OIPE JC174 AUG 30 2001 PATENT & TRADEMARK OFFICE

11-01-2001

9-30-01

008422.0223

Form PTO-1594 (Rev. 03/01)
OMB No. 0651-0027

101883193

RECORDATION FORM COVER SHEET ONLY

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

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):

TCBY Enterprises, Inc.

- [ ] Individual(s)
- [ ] Association
- [ ] General Partnership
- [ ] Limited Partnership
- [x] Corporation-State Delaware
- [ ] Other

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

2. Name and address of receiving party(ies)

Name: Wells Fargo Bank, National Association, as Agent

Internal Address:

Street Address: 201 3rd Street, 8th Floor

City: San Francisco State: CA Zip: 94103

- [ ] Individual(s) citizenship
- [x] Association National Association
- [ ] General Partnership
- [ ] Limited Partnership
- [ ] Corporation-State
- [ ] Other

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 [x] No

3. Nature of conveyance:

- [ ] Assignment
- [ ] Merger
- [x] Security Agreement
- [ ] Change of Name
- [ ] Other

Execution Date: August 30, 2001

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

A. Trademark Application No.(s)

75738632 76060460
75830030 76211317

B. Trademark Registration No.(s)

1341281 1819286 1853240
1341713 2142775 1414577

Additional number(s) attached [x] Yes [ ] No

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

Name: Jason D. White, Esq.

Internal Address: Brobeck, Phleger & Harrison LLP

Street Address: One Market
Spear Street Tower

City: San Francisco State: CA Zip: 94105

6. Total number of applications and registrations involved: 72

7. Total fee (37 CFR 3.41) ..... $ 1,815.00

- [x] Enclosed
- [ ] Authorized to be charged to deposit account

8. Deposit account number:

50-1640

(any deficiencies)

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

DO NOT USE THIS SPACE

9. 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.

Michael Ward — Name of Person Signing

Signature

August 30, 2001 — Date

Total number of pages including cover sheet, attachments, and document: 14

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

09/04/2001 DBYRNE 00000116 75738632
01 FC:481 40.00 OP
02 FC:482 1775.00 OP

RECORDATION FORM COVER SHEET (CONTINUATION)

TRADEMARKS ONLY

ITEM 4. Additional Trademark Registration Numbers

1989874	2066904
1978917	2067193
2089726	2067192
2169323	2047999
2165598	1550397
2133019	1643075
1460412	2382569
2228869	1562438
1793248	1805601
1542036	1868790
1534756	1415194
2175157	1367174
2175158	1924764
1496141	2145363
1776095	2145364
1764750	2054972
2163218	2145361
2163219	2145362
1426719	2052883
1773793	2145359
1757078	2145360
1726014	2052884
2084632	2222442
1953614	1338536
1463784	1672857
1849396	1988156
1901091	1646988
1415353	1408813
1904554	1281824
1806816	1567404
2066903	1614096

AMENDED AND RESTATED
PATENT AND TRADEMARK SECURITY AGREEMENT

THIS AMENDED AND RESTATED PATENT AND TRADEMARK SECURITY AGREEMENT (this "Agreement"), dated as of August 31, 2001, is made by and between TCBY Systems, LLC, a Delaware limited liability company (the "Borrower"), TCBY Enterprises, Inc., a Delaware corporation ("Enterprises"), TCBY Holding Company, Inc., a Delaware corporation ("Parent") (the Borrower, Enterprises and Parent collectively and individually, the "Grantor") and Wells Fargo Bank, National Association, as administrative agent for the Banks under the below-referenced Credit Agreement (in such capacity, the "Agent").

The Grantor, the financial institutions from time to time party as "Banks" (each a "Bank" and collectively "Banks"), and the Agent are parties to a Credit Agreement dated as of May 31, 2000, as amended by that certain Amendment to Credit Agreement dated as of June 30, 2000 (as so amended, the "May 2000 Credit Agreement"), pursuant to which the Banks have provided a senior secured term loan facility under the terms and conditions set forth therein.

