

12-20-2002

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)



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

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102317242

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

1. Name of conveying party(ies):

Clothestime Stores, Inc.

12/13/02

- ☐ 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: December 11, 2002

2. Name and address of receiving party(ies)

Name: Wells Fargo Retail Finance, LLC

Internal

Address: _____

Street Address: One Boston Place, 18th Floor

City: Boston State: MA Zip: 02108

- ☐ Individual(s) citizenship _____
☐ Association _____
☐ General Partnership _____
☐ Limited Partnership _____
☐ Corporation-State _____
☒ Other Delaware limited liability co.

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

Additional number(s) attached ☒ Yes ☐ No

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

Name: Josh S. Ridout

Internal Address: _____

12/19/2002 TDIAZI 00000048 160752 2286793

01 FC:521 40.00 CH
02 FC:522 200.00 CH

Street Address: Paul Hastings
25th Floor

515 S. Flower Street

City: Los Angeles State: CA Zip: 90071

6. Total number of applications and registrations involved: 9

7. Total fee (37 CFR 3.41).....\$ 240.00

- ☐ Enclosed
☒ Authorized to be charged to deposit account

8. Deposit account number:

16-0752

(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.

Josh S. Ridout

Name of Person Signing

Signature

December 13, 2002

Date

Total number of pages including cover sheet, attachments, and document: 16

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

TRADEMARK
REEL: 002636 FRAME: 0663

Registrations

Mark	Registration No.
Blue Threads	2,286,793
Chill Zone	2,579,986
Clothestime Be All That	2,471,534
Eye Candy	2,647,626
Genevieve	2,226,016
Love Match	2,632,708
X.CESS.IT	2,224,301

Applications

Mark	Serial No.
Eye Candy	75/373,158
Take Control	75/507,284

AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT

This AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT (this "Agreement"), dated as of December 11, 2002, is made by **CLOTHETIME STORES, INC.**, a Delaware corporation ("Obligor"), in favor of **WELLS FARGO RETAIL FINANCE, LLC**, a Delaware limited liability company ("Secured Party").

RECITALS

A. Obligor and Foothill Capital Corporation, a California corporation (predecessor in interest to Secured Party and referred to herein as "Foothill"), are parties to that certain Loan and Security Agreement dated September 26, 1997, as amended by that certain Amendment No. One dated June 26, 1998, that certain Amendment No. Two dated April 13, 2000, and that certain Amendment No. Three dated November 25, 2002 (as so amended, the "Original Loan Agreement");

B. Pursuant to the Original Loan Agreement, Foothill and Obligor entered into that certain Trademark Security Agreement dated as of September 26, 1997 (as amended prior to the date hereof, and as it may be amended, modified, supplemented, revised or restated from time to time, the "Trademark Security Agreement"), pursuant to which Obligor pledged to Foothill certain Trademark Collateral defined therein as security for the Obligations as defined in the Original Loan Agreement;

C. Foothill has assigned all of its rights and obligations under the Original Loan Agreement and the Loan Documents defined therein (including the Trademark Security Agreement) to Secured Party pursuant to that certain Assignment and Acceptance Agreement dated as of the date hereof (the "Assignment Agreement");

D. Concurrently herewith Obligor and Secured Party are amending and restating the Original Loan Agreement by entering into that certain Amended and Restated Loan and Security Agreement dated as of the date hereof (as it may be amended, modified, supplemented, revised or restated from time to time, the "Loan Agreement");

E. In connection with the Loan Agreement and as one of the conditions precedent to the obligations of Secured Party under the Loan Agreement, Secured Party is requiring the execution and delivery of this Agreement to Secured Party for filing with the PTO and with any other relevant recording systems in any domestic or foreign jurisdiction, and to evidence the pledge of the Trademark Collateral as security for all Obligations as defined in the Loan Agreement.

ASSIGNMENT

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, Obligor hereby agrees in favor of Secured Party as follows:

1. Definitions; Interpretation.

(a) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Bankruptcy Code" shall have the meaning ascribed thereto in the Loan Agreement.

"Event of Default" shall have the meaning ascribed thereto in the Loan Agreement.

"Foothill" has the meaning set forth in the recitals of this Agreement.

"Lien" means any pledge, security interest, assignment, charge or encumbrance, lien (statutory or other), or other preferential arrangement (including any agreement to give any security interest).

