

07-28-1999



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RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
- Merger Effective Date
Month Day Year
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKATA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

- Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

07/27/1999 DNGUYEN 00000170 2011994

FOR OFFICE USE ONLY

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40.00 OP

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="2,011,994"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Doreen Sanders

Name of Person Signing

[Signature]

Signature

7-21-99

Date Signed

TRADEMARK MORTGAGE

THIS TRADEMARK MORTGAGE (the "Mortgage") made as of this ~~18th~~ day of May, 1999, by THE ROSS-WILLOUGHBY COMPANY, an Ohio corporation, having an office at 1320 McKinley Avenue, Columbus, Ohio 43222 ("Mortgagor") in favor of FLEET CAPITAL CORPORATION, a Rhode Island corporation, as lender and agent, with an office at One North Franklin, Suite 3600, Chicago, Illinois ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor and Mortgagee are parties to a certain Loan and Security Agreement of even date herewith (the "Loan Agreement"), which Loan Agreement provides, among other things, (i) for Mortgagee, as agent for itself and various other financial institutions from time to time party thereto ("Lenders"), and Lenders to, from time to time, extend credit to or for the account of Mortgagor and (ii) for the grant by Mortgagor to Mortgagee, on behalf of itself and Lenders, of a security interest in substantially all of Mortgagor's assets, including, without limitation, the trademarks, trademark applications, tradenames, service marks, service mark applications and goodwill of Mortgagor;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Mortgagor agrees as follows:

1. Capitalized Terms. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Loan Agreement.

2. Mortgage of Trademarks. To secure the complete and timely satisfaction of all of the Obligations, Mortgagor hereby grants, bargains, assigns, mortgages, creates a security interest in, pledges, transfers and conveys to Mortgagee, on behalf of itself and Lenders, as and by way of a mortgage and security interest having priority over all other security interests, all of Mortgagor's right, title and interest in and to all of its now existing and hereafter created or acquired:

(i) trademarks, trademark registrations, trademark applications, tradenames and tradestyles, service marks, service mark registrations and service mark registration applications, including, without limitation, the trademarks, tradenames, service marks, registrations and applications for registration listed on Exhibit A attached hereto and hereby made a part hereof, and (a) renewals or extensions thereof, (b) all income, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing

trademarks, tradenames and tradestyles, service marks and applications and registrations thereof, together with the items described in clauses (a)-(d) of this subsection 2(i), are sometimes hereinafter referred to individually as a "Trademark", and, collectively, as the "Trademarks"); and

(ii) the goodwill of Mortgagor's business connected with and symbolized by the Trademarks (collectively, the "IP Collateral").

Upon the occurrence and during the continuation of an Event of Default, Mortgagee, on behalf of itself and Lenders, shall have the power, to the extent permitted by law, to exercise the rights and remedies of a secured party provided under the Loan Agreement, including without limitation the right to sell the Trademarks, in accordance with the terms of the Loan Agreement.

3. Warranties, Representations and Covenants. Mortgagor warrants and represents to Mortgagee, on behalf of itself and Lenders, that:

(i) No Trademarks have been adjudged invalid or unenforceable or have been cancelled, in whole or in part, or are not presently subsisting;

(ii) Each of the Trademarks is valid and enforceable;

(iii) Save for the security interest created herein and Permitted Liens, Mortgagor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including, without limitation, licenses, shop rights and covenants by Mortgagor not to sue third persons;

(iv) Mortgagor has adopted, used and is currently using, or has a current bona fide intention to use, all of the Trademarks;

(v) Mortgagor has no notice of any suits or actions commenced or threatened with reference to the Trademarks; and

(vi) Mortgagor has the right to execute and deliver this Mortgage and perform its terms.

4. Restrictions on Future Agreements. Mortgagor agrees that until the Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated, Mortgagor shall not sell or assign its interest in, or grant any license under, the Trademarks, or enter into any other agreement with respect to the Trademarks which is inconsistent with the Obligations under this Mortgage, without the prior written consent of Mortgagee, and Mortgagor further agrees that it shall not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would adversely affect the validity or enforcement of the rights transferred to

Mortgagee under this Mortgage provided, however, that Mortgagor may license the IP Collateral in the ordinary course of Borrower's business and may otherwise transfer such IP Collateral in accordance with the Loan Agreement.

