

12-30-2004
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RECO
TRADEMARK

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

12.15.04

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

XM International, Inc.

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

Citizenship (see guidelines) New Jersey

Execution Date(s) 12/10/2004

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

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

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Sovereign Bank

Internal

Address: Sixth Floor

Street Address: 101 Wood Avenue South

City: Iselin

State: New Jersey

Country: U.S.A. Zip: 08830

- Association
- General Partnership
- Limited Partnership
- Corporation

Other Federal Savings Citizenship United States

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.

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 76550828; 76550831; 76550837; 76550835; 76550833; 76550832;

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

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

Name: John N. Malyska, Esq.

Internal Address: Suite 2500

Meyner and Landis LLP

Street Address: One Gateway Center

City: Newark

State: New Jersey Zip: 07102

Phone Number: (973) 624-2800

Fax Number: (973) 624 0356

Email Address: jmalyska@meyner.com

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____
Authorized User Name _____

9. Signature:

Signature

Date

Name of Person Signing

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

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

12/29/2004 METACHE 00000127 76550808

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125.00 DP

TRADEMARK AND TRADENAME SECURITY AGREEMENT

THIS TRADEMARK AND TRADENAME SECURITY AGREEMENT (the "Agreement") is made this 10th day of December, 2004, by and between

X M INTERNATIONAL, INC., a corporation organized and existing under the laws of the State of New Jersey with its principal place of business at 30 Murray Hill Parkway, Suite 200, East Rutherford, Bergen County, New Jersey 07073 (hereinafter referred to as "**Borrower**")

and

SOVEREIGN BANK, a federal savings bank organized under the laws of the United States with offices at 101 Wood Avenue South, Sixth Floor, Iselin, New Jersey 08830 (together with its affiliates and subsidiaries, and all successors and assigns thereof hereinafter collectively referred to as "**Lender**")

WITNESSES THAT:

(1) **WHEREAS**, contemporaneously herewith, the Lender is extending certain loan and letter of credit facilities to the Borrower (such loan and letter of credit facilities, together with all extensions, modifications, amendments and renewals thereof, collectively and individually referred to as the "**Loans**") pursuant to the terms and conditions of a certain Loan and Security Agreement of even date herewith by and between the Lender and the Borrower (such Loan and Security Agreement, together with all extensions, modifications, amendments and renewals thereof, the "**Loan Agreement**"), the Loan Agreement and any and all other documents (including any notes), instruments, writings and agreements related thereto, together with all extensions, modifications, amendments and renewals thereof, collectively and individually the "**Loan Documents**"; and

(2) **WHEREAS**, it is a condition of the Lender's obligation to extend or cause the extension of the Loans that the Borrower execute and deliver to the Lender this Agreement;

(3) **WHEREAS**, to induce the Lender to enter into the Loan Documents, the Borrower is willing to execute and deliver this Agreement to the Lender and to perform the Borrower's obligations hereunder;

NOW, THEREFORE, on consideration of the foregoing, the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender hereby agree as follows:

Definitions. As used herein, the following terms shall have the following meanings:

- 1.1 “**Agreement**” means this Trademark and Tradename Security Agreement, and any and all schedules and exhibits annexed hereto, together with all extensions, modifications, amendments and renewals hereof.
- 1.2 “**Collateral**” means each and all of the following collectively and individually:
- (1) each of the Trademarks and the goodwill of the business symbolized by each of the Trademarks;
 - (2) each of the Licenses;
 - (3) all accounts, contract rights and general intangibles of the Borrower arising under or relating to the Licenses, whether now existing or hereafter arising, including, without limitation, (a) all moneys due and to become due under any License, (b) any damages arising out of or for breach or default in respect of any such License, (c) all other amounts from time to time paid or payable under or in connection with any such License, and (d) the right of the Borrower to terminate any such License or to perform and to exercise all remedies thereunder;
 - (4) any claims by the Borrower 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
 - (5) as to all of the foregoing (1) through (4) 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 Borrower.
- 1.3 “**Events of Default**” means any one or more of the events set forth in **Section 5** of this Agreement.
- 1.4 “**Licenses**” means, collectively and individually, any and all Trademark license agreements granted by the Borrower 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.
- 1.5 (1) “**Obligations**” means each and all of the following collectively and individually:

- (1) principal due on the Revolving Loan and the Revolving Note (including all advances and re-advances under the Revolving Loan and the Revolving Note) to be paid with interest thereon as required by the Loan Agreement and the Revolving Note;
- (2) advances and re-advances which are and which may be made from time to time by the Lender to the Borrower not in compliance with the Lending Formula or the “**loan value**” requirements of **Article II** of the Loan Agreement;
- (3) advances and re-advances which are and which may be made from time to time by the Lender or any Lender’s Affiliate, on behalf of or for the account of the Borrower over and above any monetary limitation on the Revolving Loan and over and above any other lending limitation contained in the Loan Agreement, and the interest thereon;
- (4) all amounts which Lender or any Lender’s Affiliate has actually advanced or is contingently liable to advance on account of Letters of Credit; and/or in the event that Lender is not itself the issuer of any Letter of Credit, all amounts which Lender actually advances or is contingently liable to advance to any such issuer (including without limitation any Lender’s Affiliate on account of the Letters of Credit;
- (5) the Letter of Credit Obligations;
- (6) any and all other advances and re-advances made by the Lender prior to, on and after the date of this Agreement to, or on the account of, the Borrower;
- (7) any and all interest, commissions, checking account overdrafts, bank overdrafts, and other obligations, liabilities and indebtedness owed by the Borrower to the Lender or to any Lender’s Affiliate (whether direct or indirect, primary, secondary, contingent, joint or several, and regardless of how acquired by the Lender or any such Lender’s Affiliate) which are due or which will arise or become due in the future, no matter how or when arising and whether under any now existing or future agreement or instrument of whatever nature (a) between the Borrower and the Lender or (b) between the Borrower and any Lender’s Affiliate or (c) otherwise;

- (8) the performance and fulfillment by the Borrower of all the terms, conditions, promises, covenants and provisions contained in the Loan Agreement, or in any now existing agreement or future agreement or instrument of whatever nature (a) between the Borrower and the Lender or (b) between the Borrower and any Lender's Affiliate or (c) otherwise;
 - (9) The Borrower's obligation to indemnify the Lender from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever which the Lender may incur (or which may be claimed against the Lender by any person or entity whatsoever including any Lender's Affiliate) by reason of or in connection with the execution and delivery or transfer of, or payment or failure to pay under the Revolving Loan and the Letter of Credit Obligations; and
 - (10) the amount due upon any notes or other obligations given to, or received by, the Lender or any Lender's Affiliate on account of any of the foregoing;
 - (11) the Liabilities defined in the Loan Agreement.
- (2) For purposes of the foregoing, the following terms shall have the following meanings:
- (1) The term "**Lender's Affiliate**" shall have the meaning given that term in the Loan Agreement and shall include any entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Lender (or any successor thereto).
 - (2) The term "**Lending Formula**" shall have the meaning given that term in the Loan Agreement.
 - (3) The term "**Letter of Credit Obligations**" shall have the meaning given that term in the Loan Agreement.
 - (4) The term "**Letters of Credit**" shall have the meaning given that term in the Loan Agreement.
 - (5) The term "**Liabilities**" shall have the meaning given that term in the Loan Agreement.

- (6) The term “**loan value**” shall have the meaning given that term in the Loan Agreement.
- (7) The terms “**Revolving Loan**” and “**Revolving Note**” shall have the meanings given those terms in the Loan Agreement and shall include all extensions, modifications (including modifications which may increase the amount of the Revolving Loan and the Revolving Note), amendments and renewals thereof.

1.6 “**Trademarks**” means, collectively and individually, each and all of the following:

- (1) 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, and all registrations and recordings thereof, including, without limitation, applications, 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 licensed by the Borrower, including, but not limited to, those listed on **Schedule A** annexed hereto and made a part hereof; and
- (2) trademarks, trade names, trade dress and service marks, whether now or hereafter owned by the Borrower which has not or is not required to be registered or recorded in any jurisdiction; and
- (3) reissues, extensions or renewals thereof and all licenses thereof (including, without limitation, all license agreements).

2. Security Interest.

2.1 The Borrower, to secure payment and performance of all Obligations of the Borrower to the Lender, hereby grants the Lender a security interest in, all of the Borrower’s right, title and interest in and to all of the Collateral, and such security interest shall be deemed to include the right (but not the obligation) to sue or recover in the name of the Borrower for all damages or profits arising out of past infringement and/or infringement that may arise during the period that this Agreement shall be in force between the parties, on any of the Collateral, or for injury to said goodwill, or acts of unfair competition either under Federal or State Law. The security interest granted herein shall remain in full force and effect until all of the Obligations of the Borrower to the Lender are fully paid and satisfied.

