

07-02-2008

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

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103511796

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):

Bruegger's Enterprises, Inc. Three Bells Bagels, Inc.
BF Holding, Inc.
Bruegger's Franchise Corporation
Bruegger's Holding Corp.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation- State: Delaware
☐ Other _____

Citizenship (see guidelines) _____

Additional names of conveying parties attached? ☐ Yes ☒ No

3. Nature of conveyance /Execution Date(s) :

Execution Date(s) June 25, 2008

- ☐ 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: TD Bank, National Association

Internal _____

Address: _____

Street Address: 111 Main Street

City: Burlington

State: Vermont

Country: USA Zip: 05401

- ☐ Association Citizenship _____
☐ General Partnership Citizenship _____
☐ Limited Partnership Citizenship _____
☐ Corporation Citizenship _____
National Banking
☒ Other Association 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)

76/585145

77/178866

77/181236

B. Trademark Registration No.(s)

1,513,741 1,776,884 1,790,827 1,790,828 1,792,050

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: Anja Freiburg, Esq.

Internal Address: Burak Anderson & Melloni, PLC

Street Address: 30 Main Street, Suite 210

City: Burlington

State: Vermont Zip: 05401

Phone Number: 802-862-0500

Fax Number: 802-862-8176

Email Address: afreiburg@vtlaw1.com

6. Total number of applications and registrations involved:

18

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 465.00

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

8. Payment Information:

a. Credit Card Last 4 Numbers _____

07/01/2008 00000018 76585145

b. Deposit Account Number _____

02 FC:8522
Authorized User Name _____

46.00
425.00

9. Signature:

Anja Freiburg
Signature

6/25/08

Date

Anja Freiburg

Name of Person Signing

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

17

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

TRADEMARK
REEL: 003808 FRAME: 0831

Attachment A- Additional Trademarks

1. 2,054,478
2. 2,054,916
3. 2,054,479
4. 2,066,966
5. 2,069,341
6. 2,069,340
7. 2,123,032
8. 2,706,982
9. 3,197,945
10. 3,273,293

PATENT, TRADEMARK
AND COPYRIGHT SECURITY AGREEMENT

THIS PATENT, TRADEMARK AND COPYRIGHT SECURITY AGREEMENT (this "Agreement") is entered into as of this 25th day of June 2008, by and between BRUEGGER'S ENTERPRISES, INC., a Delaware corporation (and successor by merger to IOWA BAGELS, INC., a Delaware corporation) ("BEI"), BF HOLDING, INC., a Delaware corporation ("BFH"), BRUEGGER'S FRANCHISE CORPORATION, a Delaware corporation ("BFC"), and THREE BELLS BAGELS, INC., a Delaware corporation (f/k/a Bruegger's North Carolina, Inc.) ("TBB" and together with BEI, BFH, BFC and TBB, the "Borrowers"), as Borrowers, BRUEGGER'S HOLDING CORP., a Delaware corporation ("Holdings" and, together with the Borrowers, the "Pledgors"), and TD Bank, National Association, a national banking association (the "Agent").

WHEREAS, Pledgors, Agent and the Lenders are parties to a certain Credit Agreement, dated as of June 25, 2008 (as amended, restated, supplemented or extended from time to time, the "Credit Agreement"), and a Security Agreement, dated as of June 25, 2008, which together provide: (i) for the Lenders, under and as defined in the Credit Agreement, to extend certain loans to or for the account of the Borrowers; and (ii) for the grant by the Pledgors to the Agent, for the benefit of the Lenders, of a security interest in all of the Borrower's assets, including, without limitation, its patents, patent applications, trademarks, trademark applications, service marks, trade names, trade styles, copyrights, copyright applications, mask works, trade-secrets information and the goodwill associated with each of the foregoing, and other proprietary rights, together with all additions, accessions, accessories, amendments, attachments, modifications, substitutions, and replacements, proceeds and products of any of the foregoing; and

WHEREAS, the Lenders are not willing to provide any credit or accommodations to the Borrowers unless the obligations of the Borrowers are secured by a pledge and perfected security interest in the Collateral (as defined below).