The Borrower has requested that the Banks amend and restate the May 2000 Credit Agreement in its entirety (as so amended and restated, the "Credit Agreement") and thereby, among other things, continue their extension of credit to the Borrower in the form of a senior secured revolving loan facility. It is a condition precedent to the effectiveness of the Credit Agreement that the Grantor enter into this Agreement and grant to the Agent, for itself and for the ratable benefit of the Banks, the security interests hereinafter provided to secure the obligations of the Grantor described below.

Accordingly, the parties hereto agree as follows:

SECTION 1. Definitions; Interpretation.

A. Terms Defined in Credit Agreement. All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

B. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Collateral" has the meaning set forth in Section 2.

"PTO" means the United States Patent and Trademark Office.

"Secured Obligations" means all indebtedness, liabilities and other obligations of the Grantor to the Agent and the Banks under or in connection with the Credit Agreement, the Notes and the other Restated Loan Documents, including all unpaid principal of the Loans, all interest accrued thereon, all fees due under the Credit Agreement and all other amounts payable by the Grantor to the Agent and the Banks thereunder or in connection therewith, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined.

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"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California.

C. Terms Defined in UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

D. Interpretation. The rules of interpretation set forth in Section 1.03 of the Credit Agreement shall be applicable to this Agreement and are incorporated herein by this reference.

SECTION 2. Security Interest.

A. Grant of Security Interest. As security for the payment and performance of the Secured Obligations, the Grantor hereby assigns, transfers and conveys to the Agent, and grants a security interest in and mortgage to the Agent, all of the Grantor's right, title and interest in, to and under the following property, in each case whether now or hereafter existing or arising or in which the Grantor now has or hereafter owns, acquires or develops an interest and wherever located (collectively, the "Collateral"):

(1) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (described in Schedule A), all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(2) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (described in Schedule B), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(3) the entire goodwill of or associated with the businesses now or hereafter conducted by the Grantor connected with and symbolized by any of the aforementioned properties and assets;

(4) all commercial tort claims associated with or arising out of any of the aforementioned properties and assets;

(5) all accounts, all intangible intellectual or other similar property and other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above, including all license payments and payments under insurance (whether or not the Agent is the loss payee thereof) or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the foregoing Collateral; and

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(6) all products, proceeds and supporting obligations of or with respect to any of the foregoing Collateral.

B. Continuing Security Interest. The Grantor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with Section 20.

SECTION 3. Supplement To Security Agreement. The terms and provisions of this Agreement are intended as a supplement to the terms and provisions of the Restated Security Agreement. The Grantor acknowledges that the rights and remedies of the Agent with respect to the security interest in the Collateral granted hereby are more fully set forth in the Restated Security Agreement and the other Restated Loan Documents and all such rights and remedies are cumulative.

SECTION 4. Representations And Warranties. The Grantor represents and warrants to each Bank and the Agent that:

A. Patents. A true and correct list of all of the existing Collateral consisting of U.S. patents and patent applications and/or registrations owned by the Grantor, in whole or in part, is set forth in Schedule A.

B. Trademarks. A true and correct list of all of the existing Collateral consisting of U.S. trademarks, trademark registrations and/or applications owned by the Grantor, in whole or in part, is set forth in Schedule B.

SECTION 5. Further Acts. On a continuing basis, the Grantor shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by the Agent to carry out the intent and purposes of this Agreement, or for assuring, confirming or protecting the grant or perfection of the security interest granted or purported to be granted hereby, to ensure the Grantor's compliance with this Agreement or to enable the Agent to exercise and enforce its rights and remedies hereunder with respect to the Collateral, including any documents for filing with the PTO and/or any applicable state office. The Agent may record this Agreement, an abstract thereof, or any other document describing the Agent's interest in the Collateral with the PTO, at the expense of the Grantor.

SECTION 6. Future Rights. Except as otherwise expressly agreed to in writing by the Agent, if and when the Grantor shall obtain rights to any new patentable inventions or any new trademarks, or become entitled to the benefit of any of the foregoing, or obtain rights or benefits with respect to any reissue, division, continuation, renewal, extension or continuation-in-part of any patents or trademarks, or any improvement of any patent, the provisions of Section 2 shall automatically apply thereto and the Grantor shall give to the Agent prompt notice thereof. The Grantor shall do all things deemed necessary or advisable by the Agent to ensure the validity, perfection, priority and enforceability of the security interests of the Agent in such future acquired Collateral. The Grantor hereby authorizes the Agent to modify, amend, or supplement the Schedules hereto and to reexecute this Agreement from time to time on the Grantor's behalf

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and as its attorney-in-fact to include any such future Collateral and to cause such reexecuted Agreement or such modified, amended or supplemented Schedules to be filed with the PTO.

