

11-08-1999

Department of Commerce
Patent and Trademark Office
TRADEMARK



101194093

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

11-4-99

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 Change of Name
 - Other
- Effective Date
Month Day Year

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

09 23 99

Name

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

11/05/1999 NTHA11 00000265 0831222
01 FC:481 40.00 OP
02 FC:482 50.00 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

TRADEMARK
REEL: 001985 FRAME: 0664

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="0,831,222"/>	<input type="text" value="0,829,274"/>	<input type="text" value="1,496,261"/>
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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

November 2, 1999

Name of Person Signing

Signature

Date Signed

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4 **TRADEMARK AND TRADEMARK**
5 **APPLICATIONS SECURITY AGREEMENT**

BankBoston Retail Finance Inc.

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..September 20, 1999..
..Sept 27 1999

THIS AGREEMENT is made between

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

and

Chaffin Acquisition Co., Inc. (hereinafter, the "**Borrower**"), a Kansas
corporation with its principal executive offices at 1313 Minneola Road, Dodge
City, Kansas 67801

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

WITNESSETH:

1. **BACKGROUND:** The Lender and the Borrower 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 and under which the Borrower's Liabilities are to be secured
by certain of the Borrower's assets, including all Marks. (Terms used herein which are defined in the
Loan Agreement are used as so defined).

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

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

..September 20, 1999..

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

2 (c) All income, royalties, damages and payments now and hereafter due and/or
3 payable under and with respect to any of the foregoing, including, without limitation, payments under all
4 licenses entered into in connection therewith and damages and payments for past or future
5 infringements or dilutions thereof.

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

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

10
11 3. **PROTECTION OF MARKS BY BORROWER:** The Borrower shall undertake
12 the following with respect to each items respectively described in Sections 2(a) and 2(b) (collectively, the
13 "Marks"):

14 (a) Pay all renewal fees and other fees and costs associated with maintaining the
15 Marks and with the processing of the Marks.

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

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

22
23 4. **BORROWER'S REPRESENTATIONS AND WARRANTIES:** The Borrower
24 represents and warrants that:

25 (a) **EXHIBIT A** includes all of the registered trademarks, Federal trademark
26 applications, registered service marks and Federal service mark applications now owned by the
27 Borrower.

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

30 (c) The Borrower shall give the Lender written notice (with reasonable detail) within
31 Ten (10) days following the occurrence of any of the following:

32 (i) The Borrower's obtaining rights to, and filing applications for registration
33 of, any new trademarks, or service marks, or otherwise acquires ownership of any newly
34 registered trademarks, registered service marks, trademark applications, or service mark
35 applications, (other than the Borrower's right to sell products containing the trademarks of others

1 in the ordinary course of Borrower's business).

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

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

9
10 **5 AGREEMENT APPLIES TO FUTURE MARKS:**

11 (a) The provisions of this Security Agreement shall automatically apply to any such
12 additional property or rights described in 4(c), above, all of which shall be deemed to be and treated as
13 "Marks" within the meaning of this TM Security Agreement.

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

19
20 **6. BORROWER'S RIGHTS TO ENFORCE MARKS:** Prior the Lender's giving of

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

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

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

29 (c) Following the occurrence of any Event of Default, the Lender, by notice to the
30 Borrower may be terminate or limit the Borrower's rights under this Section 6.

31
32 **7. LENDER'S ACTIONS TO PROTECT MARKS:** In the event of

33 (a) the Borrower's failure, within Five (5) days of written notice from the Lender, to
34 cure any failure by the Borrower to perform any of the Borrower's obligations set forth in Section 3;
35 and/or

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

2 the Lender, acting in its own name or in that of the Borrower, may (but shall not be required to) act in the
3 Borrower's place and stead and/or in the Lenders' own right in connection therewith.
4

5 8. **RIGHTS UPON DEFAULT:** Upon the occurrence of any Event of Default, the
6 Lender may exercise all rights and remedies of a secured party upon default under the Uniform
7 Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with
8 respect to the Marks, in addition to which the Lender may sell, license, assign, transfer, or otherwise
9 dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Lender that
10 an Event of Default has occurred and that the Lender is authorized to exercise such rights and remedies.
11

12 9. **LENDER AS ATTORNEY IN FACT:**

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

15 (i) To exercise any of the rights and powers referenced in Sections 3 and
16 5(b).

