

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	SECURITY INTEREST
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CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Verdugt B.V.	Verdugt Holdings Sub B.V.	03/31/2004	private company with limited liability: NETHERLANDS

RECEIVING PARTY DATA

Name:	Ing Bank B.V.
Street Address:	Amstelveenseweg 500
City:	1081 KL Amsterdam
State/Country:	NETHERLANDS
Entity Type:	COMPANY: NETHERLANDS

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	1638035	CLEARWAY

CORRESPONDENCE DATA

Fax Number: (216)241-1666
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 216-861-5582
 Email: uspto@faysharpe.com
 Correspondent Name: Colleen F. Goss - Fay, Sharpe et al.
 Address Line 1: 1100 Superior Avenue
 Address Line 2: Seventh Floor
 Address Line 4: Cleveland, OHIO 44114

ATTORNEY DOCKET NUMBER:	BPTZ 5 00136
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DOMESTIC REPRESENTATIVE

Name:
 Address Line 1:
 Address Line 2:
 Address Line 3:

CH \$40.00 1638035

Address Line 4:

NAME OF SUBMITTER:

Colleen F. Goss

Total Attachments: 9

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**C L I F F O R D
C H A N C E**

**LIMITED LIABILITY PARTNERSHIP
ADVOCATEN BELASTINGADVISEURS SOLICITORS**

EXECUTION COPY

VERDUGT B.V.

as Pledgor

and

ING BANK N.V.

as Pledgee

**AGREEMENT AND DEED OF
FIRST PRIORITY PLEDGE OF
INTELLECTUAL PROPERTY RIGHTS**

**TRADEMARK
REEL: 002955 FRAME: 0718**

THIS AGREEMENT AND DEED OF FIRST PRIORITY PLEDGE OF INTELLECTUAL PROPERTY RIGHTS is made on 31 March 2004 by:

- (1) **VERDUGT B.V.**, a private company with limited liability (*besloten vennootschap met beperkte aansprakelijkheid*) incorporated under the laws of The Netherlands, having its seat (*statutaire zetel*) at Tiel, The Netherlands, and its registered office at Papesteeg 91, 4006 WC Tiel, The Netherlands, and registered with the Chamber of Commerce and Industry for Rivierenland (*Kamer van Koophandel en Fabrieken voor Rivierenland*) under number 1104 4303 (the "**Pledgor**"); and
- (2) **ING BANK N.V.**, a company incorporated under the laws of The Netherlands, having its seat (*statutaire zetel*) at Amsterdam, The Netherlands, and a registered office at Amstelveenseweg 500, 1081 KL Amsterdam, The Netherlands, acting in its capacity of Security Agent, (the "**Pledgee**");

WHEREAS:

- (A) Pursuant to a senior facilities agreement dated 31 March 2004 and made among Verdugt Topco B.V. as an Original Borrower and Original Guarantor, ABN AMRO Bank N.V. and ING Bank N.V. as Arrangers, ING Bank N.V. as Facilities Agent and as Security Agent and the financial institutions named therein as Lenders (all as defined therein (the "**Facilities Agreement**") the Lenders have agreed to lend moneys to the Borrowers (all as defined therein) on the terms and conditions set out therein; and
- (B) It is a condition of the Facilities Agreement that the Pledgor pledges to the Pledgee its IP Rights (as defined below);

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions as in Facilities Agreement

Words and expressions defined in the Facilities Agreement and Intercreditor Agreement (as defined below) shall have the same meaning when used herein, unless defined otherwise herein or the context otherwise requires.

1.2 Definitions

In this Agreement and Deed of Pledge (*pandakte*) the following terms shall have the following meanings:

"Beneficiaries" means (a) each of the Finance Parties including the Pledgee and (b) any person designated by the parties hereto (provided such person has agreed to such designation), and "Beneficiary" means any of them;

"Deed of Pledge" means this agreement and deed of first priority pledge of IP Rights and any Supplemental Pledge of IP Rights;

"Enforcement Event" means a default (*verzuim*) in the proper performance of the Secured Obligations, provided it is also an Event of

Default which is continuing and of which notice is given as referred to in Clause 24.20 (*Acceleration*) of the Facilities Agreement and/or Clause 22.20 of the Mezzanine Facility Agreement;

