



Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

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101922075

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):

**The Mark Group, Inc.  
Mark Group, Inc.**

12-701

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

Execution Date: **November 19, 2001**

2. Name and address of receiving party(ies)

Name: **Wells Fargo Retail Finance, LLC**

Internal Address: **Suite 1800**

Street Address: **One Boston Place**

City: **Boston** State: **MA** Zip: **02108**

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other **limited liability company**

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)

B. Trademark Registration No.(s)

**see attached**

Additional number(s) attached  Yes  No

2402032

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

Name: **Amanda Jane Elliott**

Internal Address: **Paul, Hastings, Janofsky  
& Walker, LLP**

Street Address: **600 Peachtree St., NE  
Suite 2400**

City: **Atlanta** State: **GA** Zip: **30308**

6. Total number of applications and registrations involved: 9

7. Total fee (37 CFR 3.41).....\$ **240.00**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

**16-0752**

(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.*

**Amanda Jane Elliott**

Name of Person Signing

*Amanda Jane Elliott*  
Signature

**December 5, 2001**

Date

16

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

12/18/2001 LMJELLER 00000251 2402032

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

01 FC:481  
02 FC:482

40.00 OP  
200.00 OP

**Question 4(B)**

**Trademark Registration Numbers**

<u>Name</u>	<u>Record Owner</u>	<u>Registration No.</u>
Rum Runner	Mark Group, Inc.	#2,402,032
Mark, Fore & Strike	The Mark Group, Inc.	#2,117,698
Charles Keath	The Mark Group, Inc.	#2,125,203
Mark, Fore & Strike Inc. and design	The Mark Group, Inc.	#665,772
Boston Proper	The Mark Group, Inc.	#1,750,625
Boston Proper	The Mark Group, Inc.	#1,201,644
Enticements, Ltd.	The Mark Group, Inc.	#1,274,671
Charles Keath, Ltd.	The Mark Group, Inc.	#1,334,269
Sketches	The Mark Group, Inc.	#1,323,222

## TRADEMARK SECURITY AGREEMENT

THIS AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT (this "Agreement") is made as of this 19<sup>th</sup> day of November 2001, between The Mark Group, Inc., a Florida corporation (the "Borrower"), and Wells Fargo Retail Credit, LLC, a Delaware limited liability company (the "Lender").

### WITNESSETH:

WHEREAS, in connection with the initial capitalization of the Lender, Foothill Capital Corporation, a California corporation ("Foothill") contributed to the Lender all of its right, title and interest in and to that certain Amended and Restated Loan and Security Agreement dated as of April 15, 1998 between the Borrower and Lender, as amended and modified by that certain First Amendment to Amended and Restated Loan and Security Agreement dated as of December 28, 1998, that certain Second Amendment to Amended and Restated Loan and Security Agreement dated as of July 10, 2000, that certain Third Amendment to Amended and Restated Loan and Security Agreement dated as of November 1, 2000, that certain Fourth Amendment to Amended and Restated Loan and Security Agreement dated as of November 30, 2000, that certain Fifth Amendment to Amended and Restated Loan and Security Agreement dated as of April, 2001, (as heretofore further modified and amended, the "Prior Loan Agreement"); and

WHEREAS, the Lender, as successor in interest to Foothill under the Prior Loan Agreement, and the Borrower have agreed to amend and restate the Prior Loan Agreement, as set forth in that certain Second Amended and Restated Loan Agreement of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"); and

WHEREAS, to secure the Obligations (as defined in the Prior Loan Agreement), the Borrower and Foothill executed and delivered that certain Trademark and Security Agreement dated as of December 18, 1996 (as in effect on the date hereof, the "Prior Trademark Security Agreement"); and

WHEREAS, the Lender, as successor in interest to Foothill under the Prior Trademark Security Agreement, has required the Borrower to execute and deliver this Agreement (i) in order to secure the prompt and complete payment, observance and performance of all of the Obligations (as defined in the Loan Agreement) and (ii) as a condition precedent to any extension of credit under the Loan Agreement;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree to amend and restate the Prior Trademark Security Agreement as follows:

1. Defined Terms.

**Trademark Applications**

Name

Applicant

Application No.

