and Security Agreement (All Assets) dated May 5, 2000, between Bank and Borrower (the "**Loan Agreement**") (collectively, the "**Obligations**").

The Collateral shall consist of the following:

(a) Each of the trademarks, and rights and interests protectible as trademarks, which are presently, or in the future may be, owned, created, acquired or used (whether pursuant to a license or otherwise) by Borrower, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(b) All of Borrower's right, title and interest, in and to the trademarks and trademark registrations listed on Schedule A attached hereto, as the same may be updated hereafter from time to time;

(c) All of Borrower's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country, and to apply for, renew and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Borrower or in the name of Bank for past, present and future infringements of the trademarks, registrations or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill;

(d) All general intangibles relating to the Collateral; and

(e) All proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

2. **Warranties and Representations.** Borrower hereby warrants and represents to Bank the following:

(a) A true and complete schedule setting forth all federal and state trademark registrations owned or controlled by Borrower or licensed to Borrower, together with a summary description and

full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule A;

(b) Each of the trademarks and trademark registrations is valid and enforceable, and Borrower is not presently aware of any past, present or prospective claim by any third party that any of the trademarks are invalid or unenforceable, or that the use of any trademarks violates the rights of any third person, or of any basis for any such claims;

(c) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the trademarks and trademark registrations free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses, shop rights and covenants by Borrower not to sue third persons;

(d) Borrower has used and will continue to use proper statutory notice in connection with its use of each of the trademarks;

(e) Borrower has used and will continue to use consistent standards of high quality (which may be consistent with Borrower's past practices) in the manufacture, sale and delivery of products and services sold or delivered under or in connection with the trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks;

(f) Except for the filing of financing statements with the Secretary of State, Boston, Massachusetts, the City Clerk, Boston, Massachusetts, the Department of State, Albany, New York, and the City Register, New York County, New York, under the Uniform Commercial Code and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by Borrower of the security interest hereunder or for the execution, delivery or performance of this Agreement by Borrower or for the perfection of or the exercise by Bank of its rights hereunder to the Collateral in the United States.

3. **After-Acquired Trademark Rights.** If Borrower shall obtain rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto. Borrower shall give prompt notice in writing to Bank with respect to any such new trademarks or renewal or extension of any trademark registration. Borrower shall bear any expenses incurred in connection with future applications for trademark registration.

4. **Litigation and Proceedings.** Borrower shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings or other actions for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Borrower shall provide to Bank any information with respect thereto requested by Bank. Bank shall provide at Borrower's expense all necessary cooperation in connection with any such suit, proceeding or action, including, without limitation, joining as a necessary party. Following Borrower's becoming aware thereof, Borrower shall notify Bank of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state or foreign court regarding Borrower's claim of ownership in any of such trademarks, its right to apply for the same, or its right to keep and maintain such trademark rights.

5. **Power of Attorney.** Borrower grants Bank power of attorney, having the full authority, and in the place of Borrower and in the name of Borrower, from time to time in Bank's discretion to take any action and to execute any instrument which Bank may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of the Loan Agreement:

(a) To endorse Borrower's name on all applications, documents, papers and instruments necessary for Bank to use or maintain the Collateral;

(b) To ask, demand, collect, sue for, recover, impound, receive and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral;

(c) To file any claims or take any action or institute any proceedings that Bank may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce Bank's rights with respect to any of the Collateral and to assign, pledge, convey or otherwise transfer title in or dispose of the Collateral to any person.

7. **Right to Inspect.** Borrower grants to Bank and its employees and agents the right to visit Borrower's plants and facilities which manufacture, inspect or store products sold under any of the trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

8. **Events of Default.** Any of the following events shall be an Event of Default:

(a) Borrower fails to make any payment of principal or interest or any other payment on any Obligation when due and payable, by acceleration or otherwise; and

(b) the occurrence of an Event of Default as that term is defined in the Loan Agreement.

9. **Specific Remedies.** Upon the occurrence of any Event of Default:

(a) Bank may cease advancing money or extending credit to or for the benefit of Borrower under the Loan Agreement or under any other agreement between Borrower and Bank.

