

12-04-2002

Form PTO-1  
(Rev. 03/01)  
OMB No. 06

102301810

Form Cover Sheet  
MARKS ONLYU.S. DEPARTMENT OF COMMERCE  
U.S. Patent and Trademark Office

NOV 27 2002

Tab settings

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

1. Name of conveying party(ies):

**Designs Apparel, Inc.**

11-27-02

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☒ Corporation-State **Delaware**  
☐ 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: **05/14/2002**

2. Name and address of receiving party(ies):

Name: **Fleet Retail Finance Inc.**

Internal

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

Street Address: **40 Broad Street**City: **Boston** State: **MA** Zip: **02109**☐ Individual(s) citizenship \_\_\_\_\_☐ Association \_\_\_\_\_☐ General Partnership \_\_\_\_\_☐ Limited Partnership \_\_\_\_\_☒ Corporation-State **Delaware**☐ 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) **75456406**B. Trademark Registration No.(s) **1171694**Additional number(s) attached ☒ Yes ☐ No

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

Name: **Peter Smith, Esq.**Internal Address: **Kramer Levin Naftalis & Frankel LLP**Street Address: **919 Third Avenue**City: **New York** State: **NY** Zip: **10022**6. Total number of applications and registrations involved: **41**7. Total fee (37 CFR 3.41) \$ **1040.00**☒ Enclosed☐ Authorized to be charged to deposit account8. Deposit account number: **50-0540**

(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.

**Erica D. Klein, Esq.**

Name of Person Signing

Signature

**November 22, 2002**

Date

**12**

12/03/2002 BYRNE 00000133 75456406

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

40.00 OP  
1000.00 OP01 FC:8521  
02 FC:8522

KL3:2224601.1

TRADEMARK  
REEL: 002627 FRAME: 0217

**RECORDATION FORM COVER SHEET  
CONTINUATION SHEET  
ITEM 4. APPLICATION NUMBER (s) OR REGISTRATION NUMBER (s):**

(Security Agreement from Designs Apparel, Inc.)

**UNITED STATES TRADEMARK APPLICATIONS AND REGISTRATIONS**

<b><u>MARK</u></b>	<b><u>APPLICATION NUMBER</u></b>	<b><u>REGISTRATION NUMBER</u></b>
HIGH & MIGHTY	73104771	1171694
HIGH AND MIGHTY	73046301	1034385
A.X. LLOYD	74415787	2016661
ALEXANDER LLOYD	74349424	1792707
ALEXANDER LLOYD EXECUTIVE SEPARATES	74699051	2062067
ALEXANDER LLOYD LOUNGE WEAR	74701022	2063919
HARBOR BAY	76019152	2531456
HB SPORT HARBOR BAY	76020085	2471393
HB SPORT HARBOR BAY & Design	76152529	2566969
HIMALAYA	74349404	1974456
HIMALAYA OUTFITTERS	74348067	1975575
NATURAL EXCHANGE BY ALEXANDER LLOYD	74683956	2018824
B&T BIG & TALL FACTORY STORE & Design	75823690	2415558
B&T FACTORY STORE & Design	75701406	2443351
BIG & TALL (Supplemental Registration)	73758092	1553379
BIG & TALL CASUAL MALE & Design	75039345	2080852
CASUAL MALE	75345625	2198042
CASUAL MALE BIG & TALL	75039630	2036883
CASUAL MALE BIG & TALL & Design	75039289	2080851
GRADE A JEANS	76055190	2490404

**RECORDATION FORM COVER SHEET  
CONTINUATION SHEET  
ITEM 4. APPLICATION NUMBER (s) OR REGISTRATION NUMBER (s):**

(Security Agreement from Designs Apparel, Inc.)

CONTINUED

<b><u>MARK</u></b>	<b><u>APPLICATION NUMBER</u></b>	<b><u>REGISTRATION NUMBER</u></b>
GRANDE CENTRAL BIG & TALL CLOTHING CO.	75456406	2635630*
THINK BIG	75806864	
THINK BIG	75642388	2324049
THINK BIG (Stylized)	75641558	2643269*
THINK BIG! (Stylized)	74243318	1751349
WAIST RELAXER	76310647	2650656*
BAY CREEK (Stylized)	74717443	2029787
BIG & TALL REPP LTD ATHLETIC & Design	74223867	1714526
BRINELLI (Stylized)	74717254	1988633
CANYON RIDGE	74522210	2159159
FERRACCI (Stylized)	74653718	1988222
FLAGG STAFF	74717352	1988634
JEREMY PETERS & Design	73378822	1253847
JP JEREMY PETERS & Design	73378823	1253848
OCEAN PORT	74717353	1988635
REPP	76102481	
REPP TECH	75525610	2346534
REPP, LTD. & Design	73353939	1242946
TOWER BAY	74653717	1966668
LP INNOVATIONS YOUR LOSS PREVENTION SOLUTION	75555443	2407697
SECUREX	76261702	2607266*

