

02-20-2004

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



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

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

1. Name of conveying party(ies):

Digital Financial Network, LLC

2.18.04

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

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

3. Nature of conveyance:

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

Execution Date: 12/23/03

2. Name and address of receiving party(ies)

Name: Fifth Third Bank

Internal

Address:

Street Address: 233 So. Wacker Drive

City: Chicago State: IL Zip: 60606

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

SEE EXHIBIT A

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Laura J. Geis

Internal Address:

Street Address: 191 No. Wacker Dr., Ste. 1800

City: Chicago State: IL Zip: 60606

6. Total number of applications and registrations involved:

2

7. Total fee (37 CFR 3.41) \$ 65.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

RECEIVED FEB 13 AM 8:00 OPR/FINANCE

DO NOT USE THIS SPACE

9. Signature.

Laura J. Geis

Name of Person Signing

[Handwritten Signature]

Signature

2/13/04

Date

15

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

02/19/2004 DBYRNE 00000079 2366338

01 FC:0521 02 FC:0522

40.00 OP 25.00 OP All documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

1. Name of Conveying Parties

Digital Financial Network, LLC

NewGround Resources, Inc.

Bank Building Corporation

NewGround Merchandising, L.L.C.

Compass Group d/b/a Stern Marketing Group

TTS Solutions, L.L.C.

Financial Research Associates, L.L.C. d/b/a NewGround Consulting

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

2,366,338

2,466,209

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (the "Agreement"), dated as of December 23, 2003 (the "Effective Date"), is executed by DIGITAL FINANCIAL NETWORK, LLC, a Delaware limited liability company (the "Borrower"), whose address is 13537 Barrett Parkway Drive, Suite 200, Manchester, Missouri, 63021, in favor of FIFTH THIRD BANK, CHICAGO, a Michigan banking corporation, with its office in Chicago, IL, and its successors and assigns, (the "Bank"), whose address is Sears Tower, Suite 400, 233 South Wacker Drive, Chicago, Illinois 60606.

RECITALS

A. The Borrower, NewGround Resources, Inc., a Delaware corporation, Bank Building Corporation, an Illinois corporation, NewGround Merchandising, L.L.C., a Delaware limited liability company, the Compass Group d/b/a Stern Marketing Group, a California corporation, TTS Solutions, L.L.C., a Delaware limited liability company, Financial Research Associates, L.L.C., d/b/a NewGround Consulting, a Delaware limited liability company (collectively, "Other Borrowers") and the Bank entered into that certain Loan and Security Agreement (the "Loan Agreement") dated the Effective Date. All capitalized terms not otherwise defined in this Agreement will have the meanings ascribed to such terms in the Loan Agreement, the applicable provisions of which are incorporated herein by this reference.

B. The Borrower has determined that it is in its best interests to enter into the Loan Agreement. The Bank, however, will not enter into the Loan Agreement unless the Borrower executes and delivers this Agreement to the Bank and pledges and grants to the Bank, a security interest in the Pledged Collateral (as defined herein) in order to secure the payment and performance by the Borrower and Other Borrowers of the obligations and liabilities hereunder, under the Loan Agreement, and under all of the other instruments, documents and agreements executed and delivered by the Borrower and Other Borrowers to the Bank in connection with the Loan Agreement (the "Related Documents") (all such obligations and liabilities being hereinafter referred to collectively as the "Obligations").

AGREEMENT

In consideration of the mutual agreements hereinafter set forth, and of any loan, advance or financial accommodation of any kind whatsoever heretofore, now or hereafter made, given or granted to the Borrower by the Bank, the Borrower and the Bank hereby agree as follows:

1. Recitals. The recitals to this Assignment are incorporated by this reference.
2. Incorporation of the Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.
3. Grant of Security Interest. To secure the complete and timely payment and satisfaction of the Obligations, the Borrower hereby grants to the Bank, a continuing first priority and perfected security interest in, having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of the Borrower's now owned or existing or hereafter acquired (collectively, the "Pledged Collateral");

(a) all worldwide trademarks, registered trademarks and trademark applications, service marks, logos, corporate names, assumed or fictitious trade names, trade styles, trade dress, other business identifiers, prints on which any of the foregoing have appeared or appear, all registrations and recordings thereof, registered service marks and service mark applications and all applications in connection therewith, including, without limitation, those listed on Exhibit A (such registered trademarks, trademark registrations, registered service marks and service

applications being referred to collectively as the "Registered Marks"); (i) all translations, adaptations, derivations, combinations and renewals thereof; (ii) all income, royalties, damages and payments now or hereafter due or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing; (iii) the right to sue for past, present and future infringements of any of the foregoing; and (iv) all of the Borrower's rights corresponding thereto throughout the world (all of the foregoing Registered Marks, trademark application, registered service marks and service mark application, together with the items described in clauses (i) – (iv) in this Section 3(a), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(b) the goodwill of the Borrower's business connected with and symbolized by the Trademarks; and

(c) license agreements with any other party in connection with any Trademarks or such other party's trademarks, registered trademarks and trademark applications, trade names, service marks, registered service marks and service mark applications, whether the Borrower is a licensor or licensee under any such license agreement, including but not limited to, the license agreements listed on Exhibit B, and the right upon the occurrence and during the continuance of an event of default to use the foregoing in, connection the enforcement of the Bank's rights under the Loan Agreement and the Related Documents (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 3, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement.

