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RECOR

12-12-2002

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



Tab settings

To the Honorable Commissioner of Patents

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Original documents or copy thereof.

1. Name of conveying party(ies):

Resun Leasing Incorporated

- 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: November 8, 2002

2. Name and address of receiving party(ies)

Name: U.S. Bank National Association. Address: BC-MN-H04B, 800 Nicollet Mall, Minneapolis MN Zip 55402

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State, Other National Banking Association

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)

B. Trademark Registration No.(s)

2,165,218, 2,136,875, 2,135,462, 2,135,463, 2,148,887, 2,123,379, 2,123,373, 2,123,374, 2,588,020, 2,638,672.

Additional number(s) attached Yes No

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

Name: Daniele E. Bourgeois Internal Address: TROUTMAN SANDERS LLP Bank of America Plaza, Suite 5200 Street Address: 600 Peachtree Street City: Atlanta State Ga Zip: 30308

6. Total number of applications and registrations involved: 10

7. Total fee (37 CFR 3.41) \$ 265.00 Enclosed Authorized to be charged to deposit account

8. Deposit account number:

20-1507

(Attach duplicate copy of this page if paying by deposit account)

12/11/2002 TDIAZI 00000042 2165218

DO NOT USE THIS SPACE

01 FC:8521 40.00 OP 02 FE:8522 225.00 OP

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.

Daniele E. Bourgeois

Signature

December 3, 2002

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: 10

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

CONDITIONAL ASSIGNMENT AND TRADEMARK SECURITY AGREEMENT

THIS CONDITIONAL ASSIGNMENT AND TRADEMARK SECURITY AGREEMENT (this "Agreement") is made as of November 8, 2002, by **Resun Leasing, Incorporated** (the "Grantor") in favor of U.S. Bank National Association, as collateral agent (the "Collateral Agent"), for the benefit of the Holders (as such term is defined below).

WITNESSETH:

WHEREAS, pursuant to that certain Investment Agreement dated as of the date hereof (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Investment Agreement") by and among the Grantor, the other Borrowers from time to time party thereto, Banc of America Mezzanine Capital LLC, as the initial holder and the other Holders from time to time party thereto (the "Holders"), the Holders have agreed to purchase the Notes pursuant to the Investment Agreement from the Borrowers, subject to the terms and conditions contained in the Investment Agreement; and

WHEREAS, in order to induce the Holders to enter into the Investment Agreement and to purchase the notes thereunder, the Grantor has agreed to conditionally assign to the Collateral Agent, for the benefit of the Holders, certain trademark rights as described herein.

NOW, THEREFORE, in consideration of the premises set forth herein, to induce the Holders to purchase the Notes from the Borrowers, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor hereby agrees with the Collateral Agent as follows:

1. Definitions.

Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Investment Agreement.

2. Grant of Security Interest.

To secure the complete and timely payment and performance of all Note Obligations, the Grantor hereby grants to the Collateral Agent, for the benefit of the Holders, a security interest in the following assets, in each case whether now owned or existing or hereafter acquired or arising, and wherever located: Grantor's entire world-wide right, title and interest in and to the trademarks and their respective registrations and applications for registration listed in Schedule A attached hereto and by reference made a part hereof, as modified from time to time as herein provided together with the goodwill of the business symbolized by the trademarks, all

licenses relating thereto, and all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), and the right to sue for past, present and future infringements (all of which trademarks, trademark registrations, applications for registration, goodwill, licenses, proceeds, and other rights are collectively called the "Trademarks").

3. Conditional Grant of Security Interest in Additional Trademarks.

If, before the Note Obligations shall have been satisfied in full and terminated, the Grantor shall have or obtain ownership of any trademark, including any registration or application therefor, with respect to goods sold in the Grantor's business (the "Goods"), the provisions of Section 1 shall automatically apply thereto, and also to any composite marks or other marks of the Grantor which are confusingly similar to such mark, and the Grantor shall give to the Collateral Agent prompt written notice thereof. This Section 2 shall not apply to trademarks which are owned by others and licensed to the Grantor. The Grantor shall perform all acts and execute all documents reasonably requested by the Collateral Agent at any time and from time to time to evidence, perfect, maintain, record and enforce the Collateral Agent's and the Holders' security interest in the Trademarks in the United States of America, including, without limitation, any trademarks falling under this Section 2.