SECTION 7. Agent Appointed Attorney-In-Fact. The Agent shall have the right to, in the name of the Grantor, or in the name of the Agent or otherwise, without notice to or assent by the Grantor, and the Grantor hereby constitutes and appoints the Agent (and any of the Agent's officers or employees or agents designated by the Agent) as the Grantor's true and lawful attorney-in-fact, with full power and authority, and hereby authorizes the Agent: (i) to sign and file in the name of the Grantor any financing statement (with or without Grantor's signature) or other instrument and any modification, supplement or amendment to this Agreement (including any described in Section 6), and to sign the name of the Grantor on all or any of such documents or instruments and perform all other acts that the Agent deems necessary or advisable in order to perfect or continue perfected, maintain the priority or enforceability of or provide notice of the Agent's security interest in, the Collateral; and (ii) to execute any and all other documents and instruments, and to perform any and all acts and things for and on behalf of the Grantor, which the Agent may deem necessary or advisable to maintain, preserve and protect the Collateral and to accomplish the purposes of this Agreement, including (A) to defend, settle, adjust or after the occurrence of any Event of Default institute any action, suit or proceeding with respect to the Collateral, (B) to assert or retain any rights under any license agreement for any of the Collateral, including any rights of the Grantor arising under Section 365(n) of the Bankruptcy Code, and (C) after the occurrence of any Event of Default, to execute any and all applications, documents, papers and instruments for the Agent to use the Collateral, to grant or issue any exclusive or non-exclusive license with respect to any Collateral, and to assign, convey or otherwise transfer title in or dispose of the Collateral; provided, however, that in no event shall the Agent have the unilateral power, prior to the occurrence of an Event of Default, to assign any of the Collateral to any Person, including itself, without the Grantor's written consent. The foregoing power of attorney is coupled with an interest and irrevocable so long as the Banks have any Revolving Commitments or the Secured Obligations have not been paid and performed in full. The Grantor hereby ratifies, to the extent permitted by law, all that the Agent shall lawfully and in good faith do or cause to be done by virtue of and in compliance with this Section 7.

SECTION 8. Agent Performance Of Grantor Obligations. The Agent may perform or pay any obligation which the Grantor has agreed to perform or pay under or in connection with this Agreement, and the Grantor shall reimburse the Agent on demand for any amounts paid by the Agent pursuant to this Section 8.

SECTION 9. Agent's Duties. Notwithstanding any provision contained in this Agreement, the Agent shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to the Grantor or any other Person for any failure to do so or delay in doing so. Except for and the accounting for moneys actually received by the Agent hereunder, the Agent shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral.

SECTION 10. Remedies. Upon the occurrence of any Event of Default, the Agent shall have, in addition to all other rights and remedies granted to it in this Agreement, the Credit Agreement or any other Restated Loan Document, all rights and remedies of a secured party under the UCC and other applicable laws. Without limiting the generality of the foregoing, the

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Grantor agrees that the Agent shall at all times have such royalty free licenses, to the extent permitted by law, for any Collateral that is reasonably necessary to permit the exercise of any of the Agent's rights or remedies upon or after the occurrence of an Event of Default. In addition to and without limiting any of the foregoing, upon the occurrence and during the continuance of an Event of Default, the Agent shall have the right but shall in no way be obligated to bring suit, or to take such other action as the Agent deems necessary or advisable, in the name of the Grantor or the Agent, to enforce or protect any Collateral, and any license thereunder, in which event the Grantor shall, at the request of the Agent, do any and all lawful acts and execute any and all documents required by the Agent in aid of such enforcement.

SECTION 11. Notices. All notices and other communications provided for hereunder shall be given in accordance with Section 12.02 of the Credit Agreement.

SECTION 12. No Waiver; Cumulative Remedies. No failure on the part of the Agent to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights and remedies under this Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges that may otherwise be available to the Agent.

