

12-27-02

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



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

102323104

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

1. Name of conveying party(ies):

FunMail, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation-State (Delaware) Other

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

2. Name and address of receiving party(ies)

Name: Leo Capital Holdings, LLC

Internal

Address:

Street Address: 1101 Skokie Boulevard, Suite 255

City: Northbrook State: Illinois Zip: 60062

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other LIMITED LIABILITY COMPANY

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: December 18, 2002

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) See Attached Exhibit A

B. Trademark Registration No.(s) See Attached Exhibit A

Additional number(s) attached Yes No

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

Name: Joseph Kye

Internal Address:

Vedder, Price, Kaufman & Kammholz

Street Address: 222 N. LaSalle St., 24th Floor

City: Chicago State: IL Zip: 60601

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41): \$ 90.00

- Enclosed Authorized to be charged to deposit account (Charge any deficiencies or credit any overpayment to the acct)

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.

Joseph Kye

Name of Person Signing

Signature

Date

15

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

12/27/2002 LNUELLER 00000131 78000785

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

01 FC:8521 02 FC:8522

40.00 OP 50.00 OP

TRADEMARK REEL: 002639 FRAME: 0337

EXHIBIT A
TRADEMARK SECURITY AGREEMENT

TRADEMARK	SERIAL NUMBER	FILING DATE
Funmail	78000785	3/23/2000
Funmail.com	75923435	2/19/2000
Funmail.com	76018064	4/6/2000

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is made as of December 18, 2002, by and between FunMail, Inc., a Delaware corporation ("Borrower"), and Leo Capital Holdings, LLC, a Delaware limited liability company (the "Secured Party").

W I T N E S S E T H:

WHEREAS, Borrower has made, pursuant to that certain Secured Note and Series A Preferred Stock Purchase Agreement of even date herewith among Borrower, the Secured Party and one or more other parties (the "Purchase Agreement"), a Secured Note (as defined in the Security Agreement) payable to the Lenders to evidence Borrower's obligation to repay certain funds loaned to Borrower by the Lenders;

WHEREAS, Borrower and the Secured Party are parties to that certain Security Agreement of even date herewith (as the same may hereafter be modified, amended, restated or supplemented from time to time, the "Security Agreement"), pursuant to which Borrower has granted a security interest in all of its assets to the Secured Party; and

WHEREAS, the Secured Party has required Borrower to execute and deliver this Agreement in order to secure the prompt and complete payment, observance and performance of all of the Liabilities (as defined in the Security Agreement).

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Defined Terms.

1.1 Unless otherwise defined herein, each capitalized term used herein that is not defined herein shall have the meaning specified for such term in the Security Agreement.

1.2 All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and *vice versa*, unless otherwise specified.

2. Incorporation of the Financing Agreements. The Secured Note, the Purchase Agreement, the Security Agreement and all related documents thereto and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto (the "Financing Agreements").

3. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Liabilities, Borrower hereby grants to the Secured Party a security interest in, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of Borrower's now owned or existing and hereafter acquired or arising:

3.1 trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including but not limited to those listed on Schedule A attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, (d) the goodwill of Borrower's business symbolized by the foregoing and connected therewith and (e) all of Borrower's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in subclauses (a)-(e) in this Section 3.1, are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and

3.2 rights under or interest in any trademark license agreements or service mark license agreements with any other party, whether Borrower is a licensee or licensor under any such license agreement, including, without limitation, those trademark license agreements and service mark license agreements listed on Schedule B attached hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademark license agreements or service mark license agreements, and the right to prepare for sale and sell any and all Inventory now or hereafter owned by Borrower and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 3, the Licenses shall not include any license agreement in effect as of the date hereof which by its terms prohibits the grant of the security contemplated by this Agreement; provided however, that upon the termination of such prohibitions for any reason whatsoever, the provisions of this Section 3 shall be deemed to apply thereto automatically.

4. Restrictions on Future Agreements. Borrower will not, without the Secured Party's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Borrower further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect affect the validity or enforcement of the rights transferred to the Secured Party under this Agreement or the rights associated with the Trademarks or Licenses.