4. Modification of Agreement.

The Grantor authorizes the Collateral Agent to modify this Agreement by amending Schedule A to include any additional trademarks, registrations and applications for registration thereof which are Trademarks under Section 1 or Section 2 hereof, and to have this Agreement, as amended, or any other document evidencing the security interest granted therein, recorded in the U.S. Patent and Trademark Office at the expense of the Grantor. The Collateral Agent shall provide notice to the Grantor of any amendment or modification to be effected pursuant to this Section.

5. Remedies Upon Default; Power of Attorney

Subject to the terms of Section 11 of the Investment Agreement:

(a) In addition to the grant of the security interest contained in Sections 1 and 2 hereof, if any Event of Default shall have occurred and be continuing, upon the election of the Required Holders, all right, title and interest in and to the Trademarks shall be automatically granted, assigned, conveyed and delivered to the Collateral Agent for the benefit of the Holders, or its designee. The Grantor hereby irrevocably constitutes and appoints the Collateral Agent and any officer, agent or employee thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in the name of Grantor or the Collateral Agent's own name or the name of the Collateral Agent's designee, all acts of said attorney being hereby ratified and confirmed, upon the occurrence of an Event of Default: (i) to complete, date, execute and file, or cause to be filed, the Assignment attached hereto as Exhibit A and incorporated hereby by reference (the

“Assignment”) in the U.S. Patent and Trademark Office and in all other applicable offices, and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purpose of the Assignment, including, without limitation, the right (but not the obligation) to prosecute applications in the name of the Grantor or the Collateral Agent, and to take any other actions deemed necessary by the Collateral Agent to maintain such registrations in effect; (ii) to collect proceeds from the Trademarks (including, by way of example, license royalties and proceeds of infringement suits); (iii) to convey, in any transaction authorized by the Investment Agreement or any other Note Document, any Goods covered by the registrations applicable to the Trademarks to any purchaser thereof; and (iv) to make payment or to discharge taxes or liens levied or placed upon or threatened against any goods covered by the Trademarks, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent at the direction of the Required Holders, in their sole discretion in its sole discretion, and such payments made by the Holders or the Collateral Agent to become the obligations of the Grantor to the Holders, due and payable immediately without demand. Such power, being coupled with an interest, is irrevocable.

(b) The Collateral Agent shall have, in addition to all other rights and remedies given it by this Agreement and any other Note Document, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be enforceable, and, without limiting the generality of the foregoing, the Collateral Agent shall at the direction of the Required Holders, if any Event of Default shall have occurred, immediately, without demand or performance and without other notice (except as set forth below) or demand whatsoever to the Grantor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, the Trademarks, together with the goodwill of the business symbolized by the Trademarks, and all of the other assets of the Grantor pledged to the Collateral Agent pursuant to this Agreement, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds in accordance with the Investment Agreement. Notice of any sale or other disposition of the Trademarks shall be given to the Grantor at least ten (10) days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which the Grantor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, the Collateral Agent may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right of redemption on the part of the Grantor, which right is hereby waived and released. The Grantor hereby agrees to execute any documents requested by the Collateral Agent or the Holders in connection with any disposition hereunder.

(c) Upon the occurrence of the conditional assignment provided for herein, the Grantor shall have no right, title, or interest in or to any of the Trademarks and the Grantor shall cease and desist in the use of the Trademarks and of any colorable imitation thereof, and shall, upon written demand of the Collateral Agent, or pursuant to the terms of the Note Documents, deliver to the Collateral Agent all Goods bearing the Trademarks.

6. Termination of Agreement.

At such time as all Notes have been paid in full or terminated and all of the other Note Obligations (other than indemnification obligations as to which no claim has been asserted) have been paid in full terminated, the Collateral Agent shall execute and deliver to the Grantor all deeds, assignments and other instruments as may be necessary or proper to re-vest in the Grantor title to the Trademarks and the goodwill of the business symbolized by the Trademarks, subject to any disposition thereof which may have been made by the Collateral Agent pursuant hereto.