4. Warranties and Representations. The Borrower, represents and warrants to the Bank that, except as otherwise previously disclosed to the Bank:

(a) None of the Pledged Collateral has been adjudged invalid or unenforceable by a court of competent jurisdiction nor has any such Pledged Collateral been cancelled in whole or in part and each Trademark which is part of the Pledged Collateral is presently subsisting;

(b) The Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Pledged Collateral, free and clear of any liens (other than Permitted Liens), including without limitation, shop rights and covenants by the Borrower not to sue third persons;

(c) The Borrower does not have notice of any suits or actions commenced or, to the Borrower's knowledge, threatened with reference to the Pledged Collateral; and

(d) The Borrower has the unqualified right to execute and deliver this Agreement and perform in accordance with its terms.

5. Restrictions on Future Agreements. The Borrower will not, without the Bank's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, except where entering into any such agreement would not have a Material Adverse Effect, and the 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 subject to its control, including licensees, or fail to take any action, which would, in any material respect adversely affect the validity or enforcement of the rights transferred to the Bank for its benefit, under this Agreement which are necessary in, or material to, the operation of Borrower's business, or the rights associated with those Trademarks which are necessary in, or material to, the operation of the Borrower's business.

6. New Trademarks and Licenses. The Borrower represents and warrants to the Bank that the Trademarks and Licenses listed on Exhibits A and B, respectively, constitute all of the trademarks, trademark registrations, trademark application, trade names, service marks, service mark registrations, service mark applications and license agreements in connection therewith now owned or held by the Borrower that are material to the operation of the Borrower's business. If, before the Obligations are paid in full or before the Loan Agreement and the Related Documents have been terminated, the Borrower (a) becomes aware of any existing trademark of which the Borrower has not previously informed the Bank, which is material to the operation of Borrower's business or (b) becomes entitled to the benefit of any trademark which is material to the operation of Borrower's business, which benefit is not in existence on the date hereof, then the provisions of this Agreement will automatically apply thereto and the Borrower will give the Bank prompt written notice thereof. The Borrower hereby authorizes the Bank to modify this Agreement by amending Exhibit A or Exhibit B, respectively, to include any such trademark and to file a duplicate original of this Agreement containing such amended Exhibit.

7. Royalties. The Borrower hereby agrees that the use by the Bank of the Trademarks and Licenses as authorized hereunder in connection with the Bank's exercise of its rights and remedies under Section 18 hereof and under the Loan Agreement shall be coextensive with the Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Bank to the Borrower.

8. Further Assignments and Security Interests. The Bank shall have the right, at any reasonable time and from time to time as set forth in the Loan Agreement, to inspect the Borrower's premises and to examine the Borrower's books, records and operations relating to the Trademarks. Except as otherwise permitted under the Loan Agreement, the Borrower agrees 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 Bank.

9. Term. The term of this Agreement will extend until the Obligations are paid in full. Upon the occurrence of an Event of Default under the Loan Agreement, the use by the Bank of the Pledged Collateral will be worldwide and without any liability for royalties or other related charges from the Bank to the Borrower.

10. Product Quality. The Borrower will maintain the quality of any and all products in connection with which the Pledged Collateral is used, consistent with commercially reasonable business practices. Upon the occurrence of an Event of Default, the Bank, or a conservator or receiver appointed by the Bank, will have the right to establish such additional product quality controls as the Bank, or such conservator or receiver in its reasonable judgment, may deem necessary to assure maintenance of the quality of products in connection with which the Pledged Collateral is used.

11. Nature and Continuation of The Bank's Security Interest; Termination of The Bank'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 only when the Obligations have been indefeasibly paid and satisfied in full and the Loan Agreement and all of the other documents executed in connection therewith have terminated pursuant to the respective terms and provisions thereof.

12. Expenses. All expenses incurred in connection with the performance of this Agreement will be borne by the Borrower. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by the Bank in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, including reasonable attorneys' fees and legal expenses, maintenance fees,

encumbrances or otherwise in protecting, maintaining or preserving the Pledged Collateral or in defending or prosecuting any actions or proceedings arising out of or related to the Pledged Collateral will be borne by and paid by the Borrower and until paid will constitute Obligations.

