

12-22-1999



101230438 VER SHEET  
**TRADEMARKS ONLY**

12-3-99

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  
Effective Date  
Month Day Year
- Merger
- Change of Name
- Other

**Conveying Party**

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year  
11 08 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

12/21/1999 JSHABAZZ 00000121 75429965  
01 FC:481 40.00 OP  
02 FC:482 550.00 OP

**FOR OFFICE USE ONLY**

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

Exp. # 101230438 30245918 US

**TRADEMARK**  
REEL: 002002 FRAME: 0448

**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

(650) 812-1360

Name

Janet Walworth

Address (line 1)

Manatt, Phelps & Phillips, LLP

Address (line 2)

3030 Hansen Way, Suite 100

Address (line 3)

Palo Alto, CA 94304

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)**

75429965

75430385

75676782

2119756

2249251

2119756

75430399

75430229

75430028

2149877

2284728

75430384

75430383

75360446

2184021

2249252

**Number of Properties**

Enter the total number of properties involved.

#

23

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

590.00

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.

Francis X. Ferrer

Name of Person Signing

Signature

12-2-99

Date Signed

**RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY**

FORM PTO-1618C  
Expires 06/30/99  
OMB 0651-0027

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

**Conveying Party**

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date

Month Day Year

Name

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship State of Incorporation/Organization

**Receiving Party**

Enter Additional 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  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

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 the Assignment.)

**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)**

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**AMENDED AND RESTATED  
COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY AGREEMENT**

576  
10/28/99

This Amended and Restated Collateral Assignment, Patent Mortgage and Security Agreement (this "Amended Collateral Assignment") is made as of this    day of ~~October~~, 1999 by and between Big Wick Candle Company, Inc., a Delaware corporation fka The Washington Aromatherapy of Rome, Inc. ("Assignor") and **Business Factors, Inc., dba BFI Business Finance** ("Assignee"), a California corporation.

RECITALS

- A. Assignee has loaned to Assignor certain funds (the "Prior Loan"), and Assignor has borrowed such funds from Assignee which are secured in part pursuant to the terms of that certain Amended and Restated Loan & Security Agreement dated April 28, 1999;
- B. In connection with the Prior Loan, Assignor executed in favor of Assignee that certain Collateral Assignment, Patent Mortgage and Security Agreement (the "Prior Collateral Assignment") dated April 28, 1999, which was filed with the U.S. Patent and Trademark Office on July 6, 1999, Registration Number 2249251. This Amended Security Agreement amends and restates the Prior Security Agreement.
- C. U.S.A. Unico ("Unico") has merged with and into Assignor, with Assignor as the surviving corporation. Assignor then re-incorporated in the State of Delaware and changed its name from The Washington Aromatherapy of Rome, Inc. to Big Wick Candle Company, Inc. (collectively, such transactions are referred to as the "Merger").
- D. Assignee has agreed to lend to Assignor certain additional funds (the "New Loan"), and Assignor desires to borrow such funds from Assignee and will be secured in part pursuant to the terms of that certain Amended and Restated Loan & Security Agreement (Accounts Receivable, Inventory Line of Credit and Equipment Term Loan) and all documents related thereto, dated ~~October~~   , 1999 (the "Loan Agreement"). *New Loan*
- E. In order to induce Assignee to make the New Loan, Assignor has agreed to assign certain intangible property to Assignee for purposes of securing the obligations of Assignor to Assignee.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Assignment, Patent Mortgage and Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Assignor's present or future indebtedness, obligation and liabilities to Assignee, Assignor hereby assigns, transfers, conveys and grants a mortgage to Assignee, as security, of Assignor's entire right, title and interest in, to and under the following (all of which shall collectively be called the "Collateral," which shall also include all of the following types of property that were formerly owned by Unico (the "Predecessor Collateral")):

(a) Any and all copyright rights, copyright application, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Copyrights");



(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, or acquired or held;

(c) Any and all design rights which may be available to Assignor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on **Exhibit B** attached hereto (collectively, the "Patents");

(e) Any trademark and service mark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Assignor connected with and symbolized by such trademarks, including without limitation those set forth on **Exhibit C** attached hereto (collectively, the "Trademarks");

(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use; and

(h) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing

THE INTEREST IN THE COLLATERAL BEING ASSIGNED HEREUNDER SHALL NOT BE CONSTRUED AS A CURRENT ASSIGNMENT, BUT AS A CONTINGENT ASSIGNMENT TO SECURE ASSIGNOR'S OBLIGATIONS TO ASSIGNEE UNDER THE LOAN AGREEMENT AND DOCUMENTS RELATED THERETO.

