

04-04-2001



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TRADEMARK

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

☐ Other

Effective Date
Month Day Year
2 15 2001

Conveying Party

☐ Mark if additional names of conveying parties attached

Name Cyrk, Inc.

Execution Date
Month Day Year
2 15 2001

Formerly

☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association

☐ Other

☒ Citizenship/State of Incorporation/Organization Delaware

Receiving Party

☐ Mark if additional names of receiving parties attached

Name Foothill Capital Corporation

DBA/AKA/TA

Composed of

Address (line 1) 2450 Colorado Avenue

Address (line 2) Suite 3000W

Address (line 3) Santa Monica

CA

State/Country

90404

Zip Code

☐ Individual ☐ General Partnership ☐ Limited Partnership

☒ Corporation ☐ Association

☐ Other

☒ Citizenship/State of Incorporation/Organization California

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

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: 002263 FRAME: 0001

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 (617) 523-2700

Name

Sean B. Leonard

Address (line 1)

Holland & Knight LLP

Address (line 2)

10 St. James Avenue

Address (line 3)

Boston, MA 02116

Address (line 4)

Pages

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

#

20

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)

76034206

1257634

1579017

76140123

1861865

1579018

75832732

2186415

Number of Properties

Enter the total number of properties involved.

#

8

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

215

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.

SEAN B. LEONARD

Sean B. Leonard

3-16-01

Name of Person Signing

Signature

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

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

Conveying Party

Enter Additional Conveying Party

☐

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

☐

Individual

☐

General Partnership

☐

Limited Partnership

☐

Corporation

☐

Association

☐

Other

☐

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional 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

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Corporation

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Association

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Other

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Citizenship/State of Incorporation/Organization

Trademark Application Number(s) or Registration Number(s)

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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)

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Registration Number(s)

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AMENDED AND RESTATED
TRADEMARK SECURITY AGREEMENT

THIS AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT, is dated as of February 16, 2001, made by the Persons listed on the signature pages hereof under the caption "Grantors" (each a "Grantor" and, collectively, the "Grantors"), to Foothill Capital Corporation (the "Lender").

PRELIMINARY STATEMENTS

(1) The Lender entered into a Loan and Security Agreement dated as of December 28, 2000 (said Agreement, being the "December 2000 Loan Agreement"), with Cyrk, Inc., a Delaware corporation, ("Cyrk"), Cyrk Acquisition Corp., a Delaware corporation ("Cyrk Acquisition"), Tonkin, Inc., a Delaware corporation ("Tonkin"), and Cyrk.com, Inc., a Delaware corporation ("Cyrk.com").

(2) In connection with the December 2000 Loan Agreement, Cyrk, Cyrk Acquisition, Tonkin and Cyrk.com executed and delivered to Lender a Trademark Security Agreement dated as of December 28, 2000 (said Agreement, being the "December 2000 Trademark Security Agreement").

(3) Cyrk has entered into a Purchase Agreement dated as of January 20, 2001 (the "Purchase Agreement") with Cyrk Holdings, Inc. (formerly Rockridge Partners, Inc.), a Massachusetts corporation (the "Buyer"). Pursuant to the Purchase Agreement, Buyer has agreed to purchase, and Parent has agreed to sell, certain of Parent's assets, including the stock of Cyrk Acquisition and Tonkin owned by it.

(4) In connection with the Purchase Agreement, Cyrk, Cyrk.com, Tonkin and Cyrk Acquisition have requested Lender to (a) release its liens on the assets to be sold by Cyrk to Buyer, and (b) restructure the credit facility evidenced by the December 2000 Loan Agreement such that, among other things, only Cyrk and Cyrk.com remain as borrowers thereunder.

(5) Lender has agreed to such a restructuring and, in connection therewith, Lender, Cyrk and Cyrk.com have entered into an Amended and Restated Loan and Security Agreement (said Agreement, as it may hereafter be amended or otherwise modified from time to time, being the "Loan Agreement", the terms defined therein and not otherwise defined herein being used herein as defined therein).