"Loan Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Loan Documents" shall have the meaning ascribed thereto in the Loan Agreement.

"Material Adverse Change" shall have the meaning ascribed thereto in the Loan Agreement.

"Original Loan Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Proceeds" means whatever is receivable or received from or upon the sale, lease, license, collection, use, exchange or other disposition, whether voluntary or involuntary, of any Trademark Collateral, including "proceeds" as defined in the UCC, all insurance proceeds and all proceeds of proceeds. Proceeds shall include (i) any and all accounts, chattel paper, instruments, general intangibles, cash and other proceeds, payable to or for the account of Obligor, from time to time in respect of any of the Trademark Collateral, (ii) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to or for the account of Obligor from time to time with respect to any of the Trademark Collateral, (iii) any and all claims and payments (in any form whatsoever) made or due and payable to Obligor from time to time in connection with any requisition,

confiscation, condemnation, seizure or forfeiture of all or any part of the Trademark Collateral by any Person acting under color of governmental authority, and (iv) any and all other amounts from time to time paid or payable under or in connection with any of the Trademark Collateral or for or on account of any damage or injury to or conversion of any Trademark Collateral by any Person.

“PTO” means the United States Patent and Trademark Office and any successor thereto.

“Secured Obligations” means Obligations as defined in the Loan Agreement.

“Trademark Collateral” has the meaning set forth in Section 2.

“Trademark Security Agreement” has the meaning set forth in the recitals of this Agreement.

“Trademarks” has the meaning set forth in Section 2.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of California.

“United States” and “U.S.” each mean the United States of America.

(b) Terms Defined in UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(c) Interpretation. In this Agreement, except to the extent the context otherwise requires:

(i) Any reference to a Section or a Schedule is a reference to a section hereof, or a schedule hereto, respectively, and to a subsection or a clause is, unless otherwise stated, a reference to a subsection or a clause of the Section or subsection in which the reference appears.

(ii) The words “hereof,” “herein,” “hereto,” “hereunder” and the like mean and refer to this Agreement as a whole and not merely to the specific Section, subsection, paragraph or clause in which the respective word appears.

(iii) The meaning of defined terms shall be equally applicable to both the singular and plural forms of the terms defined.

(iv) The words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation.”

(v) References to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto.

(vi) References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation referred to.

(vii) Any captions and headings are for convenience of reference only and shall not affect the construction of this Agreement.

(viii) Capitalized words not otherwise defined herein shall have the respective meanings assigned to them in the Loan Agreement.

(ix) In the event of a direct conflict between the terms and provisions of this Agreement and the Loan Agreement, it is the intention of the parties hereto that both such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of the Loan Agreement shall control and govern; provided, however, that the inclusion herein of additional obligations on the part of Obligor and supplemental rights and remedies in favor of Secured Party (whether under federal law or applicable California law), in each case in respect of the Trademark Collateral, shall not be deemed a conflict in the Loan Agreement.

2. Security Interest.

(a) Assignment and Grant of Security Interest. To secure the Secured Obligations, Obligor hereby grants, assigns, transfers and conveys to Secured Party a continuing security interest in all of Obligor's right, title and interest in and to the following property, whether now existing or hereafter acquired or arising and whether registered or unregistered (collectively, the "Trademark Collateral");

(i) all state (including common law), federal and foreign trademarks, service marks and trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, together with and including all licenses therefor held by Obligor (unless otherwise prohibited by any license or related licensing agreement under circumstances where the granting of the security interest would have the effect under applicable law of the termination or permitting termination of the license for breach and where the licensor has elected such termination remedy), and all registrations and recordings thereof, and all applications filed or to be filed in connection therewith, including registrations and applications in the PTO, any State of the United States or any other country or any political subdivision thereof, and all extensions or renewals thereof,

including without limitation any of the foregoing identified on Schedule A hereto (as the same may be amended, modified or supplemented from time to time), and the right (but not the obligation) to register claims under any state or federal trademark law or regulation or any trademark law or regulation of any foreign country and to apply for, renew and extend any of the same, to sue or bring opposition or cancellation proceedings in the name of Obligor or in the name of Secured Party for past, present or future infringement or unconsented use thereof, and all rights arising therefrom throughout the world (collectively, the "Trademarks");

(ii) all claims, causes of action and rights to sue for past, present or future infringement or unconsented use of any Trademarks and all rights arising therefrom and pertaining thereto;

(iii) all general intangibles related to or arising out of any of the Trademarks and all the goodwill of Obligor's business symbolized by the Trademarks or associated therewith; and

(iv) all products and Proceeds of any and all of the foregoing.

