

RECOP

01-26-1999

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab settings



100950411

original documents or copy thereof.

1. Name of conveying party(ies)

Veva Optique, Inc.
1540 Route 22 West
Somerville, NJ 08876



01-11-1999

U.S. Patent & TMO/TM Mail Rpt Dt: 57

- Individual(s)
- General Partnership
- Corporation-State New Jersey
- Other

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date December 23, 1998

2. Name and address of receiving party(ies)

Name: PNC BANK, National Association

Internal Address: c/o PNC Business Credit
8th Floor

Street Address: Two Tower Center

City: E. Brunswick State: NJ ZIP: 08816

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

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)

75,470,686
75,470,021

B. Trademark Registration No.(s)

1,764,095	2,122,079	1,819,779
1,482,259	1,734,451	1,189,827
1,772,248	1,522,493	1,741,022
	1,817,362	1,190,515

Additional numbers attached? Yes No

01/25/1999 SBURNS 00000021 200052 75470686

01 FC:481 49.00 CH
02 FC:482 300.00 CH

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

Name: PNC Bank, National Association

Internal Address: c/o PNC Business Credit
8th Floor

Attn: Josephine Griffin

Street Address: Two Tower Center

City: E. Brunswick State: NJ ZIP: 08816

6. Total number of applications and registrations involved: 13

7. Total fee (37 CFR 3.41).....\$ 340.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

20-0052

(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.

Christine E. Wilson
Name of Person Signing

Christine E. Wilson
Signature

1/7/99
Date

Total number of pages including cover sheet, attachments, and document: 1

TRADEMARK AND TRADENAME
SECURITY AGREEMENT AND MORTGAGE

THIS TRADEMARK AND TRADENAME SECURITY AGREEMENT AND MORTGAGE (the "Security Agreement") is made as of this 23 day of December, 1998 by Viva Optique, Inc., a New Jersey corporation with its principal place of business at 1340 Route 22 West, Somerville, NJ 08875 (collectively; the "Grantor") in favor of PNC BANK, National Association having an office located at Two Tower Center, East Brunswick, NJ 08816 (the "Lender").

WHEREAS, the Grantor is the owner and holder of the Trademarks listed on Schedule A annexed hereto and made a part hereof, together with all of the goodwill of the business symbolized by each of the Trademarks; and

WHEREAS, the Grantor and the Lender are about to enter into a certain Amended and Restated Revolving Credit Loan and Security Agreement of even date herewith (said Agreement, as it may hereafter be amended, supplemented, restated or otherwise modified from time to time being the "Loan Agreement") (any capitalized terms used, but not specifically defined herein shall have the meaning provided for such terms in the Loan Agreement); and

WHEREAS, to induce the Lender to enter into the Loan Agreement and to grant the loans, advances and extensions of credit to the Grantor in accordance with the Loan Agreement, the Grantor has offered to execute and deliver this Security Agreement to the Lender, granting and conveying to the Lender a security interest, first in priority, upon the Collateral (as such term is hereinafter defined);

NOW, THEREFORE, in consideration of the foregoing, in consideration of the premises set forth in the Loan Agreement and in order to induce the Lender to grant the loans, advances and extensions of credit to the Grantor in accordance with the Loan Agreement, the Grantor hereby agrees with the Lender for its benefit as follows:

1. Certain Defined Terms. As used in this Security Agreement, unless the context otherwise requires:

(a) "Collateral": Shall mean, collectively and individually--

(i) each of the Trademarks listed on Schedule A annexed hereto and made a part hereof and the goodwill of the business symbolized by each of those Trademarks;

(ii) each of the Licenses;

(iii) all accounts, contract rights and general intangibles of the Grantor arising under or relating to the Licenses, whether now existing or hereafter arising, including without limitation, (1) all moneys due and to become due under any License, (2) any damages arising out of or for breach or default in respect of any such License, (3) all other amounts from time to time paid or payable under or in connection with any such License, and (4) the right of the Grantor to terminate any such License or to perform and to exercise all remedies thereunder;

(iv) any claims by the Grantor against third parties, and all proceeds of suits, for infringement of the Trademarks, and the rights to sue for past, present and future infringements and all rights corresponding thereto in the United States; and

(v) as to all of the foregoing (i) through (iv) inclusive, any and all cash proceeds, non-cash proceeds and products thereof, additions and accessions thereto, replacements and substitutions therefor, and all related books, records, journals, computer print-outs and data, of the Grantor.

