

11-21-2002



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RECORDATION FORM COVER SHEET
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FINANCE SECTION

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- ☒ New
- ☐ Resubmission (Non-Recordation)
Document ID #
- ☐ Correction of PTO Error
Reel # Frame #
- ☐ Corrective Document
Reel # Frame #

Conveyance Type

- ☐ Assignment ☐ License
- ☐ Security Agreement ☒ Nunc Pro Tunc Assignment
- ☐ Merger
- ☐ Change of Name
- ☐ Other
- Effective Date
Month Day Year

Conveying Party

☐ Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association
- ☐ Other
- ☐ Citizenship/State of Incorporation/Organization

Receiving Party

☐ Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

State/Country

Zip Code

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☐ If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)
- ☒ Corporation ☐ Association
- ☐ Other
- ☐ Citizenship/State of Incorporation/Organization

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01 FC:0521
02 FC:0522

40.00 OP
25.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK
REEL: 002620 FRAME: 0384

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number **303-473-2726**

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

4

Trademark Application Number(s) or Registration Number(s)

☐

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

2,321,415		
2,353,475		

Number of Properties

Enter the total number of properties involved.

#

2

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

65.00

Method of Payment:

Enclosed

☒

Deposit Account

☐

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

08-2623

Authorization to charge additional fees:

Yes

☒

No

☐

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. Charges to deposit account are authorized, as indicated herein.

Kristine M. Miller

Name of Person Signing

Signature

Date Signed

ASSIGNMENT

THIS ASSIGNMENT of service marks ("Assignment") effective as of the 1st day of September, 2001 (the "Effective Date"), is by and between **WEAR ELSE FASHIONS LTD.** ("Wear Else"), a New York corporation with a principal place of business at 445 Central Avenue, Cedarhurst, New York 11516, and **SEARS, ROEBUCK AND CO.** ("Sears"), a New York corporation with a principal place of business at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Wear Else and Sears shall each be referred to as a "Party," and shall collectively be referred to as the "Parties" to this Assignment.

RECITALS

A. Wear Else is the registrant of Federal Trademark Registration No. 2,353,475 - WEAR ELSE? & Design; and Reg. No. 2,321,415 - WEAR ELSE, and claims to own all common law rights and goodwill associated with these marks (collectively referred to as the "WEAR ELSE Marks").

B. Sears owns Federal Application Serial No. 78/072,632 - WHERE ELSE? and Ser. No. 78/072,636 - SEARS. WHERE ELSE?, and all common law rights and goodwill associated with these marks (collectively referred to as Sears' Marks.)

C. The United States Patent and Trademark Office ("PTO") cited Federal Trademark Registration No. 2,353,475 - WEAR ELSE? & Design as a bar to registration of Federal Application Serial No. 78/072,632 - WHERE ELSE? on the ground that the coexistence of the two marks is likely to cause confusion under Section 2(d) of the Lanham Act.

D. Sears petitioned to cancel the WEAR ELSE Marks on the ground of abandonment, commencing cancellation proceeding numbers 92040402 and 92040778.

E. Wear Else alleges that it has made continuous use of, and/or has had a continued bona fide intent not to abandon, the WEAR ELSE Marks through to the date of execution of this Assignment.

F. Sears wishes to acquire, and Wear Else wishes to assign to Sears, all rights, title, and interest in and to the WEAR ELSE Marks that may exist throughout the world.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. ASSIGNMENT. Wear Else hereby assigns to Sears all rights, title, and interest throughout the world in and to the WEAR ELSE Marks, including all associated

goodwill. The WEAR ELSE Marks are to be owned exclusively by Sears with Wear Else retaining no rights in and to the same. Wear Else shall not adopt, attempt to register, register, or use any mark, name, or domain name consisting of or incorporating the words WEAR ELSE, or WHERE ELSE, or any words that are phonetically equivalent or confusingly similar to WEAR ELSE, or WHERE ELSE.

2. PAYMENT. Sears shall forward to Wear Else via overnight mail or courier services a check in the amount of five hundred dollars (\$500) upon receipt of a fully executed copy of this Assignment.

3. REPRESENTATIONS AND WARRANTIES.

3.1 Wear Else represents and warrants that it has the power to assign the WEAR ELSE Marks to Sears and that this Assignment constitutes the legal, valid, and binding obligation of Wear Else enforceable against Wear Else in accordance with its terms.

3.2 Wear Else further represents and warrants that it has at no time sold, transferred, licensed, sublicensed, assigned, encumbered, pledged, agreed to limit, or leased any rights, title, or interest in and to the WEAR ELSE Marks to any third party.

3.3 Wear Else further represents and warrants that it has never received an inquiry or objection from a third party to its use of the WEAR ELSE Marks, that it is aware of no threatened claim, pending claim, or proceeding involving its claim of ownership in the WEAR ELSE Marks, and that it is aware of no ruling or final decision adverse to its claim of ownership of the WEAR ELSE Marks.

3.4 Wear Else further represents and warrants that it will cooperate with Sears, at no cost to Sears, by executing any and all papers, making all rightful oaths, and doing any and all acts which Sears may determine necessary, in its reasonable discretion, to carry out the intent of this Assignment.

4. MISCELLANEOUS.

4.1 Relationship. Each Party is an independent contractor of the other Party. This Assignment does not make either Party the partner, employee, agent, or legal representative of the other Party for any purpose whatsoever. Neither Party is granted any right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of or in the name of the other Party.

4.2 Assignment; Binding Nature. This Assignment shall be binding upon and inure to the benefit of each of the parties and their permitted assigns, and sublicensees. Sears may assign its rights and obligations to any third party. All assignments by Wear Else shall be null and void.

4.3 Waiver. No waiver by any party of any default in performance by the other Party, or of any breach or series of breaches by the other Party, shall constitute a waiver of any subsequent default in performance or breach.

4.4 Entire Agreement; Amendment. The Parties acknowledge that this Assignment expresses their entire understanding and agreement. The Parties further acknowledge that this Assignment supersedes, terminates, and otherwise renders null and void any and all prior or contemporaneous agreements or contracts with respect to the matters expressly set forth in this Assignment. No amendment or modification including those by custom, usage of trade, or course of dealing will be effective unless in writing and signed by both Parties.

4.5 Remedies; Injunctive Relief. Each Party acknowledges and agrees that if there is any breach of this Assignment, the non-breaching Party will suffer irreparable injury that cannot be compensated by money damages and therefore will not have an adequate remedy at law. Either Party may seek injunctive relief, without posting a bond. Any specific right or remedy in this Assignment shall not be exclusive, but shall be cumulative upon all other rights and remedies allowed under applicable law.

4.6 Governing Law. This Assignment shall be governed by the laws of the state of Illinois, without regard to the conflict of law provisions of any state that would have another state's law apply. Any disputes will be heard in the appropriate federal or state courts located in Illinois. All Parties hereto expressly consent to the personal jurisdiction of the federal and state courts of Illinois and service of process being effected upon them by registered mail sent to the addresses set forth in the introductory paragraph of this Assignment.

4.7 Counterparts. This Assignment may be executed in multiple counterparts and by facsimile signature, any one of which will be deemed an original, but all of which shall constitute one and the same instrument.

4.8 Headings. Captions and section headings used in this Assignment are for convenience only and are not a part of this Assignment and shall not be used in construing it.

The Parties have executed this Assignment as of the dates set forth below.

WEAR ELSE FASHIONS LTD.:

By: [Signature] DZES
Date: 10/15/02

SEARS, ROEBUCK AND CO.:

By: Lynn Hudson Boone
Date: 10/29/02