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U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

OMB No. 0651-0011 (exp. 4/94)



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To the Honorable Commissioner of Patents and Trademarks, I have received the attached original documents or copy thereof.

1. Name of conveying party(ies):

2nd Source Cellular, Inc. 2205 Global Way Hebron, Kentucky 41048

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

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

3. Nature of conveyance:

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

Execution Date: August 13, 1999

2. Name and address of receiving party(ies)

Name: FINOVA Mezzanine Capital Inc.

Internal Address:

Street Address: 500 Church Street, Suite

City: Nashville State: TN ZIP: 37219

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designations must be a separate document from assignment)

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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1910431 (registration number)

Additional numbers attached? Yes No

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

Name: Philip S. Clark, Esq.

Internal Address:

FINOVA Mezzanine Capital Inc.

Street Address: 500 Church Street

Suite 200

City: Nashville State: TN ZIP: 37219

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41) \$ 40.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

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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.

Philip S. Clark Name of Person Signing

Signature

9/7/99 Date

Total number of pages including cover sheet, attachments, and document:

# TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT is made on the 13<sup>th</sup> day of August, 1999 between 2nd SOURCE CELLULAR, INC., a Kentucky corporation, having their addresses at 2205 Global Way, Hebron, Kentucky ("Assignor"), and FINOVA MEZZANINE CAPITAL INC. ("FINOVA"), whose address is 500 Church Street, Suite 200, Nashville, Tennessee 37219

BACKGROUND. Assignor has executed and delivered its Loan Agreement as such may be amended from time to time, the "Loan Agreement"), Secured Promissory Note, and other loan documents executed in connection therewith (all of which are collectively referred to as the "Loan Documents") to FINOVA to secure a loan by FINOVA to Assignor in the amount of \$5,000,000. In order to induce FINOVA to execute and deliver the Loan Agreement, Assignor has agreed to collaterally assign to FINOVA certain trademark rights. This Agreement is being executed contemporaneously with the Loan Agreement under which FINOVA is being granted a lien on and security interest in accounts receivable, inventory, equipment and certain other assets ("Other Assets") relating to products sold under the Trademarks (as such term is defined herein) whereby FINOVA shall have the right to foreclose on the Trademarks and the Other Assets in the event of the occurrence and continuance of an Event of Default (as such terms are defined in the Loan Agreement), in order that FINOVA or any subsequent owner of the Trademarks may continue to use the Trademarks in substantially the same manner as used by Assignor.

NOW, THEREFORE, in consideration of the foregoing premises, Assignor hereby agrees with FINOVA as follows:

1) To secure the complete and timely satisfaction of all Obligations (as such term is defined in the Loan Agreement), Assignor hereby grants, assigns and conveys to FINOVA the Assignor's entire right, title and interest in and to the trademark applications and trademarks listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), including without limitation all renewals thereof, all proceeds of infringement suits, the right to sue for past, present and future infringements and all rights corresponding thereto throughout the world (all of the foregoing are collectively called the "Trademarks"), and the goodwill of the business to which each of the Trademarks relates.

2) Assignor covenants and warrants that to the best of its knowledge (actual or constructive):

- (a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;
- (b) Each of the Trademarks is valid and enforceable;
- (c) No claim has been made that the use of any of the Trademarks does or may violate the rights of any third person;
- (d) Assignor 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 pledges, assignments, licenses, registered user agreements and covenants by Assignor not to sue third persons, other than the assignment to FINOVA pursuant to this Agreement;

- (e) Assignor has the unqualified right to enter into this Agreement and perform its terms;
- (f) Assignor has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Trademarks;
- (g) Assignor has used, and will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture or use of products sold under the Trademarks; and
- (h) Assignor (along with its predecessors in interest) does not own any other Trademarks and/or trade names, service marks or other intangible assets which are registered with the United States Patent and Trademark Office in Washington, D.C. except as are specifically identified in the other Loan Documents.

3) Assignor hereby grants to FINOVA and its employees and agents the right to visit Assignor's facilities which maintain or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto. Assignor shall do any and all acts reasonably required by FINOVA to ensure Assignor's compliance with paragraph 2(g).

4) Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement which is inconsistent with Assignor's obligations under this Agreement, without FINOVA's prior written consent, such consent not to be unreasonably withheld.

5) If, before the Obligations shall have been satisfied in full, Assignor shall obtain rights to any new trademarks or trademark applications, the provisions of paragraph 1 shall automatically apply thereto and Assignor shall give FINOVA prompt written notice thereof.

6) Assignor authorizes FINOVA to modify this Agreement by amending Schedule A to include any future trademarks and trademark applications covered by paragraphs 1 and 5.

7) Unless and until there shall have occurred an Event of Default, FINOVA hereby grants to Assignor the exclusive, nontransferable right and license to use the Trademarks on and in connection with products sold by Assignor, for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this paragraph 7, without the prior written consent of FINOVA which consent shall not be unreasonably withheld.

8) If any Event of Default shall have occurred, Assignor's license under the Trademarks, as set forth in paragraph 7, shall terminate forthwith, and FINOVA shall have, in addition to all other rights and remedies given to it by this Agreement and the Loan Agreement, those rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located and, without limiting the generality of the foregoing, FINOVA may immediately, without demand of performance and without other notice (except as set forth below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon in a commercially reasonable manner, all or from time to time any of the Trademarks, or any interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all reasonable expenses (including all reasonable expenses for broker's fees and legal services), may apply the residue of such proceeds to the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Assignor. Notice of any sale or other disposition of the Trademarks shall be given to Assignor at least five (5) Business Days (as such term is defined in the Loan Agreement) before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which notice Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, FINOVA may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right or equity of redemption on the part of Assignor, which right and equity of redemption are hereby waived and released.

9) At such time as Assignor shall completely satisfy all of the Obligations, this Agreement shall terminate and FINOVA shall execute and deliver to Assignor at Assignor's expense all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Trademarks, subject to any disposition thereof which may have been made by FINOVA pursuant hereto.

10) Any and all reasonable fees, costs and expenses, of whatever kind or nature, including reasonable attorney fees and legal expenses incurred by FINOVA in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, 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 protecting, maintaining or preserving the Trademarks, in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, or in the enforcement by FINOVA of any of its rights or remedies under this Agreement, the Loan Agreement or any Loan Document (as such term is defined in the Loan Agreement) shall be borne and paid by Assignor on demand by FINOVA and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the Default Rate (as such term is defined in the Loan Agreement).

11) Assignor shall have the duty, through counsel reasonably acceptable to FINOVA, to prosecute diligently any trademark applications of the Trademarks pending as of the date of

this Agreement or thereafter until the Obligations shall have been paid in full, to make federal application on registrable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings and to do any and all acts which are necessary or desirable to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with the Trademarks shall be borne by Assignor. The Assignor shall not abandon any Trademark without the consent of FINOVA, which consent shall not be unreasonably withheld.

12) Assignor shall have the right to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Trademarks, in which event FINOVA may, if necessary, be joined as a nominal party to such suit if FINOVA shall have been satisfied that it is not incurring any risk of liability because of such joinder. Assignor shall promptly, upon demand, reimburse and indemnify FINOVA for all damages, costs and expenses, including attorney fees, incurred by FINOVA in the fulfillment of the provisions of this paragraph. The obligations of the Assignor under this paragraph shall survive the termination of this Agreement.

13) In the event of the occurrence of a Default or an Event of Default, Assignor hereby authorizes and empowers FINOVA to make, constitute and appoint any officer or agent of FINOVA as FINOVA may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for FINOVA to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or necessary for FINOVA to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Agreement.

14) If Assignor fails to comply with any of its obligations hereunder, FINOVA may do so in Assignor's name or in FINOVA's name, but at Assignor's expense, and Assignor hereby agrees to reimburse FINOVA in full for all expenses, including reasonable attorney's fees, incurred by FINOVA in protecting, defending and maintaining the Trademarks.

15) No course of dealing between Assignor and FINOVA, nor any failure to exercise, nor any delay in exercising, on the part of FINOVA, 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.