(b) "Licenses": Collectively and individually, any and all Trademark license agreements granted by the Grantor to third parties, whether now existing or hereafter arising, as any of same may from time to time be amended or supplemented, including, but not limited to, the license agreements listed on Schedule B annexed hereto and made a part hereof.

(c) "Obligations": All loans, advances, indebtedness, notes, liabilities, overdrafts, outstanding Letters of Credit not drawn upon, Letters of Credit drawn upon and not yet reimbursed, outstanding Acceptances, and other amounts, liquidated or unliquidated, each of every kind, nature and description, whether arising under this Agreement or otherwise, including, without limitation, principal and interest, and whether secured or unsecured, direct or indirect, absolute or contingent, due or to become due now existing or hereafter contracted.

(d) "Trademarks": Collectively and individually, all --

(i) trademarks, trade names, trade dress, service marks, prints and labels on which said trademarks, trade names, trade dress and service marks have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired by Grantor, all right, title and interest therein and thereto, all applications thereof filed under Section 1(a) of the Lanham Act (15 U.S.C.A. 1051(a)), and all

registrations and recordings of any of the foregoing, including, without limitation, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof, all whether now or hereafter owned or licensable by any Grantor, including, but not limited to, those listed on Schedule A annexed hereto and made a part hereof; and

(ii) trademarks, trade names, trade dress and service marks, whether now or hereafter owned by the Grantor which has not or is not required to be registered or recorded in any jurisdiction; and

(iii) all renewals thereof and all licenses thereof (including, without limitation, all license agreements).

2. Grant of Security. To secure payment and performance of all of the Obligations of the Grantor to the Lender, the Grantor hereby mortgages to and pledges with the Lender and grants and conveys to the Lender a security interest in all of the Grantor's right title and interest in and to the Collateral, which security interest shall remain in full force and effect until all of the Obligations of the Grantor to the Lender are fully paid and satisfied; provided, however, anything herein, in the Loan Agreement or in any other document, instrument, writing or agreement related thereto to the contrary notwithstanding, the maximum liability of the Grantor secured by the Collateral hereunder and under the Loan Agreement shall in no event exceed an amount equal to the largest amount that would not render the Grantor's obligations hereunder subject to avoidance under Section 548 of the Title 11 of the U.S. Code, as amended, or any equivalent provision of the law of any state.

3. Representations, Warranties and Covenants of the Grantor. The Grantor hereby represents, warrants, covenants and agrees as follows:

(a) Title to the Trademarks. To the best of Grantor's knowledge, Grantor or Savvy Eyewear, Inc., a company which has been merged into Grantor previously has sole, exclusive, full, clear and unencumbered right, title and interest in and to the registrations of the Trademarks and such registrations are valid and subsisting and in full force and effect. The registrations for the Trademarks have not, to the best of Grantor's knowledge, been abandoned, suspended, voluntarily terminated or canceled by the Grantor, have not to the best of Grantor's knowledge, been adjudged invalid or unenforceable and, to the best of the Grantor's knowledge, there is no reason why the registrations for the Trademarks should be adjudged invalid or unenforceable.

(b) Use of the Trademarks. Except to the extent that (i) the Lender, upon prior written notice by the Grantor shall consent, or (ii) the Grantor determines in its reasonable

business judgment that a Trademark of the Grantor has negligible economic value and such Trademark is no longer utilized in the ordinary course of the Grantor's business, the Grantor (either itself or through licensees) has used and will continue to use the Trademarks on each and every trademark class of goods applicable to its current line only in the territory in which such Trademarks are used as of the date this Agreement as reflected in its current catalogs, brochures and price lists in order to maintain the Trademarks in full force free from any claim of abandonment for nonuse and the Grantor will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any of the Trademarks may become invalidated, abandoned, unenforceable, avoided, avoidable or otherwise diminished in value, and shall notify the Lender immediately if it knows of any reason or has reason to know of any ground under which any of the foregoing may occur.

(c) License or Assignment of Trademarks. Without the prior written consent of the Lender, the Grantor shall not license or assign any of the Trademarks to any party.