SECTION 13. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Grantor, the Agent and each Bank and their respective successors and assigns.

SECTION 14. Governing Law. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA, EXCEPT AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND TO THE EXTENT THE VALIDITY OR PERFECTION OF THE SECURITY INTERESTS HEREUNDER, OR THE REMEDIES HEREUNDER, IN RESPECT OF ANY COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN CALIFORNIA, PROVIDED THAT THE AGENT AND EACH BANK SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.**

SECTION 15. Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and shall not be amended except by the written agreement of the parties as provided in the Credit Agreement.

SECTION 16. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under all applicable laws and regulations. If, however, any provision of this Agreement shall be prohibited by or invalid under any such law or regulation in any jurisdiction, it shall, as to such jurisdiction, be deemed modified to conform to the minimum requirements of such law or regulation, or, if for any reason it is not deemed so modified, it shall be ineffective and invalid only to the extent of such prohibition or invalidity without affecting the remaining provisions of this Agreement, or the validity or effectiveness of such provision in any other jurisdiction.

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SECTION 17. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

SECTION 18. Incorporation Of Provisions Of The Credit Agreement. To the extent the Credit Agreement contains provisions of general applicability to the Restated Loan Documents, including any such provisions contained in Article XII thereof, such provisions are incorporated herein by this reference.

SECTION 19. No Inconsistent Requirements. The Grantor acknowledges that this Agreement and the other Restated Loan Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

SECTION 20. Termination. Upon the termination of the Revolving Commitments of the Banks and payment and performance in full of all Secured Obligations, the security interests contemplated by this Agreement shall terminate and the Agent shall promptly execute and deliver to the Grantor such documents and instruments reasonably requested by the Grantor as shall be necessary to evidence termination of all security interests given by the Grantor to the Agent hereunder, including cancellation of this Agreement by written notice from the Agent to the PTO.

SECTION 21. Effect of Agreement. This Agreement is intended to amend the Borrower Patent and Trademark Security Agreement and the Parent/Enterprises Patent and Trademark Security Agreement entered into in connection with the May 2000 Credit Agreement, without novation, and, solely for convenience, pursuant to the terms hereof, to restate them. Grantor hereby reaffirms the validity and binding effect of all pledge, security and collateral documents and agreements executed and delivered pursuant to the May 2000 Credit Agreement, and acknowledges and agree that all collateral subject to such documents and agreements does and shall secure the Obligations.

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TRADEMARK
REEL: 002359 FRAME: 0864

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

GRANTOR

TCBY SYSTEMS, LLC

By: _____
Title: Sr. V.P.

GRANTOR

TCBY ENTERPRISES, INC.

By: _____
Title: Sr. V.P.

GRANTOR

TCBY HOLDING COMPANY, INC.

By: _____
Title: Sr. V.P.

AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS AGENT

By: _____
Title:

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

GRANTOR

TCBY SYSTEMS, LLC

By:_____
Title:

GRANTOR

TCBY ENTERPRISES, INC.

By:_____
Title:

GRANTOR

TCBY HOLDING COMPANY, INC.

By:_____
Title:

AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS AGENT

By: [illegible]
Title: VICE PRESIDENT

MMK\5544329.01(3@%15011.DOC)

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SCHEDULE A

to the Patent and Trademark Security Agreement

Issued U.S. Patents and/or Patent Applications of Borrower/Parent/Enterprises

None.

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SCHEDULE B
to the Patent and Trademark Security Agreement

U.S. Trademarks of Borrower/Parent

None.

