

05-15-2000



101355129

4-28-00

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

APR 28 2000

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

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)

- 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 Assignment.)

05/12/2000 BCPATES 00000210 1263011

FOR OFFICE USE ONLY

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

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

TRADEMARK  
REEL: 002072 FRAME: 0891

**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)**

<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"/>

**Registration Number(s)**

<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.

Janice M. Duffy

Name of Person Signing

Signature

April 24, 2000

Date Signed

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 #
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  - Other
- Effective Date  
Month Day Year

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

FOR OFFICE USE ONLY

240E

08/02/1999 DNGUYEN 00000246 1263011

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

ASSIGNMENT OF LOAN OBLIGATIONS  
AND LOAN DOCUMENTS

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, Fleet Retail Finance, Inc. (successor to BankBoston Retail Finance, Inc.), a Delaware corporation with a usual place of business at 40 Broad Street, Boston, Massachusetts, 02109 (herein, the "**Assignor**"), hereby assigns to Paragon Capital LLC, a Delaware limited liability company, with a usual place of business at Hillside Office Building, 75 Second Avenue, Suite 400, Needham, Massachusetts 02494 (herein, the "**Assignee**"), in accordance with the terms hereof, all obligations of Borrower to Assignor and all right, title, and interest of the Assignor in and to a certain Loan and Security Agreement dated as of July 8, 1999, as amended, (the "**Loan Agreement**"), together with, except as provided below, all related notes, security agreements, instruments, financing statements and other documents ("**Loan Documents**") which relate to a loan arrangement established between the Assignor and Joan and David Helpem incorporated, a Massachusetts corporation with a principal place of business located at 1935 Revere Beach Parkway, Everett, Massachusetts, 02149 (hereinafter "**Borrower**") described more fully on Exhibit A attached hereto and made a part hereof. The foregoing assignment does not include, and Assignor shall retain its interest in, the Limited Guaranty of Collection by David Helpem and Joan M. Helpem, dated July 8, 1999, and the Agreement Regarding Guaranty dated July 8, 1999 among Assignor, David Helpem and Joan M. Helpem, and any collateral Assignor holds therefor on the date hereof (and any agreements relating to such collateral) on the terms provided in the letter agreement of even date herewith, among the Assignor, David Helpem, Joan M. Helpem and others. In addition, upon the effectiveness of this assignment, the Limited Recourse Guaranty of Collection, dated July 8, 1999, from Joan Helpem Designs, Inc. is amended to provide that the amount guaranteed thereby is limited to the amount of the obligations owing to the Assignor on the date hereof.

**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**

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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)**

**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

AS BETWEEN ASSIGNOR AND ASSIGNEE, THIS ASSIGNMENT IS MADE WITHOUT RECOURSE OR ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXCEPT AS SET FORTH EXPRESSLY HEREIN.

Assignor agrees to execute such other instruments reasonably required by Assignee, and at Assignee's expense, to effect the within Assignment including, without limitation, UCC-3 assignments, assignments of interests in trademarks and other assignments.

The Assignor hereby represents that subject to collection of all items credited to Assignee's account, the following amounts are due to Assignor from Borrower pursuant to the following documents:

<u>Document</u>	<u>Principal Balance as of March 10, 2000</u>	<u>Interest as of March 10, 2000</u>	<u>Fees as of March 10, 2000</u>
Loan and Security Agreement dated July 8, 1999	\$5,138,078.64, plus \$884,554.59 in letters of credit	\$17,417.09, plus a per diem of \$1,828.13	\$303,405.03, plus a per diem of \$53.72

