

10-22-2002

10-22-02

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



102256187

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):

M T S, Incorporated

MRD 10-22-02

- Individual(s) Association General Partnership Limited Partnership Corporation-State California 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: 10/09/2002

2. Name and address of receiving party(ies)

Name: The CIT Group/Business Credit, Inc.

Internal

Address:

Street Address: 300 South Grand Avenue, 3rd Floor

City: Los Angeles State: CA Zip: 90071

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State New York 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 No

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

A. Trademark Application No.(s)

Please see Exhibit B attached hereto.

B. Trademark Registration No.(s)

Please see Exhibit B attached hereto.

Additional number(s) attached Yes No

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

Name: Susanna Zubia

Internal Address: Mayer, Brown, Rowe & Maw

Street Address: 350 South Grand Avenue

25th Floor

City: Los Angeles State: CA Zip: 90071

6. Total number of applications and registrations involved:

67

7. Total fee (37 CFR 3.41): \$1,690.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

N/A

(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.

Susanna Zubia Name of Person Signing

Susanna Zubia Signature

October 21, 2002 Date

15

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

10/22/2002 DBYRNE 00000136 2213846

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

01 FC:8521 02 FC:8522

40.00 1650.00

SCHEDULE B
U.S. TRADEMARKS

<u>Title or Mark</u>	<u>Registration/Application No.</u>	<u>Registration/Filing Date</u>
@TOWER (STYLIZED)	2213846	December 29, 1998
33RD STREET RECORDS	2613292	August 27, 2002
33RD STREET RECORDS	2581700	June 18, 2002
33RD STREET RECORDS AND DESIGN	76385101	
AT TOWER RECORDS, THE DIFFERENCE IS SELECTION	2048698	April 1, 1997
BAYSIDE	2229988	March 9, 1999
BED	2444643	April 17, 2001
BED & LOGO	2615774	September 3, 2002
BED BAYSIDE ENTERTAINMENT DISTRIBUTION (STYLIZED)	2349287	May 16, 2000
CALAMARI RECORDS	75856455	November 23, 1999
CLUB TOWER	2121440	December 16, 1997
COLUMBUS & BAY	76105339	August 7, 2000
DESERT ISLAND DISCS	2266463	August 3, 1999
EPULSE	1993203	August 13, 1996
EPULSE & DESIGN	2149377	April 7, 1998
GIANORMOUS	2500578	October 23, 2001
IT'S A GLOBAL THING	1995459	August 20, 1996
KNOW BOOKS, KNOW LIFE	76368169	
KNOW MUSIC, KNOW LIFE	76368170	
NO MUSIC, NO LIFE	2225107	February 23, 1999
NO RISK DISC	75931044	February 28, 2000
PUG'Z	2544981	March 5, 2002
PULSE	1380333	January 28, 1986
PULSE!	2617404	September 10, 2002
PULSE! LATINO	75845942	November 10, 1999
REWOT	75931471	February 28, 2000
REWOT	76101310	August 1, 2000
ROSE RECORDS	2126723	January 6, 1998
ROSE RECORDS	1188221	January 26, 1982

