

02-18-2000



101270100

Docket No.:

Tab settings

MKD
1-31-00

To the Honorable Commissioner of Patents

Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Club Distribution, Inc.

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

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

2. Name and address of receiving party(ies):

Name: Finova Capital Corporation

Internal Address:

Street Address: 355 South Grand Avenue

City: Los Angeles State: CA ZIP: 90071

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Trademark Collateral Assignment and Security Agreement
- Merger
- Change of Name

Execution Date: January 12, 2000

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

75/742199

B. Trademark Registration No.(s)

Additional numbers attached? Yes No

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

Name: David J. Richter, Esq.

Internal Address: Piper Marbury Rudnick & Wolfe

Street Address: P.O. Box 64807

City: Chicago State: IL ZIP: 60664

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41):.....\$ \$4000

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

18-2284

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.

02/17/2000 TTM11 00000043 75742199

01 FC:481 40.00 UP
Name of Person Signing

David J. Richter
Signature

January 26, 2000
Date

Total number of pages including cover sheet, attachments, and document: 10

TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT (the "Agreement") made this 12 day of January, 2000 between CLUB DISTRIBUTION, INC., an Illinois corporation, having its chief executive office and mailing address at 150 Fairway Drive, Suite 146, Vernon Hills, Illinois 60061 ("Grantor"), and FINOVA CAPITAL CORPORATION, a Delaware corporation, with its mailing address at 355 South Grand Avenue, Los Angeles, California 90071 ("FINOVA").

W I T N E S S E T H:

WHEREAS, Grantor has entered into a Loan and Security Agreement, dated as of January 12, 2000 (as at any time amended, modified or supplemented, the "Loan Agreement"), with FINOVA pursuant to which FINOVA has agreed to make Revolving Credit Loans and a Term Loan (as defined in the Loan Agreement) to Grantor (the Revolving Credit Loans and the Term Loan being hereinafter collectively referred to as the "Loans"), the proceeds of which are to be used for working capital and other corporate purposes of Grantor as set forth in the Loan Agreement; and

WHEREAS, in connection with the making of the Loans under the Loan Agreement and as security for all of the Obligations of Grantor under the Loan Agreement, FINOVA is requiring that Grantor shall have executed and delivered this Trademark Collateral Assignment and Security Agreement and granted the security interest contemplated hereby;

NOW, THEREFORE, for and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

1. **Defined Terms.**

(i) Unless otherwise defined herein, the capitalized terms used herein which are defined in the Loan Agreement shall have the meanings specified in the Loan Agreement.

(ii) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and schedule references are to this Agreement unless otherwise specified.

(iii) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. **Security Interest in Trademarks.** To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Grantor hereby grants to FINOVA a security interest in, having priority over all other security interests, with power of sale to the extent permitted

by applicable law upon the occurrence of an Event of Default, all of Grantor's now owned or existing and filed and hereafter acquired or arising and filed:

(i) trademarks, registered trademarks and trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications including, without limitation, the registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule A attached hereto and made a part hereof, and (a) all renewals thereof, (b) all accounts receivable, income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, and (d) all of Grantor's rights corresponding thereto throughout the world (all of the foregoing registered trademarks, trademark applications, trade names, trade styles, registered service marks and service mark applications, together with the items described in clauses (a)-(d) in this paragraph 2(i), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(ii) the goodwill of Grantor's business connected with and symbolized by the Trademarks; and

(iii) license agreements with any other party now or hereafter entered into in connection with any Trademarks or such other party's trademarks, registered trademarks and trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications, whether Grantor is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B attached hereto and made a part hereof, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of the rights of FINOVA under the Loan Agreement, the Loan Documents or any other agreement executed in connection therewith (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement under which Grantor is licensee which by its terms prohibits the grant of the security interest contemplated by this Agreement.

3. **Restrictions on Future Agreements.** Grantor will not, without FINOVA's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Grantor further agrees that it will not take any action, and will use reasonable efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to FINOVA under this Agreement or the rights associated with those Trademarks and Licenses which are necessary or desirable in the operation of Grantor's business.

