

04-12-2002

FORM PTO-1594
(Rev 5-93)



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner c

102053389

original documents or copy thereof.

1. Name of conveying party(ies):

DOLPHIN ACQUISITION CORP.

Individual(s) citizenship:

4-12-02

Association:

General Partnership:

Limited Partnership:

Corporation - State: CALIFORNIA

Other:

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

3. Nature of Conveyance:

- [] Assignment [] Merger
- [X] Security Agreement [] Change of Name
- [] Other

Execution Date: November 28, 2001

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

Name: COMERICA BANK-CALIFORNIA
Address: 1331 NORTH CALIFORNIA BOULEVARD, SUITE 400
City: WALNUT CREEK State: CA Zip: 94596

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation - State:

Other: a California banking corporation

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 [x] No

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

A. Trademark Application No.(s)

~~76/333,924~~ 76/294,951
~~76/267,579~~ 76/656,399

B. Trademark Registration No.(s)

1,539,966 1,243,255
2,127,757 2,321,607
2,211,150 2,444,998
2,419,952 2,209,077
2,212,978 2,212,977

Additional numbers attached? [] Yes [X] No

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

Name: Erin O'Brien
Internal Address: GRAY CARY WARE & FREIDENRICH
4365 Executive Drive, Suite 1100
San Diego, California 92121-2133

6 Total number of applications and registrations involved: 14

7. Total fee (37 CFR 3.41) \$365.00

[X] Enclosed

[] Authorized to be charged to deposit account

8. Deposit account number:

(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.

Erin O'Brien
Name of Person Signing *Erin O'Brien*
Signature

April 11, 2002
Date

Total number of pages comprising cover sheet: [9]

Mail Documents to be recorded with required cover sheet information to:
U.S. Patent and Trademark Office, Office of Public Records
1213 Jefferson Davis Highway, 3rd Floor
Arlington, VA 22202

04/12/2002 BBYRNE 00000237 76333924
01 FC:481 40.00 OP
02 FC:482 325.00 OP

PAN10227441.1
1090371-968000

TRADEMARK
REEL: 002481 FRAME: 0631

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (the "Agreement") is made as of November 28, 2001, by and between DOLPHIN ACQUISITION CORP., a California corporation ("Grantor"), and COMERICA BANK-CALIFORNIA ("Secured Party").

RECITALS

A. Secured Party has agreed to make certain advances of money and to extend certain financial accommodations to MD BEAUTY, INC., a Delaware corporation (the "Borrower") in the amounts and manner set forth in that certain Loan and Security Agreement, dated as of November 28, 2001 (the "Loan Agreement"). Grantor has agreed to guarantee all of Borrower's obligations under the Loan Agreement pursuant to that certain Unconditional Guaranty and Third Party Security Agreement, each dated November 28, 2001. (collectively, the "Guarantee;" all capitalized terms used herein without definition shall have the meanings ascribed to them in the Guarantee).

B. Secured Party is willing to make the Loans to Borrower, but only upon the condition, among others, that Grantor shall grant to Secured Party a security interest in all of Grantor's right title, and interest in, to and under all of the Collateral whether presently existing or hereafter acquired.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Secured Party, Grantor hereby grants a security interest and mortgage to Secured Party, as security, in and to Grantor's entire right, title and interest in, to and under all of its intellectual property, including without limitation the following (all of which shall collectively be called the "Collateral"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Copyrights");

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Grantor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");

(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(h) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(i) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is now the sole owner of the Collateral, except for licenses granted by Grantor to its customers in the ordinary course of business;

(b) Except as set forth in the Schedule, Grantor's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross revenue in any given month, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service;

(c) Performance of this Agreement does not conflict with or result in a breach of any agreement to which Grantor is party or by which Grantor is bound;

(d) During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Collateral, except for licenses granted by Grantor in the ordinary course of business or as set forth in this Agreement;

(e) To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party;

