

10-04-2002

10-402

Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

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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):

SendAmerica, Inc.

10-4-02

☐ Individual(s)☐ Association☐ General Partnership☐ Limited Partnership☒ Corporation-State☐ Other _____Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment☐ Merger☒ Security Agreement☐ Change of Name☐ Other _____

Execution Date: 09272002

2. Name and address of receiving party(ies)

Name: Banknorth, National Association

Internal

Address: _____

Street Address: 111 Main Street

City: Burlington State: Vermont Zip: 05401

☐ Individual(s) citizenship _____☐ Association _____☐ General Partnership _____☐ Limited Partnership _____☐ Corporation-State _____☒ Other National Banking AssociationIf 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

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

A. Trademark Application No.(s)

See Attached

B. Trademark Registration No.(s)

See Attached

Additional number(s) attached ☒ Yes ☐ No

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

Name: Thomas R. Melloni, Esq.

Internal Address: _____

Borak Anderson & Melloni, P.C.

Street Address: 30 Main Street, Suite 210

City: Burlington

State: VT

Zip: 05401

6. Total number of applications and registrations involved: _____

49

7. Total fee (37 CFR 3.41).....\$ 1240.00

☒ 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.

THOMAS R. MELLONI

Name of Person Signing

[Signature]

Signature

September 27, 2002

Date

Total number of pages including cover sheet, attachments, and document: 15

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

10/04/2002 6TOM11 00000099 76165956

01 FC:481
02 FC:48240.00 00
1200.00 00TRADEMARK
REEL: 002588 FRAME: 0001

Attachment to Form PTO-1594 Recordation Form Cover Sheet Trademarks Only

Continuation of Item #4A and Item #4B

Page 1

#4 A. Trademark Application No.(s):

76166074	76165956
76166024	76165821
76165980	76165996
76165963	76165823

#4 B. Trademark Registration No.(s):

2608162	2608161
2615899	2608160
2613395	2608159
2613394	2608158
2610549	2608157
2610548	2608156
2610547	2608155
2610546	2608154
2610545	2605693
2610544	2605692
2608169	2605691
2608168	2605690
2608167	2605689
2608166	2605688
2608165	2605687
2608164	2605686
2608163	2605685

Attachment to Form PTO-1594 Recordation Form Cover Sheet Trademarks Only
Continuation of Item #4A and Item #4B

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2605684	2602495
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PATENT, TRADEMARK
AND COPYRIGHT SECURITY AGREEMENT

THIS PATENT, TRADEMARK AND COPYRIGHT SECURITY AGREEMENT (the "Security Agreement") is entered into as of this 27th day of September 2002, by SENDAMERICA, INC., a Delaware corporation, with its principal place of business at 6655 Shelburne Road, P.O. Box 965, Shelburne, Vermont 05482 (the "Subsidiary") in favor of **Banknorth, National Association**, with an office at 111 Main St., P.O. Box 409, Burlington, VT 05402-0409 (the "Bank").

WHEREAS, The Vermont Teddy Bear Co., Inc. (the "Borrower") is the parent of the Subsidiary and is entering into a certain Loan Agreement dated as of September 27, 2002 (the "Loan Agreement") which provides for the Bank, to extend certain loans to or for the account of the Borrower;

WHEREAS, as a condition precedent to the extensions of the Loans or other credit facilities under the Loan Agreement, the Bank requires that the Borrower secure its Obligations under the Loan Agreement, including a pledge of all Stock in the Subsidiary and to cause the Subsidiary to pledge its assets to the Bank;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements contained, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Subsidiary and the Bank agree as follows:

1. Security Interest in Patents, Trademarks and Licenses. To secure the complete and timely satisfaction of all of the Borrower's "Obligations" (as that term is defined in the Loan Agreement) to Bank, Subsidiary hereby grants and conveys to Bank a security interest (having priority over all other security interests) with power of sale, to the extent permitted by law, in all of its now owned or existing, and hereafter acquired or arising:

