

08-26-2004

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/2005)



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

4/28/04 RECOI 102823351
TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

Lenny's Intellectual Property, LLC

- Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other Delaware LLC

Citizenship (see guidelines) _____

Execution Date(s) August 12, 2004

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

- Assignment Merger
 Security Agreement Change of Name
 Other _____

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: First Tennessee Bank National Association

Internal _____

Address: _____

Street Address: 165 Madison Avenue

City: Memphis

State: TN

Country: USA Zip: 38103

Association Citizenship National

General Partnership Citizenship _____

Limited Partnership Citizenship _____

Corporation Citizenship _____

Other _____ Citizenship _____

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s) _____

2549035; 48502424; 52600799

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

Lenny's Sub Shop (words + Design) (for all three numbers)

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

Name: Kimberly Harris Jordan

Internal Address: Husch + Sporenberger

Street Address: 6060 Poplar Ave., Suite 440

City: Memphis

State: TN Zip: 38119

Phone Number: 901-888-4004

Fax Number: 901-888-4040

Email Address: Kimberly.Jordan@Husch.com

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 90.00

- Authorized to be charged by credit card
 Authorized to be charged to deposit account
 Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature:

Corey Brock

Signature

8-18-04

Date

Corey Brock

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 11

08/25/2004 DBYRNE

00000022 2549035 Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to: Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

01 FC:8521

40.00 DP
50.00 DP

02 FC:8522

PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (“Agreement”), dated as of August 12, 2004 is made by and between Lenny’s Intellectual Property, LLC, a Delaware limited liability company, having a mailing address at 1209 Orange Street, Wilmington, Delaware 19801 (the “Debtor”), and First Tennessee Bank National Association, a national banking association, having a place of business at 165 Madison Avenue, Memphis, Tennessee 38103 (the “Secured Party”).

Recitals

WHEREAS, the Debtor and the Secured Party are parties to that certain Loan Agreement of even date herewith by and among Debtor, Lenny’s Franchisor, LLC (“Lenny’s Franchisor”), Alvord Investments, LLC (“Alvord Investments”), as borrowers, George H. Alvord and Albert LaRocca, as guarantors, and Secured Party, as bank (as the same may hereafter be amended, supplemented or restated from time to time, the “Loan Agreement”) setting forth the terms on which the Secured Party may now or hereafter extend credit to or for the account of the Debtor, Lenny’s Franchisor and Alvord Investments;

WHEREAS, as a condition to extending credit to or for the account of the Debtor, Lenny’s Franchisor, and Alvord Investments, the Secured Party has required the execution and delivery of this Agreement by the Debtor; and

WHEREAS, it is in the best interest of Debtor that Secured Party extend credit to or for the benefit of Debtor, Lenny’s Franchisor and Alvord Investments.

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

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

“Obligations” means each and every debt, liability and obligation of every type and description arising under or in connection with the Loan Agreement or any other Loan Document (as defined in the Loan Agreement) which the Debtor, Lenny’s Franchisor, or Alvord Investments may now or at any time hereafter owe to the Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance, lien (statutory or otherwise), preference, priority or charge of any kind (including, without limitation, any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any financing or

similar statement or notice filed under the Uniform Commercial Code as adopted and in effect in the relevant jurisdiction or other similar recording or notice statute, and any lease in the nature thereof).

“Patents” means all of the Debtor’s right, title and interest in and to patents or applications for patents, patent disclosures, inventions (whether patentable or unpatentable or not reduced to practice), all improvements thereto, fees or royalties with respect to each, together with all reissuances, continuations, continuations in-part, revisions, extensions, and re-examinations thereof, and also including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

"Permitted Liens" means (i) Liens securing obligations of Debtor to Bank (ii) Liens for taxes not yet due or Liens for taxes being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to any such Lien is not yet subject to foreclosures, sale or loss on account thereof), (iii) judgment Liens that would not constitute an Event of Default, and (iv) any other Liens to which Secured Party has consented in writing.

“Security Interest” has the meaning given in Section 2.

“Trademarks” means all of the Debtor’s right, title and interest in and to: (i) all business names, trade names, images and likenesses (and any derivation thereof), trade dress, logos, slogan, registered and unregistered trademarks (including common law marks), service marks, internet domain names, rights in telephone numbers, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each, (ii) all translations, adaptations, derivations and combinations thereof (iii) licenses, fees or royalties with respect to each, (iv) the right to sue for past, present and future infringement, dilution and damages therefor, (v) and licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. The Debtor hereby irrevocably pledges and assigns to, and grants the Secured Party a security interest (the “Security Interest”), with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of the Debtor.

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

(a) ***Existence; Authority.*** The Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and this

Agreement has been duly and validly authorized by all necessary corporate action on the part of the Debtor.

(b) **Patents.** Exhibit A accurately lists all Patents owned or controlled by the Debtor as of the date hereof, or to which the Debtor has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, the Debtor owns, controls or has a right to have assigned to it any Patents not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then the Debtor shall within 60 days provide written notice to the Secured Party with a replacement Exhibit A, which upon acceptance by the Secured Party shall become part of this Agreement.

(c) **Trademarks.** Exhibit B accurately lists all Trademarks owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to the Debtor's or any Affiliate's business(es). If after the date hereof, the Debtor owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to the Debtor's or any Affiliate's business(es)), or if Exhibit B ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then the Debtor shall promptly provide written notice to the Secured Party with a replacement Exhibit B, which upon acceptance by the Secured Party shall become part of this Agreement.