(d) Further Assurances. The Grantor will perform all acts and execute all further instruments and documents, including, without limitation, assignments for security in form suitable for filing with the United States Patent and Trademark Office, reasonably requested by the Lender at any time to evidence, perfect, maintain, record and enforce the Lender's interest in the Collateral or otherwise in furtherance of the provisions of this Security Agreement, and the Grantor hereby authorizes the Lender to execute and file (with or without the signature of the Grantor) one or more financing statements (and similar documents) or copies thereof or this Security Agreement with respect to the Collateral signed only by the Lender.

(e) Costs and Expenses. The Grantor shall pay on demand all reasonable and necessary expenses and expenditures of the Lender, including, without limitation, reasonable attorney's fees and expenses, incurred or paid by the Lender in protecting, enforcing or exercising its interests, rights or remedies created by, connected with or provided in this Security Agreement, or performance pursuant to this Security Agreement.

(f) Pledge of Additional Trademarks. In the event the Grantor, either itself or through any agent, employee, licensee or designee shall:

(i) file or record an application for the registration of any Trademark with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof; or

(ii) file or record any assignment of any Trademark which the Grantor may acquire, own or license from a

third party, with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof;

the Grantor shall promptly, but in no event more than fifteen (15) days subsequent to such filing, notify the Lender thereof, and, upon request of the Lender shall promptly, but in no event more than twenty (20) days subsequent to such notice, execute and deliver any and all agreements, instruments, documents and papers as the Lender may reasonably request to evidence the Lender's interest pursuant to this Security Agreement in such trademark and the goodwill of the Grantor relating thereto or represented thereby. The Grantor hereby grants the Lender a power of attorney, irrevocable until the Obligations of the Grantor to the Lender are fully paid and satisfied, to modify this Security Agreement by amending Schedule A and Schedule B, as applicable to include any future Trademarks or Licenses, including without limitation, registrations or applications appurtenant thereto, covered by this Security Agreement.

(g) Grantor's Authority, Etc. The Grantor has the right and power to mortgage and pledge the Collateral and to grant the security interest in the Collateral herein granted; and the Collateral is not now, to the best of Grantor's knowledge, and at all times hereafter will not be subject to any liens, licenses (other than as permitted under subparagraph 3(c) of this Security Agreement), pledges, assignments, registered license agreement, covenants not to sue by the Grantor or other encumbrance of any nature whatsoever, and the Grantor has not received, to the best of Grantor's knowledge, any notice from any third party claiming any right or interest in and to any of the Collateral or that the Grantor's use thereof infringes the rights of any third party with the exception of the trademark Chelsea Morgan in the United States.

(h) Negative Pledge The Grantor will not, without the prior written consent of the Lender, assign (by operation of law or otherwise), sell mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, grant an exclusive or non-exclusive license upon (other than those existing Licenses listed on Schedule B annexed hereto and made a part hereof or as permitted under subparagraph 3 (c) of this Security Agreement), or otherwise encumber, grant rights to any other person upon or dispose of any of the Collateral, and nothing in this Security Agreement shall be deemed a consent by the Lender to any such action except as expressly permitted herein. The Grantor shall defend the Collateral against and shall take such other action as is necessary to remove any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Collateral, and will defend the right, title and interest of the Lender in and to any of the Grantor's rights under the Collateral against the claims or demands of all persons whomsoever.

(i) No Additional Trademarks. As of the date hereof the Grantor does not own any Trademarks, or have any Trademarks registered in or the subject of pending applications in the United States Patent and Trademark Office, other than those registrations or applications for registrations listed on Schedules A annexed hereto and made a part hereof.

(j) Additional Further Assurances. The Grantor will take all necessary steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country, or any political subdivision thereof, (i) to maintain each registration of the Trademarks subject to this Security Agreement and Licenses, and (ii) in accordance with its reasonable business judgment and at its expense, to halt any infringement of the Trademarks and shall properly exercise its duty to control the nature and quality of the goods offered by any licensees in connection with the Licenses.

