

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/2005)

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

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

JBS Liquidators LLC

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

Citizenship: NY

Execution Date(s): 6/7/04

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other: Amended and Restated Security Agreement

2. Name and address of receiving party(ies):

Additional names, addresses, or citizenship attached? Yes No

Name: Fleet Retail Group Inc.

Internal Address: _____

Street Address: 40 Broad Street

City: Boston

State: MA

Country: US Zip: 02109

- Association Citizenship: _____
- General Partnership Citizenship: _____
- Limited Partnership Citizenship: _____
- Corporation Citizenship: DE
- Other: _____ Citizenship: _____

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark(s):

A. Trademark Application No.(s):

B. Trademark Registration No.(s):

2,354,959

Additional sheet(s) attached? Yes No

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

Name: Christopher E. Kondracki

Address: 2001 Jefferson Davis Highway

Suite 1007

Arlington, Virginia 22202

Phone Number: (703) 415-1555

Fax Number: (703) 415-1557

Email Address: _____

6. Total number of applications and registrations involved:

1

7. Total Fee (37 CFR 2.6(b)(6) & 3.41): \$ 40.00

- Authorized to be charged by credit card
- Authorized to be charged by Deposit Account
- Fees Enclosed

8. Payment Information:

Deposit Account Number: 19-3545

Authorized User Name: Christopher E. Kondracki

9. Signature: _____

Signature

12/10/04

Date

Christopher E. Kondracki
Name of Person Signing

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

CH \$40.00 193645 2354959

**AMENDED AND RESTATED TRADEMARK AND
TRADEMARK APPLICATIONS SECURITY AGREEMENT**

Fleet Retail Group Inc.
Agent
June 7, 2004

THIS AGREEMENT is made between

FLEET RETAIL GROUP INC. (in such capacity, the "**Agent**"), a Delaware corporation with offices at 40 Broad Street, Boston, Massachusetts 02109, as agent for a syndicate of revolving credit lenders and a term lender (the "**Lenders**")

and

JBS LIQUIDATORS LLC (hereinafter, the "**Borrower**"), a New York Limited Liability Company with its principal executive offices at 200 Helen Street, South Plainfield, New Jersey 07080

Background:

A. The Agent, Odd Job Stores, Inc. as lead borrower (in such capacity, the "**Lead Borrower**") for certain of its affiliates (collectively, the "**Borrowers**"), and certain other parties, entered in the Loan and Security Agreement dated as of July 17, 2003 (as amended by the First Amendment to Loan and Security Agreement dated November 14, 2003, the "**Original Loan Agreement**"), pursuant to which a credit facility was established in favor of the Borrowers and under which the Borrowers' Liabilities were secured by certain of the Borrowers' assets, including all Marks as set forth in that certain Trademark and Trademark Applications Security Agreement dated as of November 14, 2003 (the "**Original Trademark Security Agreement**"). Terms used herein which are defined in the Loan Agreement are used as so defined.

B. The Original Loan Agreement is being amended and restated in its entirety on the date hereof by that certain Amended and Restated Loan and Security Agreement (as such agreement may be further modified, supplemented, amended or restated from time to time, hereinafter, the "**Loan Agreement**") pursuant to which, among other things, the Revolving Credit Ceiling shall be increased and the Term Loan shall be made by the Term Lender.

C. It is a condition to the effectiveness of the Loan Agreement that the Original Trademark Security Agreement be modified so as to, among other things, clarify that the Agent is acting as agent for both the Revolving Credit Lenders and the Term Lender.

NOW THEREFORE, in consideration of the mutual covenants contained herein and benefits to be derived herefrom, the parties hereto agree that the Original Trademark Security Agreement shall be amended and restated in its entirety as follows:

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1. **Grant of Security Interest:** To secure the Liabilities, the Borrower hereby creates a security interest in favor of the Agent (for the benefit of the Agent and the Lenders), with power of sale (which power of sale shall be exercisable only following the occurrence and during the continuance of an Event of Default) in and to the following and all proceeds thereof (collectively, the "TM Collateral"):
 - a. All of the Borrower's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks and service mark applications including, without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, and service mark applications.
 - b. All renewals of any of the foregoing.
 - c. All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.
 - d. The right to sue for past, present and future infringements and dilutions of any of the foregoing.
 - e. All of Borrower's rights corresponding to any of the foregoing throughout the world.
2. **Protection of Marks By Borrower:** The Borrower shall undertake the following with respect to each item respectively described in Sections 1.a and 1.b (collectively, the "Marks"):
 - a. Pay all renewal fees and other fees and costs associated with maintaining the Marks and with the processing of the Marks.
 - b. At the Borrower's sole cost, expense, and risk, and at the Borrower's discretion, pursue the prompt, diligent, processing of each Application for Registration which is the subject of the security interest created herein and not abandon or delay any such efforts.
 - c. At the Borrower's sole cost, expense, and risk, take any and all action which Borrower deems desirable to protect the Marks, including, without limitation, but subject to Borrower's discretion, the prosecution and defense of infringement actions.
3. **Borrower's Representations and Warranties:** The Borrower represents and warrants that:

- a. **EXHIBIT A** includes all of the material registered trademarks, Federal trademark applications, registered service marks and Federal service mark applications now owned by the Borrower.
- b. All TM Collateral is and shall remain, free and clear of all liens, Encumbrances, or security interests to any Person other than to the Agent.
- c. The Borrower shall give the Agent written notice (with reasonable detail) within thirty (30) days following the occurrence of any of the following:
 - i. The Borrower's obtaining rights to, and filing applications for registration of, any new trademarks, or service marks, or otherwise acquires ownership of any newly registered trademarks, registered service marks, trademark applications, or service mark applications, (other than the Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).
 - ii. The Borrower's becoming entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor (other than Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).
 - iii. The Borrower's entering into any new trademark license agreement or service mark license agreement.

