

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM372148

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Totally Chocolate, LLC		02/03/2016	LIMITED LIABILITY COMPANY: WASHINGTON
RECEIVING PARTY DATA			
Name:	Bank of Montreal		
Street Address:	105 St-Jacques Street		
Internal Address:	3rd Floor		
City:	Montreal (Quebec)		
State/Country:	CANADA		
Postal Code:	H2Y 1L6		
Entity Type:	a bank chartered under the Bank Act: CANADA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2561752	TOTALLY CHOCOLATE	
CORRESPONDENCE DATA			
Fax Number:	8165317545		
	<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>		
Phone:	(816) 460-2400		
Email:	brian.mcginley@dentons.com, anita.hansen@dentons.com,doug.wingo@dentons.com		
Correspondent Name:	Brian R. McGinley		
Address Line 1:	Dentons US LLP		
Address Line 2:	P. O. Box 061080		
Address Line 4:	Chicago, ILLINOIS 60606-1080		
ATTORNEY DOCKET NUMBER:	09773150-000063 (002469)		
NAME OF SUBMITTER:	BRIAN R. MCGINLEY		
SIGNATURE:	/Brian R McGinley/		
DATE SIGNED:	02/05/2016		
Total Attachments: 12			
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INTELLECTUAL PROPERTY
SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this “**Security Agreement**”) dated as of February 3, 2016, is made by **TOTALLY CHOCOLATE, LLC**, a Washington limited liability company (the “**Grantor**”), in favor of **BANK OF MONTREAL** (together with its successors and assigns, “**Grantee**”).

WITNESSETH:

WHEREAS, Grantor and Grantee are parties to that certain Credit Agreement of even date herewith (as the same may be amended, supplemented or modified from time to time, the “**Credit Agreement**”), which provides (i) for Grantee to make certain loans and other financial accommodations to Grantor; and (ii) for the grant by Grantor to Grantee of a security interest in Grantor’s assets, including, without limitation, its patents, patent applications, trademarks, trademark applications, trade names, copyrights, service marks, service mark applications, goodwill and licenses, and all proceeds thereof.

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor (intending to be legally bound hereby) agrees as follows:

1. **Incorporation of Credit Agreement.** The Credit Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Credit Agreement.

2. **Security Interest in Intellectual Property.** To secure prompt payment of any and all of the Obligations in accordance with the terms and conditions of the Credit Agreement and the other Loan Documents and in order to secure prompt performance by Grantor of each of its covenants and duties under the Credit Agreement and the other Loan Documents, Grantor hereby grants to Grantee a continuing security interest in, all of Grantor’s right, title and interest in and to all of the following now owned and existing and hereafter arising, created or acquired property (collectively, the “**Intellectual Property**”):

(i) patents and patent applications, including, without limitation, rights in the inventions and improvements described and claimed therein, and those patents listed on Exhibit A attached hereto and hereby made a part hereof, and (a) all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages, proceeds and payments now and hereafter due or payable under or with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d) of this subsection 2(i), are sometimes hereinafter referred to individually as a “**Patent**” and, collectively, as the “**Patents**”); and

(ii) trademarks, trademark registrations, trademark applications, trade names and tradestyles, brand names, service marks, service mark registrations and service mark applications, including, without limitation, the trademarks, trade names, brand names, service marks and applications and registrations thereof listed on Exhibit B attached hereto and hereby made a part hereof, and (a) all renewals or extensions thereof, (b) all income, royalties, proceeds, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names and tradestyles, brand names, service marks and applications and registrations thereof, together with the items described in clauses (a)-(d) of this subsection 2(ii), are sometimes hereinafter referred to individually as a “**Trademark**” and, collectively, as the “**Trademarks**”); and

(iii) rights under or interests in any patent, trademark, or copyright license agreements with any other Person (to the extent a security interest may be granted in such rights without violating the terms of any such license agreement; with respect to any of the Intellectual Property or any other patent, trademark, service mark or any application or registration thereof or any other trade name or tradestyle between Grantor and any other Person, whether Grantor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Exhibit C attached hereto and hereby made a part hereof (all of the foregoing license agreements and Grantor’s rights thereunder are referred to collectively as the “**Licenses**”); and

(iv) the goodwill of Grantor’s business connected with and symbolized by the Trademarks; and

(v) copyrights, copyright registrations and copyright applications, used in the United States, Canada and elsewhere, including, without limitation, the copyright registrations and copyright applications listed on Exhibit D attached hereto and made a part hereof, and (a) renewals or extensions thereof, (b) all income, royalties, proceeds, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing copyrights, copyright registrations and copyright applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the “**Copyrights**”); and

(vi) all trade secrets, formulas, processes, devices, know-how, or compilations of information (including technical information and non-technical information such as customer lists and marketing plans), collectively referred to as trade secrets, which are not available to others and which are maintained as confidential by Grantor, and the right to prevent misappropriation and unauthorized disclosures thereof and all rights corresponding thereto throughout the world (all of the foregoing trade secrets and associated rights are sometimes hereinafter individually and/or collectively referred to as the “**Trade Secrets**”).

