

11-15-2004



Form PTO-1594 (Rev. 06/04)  
OMB Collection 0651-0027 (ext.)

102910410

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

# RECORDATION FORM COVER SHEET 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):

Tom's of Maine, Inc.

- ☐ Individual(s)      ☐ Association  
☐ General Partnership      ☐ Limited Partnership  
☒ Corporation-State (Maine)  
☐ Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Execution Date(s) October 22, 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: Citizens Bank New Hampshire

Internal \_\_\_\_\_

Address: \_\_\_\_\_

Street Address: 100 Middle Street

City: Portland

State: Maine

Country: U.S.A. Zip: 04104

- ☐ Association      Citizenship \_\_\_\_\_  
☐ General Partnership      Citizenship \_\_\_\_\_  
☐ Limited Partnership      Citizenship \_\_\_\_\_  
☐ Corporation      Citizenship \_\_\_\_\_  
☒ Other New Hampshire Guaranty Savings Bank      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)

76-367,567

76-576,950

B. Trademark Registration No.(s) 2,770,010;

2,772,388; 1,094,160; 1,304,577;

1,381,476

Additional sheet(s) attached? ☒ Yes ☐ No

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

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

Name: Christopher J. Devlin

Internal Address: \_\_\_\_\_

Bernstein, Shur, Sawyer & Nelson, P.A.

Street Address: 100 Middle Street

City: Portland

State: ME Zip: 04104

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

## 6. Total number of applications and registrations involved:

11

## 7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 440.00

- ☐ 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:

Signature

Christopher J. Devlin

October 22, 2004

Date

Total number of pages including cover sheet, attachments, and document: 15

11/16/2004 DRYNE 00000002 76367567 Name of Person Signing

Documents to be recorded (including cover sheet) should be filed to (703) 306-5995, or mailed to:  
Mail Stop Assignment/Recordation Services, Director of the USPTO, Box 250, Alexandria, VA 22313-1450

01 FC:8521  
02 FC:8522

TRADEMARK  
REEL: 003090 FRAME: 0011

**Attachment to Form PTO-1594  
Trademark Recordation Form Cover Sheet**

**Continuation of Item 4B: Additional Trademark Registration Numbers**

Date:	October 22, 2004
Conveying Party:	Tom's of Maine, Inc
Receiving Party:	Citizens Bank New Hampshire
Additional Trademark Registration Numbers:	1,465,112 2,776,761 1,397,289 2,236,451

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

SECURITY AGREEMENT, dated as of October 22, 2004, between TOM'S OF MAINE, INC., a Maine corporation with a place of business in Kennebunk, Maine (the "**Debtor**"), and CITIZENS BANK NEW HAMPSHIRE, a guaranty savings bank organized under the laws of the State of New Hampshire, with a place of business in Portland, Maine (the "**Secured Party**") WHO AGREE as follows:

1. Definitions; Interpretation.

(a) Terms Defined in Loan Agreement. All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

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

"**Copyright Collateral**" has the meaning set forth in paragraph 2(c).

"**Copyright Office**" means the United States Copyright Office.

"**Event of Default**" means the occurrence of any or all of the following events: (i) the occurrence of any event identified as an "Event of Default" in the Loan Agreement; or (ii) Debtor's failure to observe or perform any covenant or agreement contained in this Agreement.

"**IP Collateral**" means, all or any portion of the Copyright Collateral, the Patent Collateral and the Trademark Collateral.

"**Loan Agreement**" means that certain Loan and Security Agreement (All Assets), dated as of the date hereof, between Debtor and Secured Party.

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

"**Patent Collateral**" has the meaning set forth in paragraph 2(a).

"**Trademark Collateral**" has the meaning set forth in paragraph 2(b).

"**UCC**" means the Uniform Commercial Code as in effect in the State of Maine.

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

(d) Construction. In this Agreement, the following rules of construction and interpretation shall be applicable: (i) no reference to "proceeds" in this Agreement authorizes any sale, transfer, or other disposition of any IP Collateral by Debtor; (ii) "includes" and "including"

are not limiting; (iii) "or" is not exclusive; and (iv) "all" includes "any" and "any" includes "all." To the extent not inconsistent with the foregoing, the rules of construction and interpretation applicable to the Loan Agreement shall also be applicable to this Agreement and are incorporated herein by this reference.

2. Security Interest. As security for the payment and performance of the Obligations, Debtor hereby assigns, transfers and conveys to Secured Party, and grants to Secured Party a security interest in and mortgage to, all of Debtor's right, title and interest in, to and under the property described in the following subparagraphs (a) through (c), in each case whether now or hereafter existing or arising or in which Debtor now has or hereafter owns, acquires or develops an interest and wherever located:

(a) Grant of Security Interest in Patents.

