

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM389680

<b>SUBMISSION TYPE:</b>	RESUBMISSION		
<b>NATURE OF CONVEYANCE:</b>	Foreclosure and Sale Agreement		
<b>RESUBMIT DOCUMENT ID:</b>	900347702		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Siena Funding LLC		11/19/2014	LIMITED LIABILITY COMPANY:
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	SCN Products LLC		
<b>Street Address:</b>	245 Saw Mill Road		
<b>Internal Address:</b>	Suite 106		
<b>City:</b>	Hawthorne		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	10532		
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: DELAWARE		
<b>PROPERTY NUMBERS Total: 3</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4526603	COMFORTCORE	
<b>Registration Number:</b>	3654284	IHEATER	
<b>Registration Number:</b>	4414549	SITNCYCLE	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	9197814865		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	9197814000		
<b>Email:</b>	ip@wyrick.com		
<b>Correspondent Name:</b>	Devon E. White		
<b>Address Line 1:</b>	4101 Lake Boone Trail		
<b>Address Line 2:</b>	Suite 300		
<b>Address Line 4:</b>	Raleigh, NORTH CAROLINA 27607		
<b>ATTORNEY DOCKET NUMBER:</b>	26441.004		
<b>NAME OF SUBMITTER:</b>	DEVON E. WHITE		
<b>SIGNATURE:</b>	/DEW/		
<b>DATE SIGNED:</b>	06/29/2016		

**Total Attachments: 14**

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**FORECLOSURE AND SALE AGREEMENT**

This FORECLOSURE AND SALE AGREEMENT (the "Agreement") is entered into as of November 19, 2014, between SCN Products LLC, a Delaware limited liability company ("Buyer") and Siena Funding LLC, a Delaware limited liability company ("Lender").

**RECITALS**

A. Pursuant to that certain Loan and Security Agreement dated as of September 23, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), among Siena Lending Group LLC, as lender, Smooth Fitness, LLC ("Smooth Fitness") and iHeater, LLC ("iHeater"), and together with Smooth Fitness, collectively, the "Borrowers" and each individually a "Borrower"), as well as certain other documents, instruments and agreements executed by Borrowers and their affiliates, pursuant to the Loan Agreement or in connection therewith (together with the Loan Agreement, collectively, the "Loan Documents"), Siena Lending Group LLC made loans and other financial accommodations to or for the benefit of the Borrowers (all such loans and other financial accommodations being herein referred to collectively as the "Loans"). The Loans and all other liabilities and obligations of the Borrowers to Siena Lending Group LLC under the Loan Documents, howsoever created, arising or evidenced (collectively, the "Obligations"), are secured by a first priority, perfected lien on and security interest in substantially all of the Borrowers' assets in favor of Lender. Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement.

B. Subsequent to September 23, 2013, Siena Lending Group LLC assigned all of its right, title and interest and to the Loan Documents and Obligations to its affiliate, Lender.

C. As a result of numerous continuing defaults in respect of the Obligations under the Loan Agreement, Lender has determined that it is entitled under Sections 9-610 et seq. of the Uniform Commercial Code in effect from time to time in the State of New York (and, to the extent the character or location of any of the Encumbered Assets (as defined below) requires the application of a different state(s)'s Uniform Commercial Code, the Uniform Commercial Code in effect from time to time in such different state(s)) (the "UCC"), the Loan Documents and other applicable law to, among other things, sell and transfer to any person or entity for value all of the Borrowers' right, title and interest in and to any or all of the personal property subject to Lender's security interest (such assets are collectively referred to herein as the "Encumbered Assets") in one or more foreclosure sales.

D. Based on the foregoing, Lender desires to sell, transfer and deliver to Buyer, and Buyer desires to acquire from Lender for value in a private foreclosure sale pursuant to the UCC and on the terms and conditions hereinafter set forth, all of the Borrowers' right, title and interest in and to the Subject Assets (as hereinafter defined), which shall be surrendered by Borrowers to Buyer at the Closing (as hereinafter defined).

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, the parties hereto agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated into and form an integral part of the agreement between the parties contained in this Agreement.