(k) Responsibility and Liability. The Grantor assumes all responsibility and liability arising from the Grantor's use of the Trademarks and Licenses, and hereby indemnifies and holds the Lender and each director, officer, employee, affiliate and agent thereof, harmless from and against any claim, suit, loss, damage or expense (including attorneys' fees and expenses) arising out of any alleged defect in any product manufactured, promoted or sold by the Grantor in connection with any of the Trademarks or otherwise arising out of the Grantor's operation of its business from the use of the Trademarks. In any suit, proceeding or action brought by the Lender under any License as may be permitted under this Security Agreement for any sum owing thereunder, or to enforce any provisions of such License, the Grantor will indemnify and keep the Lender harmless from and against all expense loss or damage suffered by reason of any defense, set off, recoupment, claim, counterclaim, reduction of liability whatsoever of the obligee thereunder or arising out of a breach of the Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from the Grantor, and all such obligations of the Grantor shall be and remain enforceable against and only against the Grantor and shall not be enforceable against the Lender.

(l) Lender's Rights. The Lender may, in its sole discretion, pay any amount or do any act required of the Grantor hereunder or requested by the Lender to preserve, defend, protect, maintain, record or enforce the Grantor's obligations contained herein, the Obligations of the Grantor to the Lender, the Collateral, or the right, title and interest granted the Lender herein, and which the Grantor fails to do or pay, and any such payment shall be deemed an advance by the Lender to the Grantor and shall be payable on demand together with interest thereon at the default rate as specified in the Loan Agreement.

(m) Protection of the Trademarks. The Grantor agrees that if it learns of any use by any person of any term or design likely to cause confusion with any Trademark, or of any claim of any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Collateral, the Grantor shall promptly notify the Lender of such use, lien, security interest, claim, right or other encumbrance and, if requested by the Lender, shall join with the Lender, at the Grantor's expense, in such action as the Lender, in its reasonable discretion, may deem advisable for the protection of the Lender's interest in and to the Trademarks, it being understood that the foregoing shall not preclude the Grantor from bringing an action against a person for the protection of the Grantor's interest in and to such Trademarks.

4. Lender's Appointment as Attorney-in-Fact.

(a) The Grantor hereby irrevocably constitutes and appoints the Lender, and any officer or agent 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 the Grantor and in the name of the Grantor or in its own name, from time to time in the Lender's discretion, for the purposes of carrying out the terms of this Security Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Security Agreement and, without limiting the generality of the foregoing, hereby gives the Lender the power and right, on behalf of the Grantor, to do the following:

(i) To pay or discharge taxes, liens security interests or other encumbrances levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Security Agreement or the Loan Agreement and to pay all or any part of the premiums therefor and the costs thereof;

(ii) Upon the occurrence of an Event of Default:

(1) to ask, demand, collect, receive and give acquittances and receipts for any and all moneys due and to become due under any Licenses and, in the name of the Grantor or in its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any License and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Lender for the purpose of collecting any and all such moneys due under any License whatsoever;

(2) to direct any party liable for any payment under any of the Licenses to make payment of any and all

moneys due and to become due thereunder directly to the Lender or as the Lender shall direct;

(3) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral;

(4) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral;

(5) to defend any suit, action or proceeding brought against the Grantor with respect to any Collateral;

(6) to settle, compromise, or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Lender may deem appropriate;

(7) generally, to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner thereof for all purposes, and to do, at the Lender's option, all acts and things which the Lender deems necessary to protect, preserve or realize upon the Collateral and the Lender's security interest therein, in order to effect the intent of this Security Agreement, all as fully and effectively as the Grantor might do.

(b) This power of attorney is a power coupled with an interest and shall be irrevocable during the term of this Security Agreement. Notwithstanding the foregoing, the Grantor further agrees to execute any additional documents which the Lender may require in order to confirm this power of attorney, or which the Lender may deem necessary to enforce any of its rights contained in this Security Agreement.

(c) The powers conferred on the Lender hereunder are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon the Lender to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither the Lender nor any of its officers, directors, employees or agents shall be responsible to the Grantor for any act or failure to act, except for the Lender's own gross negligence or willful misconduct.

(d) The Grantor also authorizes the Lender to execute, in connection with any sale provided for in this Security Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

5. Event of Default. The occurrence of any one or more of the following shall constitute an Event of Default under this Agreement:

(a) The occurrence of any Default or Event of Default under the Loan Agreement.

(b) A breach by the Grantor of any covenant contained in this Security Agreement;

(c) If any warranty or representation contained in this Security Agreement, including, without limitation, the warranties and representations contained in Section 3 of this Security Agreement, shall be incorrect in any material respect.

