

09-26-2002

926-02

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



J.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

RECEIVED 09/26/02 SEP 26 AM 11:09 TRADEMARKS DIV

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copies thereof.

1. Name of conveying party(ies): Lantis Eyewear Corporation. Association. Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies): Name: PNC Bank, National Association. Internal Address: Street Address: Two Tower Center Boulevard. City: East Brunswick State: NJ Zip: 08816. Association national banking association.

3. Nature of conveyance: Security Agreement. Change of Name. Execution Date: 09/17/2002

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) SEE ATTACHED SCHEDULE

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Pitney Hardin Kipp & Szuch, LLP. Attn: Michael P. Turner, Esq. P.O. Box 1945, Morristown, NJ 07962. Street Address: 200 Campus Drive. City: Florham Park State: NJ Zip: 07932

6. Total number of applications and registrations involved: 35. 7. Total fee (37 CFR 3.41): \$ 890.00. Enclosed. Authorized to be charged to deposit account

8. Deposit account number: 501145

DO NOT USE THIS SPACE

9. Signature. Michael P. Turner Name of Person Signing. Signature. Date 9/24/02

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

09/26/2002 JJALLAH2 00000030 501145 2108854 40.00 CH 850.00 CH

TRADEMARK REEL: 002597 FRAME: 0359

**SCHEDULE A-1 TO
PLEDGE OF TRADEMARKS AND PATENTS AS SECURITY**

**TRADEMARKS
(Registered/Filed)**

United States Trademark	Application or Registration Number	Registration or Filing Date	Status
METROPOLITAN	RN 2,108,854	10/28/97	Registered
MISCELLANEOUS DESIGN (Road)	RN 2,386,754	9/19/00	Registered
LENSES FOR DRIVING and Design	RN 2,248,788	6/1/99	Registered
EDITOR'S CHOICE	RN 1,877,501	2/7/95	Registered
FAMILY OPTICS	RN 1,900,378	6/20/95	Registered
UNITED VISION	SN 78/094,418	11/20/01	Pending
V AND DESIGN	RN 2,292,154	11/16/99	Registered
GO-GO'S	RN 2,188,237	9/8/98	Registered
SOLAR ECLIPSE	RN 2,109,357	10/28/97	Registered
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FX and Design	RN 2,201,103	11/3/98	Registered
ZEOLYTE	RN 2,169,581	6/30/98	Registered
S and Design	RN 2,080,959	7/22/97	Registered
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SOLARGENICS	RN 1,527,659	3/7/89	Registered
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EYE.D.OLOGY	SN 75/524,755	7/24/98	Pending
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AUTOBAHN	SN 76/093,817	7/21/00	Pending
USI	RN 2,432,122	2/27/01	Registered
SUCCESS	RN 2,432,121	2/27/01	Registered
CLIQUE	RN 2,472,007	7/24/01	Registered
INTRIGUE	RN 2,409,292	11/28/00	Registered
PLAYERS	RN 2,358,446	6/13/00	Registered
LANTIS LASER	SN 75/468,843	4/16/98	Pending

Canadian Trademark	Application or Registration Number	Registration or Filing Date	Status
SOLARGENICS	TMA 553,169	10/31/01	Registered
GREENSEEKER	TMA 532,504	9/12/00	Registered

Prepared by, Record and Return to:
MICHAEL P. TURNER, ESQ.
Pitney, Hardin, Kipp & Szuch LLP
P.O. Box 1945
Morristown, NJ 07962-1945

PLEDGE OF TRADEMARKS AND PATENTS AS SECURITY

This Pledge of Trademarks and Patents as Security ("Pledge") made as of the 17 day of September, 2002, by **LANTIS EYEWEAR CORPORATION**, a corporation of the State of New Jersey, having its principal place of business located at 755 Secaucus Road, Secaucus, New Jersey 07094 ("**Pledgor**"), and delivered to **PNC BANK, NATIONAL ASSOCIATION**, in its capacity as Agent for each of the financial institutions named in or which hereafter become a party to that certain Third Amended and Restated Loan and Security Agreement, dated as of October 27, 1999 (as same has been and may in the future be amended, modified, supplemented, renewed, restated or replaced, the "**Loan Agreement**"), between the Pledgor, the Lenders referred to therein and Agent (hereinafter the "**Lender**"), having a location at Two Tower Center Boulevard, East Brunswick, New Jersey 08816.