(f) Grantor shall deliver to Secured Party within thirty (30) days of the last day of each fiscal quarter, a report signed by Grantor, in form reasonably acceptable to Secured Party, listing any applications or registrations that Grantor has made or filed in respect of any patents, copyrights or trademarks and the status of any outstanding applications or registrations. Grantor shall promptly advise Secured Party of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Grantor in or to any Trademark, Patent or Copyright not specified in this Agreement;

(g) Grantor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Secured Party, which shall not be unreasonably withheld;

(h) Grantor shall register or cause to be registered on an expedited basis (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable: (i) those intellectual property rights listed on Exhibits A, B and C to the Intellectual Property Security Agreement delivered to Secured Party by Grantor in connection with this Agreement, within thirty (30) days of the date of this Agreement, (ii) all registerable, copyrightable intellectual property rights Grantor has developed or acquired as of the date of this Agreement but heretofore failed to register which are material to Grantor's business, or constitute or give rise to more than five percent (5%) of Grantor's gross income in any given month, within thirty (30) days of the date of this Agreement (iii) all registerable, patentable and trademarkable intellectual property rights Grantor has developed as of the date of this Agreement but heretofore failed to register if such registration is commercially reasonable, within thirty (30) days of the date of this Agreement, and (iv) those additional registerable, copyrightable intellectual property rights developed or acquired by Grantor from time to time in connection with any product or service, which are material to Grantor's business, or constitute or give rise to more than five percent (5%) of Grantor's gross income in any given month, prior to the sale or licensing of such product or the rendering of such service to any third party, and prior to Grantor's use of such product (including without

limitation major revisions or additions to the intellectual property rights listed on such Exhibits A, B and C), and (v) those additional registerable, patentable and trademarkable intellectual property rights developed or acquired by Grantor from time to time in connection with any product or service, if such registration is commercially reasonable, prior to the sale or licensing of such product or the rendering of such service to any third party, and prior to Grantor's use of such product (including without limitation major revisions or additions to the intellectual property rights listed on such Exhibits A, B and C). Grantor shall, from time to time, execute and file such other instruments, and take such further actions as Secured Party may reasonably request from time to time to perfect or continue the perfection of Secured Party's interest in the Collateral. Grantor shall give Secured Party notice of all such applications or registrations;

(i) This Agreement creates, and in the case of after acquired Collateral, this Agreement will create at the time Grantor first has rights in such after acquired Collateral, in favor of Secured Party a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Guarantee;

(j) All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Grantor with respect to the Collateral is accurate and complete in all material respects;

(k) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Secured Party's prior written consent, which consent shall not be unreasonably withheld. Grantor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Grantor's rights and interests in any property included within the definition of the Collateral acquired under such contracts; and

(l) Upon any executive officer of Grantor obtaining actual knowledge thereof, Grantor will promptly notify Secured Party in writing of any event that materially adversely affects the value of any Collateral, the ability of Grantor to dispose of any Collateral or the rights and remedies of Secured Party in relation thereto, including the levy of any legal process against any of the Collateral.

3. Secured Party's Rights. Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Agreement to take but which Grantor fails to take, after fifteen (15) days' notice to Grantor. Grantor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 3.

4. Inspection Rights. Grantor hereby grants to Secured Party and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Grantor, any of Grantor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Grantor and as often as may be reasonably requested.

5. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Grantor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Secured Party, to perfect Secured Party's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Collateral.

(b) Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C, hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or

Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Grantor no longer has or claims any right, title or interest, (ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law and (iii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Secured Party or a third party to the extent permitted under the California Uniform Commercial Code.

6. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement:

(a) An Event of Default occurs under the Guarantee or under the Loan Agreement; or

(b) Grantor breaches any warranty or agreement made by Grantor in this Agreement and, as to any breach that is capable of cure, Grantor fails to cure such breach within five (5) days of the occurrence of such breach.