(6) It is a condition precedent to the extension of credit by the Lender under the Loan Agreement that each Grantor shall have executed and delivered to Lender this Agreement, which amends and restates the December 2000 Trademark Security Agreement in its entirety.

NOW, THEREFORE, in consideration of the premises and in order to induce the Lender to make extensions of credit under the Loan Agreement, each of the Grantors hereby agrees with the Lender as follows:

SECTION 1. Grant of Security. Each Grantor hereby assigns, pledges and grants to the Lender a security interest in all of such Grantor's right, title and interest in and to the following, whether now owned or hereafter acquired (collectively, the "Trademark Collateral"):

(a) all trademarks, service marks, trade names, trade dress or other indicia of trade origin, trademark and service mark registrations, and applications for trademark or service mark registrations (except for "intent to use" applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of said Act has been filed), and any renewals thereof, including, without limitation, each registration and application identified in Schedule I attached hereto and made a part hereof, and including without limitation (i) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (ii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past or future infringements thereof), and (iii) all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each such trademark, service mark, trade name, trade dress or other indicia of trade origin (the "Trademarks"); and

(b) all license agreements with any other Person in connection with any of the Trademarks or such other Person's names or marks, whether such Grantor is a licensor or licensee under any such license agreement, including, without limitation, the license agreements listed on Schedule II attached hereto and made a part hereof, subject, in each case, to the terms of such license agreements, including, without limitation, terms requiring consent to a grant of a security interest, and any right to prepare for sale, sell and advertise for sale, all Inventory (as defined in the Loan Agreement) now or hereafter owned by such Grantor and now or hereafter covered by such licenses (the "Licenses").

SECTION 2. Security for Obligations. The assignment and pledge of and grant of a security interest in the Trademark Collateral by each Grantor pursuant to this Agreement secures the payment of all Obligations, whether for principal, interest, fees, expenses or otherwise (all such Obligations being the "Secured

Obligations”). Without limiting the generality of the foregoing, this Agreement secures the payment of all amounts that constitute part of the Secured Obligations and would be owed by any Grantor to the Lender under the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any of the Grantors.

SECTION 3. Grantors Remain Liable. Anything herein to the contrary notwithstanding, (a) each Grantor shall remain liable under the contracts and agreements included in the Trademark Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Lender of any of the rights hereunder shall not release such Grantor from any of its duties or obligations under the contracts and agreements included in the Trademark Collateral and (c) the Lender shall not have any obligation or liability under the contracts and agreements included in the Trademark Collateral by reason of this Agreement, nor shall the Lender be obligated to perform any of the obligations or duties of such Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 4. Representations and Warranties. Each Grantor represents and warrants as to itself and its Trademark Collateral as follows:

(a) Such Grantor is the sole, legal and beneficial owner of the entire right, title and interest in and to the trademark and service mark registrations and applications for registration set forth in Schedule I hereto as being the property of such Grantor free and clear of any Lien, except for the security interest created by this Agreement and Permitted Liens. No security agreement, effective financing statement or other instrument similar in effect covering all or any part of the Trademark Collateral, that has not been terminated or released (or that will not be terminated or released in connection with the closing (the “Closing”) of the transactions contemplated by the Loan Agreement), is on file in any recording office (including, without limitation, the United States Patent and Trademark Office), except such as may have been filed in favor of the Lender relating to this Agreement or any other Loan Document, and such Grantor has not consented to the filing of a financing statement under the Uniform Commercial Code or the filing of any document or notice similar in effect, that has not been released or terminated (or that will not be terminated or released in connection with the Closing), with the United States Patent and Trademark Office covering all or any part of the Trademark Collateral other than as contemplated hereby and thereby.

