

11-19-2002

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



102285268

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):
AEROGROUP INTERNATIONAL HOLDINGS, . INC

11-13-02

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other CORP IN NEW JERSEY

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

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other AMENDED & RESTATED PATENTS, TRADEM

Execution Date: 9/26/02

2. Name and address of receiving party(ies)

Name: WACHOVIA BANK NATIONAL BANK

Internal

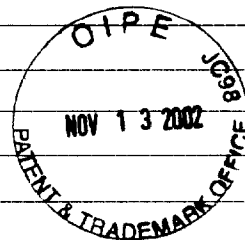
Address: _____

Street Address: 1339 CHESTNUT STREET

City: PHILADELPHIA State: PA Zip: 19103

- Individual(s) citizenship
- Association BANKING
- General Partnership
- Limited Partnership
- Corporation-State
- 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)
SEE ATTACHED

B. Trademark Registration No.(s)
SEE ATTACHED

2,062,730

Additional number(s) attached Yes No

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

Name: TONYA CHAPPLE

Internal Address: C/O CSC

Street Address: 80 STATE STREET

City: ALBANY State: NY Zip: 12207

6. Total number of applications and registrations involved: _____

17

7. Total fee (37 CFR 3.41).....\$ 440.00

- 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.

TONYA CHAPPLE

Name of Person Signing

Tonya Chapple
Signature

11/12/02

Date

20

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

11/18/2002 LNUJELLER 00000199 2062730

01 FC:8521
02 FC:8522

40.00 DP
400.00 DP

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

TRADEMARK
REEL: 002619 FRAME: 0071

AEROGROUP INTERNATIONAL INC.

UNITED STATES TRADEMARK REGISTRATIONS AND APPLICATIONS

Mark	Serial No.	Registration No.
1-800-79TWIST		2,062,730
AEROSOLE		2,078,534
AEROSOLES		2,190,880
AEROSOLES & Design		1,756,927
AEROSOLES & Design		2,190,746
Shoe Sole Design		1,953,875
THEY'RE NOT JUST SHOES, THEY'RE AEROSOLES		2,144,257
TWIST & SHOUT FOREVER		2,052,137
Twisted Shoe Design		2,064,613
Twisted Shoe Design		2,116,138
WHAT'S WHAT		2,055,618
WHAT'S WHAT & Design		2,069,963
A2 & Design	76/368,902	
AEROLOGY	76/122,939	
AEROSOLES (stylized)	76/081,647	
AEROSOLES (stylized)	76/368,901	
WHAT'S WHAT	76/219,942	

**AMENDED AND RESTATED
PATENTS, TRADEMARKS, COPYRIGHTS
AND LICENSES SECURITY AGREEMENT**

(Trademarks)

This Amended and Restated Patents, Trademarks, Copyrights, and Licenses Security Agreement ("Agreement") is made as of the 26th day of September, 2002, by AEROGROUP INTERNATIONAL HOLDINGS, INC. ("Company"), a New Jersey corporation, with its chief executive office located at 201 Meadow Road, Edison, New Jersey 08817, and delivered to WACHOVIA BANK, NATIONAL BANK, in its capacity as Agent for Lenders ("Agent"), having a mailing address of 1339 Chestnut Street, Philadelphia, Pennsylvania 19103.

BACKGROUND

A. This Agreement is being executed in connection with that certain Loan and Security Agreement dated as of March 14, 2001 by and among Company, the other Borrowers, Agent and such other financial institutions a party thereto as a Lender (as has been and may hereafter be supplemented, restated, amended, superseded or replaced from time to time, the "Loan Agreement"), under which Company has granted Agent, a lien on and security interest in all of the assets of Company associated with or relating to products leased or sold or services provided under Company's patents, trademarks (and the goodwill associated therewith) and copyrights, and under which Agent is entitled to foreclose or otherwise deal with such assets, patents, patents, patent rights, patent applications, goodwill, trademarks, trademark applications, service marks, service mark applications, trade names, copyrights, and copyright applications under the terms and conditions set forth therein. Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

B. Company has adopted, used and is using (or has filed applications and/or registrations of) the patents, patent rights, and patent applications (collectively, the "Patents"); trademarks, service marks, trade names, and service trade names (collectively, "Trademarks"); copyrights, and copyright applications and licenses (collectively, the "Copyrights"); and goodwill associated thereto ("Goodwill") listed on **Schedule A** attached hereto and made part hereof (all such Patents, Trademarks, Copyrights or Goodwill hereinafter referred to as the "Assets").