WITNESSETH:

WHEREAS, Pledgor has adopted, used and is using (or has filed applications, other than intent-to-use applications, for the registration of) the trademarks, service marks and trade names listed on Schedules "A-1" and "A-2" annexed hereto (all such marks or names hereinafter referred to as the "**Trademarks**"), as evidenced by (with respect to the Trademarks listed on Schedule A-1) records in the United States Patent and Trademark Office; and

WHEREAS, Pledgor is the owner of and has exclusive right, title and interest in and to said Trademarks; and

WHEREAS, Pledgor is the holder of certain Patent Rights and Claims (as hereinafter defined), as evidenced by records in the United States Patent and Trademark Office; and

WHEREAS, Lender and Borrower are contemporaneously herewith entering into a Forbearance Agreement (as amended and supplemented from time to time, the "**Forbearance Agreement**"), pursuant to which Lender and Pledgor are, *inter alia*, amending the commercial lending agreements previously entered into and certain other documents and agreements relating thereto (collectively, the "**Loan Documents**"); and

WHEREAS, Lender desires to acquire a lien and security interest on the Trademarks and the registration thereof and the Patent Collateral (as hereinafter defined), together with all the goodwill of the Pledgor associated therewith and represented thereby, as security for the Obligations (as defined in the Loan Agreement), and Lender desires to have its security interest in such Trademarks and the Patent Collateral (as hereinafter defined) confirmed by a document

identifying same and in such form that it may record in the United States Patent and Trademark Office.

NOW THEREFORE, in consideration of the foregoing premises and mutual promises herein contained, Pledgor and Lender, intending to be legally bound, hereby covenant and agree as follows (all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement):

1. **Grant of Security Interest.** In consideration of and pursuant to the terms of the Loan Documents and the Forbearance Agreement, and for other good, valuable and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, and to secure payment and performance of the Obligations, the Pledgor grants a lien and security interest to the Lender in (i) all its present and future right, title and interest in and to the Trademarks, together with all the goodwill and other tangible assets of the Pledgor associated with and represented by the Trademarks, and the non-intent-to-use applications for and registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits; (ii) the United States Letters Patent and the inventions described and claimed therein set forth on Schedule B hereto and any future patents of Pledgor (hereinafter referred to collectively as the "**Patents**"); (iii) the applications for Letters Patent and the inventions described and claimed therein set forth on Schedule B hereto and any United States Letters Patent which may be issued upon any of said applications and any future patent applications of Pledgor (hereinafter referred to collectively as the "**Applications**"); (iv) any reissue, extension, division or continuation of the Patents or the Applications (such reissues, extensions, divisions and continuations being herein referred to collectively as the "**Reissued Patents**"); (v) all future royalties or other fees paid or payment or payments made or to be made to the Pledgor in respect of the Patents; (vi) proceeds of any and all of the foregoing (the Patents, Applications, Reissued Patents and Royalties and proceeds being herein referred to collectively as the "**Patent Rights**"); and (vii) all rights, interests, claims and demands that the Pledgor has or may have in existing and future profits and damages for past and future infringements of the Patent Rights (such rights, interests, claims and demands being herein called the "**Claims**") (the Patent Rights and Claims collectively referred to as the "**Patent Collateral**").