2.2 The security interest granted pursuant to this Agreement shall create a continuing security interest in the Collateral which shall (a) remain in full force and effect until payment in full

in cash or in another manner acceptable to Lender and termination of the Obligations of the Borrower to the Lender, (b) be binding upon and inure to the benefit of, and be enforceable by, the Borrower, its successors and assigns, and (c) be binding upon and inure to the benefit of, and be enforceable by, the Lender and its successors, transferees and assigns.

2.3 Upon the payment in full in cash or in another manner acceptable to Lender and termination of the Obligations of the Borrower to the Lender then outstanding, this Agreement shall terminate and all rights granted as security in the Collateral to the Lender shall revert to the Borrower. Upon any such termination, the Lender will, at Borrower's expense, execute and deliver to the Borrower such documents as the Borrower shall reasonably request to evidence such termination.

3. **Representations, Warranties and Covenants of the Borrower.** The Borrower hereby represents, warrants, covenants and agrees as follows:

3.1 **Title to the Trademarks.** To the best of Borrower's information, knowledge and belief, the Borrower has sole, exclusive, full, clear and unencumbered right, title and interest in and to the Trademarks and the registrations of the Trademarks are valid and subsisting and in full force and effect. The Trademarks have not been abandoned, suspended, voluntarily terminated or cancelled by the Borrower and, to the best of the Borrower's knowledge, have not been adjudged invalid or unenforceable.

3.2 **Use of the Trademarks.** Except to the extent that (a) the Lender, upon prior written notice by the Borrower, shall consent, or (b) the Borrower determines in its reasonable business judgment that a Trademark of the Borrower has negligible economic value and such Trademark is no longer utilized in the ordinary course of the Borrower's business, the Borrower (either itself or through licensees) has used and will continue to use the Trademarks on each and every trademark class of goods applicable to its current line as reflected in its current catalogs, brochures and price lists in order to maintain the Trademarks in full force free from any claim of abandonment for non-use and the Borrower will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any of the Trademarks may become invalidated, abandoned, unenforceable, avoided, avoidable or otherwise diminished in value, and shall notify the Lender immediately if it knows of any reason or has reason to know of any ground under which any of the foregoing may occur.

3.3 **License or Assignment of Trademarks.** The Borrower shall not license or assign any of the Trademarks to any party without the prior written consent of the Lender.

3.4 **Existing Patents.** The Borrower, as of the date hereof, owns no patents or patent applications, nor is the Borrower a party to any license agreement granting any right to use or practice any invention on which a patent is in existence. In the event any patent is developed or otherwise acquired by the Borrower, the Borrower shall grant to the Lender a security interest in all of the Borrower's right, title and interest in and to the patents, pursuant to a security agreement in

form and substance similar to this Agreement and will execute any agreements, instruments, documents and papers as the Lender may reasonably request to evidence the Lender's interest in such patent and the goodwill and general intangibles of the Borrower relating thereto or represented thereby.

3.5 **Further Assurances.** The Borrower will perform all acts and execute all further instruments and documents, including, without limitation, assignments for security in form suitable for filing with the United States Patent and Trademark Office, reasonably requested by the Lender at any time to evidence, perfect, maintain, record and enforce the Lender's interest in the Collateral or otherwise in furtherance of the provisions of this Agreement, and the Borrower hereby authorizes the Lender to execute and file (with or without the signature of the Borrower) one or more financing statements (and similar documents) or copies thereof or this Agreement with respect to the Collateral signed only by the Lender.

3.6 **Costs and Expenses.** The Borrower shall pay on demand all reasonable and necessary expenses and expenditures of the Lender, including, without limitation, reasonable attorney's fees and expenses, incurred or paid by the Lender in protecting, enforcing or exercising its interests, rights or remedies created by, connected with or provided in this Agreement, or performance pursuant to this Agreement.

