

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

Docket No.:

20728/43

FORM PTO-1594 (Modified)
(Rev. 10/02)
OMB No. 0551-0027 (exp. 6/30/2005)
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TM05/REV03

Tab settings → → → ▼ ▼ ▼ ▼ ▼
To the Director of the United States Patent and Trademark Office: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
2nd Swing®, Inc.

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

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: February 2, 2004

2. Name and address of receiving party(ies):

Name: Fleet Retail Finance

Internal Address: _____

Street Address: 40 Broad Street

City: Boston State: MA ZIP: 02109

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

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from
Additional name(s) & address(es) Yes N

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,209,282
2,498,367
2,704,289

Additional numbers Yes No

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

Name: Mark S. Leonardo, Esq.

Internal Address: Brown Rudnick Berlack Israels LLP

Street Address: One Financial Center

City: Boston State: MA ZIP: 02111

6. Total number of applications and registrations involved:..... 3

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

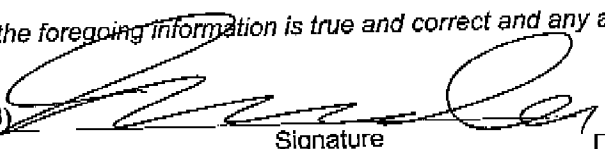
Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:

500369

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.

Mark S. Leonardo, Esq. (Reg. No. 41,433)  February 10, 2004
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and 12

700065398

CH \$90.00 500369 2209282

**TRADEMARK AND TRADEMARK
APPLICATIONS SECURITY AGREEMENT**

This Trademark and Trademark Application Security Agreement (the "**TM Security Agreement**") is made as of the 2nd day of February, 2004, by 2nd Swing®, Inc., a Minnesota corporation with offices at 5810 Baker Road, Minnetonka, MN 55345 (the "**Borrower**"), and Fleet Retail Finance, a Delaware corporation at its office at 40 Broad Street, Boston, Massachusetts 02109 (the "**Lender**").

RECITALS

WHEREAS, pursuant to the Loan and Security Agreement dated February 2, 2004 (as amended from time to time, the "**Loan Agreement**") made between the Borrower and the Lender, the Lender has agreed to make certain Loans (as defined in the Loan Agreement, hereinafter, the "**Loans**") available to the Borrower;

WHEREAS, pursuant to the Loan Agreement the Borrower has granted to the Lender a security interest in the Borrower's Collateral (as defined in the Loan Agreement) to secure the Liabilities (as defined in the Loan Agreement) of the Borrower to the Lender;

WHEREAS, as a condition, among others, to the establishment of the credit facilities contemplated by the Loan Agreement, and to further secure the Liabilities and to more fully vest the security interest granted in the Loan Agreement, the Borrower has executed this TM Security Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Borrower and the Lender agree as follows:

1. Terms used herein which are defined in the Loan Agreement are used as so defined.
2. To secure the Liabilities, the Borrower hereby grants a security interest in favor of, and collaterally assigns to the Lender, with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default as defined in the Loan Agreement and used herein as so defined), in and to the following and all proceeds thereof:
 - a. All of the Borrower's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks and service mark applications including, without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, and service mark applications.
 - b. All renewals of any of the foregoing.

- c. All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.
- d. The right to sue for past, present and future infringements and dilutions of any of the foregoing.
- e. All of Borrower's rights corresponding to any of the foregoing throughout the world.

All of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications described in Subsection 2(a), together with the items respectively described in Subsections 2(b) through and including 2(e) are hereinafter individually and/or collectively referred to as the "Marks".

- 3. Until this TM Security Agreement is terminated in writing by a duly authorized officer of the Lender, the Borrower shall undertake the following with respect to each Mark:
 - a. Pay all renewal fees and other fees and costs associated with maintaining the Marks and with the processing of the Marks.
 - b. At the Borrower's sole cost, expense, and risk, pursue the prompt, diligent, processing of each Application for Registration which is the subject of the security interest created herein and not abandon or delay any such efforts.
 - c. At the Borrower's sole cost, expense, and risk, take any and all action which Borrower deems necessary or desirable to protect the Marks, including, without limitation, the prosecution and defense of infringement actions.
- 4. In the event of:
 - a. the Borrower's failure, within Five (5) days of written notice from the Lender, to cure any failure by the Borrower to perform any of the Borrower's obligations set forth in Section 3, above, and/or
 - b. the occurrence of any Event of Default,the Lender acting in its own name or in that of the Borrower may (but shall not be required to) act in the Borrower's place and stead and/or in the Lenders' own right in connection therewith.
- 5. Borrower represents and warrants that:

- a. **EXHIBIT A** includes all of the registered trademarks, Federal trademark applications, registered service marks and Federal service mark applications now owned by the Borrower.
- b. No liens, claims or security interests have been granted in any Mark by the Borrower to any Person other than to the Lender.

