

9-19-00 RECORDATIO

09-29-2000

Docket No.:

TRADEMARK



06497.PENDI-2120FF

Tab settings

101476487

To the Honorable Commissioner of Patents and Trademark

original documents or copy thereof.

1. Name of conveying party(ies):

School Apparel, Inc.,

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

Name: Comerica Bank, a California banking corporation

Internal Address: \_\_\_\_\_

Street Address: 55 Almaden Blvd. 2nd Floor

City: San Jose State: CA ZIP: 95113

- Individual(s)
- General Partnership
- Corporation-State California
- Other \_\_\_\_\_

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State California
- Other \_\_\_\_\_

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

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

3. Nature of conveyance:

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

Execution Date: August 15, 2000

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

A. Trademark Application No.(s)

75/916,875    75/443,941    75/441,339

B. Trademark Registration No.(s)

2,343,021    2,160,907    2,231,320  
2,139,467    1,703,401    1,271,905

Additional numbers  Yes  No

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

Name: Charlotte Carberry

Internal Address: \_\_\_\_\_

Street Address: c/o Manatt, Phelps & Phillips, LLP

1001 Page Mill Road, Building 2

City: Palo Alto State: CA ZIP: 94304

6. Total number of applications and registrations involved:..... 9

7. Total fee (37 CFR 3.41):.....\$ \$240.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

09/28/2000 NTHA11 0000278 75916875

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

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.

Francis X. Ferrer, Esq.

Name of Person Signing

Signature

September 18, 2000

Date

Total number of pages including cover sheet, attachments, and

10

TRADEMARK

REEL: 002150 FRAME: 0691

**INTELLECTUAL PROPERTY SECURITY AGREEMENT**

This **INTELLECTUAL PROPERTY SECURITY AGREEMENT** ( this "*Assignment*") is made as of this 5 day of August, 2000, by and between **SCHOOL APPAREL, INC.**, a California corporation, ("*Assignor*") and **COMERICA BANK-CALIFORNIA**, a California banking corporation ("*Assignee*").

**RECITALS**

A. Assignee has agreed to lend to Assignor certain funds (the "*Loan*"), and Assignor desires to borrow such funds from Assignee. The Loan will be evidenced by one or more promissory notes or other evidences of credit extensions (a "*Note*" or, collectively, the "*Notes*") and will be secured in part pursuant to the terms of that certain Revolving Credit and Term Loan & Security Agreement of even date herewith by and between Assignor and Assignee (together with all documents, instruments and agreements executed pursuant thereto the "*Loan Documents*").

B. In order to induce Assignee to make the Loan, Assignor has agreed to assign certain intellectual property to Assignee for purposes of securing the obligations of Assignor to Assignee.

**NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:**

1. Assignment and Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Assignor's present or future indebtedness, obligations and liabilities of every kind and character ("*Obligations*"), owed to Assignee, including without limitation the Loan, Assignor hereby assigns, transfers, conveys and grants a security interest and mortgage to Assignee, as security, in Assignor's entire right, title and interest in, to and under the following (all of which shall collectively be called the "*Collateral*"):

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

1.2 Any and all trade secrets, proprietary information, customer lists, manufacturing techniques, formulas, product formulations, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

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

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

1.5 Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, all trade names, trade styles, designs, and the like, all elements of package or trade dress of goods, and the entire goodwill of the business of Assignor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "*Trademarks*");

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

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

1.8 All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

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

**THE INTEREST IN THE COLLATERAL BEING ASSIGNED HEREUNDER SHALL NOT BE CONSTRUED AS A CURRENT ASSIGNMENT, BUT AS A CONTINGENT ASSIGNMENT TO SECURE ASSIGNOR'S OBLIGATIONS TO ASSIGNEE.**

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

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

3.1 Assignor is the sole and lawful owner of the Collateral, except for non-exclusive licenses granted by Assignor to its customers in the ordinary course of business and except for liens, encumbrances or security interests to which Assignee has consented in writing;

3.2 Performance of this Assignment does not conflict with or result in a breach of any agreement to which Assignor is party or by which Assignor is bound;

3.3 During the term of this Assignment, Assignor will not transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Assignor in the ordinary course of business;

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

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

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

3.7 Assignor shall promptly register the most recent version of any of Assignor's Copyrights, if not so already registered, and shall, from time to time, execute and file such other instruments, and take such further actions as Assignee may request from time to time to perfect or continue the perfection of Assignee's interest in the Collateral to perfect or continue the perfection of Assignee's interests in the Collateral, at Assignor's sole expense.

