

08-07-2003

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

1. Name of conveying party(ies):  
Caliber Holdings Corporation

8603

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

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other \_\_\_\_\_
- Merger
- Change of Name

Execution Date: 07/31/2003

2. Name and address of receiving party(ies)

Name: The CIT Group/Business Credit, Inc.

Internal

Address: \_\_\_\_\_

Street Address: 300 S. Grand Ave., 3rd Floor

City: Los Angeles State: CA Zip: 90071

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State New York
- 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) 2,708,662

2,270,592

1,770,871

Additional number(s) attached  Yes  No

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

Name: Federal Research Co., LLC

Internal Address: \_\_\_\_\_

Street Address: 1030 15th St., NW, Suite 920

City: Washington State: DC Zip: 20005

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: \_\_\_\_\_

DO NOT USE THIS SPACE

9. Signature.

Julie Cravitz

Name of Person Signing

Julie Cravitz

Signature

August 5, 2003

Date

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

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

08/07/2003 6TON11 0000039 2708662

01 FC:8521  
02 FC:8522

40.00 OP  
50.00 OP

TRADEMARK  
REEL: 002796 FRAME: 0083

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement"), dated as of July 31, 2003, is entered into by and between CALIBER HOLDINGS CORPORATION, a Delaware corporation ("Guarantor"), having an office at 17771 Cowan Avenue, Irvine, California 92614 and THE CIT GROUP/BUSINESS CREDIT, INC. ("Secured Party"), having an office at 300 South Grand Avenue, 3<sup>rd</sup> Floor, Los Angeles, California 90071, with reference to the following facts:

### RECITALS

A. Guarantor has adopted, used and is using, and is the owner of the entire right, title and interest in and to the trademarks, trade names, terms, designs and applications therefor described in Schedule A annexed hereto and made a part hereof.

B. Secured Party has agreed to enter into financing arrangements with Caliber Bodyworks, Inc., a California corporation ("CBI"), Caliber Bodyworks of Texas, Inc., a Texas corporation ("CBTI"), Corwin Industries Corporation, a California corporation ("Corwin"), D. R. Long, Ltd., a California corporation ("D. R. Long"), F & R Ventures, Inc., a California corporation ("F & R"), Richard J. Kellejian, Inc., a California corporation ("RJKI"), Chapparone Properties, Inc., a California corporation ("CPI"), and Chapparone Auto Body of Miramar, Inc., a California corporation ("CABMI", and collectively with CBI, CBTI, Corwin, D. R. Long, F & R, RJKI, and CPI, the "Borrowers"), pursuant to a Financing Agreement of even date herewith (as amended or supplement from time to time, the "Financing Agreement"). All capitalized terms used herein and not otherwise defined shall have the meanings as set forth in the Financing Agreement.

C. Guarantor has agreed to enter into that certain Guaranty dated as of even date herewith, in favor of Secured Party (as amended and supplemented from time to time, the "Guaranty"), pursuant to which Guarantor has agreed to guaranty certain obligations of the Borrowers.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor and Secured Party agree as follows:

#### 1. SECURITY INTEREST

Guarantor hereby grants to Secured Party a security interest in:

A. All of Guarantor's now existing or hereafter acquired right, title, and interest in and to: all of Guarantor's trademarks, trade names, trade styles and service marks; all prints and labels on which such trademarks, trade names, trade styles and service marks appear, have appeared or will appear, and all designs and general intangibles of a like nature; all applications, registrations and recordings relating to the foregoing in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other countries, and all reissues, extensions and renewals thereof including those trademarks, terms, designs and applications described in Schedule A hereto (collectively, the "Trademarks");

B. The goodwill of the business symbolized by each of the Trademarks, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing the Trademarks; and

C. Any and all proceeds of any of the foregoing, including, without limitation, any claims by Guarantor against third parties for infringement of the Trademarks or of any licenses with respect thereto (all of the foregoing are collectively referred to herein as the "Collateral").

## 2. OBLIGATIONS SECURED

The security interests granted to Secured Party in this Agreement shall secure the prompt and indefeasible payment and performance of the obligations of Guarantor now or hereafter existing under the Guaranty, this Agreement or any other Loan Document (all the foregoing hereinafter referred to as the "Obligations").