(b) Set forth in Schedule I opposite the name of such Grantor is a complete and accurate list of all material trademark and service mark registrations and applications for registration owned by such Grantor. Such Grantor has made all necessary filings and recordations to protect and

maintain its interest in the trademark and service mark registrations and applications for registration set forth in Schedule I, including, without limitation, all necessary filings and recordings in the United States Patent and Trademark Office. Set forth in Schedule II opposite the name of such Grantor is a complete and accurate list of the material Licenses owned by such Grantor in which such Grantor is (i) a licensor or (ii) a licensee, and Schedule II specifies whether such Grantor is a licensee or a licensor under each such License.

(c) Each material trademark and service mark registration and application for registration of such Grantor set forth in Schedule I is subsisting and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, and, to the best of such Grantor's knowledge, is valid, registrable and enforceable. Each material License of such Grantor identified in Schedule II is validly subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and, to the best of such Grantor's knowledge, is valid and enforceable. Such Grantor has notified the Lender in writing of all uses of any material item of Trademark Collateral of which such Grantor is aware which could reasonably be expected to lead to such item becoming invalid or unenforceable, including unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with such Trademark Collateral.

(d) Such Grantor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale, transfer or encumbrance of any of the Trademark Collateral that has not been terminated or released, except as will be terminated or released in connection with the Closing. Such Grantor has not granted any license (other than those listed on Schedule II hereto), release, covenant not to sue, or non-assertion assurance to any person with respect to any part of the Trademark Collateral.

(e) No consent of any other Person and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or other third party in the United States is required either (A) for the grant by any Grantor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by any Grantor, (B) for the perfection or maintenance of the pledge and security interest created hereby (including the first priority nature of such pledge or security interest), except for the filing of financing and continuation statements under the Uniform Commercial Code and filings with the United States Patent and Trademark office, or (C) for the exercise by the Lender of its rights provided for in this Agreement or the remedies in respect of the Trademark Collateral pursuant to this Agreement.

(f) Except for the licenses listed on Schedule II hereto, such Grantor has no knowledge of the existence of any right or any claim that is likely to be made under any material item of Trademark Collateral contained on Schedule I.

(g) No claim has been made and is continuing or threatened that the use by such Grantor of any item of Trademark Collateral is invalid or unenforceable or that the use by such Grantor of any Trademark Collateral does or may violate the rights of any Person, except claims, uses and infringements that will not result in a material adverse effect on the business, finances or operations of such Grantor or the Collateral. To the best of such Grantor's knowledge, there is currently no infringement or unauthorized use of any material item of Trademark Collateral contained on Schedule I.

(h) Such Grantor uses consistent standards of quality in all material respects in the manufacture, distribution and sale of all products sold and provision of all services provided under or in connection with any material item of Trademark Collateral contained on Schedule I and has taken all steps necessary to ensure that all licensed users of any material item of Trademark Collateral contained on Schedule I use such consistent standards of quality.

(i) No Grantor has knowledge of the existence of any trademark or license agreement held or claimed by any other Person that would preclude such Grantor from distributing, marketing, selling or providing any product or service currently distributed, marketed, sold or provided by it, as the case may be, under or in connection with any material part of the Trademark Collateral (except, in each case, to the extent that such Grantor has granted an exclusive license to another Person), or that would materially interfere with the ability of such Grantor to carry on its business as currently carried on, and no Grantor has knowledge of any claim that is likely to be made that if upheld would preclude or materially interfere with the business of such Grantor as currently carried on under any of the Trademark Collateral.

SECTION 5. Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, such Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Lender may reasonably request, in order to perfect and protect any pledge, assignment or security interest granted or purported to be granted hereby or to enable the Lender 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, each

Grantor will execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary, or desirable, or as the Lender may reasonably request, in order to perfect and preserve the pledge, assignment and security interest granted or purported to be granted hereby.

(b) Each Grantor hereby authorizes the Lender to file one or more financing or continuation statements, and amendments thereto, relating to all or any part of the Trademark Collateral without the signature of such Grantor where permitted by law. A photocopy 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.

