

04-10-2001

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REC



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101658593

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies)

RxBazaar.com, Inc.

3-23-01

- Individual(s)
- General Partnership
- Corporation - State
- Other
- Association
- Limited Partnership

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other

Execution Date: March 9, 2001

2. Name and address of receiving party(ies)

Name: The CIT Group/Business Credit, Inc.

Internal Address:

Street Address: 1211 Avenue of the Americas

City: New York State: New York ZIP: 10036

- Association
- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State State of New York
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

76/169,181
76/091,454
76/091,452

B. Trademark Registration No.(s)

Additional numbers attached? Yes No

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

Name: John L. DuPré

Internal Address:

Hamilton, Brook, Smith & Reynolds, P.C.

Street Address: Two Militia Drive

City: Lexington State: MA ZIP: 02421-4799

6. Total number of applications and registrations involved: [3]

7. Total Fee (37 C.F.R. 3.41)..... \$ 90.00

- Enclosed
- Authorized to charge any deficiencies or credit any overpayment to deposit account
- Authorized to be charged to deposit account

8. Deposit account number:

08-0380

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

John L. DuPré
Name of Person Signing

John L. DuPré
Signature

3/21/01
Date

4/09/2001 LMUELLER 00000227 76169181

Total number of pages including cover sheet, attachments, and document: [11]

01 FC:481
02 FC:482

50.00 DP

**TRADEMARK AND TRADEMARK
APPLICATIONS SECURITY AGREEMENT**

This Trademark and Trademark Applications Security Agreement (the "**Trademark Security Agreement**") is made as of the 23rd day of February, 2001 by and among RxBazaar.com, Inc., a Delaware corporation with its principal place of business at 11895 Kemper Springs Drive, Cincinnati, Ohio 45240 (the "**Guarantor**"), Superior Pharmaceutical Company, an Ohio corporation with its principal place of business at 1385 Kemper Meadow Drive, Cincinnati, Ohio 45240 ("**Company**"; Company and Guarantor are sometimes referred to herein jointly and severally as the "**Debtor**"), and The CIT Group/Business Credit, Inc., a New York corporation with offices at 1211 Avenue of the Americas, New York, New York 10036 (the "**Secured Party**").

RECITALS

WHEREAS, pursuant to a certain Financing and Security Agreement of even date herewith (as amended from time to time, the "**Financing Agreement**") made among the Borrower, the Guarantor and the Secured Party, the Secured Party has entered into a certain loan arrangement with the Borrower;

WHEREAS, pursuant to the Financing Agreement, the Debtor has granted to the Secured Party a security interest in the Debtor's Collateral (as defined in the Financing Agreement) to secure the Obligations (as defined in the Financing Agreement) of the Borrower to the Secured Party;

WHEREAS, to further secure the Obligations and to more fully vest the security interest granted in the Financing Agreement, the Debtor has executed this Trademark and Trademark Applications Security Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Debtor and the Secured Party agree as follows:

1. All capitalized terms used herein and not otherwise defined have the same meaning herein as in the Financing Agreement.
2. To secure the Obligations, the Debtor hereby grants a security interest in favor of, and collaterally assigns to the Secured Party, with power of sale in and to the following and all proceeds thereof:

(a) All of the Debtor's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks, service mark applications including, without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by

any such trademarks, trademark applications, service marks, registered service marks, and service mark applications.

(b) All renewals of any of the foregoing.

(c) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.

(d) The right to sue for past, present and future infringements and dilutions of any of the foregoing.

(e) All of Debtor's rights corresponding to any of the foregoing throughout the world.

All of the foregoing trademarks, trademark applications, service marks, registered service marks, and service mark applications described in Subsection 2.(a), together with the items respectively describe in Subsections 2.(b) through and including 2.(e) are hereinafter individually and/or collectively referred to as the "**Trademarks**".

3. Until this Trademark Security Agreement is terminated in writing by a duly authorized officer of the Secured Party, the Debtor shall undertake the following with respect to each Trademark:

(a) Pay all renewal fees and other fees and costs associated with maintaining the Trademarks and with the processing of the Trademarks.

(b) At Debtor's sole cost, expense, and risk, pursue the prompt, diligent, processing of each Application for Registration which is the subject of the foregoing assignment and not abandon or delay any such efforts.

(c) At Debtor's sole cost, expense, and risk, take any and all action which may be necessary or desirable to protect the Trademarks, including, without limitation, the prosecution and defense of infringement actions.