## 3. WARRANTIES AND COVENANTS

Guarantor hereby covenants, represents and warrants that (all of such covenants, representations and warranties being continuing in nature so long as any of the Obligations are outstanding):

A. All of the existing Collateral is valid and subsisting in full force and effect to Guarantor's knowledge, and Guarantor owns sole, full, and clear title thereto, and has the right and power to grant the security interests granted hereunder. Guarantor will, at Guarantor's expense, perform all acts and execute all documents reasonably necessary to maintain the existence of the Collateral as valid, subsisting and registered trademarks, including, without limitation, the filing of any renewal affidavits and applications. The Collateral is not subject to any lien, security interest, claim or encumbrance ("Lien"), except the security interest granted hereunder, the licenses, if any, which are specifically described in Schedule B hereto and Permitted Encumbrances (as defined in the Financing Agreement).

B. Guarantor will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or Lien upon, encumber, grant an exclusive license relating thereto, except to Secured Party, or otherwise dispose of any of the Collateral without the prior written consent of Secured Party. Notwithstanding the foregoing, Guarantor may grant nonexclusive licenses in and to any of the Collateral without the prior written consent of Secured Party.

C. Guarantor will, at Guarantor's expense, perform all acts and execute all documents reasonably requested at any time by Secured Party to evidence, perfect, maintain, record, or enforce the security interest in the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Guarantor hereby authorizes Secured Party to execute and file one or more financing statements (or similar documents) with respect to the Collateral. Guarantor further authorizes Secured Party to have this or any other similar security agreement filed with the Commissioner of Patents and Trademarks or other appropriate federal, state or government office.

D. Guarantor will, concurrently with the execution and delivery of this Agreement, execute and deliver to Secured Party five (5) originals of a Power of Attorney in the form of Exhibit 1 annexed hereto for the implementation of the assignment, sale or other disposition of the Collateral pursuant to Secured Party's exercise of the rights and remedies granted to Secured Party hereunder. Secured Party agrees it will only exercise the Power of Attorney upon the occurrence and during the continuation of an Event of Default under (and as defined in) the Financing Agreement.

E. Secured Party may, in its sole discretion, pay any amount or do any act which Guarantor fails to pay or do as required hereunder or as requested by Secured Party to maintain and preserve the Collateral, defend, protect, record, amend or enforce the Obligations, the Collateral, or the security interest granted hereunder including but not limited to, all filing or recording fees, court costs, collection charges and reasonable attorneys' fees. Guarantor will be liable to Secured Party for any such payment, which payment shall be deemed a guaranteed obligation, and shall be payable on demand together with interest at the rate set forth for the other guaranteed obligations secured hereby.

F. As of the date hereof, Guarantor does not have any Trademarks registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States other than those described in Schedule A annexed hereto.

G. Guarantor shall notify Secured Party in writing of the filing of any application for the registration of a Trademark with the United States Patent and Trademark Office or any similar office or agency in the United States or any state therein within thirty (30) days of such filing. Upon request of Secured Party, Guarantor shall execute and deliver to Secured Party any and all amendments to this Agreement as may be requested by Secured Party to evidence the security interests of Secured Party in such Trademark.

H. Guarantor has not abandoned any of the Trademarks and Guarantor will not do any act, nor omit to do any act, whereby the Trademarks may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable. Guarantor shall notify Secured Party immediately if Guarantor knows or has reason to know of any reason why any application, registration, or recording may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable.

I. Guarantor will take such actions in any proceeding before the United States Patent and Trademark Office, any federal or state court, or any similar office or agency in the United States or any state therein or any other country as are necessary to maintain such application and registration of the Trademarks as Guarantor's exclusive property and to protect Secured Party's interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

J. Guarantor will promptly notify Secured Party if Guarantor (or any affiliate or subsidiary thereof) learns of any use by any person of any term or design likely to cause confusion with any Trademark or of any use by any person of any other process or product which infringes upon any Trademark, which use is not discontinued by such person within 30 days after Guarantor's written demand to such person to discontinue such use. Guarantor, at

Guarantor's expense, shall take such action as Secured Party and Guarantor shall mutually agree for the protection of Secured Party's interest in and to any such Trademark.

K. Guarantor will use commercially reasonable efforts to maintain the quality of the products associated with the Trademarks at a level consistent with the quality at the time of this Agreement. Guarantor hereby grants to Secured Party the right to visit Guarantor's plant and facilities which manufacture or store products sold under any of the Trademarks and to inspect the products and quality-control records relating thereto at such times and upon such notice as permitted or required in the Financing Agreement.

