

08-03-1999



101106335

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 00000246 1263011 FOR OFFICE USE ONLY 240E

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

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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

Name of Person Signing

Signature

26 July 1999

Date Signed

3
4 **TRADEMARK AND TRADEMARK**
5 **APPLICATIONS SECURITY AGREEMENT** BankBoston Retail Finance Inc.
6
7
8
9

July 8, 1999 (GSE)

10
11
12 THIS AGREEMENT is made between

13
14 BankBoston Retail Finance Inc., a Delaware corporation with offices at 40
15 Broad Street Boston, Massachusetts 02109

16
17 and

18
19 joan and david helpern incorporated (hereinafter, the "**Borrower**"), a
20 Massachusetts corporation with its principal executive offices at 1935 Revere
21 Beach Parkway, Everett, Massachusetts 02149

22
23 in consideration of the mutual covenants contained herein and benefits to be derived
24 herefrom,

25 *WITNESSETH:*

26
27 1. **BACKGROUND:** The Lender and the Borrower have entered in a certain Loan and
28 Security Agreement of even date (as such agreement may be modified, supplemented, amended or
29 restated from time to time, hereinafter, the "**Loan Agreement**") pursuant to which a credit facility has
30 been established in favor of the Borrower and under which the Borrower's Liabilities are to be secured by
31 certain of the Borrower's assets, including all Marks. (Terms used herein which are defined in the Loan
32 Agreement are used as so defined).

33
34 2. **GRANT OF SECURITY INTEREST:** To secure the Liabilities, the Borrower hereby
35 creates a security interest in favor of the Lender, with power of sale (which power of sale shall be
36 exercisable only following the occurrence of an Event of Default) in and to the following and all proceeds
37 thereof (collectively, the "**TM Collateral**");

1 (a) All of the Borrower's now owned or existing or hereafter acquired or arising trademarks,
2 trademark applications, service marks, registered service marks and service mark applications including,
3 without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any
4 goodwill connected with and symbolized by any such trademarks, trademark applications, service marks,
5 registered service marks, and service mark applications.

6 (b) All renewals of any of the foregoing.

7 (c) All income, royalties, damages and payments now and hereafter due and/or payable
8 under and with respect to any of the foregoing, including, without limitation, payments under all licenses
9 entered into in connection therewith and damages and payments for past or future infringements or dilu-
10 tions thereof.

11 (d) The right to sue for past, present and future infringements and dilutions of any of the
12 foregoing.

13 (e) All of Borrower's rights corresponding to any of the foregoing throughout the world.

14
15 **3 PROTECTION OF MARKS BY BORROWER:**

The Borrower shall undertake
16 the following with respect to each items respectively described in Sections and (collectively, the
17 "**Marks**"):

18 (f) Pay all renewal fees and other fees and costs associated with maintaining the Marks and
19 with the processing of the Marks.

20 (g) At the Borrower's sole cost, expense, and risk, pursue the prompt, diligent, processing of
21 each Application for Registration which is the subject of the security interest created herein and not
22 abandon or delay any such efforts.

23 (h) At the Borrower's sole cost, expense, and risk, take any and all action which Borrower
24 deems desirable to protect the Marks, including, without limitation, but subject to Borrower's discretion,
25 the prosecution and defense of infringement actions.

26
27 **4 BORROWER'S REPRESENTATIONS AND WARRANTIES:**

The Borrower
28 represents and warrants that:

29 (i) **EXHIBIT A** includes all of the registered trademarks, Federal trademark applications,
30 registered service marks and Federal service mark applications now owned by the Borrower.

31 (j) All TM Collateral is and shall remain, free and clear of all liens, Encumbrances, or
32 security interests to any Person other than to the Lender.

1 (k) The Borrower shall give the Lender written notice (with reasonable detail) within Ten (10)
2 days following the occurrence of any of the following:

3 (i) The Borrower's obtaining rights to, and filing applications for registration of, any
4 new trademarks, or service marks, or otherwise acquires ownership of any newly registered
5 trademarks, registered service marks, trademark applications, or service mark applications, (other
6 than the Borrower's right to sell products containing the trademarks of others in the ordinary
7 course of Borrower's business).

8 (ii) The Borrower's becoming entitled to the benefit of any registered trademarks,
9 trademark applications, trademark licenses, trademark license renewals, registered service
10 marks, service mark applications, service mark licenses or service mark license renewals
11 whether as licensee or licensor (other than Borrower's right to sell products containing the
12 trademarks of others in the ordinary course of Borrower's business).

13 (iii) The Borrower's entering into any new trademark license agreement or service
14 mark license agreement.