4. The Debtor represents and warrants that:

(a) **EXHIBIT A** includes all of the registered trademarks, Federal trademark applications, registered service marks and Federal service mark applications now owned by the Debtor.

(b) No liens, claims or security interests have been granted in any Trademark by the Debtor to any person other than to the Secured Party, and the Trademarks shall

hereafter remain free and clear of all liens, encumbrances, or security interests to any person other than to the Secured Party.

5. In order to further secure the Obligations:

(a) The Debtor shall give the Secured Party written notice (with reasonable detail) within ten (10) days following the occurrence of any of the following:

(i) The Debtor obtains rights to, and files applications for registration of, any new trademarks, or service marks, or otherwise acquires ownership of any newly registered trademarks, registered service marks, trademark applications, or service mark applications, (other than the Debtor's right to sell products containing the trademarks of others in the ordinary course of Debtor's business).

(ii) The Debtor's becoming entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor (other than Debtor's right to sell products containing the trademarks of others in the ordinary course of Debtor's business).

(b) The provisions of this Trademark Security Agreement shall automatically apply to any such additional property or rights described in Section 5(a) above, all of which shall be deemed to be and treated as "Trademarks" within the meaning of this Trademark Security Agreement.

(c) The Debtor hereby authorizes the Secured Party to modify this agreement by amending **EXHIBIT A** to include any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, provided, however, the modification of said **EXHIBIT** shall not be a condition to the creation or perfection of the security interest created hereby.

6. The Debtor shall have the exclusive right to sue for past, present and future infringement of the Trademarks including the right to seek injunctions and/or money damages, in an effort by Debtor to protect the Trademarks against encroachment by third parties, provided, however:

(a) The Debtor first provides the Secured Party with written notice of the Debtor's intention to so sue for enforcement of any Trademark.

(b) Any money damages awarded or received by the Debtor on account of such suit (or the threat of such suit) shall constitute Collateral.

(c) During the continuance of any Event of Default, the Secured Party, by notice to the Debtor may be terminate or limit the Debtor's rights under this Section 6.

7. In the event of

(a) the Debtor's failure, within ten (10) days of written notice from the Secured Party, to cure any failure by the Debtor to perform any of the Debtor's obligations set forth in Section 6; and/or

(b) any Event of Default that is continuing, the Secured Party, acting in its own name or in that of the Debtor, may (but shall not be required to) act in the Debtor's place and stead and/or in the Secured Party's own right in connection therewith.

8. During the continuance of any Event of Default, the Secured Party may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in the State of New York, with respect to the Trademarks, in addition to which the Secured Party, subject to the terms of the Financing Agreement, may sell, license, assign, transfer, or otherwise dispose of the Trademarks. Any person may conclusively rely upon an affidavit of an officer of the Secured Party that an Event of Default has occurred and is continuing and that the Secured Party is authorized to exercise such rights and remedies.

9. The Debtor hereby irrevocably constitutes and designates the Secured Party as and for the Debtor's attorney in fact, exercisable during the continuance of any Event of Default:

(a) To exercise any of the rights and powers referenced in Sections 3 and 6 hereof.

(b) To execute all and singular such instruments, documents, and papers as the Secured Party determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Trademarks.

The foregoing grant of a power of attorney, being coupled with an interest, shall be irrevocable until the within Trademark Security Agreement is terminated by a duly authorized officer of the Secured Party.

10. Any use by the Secured Party of the Trademarks as authorized hereunder in connection with the exercise of the Secured Party's right and remedies under this Trademark Security Agreement and the Security Agreement shall be coextensive with Debtor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Secured Party to the Debtor.

11. Following the payment and satisfaction of all Obligations, and the termination of any obligations of the Secured Party under the Financing Agreement, this Trademark Security

Agreement shall terminate and the Secured Party shall execute and deliver to Debtor, at Debtor's cost and expense, all such instruments as the Debtor reasonably may request to release any encumbrance in favor of the Secured Party created hereby or pursuant hereto, subject, however, to any disposition thereof which may have been made by Secured Party pursuant hereto or pursuant to the Financing Agreement.

