

01-23-2003

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



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

102345090

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

1. Name of conveying party(ies):

Pretzel Time, Inc.

1-16-03

- Individual(s) Association General Partnership Limited Partnership [X] Corporation-State Utah Other

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

3. Nature of conveyance:

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

Execution Date: 01/16/2003

2. Name and address of receiving party(ies)

Name: Foothill Capital Corporation

Internal

Address:

2450 Colorado Avenue, Suite 3000 West

Street Address:

City: Santa Monica State: CA Zip: 90404

- Individual(s) citizenship Association General Partnership Limited Partnership [X] Corporation-State California 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 No

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

A. Trademark Application No.(s) See Attached

B. Trademark Registration No.(s) See Attached

Additional number(s) attached Yes No

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

Name: Josh S. Ridout, Esq.

Internal Address:

Street Address: Paul, Hastings, Janofsky & Walker LLP

515 South Flower Street, Suite 2500

City: Los Angeles State: CA Zip: 90071-2228

6. Total number of applications and registrations involved:

9

7. Total fee (37 CFR 3.41) \$ 240.00

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

8. Deposit account number:

16-0752

(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.

Josh S. Ridout

Name of Person Signing

[Signature]

Signature

1/16/03

Date

Total number of pages including cover sheet, attachments, and document: 12

01/22/2003 LMUELLER 00000104 2347706

01 FC: 4521 02 FC: 4522

40.00 DP 200.00 DP

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

TRADEMARK REEL: 002653 FRAME: 0531

OFFICE OF THE COMMISSIONER OF PATENT AND TRADEMARKS FINANCE SECTION 2003 JAN 16 AM 7:32 REPLY REF: LMUELLER 00000104 2347706 DATE: 01/16/03 FC: 9204

Pretzel Time, Inc.

Registrations

Trademark	Registration No.
Freshness with a Twist	2,347,706
Pretzel Time and Design	1,875,649
Pretzel Time (Stylized)	1,778,178
Roll It, Twist It, Bake It . . . Fresh	2,446,885
Pretzel Time	2,495,593
Pretzelini	2,675,524

Applications

Trademark	Serial No.
Deli Pockets	76/427,508
Pretzel Dog	76/383,156
Pretzel Time Deli Pockets	78/186,661

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT dated January 16, 2003 (this "Trademark Security Agreement"), is made between **PRETZEL TIME, INC.**, a Utah corporation ("Pledgor"), and **FOOTHILL CAPITAL CORPORATION**, a California corporation ("Pledgee").

W I T N E S S E T H:

WHEREAS, Mrs. Fields' Original Cookies, Inc., a Delaware corporation ("Borrower"), and LaSalle National Bank, a national banking association (the "Existing Lender") are parties to that certain Amended and Restated Loan Agreement dated as of February 28, 1998, (as amended, modified or supplemented as of the date hereof, the "Credit Facility");

WHEREAS, Borrower and the Existing Lender have agreed to refinance the Credit Facility and Pledgee has agreed to provide additional financial accommodations to Borrower;

WHEREAS, in connection with the refinancing of the Credit Facility the Existing Lender has assigned all of its right, title and interest in and to the Credit Facility to Lender;

WHEREAS, to effectuate the refinancing and assignment Borrower and Pledgee have entered into that certain Second Amended and Restated Loan and Security Agreement ("Loan Agreement"), dated as of the date hereof (together with all documents in connection therewith, "Loan Documents"), pursuant to which the Pledgee will provide certain financial accommodations to Borrower;

WHEREAS, to effectuate the refinancing and assignment, the parties desire to amend and restate that certain Trademark Security Agreement by and between Pledgor and the Existing Lender dated as of December 28, 2001 in favor of the Existing Lender in connection with the Credit Facility, in its entirety on the terms and conditions set forth herein;

WHEREAS, in connection with such financing arrangement, Pledgor has executed that certain Guaranty (the "Guaranty") and Subsidiary Security Agreement dated as of the date hereof in favor of Pledgee, pursuant to which Pledgor has guaranteed the obligations of Borrower to Pledgee under the Loan Documents;