<u>Title or Mark</u>	<u>Registration/Application No.</u>	<u>Registration/Filing Date</u>
ROSE RECORDS AND DESIGN	2126722	January 6, 1998
SOLOMON DUBNICK GALLERY	1875714	January 24, 1995
SOLOMON DUBNICK PRESS	2062095	May 13, 1997
SUPER SHNOZZ	2613233	April 27, 2002
T.E.N.	75221704	January 6, 1997
THE BEST PLACE TO BUY MUSIC. PERIOD.	75929573	February 28, 2000
THE TOWER DIFFERENCE IS SELECTION	1991259	August 6, 1996
TOWER	1869742	December 27, 1994
TOWER	2414228	December 19, 2000
TOWER AND DESIGN	2612519	August 27, 2002
TOWER BOOKS	1605065	July 3, 1990
TOWER CD LISTENING STATION	1903183	July 4, 1995
TOWER CONCEPTS	1999796	September 10, 1996
TOWER DIRECT	75-931460	February 28, 2000
TOWER ENTERTAINMENT NETWORK	75221706	January 6, 1997
TOWER ESSENTIALS	76385371	
TOWER ESSENTIALS COLLECTION	76048553	May 15, 2000
TOWER EXPRESS	2527869	January 8, 2002
TOWER FRAMING	2023666	December 17, 1996
TOWER GALLERY	1878145	February 7, 1995
TOWER LATINA	2415694	December 26, 2000
TOWER MANIA	76042982	May 8, 2000
TOWER NEWS	75-281509	April 25, 1997
TOWER NEWSSTAND	76340770	
TOWER OUTLET	1879004	February 14, 1995
TOWER RECORDS	1469471	December 15, 1987
TOWER RECORDS	2213918	December 29, 1998
TOWER RECORDS (STYLIZED)	1879006	February 14, 1995
TOWER RECORDS ESSENTIALS COLLECTION	76048246	May 15, 2000
TOWER RECORDS VIDEO (STYLIZED)	1878147	February 7, 1995
TOWER RECORDS VIDEO BOOKS AND DESIGN	2612521	August 27, 2002
TOWER RECORDS/VIDEO	1548727	July 18, 1989

<u>Title or Mark</u>	<u>Registration/Application No.</u>	<u>Registration/Filing Date</u>
TOWER RECORDS/VIDEO/BOOKS (STYLIZED)	1906108	July 18, 1995
TOWER TO TOWER RUN	2275788	September 7, 1999
TOWER VIDEO	1546888	July 4, 1989
TOWERBOOKSTORE	76233215	March 30, 2001
WHERE ANGELS REST BY E. GALINDO AND DESIGN	2207708	December 1, 1998
WOW!	1592492	April 17, 1990

**GRANT OF SECURITY INTEREST IN
PATENTS, TRADEMARKS AND LICENSES**

THIS GRANT OF SECURITY INTEREST IN PATENTS, TRADEMARKS AND LICENSES (herein the "Agreement") made as of this 9th day of October, 2002, by **M T S, Incorporated**, a California corporation, with its principal place of business at 2500 Del Monte Street, West Sacramento, California 95691 (herein the "Company"), and **The CIT Group/Business Credit, Inc.** a New York corporation ("CIT"), with offices at 300 South Grand Avenue, 3rd Floor, Los Angeles, California 90071, as agent (in such capacity, "Agent") for the Lenders (defined below).

W I T N E S S E T H:

WHEREAS, the Company and Three A's Holdings, L.L.C., a Delaware limited liability company (collectively, "Borrowers"), Agent, the lenders signatory thereto (the "Lenders"), are parties to a certain Loan and Security Agreement, of even date herewith (as the same may be amended modified, supplemented, extended, renewed, restated or replaced from time to time, the "Loan Agreement"), which provides (i) for Agent and the Lenders to make certain loans, advances and extensions of credit, all to or for the account of the Borrowers and (ii) for the grant by the Company to Agent of a security interest in all of the Company's assets, including, without limitation, its patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, tradenames, goodwill and licenses, all as more fully set forth therein;

NOW THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Company agrees as follows:

1. Definitions. Capitalized terms used herein and defined in the Loan Agreement shall have the meanings set forth therein unless otherwise specifically defined herein.
2. Grant of Security Interest. To secure the payment of the Obligations (as defined in the Loan Agreement), the Company hereby grants to Agent, for itself and the ratable benefit of the Lenders, a security interest, effective immediately, in all of the Company's right, title and interest in and to all of the following described property, whether now owned or hereafter acquired (collectively herein the "Intellectual Property Collateral"):
 - (i) Patents and patent applications and/or registrations together with the inventions and improvements described and claimed therein including, without limitation, the patents and applications, if any, listed on Schedule A, attached hereto and made a part hereof, and any and all reissues and renewals thereof and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Patent Collateral");
 - (ii) Trademarks, trademark registrations and/or applications and tradenames including, without limitation, the trademarks and applications, if any, listed on

Schedule B attached hereto and made a part hereof, and any and all reissues and/or renewals thereof, and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademark Collateral");

- (iii) Any license agreement in which the Company is or becomes licensed to use any patents and/or trademarks owned by a third party including, without limitation, the licenses, if any, listed on Schedule C attached hereto and made a part hereof (all of the foregoing are sometimes referred to herein individually and/or collectively as the "License Collateral");
- (iv) The goodwill of the Company's business connected with and symbolized by the Intellectual Property Collateral; and
- (v) All cash and non-cash proceeds of the foregoing.