5. New Trademarks. Mortgagor represents and warrants that the Trademarks listed on Exhibit A respectively, constitute all of the Trademarks now owned by Mortgagor. If, before the Obligations shall have been satisfied in full or before the Loan Agreement has been terminated, Mortgagor shall (i) obtain rights to any new Trademarks, or (ii) become entitled to the benefit of any Trademarks, the provisions of this Mortgage above shall automatically apply thereto and Mortgagor shall give to Mortgagee prompt written notice thereof. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibit A, as applicable, to include any such Trademarks.

6. Royalties; Term. The term of the mortgages granted herein shall extend until the earlier of (i) the expiration of each of the respective Trademarks assigned hereunder, and (ii) the Obligations have been paid in full and the Loan Agreement has been terminated. Upon the occurrence of an Event of Default, Mortgagor agrees that the use by Mortgagee of all Trademarks shall be worldwide and without any liability for royalties or other related charges from Mortgagee to Mortgagor.

7. Grant of License to Mortgagor. Unless and until an Event of Default shall have occurred, Mortgagee hereby grants to Mortgagor the exclusive, nontransferable right and license to use the Trademarks in the ordinary course of its business. Mortgagor shall use the Trademarks only on goods of at least as high quality as the goods on which Mortgagor or its predecessor used the goods prior to the date hereof. From and after the occurrence of an Event of Default, Mortgagor's license with respect to the Trademarks set forth in this Section 7 shall terminate forthwith, and Mortgagee shall have, in addition to all other rights and remedies given it by this Mortgage, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code (or such other applicable laws) as enacted in any of the jurisdictions in which the Trademarks may be located.

8. Mortgagee's Right to Inspect. Mortgagor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof and (ii) to provide Mortgagee, upon Mortgagee's request from time to time, with a certificate of an officer of Mortgagor certifying Mortgagor's compliance with the foregoing. Upon the occurrence of an Event of Default, Mortgagor agrees that Mortgagee, or a conservator appointed by Mortgagee, shall have the right to establish such additional product quality controls as Mortgagee, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks.

9. Release of Mortgage. This Mortgage is made for collateral purposes only. Upon payment in full of the Obligations and termination of the Loan Agreement, Mortgagee shall promptly execute and deliver to Mortgagor all deeds, assignments and other

instruments, and shall take such other actions, as may be necessary or proper to re-vest in Mortgagor full title to the Trademarks, subject to any disposition thereof which may have been made by Mortgagee pursuant hereto or pursuant to the Loan Agreement.

10. Expenses. All reasonable expenses incurred in connection with the reasonable performance of any of the agreements set forth herein shall be borne by Mortgagor. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' and paralegals' fees and legal expenses, incurred by Mortgagee in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne by and paid by Mortgagor on written demand by Mortgagee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the then applicable rate as set forth in the Loan Agreement.

11. Duties of Mortgagor. Mortgagor shall have the duty (unless Mortgagor, in the exercise of its reasonable business judgment, determines that it is not necessary for the conduct of its business) (i) to prosecute diligently any trademark or service mark applications pending as of the date hereof or thereafter until the Obligations shall have been paid in full, (ii) to make application on trademarks and service marks, as appropriate, (iii) to preserve and maintain all rights in the Trademarks, and (iv) to ensure that the Trademarks are and remain enforceable. Any expenses incurred in connection with Mortgagor's obligations under this Section 11 shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a trademark or service mark application, or any other Trademark without the written consent of Mortgagee, unless Mortgagor, in its reasonable business judgment determines that any of the foregoing is not necessary for the conduct of its business.

12. Mortgagee's Right to Sue. After the occurrence of an Event of Default, Mortgagee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks, and, if Mortgagee shall commence any such suit, Mortgagor shall, at the request of Mortgagee, do any and all lawful acts and execute any and all proper documents required by Mortgagee in aid of such enforcement and Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all costs and expenses incurred by Mortgagee in the exercise of its rights under this Section 12.

13. Waivers. No course of dealing among Mortgagor, Mortgagee and Lenders, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee or Lenders, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. Severability. The provisions of this Mortgage are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Mortgage in any jurisdiction.