15
16 **AGREEMENT APPLIES TO FUTURE MARKS:**

17 (a) The provisions of this Security Agreement shall automatically apply to any such
18 additional property or rights described in , above, all of which shall be deemed to be and treated as
19 "Marks" within the meaning of this TM Security Agreement.

20 (b) The Borrower hereby authorizes the Lender to take all such action to protect the Lender's
21 interest in and concerning any future registered trademarks, trademark applications, registered service
22 marks and service mark applications, written notice of which is so given, *provided, however*, the Lender's
23 taking of such action shall not be a condition to the creation or perfection of the security interest created
24 hereby.

25
26 **BORROWER'S RIGHTS TO ENFORCE MARKS:** Prior the Lender's giving of

27 notice to the Borrower following the occurrence of an Event of Default, the Borrower shall have the
28 exclusive right to sue for past, present and future infringement of the Marks including the right to seek
29 injunctions and/or money damages, in an effort by Borrower to protect the Marks against encroachment
30 by third parties, *provided, however*.

31 (a) The Borrower first provides the Lender with written notice of the Borrower's intention to so
32 sue for enforcement of any Mark.

1 (b) Any money damages awarded or received by the Borrower on account of such suit (or
2 the threat of such suit) shall constitute TM Collateral.

3 (c) Following the occurrence of any Event of Default, the Lender, by notice to the Borrower
4 may be terminate or limit the Borrower's rights under this Section .

5 (d)

6 3 **LENDER'S ACTIONS TO PROTECT MARKS:** In the event of

7 (a) the Borrower's failure, within Five (5) days of written notice from the Lender, to cure any
8 failure by the Borrower to perform any of the Borrower's obligations set forth in Section ; and/or

9 (b) the occurrence of any Event of Default,

10 (c) the Lender, acting in its own name or in that of the Borrower, may (but shall not be required to) act in
11 the Borrower's place and stead and/or in the Lenders' own right in connection therewith.

12 (d)

13 4 **RIGHTS UPON DEFAULT:** Upon the occurrence of any Event of Default, the Lender
14 may exercise all rights and remedies of a secured party upon default under the Uniform Commercial
15 Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with respect to the
16 Marks, in addition to which the Lender may sell, license, assign, transfer, or otherwise dispose of the
17 Marks. Any person may conclusively rely upon an affidavit of an officer of the Lender that an Event of
18 Default has occurred and that the Lender is authorized to exercise such rights and remedies.

19 5

20 6 **LENDER AS ATTORNEY IN FACT:**

21 (a) The Borrower hereby irrevocably constitutes and designates the Lender as and for the
22 Borrower's attorney in fact, effective following the occurrence of any Event of Default:

23 (i) To exercise any of the rights and powers referenced in Sections and .

24 (ii) To execute all such instruments, documents, and papers as the Lender
25 determines to be appropriate in connection with the exercise of such rights and remedies and to
26 cause the sale, license, assignment, transfer, or other disposition of the Marks.

27 (b) The within grant of a power of attorney, being coupled with an interest, shall be
28 irrevocable until this Agreement is terminated by a duly authorized officer of the Lender.

29 (c) The Lender shall not be obligated to do any of the acts or to exercise any of the powers
30 authorized by Section herein, but if the Lender elects to do any such act or to exercise any of such
31 powers, it shall not be accountable for more than it actually receives as a result of such exercise of
32 power, and shall not be responsible to the Borrower for any act or omission to act except for any act or

1 omission to act as to which there is a final determination made in a judicial proceeding (in which
2 proceeding the Lender has had an opportunity to be heard) which determination includes a specific
3 finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

4 (d)

5 7 **LENDER'S RIGHTS:**

6 (a) Any use by the Lender of the Marks, as authorized hereunder in connection with the
7 exercise of the Lenders' rights and remedies under this Agreement and under the Loan Agreement shall
8 be coextensive with the Borrower's rights thereunder and with respect thereto and without any liability for
9 royalties or other related charges.

10 (b) None of this Agreement, the Loan Agreement, or any act, omission, or circumstance
11 taken or arising hereunder may be construed as directly or indirectly conveying to the Lender any rights in
12 and to the Marks, which rights are effective except following the occurrence of any Event of Default.

13 (c)

14 8 **INTENT:** It is intended that this Agreement supplement the Loan Agreement. All
15 provisions of the Loan Agreement shall apply to the Marks. The Lender shall have the same rights,
16 remedies, powers, privileges and discretions, with respect to the security interests created in the TM
17 Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Loan
18 Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Loan
19 Agreement with respect to all other Collateral.

20 9

21 10 **CHOICE OF LAWS:** It is intended that this Agreement take effect as a sealed
22 instrument and that all rights and obligations hereunder, including matters of construction, validity, and
23 performance, shall be governed by the laws of The Commonwealth of Massachusetts.