- (a) patents, patent applications, including, without limitation, any invention and improvement to a patent or patent application, and those patents and patent applications listed in Schedule A;
- (b) trademarks, registered trademarks and trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications including, without limitation, the registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule B and (i) all renewals thereof, (ii) all accounts receivable, income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past, present or future infringements and dilutions thereof, and (iii) the right to sue for past,

present and future infringements and dilutions thereof, and (iv) all of the Subsidiary's rights corresponding thereto throughout the world (all of the foregoing registered trademarks, trademark applications, trade names, trade styles, registered service marks and service mark applications, together with the items described in clauses (i)-(iv) in this Section 1(b), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks";

- (c) the goodwill of Subsidiary's business connected with and symbolized by the Trademarks;
- (d) all general intangibles, accounts, equipment, and contract rights;
- (e) license agreements with any other party now or hereafter entered into in connection with any Trademarks or such other party's trademarks, registered trademarks and trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications, whether Subsidiary is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule C, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of the rights of Bank under the Loan Agreement, any other Loan Document, the Lease or any Lease Collateral Document (all of the foregoing being hereinafter referred to collectively as the "Licenses");

together with all additions, accessions, accessories, amendments, attachments, modifications, substitutions, and replacements, proceeds and products of the foregoing.

2. Recording of Patents and Trademarks. Subsidiary represents and warrants that (1) the patents and patent applications listed in Schedule A, and (2) the trademark and trademark applications described in Schedule B, have each been duly recorded in the U.S. Patent and Trademark Office (the "PTO"); and that no other patents, patent applications, trademarks, or trademark applications have been filed or recorded with the PTO in which the Subsidiary has an interest.

3. Recording of Copyrights. Subsidiary represents and warrants that no copyright, or copyright applications have been recorded in the U.S. Copyright Office, in which the Subsidiary has an interest.

4. Restrictions on Future Agreements. Subsidiary will not, without Bank's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Subsidiary further agrees that it will not take any action, and will use reasonable efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to Bank under this Agreement or the rights

associated with those Patents, Trademarks and/or Licenses which are necessary or desirable in the operation of Subsidiary's business.

5. New Patents, Trademarks and Licenses. Subsidiary represents and warrants that the Patents, Trademarks and Licenses listed on Schedules A, B and C, include all of the patents, patent applications, trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service marks registrations, service mark applications and license agreements in connection with trademarks, registered trademarks, trademark applications, trade names, trade styles, service marks, registered service marks, service mark applications now owned or held by Subsidiary. If, prior to the termination of this Agreement, Subsidiary shall (i) create or obtain rights to any new patents, trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service marks registrations, service mark applications, or license agreements in connection with trademarks, registered trademarks, trademark applications, trade names, trade styles, service marks, registered service marks, service mark applications or (ii) become entitled to the benefit of any patent, trademark, trademark registration, trademark application, trade name, trade style, service mark, service mark registration, service mark application, the provisions of Section 1 above shall automatically apply thereto and Subsidiary shall give Bank prompt written notice thereof. Subsidiary hereby authorizes Bank to modify this Agreement by (a) amending Schedules A, B and /or C, as the case may be, to include any future patents, trademarks, trademark registrations, trademark applications, trade name, trade styles, service marks, service mark registrations, service mark applications and trade names that are Patents, Trademarks or Licenses under Section 1 above, or under this Section 5 (whether or not any such notice from Subsidiary has been sent or received), and (b) filing, in addition to and not in substitution for this Agreement, a supplement or addendum to this Agreement containing on Schedule B therein, as the case may be, such trademarks, registered trademarks, trademark applications, trade names, trade styles, service marks, registered service marks, service mark applications and trade names which are Trademarks or Licenses under Section 1 above or this Section 5 and to take any action Bank otherwise deems appropriate to perfect or maintain the rights and interest of Bank under this Agreement with respect to such Patents, Trademarks and Licenses.