C. Pursuant to the Loan Agreement, Agent is acquiring a lien on, and security interest in, the Assets and the registration thereof, together with all the goodwill of Company associated therewith and represented thereby, as security for all Obligations, and desires to have its security interest in such Assets confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office and United States Copyright Office, respectively.

D. This Agreement amends and restates that certain Patents, Trademarks, Copyrights, and Licenses Security Agreement from Aerogroup International, Inc. ("AII") to Agent dated as of March 14, 2001. AII assigned its right, title and interest in and to the Assets to Company pursuant to the terms of that certain Assignment dated as of September 9, 2002.

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Loan Agreement and all other instruments, agreements and documents entered into in connection therewith (collectively, the "Loan Documents"), and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Obligations, Company grants a lien and security interest to Agent in all of its present and future right, title and interest in and to the Assets, together with all the goodwill of Company associated with and represented by the Assets, and the registration thereof and the right (but not the obligation) to sue, following the occurrence of an Event of Default under the Loan Agreement, for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Company represents, warrants and covenants that:

(a) Company has the power and corporate authority to enter into this Agreement and perform its terms;

(b) Each of the Assets listed on **Schedule A** constitute all of the Assets, and all applications for any of the foregoing, now owned by Company. If, before all Obligations shall have been indefeasibly paid and satisfied in full and the Loan Agreement shall have been terminated, Company shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, trade names, or copyrights or licenses, or (ii) become entitled to the benefit of any patent or trademark application, trademark, trademark registration, copyright or copyright registration or application or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of this Agreement shall automatically apply thereto and such patent or trademark application, trademark, trademark registration, copyright or copyright registration or application or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent shall be deemed part of the Assets. Company shall give Agent prompt written notice thereof along with an amended **Schedule A**.

3. Company further covenants that until all Obligations have been indefeasibly paid and satisfied in full and the Loan Agreement is terminated, it will not enter into any agreement, including without limitation, license agreements or options, which is inconsistent with Company's obligations under this Agreement, except for agency, co-marketing and co-branding agreements.

4. Except during the continuance of an Event of Default under the Loan Agreement, Company shall continue to have the exclusive right to use the Assets and Agent shall have no right to use the Assets or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Assets to anyone else.

5. If and while an Event of Default exists under the Loan Agreement, Company hereby

covenants and agrees that Agent, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in the Commonwealth of Pennsylvania, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Assets covered hereby. During the existence of an Event of Default under the Loan Agreement, Company hereby authorizes and empowers Agent, its successors and assigns, and any officer or agent of Agent as Agent may select, in its exclusive discretion, as Company's true and lawful attorney-in-fact, with the power to endorse Company's name on all applications, assignments, documents, papers and instruments necessary for Agent, to use the Assets or to grant or issue any exclusive or non-exclusive license under the Assets to anyone else, or necessary for Agent to assign, pledge, convey or otherwise transfer title in or dispose of the Assets to anyone else including, without limitation, the power to execute a trademark assignment in the form attached hereto as **Exhibit 1**. Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms hereof, except for the gross negligence or willful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Agreement, the Loan Documents, and until all Obligations are indefeasibly paid and satisfied in full and the Loan Agreement is terminated.

6. This Agreement 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 parties hereto.

7. All rights and remedies herein granted to Agent shall be in addition to any rights and remedies granted 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.

8. Upon Company's performance of all of the obligations under the Loan Documents and full and unconditional satisfaction of all Obligations, Agent shall execute and deliver to Company all documents reasonably necessary to terminate Agent's security interest in the Assets.

9. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Agent in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Assets, or in defending or prosecuting any actions or proceedings arising out of or related to the Assets, or defending, protecting or enforcing Agent's rights hereunder, in each case in accordance with the terms of this Agreement, shall be borne and paid by Company on demand by Agent and until so paid shall be added to the principal amount of Obligations and shall bear interest at the otherwise applicable rate of interest prescribed in the Loan Agreement.

10. Company shall have the right to bring suit in its own name to enforce the Assets, in which event Agent may, if Company reasonably deems it necessary, be joined as a nominal party to such suit if Agent shall have been satisfied, in its sole discretion, that Agent is not thereby incurring any risk of liability because of such joinder. Company shall promptly, upon demand, reimburse and indemnify Agent for all damages, reasonable costs and expenses, including reasonable attorneys' fees,

incurred by Agent in the fulfillment of the provisions of this paragraph.