3. Representations and Warranties. Grantor hereby represents and warrants to Grantee, which representations and warranties shall survive the execution and delivery of this Security Agreement, that:

(i) None of the issued patents, patent applications, registered trademarks, trademark applications, registered copyrights or copyright applications (collectively, the “**Registered Intellectual Property**”) has been adjudged invalid or unenforceable nor has any such Registered Intellectual Property been cancelled (except for those denoted as lapsed or abandoned as set forth in the Exhibits), in whole or in part, and each such Intellectual Property is presently subsisting (except for those denoted as lapsed or abandoned as set forth in the Exhibits);

(ii) None of the Intellectual Property infringes upon the rights or property of any other Person or is currently being challenged in any way;

(iii) There are no pending or, to the knowledge of the Grantor, threatened claims, litigation, proceedings or other investigations regarding any of the Intellectual Property;

(iv) Each of the Intellectual Property (except for those denoted as lapsed or abandoned as set forth in the Exhibits) is valid and enforceable, and the Grantor has adopted adequate precautions to protect its Trade Secrets from unauthorized or accidental disclosure;

(v) Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Registered Intellectual Property, free and clear of any liens, security interests, mortgages, charges and encumbrances, including, without limitation, licenses, consent-to-use agreements, shop rights and covenants by Grantor not to sue third Persons (except for Permitted Liens as defined in the Credit Agreement);

(vi) Grantor has adopted, used and is currently using all of the Trademarks, and, to the knowledge of Grantor, Grantor’s use thereof does not infringe the intellectual property rights of any person or entity;

(vii) Grantor has the unqualified right to execute and deliver this Security Agreement and perform its terms, this Security Agreement has been executed and delivered by a duly authorized officer or manager of Grantor, and this Security Agreement is a legally enforceable obligation of Grantor subject to the effects of (a) bankruptcy, insolvency, reorganization, moratorium and similar laws effecting creditors’ rights generally and (b) general equitable principles regardless of whether enforcement is sought in equity or at law;

(viii) No trademark opposition or cancellation proceedings have been filed in the prior three years with the United States Patent and Trademark Office or the Canadian Intellectual Property Office against any of the Trademarks; and

(ix) The Licenses are valid and binding agreements, enforceable in accordance with their terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization, insolvency and similar laws from time to time in effect). Each of the material

Licenses is in full force and effect and has not been amended or abrogated and there is no default under any of the Licenses.

4. Restrictions on Future Agreements. Except as otherwise permitted pursuant to the Credit Agreement, Grantor agrees that until all Obligations shall have been satisfied and paid in full and the Credit Agreement shall have been terminated, Grantor shall not, without the prior written consent of Grantee, sell, transfer, mortgage, convey, dispose, encumber or assign any or all of, or grant any license or sublicense under the Intellectual Property, or enter into any other agreement with respect to the Intellectual Property, and Grantor further agrees that it shall not knowingly take any action or knowingly permit any action to be taken by others subject to its control, including, without limitation, licensees or sublicensees, or knowingly fail to take any action, which would materially adversely affect the validity or enforcement of the rights Grantee subject to this Security Agreement, other than in the ordinary course of business.

5. New Intellectual Property. Grantor hereby represents and warrants to Grantee that the Intellectual Property listed on Exhibits A, B and C, respectively, constitute all of the Registered Intellectual Property now owned by Grantor. Grantor hereby represents and warrants to Grantee that the Intellectual Property listed on Exhibit C constitute all of the material Licenses now owned by Grantor. If, before all Obligations shall have been satisfied in full or before the Credit Agreement has been terminated, Grantor shall (i) become aware of any existing Registered Intellectual Property of which Grantor has not previously informed Grantee, (ii) obtain rights to any Registered Intellectual Property, or (iii) become entitled to the benefit of any material Intellectual Property which benefit is not in existence on the date hereof, the provisions of this Security Agreement above shall automatically apply thereto and Grantor shall give to Grantee prompt written notice thereof. Grantor hereby authorizes Grantee to modify this Security Agreement by amending Exhibits A, B, C, and D, as applicable, to include any such Intellectual Property, and Grantee may file or refile this Security Agreement with the U.S Patent and Trademark Office , U.S. Copyright Office and the Canadian Intellectual Property Office. Grantor agrees to execute and deliver any and all documents and instruments necessary or advisable to record or preserve Grantee's interest in all Intellectual Property added to Exhibits A, B, C, and D pursuant to this Section.

