

11-29-2000



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11-29-00

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

☒ 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   
Month Day Year

☐ Change of Name

☐ Other

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

11/29/2000 DNGUYEN 00000242 1838591

FOR OFFICE USE ONLY

01 FC:481

40.00 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: 002182 FRAME: 0507

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name	HSBC Bank USA
Address (line 1)	140 Broadway
Address (line 2)	New York, New York 10005
Address (line 3)	Attn: Commercial Finance Division
Address (line 4)	

**Correspondent Name and Address**

Area Code and Telephone Number

Name	HSBC Bank USA
Address (line 1)	140 Broadway
Address (line 2)	New York, New York 10005
Address (line 3)	Attn: Commercial Finance Division
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)**

**Registration Number(s)**

			1,838,591		

**Number of Properties**

Enter the total number of properties involved.

# 1

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 40.00

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 G. Dorman

Name of Person Signing

Signature

11/28/00

Date Signed

# TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

AGREEMENT made this 28th day of November, 2000 by and between ADAR IMPORT & DISTRIBUTING CORP., a New York corporation ("Debtor"), with its chief executive office at 130 North Fourth Street, Brooklyn, NY 11211 and HSBC BANK USA, a bank organized under the laws of the State of New York ("Secured Party"), having an office at 140 Broadway, New York, New York 10005.

## W I T N E S S E T H:

WHEREAS, Debtor has adopted, used and is using, and is the owner of the entire right, title, and interest in and to the trademarks, trade names, terms, designs and applications therefor described in Exhibit A annexed hereto and made a part hereof; and

WHEREAS, Secured Party and Debtor have entered into financing arrangements pursuant to which Secured Party may make advances and provide other financial accommodations to Debtor in accordance with the terms and conditions of an Amended and Restated Loan and Security Agreement dated the date hereof among Debtor, Bartex Corp. and Secured Party (the "Loan Agreement", and together with all agreements and documents now or at any time executed in connection therewith as such agreements and documents may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "Transaction Documents"); and

WHEREAS, in order to induce Secured Party to enter into the Transaction Documents and to make the term loan, advances and provide other financial accommodations to Debtor pursuant thereto, Debtor has agreed to grant to Secured Party certain collateral security as set forth herein;

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

### 1. GRANT OF SECURITY INTEREST

As collateral security for the prompt performance, observance and indefeasible payment in full of all of the Indebtedness (as hereinafter defined), Debtor hereby grants to Secured Party a continuing security interest in and a general lien upon, and hereby assigns and transfers to Secured Party: (a) all of Debtor's now existing or hereafter acquired right, title, and interest in and to: all of Debtor's trademarks, trade names, tradestyles and service marks; all prints and labels on which said trademarks, trade names, tradestyles and service marks appear, have

appeared or will appear, and all designs and general intangibles of a like nature; all applications, registrations and recordings relating to the foregoing in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other countries, and all reissues, extensions and renewals thereof including those trademarks, terms, designs and applications described in Exhibit A hereto (the "Trademarks"); (b) the goodwill of the business symbolized by each of the Trademarks, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing the Trademarks; and any and all proceeds of any of the foregoing, including, without limitation, any claims by Debtor against third parties for infringement of the Trademarks or any licenses with respect thereto (all of the foregoing are collectively referred to herein as the "Collateral").

## 2. INDEBTEDNESS SECURED

The security interest, lien and other interests granted to Secured Party pursuant to this Agreement secures payment of any and all indebtedness, and performance of all obligations and agreements, of Debtor to Secured Party, whether now existing or hereafter incurred or arising, of every kind and character, primary or secondary, direct or indirect, absolute or contingent, sole, joint or several, and whether such indebtedness is from time to time reduced and thereafter increased, or entirely extinguished and thereafter reincurred, including, without limitation: (a) all Advances (as defined in the Loan Agreement); (b) the Acquisition Loans (as defined in the Loan Agreement); (c) the Term Loan (as defined in the Loan Agreement); (d) all interest which accrues on any such indebtedness, until payment of such indebtedness in full, including, without limitation, all interest provided for under the Loan Agreement; (e) all other monies payable by Debtor, and all obligations and agreements of Debtor to Secured Party, pursuant to the Transaction Documents; (f) all debts owed, or to be owed, by Debtor to others which Secured Party has obtained, or may obtain, by assignment or otherwise; (g) all monies payable by any Third Party (as defined in the Loan Agreement), and all obligations and agreements of any Third Party to Secured Party, pursuant to any of the Transaction Documents; and (h) all monies due, and to become due, pursuant to the Loan Agreement and the Transaction Documents (all hereinafter referred to as "Indebtedness").