(b) Continuing Security Interest. Obligor agrees that this Agreement shall create a continuing security interest in the Trademark Collateral which shall remain in effect until terminated in accordance with Section 17.

(c) Incorporation into Loan Agreement. This Agreement shall be fully incorporated into the Loan Agreement and all understandings, agreements and provisions contained in the Loan Agreement shall be fully incorporated into this Agreement. Without limiting the foregoing, the Trademark Collateral described in this Agreement shall constitute part of the Collateral in the Loan Agreement.

3. Further Assurances; Appointment of Secured Party as Attorney-in-Fact. Obligor at its expense shall execute and deliver, or cause to be executed and delivered, to Secured Party any and all documents and instruments, in form and substance satisfactory to Secured Party, and take any and all action, which Secured Party may reasonably request from time to time, to perfect and continue perfected, maintain the priority of or provide notice of Secured Party's security interest in the Trademark Collateral and to accomplish the purposes of this Agreement. Secured Party shall have the right, in the name of Obligor, or in the name of Secured Party or otherwise, without notice to or assent by Obligor, and Obligor hereby irrevocably constitutes and appoints Secured Party (and any of Secured Party's officers or employees or agents designated by Secured Party) as Obligor's true and lawful attorney-in-fact with full power and authority (i) to sign the name of Obligor on all or any of such documents or instruments and perform all other acts that Secured Party deems necessary or advisable in order to perfect or continue perfected, maintain the priority or enforceability of or provide notice of Secured Party's security interest in the Trademark Collateral, and (ii) to execute any and

all other documents and instruments, and to perform any and all acts and things for and on behalf of Obligor, which Secured Party may deem necessary or advisable to maintain, preserve and protect the Trademark Collateral and to accomplish the purposes of this Agreement, including (A) after the occurrence and during the continuance of any Event of Default, to defend, settle, adjust or institute any action, suit or proceeding with respect to the Trademark Collateral, (B) after the occurrence and during the continuance of any Event of Default, to assert or retain any rights under any license agreement for any of the Trademark Collateral, and (C) after the occurrence and during the continuance of any Event of Default, to execute any and all applications, documents, papers and instruments for Secured Party to use the Trademark Collateral, to grant or issue any exclusive or non-exclusive license with respect to any Trademark Collateral, and to assign, convey or otherwise transfer title in or dispose of the Trademark Collateral. The power of attorney set forth in this Section 3, being coupled with an interest, is irrevocable so long as this Agreement shall not have terminated in accordance with Section 17.

4. Representations and Warranties. Obligor represents and warrants to Secured Party as follows:

(a) No Other Trademarks. Schedule A sets forth, as of the Closing Date, a true and correct list of all of the existing Trademarks that are registered, or for which any application for registration has been filed with the PTO or any corresponding or similar trademark office of any other U.S. or foreign jurisdiction, and that are owned or held (whether pursuant to a license or otherwise) and used by Obligor.

(b) Trademarks Subsisting. Each of the Trademarks listed in Schedule A is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and, to the best of Obligor's knowledge, each of the Trademarks is valid and enforceable.

(c) Ownership of Trademark Collateral; No Violation. (i) Obligor has rights in and good and defensible title to the existing Trademark Collateral, (ii) with respect to the Trademark Collateral shown on Schedule A hereto as owned by it, Obligor is the sole and exclusive owner thereof, free and clear of any Liens and rights of others (other than the security interests created under the Loan Agreement and hereunder), including licenses, registered user agreements and covenants by Obligor not to sue third persons, and (iii) with respect to any Trademarks for which Obligor is either a licensor or a licensee pursuant to a license or licensee agreement regarding such Trademark, each such license or licensing agreement is in full force and effect, Obligor is not in default of any of its obligations thereunder and, other than the parties to such licenses or licensing agreements, no other Person has any rights in or to any of the Trademark Collateral. To the best of Obligor's knowledge, the past, present and contemplated future use of the Trademark Collateral by Obligor has not, does not and will not infringe upon or violate any right, privilege or license agreement of or with any other Person.

(d) No Infringement. To the best of Obligor's knowledge, no material infringement or unauthorized use presently is being made of any of the Trademark Collateral by any Person.

