

01-31-2002



Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)

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

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): Diamond Game Enterprises 1-10-02
Individual(s) Association
General Partnership Limited Partnership
XXX Corporation-State
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) GMAC Commercial Credit LLC
Name:
Internal
Address:
Street Address: 1290 Avenue of the Americas
City: New York State: NY Zip: 10104
Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation-State
XXX Other Limited Liability Corporation
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

3. Nature of conveyance:
Assignment Merger
XXX Security Agreement Change of Name
Other
Execution Date: December 20, 2001

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s)
1,964,165 1,966,777
2,034,879 2,103,007
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Frank J. DeRosa, Esq.
Internal Address: Brown Raysman Millstein
Felder & Steiner LLP
Street Address: 900 Third Avenue
City: New York State: NY Zip: 10022

6. Total number of applications and registrations involved: 4
7. Total fee (37 CFR 3.41): \$115.00
Enclosed
Authorized to be charged to deposit account
8. Deposit account number: 02-4270
(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.
Frank J. DeRosa Signature Date 1-9-02
Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 7

01/31/2002 6TOM11 0000059 1964165

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

01 FC:481 40.00 DP
02 FC:482 75.00 DP

TRADEMARK REEL: 002434 FRAME: 0492

## TRADEMARK SECURITY AGREEMENT

THIS AGREEMENT is made this 20<sup>th</sup> day of December, 2001, between Diamond Game Enterprises, a ~~Delaware~~<sup>California</sup> corporation having its principal place of business at 9817 Variel Street, Chatsworth, CA 91311 (the "Guarantor"), and GMAC COMMERCIAL CREDIT LLC (together with its successors and assigns, "Lender"), with reference to the following facts.

- A. Lender has lent and continues to lend certain funds to Worldwide Game Technology Corp. ("Worldwide"), RSC International, Inc., Southeastern Communications Corporation and others (those borrowers together with GCF, Inc., California Gaming Corp., RSC Management Company, and Vusa Telecom being referred to herein collectively as the "Borrower") pursuant to a Revolving Credit and Security Agreement dated on or about February 20, 2001, and other associated documentation (the "Loan Transaction").
- B. At all times relevant hereto, Guarantor has been and is the beneficial owner of United States Registered Trademarks, Numbered 1,964,165, 1,966,777, 2,034,879, and 2,103,007, in the trademarks "Lucky Tab" and "Lucky Tab II" ("the Marks") and has granted certain rights to Worldwide to use the Marks in connection with Worldwide's own marks to identify certain patented devices for which Worldwide holds certain specified manufacturing, sale and use rights ("Worldwide License"), pursuant to a written Settlement Agreement among the Borrower, Guarantor and certain affiliates of Guarantor, and others (the "Settlement Agreement"). As of the date hereof, the Marks are held of record in the name of Ronald C. Clapper, Jr. ("Clapper") and an instrument is being recorded confirming the actual ownership of the mark by Guarantor.
- C. Pursuant to the Consent and Agreement executed and delivered by GMAC herewith and accepted by Guarantor and others (the "Consent"), GMAC has agreed to release its lien of record in and to the Marks and to substitute a lien in the Worldwide License securing performance by Borrower of all obligations under the Loan Transaction. At the same time, GMAC has required as a condition of its execution and delivery of the Consent that Guarantor execute and deliver a limited recourse guarantee of Borrower's performance pursuant to the Loan Transaction ("Limited Guarantee"), secured and with recourse solely to the ownership of the Marks.
- D. Borrower has heretofore, pursuant to the Loan Transaction, granted to Lender a lien upon and security interest in the Company's now existing and hereafter acquired inventory, trade secrets, machinery, equipment, equipment formulations, manufacturing procedures, quality control procedures and product specifications relating to products sold under the Marks and in certain license agreements, pursuant to the terms of which Clapper and Lucky Tab Holdings LLC ("Holdings") have granted to Worldwide certain rights to practice patents owned by Clapper and by Holdings respectively;

**NOW, THEREFORE**, in consideration of the foregoing premises, Guarantor hereby agrees with Lender as follows:

1. **Definitions.** Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed to them in the Consent and/or the Limited Guaranty.