4. **New Trademarks and Licenses.** Grantor represents and warrants that the Trademarks and Licenses listed on Schedules A and B, respectively, include all of the trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service mark registrations, service mark applications and license agreements in connection with trademarks. registered trademarks, trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications now owned or held by Grantor. If, prior to the termination of this Agreement, Grantor shall (i) create or obtain rights to any new trademarks. trademark registrations, trademark applications, trade names, trade styles, service marks, service mark registrations, service mark applications or license agreements in connection with trademarks. registered trademarks, trademark applications, trade names, trade styles, service marks, registered service marks or service mark applications or (ii) become entitled to the benefit of any trademark, trademark registration, trademark application, trade name, trade styles, service mark, service mark registration or service mark application, the provisions of Section 2 above shall automatically apply thereto and Grantor shall give to FINOVA prompt written notice thereof. Grantor hereby authorizes FINOVA to modify this Agreement by (a) amending Schedules A or B, as the case may be, to include any future trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service mark registrations, service mark applications, and license agreements in connection with trademarks, registered trademarks, trademark applications, trade styles, service marks, service mark registrations, service mark applications and trade names that are Trademarks or Licenses under Section 2 above, or under this Section 4 (whether or not any such notice from Grantor has been sent or received), and (b) filing, in addition to and not in substitution for, this Agreement, a supplement or addendum to this Agreement containing on Schedules A or B thereto, as the case may be, such trademarks, trademark applications, trade names, trade styles, service marks, service mark applications and license agreements in connection with trademarks, registered trademarks, trademark applications, trade styles, service marks, registered service marks, service mark applications and trade names which are Trademarks or Licenses under Section 2 above or this Section 4 and to take any action FINOVA otherwise deems appropriate to perfect or maintain the rights and interests of FINOVA under this Agreement with respect to such Trademarks and Licenses.

5. **Royalties.** Grantor hereby agrees that the use by FINOVA of the Trademarks and Licenses as authorized hereunder shall be co-extensive with Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from FINOVA to Grantor or anyone.

6. **Nature and Continuation of Security Interest.** This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall remain in full force and effect until the Obligations have been paid in full and the Loan Agreement terminated. To the extent that the collateral assignment of the security interest in any one or more of the trademark or service mark intent to use applications would invalidate a specific trademark or service mark application or registration, then the collateral assignment of the security interest of such specific application shall be deemed without force or effect as if it had never been made.

7. **Right to Inspect; Further Assignments and Security Interests.** FINOVA shall have the right, at any reasonable time and from time to time, to inspect Grantor's premises and to examine Grantor's books, records, and operations relating to the Trademarks, including, without limitation, Grantor's quality control processes; provided, that in conducting such inspections and examinations, FINOVA shall use reasonable efforts not to disturb unnecessarily the conduct of Grantor's ordinary business operations. From and after the occurrence of an Event of Default, and subject to the terms of the Loan Agreement, the Loan Documents and the other agreements executed in connection therewith, Grantor agrees that FINOVA, or a conservator appointed by FINOVA, shall have the right to take any action to renew or to apply for registration of any Trademarks as FINOVA or said conservator, in its sole judgment, may deem necessary or desirable in connection with the enforcement of FINOVA's rights hereunder. Grantor agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks without the prior written consent of FINOVA and (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof.

8. **Duties of Grantor.** Grantor shall have the duty, to the extent necessary or desirable in the normal conduct of Grantor's business, (i) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, (ii) to make application for trademarks and service marks as Grantor deems appropriate, and (iii) to preserve and maintain all of Grantor's rights in the trademark applications, service mark applications and trademark and service mark registrations that are part of the Trademarks and Licenses. Any expenses incurred in connection with the foregoing shall be borne by Grantor. Grantor shall not abandon any trademark or service mark which is the subject of a registered trademark, service mark or application therefor and which is or shall be necessary or economically desirable in the operation of the Grantor's business. Grantor agrees to retain an experienced trademark attorney reasonably acceptable to FINOVA for the filing and prosecution of all such applications and other proceedings. FINOVA shall not have any duty with respect to the Trademarks and Licenses. Without limiting the generality of the foregoing, FINOVA shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks and Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of Grantor and added to the Obligations secured hereby.

