

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027

01-26-2001

U.S. Department of Commerce  
Patent and Trademark Office  
**TRADEMARK**

11/11/01



101593747

**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**  **Change of Name**  
Effective Date  
Month Day Year  
11 09 2000

**Other**

**Conveying Party**

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

11 09 2000

Formerly

**Individual**  **General Partnership**  **Limited Partnership**  **Corporation**  **Association**  
 **Other**

**Citizenship/State of Incorporation/Organization**

**Receiving Party**

Mark if additional names of conveying parties attached

Name

DBA/AKATA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)   
City State/Country Zip Code

**Individual**  **General Partnership**  **Limited Partnership**  **Association**  
 **Other**   
 **Citizenship/State of Incorporation/Organization**

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.)

FOR OFFICE USE ONLY

01/25/2001 AAHME1 00000088 75456728  
40.00 DP

01 FC-401  
02 FPL-102  
The 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: 002219 FRAME: 0838**

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

314-259-2000

Name

Mark A. Paskar, Esq.

Address (line 1)

Bryan Cave, LLP

Address (line 2)

211 North Broadway, Suite 3600

Address (line 3)

St. Louis, MO 63102

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments

#

9

**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)**

75456728	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

2277999	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved

#

2

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

65.00

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:

#

02-4467

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.

Mark A. Paskar  
Name of Person Signing

*Mark A. Paskar*  
Signature

1/10/01  
Date Signed

# **TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT**

THIS TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT ("Agreement") is made by and between DIGITA360, INC., a Missouri corporation ("Assignor"), and BANK OF AMERICA, N.A., a national banking association, (the "Assignee"), as administrative agent for itself and various other lenders.

## **Recitals**

**A.** Assignor and Assignee are parties to a certain Loan and Security Agreement dated as of November 9, 2000 (the "Credit Agreement") and other Credit Documents representing indebtedness of Assignor to Assignee.

**B.** The Credit Agreement provides for an assignment of Assignor's trademark rights to Assignee to secure the Secured Obligations.

## **Assignment and Agreement**

**1. Assignment of Trademark Collateral.** As security for the full and prompt performance of all of the Secured Obligations, Assignor hereby grants, assigns and conveys to Assignee a security interest in Assignor's entire right, title and interest in and to the Trademark Collateral. As used herein, "Trademark Collateral" means: all of the Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service mark applications, including, without limitation, each mark, registration, and application listed on Schedule A attached hereto and made a part hereof (as the same may be amended pursuant hereto from time to time), and (i) renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, (iv) all rights corresponding thereto throughout the world, and (v) together in each case with the good will of Assignor's business connected with the use of each item of Trademark Collateral, and symbolized by, the Trademark Collateral.

**2. Incorporation of Credit Agreement.** The Credit Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety. All capitalized terms used and not otherwise defined herein shall have the meanings given them in the Credit Agreement.

**3. Representations and Warranties.** The Assignor represents and warrants to Assignee as follows:

**3.1.** The Trademark Collateral listed on Schedule A constitutes all of the trademarks, trade names, service marks, trademark and service mark registrations and applications for trademark and service mark registrations now owned by Assignor.

**3.2.** The Trademark Collateral is subsisting and has not been adjudged invalid or unenforceable.

**3.3.** To Assignor's knowledge, each of the items comprising the Trademark Collateral is valid and enforceable.

**3.4.** Assignor is the sole and exclusive owner of the Trademark Collateral free and clear of any Liens and, to the knowledge of Assignor, claims of infringement upon the rights of third parties, except as otherwise disclosed in Schedule A.

**3.5.** Assignor has not granted any license, release, covenant not to sue, or non-assertion assurance to any third person with respect to any part of the Trademark Collateral, except as contemplated in the Credit Agreement or as otherwise disclosed in Schedule A.

**3.6.** Assignor has used consistent standards of quality in its manufacture of products sold under the Trademark Collateral.

#### **4. Further Assurances; Covenants.**

**4.1.** Assignor agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary in order (i) to continue, perfect, amend or protect the assignment and the security interest granted hereby or (ii) to enable Assignee to exercise and enforce its rights and remedies hereunder with respect to any part of the Trademark Collateral. Without limiting the generality of the foregoing, Assignor will execute and file such financing or continuation statements, amendments hereto, and such other instruments or notices as may be necessary or desirable, or as Assignee may reasonably request, in order to perfect and preserve the assignment and security interest granted hereby.

