

08-03-1999



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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** 7-30-99

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/AKA/TA

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

08/02/1999 DNGUYEN 00000245 1263011

FOR OFFICE USE ONLY

240E

01 FC:481 40.00 DP  
02 FC:482 200.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**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="1,263,011"/>	<input type="text" value="1,325,974"/>	<input type="text" value="1,498,122"/>
<input type="text" value="1,508,301"/>	<input type="text" value="1,508,302"/>	<input type="text" value="1,567,298"/>
<input type="text" value="1,697,635"/>	<input type="text" value="1,951,549"/>	<input type="text" value="2,110,986"/>

**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.

Christopher E. Kondracki

26 July 1999

Name of Person Signing

Signature

Date Signed

ASSIGNMENT OF LICENSING AGREEMENT

THIS ASSIGNMENT OF LICENSING AGREEMENT (this "Assignment") is made and entered into this 21<sup>st</sup> day of ~~June~~<sup>July</sup>, 1999 between

GJC

BankBoston Retail Finance Inc. (hereinafter, the "**Lender**"), a Delaware corporation with offices at 40 Broad Street Boston, Massachusetts 02109;

and

Joan and David Helpert Incorporated (hereinafter, the "**Borrower**"), a Massachusetts corporation with its principal executive offices at 1935 Revere Beach Parkway, Everett, Massachusetts 02149;

WHEREAS, Borrower and Lender have entered in a certain Loan and Security Agreement of even date (as such agreement may be modified, supplemented, amended or restated from time to time, hereinafter, the "**Loan Agreement**") pursuant to which a credit facility has been established in favor of the Borrower (terms used herein which are defined in the Loan Agreement are used as so defined); and

WHEREAS, the Borrower has entered into that certain that certain Licensing Agreement dated December 11, 1990 between Joan Helpert Designs, Inc. (hereinafter, the "**Licensor**"), a Delaware corporation, as Licensor, and the Borrower, as Licensee, as amended by First Amendment to License Agreement dated January 31, 1991 (as such agreement, as amended, may be modified, supplemented, amended or restated from time to time, hereinafter the "**Licensing Agreement**"), pursuant to which the Licensor has licensed to the Borrower all "Trademarks" (hereinafter, as defined in the Licensing Agreement) upon the terms and conditions therein contained (all and singular the provisions of the Licensing Agreement are specifically incorporated herein by reference); and

WHEREAS, the execution and delivery of this Assignment is a condition precedent to the performance by the Lender of its obligations under the Loan Agreement;

NOW, THEREFORE, in consideration of the recitals set forth above and incorporated herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants and agrees as follows:

1. Borrower hereby grants, transfers, and assigns to Lender all the right, title, and interest of Borrower (but not the obligations of the Borrower) in, to, and under the Licensing Agreement.

This Assignment is made for the purpose of securing all Liabilities of the Borrower to the Lender.

2. Borrower hereby covenants and agrees:

A. Faithfully to abide by, perform, and discharge each and every obligation, covenant, condition, and agreement of the Licensing Agreement to be performed by Borrower and to enforce performance by the Licensor thereto of each and every obligation, covenant, condition, and agreement now or hereafter to be performed by such other party.

B. To provide Lender promptly with copies of any and all notices received or given by Borrower which allege, either directly or indirectly, that Borrower is in default in the performance of any obligation, covenant, condition, or agreement of the Licensing Agreement to be performed by Borrower, or that the Licensor to the Licensing Agreement is in default in the performance of any obligation, covenant, condition, or agreement of the Licensing Agreement to be performed by such other party.

C. That the term "Event of Default", whenever used in this Assignment, shall have the meaning set forth in the Loan Agreement.

D. That an Event of Default by Borrower under this Assignment shall constitute an Event of Default under all of the other Loan Documents.

E. That upon the occurrence of any Event of Default, Lender may, at its option, with or without notice or demand of any kind (except as may be provided herein or in any of the other Loan Documents) and without waiving such Event of Default, exercise any or all of the Lender's Rights and Remedies. Lender has the right (but not the obligation) to perform and discharge each and every obligation, covenant, condition, and agreement of Borrower under the Licensing Agreement, and, in exercising any such powers, to pay necessary costs and expenses, employ counsel, and incur and pay attorneys' fees and expenses. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty, or liability of Borrower under any of the Licensing Agreement, or by reason of this Assignment; it being agreed that Lender shall be treated as agreeing to perform or discharge such obligation, duty, or liability if (but only if) Lender shall, at its sole option by written notice sent to the Licensor, expressly so elect.