Assignee hereby represents that it has made its own investigation as to the acquisition of the Loan Documents and as to the financial condition of the Borrower with counsel of its independent selection and is not relying on any representations or warranties of Assignor, other than as set forth herein, in connection with said acquisition. Upon Assignor's and Assignee's execution hereof, Assignee shall be a party to Loan Documents (as amended by the Second Amendment thereto dated the date hereof) and have the rights and obligations of Assignor thereunder, and Assignor shall except as otherwise expressly provided herein, relinquish its rights and be released from its obligations under the Loan Documents, provided, however and notwithstanding any provisions of this Assignment to the contrary, the Assignor shall continue to be entitled to the benefit of each of those provisions of the Loan Documents, which in accordance with the provisions of such Loan

Documents, survive the termination of the Loan Documents and the payment of all amounts owing thereunder. By the Assignee's acceptance of this Assignment (such acceptance being indicated by the Assignee's payment to the Assignor of the consideration given to obtain this Assignment), the Assignee has signified its acceptance of the terms hereof.

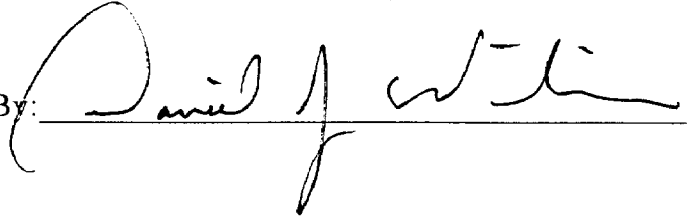
The Assignee shall indemnify, defend, and hold the Assignor and any employee, officer, attorney, or agent of the Assignor (each, an "**Indemnified Person**") harmless of and from any claim brought or threatened against any Indemnified Person by the Borrower or any other person (as well as from attorneys' fees and expenses in connection therewith) which claim arises after the effectiveness of this Assignment on account of the Assignee's relationship with the Borrower (each of which may be defended, compromised, settled, or pursued by the Indemnified Person with counsel of the Assignor's selection or, at the Assignee's election, by counsel of the Assignee's selection, in each case, at the expense of the Assignee). The Assignee acknowledges and agrees that its liability and obligations under this paragraph shall continue in full force and effect until specifically terminated in writing by a duly authorized officer of the Assignor.

This Assignment may be signed in any number of identical counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

This Agreement shall be construed in accordance with and governed by the internal laws of The Commonwealth of Massachusetts (without regard to principles of conflict of laws).

Executed as an instrument under seal this 10<sup>th</sup> day of March, 2000.

FLEET RETAIL FINANCE, INC.

By: 

ACCEPTED AND AGREED TO:

PARAGON CAPITAL LLC

By: \_\_\_\_\_

The undersigned acknowledge notice of the assignment, confirm the balances due set forth in the above assignment and agree to be bound to Paragon Capital LLC to the same extent as if Paragon Capital LLC were named in all of the documents listed on Exhibit A, including without limitation, the Loan Agreement, as amended by the Second Amendment thereto dated the date hereof.

joan and david helpern incorporated

By: \_\_\_\_\_

Joan Helpern Designs, Inc.

By: \_\_\_\_\_



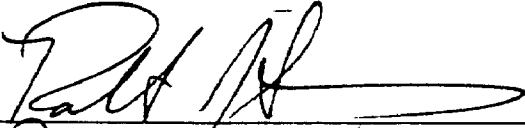
Executed as an instrument under seal this \_\_\_\_\_ day of March, 2000.

FLEET RETAIL FINANCE, INC.

By: \_\_\_\_\_

ACCEPTED AND AGREED TO:

PARAGON CAPITAL LLC

By:   
Robert J. Shusterman

The undersigned acknowledge notice of the assignment, confirm the balances due set forth in the above assignment and agree to be bound to Paragon Capital LLC to the same extent as if Paragon Capital LLC were named in all of the documents listed on Exhibit A, including without limitation, the Loan Agreement, as amended by the Second Amendment thereto dated the date hereof and, in the case of Joan Helpem Designs, Inc., the Limited Recourse Guaranty of Collection, as further limited by the terms of the foregoing assignment.

joan and david helpem incorporated

By: \_\_\_\_\_

Joan Helpem Designs, Inc.

