

FORM PTO 1594

09-25-1998

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE



100838904

COVER SHEET
S ONLY

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying Party(ies):

Fox Photo, Inc.

9-18-98

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

3. Nature of conveyance:

- Assignment
- Security Agreement **27**
- Other
- Merger
- Change of name

Execution Date: September 1, 1998

2. Name and address of receiving party(ies):

Name: First Union National Bank

Internal Address: One First Union Center,

Street Address: 301 South College Street

City: Charlotte

State: NC

RECEIVED
1998 SEP 18 PM 5:06
OPR/INVOICE

Zip: 28288-0737

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation State
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached Yes No (Designations must be separate from assignment)

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

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

A. Trademark Application No.(s)

75/157490

B. Trademark Registration No.(s)

1,278,354

(SEE SCHEDULE I FOR ADDITIONAL APPLICATIONS/REGISTRATIONS)

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Michael D. Hobbs, Jr., Esq.

Internal Address: Troutman Sanders LLP

600 Peachtree Street NE
Suite 5200

Street Address:

City: Atlanta

State: GA Zip: 30308

6. Total number of applications and registrations involved: 21

7. Total fee (37 CFR 3.41) \$ 540.00

Enclosed

Authorized to be charged to deposit account

(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.

Michael D. Hobbs, Jr.

Name of Person Signing

Signature

September 17, 1998

Date

09/23/1998 TTOM11 00000010 1278354

01 FC:481 40.00 OP

02 FC:482 500.00 OP

Total number of pages comprising cover sheet: 13

OMB No. 0651-0011 (exp. 4/94)

DO NOT DETACH THIS PORTION

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

Schedule I

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>
PHOTO FINISH & Design	1,278,354	May 15, 1984
FOX	1,264,504	January 17, 1984
FOX	1,333,217	April 30, 1985
FOX & Design	991,007	August 13, 1974
FOX & Design	1,209,074	September 14, 1982
FOX (Design Only)	1,162,569	July 28, 1981
THE FOX CO.	536,960	January 23, 1951
THE FOX CO.	222,662	January 4, 1927
FOX PHOTO	1,141,919	November 25, 1980
FOX-TONE	163,773	January 30, 1923
QUICK-AS-A-FOX	1,142,126	December 2, 1980
FOX PHOTO	1,101,307	September 5, 1978
FOX PHOTO	2,042,359	March 4, 1997
FOX PHOTO	2,092,589	September 2, 1997
FOX PHOTO EXPRESS & Design	2,040,540	February 25, 1997
FOX PRO COLOR & Design	832,719	July 25, 1967
FOX PRO LAB	1,296,968	September 18, 1984
FOX-TONE (stylized)	163,773	January 30, 1923

<u>Pending Mark</u>	<u>Serial No.</u>	<u>Filing Date</u>
FRAMECARD	75/157490	August 29, 1996
FRAMECARD	75/157491	August 29, 1996
IMAGINE WHAT A PICTURE CAN BE	75/199465	November 18, 1996

CONDITIONAL ASSIGNMENT AND
TRADEMARK SECURITY AGREEMENT

THIS CONDITIONAL ASSIGNMENT AND TRADEMARK SECURITY AGREEMENT (the "Agreement"), dated as of September 1, 1998, between FOX PHOTO, INC., a Delaware corporation ("Grantor"); and FIRST UNION NATIONAL BANK, as administrative agent under the "Credit Agreement" as defined below (in such capacity, the "Administrative Agent").

W I T N E S S E T H:

WHEREAS, Grantor owns the trademarks, trademark applications, service marks and service mark applications listed on Schedule 1 annexed hereto.

WHEREAS, Grantor and certain affiliates of Grantor (collectively, the "Borrowers"), the lenders from time to time party thereto (the "Lenders"), First Union National Bank, as issuing lender (the "Issuing Lender") and swingline lender (the "Swingline Lender"), and the Administrative Agent are parties to that certain Credit Agreement, dated as of September 1, 1998 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), pursuant to which, among other things, the Issuing Lender, the Swingline Lender and the Lenders will make available to the Borrowers revolving credit loans (the "Revolving Credit Loans"), term loans (the "Term Loans") and swingline loans (the "Swingline Loans" and, together with the Revolving Credit Loans and the Term Loans, the "Loans"); and

WHEREAS, the Issuing Lender, the Swingline Lender, the Lenders and the Administrative Agent have required, as a condition to their entry into the Credit Agreement and the making of the Loans and the other extensions of credit pursuant to the terms thereof that Grantor and the certain of its affiliates (collectively, the "Guarantors") execute and deliver to the Administrative Agent that certain Master Guaranty, dated as of September 1, 1998 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Guaranty"); and

WHEREAS, the Issuing Lender, the Swingline Lender, the Lenders and the Administrative Agent have required, as a further condition to their entry into the Credit Agreement and the making of the Loans and the other extensions of credit pursuant to the terms thereof, that Grantor execute and deliver to the Administrative Agent this Assignment to secure the obligations of the Grantor under the Credit Agreement and the Guaranty;

NOW, THEREFORE, in consideration of the premises, the terms and conditions herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, it is hereby agreed as follows:

1. Definitions. Capitalized terms used and not otherwise defined herein have the

meanings set forth in the Credit Agreement.

