

05-12-2004

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): JOHN F. COPE CO., INC. A Pennsylvania Corporation S. 12.04
Individual(s) Association General Partnership Limited Partnership Corporation-State Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) Name: THE CIT GROUP/BUSINESS CREDIT, INC. Internal Address: Street Address: 1211 AVENUE OF THE AMERICAS City: NEW YORK State: NY Zip: 10036
Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State NY 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

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other
Execution Date: 05/06/2004

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 1452357 0680893 0824543 2547310
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: PAUL H. SHUR, ESQ. Internal Address: REED SMITH LLP Street Address: 136 Main Street PO Box 7839 City: PRINCETON State: NJ Zip: 08543-7839

6. Total number of applications and registrations involved: 4
7. Total fee (37 CFR 3.41): \$ 115.00 Enclosed Authorized to be charged to deposit account
8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature. John F. Cope Co. Inc. By: Larry A. Jones, Pres Name of Person Signing Signature Date May 6, 2004
Total number of pages including cover sheet, attachments, and document: 9

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

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TRADEMARK REEL: 002965 FRAME: 0319

**TRADEMARK AND TRADENAME**  
**SECURITY AGREEMENT**  
**AND**  
**MORTGAGE**

This **TRADEMARK AND TRADENAME SECURITY AGREEMENT AND MORTGAGE** (the "Trademark Mortgage") is made as of this 6 day of MAY, 2004 by **JOHN F. COPE CO., INC.**, a Pennsylvania Corporation with its principal place of business located at 156 W. Harrisburg Avenue, Rheems, PA 17570-0419 (the "Grantor") in favor of **THE CIT GROUP/BUSINESS CREDIT, INC.**, a New York Corporation with an office located at 1211 Avenue of the Americas, New York, New York 10036 (the "Lender").

**WHEREAS**, the Grantor is the owner and holder of the Trademarks listed on Schedule A annexed hereto and made a part hereof, together with all of the goodwill of the business symbolized by each of the Trademarks; and

**WHEREAS**, the Grantor and the Lender are about to enter into a certain Financing Agreement of even date herewith (said Agreement, as it may hereafter be amended, supplemented, restated or otherwise modified from time to time being the "Financing Agreement") (any capitalized terms used, but not specifically defined, herein shall have the meaning provided for such terms in the Financing Agreement); and

**WHEREAS**, to induce the Lender to enter into the Financing Agreement and to grant the loans, advances and extensions of credit to the Grantor in accordance with the Financing Agreement, the Grantor has offered to execute and deliver this Trademark Mortgage to the Lender, granting and conveying to the Lender a security interest, first in priority, upon the Collateral (as such term is hereinafter defined);

**NOW, THEREFORE**, in consideration of the foregoing, in consideration of the premises set forth in the Financing Agreement and in order to induce the Lender to grant the loans, advances and extensions of credit to the Grantor in accordance with the Financing Agreement, the Grantor hereby agrees with the Lender for its benefit as follows:

1. Certain Defined Terms. As used in this Trademark Mortgage, unless the context otherwise requires:

(a) "Collateral": Shall mean, collectively and individually--

(i) each of the Trademarks listed on Schedule A annexed hereto and made a part hereof and the goodwill of the business symbolized by each of those Trademarks;

(ii) each of the Licenses;

(iii) all accounts, contract rights and general intangibles of the Grantor arising under or relating to the Licenses, whether now existing or hereafter arising, including, without limitation, (1) all moneys due and to become due under any License, (2) any damages arising out of or for breach or default in respect of any such License, (3) all other amounts from time to time paid or payable under or in connection with any such License, and (4) the right of the Grantor to terminate any such License or to perform and to exercise all remedies thereunder;

(iv) any claims by the Grantor against third parties, and all proceeds of suits, for infringement of the Trademarks, and the rights to sue for past, present and future infringements and all rights corresponding thereto in the United States; and

(v) as to all of the foregoing (i) through (iv) inclusive, and any and all cash proceeds, non-cash proceeds and products thereof, additions and accessions thereto, replacements and substitutions therefor, and all related books, records, journals, computer print-outs and data, of the Grantor.