3. Agent's Rights. Upon the occurrence and during the continuance of any Event of Default hereunder, Agent shall have all the rights and remedies of a secured party under the UCC and any other applicable state or federal laws. Agent will give the Company reasonable notice of the time and place of any public sale of the Intellectual Property Collateral or the time after which any private sale of the Intellectual Property Collateral or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid to the address of the Company set forth above at least ten (10) days before the date of such sale or disposition. In addition to the foregoing and all other rights and remedies of Agent upon the occurrence and during the continuance of any Event of Default hereunder, Agent shall thereupon have the immediate right to transfer to itself or to sell, assign and transfer to any other person all right, title and interest in and to all or any part of the Intellectual Property Collateral. A formal irrevocable power of attorney (in the form annexed hereto) is being executed and delivered by the Company to Agent concurrently with this Agreement to enable such rights to be carried out. The Company agrees that, in the event Agent exercises its right to transfer, sell or assign the Intellectual Property Collateral hereunder pursuant to said power of attorney, after written notification of such event from Agent to the Company, the Company shall never thereafter, without the prior written authorization of the owner or owners of such Intellectual Property Collateral, use any of such Intellectual Property Collateral. The condition of the foregoing provision is such that unless and until there occurs an Event of Default, the Company shall continue to own and use the Intellectual Property Collateral in the normal course of its business and to enjoy the benefits, royalties and profits therefrom. This Agreement will not operate to place upon Agent any duty or responsibility to maintain the Intellectual Property Collateral.

4. Fees. The Company will pay all filing fees with respect to the security interest created hereby which Agent may deem necessary or advisable in order to perfect and maintain the perfection of its security interest in the Intellectual Property Collateral.

5. Representations, Warranties and Covenants. The Company represents, warrants and covenants that: (a) the Company has not made or given any prior assignment, transfer or security interest in the Intellectual Property Collateral or any of the proceeds thereof except for Permitted Liens; (b) the Intellectual Property Collateral is and will continue to be, in all respects, in full force and effect; provided, however, and to the extent not prohibited under the terms of the Loan Agreement, the Company may discontinue, abandon or terminate any registrations or application for registrations of the Intellectual Property Collateral or any licenses constituting Intellectual Property Collateral which, in its reasonable business judgment, do not have sufficient economic value to warrant such actions; and (c) that there are no known material infringements of the Intellectual Property Collateral.
6. Application of Proceeds. The proceeds of any sale, transfer or disposition of the Intellectual Property Collateral by Agent pursuant to the terms hereof shall be applied first to all costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses and court costs, incurred by Agent in connection with such sale and the exercise of Agent's rights and remedies hereunder and under the Loan Agreement; next, such proceeds shall be applied to the payment, in whole or in part, of the Obligations due Agent in such order as Agent may elect; and the balance, if any, shall be paid to the Company or as a court of competent jurisdiction may direct.
7. Defense of Claims. Except as provided in Section 5 hereof, the Company will defend at its own cost and expense any action, claim or proceeding affecting the Intellectual Property Collateral or the interest of Agent therein; provided, however, and to the extent not prohibited under the terms of the Loan Agreement, the Company may elect not to defend any such action, claim or proceeding affecting Intellectual Property Collateral which, in its reasonable business judgment, does not have sufficient economic value to warrant such actions.
8. Rights Cumulative. This Agreement shall be in addition to the Loan Agreement and shall not be deemed to affect, modify or limit the Loan Agreement or any rights that Agent has under the Loan Agreement. The Company agrees to execute and deliver to Agent (at the Company's expense) any further documentation or papers necessary to carry out the intent or purpose of this Agreement including, but not limited to, financing statements under the UCC.
9. Construction and Invalidity. Any provisions hereof contrary to, prohibited by or invalid under any laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof.
10. **CHOICE OF LAW, ETC. THE COMPANY AGREES THAT THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT AND ALL RIGHTS HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES. THIS AGREEMENT TOGETHER WITH THE LOAN AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE COMPANY AND AGENT WITH RESPECT TO THE INTELLECTUAL**

