

RECC

06-02-2000

COVER SHEET

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

-Y 05/09/00 Patent and Trademark Office

To the Honorable Commissioner of Patents



original documents or copy thereof.

1. Name of conveying party(ies):

M GROUP USA, INC.

101372491

Name of receiving party(ies):

Name: Capital Factors, Inc.

Internal Address:

Street Address: 120 E. Palmetto Park Road

City: Boca Raton State: FL Zip: 33432

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation- Florida
- 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 assignee )

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

- Individual(s)
- General Partnership
- Corporation-Florida
- Other
- Association
- Limited Partnership

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

3. Nature of conveyance:

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

Execution Date: February 8, 2000

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

75/440,146

Additional numbers attached?  Yes  No

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

Name: Joseph W. Bain, Esq.

Internal Address: Quarles & Brady LLP

Street Address: 222 Lakeview Avenue, 4th Floor

P.O. Box 3188

City: West Palm Beach State: FL Zip: 33402-3188

6. Total number of applications and registrations involved: 1

Total Fee (37 CFR 3.41) \$40.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number

17-0055

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

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.

Joseph W. Bain  
Name of person signing

Signature

Date

5/8/2000

Total number of pages including cover sheet, attachments, and document: 7

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents and Trademarks, Box Assignments  
Washington, D.C. 20231

05/31/2000 DNGUYEN 00000140 75440146

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Express Mail Label: EK575128327US

## TRADEMARKS AND LETTERS PATENT COLLATERAL ASSIGNMENT

This Assignment of Trademarks and Letters Patent ("**Assignment**") made this 8th day of February, 2000 is entered into between the undersigned, M GROUP USA, INC., a Florida corporation, with its principal place of business at 1160-B South Rogers Circle, Boca Raton, Florida ("**Assignor**") and CAPITAL FACTORS, INC., a Florida corporation with a place of business at 120 E. PALMETTO PARK ROAD, BOCA RATON, FLORIDA 33432, ("**Assignee**").

WHEREAS, Assignor and Assignee have entered into a certain Loan and Security Agreement of even date herewith whereby Assignee has lent and has agreed to lend funds to Assignor on the terms and conditions set forth in said Loan and Security Agreement and other financing documents are hereinafter collectively referred to as the "**Security Agreements**"; and

WHEREAS, Assignee has a security interest in substantially all other assets of Assignor pursuant to the Security Agreements such that it will be able to manufacture the goods and products covered by the Trademarks (as defined below) with the same standards of quality as Assignor; and

WHEREAS, Assignor is the record owner of: (i) the trademarks, trademark applications, letters patent of the United States and applications for letters patent of the United States listed on **Schedule A** annexed hereto (the "**Trademarks**" and the "**Letters Patent**" respectively), which Trademarks and Letters Patent are registered or are in the process of being registered in the United States Patent and Trademark Office, and (ii) the inventions described and claimed in the Letters Patent; and

WHEREAS, Assignor hereby grants Assignee a security interest in the Trademarks and the Letters Patent on the terms set forth herein.

NOW, THEREFORE, for and in consideration of the terms and conditions set forth in the Security Agreements and set forth herein, the parties agree as follows:

1. To secure the complete and timely satisfaction of all of the obligations of Assignor to Assignee under the Security Agreements (the "**Obligations**"), Assignor hereby grants, assigns and conveys to Assignee, its successors and assigns, its entire right, title and interest in and to the Trademarks and the Letters Patent, including, without limitation, the good will of the business to which each of the Trademarks relates, all proceeds of the Trademarks and the Letters Patent (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof.

2. Assignor covenants and warrants that:

a. The Trademarks and the Letters Patent are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

b. To the best of Assignor's knowledge, each of the Trademarks and the Letters Patent is valid and enforceable;

c. Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks and the Letters Patent, free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, registered user agreements, licenses, shop rights and covenants by Assignor not to sue third persons;

d. Assignor has the unqualified right to enter into this Assignment and perform its terms and will enter into written agreements with each of its present and future employees, agents and consultants that will enable it to comply with the covenants herein contained;

e. Other than as disclosed to Assignee, no claim has been made that the use of any of the Trademarks does or may violate the rights of any third person;

f. Assignor has used and will continue to use for the duration of this Assignment proper statutory notice in connection with its use of the Trademarks; and

g. Assignor has used and will continue to use for the duration of this Assignment consistent standards of quality in its manufacture of products sold under the Trademarks.

3. Assignor hereby grants to Assignee and its employees and agents the right to visit Assignor's plants and facilities which manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours. Assignor shall do any and all acts required by Assignee to ensure Assignor's compliance with **Paragraph 2.G.** above.

4. Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with Assignor's obligations under this Assignment, without Assignor's prior written consent.

5. If, before the Obligations shall have been satisfied in full, Assignor shall obtain rights to any new trademarks or patentable inventions, or become entitled to the benefit of any patent application or patent for any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent, the provisions of **Paragraph 1** hereof shall automatically apply thereto and Assignor shall give to Assignee prompt notice thereof in writing hereof.