16) All of FINOVA's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Agreement, or by any other agreement(s) or by law shall be cumulative and may be exercised singly or concurrently.

17) The provisions of this Agreement 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 Agreement in any jurisdiction.

18) This Agreement is subject to modification only by a writing signed by the parties, except as provided elsewhere herein.

19) The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

20) The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Arizona.

21) THE PARTIES HERETO AGREE TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN ARIZONA IN CONNECTION WITH ANY MATTER ARISING HEREUNDER, INCLUDING THE COLLECTION AND ENFORCEMENT HEREOF. THE ASSIGNOR AND FINOVA EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE ACTIONS OF FINOVA. THIS WAIVER IS MADE KNOWINGLY AND IN CONSIDERATION OF THE ADVANCES MADE UNDER THE LOAN AGREEMENT.

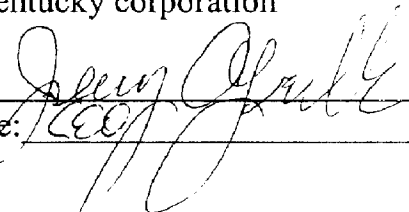
22) This Agreement, the Loan Agreement and the Loan Documents embody the entire agreement and understanding between the Assignor and FINOVA and supersedes all prior agreements and understandings relating to the subject matter hereof and thereof.

WITNESS the execution hereof under seal as of the day and year first above written.

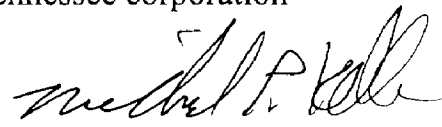
ATTEST:

\_\_\_\_\_  
[SEAL]

2nd SOURCE CELLULAR, INC.,  
a Kentucky corporation

By:   
Title: CEO

FINOVA MEZZANINE CAPITAL INC.,  
a Tennessee corporation

By:   
Title: Vice President - Credit

## SCHEDULE A

**Word Mark** 2ND SOURCE  
**Owner Name** (REGISTRANT) Source, Inc.  
**Owner Address** 14060 Proton Road Dallas TEXAS 75244 CORPORATION TEXAS  
**Attorney of Record** Todd V. McMurtry  
**Serial Number** 74-378948  
**Registration Number** 1910431  
**Filing Date** 04/06/1993  
**Registration Date** 08/08/1995  
**Mark Drawing Code** (1) TYPED DRAWING  
**Register** PRINCIPAL  
**Published for Opposition** 11/16/1993  
**Type of Mark** SERVICE MARK

FINOVA MEZZANINE CAPITAL INC.  
500 CHURCH STREET, SUITE 200  
NASHVILLE, TN 37219  
TEL 615 256 0701  
FAX 615 726 1208  
www.finova.com

September 9, 1999

**VIA FEDERAL EXPRESS**

Assistant Commissioner for Trademarks/Patents  
U.S. Patent and Trademark Office  
Attn: Customer Services Counter  
1213 Jefferson Davis Highway, 3rd Floor  
Arlington, VA 22202

Re: 2<sup>nd</sup> Source Cellular, Inc.

Dear Commissioner:

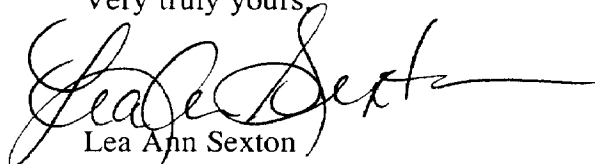
Please find enclosed for recording, the following documents regarding the above listed entities:

1. One Recordation Form Cover Sheet - Trademarks Only;
2. One Security Agreement; and
3. A check in the amount of \$40.00 to cover recording costs.

If this check is insufficient to cover the costs of recording the subject document, please record the document immediately and contact me as soon as possible concerning the insufficient amount. If the check is excessive, we request that the document be recorded at once and that a refund be processed in due course.

Please stamp the enclosed copy of this letter "received" and return it to me in the enclosed self-addressed stamped envelope.

Very truly yours,

  
Lea Ann Sexton  
Legal Assistant

las/trademark\_tributary  
cc: Philip S. Clark, Esq.