3.8 This Assignment creates, and in the case of after acquired Collateral, this Assignment will create at the time Assignor first has rights in such after acquired Collateral, in favor of Assignee a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the Obligations owed to Assignee upon making the filings referred to in Section 3.9 below;

3.9 Except for, and upon, the filing of a UCC-1 financing statement with the California Secretary of State, and the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights necessary to perfect the security interests and assignment created hereunder, and, except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (a) for the grant by Assignor of the security interest granted hereby or for the execution, delivery or performance of this Assignment by Assignor; or (b) for the perfection in the United States or the exercise by Assignee of its rights and remedies hereunder;

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

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

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

4. Assignee's Rights. Assignee shall have the right, but not the obligation, to take, at Assignor's sole expense, any actions that Assignor is required under this Assignment to take but which Assignor fails to take. Assignor shall reimburse and indemnify Assignee for all costs and expenses incurred in the reasonable exercise of its rights under this Section 4.

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

6. Further Assurances; Attorney in Fact.

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

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

6.2.1 To modify, in its sole discretion, this Collateral Assignment without first obtaining Assignor's approval of or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C, thereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Assignor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Assignor no longer has or claims any right, title or interest; and

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

6.2.3 Upon an Event of Default hereunder, and following the exercise of any of the remedies provided hereby, to assign and transfer title to the Collateral to its own (or its nominee's) name or to the name of any purchaser of any of the Collateral at a public or private foreclosure sale. Assignor covenants and agrees to cooperate with Assignee to the extent necessary to permit Assignee to exercise its remedies following an Event of Default by Assignor hereunder.

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

- 7.1 An Event of Default occurs under the Loan Documents or any Note;
- 7.2 Assignor breaches any warranty or agreement made by Assignor in this Assignment; or
- 7.3 Assignor breaches any of the terms or conditions of any Obligations owed to Assignee.

8. Remedies. Upon the occurrence of an Event of Default, Assignee shall have the right:

- 8.1 to declare the entire amount of the Loan, or any other Obligation owed to Assignee, immediately due and payable,
- 8.2 to exercise any rights and remedies Assignee may have under the Loan Documents, other documents regarding any of the Obligations or applicable law; and
- 8.3 to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require Assignor to assemble the Collateral and any tangible property in which Assignee has a security interest and to make it available to Assignee at a place designated by Assignee. Assignee shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Assignee to exercise its rights and remedies upon the occurrence of an Event of Default. Assignor will pay any expenses (including attorneys' fees) incurred by Assignee in connection with the exercise of any of Assignee's rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Assignee's rights and remedies with respect to the Collateral shall be cumulative.

9. Indemnity. Assignor agrees to defend, indemnify and hold harmless Assignee and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Assignment, and (b) all losses or expenses in any

way suffered, incurred, or paid by Assignee as a result of or in any way arising out of, following or consequential to transactions between Assignee and Assignor, whether under this Assignment or otherwise (including without limitation attorneys fees and expenses), except for losses arising from or out of Assignee's gross negligence or willful misconduct.

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

11. Successors and Assigns. This Assignment shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Assignment nor any rights hereunder may be assigned by Assignor without Assignee's prior written consent, which consent may be granted or withheld in Assignee's sole discretion.

12. Severability of Provisions. In the event any one or more of the provisions contained in this Assignment is held to be invalid, illegal or unenforceable in any respect, then such provision shall be ineffective only to the extent of such prohibition or invalidity, and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

13. Amendments. Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated, nor may any consent to the departure from the terms hereof be given, orally (even if supported by new consideration), but only by an instrument in writing signed by all parties to this Assignment. Any waiver or consent so given shall be effective only in the specific instance and for the specific purpose for which given.

14. Entire Agreement. This Assignment, together with the Loan Documents embodies the entire agreement and understanding among and between the parties hereto, and supersedes all prior or contemporaneous agreements and understandings between said parties, verbal or written, express or implied, relating to the subject matter hereof. No promises of any kind have been made by Assignee or any third party to induce Assignor to execute this Assignment. No course of dealing, course of performance or trade usage, and no parol evidence of any nature, shall be used to supplement or modify any terms of this Assignment.