5. Trademarks and Licenses. Borrower represents and warrants that as of the date hereof and until the termination of this Agreement (except for new trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications as to which Borrower notifies the Secured Party as set forth below) (a) the Trademarks listed on Schedule A include all of the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned or held by Borrower, (b) the Licenses listed on Schedule B include all of the trademark license agreements and service mark license agreements under which Borrower is the licensee or licensor and (c) no Liens in such Trademarks and Licenses have been granted by Borrower to

any Person other than the Secured Party. If, prior to the termination of this Agreement, Borrower shall (i) obtain rights to any new trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (ii) become entitled to the benefit of any trademarks, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor, or (iii) enter into any new trademark license agreement or service mark license agreement, the provisions of Section 3 above shall automatically apply thereto. Borrower shall give to the Secured Party written notice of events described in subclauses (i), (ii) and (iii) of the preceding sentence promptly after the occurrence thereof, but in any event not less frequently than on a quarterly basis. Borrower hereby authorizes the Secured Party to modify this Agreement unilaterally (i) by amending Schedule A to include any future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and by amending Schedule B to include any future trademark license agreements and service mark license agreements which are Trademarks or Licenses under Section 3 above or under this Section 5 and (ii) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule A or Schedule B thereto, as the case may be, such future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, and trademark license agreements and service mark license agreements; provided that Secured Party provides a copy of any such amendment(s) to Borrower within fifteen (15) days thereafter.

6. Right to Inspect; Further Assignments and Security Interests. The Secured Party may have at all reasonable times (and at any time when a Default has occurred and is continuing) access to, examine, audit, make copies (at Borrower's expense) and extracts from and inspect Borrower's premises and examine Borrower's books, records and operations relating to the Trademarks and Licenses; provided, that, in conducting such inspections and examinations, the Secured Party shall use reasonable efforts not to disturb unnecessarily the conduct of Borrower's ordinary business operations. From and after the occurrence of a Default, Borrower agrees that the Secured Party, or a conservator appointed by the Secured Party, shall have the right to establish such reasonable additional product quality controls as the Secured Party or such conservator, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by Borrower under the Trademarks and the Licenses or in connection with which such Trademarks and Licenses are used. Borrower agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the Licenses without the prior and express written consent of the Secured Party, (ii) to maintain the quality of such products as of the date hereof and (iii) not to diminish the quality of such products in any material respect without the Secured Party's prior and express written consent.

7. Nature and Continuation of the Secured Party's Security Interest; Termination of the Secured Party's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall terminate upon the date all of the Liabilities have been paid in full in cash and the Security Agreement has been terminated. When this Agreement has terminated, the Secured Party shall promptly execute and deliver to Borrower, at Borrower's expense, all termination statements and other instruments as may be necessary or proper to terminate the Secured Party's security interest in the Trademarks and the Licenses, subject to any disposition thereof which

may have been made by the Secured Party pursuant to this Agreement or the Security Agreement.

8. Duties of Borrower. Borrower shall have the duty, to the extent desirable in the normal conduct of Borrower's business, to: (a) prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement and (b) make application for trademarks or service marks. Borrower further agrees (i) not to abandon any Trademark or License without the prior written consent of the Secured Party and (ii) to use its best efforts to maintain in full force and effect the Trademarks and the Licenses that are or shall be necessary or economically desirable in the operation of Borrower's business. Any expenses incurred in connection with the foregoing shall be borne by Borrower. The Secured Party shall have no duty with respect to the Trademarks and Licenses. Without limiting the generality of the foregoing, the Secured Party shall be under no obligation to take any steps necessary to preserve rights in the Trademarks or Licenses against any other parties, but the Secured Party may do so at its option from and after the occurrence of a Default, and all expenses incurred in connection therewith shall be for the sole account of Borrower and shall be added to the Liabilities secured hereby.

