

12-26-2000



UNIT

101562439

ADEMARK OFFICE

11-15-00

RECORDATION FORM COVER SHEET

TRADEMARKS ONLY

11-15-00

To the Honorable Commissioner of Patents and Trademarks:

Please record the attached original document or copy thereof.

1. Name and address of conveying party:

The J.M. Ney Company
Ney Industrial Park
Bloomfield, CT 06002

A Delaware corporation

2. Name and address of receiving party:

Sovereign Bank
100 Pearl Street
Hartford, CT 06103

A federally-chartered savings bank

3. Nature of conveyance:

First Supplemental Trademark Collateral Assignment and Security Agreement

Execution date: October 12, 2000

4. Application numbers or registration numbers:

A. Trademark application numbers:

See Attached Schedule A

12/22/2000 6TON11 00000289 2342244

01 FC:481

40.00 0P

B. Trademark registration numbers:

See Attached Schedule B

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

Michelle Walters Fournier, RP
Senior Paralegal
Bingham Dana LLP
100 Pearl Street
Hartford, Connecticut 06103

6. Total number of applications and registrations involved: 1


7. Total fee enclosed: \$40.00

8. Deposit account number: [Not applicable]

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.

THE J.M. NEY COMPANY

By: 

Dated as of October 12, 2000

Total number of pages comprising cover sheet (including attached Schedules): 15

**FIRST SUPPLEMENTAL TRADEMARK COLLATERAL
SECURITY AND PLEDGE AGREEMENT**

This FIRST SUPPLEMENTAL TRADEMARK COLLATERAL SECURITY AND PLEDGE AGREEMENT (the "*Agreement*") dated as of October 12, 2000 by and between The J.M. Ney Company, a Delaware corporation with its principal place of business at Ney Industrial Park, Bloomfield, Connecticut 06002 (the "*Company*") and SOVEREIGN BANK, a federally-chartered savings bank, as assignee of Fleet National Bank, formerly known as BankBoston, N.A., with its principal place of business at 100 Pearl Street, Hartford, Connecticut 06103 (the "*Bank*").

Reference is hereby made to the Security Agreement dated as of December 29, 1997 by and between the Company and the Bank (as amended and restated and in effect from time to time, the "*Security Agreement*").

RECITALS

WHEREAS, pursuant to the terms of a Securities Purchase Agreement dated as of December 29, 1997 by and between the Company and the Bank, as amended by that certain Amendment and Waiver to Securities Purchase Agreement dated of even date herewith by and between the Company and the Bank (as amended, and in effect from time to time, the "*Securities Purchase Agreement*"), the Company and the Bank have entered into the Securities Purchase Agreement, pursuant to which the Company has issued a Note in the principal amount of \$7,500,000 and Warrant (each as defined in the Securities Purchase Agreement) to the Bank as more particularly described therein;

WHEREAS, in connection with the transactions contemplated by the Securities Purchase Agreement, the Company and the Bank have entered into the Security Agreement pursuant to which the Company has granted to the Bank, to secure the payment and performance in full of all of the Obligations (as defined in the Securities Purchase Agreement), a security interest in and a pledge and assignment of the Collateral (as defined in the Security Agreement);

WHEREAS, in connection with the transactions contemplated by the Securities Purchase Agreement and the Security Agreement, the Company and the Bank have also entered into a Trademark Collateral Security and Pledge Agreement dated as of December 29, 1997, which was recorded with the United States Patent and Trademark Office (the "*PTO*") on or about May 27, 1998 at Trademark Reel 1769, Frame 0437 (the "*Original Trademark Collateral Assignment*"), pursuant to which the Company granted to the Bank a security interest in and collateral assignment of all of the Company's Trademarks, as such term is defined in the Original Trademark Collateral Assignment;

WHEREAS, the Original Trademark Collateral Assignment originally granted to Fleet National Bank, formerly known as BankBoston, N.A., was assigned to Sovereign Bank by virtue of an Assignment of Trademark dated of even date herewith and filed with the United States Patent and Trademark Office contemporaneously herewith;

WHEREAS, subsequent to the execution, delivery and recording of the Original Trademark Collateral Assignment, the Company has adopted, acquired or been granted the trademarks and has filed or made the trademark applications set forth on Schedule A hereto (such trademarks and trademark applications being collectively referred to herein as the "*Supplemental Trademarks*");

WHEREAS, pursuant to and in fulfillment of the Company's obligations under the Securities Purchase Agreement, the Security Agreement and the Original Trademark Collateral Assignment, the

Company wishes to execute and deliver this Agreement to further effect, evidence and memorialize the Company's grant to the Bank of a security interest in the Supplemental Trademarks, the Trademark rights associated with or related to the Supplemental Trademarks (the "*Supplemental Trademark Rights*") and the proceeds associated with or related to the Supplemental Trademarks (the "*Supplemental Proceeds*"), (the Supplemental Trademarks, Supplemental Trademark Rights and Supplemental Proceeds collectively referred to as the "*Supplemental Trademark Collateral*"), and the Company's collateral future assignment to the Bank of the Supplemental Trademark Collateral, all as contemplated by the Original Trademark Collateral Assignment.

