

07-31-2002



To the Honorable Commissioner of Patents and T

nal documents or copy thereof.
ving party(ies):

1. Name of conveying party(ies): **WEST 49 INC.** *07.29.02*
- Individual(s) Association
- General Partnership Limited Partnership
- Corporation-State
- Other: **Ontario Company**

102173653

Name: **LASALLE RETAIL FINANCE**

Internal Address:

Street Address: **25 Braintree Hill Office Park, Suite 205**

City: **BRAINTREE** State: **MA** Zip: **02184**

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

3. Nature of conveyance:
- Assignment Merger
- Security Agreement Change of Name
- Other

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State **DELAWARE**
- Other

Execution Date: DECEMBER 10, 2001

If assignee is not domiciled in the United States, a domestic designation is Yes No
(Designations must be a separate document from Additional name(s) & address(es) Yes No

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

If this document is being filed together with a new application, the execution date of the application is:

A. Trademark Application No. (s)
76/328,737 (filing date: October 24, 2001)

B. Trademark Registration No.(s)

Additional numbers attached? Yes No

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

Name: **Mark S. Leonardo, Esq.**

Internal Address:
**Brown Rudnick Berlack Israels LLP
Box IP, 18th Floor**

Street Address:
One Financial Center

City: **Boston** State: **MA** Zip: **02111**

6. Total number of applications and patents involved:

1

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

Enclosed - Any excess or insufficiency should be credited or debited to deposit account:

Authorized to be charged to deposit account

8. Deposit account number: **50-0369**

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.

Mark S. Leonardo (41,433)
Name of Person Signing

Signature

July 22, 2002
Date

Total number of pages including cover sheet, attachments, and document: **14**

07/31/2002 LHWELLER 00000022 76328737

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TRADEMARK AND TRADEMARK
APPLICATIONS SECURITY AGREEMENT

This Trademark and Trademark Application Security Agreement (the "**TM Security Agreement**") is made as of the 20th day of June, 2002, by West 49 Inc. (the "**Lead Borrower**"), an Ontario company with offices at 4335 Mainway Drive, Burlington, Ontario, Canada L5L 5N9 and LaSalle Retail Finance, a division of LaSalle Business Credit, Inc., a Delaware corporation, with offices at 25 Braintree Hill Office Park, Suite 205, Braintree, Massachusetts 02184 (in its capacity as agent for itself and the other lenders, the "**Secured Party**").

RECITALS

WHEREAS, pursuant to the Loan and Security Agreement, dated as of even date hereof, (as amended from time to time, the "**Loan Agreement**") by and among the Lead Borrower, West 49 US Inc., a Delaware corporation ("**Borrower**"), the Secured Party, and ABN AMRO Bank N.V., Canada Branch, the Canadian branch of a Netherlands bank (the "**Lender**"), the Secured Party and the Lender agreed to make certain Loans (as defined in the Loan Agreement, hereinafter, the "**Loans**") available to the Lead Borrower and the Borrower;

WHEREAS, pursuant to the Loan Agreement the Lead Borrower and the Borrower have granted to the Secured Party as agent for itself and the Lender a security interest in the Collateral (as defined in the Loan Agreement) to secure the Liabilities (as defined in the Loan Agreement) of the Lead Borrower and the Borrower to the Secured Party;

WHEREAS, as a condition, among others, to the establishment of the credit facilities contemplated by the Loan Agreement, and to further secure the Liabilities and to more fully vest the security interest granted in the Loan Agreement, the Lead Borrower has executed this TM Security Agreement.

NOW THEREFORE, For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Lead Borrower and the Secured Party, agree as follows:

1. Terms used herein which are defined in the Loan Agreement are used as so defined.
2. To secure the Liabilities, the Lead Borrower hereby grants a security interest in favor of, and collaterally assigns to the Secured Party as agent for itself and the other lender, with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default as defined in the Loan Agreement and used herein as so defined), in and to the following and all proceeds thereof:

- a. All of the Lead Borrower'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 the Lead Borrower's rights corresponding to any of the foregoing throughout the world.

All of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications described in Subsection 2(a), together with the items respectively described in Subsections 2(b) through and including 2(e) are hereinafter individually and/or collectively referred to as the "Marks".

3. Until this TM Security Agreement is terminated in writing by a duly authorized officer of the Secured Party, the Lead Borrower shall undertake the following with respect to each Mark:

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 Lead Borrower'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 Lead Borrower's sole cost, expense, and risk, take any and all action which the Lead Borrower deems necessary or desirable to protect the Marks, including, without limitation, the prosecution and defense of infringement actions.