\* Registered after execution of Security Agreement

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**TRADEMARK AND TRADEMARK APPLICATIONS SECURITY AGREEMENT**

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May 14, 2002

THIS AGREEMENT is made between

Fleet Retail Finance Inc., a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as Collateral Agent (in such capacity, the "**Agent**") for the Revolving Credit Lenders, and Back Bay Capital Funding LLC, as Tranche B Lender (the "**Lenders**")

and

Designs Apparel, Inc. (hereinafter, the "**Borrower**"), a Delaware corporation with its principal executive offices at 66 B Street, Needham, Massachusetts 02194

in consideration of the mutual covenants contained herein and benefits to be derived herefrom,

**WITNESSETH:**

1. **BACKGROUND:** The Agent, Fleet Retail Finance Inc., as Administrative Agent, the Lenders, Designs, Inc. and Borrower, have entered into that certain Third Amended and Restated Loan and Security Agreement of even date (as such agreement may be modified, supplemented, amended or restated from time to time, hereinafter, the "**Loan Agreement**") pursuant to which a credit facility has been established in favor of the Borrower and under which the Liabilities are to be secured by certain of the Borrower's assets, including all Marks. (Terms used herein which are defined in the Loan Agreement are used as so defined).

2. **GRANT OF SECURITY INTEREST:** To secure the Liabilities, the Borrower hereby creates a security interest in favor of the Agent (for the benefit of the Agent and the Lenders), with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default) in and to the following and all proceeds thereof (collectively, the "**TM Collateral**");

(a) All of the Borrower's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks and service mark applications including, without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, and service mark applications.

(b) All renewals of any of the foregoing.

(c) All income, royalties, damages and payments now and hereafter due and/or

payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.

(d) The right to sue for past, present and future infringements and dilutions of any of the foregoing.

(e) All of Borrower's rights corresponding to any of the foregoing throughout the world.

3. **PROTECTION OF MARKS BY BORROWER:** The Borrower shall undertake the following with respect to each items respectively described in Sections 2(a) and 2(b) (collectively, the "**Marks**");

(a) Pay all renewal fees and other fees and costs associated with maintaining the Marks and with the processing of the Marks.

(b) At the Borrower's sole cost, expense, and risk, pursue the prompt, diligent, processing of each Application for Registration which is the subject of the security interest created herein and not abandon or delay any such efforts.

(c) At the Borrower's sole cost, expense, and risk, take any and all action which Borrower deems desirable to protect the Marks, including, without limitation, but subject to Borrower's discretion, the prosecution and defense of infringement actions.

Notwithstanding the foregoing, the Borrower shall not be required to take the above actions with respect to any Marks to the extent the Borrower deems such Marks not necessary or not appropriate to its business.

4. **BORROWER'S REPRESENTATIONS AND WARRANTIES:** The Borrower represents and warrants that:

(a) **EXHIBIT A** includes all of the registered trademarks, Federal trademark applications, registered service marks and Federal service mark applications now owned by the Borrower.

(b) All TM Collateral is and shall remain, free and clear of all liens, encumbrances, or security interests of any Person other than the Agent and except for Permitted Encumbrances.

(c) The Borrower shall give the Agent written notice (with reasonable detail) within Ten (10) days following the occurrence of any of the following:

(i) The Borrower's obtaining rights to, and filing applications for registration of, any new trademarks, or service marks, or otherwise acquiring ownership of any additional

registered trademarks, registered service marks, trademark applications, or service mark applications, (other than the Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).

(ii) The Borrower's becoming entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor (other than Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).

(iii) The Borrower's entering into any new trademark license agreement or service mark license agreement.

**5. AGREEMENT APPLIES TO FUTURE MARKS:**

(a) The provisions of this Agreement shall automatically apply to any such additional property or rights described in 4, above, all of which shall be deemed to be and treated as "Marks" within the meaning of this Agreement.

(b) The Borrower hereby authorizes the Agent, following the occurrence and during the continuance of an Event of Default, to take all such action to protect the Agent's interest in and concerning any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, *provided, however*, the Agent's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

**6. BORROWER'S RIGHTS TO ENFORCE MARKS:** Prior to the Agent's giving of notice to the Borrower following the occurrence, and during the continuance, of an Event of Default, the Borrower shall have the exclusive right to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by Borrower to protect the Marks against encroachment by third parties, *provided, however*.

(a) The Borrower first provides the Agent with written notice of the Borrower's intention to so sue for enforcement of any Mark.

(b) Any money damages awarded or received by the Borrower on account of such suit (or the threat of such suit) shall constitute TM Collateral.

