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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings



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U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

1. Name of conveying party(ies): Homeland Stores, Inc. 97-01
Individual(s) Association
General Partnership Limited Partnership
[X] Corporation-State DE
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Fleet Retail Finance Inc.
Internal Address:
Street Address: 40 Broad Street
City: Boston State: MA Zip: 02109
Individual(s) citizenship
Association
General Partnership
Limited Partnership
[X] Corporation-State DE
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

3. Nature of conveyance:
Assignment Merger
[X] Security Agreement Change of Name
Other
Execution Date: August 15, 2001

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
78/066,230
78/066,216
78/066,210
Additional number(s) attached Yes No

B. Trademark Registration No.(s)
1,555,307 1,650,397
1,645,401 1,820,865
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Christopher E. Kondracki
Internal Address:
Street Address: 2001 Jefferson Davis, Hwy., Suite 505
City: Arlington State: VA Zip: 22202

6. Total number of applications and registrations involved: 7
7. Total fee (37 CFR 3.41): \$ 190.00
[X] Enclosed
Authorized to be charged to deposit account
8. Deposit account number:
(Attach duplicate copy of this page if paying by deposit account)

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.
Christopher E. Kondracki
Name of Person Signing
Signature
Date 9/6/01
Total number of pages including cover sheet, attachments, and document: 8

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

09/13/2001 6TON11 00000226 78066230
01 FC:481 40.00 DP
02 FC:482 150.00 DP

TRADEMARK REEL: 002366 FRAME: 0614

**TRADEMARK AND TRADEMARK
APPLICATIONS SECURITY AGREEMENT**

**Fleet Retail Finance Inc.
AGENT**

August 15, 2001

THIS AGREEMENT is made between

Fleet Retail Finance Inc. (in such capacity, the "**Agent**"), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as agent for a revolving credit lender and a term lender (collectively, the "**Lenders**")

and

Homeland Stores, Inc. (hereinafter, the "**Borrower**"), a Delaware corporation with its principal executive offices at 2601 NW Expressway, Suite 1100E, Oklahoma City, Oklahoma 73112

in consideration of the mutual covenants contained herein and benefits to be derived herefrom,

WITNESSETH:

1. **BACKGROUND:** The Agent, the Revolving Credit Lender, the Term Lender, and the Borrower have entered in a certain Loan and Security Agreement dated August 15, 2001 (as such agreement may be modified, supplemented, amended or restated from time to time, hereinafter, the "**Loan Agreement**") pursuant to which a credit facility has been established in favor of the Borrower and under which the Borrower's Liabilities are to be secured by certain of the Borrower's assets, including all Marks. (Terms used herein which are defined in the Loan Agreement are used as so defined).

2. **GRANT OF SECURITY INTEREST:** To secure the Liabilities, the Borrower hereby creates a security interest in favor of the Fleet Retail Finance Inc. (the "**Collateral Agent**") a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109 for the ratable benefit of the Agent and the Lenders, with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default) in and to the following and all proceeds thereof (collectively, the "**TM Collateral**");

..1..

(a) All of the Borrower's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks and 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 Borrower's rights corresponding to any of the foregoing throughout the world.

3. **PROTECTION OF MARKS BY BORROWER:** The Borrower shall undertake the following with respect to each items respectively described in Sections 2(a) and 2(b) (collectively, the "**Marks**"):

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

(b) At the Borrower's sole cost, expense, and risk, pursue the prompt, diligent, processing of each Application for Registration, if any, which is the subject of the security interest created herein and not abandon or delay any such efforts.

(c) At the Borrower's sole cost, expense, and risk, take any and all action which Borrower deems desirable to protect the Marks, including, without limitation, but subject to Borrower's discretion, the prosecution and defense of infringement actions.

4. **BORROWER'S REPRESENTATIONS AND WARRANTIES:** The Borrower 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 Borrower.

(b) All TM Collateral is and shall remain, free and clear of all liens, Encumbrances, or security interests to any Person other than to the Collateral Agent (other than Permitted Encumbrances).

(c) The Borrower shall give the Agent written notice (with reasonable detail) within

ten (10) days following the occurrence of any of the following:

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

(ii) The Borrower'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 Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).

(iii) The Borrower's entering into any new trademark license agreement or service mark license agreement.

5. **AGREEMENT APPLIES TO FUTURE MARKS:**

(a) The provisions of this TM Security Agreement shall automatically apply to any such additional property or rights described in 4(c), above, all of which shall be deemed to be and treated as "Marks" within the meaning of this TM Security Agreement.

(b) The Borrower hereby authorizes the Collateral Agent to take all such action to protect the Collateral Agent's interest in and concerning any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, *provided, however*, the Collateral Agent's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

6. **BORROWER'S RIGHTS TO ENFORCE MARKS:** Prior the Agent's giving of notice to the Borrower following the occurrence of an Event of Default, the Borrower shall have the exclusive right to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by Borrower to protect the Marks against encroachment by third parties, *provided, however*.