(e) Powers. Obligor has the unqualified right, power and authority to pledge and to grant to Secured Party a security interest in all of the Trademark Collateral pursuant to this Agreement, and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person except as already obtained.

5. Covenants. So long as any of the Secured Obligations remain unsatisfied, Obligor agrees that it will promptly give Secured Party written notice of the occurrence of any event effecting any of the Trademarks or the Trademark Collateral, including any petition under the Bankruptcy Code filed by or against any licensor of any of the Trademarks for which Obligor is a licensee, the result of which would be a Material Adverse Change.

6. Future Rights. For so long as any of the Secured Obligations shall remain outstanding, or, if earlier, until Secured Party shall have released or terminated, in whole but not in part, its interest in the Trademark Collateral, if and when Obligor shall obtain rights to any new Trademarks, or any reissue, renewal or extension of any Trademarks, the provisions of Section 2 shall automatically apply thereto and Obligor shall give to Secured Party prompt notice thereof. Obligor shall do all things deemed necessary or advisable by Secured Party to ensure the validity, perfection, priority and enforceability of the security interests of Secured Party in such future acquired Trademark Collateral. Obligor shall modify, amend or supplement the Schedules hereto and re-execute this Agreement from time to time to include any future Trademarks which are or become Trademark Collateral and cause such re-executed Agreement or such modified, amended or supplemented Schedules to be filed with the PTO.

7. Secured Party's Duties. Notwithstanding any provision contained in this Agreement, Secured Party shall have no duty to exercise any of the rights, privileges or powers afforded to it and shall not be responsible to Obligor or any other Person for any failure to do so or delay in doing so. Except for the accounting for moneys actually received by Secured Party hereunder or in connection herewith, Secured Party shall have no duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Trademark Collateral.

8. Remedies. From and after the occurrence and during the continuation of an Event of Default, Secured Party shall have all rights and remedies available to it under the Loan Agreement and applicable law (which rights and remedies are cumulative) with respect to the security interests in any of the Trademark Collateral or any other Collateral. Obligor agrees that such rights and remedies include the right of Secured Party as a secured party to sell or otherwise dispose of its Collateral after default, pursuant to the UCC. Obligor agrees that Secured Party shall at all times have such

royalty-free licenses, to the extent permitted by law, for any Trademark Collateral that is reasonably necessary to permit the exercise of any of Secured Party's rights or remedies upon or after the occurrence of (and during the continuance of) an Event of Default with respect to (among other things) any tangible asset of Obligor in which Secured Party has a security interest, including Secured Party's rights to sell inventory, tooling or packaging which is acquired by Obligor (or its successor, assignee or trustee in bankruptcy). In addition to and without limiting any of the foregoing, upon the occurrence and during the continuance of an Event of Default, Secured Party shall have the right but shall in no way be obligated to bring suit, or to take such other action as Secured Party deems necessary or advisable, in the name of Obligor or Secured Party, to enforce or protect any of the Trademark Collateral, in which event Obligor shall, at the request of Secured Party, do any and all lawful acts and execute any and all documents required by Secured Party in aid of such enforcement. To the extent that Secured Party shall elect not to bring suit to enforce such Trademark Collateral, Obligor agrees to use all reasonable measures and its diligent efforts, whether by action, suit, proceeding or otherwise, to prevent the infringement, misappropriation or violation thereof by others and for that purpose agrees diligently to maintain any action, suit or proceeding against any Person necessary to prevent such infringement, misappropriation or violation.

9. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Obligor and Secured Party and their respective successors and assigns.

10. Notices. All notices and other communications hereunder shall be in writing and shall be mailed, sent or delivered in accordance with the Loan Agreement.

11. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the United States (including the bankruptcy code) without regard to the application of any provision of state law. To the extent that federal law would apply the law of any state as the federal rule for the purposes of this agreement, the parties agree that the laws of the State of California shall be used to supplement the application of federal law.

12. Entire Agreement; Amendment. This Agreement, together with the Schedules hereto, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior drafts and communications relating to such subject matter. Neither this Agreement nor any provision hereof may be modified, amended or waived except by the written agreement of the parties as provided in the Loan Agreement. Notwithstanding the foregoing, Secured Party may re-execute this Agreement or modify, amend or supplement the Schedules hereto as provided in Section 6 hereof.