6. Royalties. Subsidiary hereby agrees that the use by Bank of the Patents, Trademarks and Licenses as authorized hereunder shall be co-extensive with Subsidiary's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Bank to Subsidiary or anyone.

7. Nature and Continuation of Security Interest; Notice to Third Parties. This Security Agreement has the effect of giving third parties notice of the Bank's security interest in Subsidiary's patents, patent applications, trademarks, trademark applications, Licenses, and general intangibles. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Patents, Trademarks and Licenses and shall remain in full force and effect until the liabilities and Obligations of the Subsidiary to the Bank have been paid in full, including all obligations under the Loan Agreement, and until all of the Subsidiary's obligations under the Lease and the Lease Collateral Documents have been performed.

8. Right to Inspect; Assignments and Security Interests. Bank shall have the right, at any reasonable time and from time to time, to inspect Subsidiary's premises and to examine Subsidiary's books, records and operations relating to the Patents and the Trademarks, including, without limitation, Subsidiary's quality control processes; provided, that in conducting such inspections and examinations, Bank shall use reasonable efforts not to disturb unnecessarily the conduct of Subsidiary's ordinary business operations. From and after the occurrence of an event of default, under the Loan Agreement, or the Lease or any Lease Collateral Documents ("Event of Default"), Subsidiary agrees that Bank, or a conservator appointed by Bank, shall have the right to take any action to renew or to apply for registration of any Trademarks as Bank or said conservator, on its sole judgment, may deem necessary or desirable in connection with the enforcement of Bank's rights hereunder. Subsidiary agrees (i) not to sell or assign its respective interests in the Patents, Trademarks and/or Licenses without the prior written consent of Bank and (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof.

9. Duties of Subsidiary. Subsidiary shall have the duty, to the extent necessary or desirable in the normal conduct of Subsidiary's business, to (i) prosecute diligently any patent application, trademark application or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, (ii) make application for patents, trademarks and service marks as Subsidiary deems appropriate, and (iii) preserve and maintain all of Subsidiary's rights in the patents, patent applications, trademark applications, service mark applications and trademark and service mark registrations that are part of the Trademarks and Licenses. Any expenses incurred in connection with the foregoing shall be borne by Subsidiary. Subsidiary shall not abandon any trademark or service mark which is the subject of a registered trademark, service mark or application therefor and which, is or shall be necessary or economically desirable in the operation of the Subsidiary's business. Bank shall not have any duty with respect to the Patents, Trademarks and/or Licenses. Without limiting the generality of the foregoing, Bank shall not be under any obligation to take any steps necessary to preserve rights in the Patents, Trademarks and/or Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of Subsidiary and added to the Obligations and liabilities secured hereby, by the Loan Documents and by the Lease Collateral Documents.

10. Bank's Right to Sue. From and after the occurrence and during the continuance of an Event of Default, Bank shall have the right, but shall not be obligated, to bring suit or take any other action to enforce the Patents, Trademarks and Licenses and, if Bank shall commence any such suit or take any such action, Subsidiary shall, at the request of Bank, do any and all lawful acts and execute any and all proper documents required by Bank in aid of such enforcement. Subsidiary shall, upon demand, promptly reimburse and indemnify Bank for all costs and expenses incurred by Bank in the exercise of its rights under this Section 10 (including, without limitation, all attorneys' fees). If, for any reason whatsoever, Bank is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Liabilities secured hereby, and in accordance with the Lease.