15. Waiver. No failure to exercise and no delay in exercising any right, power, or remedy hereunder shall impair any right, power, or remedy which Assignee may have, nor shall any such delay be construed to be a waiver of any of such rights, powers, or remedies, or any acquiescence in any breach or default hereunder; nor shall any waiver by Assignee of any breach or default by Assignor hereunder be deemed a waiver of any default or breach subsequently occurring. All rights and remedies granted to Assignee hereunder shall remain in full force and effect notwithstanding any single or partial exercise of, or any discontinuance of action begun to enforce, any such right or remedy. The rights and remedies specified herein are cumulative and not exclusive of each other or of any rights or remedies which Assignee would otherwise have. Any waiver, permit, consent or approval by Assignee of any breach or default hereunder must be in writing and shall be effective only to the extent set forth in such writing and only as to that specific instance.

16. Interpretation. This Assignment and all agreements relating to the subject matter hereof are the product of negotiation and preparation by and among each party and its respective attorneys, and shall be construed accordingly. The parties waive the provisions of California Civil Code §1654.

17. Survival. All covenants, representations and warranties made in this Assignment shall continue in full force and effect so long as any Obligations remain outstanding. The obligations of Assignor to indemnify Assignee with respect to the expenses, damages, losses, costs and liabilities shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Assignee have run, provided that so long as the obligations set forth in the first sentence of this Section 17 have been satisfied, and Assignee has no

commitment to make any Advances or to make any other loans to Assignor, Assignee shall release all security interests granted hereunder and redeliver all Collateral held by it in accordance with applicable law.

18. Venue; Waiver of Jury Trial. This Assignment and all transactions contemplated hereunder and/or evidenced hereby shall be governed by, construed under, and enforced in accordance with the internal laws of the State of California, without regard to principles of conflicts of law. Each of Assignor and Assignee hereby submits to the exclusive jurisdiction of the state and Federal courts located in the County of Santa Clara, State of California. BORROWER AND BANK EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

19. Counterparts. This Assignment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same instrument. Delivery of an executed counterpart of the signature page to this Assignment by telefacsimile shall be effective as delivery of a manually executed counterpart of this Assignment, and any party delivering such an executed counterpart of the signature page to this Assignment by telefacsimile to any other party shall thereafter also promptly deliver a manually executed counterpart of this Assignment to such other party; provided; however, that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Assignment.

**IN WITNESS WHEREOF**, the parties hereto have caused this Intellectual Security Assignment to be executed as of the date first above written.

**SCHOOL APPAREL, INC.**

By: AA [Signature]  
Title: CFO.

**COMERICA BANK-CALIFORNIA**

Michelle R. Dupuis  
Michelle R. Dupuis  
Assistant Vice President

**EXHIBIT A**

**Copyrights**

Handwritten signature or initials in black ink, appearing to be 'MAD'.

AMERICAN BEER



**EXHIBIT B**

**Patents**

*MAD*

INITIAL MARK

EXHIBIT C

Trademarks

TRADEMARK	REGISTRATION NO.	SERIAL NO.	FILING DATE	REGISTRATION DATE
PRODUCTS IN MOTION	2,343,021	75-641,060	February 16, 1999	April 18, 2000
✓ SFKM	2,160,907	75-146,079	August 6, 1996	May 26, 1998
✓ A+ FABRICS	2,231,320	75-133,511	July 12, 1996	March 16, 1999
✓ SCHOOL APPAREL	2,139,467	75-014,123	November 2, 1995	February 24, 1998
<del>HI POINT</del>	2,021,211	74-545,218	June 30, 1994	December 3, 1996
<del>COMPRESS</del>	2,018,114	74-526,168	May 18, 1994	November 19, 1996
<del>PRESTO</del>	2,027,449	74-518,060	April 28, 1994	December 31, 1996
✓ SAN FRANCISCO KNITTING MILLS, INC.	1,703,401	74-193,106	August 9, 1991	July 28, 1992
✓ SCHOOL APPAREL, INC.	1,271,905	74-385,333	September 13, 1982	March 27, 1984
<del>S</del>	1,238,486	73-333,728	October 22, 1981	May 17, 1983
<del>SCHOOLGIRL</del>	1,200,481	73-233,606	October 1, 1979	July 6, 1982
<del>SCHOOLBOY</del>	1,191,739	73-233,602	October 1, 1979	March 9, 1982
VIRTUAL UNIFORMS		75-916,875	February 11, 2000	
TUFF-TEST FABRICS		75-443,941	March 3, 1998	
SERVICE APPAREL		75-441,339	February 26, 1998	

*meo*  
INITIAL FILE