(b) "Licenses": Collectively and individually, any and all Trademark license agreements granted by the Grantor to third parties, whether now existing or hereafter arising, as any of same may from time to time be amended or supplemented, including, but not limited to, the license agreements listed on Schedule B annexed hereto and made a part hereof.

(c) "Obligations": All loans, advances, indebtedness, notes, liabilities, overdrafts, outstanding letters of credit not drawn upon, letters of credit drawn upon and not yet reimbursed, outstanding acceptances, and other amounts, liquidated or unliquidated, of every kind, nature and description, whether arising under this Agreement or otherwise, and as defined in the Financing Agreement.

(d) "Trademarks": Collectively and individually,  
all--

(i) trademarks, trade names, trade dress, service marks, prints and labels on which said trademarks, trade names, trade dress and service marks have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all right, title and interest therein and thereto, all applications thereof filed under Section 1(a) of the Lanham Act (15 U.S.C.A. 1051(a)), and all registrations and recordings of any of the foregoing, including, without limitation, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof, all whether now or hereafter owned or licensable by any Grantor, including, but not limited to, those listed on Schedule A annexed hereto and made a part hereof; and

(ii) trademarks, trade names, trade dress and service marks, whether now or hereafter owned by the Grantor which has not or is not required to be registered or recorded in any jurisdiction; and

(iii) reissues, extensions or renewals thereof and all licenses thereof (including, without limitation, all license agreements).

2. Grant of Security. To secure payment and performance of all of the Obligations of the Grantor to the Lender, the Grantor hereby mortgages to and pledges to the Lender and grants and conveys to the Lender a security interest in all of the Grantor's right, title and interest in and to the Collateral, which security interest shall remain in full force and effect until all of the Obligations of the Grantor to the Lender are fully paid and satisfied.

3. Representations, Warranties and Covenants of the Grantor. The Grantor incorporates by reference its representations, warranties, covenants and agreements relating to the Collateral as more fully set forth in the Financing Agreement and the following:

(a) No Additional Trademarks. As of the date hereof, the Grantor does not own any Trademarks, or have any Trademarks registered in or the subject of pending applications in the United States Patent and Trademark Office or any similar office or agency in any other

country or any political subdivision thereof, other than those grants, registrations or applications for registrations listed on Schedules A annexed hereto and made a part hereof.

(b) **Responsibility and Liability.** The Grantor assumes all responsibility and liability arising from the use of the Trademarks and Licenses, and hereby indemnifies and holds the Lender and each director, officer, employee, affiliate and agent thereof, harmless from and against any claim, suit, loss, damage or expense (including attorneys' fees and expenses) arising out of any alleged defect in any product manufactured, promoted or sold by the Grantor in connection with any of the Trademarks or otherwise arising out of the Grantor's operation of its business from the use of the Trademarks. In any suit, proceeding or action brought by the Lender under any License for any sum owing thereunder, or to enforce any provisions of such License, the Grantor will indemnify and keep the Lender harmless from and against all expense, loss or damage suffered by reason of any defense, set off, recoupment, claim, counterclaim, reduction or liability whatsoever of the obligee thereunder or arising out of a breach of the Grantor of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from the Grantor, and all such obligations of the Grantor shall be and remain enforceable against and only against the Grantor and shall not be enforceable against the Lender.

(c) **Protection of the Trademarks.** The Grantor agrees that if it learns of any use by any person of any term or design likely to cause confusion with any Trademark, or of any claim of any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Collateral, the Grantor shall promptly notify the Lender of such use, lien, security interest, claim, right or other encumbrance and, if requested by the Lender, shall join with the Lender, at the Grantor's expense, in such action as the Lender, in its reasonable discretion, may deem advisable for the protection of the Lender's interest in and to the Trademarks, it being understood that the foregoing shall not preclude the Grantor from bringing an action against a person for the protection of the Grantor's interest in and to such Trademarks.

4. **Lender's Appointment as Attorney-in-Fact.** The Grantor hereby irrevocably constitutes and appoints the Lender, and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Grantor and in the name of the Grantor or in its own name, from time to time in the Lender's discretion, for the purposes of carrying out the terms of this Trademark Mortgage, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Trademark Mortgage.