2. Purchase and Sale. Subject to the terms and conditions set forth in this Agreement, in consideration of the Purchase Price (as hereinafter defined), at the Closing referred to in Section 4 hereof, pursuant to Sections 9-610 et seq. of the UCC and the Loan Documents, (i) Lender shall sell, assign and transfer to the Buyer, and the Buyer shall purchase, acquire and take assignment of, all of the Borrowers' right, title and interest in and to all of the Encumbered Assets more particularly described on Schedule 2 attached hereto (all of which assets are hereinafter referred to collectively as the "Subject Assets"), whereupon Lender's liens on, and security interests in, the Subject Assets, and all liens and security interests, will be discharged, and (ii) the Subject Assets shall be surrendered by Borrowers to Buyer free and clear of all liens and security interests.

2.1 Excluded Assets. Notwithstanding the foregoing, Lender is not selling, and the Buyer is not purchasing, any of those assets more particularly described on Schedule 2.1 hereto (such assets being referred to hereinafter as the "Excluded Assets"). Prior to the Closing Date, the Buyer may elect to exclude any of the Subject Assets from the sale hereunder, and the list of Excluded Assets in Schedule 2.1 shall be amended to include the assets Buyer elects to exclude, provided that no such exclusions shall result in any reduction of the Purchase Price (as hereinafter defined).

2.2 Compliance with Sections 9-610 et seq. It is the express intent of the parties hereto that the sale of the Subject Assets contemplated hereby be consummated pursuant to Sections 9-610 et seq. of the UCC. To the extent not waived in writing to the satisfaction of Lender and the Buyer, Lender has sent notices (the form, substance and timing of which were in compliance with all applicable provisions of the UCC) with respect to the foreclosure sale contemplated hereby to all parties entitled to such notice under the UCC, including (i) the Borrowers, (ii) any secondary obligor (as defined in the UCC), (iii) any person from whom Lender has received before the notification date (as defined in Section 9-611(a) of the UCC) an authentication notification of a claim of an interest in the Subject Assets, and (iv) any secured party or lienholder pursuant to Sections 9-611(c)(3)(B) (by compliance with Sections 9-611(e) and 9-611(c)(3)(C) of the UCC.

2.3 Limited Assumption of Obligations or Liabilities; Creditor Payments. The Buyer shall not assume or be deemed to assume any liabilities or accrued liabilities of the Borrowers, the Lender or any other person or entity except that on the Closing Date, the Buyer shall assume those liabilities specifically set forth on Schedule 2.3 hereto (collectively, the "Assumed Liabilities"). Lender shall not assume, nor shall any such party be deemed to have assumed, any liability or obligation of the Borrowers whatsoever. If the Buyer, in its sole and absolute discretion, elects to make any payment to any creditor of the Borrowers (a "Creditor

Agreement by delivering by facsimile or other electronic transmission a signature page of this Agreement signed by such party, and any such facsimile or similar electronic signature shall be treated in all respects as having the same effect as an original signature.

11.10 Survival. The representations and warranties of the parties contained in this Agreement and the Transaction Documents shall survive the Closing until thirty (30) days after the expiration of the applicable statute of limitations (including any waivers or extensions thereof) to which the underlying matter relates. The covenants and agreements contained in this Agreement and the Transaction Documents and the indemnity contained in Section 2.5 of this Agreement shall survive the Closing and remain in full force and effect until fully performed in accordance with their terms.

11.11 Schedules and Exhibits. The Schedules and Exhibits to this Agreement are an integral part hereof and are incorporated herein by reference.

11.12 Miscellaneous Definitions. For purposes of this Agreement and the Schedules and Exhibits that form a part hereof, the following terms shall be defined as follows:

(a) The “Direct Response Business” shall mean the Borrowers’ business involving marketing, sales and service (whether directly to consumers or to retailers, distributors or other parties) of products not exclusively marketed and sold pursuant to the Legacy Fitness Business, including without limitation, the marketing, sales and service of the sitNcycle, smoothXbike and iHeater (and other similar) product lines, including product lines currently under development.

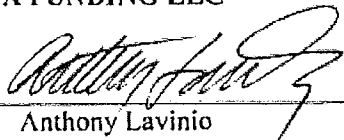
(b) The “Legacy Fitness Business” shall mean the Borrowers’ business involving marketing, sales and service of home gyms and gym/exercise equipment, including without limitation treadmills, elliptical machines and exercise bikes.

