

03-31-2003

3-31-03

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

REC



102404711

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

Tab settings

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

1. Name of conveying party(ies): APEX FITNESS, INC.

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

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

2. Name and address of receiving party(ies)

Name: JPMORGAN CHASE BANK (F/K/A THE CHASE MANHATTAN BANK), AS COLLATERAL AGENT Internal Address:

Street Address: 270 PARK AVENUE

City: NEW YORK State: NY Zip: 10017

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State NY, 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

3. Nature of conveyance:

- Assignment, Merger, Security Agreement, Change of Name, Other

Execution Date: 02/01/2001

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

A. Trademark Application No.(s)

SEE

B. Trademark Registration No.(s)

ATTACHED

Additional number(s) attached Yes No

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

Name: PENELOPE AGODOA

Internal Address: FEDERAL RESEARCH CORP.

Street Address: 1030 FIFTEENTH STREET NW, SUITE 920

City: Washington State: DC Zip: 20005

6. Total number of applications and registrations involved: 11

7. Total fee (37 CFR 3.41): \$290.00

- Enclosed, Authorized to be charged to deposit account

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.

Oghale Jituboh

Name of Person Signing

Oghale Jituboh

Signature

03/28/2003

Date

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

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

04/01/2003 6T0N11 00000027 1957293

01 FC:0521 40.00 OP 02 FC:0522 250.00 OP

TRADEMARK REEL: 002702 FRAME: 0852

## TRADEMARKS

APEX FITNESS, INC.

Mark	Application Number	File Date	Registration Number	Registration Date
Apex Service Mark (Triangle Logo)			1,957,293	02/20/96
Apex Fitness and Nutrition Analysis Systems (APEX imposed on Triangle Logo over stylized FITNESS AND NUTRITION ANALYSIS SYSTEMS)			1,932,876	11/07/95
Apex Fitness Group (& Design)	75/849816	11/16/99		
Apex Training System ( & Design)	75/849815	11/16/99		
Apex Fitness Group Virtual Gym (design & word mark)	76/091509	07/19/00		
TDR	76/066969	05/09/00		
TDR	75/980351	05/09/00		
Ergogen Labs (design & word mark)	76/091508	07/19/00		
Ergogen Labs Cookies 'N Creatine	76/149487	10/18/00		
T2	76/242939	04/19/01		
T2 Lean	76/255462	05/11/01		

SUPPLEMENT NO. 1 dated as of February 1, 2001, to the DOMESTIC SECURITY AGREEMENT dated as of November 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Domestic Security Agreement"), among FITNESS HOLDINGS WORLDWIDE, INC., a Delaware corporation (the "Parent Borrower"), each Subsidiary that has become a party thereto (each such subsidiary, individually, a "Subsidiary Guarantor" and, collectively, the "Subsidiary Guarantors"; the Subsidiary Guarantors and the Borrower are referred to collectively herein as the "Grantors") and THE CHASE MANHATTAN BANK, a New York banking corporation ("Chase"), as collateral agent (in such capacity, the "Collateral Agent") for the Secured Parties (as defined therein).

A. Reference is made to (a) the Credit Agreement dated as of November 2, 1999 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among the Parent Borrower, the Borrowing Subsidiaries from time to time party thereto, the lenders from time to time party thereto and Chase, as administrative agent for the Lenders (in such capacity, the "Administrative Agent") and Bankers Trust Company, as syndication agent and BNP Paribas (f/n/a Banque Nationale de Paris), as documentation agent, and (b) the other Loan Documents referred to in the Credit Agreement to which any Domestic Credit Party is a party (the "Domestic Loan Documents").

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement.

C. The Grantors have entered into the Domestic Security Agreement in order to induce the Tranche B Lenders, the Tranche C Lenders and the Revolving Dollar Lenders to make Term Loans and Revolving Dollar Loans and the Issuing Bank to issue Letters of Credit. For the purposes of this Supplement (i) Term Loans and Revolving Dollar Loans shall be referred to collectively as "Loans" and (ii) the Tranche B Lenders, the Tranche C Lenders and the Revolving Dollar Lenders are referred to collectively as the "Lenders". Pursuant to Section 5.13 of the Credit Agreement each Subsidiary incorporated or organized under the laws of the United States of America, any State thereof or the District of Columbia that was not a Subsidiary or in existence on the date of the Credit Agreement is required to enter into the Domestic Security Agreement as a Subsidiary Guarantor upon becoming a Subsidiary. Section 7.15 of the Domestic Security Agreement provides that additional Subsidiaries of the Parent Borrower may become Grantors under the Domestic Security Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "New Grantor") is executing this Supplement in accordance with the requirements of the Credit Agreement to become a Grantor under the Domestic Security Agreement in order to induce the Lenders to make additional Loans and the Issuing Bank to issue additional Letters of Credit and as consideration for Loans previously made and Letters of Credit previously issued.