5. **Event of Default.** The occurrence of any one or more of the following shall constitute an Event of Default under this Agreement:

(a) The occurrence of any Default or Event of Default defined under the Financing Agreement;

(b) A breach by the Grantor of any covenant contained in this Trademark Mortgage;

(c) If any warranty or representation contained in this Trademark Mortgage, including, without limitation, the warranties and representations contained in Section 3 of this Trademark Mortgage, shall be incorrect in any material respect.

6. **Remedies.** Upon the occurrence of an Event of Default, in addition to all other rights and remedies of the Lender, whether under law, in equity or otherwise (all such rights and

remedies being cumulative, not exclusive and enforceable alternatively, successively or concurrently):

(i) the Lender shall have all of the rights and remedies set forth in the Financing Agreement;

(ii) the Lender may appear before the United States Patent and Trademark Office as owner of the Collateral, without recording or filing any documents to evidence the Lender's ownership in the Collateral;

(iii) in addition to the foregoing, in order to implement the assignment, sale or other disposal of any of the Collateral, the Lender may, at any time, pursuant to the authority granted in the Special Power of Attorney (such authority becoming effective on the occurrence of an Event of Default), execute and deliver on behalf of the Grantor, one or more instruments of assignment of the Trademarks (or any application or registration thereof), in form suitable for filing, recording or registration in any country. The Grantor agrees to pay when due all reasonable costs and expenses incurred in any such transfer of the Trademarks, including any taxes, fees and reasonable attorneys' fees, and all such costs shall be added to the Obligations of the Grantor to the Lender. The Lender shall apply the proceeds actually received from any such license, assignment, sale or other disposition to the payment of the Obligations of the Grantor to the Lender as provided for in the Financing Agreement. The Grantor shall remain liable for any deficiency with respect to the Obligations of the Grantor to the Lender, which shall bear interest and be payable at the Default Rate of interest under the Financing Agreement. The rights of the Grantor to receive any surplus shall be subject to any duty of the Lender imposed by law to the holder of any subordinate security interest in the Collateral known to the Lender. Nothing contained herein shall be construed as requiring the Lender to take any such action at any time.

7. Execution of Special Power of Attorney. Concurrently with the execution and delivery of this Trademark Mortgage, the Grantor is executing and delivering to the Lender a certain Special Power of Attorney for the implementation of the sale, assignment, licensing or other disposition of the Collateral pursuant to this Trademark Mortgage.

8. Amendments and Modification. No provision hereof shall be modified, altered, waived or limited except by a written instrument expressly referring to this Trademark Mortgage and executed by the party to be charged.

9. Binding Nature. This Trademark Mortgage shall be binding upon and inure to the benefit of the successors, assigns or other legal representatives of the Grantor, and shall, together with the rights and remedies of the Lender hereunder, be binding upon and inure to the benefit of the Lender, its successors, assigns or other legal representatives.

10. GOVERNING LAW. THIS TRADEMARK MORTGAGE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

11. Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing (unless otherwise expressly provided herein) and shall be sent and deemed to have been received as set forth in the Financing Agreement.

12. Counterparts. This Trademark Mortgage may be executed in counterparts, each of which, when taken together, shall be deemed one and the same instrument.

13. **Headings.** Section headings herein are included for convenience of reference only and shall not constitute a part of this Trademark Mortgage for any other purpose.

14. **Acknowledgment of Receipt.** The Grantor acknowledges receipt of a copy of this Trademark Mortgage.

15. **No Waiver.** No course of dealing between the Grantor and the Lender, and no delay or omission of the Lender in exercising or enforcing any of the Lender's rights and remedies hereunder shall constitute a waiver thereof; and no waiver by the Lender of any Event of Default shall operate as a waiver of any other Event of Default.


16. **Severability.** If any of the provisions of this Trademark Mortgage shall contravene or be held invalid under the laws of any jurisdiction, this Trademark Mortgage shall be construed as if not containing such provisions and the rights, remedies, warranties, representations, covenants, and provisions hereof shall be construed and enforced accordingly in such jurisdiction and shall not in any manner affect such provision in any other jurisdiction, or any other provisions of this Trademark Mortgage in any jurisdiction. In the event of any inconsistency between the provisions of this Trademark Mortgage and the Financing Agreement, the terms of the Financing Agreement shall prevail.