2. **Security Interest.** To secure the payment and performance of all of the obligations of Guarantor under the Limited Guaranty (the "Obligations"), Guarantor hereby grants to Lender a continuing security interest in and lien upon all of the right, title and interest of Guarantor in the Marks identified in recital B above and United States registrations thereof (collectively, the "Collateral" or the "Marks");

3. **Warranties.** Guarantor represents and warrants to Lender that:

3.1 Guarantor has the unqualified right to enter into this Agreement and to perform its terms.

3.2 Guarantor has not heretofore granted any security interest in the Collateral to any person other than Lender; and

3.3 Guarantor has not granted any rights to use the Marks to any person other than to its resellers, sales agents and service contractors and to Worldwide.

3.4 Notwithstanding anything to the contrary herein, Guarantor makes no warranty or representation as to the validity of a registration or of the enforceability of any rights under the Marks by or against any party and specifically disclaims any warranty or obligation with respect to the past, present or future use of the Marks by Borrower.

4. **Covenants of Guarantor.** Guarantor covenants and agrees with Lender that

4.1 Except for the interests of licensees under Permitted Licenses (as hereinafter defined) or as otherwise stated in the definition of "Permitted Licenses," Guarantor is and will remain the sole and exclusive owner, of the entire right, title and interest in and to the Collateral, free and clear of any liens, charges, claims, rights and encumbrances;

4.2 Guarantor has used, and will continue to use for the duration of this Agreement, required statutory notices in connection with its use of the Trademarks; and

4.3 Guarantor shall not abandon any of the Trademarks without Lender's prior written consent, including, without limitation, by failure to file an affidavit of use with the USPTO during the sixth year of a United States registration as required by law. Guarantor will not do any act, or omit to do any act, whereby the Marks or any registration or application appurtenant thereto, may become abandoned, invalidated, unenforceable, avoided, avoidable, or will otherwise diminish in value, and shall notify Lender immediately if it knows of any reason or has reason to know of any ground under which this result may occur. Notwithstanding the foregoing, nothing herein shall obligate Guarantor to use the Marks to identify any goods or services of Guarantor at any time now or in the future.

5. **Disposition of Marks.** Until all of the Obligations have been satisfied in full and the Loan Transaction has been terminated, Guarantor shall not sell any of the Marks, grant or assign any security or other interest in any of the Marks, or enter into any license agreement with respect to any of the Marks other than Permitted Licenses or as stated in the definition of that term.

6. **Permitted Licenses.** As used herein, the term "Permitted Licenses" shall mean and include, rights to use the Marks on Products made, used, sold or offered by sale by any of the following:

6.1 Any person controlling, controlled by, or under common control with Guarantor.

6.2 Any authorized distributor, reseller, sales agent or service contractor, acting in the ordinary course and scope of a business relationship with Guarantor.

6.3 Any successor in interest to substantially all of the assets of the operating unit of Guarantor engaged in the business of making, using or selling goods under the Marks, whether by way of sale of assets or merger (in which case, the Marks may be transferred to such successor with such other assets provided that the Marks shall remain subject to the security interest granted herein and such successor executes similar forms of guarantee and trademark security agreement executed by Guarantor in connection herewith) or sale of stock.

7. **Further Assurances.** Guarantor agrees to execute and deliver to Lender such further papers and to do such other acts as may be necessary and proper to accomplish the purposes of this Agreement, including without limitation, in order to perfect or continue the perfection of Lender's security interest in all of the Collateral. At any time and from time to time, upon the written request of Lender, Guarantor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lender may reasonably deem desirable in obtaining the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code with respect to the liens and security interests granted hereby all of which lender is hereby authorized to file with the appropriate recording office.

