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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

102463342

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

1. Name of conveying party(ies): J. KNIPPER AND COMPANY, INC.

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

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

- Assignment Merger Security Agreement Change of Name Other

Execution Date: February 10, 2003

2. Name and address of receiving party(ies) Name: Mercantile Capital, L.P.

Internal Address: Attn: Kevin P. Meise

Street Address: 300 E. Lancaster Ave. Ste. 308 City: Wynnewood State: PA Zip: 19076-2106

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

B. Trademark Registration No.(s)

Attchd

Additional number(s) attached Yes No

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

Name: Kevin P. Meise

Internal Address: Mercantile Capital, L.P.

Street Address: 300 E. Lancaster Avenue

Suite 308

City: Wynnewood State: PA Zip: 19076-2106

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41): \$ 160.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

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

06/03/2003 DBYRNE 00000071 2282683

DO NOT USE THIS SPACE

FC:8021 9. Statement and signature 40.00 OP 75.00 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.

Kevin P. Meise Name of Person Signing

Kevin P Meise Signature

5/28/03 Date

Refund Ref: 06/03/2003 DBYRNE 0000127725

Total number of pages including cover sheet, attachments, and document: 9

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

CHECK Refund Total: \$45.00

TRADEMARK REEL: 002745 FRAME: 0003

RECORDATION FORM COVER SHEET PAGE 2
ADDITIONAL REGISTRATION NUMBERS

**Continuation of Item 4 on Cover Sheet*

<u>TRADEMARK DESCRIPTION</u>	<u>REGISTRATION NUMBER</u>
J. KNIPPER AND COMPANY, INC.	2282683
KNIPPER DIRECT	2280662
KNIPPER	2280661
APOTHECHECK	1864276

EXHIBIT A
TRADEMARKS

<u>Trademark</u>	<u>Serial #</u>	<u>Filed</u>
1. J. KNIPPER AND COMPANY, INC.	2282683	10/5/99
2. KNIPPER DIRECT	2280662	9/28/99
3. KNIPPER	2280661	9/28/99
4. APOTHECHECK	1864276	11/22/94

COLLATERAL ASSIGNMENT OF TRADEMARKS

This Collateral Assignment of Trademarks ("Assignment") is made effective as of the 30th day of September, 2002 between J. KNIPPER AND COMPANY, INC., a New Jersey corporation ("Assignor"), with an office at 1645 Oak Street, Lakewood, New Jersey 08701, and MERCANTILE CAPITAL, L.P., a Pennsylvania limited partnership ("Assignee"), having an address of 300 E. Lancaster Avenue, Wynnewood, Pennsylvania 19096-2106.

WHEREAS Assignor and Assignee entered into a Loan and Security Agreement dated as of September 30, 2002 (the "Loan Agreement"); and

WHEREAS the Loan Agreement provides, inter alia, that Assignor will grant to Assignee a security interest in all of the properties described herein, namely Assignor's present trademarks, trademark applications, trademark registrations, tradenames, trade dress, the goodwill associated with such trademarks, trade names and trade dress.

NOW, THEREFORE, in consideration of the promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound thereby, the parties agree as follows:

1. **Incorporation of Loan Agreement.** The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety. All terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

2. **Collateral Assignment of Trademarks.** To secure the complete and timely payment and satisfaction of the Obligations (as defined in the Loan Agreement) and obligations of Assignor to Assignee under the Loan Agreement and all loan documents referred to in the Loan Agreement (referred to collectively herein as "Obligations"), Assignor hereby grants, assigns and creates a security interest in favor of the Assignee as and by way of a mortgage and security interest having priority over all other security interests, with power of sale, to the extent permitted by law, upon the occurrence of an Event of Default (as defined in the Loan Agreement), in all of the Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed: trademarks, whether registered or unregistered, trademark applications, trademark registrations, including renewals thereof, trade dress and tradenames, including, without limitation, the trademarks, trade dress and tradenames listed on Exhibit A, attached hereto; the goodwill of Assignor's business connected with and symbolized by said trademarks, tradenames and trade dress; all licenses, income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof; the right to sue for past, present and future infringements thereof; and all rights corresponding thereto throughout the world (hereinafter referred to collectively as "Trademarks").

