

02-16-2001



101614499

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TC: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New **2-8-01**
- 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
- Other **Effective Date**
Month Day Year

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 Corporation 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.)

02/15/2001 DBYRNE 00000092 1280875

FOR OFFICE USE ONLY

01 FC:481 40.00 DP
02 FC:482 25.00 DP

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

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

Name

Address (line 1)

Address (line 2)

Address (line 3)

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)

Number of Properties

Enter the total number of properties involved. #

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

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: #

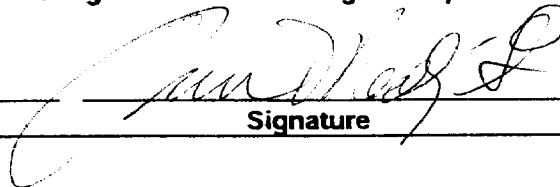
Authorization to charge additional fees: Yes No

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.

Theresa Mady-Grove

Name of Person Signing



Signature

1/31/01

Date Signed

AMENDED AND RESTATED
TRADEMARK COLLATERAL SECURITY AGREEMENT

THIS AGREEMENT is made on the 31st day of January, 2001, by and between **JOSEPH SEVIROLI, INC.**, a New York corporation having a mailing address at 601 Brook Street, Garden City, New York ("Borrower") and **FLEET NATIONAL BANK** having a mailing address at 300 Broad Hollow Road, Melville, New York ("Lender").

BACKGROUND

Borrower and Lender, among others have entered into a Line of Credit and Term Loan Agreement of even date herewith (as amended and supplemented from time to time, the "Loan Agreement") providing for a discretionary line of credit and a term loan to the Borrower. In order to induce Lender to execute and deliver the Loan Agreement, Borrower agreed to execute and deliver to Lender this Amended and Restated Trademark Collateral Security Agreement ("Security Agreement"), amending and restating that prior Trademark Collateral Security Agreement by and between the Borrower and the Lender, dated September 7, 1995 and recorded with the United States Patent and Trademark Office on September 8, 1995 in Reel 1388, Frame 0192 ("Prior Security Agreement"). This Security Agreement, covering Trademarks (as hereinafter defined), is being executed contemporaneously with the Loan Agreement and with a Continuing General Security Agreement under which Lender is granted a lien on and security interest in all personal property of the Borrower.

NOW, THEREFORE, in consideration of the premises, Borrower and Lender hereby agree as follows:

1. **Defined Terms.**

"Account" shall have the meaning assigned to it under Section 9-106 of the Code.

"Ancillary Agreements" means all agreements, instruments, and documents including, without limitation, mortgages, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, trust agreements whether heretofore, concurrently, or hereafter executed by or on behalf of Borrower or delivered to Lender, relating to the Loan Agreement or to the transactions contemplated by the Loan Agreement.

"Code" shall mean the Uniform Commercial Code as the same may time to time be in effect in the State of New York.

"Collateral" shall have the meaning assigned to it in Section 2 of this Security Agreement.

"Event of Default" shall have the meaning assigned to it in the Loan Agreement.

"Obligations" shall mean and include any and every obligation and liability of Borrower to Lender and claims of every nature and description of Lender against Borrower (including, but not limited to, costs and reasonable attorneys' fees incurred by Lender in the collection, whether by suit or by any other means, of negotiable or non-negotiable instruments which have been purchased by Lender from Borrower or those arising out of or in any way connected with warranties made by Borrower to Lender in connection with negotiable or non-negotiable instruments deposited with, or purchased by, Lender), whether or not represented by negotiable instruments or other writings (including, but not limited to, purchase and repurchase agreements) whether now existing or hereinafter incurred, originally contracted with Lender and/or with another or others and now or hereafter owing to or acquired in any manner, in whole or in part, by Lender or in which Lender may acquire a participation, whether contracted by Borrower alone or jointly and/or severally with another or others, direct or indirect, absolute or contingent, secured or not secured, matured or not matured, pursuant to a line of credit from Lender to Borrower (which the Lender may advance in its sole discretion), pursuant to the Loan Agreement or pursuant to the guaranty, as such guaranty may be amended from time to time, that the Borrower has issued to the Lender guaranteeing the obligations of Joseph Sevioli, Sr. to the Lender.

"Security Agreement" shall mean this Security Agreement, as the same may from time to time be amended or supplemented.