- “Facilities Agreement”** has the meaning ascribed thereto in paragraph (A) above;
- “Future IP Rights”** means any and all IP Rights, which at the date of this Deed of Pledge or at the date of any previous Supplemental Pledge are not yet owned, acquired or otherwise the property of the Pledgor;
- “Intellectual Property”** means all patents and patent applications, trade and service marks and trade and/or service mark applications (and all goodwill associated with any such applications), all brand and trade names, all copyrights in the nature of copyright, all design rights, all registered designs and applications for registered designs, all trade secrets, know-how, IP Licences-In, IP Licences-Out and all other intellectual property rights;
- “Intercreditor Agreement”** means an intercreditor agreement dated 31 March 2004 and made among ING Bank N.V. as Senior Agent, ABN AMRO Bank N.V. as Mezzanine Agent, the Senior Lenders, the Mezzanine Lenders, the Hedge Counterparties, the Investors, Verdugt Luxembourg S.A. as the Parent, Verdugt Topco B.V. as the Company, the Subsidiaries of the Company as Original Obligors and ING Bank N.V. as the Security Agent (all as defined therein);
- “IP Licences-In”** means any and all present or future licences, authorizations or consents granted by any third party to the Pledgor (either alone or jointly with others) to exploit or use in any manner whatsoever any Intellectual Property that is owned, acquired or otherwise the property of any third party (either alone or jointly with others), including but not limited to the IP Licences-In, if any, mentioned or referred to in Annex I (*List of IP Rights*) or any other schedule, exhibit or annex to any Supplemental Pledge of Future IP Rights;
- “IP Licences-Out”** means any and all present or future rights of the Pledgor (either alone or jointly with others) vis-à-vis any third party (either alone or jointly with others) because of any present or future authorized exploitation or use in any manner whatsoever of any IP Rights or any IP Licences-In by any third party; irrespective of whether any of such rights (a) now exist (*bestaan*), (b) will be acquired by the

Pledgor directly pursuant to a legal relationship now in existence (*rechtstreeks zal worden verkregen uit een nu reeds bestaande rechtsverhouding*) or will hereafter otherwise be acquired by the Pledgor, (d) whether due and payable or (e) whether actual or contingent and including but not limited to the IP Licences-Out, if any, mentioned or referred to in Annex I (*List of IP Rights*) hereto or any other schedule, exhibit or annex to any Supplemental Pledge of Future IP Rights);

"IP Registers"

means any appropriate public register in any jurisdiction in which any of the IP Rights are registered, including registers in which internet domain names are registered;

"IP Rights"

means any and all rights in relation to Intellectual Property, including those IP Rights, if any, listed in Annex I (*List of IP Rights*) hereto, all to the extent that such rights are at the date of this Deed of Pledge or will in the future at any time, either in whole or in part, be (i) registered, deposited, filed or applied for in the name of, to the extent the Pledgor holds, acquires or owns these rights or (ii) owned or acquired by or otherwise the property of the Pledgor, either as a sole proprietor or jointly with others;

"Material IP Rights"

has the meaning ascribed thereto in Clause 3.1.3;

"Parallel Debt"

means the covenant to pay the Security Agent pursuant to Clause 18 (*Parallel Debt (Covenant to pay the Security Agent)*) of the Intercreditor Agreement;

"Pledge of IP Rights"

has the meaning ascribed thereto in Clause 3.1.1;

"Principal Obligations"

means all present and future obligations owed by the Pledgor to any Finance Party under or in connection with the Finance Documents, **other than** the obligations pursuant to the Parallel Debt;

"Prohibition"

has the meaning ascribed thereto in Clause 19 (*Overriding Principle*);

"Secured Obligations"

means all present and future monetary obligations owed by the Pledgor to the Pledgee pursuant to Clause 18 (*Parallel Debt (Covenant to pay the Security Agent)*) of the Intercreditor Agreement and all Principal Obligations which are secured obligations pursuant to Clause 3.1.8;

"Security Agent"

means ING Bank N.V.;

"Security Assets"

means any and all IP Rights and any and all other assets,

to such statute or statutory provision as the same may have been, or from time to time may be, amended or re-enacted and all instruments, orders, plans, regulations, by-laws, permissions and directions at any time made thereunder.

