

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings ⇌ ⇌ ⇌

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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): Tuesday Morning Corporation
[] Individual(s) [] Association
[] General Partnership [] Limited Partnership
[] Corporation-State DE
[] Other
Additional name(s) of conveying party(ies) attached? [x] Yes [] No

2. Name and address of receiving party(ies)
Name: Fleet National Bank
Internal Address:
Street Address: 100 Federal Street
City: Boston State: MA Zip: 02110
[] Individual(s) citizenship
[x] Association
[] General Partnership
[] Limited Partnership
[] Corporation-State
[] 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 [x] No

3. Nature of conveyance:
[] Assignment [] Merger
[x] Security Agreement [] Change of Name
[] Other
Execution Date: 9/27/02

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s) 1,211,931
1,211,932 1,768,620 1,819,729
Additional number(s) attached [] Yes [x] No

6. Total number of applications and registrations involved: 4

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Christopher E. Kondracki
Internal Address:
Street Address: 2001 Jefferson Davis, Hwy. Suite 505
City: Arlington State: VA Zip: 22202

7. Total fee (37 CFR 3.41).....\$ 115.00
[] Enclosed
[x] Authorized to be charged to deposit account

8. Deposit account number: 19-3545

DO NOT USE THIS SPACE

9. Signature.
Christopher E. Kondracki
Name of Person Signing

Signature: [Handwritten Signature]

Date: 10/15/02

Total number of pages including cover sheet, attachments, and document: 12

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

Conveying Party(ies)

TMI Holdings, Inc.

Tuesday Morning, Inc.

Friday Morning, Inc.

Days of the Week, Inc.

Tuesday Morning Partners, Ltd.

Nights of the Week, Inc.

**TRADEMARK AND TRADEMARK
APPLICATIONS SECURITY AGREEMENT**

September 27, 2002

THIS TRADEMARK AND TRADEMARK APPLICATIONS SECURITY AGREEMENT
(this "**Agreement**") is made between

Fleet National Bank, a national banking association with offices at 100 Federal Street, Boston, Massachusetts 02110, as administrative agent (in such capacity, herein the "**Administrative Agent**"), for the ratable benefit of the Secured Parties (as defined in the Security Agreement),

and

Tuesday Morning Corporation, a Delaware corporation with offices at 14621 Inwood Road, Addison, Texas 75001-3768 (the "**Borrower**")

and

Each of the Subsidiaries party hereto (the "**Guarantors**") (the Borrower and the Guarantors are collectively referred to herein as the "**Debtors**"),

in consideration of the mutual covenants contained herein and benefits to be derived herefrom,

WITNESSETH:

WHEREAS, the Borrower has entered into a certain Credit Agreement dated as of September 27, 2002 (as such may be amended, modified, supplemented or restated hereafter, the "**Credit Agreement**") with (i) the Guarantors, (ii) the Revolving Credit Lenders named therein, and (iii) Fleet National Bank, as Administrative Agent for the Revolving Credit Lenders named therein, as Swing Loan Lender and as Issuing Lender, pursuant to which the Revolving Credit Lenders have agreed, among other things, to make certain Revolving Credit Loans to the Borrower. Terms used herein which are defined in the Credit Agreement are used as so defined.

WHEREAS, it is a condition precedent to the Revolving Credit Lenders making the Revolving Credit Loans or otherwise extending credit to the Borrower under the Credit Agreement that the Debtors execute and deliver to the Administrative Agent this Agreement.

WHEREAS, the Debtors wish to grant pledges and security interests in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, as herein provided.

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **GRANT OF SECURITY INTEREST:** To secure the Liabilities, the Debtors hereby create a security interest in favor of the Administrative Agent (for the ratable benefit of the Secured Parties), with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default) in and to the following and all proceeds thereof (collectively, the "TM Collateral"):

(a) All of the Debtors' 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 Debtors' rights corresponding to any of the foregoing throughout the world.

2. **PROTECTION OF MARKS BY DEBTORS:** The Debtors shall undertake the following with respect to each of the items respectively described in Sections 1(a) and 1(b) (collectively, the "Marks"):

(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 Debtors' 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 Debtors' sole cost, expense, and risk, take any and all action which Debtors deem desirable to protect the Marks, including, without limitation, but subject to Debtors' discretion, the prosecution and defense of infringement actions.

Notwithstanding the foregoing, so long as no Material Adverse Effect would result therefrom, no Debtor shall have an obligation to use or to maintain any Mark (i) that relates solely to any product or work, that has been, or is in the process of being, discontinued, abandoned or terminated, (ii) that is being replaced with a Mark substantially similar to the Mark that may be abandoned or otherwise become invalid, so long as the failure to use or maintain such Mark does not materially adversely affect the validity of such replacement Mark and so long as such replacement Mark is subject to the lien created by this Agreement or (iii) that is substantially the same as another Mark that is in full force, so long as the failure to use or maintain such Mark does not materially adversely affect the validity of such replacement Mark and so long as such other Mark is subject to the Lien and security interest created by this Agreement.

3. **DEBTORS' REPRESENTATIONS AND WARRANTIES:** The Debtors represent and warrant 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 Debtors.

(b) All TM Collateral is and shall remain, free and clear of all liens, Encumbrances, or security interests to any Person other than to the Administrative Agent.

(c) The Debtors shall give the Administrative Agent written notice (with reasonable detail) within ten (10) days following the occurrence of any of the following:

(i) The Debtors' obtaining rights to, and filing applications for registration of, any new trademarks, or service marks, or otherwise acquiring ownership of any newly registered trademarks, registered service marks, trademark applications, or service mark applications, (other than the Debtors' right to sell products containing the trademarks of others in the ordinary course of Debtors' business).