3. **Duties of Assignor.** Assignor shall have the duty:

(a) to use for the duration of this Agreement proper notice in connection with its use of the Trademarks;

(b) to prosecute diligently any trademark application of the Trademarks pending as of the date hereof or thereafter until all Obligations are paid in full and the Loan Agreement is terminated;

(c) to apply to register the Trademarks, as appropriate; and

(d) to preserve and maintain all rights in the Trademarks.

All expenses incurred in connection with said applications and said maintenance shall be borne by the Assignor. Assignor shall not abandon any right to file a trademark application, or any pending trademark application, without the prior written consent of Assignee. Any failure of Assignor to comply with the duties set forth in this **Paragraph 3** will be deemed an Event of Default under the Loan Agreement.

4. **Restriction On Use, License and Transfer of Properties.** Unless and until there shall have occurred an Event of Default under the Loan Agreement, Assignee shall have no right to use the Trademarks or issue any license thereunder, or assign or otherwise transfer title in said Trademarks to anyone else.

5. **Restrictions on Future Agreements.** Assignor agrees that until all Obligations shall have been paid and satisfied in full, Assignor will not, without the prior written consent of the Assignee, enter into any agreement or arrangement which is inconsistent with Assignor's obligations under this Assignment; and Assignor further agrees that it will not take any action, or permit any action to be taken by others, subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights of Assignee under this Assignment.

6. **Warranty.** Assignor represents, warrants, and covenants that:

(a) the Trademarks are subsisting and have not been adjudged invalid or unenforceable in whole or in part;

(b) to the best of Assignor's knowledge, each of the Trademarks is valid and enforceable;

(c) to the best of Assignor's knowledge, no claim has been made that the use of any of the Trademarks does or may violate the rights of any third persons;

(d) that it has no notice of any suits or actions commenced or threatened against it with reference to the Trademarks and/or the interests granted therein;

(e) that Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses, registered user agreements, shop rights and covenants by Assignor not to sue third parties; and

(f) neither the making of this Assignment nor Assignor's performance hereunder requires the agreement or approval of any other person or any governmental authority or agency which has not been obtained.

7. **New Trademarks.** Assignor represents and warrants that the Trademarks listed on Exhibit A hereto constitute a complete list of all of the trademarks now owned by Assignor. If, before the Obligations shall have been satisfied in full, Assignor shall (a) obtain rights in and to any new trademarks, trademark applications, trademark registrations, trade dress, tradenames or licenses thereof, or (b) become entitled to the benefit of any trademark, trademark application, trademark registration, trade dress, trade name, or license thereof, the provisions of **Paragraph 2** above shall automatically apply thereto. Assignor shall give to the Assignee written notice of any existing and new rights and/or benefits as described in this **Paragraph 7** but excluded from Exhibit A hereto not more than thirty (30) days after the date of this Assignment and within thirty (30) days of the acquisition or creation by Assignor of any new rights and/or benefits. Assignor hereby authorizes the Assignee to modify this Assignment by amending Exhibit A to include any trademarks, trademark applications, trade registrations, trade dress, tradenames or licenses thereof presently owned by Assignor but not included on Exhibit A hereto and for any of Assignor's future trademarks, trademark applications, trademark registrations, trade dress, tradenames or licenses thereof.

8. **Events of Default.** This Assignment is subject to the terms and conditions of the Loan Agreement, and default (or the occurrence of an Event of Default) hereunder with respect to Assignor shall constitute a default (or Event of Default) under the Loan Agreement and all agreements between Assignor and Assignee unless cured within the applicable cure period set forth in the Loan Agreement. In addition, Assignor shall be deemed to be in default hereunder upon the occurrence of any of the following events ("Event of Default"):

(a) if any material representation or warranty contained herein shall prove to have been, when made, materially false, inaccurate, or misleading;

(b) if Assignor materially breaches any material covenant or obligation contained herein; or

(c) if a default (or Event of Default) occurs under the Loan Agreement.