- 1.3.7 The term "including" shall be construed as meaning "including without limitation".
- 1.3.8 A reference to a "person" shall be construed as a reference to any person, firm, company, corporation, body corporate, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing.
- 1.3.9 A reference to a "subsidiary" of any person shall be construed as a reference to any other person which is a "subsidiary undertaking" in relation to the first-mentioned person within the meaning ascribed to that term by Article 2:24a Netherlands Civil Code as it is in force at the date hereof.

2. UNDERTAKING TO PLEDGE; PLEDGEE NOT AN AGENT

2.1 Undertaking to Pledge

The Pledgor hereby agrees with the Pledgee and hereby undertakes that the Pledgor shall grant to the Pledgee the rights of pledge purported to be granted under and pursuant to this Deed of Pledge.

2.2 Pledgee not an Agent

The parties acknowledge that, solely in connection with the creation of rights of pledge hereunder or pursuant hereto, the Pledgee acts in its own name and not as representative of the Beneficiaries or any of them and, consequently, the Pledgee becomes the sole pledgee hereunder and pursuant hereto.

2.3 Separate Agreements; Counterparts

This Deed of Pledge may be executed in any number of counterparts and by way of facsimile exchange of executed signature pages, all of which taken together shall constitute one and the same agreement and deed of pledge.

3. PLEDGE OF IP RIGHTS

3.1 Pledge of IP Rights

3.1.1 In order to secure and provide for the payment and discharge of all Secured Obligations the Pledgor hereby pledges (*verpandt*) to the Pledgee for the duration of the Security Period, by way of a first priority right of pledge (*pandrecht eerste in rang*), all IP Rights to the extent that these IP Rights can validly be pledged (the "Pledge of IP Rights"), which right of pledge is hereby accepted by the Pledgee.

3.1.2 In order to secure and provide for the payment and discharge of all Secured Obligations the Pledgor hereby undertakes pledge to the Pledgee, from time to time and in accordance with and subject to the terms hereof, by way of a first

priority rights of pledge (*pandrecht eerste in rang*) any Future IP Rights in so far as these have not already been validly pledged under or pursuant to the Pledge of IP Rights. The Pledgor undertakes to pledge these Future IP Rights to the Pledgee by a deed of pledge in the form of **Annex IV (Form of Supplemental Pledge of Future IP Rights)** (each a “**Supplemental Pledge of Future IP Rights**”) hereto:

- (a) forthwith upon the acquisition of Future IP Rights or upon the occurrence of a Potential Event of Default which is continuing and/or an Event of Default which is continuing with such other frequency as the Pledgee may in its sole discretion designate in writing to the Pledgor; and
- (b) upon any request of the Pledgee.

3.1.3 The Pledgor will provide the Pledgee within ten (10) Business Days after execution of this (i) Deed of Pledge and each (ii) Supplemental Pledge of Future IP Rights, with a list of IP Rights that are material for the ordinary course of the Pledgor’s business. The Pledgor and the Pledgee shall discuss this list, following which the Pledgee and the Pledgor shall mutually agree within five (5) Business Days after receipt of the aforementioned list in relation to which IP Rights a Supplemental Foreign Law Pledge of IP Rights referred to in Clause 3.1.4 shall be executed and/or a registration referred to in Clause 4.1 shall be effected (the “**Material IP Rights**”). The Pledgor shall provide the Pledgee forthwith with all information the Pledgee reasonably may require to make such determination of Material IP Rights. At the request of the Pledgee the Pledgor shall provide the Pledgee with an updated list of IP Rights, after which the Pledgor and the Pledgee will again mutually agree which of those IP Rights shall be Material IP Rights, after which in relation to such IP Rights a Supplemental Foreign Law Pledge of IP Rights referred to in Clause 3.1.4 shall be executed and/or a registration referred to in Clause 4.1 shall be effected.