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

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

22 (c) The Lender shall not be obligated to do any of the acts or to exercise any of the
23 powers authorized by Section 9(a) herein, but if the Lender elects to do any such act or to exercise any
24 of such powers, it shall not be accountable for more than it actually receives as a result of such exercise
25 of power, and shall not be responsible to the Borrower for any act or omission to act except for any act
26 or omission to act as to which there is a final determination made in a judicial proceeding (in which
27 proceeding the Lender has had an opportunity to be heard) which determination includes a specific
28 finding that the subject act or omission to act had been grossly negligent or in actual bad faith.
29

30 10. **LENDER'S RIGHTS:**

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

35 (b) None of this Agreement, the Loan Agreement, or any act, omission, or

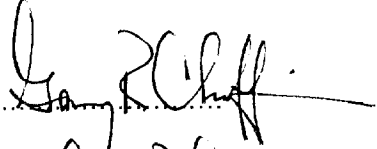
1 circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the
2 Lender any rights in and to the Marks, which rights are effective except following the occurrence of any
3 Event of Default.
4

5 11. **INTENT:** It is intended that this Agreement supplement the Loan Agreement. All
6 provisions of the Loan Agreement shall apply to the Marks. The Lender shall have the same rights,
7 remedies, powers, privileges and discretions, with respect to the security interests created in the TM
8 Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Loan
9 Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Loan
10 Agreement with respect to all other Collateral.
11


12 12. **CHOICE OF LAWS:** It is intended that this Agreement take effect as a sealed
13 instrument and that all rights and obligations hereunder, including matters of construction, validity, and
14 performance, shall be governed by the laws of The Commonwealth of Massachusetts.
15
16

17 IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this
18 Agreement to be executed by their respective duly authorized officers as of the date first above written.
19

20 CHAFFIN ACQUISITION CO., INC.
21 (The "Borrower")

22
23 By: 
24 Name: GARY R. CHAFFIN
25
26 Title: Pres.....
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BANKBOSTON RETAIL FINANCE INC.
(The "Lender")

By: 
Name: Michael L. Piretta
Title: Managing Director

..September 20, 1999..

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THE Not OF DE
COUNTY OF NC, SS

Then personally appeared before me Ray P. Chaffin who acknowledged that such person is the duly authorized President of Chaffin Acquisition Co., Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 23rd day of September

Judith A. Hearn

, Notary Public
My Commission Expires:

THE Not OF DE
COUNTY OF N.C.

**JUDITH A. HEARN
NOTARY PUBLIC
STATE OF DELAWARE
MY COMMISSION EXPIRES NOVEMBER 20, 1999**

Then personally appeared before me Michael P. Dineen who acknowledged that such person is the duly authorized Mgr. Dir. of BankBoston Retail Finance Inc. and that such person executed the foregoing instrument on its behalf.

Witness my hand and seal this 23rd day of September

Judith A. Hearn

, Notary Public
My Commission Expires:

**JUDITH A. HEARN
NOTARY PUBLIC
STATE OF DELAWARE
MY COMMISSION EXPIRES NOVEMBER 20, 1999**

EXHIBIT A

Borrower'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

<u>TRADEMARK</u>	<u>REGISTRATION NUMBER</u>	<u>REGISTRATION DATE</u>
"Gibson's"	0831222	June 27, 1967
"Gibson"	0829274	May 23, 1967
"Gibson's Discount Center Where You Buy the Best for Less"	1496261	July 12, 1988

Trademark Applications

<u>MARK</u>	<u>SERIAL NUMBER</u>	<u>FILING DATE</u>
518961.1		

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