## 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

Debtor hereby represents, warrants and covenants to Secured Party the following (which shall survive the execution and delivery of this Agreement), the truth and accuracy of which, or compliance with, being a continuing condition of the making of loans by Secured Party to Debtor under the Transaction Documents:

(a) Debtor will pay and perform all of the Indebtedness according to their terms.

(b) All of the existing Collateral is valid and subsisting in full force and effect, and Debtor owns the sole, full, and clear title thereto, and the right and power to grant the security interests granted hereunder. Debtor will, at Debtor's expense, perform all acts and execute all documents necessary to maintain the existence of the Collateral as valid, subsisting and registered trademarks including, without limitation, the filing of any renewal affidavits and applications. The Collateral is not subject to any liens, claims, mortgages, assignments, licenses, security interests, or encumbrances of any nature whatsoever, except the security interests granted hereunder and pursuant to the Loan Agreement, the security interests permitted under the Loan Agreement, and the licenses permitted under Section 3(e) below.

(c) Debtor will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license relating thereto, except as permitted herein, in the Transaction Documents, or otherwise dispose of any of the Collateral without the prior written consent of Secured Party. Nothing in this Agreement shall be deemed a consent by Secured Party to any such action, except as such action is expressly permitted hereunder.

(d) Debtor will, at Debtor's expense, perform all acts and execute all documents requested at any time by Secured Party to evidence, perfect, maintain, record, or enforce the security interest in the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Debtor hereby authorizes Secured Party to execute and file one or more financing statements (or similar documents) with respect to the Collateral, signed only by Secured Party or as otherwise determined by Secured Party. Debtor further authorizes Secured Party to have this or any other similar security agreement filed with the Commissioner of Patents and Trademarks or other appropriate federal, state or government office, or in any similar office or agency of the United States, any State thereof, or any other domestic or foreign jurisdiction or subdivision thereof.

(e) As of the date hereof, Debtor does not have any Trademarks registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof, or any other domestic or foreign jurisdiction or subdivision thereof, other than those described in Exhibit A annexed hereto and has not granted any licenses with respect thereto, except as set forth on Exhibit B hereto.

(f) Debtor will, concurrently with the execution and delivery of this Agreement, execute and deliver to Secured Party five (5) originals of a Power of Attorney in the form of Exhibit C annexed hereto for the implementation of the assignment, sale or other disposition of the Collateral pursuant to Secured Party's exercise of the rights and remedies granted to Secured Party hereunder.

(g) Secured Party may, in its discretion, pay any amount or do any act which Debtor fails to pay or do as required hereunder or as requested by Secured Party to preserve, defend, protect, maintain, record, amend or enforce the Indebtedness, the Collateral, or the

security interest granted hereunder including but not limited to all filing or recording fees, court costs, collection charges and reasonable attorneys' fees. Debtor will be liable to Secured Party for any such payment, which payment shall be deemed an advance by Secured Party to Debtor, shall be payable on demand together with interest at the then applicable rate set forth in the Transaction Documents and shall be part of the Indebtedness secured hereby.

(h) Debtor shall not file any application for the registration of a Trademark with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof, or any other domestic or foreign jurisdiction or subdivision thereof, unless Debtor has by thirty (30) days prior written notice informed Secured Party of such action. Upon request of Secured Party, Debtor shall execute and deliver to Secured Party any and all assignments, agreements, instruments, documents and such other papers as may be requested by Secured Party to evidence the security interests of Secured Party in such Trademark.

(i) Debtor has not abandoned any of the Trademarks and Debtor will not do any act, nor omit to do any act, whereby the Trademarks may become abandoned, invalidated, unenforceable, avoided or avoidable. Debtor shall notify Secured Party immediately if it knows or has reason to know of any reason why any application, registration, or recording may become abandoned, canceled, invalidated, avoided, or avoidable.

(j) Debtor will render any assistance necessary to Secured Party in any proceeding before the United States Patent and Trademark Office, any federal or state court, or any similar office or agency of the United States, any State thereof, or any other domestic or foreign jurisdiction or subdivision thereof, to maintain such application and registration of the Trademarks as Debtor's exclusive property and to protect Secured Party's interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

(k) Debtor will promptly notify Secured Party if Debtor (or any affiliate or subsidiary thereof) learns of any use by any person of any term or design likely to cause confusion with any Trademark. If requested by Secured Party, Debtor, at Debtor's expense, shall join with Secured Party in such action as Secured Party, in its discretion, may deem advisable for the protection of Secured Party's interest in and to the Trademarks.