3.1.4 In order to secure and provide for the payment and discharge of all Secured Obligations and in order to secure that the Pledge of IP Rights and each of the Supplemental Pledges of Future IP Rights will be legal, valid, binding and enforceable in any jurisdiction other than The Netherlands, the Pledgor undertakes to pledge to the Pledgee, upon any request of the Pledgee, from time to time and in accordance with and subject to the terms hereof, by way of first priority right of pledge (*pandrecht eerste in rang*) any Material IP Rights in accordance with the laws of any jurisdiction that the Pledgee in its sole discretion deems to be relevant or opportune to make sure that the Pledgee will have legal, valid, binding and enforceable rights of pledge or a comparable security interest under the laws of such jurisdiction (each a “**Supplemental Foreign Law Pledge of IP Rights**”).

3.1.5 The Pledgor shall promptly and fully co-operate with the execution of each Supplemental Pledge of Future IP Rights and each Supplemental Foreign Law Pledge of IP Rights (each a “**Supplemental Pledge of IP Rights**”) that the Pledgee may deem necessary or opportune. In particular, the Pledgor shall

provide the Pledgee upon request with any and all information and documentation that the Pledgee may request or need in connection with such Supplemental Pledge of IP Rights.

- 3.1.6 The Pledgor shall register, deposit or file applications with regard to any intellectual property rights that are part of the IP Rights in any jurisdiction where this is prudent because of the legal or commercial impact or opportunities that may be the result thereof and, in general, do all such other things as are reasonably necessary or opportune within the ordinary course of the Pledgor's business to properly obtain, maintain and safeguard any part of the IP Rights in such jurisdiction.
- 3.1.7 Insofar as any right of pledge envisaged to be created hereunder or pursuant hereto cannot be created as a first ranking right of pledge due to prior encumbrances, a right of pledge is still created in favour of the Pledgee as pledgee and hereby granted and accepted as set out in this Clause 3.1 (*Pledge of IP Rights*) and the Pledge of IP Rights or each Supplemental Pledge of IP Rights shall be construed accordingly, without prejudice to the Pledgee's rights vis-à-vis the Pledgor because no first ranking right of pledge has been created.
- 3.1.8 If and to the extent that at the time of the creation of this right of pledge, or at any time hereafter, a Principal Obligation owed to the Pledgee cannot be validly secured (indirectly) by means of the Parallel Debt, such Principal Obligation itself shall be a Secured Obligation.

3.2 Accessory rights

If and insofar as any accessory rights (*afhankelijke rechten*) upon the IP Rights, such as rights of pledge and mortgage connected or hereafter to be connected with such IP Rights, as well as rights arising out of (bank) guarantees connected or hereafter to be connected with the IP Rights, have not already passed to the Pledgee by virtue of the pledge of such IP Rights pursuant hereto, the Pledgor hereby grants an irrevocable power of attorney to the Pledgee to exercise, upon and following the occurrence of an event of default which is continuing, such rights in the Pledgor's name and in the Pledgee's interest.

4. REGISTRATION, DEPOSIT AND FILING

4.1 Registration by Pledgor

- 4.1.1 Within one (1) month after the execution of this Deed of Pledge and within one (1) month after the execution of any Supplemental Pledge of IP Rights the Pledgor will register, deposit and/or file - where possible by submitting the extract of deed of pledge of IP Rights substantially in the form of **Annex III** - this Deed of Pledge, the Pledge of IP Rights and, as the case may be, such Supplemental Pledge of IP Rights with:


- (a) the Benelux Trademark Office (*Benelux Merkenbureau*) in the relevant Benelux Trademark Register, as far as it concerns trademarks registered in the Benelux and the International Bureau as mentioned in the Madrid

SIGNATURES

IN WITNESS whereof this Deed of Pledge has been duly executed on the date first above written.

for and on behalf of
VERDUGT B.V.

By: Verdugt Topco B.V.
in its capacity of Managing Director of
Verdugt B.V.



Name : K.E. Witt
Title : Managing Director of Verdugt
Topco B.V.

for and on behalf of
ING BANK N.V., as Pledgee



Name : R.E. van den Dungen
Title : Authorised Signatory



Name : M.M. Boskma
Title : Authorised Signatory

ANNEX I

LIST OF IP RIGHTS

CLEARWAY

Reg. No. 1638035

Issued 3/19/1992