

05-12-1999



5-2-99

100993659

Original documents or copy thereof.

1. Name of conveying party(ies):

The Troxel Company  
11495 Highway 57 West  
Moscow, Tennessee 38057

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

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

3. Nature of conveyance:

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

Execution Date: 4/30/99

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

Name: The CIT Group/Credit Finance, Inc.

Internal Address: 21st Floor

Street Address: 1211 Avenue of the Americas

City New York State NY ZIP 10036

- 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

(Designation must be a separate document from Assignment)

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

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

A. Trademark Application No.(s)

B. Trademark registration No.(s)

1,657,623  
1,713,433  
1,677,071  
1,862,980

Additional numbers attached?  Yes  No

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

Name: Diane S. White

Internal Address:

King & Spalding

Street Address: 191 Peachtree Street

City: Atlanta State: GA ZIP 30303

6. Total number of applications and registrations involved: 7

7. Total fee (37 CFR 3.41): \$ 115.00

- Enclosed
  - Authorized to be charged to deposit account
- Fee and \$120 expedited fee 120.00

8. Deposit account number:

(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 J. HYNAK

*Michael J. Hynak*

5-10-99

Name of Person Signing

Signature

Date

Void date: 05/13/1999 DCOATES 1657623  
01 FC:481 DCOATES 00000007 -40.00 OP  
02 FC:482 -100.00 OP  
03 FC:484 OMB No. 0651-0011 (exp. 4/30/99) 120.00 OP

Total number of pages comprising cover sheet: 4

Do not detach this portion

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

05/13/1999 DCOATES 00000007 1657623

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

01 FC:481 40.00 OP  
02 FC:482 100.00 OP  
03 FC:484 120.00 OP

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

05/13/1999 DCOATES 00000033 1657623  
01 FC:481  
02 FC:482  
03 FC:484

TRADEMARK

# TRADEMARK AND PATENT SECURITY AGREEMENT

AGREEMENT made as of the 30<sup>th</sup> day of April, 1999 between THE TROXEL COMPANY, a Delaware corporation, having an office at 11495 Highway 57 West, Moscow, Tennessee 38057 ("Debtor"), and THE CIT GROUP/CREDIT FINANCE, INC., having an office at 1211 Avenue of the Americas, 21st Floor, New York, New York 10036 ("Secured Party").

## 1. SECURITY INTEREST.

WHEREAS, Debtor has adopted, used and is using, and is the owner of the entire right, title, and interest in and to the trademarks, tradenames, terms, designs and applications therefor described in Schedule A annexed hereto, and the patents and applications therefor described in Schedule B annexed hereto and made a part hereof; and

WHEREAS, Secured Party has agreed to enter into or has entered into financing arrangements with Debtor, pursuant to a Loan and Security Agreement, dated as of even date herewith (the "Loan Agreement"), between Debtor and Secured Party (the Loan Agreement, together with this Agreement, and all other related documents, agreements, instruments or notes, as the same may now exist or may hereafter be amended or supplemented, are collectively referred to herein as the "Agreements").

NOW, THEREFORE, in order to induce Secured Party to enter into the Agreements and in consideration thereof, Debtor hereby grants to Secured Party a security interest in: (a) all of Debtor's now existing or hereafter acquired right, title, and interest in and to: all of Debtor's trademarks, trade names, trade styles and service marks; all prints and labels on which said trademarks, trade names, trade styles and service marks appear, have appeared or will appear, and all designs and general intangibles of a like nature; all applications, registrations and recordings relating to the foregoing in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other countries, and all reissues, extensions and renewals thereof including those trademarks, terms, design and applications described in Schedule A hereto (the "Trademarks"); (b) the goodwill of the business symbolized by each of the Trademarks, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing the Trademarks; and (c) all of Debtor's now existing or hereafter acquired right, title and interest in and to: all of Debtor's interests in any patents; all applications, registrations and recordings relating to such patents in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof, any political subdivision thereof and all reissues, extensions and renewals thereof, including, without limitation, those patents, applications, registrations and recordings described in Schedule B hereto (the "Patents"); and (d) any and all proceeds of any of the foregoing, including, without limitation, any claims by Debtor against third parties for infringement of the Trademarks, Patents or any licenses with respect thereto (all of the foregoing are collectively referred to herein as the "Collateral").

