

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

ETAS ID: TM608317

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|---|--|-----------------------|--|
| SUBMISSION TYPE: | NEW ASSIGNMENT | | |
| NATURE OF CONVEYANCE: | Intellectual Property Security Agreement | | |
| CONVEYING PARTY DATA | | | |
| Name | Formerly | Execution Date | Entity Type |
| DunnTire LLC | | 11/06/2020 | Limited Liability Company: DELAWARE |
| RECEIVING PARTY DATA | | | |
| Name: | Cadence Bank, N.A. | | |
| Street Address: | 3399 Peachtree Road, N.E., Suite 1800 | | |
| City: | Atlanta | | |
| State/Country: | GEORGIA | | |
| Postal Code: | 30326 | | |
| Entity Type: | National Banking Association: UNITED STATES | | |
| PROPERTY NUMBERS Total: 2 | | | |
| Property Type | Number | Word Mark | |
| Registration Number: | 3727411 | DUNN TIRE | |
| Registration Number: | 3727454 | DUNN TIRE | |
| CORRESPONDENCE DATA | | | |
| Fax Number: | 6175236850 | | |
| <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: | 617-523-2700 | | |
| Email: | susan.dinicola@hklaw.com,michelle.diaz@hklaw.com | | |
| Correspondent Name: | Holland & Knight LLP | | |
| Address Line 1: | 10 St. James Avenue | | |
| Address Line 4: | Boston, MASSACHUSETTS 02116 | | |
| NAME OF SUBMITTER: | Susan C. DiNicola | | |
| SIGNATURE: | /Susan C. DiNicola/ | | |
| DATE SIGNED: | 11/12/2020 | | |
| Total Attachments: 7 | | | |
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INTELLECTUAL PROPERTY SECURITY AGREEMENT

This **INTELLECTUAL PROPERTY SECURITY AGREEMENT** (this "Agreement") is made this 6th day of November, 2020, between CADENCE BANK, N.A., a national banking association, having an office at 3399 Peachtree Road, N.E., Suite 1800, Atlanta, GA 30326 (together with its successors and assigns "Lender"), and Dunn Tire LLC, a Delaware limited liability company having its principal place of business at 475 Cayuga Road, Suite 500, Buffalo, New York 14225 (the "Company").

Recitals:

The Company and certain of its affiliates desire to obtain loans and other financial accommodations from Lender pursuant to that certain Loan and Security Agreement dated as of November 6, 2020, (as at any time amended, the "Loan Agreement") by and among the Company, such affiliates and Lender.

Lender is willing to make loans and other financial accommodations to the Company and such affiliates from time to time pursuant to the terms of the Loan Agreement provided that the Company executes this Agreement.

NOW, THEREFORE, for Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby agrees with Lender as follows:

1. **Definitions.** Capitalized terms used herein (including those used in the Recitals hereto) shall have the meanings ascribed to them in the Loan Agreement. In addition, the following terms shall have the meanings set forth below:

"Full Payment" shall mean full and final payment of the Obligations and termination of the Commitments.

"Trademarks" shall mean the entire right, title and interest of the Company in and to the trademarks and service marks and the trademark and service mark applications listed on Exhibit A hereto (as the same may be amended from time to time); all continuations, renewals and extensions thereof; the goodwill of the Company's business associated therewith; all proceeds thereof; the right to sue for past, present and future infringements thereof; and all rights corresponding thereto throughout the world.

"UCC" shall mean the Uniform Commercial Code as in effect from time to time in the State of Georgia.

2. **Grant of Security Interest.** To secure the prompt payment and performance of all of the Obligations, the Company hereby grants, assigns and pledges to Lender a continuing security interest in and Lien upon the Trademarks.

3. **Representations, Warranties and Agreements.** The Company represents, warrants and agrees that:

(a) Each Trademark is subsisting, has not been adjudged invalid or unenforceable, and is not subject to any infringement of which the Company is aware;

(b) The Company has, and will continue to have, absolute and exclusive title to each Trademark free and clear of any Liens other than Permitted Liens;

(c) The Company has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Trademarks and has made, and will continue to make, all appropriate filings with the Library of Congress, the United States Patent and Trademark Office, Canadian Intellectual Property Office, or any other appropriate filing office in order to maintain protection with respect to each Trademark;

(d) Until Full Payment has been made, the Company shall not enter into any license agreement relating to any Trademark with any Person, except non-exclusive licenses to customers, vendors, suppliers, agents or other service providers of the Company in the regular and ordinary course of the Company's business as presently conducted and for reasonable and customary compensation, and shall not become a party to any agreement with any Person that is inconsistent with the Company's obligations under this Agreement;

(e) The Company shall use its commercially reasonable efforts to detect any infringement of any Trademark and shall notify Lender in writing of any material infringement detected;

(f) The Company shall not abandon any Trademark or any pending application for a trademark without the prior written consent of Lender, unless the Company has reasonably determined that such Trademark or application for a trademark is no longer material to the conduct of its business;

(g) The Company shall promptly notify Lender of any adverse determination or material development regarding any of the Company's trademark applications; and

(h) The Company has the unqualified right to enter into and perform this Agreement.