By: \_\_\_\_\_

Executed as an instrument under seal this \_\_\_\_\_ day of March, 2000.

FLEET RETAIL FINANCE, INC.

By: \_\_\_\_\_

ACCEPTED AND AGREED TO:

PARAGON CAPITAL LLC

By: \_\_\_\_\_

The undersigned acknowledge notice of the assignment, confirm the balances due set forth in the above assignment and agree to be bound to Paragon Capital LLC to the same extent as if Paragon Capital LLC were named in all of the documents listed on Exhibit A, including without limitation, the Loan Agreement, as amended by the Second Amendment thereto dated the date hereof and, in the case of Joan Helpem Designs, Inc., the Limited Recourse Guaranty of Collection, as further limited by the terms of the foregoing assignment.

joan and david helpem incorporated

By: David M. Helpem  
CHAIRMAN

Joan Helpem Designs, Inc.

By: \_\_\_\_\_

Executed as an instrument under seal this \_\_\_\_\_ day of March, 2000.

FLEET RETAIL FINANCE, INC.

By: \_\_\_\_\_

ACCEPTED AND AGREED TO:

PARAGON CAPITAL LLC

By: \_\_\_\_\_

The undersigned acknowledge notice of the assignment, confirm the balances due set forth in the above assignment and agree to be bound to Paragon Capital LLC to the same extent as if Paragon Capital LLC were named in all of the documents listed on Exhibit A, including without limitation, the Loan Agreement as amended by the Second Amendment thereto dated the date hereof and, in the case of Joan Helpen Design, Inc., the Limited Recourse Guaranty of Collection, as further limited by the terms of the foregoing assignment.

Joan and David Helpen Incorporated

By: \_\_\_\_\_

Joan Helpen Design, Inc.

By: Joan M. Helpen  
Director

Printed Name and Title of Assignee of Lender

EXHIBIT A

BANKBOSTON RETAIL FINANCE INC.

joan and david helpern incorporated

July 8, 1999

LOAN DOCUMENTS

VOLUME I

1. Loan and Security Agreement
2. Revolving Credit Note - BankBoston Retail Finance Inc.
3. Officers Certificates
  - (a) Chairman of joan and david helpern incorporated addressed to BankBoston Retail Finance
  - (b) Chairman of Joan Helpern Designs, Inc.
  - (c) Chairman of joan and david helpern incorporated furnished to Goulston & Storrs, PC
  - (d) Financial Vice President of joan and david helpern incorporated
4. ~~Limited Guaranty of Collection by David Helpern and Joan M. Helpern~~ *Intentionally Excluded -*
5. Limited Recourse Guaranty of Collection for Joan Helpern Designs, Inc.
6. ~~Side letter Agreement Regarding Reduction of Limited Guaranty~~ *Intentionally Excluded*
7. ~~BDA Notifications~~
8. ~~Blocked Account Agreement~~
  - (a) ~~BankBoston, N.A.~~
  - (b) ~~State Street Bank and Trust Company~~
9. Credit Card Notification
10. /Customs Broker Agreement

*Intentionally Excluded*

11. Air and Sea Consolidator Agreement
  - (a) Air and Sea Transport
  - (b) Franco Vago International
  - (c) Moda Logistical
12. Non-Exclusive License Regarding Trademarks between Joan Helpem Design and joan and david helpem incorporated

VOLUME II

13. Trademark Security Agreement
  - (a) joan and david helpem incorporated
  - (b) Joan Helpem Designis, Inc.
14. Tri-Party Agreement
15. Security Agreement
16. Assignment of Licensing Agreement
17. Financing Statements for joan and david helpem incorporated
  - (a) Arizona - Secretary of State  
No. 1071108  
June 7, 1999
  - (b) California - Secretary of State  
No. 9916160413  
June 7, 1999
  - (c) Colorado - Secretary of State  
No. 1992032073  
June 7, 1999
  - (d) Connecticut - Secretary of State  
No. 1928314  
June 4, 1999
  - (e) District of Columbia - Secretary of State  
No. 9900009757  
June 8, 1999
  - (f) Florida - Secretary of State  
No. 990000144384  
June 25, 1999