17. **Interest Granted to Lender.** Notwithstanding any provision of this Trademark Mortgage to the contrary, the interest granted to the Lender under this Trademark Mortgage is intended to be a pledge and a security interest only, and the execution of this Trademark Mortgage is not intended to create an assignment or a transfer of title or any other property rights to the Trademarks.


**18. WAIVER OF JURY TRIAL. THE GRANTOR WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS TRADEMARK MORTGAGE.**

**IN WITNESS WHEREOF,** the Grantor has caused this Trademark Mortgage to be duly executed as of the day and year first above written.




Attest/Witness:

  
Print Name: DONALD J. LONG  
Title: Secretary

**JOHN F. COPE CO., INC.**  
A Pennsylvania Corporation

By:   
Print Name: LARRY A. JONES  
Title: President/CEO

**SCHEDULE A**  
to  
**Trademark and Tradename**  
**Security Agreement and Mortgage**

Mark	Appl. No.	Reg. No.	Status	Present Owner
John Cope's	73/629,175	1,452,357	Section 8 & 15 affidavits have been accepted and acknowledged	John F. Cope Co., Inc.
	72/059,094	0,680,893	Renewed	John F. Cope Co., Inc.
	72/240,070	0,824,543	Renewed	John F. Cope Co., Inc.
	76/276,702	2,547,310	Registered	John F. Cope Co., Inc.

**SCHEDULE B**  
**to**  
**TRADEMARK AND TRADENAME**  
**SECURITY AGREEMENT AND MORTGAGE**

*NONE*



**SPECIAL POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS**, that as of this \_\_\_\_\_ day of \_\_\_\_\_, 2004, **JOHN F. COPE CO., INC.**, a Pennsylvania Corporation with its principal place of business located at 156 W. Harrisburg Avenue, Rheems, PA 17570-0419 (the "Grantor"), pursuant to a certain Trademark and Tradename Security Agreement and Mortgage of even date herewith (the "Trademark Mortgage") by the Grantor in favor of **THE CIT GROUP/BUSINESS CREDIT, INC.**, a New York Corporation having an office located at 1211 Avenue of the Americas, New York, New York, 10036 (the "Lender"), hereby appoints and constitutes the Lender as its true and lawful attorney, with full power of substitution, and with full power and authority to perform the following acts on behalf of the Grantor, in accordance with the terms and provisions of the Trademark Mortgage:


1. Assigning, selling or otherwise disposing or all right, title and interest of the Grantor in and to the Trademarks, as such term is defined in the Trademark Mortgage, including, without limitation, those Trademarks listed on Schedule A annexed to the Trademark Mortgage, any Trademarks that the Grantor may now or hereafter acquire, and any Trademarks which may be added to Schedule A annexed to the Trademark Mortgage subsequent to the date of this Special Power of Attorney, all applications filed under Section 1(a) of the Lanham Act (15 U.S.C.A. 1051(a)), and all registrations and recordings of any of the foregoing, and for the purpose of the recording, registering and filing of, or accomplishing any other formality with respect to the foregoing, and to execute and deliver any and all other agreements, documents, instruments or assignment or other papers necessary or advisable to effect such purpose, in each case, in accordance with the terms and provisions of the Trademark Mortgage; and

2. To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as the Lender may in its sole discretion determine.

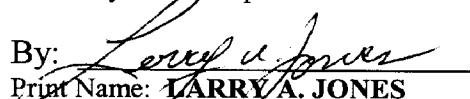
This Special Power of Attorney is made pursuant to the Trademark Mortgage and may not be revoked until the Obligations, as such term is defined in the Trademark Mortgage, of the Grantor to the Lender is fully paid and satisfied.

**IN WITNESS WHEREOF**, the Grantor has caused this Special Power of Attorney to be duly executed as of the day and year first above written.

Attest/Witness:

  
Print Name: DONALD J. LONG  
Title: Secretary

**JOHN F. COPE CO., INC.**  
A Pennsylvania Corporation

By:   
Print Name: LARRY A. JONES  
Title: President/CEO