"Trademarks" shall mean the U.S. registered trademarks and pending applications shown in the attached Schedule A, and those trademarks which are hereafter adopted or acquired by Borrower, and all right, title and interest therein and thereto, and all registrations, applications, and recordings thereof, including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, all whether now owned or hereafter acquired by Borrower.

2. Grant of Security Interest. As collateral security for the prompt payment of the Obligations, Borrower hereby grants and conveys to Lender a security interest in and to the entire right, title and interest of Borrower in and to the Trademarks, including the registrations and applications appurtenant thereto, listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), and in and to any and all trademarks, and registrations and applications appurtenant thereto, hereafter acquired or filed by Borrower, including without limitation all renewals thereof, all proceeds of infringement suits and all rights corresponding thereto in the United States and the goodwill of the business to which each of the Trademarks relates (all of the foregoing hereinafter the "Collateral").

3. Representations and Warranties. Borrower covenants and warrants that as of the date of this Security Agreement:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

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

(c) There is no outstanding claim that the use of any of the Trademarks violates the rights of any third person;

(d) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, (including without limitation pledges, assignments, licenses, registered user agreements and covenants by Borrower not to sue third persons);

(e) Borrower has the right to enter into this Security Agreement and perform its terms;

(f) Borrower has used, and will continue to use for the duration of this Security Agreement, proper statutory notice, where appropriate, in connection with its use of the Trademarks; and

(g) Borrower has used, and will continue to use for the duration of this Security Agreement, consistent standards of quality in its manufacture of products sold under the Trademarks.

4. Right of Inspection. Borrower hereby grants to Lender and its employees and agents the right to visit Borrower's plants and facilities which manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control relating thereto at reasonable times during regular business hours. Borrower shall use its best efforts to do any and all acts required by Lender to ensure Borrower's compliance with paragraph 3(g) above.

5. New Trademarks. (a) If, before the Obligations shall have been paid in full or if a commitment from Lender under the Obligations shall be in effect, Borrower shall obtain rights to any new trademarks, the provisions of paragraph 2 shall automatically apply thereto and Borrower shall give Lender prompt written notice thereof. (b) Borrower grants Lender a power-of-attorney, irrevocable so long as the Loan Agreement is in existence, to modify this Security Agreement by amending Schedule A to include any future trademarks, including trademark registrations or applications appurtenant thereto covered by this Security Agreement.

6. Covenants. Borrower covenants and agrees with Lender that from and after the date of this Security Agreement and until the Obligations are fully satisfied and any commitment from Lender under the Obligations has terminated:

(a) **Further Documentation; Pledge of Instruments.** At any time and from time to time, upon the written request of Lender, Borrower will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lender may reasonably deem desirable in obtaining the full benefits of this Security Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statement under the Code with respect to the liens and security interests granted hereby. Borrower also hereby authorizes Lender to file any such financing or continuation statement without the signature of Borrower to the extent permitted by applicable law. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be immediately pledged to Lender hereunder, duly endorsed in a manner satisfactory to Lender.

(b) **Maintenance of Trademarks.** Borrower will not do any act, or omit to do any act, whereby the Trademarks or any registration or application appurtenant thereto, may become abandoned, invalidated, unenforceable, avoided, avoidable, or will otherwise diminish in value, and shall notify Lender immediately if it knows of any reason or has reason to know of any ground under which this result may occur. Borrower shall take appropriate action at its expense to halt the infringement of the Trademarks.

(c) **Indemnification.** Borrower assumes all responsibility and liability arising from the use of the Trademarks, and Borrower hereby indemnifies and holds Lender harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of Borrower's operations of its business from the use of the Trademarks.

(d) **Limitation of Liens on Collateral.** Borrower will not create, permit or suffer to exist, and will defend the Collateral against and take such other action as is necessary to remove any lien, security interest, encumbrance, claim or right, in or to the Collateral.

(e) **Notices.** Borrower will advise Lender promptly, in reasonable detail, (i) of any lien or claim made or asserted against any of the Collateral, (ii) of any material change in the composition of the Collateral, and (iii) of the occurrence of any other event which would have a material adverse effect on the value of any of the Collateral or on the security interests created hereunder.

(f) **Limitation on Further Uses of Trademarks.** Borrower 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, or otherwise dispose of any of the Collateral, without prior written consent of Lender.

