

05-17-2004

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



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

102746365

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

1. Name of conveying party(ies): Next, Inc.

5.13.04

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 4/15/04

2. Name and address of receiving party(ies)

Name: National City Bank of Indiana Internal Address: 101 W. Washington St., Suite 200-E

Street Address:

City: Indianapolis State: IN Zip: 46255

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other National Commercial Bank

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) 78/290,539; 78/290,588; 78/290,573; 78/290,532

B. Trademark Registration No.(s) 1,855,814 and 2,292,052

Additional number(s) attached Yes No

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

Name: Julia A. Carpenter, Esq.

Internal Address: Krieg DeVault LLP

Street Address: One Indiana Square, Suite 2800

City: Indianapolis State: IN Zip: 46204-2079

6. Total number of applications and registrations involved: 14

7. Total fee (37 CFR 3.41): \$ 365.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Julia A. Carpenter

Name of Person Signing

Signature

5-6-04

Date

Total number of pages including cover sheet, attachments, and document: 7

05/14/2004 DBYRNE 0000007 78290539 01 FC:8521 02 FC:8522

40.00 UP 325.00 OP

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

TRADEMARK REEL: 002967 FRAME: 0775

Attachment to Recordation Form Cover Sheet  
Trademarks Only

**Next, Inc.**

Trademark Application No.(s)

Additional Numbers:

78/290,565  
78/290,580  
78/289,311  
78/289,305  
76/393,801  
78/377,111  
78/307,484  
78/377,715

## AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT

THIS AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT, dated as of April 15, 2004, between **NEXT, INC.**, a Delaware corporation (the "Debtor"), and **NATIONAL CITY BANK OF INDIANA**, a national banking association (the "Secured Party").

Debtor and Secured Party hereby agree as follows:

### Section 1. Definitions; Interpretation.

(a) **Terms Defined in Credit Agreement.** All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

(b) **Certain Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

"Collateral" has the meaning set forth in Section 2.

"Credit Agreement" means that certain Amended and Restated Credit Agreement, dated as of the date hereof, between Debtor and Secured Party.

"PTO" means the United States Patent and Trademark Office.

"UCC" means the Uniform Commercial Code as in effect in the State of Indiana.

(c) **Terms Defined in UCC.** Where applicable in the context of this Agreement and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(d) **Construction.** In this Agreement, the following rules of construction and interpretation shall be applicable: (i) no reference to "proceeds" in this Agreement authorizes any sale, transfer, or other disposition of any Collateral by Debtor; (ii) "includes" and "including" are not limiting; (iii) "or" is not exclusive; and (iv) "all" includes "any" and "any" includes "all." To the extent not inconsistent with the foregoing, the rules of construction and interpretation applicable to the Credit Agreement shall also be applicable to this Agreement and are incorporated herein by this reference.

### Section 2. Security Interest.

(a) **Grant of Security Interest.** As security for the payment and performance of the Obligations, Debtor hereby grants to Secured Party a security interest in, and a mortgage upon, all of Debtor's right, title and interest in, to and under the following property, in each case whether now or hereafter existing or arising or in which Debtor now has or hereafter owns, acquires or develops an interest and wherever located (collectively, the "Collateral"):

(i) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names (but excluding any application to register any trademark, service mark or other mark prior to the filing under applicable law of a verified statement of use (or the equivalent) for such trademark, service mark or other mark to the extent the creation of a security interest therein or the grant of a mortgage thereon would void or invalidate such trademark, service mark or other

mark), all licenses relating to any of the foregoing and all income and royalties with respect to any licenses (including such marks, names and applications as described in Schedule A), whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(ii) the entire goodwill of or associated with the businesses now or hereafter conducted by Debtor connected with and symbolized by any of the aforementioned properties and assets;

(iii) all general intangibles and all intangible intellectual or other similar property of Debtor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above; and

(iv) all proceeds of any and all of the foregoing Collateral (including license royalties, rights to payment, accounts receivable and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance (whether or not Secured Party is the loss payee thereof) or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the foregoing Collateral.

(b) **Continuing Security Interest.** Debtor agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until terminated in accordance with Section 11.

Section 3. **Supplement to Credit Agreement.** This Agreement has been entered into in conjunction with the security interests granted to Secured Party under the Credit Agreement or other security documents referred to therein. The rights and remedies of Secured Party with respect to the security interests granted herein are without prejudice to, and are in addition to those set forth in the Credit Agreement or any other security documents referred to therein, all terms and provisions of which are incorporated herein by reference.

Section 4. **Representations and Warranties.** Debtor represents and warrants to Secured Party that:

(a) **Trademarks.** A true and correct list of all of the existing Collateral consisting of U.S. trademarks, trademark registrations or applications owned by Debtor, in whole or in part, is set forth in Schedule A.

Section 5. **Further Acts.** On a continuing basis, Debtor shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by Secured Party to carry out the intent and purposes of this Agreement, or for assuring, confirming or protecting the grant or perfection of the security interest granted or purported to be granted hereby, to ensure Debtor's compliance with this Agreement or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to the Collateral, including any documents for filing with the PTO or any applicable state office. Secured Party may record this Agreement, an abstract thereof, or any other document describing Secured Party's interest in the Collateral with the PTO, at the expense of Debtor. In addition, Debtor authorizes Secured Party to file financing statements describing the Collateral in any UCC filing office deemed appropriate by Secured Party. If the Debtor shall at any time hold or acquire a commercial tort claim arising with respect to the Collateral, the Debtor shall immediately notify Secured Party in a writing signed by the Debtor of the brief details thereof and grant to the Secured Party in such

writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to the Secured Party.