None

Schedule 1

Dated as of November 19, 2001

**Current Trademarks**

<u>Name</u>	<u>Record Owner</u>	<u>Registration No.</u>
Rum Runner	Mark Group, Inc.	#2,402,032
Mark, Fore & Strike	The Mark Group, Inc.	#2,117,698
Charles Keath	The Mark Group, Inc.	#2,125,203
Mark, Fore & Strike Inc. and design	The Mark Group, Inc.	#665,772
Boston Proper	The Mark Group, Inc.	#1,750,625
Boston Proper	The Mark Group, Inc.	#1,201,644
Enticements, Ltd.	The Mark Group, Inc.	#1,274,671
Charles Keath, Ltd.	The Mark Group, Inc.	#1,334,269
Sketches	The Mark Group, Inc.	#1,323,222

**Trade Names**

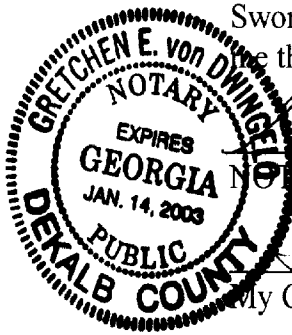
None.

**Trademarks Not Currently In Use**

None.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

TRADEMARK SECURITY AGREEMENT



Sworn to and subscribed before me this 19<sup>th</sup> day of November, 2001.

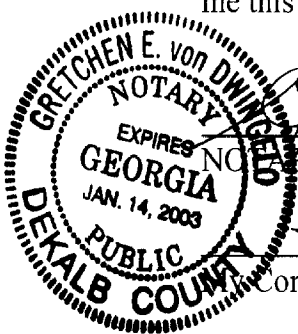
[Signature]  
NOTARY PUBLIC

January 14, 2003  
My Commission Expires

THE MARK GROUP, INC.

By: [Signature]  
Its: President

Accepted and agreed to as of the day and year first above written.



Sworn to and subscribed before me this 19<sup>th</sup> day of November, 2001.

[Signature]  
NOTARY PUBLIC

January 14, 2003  
My Commission Expires

WELLS FARGO RETAIL FINANCE, LLC

By: [Signature]  
Its: Vice President

Accepted and agreed to as of the day and year first above written.

Licenses required by law shall be deemed reasonably and properly given if given at least five (5) days, if such notice is given by facsimile, or eight (8) days, if such notice is given by mail, before such disposition; provided, however, that the Lender may give any shorter notice that is commercially reasonable under the circumstances.

17. Successors and Assigns. This Agreement shall be binding upon the Borrower and its successors and assigns, and shall inure to the benefit of the Lender and its nominees, successors and assigns. The Borrower's successors and assigns shall include, without limitation, a receiver or a trustee of the Borrower; provided, however, that the Borrower shall not voluntarily assign or transfer its rights or obligations hereunder without the Lender's prior written consent.

18. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the laws and decisions of the State of New York without reference to the conflicts or choice of law principles thereof.

19. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

20. Paragraph Titles. The paragraph titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

21. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of a counterpart hereof via facsimile transmission shall be effective as delivery of a manually executed counterpart of this Agreement hereof.

22. Merger. This Agreement represents the final agreement of the Borrower and the Lender with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Borrower and the Lender.

23. Effectiveness. This Agreement shall become effective on the Closing Date.

[Remainder of this page intentionally left blank]

15. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in paragraph 6 hereof or by a writing signed by the parties hereto.

16. Power of Attorney; Cumulative Remedies. (a) The Borrower hereby irrevocably designates, constitutes and appoints the Lender (and all officers and agents of the Lender designated by the Lender in its sole and absolute discretion) as the Borrower's true and lawful attorney-in-fact, and authorizes the Lender and any of the Lender's designees, in the Borrower's or the Lender's name, upon the occurrence and during the continuation of an Event of Default to take any action and execute any instrument necessary or reasonably advisable to accomplish the purposes of this Agreement, including, without limitation, to (i) endorse the Borrower's name on all applications, documents, papers and instruments necessary or reasonably desirable for the Lender in the use of the Trademarks or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks or the Licenses to anyone, and (iv) take any other actions with respect to the Trademarks or the Licenses as the Lender reasonably deems in its best interest for the payment of the Obligations. The Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement is terminated. The Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Lender under the Loan Agreement or any other Loan Document, but rather is intended to facilitate the exercise of such rights and remedies.