WHEREAS, Pledgor owns all right, title, and interest in and to, among other things, all the United States and foreign trademarks and trademark registrations, trademark applications and trade names set forth on Exhibit A hereto (collectively, the "Trademarks"); and

WHEREAS, in order to secure Pledgor's obligations to Pledgee under the Guaranty, Pledgor has agreed to grant to Pledgee a security interest in the Trademarks and the goodwill and certain other assets with respect to the Trademarks, as further set forth herein, and Pledgee has requested Pledgor to enter into this Trademark Security Agreement to further evidence such security interest.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for valuable consideration received and to be received, as security for the full payment and performance of Pledgor's obligations under the Guaranty, and to induce Pledgee to make loans and advances to Borrower, Pledgor hereby grants to Pledgee a security interest in and a continuing lien on all of its right, title, and interest in all currently existing and hereafter acquired or arising:

(a) Trademarks;

(b) all of Pledgor's registrations of the Trademarks in the United States, any State thereof and any foreign countries and localities;

(c) all trade names, trademarks and trademark registrations hereafter adopted or acquired and used by Pledgor, including, but not limited to, those which are based upon or derived from the Trademarks or any variations thereof (the "Future Trademarks");

(d) all extensions, renewals, and continuations of the Trademarks and Future Trademarks;

(e) all of Pledgor's rights to sue for past, present and future infringements of the Trademarks and Future Trademarks;

(f) all of Pledgor's packaging, labeling, trade names, service marks, logos, and trade dress including or containing the Trademarks and Future Trademarks;

(g) all licenses and other agreements under which Pledgor is licensor, and all fees, rents, royalties, proceeds or monies thereunder, relating to the Trademarks and Future Trademarks and the use thereof; and

(h) all goodwill of Pledgor's business connected with, symbolized by or in any way related to the items set forth in clauses (a) through (g) above and all licenses and agreements related to the items set forth in clauses (a) through (g).

All of the foregoing items set forth in clauses (a) through (h) are hereinafter referred to collectively as the "Collateral." All capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Loan Agreement.

AND Pledgor hereby covenants with Pledgee as follows:

1. Pledgor's Obligations. Pledgor agrees that, notwithstanding this Trademark Security Agreement, it will perform and discharge and remain liable for all its covenants, duties, and obligations arising in connection with the Collateral. Pledgee shall not have any obligation or liability in connection with the Collateral by reason of this Trademark Security Agreement or any payment received by Pledgee relating to the Collateral, nor shall Pledgee be required to perform any covenant, duty, or obligation of Pledgor arising in connection with the Collateral or to take any other action regarding the Collateral.

2. Representations and Warranties. Pledgor represents and warrants to Pledgee that:

(a) To the best of Pledgor's knowledge, no claim has been made and is continuing or threatened that the use by Pledgor of any Trademarks is invalid or unenforceable or that the use by Pledgor of any Trademark violates the Trademark of any Person, other than any such claim which would not cause a Material Adverse Change;

(b) the Trademarks are the only trademarks, trademark registrations, trademark applications and trade names in which Pledgor has all right, title and interest;

(c) the Collateral is free and clear of Liens, except for Permitted Liens; and

(d) when this Trademark Security Agreement is filed in the United States Patent and Trademark Office (the "Trademark Office") and the Pledgee has taken the other actions contemplated in this Trademark Security Agreement and by the Loan Documents, this Trademark Security Agreement will create a legal and valid perfected and continuing lien on and security interest in the Collateral in favor of Pledgee, enforceable against Pledgor and all third parties, subject to no other mortgage, lien, charge, encumbrance, or security or other interest.

3. Covenants.

(a) Pledgor will maintain the same standard of quality (which Pledgee has reviewed) for the goods and services in connection with which the Trademarks are used as Pledgor maintained for such goods and services prior to entering into this Trademark Security Agreement. Pledgee shall have the right to enter upon Pledgor's premises at all reasonable times to monitor such quality standards.