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Pledgors and the Agent agree as follows:

1. Security Interest in Patents, Trademarks and Copyrights. To secure the complete and timely satisfaction of all of the Pledgors' "Obligations" (as that term is defined in the Credit Agreement) to the Lenders, the Pledgors hereby grant and convey to the Agent, for the benefit of the Lenders, a security interest (having priority over all other security interests) with power of sale, to the extent permitted by law, in all of its now owned or existing, and hereafter acquired or arising:

- (a) patents and patent applications, including, without limitation, any invention and improvement to a patent or patent application, including without limitation those patents and patent applications listed in Schedule

A (being sometimes referred to individually and/or collectively, the "Patents");

- (b) trademarks, registered trademarks and trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications including, without limitation, the registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule B and (i) all renewals thereof, (ii) all accounts receivable, income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past, present or future infringements and dilutions thereof, and (iii) the right to sue for past, present and future infringements and dilutions thereof, and (iv) all of the Borrower's rights corresponding thereto throughout the world (all of the foregoing registered trademarks, trademark applications, trade names, trade styles, registered service marks and service mark applications, together with the items described in clauses (i)-(iv) in this Section 1(b), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");
- (c) the goodwill of the Pledgors' business connected with and symbolized by the Trademarks; and
- (d) copyrights and copyright applications, including without limitation, those copyrights listed in Schedule C (being sometimes referred to individually and/or collectively as the "Copyrights");

together with all additions, accessions, accessories, amendments, attachments, modifications, substitutions, and replacements, proceeds and products of the foregoing (collectively, the "Collateral").

2. Recording of Patents and Trademarks. The Pledgors represent and warrant that (1) the patents and patent applications listed in Schedule A and (2) the trademark and trademark applications described in Schedule B, have each been duly recorded in the U.S. Patent and Trademark Office (the "PTO"); and that no other patents, patent applications, trademarks or trademark applications have been filed or recorded with the PTO in which any of the Pledgors have an interest.

3. Recording of Copyrights. Pledgors represent and warrant that the copyright and copyright applications described in Schedule C have been duly recorded in the U.S. Copyright Office, and that no other copyright or copyright applications have been recorded in the U.S. Copyright Office in which the Pledgors have an interest.

4. Restrictions on Future Agreements. Pledgors will not, without the Agent's prior written consent, enter into any agreement, including, without limitation, any license agreement, which would cause a breach of this Agreement, and Pledgors further agree that they will not take any action, and will use reasonable efforts not to permit any action to be taken by others subject to their control, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to the Agent under this Agreement or the rights associated with the Patents, Trademarks and/or Copyrights that are necessary in the ordinary operation of Pledgors' business.

5. New Patents, Trademarks and Copyrights. Pledgors represent and warrant that the Patents, Trademarks, and Copyrights listed on Schedules A, B and C include all of the patents, patent applications, trademark registrations, trademark applications, service marks registrations, service mark applications, registered copyrights and copyright applications, now owned or held by Pledgors. If, prior to the termination of this Agreement, Pledgors shall (i) create or obtain rights to any new patents, trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service marks registrations or service mark applications, or (ii) become entitled to the benefit of any patent, trademark, trademark registration, trademark application, trade name, trade style, service mark, service mark registration or service mark application, the provisions of this Agreement shall automatically apply thereto and Pledgors shall give Agent prompt written notice thereof. Pledgors hereby authorize Agent to modify this Agreement by (a) amending Schedules A, B, and/or C, as the case may be, to include any future patents, trademark registrations, trademark applications, service mark registrations, service mark applications, registered copyrights and copyright applications that are Patents, Trademarks or Copyrights under Section 1 above or under this Section 5 (whether or not any such notice from Pledgors has been sent or received), and (b) filing, in addition to and not in substitution for this Agreement, a supplement or addendum to this Agreement containing on Schedule B therein, as the case may be, such registered trademarks, trademark applications, service marks, registered service marks and service mark applications which are Trademarks under Section 1 above or this Section 5 and to take any action Agent otherwise deems appropriate, in its reasonable discretion, to perfect or maintain the rights and interest of Agent under this Agreement with respect to such Patents, Trademarks and Copyrights.

6. Royalties. The Pledgors hereby agree that following the occurrence and continuation of an Event of Default (as defined in the Credit Agreement), the use by Agent of the Patents, Trademarks and Copyrights as authorized hereunder shall be co-extensive with Pledgors' rights with respect thereto and without any liability for royalties or other related charges from the Agent to the Pledgors or any other person.