## 2. OBLIGATIONS SECURED.

The security interests granted to Secured Party in this Agreement shall secure the prompt and indefeasible payment and performance of all now existing and future obligations, liabilities and indebtedness of Debtor to Secured Party of every kind, nature and description, direct or indirect, absolute or contingent, whether arising under this Agreement, the other Agreements, or any other agreement, document or instrument or by operation of law or otherwise, including, without limitation, "Obligations" as defined in the Loan Agreement (all the foregoing hereinafter referred to as "Obligations").

## 3. WARRANTIES AND COVENANTS.

Debtor hereby covenants, represents and warrants that (all of such covenants, representations and warranties being continuing in nature so long as any of the Obligations are outstanding):

A. Debtor will pay and perform all of the Obligations according to their terms.

B. All of the existing Collateral is valid and subsisting in full force and effect to Debtor's knowledge, and Debtor owns sole, full, and clear title thereto, and has the right and power to grant the security interests granted hereunder. Debtor will, at Debtor's expense, perform all acts and execute all documents necessary to maintain the existence of the Collateral as valid, subsisting and registered trademarks and patents including without limitation the filing of any renewal affidavits and applications. The Collateral is not subject to any liens, claims, mortgages, assignments, licenses, security interests, or encumbrances of any nature whatsoever except the security interests granted hereunder, and the licenses, if any, which are specifically described in Schedule C hereto.

C. Debtor will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license relating thereto, except to Secured Party, or otherwise dispose of any of the Collateral without the prior written consent of Secured Party.

D. Debtor will, at Debtor's expense, perform all acts and execute all documents requested at any time by Secured Party to evidence, perfect, maintain, record, or enforce the security interest in the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Debtor hereby authorizes Secured Party to execute and file one or more financing statements (or similar documents) with respect to the Collateral signed only by Secured Party. Debtor further authorizes Secured Party to have this or any other similar Security Agreement filed with the Commissioner of Patents and Trademarks or other appropriate federal, state or government office.

E. Debtor will, concurrently with the execution and delivery of this Agreement, execute and deliver to Secured Party five (5) originals of a Power of Attorney in the form of

Exhibit 1 annexed hereto for the implementation of the assignment, sale or other disposition of the Collateral pursuant to Secured Party's exercise of the rights and remedies granted to Secured Party hereunder.

F. Secured Party may, in its sole discretion, pay any amount or do any act which Debtor fails to pay or do as required hereunder or as requested by Secured Party to maintain and preserve the Collateral, defend, protect, record, amend or enforce the Obligations, the Collateral, or the security interest granted hereunder including but not limited to, all filing or recording fees, court costs, collection charges and reasonable attorneys' fees. Debtor will be liable to Secured Party for any such payment, which payment shall be deemed a borrowing by Debtor from Secured Party, and shall be payable on demand together with interest at the rate set forth in the Agreements and shall be part of the Obligations secured hereby.

G. As of the date hereof, Debtor does not have any Trademarks or Patents registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States other than those described in Schedules A and B annexed hereto.

H. Debtor shall notify Secured Party in writing of the filing of any application for the registration of a Trademark or Patent with the United States Patent and Trademark Office or any similar office or agency in the United States or any state therein within thirty (30) days of such filing. Upon request of Secured Party, Debtor shall execute and deliver to Secured Party any and all assignments, agreements, instruments, documents, and such other papers as may be requested by Secured Party to evidence the security interests of Secured Party in such Trademark or Patent.