#### 4. RIGHTS AND REMEDIES

Upon the occurrence and during the continuation of an Event of Default and at any time thereafter, in addition to all other rights and remedies of Secured Party, whether provided under applicable law, the Loan Documents or otherwise, and after expiration of any applicable grace period, Secured Party shall have the following rights and remedies which may be exercised without notice to, or consent by, Guarantor, except as such notice or consent is expressly provided for hereunder.

A. Secured Party may make use of any Trademarks for the sale of goods or rendering of services in connection with enforcing any other security interest granted to Secured Party by Guarantor or any subsidiary of Guarantor.

B. Secured Party may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner as Secured Party shall in its sole discretion deem appropriate. Such license or licenses may be general, special, or otherwise and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions, and all foreign countries.

C. Secured Party may assign, sell, or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations, except that Secured Party agrees to provide Guarantor with ten (10) days prior written notice of any proposed disposition of the Collateral. Secured Party shall have the power to buy the Collateral or any part thereof, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in Secured Party's sole discretion, deem appropriate or proper to complete such assignment, sale or disposition. In any such event, Guarantor shall be liable for any deficiency.

D. In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral pursuant to subparagraph 4C hereof, Secured Party may at any time execute and deliver on behalf of Guarantor, pursuant to the authority granted in the Powers of Attorney described in subparagraph 3D hereof, one or more instruments of assignment of the Trademarks (or any application, registration, or recording relating thereto), in form suitable for filing, recording or registration. Guarantor agrees to pay Secured Party on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, and reasonable attorneys' fees.

E. Secured Party may apply the proceeds actually received from any such license, assignment, sale or other disposition of Collateral first to the reasonable costs and

expenses thereof, including, without limitation, reasonable attorneys' fees and all legal, travel, and other expenses which may be incurred by Secured Party. Thereafter, Secured Party may apply any remaining proceeds to such of the Obligations as Secured Party may in its sole discretion determine. Guarantor shall remain liable to Secured Party for any expenses or obligations remaining unpaid after the application of such proceeds, and Guarantor will pay Secured Party on demand any such unpaid amount, together with interest at the default rate set forth in the Financing Agreement.

F. In the event that any such license, assignment, sale or disposition of the Collateral (or any part thereof) is made after the occurrence of an Event of Default, Guarantor, to the extent practicable, shall supply to Secured Party or Secured Party's designee Guarantor's knowledge and expertise relating to the manufacture and sale of the products and services bearing the Trademarks and Guarantor's customer lists and other records relating to the Trademarks and the distribution thereof.

Nothing contained herein shall be construed as requiring Secured Party to take any such action at any time. All of Secured Party's rights and remedies, whether provided under law, the Loan Documents, this Agreement, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

## 5. MISCELLANEOUS

A. Any failure or delay by Secured Party to require strict performance by Guarantor of any of the provisions, warranties, terms and conditions contained herein or in any other agreement, document, or instrument, shall not affect Secured Party's right to demand strict compliance and performance therewith, and any waiver of any Event of Default shall not waive or affect any other Event of Default, whether prior or subsequent thereto, and whether of the same or of a different type. None of the warranties, conditions, provisions, and terms contained herein or in any other agreement, document, or instrument shall be deemed to have been waived by any act or knowledge of Secured Party, its agents, officers, or employees, but only by an instrument in writing, signed by an officer of Secured Party and directed to Guarantor, specifying such waiver.

B. All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been duly given or made: if by hand, immediately upon delivery; if by facsimile (fax), telex or telegram, immediately upon sending; if by any overnight delivery service, one day after dispatch; and if mailed by first class or certified mail, three (3) days after mailing. All notices, requests and demands are to be given or made to the respective parties at the addresses set forth in the preamble to this Agreement.

C. In the event any term or provision of this Agreement conflicts with any term or provision of the Financing Agreement, the term or provision of the Financing Agreement shall control.

D. In the event that any provision hereof shall be deemed to be invalid by any court, such invalidity shall not affect the remainder of this Agreement.

E. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. No provision hereof shall be modified, altered or limited except by a written instrument expressly referring to this Agreement signed by the party to be charged thereby.