4. **Agreement Applies to Future Marks:**

- a. The provisions of this TM Security Agreement shall automatically apply to any such additional material property or rights described in 3.c, above, all of which shall be deemed to be and treated as "Marks" within the meaning of this TM Security Agreement.
- b. The Borrower hereby authorizes the Agent to take all such action to protect the Agent's interest in and concerning any future material registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, provided, however, the Agent's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

5. **Borrower's Rights To Enforce Marks:** Prior to the Agent's giving of notice to the Borrower following the occurrence and during the continuance of an Event of Default, the Borrower shall have the exclusive right to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages,

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in an effort by Borrower to protect the Marks against encroachment by third parties, provided, however:

- a. The Borrower first provides the Agent with written notice of the Borrower's intention to so sue for enforcement of any Mark.
- b. Any money damages awarded or received by the Borrower on account of such suit (or the threat of such suit) shall constitute TM Collateral.
- c. Following the occurrence and during the continuance of any Event of Default, the Agent, by notice to the Borrower may be terminate or limit the Borrower's rights under this Section 5.

6. Agent's Actions To Protect Marks: In the event of

- a. the Borrower's failure, within ten (10) days of written notice from the Agent, to cure any failure by the Borrower to perform any of the Borrower's obligations set forth in Section 2; and/or
- b. the occurrence and during the continuance of any Event of Default,

the Agent, acting in its own name or in that of the Borrower, may (but shall not be required to) act in the Borrower's place and stead and/or in the Agents' own right in connection therewith.

7. Rights Upon Default: Upon the occurrence of any Event of Default, the Agent may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with respect to the Marks, in addition to which the Agent may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Agent that an Event of Default has occurred and is continuing and that the Agent is authorized to exercise such rights and remedies.

8. Agent As Attorney In Fact:

- a. The Borrower hereby irrevocably constitutes and designates the Agent as and for the Borrower's attorney in fact, effective following the occurrence of any Event of Default:
 - i. To exercise any of the rights and powers referenced in Sections 2 and 4.b.
 - ii. To execute all such instruments, documents, and papers as the Agent determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Marks.

- b. The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Agent.
- c. The Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section a herein, but if the Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to the Borrower for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Agent has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

9. **Agent's Rights:**

- a. Any use by the Agent of the Marks, as authorized hereunder in connection with the exercise of the Agent' rights and remedies under this Agreement 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.
- b. None of this Agreement, the Loan Agreement, or any act, omission, or circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the Agent any rights in and to the Marks, which rights are effective except following the occurrence and during the continuance of any Event of Default.

10. **Intent:** It is intended that this Agreement supplement the Loan Agreement. All provisions of the Loan Agreement shall apply to the Marks. The Agent shall have the same rights, remedies, powers, privileges and discretions, with respect to the security interests created in the TM Collateral as in all other Collateral. In the event of a conflict between this Agreement and the Loan Agreement, the terms of this Agreement shall control with respect to the TM Collateral and the Loan Agreement with respect to all other Collateral.

11. **Choice of Laws:** It is intended that this Agreement take effect as a sealed instrument and that all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the laws of The Commonwealth of Massachusetts.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Borrower and the Agent respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

FLEET RETAIL GROUP INC. (The "Agent")

By Francis D. Garvin
Name: Francis D. Garvin
Title: Vice President

JBS LIQUIDATORS LLC (The "Borrower")

By: Odd Job Stores, Inc.,
their sole member

By _____
Name: Moshael Straus
Title: Co-Chief Executive Officer


IN WITNESS WHEREOF, the Borrower and the Agent respectively have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

FLEET RETAIL GROUP INC. (The "Agent")

By, _____
Name: Francis D. Garvin
Title: Vice President

JBS LIQUIDATORS LLC (The "Borrower")

By: Odd Job Stores, Inc.,
their sole member

By,  _____
Name: Moshael Straus
Title: Co-Chief Executive Officer

The Commonwealth Of Massachusetts

Suffolk County

Then personally appeared before me Francis D. Garvin, who acknowledged that such person is the duly authorized Managing Director of Fleet Retail Finance Inc. and that such person executed the foregoing instrument on its behalf.

Witness my hand and seal this 7th day of June, 2004

Carla Strange
CARLA STRANGE Notary Public

My Commission Expires: 1/3/08

The 03 of June, 2004

County of Middlesex, ss

Then personally appeared before me Moshael Straus who acknowledged that such person is the duly authorized Managing Member of **JBS LIQUIDATORS LLC** and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 03 day of June, 2004

PATRICK J. [unclear]
NOTARY PUBLIC STATE OF N.J.
COMMISSION EXPIRES MAY 24, 2009
COMMISSION NO 2100168

Patrick J. [unclear]
N.J., Notary Public

My Commission Expires: 05/24/2009

EXHIBIT A

Borrower's now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks, and Federal trade mark applications:

Trademark/Service Mark Registrations

<u>TRADEMARK</u>	<u>REGISTRATION NUMBER</u>	<u>REGISTRATION DATE</u>
Amazing Savings	2,354,959	June 6, 2000

Trademark Applications

<u>MARK</u>	<u>SERIAL NUMBER</u>	<u>FILING DATE</u>
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None