

03-29-1999



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UNITED STATES PATENT AND TRADEMARK OFFICE

RECORDATION FORM COVER SHEET

TRADEMARKS ONLY

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To the Honorable Commissioner of Patents and Trademarks:

Please record the attached original document or copy thereof.

1. Name and address of conveying party:

Club One, Inc.  
235 Montgomery Street, 26<sup>th</sup> Floor  
San Francisco, CA 94104

A Delaware corporation

2. Name and address of receiving party:

Imperial Bank  
226 Airport Parkway  
San Jose, CA 95110

A California banking corporation

3. Nature of conveyance: Trademark Security Agreement

Execution date: December 31, 1998

4. Application numbers and registration numbers:

A. Trademark numbers:

See Attachment I attached hereto.

B. Trademark application numbers:

None.

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01 FC:481  
02 FC:482

40.00 OP  
25.00 OP

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

Mary E. Flater, Legal Assistant  
Bingham Dana LLP  
150 Federal Street  
Boston, Massachusetts 02110

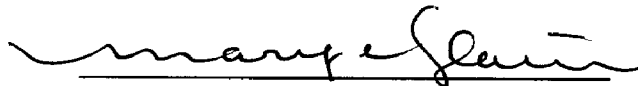
6. Total number of applications and trademarks involved: 2

7. Total fee enclosed: \$65.00

8. Deposit account number: Not applicable

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.



Mary E. Flater, Legal Assistant  
March 22, 1999

Total number of pages submitted (including cover sheet and any attached Schedules, and conveyance document and any attached Schedules): 11

Send documents to be recorded with required cover sheet information by overnight delivery to:

United States Patent and Trademark Office  
Office of Public Records  
ATTN: CUSTOMER SERVICE COUNTER  
1213 Jefferson Davis Highway  
3<sup>rd</sup> Floor  
Arlington, VA 22202

**ATTACHMENT 1  
TO THE TRADEMARK SECURITY AGREEMENT,  
DATED AS OF DECEMBER 31, 1998, BETWEEN  
CLUB ONE, INC. AND  
IMPERIAL BANK**

---

**ITEM A. Trademarks.**

<b>Trademark</b>	<b>Registration or Serial Number</b>	<b>Filing Date</b>	<b>Registration Date</b>
Club One	1709510	November 28, 1990	August 18, 1992
Club One	1702559	November 28, 1990	August 18, 1992

**ITEM B. Service Marks.**

<b>Service Mark</b>	<b>Registration or Serial Number</b>	<b>Filing Date</b>	<b>Registration Date</b>

**TRADEMARK SECURITY AGREEMENT**

**TRADEMARK SECURITY AGREEMENT**, dated as of December 31, 1998, between **CLUB ONE, INC.**, a Delaware corporation ("**Company**"), and **IMPERIAL BANK**, a California banking corporation ("**Bank**").

**RECITALS**

Pursuant to the Credit Agreement, dated as of December 31, 1998 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "**Credit Agreement**"), among the Company, Club One, LLC, a California limited liability company ("**Borrower**"), the Subsidiaries of the Company or of the Borrower from time to time party thereto, and Imperial Bank ("**Bank**"), the Bank has extended a commitment to make Credit Extensions to the Borrower.

The Company has executed and delivered to the Bank the Security Agreement, dated as of December 31, 1998 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "**Security Agreement**"), among the Company, the Borrower, certain Subsidiaries of the Company or of the Borrower, and the Bank, pursuant to which the Company has granted to the Bank, for the benefit of the Bank, security interests in the personal Property of the Company in order to secure the payment and performance of all of the Obligations of the Company, the Borrower and each of the other Principal Companies.

Pursuant to the Security Agreement, the Company is required to execute and deliver to the Bank a supplemental security agreement with respect to certain registered trademarks and service marks, certain trademark and service mark registration applications and certain related Property of the Company, and such supplemental security agreement is required to be in or substantially in the form hereof.

Accordingly, the parties hereto agree as follow:

**SECTION 1. Defined Terms.** The following terms, when used in this Agreement, including the introductory paragraph and Recitals hereto, shall, except where the context otherwise requires, have the following meanings:

"**Agreement**" means this Trademark Security Agreement.