2. Grant of Security Interest

(a) Grantor hereby grants to the Administrative Agent, its successors and assigns, a continuing security interest in all of Grantor's right, title, and interest in the following (the "Trademark Collateral"), whether now owned or hereafter acquired or arising, in order to secure the due and punctual payment and performance of all the Secured Obligations:

(i) All "Trademarks" (as defined below), whether now owned or hereafter arising or acquired by Grantor, including each trademark identified on Schedule I hereto. For purposes of this Agreement, "Trademarks" shall mean all trade names, trademarks, service marks and logos (registered and unregistered) and state, federal and foreign trademark and service mark registrations and state, federal and foreign registration applications (in use and intent to use) and all renewals and divisions thereof, all income, royalties, damages and payments now or hereafter due and/or payable with respect thereto, the right to recover for all past, present and future infringements thereof, all other rights of any kind whatsoever accruing thereunder or pertaining thereto, all rights corresponding thereto throughout the world, together, in each case, with the product lines and goodwill of the business connected with the use of, and symbolized by, each such Trademark and all proceeds of the foregoing; and

(ii) All agreements providing for the grant of any right in or to any Trademark (whether Grantor is the licensee or the licensor thereunder) including but not limited to those agreements on Schedule II hereto and all proceeds of the foregoing (the "Trademark Licenses"); provided that the Trademark Licenses shall not include Grantor's interest in any such agreement that, by its terms, cannot be assigned after the use by Grantor of its reasonable best efforts to obtain consent to such assignment.

(b) This security interest is granted in conjunction with the security interest granted to the Administrative Agent under that certain Master Security Agreement dated as of the date hereof (the "Security Agreement"), executed by each of the Guarantors in favor of the Administrative Agent. The rights and remedies of the Administrative Agent with respect to the security interest granted hereby are in addition to those set forth in the Security Agreement, and those which are now or hereafter available to the Administrative Agent as a matter of law or equity. Each right, power and remedy of the Administrative Agent provided for herein or in the Security Agreement, or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power, or remedy provided for herein. The exercise by the Administrative Agent of any one or more of the rights, powers or remedies provided for in this Agreement or in the Security Agreement or now or hereafter existing at law or in equity shall not preclude the simultaneous or later exercise by the Administrative Agent of any or all other rights, powers or remedies.

3. Secured Obligations. The collateral assignment contained herein shall secure the

due and punctual payment of (i) the Obligations, as defined in the Credit Agreement, and (ii) the Guaranteed Obligations, as defined in the Guaranty (collectively, the "Secured Obligations").

4. Modification of Agreement

This Agreement may not be changed, waived or terminated except in accordance with the amendment provisions of the Credit Agreement. Notwithstanding the foregoing, Grantor authorizes the Administrative Agent, upon notice to Grantor, to modify this Agreement in the name of and on behalf of Grantor without obtaining Grantor's signature to such modification, to the extent that such modification constitutes an amendment of Schedule I to add any right, title or interest in any Trademark owned or subsequently acquired by Grantor.

5. Representations and Warranties

(a) Schedule I hereto contains a true and accurate list of all Grantor's Trademarks and Trademark applications.

(b) Grantor is the sole owner of the Trademarks and its interest in the Trademark Licenses, free and clear of all liens, claims and encumbrances, other than the lien created by the Security Agreement and this Agreement; the records of the United States Patent and Trademark Office currently reflect that Grantor is the owner of all Trademark registrations and applications; and none of the Trademark Collateral has been licensed by Grantor to any third party, except for the Trademark Licenses listed on Schedule II.

(c) To the best of Grantor's knowledge, each Trademark is valid, subsisting, unexpired and enforceable, and Grantor has used and continues to use the appropriate statutory notice of registration in connection with its use of all federally registered Trademarks.

(d) No holding, decision or judgment has been rendered in any action or proceeding limiting, canceling or questioning the validity of Grantor's rights in any Trademark and no such action or proceeding is pending or, to the best of Grantor's knowledge, threatened. To the best of Grantor's knowledge, there is no subsisting breach or default under any Trademark License.

(e) To the best of Grantor's knowledge, (i) the conduct of Grantor's business does not infringe upon any trademark or other intellectual property right owned or controlled by a third party and (ii) except as previously disclosed in writing to the Administrative Agent, no third party is infringing upon any of the Trademark Collateral.