3.7 **Pledge of Additional Patents and Trademarks.** In the event the Borrower, either itself or through any agent, employee, licensee or designee shall:

- (1) file an application for the registration of any patent or Trademark with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof; or
- (2) file any assignment of any patent or Trademark which the Borrower may acquire, own or license from a third party, with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof;

the Borrower shall promptly, but in no event more than thirty (30) days subsequent to such filing, notify the Lender thereof, and, upon request of the Lender shall promptly, but in no event more than twenty (20) days subsequent to such request, execute and deliver any and all agreements, instruments, documents and papers as the Lender may reasonably request to evidence the Lender's security interest in such patent or Trademark and the good will and general intangibles of the Borrower relating thereto or represented thereby. The Borrower hereby grants the Lender a power of attorney, irrevocable until the Obligations of the Borrower to the Lender are fully paid and satisfied, to modify this Agreement by amending **Schedule A** and **Schedule B**, as applicable, to include any future Trademarks or Licenses, including, without limitation, registrations or applications appurtenant thereto.

3.8 **Borrower's Authority, Etc.** The Borrower has the right and power to mortgage and pledge the Collateral, and to grant the security interest in the Collateral herein granted; and the Collateral is not now, and at all times hereafter will not be subject to any liens (other than Permitted Liens allowed by the Loan Agreement), licenses (other than as permitted under Section 3.3 of this Agreement), pledges, assignments, registered license agreements, covenants not to use by the Borrower or other encumbrance of any nature whatsoever, and the Borrower has not received any notice from any third party claiming any right or interest in and to any of the Collateral or that the Borrower's use thereof infringes the rights of any third party.

3.9 **Negative Pledge.** Except as may be expressly allowed by the Loan Agreement, the Borrower will not, without the prior written consent of the Lender, assign (by operation of law or otherwise), sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest or lien upon, grant an exclusive or non-exclusive license upon (other than those existing Licenses, if any, listed on **Schedule B** annexed hereto and made a part hereof), or otherwise encumber, grant rights to any other person upon or dispose of any of the Collateral, and nothing in this Agreement shall be deemed a consent by the Lender to any such action except as expressly permitted herein. The Borrower shall defend the Collateral against and shall take such other action as is necessary to remove any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Collateral, and will defend the right, title and interest of the Lender in and to any of the Borrower's rights under the Collateral against the claims or demands of all persons whomsoever.

3.10 **No Additional Trademarks.** As of the date hereof, the Borrower 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 **Schedule A** annexed hereto and made a part hereof.

3.11 **Additional Further Assurances.** The Borrower will take all necessary steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country, or any political subdivision thereof (i) to maintain each registration and grant of the Trademarks and Licenses, and (ii) in accordance with its reasonable business judgment and at its expense, to halt any infringement of the Trademarks and shall properly exercise its duty to control the nature and quality of the goods offered by any licensees in connection with the Licenses.

3.12 **Responsibility and Liability.** The Borrower 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 Borrower in connection with any of the Trademarks or otherwise arising out of the Borrower'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 Borrower 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 any other agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from the Borrower, and all such obligations of the Borrower shall be and remain enforceable against and only against the Borrower and shall not be enforceable against the Lender.

3.13 **Lender's Rights.** The Lender may, in its sole discretion, pay any amount or do any act required of the Borrower hereunder or reasonably requested by the Lender to preserve, defend, protect, maintain, record or enforce the Borrower's obligations contained herein, the Obligations of the Borrower to the Lender, the Collateral, or the right, title and interest granted the Lender herein, and which the Borrower fails to do or pay, and any such payment shall be deemed an advance by the Lender to the Borrower and shall be payable on demand together with interest thereon at the default rate as specified in the Loan Agreement.

3.14 **Protection of the Trademarks.** The Borrower 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 (other than Permitted Liens allowed by the Loan Agreement), the Borrower 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 Borrower'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 Borrower from bringing an action against a person for the protection of the Borrower's interest in and to such Trademarks.

4. **Lender's Appointment as Attorney-in-Fact.**

4.1 The Borrower 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 irrevocable power and authority in the place and stead of the Borrower and in the name of the Borrower or its own name, from time to time in the Lender's discretion, for the purposes of carrying out the terms of this Agreement, 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 Agreement and, without limiting the generality of the foregoing, hereby gives the Lender the power and right, on behalf of the Borrower, to do the following:

- (1) to pay or discharge taxes, liens, security interests or other encumbrances levied or placed on or threatened against the Collateral, to effect any repairs or any insurance called for by the terms of this Agreement or the Loan Agreement and to pay all or any part of the premiums therefor and the costs thereof;
- (2) upon the occurrence and during the continuance of an Event of Default:

- (1) to ask, demand, collect, receive and give acquittances and receipts for any and all moneys due and to become due under any Licenses and, in the name of the Borrower or in its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any License and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Lender for the purpose of collecting any and all such moneys due under any License whatsoever;
- (2) to direct any party liable for any payment under any of the Licenses to make payment of any and all moneys due and to become due thereunder directly to the Lender or as the Lender shall direct;
- (3) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral;
- (4) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction, to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral;
- (5) to defend any suit, action or proceeding brought against the Borrower with respect to any Collateral;
- (6) to settle, compromise, or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as the Lender may deem appropriate;
- (7) generally, to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner thereof for all purposes, and to do, at the Lender's option, all acts and things which the Lender deems necessary to protect, preserve or realize upon the Collateral and the Lender's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as the Borrower might do.

4.2 This power of attorney is a power coupled with an interest and shall be irrevocable. Notwithstanding the foregoing, the Borrower further agrees to execute any additional documents

which the Lender may require in order to confirm this power of attorney, or which the Lender may deem necessary to enforce any of its rights contained in this Agreement.

4.3 The powers conferred on the Lender hereunder are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon the Lender to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither the Lender nor any of its officers, directors, employees or agents shall be responsible to the Borrower for any act or failure to act, except for the Lender's own gross negligence or willful misconduct.

4.4 The Borrower also authorizes the Lender to execute, in connection with any sale provided for in this Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

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

5.1 the occurrence of any Event of Default under the Loan Agreement;

5.2 a breach by the Borrower of any covenant contained in this Agreement which, if capable of being cured, is not cured within 30 days after the Borrower receives notice to do so;

5.3 if any warranty or representation contained in this Agreement, including, without limitation, the warranties and representations contained in Section 3 of this Agreement, 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):

6.1 The Lender shall have all of the rights and remedies set forth in the Loan Agreement.

6.2 Immediately upon the Lender's written request, the Borrower shall not make any further use of the Trademarks or any mark similar thereto for any purposes.

6.3 The Lender may, at any time and from time to time, license, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any of the Trademarks, throughout the world for such term or terms, on such conditions, and in such manner, as the Lender shall in its sole discretion determine.

6.4 The Lender may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of the Borrower in, to and under any one or more license agreements with

respect to the Collateral, including, without limitation the Licenses, and take or refrain from taking any action under any license or sublicensee thereof, and the Borrower hereby releases the Lender from, and agrees to hold the Lender free and harmless from and against, any claims arising out of any action taken or omitted to be taken with respect to any such license agreements.

6.5 The Lender may foreclose upon the Collateral for the purpose of using, assigning, selling or otherwise disposing of the Collateral or any of it, either with or without special or other conditions or stipulations, and record any documents with the United States Patent and Trademark Office necessary to evidence the Lender's ownership in the Collateral.

6.6 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.

6.7 Whether or not the Lender forecloses upon the Collateral in accordance with this Agreement, the Lender may, at any time and from time to time, assign, sell, or otherwise dispose of, the Collateral or any of it either with or without special or other conditions or stipulations, with power to buy the Collateral or any part of it, and with power also to execute assurances, and do all other acts and things for completing the assignment, sale or disposition which the Lender shall, in its sole discretion, deem appropriate or proper.

6.8 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 Power of Attorney in the form of **Schedule C** annexed hereto and made a part hereof (such authority being effective on the occurrence and during the continuance of an Event of Default), execute and deliver on behalf of the Borrower, 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 Borrower 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 Borrower to the Lender. The Lender may apply the proceeds actually received from any such license, assignment, sale or other disposition to the payment of the Obligations of the Borrower to the Lender as provided for in the Loan Agreement. The Borrower shall remain liable for any deficiency with respect to the Obligations of the Borrower to the Lender, which shall bear interest and be payable at the Default Rate under the Loan Agreement. The rights of the Borrower 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.

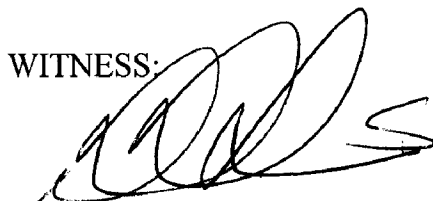
7. **Execution of Special Power of Attorney.** Concurrently with the execution and delivery of this Agreement, the Borrower is executing and delivering to the Lender a certain Power of Attorney, in the form of **Schedule C** annexed hereto and made a part hereof, for the implementation of the sale, assignment, licensing or other disposition of the Collateral pursuant to this Agreement.