**"Bank"** is defined in the introductory paragraph hereto.

**"Company"** is defined in the introductory paragraph hereto.

**"Credit Agreement"** is defined in the first paragraph of the Recitals hereto.

**"Security Agreement"** is defined in the second paragraph of the Recitals hereto.

**"Trademark Collateral"** is defined in Section 2.

Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including the introductory paragraph and Recitals hereto, have the meanings given to such terms in the Credit Agreement.

**SECTION 2. Grant of Security Interest.** The Company hereby pledges and assigns to the Bank and hereby grants to the Bank, for the benefit of the Bank, continuing security interests in all of the Company's rights, title and interests in and to all of the following Property, whether currently existing or hereafter arising or acquired (all of such Property being collectively called the **"Trademark Collateral"**):

(a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of a like nature (all of the foregoing items hereinbefore identified and described in this clause (a) being collectively called **"Trademarks"**), all registrations and recordings thereof, and in connection therewith, all applications in the United States Patent and Trademark Office or in any similar office or agency of the United States or any state thereof, including those referred to in Item A and Item B of Attachment 1;

(b) all Trademark licenses and other agreements providing the Company with rights to use Trademarks;

(c) all reissues, extensions or renewals of any of the items described in the foregoing clauses (a) and (b);

(d) all of the goodwill of the business of the Company connected with the use of, and symbolized by the items described in, clauses (a), (b) and (c); and

(e) all royalties from and all proceeds of, and all rights associated with, the foregoing, including any and all claims by the Company (and rights to sue thereunder) against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration or Trademark license, including any Trademark, Trademark registration, Trademark license or trade name referred to in Item A or Item B of Attachment 1, or for any injury to the goodwill associated with any Trademark, Trademark registration, Trademark license or trade name.

Notwithstanding the foregoing, the term "Trademark Collateral" shall not include any Property in which the Company is not permitted, by Applicable Law or by the terms of any Instrument to which the Company is a party or by which such Property is bound, to grant a security interest or Lien; provided, however, that all proceeds of Property described in the foregoing provisions of this paragraph shall in any event constitute "Trademark Collateral".

**SECTION 3. Security Agreement.** This Agreement has been executed and delivered to the Bank by the Company for the purpose of registering the grant of the security interests of the Bank in certain Trademark Collateral with the United States Patent and Trademark Office. The security interests granted pursuant hereto are granted as a supplement to, and not in limitation of, the security interests granted to the Bank, for the benefit of the Bank, under the Security Agreement. The Security Agreement (and all rights and remedies of the Bank thereunder) shall remain in full force and effect in accordance with its terms.

**SECTION 4. Release of Liens.** At such time as the Commitment shall have terminated and the Obligations shall have been paid in full in cash, the Bank shall, at the Company's expense, execute and deliver to the Company all such Instruments and other documents as may be necessary or as may be reasonably requested by the Company to release Liens on the Trademark Collateral which have been granted pursuant hereto and pursuant to the Security Agreement.

**SECTION 5. Acknowledgment.** The Company does hereby further acknowledge and affirm that the rights and remedies of the Bank with respect to the Liens on the Trademark Collateral granted pursuant hereto are more fully set forth in the Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

**SECTION 6. Collateral Document, etc.** This Agreement is a Collateral Document and a Loan Document executed and delivered to the

Bank pursuant to the Credit Agreement and shall be construed, administered and applied in accordance with, and subject to, the terms and provisions of the Credit Agreement.

**SECTION 7. Counterparts.** This Agreement may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement.

**[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, the parties hereto have caused this TRADEMARK SECURITY AGREEMENT to be duly executed and delivered by their respective officers thereunto duly authorized on and as of the day and in the year first above written.