(b) The Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies 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 Borrower may be located or deemed located. Upon the occurrence of an Event of Default and the election by the Lender to exercise any of its rights and remedies under Section 9-504 or Section 9-505 of the Uniform Commercial Code, or Section 9-610, Section 9-620 or other equivalent provisions of revised Article 9 of the Uniform Commercial Code as in effect in any jurisdiction, with respect to the Trademarks or the Licenses, the Borrower agrees to assign, convey and otherwise transfer title in and to the Trademarks and the Licenses to the Lender or any transferee of the Lender and to execute and deliver to the Lender or any such transferee all such agreements, documents and instruments as may be necessary, in the Lender's sole discretion, to effect such assignment, conveyance and transfer. All of the Lender's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by the Loan Agreement or by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence of an Event of Default, the Lender may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement or any of the other Loan Documents. The Borrower agrees that any notification of intended disposition of any of the Trademarks or the



connection with the foregoing shall be borne by the Borrower. The Lender shall not have any duty with respect to the Trademarks or the Licenses. Without limiting the generality of the foregoing, the Lender shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks or the Licenses against any other parties, but the Lender may do so at its option from and after the occurrence of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of the Borrower and shall be added to the Obligations secured hereby.

11. Indemnification by the Borrower. The Borrower hereby agrees to indemnify and hold harmless the Lender for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including reasonable attorneys' fees) of any kind whatsoever which may be imposed on, incurred by or asserted against the Lender in connection with or in any way arising out of any suits, proceedings or other actions, relating to any or all of the Trademarks or the Licenses; unless with respect to any of the above, the Lender is judicially determined to have acted or failed to act with gross negligence or willful misconduct. The indemnification in this paragraph shall survive the termination of this Agreement.

12. The Lender's Right to Sue. From and after the occurrence of an Event of Default, the Lender shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Trademarks and Licenses and, if the Lender shall commence any such suit, the Borrower shall, at the request of the Lender, do any and all lawful acts and execute any and all proper documents reasonably required by the Lender in aid of such enforcement. The Borrower shall, upon demand, promptly reimburse the Lender for all costs and expenses incurred by the Lender in the exercise of its rights under this paragraph 12 (including, without limitation, fees and expenses of attorneys and paralegals for the Lender).

13. Waivers. The Lender's failure, at any time or times hereafter, to require strict performance by the Borrower of any provision of this Agreement shall not waive, affect or diminish any right of the Lender thereafter to demand strict compliance and performance therewith nor shall any course of dealing between the Borrower and the Lender have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of the Borrower contained in this Agreement shall be deemed to have been suspended or waived by the Lender unless such suspension or waiver is in writing signed by an officer of the Lender and directed to the Borrower specifying such suspension or waiver.

14. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but 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 hereof, 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.

Schedule 2

to

Trademark Security Agreement

Dated as of November 19, 2001

**Licenses**

None

mark applications, which are Trademarks under paragraph 4 above or under this paragraph 6; (ii) by amending Schedule 2 to include any future license agreements that are Licenses under paragraph 4 above or under this paragraph 6; and (iii) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule 1 thereto, as the case may be, such future trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and containing on Schedule 2 thereto as the case may be such future license agreements.

7. Royalties. The Borrower hereby agrees that the use by the Lender of the Trademarks and Licenses as authorized hereunder in connection with the Lender's exercise of its rights and remedies under paragraph 16 or pursuant to any Loan Document shall be coextensive with the Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Lender to the Borrower.

8. Right to Inspect; Further Assignments and Security Interest. The Lender may from time to time hereafter (during normal business hours if no Event of Default then exists or at any time if an Event of Default then exists), have access to, examine, audit, make copies (at the Borrower's expense) and extract from and inspect the Borrower's premises and examine the Borrower's books, records and operations relating to the Trademarks and the Licenses. The Borrower agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks without the prior and express written consent of the Lender and (ii) not to sell or assign its respective interests in the Licenses without the prior and express written consent of the Lender.