(c) Each Grantor will furnish to the Lender from time to time (but not more frequently than once in any quarter, unless an Event of Default shall have occurred and be continuing) statements and schedules further identifying and describing the Trademark Collateral and such other reports in connection with the Trademark Collateral as the Lender may reasonably request, all in reasonable detail.

(d) Each Grantor agrees that, should it obtain an ownership interest in any trademark, service mark, trade name, trade dress, other indicia of trade origin, trademark or service mark registration, or application for trademark or service mark registration, or license, which is not now a part of the Trademark Collateral, (i) the provisions of Section 1 shall automatically apply thereto, (ii) any such trademark, service mark, trade name, trade dress, indicia of trade origin, trademark or service mark registration or application for trademark or service mark registration, together with the goodwill of the business connected with the use of same and symbolized by same, or license, shall automatically become part of the Trademark Collateral, and (iii) with respect to any ownership interest in any material trademark or service mark registration, or application for trademark or service mark registration that such Grantor should obtain, it shall give prompt written notice thereof to the Lender in accordance with Section 13 hereof. Each Grantor authorizes the Lender to modify this Agreement by amending Schedules I and II (and will cooperate reasonably with the Lender in effecting any such amendment) to include any trademark or service mark registration or application for trademark or service mark registration, or license, which becomes part of the Trademark Collateral under this Section.

(e) With respect to each trademark or service mark registration, application for trademark or service mark registration, and License, each Grantor agrees to take all necessary steps, including, without limitation, in

the United States Patent and Trademark Office or in any court, to (i) maintain each such trademark or service mark registration, application for trademark or service mark registration, and License, and (ii) pursue each such application for trademark or service mark registration, now or hereafter included in the Trademark Collateral, including, without limitation, the filing of responses to office actions issued by the United States Patent and Trademark Office, the filing of applications for renewal, the filing of affidavits under Sections 8 and 15 of the United States Trademark Act, and the participation in opposition, cancellation and infringement and misappropriation proceedings, except where a failure to do any of the foregoing will not result in a material adverse effect on the business, finances or operations of such Grantor or the Collateral. Each Grantor agrees to take corresponding steps with respect to each new or acquired trademark or service mark registration, application for trademark or service mark registration, or License to which it is now or later becomes entitled, except where a failure to do any of the foregoing will not result in a material adverse effect on the business, finances or operations of such Grantor or the Collateral. Such Grantor shall not discontinue use of or otherwise abandon any trademark or service mark, or abandon any right to file an application for registration thereof, or abandon any pending application for registration or registration of any trademark or service mark, without the written consent of the Lender, unless the loss thereof will not result in a material adverse effect on the business, finances or operations of such Grantor or the Collateral.

(f) Each Grantor agrees to notify the Lender promptly and in writing if it learns (i) that any material item of the Trademark Collateral contained on Schedule I has become abandoned or cancelled or (ii) of any adverse determination or the institution of any proceeding (including, without limitation, the institution of any proceeding in the United States Patent and Trademark Office or any court) regarding any material item of the Trademark Collateral.

(g) In the event that any Grantor becomes aware that any material item of the Trademark Collateral is infringed or misappropriated by a third party, such Grantor shall promptly notify the Lender and shall take such actions as such Grantor reasonably deems appropriate under the circumstances to protect such Trademark Collateral, including, without limitation, suing for infringement or misappropriation and for an injunction against such infringement or misappropriation. Any expense incurred in connection with such activities shall be borne by such Grantor.

(h) Each Grantor shall to the extent it deems reasonable in its best business judgment use proper statutory notice in connection with its use of each of its federally registered trademarks and service marks contained in

Schedule I, and use the notice designation "TM", or "SM", as the case may be, in connection with its use of its adopted trademarks and service marks that are not federally registered.

(i) Each Grantor shall take all reasonably appropriate steps under the circumstances to preserve and protect its Trademark Collateral.