NOW, THEREFORE, the Company and the Bank, in consideration of the promises set forth in the Securities Purchase Agreement, the Security Agreement and the Original Trademark Collateral Assignment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. DEFINITIONS. All capitalized terms used herein without definition shall have as their respective meanings the definitions as set forth in the Original Trademark Collateral Assignment.

2. GRANT OF SECURITY; COLLATERAL ASSIGNMENT.

2.1. Grant of Security Interest. As collateral security for the complete and timely payment, performance and satisfaction of all Obligations (as defined in the Securities Purchase Agreement), the Company hereby unconditionally grants to the Bank (and confirms its grant to the Bank pursuant to the Original Trademark Collateral Assignment and the Security Agreement), a continuing security interest in and first priority lien on the Supplemental Trademark Collateral, and pledges, mortgages and hypothecates (but does not transfer title to) the Supplemental Trademark Collateral to the Bank (and confirms its pledge, mortgage, and hypothecation of the Supplemental Trademark Collateral to the Bank pursuant to the Original Trademark Collateral Assignment). In addition, the Company has executed in blank and delivered to the Bank an assignment of federally registered trademarks in substantially the form of Exhibit 1 hereto (the "Assignment of Marks"). The Company hereby authorizes the Bank to complete as assignee and record with the PTO the Assignment of Marks upon the occurrence and during the continuance of an Event of Default and the proper exercise of the Bank's remedies under this Agreement, the Original Trademark Collateral Assignment and the Security Agreement. The Bank will give prompt notice of any such completion and recording of any Assignment of Marks pursuant to this Section 2.1.

2.2. Collateral Assignment. In addition to, and not by way of limitation of, the grant, pledge, mortgage and hypothecation of the Supplemental Trademark Collateral provided and confirmed in Section 2.1 hereof, to secure the complete and timely payment, performance and satisfaction of all Obligations, the Company hereby grants, assigns, transfers and conveys to the Bank (and confirms its grant, assignment, transfer and conveyance to the Bank pursuant to the Original Trademark Collateral Assignment), BY WAY OF COLLATERAL SECURITY, the Company's entire right, title and interest in and to the Supplemental Trademark Collateral, provided, however, that such grant, assignment, transfer and conveyance shall be and become of force and effect only (i) upon the occurrence and during the continuance of an Event of Default under the Securities Purchase Agreement and (ii) either (A) upon the written demand of the Bank at any time during such continuance or (B) immediately and automatically (without notice or action of any kind by the Bank) upon an Event of Default for which acceleration of amounts outstanding is automatic under the Securities Purchase Agreement or upon the sale or other disposition of or foreclosure upon the Supplemental Trademark Collateral pursuant to the Security Agreement or Article 9 of the Uniform Commercial Code (including the transfer or other disposition of the Supplemental Trademark Collateral by the Company to the Bank

in lieu of foreclosure). The foregoing grant, assignment, transfer and conveyance shall be referred to from time to time herein as the "*Section 2.2 Assignment*". THE BANK ASSUMES NO LIABILITY OR RESPONSIBILITY ARISING IN ANY WAY BY REASON OF ITS HOLDING SUCH COLLATERAL SECURITY.

2.3. Rights and Remedies Upon Default. If any Event of Default shall have occurred and be continuing, then, with respect to the Supplemental Trademark Collateral, the Bank shall have such rights, interests and remedies, and the Company shall have such obligations, as are provided in or arise under the Original Trademark Collateral Assignment with respect to the Trademarks, and all such rights, interests, remedies and obligations are hereby incorporated herein by reference as if set forth in full herein and are hereby ratified, confirmed, adopted and approved.

