

11-05-2002

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

REC  
T



102271189

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

Tab settings ⇨ ⇨ ⇨ ▼ ▼ ▼ ▼ ▼ ▼ ▼

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

1. Name of conveying party(ies):

PHOTO FANTASY, INC.

10-23-02

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

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other \_\_\_\_\_
- Merger
- Change of Name

Execution Date: 09/20/2002

2. Name and address of receiving party(ies)

Name: SOVEREIGN BANK

Internal

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

Street Address: 75 State Street

City: Boston State: MA Zip: 02109

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State \_\_\_\_\_

Other Federally Chartered Bank

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)  
See attached Schedule A

B. Trademark Registration No.(s)  
See attached Schedule A

Additional number(s) attached  Yes  No

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

Name: Rona West Cross, Esquire

Internal Address: RUBERTO, ISRAEL & WEINER, P.C.  
6th Floor

Street Address: \_\_\_\_\_  
100 North Washington Street

City: Boston State: MA Zip: 02114

6. Total number of applications and registrations involved: \_\_\_\_\_

18

7. Total fee (37 CFR 3.41).....\$ 720.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

501715

(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.

Rona West Cross

10/10/2002

Name of Person Signing

Signature

Date

8

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

11/04/2002 11:01 AM 00000100 501715 71114248

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

01 FC:0521 40.00 CH  
02 FC:0522 425.00 CH

OFFICE OF PUBLIC RECORDS  
FINANCE SECTION  
2002 OCT 23 PM 3:14

**SCHEDULE A TO TRADEMARKS RECORDATION FORM COVER SHEET**

Trademark Application No.(s): \_\_\_\_\_ Trademark Registration No. (s)

78/114,248	2,543,066
78/051,960	2,517,480
78/014,225	2,260,300
78/014,226	2,409,979
	2,288,575
	2,201,210
	2,095,121
	2,081,694
	2,084,091
	2,111,439
	2,131,346
	2,002,920
	2,004,296
	1,502,645

## TRADEMARK SECURITY AGREEMENT

THIS SECURITY AGREEMENT is entered into as of September 20, 2002, by and between Foto Fantasy, Inc., a Delaware corporation having its principal place of business at 8 Commercial Street, Hudson, New Hampshire 03051 (the "**Borrower**"), and Sovereign Bank, a federally chartered savings bank with a usual place of business at 75 State Street, Boston, Massachusetts 02109 ("**Bank**").

NOW THEREFORE, in consideration of the premises, Borrower hereby agrees with Bank as follows:

**1. Grant of Security Interest.** Borrower hereby grants to Bank a first priority security interest in, and conditionally assigns, but does not transfer title to Bank, all of Borrower's right, title and interest in and to the following (collectively, the "**Collateral**") to secure payment and performance of all obligations of Borrower to Bank whether such obligations are direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including without limitation, those liabilities of Borrower to Bank pursuant to an Amended and Restated Commercial Loan Agreement of even date between Bank and Borrower (the "**Loan Agreement**") (collectively, the "**Obligations**").

The Collateral shall consist of the following:

(a) Each of the trademarks, and rights and interests protectible as trademarks, which are presently, or in the future may be, owned, created, acquired or used (whether pursuant to a license or otherwise) by Borrower, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(b) All of Borrower's right, title and interest, in and to the trademarks and trademark registrations listed on Schedule A attached hereto, as the same may be updated hereafter from time to time;

(c) All of Borrower's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country, and to apply for, renew and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Borrower or in the name of Bank for past, present and future infringements of the trademarks, registrations or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill;

(d) All general intangibles and goodwill relating to the Collateral; and

(e) All proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

**2. Warranties and Representations.** Borrower hereby warrants and represents to Bank the following:

(a) A true and complete schedule setting forth all federal and state trademark registrations owned or controlled by Borrower or licensed to Borrower, together with a summary description and

full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule A;

(b) Each of the trademarks and trademark registrations is valid and enforceable, and Borrower is not presently aware of any past, present or prospective claim by any third party that any of the trademarks are invalid or unenforceable, or that the use of any trademarks violates the rights of any third person, or of any basis for any such claims;

(c) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the trademarks and trademark registrations free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses, shop rights and covenants by Borrower not to sue third persons;

(d) Borrower has used and will continue to use proper statutory notice in connection with its use of each of the trademarks;

(e) Borrower has used and will continue to use consistent standards of high quality (which may be consistent with Borrower's past practices) in the manufacture, sale and delivery of products and services sold or delivered under or in connection with the trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks;

(f) Except for the filing of financing statements with the Division of Corporations for the State of Delaware under the Uniform Commercial Code and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by Borrower of the security interest hereunder or for the execution, delivery or performance of this Agreement by Borrower or for the perfection of or the exercise by Bank of its rights hereunder to the Collateral in the United States.