(b) Pledgor agrees that, should it at any time obtain an interest in any Future Trademark, (i) any such Future Trademark shall automatically become Collateral and (ii) with respect to any registration or application in connection with such Future Trademark that Pledgor should obtain, it shall give written notice on the first Business Day of each month thereof to Pledgee in accordance with Section 12 hereof. Pledgor authorizes Pledgee to modify this Agreement by amending Exhibit A (and will cooperate with Pledgee in effecting any such amendment) to include all Future Trademarks which become part of the Collateral under this Section. Pledgor shall execute and deliver any and all agreements, instruments and documents as Pledgee may reasonably request to evidence Pledgee's interest in such Future Trademark. Pledgor hereby authorizes Pledgee to execute and file all such writings for the foregoing as Pledgor's attorney-in-fact in the event Pledgor fails to deliver or file any such writing, all acts of attorney being hereby ratified and confirmed, such power coupled with an interest is irrevocable until the Obligations are indefeasibly paid and satisfied in full.

(c) Pledgor agrees to take all reasonable and necessary actions to maintain all Trademarks and Future Trademarks other than those Trademarks and Future Trademarks which are not in use or which have no realizable economic value. Any expenses incurred in connection with such activities shall be borne solely by Pledgor. Following abandonment no Affiliate of Pledgor may use or assert any interest in such abandoned Trademark or Future Trademark.

(d) Pledgor shall continue to take all actions reasonably necessary to protect the Trademarks and Future Trademarks other than those Trademarks and Future Trademarks which are not in use and which have no realizable economic value. Except for Trademarks which are not in use and which have no realizable value, Pledgor shall continue to use the Trademarks in order to maintain the Trademarks in full force and effect and shall not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become invalidated. Pledgor agrees that should it obtain, after the Closing Date, any interest in any Future Trademark which may have realizable economic value, Pledgor shall promptly after such obtainment file applications and take any and all actions reasonably necessary to register such Future Trademark in accordance with the procedures and regulations of the Trademark Office, or any similar office of any other jurisdiction in which such Future Trademarks are used. Pledgor authorizes Pledgee to modify this Agreement by amending Exhibit A (and will cooperate reasonably with Pledgee in effecting any such amendment) to include any such additional license grant(s).

(e) Pledgor agrees to notify Pledgee promptly and in writing if it learns (i) that any Trademark or Future Trademark is likely to be determined to have become cancelled or abandoned other than those Trademarks or Future Trademarks which are not in use and which have no realizable economic value or (ii) of any adverse determination or the institution of any proceeding (including, without limitation, the institution of any proceeding in the Trademark Office and any other appropriate government agencies in foreign jurisdictions, or any court) regarding any Trademarks or Future Trademarks the loss of which would cause a Material Adverse Change.

(f) In the event that Pledgor becomes aware that any Trademark or Future Trademark owned by Pledgor or exclusively licensed by Pledgor is likely to be infringed upon or misappropriated by a third party, Pledgor shall promptly notify Pledgee and shall take such reasonable actions as Pledgor or Pledgee deems reasonably appropriate under the circumstances to protect such Trademark or Future Trademark, unless any such infringement or misappropriation would not cause a Material Adverse Change or such Trademark or Future Trademark is not in use or has no realizable economic value. Any expense incurred in connection with such activities shall be borne solely by Pledgor.

(g) For purposes of this Trademark Security Agreement (including, without limitation this Section 3) and throughout the term of this Agreement, Pledgor acknowledges, covenants and agrees that any tradename, trademark, service mark, design or logo containing "Mrs. Fields," "Great American Cookie Company," "Pretzel Time," and "Pretzelmaker" in either stylized or word form shall remain in use and does not have realizable economic value.

4. Use Prior to Default. Effective until Pledgee's exercise of its rights and remedies upon the occurrence and during the continuation of an Event of Default under and as defined in the Loan Documents (an "Event of Default"), Pledgor shall be entitled to use the Collateral in the ordinary course of its business, subject to the terms and covenants of the Loan Documents and this Trademark Security Agreement.

