

10-15-2002

10-15-02

Form PTO-1594  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)  
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102248462

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):

Zelda Design Group, Inc.

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State New York
- Other \_\_\_\_\_

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

2. Name and address of receiving party(ies)

Name: First International Bank

Internal

Address: \_\_\_\_\_

Street Address: 280 Trumbull Street

City: Hartford State: CT Zip: 06103

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State \_\_\_\_\_
- Other National banking assoc.

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  No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name

Other Order Granting Possession

Execution Date: of Collateral - 8/15/02

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2072213; 2216358

Additional number(s) attached  Yes  No

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

Name: Todd M. Galante

Internal Address: St. John & Wayne, LLC

Street Address: Two Penn Plaza East

City: Newark State: NJ Zip: 07105

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41).....\$65.00

- 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.

Todd M. Galante, Esq.

Name of Person Signing

Signature

October 11, 2002

Date

Total number of pages including cover sheet, attachments, and document: 9

10/16/2002 DDYRNE 00000156 2072213

01 FC:8521  
02 FC:8522

40.00 OP  
25.00 OP

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

**TRADEMARK**  
**REEL: 002597 FRAME: 0704**

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hele E. Freedman  
Justice

PART 39

First Intl Bank

INDEX NO. 603002/02

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 01

MOTION CAL. NO. \_\_\_\_\_

- v -

Zelda Design Group

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion for possession of assets & permanent restraint against defendant is granted as per order signed herewith

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 8/22/02

H E F  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION TRADEMARK

At the ex Parte Motion Part of the Supreme Court of the State of New York, held in and for the County of New York at 60 Centre Street, New York, New York on the 15 day of August, 2002

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

FIRST INTERNATIONAL BANK, N.A.,  
Plaintiff,  
vs.  
ZELDA DESIGN GROUP, INC., a  
corporation of the State of New York,  
PHILLIP S. GAYNOR, PROFILE  
ENTERPRISES, L.L.P., a Limited Liability  
Partnership of the State of New York, and  
ABC CORPS. 1 through 3 being fictitious  
names,  
Defendants.

Index No. 603002/2002

Hon. Helen Freedman, J.S.C.

**ORDER GRANTING  
POSSESSION OF COLLATERAL,  
RESTRAINTS, ~~APPOINTING~~  
~~TEMPORARY RECEIVER~~ AND  
OTHER RELIEF**

**THIS MATTER** having been opened to the Court by St. John & Wayne, LLC, attorneys for plaintiff, First International Bank, N.A. (Andrew s. Wulfman, Esq., appearing), by way of the ex Parte filing of an Order to Show Cause, Complaint, Affidavit of Christopher Ursini with Exhibits, Affidavit of Urgency and Memorandum of Law in Support of the entry of immediate temporary restraints and other related relief, (hereinafter collectively referred to as the "Moving Papers"), and advance telephone notice of the filing of the Motion Papers having been given by Andrew S. Wulfman, Esq. to defendants Zelda Design Group, Phillip S. Gaynor and Profile Enterprises, L.P. and the Court having entered the Order to Show Cause with temporary restraints against all defendants on August 15, 2002, (the "Order to Show Cause"), and true

copies of the Order to Show Cause having been delivered by facsimile on August 15, 2002 and true copies of the Order to Show Cause and Motion Papers having been served by hand on August 16, 2002 upon Kenneth Schulman, Esq., of Pryor Cashman Sherman & Flynn, counsel for defendants Zelda Design Group, Inc. and Phillip S. Gaynor and upon Edward Siegel, Esq., of Borah, Goldstein, Altschuler, & Schwartz, counsel for defendant Profile Enterprises, L.P., and a true copy of the Order to Show Cause and Motion Papers having been served by hand upon Phillip S. Gaynor, individually at 1245 Park Avenue, New York, New York; and it now further appearing from the averments and allegations set forth in the Motion Papers, including the Affidavit of Christopher Ursini, that:

1. Defendants Zelda Design Group, Inc. ("Zelda") and Phillip S. Gaynor ("Gaynor") owe Plaintiff in excess of \$1,750,000.00 pursuant to certain written, executed and delivered loan agreements, guarantees and other documents as detailed in the Complaint and otherwise (the "Loan Agreements");
2. Defendant Zelda is in default under the Loan Agreements and neither Zelda nor Gaynor have made payment to Plaintiff as required by the Loan Agreements;
3. Plaintiff has a valid and duly perfected first priority lien and security interest in all of Zelda's assets (the "Collateral") and that due to Zelda's defaults and failure to pay Plaintiff, Plaintiff is entitled to possession of the Collateral and other relief;
4. it further appearing that Zelda has various inventory ready for shipment and/or work in process that has a value substantially in excess of amounts due Profile Enterprises L.P. which are being distrained by Profile Enterprises, L.P. to the detriment of Zelda, Gaynor and Plaintiff;