**4.2.** Assignor hereby authorizes Assignee to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Trademark Collateral, or subsequent additions thereto, without the signature of Assignor where permitted by law. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Trademark Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

**4.3.** Assignor agrees that, should it obtain an ownership interest in any trademark, service mark, trade name, trademark or service mark registration, or application for trademark or service mark registration which is not now identified in Schedule A, (i) Assignor shall give prompt written notice thereof to Assignee, (ii) the provisions of Section 1 shall automatically apply to any such mark, registration, or application, and (iii) any such mark, registration, or application, together with the good will of the business connected with the use of the mark and symbolized by it, shall automatically become part of the Trademark Collateral.

**4.4.** With respect to any Trademark Collateral necessary to the conduct of Assignor's business, Assignor agrees to take all necessary steps in any proceeding before the United States

Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof or in any court to maintain each registered trademark, service mark, and trademark or service mark registration, and to pursue each application for trademark or service mark registration now or hereafter included in the Trademark Collateral, including the filing of applications for renewal, the payment of maintenance fees, and participation in opposition, interference and infringement proceedings. To the extent necessary or desirable to the conduct of its business, Assignor agrees to take corresponding steps with respect to each new or other registered trademark, service mark, trademark or service mark registration to which the Assignor is now or later becomes entitled.

**4.5.** If Assignor becomes aware that any material item of the Trademark Collateral is infringed or misappropriated by a third party, Assignor shall promptly notify Assignee and shall promptly sue for infringement or misappropriation and for recovery of all damages caused by such infringement or misappropriation, or, with the consent of Assignor, shall take such other actions as Assignor shall deem appropriate under the circumstances to protect such Trademark Collateral.

**4.6.** Assignor shall continue to use reasonable and proper statutory notice in connection with its use of each registered trademark or service mark.

**4.7.** Assignor will continue to use for the duration of this Agreement, standards of quality in its manufacture of products sold under the Trademark Collateral consistent with the quality of such products as of the date hereof and will not reduce the quality of such products without Assignee's express written consent.

**5. Inspection of Assignor's Facilities.** Assignor hereby grants 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 Trademark Collateral, and to inspect products and quality control records relating thereto at reasonable times during regular business hours. Assignor shall do any and all acts reasonably required by Assignee to ensure Assignor's compliance with Section 4.5.

**6. Transfers and Other Liens.** Assignor shall not:

**6.1.** sell, assign (by operation of law or otherwise), grant a license in or with respect to, or otherwise dispose of any of the Trademark Collateral, except as permitted by the Credit Agreement;

**6.2.** create or suffer to exist any Lien upon or with respect to any of the Trademark Collateral except as otherwise disclosed in Schedule A or as otherwise permitted by the Credit Agreement; or

**6.3.** take any other action in connection with any of the Trademark Collateral that would impair the value of the interests or rights thereunder of Assignor except as otherwise permitted by the Credit Agreement.

**7. Assignee Appointed Attorney-in-Fact.** After and during the continuance of an Event of Default, Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, with full authority in Assignor's place, stead and on behalf of Assignor and in Assignor's names or otherwise, from time to time in Assignee's reasonable discretion, to take any action and to execute any instrument that Assignee deems reasonably necessary to accomplish the purposes of this Agreement, including, without limitation, (i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Trademark Collateral; (ii) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (i) above; (iii) to file any claims or take any action or institute any proceedings that Assignee may deem necessary for the collection of any of the Trademark Collateral or otherwise to enforce the rights of Assignee with respect to any of the Trademark Collateral; and (iv) to file any absolute assignments and bills of sale of the Tradename Collateral with any office or agency to reflect the vesting of absolute title in Assignee.

**8. Assignee May Perform.** If Assignor fails to perform any of its obligations contained herein, Assignee may perform, or cause performance of, such obligations, and the expenses of Assignee incurred in connection therewith shall be payable by Assignor under Section 11.

**9. Assignee's Right to Maintain Quality.** Assignor agrees that after and during the continuance of an Event of Default (as defined in the Credit Agreement), Assignee shall have the right to establish such additional product quality controls as Assignee, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Assignor under the Trademark Collateral.