5. Remedies Upon Default. Whenever any Event of Default shall occur and be continuing, Pledgee shall have all the rights and remedies granted to it in such event by the Loan Documents, which rights and remedies are specifically incorporated herein by reference and made a part hereof, and any and all rights and remedies of law available to Pledgee or any Lender. Pledgee in such event may collect directly any payments due to Pledgor in respect of the Collateral and may sell, license, lease, assign, or otherwise dispose of the Collateral in the manner set forth in the Loan Documents. Pledgor agrees that, in the event of any disposition of the Collateral upon and during the continuance of any such Event of Default, it will duly execute, acknowledge, and deliver all documents necessary or advisable to record title to the Collateral in any transferee or transferees thereof, including, without limitation, valid, recordable assignments of the Trademarks or Future Trademarks. In the event Pledgor fails or refuses to execute and deliver such documents, Pledgor hereby irrevocably appoints Pledgee as its attorney-in-fact, with power of substitution, to execute, deliver, and record any such documents on Pledgor's behalf. Notwithstanding any provision hereof to the contrary, during the continuance of an Event of Default, Pledgor may sell any merchandise or services bearing the Trademarks and Future Trademarks in the ordinary course of its business and in a manner consistent with its past practices, until it receives written notice from Pledgee to the contrary. The preceding sentence shall not limit any right or remedy granted to Pledgee with respect to Pledgor's inventory under the Loan Documents or any other agreement now or hereinafter in effect.

6. Amendments and Waivers. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by Pledgor therefrom, shall be effective unless the same shall be in writing and signed by Pledgee and Pledgor and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

7. No Waivers, No Cumulative Remedies. No failure by Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Lender in exercising the same, will operate as a waiver thereof. No waiver by Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Lender on any occasion shall affect or diminish Lender's rights thereafter to require strict performance by Borrower of any provision of this Agreement. Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Lender may have.

8. Assignment. The provisions of this Trademark Security Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto; provided, however, that no interest herein or in or to the Collateral may be assigned by Pledgor without the prior written consent of Pledgee; and, provided further, that subject to the terms of the Loan Agreement Pledgee may assign the rights and benefits hereof to any party acquiring any interest in the Obligations (as defined by the Loan Documents) or any part thereof.

9. Enforcement. Upon Pledgor's failure to do so after Pledgee's demand, or upon the occurrence and continuation of an Event of Default, Pledgee shall have the right but shall in no way be obligated to bring suit in its own name to enforce the Trademarks and Future Trademarks and any license thereunder, in which event Pledgor shall at the request of Pledgee do

any and all lawful acts and execute any and all proper documents required by Pledgee in aid of such enforcement and Pledgor shall promptly, upon demand, reimburse and indemnify Pledgee and its respective agents for all costs and expenses incurred by Pledgee in the exercise of their rights under this Section 10.

10. Release. At such time as Pledgor shall completely satisfy all of the Obligations (as defined by the Loan Documents), and the Loan Documents have been terminated, other than upon enforcement of Pledgee's remedies under the Loan Documents after the occurrence and continuation of an Event of Default, Pledgee will execute and deliver to Pledgor a release or other instrument as may be necessary or proper to release Pledgor's lien in the Collateral, subject to any dispositions thereof which may have been made by Pledgee pursuant hereto.

11. Severability. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12. Notices. All notices, requests and demands to or upon Pledgor or Pledgee under this Trademark Security Agreement shall be given in the manner prescribed by the Loan Agreement.

13. Choice of Law and Venue; Jury Trial Waiver.

(a) THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT PLEDGEE'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE PLEDGEE ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. PLEDGOR AND PLEDGEE WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 14(b).

(c) PLEDGOR AND PLEDGEE HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT

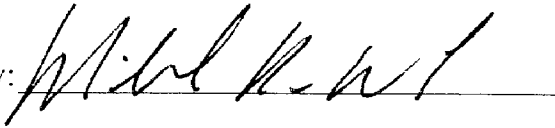
CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. PLEDGOR AND PLEDGEE REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

14. Supplement. This Trademark Security Agreement is a supplement to, and is hereby incorporated into, the Loan Documents and made a part thereof.

IN WITNESS WHEREOF, the parties have entered into this Trademark Security Agreement as of the date first above written.

PLEDGOR

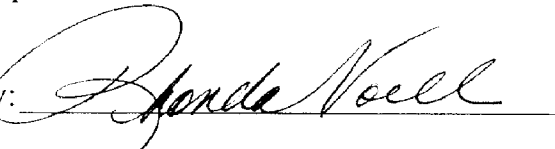
PRETZEL TIME, INC., a Utah corporation

By: 

Name: Michael R. Ward
Title: Senior Vice President

PLEDGEE

FOOTHILL CAPITAL CORPORATION, a California corporation

By: 

Name: Rhonda Noell
Title: Senior Vice President

[SIGNATURE PAGE TO TRADEMARK SECURITY AGREEMENT]

Exhibit A. to Trademark Security Agreement

Pretzel Time, Inc.