I. Debtor has not abandoned any of the Trademarks or Patents material to the conduct of the business and Debtor will not do any act, nor omit to do any act, whereby the Trademarks or Patents may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable. Debtor shall notify Secured Party immediately if Debtor knows or has reason to know of any reason why any application, registration, or recording may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable.

J. Debtor will render any assistance, as Secured Party may determine is necessary, to Secured Party in any proceeding before the United States Patent and Trademark Office, any federal or state court, or any similar office or agency in the United States or any state therein or any other country to maintain such application and registration of the Trademarks or Patents as Debtor's exclusive property and to protect Secured Party's interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

J. Debtor will promptly notify Secured Party if Debtor (or any affiliate or subsidiary thereof) learns of any use by any person of any term or design likely to cause confusion with any Trademark or of any use any person of any other process or product which infringes upon

any Patent or Trademark. If requested by Secured Party, Debtor, at Debtor's expense, shall join with Secured Party in such action as Secured Party, in Secured Party's discretion, may deem advisable for the protection of Secured Party's interest in and to the Trademarks or Patents.

K. Debtor assumes all responsibility and liability arising from the use of the Trademarks or Patents and Debtor hereby indemnifies and holds Secured Party harmless from and against any claim, suit, loss, damage, or expense (including reasonable attorneys' fees) arising out of any alleged defect in any product manufactured, promoted, or sold by Debtor (or any affiliate or subsidiary thereof) in connection with any Trademark and Patent or out of the manufacture, promotion, labeling, sale or advertisement of any such product by Debtor (or any affiliate or subsidiary thereof).

L. In any action or proceeding instituted by Secured Party in connection with any matters arising at any time out of or with respect to this Agreement, Debtor will not interpose any counterclaim of any nature.

M. Prior to an Event of Default, Secured Party hereby grants to Debtor the exclusive nontransferable right and license to use the Trademarks and the goodwill of the business symbolized by the marks for Debtor's own benefit. Debtor will maintain the quality of the products associated with the Trademarks at a level consistent with the quality at the time of this Agreement. Debtor will not change the quality of the products associated with the Trademarks without the Secured Party's prior written consent. Debtor hereby grants to Secured Party the right to visit Debtor's plant and facilities which manufacture or store products sold under any of the Trademarks and to inspect the products and quality-control records relating thereto at any time during regular business hours, or at such other times as Secured Party may reasonably request.

#### 4. EVENTS OF DEFAULT.

All Obligations shall, at Secured Party's option, become immediately due and payable without notice of demand upon the occurrence of any of the following events of default ("Events of Default"):

A. Debtor fails to pay or perform any Obligations when due.

B. Debtor defaults in the observance or performance of any agreements, covenants or conditions contained herein or in any of the Agreements or in any other document or instrument referred to herein or therein.

C. Any present or future representation or warranty made by or on behalf of the Debtor, whether contained herein or in any of the other Agreements or in any other document or instrument referred to herein or therein in connection with any of the transactions contemplated herein or therein, shall be false or incorrect in any material respect.

D. Any other event of default pursuant to the Agreements shall have occurred, including, but not limited to, any event of default under the Accounts Agreement.

## 5. RIGHTS AND REMEDIES.

Upon the occurrence of any such Event of Default and at any time thereafter, in addition to all other rights and remedies of Secured Party, whether provided under law, the Agreements or otherwise, and after expiration of any grace period, Secured Party shall have the following rights and remedies which may be exercised without notice to, or consent by, Debtor except as such notice or consent is expressly provided for hereunder.

A. Secured Party may require that neither Debtor nor any affiliate or subsidiary of Debtor make any use of the Trademarks or any marks similar thereto or any Patent for any purpose whatsoever. Secured Party may make use of any Trademarks or Patents for the sale of goods, or rendering of services in connection with enforcing any other security interest granted to Secured Party by Debtor or any subsidiary of Debtor.

B. Secured Party may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as Secured Party shall in its sole discretion deem appropriate. Such license or licenses may be general, special, or otherwise, and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions, and all foreign countries.