**10. Assignee's Duties.** The powers conferred on Assignee hereunder are solely to protect their interest in the Trademark Collateral and shall not impose any duty upon Assignee to exercise any such powers. Except for the accounting for moneys actually received by it hereunder, Assignee shall have no duty as to any Trademark Collateral, or as to the taking of any necessary steps to preserve rights against other parties or any other rights pertaining to any Trademark Collateral.

**11. Remedies.** If any Event of Default shall have occurred and be continuing:

**11.1.** Assignee may exercise in respect of the Trademark Collateral, in addition to other rights and remedies provided for herein or otherwise available to Assignee, all the rights and remedies of a secured party on default under the Uniform Commercial Code ("Code") (whether or not the Code applies to the affected Trademark Collateral) and also may (i) as provided in Section 6, exercise any and all rights and remedies of Assignor under or otherwise in respect of the Trademark Collateral; (ii) require Assignor to, and Assignor hereby agrees that it will at its expense and upon request of Assignee forthwith, assemble all or any part of the documents embodying the Trademark Collateral as directed by Assignee and make them available to Assignee at a place to be designated by Assignee which is reasonably convenient to both Assignee and Assignor, (iii) license, sell or otherwise dispose of the Trademark Collateral or any part thereof, in one or more lots, at public or private sale, at any of Assignee's offices or

elsewhere, for cash, credit or other consideration, and upon such other terms as are commercially reasonable. In the event of any sale, assignment, or other disposition of any of the Trademark Collateral, the good will of the business connected with and symbolized by any Trademark Collateral subject to such disposition shall be included, and Assignor shall supply to Assignee or its designee Assignor's know-how and expertise relating to the manufacture and sale of products or the provision of services relating to any Trademark Collateral subject to such disposition, and Assignor's customer lists and other records relating to such Trademark Collateral and to the distribution of such products and services. Assignor agrees that, to the extent notice to Assignor of the time and place of any public sale or the time after which any private sale is to be made, ten (10) days shall constitute reasonable notice. Assignee shall not be obligated to make any sale of any Trademark Collateral regardless of notice of sale having been given. Assignee may adjourn any public or private sale therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

**11.2.** All payments received by Assignor under or in connection with any of the Trademark Collateral shall be received in trust for the benefit of Assignee, shall be segregated from other funds of Assignor and shall be forthwith paid over to Assignee in the same form as so received (with any necessary endorsement).

**11.3.** All payments made hereunder or in connection with or otherwise in respect of the Trademark Collateral and all cash proceeds received by Assignee in respect of any sale of, collection from, or other realization upon all or any part of the Trademark Collateral shall be applied (after payment of any amounts payable to Assignee pursuant to Section 11) by Assignee against the Secured Obligations in such order as Assignee shall elect. Any surplus of such cash or cash proceeds held by Assignee and remaining after payment in full of all the Secured Obligations shall be paid over to Assignor or to whomsoever may be lawfully entitled to receive such surplus.

**12. Expenses.** Assignor, upon demand, will pay to Assignee the amount of any and all reasonable expenses, including, without limitation, the reasonable fees and actual expenses of its counsel and of any experts and agents, which Assignee may incur in connection with any and all of the following (i) the custody, preservation, use or operation of, or the sale of, collection from, or other realization upon, any of the Trademark Collateral, (ii) the exercise or enforcement of any of Assignee's rights hereunder, or (iii) the failure by Assignor to perform or observe any of the provisions hereof.

**13. Amendments; Waivers and Consents.** No amendment of any provision of this Agreement shall be effective unless such amendment shall be in writing and signed by an authorized officer of Assignee and Assignor. No waiver of any provision of this Agreement or consent to any departure by Assignor therefrom shall be effective unless such waiver or consent is signed by an authorized officer of Assignee. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

**14. Notices.** Any notice or notification required, permitted or contemplated hereunder shall be given in the manner set out in the Credit Agreement.

**15. Miscellaneous.**

**15.1.** This Agreement shall create a continuing assignment and security interest in the Trademark Collateral and shall (i) remain in full force and effect until payment in full of the Secured Obligations, and (ii) be binding upon Assignor, its successors and assigns, and (iii) inure, together with the rights and remedies of Assignee hereunder, to the benefit of Assignee, its successors, transferees and assigns.