2. **Representations and Warranties.** The Pledgor represents, warrants and covenants that: (a) the Trademarks are subsisting and have not been abandoned, suspended, voluntarily terminated or canceled by the Pledgor, have not been adjudged invalid or unenforceable, and to the best of the Pledgor's knowledge, there is no reason why the Trademarks should be adjudged invalid or unenforceable; (b) each of the Trademarks listed on Schedule A-1 is valid and enforceable; (c) the Pledgor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses and covenants by the Pledgor not to sue third persons, except liens in favor of Lender; (d) the Pledgor has the unqualified right to enter into this Agreement and perform its terms; (e) the Pledgor has used, and will continue to use for the duration of this Pledge, proper notice, as required by 15 U.S.C. §§ 1051-1127 in connection with its use of the Trademarks; (f) the Pledgor has used, and will continue to use for the duration of

this Pledge, consistent standards of quality in products leased or sold under the Trademarks; (g) the Pledgor will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any of the Trademarks may become invalidated, abandoned, unenforceable, avoided, avoidable or otherwise diminished in value, and shall notify Lender immediately if it knows of any reason or has any reason to know of any grounds under which any of the foregoing may occur; (h) the Pledgor is the true and lawful exclusive owner of the Patent Rights set forth on Schedule B, including all rights and interests herein granted; (i) the Patent Collateral is valid and enforceable; (j) the Pledgor has no notice of any suits or actions commenced or threatened against it, or notice of claims asserted or threatened against it, with reference to the Patent Rights and the interests granted herein; and (k) the Patent Rights and all interests granted herein are so granted free from all liens, charges, claims, options, licenses, pledges and encumbrances of every kind and character, except in favor of Lender.

3. Verification of Quality Control. The Pledgor hereby grants to the Lender and its employees and agents the right to visit the Pledgor's locations which lease, sell, or store products under any of the Trademarks and to inspect the products and quality control records relating thereto upon reasonable advance notice, at reasonable times during regular business hours to ensure the Pledgor's compliance with the covenants herein provided. Any such inspections shall, so long as there has occurred no default hereunder or Event of Default under the Loan Documents, be conducted in such a manner so as to minimize any disruption of Pledgor's ordinary business activities.

4. Covenants. The Pledgor further covenants that until all of the Obligations have been satisfied in full, unless Lender gives its prior written consent to the contrary: (a) the Pledgor shall maintain the Trademarks in full force and effect to the extent necessary for Pledgor's business in the ordinary course; (b) the Pledgor will not enter into any agreement, including without limitation, any license agreement, which is inconsistent with the Pledgor's obligations under this Pledge or which restrict or impair the Lender's rights hereunder; (c) if the Pledgor acquires rights to any new non-intent-to-use Trademarks or to any new Patent Collateral, the provisions of this Pledge shall automatically apply thereto and the Pledgor shall give the Lender prompt written notice thereof along with an amended Schedule A or Schedule B, as appropriate.

5. Use of Trademarks and Patent Collateral. So long as this Pledge is in effect and so long as the Pledgor has not received notice from the Lender that an Event of Default has occurred under the Loan Documents and that the Lender has elected to exercise its rights to assignment hereunder, the Pledgor shall continue to have the exclusive right to use the Trademarks and Patent Collateral in the ordinary course of business, including the right to enter into agreements and licenses thereof, or pertaining thereto.

6. Negative Pledge. The Pledgor agrees not to sell, assign (by operation of law or otherwise) or further encumber its rights and interest in the Trademarks or the Patent Collateral without prior written consent of the Lender. The Pledgor shall defend the Trademarks and the Patent Collateral against and shall take other action as is necessary to remove any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Trademarks and the Patent Collateral, and upon Lender's request will defend the right, title and interest of the

Lender in and to any of the Pledgor's rights under the Trademarks and the Patent Collateral against the claims or demands of all persons whatsoever.

7. **No Additional Trademarks or Patent Collateral.** As of the date hereof, the Pledgor does not have any Trademarks or Patents or Reissued Patents registered in or the subject of pending applications in the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, other than those grants, registrations or applications for registrations listed on Schedule A-1 and Schedule B (as applicable) annexed hereto and made a part hereof.

