

09-26-2001

Form PTO-1594  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)  
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101855592

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):

Express Franchise Services, L.P.

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☒ Limited Partnership  
☐ Corporation-State  
☐ Other \_\_\_\_\_

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

## 3. Nature of conveyance:

- ☐ Assignment ☐ Merger  
☒ Security Agreement ☐ Change of Name  
☐ Other \_\_\_\_\_

Execution Date: May 31, 2001

## 2. Name and address of receiving party(ies)

Name: Bank of Oklahoma, N.A.

Internal

Address: P.O. Box 24128Street Address: 201 Robert S. KerrCity: OklahomaState: OK Zip: 73124

- ☐ Individual(s) citizenship  
☒ Association  
☐ General Partnership  
☐ Limited Partnership  
☐ Corporation-State  
☐ 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)

75/478,637 75/478,638 75/612,680 76/020,630  
76/040,636 76/049,055 76/271,379

## B. Trademark Registration No.(s)

1,348,486 1,457,706 1,463,830 1,465,780  
1,473,438 1,614,183 1,623,976 1,643,850  
1,646,233 1,647,022 1,651,736 1,657,595  
1,693,487

Additional number(s) attached ☒ Yes ☐ No

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

Name: Donald J. Fitzpatrick, Esq.  
Greensfelder, Hemker & Gale, P.C.

Internal Address: \_\_\_\_\_

Street Address: 2000 Equitable Building10 South BroadwayCity: St. Louis State: MO Zip: 63102

## 6. Total number of applications and registrations involved: \_\_\_\_\_

28

7. Total fee (37 CFR 3.41).....\$ 715.00

- ☒ Enclosed  
☐ Authorized to be charged to deposit account

## 8. Deposit account number:

07-1985 (deficiency or overpayment)

(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. 715E

Donald J. Fitzpatrick, Esq. Donald J. Fitzpatrick

Name of Person Signing

Signature

9-19-01

Date

Total number of pages including cover sheet, attachments, and document: 9

Mail documents to be recorded with required cover sheet information to:  
CERTIFICATE OF MAIL

09/26/2001 DBYRME 00000016 75478637

01 FC:481  
02 FC:482

I hereby certify that this paper or fee is being deposited with the United States Postal Service as first class mail on September 19, 2001 to:  
Box Assignment  
Director - US Patent and Trademark Office  
Washington, D.C. 20231

Kimberly R. Rositz

TRADEMARK

REEL: 002373 FRAME: 0320

RECORDATION FORM COVER SHEET  
**TRADEMARKS ONLY**

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

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼ ▼ ▼

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City: Oklahoma State: OK Zip: 73124

- ☐ Individual(s) citizenship \_\_\_\_\_  
☒ Association \_\_\_\_\_  
☐ General Partnership \_\_\_\_\_  
☐ Limited Partnership \_\_\_\_\_  
☐ Corporation-State \_\_\_\_\_  
☐ Other \_\_\_\_\_

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(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)

B. Trademark Registration No.(s)

1,700,779 1,708,586 1,718,629 1,938,992  
1,946,030 2,124,198 2,225,130 1,651,735

Additional number(s) attached ☐ Yes ☒ No

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

Name: Donald J. Fitzpatrick, Esq.

Internal Address: \_\_\_\_\_

Street Address: 2000 Equitable Building  
10 South Broadway

City: St. Louis State: MO Zip: 63102

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Donald J. Fitzpatrick, Esq.

Name of Person Signing

Signature

9-19-01

Date

Total number of pages including cover sheet, attachments, and document: **9**

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

**TRADEMARK**  
**REEL: 002373 FRAME: 0321**

**FIRST AMENDED AND RESTATED TRADEMARK  
COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT**

THIS AGREEMENT is made effective as of May 31, 2001 by and between EXPRESS FRANCHISE SERVICES, L.P. ("Grantor"), a Texas limited partnership, with its principal place of business located at 6300 Northwest Expressway, Oklahoma City, Oklahoma 73132 and BANK OF OKLAHOMA, N.A., AS AGENT BANK, as collateral agent for the ratable benefit of Lenders, as hereinafter defined (the "Agent Bank"), a national banking association with an office located at 201 Robert S. Kerr, P.O. Box 24128, Oklahoma City, Oklahoma 73124.

