

REC 06-01-1998



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U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

100723540

To the Honorable Commissioner of Patents and Trademarks, U.S. Department of Commerce  
The attached original documents or copy thereof.

1. Name of conveying party(ies):  
**FEDERAL EMPLOYEES' DISTRIBUTING COMPANY**  
**9300 Santa Fe Springs, Road**  
**Santa Fe Springs, CA 90670**  
☐ Individuals(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☒ Corporation-State **California**  
☐ Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:  
☐ Assignment ☐ Merger  
☒ Security Agreement ☐ Change of Name  
☐ Other \_\_\_\_\_

Execution Date: **April 22, 1998**

2. Name and address of receiving party(ies)  
Name: **BANKAMERICA BUSINESS CREDIT, INC.**  
Internal Address:  
Street Address: **55 South Lake Avenue,**  
**9th Floor**  
City: **Pasadena** State: **California** ZIP: **91101**  
☐ Individual(s) citizenship \_\_\_\_\_  
☐ Association \_\_\_\_\_  
☐ General Partnership \_\_\_\_\_  
☐ Limited Partnership \_\_\_\_\_  
☒ Corporation-State **Delaware**  
☐ Other \_\_\_\_\_

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)  
Additional name(s) & address(es) attached? ☐ Yes ☐ No

4. Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

**Electrovox (Reg. No. 743703)**

Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:  
**Mr. Sigi Hinojosa**  
Name: **Buchalter, Nemer, Fields & Younger**  
Internal Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Street Address: **601 South Figueroa Street, 24th Floor**  
City: **Los Angeles** State: **California** ZIP: **90017**

6. Total number of applications and registrations involved: 19

7. Total fee (37 CFR 3.41) ..... \$ **496.00**  
☐ Enclosed  
☒ Authorized to be charged to deposit account

8. Deposit account number:  
**20-0052**  
**743703**  
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.  
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

**MR. SIGI HINOJOSA**  
Name of Person Signing

Signature

May 5, 1998

Date

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

TRADEMARK

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05/29/1998 15:11  
01 FC:481  
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# SCHEDULE A

## Trademark Registrations:

Country/State	Mark	Reg. No.	IC	Renewal Due
United States	ELECTROVOX	743703	38	01/15/03
United States	FED-A-KOTS	921014	5	09/28/01
United States	FED-LOX	922203	5	10/19/01
United States	FED-PAC	907064	5	02/02/01
United States	FEDCAL	893968	3	07/07/00
United States	FEDCAL	1036511	2	03/30/06
United States	FEDCAL	647154	25	06/18/07
United States	FEDCAL	2142851	33	03/10/08
United States	FEDCHARGE	1406123	36	08/19/06
United States	FEDCO REPORTER	600017	16	12/28/04
United States	FEDLUBE	666187	15	08/26/98
United States	FEDRA-LAC	907063	5	02/02/01
United States	SAN MARINO	1867004	18	12/13/04
United States	SAN MARINO	825260	22	03/07/07
United States	SAN MARINO	1238508	25	05/17/03

## Pending Trademark Applications:

Country	Mark	Appl. No.	IC
United States	FEDCO	75/163601	35
United States	FEDCO PROFESSIONAL PHARMACIES	75/163609	42
United States	FEDCO PROFESSIONAL PHARMACIES	75/163610	42
United States	FEDCO SUPERSTORES MORE FOR ETC	75/163600	42

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## INTELLECTUAL PROPERTY SECURITY AGREEMENT

This **INTELLECTUAL PROPERTY SECURITY AGREEMENT** ("Agreement"), dated as of April 22, 1998, is entered into between **FEDERAL EMPLOYEES' DISTRIBUTING COMPANY**, a California nonprofit mutual benefit corporation ("Debtor") and **BANKAMERICA BUSINESS CREDIT, INC.**, a Delaware corporation ("BABC"), in light of the following:

A. Debtor and BABC are, contemporaneously herewith, entering into that certain Loan and Security Agreement ("Loan Agreement") and other instruments, documents and agreements contemplated thereby or related thereto (collectively, together with the Loan Agreement, the "Loan Documents"); and

B. Debtor is the owner of certain intellectual property, identified below, in which Debtor is granting a security interest to BABC.