(l) Debtor assumes all responsibility and liability arising from the use of the Trademarks and Debtor hereby indemnifies and holds Secured Party harmless from and against any claim, suit, loss, damage, or expense (including attorneys' fees) arising out of any alleged defect in any product manufactured, promoted, or sold by Debtor (or any affiliate or subsidiary thereof) in connection with any Trademark or out of the manufacture, promotion, labeling, sale or advertisement of any such product by Debtor (or any affiliate or subsidiary thereof).

(m) Debtor will promptly pay Secured Party for any and all expenditures made by Secured Party pursuant to the provisions of this Agreement or for the defense, protection, or

enforcement of the Indebtedness, the Collateral, or the security interests granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, travel expenses, and attorneys' fees and legal expenses. Such expenditures shall be payable on demand, together with interest at the then applicable rate set forth in the Transaction Documents and shall be part of the Indebtedness secured hereby.

4. EVENTS OF DEFAULT

All Indebtedness shall become immediately due and payable, without notice or demand, at the option of Secured Party, upon the occurrence of any one or more of the "Events of Default", as defined in the Loan Agreement (each an "Event of Default" hereunder).

5. RIGHTS AND REMEDIES

Upon the occurrence of any such Event of Default and at any time thereafter, in addition to all other rights and remedies of Secured Party, whether provided under law, the Transaction Documents or otherwise, Secured Party shall have the following rights and remedies which may be exercised without notice to, or consent by, Debtor except as such notice or consent is expressly provided for hereunder.

(a) Secured Party may require that neither Debtor nor any affiliate or subsidiary of Debtor make any use of the Trademarks or any marks similar thereto for any purpose whatsoever. Secured Party may make use of any Trademarks for the sale of goods, completion of work in process or rendering of services in connection with enforcing any other security interest granted to Secured Party by Debtor or any subsidiary of Debtor.

(b) Secured Party may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as Secured Party shall in its discretion deem appropriate. Such license or licenses may be general, special, or otherwise, and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions, and all foreign countries.

(c) Secured Party may assign, sell or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations except that if notice to Debtor of intended disposition of Collateral is required by law, the giving of five (5) days notice in the manner set forth in subparagraph 6(b) hereof shall be deemed reasonable notice thereof and Debtor waives any other notice with respect thereto. Secured Party shall have the power to buy the Collateral or any part thereof, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in its discretion, deem appropriate or proper to complete such assignment, sale, or disposition.

(d) In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral pursuant to Subparagraph 5(c) hereof, Secured Party

may at any time execute and deliver on behalf of Debtor, pursuant to the authority granted in the Powers of Attorney described in Subparagraph 3(f) hereof, one or more instruments of assignment of the Trademarks (or any application, registration, or recording relating thereto), in form suitable for filing, recording, or registration. Debtor agrees to pay Secured Party on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, legal expenses and reasonable attorneys' fees and legal expenses.

(e) Secured Party may first apply the proceeds actually received from any such license, assignment, sale, or other disposition of Collateral to the costs and expenses thereof, including, without limitation, attorneys' fees and all legal, travel and other expenses which may be reasonably incurred by Secured Party. Thereafter, Secured Party may apply any remaining proceeds to such of the Indebtedness as Secured Party may in its discretion determine. Debtor shall remain liable to Secured Party for any expenses or obligations remaining unpaid after the application of such proceeds, and Debtor will pay Secured Party on demand any such unpaid amount, together with interest at a rate equal to the highest rate then payable on the Indebtedness.

(f) Debtor shall supply to Secured Party or its designee, Debtor's knowledge and expertise relating to the manufacture and sale of the products and services bearing the Trademarks and Debtor's customer lists and other records relating to the Trademarks and the distribution thereof.

(g) Nothing contained herein shall be construed as requiring Secured Party to take any such action at any time. All of Secured Party's rights and remedies, whether provided under law, the Transaction Documents, this Agreement, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

## 6. MISCELLANEOUS

(a) Any failure or delay by Secured Party to require strict performance by Debtor of any of the provisions, warranties, terms, and conditions contained herein or in any other agreement, document, or instrument, shall not affect Secured Party or Secured Party's right to demand strict compliance and performance therewith, and any waiver of any default shall not waive or affect any other default, whether prior or subsequent thereto, and whether of the same or of a different type. None of the warranties, conditions, provisions, and terms contained herein or in any other agreement, document, or instrument shall be deemed to have been waived by any act or knowledge of Secured Party, its agents, officers, or employees, but only by an instrument in writing, signed by an officer of Secured Party and directed to Debtor, specifying such waiver.