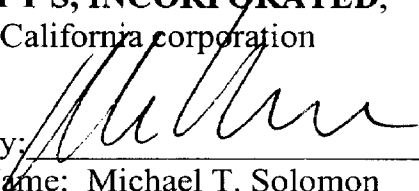
PROPERTY COLLATERAL, CAN ONLY BE CHANGED OR MODIFIED IN WRITING IN ACCORDANCE WITH SECTION 11.3(b) OF THE LOAN AGREEMENT AND SHALL BIND AND BENEFIT THE COMPANY, AGENT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. THE COMPANY AND AGENT EACH HEREBY EXPRESSLY WAIVES ANY RIGHT OF TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER.

11. Events of Default. The existence or occurrence of any Event of Default under the Loan Agreement is referred to herein individually as an “Event of Default,” and collectively as “Events of Default.”
12. Notices. The Company covenants and agrees that, with respect to the Intellectual Property Collateral, it will give Agent written notice in the manner provided in the Loan Agreement of:
 - (i) any claim by a third party that the Company has infringed on the rights of a third party which (A) if adversely determined would have a Material Adverse Effect or would otherwise constitute a Default or Event of Default under the Loan Agreement or (B) would otherwise be required to be reported to Agent under the terms of the Loan Agreement;
 - (ii) any infringement by a third party on the rights of the Company to the extent required under Section 5.2(g) of the Loan Agreement;
 - (iii) the registration or application for registration of any Intellectual Property Collateral after the date hereof; or
 - (iv) the acquisition, after the date hereof, of any material licenses constituting Intellectual Property Collateral.
13. Further Assurances. The Company will take any such action as Agent may reasonably require to further confirm or protect Agent’s rights under this Agreement in the Intellectual Property Collateral; provided, however, the Company shall have no obligation to register or seek registration of any Intellectual Property Collateral except to the extent such Intellectual Property has sufficient economic value, as determined by Borrower in its reasonable business judgment, to warrant such action or as may otherwise be required under the terms hereof or of the Loan Agreement. In furtherance thereof, the Company hereby grants to Agent a power of attorney coupled with an interest which shall be irrevocable during the term of this Agreement to execute any documentation or take any action in the Company’s behalf as may be permitted under the terms of the Agreement or as may be required to effectuate the terms, provisions and conditions of this Agreement.
14. Termination. This Agreement shall terminate upon termination of the Loan Agreement and full, final and indefeasible payment of the Obligations (other than contingent indemnification obligations). Upon the Company’s request, Agent shall within a reasonable time after any such termination execute and deliver to the Company (at the

Company's expense) such documents and instruments as are reasonably necessary to evidence such termination and release of the security interest granted herein on any applicable public record.

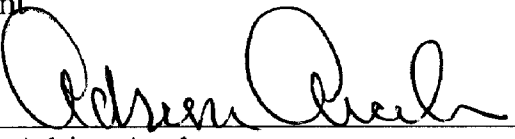
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

M T S, INCORPORATED,
a California corporation

By: 
Name: Michael T. Solomon
Title: President

Agreed and Accepted this 9th day of
October, 2002

THE CIT GROUP/BUSINESS CREDIT, INC.,
a New York corporation,
as Agent

By: 
Name: Adrian Avalos
Title: Vice President

IRREVOCABLE POWER OF ATTORNEY

M T S, Incorporated, a California corporation, with its principal place of business at 2500 Del Monte Street, West Sacramento, California 95691, (hereinafter referred to as the "Company"), hereby grants to **The CIT Group/Business Credit, Inc.**, a New York corporation, with offices at 300 South Grand Avenue, 3rd Floor, Los Angeles, California 90071, as agent (hereinafter referred to as "Agent"), the exclusive Irrevocable Power of Attorney to transfer to Agent or to any designee of Agent all Intellectual Property Collateral listed on the Schedules attached to the Grant of Security Interest in Patents, Trademarks and Licenses (the "Agreement"), dated as of the date hereof, between the Company and Agent, including, without limitation, all patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, and licenses together with the goodwill of the business connected with or symbolized by such Intellectual Property Collateral and the Company's entire inventory of labels and decals bearing any trademarks not affixed to its products, and the right to operate and control, sell, assign, and transfer the business under those trademarks under the following terms and conditions:

1. The power of attorney granted hereunder shall be effective as of the date hereof and shall last until the termination of the Agreement.
2. The power of attorney granted herein shall be irrevocable throughout the duration of its life as specified in Paragraph 1 hereinabove.
3. The power of attorney granted herein shall only be exercisable by Agent after the occurrence and during the continuance of an Event of Default under the Agreement.
4. Agent shall give the Company written notice of the exercise of this power as may be required by the Agreement or the Loan Agreement and the waiver by Agent of any particular Event of Default shall only be made in accordance with the terms of the Loan Agreement. Even then such waiver shall not constitute or be considered a waiver of any other Event of Default then existing or thereafter arising whether similar or not.

IN WITNESS WHEREOF, the Company has caused this Power of Attorney to be executed as of the 9th day of October, 2002.

M T S, INCORPORATED,
a California corporation

By: 

Name: Michael T. Solomon

Title: President

SCHEDULE A

U.S. PATENTS

None.

SCHEDULE C

U.S. LICENSES

None.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)

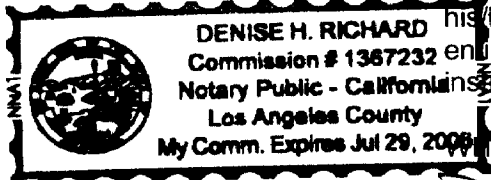
COUNTY OF Los Angeles)

) ss.

On Oct. 9, 2002 , before me, Denise H. Richard,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Michael T. Solomon,
Name of Signer(s)

__ personally known to me – OR – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Denise H. Richard
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY(IES) CLAIMED BY SIGNER(S)		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> Individual		
<input type="checkbox"/> Corporate Officer		
_____		_____
	Title(s)	Title or Type of Document
<input type="checkbox"/> Partner(s)	<input type="checkbox"/> Limited	
	<input type="checkbox"/> General	
_____		_____
		Number of Pages
<input type="checkbox"/> Attorney-In-Fact		
<input type="checkbox"/> Trustee(s)		
<input type="checkbox"/> Guardian/Conservator		
<input type="checkbox"/> Other: _____		_____
		Date of Document

Signer is Representing:
Name of Person(s) or Entity(ies)

Signer(s) Other Than Named Above

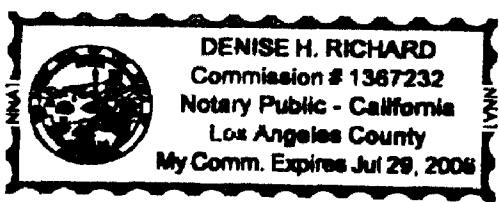
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA)
)
 COUNTY OF Los Angeles) ss.

On October 9, 2002, before me, Denise H. Richard,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Adrian Avalos,
Name of Signer(s)

personally known to me – **OR** – proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Denise H. Richard
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY(IES) CLAIMED BY SIGNER(S)		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> Individual		
<input type="checkbox"/> Corporate Officer		
<hr/> <input type="checkbox"/> Partner(s) <input type="checkbox"/> Limited <input type="checkbox"/> General		<hr/> Title or Type of Document
<input type="checkbox"/> Attorney-In-Fact		<hr/> Number of Pages
<input type="checkbox"/> Mortgagee(s)		
<input type="checkbox"/> Guardian/Conservator		
<input type="checkbox"/> Other: _____		
Signer is Representing: _____		Date of Document _____
Name of Person(s) or Entity(ies) _____		Signer(s) Other Than Named Above _____