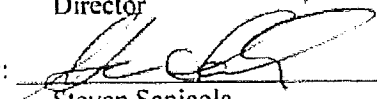
**[Signature Page on the Following Page]**

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

**LENDER:**

**SIENA FUNDING LLC**

By:   
\_\_\_\_\_  
Anthony Lavinio  
Director

By:   
\_\_\_\_\_  
Steven Sanicola  
Director

Signature Page to Foreclosure and Sale Agreement

**BUYER:**

SCN PRODUCTS LLC

By: Nosco Marketing, Inc., its manager

By: 

Name: Scott Paternoster

Its: President

Signature Page to Foreclosure and Sale Agreement

**LIST OF EXHIBITS TO FORECLOSURE AND SALE AGREEMENT**

- A. General Assignment and Bill of Sale
- B. Termination and Release of Security Interest in Trademarks and Patents
- C. Consent and Acknowledgment



## GENERAL ASSIGNMENT AND BILL OF SALE

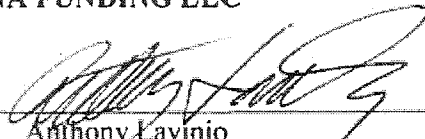
SIENA FUNDING LLC (the "Seller"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, convey, assign, transfer and deliver to SCN PRODUCTS LLC (the "Buyer"), and its successors and assigns forever, pursuant to Section 9-610 et seq. of the applicable Uniform Commercial Code, the Loan Documents and other applicable law, all the right, title and interest of Smooth Fitness, LLC, a Delaware limited liability company, and iHeater, LLC, a Delaware limited liability company (the "Borrowers") in and to all of the personal property and assets of the Borrowers (collectively, the "Property") listed on Schedule I hereto.


EXCEPT AS EXPRESSLY SET FORTH IN THAT CERTAIN FORECLOSURE AND SALE AGREEMENT, DATED AS OF NOVEMBER 19, 2014 (THE "SALE AGREEMENT"), BETWEEN SELLER AND THE BUYER, LENDER DOES NOT MAKE ANY REPRESENTATION, WARRANTY, COVENANT OR UNDERTAKING, EXPRESS OR IMPLIED, WITH RESPECT TO THE EXISTENCE OF ANY SPECIFIC ITEMS CONSTITUTING THE PROPERTY OR THE QUANTITY THEREOF, OR THE COMPANY'S BUSINESS OR PROSPECTS, OR THE CONDITION, QUALITY, MERCHANTABILITY (IN THE SENSE OF A UCC WARRANTY), FITNESS FOR A PARTICULAR PURPOSE OR VALUE OF THE PROPERTY; AND THE PROPERTY IS SOLD WITHOUT RECOURSE ON AN ABSOLUTE "AS IS, WHERE IS" BASIS.

On or after the date hereof, Lender will from time to time at the Buyer's reasonable request, execute and deliver such further instruments and take or cause to be taken such other action to carry out the effect, intent and purpose of the conveyance, assignment and transfer to the Buyer hereunder and otherwise in the carrying out of the intent and purposes of this General Assignment and Bill of Sale. Capitalized terms used herein or in Schedule I shall have the meanings given to them in the Sale Agreement, unless otherwise defined herein or in Schedule I.

Dated this 19<sup>th</sup> day of November, 2014.

SIENA FUNDING LLC

By:   
\_\_\_\_\_  
Anthony Lavinio  
Director

By:   
\_\_\_\_\_  
Steven Sanicola  
Director

Signature Page to General Assignment and Bill of Sale

**ANNEX 1(a) TO SCHEDULE I – INTELLECTUAL PROPERTY**

Patents

<b>Borrower</b>	<b>Patent</b>	<b>Patent Application Number and Country if not USA</b>	<b>Patent Registration Number and Country if not USA</b>
iHeater, LLC	Heater	29/354,478	Abandoned
iHeater, LLC	Heater	29/363,438	Abandoned
iHeater, LLC	Electric Heater	29/423,832	Abandoned
iHeater, LLC	Electric Heater	29/423,836	Abandoned
iHeater, LLC	Window Fan	29/437,237	Abandoned
iHeater, LLC	Tower Fan	29/437,245	Abandoned
iHeater, LLC	Electrical Air Conditioning Device	61/655,955	Expired
iHeater, LLC	Expandable Window Fan	61/726,547	Expired
iHeater, LLC	Multi-Tower Fan	61/726,549	Expired
All patent applications and issued patents from the People's Republic of China including those attached hereto as <u>Annex 1(b)</u> .			