SECTION 6. Transfers and Other Liens. No Grantor shall (a) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any item of the Trademark Collateral, except in accordance with Section 7.04 of the Loan Agreement, or (b) create or suffer to exist any Lien upon or with respect to any of the Trademark Collateral except for the pledge, assignment, and security interest created by this Agreement or Permitted Liens.

SECTION 7. Lender Appointed Attorney-in-Fact. Each Grantor hereby irrevocably appoints the Lender such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time in the Lender's discretion, after the occurrence and during the continuance of an Event of Default, to take any action and to execute any instrument that the Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

(a) to ask for, 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,

(b) to receive, indorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above, and

(c) to file any claims or take any action or institute any proceedings that the Lender may deem necessary or desirable for the collection of any payments relating to any of the Trademark Collateral or otherwise to enforce the rights of the Lender with respect to any of the Trademark Collateral.

To the extent permitted by law, each Grantor hereby ratifies all that the Lender shall lawfully do or cause to be done as attorney-in-fact for such Grantor. This power of attorney is a power coupled with an interest and is irrevocable.

SECTION 8. The Lender May Perform. If any Grantor fails to perform any agreement contained herein, after the expiration of any applicable grace period, the Lender may itself perform, or cause performance of, such agreement after reasonable notice to such Grantor to the extent practicable, and the expenses of the Lender incurred in connection therewith shall be payable by such Grantor under Section 11.

SECTION 9. The Lender's Duties. The powers conferred on the Lender hereunder are solely to protect its interest in the Trademark Collateral and shall not impose any duty upon the Lender to exercise any such powers. Except for the safe custody of any Trademark Collateral in its possession and the accounting for any moneys actually received by it hereunder, the Lender shall have no duty as to any Trademark Collateral or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Trademark Collateral. The Lender shall be deemed to have exercised reasonable care in the custody and preservation of any Trademark Collateral in its possession if such Trademark Collateral is accorded treatment substantially equal to that which the Lender accords its own property.

SECTION 10. Remedies. If any Event of Default shall have occurred and be continuing:

(a) The Lender may exercise in respect of the Trademark Collateral, in addition to other rights and remedies provided for herein or otherwise available to it and to the fullest extent permitted by law, all the rights and remedies of a secured party upon default under the Uniform Commercial Code in effect in the Commonwealth of Massachusetts at such time (the "MA Uniform Commercial Code") (whether or not the MA Uniform Commercial Code applies to the affected Trademark Collateral) and also may (i) require each Grantor to, and such Grantor hereby agrees that it will, at its expense and upon request of the Lender forthwith, assemble all or part of the documents and things embodying the Trademark Collateral as directed by the Lender and make them available to the Lender at a place to be designated by the Lender that is reasonably convenient to both parties, (ii) occupy any premises owned or leased by such Grantor where documents and things embodying the Trademark Collateral or any part thereof are assembled for a reasonable period in order to effectuate the Lender's rights and remedies hereunder or under law, without obligation to any Grantor in respect of such occupation, and (iii) without notice except as specified below, sell the Trademark Collateral or any part thereof in one or more parcels at public or private sale, at any of the Lender's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Lender may deem commercially reasonable. In the event of any sale, assignment, or other disposition of any of the Trademark Collateral, the goodwill of the business connected with and symbolized by any Trademark Collateral subject to such disposition shall be included, and each Grantor shall supply to the Lender or its designee such Grantor's know-how and expertise, and documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Trademark Collateral subject to such disposition, and such Grantor's customer lists and other records and documents relating to such Trademark Collateral and to the manufacture, distribution, advertising and sale of such

products and services. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Lender shall not be obligated to make any sale of Trademark Collateral regardless of notice of sale having been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All cash proceeds received by the Lender in respect of any sale of, collection from, or other realization upon all or any part of, the Trademark Collateral shall be applied against the Secured Obligations in the order set forth in Section 2.4(b) of the Loan Agreement.