2. Authorization and Request. Assignor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this conditional assignment.

3. Covenants and Warranties. Assignor represents, warrants, covenants and agrees as follows:

(a) Assignor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Assignor to its customers in the ordinary course of business and except for liens, encumbrances or security interests described in **Exhibit D** attached hereto;

(b) Assignor has succeeded to, and, as a result of the Merger now owns, any and all of the Predecessor Collateral.

(c) Performance of this Amended Collateral Assignment does not conflict with or result in a breach of any agreement to which Assignor is party or by which Assignor is bound;

(d) During the term of this Amended Collateral Assignment, Assignor will not transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Assignor;



(e) Each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party;

(f) Assignor shall promptly advise Assignee of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Assignor in or to any Trademark, Patent or Copyright not specified in this Assignment;

(g) Assignor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights; (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Assignee in writing of material infringements detected; and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Assignee, which shall not be unreasonably withheld;

(h) Assignor shall promptly register the most recent version of any of Assignor's copyrights, if not so already registered, and shall, from time to time, execute and file such other instruments, and take such further actions as Assignee may request from time to time to perfect or continue the perfection of Assignee's interest in the Collateral;

(h) This Amended Collateral Assignment creates, and in the case of after acquired Collateral, this Assignment will create at the time Assignor first has rights in such after acquired Collateral, in favor of Assignee a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan Agreement upon making the filings referred to in clause (i) below;

(i) Except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents necessary to perfect the security interests and assignment created hereunder, and, except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (i) for the grant by Assignor of the security interest granted hereby or for the execution, delivery or performance of this Amended Collateral Assignment or by Assignor or (ii) for the perfection in the United States or the exercise by Assignee of its rights and remedies hereunder;

(j) All information heretofore, herein or hereafter supplied to Assignee by or on behalf of Assignor with respect to the Collateral is accurate and complete in all material respects;

(k) Assignor shall not enter into any agreement that would materially impair or conflict with Assignor's obligations hereunder without Assignee's prior written consent. Assignor shall not permit the inclusion in any contract to which it becomes a party of any provisions that could or might in any way impair or prevent the creation of a security interest in Assignor's rights and interests in any property included within the definition of the Collateral acquired under such contracts; and

(l) Upon any officer of Assignor obtaining knowledge thereof, Assignor will promptly notify Assignee in writing of any event that materially adversely affects the value of any of the Collateral, the ability of Assignor or Assignee to dispose of any of the Collateral or the rights and remedies of Assignee in relation thereto, including the levy of any legal process against any of the Collateral.

4. Assignee's Rights. Assignee shall have the right, but not the obligation, to take, at Assignor's sole expense, any actions that Assignor is required under this Amended Collateral Assignment to take but which Assignor fails to take, after five (5) days' telephonic or written notice to Assignor. Assignor shall reimburse and indemnify Assignee for all costs and expenses incurred in the reasonable exercise of its rights under this Section 4.



5. Inspection Rights. Assignor hereby grants to Assignee and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable notice to Assignor, and any of Assignor's and its subcontractors' plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold under any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable notice to Assignor and as often as may be reasonably requested; provided, however, nothing herein shall entitle Assignee to access to Assignor's trade secrets and other proprietary information.

6. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Assignor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including, appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Assignee to carry out the intent and purposes of this Amended Collateral Assignment, or for assuring and confirming to Assignee the grant or perfection of a security interest in all Patents.

(b) Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, with full authority in the place and stead of Assignor and in the name of Assignor, Assignee or otherwise, from time to time in Assignee's discretion, to take any action and to execute any instrument which Assignee may deem necessary or advisable to accomplish the purposes of this Amended Collateral Assignment, including:

(i) To modify in its sole discretion this Amended Collateral Assignment without first obtaining Assignor's approval of or signature to such modification by amending **Exhibit A**, **Exhibit B** and **Exhibit C** thereof, to include reference to any right title or interest in any copyright, patents, or trademarks acquired by Assignor after the execution hereof or to delete any reference to any right, title, interest in any copyrights, patents, or trademarks in which Assignor no longer has or claims any right, title or interest; and,

(ii) To file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Assignor where permitted by law.

7. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Assignment:

(a) An Event of Default occurs under the Loan Agreement or any other agreement;

or

(b) Assignor breaches any warranty or agreement made by Assignor in this Assignment.

