

12-21-2001

ET

Docket No.:

Y



101923625

Tab settings

To the Honorable Commissioner of Pat.

Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Excel Industries, Inc.

Individual(s)
 General Partnership
 Corporation-State Kansas
 Other

Additional names(s) of conveying party(ies) Yes No



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

Name: U.S. Bank National Association

Internal Address: _____

Street Address: 425 Walnut Street

City: Cincinnati State: OH ZIP: 45202

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

If assignee is not domiciled in the United States, a domestic designation is Yes N
 (Designations must be a separate document from Additional name(s) & address(es) Yes N

3. Nature of conveyance: 12/18/01

Assignment
 Security Agreement
 Other

Merger
 Change of Name

Execution Date: December 10, 2001

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

A. Trademark Application No.(s)
78/086,756 76/223,847 76/340,648

Additional numbers Yes No

B. Trademark Registration No.(s)

<u>1,360,128</u>	<u>1,985,194</u>	<u>2,217,900</u>
<u>1,717,536</u>	<u>2,232,866</u>	<u>2,307,355</u>

Yes No

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

Name: Jean-Marc Brun, Esquire

Internal Address: _____

Vorys Sater Seymour and Pease, LLP

Street Address: 1828 L Street, N.W.: 11th Floor

City: Washington State: DC ZIP: 20036

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:
22-0585

12/20/2001 DBYRNE 00000123 78086756
 41 FC:481 40.00 OP
 42 FC:482 200.00 OP

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.

Jean-Marc Brun Name of Person Signing
Jean-Marc Brun Signature
December 7, 2001 Date

Total number of pages including cover sheet, attachments, and 13

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is made between EXCEL INDUSTRIES, INC., a Kansas corporation, having an office at 200 South Ridge Road, Hesston, Kansas 67062-2097 ("Borrower"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Bank" or "the Bank").

WITNESSETH

WHEREAS, Borrower and the Bank have entered into a Financing Agreement of even date herewith, providing for the making of Loans (as defined in the Financing Agreement) and the issuance of Letters of Credit (as defined in the Financing Agreement) (as used in this Agreement, the term "Financing Agreement" means the Financing Agreement described above in this paragraph, as the same may be amended, modified, extended, renewed, replaced or supplemented from time to time);

NOW THEREFORE, in consideration of the foregoing and other benefits accruing to Borrower, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants and agrees with, and makes the following representations and warranties to the Bank as follows:

1. DEFINITIONS.

1.1 Financing Agreement. Any capitalized term used but not defined in this Agreement shall have the meaning ascribed thereto in the Financing Agreement.

1.2 Other Definitional Provisions; Construction. Unless otherwise specified,

(i) As used in this Agreement, accounting terms relating to Borrower not defined in this Agreement have the respective meanings given to them in accordance with GAAP.

(ii) References to the Uniform Commercial Code, or UCC, mean as enacted in the particular jurisdiction(s) encompassed by the reference.

(iii) The definition of any document or instrument includes all schedules, attachments and exhibits thereto and all renewals, extensions, supplements, restatements and amendments thereof. All Schedules and Exhibits attached to this Agreement are incorporated into, made and form an integral part of, this Agreement for all purposes.

(iv) "Hereunder," "herein," "hereto," "this Agreement" and words of similar import refer to this entire document; "including" is used by way of illustration and not by way of limitation, unless the context clearly indicates the contrary; the singular includes the plural and conversely; and any action required to be taken by Borrower is to be taken promptly, unless the context clearly indicates the contrary.

(v) All of the uncapitalized terms contained in this Agreement which are defined under the Code will, unless the context indicates otherwise, have the meanings provided for now or hereafter in the Code.

(vi) “material item of the Trademark Collateral” means the mark “Hustler” and each item of the Trademark Collateral unless, with respect to the applicable item of Trademark Collateral, the goodwill of the business connected with and symbolized by such application, registration, trademark or service mark is not necessary in the conduct of Borrower’s business.