(c) The Lender may exercise any and all rights and remedies of each Grantor under or otherwise in respect of the Trademark Collateral.

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

SECTION 11. Indemnity and Expenses.

(a) Each Grantor agrees to indemnify the Lender from and against any and all claims, losses and liabilities growing out of or resulting from this Agreement (including, without limitation, enforcement of this Agreement), except claims, losses or liabilities resulting from the Lender's gross negligence or willful misconduct as determined by, a final judgment of a court of competent jurisdiction.

(b) Each Grantor will upon demand pay to the Lender the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, that the Lender may incur in connection with (i) the administration of this Agreement, (ii) the custody, preservation, use or operation of, or the sale of, collection from or other realization upon, any of the Trademark Collateral, (iii) the exercise or enforcement of any of the rights of the Lender, hereunder or (iv) the failure by such Grantor to perform or observe any of the provisions hereof.

SECTION 12. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, and no consent to any departure by any Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender and, in the case of an amendment, by each Grantor and then

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such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Lender to exercise, and no delay in exercising any right hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

SECTION 13. Addresses for Notices. All notices and other communications provided for hereunder shall be in writing, and shall be given and shall be effective as set forth Section 12 of the Loan Agreement.

SECTION 14. Continuing Security Interest, Etc. This Agreement shall create a continuing security interest in the Trademark Collateral and shall (a) remain in full force and effect until the later of the indefeasible payment in full in cash of the Secured Obligations, the termination of the Loan Agreement in accordance with the terms thereof, and the termination of Lender's obligations to provide additional credit thereunder, (b) be binding upon each Grantor, its successors and assigns and (c) inure, together with the rights and remedies of the Lender hereunder, to the benefit of the Lender, and its respective successors, transferees and assigns.

SECTION 15. Amendment and Restatement. This Agreement amends and restates in its entirety the December 2000 Trademark Security Agreement. Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, the execution and delivery of this Agreement, except as provided in the Acknowledgement and Asset Segregation Letter, shall not release, terminate or limit or cause the release, termination or limitation of, the liens and security interests granted to Lender pursuant to the December 2000 Trademark Security Agreement, which liens and security interests are hereby ratified and confirmed in all respects. Such liens and security interests continue to secure the Secured Obligations, including, without limitation, the "Obligations" under the December 2000 Loan Agreement.

SECTION 16. Terms. THE VALIDITY OF THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered under seal as of the date first above written.

CYRK, INC.
a Delaware Corporation

By: 

Title: 

CYRK.COM, INC.
a Delaware corporation


By: 

Title: 

Agreed and consented to as of
the date first above written:

FOOTHILL CAPITAL CORPORATION
A California corporation

By: 

Title: 

AGREEMENT

The undersigned (a) hereby agree and consent to the amendment and restatement of the December 2000 Trademark Security Agreement as set forth above, and (b) acknowledge and agree that they are not parties to such amendment and restatement and have no rights thereunder and are not parties thereto.

TONKIN, INC.
a Delaware corporation

By: 

Title: _____

CYRK ACQUISITION CORP.
a Delaware corporation

By: 

Title: _____

COMMONWEALTH OF MASSACHUSETTS)

) ss.:

COUNTY OF SUFFOLK)

On the 15 day of February, 2001, before me personally came Ronald Cote to me known, who, being by me duly sworn, did depose and say he resides at 31 Cable Road, Rye, NH 03870 and that he is the Vice President of FOOTHILL CAPITAL CORPORATION, the corporation described in and which executed the above instrument; that he has been authorized to execute said instrument on behalf of said corporation; and that he signed said instrument on behalf of said corporation pursuant to said authority.