6. Covenants of Grantor

(a) Except for Trademarks which are no longer in use in connection with its business, Grantor will not do any act or omit to do any act (and not permit any licensees or sublicensees of Grantor to do any act) whereby any Trademark of Grantor will become

abandoned, invalidated or unenforceable, and Grantor shall diligently pursue each Trademark application unless it shall reasonably determine that a registration is not likely to issue or the costs associated with such registration process will not be commercially justified by the sales of the related product, and shall maintain each Trademark registration in full force and effect. In the event that any Trademark owned by, or, to the extent permitted by the related Trademark License, licensed to, Grantor, is infringed or diluted by a third party, Grantor shall promptly take all reasonable actions to stop such infringement or dilution and protect its exclusive rights in such Trademark.

(b) Grantor agrees to promptly report to the Administrative Agent on an annual basis and, in the event of a continuing Event of Default, on a quarterly basis (i) the filing of any application for registration of any Trademark (whether such application is filed by Grantor or through any agent, employee, licensee or designee) and (ii) the registration of any Trademark. Grantor agrees to execute and deliver to the Administrative Agent an amendment to this Agreement covering such new applications or registrations for Trademarks in form appropriate for recordation in the United States Patent and Trademark Office.

(c) Without the prior written consent of the Administrative Agent, Grantor shall not (i) sell, assign (by operation of law or otherwise) or otherwise dispose of any of the Trademark Collateral or any rights therein (except as contemplated by clause (c)(iii)), (ii) grant any lien or security interest in any of the Trademark Collateral (except for the lien created by this Agreement and the Security Agreement, or (iii) license any of the Trademark Collateral to any third party, except that, unless an Event of Default has occurred and is continuing, Grantor can grant non-exclusive licenses of any of the Trademarks to a third party in the ordinary course of business; provided that the Administrative Agent shall receive a security interest in any fees, royalties and payments with respect to all and any such licenses.

7. Grant of License

(a) Grantor hereby grants to the Administrative Agent a non-exclusive, royalty-free right and license, with rights of sublicense, in and to the Trademark Collateral, and a sublicense in and to Grantor's rights under Trademark Licenses to the extent permitted under the terms of such Trademark Licenses, to the extent permitted under the terms thereof, to use such Trademark Collateral or operate under such Trademark Licenses, effective upon the occurrence of an Event of Default, in connection with the enforcement of the Administrative Agent's rights and remedies hereunder and under the Security Agreement. Without limiting the generality of the foregoing, the Administrative Agent shall have the right, pursuant to the foregoing license and sublicense, to use the Trademark Collateral in connection with the foreclosure upon any of the Collateral granted hereunder or under the Security Agreement.

(b) The license granted pursuant to Section 5(a) is conditional upon the requirement that the goods sold and services rendered by the Administrative Agent under the Trademark Collateral shall be of a nature and quality substantially consistent with those theretofore offered under such Trademarks by Grantor.

8. Remedies Upon Default: Power of Attorney

(a) Upon the occurrence and continuance of an Event of Default under the Credit Agreement, and subject to the notice provisions therein, the Trademarks shall be assigned, transferred, set over and delivered to the Administrative Agent or its designee, and Grantor hereby irrevocably constitutes and appoints the Administrative Agent and any officer, agent or employee thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantor and in the name of Grantor or the Administrative Agent's own name or the name of the Administrative Agent's designee, upon the occurrence of an Event of Default, (i) to complete, date, execute and file, or cause to be filed, the Assignment attached hereto as Exhibit A and incorporated hereby by reference (the "Assignment") in the United States Patent and Trademark Office and in all other applicable offices, and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purpose of the Assignment, (ii) to collect proceeds of any Trademark Collateral, (iii) in any transaction authorized by the Credit Agreement, convey any Trademark Collateral to any purchaser thereof, payment or discharge of taxes or liens levied or placed upon or threatened against any Trademark Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Administrative Agent in its sole discretion, and such payments made by the Administrative Agent to become the obligations of Grantor to the Administrative Agent, due and payable immediately without demand. The Administrative Agent's authority hereunder shall include, without limitation, the authority to endorse and negotiate any checks or instruments constituting proceeds of any Trademark Collateral in the name of Grantor, execute and give receipt for any certificate of ownership or any document (constituting Trademark Collateral), sign Grantor's name on all financing statements or any other documents necessary or appropriate by the Administrative Agent to preserve, protect or perfect the security interest in any Trademark Collateral (to the extent permitted by Applicable Law) and to file the same, prepare, file and sign Grantor's name on any notice of Lien, and prepare, file and sign Grantor's name on a proof of claim in bankruptcy or similar document against any customer of Grantor with respect to any claim of Grantor comprising part of any Trademark Collateral, and to take any other actions arising from or incident to the powers granted to the Administrative Agent in the Security Agreement.