6. Remedies.

(a) Upon the occurrence of an Event of Default, in addition to all other rights and remedies of the Lender, whether under law, in equity or otherwise (all such rights and remedies being cumulative, not exclusive and enforceable alternatively, successively or concurrently):

(i) the Lender shall have all of the rights and remedies set forth in the Loan Agreement;

(ii) immediately upon the Lender's written request, the Grantor shall not make any further use of the Trademarks or any mark similar thereto for any purposes, except to sell off product or fill any outstanding orders for product;

(iii) the Lender may, at any time and from time to time, license, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any of the Trademarks, throughout the world for such term or terms, on such conditions, and in such manner, as the Lender shall in its sole discretion determine provided such license does not violate the terms of the Licenses;

(iv) the Lender may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of the Grantor in, to and under any one or more license agreements with respect to the Collateral, including, without limitation the Licenses, and take or refrain from taking any action under any license or sublicense thereof, and the Grantor hereby releases the Lender from, and agrees to hold the Lender free and harmless from and against, any claims arising out of any action taken or omitted to be taken with respect to any such license agreements;

(v) the Lender may foreclose upon the Collateral for the purpose of using, assigning, selling or otherwise disposing of the Collateral or any of it, either with or without special or other conditions or stipulations, and record any

documents with the United States Patent and Trademark Office necessary to evidence the Lender's ownership in the Collateral;

(vi) the Lender may appear before the United States Patent and Trademark Office as owner of the Collateral, without recording or filing any documents to evidence the Lender's ownership in the Collateral;

(vii) whether or not the Lender forecloses upon the Collateral in accordance with this Security Agreement, the Lender may, at any time and from time to time, assign, sell, or otherwise dispose of, the Collateral or any of it either with or without special or other conditions or stipulations, with power to buy the Collateral or any part of it, and with power also to execute assurances, and do all other acts and things for completing the assignment, sale or disposition which the Lender shall, in its sole discretion, deem appropriate or proper; and

(viii) in addition to the foregoing, in order to implement the assignment, sale or other disposal of any of the Collateral, the Lender may, at any time, pursuant to the authority granted in the Special Power of Attorney (such authority becoming effective on the occurrence of an Event of Default), execute and deliver on behalf of the Grantor, one or more instruments of assignment of the Trademarks (or any application or registration thereof), in form suitable for filing, recording or registration in any country. The Grantor agrees to pay when due all reasonable costs and expenses incurred in any such transfer of the Trademarks, including any taxes, fees and reasonable attorneys' fees, and all such costs shall be added to the Obligations of the Grantor to the Lender. The Lender may apply the proceeds actually received from any such license, assignment, sale or other disposition to the payment of the Obligations of the Grantor to the Lender as provided for in the Loan Agreement. The Grantor shall remain liable for any deficiency with respect to the Obligations of the Grantor to the Lender, which shall bear interest and be payable at the Default Rate under the Loan Agreement. The rights of the Grantor to receive any surplus shall be subject to any duty of the Lender imposed by law to the holder of any subordinate security interest in the Collateral known to the Lender. Nothing contained herein shall be construed as requiring the Lender to take any such action at any time.

(b) Notwithstanding anything contained in this Security Agreement to the contrary, the Lender shall not foreclose upon, dispose of or be deemed the owner of any Trademark unless and until the Lender has provided the Grantor with advance written notice of its intent to foreclose upon, dispose of or take an ownership interest in any Trademark. Any writing given by the Lender to the Grantor under this paragraph 6 must make explicit reference to this Security Agreement and of the Lender's intent to exercise its rights and remedies hereunder.

7. Execution of Special Power of Attorney. Concurrently with the execution and delivery of this Security Agreement, the Grantor is executing and delivering to the Lender a certain Special Power of Attorney for the implementation of the sale, assignment, licensing or other disposition of the Collateral pursuant to this Security Agreement.

8. Amendments and Modification. No provision hereof shall be modified, altered, waived or limited except by a written instrument expressly referring to this Security Agreement and executed by the party to be charged.

9. Binding Nature. This Security Agreement shall be binding upon and inure to the benefit of the successors, assigns or other legal representatives of the Grantor, and shall, together with the rights and remedies of the Lender hereunder, be binding upon and inure to the benefit of the Lender, its successors, assigns or other legal representatives.

10. GOVERNING LAW. THIS SECURITY AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

11. Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing (unless otherwise expressly provided herein) and shall be sent and deemed to have been received as set forth in the Loan Agreement.