11. Waivers. The Subsidiary waives presentment, demand, notice, protest, notice of acceptance of this Agreement, notice of any loans made, credit or other extensions granted, collateral received or delivered or any other action taken in reliance hereon and all other demands and notices of any description, except for such demands and notices as are expressly required to be provided to the Subsidiary under this Agreement or any other document evidencing the Obligations or the liabilities under the Lease or the Lease Collateral Documents. With respect to both the Obligations and the Collateral, the Subsidiary assents to any extension or postponement of the time of payment or any other forgiveness or indulgence, to any substitution, exchange or release of Collateral, to the addition or release of any party or person primarily or secondarily liable, to the acceptance of partial payment thereon and the settlement, compromise or adjustment of any thereof, all in such manner and at such time or times as the Bank may deem advisable. The Bank may exercise its rights with respect to the Collateral without resorting, or regard, to other collateral or sources of reimbursement for Obligations. The Bank shall not be deemed to have waived any of its rights with respect to the Obligations or the Collateral unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not bar or waive the exercise of any right on any future occasion. All rights and remedies of the Bank in the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, are cumulative and not exclusive of any remedies provided by law or any other agreement, and may be exercised separately or concurrently.

12. Successors and Assigns. This Agreement shall be binding upon the Subsidiary, its respective successors and assigns, and shall inure to the benefit of and be enforceable by the Bank and its successors and assigns. Without limiting the generality of the foregoing sentence, the Bank may assign or otherwise transfer any agreement or any note held by it evidencing, securing or otherwise executed in connection with the Obligations, or sell participations in any interest therein, to any other person or entity.

13. General. This Agreement may not be amended or modified except by a writing signed by the Subsidiary and the Bank, nor may the Subsidiary assign any of its rights hereunder. This Agreement and the terms, covenants and conditions hereof shall be construed in accordance with, and governed by, the laws of The State of Vermont (without giving effect to any conflicts of law provisions contained therein). In the event that any Collateral stands in the name of the Subsidiary and another or others jointly, the Bank may deal with the same for all purposes as if it belonged to or stood in the name of the Subsidiary alone.

14. WAIVER OF JURY TRIAL; VENUE.

THE SUBSIDIARY AND THE BANK HEREBY WAIVE TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH OR, ARISING OUT OF: (A) THIS AGREEMENT OR ANY OTHER INSTRUMENT OR DOCUMENT DELIVERED IN CONNECTION WITH THE OBLIGATIONS; (B) THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT THEREOF; OR (C) ANY OTHER CLAIM OR DISPUTE HOWEVER ARISING BETWEEN THE SUBSIDIARY AND THE BANK.

THE SUBSIDIARY AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THE OBLIGATIONS, ARISING OUT OF OR IN ANY MANNER RELATING TO THIS AGREEMENT OR ANY TRANSACTION RELATING TO ANY LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF VERMONT OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF SUCH COURT AND TO SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON THE SUBSIDIARY BY MAIL AT THE ADDRESS SPECIFIED IN THE LOAN AGREEMENT. THE SUBSIDIARY HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT WAS BROUGHT IN AN INCONVENIENT COURT. THE SUBSIDIARY SHALL NOT BE ENTITLED IN ANY SUCH ACTION OR PROCEEDING TO ASSERT ANY DEFENSE GIVEN OR ALLOWED UNDER THE LAWS OF ANY STATE OTHER THAN THE STATE OF VERMONT UNLESS SUCH DEFENSE IS ALSO GIVEN OR ALLOWED BY THE LAWS OF THE STATE OF VERMONT. NOTHING IN THIS SECTION SHALL AFFECT OR IMPAIR IN ANY MANNER OR TO ANY EXTENT THE RIGHT OF THE BANK TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE SUBSIDIARY IN ANY JURISDICTION OR TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

SUBSIDIARY:

SENDAMERICA, INC.

Christen D. Hart
Witness

By: Elizabeth B. B. B.
Its President and duly authorized agent

BANK:

BANKNORTH, NATIONAL ASSOCIATION

Gail A. Cromie
Witness


By: H. Ellett
Its Vice-President and duly authorized agent

ACKNOWLEDGMENT

STATE OF VERMONT
County of Chittenden, SS.

At Burlington, in said County, on this 27th day of September, 2002, personally appeared Elisabeth B. Robert, President and duly authorized agent of SENDAMERICA, INC. and she acknowledged this instrument, by her, sealed and subscribed, to be her free act and deed and the free act and deed of SENDAMERICA, Inc.