7. Nature and Continuation of Security Interest; Notice to Third Parties. This Security Agreement has the effect of giving third parties notice of the Agent's Security Interest in Pledgors' Patents, Trademarks and Copyrights. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Patents, Trademarks and Copyrights and shall remain in full force and effect until the Obligations have been paid in full (other than contingent indemnity obligations to the extent no claim giving rise

thereto has been asserted) and the termination of the Lenders' obligations to extend credit pursuant to the Credit Agreement.

8. Assignments and Security Interests. After the occurrence and during the continuance of an Event of Default (as defined in the Credit Agreement), Pledgors agree that Agent or a conservator appointed by Agent shall have the right to take any action to renew or to apply for registration of any Trademarks as Agent or said conservator, each in its sole judgment, may deem necessary or desirable in connection with the enforcement of Agent's rights hereunder. Pledgors agrees (i) except in accordance with Pledgors' reasonable business judgment, not to sell or assign its respective interests in the Patents, Trademarks and/or Copyrights without the prior written consent of Agent and (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof.

9. Duties of Pledgors. Pledgors shall have the duty, to the extent necessary or desirable in the normal conduct of Pledgors' business, to (i) prosecute diligently until issuance or rejection any patent application or trademark application or service mark application that is part of the Patents or Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, and (ii) preserve and maintain all of Pledgors' rights in the patents, patent applications, trademark applications, service mark applications and trademark and service mark registrations that are part of the Patents and Trademarks, except those rights declared to be invalid or unenforceable by a legal proceeding of competent jurisdiction. Any expenses incurred in connection with the foregoing shall be borne by Pledgors. Pledgors shall not, without thirty (30) days prior written notice to Agent, abandon any trademark or service mark that is the subject of a registered trademark, service mark or application therefor. Agent shall not have any duty with respect to the Patents, Trademarks and/or Copyrights. Without limiting the generality of the foregoing, Agent shall not be under any obligation to take any steps necessary to preserve rights in the Patents, Trademarks and/or Copyrights against any other parties, but may do so at its option during the continuance of an Event of Default, and all reasonable expenses incurred in connection therewith shall be for the sole account of Pledgors and added to the Obligations and liabilities secured hereby and by the other Loan Documents.

10. Agent's Right to Sue. Upon the occurrence and during the continuance of any Event of Default, the Agent shall have the right to exercise all rights and remedies available at law or in equity. From and after the occurrence and during the continuance of an Event of Default, Agent shall have the right, but shall not be obligated, to bring suit or take any other action to enforce the Patents, Trademarks and Copyrights and, if Agent shall commence any such suit or take any such action, Pledgors shall, at the request of Agent, do any and all reasonable lawful acts and execute any and all proper documents reasonably required by Agent in aid of such enforcement. Pledgors shall, upon demand, promptly reimburse and indemnify Agent for all reasonable out-of-pocket costs and expenses incurred by Agent in the exercise of its rights under this Section 10 (including, without limitation, all reasonable attorneys' fees). If, for any reason whatsoever, Agent is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby.

11. Waivers. The Pledgors waive, to the extent permitted by applicable law, presentment, demand, notice, protest, notice of acceptance of this Agreement, notice of any loans made, credit or other extensions granted, collateral received or delivered or any other action taken in reliance hereon and all other demands and notices of any description, except for such demands and notices as are expressly required to be provided to the Pledgors under this Agreement or any other document evidencing the Obligations or the liabilities under the Loan Documents. With respect to both the Obligations and the Collateral, the Pledgors assent to any extension or postponement of the time of payment or any other forgiveness or indulgence, to any substitution, exchange or release of Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromise or adjustment of any thereof, all in such manner and at such time or times as the Agent may deem advisable. The Agent may exercise its rights with respect to the Collateral without resorting, or regard, to other collateral or sources of reimbursement for Obligations. The Agent shall not be deemed to have waived any of its rights with respect to the Obligations or the Collateral unless such waiver is in writing and signed by the Agent. No delay or omission on the part of the Agent in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not bar or waive the exercise of any right on any future occasion. All rights and remedies of the Agent in the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, are cumulative and not exclusive of any remedies provided by law or any other agreement, and may be exercised separately or concurrently.