9. Nature and Continuation of the Lender's Security Interest; Termination of the Lender's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall terminate only when the Obligations have been paid in full and the Loan Agreement has been terminated. When this Agreement has terminated, the Lender shall promptly execute and deliver to the Borrower, at the Borrower's expense, all termination statements and other instruments as may be necessary or proper to terminate the Lender's security interest in the Trademarks and Licenses, subject to any disposition thereof which may have been made by the Lender pursuant to this Agreement.

10. Duties of the Borrower. The Borrower shall have the duty, to the extent desirable in the normal conduct of the Borrower's business, (a) to prosecute with reasonable diligence any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement and (b) to take all reasonable and necessary action to preserve and maintain all of the Borrower's rights in the Trademarks and the Licenses. The Borrower further agrees (i) not to abandon any Trademark or License material to its business without the prior written consent of the Lender, and (ii) to use its best efforts to maintain in full force and effect the Trademarks and the Licenses that are or shall be necessary or economically desirable in the operation of the Borrower's business. Any expenses incurred in

Inventory and Equipment now or hereafter owned by the Borrower and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of clause (iii) of this paragraph 4, the grant of a security interest in the Licenses shall not include any License agreement in effect as of the date hereof which by its terms prohibits the grant of the security interest contemplated by this Agreement; provided, however, that upon the termination of such prohibitions for any reason whatsoever, the provisions of clause (iii) of this paragraph 4 shall be deemed to apply thereto automatically; and provided, further however, that the Borrower shall fully disclose to the Lender all such prohibitions and shall promptly notify the Lender upon the termination of such prohibitions.

5. Restrictions on Future Agreements. The Borrower will not, without the Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and the Borrower further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including, without limitation, licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to the Lender under this Agreement or the rights associated with the Trademarks or Licenses, provided, however that the Borrower shall be permitted to exercise its reasonable business judgment in determining whether to prosecute potential infringers with respect to Trademarks or Licenses that are not material to Borrower's business.

6. New Trademarks and Licenses. The Borrower represents and warrants that, from and after the Agreement Date, (a) the Trademarks listed on Schedule 1 include all of the trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned or held by the Borrower, (b) the Licenses listed on Schedule 2 include all of the license agreements under which the Borrower is the licensee or licensor, and (c) no Liens, claims or security interests in such Trademarks or Licenses have been granted by the Borrower to any Person other than the Lender and except as disclosed in the Loan Agreement. If, prior to the termination of this Agreement, the Borrower shall (i) obtain rights to any new trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (ii) become entitled to the benefit of any trademarks, trade names, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals or license agreements whether as licensee or licensor or (iii) enter into any new license agreement, the provisions of paragraph 4 above shall automatically apply thereto (to the extent permitted by licensors under agreements in connection with the granting of such licenses). The Borrower shall give to the Lender written notice of events described in clauses (i) and (ii) of the preceding sentence promptly after the occurrence thereof. The Borrower hereby authorizes the Lender to modify this Agreement unilaterally (i) by amending Schedule 1 to include any future trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service

(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Loan Agreement shall have the meaning specified for such term in the Loan Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and paragraph references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Incorporation of Premises. The premises set forth above are incorporated into this Agreement by this reference thereto and are made a part hereof.

3. Incorporation of the Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

4. Security Interest in Trademarks and Trademarks Licenses. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, the Borrower hereby grants to the Lender a security interest in, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of the Borrower's now owned or existing and hereafter acquired or arising: (i) trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on Schedule 1 attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, (d) the goodwill of the Borrower's business symbolized by the foregoing and connected therewith, and (e) all of the Borrower's rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names, registered trademarks and trademark applications, service marks, registered service marks and service mark applications, together with the items described in clauses (a)-(e) in this paragraph 4(i), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); (ii) the goodwill of the Borrower's business connected with and symbolized by the Trademarks; and (iii) rights under or interest in any trademark License agreements with any other party, whether the Borrower is a licensee or licensor under any such License agreement, including, without limitation, the License agreements listed on Schedule 2 attached hereto and made a part hereof, and the right to use the foregoing in connection with the enforcement of the Lender's rights under the Loan Agreement, including without limitation, the right to prepare for sale and sell any and all