(b) Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue of this power of attorney. This power of attorney is a power coupled with an interest and shall be irrevocable.

(c) In addition to the foregoing, upon the occurrence of a Default or an Event of Default, the Administrative Agent shall have all rights and remedies of a secured party under the applicable Uniform Commercial Code and as provided in the Security Agreement and as otherwise available at law and equity.

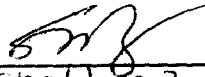
9. Termination of Agreement


This Agreement shall terminate upon the latter to occur of (a) termination of the Credit Agreement, the Guaranty and the other Loan Documents, and (b) the payment in full of all Secured Obligations then outstanding under the Credit Agreement, the Guaranty and the other Loan Documents. At such time, the Administrative Agent shall execute and deliver such instruments and documents as are necessary to terminate the security interest granted hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

("Grantor")

FOX PHOTO, INC.

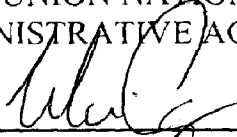
By: 
Name: Sheldon Zimmerman
Title: CFO

Attest: 
Name: Stephen LaMustra
Secretary

(CORPORATE SEAL)

("Administrative Agent")

FIRST UNION NATIONAL BANK, AS
ADMINISTRATIVE AGENT

By: 
Name: MORRIS G. CAMP, JR.
Title: VP

Schedule II

None.

EXHIBIT A

ASSIGNMENT

THIS ASSIGNMENT dated the ___ day of _____, 199_/200_, from _____, a _____ corporation (the "Assignor"), to First Union National Bank, as Administrative Agent (the "Assignee"), recites and provides:

WHEREAS, Assignor is the owner of certain trademarks and service marks; and

WHEREAS, Assignee desires to obtain, for the benefit of the Issuing Lender, the Swingline Lender and Lenders, each as defined in that certain Credit Agreement dated as of September __, 1998, among the borrowers identified therein, the Issuing Lender, the Swingline Lender, the Lenders and the Assignee, all of the Assignor's right, title and interest in all such trademarks and service marks.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor hereby transfers, assigns, sets over and delivers to Assignee, its successors and assigns, the entire right, title and interest of Assignor in and to the trademarks and service marks and the registrations thereof and applications therefor listed in Schedule 1 hereto, including without limitation all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), and the right to sue for past, present and future infringements (collectively, the "Marks"), together with the goodwill of the business symbolized by the Marks and the assets of the Assignor associated with such business.

Assignor further agrees to execute such further instruments and documents and perform such further acts as Assignee may deem necessary to secure to Assignee the rights herein conveyed.

By: _____

Name:

Title:

Attest: _____

Name:

Secretary

(CORPORATE SEAL)

Schedule 1

MARKS

TROUTMAN SANDERS LLP

A T T O R N E Y S A T L A W
A LIMITED LIABILITY PARTNERSHIP

NATIONSBANK PLAZA
600 PEACHTREE STREET, N.E. - SUITE 5200
ATLANTA, GEORGIA 30308-2216
TELEPHONE: 404-885-3000
FACSIMILE: 404-885-3995
INTERNET: michael.hobbs@troutmansanders.com

Michael D. Hobbs, Jr.

404-885-3330

September 17, 1998

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

Re: Fox Photo, Inc./First Union National Bank
Our Reference: 22270.95168

Honorable Sir:

Enclosed please find the following documents for recordation:

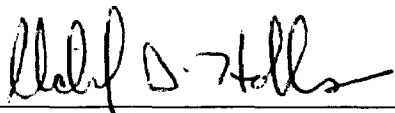
1. Recordation cover sheet dated September 17, 1998;
2. Conditional Assignment and Trademark Security Agreement between Fox Photo, Inc. and First Union National Bank;
3. This firm's check in the amount of \$540.00

If any additional fees are deemed to be payable, please charge our Deposit Account No. 20-1507.

Thank you for your assistance in this matter. If you have any questions, please contact the undersigned at (404) 885-3330.

Respectfully submitted,

TROUTMAN SANDERS LLP

By: 
Michael D. Hobbs, Jr.

/pak
Enclosures

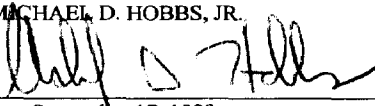
cc: Matthew F. Roberts, Esq.

CERTIFICATE OF EXPRESS MAIL UNDER 37 CFR 1.10

Express Mail Mailing Label No.: EM569822954US
Date of Deposit: September 17, 1998

I hereby certify that this paper is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Patents and Trademarks, Box Assignments, Washington, D.C. 20231.

MICHAEL D. HOBBS, JR.


Date of Signature: September 17, 1998

0315191.01

RECORDED: 09/18/1998

TRADEMARK
REEL: 1791 FRAME: 0122