9. Secured Party's Right to Sue. From and after the occurrence and during the continuance of a Default, the Secured Party shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Trademarks and the Licenses and, if the Secured Party shall commence any such suit, Borrower shall, at the request of the Secured Party, do any and all lawful acts and execute any and all proper documents required by the Secured Party in aid of such enforcement. Borrower shall, upon demand, promptly reimburse the Secured Party for all costs and expenses incurred by the Secured Party in the exercise of its rights under this Section 9 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for the Secured Party).

10. Waivers. The Secured Party's failure, at any time or times hereafter, to require strict performance by Borrower of any provision of this Agreement shall not waive, affect or diminish any right of the Secured Party thereafter to demand strict compliance and performance therewith nor shall any course of dealing between Borrower and the Secured Party have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of Borrower contained in this Agreement shall be deemed to have been suspended or waived by the Secured Party unless such suspension or waiver is in writing signed by an officer of the Secured Party and directed to Borrower specifying such suspension or waiver.

11. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but 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.

12. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

13. Cumulative Remedies; Power of Attorney.

13.1 Effective as of the date of the occurrence and during the continuance of a Default, Borrower hereby irrevocably designates, constitutes and appoints the Secured Party (and all Persons designated by the Secured Party in its sole and absolute discretion) as Borrower's true and lawful attorney-in-fact, and authorizes the Secured Party and any of the Secured Party's designees, in Borrower's or the Secured Party's name, to take any action and execute any instrument which the Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, from and after the occurrence and during the continuance of a Default and the giving by the Secured Party of notice to Borrower of the Secured Party's intention to enforce its rights and claims against Borrower, to (a) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for the Secured Party in the use of the Trademarks or the Licenses, (b) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone on commercially reasonable terms, (c) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone on commercially reasonable terms and (d) take any other actions with respect to the Trademarks or the Licenses as the Secured Party deems in its best interest. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all of the Liabilities shall have been paid in full in cash and the Security Agreement shall have been terminated. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Secured Party under the Security Agreement, but rather is intended to facilitate the exercise of such rights and remedies.

13.2 The Secured Party shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies 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 or the Licenses may be located or deemed located. Upon the occurrence of a Default and the election by the Secured Party to exercise any of its remedies under Section 9-504 or Section 9-505 of the Uniform Commercial Code with respect to the Trademarks and Licenses, Borrower agrees to assign, convey and otherwise transfer title in and to the Trademarks and the Licenses to the Secured Party or any transferee of the Secured Party and to execute and deliver to the Secured Party or any such transferee all such agreements, documents and instruments as may be necessary, in the Secured Party's sole discretion, to effect such assignment, conveyance and transfer. All of the Secured Party's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by the Security Agreement, by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that, upon the occurrence of a Default, the Secured Party may exercise any of the rights and remedies provided in this Agreement, the Security Agreement and any of the other Financing Agreements. Borrower agrees that any notification of intended disposition of any of the Trademarks and Licenses required by law shall be deemed reasonably and properly given if

given at least ten (10) days before such disposition; provided, however, that the Secured Party may give any shorter notice that is commercially reasonable under the circumstances.

14. Successors and Assigns. This Agreement shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of the Secured Party and its nominees, successors and assigns. Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Borrower; provided, however, that Borrower shall not voluntarily assign or transfer its rights or obligations hereunder without the Secured Party's prior written consent.

15. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the internal laws (without regard to conflict of laws provisions) and decisions of the State of Illinois.

16. Notices. All notices or other communications hereunder shall be give in the manner and to the addresses set forth in the Security Agreement.

17. Section Titles. The section titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

18. Execution in 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 when taken together shall constitute one and the same agreement. Delivery by telecopier of an executed counterpart hereof shall have the same effect as delivery of an originally executed counterpart hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have duly executed this Trademark Security Agreement as of the day and year first above written.

SECURED PARTY:

LEO CAPITAL HOLDINGS, LLC

By: _____

Its: _____

1101 Skokie Road, Suite 255
Northbrook, Illinois 60062

BORROWER:

FUNMAIL, INC.