Section 6. Authorization to Supplement. If Debtor shall obtain rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to Secured Party with respect to any such new trademarks or renewal or extension of any trademark registration. Without limiting Debtor's obligations under this Section 6, Debtor authorizes Secured Party to modify this Agreement by amending Schedule A to include any such new patent or trademark rights. Notwithstanding the foregoing, no failure to so modify this Agreement or amend Schedule A shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all Collateral, whether or not listed on Schedule A.

Section 7. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Debtor, Secured Party and their respective successors and assigns. Debtor may not assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder except as specifically permitted by the Credit Agreement.

Section 8. Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Indiana, except as required by mandatory provisions of law or to the extent the validity, perfection or priority of the security interests hereunder, or the remedies hereunder, in respect of any Collateral are governed by the law of a jurisdiction other than Indiana.

Section 9. Entire Agreement; Amendment. This Agreement and the Credit Agreement, together with the Schedules hereto and thereto, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior drafts and communications relating to such subject matter. Neither this Agreement nor any provision hereof may be modified, amended or waived except by the written agreement of the parties, as provided in the Credit Agreement. Notwithstanding the foregoing, Secured Party unilaterally may re-execute this Agreement or modify, amend or supplement the Schedules hereto as provided in Section 6 hereof. To the extent that any provision of this Agreement conflicts with any provision of the Credit Agreement, the provision giving Secured Party greater rights or remedies shall govern, it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to Secured Party under the Credit Agreement.

Section 10. 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 but one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart. Any party hereto delivering a counterpart of this Agreement by facsimile shall also deliver a manually executed counterpart, but the failure to so deliver a manually executed counterpart shall not affect the validity, enforceability, or binding effect hereof.

Section 11. Termination. Upon payment and performance in full of all Obligations, the security interests created by this Agreement shall terminate and Secured Party (at Debtor's expense) shall promptly execute and deliver to Debtor such documents and instruments reasonably requested by Debtor as shall be necessary to evidence termination of all such security interests given by Debtor to Secured Party hereunder, including cancellation of this Agreement by written notice from Secured Party to the PTO.

Section 12. No Inconsistent Requirements. Debtor acknowledges that this Agreement and the other documents, agreements and instruments entered into or executed in connection herewith may contain covenants and other terms and provisions variously stated regarding the same or similar matters, and

Debtor agrees that all such covenants, terms and provisions are cumulative and all shall be performed and satisfied in accordance with their respective terms.

Section 13. Severability. If one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction or with respect to any party, such invalidity, illegality or unenforceability in such jurisdiction or with respect to such party shall, to the fullest extent permitted by applicable law, not invalidate or render illegal or unenforceable any such provision in any other jurisdiction or with respect to any other party, or any other provisions of this Agreement.

Section 14. Notices. All notices and other communications hereunder shall be in writing and shall be mailed, sent or delivered in accordance with the Credit Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

NEXT, INC.

By: [Signature]

Printed: Charles L. Thompson

Title: CFO

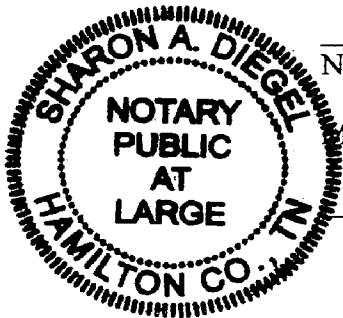
STATE OF ~~INDIANA~~ TENNESSEE )  
 ) SS:  
COUNTY OF HAMILTON )

Before me, a Notary Public in and for said County and State, personally appeared CHARLES L. THOMPSON, the CFO of Next, Inc., a Delaware corporation, who, having been duly sworn, acknowledged the execution of the foregoing Amended and Restated Trademark Security Agreement for and on behalf of such corporation as such officer and stated that all representations therein contained are true.

WITNESS my hand and Notarial Seal this 15th day of April, 2004.

[Signature]  
Notary Public

Sharon A. Diegel  
Notary Public (Printed)



My Commission Expires:  
3/28/05

My County of Residence:  
Hamilton

**SCHEDULE A**  
**to the Amended and Restated Trademark Security Agreement**

Debtor: Next, Inc.

U.S. Trademarks of Debtor

Registration No.	Registration Date	Registered Owner	Mark
US Reg. 1,855,814	9/27/94	Debtor	Midwest & Design
US Reg. 2,292,052	11/16/99	Debtor	Cadre Athletic

Pending U.S. Trademark Applications of Debtor

Debtor: Next, Inc.

Application No.	Filing Date	Applicant	Mark
US App. 78/290,539	8/21/03	Debtor	RPM Sports
US App. 76/393,801*	4/9/02	Next, Inc. (IN corp)	RPM Sports
US App. 78/290,565	8/21/03	Debtor	RPM Sports USA
US App. 78/290,580	8/21/03	Debtor	CollegewearUSA.com
US App. 78/290,573	8/21/03	Debtor	BeerwearUSA.com
US App. 78/290,532	8/21/03	Debtor	Collegewear USA
US App. 78/290,588	8/21/03	Debtor	Collegiate Gear USA
US App. 78/377,111	3/2/03	Debtor	CampustraditionsUSA.com
US App. 78/307,484	9/30/03	Debtor	Legends of the Midway
US App. 78/377,715	3/3/04	Debtor	Campus Traditions USA
US App. 78/289,311	8/19/03	Debtor	Lil' Fan
US App. 78/289,305	8/19/03	Debtor	LF2

\* Re-filed in name of Next, Inc. (DE corp) under newly assigned serial number. The corresponding application in name of Next, Inc. (IN corp) will automatically become abandoned.

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