2. GRANT OF SECURITY. As security for the full, prompt and complete performance of the Obligations, Borrower hereby pledges and grants to the Bank a continuing security interest in, and Lien on, Borrower’s entire right, title and interest in and to the Trademark Collateral. As used in this Agreement, “Trademark Collateral” means, collectively: all of Borrower’s right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed: trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service mark applications, including each mark, registration, and application listed on Schedule I, and (i) renewals thereof, (ii) all income, royalties, damages and payments now and in the future due or payable under or with respect thereto, including damages and payment for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, (iv) all rights corresponding thereto throughout the world, (v) the Trademark License Rights (as defined below) and (vi) together in each case with the goodwill of Borrower’s business connected with the use of, and symbolized by, the Trademark Collateral. Without limiting any other rights or interests set forth or granted in any of the other Loan Documents, the Trademark Collateral excludes any U.S. intent to use trademark applications until evidence of use of the mark has been filed and accepted by the U.S. Patent and Trademark Office.

3. LICENSE; SECURITY INTEREST.

3.1 Grant of Licenses. Borrower hereby grants, assigns and conveys to the Bank Borrower’s entire right, title and interest in, to and under all license agreements with any Person, whether Borrower is licensor or licensee under any such license agreement, including the licenses listed on Schedule I, with respect to any trademarks, service marks, and trade names and all rights thereto and thereunder (such rights as licensor or licensee sometimes referred to in this Agreement collectively as the “Trademark License Rights”).

3.2 License by the Bank. In consideration of Borrower’s agreement to perform, comply with, and observe each of the terms of this Agreement and to pay and discharge the Obligations, the Bank, grants to Borrower, without recourse, representation or warranty, a personal, non-transferrable exclusive license, to exercise the Trademark License Rights (such right and license referred to in this Agreement as the “License”). Upon the occurrence and during the continuation of an Event of Default and upon notice from the Bank to Borrower terminating the License: (i) the License will automatically and immediately terminate without any further notice or demand (which Borrower expressly waives), (ii) all rights and interests of Borrower in, to and under the License will revert to the Bank, and (iii) the Bank shall have all

other rights and remedies provided in this Agreement and in the other Loan Documents. If the Event of Default is cured to the Bank's satisfaction or is waived in writing by the Bank, then, without any further action on the part of the Bank, the License will immediately revert with Borrower on the cessation of the Event of Default subject to the terms of this Agreement.

3.3 Security Interest in the License. As security for the full and prompt payment and performance of all of the Obligations, Borrower hereby assigns, pledges and grants to the Bank a continuing security interest in, and Lien on, all of the right, title and interest of Borrower in and to the License.

4. REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants that:

(i) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademark Collateral and the License free and clear of any Liens, including any releases and covenants by Borrower not to sue any other Person in respect of the Trademark Collateral or the License, except as otherwise disclosed on Schedule I and except for U.S. intent to use trademark applications.

(ii) Set forth in Schedule I is a complete and accurate list of all the Trademark License Rights, trademarks, trade names, service marks, trademark and service mark registrations, U.S. intent to use trademark applications and applications for trademark or service mark registrations owned by Borrower.

(iii) Each trademark, service mark, trade name, trademark and service mark registration, and application for trademark or service mark registration identified in Schedule I is subsisting and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, except as otherwise disclosed in Schedule I, and each registered trademark and service mark and each application for trademark and service mark registration is valid, registered or registrable and enforceable. Borrower has notified the Bank in writing of all prior uses of any material item of the Trademark Collateral of which Borrower is aware which could lead to such item becoming invalid or unenforceable, including prior unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with such item.

(iv) Borrower has not granted any license, release, covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Trademark Collateral except as otherwise disclosed on Schedule I.

(v) Borrower has used reasonable and proper statutory notice in connection with its use of each registered trademark and service mark.

(vi) The Trademark License Rights are in full force and effect, and Borrower is not in default under any of the Trademark License Rights and no event has occurred which with notice, the passage of time, the satisfaction of any condition, or all of them, might constitute a default by Borrower under the Trademark License Rights.

(vii) Except for the recording of this Agreement with the United States Patent and Trademark Office and the filing of applicable perfecting documents with the State of Kansas, no authorization, consent, approval or other action by, and no notice to or filing or recording with, any Governmental Authority is currently or is reasonably expected to be required either (a) for the grant by Borrower of the Lien granted hereby or for the execution, delivery or performance of this Agreement by Borrower, or (b) for the perfection of or the exercise by the Bank of its rights and remedies under this Agreement.

5. FURTHER ASSURANCES.

5.1 Required Borrower Actions. Borrower will from time to time, at its expense, promptly execute and deliver all further instruments, documents and agreements take all further action, that may be necessary or desirable, or that the Bank may reasonably request, in order to (i) continue, perfect and protect the security interests and Liens granted or purported to be granted by this Agreement or (ii) enable the Bank to exercise and enforce its rights and remedies under this Agreement with respect to any part of the Trademark Collateral and the License, or both.