C. Secured Party may assign, sell, or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations, except that Secured Party agrees to provide Debtor with ten (10) days prior written notice of any proposed disposition of the Collateral. Secured Party shall have the power to buy the Collateral or any part thereof, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in Secured Party's sole discretion, deem appropriate or proper to complete such assignment, sale or disposition. In any such event, Debtor shall be liable for any deficiency.

D. In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral pursuant to subparagraph 5C hereof, Secured Party may at any time execute and deliver on behalf of Debtor, pursuant to the authority granted in the Power of Attorney described in subparagraph 3E hereof, one or more instruments of assignment of the Trademarks or Patents (or any application, registration, or recording relating thereto), in form suitable for filing, recording or registration. Debtor agrees to pay Secured Party on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, and attorneys' fees.

E. Secured Party may apply the proceeds actually received from any such license, assignment, sale, or other disposition of Collateral first to the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all legal, travel, and other

expenses which may be incurred by Secured Party. Thereafter, Secured Party may apply any remaining proceeds to such of the Obligations as Secured Party may in its sole discretion determine. Debtor shall remain liable to Secured Party for any expenses or obligations remaining unpaid after the application of such proceeds, and Debtor will pay Secured Party on demand any such unpaid amount, together with interest at the rate set forth in the Agreements.

F. In the event that any such license, assignment, sale or disposition of the Collateral (or any part thereof) is made after the occurrence of an Event of Default, Debtor shall supply to Secured Party or Secured Party's designee Debtor's knowledge and expertise relating to the manufacture and sale of the products and services bearing the Trademarks or to which the Patents relate and Debtor's customer lists and other records relating to the Trademarks and Patents and the distribution thereof.

Nothing contained herein shall be construed as requiring Secured Party to take any such action at any time. All of Secured Party's rights and remedies, whether provided under law, the Agreements, this Agreement, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

## 6. MISCELLANEOUS.

A. Any failure or delay by Secured Party to require strict performance by Debtor of any of the provisions, warranties, terms and conditions contained herein or in any other agreement, document, or instrument, shall not affect Secured Party's right to demand strict compliance and performance therewith, and any waiver of any default shall not waive or affect any other default, whether prior or subsequent thereto, and whether of the same or of a different type. None of the warranties, conditions, provisions, and terms contained herein or in any other agreement, document, or instrument shall be deemed to have been waived by any act or knowledge of Secured Party, its agents, officers, or employees, but only by an instrument in writing, signed by an officer of Secured Party and directed to Debtor, specifying such waiver.

B. All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been duly given or made: if by hand, immediately upon delivery; if by telecopy, telex or telegram, immediately upon sending; if by any overnight delivery service, one day after dispatch; and if mailed by certified mail, return receipt requested, forty-eight (48) hours after mailing. All notices, requests and demands are to be given or made to the respective parties at the following addresses (or to such other addresses as either party may designate by notice in accordance with the provisions of this paragraph):

If to Debtor: The Troxel Company  
Highway 57 West  
Moscow, Tennessee 38057  
Attn: Bruce E. Miller  
Title: Vice President

with a copy to: Humphreys Dunlap Wellford Acuff & Stanton  
2200 First Tennessee Building  
Memphis, Tennessee 38103-2795  
Attn: Alexander W. Wellford, Esq.

If to Secured Party: THE CIT GROUP/CREDIT FINANCE, INC.  
1211 Avenue of the Americas  
21st Floor  
New York, New York 10036  
Attention: Robert Strack, Vice President

C. In the event any term or provision of this Agreement conflicts with any term or provision of the Loan Agreement, the term or provision of the Loan Agreement shall control.

D. In the event that any provision hereof shall be deemed to be invalid by any court, such invalidity shall not affect the remainder of this Agreement.

E. This Agreement shall be binding upon and for the benefit of the parties hereto and their respective legal representatives, successors and assigns. No provision hereof shall be modified, altered or limited except by a written instrument expressly referring to this Agreement signed by the party to be charged thereby.

