

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM836770

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
TruFoods, LLC		08/21/2023	Limited Liability Company:
RECEIVING PARTY DATA			
Name:	M.P. Cleary, Inc.		
Street Address:	360 South Main Street		
City:	Elmira		
State/Country:	NEW YORK		
Postal Code:	14904		
Entity Type:	Corporation: NEW YORK		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	2565298	PUDGIE'S	
CORRESPONDENCE DATA			
Fax Number:			
<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:	(215) 825-3125		
Email:	dnussbaum@fisherzucker.com		
Correspondent Name:	Daniel Nussbaum		
Address Line 1:	21 S. 21st Street		
Address Line 4:	Philadelphia, PENNSYLVANIA 19103		
NAME OF SUBMITTER:	Daniel Nussbaum		
SIGNATURE:	/Daniel Nussbaum/		
DATE SIGNED:	09/04/2023		
Total Attachments: 6			
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OP \$40.00 2565298

TRADEMARK ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS TRADEMARK ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is made and entered on this 21st day of August, 2023 (the "Effective Date"), by and between: (i) TruFoods, LLC (the "Assignor"); and (ii) MP Cleary, Inc. (the "Assignee").

BACKGROUND

A. Assignor is the owner of all rights, title and interest in and to the following trademark (the "Mark" or the "Proprietary Mark") registration (the "Registration") on the Principal Register of the United States Patent and Trademark Office ("USPTO"), along with any common law rights and prior registrations associated with such Mark:

MARK	REG. NUMBER	REGISTRATION DATE	INTERNATIONAL CLASS OF GOODS
PUDGIE'S	2565298	April 30, 2002	042

B. Assignor now wishes to convey and assign all of its rights, obligations, title and interest in and to the Proprietary Mark and the Registration, and Assignee wishes to acquire and assume all such rights, obligations, title and interest to the Proprietary Mark and the Registration, pursuant to the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties hereby covenant and agree as follows:

1. **Assignment and Assumption.** Assignor hereby sells, assigns, transfers and otherwise conveys to Assignee its entire right, title and interest in and to the Proprietary Mark and the Registration in the United States and all other foreign jurisdictions, together with (a) the goodwill of the business connected with and symbolized by the Proprietary Mark, (b) the right to apply for and maintain trademark registrations with the USPTO or other appropriate trademark application/registration authority in any other jurisdiction that are based in whole or in part upon the Proprietary Mark, and (c) any priority right that may arise from Assignor's first and continued use of the Proprietary Mark in commerce, to Assignee (with the same to be held and enjoyed by Assignee as fully and entirely as said interest could have been held and enjoyed by Assignor had this sale, assignment, transfer and conveyance not been made). Assignee hereby purchases, assumes and otherwise acquires all such rights, title and interest in the Proprietary Mark and Registration. The foregoing assignment and assumption will be effective immediately upon execution of this Agreement.

2. **Consideration.** In addition to Assignee's agreement to assume the rights and interest described above, Assignee shall pay Assignor a purchase price of Seventy-Five Thousand Dollars (\$75,000) upon execution of this Agreement for the rights and interest assigned herein.

3. **Acknowledgment.** Assignor agrees and acknowledges that: (i) it will not challenge, contest or otherwise attempt to affect Assignee's rights to use, register and maintain the Proprietary Mark in any manner; and (ii) Assignee may claim all dates of first use and other common law rights that Assignor ever had with respect to the Proprietary Mark.

4. Representations and Warranties of Assignor. Assignor represents and warrants to Assignee

that the statements contained in this section are true and correct as of the date hereof and do not contain any untrue statement of material fact or omit any material fact necessary to make the statements contained in this section not misleading under the circumstances under which they were made.

(a) Authority of Assignor; Enforceability. Assignor has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder. The execution, delivery, and performance of this Agreement by Assignor have been duly authorized by all necessary organizational action of Assignor, and when executed and delivered by both parties, this Agreement will constitute a legal, valid, and binding obligation of Assignor, enforceable against Assignor in accordance with its terms and conditions.

(b) No Conflicts; Consents. The execution, delivery, and performance by Assignor of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (i) violate or conflict with the certificate of incorporation, by-laws, or other organizational documents of Assignor, (ii) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule, or regulation, (iii) conflict with, or result in (with or without notice or lapse of time or both), any violation of or default under, or give rise to a right of termination, acceleration, or modification of any obligation or loss of any benefit under, any contract or other instrument to which this Agreement or of the Mark are subject, or (iv) result in the creation or imposition of any encumbrances on the Mark. No consent, approval, waiver, or authorization is required to be obtained by Assignor from any person or entity (including any governmental authority) in connection with the execution, delivery, and performance by Assignor of this Agreement, or to enable Assignee to register, own, and use the Mark.

(c) Ownership. Assignor is hereby assigning all of its right, title, and interest in and to the Mark, free and clear of liens, security interests, and other encumbrances. To Assignor's knowledge Assignor is in full compliance with all legal requirements applicable to the Mark and Assignor's ownership and use thereof.

(d) Registrations and Applications. U.S. Registration No. 2565298 listed above is a correct, current and complete list of all registrations owned by Assignor in connection with the Mark. All required fees related to the registration of the Mark have been timely paid to the USPTO, and the above listed trademark Registration has at all times been and remains in good standing. Assignor has provided Assignee with all requested true and complete copies of all documents, certificates, correspondence, and other materials related to the trademark Registration that have been requested by Assignee.

(e) Validity and Enforceability. The Mark is valid, subsisting, and enforceable in the United States. To Assignor's knowledge, no event or circumstance (including any failure to exercise adequate quality control or any assignment in gross without the accompanying goodwill) has occurred or exists that has resulted in, or would reasonably be expected to result in, the abandonment of the Mark.