8. **Pledge of Additional Trademarks.** In the event the Pledgor, either itself or through any agent, employee, licensee or designee shall:

(a) file or record an application for the registration of any Trademark or Patent with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof; or

(b) file or record any assignment of any Trademark or Patent which the Pledgor may acquire, own or license from a third party, with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof;

the Pledgor shall promptly, but in no event more than fifteen (15) days subsequent to such filing, notify the Lender thereof, and, upon request of the Lender shall promptly, but in no event more than twenty (20) days subsequent to such notice, execute and deliver any and all assignments, agreements, instruments, documents and papers as the Lender may reasonably request to evidence the Lender's interest in such Trademark or Patent and the goodwill of the Pledgor associated thereto or represented thereby. The Pledgor hereby grants the Lender a power of attorney, irrevocable until the Obligations are fully paid and satisfied, to modify this Pledge by amending Schedule A and Schedule B, as applicable, to include any future Trademarks or licenses or Patents or Reissued Patents, including, without limitation, registrations or applications appurtenant thereto, covered by this Agreement. Lender shall endeavor to deliver to Pledgor any such amendments or modifications within a reasonable period of time after such amendments or modifications are executed pursuant to said power of attorney, provided, however, Lender's failure to do so shall not result in a claim or cause of action by Pledgor against Lender.

9. **Remedies Upon Default.** (a) Anything herein contained to the contrary notwithstanding, if and while either the Pledgor shall be in default hereunder or an Event of Default exists under the Loan Documents, the Pledgor hereby covenants and agrees that the Lender, as the holder of a security interest under the Uniform Commercial Code, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks and the Patent Collateral covered hereby.

(b) For such purposes, and in the event of the Pledgor's default hereunder or an Event of Default under the Loan Documents and while such default or Event of Default exists, the Pledgor hereby authorizes and empowers the Lender to make, constitute and appoint

any officer or agent of the Lender as the Lender may select, in its exclusive discretion, as the Pledgor's true and lawful attorney-in-fact, with the power to endorse the Pledgor's name on all applications, documents, papers and instruments necessary for the Lender to use the Trademarks or the Patent Collateral or to grant or issue any exclusive or non-exclusive license under the Trademarks or the Patent Collateral to anyone else, or necessary for the Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Patent Collateral to itself or to anyone else. The Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Pledge and the Loan Documents, and until all the Obligations are satisfied in full.

(c) The Pledgor expressly acknowledges that this Agreement shall be recorded with the Patent and Trademark Office in Washington, D.C. Contemporaneously herewith, the Pledgor shall also execute and deliver to the Lender such documents as the Lender shall reasonably request to permanently assign all rights in the Trademarks and the Patent Collateral to the Lender, which documents shall be held by the Lender, until the occurrence of an Event of Default hereunder or under the Loan Documents. After such occurrence, the Lender may, at its sole option, record such documents with the Patent and Trademark Office.

10. Subject to Loan Agreement. This Pledge shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

11. Inconsistent with Loan Agreement. All rights and remedies herein granted to the Lender shall be in addition to any rights and remedies granted to the Lender under the Loan Documents. In the event of an inconsistency between this Agreement and the Loan Agreement, the language of the Loan Agreement shall control. The terms and conditions of the Loan Agreement are hereby incorporated herein by reference.

12. Termination of Agreement. Upon payment and performance of all Obligations under the Loan Documents, the Lender shall execute and deliver to the Pledgor all documents necessary to re-vest all rights in and to the Trademarks and the Patent Collateral in the Pledgor and/or terminate any interest of the Lender therein.

13. Prosecution of Trademark and Patent Applications. (a) Subject to the terms of the Loan Documents, the Pledgor shall have the duty to prosecute diligently any Trademark or Patent application with respect to the Trademarks and Patents pending as of the date of this Pledge or thereafter, until the Obligations shall have been satisfied in full, to preserve and diligently maintain all rights in the registration and grant of the Trademarks and the Patent Collateral, to halt any infringement of the Trademarks and Patents and upon reasonable request of the Lender, the Pledgor shall make federal application on registrable but unregistered trademarks and Patents belonging to the Pledgor. Any reasonable expenses incurred in connection with such applications or defense of said Trademarks or Patent Collateral shall be borne by the Pledgor. The Pledgor shall not abandon any Trademark or Patent Collateral without the written consent of the Lender.