4. In the event of

a. the Lead Borrower's failure, within Five (5) days of written notice from the Secured Party, to cure any failure by the Lead Borrower to perform any of the Lead Borrower's obligations set forth in Section 3, above, or

b. the occurrence of any Event of Default,

the Secured Party acting in its capacity as Agent or in the name of the Lead Borrower may (but shall not be required to) act in the Lead Borrower's place and stead and/or in the Secured Party's own right in connection therewith.

5. The Lead Borrower 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 Lead Borrower.

b. No liens, claims or security interests have been granted in any Mark by the Lead Borrower to any Person other than to the Secured Party.

6. In order to further secure the Liabilities:

a. The Lead Borrower shall give the Secured Party written notice (with reasonable detail) within Ten (10) days following the occurrence of any of the following:

i. The Lead Borrower obtains rights to, and files 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 Lead Borrower's right to sell products containing the trademarks of others in the ordinary course of the Lead Borrower's business).

ii. The Lead Borrower becomes 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 the Lead Borrower's right to sell products in containing the trademarks of others' the ordinary course of the Lead Borrower's business).

iii. The Lead Borrower enters into any new trademark license agreement or service mark license agreement.

b. The provisions of this TM Security Agreement shall automatically apply to any such additional property or rights described in 6(a), above, all of which shall be deemed to be and treated as "Marks" within the meaning of this TM Security Agreement.

c. The Lead Borrower hereby authorizes the Secured Party to modify this agreement by amending EXHIBIT A to include any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, *provided, however*, the modification of said EXHIBIT A shall not be a condition to the creation or perfection of the security interest created hereby.

7. Upon the occurrence of any Event of Default, the Secured Party 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 Secured Party, subject to the terms of the Loan Agreement, may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Secured Party that an Event of Default has occurred and that the Secured Party is authorized to exercise such rights and remedies.

8. The Lead Borrower hereby irrevocably constitutes and designates the Secured Party as and for the Lead Borrower's attorney in fact, effective with and upon the Secured Party's first exercise (the "**First Exercise**") of such powers following the occurrence of any Event of Default:

a. To exercise any of the rights and powers referenced in Section 3.

b. To execute all and singular such instruments, documents, and papers as the Secured Party 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.

The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until the within TM Security Agreement is terminated by a duly authorized officer of the Secured Party, but shall be exercisable only following the occurrence of an Event of Default.

9. Any use by the Secured Party of the Marks as authorized hereunder in connection with the exercise of the Secured Party's rights and remedies under the within TM Security Agreement and the Loan Agreement shall be coextensive with the Lead Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Secured Party to the Lead Borrower. Such use by the Secured Party shall be permitted only with and upon the First Exercise following the occurrence of an Event of Default.

10. Secured Party hereby acknowledges that the Lead Borrower shall continue to have the exclusive right, prior to notice from the Secured Party following the occurrence of an Event of Default, to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by the Lead Borrower to protect the Marks against encroachment by third parties; provided, however, that the Lead Borrower first notifies the Secured Party in writing of its intention to sue for enforcement of the Marks against a particular party. All costs arising in connection with any infringement shall be borne by the Lead Borrower.

11. Following the payment and satisfaction of all Liabilities, and the termination of any obligation of the Secured Party and the Lender to provide loans or financial accommodations under the credit facility contemplated by the Loan Agreement, this TM Security Agreement shall terminate and the Secured Party shall execute and deliver to the Lead Borrower all such instruments as the Lead Borrower reasonably may request to release any encumbrance in favor of the Secured Party created hereby or pursuant hereto, subject, however, to any disposition thereof which may have been made by the Secured Party pursuant hereto or pursuant to the Loan Agreement.

12. The Lead Borrower shall, at the request of the Secured Party, do any and all acts and execute any and all documents required by the Secured Party in connection with the protection, preservation, and enforcement of the Secured Party's rights hereunder.

13. The Lead Borrower shall, upon demand, reimburse the Secured Party for all costs and expenses incurred by the Secured Party in the exercise of any rights hereunder (including, without limitation, fees and expenses of counsel).

14. Neither anything contained in the within TM Security Agreement or in the Loan Agreement nor any act, omission, or circumstance may be construed as directly or indirectly conveying to the Secured Party any rights in and to the Marks, which rights are effective except following the occurrence of any Event of Default (and in such circumstances, only with and upon the First Exercise).

15. This TM Security Agreement is intended to be supplemental of the Loan Agreement. All provisions of the Loan Agreement shall apply to the Marks and the Secured Party shall have the same rights with respect to any and all security interests in the Marks granted the Secured Party to secure the Liabilities hereunder as thereunder. In the event of a conflict between this TM

Security Agreement and the Loan Agreement, the terms of this TM Security Agreement shall control with respect to the Marks and the Loan Agreement with respect to all other collateral.