U.S. Trademarks of Enterprises

NAME OF MARK	REG. DATE	REG. #
All the Pleasure. None of the Guilt.	6/11/85	1,341,281
All the Pleasure. None of the Guilt.	6/11/85	1,341,713
Canopy Design	2/1/94	1,819,286
Cappuccino Chiller	3/10/98	2,142,775
Dreamy Nutty Shiver	9/6/94	1,853,240
Great Taste. No Waist.	10/21/86	1,414,577
Gurt Gunther	7/30/96	1,989,874
Juice Works	6/4/96	1,978,917
Juice Works and design	8/19/97	2,089,726
Juice Works and (horizontal) design	6/30/98	2,169,323
Juice Works and (vert.) design	6/16/98	2,165,598
Juice Works Squeezing & Pleasing and design	1/27/98	2,133,019
Kiddie Prescription	10/6/87	1,460,412
Mike & Mattie's	3/2/99	2,228,869
Moo	9/14/93	1,793,248
Nobody Treats Me Like TCBY	5/30/89	1,542,036
Nobody Treats You Like TCBY	4/11/89	1,534,756
Orchard Blend Smoothies (block)	7/21/98	2,175,157
Orchard Blend Smoothies (design)	7/21/98	2,175,158
Paws-A-Thon	7/12/88	1,496,141
Sensible Temptations	6/8/93	1,776,095
Shiver	4/13/93	1,764,750
Shiver (ice cream)	6/9/98	2,163,218
Shiver (sorbet)	6/9/98	2,163,219
Summer Coolers (yogurt)	1/27/87	1,426,719
Summer Coolers (sorbet)	5/25/93	1,773,793
Sundette	3/9/93	1,757,078

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NAME OF MARK	REG. DATE	REG. #
Sundettes	10/20/92	1,726,014
Superfresh and design	7/29/97	2,084,632
Sweet Greetings	1/30/96	1,953,614
TCBY	11/3/87	1,463,784
TCBY (caps, jerseys, shorts)	8/9/94	1,849,396
TCBY (soups, salads, sandwich)	6/20/95	1,901,091
TCBY	10/28/86	1,415,353
TCBY (traditional yogurt)	7/11/95	1,904,554
TCBY (Coffee)	11/23/93	1,806,816
TCBY (sorbet)	6/3/97	2,066,903
TCBY (ice cream)	6/3/97	2,066,904
TCBY and design	6/3/97	2,067,193
TCBY and design	6/3/97	2,067,192
TCBY and design	3/25/97	2,047,999
TCBY and Cone Design	8/1/89	1,550,397
TCBY and Cone Design	4/30/91	1,643,075
"TCBY" (and cone design)	9/5/00	2,382,569
TCBY Shiver	10/24/89	1,562,438
"TCBY" and Awning (Restaurant)	11/16/93	1,805,601
TCBY & Awning Design (soups, salads, sandwiches, etc.)	12/20/94	1,868,790
"TCBY" The Country's Best Yogurt	10/28/86	1,415,194
"TCBY" The Country's Best Yogurt	10/22/85	1,367,174
TCBY Paradise Ice & Design	10/3/95	1,924,764
"TCBY" Treats	3/17/98	2,145,363
"TCBY" Treats	3/17/98	2,145,364
"TCBY" Treats	4/22/97	2,054,972
"TCBY" Treats and design (horiz)	3/17/98	2,145,361
"TCBY" Treats and design (horiz)	3/17/98	2,145,362
"TCBY" Treats and design (horiz)	4/15/97	2,052,883
"TCBY" Treats and design (vert.)	3/17/98	2,145,359
"TCBY" Treats and design (vert.)	3/17/98	2,145,360
"TCBY" Treats and design (vert.)	4/15/97	2,052,884
"TCBY" Treats and design (diag & shaded)	2/9/99	2,222,442
TCBY Yogurt	5/28/85	1,338,536

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NAME OF MARK	REG. DATE	REG. #
The Country's Best Yogurt	1/21/92	1,672,857
Twosome	7/23/96	1,988,156
We Can Make Your Winter Warmer	6/4/91	1,646,988
Winter Warmers	9/9/86	1,408,813
Yogwich (and Design)	6/12/84	1,281,824
Yogwich (Block Design)	11/21/89	1,567,404
Yog-A-Bar	9/18/90	1,614,096

Pending U.S. Trademark Applications of Borrower/Parent

None.

Pending U.S. Trademark Applications of Enterprises

NAME OF MARK	FILING DATE	APPLIC #
Something Special for Everyone and Design	6/28/99	75/738,632
Halfbirthday	11/9/99	75/830,030
"TCBY" Ice Cream Frozen Yogurt	5/31/00	76/060,460
Gourmet Soft	2/16/01	76/211,317

TRADEMARK
RECORDED: 08/30/2001
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