- (i) 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 (including such patents and patent applications as 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;
- (ii) all general intangibles and all intangible intellectual or other similar property of Debtor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above; and
- (iii) all proceeds of any and all of the foregoing IP Collateral (including license royalties, rights to payment, accounts and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance (whether or not Secured Party 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 IP Collateral (the property described in the foregoing paragraphs 2(a)(i) through (iii) is hereinafter referred to collectively as the "**Patent Collateral**").

(b) Grant of Security Interest in Trademarks.

- (i) 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 (but excluding any application to register any trademark, service mark or other mark prior to the filing under applicable law of a verified statement of use (or the equivalent) for such trademark, service mark or other mark to the extent the creation of a security interest therein or the grant of a mortgage thereon would void or invalidate such trademark, service mark or other mark), all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including such marks, names and applications as

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;

- (ii) the entire goodwill of or associated with the businesses now or hereafter conducted by Debtor connected with and symbolized by any of the aforementioned properties and assets;
- (iii) all general intangibles and all intangible intellectual or other similar property of Debtor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above; and
- (iv) all proceeds of any and all of the foregoing IP Collateral (including license royalties, rights to payment, accounts receivable and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance (whether or not Secured Party 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 IP Collateral. (the property described in the foregoing paragraphs 2(b)(i) through (iv) is hereinafter referred to collectively as the **"Trademark Collateral"**).

(c) Grant of Security Interest in Copyrights.

- (i) All of Debtor's present and future United States registered copyrights and copyright registrations, including Debtor's United States registered copyrights and copyright registrations listed in Schedule C to this Agreement, all of Debtor's present and future United States applications for copyright registrations, including Debtor's United States applications for copyright registrations listed in Schedule B to this Agreement, and all of Debtor's present and future copyrights that are not registered in the Copyright Office including, without limitation, derivative works (collectively, the **"Copyrights"**), and any and all royalties, payments, and other amounts payable to Debtor in connection with the Copyrights, together with all renewals and extensions of the Copyrights, the right to recover for all past, present, and future infringements of the Copyrights, and all manuscripts, documents, writings, tapes, disks, storage media, computer programs, computer databases, computer program flow diagrams, source codes, object codes and all tangible property embodying or incorporating the Copyrights, and all other rights of every kind whatsoever accruing thereunder or pertaining thereto;
- (ii) All of Debtor's right, title and interest in and to any and all present and future license agreements with respect to the Copyrights;

- (iii) All present and future accounts and other rights to payment arising from, in connection with or relating to the Copyrights; and
- (iv) All cash and non-cash proceeds of any and all of the foregoing (the property described in the foregoing paragraphs 2(c)(i) through (iv) is hereinafter referred to collectively as the "**Copyright Collateral**").

(d) Continuing Security Interest. Debtor agrees that this Agreement shall create a continuing security interest in the IP Collateral that shall remain in effect until terminated in accordance with paragraph 11.

3. Supplement to Loan Agreement. This Agreement has been entered into in conjunction with the security interests granted to Secured Party under the Loan Agreement or other security documents referred to therein. The rights and remedies of Secured Party with respect to the security interests granted herein, including any such remedies available upon occurrence of an Event of Default, are without prejudice to, and are in addition to those set forth in the Loan Agreement or any other security documents referred to therein, all terms and provisions of which are incorporated herein by reference. The IP Collateral is a component of the Collateral described in the Loan Agreement.

4. Representations and Warranties. Debtor represents and warrants to Secured Party that:

(a) Patents. Debtor represents and warrants to Secured Party that a true and correct list of all of the existing Patent Collateral consisting of U.S. patents and patent applications or registrations owned by Debtor, in whole or in part, is set forth in Schedule A.

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

(c) Copyright Registrations. A true and correct list of all of Debtor's United States registered copyrights and copyright registrations is set forth in Schedule C.

(d) Applications for Copyright Registration. A true and correct list of all of Debtor's United States applications for copyright registrations is set forth in Schedule C.

5. Further Acts. On a continuing basis, Debtor 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 Secured Party 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 Debtor's compliance with this Agreement or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to the IP Collateral, including

any documents for filing with the PTO, the Copyright Office or any applicable state office. Secured Party may record this Agreement, an abstract thereof, or any other document describing Secured Party's interest in the IP Collateral with the PTO and/or the Copyright Office, at the expense of Debtor. In addition, Debtor authorizes Secured Party to file financing statements describing the IP Collateral in any UCC filing office deemed appropriate by Secured Party. If the Debtor shall at any time hold or acquire a commercial tort claim arising with respect to the IP Collateral, the Debtor shall immediately notify Secured Party in a writing signed by the Debtor of the brief details thereof and grant to the Secured Party in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party.