NOW, THEREFORE, in consideration of the mutual premises, covenants, conditions, representations, and warranties hereinafter set forth and for other good and valuable consideration, the parties hereto mutually agree as follows:

### 1. DEFINITIONS AND CONSTRUCTION.

**1.1 Definitions.** The following terms, as used in this Agreement, have the following meanings:

"Code" means the California Uniform Commercial Code, as amended and supplemented from time to time, and any successor statute.

"Collateral" means:

(i) Each of the trademarks and rights and interest which are capable of being protected as trademarks (including trademarks, service marks, designs, logos, indicia, tradenames, corporate names, company names, business names, fictitious business names, trade styles, and other source or business identifiers, and applications pertaining thereto), which are presently, or in the future may be, owned, created, acquired, or used (whether pursuant to a license or otherwise) by Debtor, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(ii) Each of the patents and patent applications which are presently, or in the future may be issued to, or owned, acquired, or used (whether pursuant to a license or otherwise) by Debtor, in whole or in part, and all patent rights with

respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), foreign filing rights, and rights to extend such patents and patent rights;

(iii) All of Debtor's right to the trademarks and trademark registrations listed on Schedule A, attached hereto, as the same may be updated hereafter from time to time;

(iv) All of Debtor's right, title, and interest, in and to the patents and patent applications listed on Schedule B, attached hereto, as the same may be updated hereafter from time to time;

(v) All of Debtor's right, title, and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew, and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Debtor or in the name of BABC for past, present, and future infringements of the trademarks, registrations, or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill;

(vi) All of Debtor's right, title, and interest in all patentable inventions, and to file applications for patent under federal patent law or regulation of any foreign country, and to request reexamination and/or reissue of the patents, the right (without obligation) to sue or bring interference proceedings in the name of Debtor or in the name of BABC for past, present, and future infringements of the patents, and all rights (but not obligations) corresponding thereto in the United States and any foreign country;

(vii) All general intangibles relating to the foregoing; and

(viii) All proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

"Event of Default" means any "Event of Default" as defined in the Loan Agreement.

"Obligations" means all obligations, liabilities, and indebtedness of Debtor to BABC, whether direct, indirect, liquidated, or contingent, and whether arising under this Agreement, the Loan Agreement, any other of the Loan Documents, or otherwise, including all costs and expenses described in Section 10.8 hereof.

**1.2 Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and other similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any initially capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Any reference herein to any of the Loan Documents includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

## **2. GRANT OF SECURITY INTEREST.**

Debtor hereby grants to BABC a first-priority security interest in all of Debtor's right, title, and interest in and to the Collateral to secure the Obligations.

## **3. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Debtor hereby represents, warrants, and covenants that:

### **3.1 Trademarks; Service Marks; Patents.**

(i) A true and complete schedule setting forth all United States (federal and state) and foreign trademark and service mark registrations owned or controlled by Debtor or licensed to Debtor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule A;

(ii) A true and complete schedule setting forth all United States and foreign patent and patent applications owned or controlled by Debtor or licensed to Debtor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule B;

**3.2 Validity; Enforceability.** Each of the patents, service marks, and trademarks is valid and enforceable, and Debtor is not presently aware of any past, present, or prospective claim by any third party that any of the patents, service marks, or trademarks are invalid or unenforceable, or that the use of any patents, service marks, or trademarks violates the rights of any third person, or of any basis for any such claims;

**3.3 Title.** Debtor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the patents, patent applications, service marks, service mark registrations, trademarks, and trademark registrations, free and clear of any liens, charges, and encumbrances, including pledges, assignments, licenses (except as set forth on Schedules A or B), shop rights, and covenants by Debtor not to sue third persons;

### **3.4 [Intentionally Deleted]**

**3.5 Quality.** Debtor has used and will continue to use consistent standards of high quality (which may be consistent with Debtor's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the service marks and trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the service marks and trademarks.