7. Remedies. Upon the occurrence and continuance of an Event of Default, Secured Party shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require Grantor to assemble the Collateral and any tangible property in which Secured Party has a security interest and to make it available to Secured Party at a place designated by Secured Party. Secured Party shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Secured Party to exercise its rights and remedies upon the occurrence of an Event of Default. Grantor will pay any expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with the exercise of any of Secured Party's rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Secured Party's rights and remedies with respect to the Collateral shall be cumulative.

8. Indemnity. Grantor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to transactions between Secured Party and Grantor, whether under this Agreement or otherwise (including without limitation reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Secured Party's gross negligence or willful misconduct.

9. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

10. Attorneys' Fees. If any action relating to this Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

11. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

13. California Law and Jurisdiction; Jury Waiver. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Grantor and Secured Party consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. GRANTOR AND SECURED PARTY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE GUARANTEE, THIS AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

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

GRANTOR:

Address of Grantor:

425 Bush Street, Third Floor
San Francisco, CA 94108
Attn: Jaime Hutter

DOLPHIN ACQUISITION CORP.

By: John Han

Its: Secretary

SECURED PARTY

Address of Secured Party:

1331 North California Boulevard, Suite 400
Walnut Creek, CA 94596
Attn: Mark Hillhouse

COMERICA BANK-CALIFORNIA

By: Mark Hillhouse

Its: VP

EXHIBIT A

Copyrights

Description

Registration Number

Registration Date

EXHIBIT B

Patents

Description

Registration/Serial Number

Registration/Application
Date

EXHIBIT C

Trademarks

<u>Description</u>	<u>Registration/Application Number</u>	<u>Registration/Application Date</u>
A foundation that works with your skin, not against it	76/333,924	11/05/01
I.D.	76/294,951	08/06/01
Makeup so pure you can sleep in it	76/267,579	06/06/01
At home in your own skin	75/656,399	03/09/99
Bare Escentuals	1,539,966	05/23/89
Bare Escentuals (and design)	1,243,255	06/21/83
Power Bath	2,127,757	01/06/98
Bareminerals	2,321,607	02/22/00
Buzz	2,211,150	12/15/98
Clear skies	2,444,998	04/17/01
Cush	2,419,952	01/09/01
For Play	2,209,077	12/08/98
Peace & Quiet	2,212,978	12/22/98
Up & At'em	2,212,977	12/22/98

4365 Executive Drive, Suite 1100
San Diego, CA 92121-2133
www.graycary.com

O) 858-638-6717
F) 858-677-1477

OUR FILE NO. 1090371-968000

April 11, 2002

VIA FEDERAL EXPRESS

U.S. Patent and Trademark Office
Office of Public Records
1213 Jefferson Davis Highway, 3rd Floor
Arlington, VA 22202

Re: Grantor: Dolphin Acquisition Corp.
Secured Party: Comerica Bank-California

Dear Sir or Ms:

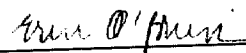
Enclosed please find the following documents:

1. Recordation Form Cover Sheet for Trademarks only;
2. Intellectual Property Security Agreement between Dolphin Acquisition Corp. and Comerica Bank-California; and
3. A self-addressed postage paid postcard for your use to indicate your receipt of the enclosed documents.

Also included is a check to cover recordation fees. Please record these documents and return the original Notice of Recordation to me at the above-listed address after the security interest has been recorded.

Sincerely,

Gray Cary Ware & Freidenrich LLP


Erin O'Brien, Paralegal
eobrien@graycary.com

epo:
Enclosures

cc: Ms. Sandra Lucero (w/enclosures)
Larry King, Esq. (w/o enclosures)

Gray Cary\PA\10227442.1
1090371-968000

SILICON VALLEY SAN DIEGO SAN DIEGO/GOLDEN TRIANGLE SAN FRANCISCO AUSTIN SEATTLE SACRAMENTO

RECORDED: 04/01/2002

TRADEMARK
REEL: 002481 FRAME: 0640