PRELIMINARY STATEMENT. Grantor has executed and delivered a Loan Agreement dated as of May 31, 2001 (as further amended from time to time, the "Loan Agreement") to the Agent Bank and Lenders, as defined in the Loan Agreement, which provides that the Lenders shall, subject to the terms and conditions thereof, extend credit to or for the benefit of Grantor in such amounts and in the manner provided for in the Loan Agreement. In order to induce the Agent Bank and Lenders to execute and deliver the Loan Agreement and extend the loans provided for therein, Grantor has agreed to grant to the Agent Bank as collateral agent for the ratable benefit of Lenders a security interest in, and collaterally assign to the Agent Bank, certain trademark rights.

This Agreement refers specifically to the Loan Agreement and a Security Agreement dated as of May 31, 2001 (the "Security Agreement"), under which the Agent Bank as collateral agent for the ratable benefit of Lenders has been granted a security interest in, among other things, all equipment, inventory, accounts, general intangibles, books, records, product specifications, goodwill, customer lists and trade secrets (collectively, the "Other Assets") relating to services sold under the Trademarks, as defined hereinafter. The Loan Agreement and Security Agreement provide that the Agent Bank and Lenders shall have the right to foreclose on the Trademark Collateral, as defined hereinafter, and the Other Assets upon the occurrence of an Event of Default, as defined in the Loan Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees with the Agent Bank as follows:

1. Grant of Security Interest; Collateral Assignment

(a) To secure the complete and timely satisfaction of all obligations of Grantor to the Agent Bank and Lenders under and provided for in the Loan Agreement (the "Obligations"), Grantor hereby grants to the Agent Bank as collateral agent for the ratable benefit of Lenders a continuing security interest in all of its right, title and interest in and to the United States trademark(s), trade name(s) and service mark(s) listed on Schedule A hereto (as the same may be amended pursuant hereto from time to time) (collectively, the "Trademarks"), including, without limitation, all renewals thereof, all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements and all rights corresponding thereto throughout the world (all of the foregoing are collectively called the "Trademark Rights"), and the goodwill of the business to which the

Trademarks relate (the "Associated Goodwill") (the Trademarks, the Trademark Rights, and the Associated Goodwill are collectively called the "Trademark Collateral").

(b) In addition to the grant of security interest provided in paragraph 1(a), Grantor hereby agrees to assign and convey to the Agent Bank as collateral agent for the ratable benefit of Lenders all of its right, title and interest in and to the Trademark Collateral upon an Event of Default; provided, however, that such assignment and conveyance shall be and become of force and effect only, and shall immediately and automatically become of force and effect without further action, upon the occurrence of an Event of Default, as defined in the Loan Agreement.

## 2. Representations, Warranties and Covenants of Grantor

Grantor represents, covenants and warrants to the Agent Bank and Lenders that:

(a) The United States registrations on the Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(b) It believes the United States Trademarks are valid and enforceable;

(c) Grantor represents that to the best of its knowledge, no claim has been made that the use of the Trademarks does or may violate the rights of any third person;

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

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

(f) Grantor shall use for the duration of this Agreement, the proper statutory notice in connection with its use of the Trademarks.

3. Inspection Right. Grantor hereby grants to the Agent Bank and its employees, agents and designees the right to visit Grantor's offices and facilities which provide services offered under the Trademarks, and to inspect the services and quality control records relating thereto.

4. Further Assurances. Grantor agrees that, until all of the obligations shall have been satisfied in full, it will not enter into any agreement which is inconsistent with, Grantor's obligations under this Agreement, without the prior written consent of Agent Bank and Lenders, not to be unreasonably withheld. Grantor further agrees that at any time and from time to time, at the reasonable expense of Grantor, 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 Agent Bank may reasonably request, in order to perfect and protect the security interest

and collateral assignment granted or purported to be granted hereby or to enable the Agent Bank and Lenders to exercise their rights and remedies hereunder.

5. Additional Trademarks. If, before the Obligations have been satisfied in full, Grantor shall obtain rights to any registrations of any new U.S. trademark(s), trade name(s) or service mark(s), or application(s) therefore, the provisions of paragraph 1 shall automatically apply thereto and Grantor shall give the Agent Bank prompt written notice thereof.

6. Modification by the Agent Bank. Grantor authorizes the Agent Bank to modify this Agreement by amending Schedule A to include any future registrations of any U.S. trademark(s), trade name(s) or service mark(s), or future application(s) therefor, covered by paragraphs 1 and 5 hereof, without the signature of Grantor to the extent permitted by applicable law, but with prior written notice.