F. That at any time after the occurrence of any Event of Default, Lender may, at its sole option, without notice and without regard to the adequacy of security for the indebtedness hereby secured, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court at any time hereafter, exercise and enforce for its own benefit every right, power, and authority under the Licensing Agreement, as fully as Borrower could itself.

G. That the Licensor, upon receipt of written notice from Lender of the occurrence of any Event of Default and Lender's election to exercise its rights under this Assignment, shall be and is hereby irrevocably directed and authorized by Borrower to recognize and accept Lender as "Licensee" under the Licensing Agreement for any and all purposes as fully as it would recognize and accept Borrower thereunder, and to perform such obligations of Licensor thereunder for the benefit of Lender in accordance with the terms and conditions of the Licensing Agreement, without any obligation to determine whether or not any such Event of Default has in fact occurred; all as set forth in that certain Tri-Party Agreement (as such agreement may be modified, supplemented, amended

or restated from time to time, hereinafter, the "**Tri-Party Agreement**") of even date amongst and between the Lender, the Borrower, and the Licensor.

H. That in the exercise of the powers herein granted to Lender, no liability shall be asserted or enforced against Lender, all such liability being hereby expressly waived and released by Borrower. Borrower hereby agrees to indemnify and hold Lender free and harmless from and against any and all claims, demands, liability, expense, cost, loss, or damage (including all costs, expenses, and attorneys' fees incurred in the defense thereof) which may be asserted against, imposed on, or incurred by Lender by reason of any act or omission of Borrower under the Licensing Agreement or by reason of this Assignment or the exercise of Lender's rights and remedies under this Assignment or under the Licensing Agreement or by reason of any alleged obligation or undertaking of Lender to perform or discharge any obligation, duty, or liability of Borrower under the Licensing Agreement; provided, however, that nothing herein shall be construed to obligate Borrower to indemnify and hold Lender free and harmless from and against any claim, demand, liability, expense, cost, loss, or damage asserted against, imposed on, or incurred by Lender by reason of Lender's willful misconduct or gross negligence.

I. Without limiting the generality of the Lender's Rights and Remedies (including, without limitation, as further provided in the Tri-Party Agreement), the Lender shall have at all times the right freely to assign to any subsequent holder of the Revolving Credit Note (including, without limitation, any subsequent agent or participant respecting the Revolving Credit), in whole or in part, all right, title, interest, power, and authority of the Borrower in, under, and by virtue of the Licensing Agreement hereby or hereafter assigned; provided, however, that any such assignment shall be subject to the provisions of Section 4 of the Tri-Party Agreement.

3. Borrower further hereby covenants, represents, and warrants to Lender that (i) Borrower has not previously assigned, sold, pledged, transferred, mortgaged, hypothecated, or otherwise encumbered the Licensing Agreement, or its right, title, and interest therein, (ii) Borrower shall not assign, sell, pledge, transfer, mortgage, hypothecate, or otherwise encumber its interests in the Licensing Agreement, (iii) Borrower has not performed, and will not perform, any act which might prevent Borrower from performing its undertakings hereunder or which might prevent Lender from operating under or enforcing any of the terms and conditions hereof or which would limit Lender in such operation or enforcement, (iv) Borrower is not in default under the Licensing Agreement and to the best knowledge of Borrower the Licensor is not in default thereunder except as disclosed in writing to Lender, and (v) no amendments to the Licensing Agreement will be made without the prior written consent of Lender.

4. All notices, demands, elections, or requests provided for or permitted to be given pursuant to this Assignment shall be in writing and shall be deemed to have been sufficiently given when delivered or mailed in the manner set forth in the Loan Agreement.

5. Any provision in the Loan Agreement that pertains to this Assignment shall be deemed to be incorporated herein as if such provision were fully set forth in this Assignment. In the event of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail. A

provision in this Assignment shall not be deemed to be inconsistent with the Loan Agreement by reason of fact that no provision in the Loan Agreement covers such provision in this Assignment.

