

11-06-2001



OMB No. 0651-0011 (exp. 4/94)

101892702

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original document.

1. Name of conveying party(ies):
Fleet Retail Finance, Inc.
40 Broad Street
Boston, Massachusetts 02109

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

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

Name and address of receiving party:
Drug Emporium, Inc.
155 Hidden Ravines Drive
Powell, Ohio 43065

- ☐ Individual(s) _____
☐ Association _____
☐ General Partnership _____
☐ Limited Partnership _____
☒ Corporation-State Delaware
☐ Other _____

10-30-2001
U.S. Patent & TMO/TM Mail Rpt Dt. #26

2. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other Release of Security Interest

Execution Date: September 24, 2001

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. Application number(s) or patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)
1,157,763; 1,180,620; 1,222,834

Additional numbers attached? ☐ Yes ☒ No

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

Name: Elizabeth C. Buckingham

Internal Address: Dorsey & Whitney LLP

Street Address: Suite 1500, 50 South Sixth Street

City: Minneapolis State: MN ZIP: 55402-1498

5. Total Number of applications and registrations involved: 3

6. Total fee (37 CFR 3.41): \$90.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

7. Deposit account number:
04-1420

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

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8. 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.

Elizabeth C. Buckingham
Name of person Signing

Elizabeth C. Buckingham
Signature

October 30, 2001
Date

Total number of pages comprising cover sheet:

OMB No. 0651-0011 (exp. 4/94)

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Mail documents to be recorded with required cover sheet information to:

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10-30-2001

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RELEASE OF SECURITY INTEREST IN INTELLECTUAL PROPERTY COLLATERAL

This RELEASE OF SECURITY INTEREST IN INTELLECTUAL PROPERTY COLLATERAL (this "Release"), dated as of September 24, 2001, is made by Fleet Retail Finance, Inc., as agent (the "Agent") pursuant to the termination of the Credit Agreement (as defined below) with Drug Emporium, Inc. (the "Borrower").

WHEREAS, the Borrowers and the Agent entered into that certain Credit Agreement, dated as of March 26, 2001 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Credit Agreement"), among the Borrower, the Agent, and the various financial institutions party to the Credit Agreement as the lenders thereunder (each individually a "Lender", and collectively the "Lenders"), pursuant to which Credit Agreement the Lenders made credit extensions to the Borrower and the Borrower granted security interests pursuant to the agreements listed on Annex I hereto (collectively, the "Security Agreements") (terms used in this Release and not herein defined shall have the meanings set forth in the Credit Agreement);

WHEREAS, the Administrative Agent acknowledges full payment, performance and satisfaction of the obligations under the Credit Agreement secured by the Security Agreements; and

WHEREAS, the Borrower has requested that the Agent release its security interest in the Collateral, as defined in the Security Agreements in connection with the termination of the Credit Agreement and the Security Agreements (the "Released Collateral").

NOW THEREFORE, the Agent hereby **RELEASES** all of its security interest in the collateral listed on the schedules attached to each of the Security Agreements and made a part hereof and any other Released Collateral described in the aforementioned Security Agreements.

The Agent agrees, at the Borrower's expense, to cooperate with the Borrower and its subsidiaries and to provide the Borrower and its subsidiaries with the information and additional authorization necessary to effect the release of the Agent's security interest in the Released Collateral.

IN WITNESS WHEREOF, the Agent has executed this Release as of the date first above written.

FLEET RETAIL FINANCE, INC.

By: James R. Dore
Name: James R. Dore
Title: Director

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF Massachusetts

COUNTY OF Middlesex

)
)
)

On this 24 day of September __, 2001, before me, the undersigned, a Notary Public in and for the county aforesaid, personally appeared James R. Dore to me known personally, and who, being by me duly sworn, deposes and says that s/he is the Director of the Agent as described in and which executed the above instruments, and s/he has been authorized to execute said instrument on behalf of said entity pursuant to said authority.

IN WITNESS WHEREOF, I hereto set my hand and official seal.


Notary Public

My commission expires: 9/2/04

ANNEX I

Trademark and Trademark Application Security Agreement

**TRADEMARK AND TRADEMARK
APPLICATIONS SECURITY AGREEMENT****BankBoston Retail Finance Inc.
AGENT**October 28, 1998

THIS AGREEMENT is made between

BankBoston Retail Finance Inc. (in such capacity, the "Agent"), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as agent for a syndicate of Lenders (the "Lenders")

and

Drug Emporium of Michigan, Inc. (hereinafter, the "Guarantor"), a Delaware corporation with offices at 155 Hidden Ravines Drive, Powell, Ohio 43065

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

WITNESSETH:

1 **BACKGROUND:** The Agent, the Lenders, and Drug Emporium, Inc., a Delaware corporation (the "Borrower") have entered in a certain Loan and Security Agreement of even date (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. The Guarantor has executed and delivered a Guaranty of even date in favor of the Agent and the Lenders to which the Guarantor has guaranteed all Liabilities of the Borrower to the Agent and the Lenders. In order to secure such Guaranty the Guarantor has executed and delivered to the Agent and the Lenders a Security Agreement (as such agreement may be modified, supplemented, amended or restated from time to time, hereinafter, the "Security Agreement") under which the Guarantor's Liabilities are to be secured by certain of the Guarantor's assets, including all Marks. (Terms used herein which are defined in the Security Agreement are used as so defined).