11. During the existence of an Event of Default under the Loan Agreement, Agent may, without any obligation to do so, complete any obligation of Company hereunder, in Company's name or in Agent's name, but at Company's expense, and Company hereby agrees to reimburse Agent in full for all costs and expenses, including reasonable attorneys' fees, incurred by Agent in protecting, defending and maintaining the Assets.

12. No course of dealing between Company and Agent nor any failure to exercise, nor any delay in exercising, on the part of Agent, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Agent's rights and remedies with respect to the Assets, whether established hereby or by the Loan Documents, or by any other future agreements between Company and Agent or by law, shall be cumulative and may be exercised singularly or concurrently.

13. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

14. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

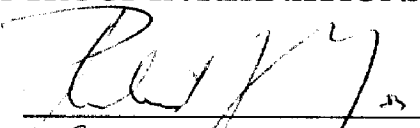
15. This Agreement shall be governed by and construed in conformity with the laws of the Commonwealth of Pennsylvania without regard to its otherwise applicable principles of conflicts of laws.

16. Company and Agent each waive any and all rights it may have to a jury trial in connection with any litigation, proceeding or counterclaim arising with respect to rights and obligations of the parties hereto or under the Loan Documents.

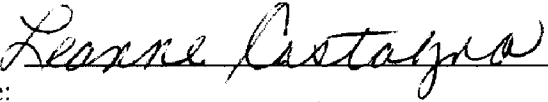
SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Patents, Trademarks, Licenses and Copyrights Security Agreement the day and year first above written.

AEROGROUP INTERNATIONAL HOLDINGS, INC.

By: 
Name: RICHARD J. MORRIS
Title: EXEC. V.P.

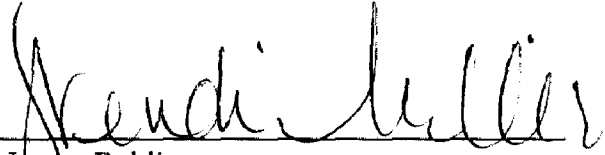
Approved and Accepted:
WACHOVIA BANK, NATIONAL ASSOCIATION

By: 
Name: _____
Title: Leanne Castagna
Vice President

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :
STATE OF NEW JERSEY : SS
COUNTY OF MIDDLESEX :

On this 20th of Sept., 2002, before me personally appeared Richard J. Morris to me known and being duly sworn, deposes and says that s/he is the Exec. Vice Pres. of Aerogroup International Holdings, Inc., the Company described in the foregoing Agreement; that s/he signed the Agreement as such officer pursuant to the authority vested in him/her by law; that the within Agreement is the voluntary act of such corporation; and s/he desires the same to be recorded as such.


Notary Public

My Commission Expires:

3/31/06

WENDI MILLER
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/31/2006

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :
COMMONWEALTH OF PENNSYLVANIA : SS
COUNTY OF PHILADELPHIA :

*State of New Jersey
Middlesex County*

On this 20th day of Sept., 2002, before me personally appeared Leanne Castagna to me known and being duly sworn, deposes and says that she is Vice President of Wachovia Bank, National Association, the Agent described in the foregoing Agreement; that she signed the Agreement as such officer pursuant to the authority vested in her by law; that the within Agreement is the voluntary act of such corporation; and she desires the same to be recorded as such.

Tracy A Rule
Notary Public

My Commission Expires:

8-1-05

OFFICIAL SEAL
NOTARY PUBLIC OF NEW JERSEY
TRACY A. RULE
MIDDLESEX COUNTY
My Commission Expires August 1, 2005

AEROGROUP INTERNATIONAL INC.**UNITED STATES TRADEMARK REGISTRATIONS AND APPLICATIONS**

Mark	Serial No.	Registration No.
1-800-79TWIST		2,062,730
AEROSOLE		2,078,534
AEROSOLES		2,190,880
AEROSOLES & Design		1,756,927
AEROSOLES & Design		2,190,746
Shoe Sole Design		1,953,875
THEY'RE NOT JUST SHOES, THEY'RE AEROSOLES		2,144,257
TWIST & SHOUT FOREVER		2,052,137
Twisted Shoe Design		2,064,613
Twisted Shoe Design		2,116,138
WHAT'S WHAT		2,055,618
WHAT'S WHAT & Design		2,069,963
A2 & Design	76/368,902	
AEROLOGY	76/122,939	
AEROSOLES (stylized)	76/081,647	
AEROSOLES (stylized)	76/368,901	
WHAT'S WHAT	76/219,942	