(c) Following the occurrence, and during the continuance, of any Event of Default, the Agent, by notice to the Borrower may terminate or limit the Borrower's rights under this Section 6.

**7. AGENT'S ACTIONS TO PROTECT MARKS:** In the event of

(a) the Borrower's failure, within Five (5) days of written notice from the Agent, to cure any failure by the Borrower to perform any of the Borrower's obligations set forth in Section 3;

and/or

(b) the occurrence of any Event of Default,

the Agent, acting in its own name or in that of the Borrower, may (but shall not be required to) act in the Borrower's place and stead and/or in the Agent's own right in connection therewith.

8. **RIGHTS UPON DEFAULT:** Upon the occurrence, and during the continuance, of any Event of Default, the Agent may exercise all rights and remedies of a secured party upon default under the UCC, with respect to the Marks, in addition to which the Agent may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Agent that an Event of Default has occurred and that the Agent is authorized to exercise such rights and remedies.

9. **AGENT AS ATTORNEY IN FACT:**

(a) The Borrower hereby irrevocably constitutes and designates the Agent as and for the Borrower's attorney in fact, effective following the occurrence, and during the continuance, of any Event of Default:

(i) To exercise any of the rights and powers referenced in Sections 3, 5 and 6.

(ii) To execute all such instruments, documents, and papers as the Agent determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Marks.

(b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Agent.

(c) The Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 9(a) herein, but if the Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to the Borrower for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Agent has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

10. **AGENT'S RIGHTS:**

(a) Any use by the Agent of the Marks, as authorized hereunder in connection with the exercise of the Lenders' rights and remedies under this Agreement and under the Loan Agreement shall be coextensive with the Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges.

(b) None of this Agreement, the Loan Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the Agent any rights in and to the Marks, which rights are ineffective except following the occurrence of any Event of Default.

11. **INTENT:** It is intended that this Agreement supplement the Loan Agreement. In that regard, the Borrower confirms that (a) all representations and covenants set forth in the Loan Agreement with respect to Collateral are applicable to the Marks, and (b) the Agent shall have the same rights, remedies, powers, privileges and discretions, with respect to the security interests created in the TM Collateral as in all other Collateral under the Loan Agreement. In the event of a conflict between this Agreement and the Loan Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Loan Agreement with respect to all other Collateral.

12. **CHOICE OF LAWS:** It is intended that this Agreement take effect as a sealed instrument and that all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of The Commonwealth of Massachusetts.

[The remainder of this page is intentionally left blank]



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

DESIGNS APPAREL, INC.  
(The "Borrower")

By: [Signature]  
Name: Dennis R. Hernreich  
Title: Senior Vice President

FLEET RETAIL FINANCE INC.  
(The "Agent")

By: [Signature]  
Name: James R. Dore  
Title: Director

COUNTY OF Norfolk, SS THE COMMONWEALTH OF MASSACHUSETTS

Then personally appeared before me Dennis R. Hernreich who acknowledged that such person is the duly authorized Senior V.P. of Designs Apparel, Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 14<sup>th</sup> day of May, 2002.

[Signature]  
Notary Public: Kathleen E. Lehman  
My Commission Expires: 1/17/08

THE COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF Wiltshire, SS

Then personally appeared before me James R. Dore who acknowledged that such person is the duly authorized Director of Fleet Retail Finance Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 14<sup>th</sup> day of May, 2002.

[Signature]  
Notary Public: 4/2/04  
My Commission Expires:

Signature Page to Trademark Security Agreement

712473.1

TRADEMARK  
REEL: 002627 FRAME: 0225

**EXHIBIT A**

Borrower's now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks, and Federal trade mark applications:

<b>REG. TRADEMARKS &amp; APPLICATIONS</b>	<b>OWNER</b>	<b>SERIAL NUMBER</b>	<b>FILE DATE</b>	<b>REG. NUMBER</b>	<b>REG. DATE</b>
HIGH & MIGHTY (SM)	Designs Apparel, Inc.	73/104771	10/29/76	1171694	09/29/81
HIGH AND MIGHTY	Designs Apparel, Inc.	73/046301	03/10/75	1034385	02/24/76
A.X. LLOYD	Designs Apparel, Inc.	74/415787	07/29/93	2016661	11/19/96
ALEXANDER LLOYD	Designs Apparel, Inc.	74/349424	01/19/93	1792707	09/14/93
ALEXANDER LLOYD EXECUTIVE SEPARATES	Designs Apparel, Inc.	74/699051	07/10/95	2062067	05/13/97
ALEXANDER LLOYD LOUNGE WEAR	Designs Apparel, Inc.	74/701022	07/14/95	2063919	05/20/97
HARBOR BAY	Designs Apparel, Inc.	76/019152	04/06/00	2531456	01/22/02
HB SPORT HARBOR BAY	Designs Apparel, Inc.	76/020085	04/06/00	2471393	07/24/01
HB SPORT HARBOR BAY & design	Designs Apparel, Inc.	76/152529	10/23/00	2566969	05/07/02
HIMALAYA	Designs Apparel, Inc.	74/349404	01/19/93	1974456	05/21/96
HIMALAYA OUTFITTERS	Designs Apparel, Inc.	74/348067	01/13/93	1975575	05/28/96
NATURAL EXCHANGE BY ALEXANDER LLOYD	Designs Apparel, Inc.	74/683956	06/02/95	2018824	11/26/96
B&T BIG & TALL FACTORY STORE & design	Designs Apparel, Inc.	75/823690	10/15/99	2415558	12/26/00
B&T FACTORY STORE & design	Designs Apparel, Inc.	75/701406	05/10/99	2443351	04/10/01
BIG & TALL (SM) (Supplemental Registration)	Designs Apparel, Inc.	73/758092	10/17/88	1553379	08/22/89
BIG & TALL CASUAL MALE & design	Designs Apparel, Inc.	75/039345	01/02/96	2080852	07/22/97
CASUAL MALE	Designs Apparel, Inc.	75/345625	08/22/97	2198042	10/20/98
CASUAL MALE BIG & TALL	Designs Apparel, Inc.	75/039630	01/02/96	2036883	02/11/97
CASUAL MALE BIG & TALL & design	Designs Apparel, Inc.	75/039289	01/02/96	2080851	07/22/97
GRADE A JEANS	Designs Apparel, Inc.	76/055190	05/24/00	2490404	09/18/01
GRANDE CENTRAL BIG & TALL CLOTHING CO.	Designs Apparel, Inc.	75/456406	03/25/98		
THINK BIG (novelty items)	Designs Apparel, Inc.	75/806864	09/23/99		

THINK BIG (SM)	Designs Apparel, Inc.	75/642388	02/17/99	2324049	02/29/00
THINK BIG (stylized)	Designs Apparel, Inc.	75/641558	02/17/99		
THINK BIG! (stylized)	Designs Apparel, Inc.	74/243318	02/05/92	1751349	02/09/93
WAIST RELAXER	Designs Apparel, Inc.	76/310647	09/07/01		
BAY CREEK (stylized)	Designs Apparel, Inc.	74/717443	08/18/95	2029787	01/14/97
BIG & TALL REPP LTD ATHLETIC & design (SM)	Designs Apparel, Inc.	74/223867	11/21/91	1714526	09/08/92
BRINELLI (stylized)	Designs Apparel, Inc.	74/717254	08/18/95	1988633	07/23/96
CANYON RIDGE	Designs Apparel, Inc.	74/522210	05/06/94	2159159	05/19/98
FERRACCI (stylized)	Designs Apparel, Inc.	74/653718	03/30/95	1988222	07/23/96
FLAGG STAFF	Designs Apparel, Inc.	74/717352	08/18/95	1988634	07/23/96
JEREMY PETERS & design	Designs Apparel, Inc.	73/378822	08/09/82	1253847	10/11/83
JP JEREMY PETERS & design	Designs Apparel, Inc.	73/378823	08/09/82	1253848	10/11/83
OCEAN PORT	Designs Apparel, Inc.	74/717353	08/30/91	1988635	07/23/96
REPP (SM)	Designs Apparel, Inc.	76/102481	08/03/00		
REPP TECH	Designs Apparel, Inc.	75/525610	07/27/98	2346534	05/02/00
REPP, LTD. & design	Designs Apparel, Inc.	73/353939	03/10/82	1242946	06/21/83
TOWER BAY	Designs Apparel, Inc.	74/653717	08/30/91	1966668	04/09/96
LP INNOVATIONS YOUR LOSS PREVENTION SOLUTION	Designs Apparel, Inc.	75/555443	09/18/98	2407697	11/28/00
SECUREX	Designs Apparel, Inc.	76/261702	05/23/01		
GLACIER TEC	Designs Apparel, Inc.	not registered			
HB CLASSICS	Designs Apparel, Inc.	not registered			
PS PRO	Designs Apparel, Inc.	not registered			
PS PRO & Design	Designs Apparel, Inc.	not registered			
PS PRO (SM)	Designs Apparel, Inc.	not registered			
REPP (Supplemental Register)(Clothing)	Designs Apparel, Inc.	not registered			

REPP LTD. (horizontal store sign) (stylized)(SM)	Designs Apparel, Inc.	not registered
REPP LTD. (vertical store sign (stylized) (SM)	Designs Apparel, Inc.	not registered
REPP PREMIER (Store sign) (stylized) (SM)	Designs Apparel, Inc.	not registered