8. **Amendments and Modification.** No provision hereof shall be modified, altered, waived or limited except by a written instrument expressly referring to this Agreement and executed by the party to be charged.
9. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of the successors, assigns or other legal representatives of the Borrower, and shall, together with the rights and remedies of the Lender hereunder, be binding upon and inure to the benefit of the Lender, successors, assigns or other legal representatives.
10. **GOVERNING LAW.** THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.
11. **Notices.** All notices, requests, demands and other communications provide 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 Loan Agreement.
12. **Counterparts.** This Agreement 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 Agreement for any other purpose.
14. **Acknowledgment of Receipt.** The Borrower acknowledges receipt of a copy of this Agreement.
15. **No Waiver.** No course of dealing between the Borrower 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 Agreement shall contravene or be held invalid under the laws of any jurisdiction, this Agreement 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 Agreement in any jurisdiction.
17. **Interest Granted to Lender.** Notwithstanding any provision of this Agreement to the contrary, the interest granted to the Lender under this Agreement is intended to be a pledge and a security interest only, and the execution of this Agreement 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 LENDER AND THE BORROWER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY CLAIM BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR THEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR THE LENDER TO ENTER INTO THIS AGREEMENT WITH THE BORROWER AND TO ADVANCE AND TO CONTINUE TO ADVANCE MONEY TO THE BORROWER UNDER LENDER'S AGREEMENTS WITH THE BORROWER. THE BORROWER 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 AGREEMENT.

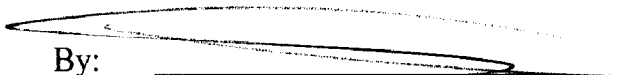
IN WITNESS WHEREOF, the Borrower and the Lender have caused this Agreement to be duly executed as of the day and year first above written.

WITNESS:




Nicholas San Filippo, Esq.

X M INTERNATIONAL, INC.

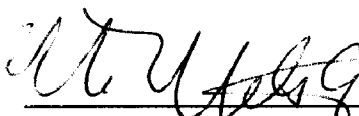
By: 

Jane Dong, President *12/10/04*



John N. Malyska, Esq.

SOVEREIGN BANK

By: 

Mark Metsky, Vice President


ACKNOWLEDGMENT

STATE OF NEW JERSEY)
) SS.:
COUNTY OF ESSEX)

I certify that on December 10, 2004, **JANE DONG**, personally came before me and this person acknowledged under oath, to my satisfaction, that:

(1) this person signed and delivered this document as the President of **XM INTERNATIONAL, INC.**, the corporation and Borrower named in this document; and

(2) this document was signed and delivered by her as and for her voluntary act and deed and as and for the voluntary act and deed of the aforesaid **XM INTERNATIONAL, INC.**, by a proper resolution of its Board of Directors.



Nicholas San Filippo, Esq.
An attorney at Law of the State of New Jersey

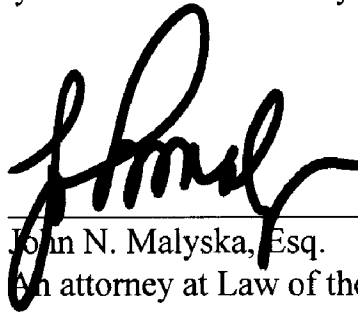
ACKNOWLEDGMENT

STATE OF NEW JERSEY)
) **SS.:**
COUNTY OF ESSEX)

I certify that on December 10, 2004, **MARK METSKY** personally came before me and this person acknowledged under oath, to my satisfaction, that:

(1) this person signed and delivered this document as a Vice President of **SOVEREIGN BANK**, the Lender named in this document; and

(2) this document was signed and delivered by said Vice President as and for his voluntary act and deed and as and for the voluntary act of the Lender duly authorized by a proper resolution of its Board of Directors.