5. Defendant Zelda's operations have ceased and it is no longer in possession of its place of business located at 224 West 35<sup>th</sup> Street, New York, New York, (the "Premises") wherein certain of the assets and operations of Zelda are located;
6. Substantial assets of Zelda, including, among others, the company's corporate and business books, records, accounts and certain other assets are located at the Premises and neither Zelda, Gaynor nor Plaintiff can gain access to the same;
7. Defendant Profile Enterprises, L.L.P. ("Profile Enterprises"), a landlord, is in possession of the Premises pursuant to a Judgement for Possession entered in the matter of Profile Enterprises LLP v. ZVII Operating Corp. pending in the Civil Court of the City of New York, County of New York, Index No. L-T 113458-01 ("Landlord/Tenant Action");
8. The Landlord/Tenant action was against ZVII Operating Corp. and not Zelda;
9. The continued distraint by the Profile Enterprises, L.P., of the Collateral and/or assets of Zelda will substantially impair the value of the assets and is depriving Plaintiff from possession and recourse to the Collateral;
10. In the event Zelda's inventory and/or work in process are not shipped and/or completed timely to meet shipping dates on outstanding orders to Zelda's customers (if appropriate), Zelda's assets and/or the Collateral will likely be reduced in value;
11. Plaintiff's perfected security interest, liens, claims and legal position appear superior to those of Profile Enterprises, L.P.,
12. Plaintiff is being and will continue to be irreparably harmed by: (a) the continued distraint of Zelda's assets/the Collateral, (b) Zelda's and Gaynor's non-payment of the amounts due and owing to Plaintiff under the loan documents, (c) Plaintiff's

inability to have access to the Collateral, as well as Zelda's corporate and business books, records, accounts and other information, (d) Zelda's claimed inability to respond to Plaintiff's demand to assemble the Collateral and turnover same to Plaintiff's due to the distraint imposed by Profile Enterprises, and (e) Gaynor's counsel having represented that his financial condition is such that his guaranty to Plaintiff is of inconsequential value and Plaintiff will need to look mostly to the Collateral to recover a large part of the debts due and owing to Plaintiff, and (f) otherwise;

13. Plaintiff is entitled to immediate relief as of right against Zelda and Gaynor under the Loan Agreements;

And the Court having set a short return date for a hearing on the Order to Show Cause of August 19, 2002, at 10:00 a.m.; and the Court having reviewed the Motion Papers and all submissions made on behalf of the parties; and the Court having held a hearing thereon and having the benefit of oral argument of counsel; and for good cause shown:

**IT IS** on this 22 day of August, 2002,

**ORDERED, ADJUDGED AND DECREED** that Plaintiff, First International Bank, N.A., is hereby granted possession of all the tangible and intangible assets of defendant, Zelda Design Group, Inc., where ever located, including, but not limited to, accounts receivable, deposits, inventory, raw material, equipment, furniture, fixtures, cash, documents, books and records, contracts, claims, causes of action, legal rights and remedies, securities, balances, and all products and proceeds thereof, including insurance proceeds, subject to the liens and security interests of Plaintiff, (the "Collateral"); and it is further

**ORDERED, ADJUDGED AND DECREED** that Zelda Design Group, Inc., Phillip S. Gaynor and ZVII Operating, Inc., ZVII, Inc. and Zelda Operating, Inc. and defendants ABC Corps, 1 through 3, as well as all of their respective agents, employees, servants, representatives and/or assigns be and hereby are permanently restrained from possessing, controlling, selling, disposing of, transferring, negotiating, pledging, hypothecating, depositing, commingling, secreting or interfering with the Collateral; and it is further