F. The security interest granted to Secured Party hereunder shall terminate upon termination of the Guaranty and indefeasible payment in full to Secured Party of all obligations thereunder.

G. THE VALIDITY, INTERPRETATION AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF CALIFORNIA. GUARANTOR HEREBY IRREVOCABLY CONSENTS AND SUBMITS IN ADVANCE TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED WITHIN THE COUNTY OF LOS ANGELES IN THE STATE OF CALIFORNIA, TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, THE OTHER AGREEMENTS OR TO ANY MATTER ARISING THEREFROM IN ANY SUCH ACTION OR PROCEEDING. GUARANTOR AGREES THAT SERVICE OF SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE OUTSIDE SUCH COUNTY IN SUCH MANNER AS MAY BE PERMISSIBLE UNDER THE RULES OF SUCH COURTS.


H. THE PARTIES TO THIS AGREEMENT ACKNOWLEDGE THAT JURY TRIALS OFTEN ENTAIL ADDITIONAL EXPENSES AND DELAYS NOT OCCASIONED BY NONJURY TRIALS. THE PARTIES TO THIS AGREEMENT AGREE AND STIPULATE THAT A FAIR TRIAL MAY BE HAD BEFORE A STATE OR FEDERAL JUDGE IN A COURT BY MEANS OF A BENCH TRIAL WITHOUT A JURY. IN VIEW OF THE FOREGOING, AND AS A SPECIFICALLY NEGOTIATED PROVISION OF THIS AGREEMENT, EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Guarantor and Secured Party have executed this Agreement as of the day and year first above written.

GUARANTOR:

CALIBER HOLDINGS CORPORATION,  
a Delaware corporation

By:   
Name: Matthew Ohrnstein  
Title: Chief Executive Officer

SECURED PARTY:

THE CIT GROUP/BUSINESS CREDIT,  
INC.

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



IN WITNESS WHEREOF, Guarantor and Secured Party have executed this Agreement as of the day and year first above written.

GUARANTOR:

CALIBER HOLDINGS CORPORATION,  
a Delaware corporation

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

SECURED PARTY:

THE CIT GROUP/BUSINESS CREDIT,  
INC.

By: Kelly A \_\_\_\_\_  
Name: Kelly W \_\_\_\_\_  
Title: VP \_\_\_\_\_

EXHIBIT 1

SPECIAL POWER OF ATTORNEY

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) ss.:

KNOW ALL MEN BY THESE PRESENTS, that CALIBER HOLDINGS CORPORATION, a Delaware corporation (hereinafter "Guarantor") hereby appoints and constitutes THE CIT GROUP/BUSINESS CREDIT, INC. ("Secured Party"), and each officer thereof, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Guarantor:

1. Execution and delivery of any and all agreements, documents, instruments of assignment, or other papers which Secured Party, in its reasonable discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all of the right, title, and interest of Guarantor in and to any trademarks and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to, the foregoing.

2. Execution and delivery of any and all documents, statements, certificates or other papers which Secured Party, in its reasonable discretion, deems necessary or advisable to further the purposes described in paragraph 1 hereof.

This Power of Attorney is made pursuant to a Trademark Security Agreement between Guarantor and Secured Party of even date herewith (as amended or supplemented, the "Security Agreement") and may not be revoked until indefeasible payment in full of all of Guarantor's "Obligations", as such term is defined in the Security Agreement. Secured Party agrees that it will exercise its rights with respect to this Special Power of Attorney only after the occurrence and during the continuation of an Event of Default (as defined in the Financing Agreement referred to in the Security Agreement).

Dated as of July \_\_, 2003.

GUARANTOR:

CALIBER HOLDINGS CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_

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

SCHEDULE A  
to  
TRADEMARK SECURITY AGREEMENT

Trademarks / Service Marks

<u>Trademark/ Service Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>
CALIBEREXPRESS	2,708,662	April 22, 2003
CALIBER COLLISION CENTERS and Design	2,270,592	August 17, 1999
CALIBER COLLISION CENTERS	1,770,871	May 11, 1993

SCHEDULE A

TRADEMARK  
REEL: 002796 FRAME: 0093

SCHEDULE B  
to  
TRADEMARK SECURITY AGREEMENT

Permitted Licenses

Guarantor has granted from time to time nonexclusive licenses in and to the Collateral to certain third parties in consideration of such third parties' promotion of Guarantor.

SCHEDULE B