24 11

1 IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this Agreement
2 to be executed by their respective duly authorized officers as of the date first above written.

3
4 JOAN AND DAVID HELPERN INCORPORATED BANKBOSTON RETAIL FINANCE INC.
5 (The "Borrower") (The "Lender")

6
7 By Ronald Cafarella
8 Name [Signature]
9 Title VP

7 By Elizabeth A. Pizzo
8 Name [Signature]
9 Title Managing Director

10 THE State OF MA.
11 COUNTY OF Middlesex

12
13 Then personally appeared before me Ronald Cafarella who acknowledged that
14 such person is the duly authorized Fin. V.P. of Joan and David Helpern Incorporated
15 and that such person had executed the foregoing instrument on its behalf.

16
17 Witness my hand and seal this 2nd day of July, 1999

18
19 [Signature]
20 , Notary Public
21 My Commission Expires: September 6, 2002

22
23 THE OF
24 COUNTY OF

25
26 Then personally appeared before me, who acknowledged that such
27 person is the duly authorized of BankBoston Retail Finance Inc. and
28 that such person executed the foregoing instrument on its behalf.

29
30 Witness my hand and seal this ...day of

31
32 _____
33 , Notary Public
34 My Commission Expires:

35
36
37
38
39
40
41
42 384018

1 IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this Agreement
2 to be executed by their respective duly authorized officers as of the date first above written.

3
4 JOAN AND DAVID HELPERN INCORPORATED
5 (The "Borrower")

BANKBOSTON RETAIL FINANCE INC.
(The "Lender")

6
7 By Ronald Cafarella

By Elizabeth A. Rutter

8
9 Name [Signature]

Name.....

10
11 Title [Signature]

Title Managing Director

12
13 THE State OF MA.
14 COUNTY OF Middlesex

15
16
17 Then personally appeared before me Ronald Cafarella who acknowledged that
18 such person is the duly authorized F.in.V.P. of Joan and David Helpern Incorporated
19 and that such person had executed the foregoing instrument on its behalf.

20
21 Witness my hand and seal this 2nd day of July 1999

22
23
24 _____
25 , Notary Public
26 My Commission Expires: September 6, 2002

27
28 THE OF
29 COUNTY OF

30
31 Then personally appeared before me, who acknowledged that such
32 person is the duly authorized of BankBoston Retail Finance Inc. and
33 that such person executed the foregoing instrument on its behalf.

34
35 Witness my hand and seal this ...day of

36
37
38 _____
39 , Notary Public
40 My Commission Expires:

41
42 384018

1 IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this Agreement
2 to be executed by their respective duly authorized officers as of the date first above written.

3
4 JOAN AND DAVID HELPERN INCORPORATED BANKBOSTON RETAIL FINANCE INC.
5 (The "Borrower") (The "Lender")

6
7 By Ronald Cafarella
8 Name Ronald Cafarella
9 Title VP

7 By Elizabeth A. Ratto
8 Name Elizabeth A. Ratto
9 Title Managing Director

10 THE State OF MA.
11 COUNTY OF Middlesex

12
13 Then personally appeared before me Ronald Cafarella who acknowledged that
14 such person is the duly authorized F.in.V.P. of Joan and David Helpern Incorporated
15 and that such person had executed the foregoing instrument on its behalf.

16 Witness my hand and seal this 2nd day of July.....

17
18
19
20
21
22
23 Rosemary C. Marchi
24 Notary Public

25 My Commission Expires: September 6, 2002

26
27 THE County OF Massachusetts
28 COUNTY OF Suffolk

29
30 Then personally appeared before me Elizabeth A. Ratto who acknowledged that such
31 person is the duly authorized Managing Director of BankBoston Retail Finance Inc. and
32 that such person executed the foregoing instrument on its behalf.

33
34 Witness my hand and seal this 13 day of July.....

35
36
37
38 [Signature]
39 Notary Public

40 My Commission Expires:

41 Sept 27, 2002

42 384018

GJE

EXHIBIT A

Borrowers

Licenser's now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks, and Federal trade mark applications:

Trademark/Service Mark Registrations

Mark	Registration No.	Registration Date
JOAN AND DAVID	1263011	01/03/84
JOAN HELPERN	1325974	03/19/85
JOAN AND DAVID	1498122	07/26/88
DAVID AND JOAN	1508301	10/11/88
JOAN AND DAVID TOO	1508302	10/11/88
JD	1567298	11/21/89
JOAN & DAVID	1697635	06/30/92
DAVID & JOAN	1951549	01/23/96
JOAN HELPERN SIGNATURE	2110986	11/04/97

Trademark Applications

MARK	SERIAL NUMBER	FILING DATE
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None.