[SEAL]

**The Company:**  
**CLUB ONE, INC**

Attest: T. Jachin

By: [Signature]  
Name: John Kinney  
Title: CEO

**The Bank:**  
**IMPERIAL BANK**

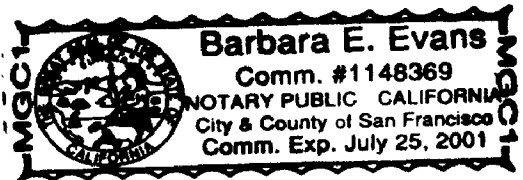
By: [Signature]  
Name: David J. Gaudin  
Title: First Vice President

State of California )  
 ) ss.  
County of SAN FRANCISCO )

Personally appeared before me, the undersigned, a Notary Public in and for said county, JOHN KINNEY, personally known to me, who, being by me first duly sworn, declared that he is the CEO of CLUB ONE, INC, a Delaware corporation, ~~a California limited liability company~~, that being duly authorized he did sign and seal the said TRADEMARK SECURITY AGREEMENT as such officer of and on behalf of such ~~limited liability company~~ corporation and that the same is such ~~limited liability company's~~ corporation's free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 20<sup>th</sup> day of JAN., 1999.

[Signature]  
Notary Public



My Commission Expires:  
July 25, 2001



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Pursuant to the Security Agreement, the Company is required to execute and deliver to the Bank a supplemental security agreement with respect to certain registered trademarks and service marks, certain trademark and service mark registration applications and certain related Property of the Company, and such supplemental security agreement is required to be in or substantially in the form hereof.

Accordingly, the parties hereto agree as follow:

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**SECTION 2. Grant of Security Interest.** The Company hereby pledges and assigns to the Bank and hereby grants to the Bank, for the benefit of the Bank, continuing security interests in all of the Company's rights, title and interests in and to all of the following Property, whether currently existing or hereafter arising or acquired (all of such Property being collectively called the **"Trademark Collateral"**):

(a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of a like nature (all of the foregoing items hereinbefore identified and described in this clause (a) being collectively called **"Trademarks"**), all registrations and recordings thereof, and in connection therewith, all applications in the United States Patent and Trademark Office or in any similar office or agency of the United States or any state thereof, including those referred to in Item A and Item B of Attachment 1;

(b) all Trademark licenses and other agreements providing the Company with rights to use Trademarks;

(c) all reissues, extensions or renewals of any of the items described in the foregoing clauses (a) and (b);

(d) all of the goodwill of the business of the Company connected with the use of, and symbolized by the items described in, clauses (a), (b) and (c); and

(e) all royalties from and all proceeds of, and all rights associated with, the foregoing, including any and all claims by the Company (and rights to sue thereunder) against third parties for past, present or future infringement or dilution of any Trademark. Trademark registration or Trademark license, including any Trademark, Trademark registration, Trademark license or trade name referred to in Item A or Item B of Attachment 1, or for any injury to the goodwill associated with any Trademark, Trademark registration, Trademark license or trade name.

Notwithstanding the foregoing, the term "Trademark Collateral" shall not include any Property in which the Company is not permitted, by Applicable Law or by the terms of any Instrument to which the Company is a party or by which such Property is bound, to grant a security interest or Lien: provided, however, that all proceeds of Property described in the foregoing provisions of this paragraph shall in any event constitute "Trademark Collateral".

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IN WITNESS WHEREOF, the parties hereto have caused this TRADEMARK SECURITY AGREEMENT to be duly executed and delivered by their respective officers thereunto duly authorized on and as of the day and in the year first above written.

[SEAL]

The Company:  
CLUB ONE, INC

Attest: T. Jackson

By: John Kinney  
Name: John Kinney  
Title: CEO

The Bank:  
IMPERIAL BANK

By: David J. Gaudian  
Name: David J. Gaudian  
Title: First Vice President

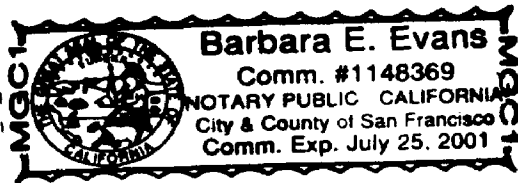
State of California )  
County of SAN FRANCISCO ) ss.

Personally appeared before me, the undersigned, a Notary Public in and for said county, JOHN KINNEY, personally known to me, who, being by me first duly sworn, declared that he is the CEO of CLUB ONE, INC., a Delaware corporation, that being duly authorized he did sign and seal the said **TRADEMARK SECURITY AGREEMENT** as such officer of and on behalf of such corporation's ~~limited liability company~~ and that the same is such ~~limited liability company's~~ free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on this 20<sup>th</sup> day of JAN., 1999.

Barbara E. Evans  
Notary Public

My Commission Expires:  
July 25, 2001



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