**15.2.** This Agreement shall terminate upon full and final payment and performance of all the Secured Obligations. At such time, Assignee shall, at the request of Assignor, reassign and redeliver to Assignor all of the Trademark Collateral hereunder which has not been sold, disposed of, retained or applied by Assignee in accordance with the terms hereof. Such reassignment and redelivery shall be without warranty by or recourse to Assignee, except as to the absence of any prior assignments by Assignee of its interest in the Trademark Collateral and shall be at the expense of Assignor.

**15.3.** If any term or provision of this Agreement is or shall become illegal, invalid or unenforceable in any jurisdiction, all other terms and provisions of this Agreement shall remain legal, valid and enforceable in such jurisdiction and such illegal, invalid or unenforceable provision shall be legal, valid and enforceable in any other jurisdiction.

**15.4.** This Agreement shall be interpreted and the rights and liabilities of the parties hereto determined in accordance with the internal law of the State of Missouri, unless preempted by the federal laws of the United States of America.

**15.5.** The captions in this Agreement are for reference purposes only and shall not relate to or affect in any way the construction or interpretation hereof.

**15.6.** The representations, warranties, covenants and agreements contained herein or in any Schedule attached hereto shall survive the execution hereof.

**15.7.** This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original, but all of which shall be deemed to be one and the same instrument.



IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement as of  
October     , 2000.

*November 9*

BANK OF AMERICA, N.A., as administrative  
agent

By: *Scott Hartwig*  
Name: *Scott Hartwig*  
Title: *Sr. Vice President*

DIGITA360, INC.

By: *Gary A. Stephens*  
Name: *Gary A. Stephens*  
Title: *President*

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

On this 8<sup>th</sup> day of ~~October~~ <sup>November</sup>, 2000, before me personally appeared Gary A. Stephens, to me personally known, who, being by duly sworn, did say that he is the President of DIGITA360, INC., a Missouri corporation, and that said instrument was signed in behalf of said corporation, by authority of its Board of Directors; and acknowledged said instrument to be the free act and deed of said corporation.

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

Debbie L. Imboden

Notary Public

Debbie L. Imboden  
Notary Public - Notary Seal  
STATE OF MISSOURI  
ST. CHARLES COUNTY  
MY COMMISSION EXP. Jan. 3, 2003

My Commission expires:

STATE OF MISSOURI )  
 ) SS.  
COUNTY OF St. Louis )

On this 9<sup>th</sup> day of ~~October~~ <sup>November</sup>, 2000, before me personally appeared Scott M. Hartwig, to me personally known, who, being by me duly sworn, did say that he is the Sr. Vice President of BANK OF AMERICA, N.A., a national banking association, and that said instrument was signed in behalf of said association by authority of its Board of Directors; and acknowledged said instrument to be the free act and deed of said association.

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

Deloris Powell

Notary Public

**DELORIS POWELL**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
My Commission Expires: Apr 30 2002

My Commission expires:

**SCHEDULE A**

**ISSUED TRADEMARK REGISTRATION - U.S.**

DIGITA360, INC.

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CLIENT NO. 02C108/89

FILE NO. 024TM98/2

**Trademark: IMAGE QUEST**

/ITU

Filing Date: 03/26/98 Serial No. 75/456,728 Class:

Publication Date: 06/22/99

**NOA Date:** 09/14 [03] 99

Registration No.: Reg. Date:

Affidavit Due:

§8 Filed:

§15 Filed:

Renewal Date:

Goods/Services:

CLIENT NO. 02C108/89

FILE NO. 025TM98/02

**Trademark: IMAGEQUEST YOUR SEARCH ENDS HERE**

/

Filing Date: 07/23/98 Serial No. 75/523,993 Class: 42

Publication Date: 06/22/99

**NOA Date:**

Registration No.: 2,277,999

Reg. Date: 09/14/99

Affidavit Due: 09/14/04-05

§8 Filed:

§15 Filed:

Renewal Date: 09/14/09

Goods/Services: Photographic services, namely, providing stock photographs and images to others

::ODMA\PCDOCS\SL01\4167571\1

**RECORDED: 01/11/2001**

**TRADEMARK  
REEL: 002219 FRAME: 0848**