In order to further secure the Liabilities:

- a. The Borrower shall give the Lender written notice (with reasonable detail) within Ten (10) days following the occurrence of any of the following:
- i. The Borrower obtains rights to, and files applications for registration of, any new trademarks, or service marks, or otherwise acquires ownership of any newly registered trademarks, registered service marks, trademark applications, or service mark applications, (other than Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).
 - ii. The Borrower becomes entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor (other than Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).
 - iii. The Borrower enters into any new trademark license agreement or service mark license agreement.
- b. The provisions of this TM Security Agreement shall automatically apply to any such additional property or rights described in 6(a), above, all of which shall be deemed to be and treated as "Marks" within the meaning of this TM Security Agreement.
- c. The Borrower hereby authorizes the Lender to modify this agreement by amending EXHIBIT A to include any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, *provided, however*, the modification of said EXHIBIT shall not be a condition to the creation or perfection of the security interest created hereby.

7. Upon the occurrence of any Event of Default, the Lender may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with respect to the Marks, in addition to which the Lender, subject to the terms of the Loan Agreement, may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of

the Lender that an Event of Default has occurred and that the Lender is authorized to exercise such rights and remedies.

8. The Borrower hereby irrevocably constitutes and designates the Lender as and for the Borrower's attorney in fact, effective with and upon the Lender's first exercise (the "First Exercise") of such powers following the occurrence of any Event of Default:
- a. To exercise any of the rights and powers referenced in Section 3.
 - b. To execute all and singular such instruments, documents, and papers as the Lender determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Marks.

The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until the within TM Security Agreement is terminated by a duly authorized officer of the Lender, but shall be exercisable only following the occurrence of an Event of Default.

9. Any use by the Lender of the Marks as authorized hereunder in connection with the exercise of the Lender's rights and remedies under the within TM Security Agreement and the Loan Agreement shall be coextensive with Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Lender to the Borrower. Such use by the Lender shall be permitted only with and upon the First Exercise following the occurrence of an Event of Default.
10. Lender hereby acknowledges that the Borrower shall continue to have the exclusive right, prior to notice from the Lender following the occurrence of an Event of Default, to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by Borrower to protect the Marks against encroachment by third parties; provided, however, that Borrower first notifies Lender in writing of its intention to sue for enforcement of the Marks against a particular party. All costs arising in connection with any infringement shall be borne by Borrower.
11. Following the payment and satisfaction of all Liabilities, and the termination of any obligation of the Lender to provide loans or financial accommodations under the credit facility contemplated by the Loan Agreement, this TM Security Agreement shall terminate and the Lender shall execute and deliver to Borrower all such instruments as the Borrower reasonably may request to release any encumbrance in favor of the Lender created hereby or pursuant hereto, subject, however, to any disposition thereof which may have been made by Lender pursuant hereto or pursuant to the Loan Agreement.
12. The Borrower shall, at the request of the Lender, do any and all acts and execute any and all documents required by the Lender in connection with the protection, preservation, and enforcement of the Lender's rights hereunder.

13. The Borrower shall, upon demand, reimburse the Lender for all costs and expenses incurred by the Lender in the exercise of any rights hereunder (including, without limitation, fees and expenses of counsel).
14. Lender hereby acknowledges that the Borrower shall continue to have the exclusive right, prior to notice from the Lender following the occurrence of an Event of Default, to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by Borrower to protect the Marks against encroachment by third parties; provided, however, that Borrower first notifies Lender in writing of its intention to sue for enforcement of the Marks against a particular party. All costs arising in connection with any infringement shall be borne by Borrower.
15. Neither anything contained in the within TM Security Agreement or in the Loan Agreement nor any act, omission, or circumstance may be construed as directly or indirectly conveying to the Lender any rights in and to the Marks, which rights are effective except following the occurrence of any Event of Default (and in such circumstances, only with and upon the First Exercise).
16. This TM Security Agreement is intended to be supplemental of the Loan Agreement. All provisions of the Loan Agreement shall apply to the Marks and the Lender shall have the same rights with respect to any and all security interests in the Marks granted the Lender to secure the Liabilities hereunder as thereunder. In the event of a conflict between this TM Security Agreement and the Loan Agreement, the terms of this TM Security Agreement shall control with respect to the Marks and the Loan Agreement with respect to all other collateral.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this TM Security Agreement to be executed by officers duly authorized so to do on the date first above written.