IN WITNESS WHEREOF, the Lead Borrower and the Secured Party respectively have caused this TM Security Agreement to be executed by officers duly authorized so to do on the date first above written.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

[SIGNATURE PAGE TO TRADEMARK AGREEMENT]

WEST 49 INC.,
as Pledgor

By: *R. Gamble*

Print Name: RON GAMBLE

Title: SECRETARY

~~FLEET RETAIL FINANCE INC.,
as Agent~~

~~By: _____~~

~~Print Name: _____~~

~~Title: _____~~

THE ~~OF~~ CITY OF TORONTO
COUNTY OF _____, SS Province of Ontario

Then personally appeared before me Ron Gamble who acknowledged that such person the duly authorized Secretary of the West 49 Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 20th day of June, 2002.

[Signature]
Notary Public
My Commission Expires: on death

THE OF
COUNTY OF _____, SS

Then personally appeared before me _____ who acknowledged that such person the duly authorized of the LaSalle Retail Finance and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this ___ day of _____, 2002.

Notary Public
My Commission Expires:

[SIGNATURE PAGE TO TRADEMARK AGREEMENT]

WEST 49 INC.,
as Pledgor

LASALLE RETAIL FINANCE,
as Agent

By: _____

By: *David Molinaro*

Print Name: _____

Print Name: David Molinaro

Title: _____

Title: Vice President

THE OF
COUNTY OF _____, SS

Then personally appeared before me _____ who acknowledged that such person the duly authorized _____ of the West 49 Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this ___ day of _____, 2002.

Notary Public
My Commission Expires:

THE ~~OF~~ COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK _____, SS

Then personally appeared before me ^{V.P.} David Molinaro who acknowledged that such person the duly authorized of the LaSalle Retail Finance and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 20th day of June, 2002.

Janet S. Wamsley
Notary Public
My Commission Expires:

JANET S. WAMSLEY, Notary Public
My Commission Expires December 9, 2005

EXHIBIT A

Lead Borrower's now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks, and Federal trade mark applications:

Trademark/Service Mark Registrations

MARK NAME	TRADEMARK REGISTRATION NUMBER	REGISTRATION DATE
N/A	N/A	N/A

Trademark Applications

MARK	SERIAL NUMBER	FILING DATE
West 49	76/328,737	October 24, 2001

TRADE MARK SECURITY AGREEMENT

RECITALS:

- A. West 49, Inc., a corporation incorporated under the laws of Ontario, (the "**Borrower**"), ABN Amro Bank N.V. (Canada Branch) (in such capacity, herein the "**Lender**"), and Lasalle Retail Finance, a division of Lasalle Business Credit, Inc., a Delaware corporation, as agent for the Lender (in such capacity, herein the "**Agent**") have entered into that certain Loan and Security Agreement dated on even date hereof (as such agreement may be amended and modified from time to time, the "**Loan Agreement**"), whereby the Lender has agreed to establish a senior secured working capital facility with the Borrower.
- B. The Borrower is the registered and beneficial owner of and has adopted, used and is using, the trade marks and service marks listed on Schedule A (each such mark, application and registration, a "**Mark**" and, collectively, the "**Marks**").
- C. Pursuant to the Loan Agreement, the Borrower has granted to the Agent, for the benefit of the Lender, a security interest in the Marks together with the good-will of the business symbolized by the Marks and all proceeds of the foregoing, including, without limitation, any and all causes of action that may exist by reason of violation thereof and any and all damages arising from past, present and future violations thereof (the "**Collateral**") to secure the payment, performance and observance of the Liabilities (as defined in the Loan Agreement).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor hereby grants to the Assignee a security interest in the Collateral to secure the prompt payment, performance and observance of the Liabilities.

The Borrower does hereby further acknowledge and affirm that the rights and remedies of the Agent and the Lender with respect to the Collateral are more fully set forth in the Loan Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein.

This Trade Mark Security Agreement shall not be interpreted to grant any rights to the Agent or the Lender or impose any obligations on the Borrower, the Agent or the Lender in addition to or different from those set forth in the Loan Agreement. The terms and provisions of the Loan Agreement prevail and are paramount over this Trade Mark Security Agreement.

IN WITNESS WHEREOF the Borrower has caused this Trade Mark Security Agreement to be duly executed by its duly authorized officer as of June 20, 2002.

WEST 49, INC.

By: _____

Name: Ronald Gamble

Title: Secretary-Treasurer

SCHEDULE A

REGISTERED TRADE AND SERVICE MARKS

1. Trade-mark application filed May 28, 2001 in respect of "West 49", file no. 1 104 016