By: _____

Its: _____ *Adam Lavine*

324 Earhart Way
Livermore, California 94550

State of California
County of Alameda

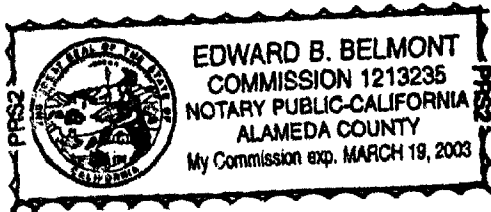
On Dec. 17, 2002 before me, Edward B. Belmont, Notary
Public, personally appeared:

Adam Lavine

personally known to me or proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to this instrument, and acknowledged to me that he/she/they executed
the same in his/her/their authorized capacity(ies) and that by
his/her/their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Edward B. Belmont
Edward B. Belmont



OPTIONAL SECTION

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER(S)

President
TITLE(S)

- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE
- GUARDIAN/CONSERVATOR
- OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

Fanmail Inc.

THIS CERTIFICATE MUST BE
ATTACHED TO THE DOCUMENT
DESCRIBED AT THE RIGHT

OPTIONAL SECTION

TITLE OR TYPE OF DOCUMENT Trademark

Security Agreement

NUMBER OF PAGES 7 DATE OF DOCUMENT 12-17-02

ALTHOUGH THE DATA
REQUESTED HERE IS NOT
REQUIRED BY LAW, IT COULD
PREVENT FRAUDULENT
REATTACHMENT OF THIS
FORM.

SCHEDULE A

to

Trademark Security Agreement

dated as of Dec. 18, 2002

Trademarks

FUNMAIL AND FUNMAIL.COM

Trademark and Service Mark Applications

United States	FUNMAIL	38 & 45	78/000,785	03/23/2000	Pending Office Action Informality issue regarding classification of services.	Published for opposition Sept. 17, 2002 in the Official Gazette of the USPTO on page TM 271. Opposition period expired Nov. 17, 2002,
United States	FUNMAIL .COM	38	75/923,435	02/19/2000	Suspended Pending rejection or abandonment of certain marks	Awaiting communication from USPTO when suspension is lifted.
United States	FUNMAIL .COM	35	76/018,064	04/06/2000	Suspended Pending rejection or abandonment of certain marks	Awaiting communication from USPTO when suspension is lifted.

Foreign Trademarks

COUNTRY	MARK	INT'L CLASS	SERIAL OR REG. NO.	FILING OR ISSUE DATE	CURRENT STATUS	NEXT ACTION DUE
European Community	FUNMAIL	9, 38 & 42	NYA	NYA	Filed	Receipt of filing particulars (filing date; serial number, etc.) from associate in Europe
Japan	FUNMAIL	38	4508315	09/21/2001	Registered	Renewal Due by September 21, 2011

Class 9: Wireless communication system, namely, a messaging system that translates text messages into animation.

Class 35: Rental of advertising space, advertising and dissemination for others via on-line electronic communications network.

Class 38: Electronic mail services; Wireless animated and visual messaging services; Internet based electronic mail services; Electronic mail being added image and music information by means of the Internet.

Class 42: Internet based email and greeting cards.

Class 45: Providing on-line electronic greeting cards.

European Community includes the following countries: Austria, Belgium, Denmark, France, Finland, Germany, Great Britain, Greece, Ireland, Italy, Luxembourg, The Netherlands, Portugal, Spain and Sweden.

SCHEDULE B

to

Trademark Security Agreement

dated as of Dec. 18, 2002

License Agreements

License Agreement – United Media (Dilbert)
License agreement – Comedy Central (South Park)
License agreement – Comedy Central Amendment No.1
License agreement – Comedy Central Amendment No.2
License agreement – Comedy Central Amendment No.3
License Agreement – Uclick (Garfield)
License Agreement Amendment Uclick

B-3

CHICAGO/#993817.3

RECORDED: 12/27/2002

**TRADEMARK
REEL: 002639 FRAME: 0351**