13. Duties of the Borrower. The Borrower shall have the duty, to the extent desirable in the normal conduct of the Borrower's business and consistent with the Borrower's current business practices (a) to diligently file and prosecute all pending applications relating to the Pledged Collateral, (b) preserve and maintain all rights in the Pledged Collateral and (c) ensure that the Pledged Collateral is and remains enforceable. The Borrower shall not abandon any Trademark or terminate any License which is necessary or economically desirable in any material respect in the operation of the Borrower's business. The Borrower agrees to retain an experienced trademark attorney reasonably acceptable to the Bank, or perform the work internally but only as confirmed as appropriate by the Bank's counsel, for the filing and prosecution of all appropriate applications and other proceedings. Any expenses incurred under this Section 13 will be borne by the Borrower. The Bank shall not have any duty with respect to the Trademarks and Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all reasonable expenses incurred in connection therewith shall be for the sole account of the Borrower and added to the Obligations secured hereby.

14. Bank's Right to Sue. From and after the occurrence and during the continuance of an Event of Default, the Bank 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 Bank shall commence any such suit, the Borrower shall, at the request of the Bank, do any and all lawful acts and execute any and all proper documents reasonably required by the Bank in aid of such enforcement. The Borrower shall, upon demand, promptly reimburse the Bank for all reasonable costs and expenses incurred by the Bank in the exercise of its rights under this Section 14 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for the Bank). If for any reason whatsoever, the Bank is not reimbursed with respect to the reasonable costs and expenses referred to in the preceding sentence, then upon written notice to the Borrower, such costs and expenses shall be added to the Obligations secured hereby.

15. Waivers. Failure by the Bank at any time or times hereafter to require strict performance by the Borrower of any provision of this Agreement shall not waive, affect or diminish any right of the Bank thereafter to demand strict compliance and performance therewith nor shall any course of dealing between the Borrower and the Bank 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 the Borrower contained in this Agreement shall be deemed to have been suspended or waived by the Bank unless such suspension or waiver is in writing signed by an officer of the Bank and directed to the Borrower specifying such suspension or waiver.

16. Enforceability. Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, unenforceable or invalid under any jurisdiction, such provision will as to such jurisdiction, be severable and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

17. Modification. No amendment, modification, termination, discharge or waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank, and then such waiver or consent shall be effective only for the specific purpose for which given.

18. Cumulative Remedies; Power of Attorney after Event of Default. The Borrower hereby irrevocably designates, constitutes and appoints the Bank (and all Persons designated by the Bank in its sole and absolute discretion) as the Borrower's true and lawful attorney-in-fact, with full power of substitution, and authorizes the Bank and any of the Bank's designees, in the Borrower's or the Bank's name, upon the occurrence and during the continuance of an Event of Default to take any action and execute any instrument which the Bank may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, to (i) endorse the Borrower's name on all applications, documents, papers and instruments necessary or desirable for the Bank in the use of the Trademarks or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone on commercially reasonable terms, (iii) 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 (iv) take any other actions with respect to the Trademarks or the Licenses as the Bank deems in its best interests. The 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 Obligations shall have been indefeasibly paid and satisfied in full and the Loan Agreement shall have terminated pursuant to the respective terms and provisions thereof. The Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Bank under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies.

The Bank shall have, in addition to all other rights and remedies given it by the terms of this Agreement, the Loan Agreement and any other agreement executed in connection therewith, all rights and remedies allowed by law and the rights and remedies of a secured party under the UCC as enacted in any jurisdiction in which the Trademarks or the Licenses may be located or deemed located. Upon the occurrence and continuance of an Event of Default and the election by the Bank to exercise any of its remedies under the UCC with respect to the Trademarks and Licenses, the Borrower agrees to assign, convey and otherwise transfer title in and to the Trademarks and the Licenses to the Bank or any transferee of the Bank and to execute and deliver to The Bank or any such transferee all such agreements, documents and instruments as may be necessary, in the Bank's sole discretion, to effect such assignment, conveyance and transfer (without further recourse against the Borrower by reason of such assignment, conveyance and transfer). All of the Bank's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by the Loan 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 and during the continuance of an Event of Default, the Bank may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement, and any of the other agreements executed in connection therewith. The 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 five (5) Business Days before such disposition; provided, that the Bank may give any shorter notice that is commercially reasonable under the circumstances.

19. Binding Effect; Benefits. This Agreement will become effective upon execution by the Borrower and the Bank. If this Agreement is not dated or contains any blanks when executed by the Borrower, the Bank is hereby authorized, without notice to the Borrower, to date this Agreement as of the date when it was executed by the Borrower, and to complete any such blanks according to the terms upon which this Agreement is executed. This Agreement will be binding upon the Borrower and its respective successors and assigns, and will inure to the benefit of the Bank, their successors, nominees and assigns.

20. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

21. Survival. All covenants, agreements, representations and warranties made by the Borrower herein will, notwithstanding any investigation by the Bank, be deemed material and relied upon by the Bank and shall survive the making and execution of this Agreement and the Loan Agreement and Related Documents until such time as the Borrower has fulfilled all of its Obligations to the Bank, and the Bank has been paid in full. The Bank, in extending financial accommodations to Borrowers, is expressly acting and relying on the aforesaid representations and warranties.

22. Governing Law. This Agreement shall be delivered and accepted in and shall be deemed to be contracts made under and governed by the internal laws of the State of Illinois (but giving effect to federal laws applicable to national banks), and for all purposes shall be construed in accordance with the laws of such State, without giving effect to the choice of law provisions of such State.

23. WAIVER OF JURY TRIAL. THE BANK AND THE BORROWER, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY, THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE PLEDGED COLLATERAL, OR ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH THE BANK AND THE BORROWER ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BANK GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER.

24. LITIGATION. TO INDUCE THE BANK TO MAKE THE LOANS, THE BORROWER IRREVOCABLY AGREES THAT ALL ACTIONS ARISING, DIRECTLY OR INDIRECTLY, AS A RESULT OR CONSEQUENCE OF THIS AGREEMENT OR THE PLEDGED COLLATERAL, SHALL BE INSTITUTED AND LITIGATED ONLY IN COURTS HAVING THEIR SITUS IN THE CITY OF CHICAGO, ILLINOIS. THE BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT HAVING ITS SITUS IN SAID CITY, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS. THE BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE BORROWER AS SET FORTH HEREIN IN THE MANNER PROVIDED BY APPLICABLE STATUTE, LAW, RULE OF COURT OR OTHERWISE.

25. 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.

26. Further Assurances. The Borrower agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as the Bank will reasonably request from time to time in order to carry out the purpose of this Agreement and agreements set forth herein.

27. 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 taken together shall constitute one and the same agreement. Any such counterpart which may be delivered by facsimile transmission shall be deemed the equivalent of an originally signed counterpart and shall be fully admissible in any enforcement proceedings regarding this Agreement.

28. Merger. This Agreement and the Loan Agreement represent the final agreement of the Borrower and the Bank with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Borrower and the Bank.

(signature page follows)

IN WITNESS WHEREOF, the Borrower and the Bank have executed this Trademark Security Agreement as of the Effective Date.

Address for Notices:

13537 Barrett Parkway Drive, Suite 200
Manchester, MO 63021
Attention: Charles Zaegel

Borrower:

DIGITAL FINANCIAL NETWORK, LLC

By: Charles J. Zaegel
Name: CHARLES J. ZAEGEL
Title: SENIOR VICE PRESIDENT

Address for Notices:

Sears Tower, Suite 400,
233 South Wacker Drive,
Chicago, Illinois 60606.
Attention: David L. Enghausen

Bank:

FIFTH THIRD BANK, CHICAGO

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the Borrower and the Bank have executed this Trademark Security Agreement as of the Effective Date.

Address for Notices:

13537 Barrett Parkway Drive, Suite 200
Manchester, MO 63021
Attention: Charles Zaegel

Borrower:

DIGITAL FINANCIAL NETWORK, LLC

By: _____

Name: _____

Title: _____

Address for Notices:

Sears Tower, Suite 400,
233 South Wacker Drive,
Chicago, Illinois 60606.
Attention: David L. Enghausser

Bank:

FIFTH THIRD BANK, CHICAGO

By:  _____

Name: DAVID L. ENGHAUSSER

Title: VICE PRESIDENT

Exhibit A

SCHEDULE OF TRADEMARKS

Digital Financial Network

COUNTRY	CREF	FILED	APPL #	REGDT	REG #	STATUS	CLASSES
DESIGN							
United States	716943.2	8/9/1999	75/771,852	7/11/2000	2,366,338	REGISTERED	35
35 – Advertising services, namely preparing and transmitting multi-media advertisements over telephone lines or display of such advertisements on a display screen, plasma screen or regular TV in financial service institutions.							
DIGITAL FINANCIAL NETWORK & DESIGN							
United States	716943 3	12/23/1998	75/611,629	7/3/2001	2,466,209	REGISTERED	35
35 – Advertising services, namely preparing and transmitting multi-media advertisements over telephone lines or display of such advertisements on a display screen, plasma screen or regular TV in financial service institutions.							

Exhibit B

LICENSES

Digital Financial Network, L.L.C.

None