7. Lender's Appointment as Attorney-in-Fact.

(a) Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Borrower and in the name of Borrower or in its own name, from time to time in Lender's discretion, for the purposes of carrying out the terms of this Security Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Security Agreement and, without limiting the generality of the foregoing, hereby gives Lender the power and right, on behalf of Borrower, to do the following:

(i) To pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Security Agreement and to pay all or any part of the premiums therefor and the costs thereof; and

(ii) Upon the occurrence and continuance of a default under the Obligations, (A) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (B) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (C) to defend any suit, action or proceeding brought against Borrower with respect to any Collateral; (D) to settle, compromise, or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as Lender may deem appropriate; and (E) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and to do, at Lender's option all acts and things which Lender deems necessary to protect, preserve or realize upon the Collateral and Lender's security interest therein, in order to effect the intent of this Security Agreement, all as fully and effectively as Borrower might do.

This power of attorney is a power coupled with an interest and shall be irrevocable. Notwithstanding the foregoing, Borrower further agrees to execute any additional documents which Lender may require in order to confirm this power of attorney, or which Lender may deem necessary to enforce any of its rights contained in this Security Agreement.

(b) The powers conferred on Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Borrower for any act or failure to act, except for its own gross negligence or willful misconduct.

(c) Borrower also authorizes Lender to execute, in connection with the sale provided for in paragraph 10(b) of this Security Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

8. Execution of Power of Attorney. Concurrently with the execution and delivery hereof, Borrower is executing and delivering to Lender, in the form of Schedule I hereto, ten (10) originals of a Power of Attorney for the implementation of the assignment, sale or other disposal of the Trademarks pursuant to paragraph 7 hereof.

9. Performance by Lender of Borrower's Obligations. If Borrower fails to perform or comply with any of its agreements contained herein and Lender, as provided for by the terms of this Security Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of Lender incurred in connection with such performance or compliance shall be payable by Borrower to Lender on demand and shall constitute Obligations secured hereby.

10. Remedies, Rights Upon Event of Default.

(a) Upon the occurrence and during the continuance of a default under the Obligations:

(i) All payments received by Borrower under or in connection with any of the Collateral shall be held by Borrower in trust for Lender, shall be segregated from other funds of Borrower and shall forthwith upon receipt by Borrower, be turned over to Lender, in the same form as received by Borrower (duly indorsed by Borrower to Lender, if required); and

(ii) Any and all such payments so received by Lender (whether from Borrower or otherwise) may, in the sole discretion of Lender, be held by Lender as collateral security for, and/or then or at any time thereafter applied in whole or in part by Lender against all or any part of the Obligations in such order as Lender shall elect. Any balance of such payments held by Lender and remaining after payment in full of all the Obligations shall be paid over to Borrower or to whomsoever may be lawfully entitled to receive the same.

(b) Upon the occurrence and during the continuance of a default under the Obligations, Lender may exercise in addition to all other rights and remedies granted to it in this Security Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the Uniform Commercial Code. Borrower shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Lender is entitled. Borrower shall also be liable for the reasonable fees of any attorneys employed by Lender to collect any such deficiency and also as to any reasonable attorney's fees incurred by Lender with respect to the collection of any of the Obligations and the enforcement of any of Lender's respective rights hereunder.

11. Termination. At such time as Borrower shall completely pay in full all of the Obligations and the Loan Agreement is terminated, this Security Agreement shall terminate and Lender shall execute and deliver to Borrower all such releases, deeds, assignments and other instruments as may be necessary or proper to revest in Borrower full title to the Trademarks, subject to any disposition thereof which may have been made by Lender pursuant hereto.

12. Notices. Any notice to Lender shall be deemed to have been duly given when deposited in the mail, first class, postage prepaid, addressed to Lender at 300 Broad Hollow Road, Melville, New York 11747, Attention: Jeffrey A. Morris, Senior Vice President. Any notice to Borrower hereunder shall be deemed to have been duly given when deposited in the mail, first class postage prepaid, addressed to Borrower at 601 Brook Street, Garden City, New York 11530, Attention: Joseph Seviroli, Sr..

13. No Waiver. No course of dealing between Borrower and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. Cumulative Remedies. All of Lender's rights and remedies with respect to the Collateral, whether established hereby or by the Loan Agreement, or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

15. Severability. The provisions of this Security Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

16. No Modification Except in Writing. This Security Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraphs 5 and 7.

17. Successors and Assigns. The benefits and burdens of this Security Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

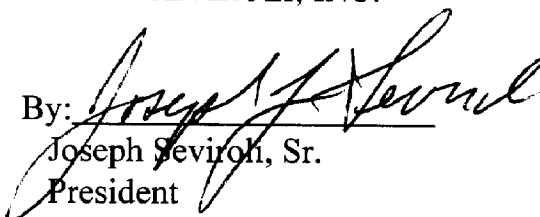
18. Governing Law. The validity and interpretation of this Security Agreement and the rights and obligations of the parties shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first above written.