8. **Actions on Default.** Upon or after the occurrence of a condition authorizing Lender to exercise its rights with respect to the Guarantee (an "Event of Default"), Lender shall have those rights and remedies given it by this Agreement and none other. Subject to prior compliance with the provisions relating to notice to Guarantor and failure of Guarantor to provide written assurances as provided in Section 10 hereunder, Lender may sell at public or private sale or otherwise realize from time to time upon all or, any of the Collateral, but only in connection with the simultaneous transfer to the transferees of the respective Marks at such sale, of goodwill legally sufficient to sustain the ongoing validity and enforceability of the Marks. Upon the occurrence and continuance of an Event of Default, compliance with such notice and request for written assurance provisions, and Guarantor's failure to timely provide such assurances, Lender may also (A) 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; (B) defend any suit, action or proceeding brought against Guarantor with respect to any Collateral; (C) settle, compromise, or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as Lender may deem appropriate; and (D) generally sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and to do, at Lender's option all acts and things which Lender deems necessary to protect, preserve or realize upon the Collateral and Lender's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as Guarantor might do. Guarantor hereby agrees that thirty (30) days written notice to the Company of any public or private sale or other disposition of any of the Collateral shall be reasonable notice. At any such sale or disposition, Lender may, to the extent permitted by law, purchase the whole or any part of the Collateral sold, free from any right of redemption on the part of Guarantor, which right Guarantor hereby waives and releases. After deducting from the proceeds of such sale or other disposition of the Collateral all costs and expenses incurred by Lender in enforcing its rights hereunder (including, without limitation, all brokers' fees, auctioneers' fees and attorneys' fees actually incurred), Lender shall apply the remainder of such proceeds to the payment of the Obligations in such order and manner as Lender in its sole discretion may determine.

9. **Power of Attorney.** Guarantor hereby irrevocably makes, constitutes and appoints Lender and any officer or agent of Lender as Lender may select, with full power of substitution, as Guarantor's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall occur ( and after compliance with notice and written assurance provisions as provided in Section 10 below) and be authorized: to endorse Guarantor's name on all applications, documents, papers and instruments necessary for Lender to use the Marks, or to grant or issue any nonexclusive license under the Marks to any other person or entity, or to assign, pledge, convey or otherwise transfer title in or dispose of the Collateral to any other person or entity. Guarantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until all of the Obligations shall have been satisfied in full and the Loan Transaction shall have been terminated. The powers conferred on Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Guarantor for any act or failure to act, except for its own willful misconduct.

10. **Notice of Default; Written Assurances.** Notwithstanding anything in this Agreement to the contrary, Lender may not exercise any rights in the Collateral under this Agreement unless Lender shall have first given Guarantor notice of default by Borrower and, within the sixty (60) days following such notice, Guarantor shall not have delivered to Lender written assurances to the effect that Borrower and any person succeeding to the Worldwide License on foreclosure of Lender's security interest in Worldwide License has and will continue to have full rights to exploit the Marks as provided in and subject to the terms of the Settlement Agreement. Such written assurances shall consist of a signed statement to such effect by an authorized officer of Guarantor or, in the event of the entry of an Order for Relief by or against Guarantor under the Bankruptcy Code, the confirmation of the assumption by the trustee or debtor in possession in the proceeding to which such Order for Relief relates of Buyer's full rights to exploit the Marks as so provided in the Settlement Agreement. Notwithstanding the foregoing, nothing herein shall waive or release Borrower or any successor in interest to Borrower from compliance with the terms and conditions of the license to Borrower.

11. **Rights of Guarantor.** In the event that Lender exercises any rights to the Collateral as set forth in Section 8 resulting in the transfer of ownership of the Marks to Lender or any person purchasing at a public or private sale pursuant hereto, Guarantor shall nonetheless thereafter have the irrevocable and perpetual, royalty-free, worldwide, non-exclusive license to use the Marks in connection with Guarantor's products , on the same terms and conditions as applicable to Borrower under the Settlement Agreement.