6. Authorization to Supplement. If Debtor shall obtain rights to any new patentable inventions or become entitled to the benefit of any patent application or patent for any reissue, division, or continuation of any patent, or to any new trademarks, the provisions of this Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to Secured Party with respect to any such new patent rights, any new trademarks or renewal or extension of any trademark registration, and shall further give Secured Party prompt notice of any additional United States copyright registrations or applications therefor after the date hereof. Without limiting Debtor's obligations under this paragraph 6, Debtor authorizes Secured Party unilaterally to modify this Agreement by amending Schedules A, B or C, as the case may be, to include any such new patent, trademark rights or any future United States registered copyrights or applications therefor of Debtor. Notwithstanding the foregoing, no failure to so modify this Agreement or amend any of the Schedules hereto shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all IP Collateral, whether or not listed on Schedule A, B or C.

7. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Debtor, Secured Party and their respective successors and assigns. Debtor may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder except as specifically permitted by the Loan Agreement.

8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Maine, except as required by mandatory provisions of law or to the extent the validity, perfection or priority of the security interests hereunder, or the remedies hereunder, in respect of any IP Collateral are governed by the law of a jurisdiction other than Maine.

9. Entire Agreement; Amendment. This Agreement and the Loan Agreement, together with the Schedules hereto and thereto, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior drafts and communications relating to such subject matter. Neither this Agreement nor any provision hereof may be modified, amended or waived except by the written agreement of the parties, as provided in the Loan Agreement. Notwithstanding the foregoing, Secured Party unilaterally may re-execute this Agreement or modify, amend or supplement the Schedules hereto as provided in paragraph 6

hereof. To the extent that any provision of this Agreement conflicts with any provision of the Loan Agreement, the provision giving Secured Party greater rights or remedies shall govern, it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to Secured Party under the Loan Agreement.

10. 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.

11. Termination. Upon payment and performance in full of all Obligations, the security interests created by this Agreement shall terminate and Secured Party (at Debtor's expense) shall promptly execute and deliver to Debtor such documents and instruments reasonably requested by Debtor as shall be necessary to evidence termination of all such security interests given by Debtor to Secured Party hereunder, including cancellation of this Agreement by written notice from Secured Party to the PTO and/or the Copyright Office.

12. No Inconsistent Requirements. Debtor acknowledges that this Agreement and the other documents, agreements and instruments entered into or executed in connection herewith may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and Debtor agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

13. Severability. If one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction or with respect to any party, such invalidity, illegality or unenforceability in such jurisdiction or with respect to such party shall, to the fullest extent permitted by applicable law, not invalidate or render illegal or unenforceable any such provision in any other jurisdiction or with respect to any other party, or any other provisions of this Agreement.

14. Notices. All notices and other communications hereunder shall be in writing and shall be mailed, sent or delivered in accordance with the Loan Agreement.



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

Witnessed by:

TOM'S OF MAINE, INC.

Evan L. Hammond  
Evan L. Hammond

By: Davey S. Scoon  
Name: Davey S. Scoon  
Title: CEO

Evan L. Hammond  
Name: Evan L. Hammond

CITIZENS BANK NEW HAMPSHIRE

By: Jeanne A. Hult  
Jeanne A. Hult  
Its Vice President

**Schedule A  
Licensed Patents**

<b><u>Inventor</u></b>	<b><u>Assignee</u></b>	<b><u>Date Issued</u></b>	<b><u>Patent No.</u></b>	<b><u>Title</u></b>
Chappell, et al.	Tom's of Maine	10/26/93	5,256,405	Herbal Deodorant
Chappell, et al.	Tom's of Maine	11/9/93	5,260,053	Herbal Deodorant

**Schedule B  
Trademarks**

See Attached.