Before me,




Notary Public
My Commission Expires: 2-10-2003

ACKNOWLEDGMENT

STATE OF VERMONT
County of Chittenden, SS.

At Burlington, in said County, on this 27th day of September, 2002, personally appeared H. Ellery Perkinson, Vice-President and duly authorized agent of Banknorth, National Association, and he acknowledged this instrument, by him, sealed and subscribed, to be his free act and deed and the free act and deed of Banknorth, National Association.

Before me,



Notary Public
My Commission Expires: 2-10-2003

Schedule A
Patents and Patent Applications

None of Record

Schedule B
Trademarks and Trademark Applications

Application/Registration #	Description	Record Owner
2608162	SENDFLORIDA	SendAmerica, Inc.
2615899	SENDPENNSYLVANIA	SendAmerica, Inc.
2613395	SENDMASSACHUSETTS	SendAmerica, Inc.
2613394	SENDMISSISSIPPI	SendAmerica, Inc.
2610549	SENDMISSOURI	SendAmerica, Inc.
2610548	SENDMONTANA	SendAmerica, Inc.
2610547	SENDNEBRASKA	SendAmerica, Inc.
2610546	SENDNEVADA	SendAmerica, Inc.
2610545	SENDNORTHDAKOTA	SendAmerica, Inc.
2610544	SENDHAWAII	SendAmerica, Inc.
2608169	SENDCALIFORNIA	SendAmerica, Inc.
2608168	SENDMARYLAND	SendAmerica, Inc.
2608167	SENDUTAH	SendAmerica, Inc.
2608166	SENDVIRGINIA	SendAmerica, Inc.
2608165	SENDRHODEISLAND	SendAmerica, Inc.
2608164	SENDSOUTHCAROLINA	SendAmerica, Inc.
2608163	SENDWYOMING	SendAmerica, Inc.
2608161	SENDIDAHO	SendAmerica, Inc.
2608160	SENDILLINOIS	SendAmerica, Inc.
2608159	SENDKANSAS	SendAmerica, Inc.
2608158	SENDKENTUCKY	SendAmerica, Inc.
2608157	SENDLOUISIANA	SendAmerica, Inc.
2608156	SENDMAINE	SendAmerica, Inc.
2608155	SENDDELAWARE	SendAmerica, Inc.
2608154	SENDALASKA	SendAmerica, Inc.
2605693	SENDNEWHAMPSHIRE	SendAmerica, Inc.
2605692	SENDNEWJERSEY	SendAmerica, Inc.
2605691	SENDNEWMEXICO	SendAmerica, Inc.
2605690	SENDWESTVIRGINIA	SendAmerica, Inc.
2605689	SENDWISCONSIN	SendAmerica, Inc.
2605688	SENDNORTHCAROLINA	SendAmerica, Inc.
2605687	SENDOKLAHOMA	SendAmerica, Inc.
2605686	SENDOREGON	SendAmerica, Inc.
2605685	SENDGEORGIA	SendAmerica, Inc.
2605684	SENDCONNECTICUT	SendAmerica, Inc.
2602498	SENDMICHIGAN	SendAmerica, Inc.
2602497	SENDMINNESOTA	SendAmerica, Inc.

2602496	SENDTENNESSEE	SendAmerica, Inc.
2602495	SENDTEXAS	SendAmerica, Inc.
2602494	SENDWASHINGTON	SendAmerica, Inc.
2602493	SENDINDIANA	SendAmerica, Inc.
76166074	SENDCOLORADO	SendAmerica, Inc.
76166024	SENDSOUTHDAKOTA	SendAmerica, Inc.
76165980	SENDOHIO	SendAmerica, Inc.
76165963	SENDIOWA	SendAmerica, Inc.
76165956	SENDARKANSAS	SendAmerica, Inc.
76165821	SENDARIZONA	SendAmerica, Inc.
76165996	SENDNEWYORK	SendAmerica, Inc.
76165823	SENDALABAMA	SendAmerica, Inc.

Schedule C
Licenses