6. Royalties; Terms; Rights Upon Default. The term of this Security Agreement shall extend until the earlier of (i) the expiration of all of the respective material Intellectual Property collaterally assigned hereunder, and (ii) the payment in full of all Obligations and the termination of the Credit Agreement. Grantor agrees that upon the occurrence and during the continuance of an Event of Default, the use by Grantee of all Intellectual Property shall be worldwide and as extensive as the rights of Grantor to use such Intellectual Property, and without any liability for royalties or other related charges from Grantee to Grantor, solely for the purpose of completing production of, advertising for sale and selling any Intellectual Property.

7. Grantee's Right to Inspect; Trademark Quality Control. To the extent permitted by the Credit Agreement, Grantee shall have the right, from time to time during normal business hours to inspect Grantor's premises and to examine Grantor's books, records and operations, including, without limitation, Grantor's quality control processes. Grantor agrees (i) to maintain the quality of any and all products in connection with which the material Trademarks are used,

consistent with the quality of said products (as determined by Grantor in its commercially reasonable business judgment) and (ii) to provide Grantee, upon Grantee's reasonable request from time to time, with a certificate of an officer of Grantor certifying Grantor's compliance with the foregoing.

8. Release of Security Agreement. Upon the payment and performance in full of the Obligations and the full and final termination of any commitment to extend any financial accommodations under the Credit Agreement, this Security Agreement shall terminate, and Grantee shall execute and deliver such documents and instruments and take such further action reasonably requested by Grantor, at Grantor's expense, as shall be necessary to evidence termination of the security interest granted by Grantor to Grantee hereunder.

9. Expenses. All costs and expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Grantor. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' and paralegals' fees and legal expenses, incurred by Grantee in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Intellectual Property, or in defending or prosecuting any actions or proceedings arising out of or related to the Intellectual Property, shall be borne by and paid by Grantor on demand by Grantee until so paid shall bear interest at the "default rate of interest" set forth in the Credit Agreement.

10. Duties of Grantor. Grantor shall have the duty to the extent commercially reasonable and in Grantor's good faith business judgment, desirable: (i) to file and prosecute diligently any patent, trademark or service mark applications pending as of the date hereof or hereafter until all Obligations (other than contingent indemnification Obligations) shall have been paid in full and the Credit Agreement has been terminated, (ii) except as otherwise provided in the Credit Agreement, to preserve and maintain all rights in the material Intellectual Property (including, but not limited to, with respect to Trademarks, the filing of affidavits of use and, incontestability, where applicable, under §§8 and 15 of the Lanham Act (15 U.S.C. § 1058, 1065) and renewals and, to the extent commercially reasonable, initiating opposition or cancellation proceedings or litigation against users of the same or confusingly similar marks who seriously threaten the validity or rights of Grantor in its material Trademarks), and (iii) to ensure that the Registered Intellectual Property is and remains enforceable. Grantor shall not knowingly or unreasonably abandon any right to file a material patent, trademark or service mark application, or abandon any pending patent application, or any other material Intellectual Property, unless Grantor, in the exercise of its commercially reasonable business judgment determines that such abandonment will not materially and adversely affect its business.

11. Grantee's Right to Sue. Upon the occurrence and during the continuance of an Event of Default, Grantee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Intellectual Property, only after Grantee has tendered notice to Grantor of Grantee's desire to initiate such suit and Grantor has declined in writing to itself pursue such suit, and, if Grantee shall commence any such suit, Grantor shall, at the request of Grantee, do any and all lawful acts and execute any and all proper documents and instruments reasonably required by Grantee in aid of such enforcement.

12. Waivers. No course of dealing between Grantor and Grantee, nor any failure to exercise, nor any delay in exercising, on the part of Grantee, any right, power or privilege hereunder or under the Credit Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13. Severability. The provisions of this Security Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Security Agreement in any jurisdiction.

14. Modification. This Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the Grantor and the Grantee.

15. Cumulative Remedies; Power of Attorney; Effect on Credit Agreement. All of Grantee's rights and remedies with respect to the Intellectual Property, whether established hereby or by the Credit Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Grantor hereby authorizes Grantee upon the occurrence and during the continuance of an Event of Default, to make, constitute and appoint any officer or agent of Grantee as Grantee may select, in its sole discretion, as Grantor's true and lawful attorney-in-fact, with power to (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for Grantee in the use of the Intellectual Property, or (ii) take any other actions with respect to the Intellectual Property as Grantee deems in its commercially reasonable judgment to be in the best interest of Grantee, or (iii) grant or issue any exclusive or non-exclusive license under the Intellectual Property to any person or entity, or (iv) assign, pledge, sell, convey or otherwise transfer title in or dispose of any of the Intellectual Property to any person or entity. Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney being coupled with an interest shall be irrevocable until all Obligations shall have been paid in full (other than contingent indemnification Obligations) and the Credit Agreement has been terminated. Grantor acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of Grantee under the Credit Agreement but rather is intended to facilitate the exercise of such rights and remedies. Grantee shall have, in addition to all other rights and remedies given it by the terms of this Security Agreement and the Credit Agreement, all rights and remedies allowed by law, in equity, and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Washington.

