

05-11-2001



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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
Tab settings ⇐ ⇨ ⇩

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

1. Name of conveying party(ies):

Interplay OEM, Inc.

S. 2.01

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State California
- 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: _____

2. Name and address of receiving party(ies)

Name: LaSalle Business Credit, Inc.

Internal Address: _____
Address: _____

Street Address: 135 South LaSalle Street

City: Chicago State: Illinois Zip: 60603

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

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)

B. Trademark Registration No.(s)

2364851

Additional number(s) attached Yes No

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

Name: Barry A. Werbin, Esq.

Internal Address: Herrick, Feinstein LLP

Street Address: 2 Park Avenue

City: New York State: NY Zip: 10016

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$40.00

- 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.

Barry A. Werbin
Name of Person Signing

[Signature]
Signature

4/25/01
Date

Total number of pages including cover sheet, attachments, and document: 11

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

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TRADEMARK
REEL: 002293 FRAME: 0533

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT ("Agreement"), dated as of April 11, 2001, is entered into between INTERPLAY OEM, INC., a California corporation ("Grantor"), which has a mailing address at 16815 Von Karman Ave., Irvine, CA 92606, and LaSALLE BUSINESS CREDIT, INC., a Delaware corporation ("Grantee"), which has a mailing address at 135 South LaSalle Street, Chicago, Illinois 60603.

RECITALS

A. Grantor and Grantee, contemporaneously herewith, entering into that certain Loan and Security Agreement ("Loan Agreement") and other instruments, documents and agreements contemplated thereby or related thereto (collectively, together with the Loan Agreement, the "Loan Documents"); and

B. Grantor is the owner of certain intellectual property, identified below, in which Grantor is granting a security interest to Grantee.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other good and valuable consideration, the parties hereto mutually agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions.** The following terms, as used in this Agreement, have the following meanings:

"Code" means the Illinois Uniform Commercial Code, as amended and supplemented from time to time, and any successor statute.

"Collateral" means all of the following, whether now owned or hereafter acquired:

(i) Each of the trademarks and rights and interest which are capable of being protected as trademarks (including trademarks, service marks, designs, logos, indicia, tradenames, corporate names, company names, business names, fictitious business names, trade styles, and other source or business identifiers, and applications pertaining thereto), which are presently, or in the future may be, owned, created, acquired, or used (whether pursuant to a license or otherwise) by Grantor, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(ii) All of Grantor's right to the trademarks and trademark registrations listed on Exhibit A attached hereto, as the same may be updated hereafter from time to time;

(iii) All of Grantor's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew, and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Grantor or in the name of Grantee for past, present, and future infringements of the trademarks, registrations, or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country;

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

(v) All general intangibles relating to the foregoing and all other intangible intellectual or other similar property of the Grantor of any kind or nature, associated with or arising out of any of the aforementioned properties and assets and not otherwise described above; and

(vi) All products and proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

"Obligations" means all obligations, liabilities, and indebtedness of Grantor to Grantee, whether direct, indirect, liquidated, or contingent, and whether arising under this Agreement, the Loan Agreement, any other of the Loan Documents, or otherwise, including all costs and expenses described in Section 9.8 hereof.

1.2 Construction. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder," and other similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any initially capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Any reference herein to any of the Loan Documents includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Grantee or Grantor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by Grantor, Grantee, and their respective counsel, and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of Grantee and Grantor. Headings have been set forth herein for convenience only, and shall not be used in the construction of this Agreement.

2. GRANT OF SECURITY INTEREST.

To secure the complete and timely payment and performance of all Obligations, and without limiting any other security interest Grantor has granted to Grantee, Grantor hereby grants, assigns

and conveys to Grantee a security interest in Grantor's entire right, title, and interest in and to the Collateral.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Grantor hereby represents, warrants, and covenants that:

3.1 Trademarks. A true and complete schedule setting forth all federal and state trademark registrations owned by Grantor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Exhibit A.

3.2 Validity; Enforceability. Each of the trademarks is valid and enforceable, and Grantor is not presently aware of any past, present, or prospective claim by any third party that any of the trademarks are invalid or unenforceable, or that the use of any trademarks violates the rights of any third person, or of any basis for any such claims.

3.3 Title. Grantor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the trademarks, and trademark registrations, free and clear of any liens, charges, and encumbrances, including pledges, assignments, licenses, shop rights, and covenants by Grantor not to sue third persons.

3.4 Notice. Grantor has used and will continue to use proper statutory notice in connection with its use of each of the trademarks.

3.5 Quality. Grantor has used and will continue to use consistent standards of high quality (which may be consistent with Grantor's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks.

3.6 Perfection of Security Interest. Except for the filing of a financing statement with the Secretary of State of California and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by Grantor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by Grantor or for the perfection of or the exercise by Grantee of its rights hereunder to the Collateral in the United States.