9. **Foreclosure.** Upon the occurrence and during the continuance of an Event of Default under the Loan Agreement, Assignee, as holder of a security interest, may take such action as is permitted by law, in Assignee's sole discretion, to foreclose upon said intellectual property. For such purposes, during the existence of an Event of Default under the Loan Agreement, Assignor hereby authorizes Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with power to (a) endorse Assignor's name on all applications, documents, papers and instruments necessary or desirable for the Assignee to use the Trademarks, or (b) take any other actions with respect to the Trademarks as the Assignee deem in the best interest of the Assignee; or (c) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (d) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone. Assignee hereby ratifies all that such attorney shall lawfully do or cause to be done

by virtue hereof. This power of attorney shall be irrevocable until the Obligations shall have been paid in full and the Loan Agreement shall have been terminated.

10. **Reassignment to Assignor.** This Assignment is made for collateral purposes only. Upon payment in full of the Obligations and termination of the Loan Agreement, Assignee shall execute and deliver to Assignor all deeds, assignments and/or other instruments as may be necessary to re-vest in Assignor full title to the Trademarks, subject to any disposition thereof which may have been made by Assignee pursuant hereto or pursuant to the Loan Agreement.

11. **Assignee' Right to Sue.** Following an Event of Default under the Loan Agreement, Assignee shall have the right, but shall in no way be obligated, to bring suit in Assignee' own name or the name of Assignee' agent to enforce the Trademarks and, if Assignee shall commence any such suit, Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents reasonably required by Assignee in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all reasonable costs and expenses incurred by Assignee in the exercise of their rights under this Paragraph 11.

12. **Indemnification.** Assignor agrees to indemnify and hold Assignee harmless against any claim for damages, including reasonable attorneys' fees, in the event that Assignee is implicated in any action or suit between Assignor and a third party involving the use of any of the Trademarks or involving any licenses thereof, or in any action which relates in any way to the Trademarks and/or such licenses.

13. **Waivers.** No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. **Severability.** The provisions of this Assignment are severable, and if any clause or provision shall be 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 Assignment in any jurisdiction.

15. **Modification.** This Assignment cannot be altered, amended or modified in any way, except as specifically provided in **Paragraph 7** hereof, or by a writing signed by the parties hereto.

16. **Cumulative Remedies; Effect on Loan Agreement.** All of Assignee's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Assignee under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies given it by the terms of this Assignment, 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 may be located.

17. **Binding Effect; Benefits.** This Assignment shall be binding upon the Assignor and its respective successors and assigns, and shall inure to the benefit of Assignee, their nominees and assigns.

18. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

19. **Further Assurances.** Assignor agrees to execute any documents which are or may be required in order to perfect the recordation of this Assignment, including the Assignment as amended pursuant to **Paragraph 7**, in the United States Patent and Trademark Office and in the records of such states as are appropriate under the provisions of the Uniform Commercial Code without compensation from Assignee.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment the day and year first above written.

(Corporate Seal)

J. KNIPPER AND COMPANY, INC.

Attest:

By: Maureen Edore
Name: Maureen Edore
Title: Executive Assistant

By: [Signature]
Name: James J. Knipper,
President

(Corporate Seal)

MERCANTILE CAPITAL, L.P.

Attest:

By: _____
Name:
Title:

By: [Signature] VP
Name: DOMINIC J. APRILE
Title: VICE PRESIDENT

STATE OF NEW JERSEY

:
: SS.
:

COUNTY OF Ocean

On this, the 10th day of February, 2003, before me, a Notary Public, the undersigned officer, personally appeared James J. Knipper who, in due form and according to law was deposed and said that he is the President of J. KNIPPER AND COMPANY, INC., a New Jersey corporation; that he, being duly authorized, duly executed the foregoing instrument on behalf of said corporations for the purposes therein contained by signing his name as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.



Notary Public

MAUREEN EDORE

Notary Public Of New Jersey

My Commission Expires ~~My Commission Expires~~ Feb 13, 2007