F. The security interest granted to Secured Party shall terminate and the Collateral will be reassigned to Debtor, at Debtor's sole expense, upon termination of the Loan Agreement and indefeasible payment in full to Secured Party of all Obligations thereunder.

G. The validity, interpretation and effect of this Agreement shall be governed by the laws of the United States of America and the laws of the State of New York. Debtor hereby irrevocably consents and submits in advance to the non-exclusive jurisdiction of the courts of the Southern District of New York, to hear and determine any claims or disputes pertaining directly or indirectly to this Agreement, the other Agreements or to any matter arising therefrom in any such action or proceeding. Debtor hereby waives personal service of the summons and complaint, or other process or notice of motion or other application or papers issued therein, and agrees that service of such summons and complaint or other process or papers may be made outside the Southern District of New York by registered or certified mail, return receipt requested, addressed to the Debtor at the address set forth herein or in such other manner as may be permissible under the rules of said courts.



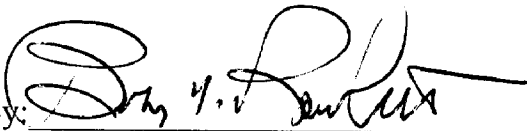
H. The parties hereto waive trial by jury in any action or proceeding of any kind or nature in any court whether arising out of, under or by reason of this Agreement, the other Agreements or any matter or proceeding relating thereto.

I. Nothing contained herein is intended to contravene or restrict any of the rights of Troxel Cycling & Fitness, LLC under that certain License Agreement, dated as of September 4, 1997, between Debtor and Troxel Cycling & Fitness, LLC, as amended by a First Amendment thereto dated as of March 25, 1998.

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the day and year first above written.

Debtor:

THE TROXEL COMPANY


By: 

Name: Bobby N. Rowlett

Title: President

Secured Party:

THE CIT GROUP/CREDIT  
FINANCE, INC.

By:   
Name: Barbara Pericoff  
Title: Assistant Vice President

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss

On this 29 day of April, 1999, before me personally came Bobby N. Rowlett, to me known, who being duly sworn, did depose and say, that he is the President of The Troxel Company, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

INDRA BEDASIE  
Notary Public, State of New York  
No. 01BE6014602  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires October 19, 2000

Indra Bedasie  
Notary Public

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss

On this 29 day of April, 1999, before me personally came Barbara Perich, to me known, who being duly sworn, did depose and say, that she is the Asst. Vice President of THE CIT GROUP/CREDIT FINANCE, INC., the corporation described in and which executed the foregoing instrument; and that he signed his/her name thereto by order of the Board of Directors of said corporation.

Indra Bedasie  
Notary Public

INDRA BEDASIE  
Notary Public, State of New York  
No. 01BE6014602  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires October 19, 2000

**SCHEDULE A**  
**to**  
**TRADEMARK AND PATENT SECURITY AGREEMENT**

**Trademarks and Applications**

<b>DESCRIPTION</b>	<b>REG. #</b>	<b>REG. DATE</b>
Troxel Service Mark	1,657,623	09-17-91
Troxel T and Design	1,713,433	09-08-92
Troxel and Design Service Mark	1,677,071	02-25-92
Troxel and Design	1,862,980	11-15-94

**SCHEDULE B**  
**to**  
**TRADEMARK AND PATENT SECURITY AGREEMENT**

**Patents and Applications**

None

**SCHEDULE C**  
**to**  
**TRADEMARK AND PATENT SECURITY AGREEMENT**

**Permitted Licenses**

License dated as of September 4, 1997 between The Troxel Company, as licensor, and Troxel Cycling & Fitness, LLC, as licensee, as amended by a First Amendment thereto dated as of March 25, 1998, which relates to certain foreign trademarks and to the following trademarks registered in the United States Patent and Trademark Office:

**REGISTRATION NUMBER**

**DESCRIPTION**

1,713,433

Troxel T and Design

1,862,980

Troxel and Design