12. **No Deficiency Recovery.** Guarantor shall not be liable for any deficiency, even if the proceeds of, or other realization upon, the Collateral by virtue of the exercise of remedies under Section 8 are insufficient to cover the costs and expenses of such exercise and the payment in full of the other Obligations.

13. **Responsibility for Costs.** Any and all fees, costs and expenses, of whatever kind or nature, including attorneys' fees and legal expenses, actually incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining, or preserving the Collateral, or in defending or prosecuting any actions or proceedings arising

out of or related to the Collateral, shall be borne and paid by Borrower and not by Guarantor (it being the intent of the Guarantor and Lender that Borrower shall be responsible for the payment of all sums, fees, costs and expenses, including, without limitation, all governmental fees with respect to the Trademarks from and after any foreclosure pursuant to this Agreement). Guarantor will be responsible for any such fees, costs and expenses associated with the preservation and enforcement of the Mark at all times prior to such foreclosure.

14. **No Implied Waiver.** No course of dealing between the Guarantor and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Loan Transaction shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

15. **Severability.** (after compliance with notice and written assurance provisions as provided in Section 10 above) The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of his Agreement in any jurisdiction.

16. **Notices.** Any notice to Lender shall be deemed to have been duly given (i) five (5) days after being mailed by certified or registered mail return receipt requested or the next business day following deposit with Federal Express for overnight delivery, addressed to Lender at GMAC Commercial Credit LLC at 1290 Avenue of the Americas, New York, New York 10104, attention: Frank Imperato, Senior Vice President; and (ii) after a telefax is transmitted of any such notice to the attention of Frank Imperato, Senior Vice President to fax number (212) 884-7162. Any notice to Guarantor hereunder shall be deemed to have been duly given (i) five (5) days after being mailed by certified or registered mail return receipt requested or the next business day after deposit with Federal Express for overnight delivery, addressed to Guarantor at the address specified in the introductory paragraph of this Agreement; and (ii) after a telefax is transmitted of any such notice to the attention of James Breslo to fax number (818) 576-0905.

17. **Modification.** This Agreement is subject to modification only by a writing signed by the parties hereto.

18. **Successors and Assigns.** The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Lender and upon the successors of Guarantor. Guarantor shall not assign its rights or delegate its duties hereunder without the prior written consent of Lender.

19. **Interpretation.** Time is of the essence of this Agreement. No person or entity, other than the parties hereto, shall be deemed to be a beneficiary hereof or have the right to enforce any of the provisions of this Agreement.

20. **Choice of Law.** This Agreement has been negotiated executed and delivered at and shall be deemed to have been made in New York. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

21. WAIVER OF JURY TRIAL. THE COMPANY AND LENDER EACH WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE COLLATERAL.

IN WITNESS the execution hereof under seal on the day and year first above written.

ATTEST:

DIAMOND GAME ENTERPRISES, INC.

Dianne Cashman  
Secretary

By: [Signature]  
~~David Zenker~~, President  
JAMES A. BASSLO

Accepted in New York, New York

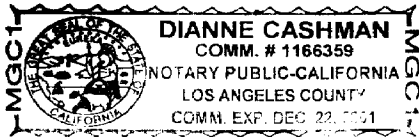
GMAC COMMERCIAL CREDIT LLC

By: [Signature]  
Name:  
Title:

STATE OF CALIFORNIA )  
 ) Ss  
COUNTY OF LOS ANGELES )

On ~~November~~ <sup>DECEMBER</sup> 4, 2001 before me, DIANNE CASHMAN, Notary Public, personally appeared ~~David Zenker~~, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.



[Signature]  
Notary Public:

[NOTARIAL SEAL]