(d) **Affiliates.** As of the date hereof, no Affiliate of Debtor owns, controls, or has a right to have assigned to it any items that would, if such item were owned by the Debtor, constitute Patents or Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then the Debtor shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to the Debtor; or (ii) notify the Secured Party of such item(s) and cause such Affiliate to execute and deliver to the Secured Party a patent and trademark security agreement substantially in the form of this Agreement. For purposes of this section, "Affiliate" shall mean Lenny's Franchisor and Alvord Investments.

(e) **Title.** The Debtor has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. The Debtor (i) will have, at the time the Debtor acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(f) **No Sale.** Except as permitted in the Loan Agreement, the Debtor will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without the Secured Party's prior written consent.

(g) **Defense.** The Debtor will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

(h) **Maintenance.** The Debtor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. The Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing the Secured Party: (i) sufficient written notice, of at least 30 days, to allow the Secured Party to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(i) **Secured Party's Right to Take Action.** If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if the Debtor notifies the Secured Party that it intends to abandon a Patent or Trademark, the Secured Party may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

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

(k) **Power of Attorney.** To facilitate the Secured Party's taking action under subsection (i) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed,

delivered or endorsed by the Debtor under this Section 3, or, necessary for the Secured Party, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof other than acts or omissions constituting gross negligence or willful misconduct. The power of attorney granted herein shall terminate upon the termination of the Loan Agreement as provided therein and the payment and performance of all Obligations.

4. Satisfaction. Upon full payment or satisfaction of the Obligations and termination of any credit facilities extended to the Debtor by the Secured Party, this Agreement and the rights granted hereunder to the Secured Party, shall be terminated upon demand by a written termination statement or release of lien to the effect that the Secured Party no longer claims a security interest under this Agreement suitable for filing wherever notices of such security interest have been filed.

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

6. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Loan Agreement, which definition is incorporated herein by reference as though copied herein verbatim, shall occur; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

7. Remedies. Following an Event of Default that is not cured within any applicable cure period, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may exercise any or all remedies available under the Loan Agreement.

(b) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) The Secured Party may enforce the Patents and Trademarks and any licenses thereunder, and if Secured Party shall commence any suit for such enforcement, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

8. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the

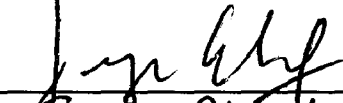
Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of Tennessee without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

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

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


DEBTOR:

LENNY'S INTELLECTUAL PROPERTY, LLC, a
Delaware limited liability company

By: 
Name: George Alvord
Its: President

SECURED PARTY:

FIRST TENNESSEE BANK NATIONAL
ASSOCIATION, a national banking association

By: 
Name: Michael Keeler
Its: Senior VP

STATE OF TENNESSEE
COUNTY OF SHELBY

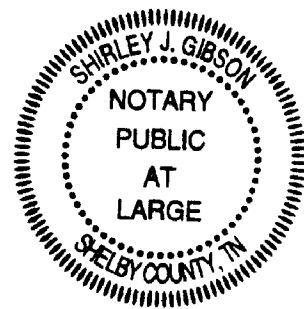
Personally appeared before me, a Notary Public in and for said State and County, George H. Alford, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged himself to be the President of Lenny's Intellectual Property, LLC, the within named bargainer, a Delaware limited liability company, and that he as such President, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as President.

WITNESS my hand and seal this 11th day of August, 2004.

Shirley J. Gibson
Notary Public

MY COMMISSION EXPIRES:
May 20, 2008

My Commission Expires: _____



STATE OF TENNESSEE
COUNTY OF SHELBY

Personally appeared before me, a Notary Public in and for said State and County, Michael Peeler, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged himself to be the Senior VP of First Tennessee Bank National Association, the within named bargainer, a national banking association, and that he as such Senior VP, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as Senior VP.

WITNESS my hand and seal this 12th day of August, 2004.

Kimberly Harris Jordan
Notary Public

My Commission Expires: 12-12-07

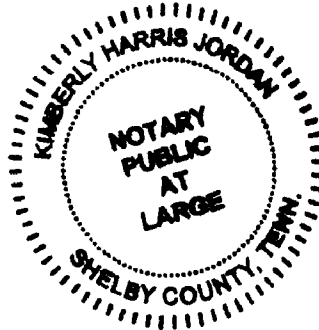


EXHIBIT A

UNITED STATES ISSUED PATENTS

<u>Title</u>	<u>Patent Number</u>	<u>Issue Date</u>
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FOREIGN ISSUED PATENTS

<u>Title</u>	<u>Country</u>	<u>Patent Number</u>	<u>Issue Date</u>
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EXHIBIT B

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS

AND COLLECTIVE MEMBERSHIP MARKS

REGISTRATIONS

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
LENNY'S SUB SHOP (WORDS AND DESIGN)	2549035	March 19, 2002

APPLICATIONS

COLLECTIVE MEMBERSHIP MARKS

UNREGISTERED MARKS

LENNY'S SUB SHOP (WORDS ONLY)

STATE ISSUED TRADEMARKS

<u>Mark</u>	<u>Serial Number</u>	<u>Registration Date</u>	<u>State</u>
LENNY'S SUB SHOP (WORDS AND DESIGN)	48502424	October 19, 1999	Tennessee

<u>Mark</u>	<u>Serial Number</u>	<u>Registration Date</u>	<u>State</u>
LENNY'S SUB SHOP (WORDS AND DESIGN)	52600799	August 31, 2000	Mississir