United States Trademarks

Mark	Registration Number	Registration Date	Application Number	Filing Date
DENTAL HEALTH FOR ALL			76-552,555	September 26, 2003
DESIGN (Bird/Toothbrush)	2,770,010	September 30, 2003		
DESIGN (Monkey/Toothbrush)	2,772,388	October 7, 2003		
DISCOVERING WELLNESS IN NATURE	2,527,127	January 8, 2002		
NATURAL CARE TOM'S OF MAINE (AND DESIGN)	2,776,761	October 21, 2003		
NATURAL CARE TOM'S OF MAINE (AND DESIGN)			76-367,567	February 6, 2002
NATURALLY, IT WORKS			76-576,951	January 26, 2004
NATURALLY, IT WORKS			76-576,950	January 26, 2004
NATURALLY, IT WORKS			76-576,952	January 26, 2004
NATURALLY, IT WORKS			76-576,953	January 26, 2004
NATURALLY, IT WORKS			76-576,954	January 26, 2004
NATURALLY, IT WORKS			76-576,955	January 26, 2004
TOM'S	1,094,160	June 27, 1978		
TOM'S	1,030,444	January 20, 1976		
TOM'S	1,094,160	June 27, 1978		
TOM'S OF MAINE (AND DESIGN)	1,397,289	June 17, 1986		
TOM'S OF MAINE (AND DESIGN)	1,304,577	November 13, 1984		
TOM'S OF MAINE (AND DESIGN)	1,381,476	February 4, 1986		
TOM'S OF MAINE (AND DESIGN)	1,465,112	November 17, 1987		
TOM'S OF MAINE (AND DESIGN)	1,397,289	June 17, 1986		
TOM'S OF MAINE NATIONAL RIVERS AWARENESS MONTH (AND DESIGN)			76-266,315	June 4, 2001
TOM'S OF MAINE NATURAL LIVING STORE (AND DESIGN)	2,236,451	April 6, 1999		
WORKING WITH NATURE TO MAKE A DIFFERENCE	2,800,846	December 30, 2003		

# Foreign Trademarks

Country	Mark	Registration Number	Registration Date	Application Number	Filing Date
Australia	NATURAL CARE TOM'S OF MAINE (AND DESIGN)	908889	September 16, 2002		
Australia	TOM'S OF MAINE (AND DESIGN)	450475	May 24, 1989		
Australia	TOM'S OF MAINE (AND DESIGN)	450476	May 24, 1989		
Australia	TOM'S OF MAINE (AND DESIGN)	450477	May 24, 1989		
Austria	TOM'S OF MAINE (AND DESIGN)	104,762	January 30, 1984		
Canada	DESIGN (Bird/Toothbrush)			1,133,780	March 11, 2002
Canada	DESIGN (Monkey/Toothbrush)			1,133,779	March 11, 2002
Canada	DISCOVERING WELLNESS IN NATURE			1,093,359	February 20, 2001
Canada	NATURAL CARE TOM'S OF MAINE (AND DESIGN)			1,135,446	March 27, 2002
Canada	TOM'S	TMA219,502	March 18, 1977		
Canada	TOM'S OF MAINE (AND DESIGN)	TMA586,914	August 8, 2003		
Canada	TOM'S OF MAINE WORKING WITH NATURE TO MAKE A DIFFERENCE (AND DESIGN)			1,107,561	June 27, 2001
Canada	WORKING WITH NATURE TO MAKE A DIFFERENCE			1,107,560	June 27, 2001
European Community	DESIGN (Bird/Toothbrush)	002618973	May 11, 2003		
European Community	DESIGN (Monkey/Toothbrush)	002618957	June 23, 2003		
European Community	NATURAL CARE TOM'S OF MAINE (AND DESIGN)	002618965	November 5, 2003		
European Community	TOM'S OF MAINE (AND DESIGN)	000522052	February 2, 1999		
European Community	TOM'S OF MAINE NATURE'S	000522011	February 2, 1999		
European Community	TOM'S OF MAINE NATURE'S (AND DESIGN)	000521971	February 2, 1999		

Country	Mark	Registration Number	Registration Date	Application Number	Filing Date
European Community	TOM'S OF MAINE WORKING WITH NATURE TO MAKE A DIFFERENCE (AND DESIGN)	002304228	October 22, 2002		
European Community	WORKING WITH NATURE TO MAKE A DIFFERENCE	002304756	May 23, 2003		
Germany	TOM'S OF MAINE (AND DESIGN)	1,061,914	April 4, 1984		
Japan	DESIGN (Bird/Toothbrush)	4625630	November 29, 2002		
Japan	DESIGN (Monkey/Toothbrush)	4625631	November 29, 2002		
Japan	NATURAL CARE TOM'S OF MAINE (AND DESIGN)	4676878	May 30, 2003		
Japan	TOM'S OF MAINE NATURE'S	4713515	September 26, 2003		
Japan	TOM'S OF MAINE NATURE'S (AND DESIGN)	4713516	September 26, 2003		
Japan	TOM'S OF MAINE (with Katakana)	2085562	October 26, 1988		
United Kingdom	TOMSO	1073562	April 20, 1978		

**Schedule C**  
**Copyrights**

None.