4. Additional Trademarks. If, before Full Payment has been made, the Company obtains rights to, or becomes entitled to the benefit of any trademarks or trademark applications not listed on Exhibit A hereto, the provisions of Section 2 hereof shall automatically apply thereto, and the Company shall give to Lender prompt notice thereof in writing. Furthermore, the Company irrevocably authorizes and empowers Lender to modify this Agreement at any time by amending Exhibit A to include any trademarks or applications for trademarks which the Company gains ownership or control of after the date hereof.

5. Lender's Rights and Remedies. At any time that (i) an Event of Default exists, (ii) any representation or warranty set forth in Section 3 becomes false or (iii) any covenant set forth in Section 3 is not observed by the Company (collectively, the "Triggering Events"), Lender may, at its option, take any or all of the following actions:

(a) Lender may exercise any of its rights or remedies under the Loan Agreement or the other Loan Documents.

(b) Lender may sell, assign, transfer, pledge, encumber or otherwise dispose of any or all of the Trademarks.

(c) Lender may enforce the Trademarks and any license relating to the Trademarks. If Lender shall commence any action for such enforcement, the Company shall, at the request of

Lender, do any lawful acts and execute any proper documents requested by Lender in aid of such enforcement.

All of Lender's rights and remedies with respect to the Trademarks, whether established by this Agreement or any of the other Loan Documents or by applicable law, shall be cumulative and may be exercised singularly or concurrently.

6. Power of Attorney. The Company hereby makes, constitutes and appoints Lender or Lender's delegate as the Company's true and lawful attorney-in-fact, with full power to do any or all of the following at any time that a Triggering Event exists: (a) endorse the Company's name on all applications, documents, papers and instruments necessary for Lender to use or continue the maintenance or existence of any of the Trademarks; (b) grant or issue any exclusive or nonexclusive license with respect to any Trademarks to any other Person; and (c) assign, pledge, convey or otherwise transfer title in or dispose of any of the Trademarks to any other Person. The Company hereby ratifies all that Lender, in its capacity as the Company's attorney-in-fact, shall lawfully do or cause to be done by virtue of this Section 6. This power of attorney, being coupled with an interest, shall be irrevocable until Full Payment has been made.

7. Limitation of Lender's Obligations. Lender shall have no duty or obligation at any time to protect or preserve any of the Trademarks.

8. Costs and Expenses. The Company shall pay **on demand** all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Lender in the preparation of this Agreement or any related documents or incurred by Lender in connection with Lender's taking action under Sections 5 and 6 hereof, or, if any such cost or expense is paid by Lender in its sole discretion, the Company shall reimburse Lender **on demand** (and, until so paid, such amount shall be added to the principal amount of the Obligations and shall bear interest under the terms of the Loan Agreement).

9. No Waiver. No course of dealing between the Company and Lender, nor any failure by Lender to exercise, nor any delay in exercising, any right, power or privilege hereunder or under any of the other Loan Documents shall operate as a waiver of any such right, power or privilege. The partial exercise of any right, power or privilege of Lender's shall not preclude any future exercise of such right, power or privilege or the exercise of any other right, power or privilege.

10. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable, in whole or in part, in any jurisdiction, the same shall be deemed severed herefrom and shall not in any manner affect such clause or provisions in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

11. Merger and Modification. This Agreement, together with the other Loan Documents, constitutes and expresses the entire understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings, inducements or conditions, whether express or implied, oral or written. This Agreement is subject to modification only by writing signed by the parties, except as provided in Section 4 hereof.

12. Successor and Assigns; Assignment by the Company. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Lender and upon the successors and permitted assigns of the Company. The Company shall not assign its rights or delegate its rights or assign its duties hereunder without the prior written consent of Lender.

13. Notice of Acceptance. The Company hereby waives notice of Lender's acceptance hereof.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Georgia.

15. Waiver of Trial by Jury. To the fullest extent permitted by applicable law, the Company and Lender each waives the right to trial by jury in any action, suit, proceeding or counterclaim of any kind arising out of or related to this Agreement, the Trademarks.

[Signatures commence on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal on the day and year first written above.

DUNN TIRE LLC

("Company")

By: 

Name: DAVID P. SIMONS

Title: PRESIDENT

Accepted:

CADENCE BANK, N.A.

("Lender")

By: _____

Name: _____

Title: _____

Intellectual Property Security Agreement

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal on the day and year first written above.

DUNN TIRE LLC
("Company")

By: _____
Name: _____
Title: _____

Accepted:

CADENCE BANK, N.A.
("Lender")

By: Kenneth B. Butler
Name: Kenneth B. Butler
Title: Senior Vice President

Intellectual Property Security Agreement

EXHIBIT A

Trademarks

| Description of Trademark | Federal Registration Number | Country | Registration Date |
|---|-----------------------------|---------|-------------------|
| DUNN TIRE (Word Mark) | FEDTM 3727411 | US | December 22, 2009 |
| DUNN TIRE (Design) | FEDTM 3727454 | US | December 22, 2009 |
| DUNN TIRE SERVICE YOU DESERVE. PROFESSIONALS YOU TRUST. (Word Mark) | TMA926842 | CAN | January 22, 2016 |
| DUNN TIRE (Word Mark) | TMA785248 | CAN | December 17, 2010 |
| DUNN TIRE (Design) | TMA74473 | CAN | August 13, 2010 |
| DUNN TIRE (Word Mark) | TMA634230 | CAN | March 1, 2005 |

Trademark Applications

| Description of Application | Federal Serial Number | Application Date |
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