**3.6 Perfection of Security Interest.** Except for the filing of a financing statement with the Secretary of State of California and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by Debtor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by Debtor or for the perfection of or the exercise by BABC of its rights hereunder to the Collateral in the United States.

#### **4. AFTER-ACQUIRED PATENT, SERVICE MARK OR TRADEMARK RIGHTS.**

If Debtor shall obtain rights to any new service marks, trademarks, 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, then: (a) the provisions of this Agreement shall automatically apply thereto; (b) Debtor shall give prompt notice in writing to BABC with respect to any such new service marks, trademarks, or patents that are registered with the United States Patent and Trademark Office, and shall provide BABC with an amended Schedule A or Schedule B, as the case may be; (c) BABC is hereby authorized to have an amendment to this Agreement recorded at the United States Patent and Trademark Office to reflect BABC's security interest in such new service marks, trademarks, or patents; and (d) all representations, warranties, and covenants of Debtor hereunder shall be deemed to be remade and restated with respect to all then existing Collateral. Debtor shall bear any expenses incurred in connection with future patent applications or service mark or trademark registrations.

#### **5. LITIGATION AND PROCEEDINGS.**

Debtor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other action for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Debtor shall provide to BABC any information with respect thereto requested by BABC. BABC shall provide at Debtor's expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following Debtor's becoming aware thereof, Debtor shall notify BABC of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state, or foreign court regarding Debtor's claim of ownership in any of the patents, service

marks or trademarks, its right to apply for the same, or its right to keep and maintain such patent, service mark or trademark rights.

#### **6. POWER OF ATTORNEY.**

Debtor grants BABC power of attorney, having the full authority, and in the place of Debtor and in the name of Debtor, from time to time in BABC's discretion following an Event of Default, to take any action and to execute any instrument which BABC may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of this Agreement: to endorse Debtor's name on all applications, documents, papers, and instruments necessary for BABC to use or maintain the Collateral; to ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral; to file any claims or take any action or institute any proceedings that BABC may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce BABC's rights with respect to any of the Collateral and to assign, pledge, convey, or otherwise transfer title in or dispose of the Collateral to any person.

#### **7. RIGHT TO INSPECT.**

Debtor grants to BABC and its employees and agents the right to visit Debtor's plants and facilities which manufacture, inspect, or store products sold under any of the patents or trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

#### **8. SPECIFIC REMEDIES.**

Upon the occurrence of any Event of Default, BABC shall have, in addition to, other rights given by law or in this Agreement, the Loan Agreement, or in any other Loan Document, all of the rights and remedies with respect to the Collateral of a secured party under the Code, including the right to notify licensees to make royalty payments on license agreements directly to BABC.

#### **9. GOVERNING LAW.**

This Agreement shall be deemed to have been made in the State of California and shall be governed by and interpreted in accordance with the laws of such state, except that no doctrine of choice of law shall be used to apply the laws of any other state or jurisdiction.

**9.1 Consent to Jurisdiction and Venue; Service of Process.** The Debtor agrees that, in addition to any other courts that may have jurisdiction under applicable laws, any action or proceeding to enforce or arising out of this Agreement or any of the other Loan Documents may be commenced in the Superior Court of the State of California for

Los Angeles County, or in the United States District Court for the Central District of California, and the Debtor consents and submits in advance to such jurisdiction and agrees that venue will be proper in such courts on any such matter. The choice of forum set forth in this section shall not be deemed to preclude the enforcement of any judgment obtained in such forum, or the taking of any action under this Agreement to enforce the same, in any appropriate jurisdiction.