9. **FINOVA's Right to Sue.** From and after the occurrence and during the continuance of an Event of Default, FINOVA shall have the right, but shall not be obligated, to bring suit or take any other action to enforce the Trademarks and the Licenses and, if FINOVA shall commence any such suit or take any such action, Grantor shall, at the request of FINOVA, do any and all lawful acts and execute any and all proper documents required by FINOVA in aid of such enforcement. Grantor shall, upon demand, promptly reimburse and indemnify FINOVA for all costs and expenses incurred by FINOVA in the exercise of its rights under this Section 9 (including, without limitation, all attorneys' and paralegals' fees). If, for any reason whatsoever, FINOVA is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby.

10. **Waivers.** No course of dealing between Grantor and FINOVA, and no failure to exercise or delay in exercising on the part of FINOVA any right, power or privilege hereunder or under the Loan Agreement, the other Loan Documents or any other agreement executed in connection therewith shall operate as a waiver of any of FINOVA's rights, powers or privileges. No single or partial exercise of any right power or privilege hereunder or under the Loan Agreement, the other Loan Documents or any other agreement executed in connection therewith shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. **Exercise of Rights and Remedies Upon Default.** Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, FINOVA may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement, the other Loan Documents, or any other agreement executed in connection therewith. Without limiting the generality of the foregoing, Grantor acknowledges and agrees that (i) the Trademarks and Licenses comprise a portion of the Collateral and FINOVA shall have the right to exercise their rights under the Loan Agreement and the other Loan Documents with respect to the Trademarks and Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) from and after the occurrence and during the continuance of an Event of Default, FINOVA or its nominee may use the Trademarks and Licenses to complete the manufacture of, assemble, package, distribute, prepare for sale and sell any and all inventory, or otherwise use or transfer such Collateral in connection with the conduct of Grantor's business.

12. **Severability.** 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.

13. **Modification.** This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 2 and Section 4 hereof or by a writing signed by the parties hereto.

14. **Cumulative Remedies; Power of Attorney.** All of FINOVA's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. Grantor hereby irrevocably appoints FINOVA as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise to carry out the acts described below. Subject to the terms of the Loan Agreement and the other Loan Documents, Grantor hereby authorizes FINOVA to, in its sole discretion, upon the occurrence and during the continuance of an Event of Default, (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for FINOVA in the use or transfer of the Trademarks and the Licenses, (ii) take any other actions with respect to the Trademarks and the Licenses as FINOVA deems is in its best interest, (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks

to anyone. Grantor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6. Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of FINOVA under the Loan Agreement, any other Loan Documents or any other agreement executed in connection therewith, but rather is intended to facilitate the exercise of such rights and remedies. FINOVA shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all 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 or deemed located.

15. **Binding Effect; Benefits.** This Agreement shall be binding upon Grantor and its successors and assigns, and shall inure to the benefit of FINOVA and its respective nominees, successors and assigns. Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Grantor; provided, however that Grantor shall not voluntarily assign its obligations hereunder without the prior written consent of FINOVA.

16. **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with, the laws of the State of Arizona, except for its choice of law provisions.

17. **Notices.** All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

18. **Section Headings.** The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

19. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first above written.

CLUB DISTRIBUTION, INC.

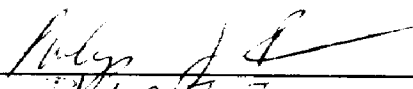
By: _____

Name: Jerold D. Isaacson

Title: President

Accepted and agreed to in Chicago, Illinois as of this 12th day of January, 2000.

FINOVA CAPITAL CORPORATION

By: 
Name: Philip J. Isom
Title: Vice President

SCHEDULE A
to Trademark Collateral Assignment and Security Agreement

TRADEMARKS

1. KIDZ BITES
Serial No. 75/742199
Filed July 1, 1999

2. ICE CREAM & MORE
(No trademark filing as of the date hereof)

SCHEDULE B
to Trademark Collateral Assignment and Security Agreement

LICENSES

None.