12. Continuing Security Interest; Assignments. This Security Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until payment in full in cash or in another manner acceptable to Lender and termination of the obligations of the Grantor to the Lender, (b) be binding upon and inure to the benefit of, and be enforceable by, the Grantor, its successors and assigns, and (c) be binding upon and inure to the benefit of, and be enforceable by, the Lender and its successors, transferees and assigns. Upon the payment in full in cash or in another manner acceptable to Lender and termination of the obligations of the Grantor to the Lender then outstanding, the security interest granted hereby shall terminate and all rights granted as security in the Collateral to the Lender shall revert to the Grantor. Upon any such termination, the Lender will, at Grantor's expense, execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence and record such termination.

14. Counterparts. This Security Agreement may be executed in counterparts, each of which when taken together, shall be deemed one and the same instrument.

15. Headings. Section headings herein are included for convenience of reference only and shall not constitute a part of this Security Agreement for any other purpose.

16. Acknowledgment of Receipt. The Grantor acknowledges receipt of a copy of this Security Agreement.

17. No Waiver. No course of dealing between the Grantor and the Lender, and no delay or omission of the Lender in exercising or enforcing any of the Lender's rights and remedies hereunder shall constitute a waiver thereof; and no waiver by the Lender of any Event of Default shall operate as a waiver of any other Event of Default.

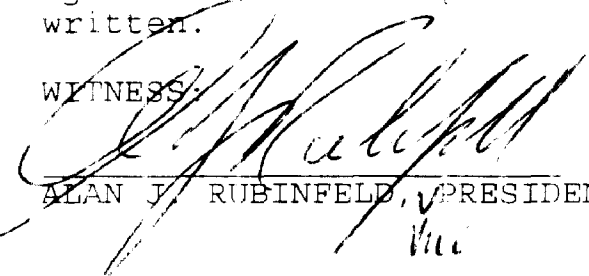
18. Severability. If any of the provisions of this Security Agreement shall contravene or be held invalid under the laws of any jurisdiction, this Security Agreement shall be construed as if not containing such provisions and the rights, remedies, warranties, representations, covenants, and provisions hereof shall be construed and enforced accordingly in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction, or any other provisions of this Security Agreement in any jurisdiction.

19. Interest Granted to Lender. Notwithstanding any provision of this Security Agreement to the contrary, the interest granted to the Lender under this Security Agreement is intended to be a pledge and a security interest only, and the execution of this Security Agreement is not intended to create an assignment or a transfer of title or any other property rights to the Trademarks.

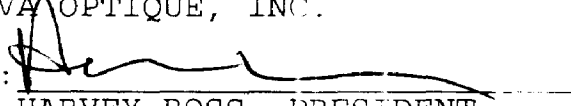
20. WAIVER OF JURY TRIAL. THE GRANTOR WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS SECURITY AGREEMENT.

IN WITNESS WHEREOF, the Grantor has caused this Security Agreement to be duly executed as of the day and year first above written.

WITNESS:


ALAN J. RUBINFELD, PRESIDENT

VIVA OPTIQUE, INC.

By: 
HARVEY ROSS, PRESIDENT

CORPORATE ACKNOWLEDGMENT

STATE OF NEW JERSEY)

: ss.

COUNTY OF Bergen)

I certify that on the 23 day of December, 1998, ^{Harvey Ross} personally came before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person signed and delivered this document as the President of Viva Optique, Inc. the corporation named in this document; and

(b) this document was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors.

RF Green

Robert F. Green
Atty at Law of N.J.

Schedule A to Security Agreement and Mortgage

TRADEMARKS

<u>Trademark</u>	<u>Application or Registration Date</u>	<u>Application Serial No. or Registration No.</u>
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[See list of trademarks attached as Schedule A-1]

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that Viva Optique, Inc., a New Jersey corporation with its principal place of business located at 1340 Route 22 West, Somerville, NJ 08876 (the "Grantor"), pursuant to a certain Trademark and Tradename Security Agreement and Mortgage of even date herewith (the "Security Agreement") by the Grantor in favor of PNC BANK, National Association, a national banking association having an office located at Two Tower Center, East Brunswick, NJ 08816 (the "Lender"), hereby appoints and constitutes the Lender as its true and lawful attorney, with full power of substitution, and with full power and authority to perform the following acts on behalf of the Grantor, in accordance with the terms and provisions of the Security Agreement:

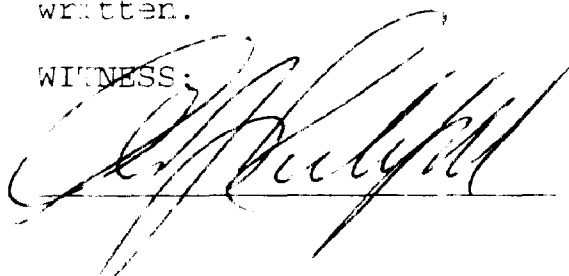
1. Assigning, selling or otherwise disposing of all right, title and interest of the Grantor in and to the Trademarks, as such term is defined in the Security Agreement, including, without limitation, those Trademarks listed on Schedule A annexed to the Security Agreement, any Trademarks that the Grantor may now or hereafter acquire, and any Trademarks which may be added to Schedule A annexed to the Security Agreement subsequent to the date of this Special Power of Attorney, all applications filed under Section 1(a) of the Lanham Act (15 U.S.C.A. 1051(a)), and all registrations and recordings of any of the foregoing, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, and to execute and deliver any and all other agreements, documents, instruments or assignment or other papers necessary or advisable to effect such purpose, in each case, in accordance with the terms and provisions of the Security Agreement; and

2. To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as the Lender may in its sole discretion determine.

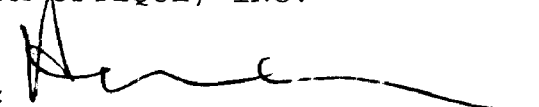
This Special Power of Attorney is made pursuant to the Security Agreement and may not be revoked until the Obligations, as such term is defined in the Security Agreement, of the Grantor to the Lender is fully paid and satisfied.

IN WITNESS WHEREOF, the Grantor has caused this Special Power of Attorney to be duly executed as of the day and year first above written.

WITNESS:



VIVA OPTIQUE, INC.

By: 
HARVEY M. ROSS, PRESIDENT

Abelman, Frayne & Schwab
VIVA INTERNATIONAL GROUP

Schedule A-1

December 9, 1998

TRADEMARK REPORT

BEAU MONDE

VIVA OPTIQUE, INC.

REG No: 1784095
APP No: 74/115789

04/13/90
11/15/90

Renewal Due: 04/13/03

UNITED STATES
Trademark

Registered

Class: Int 9

Goods: Ophthalmic eyeglass frames, sun glasses, optical cases and optical lenses.

our ref: 829,146

—First use and in commerce Feb 1990
—Sec. 8/15 filed and accepted November 10, 1998

CAROUSEL

VIVA OPTIQUE, INC.

REG No: 1482259
APP No: 73/679104
ORG No: 1482259

03/29/88
08/17/87

Renewal Due: 03/29/08

UNITED STATES
Trademark

Registered

Class: Int 9

GOODS: EYEGLASSES; SUNGLASSES; AND EYEGLASS FRAMES.

our ref: 819,157

—FIRST USE AND IN COMMERCE MAY 05 1987.
—SEC.8/15 AFFIDAVIT ACCEPTED AND FILED AUG 15 1994

CEREDA

VIVA OPTIQUE, INC.

REG No: 1772248
APP No: 74/168907

05/18/93
05/22/91

Renewal Due: 05/18/03
USE AFF. DUE 05/18/98

UNITED STATES
Trademark

Registered
MAINTEN.P.

Class: Int 9

Goods: eyeglasses and sunglasses, and parts therefor, eyeglass and sunglass frames and parts therefor eyeglass and sunglass cases.

our ref: 830,898

—First use and in commerce Nov 19 1991.

CHELSEA MORGAN

VIVA OPTIQUE, INC.

APP No: 75/295195

08/20/97

Class: INT 9

Goods: Eyeglass frames, sunglass frames and parts thereof, eyeglass and sunglass cases.

UNITED STATES
TRADEMARK

App. Pending

our ref: 856,146

LIGHT EYES

VIVA OPTIQUE, INC.

REG No: 2122079
APP No: 74/706965

12/16/97
07/27/95

Renewal Due: 12/16/07
USE AFF. DUE 12/16/03

UNITED STATES
Trademark

Registered

Class: Int 9

Goods: Eyeglass frames, sunglass frames, parts thereof, cases therefor.

our ref: 848,331

—First use and in commerce February 1996

Abelman, Frayne & Schwab
VIVA INTERNATIONAL GROUP

December 9, 1998

TRADEMARK REPORT**SAVVY**

VIVA OPTIQUE, INC.

