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08-30-2000



Docket No.:

299/12964

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101435648

Original documents or copy thereof.

To the Honorable Commissioner of Patents and T...

1. Name of conveying party(ies):

Ozark Muffler Corporation

- Individual(s)
- General Partnership
- Corporation-State **Missouri**
- Other

- Association
- Limited Partnership

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

3. Nature of conveyance:

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

Execution Date: 3/29/99

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

Name: Mercantile Business Credit, Inc.

Internal Address: _____

Street Address: One Mercantile Center

City: St. Louis State: MO ZIP: 63101

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State **Missouri**
- Other

If assignee is not domiciled in the United States, a domestic designation is Yes N
 (Designations must be a separate document from
 Additional name(s) & address(es) Yes N

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

A. Trademark Application No.(s)

75/477666
75/477694
75/477674

Additional numbers

B. Trademark Registration No.(s)

Yes No

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

Name: Mitzi Cherry

Internal Address: _____

Thompson Coburn LLP

Street Address: One Mercantile Center

City: St. Louis State: MO ZIP: 63101

6. Total number of applications and registrations involved:.....

3

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

\$90.00 E

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

20-0823

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.

Mitzi Cherry

Name of Person Signing

Signature

4/30/99

Date

Total number of pages including cover sheet, attachments, and

COLLATERAL ASSIGNMENT OF PATENTS, TRADEMARKS AND LICENSES

THIS COLLATERAL ASSIGNMENT OF PATENTS, TRADEMARKS AND LICENSES (this "Agreement") is made and entered into this ~~21st~~ day of March, 1999 by OZARK MUFFLER CORPORATION, a Missouri corporation (the "Borrower"), in favor of MERCANTILE BUSINESS CREDIT INC., a Missouri corporation, (the "Lender").

WITNESSETH:

WHEREAS, Borrower is justly indebted to Lender pursuant to that certain Loan Agreement dated the date hereof, by and between Borrower and Lender (as the same may from time to time be amended, modified, extended or renewed, the "Loan Agreement"; all capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings ascribed to them in the Loan Agreement), pursuant to which Lender agreed, subject to the terms and conditions thereof, to make loans to Borrower in the aggregate principal amount of up to \$3,023,354.00; and

WHEREAS, as a condition precedent to Lender entering into the Loan Agreement, Lender has required that Borrower execute and deliver this Agreement to Lender as security for all of the Borrower's Liabilities.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants and agrees with Lender as follows:

1. Collateral Assignment. To secure the complete and timely payment of the "Borrower's Liabilities" (as defined in the Loan Agreement), Borrower hereby grants a continuing security interest in, collaterally assigns and conveys to Lender its entire right, title and interest in and to all now existing and hereafter created or acquired (a) patents and patent applications, including without limitation, all renewals thereof, all proceeds thereof (such as, by way of example, income, sub-license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements and all rights corresponding thereto throughout the world (all of the foregoing are collectively called the "Patents"), (b) trademarks, trademark registrations, trademark applications, trade names and tradestyles, service marks, service mark registrations, service mark applications and brand names, including, without limitation, common law rights and each mark, registration, and including, without limitation, all renewals thereof, all proceeds thereof (such as, by way of example, income, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements and all rights corresponding thereto throughout the world (all of the foregoing are collectively called the "Trademarks") and (c) license agreements with respect to the Patents and Trademarks whether Borrower is the licensor or the licensee under any such license agreement (all of the foregoing license agreements and Borrower's rights thereunder are referred to individually as a "License"

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and, collectively, as the "Licenses"), together in each case with the good will of Borrower's business connected with the use of, and symbolized by, the Patents, Trademarks and Licenses (the Patents, Trademarks and Licenses are hereinafter collectively referred to as the "Property Rights" and include, without limitation, the Patents, Trademarks and Licenses listed on Exhibit A attached hereto and hereby made a part hereof).