12. Successors and Assigns. This Agreement shall be binding upon the Pledgors, their respective successors and permitted assigns, and shall inure to the benefit of and be enforceable by the Agent and its successors and assigns.

13. General. This Agreement may not be amended or modified except by a writing signed by the Pledgors and the Agent, nor may the Pledgors assign any of their rights hereunder except as may otherwise be permitted pursuant to the Credit Agreement. This Agreement and the terms, covenants and conditions hereof shall be construed in accordance with, and governed by, the laws of the State of Vermont (without giving effect to any conflicts of law provisions contained therein). In the event that any Collateral stands in the name of the Pledgors and another or others jointly, as between the Agent and the Pledgors, the Agent may deal with the same for all purposes as if it belonged to or stood in the name of the Pledgors alone. Capitalized terms used herein and not otherwise defined have the respective meanings given in the Credit Agreement.

14. WAIVER OF JURY TRIAL; VENUE.

THE PLEDGORS HEREBY WAIVE TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH OR, ARISING OUT OF: (A) THIS AGREEMENT OR ANY OTHER INSTRUMENT OR DOCUMENT DELIVERED IN CONNECTION HERewith; OR (B) THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT THEREOF.

THE PLEDGORS AGREE THAT ANY SUIT FOR THE ENFORCEMENT OF THE OBLIGATIONS ARISING OUT OF OR IN ANY MANNER RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATING TO ANY LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF VERMONT OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF SUCH COURT AND TO SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON THE PLEDGORS BY MAIL AT THE ADDRESS SPECIFIED IN THE CREDIT AGREEMENT. THE PLEDGORS HEREBY WAIVE ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT WAS BROUGHT IN AN INCONVENIENT COURT. THE PLEDGORS SHALL NOT BE ENTITLED IN ANY SUCH ACTION OR PROCEEDING TO ASSERT ANY DEFENSE GIVEN OR ALLOWED UNDER THE LAWS OF ANY STATE OTHER THAN THE STATE OF VERMONT UNLESS SUCH DEFENSE IS ALSO GIVEN OR ALLOWED BY THE LAWS OF THE STATE OF VERMONT. NOTHING IN THIS SECTION SHALL AFFECT OR IMPAIR IN ANY MANNER OR TO ANY EXTENT THE RIGHT OF THE AGENT TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE PLEDGORS IN ANY JURISDICTION IN WHICH ANY COLLATERAL IS LOCATED, THE PLEDGORS CONDUCT ACTIVITIES OR WHERE LEGAL PROCEEDINGS MAY BE NECESSARY IN ORDER TO COLLECT OR ENFORCE THE OBLIGATIONS OR TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

[Signature Page Follows]

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

PLEDGORS:

In the presence of:

Holly Ryan
Witness

BRUEGGER'S ENTERPRISES, INC.

By: [Signature]
Name: David T. Austin
Title: President

In the presence of:

Holly Ryan
Witness

BF HOLDING, INC.

By: [Signature]
Name: David T. Austin
Title: President

In the presence of:

Holly Ryan
Witness

BRUEGGER'S FRANCHISE CORPORATION

By: [Signature]
Name: David T. Austin
Title: President

In the presence of:

Holly Ryan
Witness

THREE BELLS BAGELS, INC.

By: [Signature]
Name: David T. Austin
Title: President

In the presence of:

Holly Ryan
Witness

BRUEGGER'S HOLDING CORP.

By: [Signature]
Name: David T. Austin
Title: President

*Collateral Assignment of Patents and Trademarks

ACKNOWLEDGMENT

STATE OF VERMONT
Chittenden COUNTY

In Burlington on this 24th day of June, 2008, personally appeared David T. Austin, a duly authorized agent of James T. Greco, signer of the foregoing instrument, and acknowledged the same to be his free act and deed and the free act and deed of Bruegger's Enterprises, Inc.

Before me,

Holly Ryan
Notary Public
My Commission Expires: 3-2012

STATE OF VERMONT
Burlington COUNTY

In Burlington on this 24th day of June, 2008, personally appeared David T. Austin, a duly authorized agent of BF Holding, Inc., signer of the foregoing instrument, and acknowledged the same to be his/her free act and deed and the free act and deed of BF Holding, Inc.