REG No: 1734451
APP No: 74/11579111/24/92
11/15/93

Renewal Due: 11/24/02

UNITED STATES

Trademark

Registered

Class: Int 9

Goods: Ophthalmic eyeglass frames, sun glasses, optical cases and optical lenses.

our ref: 829,147

---First use and in commerce Feb 1990.

---Owner of U.S. Reg. No. 1522493.

---Assignment from Savvy Eyewear, Inc. recorded November 12, 1991 at reel 0827, frame 0946.

---Sec 8/15 filed and accepted August 18, 1998

SAVVY EYES

VIVA OPTIQUE, INC.

REG No: 1522493
APP No: 73/734972
ORG No: 152249301/31/88
06/10/88

Renewal Due: 01/31/00

UNITED STATES

Trademark

Registered

Class: Int 9

GOODS: EYEGLASS FRAMES.

our ref: 819,544

---FIRST USE AND IN COMMERCE MAY 18 1988.

---SECTION 8/15 AFFIDAVIT ACCEPTED JULY 24, 1995.

SERGIO CEREDA

VIVA OPTIQUE, INC.

REG No: 1817362
APP No: 74/17920801/18/94
06/24/91Renewal Due: 01/18/04
USE AFF. DUE 01/18/00**UNITED STATES**

Trademark

Registered

Class: Int 9

Goods: Eyeglasses and sunglasses, eyeglass and sunglass frames, component parts and cases.

our ref: 831,032

---First use and in commerce May 1991.

SHIELD DESIGN

VIVA OPTIQUE, INC.

REG No: 1819779
APP No: 74/38504902/08/94
04/27/93Renewal Due: 02/08/04
USE AFF. DUE 02/08/00**UNITED STATES**

Trademark

Registered

Class: Int 9

Goods: Eyeglasses and sunglasses and parts therefor, eyeglass and sunglass frames and parts therefor, eyeglass and sunglass cases.

our ref: 837,542

---First use and in commerce Nov 19 1991.



Abelman, Frayne & Schwab
VIVA INTERNATIONAL GROUP

December 9, 1998

TRADEMARK REPORT

VIVA **UNITED STATES**
VIVA OPTIQUE, INC **Trademark**
 REG No: 1189827 02/18/82 Renewal Due: 02/16/02 **Registered**
 Class: Int 9
 Goods: Ophthalmic eyeglass frames, sun glasses
 Optical cases and optical lenses.
 SECTION 8/15 ACCEPTED AND FILED DEC 14 1987
 our ref: 921,522

VIVA **UNITED STATES**
VIVA OPTIQUE, INC. **Trademark**
 REG No: 1741022 12/22/92 Renewal Due: 12/22/02 **Registered**
 APP No: 74/245352 02/11/92
 Class: Int 8
 Goods: Ophthalmic eyeglass frames, sunglasses, optical cases and
 optical lenses.
 First use and in commerce Feb 24 1978
 Owner of U.S. Reg. No. 1189824.
 Sec 8/15 filed and accepted August 19, 1998
 our ref: 833,242

VIVA CLUB **UNITED STATES**
VIVA OPTIQUE, INC. **Trademark**
 APP No: 75/470686 04/20/98 **App. Pending**
 Class: INT 9
 Goods: Eyeglasses, sunglasses and frames.
 our ref: 862,922



VIVA MODA ITALIANA (STYLIZED) **UNITED STATES**
VIVA OPTIQUE, INC. **Trademark**
 REG No: 1190515 02/23/82 Renewal Due: 02/23/02 **Registered**
 APP No: 73/268716
 ORG No: 1190515
 Class: Int 9
 Goods: Ophthalmic eyeglass frames, sun glasses, optical
 cases and optical lenses.
 Sec 8/15 affidavit accepted and filed on Oct 26 1989
 our ref: 921,523



VMS VISUAL MERCHANDISING SERVICES LOGO **UNITED STATES**
VIVA OPTIQUE, INC. **servicemark**
 APP No: 75/470021 04/20/98 **App. Pending**
 Class: INT 35
 Services: Merchandising services for others
 our ref: 863,293

LICENSES