4. AFTER-ACQUIRED TRADEMARK RIGHTS.

If Grantor shall obtain rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto. Grantor shall give prompt notice in writing to Grantee with respect to any such new trademarks, or renewal or extension of any trademark registration. Grantor shall bear any expenses incurred in connection with future trademark registrations. Without limiting Grantor's obligation under this Section 4, Grantor authorizes Grantee to modify this Agreement by amending

Exhibit A to include any such new trademark rights. Notwithstanding the foregoing, no failure to so modify this Agreement or amend **Exhibit A** shall in any way affect, invalidate or detract from Grantee's continuing security interest in all Collateral, whether or not listed on **Exhibit A**.

5. LITIGATION AND PROCEEDINGS.

Grantor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other action for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Grantor shall provide to Grantee any information with respect thereto requested by Grantee. Grantee shall provide at Grantor's expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following Grantor's becoming aware thereof, Grantor shall notify Grantee of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state, or foreign court regarding Grantor's claim of ownership in any of the trademarks, its right to apply for the same, or its right to keep and maintain such trademark rights.

6. POWER OF ATTORNEY.

Grantor hereby appoints Grantee as Grantor's true and lawful attorney, with full power of substitution, to do any or all of the following, in the name, place and stead of Grantor: (a) file this Agreement (or an abstract hereof) or any other document describing Grantee's interest in the Collateral with the United States Patent and Trademark Office; (b) execute any modification of this Agreement pursuant to Section 4 of this Agreement; (c) take any action and execute any instrument which Grantee may deem necessary or advisable to accomplish the purposes of this Agreement; and (d) following an Event of Default (as defined in the Loan Agreement), (i) endorse Grantor's name on all applications, documents, papers and instruments necessary for Grantee to use or maintain the Collateral; (ii) ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral; (iii) file any claims or take any action or institute any proceedings that Grantee may deem necessary or desirable for the collection of any of the Collateral or otherwise enforce Grantee's rights with respect to any of the Collateral, and (iv) assign, pledge, convey, or other-wise transfer title in or dispose of the Collateral to any person.

7. RIGHT TO INSPECT.

Grantor grants to Grantee and its employees and agents the right to visit Grantor's plants and facilities which manufacture, inspect, or store products sold under any of the trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

8. SPECIFIC REMEDIES.

Upon the occurrence, and during the continuance, of any Event of Default (as defined in the Loan Agreement); Grantee shall have, in addition to, other rights given by law or in this Agreement,

the Loan Agreement, or in any other Loan Document, all of the rights and remedies with respect to the Collateral of a secured party under the Code, including the following:

8.1 Notification. Grantee may notify licensees to make royalty payments on license agreements directly to Grantee;

8.2 Sale. Grantee may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Grantee deems advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is given to Grantor seven (7) days prior to such disposition. Grantor shall be credited with the net proceeds of such sale only when they are actually received by Grantee, and Grantor shall continue to be liable for any deficiency remaining after the Collateral is sold or collected. If the sale is to be a public sale, Grantee shall also give notice of the time and place by publishing a notice one time at least five (5) days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held. To the maximum extent permitted by applicable law, Grantee may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any collateral payable by Grantee at such sale.

9. GENERAL PROVISIONS.

9.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by Grantor and Grantee.

9.2 Notices. Except to the extent otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing and shall be governed by the notice provisions of the Loan Agreement.

9.3 No Waiver. No course of dealing between Grantor and Grantee, nor any failure to exercise nor any delay in exercising, on the part of Grantee, any right, power, or privilege under this Agreement or under the Loan Agreement or any other agreement, shall operate as a waiver. No single or partial exercise of any right, power, or privilege under this Agreement or under the Loan Agreement or any other agreement by Grantee shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege by Grantee.

9.4 Rights Are Cumulative. All of Grantee's rights and remedies with respect to the Collateral whether established by this Agreement, the Loan Agreement, or any other documents or agreements, or by law shall be cumulative and may be exercised concurrently or in any order.

9.5 Successors. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties; provided that Grantor may not transfer any of the Collateral or any rights hereunder, without the prior written consent of Grantee, except as specifically permitted hereby or by the Loan Agreement.

9.6 Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such provision, or part thereof, in such jurisdiction, and shall not in any manner affect such provision or part thereof in any other jurisdiction, or any other provision of this Agreement in any jurisdiction.

9.7 Entire Agreement. This Agreement is subject to modification only by a writing signed by the parties, except as provided in Section 4 of this Agreement. To the extent that any provision of this Agreement conflicts with any provision of the Loan Agreement, the provision giving Grantee 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 Grantee under the Loan Agreement. This Agreement, the Loan Agreement, and the documents relating thereto comprise the entire agreement of the parties with respect to the matters addressed in this Agreement.