7. Grant of License to the Agent Bank. Grantor hereby agrees to grant to the Agent Bank as collateral agent for the ratable benefit of Lenders a license to use the Trademarks in connection with the Collateral, as defined in the Loan Agreement, upon and after the foreclosure upon, sale or other transfer of all or any part of the collateral, as defined in the Loan Agreement, by or to the Agent Bank or Lenders pursuant to the Loan Agreement and/or this Agreement following an Event of Default as defined in the Loan Agreement. The Agent Bank shall use its best efforts to insure that proper quality control provisions are exercised with respect to all goods and services covered by the trademarks listed on Schedule A. The license to be granted in this paragraph 7 may be transferred by the Agent Bank, without Grantor's consent, to any successor of the Agent Bank, any assignee of the Agent Bank, and/or any purchaser or other transfer of any or all of the collateral, as defined in the Loan Agreement and to the extent provided in the Loan Agreement. This license may not be revoked until all of the Obligations have been satisfied in full.

8. Rights of Grantor. Unless and until there shall have occurred an Event of Default, as defined in the Loan Agreement, Grantor shall own the title to the Trademark Collateral and shall have the exclusive, nontransferable right to use the Trademarks on and in connection with services offered by Grantor, for Grantor's own benefit and account and for none other. Grantor agrees not to sell or assign its interest in, or grant any license under the Trademarks or the other Trademark Collateral, other than the license to the Agent Bank hereunder and franchise agreements with its franchisees without the prior written consent of the Agent Bank and Lenders, not to be unreasonably withheld.

9. Default. If any Event of Default, as defined in the Loan Agreement, shall have occurred, Grantor's ownership and right shall terminate forthwith, and the Agent Bank and Lenders shall have in addition to all other rights and remedies them by this Agreement, those provided in the Loan Agreement and those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademark Collateral may be located.

10. Termination of Agreement. At such time as Grantor shall completely satisfy all of Obligations, this Agreement shall terminate and the Agent Bank shall execute and deliver to Grantor, at Grantor's expense, and without recourse, representation or warranty, all releases, deeds, assignments and other instruments as may be necessary or proper to re-vest in Grantor full title to the Trademark Collateral, subject to any disposition thereof which may have been made by the Agent Bank and Lenders pursuant hereto.

11. Preservation of Trademark Rights. Grantor shall undertake all reasonable business activities which are necessary or desirable to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with the foregoing shall be borne by Grantor. Grantor shall not abandon any Trademarks without the prior written consent of the Agent Bank and Lenders, not to be unreasonably withheld. Grantor shall have the right to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Trademarks. Grantor shall promptly, upon demand, reimburse and indemnify the Agent Bank and Lenders for all damages, costs and expenses, including, without limitation, attorneys' fees, incurred by the Agent Bank and Lenders in the fulfillment of any provision of this paragraph 11.

12. Agent Bank Appointed Attorney-in-Fact. Grantor hereby authorizes and empowers the Agent Bank to make, constitute and appoint any officer or agent of the Agent Bank as the Agent Bank may select, in its exclusive discretion, as Grantor's true and lawful attorney-in-fact following an Event of Default as defined in the Loan Agreement, with the power to endorse Grantor's name on all applications, documents, papers and instruments necessary for the Agent Bank and Lenders to use the Trademarks or the other Trademark Collateral, or to grant or issue any exclusive or non-exclusive license under the Trademark Collateral to the Agent Bank, Lenders or anyone else, or necessary for the Agent Bank or Lenders to assign, pledge, convey or otherwise transfer title in or dispose of the Trademark Collateral to anyone else. Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Security Agreement.

13. Agent Bank May Act. If Grantor fails to comply with any of its obligations hereunder and following an Event of Default as defined in the Loan Agreement, the Agent Bank may do so in Grantor's name or in the name of Agent Bank and Lenders to the extent permitted by applicable law, but at Grantor's expense, and Grantor hereby agrees to reimburse the Agent Bank and Lenders in full for all expenses, including, without limitation, attorneys' fees, incurred by the Agent Bank and Lenders in protecting, defending or maintaining the Trademark Collateral or any part thereof.

14. No Waiver. No course of dealing Grantor, the Agent Bank and Lenders, nor any failure to exercise, nor any delay in exercising on the part of the Agent Bank or Lenders, any right, power of privilege hereunder, under the Loan Agreement, or under applicable law 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 exercises of any other right, power or privilege.

15. Rights Cumulative. All of the Agent Bank's and Lenders' rights and remedies with respect to the Trademark 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.

16. Severability. The provisions of this 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.

17. Prior Agreement. This Agreement amends and restates in its entirety a Trademark Collateral Assignment and Security Agreement from Grantor to BOK as Collateral Agent dated February 1, 2001 (the "Prior Agreement") which secured indebtedness of Express Service and Grantor to BOK which has been amended, restated and replaced by indebtedness of Express Services and Grantor to BOK and the other Lenders pursuant to the Loan Agreement and separate evidence of indebtedness in favor of each Lender.