**9.2 WAIVER OF JURY TRIAL. THE DEBTOR HEREBY WAIVES TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, THE OBLIGATIONS OR THE COLLATERAL, OR ANY INSTRUMENT OR DOCUMENT DELIVERED PURSUANT HERETO OR THERETO, OR ANY OTHER CLAIM OR DISPUTE HOWSOEVER ARISING, BETWEEN THE DEBTOR AND BABC. THE DEBTOR CONFIRMS THAT THE FOREGOING WAIVER IS INFORMED AND FREELY MADE.**

**9.3 ARBITRATION; REFERENCE PROCEEDING.**

**(a) ANY CONTROVERSY OR CLAIM BETWEEN OR AMONG THE PARTIES, INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENTS OR INSTRUMENTS RELATING HERETO OR DELIVERED IN CONNECTION HEREWITH AND ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, SHALL AT THE REQUEST OF ANY PARTY BE DETERMINED BY ARBITRATION. THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE UNITED STATES ARBITRATION ACT (TITLE 9, U.S. CODE), NOTWITHSTANDING ANY CHOICE OF LAW PROVISION IN THIS AGREEMENT, AND UNDER THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THE ARBITRATION SHALL BE CONDUCTED WITHIN LOS ANGELES COUNTY, CALIFORNIA. THE ARBITRATOR(S) SHALL GIVE EFFECT TO STATUTES OF LIMITATION IN DETERMINING ANY CLAIM. ANY CONTROVERSY CONCERNING WHETHER AN ISSUE IS ARBITRABLE SHALL BE DETERMINED BY THE ARBITRATOR(S). JUDGMENT UPON THE ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THE INSTITUTION AND MAINTENANCE OF AN ACTION FOR JUDICIAL RELIEF OR PURSUIT OF A PROVISIONAL OR ANCILLARY REMEDY SHALL NOT CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY, INCLUDING THE PLAINTIFF, TO SUBMIT THE CONTROVERSY OR CLAIM TO ARBITRATION IF ANY OTHER PARTY CONTESTS SUCH ACTION FOR JUDICIAL RELIEF.**

**(b) Notwithstanding the provisions of subparagraph (a), no controversy or claim shall be submitted to arbitration without the consent of all parties if, at the time of the proposed submission, such controversy or claim arises from or relates to an obligation to BABC which is secured by real property collateral located in California.**



If all parties do not consent to submission of such a controversy or claim to arbitration, the controversy or claim shall be determined as provided in subparagraph (c).

(c) A controversy or claim which is not submitted to arbitration as provided and limited in subparagraphs (a) and (b) shall, at the request of any party, be determined by a reference in accordance with California Code of Civil Procedure Section 638 et seq. If such an election is made, the parties shall designate to the court a referee or referees selected under the auspices of the AAA in the same manner as arbitrators are selected in AAA--sponsored proceedings. The presiding referee of the panel, or the referee if there is a single referee, shall be an active attorney or retired judge. Judgment upon the award rendered by such referee or referees shall be entered in the court in which such proceeding was commenced in accordance with California Code of Civil Procedure Sections 644 and 645.

(d) No provision of this paragraph shall limit the right of any party to this Agreement to exercise self-help remedies such as setoff, to foreclose against or sell any real or personal property collateral or security, or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, after, or during the pendency of any arbitration or other proceeding. The exercise of a remedy does not waive the right of either party to resort to arbitration or reference. At BABC's option, foreclosure under a deed of trust or mortgage may be accomplished either by exercise of power of sale under the deed of trust or mortgage or by judicial foreclosure.

## **10. GENERAL PROVISIONS.**

**10.1 Effectiveness.** This Agreement shall be binding and deemed effective when executed by Debtor and BABC.

**10.2 Binding Effect; Assignment.** The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors, and assigns of the parties hereto; provided, however, that no interest herein may be assigned by the Debtor without the prior written consent of BABC. The rights and benefits of BABC hereunder shall, if BABC so agrees, inure to any assignee of the Obligations or any part thereof.