Bonnie Doherty
Notary Public Bonnie Doherty

My Commission Expires:

6-19-03

COMMONWEALTH OF MASSACHUSETTS)

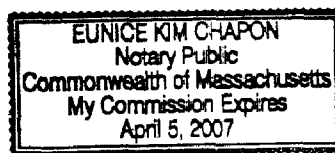
) ss.:

COUNTY OF SUFFOLK)

On the 13 day of February, 2001, before me personally came Patricia Landgren to me known, who, being by me duly sworn, did depose and say she resides at 3 Proctor Drive, Topsfield, MA 01983 and that she is the SECRETARY of TONKIN, INC., the corporation described in and which executed the above instrument; that she has been authorized to execute said instrument on behalf of said corporation; and that she signed said instrument on behalf of said corporation pursuant to said authority.

Eunice Kim Chapon
Notary Public

My Commission Expires:



COMMONWEALTH OF MASSACHUSETTS)

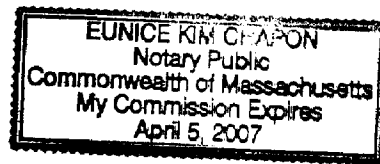
) ss.:

COUNTY OF SUFFOLK)

On the 13 day of February, 2001, before me personally came Patricia Landgren to me known, who, being by me duly sworn, did depose and say she resides at 3 Proctor Drive, Topsfield, MA 01983 and that she is the SECRETARY of CYRK, INC., the corporation described in and which executed the above instrument; that she has been authorized to execute said instrument on behalf of said corporation; and that she signed said instrument on behalf of said corporation pursuant to said authority.

Eunice Kim Chapon
Notary Public

My Commission Expires:



COMMONWEALTH OF MASSACHUSETTS)

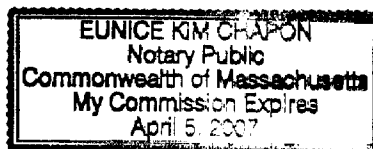
) ss.:

COUNTY OF SUFFOLK)

On the 13 day of February, 2001, before me personally came Patricia Landgren to me known, who, being by me duly sworn, did depose and say she resides at 3 Proctor Drive, Topsfield, MA 01983 and that she is the SECRETARY of CYRK.COM, INC., the corporation described in and which executed the above instrument; that she has been authorized to execute said instrument on behalf of said corporation; and that she signed said instrument on behalf of said corporation pursuant to said authority.

Eunice Kim Chapon
Notary Public

My Commission Expires:



COMMONWEALTH OF MASSACHUSETTS)

) ss.:

COUNTY OF SUFFOLK

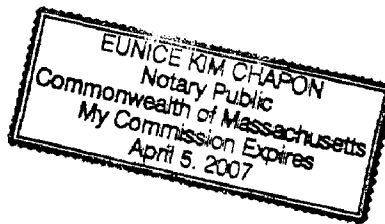
)

On the 13 day of February, 2001, before me personally came Patricia Landgren to me known, who, being by me duly sworn, did depose and say ~~he~~ resides at 3 Proctor Drive, Topsfield, MA 01983 and that ~~he~~ is the SECRETARY of CYRK ACQUISITION CORP., the corporation described in and which executed the above instrument; that ~~he~~ has been authorized to execute said instrument on behalf of said corporation; and that ~~he~~ signed said instrument on behalf of said corporation pursuant to said authority.

Eunice Kim Chapon

Notary Public

My Commission Expires:



SCHEDULE I

Cyrk, Inc.

1. Cyrk (in Australia)
Serial Number: 709821
Filed: 5/31/96
2. Cyrk (in Mexico)
Serial Number: 164000
Filed: 3/24/93
3. Cyrk
Serial Number: 73/300667
Filed: 3/11/81
4. Cyrk (stylized)
Serial Number: 74/390361
Filed: 5/12/93
5. Planetsoff
Serial Number: 75/127078
Filed: 6/28/96
6. U Otta Wear!
Serial Number: 75/772258
Filed: 8/10/99
7. U Otta Wear? and design
Serial Number: 75/772260
Filed: 8/10/99
8. High Impact Promotional Programs*
Serial Number: 75/832732
Filed: 10/26/99
9. Brand Fanatic*
Serial Number: 76/034206
Filed: 4/25/00

10. Cyrk*
Serial Number: 76/140123
Filed: 10/3/00

*Servicemarks

Cyrk.com, Inc.