**ORDERED, ADJUDGED AND DECREED** that Zelda Design Group, Inc., Phillip S. Gaynor, Profile Enterprises, L.L.P., and ZVII Operating, Inc., ZVII, Inc. and Zelda Operating, Inc. and defendants ABC Corps, 1 through 3, as well as all of their respective agents, employees, servants, representatives and/or assigns, be and hereby are permanently restrained from taking any action or engaging in any conduct that would interfere with, hinder or in any way delay, First International Bank, N.A.'s ability to take possession of, have access to and/or deal with the Collateral, including the personal property and possessions located at 224 West 35<sup>th</sup> Street, New York, New York subject to the provisions of this Order, (including, but not limited to selling and/or liquidating the same, collecting or selling the accounts receivable and other property constituting the Collateral, and applying the proceeds to the amounts due or to become due to Plaintiff in this case and then to recover on any resulting deficiency) by withholding information regarding Zelda and/or Gaynor, their respective business affairs, financial condition, assets, liabilities, books and records, financial information and/or possessing, collecting, diverting, transferring, pledging or otherwise disposing of said books, records, information, Collateral and/or the proceeds, product, replacement, receipts from or of the same, as well as any insurance proceeds regarding the Collateral; and it is further

**ORDERED** that Zelda Design Group, Inc., Phillip S. Gaynor and ZVII Operating, Inc., ZVII, Inc. and Zelda Operating, Inc. and defendants ABC Corps. 1 through 3, as well as all of their respective agents, employees, servants, representatives and/or assigns be and hereby are permanently restrained from retaining any receipts from accounts receivable collections of Zelda Design Group, Inc., including any proceeds of said accounts in their possession, custody or control, as well as any and all such receipts which may hereafter come into their possession, custody and/or control, and are hereby directed to immediately turnover and remit all such proceeds, receipts, accounts and account information to First International Bank, N.A., or its counsel; and it is further

**ORDERED** that Zelda Design Group, Inc., Phillip S. Gaynor, and ZVII Operating, Inc., ZVII, Inc. and Zelda Operating, Inc. and defendants ABC Corps. 1 through 3, as well as all of their respective agents, employees, servants, representatives and/or assigns be and are hereby enjoined and restrained from taking any action or engaging in any conduct to interfere with, hamper, hinder and/or delay Plaintiff's securing possession of and conducting an examination of all defendant Zelda's books, records, contracts, documents, notes and other information pertaining to Zelda's operations and financial condition, including, but not limited to, Zelda's financial statements, accounts receivable ledgers and all records of business transactions and corporate transactions; and it is further

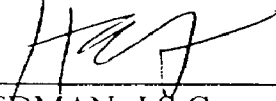
**ORDERED** that Zelda Design Group, Inc., ("Zelda"), and Phillip S. Gaynor shall immediately prepare and submit to counsel for the Plaintiff a written financial statement of all Zelda's assets, including, but not limited to, accounts receivable, deposits, inventory, raw material, equipment, furniture, fixtures, cash, tangible and intangible, claims, causes of action, legal rights and remedies (identifying their book value for all the same), as well as stating all



liabilities (identifying whether said liabilities are fixed, liquidated, contingent, disputed or paid). It shall also identify all payments made to any officers, shareholders, principals, affiliates and/or related entities of Zelda. They shall also immediately advise counsel for Plaintiff of the whereabouts of Zelda's inventory, raw materials and work in process, as well as provide copies of all outstanding orders for product. Zelda and Gaynor shall also provide a complete financial statements and identification of all assets subject to First International Bank, N.A.'s security interest, their book value and location within 7 days of the entry of this Order; and it is further

**ORDERED** that Plaintiff is granted expedited discovery of Zelda ~~prior to the return date of this Order to Show Cause~~ in the form of an inspection, examination of financial and corporate books and records of Zelda and by depositions of officers, employees and/or agents of Zelda with knowledge of the business and corporate affairs of Zelda, including defendant Phillip S. Gaynor provided that Plaintiff shall provide no less than forty-eight (48) hours advanced notice of all deposition dates and document discovery requests. Notwithstanding the above, Defendant Gaynor shall appear at the offices of St. John & Wayne, L.L.C., located at 70 East 55<sup>th</sup> Street, New York, New York (or its New Jersey office – if that is convenient for the parties and/or their Counsel) within two (2) business days from the entry of this Order to give sworn testimony respecting Zelda's assets, liabilities, financing capabilities, business and corporate affairs, employee/officer compensation, loan relationships, viability of Zelda and other relevant matters pertaining to this case. Mr. Gaynor shall bring with him all documents, records and things requested by Plaintiff in writing within twenty-four (24) hours advanced notice, ~~and it is further~~

~~telephone conference call at which time the court will consider the matter, conduct the telephone conference call, render a decision and/or schedule a formal hearing to resolve the issue.~~



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HELEN FREEDMAN, J.S.C.

DOCUMENTS RELIED ON;  
ORDER TO SHOW CAUSE  
COMPLAINT  
AFFIDAVIT OF CHRISTOPHER URSINI  
AFFIDAVIT OF URGENCY  
MEMORANDUM OF LAW