Exhibit A – List of Trademarks

TRADEMARKS

Registrations

<u>No.</u>	<u>Trademark</u>	<u>Country</u>	<u>Registration Number</u>	<u>Registration Date</u>
1.	Pretzel Time	Argentina	1.827.182	27-Apr-2001
2.	Pretzel Time	Argentina	1.827.183	27-Apr-2001
3.	Pretzel Time & Design	Australia	811326	22-Oct-1999
4.	Pretzel Time (Stylized)	Australia	A614592	25-Oct-1993
5.	Pretzel Time	Benelux	652668	19-Oct-1999
6.	Pretzel Time (Stylized)	Canada	454,105	16-Feb-1996
7.	Pretzel Time	Chile	560.755	04-Feb-2000
8.	Pretzel Time & Design	Hong Kong	6 (A-B) of 2001	29-Nov-1999
9.	Pretzel Time	Israel	124202	26-Nov-1998
10.	Pretzel Time	Israel	124203	26-Nov-1998
11.	Pretzel Time	Israel	124204	26-Nov-1998
12.	Pretzel Time (Stylized)	Japan	3329303	04-Jul-1997
13.	Pretzel Time (Stylized)	Mexico	458288	25-Apr-1994
14.	Pretzel Time	Tunisia	EE991752	21-Oct-1999
15.	Freshness with a Twist	United States	2,347,706	02-May-2000
16.	Pretzel Time and Design	United States	1,875,649	24-Jan-1995
17.	Pretzel Time (Stylized)	United States	1,778,178	22-Jun-1993
18.	Roll It, Twist It, Bake It . . . Fresh	United States	2,446,885	24-Apr-2001
19.	Pretzel Time	United States	2,495,593	09-Oct-2001
20.	Pretzelini	United States	2,675,524	14-Jan-2003
21.	Pretzel Time	Uruguay	318.246	19-Nov-2001

Applications

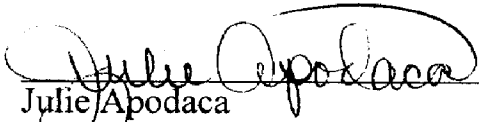
<u>No.</u>	<u>Trademark</u>	<u>Country</u>	<u>Application Number</u>	<u>Date Filed</u>
1.	Pretzel Time	Brazil	822264382	26-Nov-1999
2.	Pretzel Time	Brazil	822244020	26-Nov-1999
3.	Pretzel Time	Chile	456.269	28-Jul-1999
4.	Pretzel Time	Chile	456.271	28-Jul-1999
5.	Pretzel Time (Stylized)	Saudi Arabia	61930	22-Dec-1999
6.	Pretzel Time (Stylized)	Saudi Arabia	61931	22-Dec-1999
7.	Pretzel Time & Design	United Kingdom	2302481	10-Jan-2002
8.	Deli Pockets	United States	76/427,508	05-Jul-2002
9.	Pretzel Dog	United States	76/383,156	15-Mar-2002
10.	Pretzel Time Deli Pockets	United States	78/186,661	19-Nov-2002

CERTIFICATE OF EXPRESS MAILING

“Express Mail” mailing label number: **EV 185743392 US**

Date of Deposit: January 16, 2003

I hereby certify that the Trademark Recordation Form Cover Sheet,
Trademark Security Agreement, filing fee and transmittal letter are being deposited with
the United States Postal Service “Express Mail Post Office to Addressee” service under
37 CFR 1.10 on the date indicated above and is addressed to: The Commissioner of
Patents and Trademarks, BOX ASSIGNMENTS, Washington, D.C. 20231.



Julie Apodaca

Legal Secretary

PAUL, HASTINGS, JANOFSKY & WALKER LLP

Attorneys for Applicant

Twenty-Fifth Floor

515 South Flower Street

Los Angeles, California 90071-2228

(213) 683-6000