2nd Swing, Inc.
(the "Borrower")

Fleet Retail Finance, Inc.
(the "Lender")

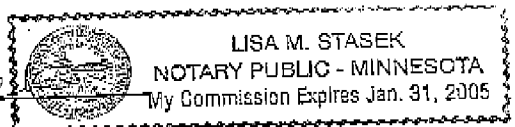
Robert M. Hibben
By: Robert M. Hibben
Title: Chief Financial Officer

THE OF _____, SS
COUNTY OF _____

Then personally appeared before me Robert Hibben who acknowledged that such person the is duly authorized CFO of 2nd Swing, Inc and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 28th day of January, 2004.

Lisa M. Stasek
Notary Public
My Commission Expires: 1-31-05



THE OF _____, SS
COUNTY OF _____

Then personally appeared before me _____ who acknowledged that such person is the duly authorized _____ of _____ and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this ___ day of _____, 2004.

Notary Public
My Commission Expires:

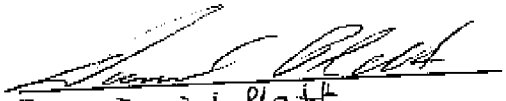
[Signature Page to Trademark Security Agreement]

IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this TM Security Agreement to be executed by officers duly authorized so to do on the date first above written.

2nd Swing, Inc.
(the "Borrower")

Fleet Retail Finance, Inc.
(the "Lender")

By: _____
Title: _____


By: Daniel Platt
Title: VP

THE OF _____, SS
COUNTY OF _____

Then personally appeared before me _____ who acknowledged that such person the is duly authorized of _____ and that such person had executed the foregoing instrument on its behalf.

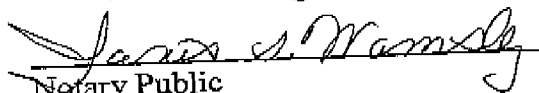
Witness my hand and seal this ___ day of _____, 2004.

Notary Public
My Commission Expires:

THE OF Com. OF MASS.
COUNTY OF SUFFOLK, SS

Then personally appeared before me Daniel Platt who acknowledged that such person is the duly authorized ^(Vice President) of Fleet Retail Finance, Inc. and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 2th day of January, 2004.


Notary Public
My Commission Expires:

[Signature Page to Trademark Security Agreement]

Exhibit A

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,209,282

United States Patent and Trademark Office

Registered Dec. 8, 1998

**SERVICE MARK
PRINCIPAL REGISTER**

2ND SWING

2ND SWING, INC. (MINNESOTA CORPORATION)
2420 EAST HENNEPIN AVENUE
MINNEAPOLIS, MN 55413

CLOTHING, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).
FIRST USE 10-1-1997; IN COMMERCE 10-1-1997.

SER. NO. 75-436,918, FILED 2-18-1998.

FOR: RETAIL STORE SERVICES FEATURING GOLF EQUIPMENT, ACCESSORIES AND

ERIK PELTON, EXAMINING ATTORNEY

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

Reg. No. 2,498,367

United States Patent and Trademark Office

Registered Oct. 16, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

IT'S NOT YOU, IT'S YOUR CLUBS!

**2ND SWING, INC. (MINNESOTA CORPORATION)
16305 - 36TH AVENUE NORTH, SUITE 550
PLYMOUTH, MN 55446**

FIRST USE 2-6-1998; IN COMMERCE 2-6-1998.

SER. NO. 76-162,430, FILED 11-9-2000.

**FOR: RETAIL STORE SERVICES FEATURING
GOLF EQUIPMENT, ACCESSORIES AND CLOTHING,
IN CLASS 35 (U.S. CLS. 100, 101 AND 102).**

G. MAYERSCHOFF, EXAMINING ATTORNEY

RECEIVED

APR 14 2003

Moss & Barnett

Reg. No. 2,704,289

Registered Apr. 8, 2003

Int. Cl.: 35

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

**SERVICE MARK
PRINCIPAL REGISTER**

2ND SWING GOLF

2ND SWING, INC. (MINNESOTA CORPORATION)
5810 BAKER ROAD
MINNETONKA, MN 55345

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "GOLF", APART FROM THE MARK
AS SHOWN.

FOR: RETAIL STORE SERVICES FEATURING
GOLF EQUIPMENT, ACCESSORIES AND CLOTHING,
IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

SER. NO. 76-403,452, FILED 5-3-2002

FIRST USE 11-12-1999; IN COMMERCE 11-12-1999.

SHAUNIA WALLACE, EXAMINING ATTORNEY