2.4. Supplemental to Certain Agreements. In no event shall this Agreement, the Section 2.2 Assignment of the Supplemental Trademark Collateral hereunder or the recordation of this Agreement (or any document hereunder) with the PTO, adversely affect or impair, in any way or to any extent, the Security Agreement, the other Security Documents (as defined in the Securities Purchase Agreement), the security interest of the Bank in the Collateral (including the Supplemental Trademark Collateral) pursuant to the Security Agreement, the Original Trademark Collateral Assignment and/or this Agreement, the attachment and perfection of such security interest under the Uniform Commercial Code, or the present or future rights and interests of the Bank in and to the Collateral under or in connection with the Security Agreement, the other Security Documents, the Original Trademark Collateral Assignment, this Agreement and/or the Uniform Commercial Code. Any and all rights and interests of the Bank in and to the Supplemental Trademark Collateral (and any and all obligations of the Company with respect to the Supplemental Trademark Collateral) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of the Bank (and the obligations of the Company) in, to or with respect to the Collateral (including the Supplemental Trademark Collateral) provided in or arising under or in connection with the Security Agreement, the other Security Documents and the Original Trademark Collateral Assignment. The Security Agreement, the other Security Documents, the Original Trademark Collateral Assignment, and all rights and interests of the Bank in and to the Collateral (including the Supplemental Trademark Collateral) thereunder, are hereby ratified, confirmed, adopted and approved.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF COMPANY.

3.1. Schedule A to the Original Trademark Collateral Assignment (the "*Original Schedule A*"), which sets forth a list of all Trademarks owned by Company, is hereby amended and supplemented by Schedule A to this Agreement (the "*New Schedule A*"). The Company represents and warrants that, together, the Original Schedule A and the New Schedule A constitute a true and complete list of all Trademarks.

3.2. The term "*Trademarks*", as defined and used in the Original Trademark Collateral Assignment, shall include, as of the time of the Company's acquisition of any right, title or interest therein or thereto, the Supplemental Trademarks, the Supplemental Trademark Rights, the Supplemental Proceeds and the Supplemental Trademark Collateral.

3.3. The Company represents and warrants that all representations and warranties of the Company as set forth in the Securities Purchase Agreement and the Original Trademark Collateral Assignment, as amended by Sections 3.1 and 3.2 hereof, are true and correct in all material respects on and as of the date hereof, except as such representations and warranties contained in the Securities

Purchase Agreement are necessarily affected by the transactions contemplated by the Securities Purchase Agreement, and except for representations and warranties which expressly relate to a prior date. All such representations and warranties are hereby ratified, affirmed and incorporated herein by reference, and such representations and warranties are applicable to the Trademarks (including the Supplemental Trademark Collateral) with the same force and effect as though set forth herein in their entirety.

3.4. All rights, interests, duties, obligations, liabilities, covenants, agreements and remedies of each of the Company and the Bank with respect to each other and/or the Trademarks (including without limitation the Supplemental Trademark Collateral) or any portion thereof, as set forth in the Original Trademark Collateral Assignment, the Security Agreement and the other Security Documents, are hereby ratified, confirmed, adopted, approved and incorporated herein by reference; and such rights, duties, obligations, liabilities, covenants, agreements and remedies are applicable to the parties and the Trademarks (including without limitation the Supplemental Trademark Collateral) with the same force and effect as though set forth herein in their entirety.


4. OTHER TERMS AND CONDITIONS OF ORIGINAL TRADEMARK COLLATERAL ASSIGNMENT.

4.1. This Agreement incorporates by reference all other terms and conditions contained in the Original Trademark Collateral Assignment, to the extent that such terms and conditions are not inconsistent with the provisions set forth in this Agreement, with the same force and effect as though set forth herein in their entirety.

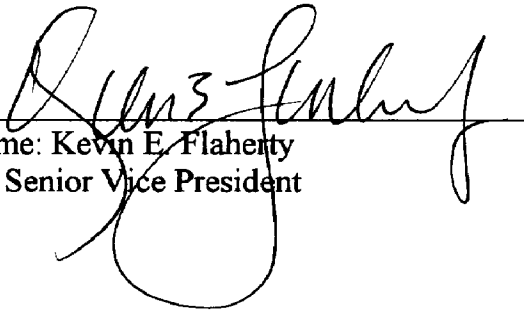
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SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Company and the Bank, each by its own duly authorized officer, have duly executed this Agreement as of the date first set forth above.