- (g) Georgia - Fulton County  
No. 060199911160  
June 9, 1999
- (h) Hawaii - Secretary of State  
No. 99-093503  
June 10, 1999
- (i) Illinois - Secretary of State  
No. 4048458  
June 9, 1999
- (j) Massachusetts - Secretary of State  
No. 636985  
June 4, 1999
- (k) Maine - Secretary of State  
No. 1320687  
June 9, 1999
- (l) Michigan - Secretary of State  
No. 04019C  
June 7, 1999
- (m) New Jersey - Secretary of State  
No. 1910741  
June 7, 1999
- (n) New Mexico - Secretary of State  
No. 990607089  
June 7, 1999
- (o) New York - Secretary of State  
No. 112193  
June 7, 1999
- (p) Pennsylvania - Secretary of State  
No. 30350448  
June 7, 1999
- (q) Pennsylvania - Montgomery County  
No. 282537  
June 7, 1999
- (r) Texas - Secretary of State  
No. 99-112605  
June 7, 1999
- (s) Vermont - Secretary of State  
No. 99-111077

June 7, 1999

- (t) Virginia - Secretary of State  
No. 9906077806  
June 7, 1999
- (u) Virginia - Arlington County  
No. 61185  
June 7, 1999
- (v) Virginia - Fairfax County  
No. 99-006117  
June 7, 1999
- (w) Washington - Secretary of State  
No. 99-158-0056  
June 7, 1999

18. Financing Statements for Joan Helbern Designs Inc.

- (a) Massachusetts - Secretary of State  
No. 645986  
July 12, 1999
- (b) Massachusetts - Everett  
No. 99-160  
July 12, 1999

19. Landlord's Waivers

- (a) Related Party
- (b) Un-Related Party

20. Opinion of Borrower's Counsel

~~21. Pay Out Letter~~ Intentionally excluded

~~22. Assignment Agreement~~ Intentionally excluded

~~23. Termination Statements for joan and david helbern incorporated~~

- (a) Arizona - Secretary of State
  - (i) No. 831612  
July 21, 1999
  - (ii) No. 831613  
July 21, 1999
- (b) California - Secretary of State
  - (i) No. 99207C0822

Intentionally excluded

October 29, 1999/...

Remainder of Item 23, Items 24, 25 and 26 are intentionally excluded.

27. Secretary's Certificates

(a) Corporate Resolution for Establishing Loan Arrangement for joan  
and david helpem incorporated

(b) Joan Helpem Designs

28. Intercreditor Agreement

29. - UK Security Agreements (See Schedule I  
attached hereto). -



Schedule I

BANKBOSTON RETAIL FINANCE  
UK SECURITY OVER JOAN AND DAVID (UK) LIMITED  
DATED 9 JULY 1999  
SECURING U.S. LOAN AND SECURITY AGREEMENT

1. Guarantee and Debenture dated 9 July 1999 between BankBoston Retail Finance Inc. and Joan and David (UK) Limited.
2. Form 395 for registration of Guarantee and Debenture.
3. Letter from Companies House dated 19 July 1999 regarding registration.
4. Notice to Royal Bank of Scotland in respect of accounts.
5. Board Resolutions of Joan and David (UK) Limited dated 30 June 1999.
6. Certificate of good standing from Companies House of Joan and David (UK) Limited dated 18 June 1999.
7. Legal opinion from Nellen & Co, Joan and David (UK) Limited's English legal attorneys dated 9 July 1999.