(a) The Borrower first provides the Agent with written notice of the Borrower's intention to so sue for enforcement of any Mark.

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

(c) Following the occurrence of any Event of Default, the Agent, by notice to the

Borrower may, terminate or limit the Borrower's rights under this Section 6.

7. **AGENT'S ACTIONS TO PROTECT MARKS:** In the event of

(a) the Borrower's failure, within five (5) days of written notice from the Agent, to cure any failure by the Borrower to perform any of the Borrower's obligations set forth in Section 3; and/or

(b) the occurrence of any Event of Default,

the Collateral Agent, acting in its own name or in that of the Borrower, may (but shall not be required to) act in the Borrower's place and stead and/or in the Collateral Agent's own right in connection therewith.

8. **RIGHTS UPON DEFAULT:** Upon the occurrence of any Event of Default, the Collateral

Agent may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with respect to the Marks, in addition to which the Collateral Agent may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Collateral Agent that an Event of Default has occurred and that the Collateral Agent is authorized to exercise such rights and remedies.

9. **AGENT AS ATTORNEY IN FACT:**

(a) The Borrower hereby irrevocably constitutes and designates the Collateral Agent as and for the Borrower's attorney in fact, effective following the occurrence of any Event of Default:

(i) To exercise any of the rights and powers referenced in Sections 3 and 5(b).

(ii) To execute all such instruments, documents, and papers as the Collateral Agent 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 Marks.

(b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Collateral Agent.

(c) The Collateral Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 9(a) herein, but if the Collateral Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to the Borrower for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Agent has had an opportunity to be heard) which determination

includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

10. **AGENT'S RIGHTS:**

(a) Any use by the Collateral Agent of the Marks, as authorized hereunder in connection with the exercise of the Collateral Agent' rights and remedies under this Agreement and under the Loan Agreement shall be coextensive with the Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges.

(b) None of this Agreement, the Loan Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the Collateral Agent any rights in and to the Marks, which rights are effective except following the occurrence of any Event of Default.

11. **INTENT:** It is intended that this Agreement supplement the Loan Agreement. All provisions of the Loan Agreement shall apply to the Marks. The Collateral Agent shall have the same rights, remedies, powers, privileges and discretions, with respect to the security interests created in the TM Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Loan Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Loan Agreement with respect to all other Collateral.

12. **CHOICE OF LAWS:** It is intended that this Agreement take effect as a sealed instrument and that all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Borrower and the Agent respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

HOMELAND STORES, INC.
(The "Borrower")

By Wayne S. Peterson
Name Wayne S. Peterson
Title Senior Vice President

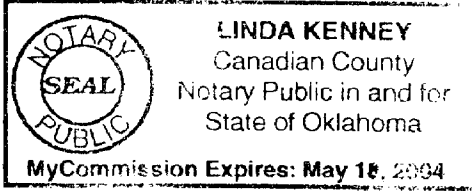
FLEET RETAIL FINANCE INC.
(The " Agent")

By Sally A. Sheehan
Name Sally A. Sheehan
Title Director

THE STATE OF OKLAHOMA
COUNTY OF OKLAHOMA, SS

Then personally appeared before me Wayne S. Peterson who acknowledged that such person is the duly authorized Senior Vice President of Homeland Stores, Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 23rd day of August, 2001.



Linda Kenney

, Notary Public

My Commission Expires: 5-18-04

THE COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK

Then personally appeared before me Sally A. Sheehan, who acknowledged that such person is the duly authorized Director of Fleet Retail Finance Inc. and that such person executed the foregoing instrument on its behalf.

Witness my hand and seal this 27th day of August, 2001.

Allen Tongue

, Notary Public

My Commission Expires:

4/2/04

EXHIBIT A

Borrower's now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks, and Federal trade mark applications:

Trademark/Service Mark Registrations

<u>TRADEMARK</u>	<u>REGISTRATION NUMBER</u>	<u>REGISTRATION DATE</u>
H (and design) (Class 042 - grocery store services)	1,555,307	9/5/1989
HOMELAND (Class 029 - eggs)	1,645,401	5/21/1991
HOMELAND (Class 042 - grocery store services)	1,650,397	6/9/1991
A GOOD DEAL BETTER (Class 042 - grocery store services)	1,820,865	2/8/1994

Trademark Applications

<u>MARK</u>	<u>SERIAL NUMBER</u>	<u>FILING DATE</u>
HOMELAND (Class 029 - milk and milk products)	78/066,230	5/29/2001
HOMELAND (Class 030 - ice cream)	78/066,216	5/29/2001
HOMELAND (Class 032 - orange juice)	78/066,210	5/29/2001

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