8. Remedies. Upon the occurrence of an Event of Default, Assignee shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require Assignor to assemble the Collateral and to make it available to Assignee at a place designated by Assignee. Assignor will pay any expenses (including attorneys' fees) incurred by Assignee in connection with the exercise of any of Assignee's rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Assignee's rights and remedies with respect to the Collateral shall be cumulative.



9. Indemnity. Assignor agrees to defend, indemnify and hold harmless Assignee and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Assignee as a result of or in any way arising out of, following or consequential to transactions between Assignee and Assignor, whether under this Amended Collateral Assignment or otherwise (including without limitation attorneys fees' and expenses), except for losses arising from or out of Assignee's gross negligence or willful misconduct.

10. Reassignment. At such time as Assignor shall completely satisfy all of the obligations secured hereunder, Assignee shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to revest in Assignor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Assignee pursuant hereto.

11. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

12. Attorneys' Fees. If any action relating to this Amended Collateral Assignment is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

13. Amendments. This Amended Collateral Assignment may be amended only by a written instrument signed by both parties hereto.

14. Counterparts. This Amended Collateral Assignment may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.


15. California Law and Jurisdiction. This Amended Collateral Assignment shall be governed by the laws of the State of California, without regard for choice of law provisions. Assignor and Assignee consent to the non-exclusive jurisdiction of any state or federal court located in Santa Clara County, California.





IN WITNESS WHEREOF, the parties hereto have executed this Amended Collateral Assignment on the day and year first above written.

ASSIGNOR: BIG WICK CANDLE COMPANY,  
INC.

By:   
Trent Brockmeier

Its: President and Chief Operating Officer

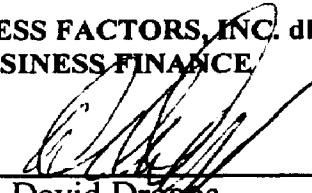
By:   
Peter Dalton

Its: Chief Executive Officer and Secretary

Address:  
1150 Sixth Street  
Berkeley, CA 94710

ASSIGNEE:

**BUSINESS FACTORS, INC. dba**  
**BFI BUSINESS FINANCE**

By:   
David Drogo  
Its: Executive Vice President

Address:  
1655 The Alameda  
San Jose, CA 95126

LEGAL/COPYRIGHTS COLLATERAL ASSIGNMENT

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TRADEMARK  
REEL: 002002 FRAME: 0456

**Exhibit "A"**

**Copyrights**

Not Applicable



Exhibit "B"

**Patents**

Not Applicable



Exhibit "C"

**Trademarks**

<u>Trademark Description</u>	<u>Country</u>	<u>Application No.</u>	<u>Registration No.</u>	<u>Status</u>
Mark: L'Assoluto Drawing Type: Miscellaneous Design	USA	75429965		pending
Mark: Fleur Du Rome Drawing Type: Words, Letters, Or Numbers in Typed Form	USA	75430399		pending
Mark: Meditation Blend Drawing Type: Words, Letters, Or Numbers in Typed Form	USA	75430384		pending
Mark: The Aromatherapy of Rome Drawing Type: Words, Letters, Or Numbers and Design	USA	75208675	2119756	registered
Mark: Colour Drawing Type: Words, Letters, Or Numbers in Typed Form	USA	75208653	2149877	registered
Mark: Essenza Drawing Type: Words, Letters, Or Numbers in Typed Form	USA	75334697	2184021	registered
AOR Border Design	USA	75429965	2249251	registered
Meditation Blend	USA	75430384	2284728	registered
Roman Spring	USA	75430034	2249252	registered
The Aromatherapy of Rome	USA	75208675	2119756	registered
Rejuvenating Blend	USA	75430385		pending
Relaxation Blend	USA	75430229		pending
Sensual Blend	USA	75430383		pending
Fleur de Rome	USA	75676782		pending
The Aromatherapy of Rome and Design	USA	75430028		pending
Concrete Perfume	USA	75360446		pending



Essenza	USA	75319384	pending
Mottled Trade Dress	USA	75430377	pending
Apothecario de Roma	USA	75373221	pending
Apothecario de Roma	USA	75373678	pending
Apothecario de Roma	USA	75373298	pending
L'Assoluto	USA	75361017	pending
Rome	USA	75361018	pending



Exhibit "D"

(list any exceptions to liens, encumbrances or security interests)

1. The security interests of Tangent Growth Fund, L.P., a California limited partnership, Tangent Fund Management II, LLC, a California limited liability company (collectively, "Tangent"), which security interests are subordinate to the security interest of Assignee, pursuant to that certain Intercreditor Agreement, by and among Assignee and Tangent, and approved by Assignor.