2 **GRANT OF SECURITY INTEREST:** To secure the Liabilities, the Guarantor hereby

creates a security interest in favor of the Agent (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"):

(a) All of the Guarantor'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 Guarantor's rights corresponding to any of the foregoing throughout the world.

3. **PROTECTION OF MARKS BY GUARANTOR:** The Guarantor 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 Guarantor's sole cost, expense, and risk, pursue the prompt, diligent, processing of each Application for Registration which is the subject of the security interest created herein and not abandon or delay any such efforts.

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

4. **GUARANTOR'S REPRESENTATIONS AND WARRANTIES:** The Guarantor 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

Guarantor.

(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 Agent.

(c) The Guarantor shall give the Agent written notice (with reasonable detail) within Ten (10) days following the occurrence of any of the following:

(i) The Guarantor's obtaining rights to, and filing 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 Guarantor's right to sell products containing the trademarks of others in the ordinary course of Guarantor's business).

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

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

5 AGREEMENT APPLIES TO FUTURE MARKS:

(a) The provisions of this Security Agreement shall automatically apply to any such personal 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 Guarantor hereby authorizes the Agent to take all such action to protect the 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 Agent's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

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

(a) The Guarantor first provides the Agent with written notice of the Guarantor's

intention to so sue for enforcement of any Mark.

(b) Any money damages awarded or received by the Guarantor 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 Guarantor may terminate or limit the Guarantor's rights under this Section 6.

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

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

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

8. RIGHTS UPON DEFAULT: Upon the occurrence of any Event of Default, the 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 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 Agent that an Event of Default has occurred and that the Agent is authorized to exercise such rights and remedies.

9. AGENT AS ATTORNEY IN FACT:

(a) The Guarantor hereby irrevocably constitutes and designates the Agent as and the Guarantor'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 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 Agent.

(c) The 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 Agent elects to do any such act or to exercise any of its 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 Guarantor 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 Agent of the Marks, as authorized hereunder in connection with the exercise of the Lenders' rights and remedies under this Agreement and under the Security Agreement shall be coextensive with the Guarantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges.

(b) None of this Agreement, the Security Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the 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 Security Agreement. All provisions of the Security Agreement shall apply to the Marks. The 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 Security Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Security 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 Guarantor and the Agent respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

DRUG EMPORIUM OF MICHIGAN, INC.
(The "Guarantor")

BANKBOSTON RETAIL FINANCE INC.
(The "Agent")

By: Michael P. Leach
Name: Michael P. Leach
Title: VP and Treasurer

By: [Signature]
Name: [Signature]
Title: Managing Director

THE STATE OF OHIO
COUNTY OF DELAWARE, SS

Then personally appeared before me Michael P. Leach who acknowledged that such person is the duly authorized VP and Treasurer of Drug Emporium of Michigan, Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 28 day of October, 1998

Kathleen A. Diersing
Notary Public

My Commission Expires:

KATHLEEN A. DIERSING

Notary Public, State of Ohio

My Commission Expires June 18, 2003

THE STATE OF OHIO
COUNTY OF DELAWARE, SS

Then personally appeared before me Michael P. Leach who acknowledged that such person is the duly authorized Managing Director of BankBoston Retail Finance Inc. and that such person executed the foregoing instrument on its behalf.

Witness my hand and seal this 28 day of October, 1998..

Kathleen A. Diersing
Notary Public

My Commission Expires:

KATHLEEN A. DIERSING

Notary Public, State of Ohio

My Commission Expires June 18, 2003

EXHIBIT A

to

TRADEMARK AND TRADEMARK APPLICATIONS SECURITY AGREEMENT

Grantor's now owned or existing or hereafter acquired or arising registered service marks and initial Federal Service Mark Application, Registered Trademark, and Federal Trademark Application, including without limitation the following:

Federal-U.S. Registration No. 1,157,763, Principal
Register, DRUG EMPORIUM Registration
Date: June 16, 1981

Federal-U.S. Registration No. 1,180,620, Principal
Register, DRUG EMPORIUM PLUS DESIGN,
Registration Date: December 1, 1981

Federal-U.S. Registration No. 1,222,834, Principal
Register, DRUG EMPORIUM, Registration
Date: January 4, 1983

Federal-U.S. Registration No. 1,738,819, Principal
Register, SAVINGS SO BIG YOU NEED A SHOPPING
CART!, Registration Date: December 8, 1992

DORSEY & WHITNEY LLP



10-30-2001

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October 30, 2001

Commissioner For Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3513

BY EXPRESS MAIL No. EL598908768US

Re: Recordal of Release of Security Interest
Our File: 0256.ASG

Dear Commissioner:

Enclosed herewith in connection with the recordal of the above Release of Security Interest are the following documents:

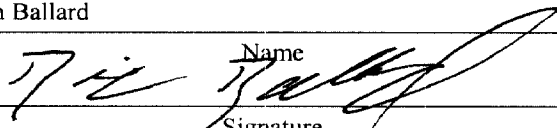
- Release of Security Interest in Intellectual Property Collateral regarding Registration Nos. 1,157,763; 1,180,620; 1,222,834;
- Recordation Form Cover Sheet; and
- Check in the amount of \$90.00 to cover the recording fee.

Express Mail mailing label number EL598908768US

Date of Deposit October 30, 2001

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

Brian Ballard


Name
Signature

RECORDED: 10/30/2001

TRADEMARK
REEL: 002393 FRAME: 0785