(b) The Pledgor shall have the right to bring suit in its own name to enforce the Trademarks and Patent Collateral, in which event the Lender may, if the Pledgor deems it necessary or after an Event of Default under the Loan Documents, be joined as a nominal party to such suit if (i) the Lender shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder, or (ii) if Lender determines, in its sole discretion, that it is or may be subject to a risk of liability as a result of such joinder, Lender may be joined as a nominal party if it is indemnified, to its satisfaction, and such indemnity obligation shall be collateralized in a manner and with collateral that is satisfactory, in all respect, to Lender. The Pledgor shall promptly, upon demand, reimburse and indemnify the Lender for all damages, reasonable costs and reasonable expenses, including attorneys' fees, incurred by the Lender in the fulfillment of the provisions of this paragraph and all other actions and conduct of the Pledgor with respect to the Trademarks and Patent Rights during the term of this Agreement.

14. Responsibility and Liability. The Pledgor assumes all responsibility and liability arising from the use of the Trademarks and the Patent Collateral, and hereby indemnifies and holds the Lender and each director, officer, employee, affiliate and agent thereof, harmless from and against any claim, suit, loss, damage or expense (including attorneys' fees and expenses) arising out of any alleged defect in any product manufactured, promoted or sold by the Pledgor in connection with any of the Trademarks, the Patent Collateral or otherwise arising out of the Pledgor's operation of its business from the use of the Trademarks and the Patent Collateral. In any suit, proceeding or action brought by the Lender under any license for any sum owing thereunder, or to enforce any provisions of such license, the Pledgor will indemnify and keep the Lender harmless from and against all expense, loss or damage suffered by reason of any defense, set off, recoupment, claim, counterclaim, reduction or liability whatsoever of the obligee thereunder or arising out of a breach of the Pledgor of any obligation thereunder or arising out of any agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from the Pledgor, and all such Obligations of the Pledgor shall be and remain enforceable against and only against the Pledgor and shall not be enforceable against the Lender.

15. Lender's Rights. The Lender may, in its sole discretion, pay any amount or do any act required of the Pledgor hereunder or requested by the Lender to preserve, defend, protect, maintain, record or enforce the Pledgor's obligations contained herein, the Obligations of the Pledgor to the Lender, the Trademarks, the Patent Collateral, or the right, title and interest granted the Lender herein, and which the Pledgor fails to do or pay, and any such payment shall be deemed an advance by the Lender to the Pledgor and shall be payable on demand together with interest thereon at the default rate specified in the Loan Documents.

16. Protection of the Trademarks and the Patent Collateral. The Pledgor agrees that if it learns of any use by any person or any term or design likely to cause confusion with any Trademark, or of any claim of any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Trademarks or the Patent Collateral, the Pledgor shall promptly notify the Lender of such use, lien, security interest, claim, right or other encumbrance and, if requested by the Lender, shall join with the Lender, at the Pledgor's expense, in such action as the Lender, in its reasonable discretion, may deem advisable for the protection of the Lender's interest in and to the Trademarks and the Patent Collateral, it being understood that the

foregoing shall not preclude the Pledgor from bringing an action against a person for the protection of the Pledgor's interest in and to such Trademarks and the Patent Collateral.

17. **Additional Remedies.** Upon the occurrence of an Event of Default under the Loan Documents, the Lender may, without any obligation to do so, complete any obligation of the Pledgor hereunder, in the Pledgor's name or in the Lender's name, but at the Pledgor's expense, and the Pledgor hereby agrees to reimburse the Lender in full for all reasonable expenses, including reasonable attorney's fees, incurred by the Lender in protecting, defending and maintaining the Trademarks and the Patent Collateral.