WITNESS:

JOSEPH SEVIROLI, INC.

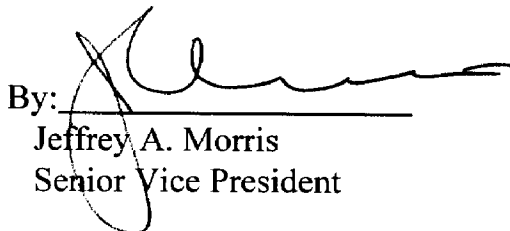
By: _____


Joseph Seviroli, Sr.
President

WITNESS:

FLEET NATIONAL BANK

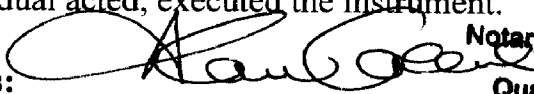
By: _____


Jeffrey A. Morris
Senior Vice President

State of New York, County of Nassau, ss:

On the 31st day of January, in the year 2001, before me the undersigned, personally appeared Joseph Seviroli, Sr. 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.

State of New York, County of Nassau, ss:



ALAN JAY GREENE
Notary Public, State of New York
No. 02GR4676554
Qualified in Nassau County
Commission Expires November 30, 2002

On the 31st day of January, in the year 2001, before me the undersigned, personally appeared Jeffrey A. Morris, 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

ALAN JAY GREENE
Notary Public, State of New York
No. 02GR4676554
Qualified in Nassau County
Commission Expires November 30, 2002

SCHEDULE A

Schedule A to a Trademark Collateral Security Agreement dated January 31, 2001 by and between **JOSEPH SEVIROLI, INC.** and **FLEET NATIONAL BANK.**

<u>Trade Mark</u>	<u>Reg. No. or Application No.</u>	<u>Country</u>	<u>Reg. or Filing Date</u>
Joseph Seviroli, Inc.	1,280,875	USA	June 5, 1984
Italian Pillows	2,116,704	USA	November 25, 1997

SCHEDULE I

SPECIAL POWER OF ATTORNEY

STATE OF NEW YORK)

:SS:

COUNTY OF NASSAU)

KNOW ALL MEN BY THESE PRESENTS, that **JOSEPH SEVIROLI, INC.**, a corporation formed under the laws of New York, with its principal office at 601 Brook Street, Garden City, New York 11530 (hereinafter called "Borrower"), pursuant to a Trademark Collateral Security Agreement, dated the date hereof (the "Security Agreement"), hereby appoints and constitutes **FLEET NATIONAL BANK**, a New York corporation, with offices at 300 Broad Hollow Road, Melville, New York 11747 (hereinafter called the "Lender"), its true and lawful attorney, with full power of substitution, and with full power and authority to perform the following acts on behalf of Borrower:

1. Assigning, selling or otherwise disposing of all right, title and interest of Borrower in and to the Trademarks listed on Schedule A of the Security Agreement, and including those trademarks which are added to the same subsequent hereto, and all registrations and recordings thereof, and all pending applications therefor, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, and to execute and deliver any and all agreements, documents, instruments of assignment or other papers necessary or advisable to effect such purpose.
2. To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as Lender may in its sole discretion determine.

This power of attorney is made pursuant to the Security Agreement, dated the date hereof, between Borrower and Lender and may not be revoked until the payment in full of all Obligations as defined in such Security Agreement.

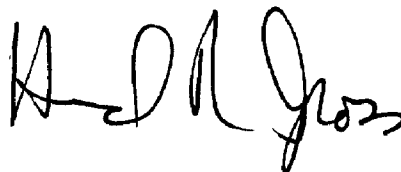
JOSEPH SEVIROLI, INC.

By: 

Joseph Sevirol, Sr.
President

State of New York, County of Nassau, ss:

On the 31st day of January, in the year 2001, before me the undersigned, personally appeared Joseph Sevioli, Sr. 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.



HOWARD R. GROSS
Notary Public, State of New York
No. 30-4605450
Qualified in Nassau County ~~199~~ 2001
Commission Expires February 28, 19~~9~~ 2001