6. Assignor authorizes Assignee to modify this Assignment by amending **Schedule A** to include any future patents and patent applications which are Letters Patent under **Paragraphs 1**

or 5 hereof or to include any future trademarks which are Trademarks under **Paragraphs 1 or 5** hereof.

7. Unless and until there shall have occurred and be continuing an event of default (as defined in the Security Agreements) or demand made upon Assignor for payment of its Obligations to Assignee, Assignee hereby grants to Assignor the exclusive, royalty-free, nontransferable right and license to make, have made, use and sell the goods covered by the Trademarks and the inventions disclosed and claimed in the Letters Patent and to use the Trademarks on and in connection with products sold by Assignor, for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this **Paragraph 7**, without the prior written consent of Assignee.

8. If demand has been made or an event of default shall have occurred and be continuing, as set forth in **Paragraph 7** above, Assignor's license as set forth in said **Paragraph 7** shall terminate forthwith, and Assignee shall have, in addition to all other rights and remedies given it by this Assignment, those 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 or the Letters Patent may be located and, without limiting the generality of the foregoing, the Assignor may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, in North Carolina or elsewhere, the whole or from time to time any part of the Trademarks or the Letters Patent, or any interest which Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks or the Letters Patent all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to Assignor. Notice of any sale or other disposition of the Trademarks or the Letters Patent shall be given to Assignor at least five (5) days before the time of any intended public or private sale or other disposition of the Trademarks or the Letters Patent, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Assignee or any holder of any note may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks or the Letters Patent sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

9. Assignor assumes all responsibility and liability arising from the use of the Trademarks and the Letters Patent and Assignor hereby indemnifies, defends and holds Assignee harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of (i) any alleged defect in any product manufactured, promoted or sold by Assignor under any of the Letters Patent or bearing any of the Trademarks, or (ii) the manufacture, promotion, labeling, sale or advertisement of any such product by Assignor.

10. Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Assignee in connection with (i) the preparation of this

Assignment and all other documents relating hereto and to the consummation of this transaction, (ii) the filing or recording of any documents (including all taxes in connection therewith) in public offices, (iii) the payment or discharge of any taxes, counsel fees, maintenance fees or encumbrances, (iv) defending or prosecuting any actions or proceedings arising out of or related to the Trademarks or the Letters Patent, or (v) otherwise protecting, maintaining or preserving the Trademarks and the Letters Patent, shall be borne and paid by Assignor on demand by Assignee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the applicable rate prescribed in the Security Agreements.

11. Assignor shall have the duty, through counsel acceptable to Assignee, to prosecute diligently any patent or trademark application for the Letters Patent or the Trademarks pending as of the date of this Assignment or thereafter until the Obligations shall have been paid in full, to make application on unpatented but patentable inventions and registrable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings, and to do all acts necessary or desirable to preserve and maintain all rights in the Trademarks, the Letters Patent and any patent or trademark applications that Assignor, in exercise of its reasonable business judgment determines have value or are necessary in Assignor's business. Any expenses incurred in connection with such an applications shall be borne by Assignor. Assignor shall not abandon any right to file a patent application, or any pending patent application or patent without the consent of Assignee, which consent shall not be unreasonably withheld.

12. Upon the failure or inability of Assignor to take actions required under **Paragraph 11** above, Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce or protect either the Trademarks or the Letters Patent and any license thereunder, in which event Assignor shall at the request of Assignee do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights hereunder.

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

14. No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Security Agreements shall operate as a waiver thereof; nor shall any single or partial exercise of any

right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

15. All of Assignee's rights and remedies with respect to the Trademarks and the Letters Patent, whether established hereby or by the Security Agreements, or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Assignment are severable, and if any clause or provision hereof 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 Assignment in any jurisdiction.

17. This Assignment is subject to modification only by a writing signed by the parties, except as provided in **Paragraph 6** hereof.

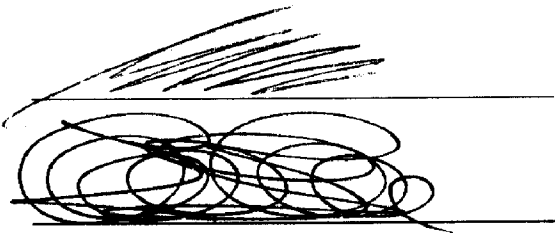
18. The benefits and burdens of this Assignment shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

19. The validity and interpretation of this Assignment and the rights and obligations of the parties shall be governed by the laws of the State of Florida.

20. This Assignment is made in order to grant Assignee a security interest in the property set forth on **Schedule A** annexed hereto, and upon satisfaction of the Obligations secured hereby, this Assignment shall be void and of no further effect.

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

WITNESS:



Assignor:

M GROUP USA, INC.:

By

Signature

*Alan I. Weisberg, President*

Name and Title

**SCHEDULE A  
TO  
TRADEMARKS AND LETTERS PATENT COLLATERAL ASSIGNMENT**

**List of Trademarks and Letters Patent**

<b><u>Trademark</u></b>	<b><u>Application No.</u></b>	<b><u>Date of Application</u></b>
MESSAGE CAMERA	75/440,146	February 25, 1998
SMILETIME	100850200	March 15, 1999
SMILETIME	1120432	March 23, 1999