(f) Non-Infringement. To Assignor's knowledge, the registration, ownership, and exercise of the Mark in connection with restaurant and carry out restaurant services does not and will not infringe or otherwise violate the intellectual property or other rights of any third party or violate any applicable regulation or law. To Assignor's knowledge, no person is currently infringing or otherwise violating Assignor's rights in the Mark.

(g) Legal Actions. To Assignor's knowledge, there are no actions (including any opposition or cancellation proceedings) settled, pending, or threatened: (i) alleging any

infringement, misappropriation, dilution, or other violation of the intellectual property rights of any third party based on the use or exploitation of the Mark; (ii) challenging the validity, enforceability, registrability, or ownership of the Mark or Assignor's rights with respect thereto, or (iii) by Assignor or any third party alleging any infringement or other violation by any third party of the Mark.

(h) Except for the representations and warranties contained in this section, Assignor has not made and makes no other express or implied representation or warranty, either oral or written, whether arising by law, course of dealing, course of performance, usage, trade, or otherwise, including with respect to the ownership, registration, validity, enforcement, or use of the Mark, all of which are expressly disclaimed.

5. Representations and Warranties of Assignee. Assignee represents and warrants to Assignor that the Assignor has the full right, power, and authority to enter into this Agreement and perform its obligations hereunder. The execution, delivery, and performance of this Agreement by Assignee have been duly authorized by all necessary organizational action of Assignee, and when executed and delivered by both parties, this Agreement will constitute a legal, valid, and binding obligation of Assignor enforceable against Assignor in accordance with its terms and conditions.

6. Indemnification.

- a. Survival. All representations, warranties, covenants, and agreements contained herein and all related rights to indemnification shall continue in full force and effect following the date hereof.
- b. Assignor shall defend, indemnify, and hold harmless Assignee, Assignee's affiliates, and their respective shareholders, directors, officers, and employees (each, a "Assignee Indemnified Party") from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, fees, costs, or expenses of whatever kind, including reasonable attorneys' fees, the cost of enforcing any right to indemnification hereunder, and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or in connection with any third-party claim, suit, action, or proceeding (each, a "Third-Party Claim") related to any actual or alleged inaccuracy in or breach or non-fulfillment of any representation, warranty, covenant, agreement, or obligation of Assignor contained in this Agreement.
- c. Assignee shall defend, indemnify, and hold harmless Assignor, Assignor's affiliates, and their respective members, managers, officers, and employees (each, a "Assignor Indemnified Party") from and against all Losses arising out of or in connection with any Third-Party Claim related to (i) any actual or alleged inaccuracy in or breach or non-fulfillment of any representation, warranty, covenant, agreement, or obligation of Assignee contained in this Agreement or any document to be delivered hereunder, and (ii) Assignee's use and ownership of the Mark after the Effective Date.
- d. An Assignee Indemnified Party or Assignor Indemnified Party ("Indemnified Party") shall promptly notify the party from whom it is seeking indemnification ("Indemnifying Party") upon becoming aware of a Third-Party Claim with respect to which the Indemnifying Party is obligated to provide indemnification under this section ("Indemnified Claim"). The Indemnifying Party shall promptly assume control of the defense and investigation of the Indemnified Claim, with counsel of its own choosing, and the Indemnified Party shall fully cooperate with the Indemnifying Party

in connection therewith, in each case at the Indemnifying Party's sole cost and expense. The Indemnified Party may participate in the defense of such Indemnified Claim, with counsel of its own choosing and at its own cost and expense. The Indemnifying Party shall not settle any Indemnified Claim on any terms or in any manner that adversely affects the rights of any Indemnified Party without Indemnified Party's prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed). If the Indemnifying Party fails or refuses to assume control of the defense of such Indemnified Claim, the Indemnified Party shall have the right, but no obligation, to defend against such Indemnified Claim, including settling such Indemnified Claim after giving notice to the Indemnifying Party, in each case in such manner and on such terms as the Indemnified Party may deem appropriate. Neither the Indemnified Party's failure to perform any obligation under this section nor any act or omission of the Indemnified Party in the defense or settlement of any Indemnified Claim shall relieve the Indemnifying Party of its obligations under this section, including with respect to any Losses, except to the extent that the Indemnifying Party can demonstrate that it has been prejudiced as a result thereof.

7. **Authorization.** Assignor authorizes the Commissioner of Trademarks of the United States, other empowered officials of the USPTO to record the transfer of any registrations and/or applications for registration associated with the Proprietary Mark and/or the Registration to Assignee as the assignee of Assignor's entire right, title and interest therein. Assignor, by and through Assignor's attorney, agrees to further execute any documents reasonably necessary to effectuate this assignment or to confirm Assignee's ownership of the Proprietary Mark.

8. **Further Assurances.** The parties shall execute and deliver all such additional documents, consents, instruments and certificates and shall take all such other actions as the other party may reasonably request in connection with the consummation of this Agreement and effecting the intent and purpose hereof.

9. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts taken together shall constitute one and the same instrument. Each counterpart may be delivered by facsimile transmission, which transmission shall be deemed delivery of an originally executed document.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

ASSIGNOR:

ASSIGNEE:

TRUFOODS, LLC

MP CLEARY, INC.

By: Robert Bagwell

By: _____
David J. Cleary, President

Print Name: ROBERT BAGWELL

Its: CFO

9. **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts taken together shall constitute one and the same instrument. Each counterpart may be delivered by facsimile transmission, which transmission shall be deemed delivery of an originally executed document.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

ASSIGNOR:

TRUFOODS, LLC

By: _____

Print Name:

Its:

ASSIGNEE:

MP CLEARY, INC.

By:  _____
David J. Cleary, President