Trademarks

<b>Borrower</b>	<b>Trademark Title</b>	<b>Trademark Application Number and Country if not USA</b>	<b>Trademark Registration Number and Country if not USA</b>
iHeater, LLC	IHEATER	1437769 (Canada)	TMA783,338 (Canada)
iHeater, LLC	ADVANCING COMFORT	85/802,141	Abandoned
iHeater, LLC	COMFORTCORE	85/802,146	4,526,603
iHeater, LLC	IHEATER	77/642,644	3,654,284
iHeater, LLC	IHEATER MAX	85/802,147	Abandoned
iHeater, LLC	IHEATER MICRO	85/802,149	Abandoned
iHeater, LLC	IHEATER MID	85/802,150	Abandoned
iHeater, LLC	IHEATER MINI	85/802,152	Abandoned
iHeater, LLC	REALM &	85/802,139	Abandoned

	DESIGN		
Smooth Fitness, LLC	SITNCYCLE	85/866,164	4,414,549
Smooth Fitness, LLC	SMOOTH BIKE & Design	86/155,264	Pending (Notice of Allowance issued 8/5/2014)

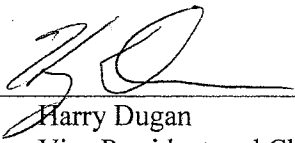
Copyrights

Borrower	Title	Federal Registration No.	Registration Date
Smooth Fitness, LLC	SitNCycle Deluxe Photographs and Advertising	VA 1-916-523	

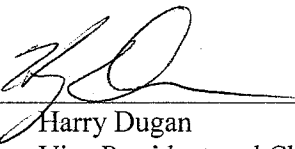
**CONSENT AND ACKNOWLEDGMENT**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Borrowers hereby execute this Consent and Acknowledgment approve and consent to that certain Foreclosure and Sale Agreement dated as of November 19, 2014 (the "Agreement"), between SCN Products LLC, a Delaware limited liability company ("Buyer"), and Siena Funding LLC, a Delaware limited liability company ("Lender"), and the sale of the Subject Assets to Buyer under the terms and conditions set forth therein and irrevocably waive any and all of their rights in Subject Assets, pursuant to the UCC or otherwise. Each of the Borrowers acknowledges and agrees that the Agreement and the transactions described therein are commercially reasonable and that the Buyer is taking the Subject Assets free and clear of the Borrowers' right, title and interest in and to the Subject Assets and free and clear of all liens, encumbrances and security interests. Each of the Borrowers hereby waives (i) any right to notice of the sale or disposition of the Subject Assets required under Section 9-611 of the UCC or otherwise, and (ii) any right to redeem any of the Subject Assets. Each of the Borrowers further covenants and agrees to (i) surrender possession of the Subject Assets to Buyer at Closing under the terms and conditions of the Agreement and the other Transaction Documents and (ii) provide to Buyer after the Closing reasonable access to Borrowers' records, information and personnel regarding the Subject Assets which Buyer did not acquire pursuant to the Agreement and the other Transaction Documents. From time to time, at the reasonable request of Buyer, each of the Borrowers shall execute and deliver such further instruments and take such further actions at the expense of Buyer, as Buyer may reasonably deem necessary or desirable in order to assure that the transfers, purposes and objectives of the Agreement and other Transaction Documents are fully accomplished. Capitalized terms used herein, but not defined, shall have the meanings assigned to them in the Agreement.

**SMOOTH FITNESS, LLC**

By:   
\_\_\_\_\_  
Harry Dugan  
Vice President and Chief Financial Officer

**IHEATER, LLC**

By:   
\_\_\_\_\_  
Harry Dugan  
Vice President and Chief Financial Officer

**LIST OF SCHEDULES TO FORECLOSURE AND SALE AGREEMENT**

Schedule 2	Subject Assets
Schedule 2.1	Excluded Assets
Schedule 2.4	Assumed Liabilities
Schedule 3	Purchase Price and Wire Instructions
Schedule 7.3	List of Liens and Security Interests
Schedule 7.4	List of Notice Parties and Copies of Materials Delivered

**ANNEX 1(a) TO SCHEDULE 2 – INTELLECTUAL PROPERTY**

Patents

<b>Borrower</b>	<b>Patent</b>	<b>Patent Application Number and Country if not USA</b>	<b>Patent Registration Number and Country if not USA</b>
iHeater, LLC	Heater	29/354,478	Abandoned
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iHeater, LLC	REALM &	85/802,139	Abandoned

	DESIGN		
Smooth Fitness, LLC	SITNCYCLE	85/866,164	4,414,549
Smooth Fitness, LLC	SMOOTH BIKE & Design	86/155,264	Pending (Notice of Allowance issued 8/5/2014)

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Borrower	Title	Federal Registration No.	Registration Date
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