

02-06-2002

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027

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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):

Smithway Motor Xpress, Inc.

1-31-02

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State Iowa, Other

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

2. Name and address of receiving party(ies)

Name: LaSalle Bank National Association

Internal Address: Suite 425

Street Address: 135 South LaSalle Street

City: Chicago State: IL Zip: 60603

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State Delaware, 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, Security Agreement, Change of Name, Other Trademark Security Agreement

Execution Date: December 28, 2001

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1597850

Additional number(s) attached Yes No

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

Name: Imee Maravilla

Internal Address: LaSalle Bank National Association Suite 425

Street Address: 135 South LaSalle Street

City: Chicago State: IL Zip: 60603

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

John Mostofi Name of Person Signing

[Signature] Signature

January 29, 2002 Date

Total number of pages including cover sheet, attachments, and document: 7

02/05/2002 TDIAZ1 00000214 1597850

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40.00 DP

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



**TRADEMARK SECURITY AGREEMENT**

THIS TRADEMARK SECURITY AGREEMENT (the "Security Agreement") made this 28th day of December, 2001, by **Smithway Motor Xpress, Inc.**, an Iowa corporation ("**Smithway Inc.**") in favor of **LaSalle Bank National Association**, with an office at 135 South LaSalle Street, Suite 425, Chicago, Illinois 60603 ("**Lender**"):

W I T N E S S E T H

WHEREAS, Smithway Inc. and East West Motor Express, Inc. (collectively, the "**Borrowers**") and Lender are parties to a certain Amended and Restated Loan and Security Agreement of even date herewith (as amended, amended and restated or otherwise modified from time to time, the "**Loan Agreement**") and other related loan documents of even date herewith (collectively, with the Loan Agreement, and as each may be amended or otherwise modified from time to time, the "**Financing Agreements**"), which Financing Agreements provide (i) for Lender to, from time to time, extend credit to or for the account of **Borrowers** and (ii) for the grant by **Borrowers** to Lender of a security interest in certain of **Borrowers'** assets, including, without limitation, the trademarks and trademark applications of Smithway Inc.;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Smithway Inc. agrees as follows:

1. Incorporation of Financing Agreements. The Financing Agreements and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Loan Agreement.

2. Grant and Reaffirmation of Grant of Security Interests. To secure the complete and timely payment and satisfaction of the Liabilities, Smithway Inc. hereby grants to Lender, and hereby reaffirms its prior grant pursuant to the Financing Agreements of, a continuing security interest in Smithway Inc. entire right, title and interest in and to all of its now owned or existing and hereafter acquired or arising trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications (other than "intent to use" applications until a verified statement of use is filed with respect to such applications) in connection therewith, including, without limitation, the trademarks and applications listed on Schedule A attached hereto and made a part hereof and the trademarks, and renewals thereof, and all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); all rights corresponding to any of the foregoing throughout the world and the goodwill of the Smithway Inc.'s business connected with the use of and symbolized by the Trademarks. Trademarks do not include any of the foregoing items held under license from third parties.

3. Warranties and Representations. Smithway Inc. warrants and represents to Lender that:

(i) no Trademark has been adjudged invalid or unenforceable by a court of competent jurisdiction nor has any such Trademark been cancelled, in whole or in part and each such Trademark is presently subsisting;

(ii) Smithway Inc. is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Trademark, free and clear of any liens, charges and encumbrances, including without limitation, shop rights and covenants by Smithway Inc. not to sue third persons;

(iii) Smithway Inc. has no notice of any suits or actions commenced or threatened with reference to any Trademark; and

(iv) Smithway Inc. has the unqualified right to execute and deliver this Security Agreement and perform its terms.

4. Restrictions on Future Agreements. Smithway Inc. agrees that until Smithway Inc.'s Liabilities shall have been satisfied in full and the Financing Agreements shall have been terminated, Smithway Inc. shall not, without the prior written consent of Lender, sell or assign its interest in any Trademark or enter into any other agreement with respect to any Trademark which would affect the validity or enforcement of the rights transferred to Lender under this Security Agreement; provided, that prior to the occurrence of an Event of Default, Smithway Inc. may make such sales or assignments as Smithway Inc. deems appropriate in its commercially reasonable judgment, so long as such sale or assignment does not impair Smithway Inc.'s or Lender's ability to sell any then existing Inventory or Equipment.

5. New Trademarks. Smithway Inc. represents and warrants that, based on a diligent investigation by Smithway Inc., the Trademarks listed on Schedule A constitute all of the federally registered Trademarks, and federal applications for registration of Trademarks (other than "intent to use" applications until a verified statement of use is filed with respect to such applications) now owned by Smithway Inc. If, before Smithway Inc.'s Liabilities shall have been satisfied in full or before the Financing Agreements have been terminated, Smithway Inc. shall (i) become aware of any existing Trademarks of which Smithway Inc. has not previously informed Lender, or (ii) become entitled to the benefit of any Trademarks, which benefit is not in existence on the date hereof, the provisions of this Security Agreement above shall automatically apply thereto and Smithway Inc. shall give to Lender prompt written notice thereof. Smithway Inc. hereby authorizes Lender to modify this Security Agreement by amending Schedule A to include any such Trademarks.

