

11/8/04

11-10-2004

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)

RE



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

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼

102878404

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

1. Name of conveying party(ies):

Casa De Oro Foods LLC

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☐ Corporation-State
☒ Other Limited Liability Company

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

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: January 30, 2004

2. Name and address of receiving party(ies)

Name: Bank Midwest, N.A.

Internal

Address: _____

Street Address: 1100 Main Street, Suite 350City: Kansas City State: MO Zip: 64105

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☐ Corporation-State
☒ Other National Banking Association

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) 76/411606,
76/553359, 76/553358

B. Trademark Registration No.(s) 2034371, 1481771
1628514

Additional number(s) attached ☐ Yes ☒ No

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

Name: Brian R. McGinley

Internal Address: Sonnenschein Nath
& Rosenthal LLP

Street Address: PO Box #061080
Wacker Drive Station, Sears Tower

City: Chicago State: IL Zip: 60606-1080

6. Total number of applications and

registrations involved: _____

6

7. Total fee (37 CFR 3.41).....\$ 165.00

- ☒ Enclosed
☒ Authorized to be charged to deposit account

8. Deposit account number:

50-1126

DO NOT USE THIS SPACE

9. Signature.

Brian R. McGinley

Name of Person Signing

Signature

November 3, 2004

Date

Total number of pages including cover sheet, attachments, and document: 9

11/09/2004 08:08 00000130 76411606

01 FC:8521
02 FC:8522

40.00 OP
125.00 OP

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

TRADEMARK
REEL: 003080 FRAME: 0756

TRADEMARK AND DOMAIN NAME SECURITY AGREEMENT

This Trademark and Domain Name Security Agreement ("**Agreement**"), dated as of January 30, 2004 is made by and between Casa de Oro Foods LLC, a Delaware limited liability company having a business location at the address set forth below next to its signature (the "**Debtor**"), and Bank Midwest, N.A., a national banking association, having a business location at the address set forth below next to its signature (the "**Secured Party**").

Recitals

The Debtor and the Secured Party are parties to a Loan and Security Agreement of even date herewith (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.

As a condition to extending credit to or for the account of the Debtor, the Secured Party has required the execution and delivery of this Agreement by the Debtor.

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 Loan Document (as defined in the Loan Agreement) which the Debtor 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, and including specifically, but not limited to, the Obligations (as defined in the Loan Agreement).

"**Domain Names**" mean all of the Debtor's right, title and interest in and to the domain name "www.cdof.com" and any other domain names owned or used by Debtor, and 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 domain names listed on Exhibit A.

"**Security Interest**" has the meaning given in Section 2.

"**Trademarks**" means all of the Debtor's right, title and interest in and to: (i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, (iv) and licenses thereunder, all

EXECUTION COPY

as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit A hereto.

2. **Security Interest.** The Debtor hereby grants the Secured Party a security interest (the "**Security Interest**"), with power of sale to the extent permitted by law, in the Domain Names 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 real property, personal property and other assets of the Debtor.

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

(a) ***Existence; Authority.*** The Debtor is a limited liability company duly organized, existing and in good standing under the laws of the State of Delaware, with full and adequate power to carry on and conduct its business as presently conducted. The Debtor's state issued organizational identification number is 3750383. The exact legal name of the Debtor is as set forth in the first paragraph of this Agreement, and the Debtor currently does not conduct, nor has it during the last five (5) years conducted, business under any other name or trade name. The Debtor has full right, power and authority to enter into this Agreement and to perform all of its duties and obligations under this Agreement. The execution and delivery of this Agreement will not, nor will the observance or performance of any of the matters and things herein or therein set forth, violate or contravene any provision of law or of the Articles of Organization of the Debtor. All necessary and appropriate action has been taken on the part of the Debtor to authorize the execution and delivery of this Agreement. This Agreement is the valid and binding agreement and contract of the Debtor, enforceable in accordance with its terms.

(b) ***Domain Name.*** Exhibit A accurately lists all Domain Names currently 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 pertaining to the Domain Names as of the date hereof. If after the date hereof, the Debtor owns, controls or has a right to have assigned to it any Domain Names not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications pertaining to the Domain Names, 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 A also 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 A 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 A (other than common law marks which are not material to the Debtor's or any Affiliate's business(es)), or if Exhibit A 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 A, which upon acceptance by the Secured Party shall become part of this Agreement.