18. Modification. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 6.

19. Inurement. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties; provided however, that the foregoing provision shall not invalidate or otherwise modify the restrictions imposed on Grantor hereunder with respect to transferring any part of or interest in the Trademark Collateral.

20. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the internal laws of the State of Oklahoma.

Executed as of May 31, 2001.

EXPRESS FRANCHISE SERVICES, L.P.,  
a Texas limited partnership ("Grantor"), by  
its General Partner, Express Holdings, Inc.  
IV, an Oklahoma corporation

By:   
Name: Thomas N. Richards  
Title: Executive Vice President

BANK OF OKLAHOMA, N.A., AS  
AGENT BANK, as collateral agent for the  
ratable benefit of Lenders ("Agent Bank")

By: John D. Higginbotham  
Name: John D. Higginbotham  
Title: Senior Vice President

STATE OF OKLAHOMA )  
 )  
COUNTY OF OKLAHOMA )

On this 17 day of August, 2001, personally appeared  
Thomas N. Richards, to me known and to me to be an Executive Vice President of Express  
Holdings, Inc. IV, an Oklahoma corporation, General Partner of Express Franchise Services, a  
Texas limited partnership ("Grantor"), and acknowledged that he executed the foregoing  
Trademark Collateral Assignment and Security Agreement on behalf of the Grantor and pursuant  
to authority duly received.

Jackie B. Ward  
Notary Public

My commission expires: 1-7-2003

\_\_\_\_\_  
(SEAL)

STATE OF OKLAHOMA )  
 )  
COUNTY OF OKLAHOMA )

On this 17 day of August, 2001, personally appeared  
John D. Higginbotham, to me known and to me to be a Senior Vice President, of Bank of  
Oklahoma, N.A., as Agent Bank as collateral agent for the ratable benefit of Lenders ("Agent  
Bank"), and acknowledged that he executed the foregoing Trademark Collateral Assignment and  
Security Agreement on behalf of the Agent Bank and pursuant to authority duly received.

Jackie B. Ward  
Notary Public

My commission expires: 1-7-2003

\_\_\_\_\_  
(SEAL)



SCHEDULE A  
REGISTERED TRADEMARKS  
(as of June 14, 2001)

<u>Trademark</u>	<u>Reg. No.</u>	<u>Date of Reg.</u>
EXPRESS & Design	1,348,486	07/09/85
SEARCH EXPRESS	1,457,706	09/15/87
ROBERT WILLIAM JAMES & ASSOCIATES	1,463,830	11/03/87
EXPRESS PERSONNEL SERVICE & Design	1,465,780	11/17/87
EXPRESS TEMPORARY SERVICES & Design	1,473,438	01/19/88
Design Only	1,614,183	09/18/90
EXPRESS HEALTH SERVICE	1,623,976	11/20/90
RECEPTIONIST EXPRESS	1,643,850	05/07/91
EXPRESS SERVICES TEMPORARY & PERMANENT PERSONNEL & Design	1,646,233	05/28/91
EXPRESS	1,647,022	06/04/91
EXPRESS & Design	1,651,735	07/23/91
EXPRESS TRAVEL SERVICE & Design	1,651,736	07/23/91
THE PERSONNEL TOUCH	1,657,595	09/17/91
NURSES EXPRESS	1,693,487	06/09/92
EXPRESS & Design	1,700,779	07/14/92
EXPRESS PERSONNEL SERVICE & Design	1,708,586	08/18/92
EXPRESS TEMPORARY SERVICE & Design	1,718,629	09/22/92
AMERICA'S EMPLOYER	1,938,992	11/28/95
EXPRESS STAFFING SERVICES	1,946,030	01/02/96
EXPRESS HUMAN RESOURCES & Design	2,124,198	12/23/97
EXPRESS MANAGEMENT SERVICES & Design	2,225,130	02/23/99

PENDING TRADEMARK APPLICATIONS

<u>Trademark</u>	<u>Appln. No.</u>	<u>Filing Date</u>
PROVIDING SOLUTIONS FOR A SIMPLER TOMORROW	75/478,637	05/04/98
WORLD'S EMPLOYER	75/478,638	05/04/98
EXPRESS TRAK	75/612,680	12/28/98
I GOT A JOB	76/020,630	04/07/00
EXPRESS PROFESSIONAL STAFFING	76/040,636	05/04/00
HELPING PEOPLE SUCCEED	76/049,055	05/15/00
EXPRESS CONNECT	76/271,379	06/14/01