Accordingly, the Collateral Agent and the New Grantor agree as follows:

SECTION 1. In accordance with Section 7.15 of the Domestic Security Agreement, the New Grantor by its signature below becomes a Grantor under the Domestic Security Agreement with the same force and effect as if originally named therein

as a Grantor and the New Grantor hereby (a) agrees to all the terms and provisions of the Domestic Security Agreement applicable to it as a Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct in all material respects on and as of the date hereof. In furtherance of the foregoing, the New Grantor, as security for the payment and performance in full of the Obligations (as defined in the Domestic Security Agreement), does hereby create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and lien on all of the New Grantor's right, title and interest in and to the Collateral (as defined in the Domestic Security Agreement) of the New Grantor. Each reference to a "Grantor" in the Domestic Security Agreement shall be deemed to include the New Grantor. The Domestic Security Agreement is hereby incorporated herein by reference.

SECTION 2. The New Grantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received counterparts of this Supplement that, when taken together, bear the signatures of the New Grantor and the Collateral Agent. Delivery of an executed signature page to this Supplement by telecopy shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. The New Grantor hereby represents and warrants that (a) set forth on Schedule I attached hereto is a true and correct schedule of the location of any and all Collateral of the New Grantor, (b) set forth as Schedules II through V attached hereto are the true and correct schedules identifying the Intellectual Property of the New Grantor and (c) set forth under its signature hereto is the true and correct location of the chief executive office of the New Grantor.

SECTION 5. Except as expressly supplemented hereby, the Domestic Security Agreement shall remain in full force and effect.

**SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

SECTION 7. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

**SECTION 8.** All communications and notices hereunder shall be in writing and given as provided in Section 7.01 of the Domestic Security Agreement. All communications and notices hereunder to the New Grantor shall be given to it at the address set forth under its signature below.

IN WITNESS WHEREOF, the New Grantor and the Collateral Agent have duly executed this Supplement to the Domestic Security Agreement as of the day and year first above written.

APEX FITNESS, INC.,

by

*Brian Bourne*  
Name: Brian Bourne / Anthony Pulositi  
Title: SR V.P.E. Sec  
Address: 5020 Franklin Dr,  
Pleasanton, CA 94588

THE CHASE MANHATTAN BANK,  
as Collateral Agent,

by

\_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the New Grantor and the Collateral Agent have duly executed this Supplement to the Domestic Security Agreement as of the day and year first above written.

APEX FITNESS, INC.,

by

\_\_\_\_\_  
Name:  
Title:  
Address:

THE CHASE MANHATTAN BANK,  
as Collateral Agent,

by

  
\_\_\_\_\_  
Name: BARRY K. BERGMAN  
Title: VICE PRESIDENT

LOCATION OF COLLATERAL

Location

123 Hodencamp Road, Ste. 204  
Thousand Oaks, CA 91360  
(Ventura County)

220 Lake Drive  
Newark, DE 19702  
(New Castle County)

11698 San Marino  
Rancho Cucamonga, CA 91730  
(San Bernadino County)



**COPYRIGHTS**

None.

**LICENSES**

As of 4/30/01, Apex has license agreements with the persons and entities listed on Attachment RIIIA-1 under the heading "Company", attached hereto and incorporated herein by this reference.

Each person to whom Apex has granted a license has entered into an agreement, substantially in the form attached hereto as Attachment RIIIA-2, and incorporated herein by this reference.

**SCHEDULE IV  
to Supplement No. 1 to the  
Domestic Security Agreement**

**PATENTS**

None.

[NYCORP;1160305.2:4305A:10/23/00-11:29p]

**TRADEMARK  
REEL: 002702 FRAME: 0862**

TRADEMARKS

A. EXISTING TRADEMARKS:

1. Apex Service Mark (Triangle Logo): Registered 2/20/96 in class 42. Registration No. 1,957,293.
2. Apex Fitness and Nutrition Analysis Systems (APEX imposed on Triangle Logo over stylized FITNESS AND NUTRITION ANALYSIS SYSTEMS): Registered 11/7/95 in class 5. Registration No. 1,932,876.

A. PENDING TRADEMARKS:

1. Apex Fitness Group (& Design): Filed application 11/16/99 in class 39 and assigned Serial No. 75/849816.
2. Apex Training System (& Design): Filed application 11/16/99 in class 39 and assigned Serial No. 75/849815.
3. Apex Fitness Group (& Design): Filed Canadian application 5/16/00 in class 39 and assigned Serial No. 1059171.
4. Apex Fitness Group (& Design): Filed European application 5/16/00 in class 39 and assigned Serial No. 1658756.
5. Apex Fitness Group Virtual Gym (design & word mark): Filed intent to use application 7/19/00 in class 42 and assigned Serial No. 76/091509.
6. TDR: Filed intent to use application 5/9/00 in class 9 and assigned Serial No. 76/066969.
7. TDR: Filed intent to use application 5/9/00 in class 16 and assigned Serial No. 75/980351.
8. Ergogen Labs (design & word mark): Filed application 7/19/00 in class 5 and assigned Serial No. 76/091508.
9. Ergogen Labs Cookies 'N Creatine: Filed intent to use application 10/18/00 in class 30 and assigned Serial No. 76/149487.
10. T2: Filed application 4/19/01 in class 5 and assigned Serial No. 76/242939.
11. T2 Lean: Filed intent to use application 5/11/01 in class 5 and assigned Serial No. 76/255462.
12. Apex Fitness Group Virtual Gym: Filed European Community application 1/22/01 in class 42. Application No. 002069623.
13. Ergogen Labs: Filed European Community application 1/22/01 in class 5. Application No. 002069607.