## ASSIGNMENT OF SECURITY AGREEMENTS

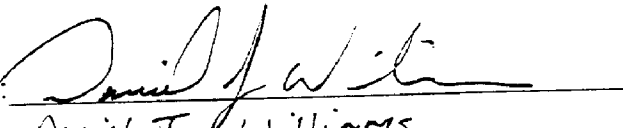
WHEREAS, Fleet Retail Finance Inc. (successor to BankBoston Retail Finance, Inc.), a Delaware Corporation with a principal place of 40 Broad Street, Boston, MA 02109 (hereinafter the "Assignor"), has assigned, on the terms set forth in the Assignment of Loan Obligations and Loan Documents of even date herewith, to Paragon Capital LLC, a Delaware limited liability company with a principal place of business at Hillside Office Building, 75 Second Avenue, Suite 400, Needham, MA 02494 (hereinafter the "Assignee") all of its right, title and interest as lender under a certain revolving credit facility dated as of July 8, 1999 (the "Credit Facility") extended to Joan and David Helpern Incorporated, a Massachusetts corporation ("Joan and David") and guaranteed, in part, by Joan Helpern Designs, Inc. ("JHDI") a Delaware corporation, having a usual place of business at 1935 Revere Beach Parkway, Everett, MA, 02149, and which in connection with such Credit Facility Assignor acquired a security interest in and to all of Joan and David's and all of JHDI's trademarks (hereinafter "Trademarks") and a security interest in and to the license of the Trademarks to Joan and David pursuant to (i) the Trademark and Trademark Applications Security Agreements dated July 8, 1999; (ii) the Security Agreement dated July 8, 1999 and (iii) the Assignment of Licensing Agreement dated July 8, 1999 recorded with the United States Patent and Trademark Office on July 30, 1999 at Reels/Frames #'s 001937/0953, 001945/0101 and 001937/0946 respectively (the "Security Agreements"), and Assignor now wishes to assign its interest in the Trademarks and the Security Agreements.

For good and valuable consideration, including the payment of Ten (\$10.00) Dollars by Assignee to Assignor, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby assigns to Assignee, without recourse, all of its right, title and interest in the Security Agreements and the Trademarks, subject to the terms of the Security Agreements.

Assignor agrees to execute, acknowledge and deliver all further instruments and documents and take all such further action, at Assignee's expense, which may be necessary or appropriate in order to carry out the intentions and purposes of this Assignment.

IN WITNESS WHEREOF, Assignor has caused this Assignment to be executed by its duly authorized officers as of the 10<sup>th</sup> day of March, 2000.

FLEET RETAIL FINANCE, INC.

By:   
Its: Daniel J. Williams  
AVP

CAWINDOWSYSTEMPAssignm1.wpd

TRADEMARK  
REEL: 002072 FRAME: 0908

July 8, 1999 (GJG)

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 helpen 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:**

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

32 (a) The Borrower first provides the Lender with written notice of the Borrower's intention to so  
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  
5 (The "Borrower")

BANKBOSTON RETAIL FINANCE INC.  
(The "Lender")

6  
7 By Ronald Cafarella

By Elizabeth A. Ratto

8 Name Ronald Cafarella

Name.....

9  
10 Title VP

Title Managing Director

11  
12 THE State OF MA.  
13 COUNTY OF Middlesex

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

18  
19 Witness my hand and seal this 2nd day of July.....

20  
21 Rosemary C. Marchi  
22 Notary Public

23 My Commission Expires: September 6, 200.

24  
25 THE ~~Commonwealth~~ OF Massachusetts  
26 COUNTY OF Suffolk

27  
28 Then personally appeared before me Elizabeth A. Ratto who acknowledged that such  
29 person is the duly authorized Managing Director of BankBoston Retail Finance Inc. and  
30 that such person executed the foregoing instrument on its behalf.

31  
32 Witness my hand and seal this 2 day of July.....

33  
34 Elizabeth A. Ratto  
35 Notary Public

36 My Commission Expires:

37 Sept 27, 2002

38  
39 384018



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EXHIBIT A

*Borrowers*

Licensor'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.