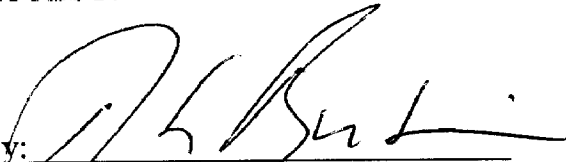
18. **Governing Law.** THIS PLEDGE WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE LENDER'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES, EXCEPT THAT THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA SHALL GOVERN TO THE EXTENT APPLICABLE.

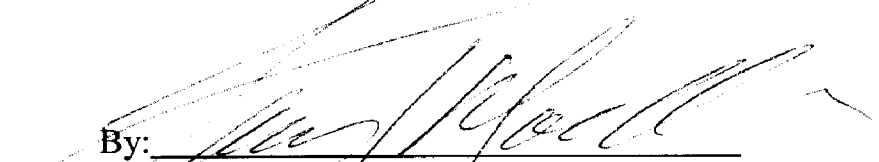
19. **Counterparts.** This Pledge may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Pledge by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Pledge by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

WITNESS the due execution hereof as a document under seal, as of the date first written above.

ATTEST:


LANTIS EYEWEAR CORPORATION

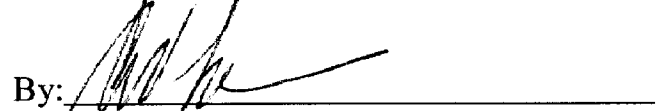
By: 
Name: Daniel L. Bernstein
Title: Secretary

By: 
Name: Laurence J. Moellentine
Title: President

WITNESS/ATTEST:

PNC BANK, NATIONAL ASSOCIATION,
as Lender and as Agent

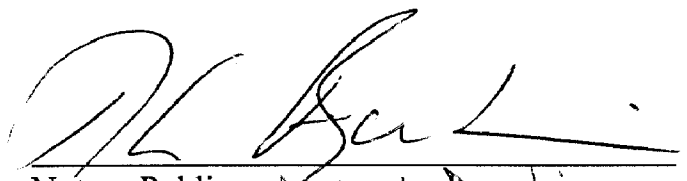
By: 
Name: Michael T. Jones
Title:

By: 
Name: Arthur Lippens
Title: Vice President

STATE OF New York) :

COUNTY OF New York) : SS.

BE IT REMEMBERED, that on this 17th day of September, 2002, before me the subscriber, a notary public, personally appeared Arthur Lippens, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is a Vice President of PNC Bank, National Association, the agent and a lender named in the within instrument; that the execution as well as the making of this instrument has been duly authorized and said instrument signed and sealed by said Vice President as and for the voluntary act and deed of PNC Bank, National Association.



Notary Public Daniel L. Bernstein

My Commission Expires: 8/31/2006

No 000E6579615

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PLAYERS	RN 2,358,446	6/13/00	Registered
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European Trademark	Application or Registration Number	Registration or Filing Date	Status
SOLARGENICS	959,312	9/20/00	Registered

SCHEDULE A-2 TO
PLEDGE OF TRADEMARKS AND PATENTS AS SECURITY

TRADEMARKS
(Common Law)

Trademark	Status
N/A	N/A

**SCHEDULE B TO
PLEDGE OF TRADEMARKS AND PATENTS AS SECURITY**

PATENTS

<u>Patent Application No.</u>	<u>Issue (Filing Date)</u>	<u>Title</u>
D426,998	6/27/00 (3/26/99)	Eyewear display panel
D436,265	1/16/01 (3/26/99)	Eyewear merchandising unit
D421,450	3/7/00 (3/27/98)	Eyewear
D404,056	1/12/99 (2/27/98)	Eyewear
D402,682	12/15/98 (2/27/98)	Eyewear
D402,306	12/8/98 (2/27/98)	Temple piece for eyewear