9.8 Fees and Expenses. Grantor shall pay to Grantee on demand all costs and expenses that the Grantee pays or incurs in connection with the negotiation, preparation, consummation, administration, enforcement, and termination of this Agreement, including: (a) reasonable attorneys' and paralegals' fees and disbursements of counsel to Grantee; (b) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) for any amendment, supplement, waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby; (c) costs and expenses of lien and title searches; (d) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office, or for filing financing statements, and continuations, and other actions to perfect, protect, and continue the security interest created hereunder; (e) sums paid or incurred to pay any amount or take any action required of Grantor under this Agreement that Grantor fails to pay or take; (f) costs and expenses of preserving and protecting the Collateral; and (g) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) paid or incurred to enforce the security interest created hereunder, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made or threatened against the Grantee arising out of the transactions contemplated hereby (including preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement or the Loan Documents regarding costs and expenses to be paid by Grantor. The parties agree that reasonable attorneys' and paralegals' fees and costs incurred in enforcing any judgment are recoverable as a separate item in addition to fees and costs incurred in obtaining the judgment and that the recovery of such attorneys' and paralegals' fees and costs is intended to survive any judgment, and is not to be deemed merged into any judgment.

9.9 Indemnity. Grantor shall protect, defend, indemnify, and hold harmless Grantee and Grantee's assigns from all liabilities, losses, and costs (including without limitation reasonable attorneys' fees) incurred or imposed on Grantee relating to the matters in this Agreement (except any amounts sustained or incurred as the result of the gross negligence or willful misconduct of Grantee or any other such persons).

9.10 Further Assurances. At Grantee's request, Grantor shall execute and deliver to Grantee any further instruments or documentation, and perform any acts, that may be reasonably necessary or appropriate to implement this Agreement, the Loan Agreement or any other agreement, and the documents relating thereto, including without limitation any instrument or documentation reasonably necessary or appropriate to create, maintain, perfect, or effectuate Grantee's security interests in the Collateral.

9.11 Release. At such time as Grantor shall completely satisfy all of the Obligations and the Loan Agreement shall be terminated, Grantee shall execute and deliver to Grantor all assignments and other instruments as may be reasonably necessary or proper to terminate Grantee's security interest in the Collateral, subject to any disposition of the Collateral which may have been made by Grantee pursuant to this Agreement. For the purpose of this Agreement, the Obligations shall be deemed to continue if Grantor enters into any bankruptcy or similar proceeding at a time when any amount paid to Grantee could be ordered to be repaid as a preference or pursuant to a similar theory, and shall continue until it is finally determined that no such repayment can be ordered.

9.12 Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Illinois, excluding its conflict of law rules to the extent such rules would apply the law of another jurisdiction, and the United States. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in Chicago, State of Illinois or, at the sole option of Grantee, in any other court in which Grantee shall initiate legal or equitable proceedings and which has subject matter jurisdiction over the matter in controversy, each of Grantor and Grantee waives, to the extent permitted under applicable law, any right they may have to assert the doctrine of forum non conveniens or to object to venue to the extent any proceeding is brought in accordance with this Section.

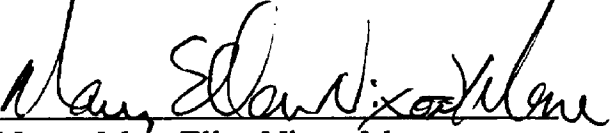
9.13 Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement or be given any substantive effect.

9.14 Assignment by Grantee. Grantee may assign this Agreement and its rights hereunder in accordance with the Loan Agreement to the third parties and such third parties shall be entitled to the benefits of this Agreement.


9.15 Waiver of Right to Jury Trial. GRANTEE AND GRANTOR EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO: (i) THIS AGREEMENT; OR (ii) ANY OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN GRANTEE AND GRANTOR; OR (iii) ANY CONDUCT, ACTS OR OMISSIONS OF GRANTEE OR GRANTOR OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH GRANTEE OR GRANTOR; IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

LaSALLE BUSINESS CREDIT, INC.

By: 
Name: Mary Ellen Nixon-Moore
Title: Vice President

INTERPLAY OEM, INC.

By: 
Name: Manuel Marrero
Title: Authorized Signatory

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 11th day of April, 2001, before me, the undersigned, personally appeared MANUEL MARRERO personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to me within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



Notary Public

MARZENNA W. WALDEN
Notary Public, State of New York
No. 02WA6029861
Qualified in New York County
Commission Expires August 30, 2001

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this 11th day of April, 2001, before me, the undersigned, personally appeared MARY ELLEN NIXON-MOORE personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to me within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



Notary Public
MARZENNA W. WALDEN
Notary Public, State of New York
No. 02WA6029861
Qualified in New York County
Commission Expires August 30, 2001

EXHIBIT "A"

REGISTERED TRADEMARKS

<u>Trademark</u>	<u>Serial Number</u>	<u>Registration No.</u>
OEM and Design (Class 41)	75-248187	2364851

PENDING TRADEMARKS

None