Before me,

Holly Ryan
Notary Public
My Commission Expires: 5-2012

STATE OF VERMONT
Chittenden COUNTY

In Burlington on this 24th day of June, 2008, personally appeared David T. Austin, a duly authorized agent of Three Bells Bagels, Inc., signer of the foregoing instrument, and acknowledged the same to be his/her free act and deed and the free act and deed of Three Bells Bagels, Inc.

Before me,

Holly Ryan
Notary Public
My Commission Expires: 5-2012

Collateral Assignment Lease

ACKNOWLEDGMENT

STATE OF VERMONT
Chittenden COUNTY

In Burlington on this 24th day of June, 2008, personally appeared David T. Gustaf a duly authorized agent of Bruegger's Enterprises, Inc., signer of the foregoing instrument, and acknowledged the same to be his/her free act and deed and the free act and deed of Bruegger's Enterprises, Inc.

Before me,

Holly Ryan
Notary Public
My Commission Expires: 5-2012

STATE OF VERMONT
Chittenden COUNTY

In Burlington on this 24th day of June, 2008, personally appeared David T. Gustaf a duly authorized agent of BF Holding, Inc., signer of the foregoing instrument, and acknowledged the same to be his/her free act and deed and the free act and deed of BF Holding, Inc.

Before me,

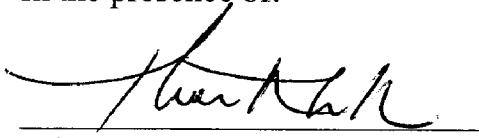
Holly Ryan
Notary Public
My Commission Expires: 5-2012

Collateral Assignment of Patents and Trademarks

AGENT:

In the presence of:

TD BANK, NATIONAL ASSOCIATION



Witness

By: 

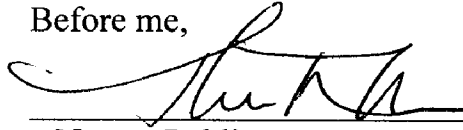
Name: Douglas S. Graham

Title: Senior Vice President

STATE OF VERMONT
Chittenden COUNTY

In Burlington on this 25th day of June, 2008, personally appeared Douglas S. Graham, a duly authorized agent of TD Bank, National Association, signer of the foregoing instrument, and acknowledged the same to be his ~~his~~ free act and deed and the free act and deed of TD Bank, National Association.

Before me,



Notary Public

My Commission Expires: 2/2/2011

Schedule A
Patents and Patent Applications

None.

Schedule B
Trademarks and Trademark Applications

Trademarks

Mark	Reg. Date	Reg. No.	Class
Bruegger's®	11/22/88*	1,513,741	29 & 30
The Best Thing Round®	6/15/93	1,776,884	42
Bruegger's Bagel Bakery/Fresh Bagels & design® (circle)	8/31/93	1,790,827	42
Bruegger's Fresh Bagel Bakery & design®	8/31/93	1,790,828	42
Bruegger's®	9/7/93	1,792,050	42
Single Baker/Single Bagel Design®	4/22/97	2,054,478	42
Bagelnet®	4/22/97	2,054,916	9
Bruegger's Bagels Baked Fresh & design®	4/22/97	2,054,479	42
Leonardo da Veggie®	6/3/97	2,066,966	30
Hot Shot Turkey®	6/10/97	2,069,341	30
Herby Turkey®	6/10/97	2,069,340	30
Brueggie Character Design®	12/23/97	2,123,032	42
Softwich®	4/15/03	2,706,982	30
Bruegger's Worthy®	1/16/07	3,197,945	43
Bruegger's Baked Fresh and design ®	8/7/07	3,273,293	43
Bruegger's Baked Fresh and design®	6/06/06	**76/661167	42
(This mark is registered under 3,273,293 – above)	8/7/07	76/666020	43

Trademark Applications

Mark	App. Date	App. No.	Class
Brew for the Crew TM	4/27/04	76/585145	30
Bagel Bits TM	5/11/07	77/178866	30
Bruegger Bites TM	5/15/07	77/181236	30

Schedule C
Copyrights and Copyright Applications

The Bagel Factory logo (Registration Number VA 512 430)