6. Although this Assignment constitutes a present, current, and absolute assignment of the Licensing Agreement, so long as there shall exist no Event of Default Borrower shall have the right to exercise every right, power, and authority under the Licensing Agreement and to perform and enforce performance of all obligations thereunder. This Assignment shall terminate when the Liabilities are indefeasibly paid and otherwise satisfied in full and all obligations, covenants, conditions, and agreements of Borrower contained herein and in the other Loan Documents are performed and discharged, and, in such event, upon the request of Borrower, Lender shall execute and deliver to Borrower instruments effective to evidence the termination of the Assignment.

7. This Assignment constitutes the granting by Borrower to Lender of a security interest under the Uniform Commercial Code as enacted in The Commonwealth of Massachusetts in the right, title, and interest of Borrower in, to, and under the Licensing Agreement. Borrower agrees to execute and deliver to Lender, at any time or times during which this Assignment shall be in effect, such further instruments as Lender may deem necessary to make effective this Assignment and the security interest created hereby. To evidence such security interest, at the request of Lender, Borrower shall, in a form satisfactory to Lender, join with Lender in executing one or more financing statements or other notices of security interest, and any continuation thereof, and shall pay the cost for filing thereof.

8. The exercise of any rights or remedies under this Assignment shall not be deemed to cure or waive any Event of Default, or to waive, modify, or affect any notice of default under any of the Loan Documents, or to invalidate any act done pursuant to such notice. The rights and remedies of Lender herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in any of the Loan Documents or at law or in equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies.

9. This Assignment shall be interpreted, construed and enforced according to laws of The Commonwealth of Massachusetts.

10. It is expressly intended, understood and agreed that this Assignment and the other Loan Documents are made and entered into for the sole protection and benefit of (and accordingly shall be binding upon and inure to the benefit of) the Borrower and Lender, and their respective legal representatives, successors and assigns (but in the case of assigns of Borrower, only if and to the extent that Lender has consented in writing to Borrower's assignment of its rights or obligations hereunder or thereunder to such assigns); that no other person or persons shall have any right at any time to action hereon or rights to the proceeds of the Revolving Credit; that such proceeds of the Revolving Credit do not constitute a trust fund for the benefit of any third party; that no third party shall under any circumstances be entitled to any equitable lien on any such undisbursed proceeds of the Revolving Credit at any time; and that Lender shall have a

lien upon and right to direct application of any such undisbursed proceeds of the Revolving Credit as provided in the Loan Documents.

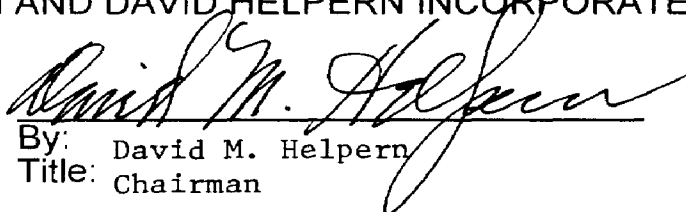
11. The relationship between Lender and Borrower is solely that of a lender and borrower, and nothing contained herein or in any of the other Loan Documents shall in any manner be construed as making the parties hereto partners, joint venturers, or any other relationship other than lender or borrower.

12. Borrower and Lender intend and believe that each provision in this Assignment comports with all applicable local, state, or federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Assignment is found by a court of law to be in violation of any applicable local, state, or federal ordinance, statute, law, administrative or judicial decision, or public policy and if such court should declare such portion, provision or provisions of this Assignment to be illegal, invalid, unlawful, void, or unenforceable as written, then it is the intent of both of Borrower and Lender that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid, and enforceable, that the remainder of this Assignment shall be construed as if such illegal, invalid, unlawful, void, or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations, and interests of Borrower and Lender under the remainder of this Assignment shall continue in full force and effect.

13. Notwithstanding any provision in this Assignment to the contrary, the provisions of this Assignment, including, without limitation, the exercise by Lender of its rights and remedies hereunder, are and at all times shall be expressly subject to the provisions of Section 4 of the Tri-Party Agreement.

IN WITNESS WHEREOF, Borrower has executed this Assignment under seal, as of the day, month, and year first above written.

JOAN AND DAVID HELPERN INCORPORATED

  
By: David M. Helpern  
Title: Chairman

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