2. Representations, Warranties and Covenants of Borrower. Borrower represents, warrants, covenants and agrees that:

(a) No Property Right has been adjudged invalid or unenforceable, in whole or in part, nor has such Property Right been cancelled, in whole or in part, nor is such Property Right at this time the subject of any challenge to its validity or enforceability;

(b) To the best of Borrower's knowledge, each Property Right is valid and enforceable;

(c) To the best of Borrower's knowledge, Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Property Right, free and clear of any liens, charges and encumbrances, including without limitation licenses, shop rights and covenants by Borrower not to sue third persons, excluding only security interests granted to Lender;

(d) To the best of Borrower's knowledge, Borrower has the unqualified right to enter into this Agreement and perform its terms; and

(e) Borrower has no notice of any suits or actions commenced or threatened with reference to the Property Rights.

3. Inspection Rights. Borrower will permit inspection of Borrower's facilities which manufacture, inspect or store products sold under any of the Property Rights and to inspect the products and records relating thereto by Lender during normal business hours and at other reasonable times. Borrower will reimburse Lender upon demand for all costs and expenses incurred by Lender in connection with any such inspection conducted by Lender while any Default or Event of Default under the Loan Agreement has occurred and is continuing. A representative of Borrower may be present during any such inspection, provided that a particular representative's availability or unavailability shall not inhibit or delay such inspection.

4. Further Assurances. Borrower agrees that, until all of the Borrower's Liabilities shall have been paid in full and the Lender has no further commitment or obligation to make any additional loans or advances or other extensions of credit to Borrower, it will not enter into any agreement (for example, a sub-license agreement) which is inconsistent with Borrower's obligations under this Agreement or the Loan Agreement, without Lender's prior written consent. Borrower further agrees that at any time and from time to time, at the expense of

Borrower, Borrower will promptly execute and deliver to Lender any and all further instruments and documents and take any and all further action that may be reasonably necessary or desirable, or that Lender may request, in order to perfect and protect the collateral assignment granted or purported to be granted hereby with respect to the Property Rights or to enable Lender to exercise its rights and remedies hereunder with respect to the same.

5. Additional Patents, Trademarks or Licenses. If, before all of the Borrower's Liabilities shall have been paid in full, Borrower shall obtain rights to any new Patents, Trademarks or Licenses, the provisions of paragraph 1 shall automatically apply thereto and Borrower shall give Lender prompt written notice thereof.

6. Modification by Lender. Borrower authorizes Lender to modify this Agreement by amending Exhibit A to include any future Patents, Trademarks or Licenses, covered by paragraphs 1 and 5 hereof, without the signature of Borrower if permitted by applicable law.

7. Grant of Property Rights to Borrower. Unless and until there shall have occurred any "Event of Default" (as defined in or within the meaning of the Loan Agreement), Lender hereby grants to Borrower the exclusive, nontransferable, royalty-free right and license to use the Property Rights on and in connection with products sold by Borrower, for Borrower's own benefit and account and for none other.

8. Default. If any "Event of Default" (as defined in or within the meaning of the Loan Agreement) shall have occurred, Borrower's license of the Property Rights as set forth in paragraph 7, shall terminate forthwith, and Lender shall have, in addition to all other rights and remedies given it by this Agreement, 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 Property Rights may be located and, without limiting the generality of the foregoing, Lender may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Borrower, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, all or from time to time any of the Property Rights, or any interest which Borrower may have therein, and after deducting from the proceeds of sale or other disposition of the Property Rights all reasonable expenses (including, without limitation, all expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Borrower's Liabilities in such order and manner as Lender, in its sole discretion, may elect. Any remainder of the proceeds after payment in full of all of the Borrower's Liabilities shall be paid over to Borrower. Notice of any sale or other disposition of the Property Rights shall be given to Borrower at least five (5) days before the time of any intended public or private sale or other disposition of the Property Rights is to be made, which Borrower hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of the Obligations or Lender may, to the extent permissible under applicable law, purchase the whole or any part of the

Property Rights sold, free from any right of redemption on the part of Borrower, which right is hereby waived and released.

9. Termination of Assignment. At such time as Borrower shall pay all of the Borrower's Liabilities in full and Lender shall have no further commitment or obligation to make any additional loans or advances or other extensions of credit to Borrower, this Agreement shall terminate and Lender shall execute and deliver to Borrower all deeds, assignments and other instruments as may be necessary or proper to re-vest in Borrower full title to the Property Rights, subject to any disposition thereof which may have been made by Lender pursuant hereto.