(ii) The Debtors' becoming 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 Debtors' right to sell products containing the trademarks of others in the ordinary course of Debtors' business).

(iii) The Debtors' entering into any new trademark license agreement or service mark license agreement.

4 AGREEMENT APPLIES TO FUTURE MARKS:

(a) The provisions of this Agreement shall automatically apply to any such additional property or rights described in 3(c), above, all of which shall be deemed to be and treated as "Marks" within the meaning of this Agreement.

(b) The Debtors hereby authorize the Administrative Agent to take all such action to protect the Administrative Agent's interest in and concerning any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, *provided, however*, the Administrative Agent's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

5. DEBTORS' RIGHTS TO ENFORCE MARKS: Prior to the Administrative Agent's giving of notice to the Debtors following the occurrence of an Event of Default, the Debtors shall have the exclusive right 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 Debtors to protect the Marks against encroachment by third parties, *provided, however*:

(a) The Debtors first provide the Administrative Agent with written notice of the Debtors' intention to so sue for enforcement of any Mark.

(b) Any money damages awarded or received by the Debtors on account of such suit (or the threat of such suit) shall constitute TM Collateral.

(c) Following the occurrence of any Event of Default, the Administrative Agent, by notice to the Debtors may be terminate or limit the Borrowers' rights under this Section 5.

6. ADMINISTRATIVE AGENT'S ACTIONS TO PROTECT MARKS: In the event of

(a) the Debtors' failure, within five (5) days of written notice from the Administrative Agent, to cure any failure by the Debtors to perform any of the Debtors' obligations hereunder; and/or

(b) the occurrence of any Event of Default,

the Administrative Agent, acting in its own name or in that of the Debtors, may (but shall not be required to) act in the Debtors' place and stead and/or in the Administrative Agent's own right in connection therewith.

7. RIGHTS UPON DEFAULT: Upon the occurrence of any Event of Default, the Administrative Agent may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in the Commonwealth of Massachusetts, with respect to the Marks, in addition to which the Administrative Agent may sell, license, assign, transfer, or otherwise

dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Administrative Agent that an Event of Default has occurred and that the Administrative Agent is authorized to exercise such rights and remedies.

8. ADMINISTRATIVE AGENT AS ATTORNEY IN FACT:

(a) The Debtors hereby irrevocably constitute and designate the Administrative Agent as and for the Debtors' attorney in fact, effective following the occurrence of any Event of Default:

(i) To exercise any of the rights and powers referenced herein.

(ii) To execute all such instruments, documents, and papers as the Administrative Agent 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.

(b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Administrative Agent.

(c) The Administrative Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 8(a) herein, but if the Administrative Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to the Debtors for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Administrative Agent has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

9. ADMINISTRATIVE AGENT'S RIGHTS:

(a) Any use by the Administrative Agent of the Marks, as authorized hereunder in connection with the exercise of the Administrative Agent's rights and remedies under this Agreement and under the Credit Agreement shall be coextensive with the Debtors' rights thereunder and with respect thereto and without any liability for royalties or other related charges.

(b) None of this Agreement, the Credit Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the Administrative Agent any rights in and to the Marks, which rights are effective except following the occurrence of any Event of Default.

10. INTENT: It is intended that this Agreement supplement the Security Agreement. All

provisions of the Security Agreement shall apply to the Marks. The Administrative Agent shall have the same rights, remedies, powers, privileges and discretions, with respect to the security interests created in the TM Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Security Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Security Agreement with respect to all other Collateral.

11. **CHOICE OF LAWS:** It is intended that this Agreement take effect as a sealed instrument and that all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of the Commonwealth of Massachusetts.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Debtors and the Administrative Agent respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

DEBTORS:

TUESDAY MORNING CORPORATION

By: Mark E. Jarvis
Name: Mark E. Jarvis
Title: Executive Vice President and
Chief Financial Officer

TMI HOLDINGS, INC.

By: Alan Oppenheimer
Name: Alan Oppenheimer
Title: President

TUESDAY MORNING, INC.

By: Mark E. Jarvis
Name: Mark E. Jarvis
Title: Executive Vice President and
Chief Financial Officer

FRIDAY MORNING, INC.

By: Mark E. Jarvis
Name: Mark E. Jarvis
Title: Executive Vice President and
Treasurer

DAYS OF THE WEEK, INC.

By: Mark E. Jarvis
Name: Mark E. Jarvis
Title: Secretary

TUESDAY MORNING PARTNERS, LTD.

By: Days of the Week, Inc., its General Partner

By: Mark E. Jarvis
Name: Mark E. Jarvis
Title: Secretary

NIGHTS OF THE WEEK, INC.

By: Alan L. Oppenheimer
Name: Alan Oppenheimer
Title: President

ADMINISTRATIVE AGENT:

FLEET NATIONAL BANK

By: Linda H. Thomas
Name: Linda H. Thomas
Title: Managing Director

EXHIBIT A

Debtors' 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

<u>OWNER</u>	<u>TRADEMARK</u>	<u>REGISTRATION NO.</u>	<u>REGISTRATION DATE</u>
Tuesday Morning Partners, Ltd.	Tuesday Morning (styled)	1211931	October 5, 1982
Tuesday Morning Partners, Ltd.	Tuesday Morning	1211932	October 5, 1982
Tuesday Morning, Inc.	Sentimental Seasons	1768620	May 4, 1993 ¹
Tuesday Morning, Inc.	Boli	1819729	December 28, 1993 ¹

Trademark Applications

<u>MARK</u>	<u>SERIAL NUMBER</u>	<u>FILING DATE</u>
-------------	----------------------	--------------------

None.

¹ This trademark is no longer in use and is not intended to be renewed.