John N. Malyska, Esq.
An attorney at Law of the State of New Jersey

SCHEDULE A**TRADEMARKS****XM INTERNATIONAL, INC.'S TRADEMARK PORTFOLIO**

Serial or Registration No.	Type of Mark	Filing Date	Status	Registration Date
Serial No. 76550828	Design & Word	10/10/03	Approved for publication on 12/06/04; awaiting opposition period; no liens	
Serial No. 76550837	Design Only	10/10/03	Non-final office action mailed 11/22/04; no determination made as to registrability yet; no liens	
Serial No. 76550835	Design Only	10/10/03	Non-final office action mailed 11/22/04; no determination made as to registrability yet; no liens	
Serial No. 76550833	Design & Words	10/10/03	A final office action refusing registration mailed on 11/15/04; applicant may respond; no liens	
Serial No. 76550832	Design & Words	10/10/03	A final office action refusing registration mailed on 11/15/04; applicant may respond; no liens	
Serial No. 76550831	Design & Words	10/10/03	A final office action refusing registration mailed on 11/15/04; applicant may respond; no liens	
Serial No. 76550830	Design & Words	10/10/03	A final office action refusing registration mailed on 11/15/04; applicant may respond; no liens	

Serial No. 76550829	Design & Words	10/10/03	A final office action refusing registration mailed on 11/15/04; applicant may respond; no liens	
Serial No. 76550839	Design Only	10/10/03	Non-final office action mailed on 4/20/04 requesting more information; no determination made as to registrability yet; no liens	
Serial No. 76550836	Design Only	10/10/03	Non-final office action mailed on 4/20/04 requesting more information; no determination made as to registrability yet; no liens	
Serial No. 76550834	Design Only	10/10/03	Non-final office action mailed on 4/20/04 requesting more information; no determination made as to registrability yet; no liens	
Serial No. 76550838	Design Only	10/10/03	Non-final office action mailed on 11/22/04 requesting more information; no determination made as to registrability yet; no liens	
Registration No. 2584775	11/15/00		Registered on Principal Register; no liens	6/25/02
Registration No. 2577806	11/15/00		Registered on Principal Register; no liens	6/11/02

SCHEDULE B

Licenses

NONE

SCHEDULE C

Special Power of Attorney

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that **X M INTERNATIONAL, INC.**, a corporation organized and existing under the laws of the State of New Jersey with its principal place of business at 30 Murray Hill Parkway, Suite 200, East Rutherford, Bergen County, New Jersey 07073 (hereinafter referred to as "**Borrower**"), pursuant to a certain Trademark and Tradename Security Agreement of even date herewith (the "**Security Agreement**"), hereby appoints and constitutes **SOVEREIGN BANK**, a federal savings bank organized under the laws of the United States with offices at 101 Wood Avenue South, Sixth Floor, Iselin, New Jersey 08830 (together with its affiliates and subsidiaries, and all successors and assigns thereof hereinafter collectively referred to as "**Lender**"), 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 Borrower, in accordance with the terms and provisions of the Security Agreement:

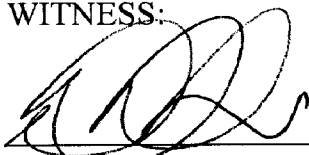
1. Assigning, selling or otherwise disposing of all right, title and interest of the Borrower in and to the Trademarks listed on Schedule A annexed to the Security Agreement, and including those trademarks and patents which may be added to the same subsequent to the date of this Special Power of Attorney, and all registrations and recordings thereof, and all pending applications therefor, 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 Security Agreement; 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 Security Agreement and may not be revoked until the Obligations, as such term is defined in the Security Agreement, of the Borrower to the Lender are fully paid and satisfied.

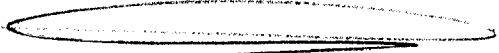
IN WITNESS WHEREOF, Borrower has executed and delivered this Special Power of Attorney this 10th day of December 2004.

WITNESS:



Nicholas San Filippo, Esq.

X M INTERNATIONAL, INC.

By: 

Jane Dong, President

12/10/04

ACKNOWLEDGMENT

STATE OF NEW JERSEY)
) **SS.:**
COUNTY OF ESSEX)

I certify that on December 10, 2004, **JANE DONG**, personally came before me and this person acknowledged under oath, to my satisfaction, that:

(1) this person signed and delivered this document as the President of **XM INTERNATIONAL, INC.**, the corporation and Borrower named in this document; and

(2) this document was signed and delivered by her as and for her voluntary act and deed and as and for the voluntary act and deed of the aforesaid **XM INTERNATIONAL, INC.**, by a proper resolution of its Board of Directors.



Nicholas SanFilippo, Esq.
An attorney at Law of the State of New Jersey