

07-16-2004

COVER SHEET  
ONLYU.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

7-16-04

Tab settings → → →

102792558

To the Honorable Commissioner of Patents and Trademarks

Send the attached original documents or copy thereof.

## 1. Name of conveying party(ies):

FOURTH PHASE LTD.  
2480 Tedlo Street  
Mississauga, Ontario  
Canada L5A 3V3

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☒ Corporation-State: Nova Scotia  
☐ Other

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

## 3. Nature of conveyances:

- ☐ Assignment ☐ Merger  
☒ Security Agreement ☐ Change of Name  
☐ Other

Execution Date: July 8, 2004

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

## A. Trademark Application.(s)

SEE ATTACHED SCHEDULE A

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

Name: GMAC Commercial Finance LLC

Internal Address:

Street Address: 1290 Avenue of the Americas, 3<sup>rd</sup> Floor

City: New York State: NY ZIP: 10104

- ☐ Individual(s) citizenship  
☐ Association  
☐ General Partnership  
☐ Limited Partnership  
☐ Corporation-State  
☒ Other Limited Liability Company

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

## B. Trademark registration No.(s)

SEE ATTACHED SCHEDULE A

Additional numbers attached? ☒ Yes ☐ No

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

Name: Hahn &amp; Hessen LLP

Internal Address:

Street Address: 488 Madison Avenue, 14<sup>th</sup> Floor

City: New York State: NY ZIP: 10022

## 6. Total number of applications and registrations involved:

5

7. Total fee (37 CFR 3.41): \$ 140.00

- ☐ Enclosed  
☐ Authorized to be charged to deposit account

## 8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

## 9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document

Stuart S. Cowitt

Name of Person Signing

Signature

July 14, 2004

Date

07/16/2004 DBYRNE 00000131 2206367

Total number of pages including coversheet, attachments and document: 5

01 FC:8521  
02 FC:852240.00 OP  
100.00 OPMail documents to be recorded with required coversheet information to:  
Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

2722605-5

TRADEMARK  
REEL: 003008 FRAME: 0032

SCHEDULE A

Schedule A to a Trademark Grant of Security dated July 8, 2004, by and between FOURTH PHASE LTD. and GMAC COMMERCIAL FINANCE LLC, as Agent.

<u>REGISTRATION NO. OR APPLICATION NO.</u>	<u>REGISTRATION OR FILING DATE</u>	<u>MARK</u>
2,206,367	12/1/98	Sun and Wave Design Mark
1,885,332	5/23/1998	Obie
1,900,911	6/20/1995	Obie's
1,997,035	8/27/96	Xescan
1,986,581	7/16/98	The Obie Company and Design

## TRADEMARK GRANT OF SECURITY

WHEREAS, FOURTH PHASE LTD., a company organized under the laws of Nova Scotia, located at 2480 Tedlo Street, Mississauga, Ontario, Canada L5A 3V3 ("Borrower"), has adopted, used and is using the marks shown in the attached Schedule A (the "Marks"), for which there are registrations or applications in the United States Patent and Trademark Office under the numbers shown in the attached Schedule A; and

WHEREAS, Borrower is obligated to GMAC COMMERCIAL FINANCE LLC ("GMAC CF"), and various other financial institutions (collectively, "Lenders") and GMAC CF as agent for Lenders ("Agent") pursuant to (i) a certain Amended and Restated Loan and Security Agreement, dated the date hereof, among Agent, Lenders, Borrower and the other credit parties named therein and (ii) a certain Intellectual Property Security Agreement, dated February 20, 2001, made by Borrower in favor of Agent (as each may be amended, modified, restated or supplemented from time to time, collectively, the "Agreements"); and

WHEREAS, pursuant to the Agreements, Borrower is granting to Agent for its benefit and for the ratable benefit of Lenders a security interest in the Marks, the goodwill of the business symbolized by the Marks, and the registrations and applications therefor.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Borrower does hereby grant unto Agent for its benefit and for the ratable benefit of Lenders and grant to Agent for its benefit and for the ratable benefit of Lenders a security interest in and to the Marks, together with the goodwill of the business symbolized by the Marks, and registrations and applications therefor, which grant and security interest shall secure all the Obligations as defined in the Agreements and in accordance with the terms and provisions thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]


Borrower expressly acknowledges and affirms that the rights and remedies of Agent and Lenders with respect to the grant and security interest granted hereby are more fully set forth in the Agreements.

Dated: New York, New York  
July 8, 2004

Witness:



FOURTH PHASE LTD.

By: 

Name: Robert Manners

Its: Vice President and Secretary

Witness:



GMAC COMMERCIAL FINANCE LLC, as Agent

By: 

Name: Gregg Wise

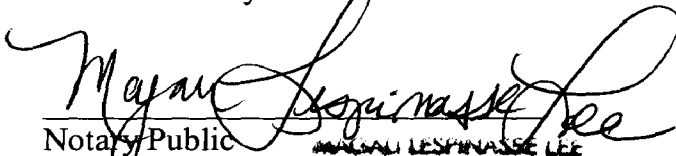
Its: Managing Director

STATE OF NEW YORK )

: SS.:

COUNTY OF NEW YORK )

On this 14<sup>th</sup> day of July, 2004, before me personally came Robert Manners, to me known, who, being by me duly sworn, did depose and say that he is the Vice President and Secretary of FOURTH PHASE LTD., the company described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said company.

  
Notary Public  
ANGELA LESPINASSE LEE  
Notary Public, State of New York  
No. 01LB069014  
Qualified in New York County  
Commission Expires January 22, 2006

STATE OF NEW YORK )

: SS.:

COUNTY OF NEW YORK )

On this \_\_\_\_ day of July, 2004, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say that s/he is the \_\_\_\_\_ of GMAC COMMERCIAL FINANCE LLC, the company described in and which executed the foregoing instrument; and that s/he was authorized to sign her/his name thereto on behalf of said company.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

On this \_\_\_\_ day of July, 2004, before me personally came Robert Manners, to me known, who, being by me duly sworn, did depose and say that he is the Vice President and Secretary of FOURTH PHASE LTD., the company described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said company.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

On this 7<sup>th</sup> day of July, 2004, before me personally came Gregg Wise, to me known, who, being by me duly sworn, did depose and say that he is the Managing Director of GMAC COMMERCIAL FINANCE LLC, the limited liability company described in and which executed the foregoing instrument; and that he was authorized to sign his name thereto on behalf of said limited liability company.

  
\_\_\_\_\_  
Notary Public

RODNEY ZAGURY  
Notary Public, State of New York  
01211131 4833352  
Qualified in New York County  
Commission Expires September 30, 2005