EXHIBIT 1

PATENTS, TRADEMARKS, LICENSES AND COPYRIGHTS ASSIGNMENT

(Trademarks)

WHEREAS, _____, a _____ corporation ("Grantor") is the registered owner of the United States trademarks, service marks, trade names, service mark applications and trademark applications listed on **Schedule A** attached hereto and made a part hereof ("Assets"), which are registered in the United States Patent and Trademark Office; and

WHEREAS, _____ ("Grantee"), having a place of business at _____, is desirous of acquiring said Assets;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, subject to the terms of the Patents, Trademarks, Licenses and Copyrights Security Agreement, of even date herewith, between Grantor and Grantee, all of its present and future right, title and interest in and to the Assets and all proceeds thereof and all goodwill associated therewith.

IN WITNESS WHEREOF, the undersigned has caused this Patents, Trademarks, Licenses and Copyrights Assignment to be executed as of the ___ day of _____.

AEROGROUP INTERNATIONAL HOLDINGS, INC.

By: _____
Attorney-in-fact

Witness:

EXHIBIT 1

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :
STATE OF : S.S.
COUNTY OF :

On this ____ day of _____ 2002, before me, a Notary Public for the said County and State, personally appeared _____ known to me or satisfactorily proven to me to be attorney-in-fact on behalf of _____, and s/he acknowledged to me that s/he executed the foregoing Patents, Trademarks, Licenses, and Copyrights Assignment on behalf of Grantor, and as the act and deed of Grantor for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

POWER OF ATTORNEY

AEROGROUP INTERNATIONAL HOLDINGS, INC., a New Jersey corporation (“Grantor”), hereby authorizes WACHOVIA BANK, NATIONAL ASSOCIATION, its successors and assigns, and any officer or agent thereof (collectively, the “Grantee”) as Grantor’s true and lawful attorney-in-fact, with the power to endorse Grantor’s name on all applications, assignments, documents, papers and instruments necessary for Grantee to enforce and effectuate its rights under a certain Patents, Trademarks, Licenses and Copyrights Security Agreement between Grantor and Grantee dated the date hereof (as it may hereafter be supplemented, restated, superseded, amended or replaced, the “Agreement”), including, without limitation, the power to use the Assets (as defined in the Agreement) and listed on Schedule A attached hereto and made a part hereof, to grant or issue any exclusive or nonexclusive license under the Assets to anyone else, or to assign, pledge, convey or otherwise transfer title in or dispose of the Assets, in each case subject to the terms of the Agreement.

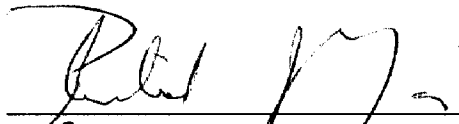
This Power of Attorney is given and any action taken pursuant hereto is intended to be so given or taken pursuant to and subject to the provisions of a certain Loan and Security Agreement dated as of March 14, 2001 among Grantor and certain other parties as borrowers and Grantee, as each document has been and may be hereinafter supplemented, restated, superseded, amended or replaced.

Grantor hereby unconditionally ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms of the Agreement.

This Power of Attorney shall be irrevocable for the life of the Agreement.

IN WITNESS WHEREOF, the Grantor has executed this Power of Attorney, under seal, this ____ day of August, 2002.

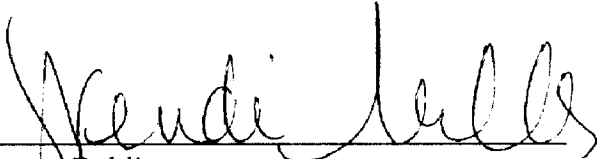
AEROGROUP INTERNATIONAL HOLDINGS, INC.

By: 
Name: RICHARD D. MORRIS
Title: EXEC U.P.

CORPORATE ACKNOWLEDGMENT

UNITED STATES OF AMERICA :
STATE OF NEW JERSEY : SS
COUNTY OF MIDDLESEX :

On this 20th of ~~August~~ Sept., 2002, before me personally appeared Richard J. Morris to me known and being duly sworn, deposes and says that s/he is Exec. Vice Pres. of Aerogroup International Holdings, Inc., the Grantor described in the foregoing Power of Attorney; that s/he signed the Power of Attorney thereto as such officer pursuant to the authority vested in her/him by law; that the within Power of Attorney is the voluntary act of such corporation; and s/he desires the same to be recorded as such.



Notary Public

My Commission Expires:

3/31/06

WENDI MILLER
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 3/31/2006