5.2 Financing Statements. Without limiting the generality of Section 5.1, the Bank is authorized by Borrower (i) to file one or more financing statements disclosing Bank's security interest and Lien under this Agreement without Borrower's signature appearing thereon and to correct or complete, or to cause to be corrected or completed, any financing statements, continuation statements or other such documents as have been filed naming Borrower as debtor and Bank as secured party and (ii) to give notice to any creditor or landlord of Borrower or to any other Person to whom Bank may reasonably determine it is necessary or desirable under applicable law to give notice to perfect or preserve Bank's interests in the Trademark Collateral. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Trademark Collateral or any part thereof or the License will be sufficient as a financing statement.

5.3 Further Information. Borrower will furnish to the Bank from time to time statements and schedules further identifying and describing the Trademark Collateral and the License and all other reports in connection with the Trademark Collateral and the License as the Bank may reasonably request, all in reasonable detail.

5.4 Additional Ownership Interests. Borrower agrees that, should it obtain an ownership interest in any of the Trademark License Rights, or in any trademark, service mark, trade name, trademark or service mark registration, or application for trademark or service mark registration, which is not now identified in Schedule I, (i) Borrower will give prompt written notice thereof to the Bank, (ii) the provisions of Section 2 shall automatically apply to any such Trademark License Rights, trademark, service mark, trademark or service mark registration, or application for trademark or service mark registration, and (iii) any such Trademark License Rights, trademark, service mark, trademark or service mark registration, or application for trademark or service mark registration, together with the goodwill of the business connected with the use of the mark and symbolized by it, shall automatically become part of the Trademark Collateral. Borrower authorizes the Bank to modify this Agreement by amending Schedule I to

include any of the Trademark License Rights, trademark, service mark, trademark or service mark registration, or application for trademark or service mark registration, which becomes part of the Trademark Collateral under this Section 5.4.

5.5 Maintenance of Rights. With respect to each material item of the Trademark Collateral, Borrower will take all necessary steps in any proceeding before the United States Patent and Trademark Office (or any similar office or agency in any other country or any political subdivision of that country) or in any court (i) to maintain and pursue any trademark application now or in the future included in the Trademark Collateral and (ii) to maintain each registered trademark, service mark, and trademark or service mark registration, and to pursue each application for trademark or service mark registration now or hereafter included in the Trademark Collateral, including the filing of applications for renewal, the payment of maintenance fees, and the participation in opposition, interference and infringement proceedings. To the extent necessary to the conduct of its business, Borrower agrees to take corresponding steps with respect to each new or other registered trademark, service mark trademark or service mark registration, and application for trademark or service mark registration to which Borrower is now or later becomes entitled. Any expenses incurred in connection with such activities shall be borne by Borrower. Borrower shall not abandon any right to file an application for trademark or service mark registration, or abandon any pending application, registration, trademark or service mark, unless the goodwill of the business connected with and symbolized by such application, registration, trademark or service mark is not necessary in the conduct of Borrower's business.

5.6 Notification. Borrower will notify the Bank immediately and in writing if Borrower learns (i) that any of the Trademark Collateral may become abandoned or dedicated; (ii) of any adverse determination or any development (including the institution of any proceeding in the United States Patent and Trademark Office or any other U.S. or foreign court or tribunal of any kind) regarding any material item of the Trademark Collateral; or (iii) that Borrower is or potentially could be in default of any of the Trademark License Rights.

5.7 Infringement. If Borrower becomes aware that any item of the Trademark Collateral is infringed or misappropriated by any Person, Borrower will promptly notify the Bank and will, if necessary under the circumstances, promptly sue for infringement or misappropriation and for recovery of all damages caused by the infringement or misappropriation, and will take all such other actions as Borrower deems appropriate under the circumstances to protect the Trademark Collateral. Any expense incurred in connection with the foregoing activities shall be borne by Borrower.

5.8 Statutory Notice. Borrower will continue to use reasonable and proper statutory notice in connection with its use of each registered trademark or service mark.

6. TRANSFERS AND OTHER LIENS. Borrower shall not:

(i) sell, assign (by operation of law or otherwise) or otherwise dispose of any of the Trademark Collateral or the License, except to the extent, if any, as expressly permitted by the Financing Agreement, except that Borrower may license any Trademark Collateral in the