(b) Bank may declare all Obligations to be due and payable immediately, whereupon they shall immediately become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Borrower;

(c) Bank may set off against the Obligations all Collateral, balances, credits, deposits, accounts or moneys of Borrower then or thereafter held with Bank, including amounts represented by certificates of deposit;

(d) Bank may notify licensees to make royalty payments on license agreements directly to Bank;

(e) Bank may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Bank deems advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Borrower ten (10) days prior to such disposition. Borrower shall be credited with the net proceeds of such sale only when they are actually received by Bank, and Borrower shall continue to be liable for any deficiency remaining after the Collateral is sold or collected;

(f) If the sale is to be a public sale, Bank shall also give notice of the time and place by publishing a notice one time at least ten (10) calendar days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held; and

(g) To the maximum extent permitted by applicable law, Bank may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any Collateral payable by Bank at such sale.

10. **Governing Law.** All acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Borrower and Bank have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

FRESH, INC.

By: Alina Roytberg, President  
Alina Roytberg, President

FAMILY BANK, FSB

By: Paul F. Flynn, Jr., SVP  
Paul F. Flynn, Jr., Senior Vice President

**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

June 30  
~~May~~, 2000

Then personally appeared the above-named, Alina Roytberg, President, and acknowledged the foregoing instrument to be the free act and deed of Fresh, Inc., before me,

Michelle M. Higgins  
Notary Public  
My Commission Expires **MY COMMISSION EXPIRES JULY 28, 2002**

**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

July 6  
~~May~~, 2000

Then personally appeared the above-named, Paul F. Flynn, Jr., Senior Vice President, and acknowledged the foregoing instrument to be the free act and deed of Family Bank, FSB, before me,

Michelle M. Higgins  
Notary Public  
My Commission Expires: February 23, 2001



RELEASE

In consideration of the payment of all indebtedness and amounts secured by that certain Trademark Security Agreement made as of May 4, 2000, by and between Fresh, Inc., a Massachusetts corporation (the "Borrower"), and Family Bank, FSB, a federally chartered savings bank (the "Bank"), which Trademark Security Agreement was filed with the United States Patent and Trademark Office on July 24, 2000, and recorded in Book 002122 Page 0493 of the Trademark Assignment Records, the Bank hereby releases and discharges all of its rights, titles and interest in and to the above-described Trademark Security Agreement, including the security interest and conditional assignment created and existing thereunder on the property described in and covered thereby, and reassigns to Borrower any right, title and interest of Bank in and to the "Collateral" described therein, including the right to recover for past infringement of any of the collateral and the goodwill of the business in connection with which the Collateral is used and which is symbolized by any of the Collateral.

Reference is made to the above-described Trademark Security Agreement, and the recordation thereof for all purposes in connection herewith.

Executed this 22<sup>nd</sup> day of September, 2000.

FAMILY BANK, FSB

By:

Paul F. Flynn, Jr. - SUP  
Paul F. Flynn, Jr., Senior Vice President

COMMONWEALTH OF MASSACHUSETTS

Middlesex  
Suffolk, ss.

September 22, 2000

Then personally appeared the above-named Paul F. Flynn, Jr., Senior Vice President, and acknowledged the foregoing instrument to be the free act and deed of Family Bank, FSB, before me,

Michelle M. Higgins  
Notary Public  
My Commission Expires: 2/23/01

**SCHEDULE A  
TO A TRADEMARK SECURITY AGREEMENT  
BETWEEN FRESH, INC. (Borrower)  
AND  
FAMILY BANK, FSB (Bank)  
DATED: MAY 24, 2000**

**REGISTERED TRADEMARKS (USA)**

<u>Trademark</u>	<u>Registration No.</u>	<u>Issue Date</u>
FORMULA F21C	2015437	November 12, 1996
MILK FORMULA F21C	2110632	November 4, 1997
SUGARBATH	2234297	March 23, 1999

**REGISTRATION PENDING FOR TRADEMARKS (USA)**

<u>Trademark</u>	<u>Serial No.</u>	<u>Filing Date</u>
FLEUR DE CHOCOLAT	75/658668	March 11, 1999
FRESH [class3]	75/658377	March 11, 1999
FRESH [class 4]	75/658667	March 11, 1999
FRESH [class 35]	75/658398	March 11, 1999
SOY FORMULA F21C	75/659277	March 12, 1999
HOMBRE DE FLORES	75/760865	July 26, 1999
INDEX	75/760764	July 26, 1999
BROWN SUGAR BODY POLISH	75/797492	September 13, 1999
SUGAR EAU DE PARHM (Stylized)	75/786152	October 30, 1999