10. Expenses. Any and all reasonable fees, costs and expenses of whatever kind or nature, including, without limitation, the reasonable attorneys' fees and legal expenses incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or other amounts in connection with protecting, maintaining or preserving the Property Rights, or in defending or prosecuting any actions or proceedings arising out of or related to the Property Rights, shall be borne and paid by Borrower on demand by Lender and until so paid shall be added to the principal amount of the Borrower's Liabilities and shall bear interest at the highest rate provided in the Loan Agreement.

11. Preservation of Rights. Borrower shall have the right, with the prior written consent of Lender, to bring any cancellation proceedings or lawsuits in its own name to enforce or protect the Property Rights, in which event Lender may, if necessary, be joined as a nominal party to such suit if Lender shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder.

12. Lender Appointed Attorney-In-Fact. If any "Event of Default" (as defined in or within the meaning of the Loan Agreement) shall have occurred and be continuing, Borrower hereby authorizes and empowers Lender to make, constitute and appoint any officer or agent of Lender as Lender may select, in its sole discretion, as Borrower's true and lawful attorney-in-fact, with the power to endorse Borrower's name on all applications, documents, papers and instruments necessary for Lender to use the Property Rights, or to grant or issue any exclusive or non-exclusive license under the Property Rights to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title to or dispose of the Property Rights to anyone else. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof except to the extent allowable to Lender's gross negligence, willful misconduct or bad faith. This power of attorney is coupled with an interest and shall be irrevocable for the duration of this Agreement.

13. No Waiver. No course of dealing between Borrower and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or

privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. 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.

15. Relationship to Other Agreements. This Agreement and the liens and security interests (and pledges and assignments, as applicable) herein granted are in addition to any and all other deeds of trusts, mortgages, security agreements, security interests, pledges, assignments, liens, rights, titles or interests in favor of Lender or assigned to such party in connection with the obligations of Borrower to such party. All rights and remedies of Lender in all such agreements are cumulative but in the event of actual conflict in terms and conditions of this Agreement and all agreements other than the Loan Agreement, the terms and conditions of this Agreement shall govern and control; provided, however, in the event of any direct conflict between the terms and conditions of this Agreement and the Loan Agreement, the terms and conditions of the Loan Agreement shall govern and control.

16. Amendments. This Agreement is subject to amendment or only by a writing signed by all of the parties hereto, except as provided in paragraph 6.

17. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to the Loan Agreement and their respective successors and assigns, except that Borrower may not assign or delegate any of its rights of obligations under this Agreement.

18. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Missouri.

IN WITNESS WHEREOF, the parties hereto have executed this Collateral Assignment of Patents, Trademarks and Licenses as of the day and year first above written.

OZARK MUFFLER CORPORATION ("Borrower")

By Wm. H. Smith
Title: President

MERCANTILE BUSINESS CREDIT INC.
("Lender")

By R. L. Johnson
Title: Sec. V.P.

CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF ~~MISSOURI~~ ^{MICHIGAN})
) ss
COUNTY OF WAYNE)

On this 29th day of March, 1999, before me personally appeared Wayne G. Smith to me personally known, who, being by me duly sworn, did say that he is the President of OZARK MUFFLER CORPORATION, a Missouri corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said Wayne G. Smith acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

THOMAS F. HATCH
Notary Public Wayne County, MI.
My Commission Expires Sept. 29, 2000
(SEAL)
My Commission Expires:

[Signature]
Notary Public

STATE OF MISSOURI)
) ss
COUNTY OF ST. LOUIS)

On this 2nd day of APRIL, 1999, before me appeared RONALD F. GUZ, to me personally known, who, being by me duly sworn, did say that he is S.V.P. of MERCANTILE BUSINESS CREDIT INC., a Missouri corporation, and that said instrument was signed on behalf of said corporation, by authority of its Board of Directors, and said RONALD F. GUZ acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official seal in the City and State aforesaid, the day and year first above written.

[Signature]
Notary Public

(SEAL)
My Commission Expires:
March 12, 2000
11274252

BARBARA J. LLOYD
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires: Mar. 12, 2000

EXHIBIT A

Patents

None.

Trademarks

Pending Trademark Applications:

"Avenger"	No. 75/477666	Filed 5/1/98
"Excel"	No. 75/477694	Filed 5/1/98
"OMCO"	No. 75/477674	Filed 5/1/98

Licenses

None.

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