15. Modification. This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

16. Cumulative Remedies; Power of Attorney; Effect on Loan Agreement. All of and Mortgagee's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Upon the occurrence of an Event of Default, Mortgagor hereby authorizes Mortgagee to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its sole discretion, as Mortgagor's true and lawful attorney-in-fact, with power to (i) endorse Mortgagor's name on all applications, documents, papers and instruments necessary or desirable for Mortgagee in the use of the Trademarks, or (ii) take any other actions with respect to the Trademarks as Mortgagee deems to be in its best interest, or (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone. Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Obligations shall have been paid in full and the Loan Agreement, including any amendments thereto, has been terminated. Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee or Lenders under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee shall have, in addition to all other rights and remedies given it by the terms of this Mortgage and the Loan Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code (or such other applicable law) as enacted in any jurisdiction in which the Trademarks may be located.

17. Binding Effect; Benefits. This Mortgage shall be binding upon Mortgagor and its respective successors and permitted assigns, and shall inure to the benefit of Mortgagee and Lenders, their successors, nominees and assigns.

18. **GOVERNING LAW. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS.**

19. **CONSENT TO FORUM AND WAIVERS. TO INDUCE MORTGAGEE AND LENDERS TO MAKE THE LOANS, AS EVIDENCED BY THE**

LOAN AGREEMENT AND THIS AGREEMENT, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL SUITS, ACTIONS OR OTHER PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT OR ANY DOCUMENTS EXECUTED IN CONNECTION HEREWITH, SHALL BE SUBJECT TO LITIGATION IN COURTS HAVING SITUS WITHIN CHICAGO, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN CHICAGO, ILLINOIS. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT AGAINST MORTGAGOR BY MORTGAGEE IN ACCORDANCE WITH THIS SECTION. MORTGAGOR AND MORTGAGEE HEREBY WAIVE, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY. MORTGAGOR FURTHER WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF MORTGAGEE.

20. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

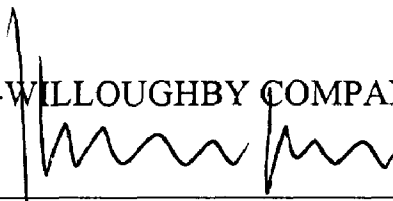
21. Further Assurances. Mortgagor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Mortgagee shall reasonably request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.

22. Survival of Representations. All representations and warranties of Mortgagor contained in this Mortgage shall survive the execution and delivery of this Mortgage and shall be remade on the date of each borrowing under the Loan Agreement.

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage in favor of Mortgagee as of the date first written above.

THE ROSS-WILLOUGHBY COMPANY

By



Rudolf Huyzer, Chief Executive Officer

AGREED AND ACCEPTED AS OF THIS
18th day of May, 1999.

FLEET CAPITAL CORPORATION

By

Its



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing Trademark Mortgage was executed and acknowledged before me this 18th day of May, 1999, by RUDOLF HUYZER, personally known to me to be the CEO of The Ross-Willoughby Company, an Ohio corporation, on behalf of such corporation.



Dawn L. Rinchiuso

Notary Public

My Commission expires:

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing Trademark Mortgage was executed and acknowledged before me this 16TH day of May, 1999, by GRETCHEAN PERKINS, personally known to me to be the VICE PRESIDENT of Fleet Capital Corporation, a Rhode Island corporation, on behalf of such corporation.

Judith Marie Gauthier
Notary Public

JUDITH MARIE GAUTHIER
NOTARY PUBLIC STATE OF MICHIGAN
MACOMB COUNTY
MY COMMISSION EXP. JAN. 19, 2004

My Commission expires:
Jan 19, 2004

AFTER FILING RETURN THIS INSTRUMENT TO:
Karen Ruth Bieber, Atty.
Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
Suite 3700
55 East Monroe
Chicago, Illinois 60603

EXHIBIT A

Trademarks

<u>Trademark Description</u>	<u>U.S. Serial/Registration No.</u>	<u>Registration Date</u>
Midwest Power Tool Division	2,011,994	10/29/96
<u>Trademark Description</u>	<u>Office of Secretary of State of Ohio Serial/Registration No.</u>	<u>Registration Date</u>
"OM" with "The Ross- Willoughby Co." Above and "ORDERMATIC" Below	SM 5977	11/30/94