(d) ***Affiliates.*** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by the Debtor, constitute Domain Names 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 Domain Names and Trademark Security Agreement substantially in the form of this Agreement.

(e) ***Title.*** Except for the Lien created hereunder and the Lien created by the documents which evidence and secure the Subordinated Debt, the Debtor has absolute title to each Domain Name and each Trademark listed on Exhibit A, free and clear of all Liens. The Debtor (i) will have, at the time the Debtor acquires any rights in Domain Name or Trademarks hereafter arising, absolute title to each such Domain Name or Trademark free and clear of all Liens, and (ii) will keep all Domain Names and Trademarks free and clear of all Liens.

(f) ***No Sale.*** Except as permitted in the Loan Agreement, the Debtor will not assign, transfer, encumber or otherwise dispose of all or any portion of the Domain Names 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 Domain Names and Trademarks against all claims or demands of all Persons.

(h) ***Maintenance.*** The Debtor will at its own expense maintain the Domain Names and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to Domain Names and 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 Domain Names 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 Domain Names 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 Domain Names 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.

4. **Debtor's Use of the Domain Names and Trademarks.** The Debtor shall be permitted to control and manage the Domain Names and Trademarks, including the right to exclude others from making, using or selling items covered by the Domain Names 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 that has not either been cured to Secured Party's satisfaction or waived in writing by Secured Party.

5. **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, shall occur and after the expiration of any applicable cure period and the failure of Debtor to cure such Event of Default; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein 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 section 3(h), immediately upon the occurrence of such failure, without notice or lapse of time); or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. **Remedies.** Upon the occurrence of an Event of Default and the expiration of any applicable cure period and at any time thereafter so long as Debtor shall not have cured such Event of Default, 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 Domain Names and Trademarks.

(c) The Secured Party may enforce the Domain Names 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.

7. **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 Domain Names and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Domain Names 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 Missouri 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.

8. **WAIVER OF JURY TRIAL.** THE LENDER AND THE BORROWER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE NOTES OR ANY OF THE OTHER OBLIGATIONS, THE COLLATERAL, OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH THE LENDER AND THE BORROWER ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER.

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

Address _____

CASA DE ORO FOODS LLC

By _____
Its _____

Address _____

BANK MIDWEST, N.A.,

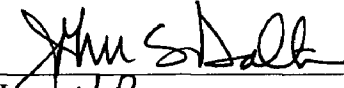
By Brian Bower
Brian Bower
Its Vice President

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

Address

3701 West Magnolia Avenue
Louisville, Kentucky 40211

CASA DE ORO FOODS LLC

By 
Its V.P.

Address

1100 Main Street,
Suite 350
Kansas City, Missouri 64105

BANK MIDWEST, N.A.,

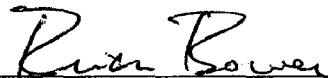
By 
Brian Bower
Its Vice President

EXHIBIT A

REGISTERED DOMAIN NAMES

Title
cdof.com

Number

Issue Date
January 27, 1998

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS
AND COLLECTIVE MEMBERSHIP MARKS

REGISTRATIONS

<u>Mark</u>	<u>App.#</u>	<u>Reg.#</u>	<u>Status</u>	<u>Classes</u>
CASA DE ORO	74/657,606	2,034,371	Registered 1/28/97	30
MESA	73/656,954	1,481,771	Registered 3/22/88	30
MISCELLANEOUS DESIGN (MESA FOODS)	74/013,029	1,628,514	Renewed 12/18/00	30

APPLICATIONS

<u>Mark</u>	<u>App.#</u>	<u>Reg.#</u>	<u>Status</u>	<u>Classes</u>
CASA DE ORO	76/411,606		Allowed/1st Extension of Time	30
CASA DE ORO FOODS (and design)	76/553359		Pending	29
CASA DE ORO	76/553358		Pending	29

COLLECTIVE MEMBERSHIP MARKS

None

UNREGISTERED MARKS

MAMACITA'S