16. Binding Effect; Benefits. This Security Agreement shall be binding upon Grantor and its respective successors and assigns, and shall inure to the benefit of Grantee, its successors, nominees and assigns; provided, however, Grantor shall not assign this Security Agreement or any of Grantor's Obligations hereunder without the prior written consent of Grantee.

17. Governing Law. This Security Agreement shall be governed by, enforced and construed in accordance with the internal laws of the State of Washington, without regard to choice of law or conflict of law principles.

18. Headings; Counterparts. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede. This Security Agreement may be signed in one or more counterparts, but all of such counterparts shall constitute and be deemed to be one and the same instrument. Any fax signature shall be deemed to be as legally enforceable and effective as a signed original.

19. Further Assurances. Grantor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Grantee shall reasonably request from time to time in order to carry out the purpose of this Security Agreement and agreements set forth herein. Grantor acknowledges that a copy of this Security Agreement will be filed by the Grantee with the United States Patent and Trademark Office, if applicable, the United States Copyright Office and the Canadian Intellectual Property Office, at the sole cost and expense of Grantor.

20. Survival of Representations. All representations and warranties of Grantor contained in this Security Agreement shall survive the execution and delivery of this Security Agreement and shall be remade on the date of each borrowing under the Credit Agreement.

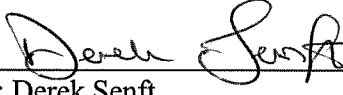
21. Foreign Patents, Copyrights and Trademarks. Upon the occurrence and during the continuance of an Event of Default, at the request of Grantee and at the sole cost and expense (including, without limitation, reasonable attorneys' fees) of Grantor, Grantor shall take all actions and execute and deliver any and all instruments, agreements, assignments, certificates and/or documents, reasonably required by Grantee to collaterally assign any and all of Grantor's foreign patent, copyright and trademark registrations and applications now owned or hereafter acquired to and in favor of Grantee. Upon the execution and delivery of any such collateral assignments or documents, the terms "Patents", "Copyrights", and "Trademarks" as used herein shall automatically be deemed amended to include such foreign patent, copyright and trademark registrations and applications without any action required by any person or entity.

22. Paramountcy. This Security Agreement has been entered into pursuant to the Credit Agreement and is subject to all of the terms and conditions thereof, and in the event of any conflicts or inconsistencies between the provisions of this Security Agreement and the provisions of the Credit Agreement, the rights and obligations of the parties shall be deemed to be governed by the provisions of the Credit Agreement, which shall be the paramount instrument.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, Grantor has duly executed this Security Agreement in favor of Grantee, as of the date first written above.

**TOTALLY CHOCOLATE, LLC, by its
sole manager, GANACHE TC INC.**

By: 
Name: Derek Senft
Title: Secretary

Signature Page for
Intellectual Property Security Agreement

TRADEMARK
REEL: 005725 FRAME: 0174

EXHIBIT A

PATENTS

None

EXHIBIT B

TRADEMARKS

MARK	COUNTRY	REGISTRATION DATE	REGISTRATION #	GOODS AND SERVICES
TOTALLY CHOCOLATE	CANADA	11/25/2003	TMA595696	Food - spices, bakery foods (Class 030); Advertising, marketing, promotional, business administration, office functions (Class 035).
TOTALLY CHOCOLATE	UNITED STATES OF AMERICA	4/16/2002	2561752	Candy (Class 030);; Catalog, direct, and online retail services featuring candy (Class 035).
TOTALLY CHOCOLATE	EUROPEAN COMMUNITY	6/26/2003	002516433	Confectionary; candy (Class 30); Retail candy (confectionary) store services; on-line retail store services featuring candy (confectionary) (Class 35).

EXHIBIT C
LICENSE AGREEMENTS

EXHIBIT D
COPYRIGHTS

TITLE	REGISTRATION DATE	REGISTRATION #	DESCRIPTION
Happy Easter!	1/27/04	VA0001236066	Design for label
Muchas Gracias!	1/27/04	VA0001285922	Commercial print
Congratulations!	1/27/04	VA0001285921	Commercial print
Thanks a million!	1/27/04	VA0001285920	Commercial print
Your business means the world to us.	1/27/04	VA0001285923	Commercial print
TGIF, thank goodness it's Friday!	1/27/04	VA0001285924	Commercial print