**3. After-Acquired Trademark Rights.** If Borrower shall obtain rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto. Borrower shall give prompt notice in writing to Bank with respect to any such new trademarks or renewal or extension of any trademark registration. Borrower shall bear any expenses incurred in connection with future applications for trademark registration.

**4. Litigation and Proceedings.** Borrower shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings or other actions for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Borrower shall provide to Bank any information with respect thereto requested by Bank. Bank shall provide at Borrower's expense all necessary cooperation in connection with any such suit, proceeding or action, including, without limitation, joining as a necessary party. Following Borrower's becoming aware thereof, Borrower shall notify Bank of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state or foreign court regarding Borrower's claim of ownership in any of such trademarks, its right to apply for the same, or its right to keep and maintain such trademark rights.

**5. Power of Attorney.** Borrower hereby grants Bank power of attorney, having the full authority, and in the place of Borrower and in the name of Borrower, from time to time in Bank's discretion to take any action and to execute any instrument which Bank may deem necessary or

advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of the Loan Agreement, such appointment shall become effective and remain in effect upon the occurrence and continuation of an Event of Default, as that term is defined in the Loan Agreement:

- (a) To endorse Borrower's name on all applications, documents, papers and instruments necessary for Bank to use or maintain the Collateral;
- (b) To ask, demand, collect, sue for, recover, impound, receive and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral;
- (c) To file any claims or take any action or institute any proceedings that Bank may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce Bank's rights with respect to any of the Collateral and to assign, pledge, convey or otherwise transfer title in or dispose of the Collateral to any person.

**7. Right to Inspect.** Borrower grants to Bank and its employees and agents the right to visit Borrower's plants and facilities which manufacture, inspect or store products sold under any of the trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

**8. Events of Default.** Any of the following events shall be an Event of Default:

- (a) Borrower fails to perform any covenant hereof;
- (b) The determination that any representation or warranty hereunder was not or is not true or complete in any material respect; or
- (c) the occurrence of an Event of Default as that term is defined in the Loan Agreement.

**9. Specific Remedies.** Upon the occurrence of any Event of Default, as described in the Loan Agreement or herein, in addition to any remedies under the Loan Agreement:

- (a) Bank may cease advancing money or extending credit to or for the benefit of Borrower under the Loan Agreement or under any other agreement between Borrower and Bank.
- (b) Bank may declare all Obligations to be due and payable immediately, whereupon they shall immediately become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Borrower;
- (c) Bank may set off against the Obligations all Collateral, balances, credits, deposits, accounts or moneys of Borrower then or thereafter held with Bank, including amounts represented by certificates of deposit;
- (d) Bank may notify licensees to make royalty payments on license agreements directly to Bank;
- (e) Bank may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Bank deems advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Borrower ten (10) days prior to such disposition. Borrower shall be credited with the net proceeds

of such sale only when they are actually received by Bank, and Borrower shall continue to be liable for any deficiency remaining after the Collateral is sold or collected;

(f) If the sale is to be a public sale, Bank shall also give notice of the time and place by publishing a notice one time at least ten (10) calendar days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held; and

(g) To the maximum extent permitted by applicable law, Bank may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any Collateral payable by Bank at such sale.

**10. Governing Law.** All acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Borrower and Bank have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

FOTO FANTASY, INC.

By: 

Kyle W. Nagel, Chief Executive Officer

SOVEREIGN BANK

By: 

Robert Rivet, Vice President

**SCHEDULE A  
TO A TRADEMARK SECURITY AGREEMENT  
BETWEEN FOTO FANTASY, INC. (Borrower)  
AND  
SOVEREIGN BANK (Bank)  
DATED: SEPTEMBER 20 , 2002**

**PENDING/REGISTERED TRADEMARKS (USA)**

<u>Serial/Registration No.</u>	<u>Trademark</u>
1. 78114248	FOTO FANTASY TARR LIVE
2. 78051960	SKETCH EXPRESS
3. 78011802/2543066	FOTO FANTASY
4. 78014685/2517480	THE PORTRAIT STUDIO
5. 78014226	FOTO FESTIVAL
6. 78014225	STICKER STATION
7. 75315610/2260300	STICKER STATION
8. 75641166/2409979	FOTOFUN
9. 75415315/2288575	THE PORTRAIT STUDIO
10. 75330585/2201210	THE PENNY MEN
11. 75169220/2095121	PUT YOURSELF IN THE PICTURE!
12. 75166862/2081694	PUT YOURSELF IN THE STICKER!
13. 75166846/2084091	PUT YOURSELF IN THE POSTCARD!
14. 75166722/2111439	FOTO FESTIVAL
15. 75166634/2131346	FANTASY ENTERTAINMENT
16. 74732610/2002920	FOTO FANTASY
17. 74732609/2004296	FOTO FANTASY
18. 73697903/1502645	FOTO FANTASY