THE J.M. NEY COMPANY

By: 
Name: Andrew M. O'Shea
Its: Secretary, Treasurer and Chief Financial Officer

SOVEREIGN BANK

By: 
Name: Kevin E. Flaherty
Its: Senior Vice President

STATE OF CONNECTICUT)

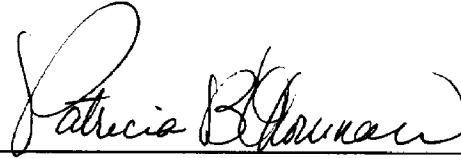
) ss.: Bloomfield

October 12, 2000

COUNTY OF HARTFORD)

On this the 12th day of October, 2000, before me, Patricia B. Chouinard, the undersigned officer, personally appeared Andrew M. O'Shea, who acknowledged himself ~~herself~~ to be the ~~Secretary~~ ^{Secretary} ~~Treasurer~~ ^{Treasurer} CFO of The J.M. Ney Company, a Delaware corporation, and that he as such ~~officer~~, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself ~~herself~~ as such officer and as his ~~her~~ and its free act and deed.

In witness whereof I hereunto set my hand.



~~Commissioner of the Superior Court~~

Notary Public

My Commission Expires:

PATRICIA B. CHOUINARD

NOTARY PUBLIC

MY COMMISSION EXPIRES FEB. 28, 2002

STATE OF CONNECTICUT)

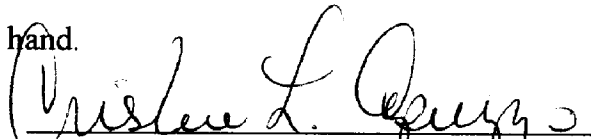
) ss.: Hartford

November
October 3, 2000

COUNTY OF HARTFORD)

On this the 3rd ^{November} day of ~~October~~, 2000, before me, Cristina L. Russo the undersigned officer, personally appeared Kevin E. Flaherty, who acknowledged himself to be the Senior Vice President of Sovereign Bank, a corporation, and that he as such Senior Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Senior Vice President and as his and its free act and deed.

In witness whereof I hereunto set my hand.



Commissioner of the Superior Court

Notary Public

My Commission Expires: 5/2001

EXHIBIT 1

ASSIGNMENT OF TRADEMARKS AND SERVICE MARKS (U.S.)

WHEREAS, The J.M. Ney Company, a corporation organized and existing under the laws of the State of Delaware, having a place of business at Ney Industrial Park, Bloomfield, Connecticut 06002 (the "Company"), has adopted and used and is using the trademarks and service marks (the "Marks") identified on the Annex hereto, and is the owner of the registrations of and pending registration applications for such Marks in the United States Patent and Trademark Office identified on such Annex; and

WHEREAS, SOVEREIGN BANK, having a place of business at 100 Pearl Street, Hartford, Connecticut 06103 (the "Bank"), is desirous of acquiring the Marks and the registrations thereof and registration applications therefor;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Company does hereby assign, sell and transfer unto the Bank all right, title and interest in and to the Marks, together with (i) the registrations of and registration applications for the Marks, (ii) the goodwill of the business symbolized by and associated with the Marks and the registrations thereof, and (iii) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Marks or the registrations thereof or such associated goodwill.

This Assignment of Trademarks and Service Marks (U.S.) is intended to and shall take effect as a sealed instrument at such time as the Bank shall complete this instrument by inserting its name in the second paragraph above and signing its acceptance of this Assignment of Trademarks and Service Marks (U.S.) below.

IN WITNESS WHEREOF, the Company, by its duly authorized officer, has executed this assignment, as an instrument under seal, on this ____ day of _____, _____.

THE J.M. NEY COMPANY

By: _____

Name:

Title:

The foregoing assignment of the Marks and the registrations thereof and registration applications therefor by the Company to the Bank is hereby accepted as of the ____ day of _____, _____.

SOVEREIGN BANK

By: _____

Name:

Title:

STATE OF _____)
) ss.:
COUNTY OF _____)

Before me, the undersigned, this ____ day of _____, _____, personally appeared _____, known to me to be the _____ of The J.M. Ney Company, signer of the foregoing instrument, and that he as such officer, acknowledged the execution of the same to be his free act and deed individually and as such officer, and the free act and deed of said corporation.

Notary Public
My commission expires

Schedule A

Trademark Application Numbers
(Continuation of Item 4A)

Trademark
or
Service Mark

Pending Applications –
United States Patent and Trademark Office
Serial No. Filing Date

None

Schedule B

Trademark Registration Numbers
(Continuation of Item 4B)

Trademark
or
Service Mark

Registrations --
United States Patent and Trademark Office

Mark	Registration Number	Registration Date
Ney + Design (Keystone)	2,342,244	April 18, 2000