6. Term. The term of this Security Agreement shall extend until the payment in full of **Borrowers'** Liabilities and the termination of the Financing Agreements.

Smithway Inc. agrees that upon the occurrence of an Event of Default, the use by Lender of all Trademarks shall be without any liability for royalties or other related charges from Lender to Smithway Inc.

7. Product Quality. Smithway Inc. agrees to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with commercially reasonable business practices. Upon the occurrence of an Event of Default, Smithway Inc. agrees that Lender, or a conservator appointed by Lender, shall have the right to establish such additional product quality controls as Lender, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Smithway Inc. under the Trademarks.

8. Release of Security Agreement. This Security Agreement is made for collateral purposes only. Upon payment in full of Smithway Inc.'s Liabilities and termination of the Financing Agreements, Lender shall take such actions as may be necessary or proper to terminate the security interests created hereby and pursuant to the Financing Agreements

9. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Smithway Inc. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Lender in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademarks or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks shall be borne by and paid by Smithway Inc. and until paid shall constitute Liabilities.

10. Duties of Smithway Inc. Smithway Inc. shall have the duty (i) to file and prosecute diligently any trademark applications pending as of the date hereof or hereafter until Smithway Inc.'s Liabilities shall have been paid in full and the Financing Agreements have been terminated, (ii) to preserve and maintain all rights in the Trademarks, as commercially reasonable and (iii) to ensure that the Trademarks are and remain enforceable, as commercially reasonable; provided, however, that prior to the occurrence of an Event of Default, Smithway Inc. shall have the right, within its commercially reasonable judgment, to not perform such duties so long as any such failure to perform such duties does not impair the ability of **Smithway Inc.** or Lender to sell any then existing Inventory or Equipment. Any expenses incurred in connection with Smithway Inc.'s Liabilities under this Section 10 shall be borne by Smithway Inc.

11. Lender's Right to Sue. After an Event of Default, Lender shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and, if Lender shall commence any such suit, Smithway Inc. shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement and Smithway Inc. shall promptly, upon demand, reimburse and indemnify Lender for all costs and expenses incurred by Lender in the exercise of its rights under this Section 11.

12. Waivers. No course of dealing between **Borrowers** and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power

or privilege hereunder or under the Financing Agreements 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 exercise of any other right, power or privilege.

13. Severability. The provisions of this Security 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 Security Agreement in any jurisdiction.

14. Modification. This Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney; Effect on Financing Agreements. All of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Financing Agreements, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Smithway Inc. hereby authorizes Lender upon the occurrence of an Event of Default, to make, constitute and appoint any officer or agent of Lender as Lender may select, in its sole discretion, as Smithway Inc.'s true and lawful attorney-in-fact, with power to (i) endorse Smithway Inc.'s name on all applications, documents, papers and instruments necessary or desirable for Lender in the use of the Trademarks or (ii) take any other actions with respect to the Trademarks as Lender deems to be in the best interest of Lender, or (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone. Smithway Inc. hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until Borrowers' Liabilities shall have been paid in full and the Financing Agreements have been terminated. Smithway Inc. acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under the Financing Agreements but rather is intended to facilitate the exercise of such rights and remedies. Lender shall have, in addition to all other rights and remedies given it by the terms of this Security Agreement and the Financing Agreements, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Illinois.

16. Binding Effect; Benefits. This Security Agreement shall be binding upon Smithway Inc. and its respective successors and assigns, and shall inure to the benefit of Lender, its successors, nominees and assigns.

17. Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and applicable federal law.

18. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

19. Further Assurances. Smithway Inc. agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Lender shall reasonably request from time to time in order to carry out the purpose of this Security Agreement and agreements set forth herein.

20. Survival of Representations. All representations and warranties of Smithway Inc. contained in this Security Agreement shall survive the execution and delivery of this Security Agreement and shall be remade on the date of each borrowing under the Financing Agreements.

IN WITNESS WHEREOF, Smithway Inc. has duly executed this Security Agreement as of the date first written above.

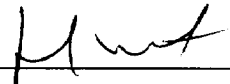
**SMITHWAY MOTOR XPRESS, INC.**

By 

Its Exec. V.P.

Agreed and Accepted  
As of the Date First Written Above

**LASALLE BANK NATIONAL ASSOCIATION**

BY 

Its Sr. VP.

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Inc.\trademark security agmt\loandocs\)

**SCHEDULE A**

**TRADEMARK REGISTRATIONS**

<u>Trademark Description</u>	<u>U.S. Serial/Registration No.</u>	<u>Date Registered</u>
SMX	1597850	May 22, 1990

**TRADEMARK APPLICATIONS**

<u>Trademark Application Description</u>	<u>U.S. Application No.</u>	<u>Date Applied</u>
N/A		

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