NONE

SCHEDULE II**Material License Agreements**

KRAFT - CORP.	1.242m		<p>Status: Catalog program active; Long-Term Supply Contract terminated? Amendment Contract to Long-Term Premium Supply Contract entered 5/21/98 (valid from 6/26/98 until 6/26/01, with automatic one year term renewal; Catalog program survives expiration of Long-term Supply Contract) between Kraft Foods, Inc. and Cyrk, Inc. (Original, signed) Scope: company wide catalog of premiums for purchase by Kraft's employees for personal & corporate uses. Long-Term Premium Supply Agreement effective 1/1/97 (valid from 1/1/97 until 12/31/99 unless earlier terminated, and otherwise automatically renewed for 1 year terms) between Kraft Foods, Inc. and Cyrk, Inc. Scope: perform consumer, trade, and employee premium procurement and administration function for Kraft. Notice of Intent from Cyrk to Kraft not to extend existing agreement for an additional year, dated 9/28/99</p>
MASTERCARD	1.95m	World Cup	<p>Status: to be executed; inventory, pricing and royalty terms agreed to prior to submission of contract with Cyrk, Inc.</p>
MASTERCARD		Catalog Agreement	<p>Status: inventory, royalty and pricing terms agreed to with Cyrk, Inc.</p>
NASCAR	2.685m	Master Agreement	<p>Agreement for Promotional Services (APS), effective 9/1/99 through 8/31/04 (executed 10/5/99; no renewal provision (copy, signed) between National Association for Stock Car Auto Racing, Inc. and Cyrk, Inc. Scope: promotional services including sponsorship sales, account management, aftermarket, licensing, marketing. Exhibit C to APS: Premium License Agreement, dated 10/7/99 (draft, unsigned). Exhibit D to APS: License Agreement, dated 10/7/99 (draft, unsigned).</p>
3222896			

NASCAR		2000- Trading Cards, Pins, Bumper Stickers	License Agreement dated 8/30/99 (effective 8/30/99 until 12/31/00) between National Association for Stock Car Auto Racing, Inc. and Cyrk, Inc. Executed as a necessary formality on 8/30/00. Promotion has already been complete and royalties have been paid.
PHILIP MORRIS	50.5m	Marlboro Adventure Gear	Letter Amendment dated 9/27/00 (between Philip Morris Incorporated and Cyrk, Inc.) to Project Agreement dated 3/9/00: changing term to commence 1/3/00 through the later of 8/7/00 or Cyrk's completion of services; Project Agreement governs multiple projects and programs to be developed / maintained by Cyrk, including current and active Marlboro 2001 program
PHILIP MORRIS		Virginia Slims	Governed by Project Agreement dated 3/9/00
PHILIP MORRIS		INTERNET	Development & Maintenance Agreement effective 3/15/00 (valid for 1 year, then automatic renewal for 1 year terms unless terminated by 60 days advance written notice) between Cyrk, Inc. and Philip Morris Incorporated for ShopPM Web site development by Cyrk (development, sourcing & fulfillment of goods by Cyrk is governed by separate Merchandise, Sourcing and Fulfillment Catalog Services Agreement between the parties)
TY, Inc.	5.009m		Confidentiality and Non-Compete Agreement for Marlboro 2001 Catalog
VOLKSWAGEN	2.437m	CATALOG	Relationship is ongoing but no longer under contract and sales are done through purchase orders; Cyrk no longer provides fulfillment services (P.O. dated 12/4/00 for \$85,484.99; P.O. dated 11/13/00 for \$23,892.54; P.O. dated 9/8/00 for \$427,438.25)