13. Severability. If one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction or with respect to any party, such invalidity, illegality or unenforceability in such

jurisdiction or with respect to such party shall, to the fullest extent permitted by applicable law, not invalidate or render illegal or unenforceable any such provision in any other jurisdiction or with respect to any other party, or any other provisions of this Agreement.

14. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same Agreement.

15. Loan Agreement. Obligor acknowledges that the rights and remedies of Secured Party with respect to the security interest in the Trademark Collateral granted hereby are more fully set forth in the Loan Agreement and all such rights and remedies are cumulative.

16. No Inconsistent Requirements. Obligor acknowledges that this Agreement and the other Loan Documents may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and Obligor agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms. To the extent of any conflict between the provisions of this Agreement and the Loan Agreement, however, the provisions of the Loan Agreement shall govern.


17. Termination. Upon the indefeasible payment in full of the Secured Obligations, including the cash collateralization, expiration, or cancellation of all Secured Obligations, if any, consisting of letters of credit, and the full and final termination of any commitment to extend any financial accommodations under the Loan Agreement, this Agreement shall terminate, and Secured Party shall execute and deliver such documents and instruments and take such further action reasonably requested by Obligor, at Obligor's expense, as shall be necessary to evidence termination of the security interest granted by Obligor to Secured Party hereunder, including cancellation of this Agreement by written notice from Secured Party to the PTO.

18. Effect of this Agreement. This Agreement amends and restates the Trademark Security Agreement in its entirety and is entitled to the benefit of all existing Loan Documents. Any reference in any other Loan Document to the "Trademark Security Agreement", "thereunder", "therein", "thereof" or words of like import referring to the Trademark Security Agreement shall mean and refer to this Agreement (as amended or otherwise modified from time to time). Any reference in any other Loan Document to the "Secured Obligations" or any similar term including or referencing obligations under the Trademark Security Agreement shall include and reference the Secured Obligations as defined in this Agreement (as amended or otherwise modified from time to time). The security interests granted pursuant to the Trademark Security Agreement and the Loan Documents shall, as modified hereby, continue in full force and

effect, and are hereby affirmed, with respect to this Agreement and the Secured Obligations as defined herein.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

CLOTHETIME STORES, INC.,
a Delaware corporation

By: 
Title: Executive VP, CEO

WELLS FARGO RETAIL FINANCE, LLC,
a Delaware limited liability corporation

By: _____
Title: _____

[Signature Page to Amended and Restated Trademark Security Agreement]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

CLOTHESTIME STORES, INC.,
a Delaware corporation

By: _____
Title: _____

WELLS FARGO RETAIL FINANCE, LLC,
a Delaware limited liability corporation

By: 
Title: Vice President

[Signature Page to Amended and Restated Trademark Security Agreement]

Schedule A

Intellectual Property

Registrations:

Mark	Type	Jurisdiction	Registration & Date Issued
Always in Fashion Never Full Price	Service Mark	Federal	1,817,218 01/18/1994
Best World Brand	Trademark	Federal	1,499,673 8/9/1988
Blue Threads	Trademark	Federal	2,286,793 10/12/1999
Chill Zone	Trademark	Federal	2,579,986 06/11/02
Clothestime	Trademark & Service Mark	Federal	1,780,374 07/06/1993
Clothestime	Trademark	Mexico	470,549 07/14/94
Clothestime Be All That	Service Mark	Federal	2,471,534 07/24/2001
Day 2 Day	Trademark	Federal	2,030,352 01/14/97
Eye Candy	Trademark	Federal	2,647,626 11/12/02
Genevieve	Trademark	Federal	2,226,016 02/23/1999
Lingerie Time	Trademark	Mexico	470,550 07/14/94
Love Match	Trademark	Federal	2,632,708 10/08/02
Spoiled Girls	Trademark	Federal	1,431,241 03/03/1987
Trend Club	Trademark	State (Florida)	14,873 08/12/91

Mark	Type	Jurisdiction	Registration & Date Issued
Trend Club	Service Mark	Federal	1,913,958 08/22/95
Via Max	Trademark	Federal	1,540,584 05/23/1989
X.CESS.IT	Trademark	Federal	2,224,301 02/16/1999

Applications:

Mark	Type	Jurisdiction	Serial No.
Eye Candy	Service Mark	Federal	75/373,158
Take Control	Service Mark	Federal	75/507,284