(b) All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been given or made: if by hand, telex, telegram or facsimile immediately upon sending; if by Federal Express, Express Mail or any other reliable overnight



delivery service, one (1) day after dispatch; and if mailed by certified mail, return receipt requested, five (5) days after mailing. All notices, requests and demands are to be given to the respective parties at the following addresses (or to such other addresses as either party may designate by notice in accordance with the provisions of this paragraph) set forth herein:

If to Debtor:                      Adar Import & Distributing Corp.  
   130 North Fourth Street  
   Brooklyn, New York 11211  
   Attention: Yehuda Backer

If to Secured Party:              HSBC Bank USA  
   140 Broadway, 8<sup>th</sup> Floor  
   New York, New York 10005  
   Attention: Julio Rodriguez

(c)      In the event that any provision hereof shall be deemed to be invalid by any court, such invalidity shall not affect the remainder of this Agreement.

(d)      All references to Debtor and Secured Party herein shall include their respective successors and assigns. All references to the term "person" or "Person" herein shall mean any individual, sole proprietorship, limited partnership, general partnership, corporation (including a business trust), unincorporated association, joint stock corporation, trust, joint venture, association, organization or other entity or government or any agency or instrumentality or political subdivision thereof.

(e)      This Agreement shall be binding upon and for the benefit of the parties hereto and their respective successors and assigns. No provision hereof shall be modified, altered or limited except by a written instrument expressly referring to this Agreement signed by the party to be charged thereby.

(f)      The validity, interpretation, and effect of this Agreement shall be governed by the laws of the State of New York, without regard to principles of conflicts of laws.

(g)      DEBTOR AND SECURED PARTY EACH HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY DEBTOR AND SECURED PARTY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS RELATED THERETO. DEBTOR REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF SECURED PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SECURED PARTY WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS RIGHT TO JURY TRIAL WAIVER. DEBTOR ACKNOWLEDGES THAT SECURED PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THIS JURY TRIAL WAIVER.

(h) ANY ACTION OR PROCEEDING TO ENFORCE OR ARISING OUT OF, THIS AGREEMENT OR THE TRANSACTIONS RELATED HERETO, MAY BE COMMENCED IN THE SUPREME COURT OF THE STATE OF NEW YORK IN NEW YORK COUNTY, OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND DEBTOR WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT A SUMMONS AND COMPLAINT COMMENCING AN ACTION OR PROCEEDING IN ANY SUCH COURT SHALL BE PROPERLY SERVED AND SHALL CONFER PERSONAL JURISDICTION IF SERVED BY REGISTERED OR CERTIFIED MAIL AT THE ADDRESSES SET FORTH HEREIN, OR AS OTHERWISE PROVIDED BY THE LAWS OF NEW YORK STATE OR THE UNITED STATES.

(i) In the event that any term or provision of this Agreement conflicts with any term or provision of the Loan Agreement, the term or provision of the Loan Agreement shall control.

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the day and year first above written.

ADAR IMPORT & DISTRIBUTING CORP.

By: 

Yehuda Backer, President

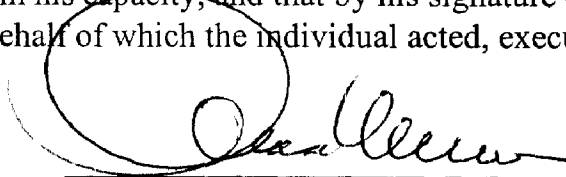
HSBC BANK USA

By: 

Julio Rodriguez, Vice President

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NEW YORK    )

On the 28<sup>th</sup> day of November in the year 2000, before me, the undersigned, personally appeared Yehuda Backer, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

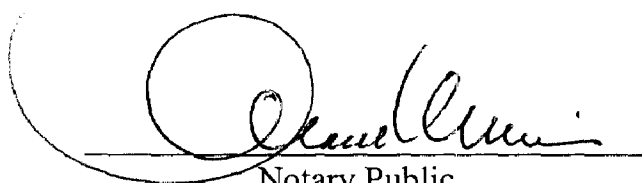


Notary Public

**ALAIN L. KLEIN**  
Notary Public, State of New York  
No. 4947498  
Qualified in Nassau County  
Commission Expires Feb. 27, 2001

STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NEW YORK    )

On the 28<sup>th</sup> day of November in the year 2000, before me, the undersigned, personally appeared Julio Rodriguez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**ALAINE L. KLEIN**  
**Notary Public, State of New York**  
**No. 4947498**  
**Qualified in Nassau County**  
**Commission Expires Feb. 27, 2001**

EXHIBIT A

TRADEMARKS

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>
Nike Sound	1,838,591	June 7, 1994

APPLICATIONS

None.

EXHIBIT B

LICENSES

None.