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DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

1. Name of conveying party(ies): ERIC JOHN 11-6-02 Individual(s) Association General Partnership Limited Partnership Corporation-State Other

2. Name and address of receiving party(ies) Name: Swell Commerce, Inc. Internal Address: Street Address: 32771 Calle Perfecto San Juan City: Capistrano State: CA Zip: 92675 Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Delaware Other

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other Execution Date: 10/28/02

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 2,079,020

6. Total number of applications and registrations involved: 01

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Stephanie E. Allen Internal Address: McAndrews, Allen & Matson Street Address: 2040 Main St., 9th Floor City: Irvine State: CA Zip: 92614

7. Total fee (37 CFR 3.41): \$40.00 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. Antony L. Uphoff Signature 10/31/02 Date

Total number of pages including cover sheet, attachments, and document: 3

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

11/07/2002 TDIAZ1 00000249 2079020 01 FC:8521 40.00 OP

**ASSIGNMENT AND ASSUMPTION AGREEMENT-
INTELLECTUAL PROPERTY**

This Assignment and Assumption Agreement-Intellectual Property ("Agreement") is dated as of October 25, 2002 and is entered into between Swell Commerce, Inc., a Delaware corporation ("Swell"), and Eric J. John ("John"). Hereinafter, Surf & Sport Enterprises, Ltd., a California corporation and LSS-RSM Retail, Inc., a California corporation are collectively, the "Companies."

WHEREAS, pursuant to the Agreement and Plan of Merger dated as of October 25, 2002 ("Merger Agreement"), by and among Swell, John and the Companies, on October 25, 2002 (as defined in the Merger Agreement), the Companies will be merged with and into Swell (the "Merger") effective as of October 28, 2002 ("Effective Date") and in connection with the Merger, John agreed to assign all of his intellectual property rights to Swell.

NOW, THEREFORE, as of the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, John hereby assigns and transfers to Swell and Swell hereby assumes the following assets of John: In connection in any manner with any entities principally owned by John and/or his spouse as of the date of this Agreement and at any time prior to the date of this Agreement, all trademarks (registered or unregistered), service marks, brand names, certification marks, trade dress, assumed names, trade names and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application; trade secrets and confidential information and rights in any jurisdiction to limit the use or disclosure thereof by any person; registration or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof; any similar intellectual property or proprietary rights similar to any of the foregoing; licenses, immunities, covenants not to sue and the like relating to any of the foregoing; and any claims or causes of action arising out of or related to any infringement, misuse or misappropriation of any of the foregoing. Included in the foregoing are "LSS," LS&S, Laguna Surf & Sport, Surf & Sport, Surf & Sport Enterprises and all variations thereof.

This Agreement is made and entered into in the State of California and the laws of that state shall govern the validity and interpretation hereof and the performance of the parties hereto of their respective obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Assignment and Assumption Agreement as of this 25th day of October, 2002.

ASSIGNEE:

Swell Commerce, Inc.

By:

Name: Antony L. Uphoff

Title: Chief Executive Officer

ASSIGNOR:

Eric J. John