12. The Debtor shall, at the request of the Secured Party, do any and all acts and execute any and all documents required by the Secured Party in connection with the protection, preservation, and enforcement of the Secured Party's rights hereunder.
13. The Debtor shall, upon demand, reimburse the Secured Party for all costs and expenses incurred by the Secured Party in the exercise of any rights hereunder (including, without limitation, fees and expenses of counsel).
14. This Agreement is intended to be supplemental of the Financing Agreement. All provisions of the Financing Agreement shall apply to the Trademarks and the Secured Party shall have the same rights with respect to any and all Trademarks granted the Secured Party to secure the Obligations hereunder as thereunder. In the event of a conflict between this Trademark Security Agreement and the Financing Agreement, the terms of this Trademark Security Agreement shall control with respect to the Trademarks.
15. This Agreement shall be governed by the laws of the State of New York without reference to principles of conflicts of laws.

**GUARANTOR:
RXBAZAAR.COM, INC.**

By: *James W. Stahly*
Print Name: JAMES W. STAHLY
Title: PRESIDENT, COO

**COMPANY:
SUPERIOR PHARMACEUTICAL
COMPANY**

By: *James W. Stahly*
Print Name: JAMES W. STAHLY
Title: EXEC VP

**SECURED PARTY:
THE CIT GROUP/
BUSINESS CREDIT, INC.**

By: _____
Title: Vice President

STATE OF Ohio
Hamilton County

Then personally appeared before me James W Stahly who acknowledged that such person is the duly authorized Officer of RxBazaar.com, Inc., and that such person had executed the foregoing instrument on its behalf and that such is the free act and deed of RxBazaar.com, Inc.

Witness my hand and seal this 8 day of March, 2001.

Lori A Hess
Notary Public
Print Name: Lori A Hess
My Commission Expires: 12/03/05
LORI A. HESS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 12-03-05

Executed under seal.

**GUARANTOR:
RXBAZAAR.COM, INC.**

By: _____
Print Name:
Title:

**COMPANY:
SUPERIOR PHARMACEUTICAL
COMPANY**

By: _____
Print Name:
Title:

**SECURED PARTY:
THE CIT GROUP/
BUSINESS CREDIT, INC.**

By: Jan Brown
Title: Vice President

STATE OF _____
_____ County

Then personally appeared before me _____ who acknowledged that such person is the duly authorized _____ of RxBazaar.com, Inc., and that such person had executed the foregoing instrument on its behalf and that such is the free act and deed of RxBazaar.com, Inc.

Witness my hand and seal this _____ day of March, 2001.

Notary Public
Print Name: _____
My Commission Expires: _____

STATE OF Ohio
Hamilton County

Then personally appeared before me James W Stahly who acknowledged that such person is the duly authorized officer of Superior Pharmaceutical Company, and that such person had executed the foregoing instrument on its behalf and that such is the free act and deed of Superior Pharmaceutical Company.

Witness my hand and seal this 8 day of March, 2001.

Lori A Hess
Notary Public
Print Name: Lori A Hess
My Commission Expires: 12/03/05

LORI A. HESS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 12-03-05

STATE OF _____
_____ County

Then personal appeared before me _____ who acknowledged that such person is the duly authorized _____ of The CIT Group/Business Credit, Inc., and that such person executed the foregoing instrument on its behalf and such is the free act and deed of The CIT Group/Business Credit, Inc.

Witness my hand and seal this _____ day of March, 2001.

Notary Public
Print Name: _____
My Commission Expires: _____

STATE OF _____
_____ County

Then personally appeared before me _____ who acknowledged that such person is the duly authorized _____ of Superior Pharmaceutical Company, and that such person had executed the foregoing instrument on its behalf and that such is the free act and deed of Superior Pharmaceutical Company.


Witness my hand and seal this _____ day of March, 2001.

Notary Public
Print Name: _____
My Commission Expires: _____

STATE OF MASSACHUSETTS
SUFFOLK County

Then personal appeared before me IAN BROWN who acknowledged that such person is the duly authorized Vice President of The CIT Group/Business Credit, Inc., and that such person executed the foregoing instrument on its behalf and such is the free act and deed of The CIT Group/Business Credit, Inc.

Witness my hand and seal this 9th day of March, 2001.



Notary Public
Print Name: MARC D. LAZAR
My Commission Expires: 7/16/04

TRADEMARK AND TRADEMARK APPLICATIONS
SECURITY AGREEMENT

EXHIBIT "A"

<u>Mark</u>	<u>Application Serial Number</u>	<u>Application Filing Date</u>
BUYERXPRESS	76169181	November 21, 2000
THE NEW PHARMACEUTICAL MARKETPLACE	76091454	July 18, 2000
RXBAZAAR.COM	76091452	July 18, 2000

«B0166624.DOC;2»

RECORDED: 03/23/2001

TRADEMARK
REEL: 002266 FRAME: 0307