**10.3 Cumulative Remedies; No Prior Recourse to Collateral.** The enumeration herein of BABC's rights and remedies is not intended to be exclusive, and such rights and remedies are in addition to and not by way of limitation of any other rights or remedies that the Lender may have under the UCC or other applicable law. BABC shall have the right, in its sole discretion, to determine which rights and remedies are to be exercised and in which order. The exercise of one right or remedy shall not preclude the exercise of any others, all of which shall be cumulative. BABC may, without limitation, proceed directly against the Debtor to collect the Obligations without any prior recourse to the Collateral.

**10.4 No Implied Waivers.** No act, failure, or delay by BABC shall constitute a waiver of any of its rights and remedies. No single or partial waiver by BABC of any provision of this Agreement or any other Loan Document, or of breach or default hereunder or thereunder, or of any right or remedy which BABC may have, shall operate as a waiver of any other provision, breach, default, right, or remedy or of the same provision, breach, default, right, or remedy on a future occasion. No waiver by BABC shall affect its rights to require strict performance of this Agreement.

**10.5 Captions.** The captions contained in this Agreement are for convenience only, are without substantive meaning and should not be construed to modify, enlarge, or restrict any provision.

**10.6 Ambiguities.** To the extent permitted by applicable law, neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against either Debtor or BABC, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by each of Debtor, BABC and their respective counsel. To the extent permitted by applicable law, in case of any ambiguity or uncertainty, this Agreement shall be construed and interpreted according to the ordinary meaning of the words used to accomplish fairly the purposes and intentions of all parties hereto.

**10.7 Severability.** If any provision of this Agreement shall be prohibited or invalid, under applicable law, it shall be ineffective only to such extent, without invalidating the remainder of this Agreement.

**10.8 [Intentionally Deleted].**

**10.9 Modification.** This Agreement is intended by the Debtor and BABC to be the final, complete, and exclusive expression of the agreement between them. This Agreement supersedes any and all prior oral or written agreements relating to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no oral agreements between the parties. No modification, rescission, waiver, release, or amendment of any provision of this Agreement shall be made, except by a written agreement signed by the Debtor and a duly authorized officer of BABC.

**10.10 Counterparts.** This Agreement may be executed in any number of counterparts, and by BABC and the Debtor in separate counterparts, each of which shall be an original, but all of which shall together constitute one and the same agreement.

**10.11 Notices.** Except as otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing, shall be delivered pursuant to Section 15.11 of the Loan Agreement.

**10.12 Termination By BABC.** After termination of the Loan Agreement and when BABC has received payment and performance, in full, of all Obligations, BABC shall execute and deliver to Debtor a termination of all of the security interests granted by Debtor hereunder.

**10.13 Integration.** This Agreement, together with the other Loan Documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

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

**BANKAMERICA BUSINESS CREDIT, INC.,**  
a Delaware corporation

By: 

Title: VICE PRESIDENT

**FEDERAL EMPLOYEES' DISTRIBUTING  
COMPANY, a California corporation**

By: 

Title: PRES and CEO

# SCHEDULE A

## Trademark Registrations:

Country/State	Mark	Reg. No.	IC	Renewal Due
California	FEDCAL	42769	3	08/27/02
California	FEDCAL	42876	5	10/04/02
California	FEDCAL	42770	1	08/27/02
California	FEDCAL	42827	2	09/18/02
California	FEDCO	40013	42	02/07/02
California	FEDCO	40012	37	02/07/02
California	FEDCO PROFESSIONAL PHARMACIES	46953	42	12/09/06
California	FEDCO PROFESSIONAL PHARMACIES	46954	42	12/09/06
California	FEDCO SUPERSTORES MORE FOR ETC	46955	42	12/09/06
California	TOSARI	42917	18	10/31/02
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United States	FEDCO SUPERSTORES MORE FOR ETC	75/163600	42

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**SCHEDULE B**

**None.**

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**TRADEMARK**  
**REEL: 1733 FRAME: 0422**

# SCHEDULE A

## Trademark Registrations:

Country/State	Mark	Reg. No.	IC	Renewal Due
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