7. Limitation of Liability and Indemnification.

The Grantor hereby releases the Collateral Agent and the Holders from, and agrees to hold the Collateral Agent and the Holders free and harmless from and against, any claims arising out of any action taken or omitted to be taken with respect to the Trademarks (except to the extent of the Collateral Agent's or the Holders' gross negligence or willful misconduct), and the Grantor agrees to indemnify the Collateral Agent and the Holders from and against any and all claims, demands, suits, losses, damages or other expenses (including reasonable attorneys' fees) arising from or in any way related to the Trademarks and any trademark infringement claim.

8. Waiver and Amendment.

(a) No course of dealing between the Grantor, the Collateral Agent and the Holders, nor any failure to exercise, nor any delay in exercising, on the part of the Collateral Agent or any Holder, any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) This Agreement is subject to modification only by a writing signed by the parties hereto.

9. Cumulative Rights.

All of the Collateral Agent's rights and remedies with respect to the Trademarks and the other assets of the Grantor pledged to the Collateral Agent for the benefit of the Holders hereunder, whether established hereby or under the other Note Documents, or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

10. Severability.

The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

11. Survival.

The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties hereto.

12. Counterparts.

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

13. Choice of Law.

The validity, construction and enforcement of this Agreement and the determination of the rights and duties of the parties hereto shall be governed by, and construed and enforced in accordance with, the internal laws in effect in the State of New York.

14. Rights of Required Holders.

All rights of the Collateral Agent hereunder, if not exercised by the Collateral Agent, may be exercised by the Required Holders.

15. Subordination of Liens.

The terms and provisions of this Agreement are subject to Section 11 of the Investment Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

Resun Leasing, Incorporated

By: 

Name: Barry A. Roman

Title: President and Treasurer

SCHEDULE A

Listing of Trademark Registrations and Applications

APPL/REGIS NO.	STATUS	MARK	LISTED OWNER
2,165,218	LIVE	Resun (stylized lettering)	Resun Leasing, Incorporated
2,136,875	LIVE	Resun Leasing, Incorporated (stylized lettering)	Resun Leasing, Incorporated
2,135,462	LIVE	Resun	Resun Leasing, Incorporated
2,135,463	LIVE	Resun Leasing, Incorporated	Resun Leasing, Incorporated
2,148,887	LIVE	Resun	Resun Leasing, Incorporated
2,123,379	LIVE	Resun	Resun Leasing, Incorporated
2,123,373	LIVE	Resun Leasing, Incorporated	Resun Leasing, Incorporated
2,123,374	LIVE	Resun Leasing, Incorporated	Resun Leasing, Incorporated
2,588,020	LIVE	"Bringing space to you"	Resun Leasing, Incorporated
2,638,672	LIVE	"Bringing space to you"	Resun Leasing, Incorporated

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Conditional Assignment and
Trademark Security Agreement

EXHIBIT A

Assignment of Trademarks and Goodwill

THIS ASSIGNMENT dated the ___ day of _____, 20___, from **Resun Leasing, Incorporated**, a Delaware corporation (the "Assignor"), to U.S. Bank National Association, as collateral agent for the Holders (the "Collateral Agent"), recites and provides:

WHEREAS, the Assignor is the owner of certain trademarks and service marks and the registrations and applications to register therefor listed in **Schedule A** hereto (the "Trademarks"); and

WHEREAS, the Assignee desires to obtain all of the Assignor's right, title and interest in all such Trademarks.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Assignor hereby grants, assigns and conveys to the Assignee, as collateral agent for the Holders, its successors and assigns, the entire right, title and interest of the Assignor in and to the Trademarks, including without limitation all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), and the right to sue for past, present and future infringements, together with the goodwill of the business symbolized by the Trademarks. The Assignor acknowledges that it has granted the Assignee the right to secure the assets of the Assignor associated with the business symbolized by the Trademarks, under a separate agreement.

The Assignor further agrees to execute such further instruments and documents and perform such further acts as the Assignee may deem necessary to secure to the Assignee the rights herein conveyed.

The Assignor warrants and represents that it is the sole owner of the interest conveyed hereunder and that such interest is not the subject of any prior transfer, assignment, lien, mortgage or other transaction which would affect the Assignor's ability to transfer such interest.

The Assignor further agrees to indemnify the Assignee for any breach of the above warranty.

IN WITNESS WHEREOF, the Assignor has executed this Assignment as of the day and year first above written.

Resun Leasing, Incorporated

By: _____

Name: _____

Title: _____