

2-13-03

Form PTO-1594  
(Rev. 10/02)  
OMB No. 0651-0027 (exp. 6/30/2005)  
Tab settings

02-13-2003

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



102365308

Send original documents or copy thereof.

To the Honorable Commissione

1. Name of conveying party(ies):

Fancor, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: 12/19/02

2. Name and address of receiving party(ies)

Name: Wells Fargo Business Credit, Inc.

Internal Address: 16th Floor

Street Address: 119 West 40th Street

City: New York State: NY Zip: 10018

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Minnesota
- 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) See attached

Additional number(s) attached  Yes  No

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

Name: Linda S. Berk, Paralegal

Internal Address: Greenberg Traurig, LLP

Street Address: 2001 Market Street

2700 Two Commerce Square

City: Philadelphia State: PA Zip: 19103

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41) \$ 90.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Linda S. Berk

Name of Person Signing

Signature

2/6/03

Date

Total number of pages including cover sheet, attachments, and document: 10

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

02/13/2003 JJALLAH2 00000014 74075239

01 FC:8521 40.00 OP  
02 FC:8522 50.00 OP

TRADEMARK  
REEL: 002670 FRAME: 0305

EXHIBIT A

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS

AND COLLECTIVE MEMBERSHIP MARKS  
REGISTRATIONS

<u>Trademark</u>	<u>Registration Number</u>	<u>Serial Number</u>
1. THE SCALE STORE	R1693634	74-075239
2. THURMAN SCALE	R1916217	74-558432
3. TS THURMAN SCALE	R1916219	74-558511

APPLICATIONS

None

COLLECTIVE MEMBERSHIP MARKS

None

UNREGISTERED MARKS

None

# PATENT AND TRADEMARK SECURITY AGREEMENT

This Agreement, dated as of December 19, 2002, is made by and between Fancor, Inc., a Kansas corporation whose address and principal place of business is 821 Locust Street, Kansas City, Missouri 64106 (the "Debtor"), and WELLS FARGO BUSINESS CREDIT, INC., a Minnesota corporation whose address and principal place of business is 16<sup>th</sup> Floor, 119 West 40<sup>th</sup> Street, New York, New York 10018 (the "Secured Party").

## Recitals

Fairbanks Scales Inc., a Kansas corporation, and Thurman Scale Company, a Kansas corporation (collectively and individually referred to as the "Borrower"), and the Secured Party have entered into a Credit and Security Agreement of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, the "Credit Agreement") setting forth the terms on which the Secured Party may now or hereafter make certain loans or other financial accommodations to or for the account of the Borrower, and the Borrower has offered and the Debtor has agreed to guaranty the payment and performance by the Borrower of its obligations to the Secured Party as described in a certain Guaranty and Security Agreement of even date herewith (the "Guaranty").

As a further condition to making any loan or other financial accommodation under the Credit Agreement or otherwise, the Secured Party has required the execution and delivery of this Agreement by the Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Guaranty and the Credit Agreement and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Credit Agreement and the Guaranty that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Guaranty) which the Debtor may now or at any time hereafter owe to the Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Obligations (as defined in the Guaranty).

"Patents" means all of the Debtor's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

“Trademarks” means all of the Debtor’s right, title and interest in and to trademarks, service marks, collective membership marks, the respective goodwill associated with each, and licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. The Debtor hereby irrevocably pledges and assigns to, and grants the Secured Party a security interest, with power of sale to the extent permitted by law (the “Security Interest”), in the Patents and in the Trademarks to secure payment of the Obligations.

3. Representations, Warranties and Agreements. The Debtor hereby represents, warrants and agrees as follows:

(a) **Existence; Authority.** The Debtor is a corporation, having full power to and authority to make and deliver this Agreement. The execution, delivery and performance of this Agreement by the Debtor have been duly authorized by all necessary action of the Debtor’s board of directors, and if necessary its stockholders, and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or its articles of incorporation or bylaws or any agreement presently binding on it. This Agreement has been duly executed and delivered by the Debtor and constitutes the Debtor’s lawful, binding and legally enforceable obligation. The correct name of the Debtor is Fancor, Inc.. The authorization, execution, delivery and performance of this Agreement do not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.

(b) **Patents.** Exhibit A accurately lists all Patents owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of registrations pertaining to the Patents as of the date hereof.

(c) **Trademarks.** Exhibit B accurately lists all Trademarks owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all registrations pertaining thereto as of the date hereof.

(d) **Title.** The Debtor has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all security interests, liens and encumbrances, except the Security Interest. The Debtor (i) will have, at the time the Debtor acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all security interests, liens and encumbrances, except the Security Interest, and (ii) will keep all Patents and Trademarks free and clear of all security interests, liens and encumbrances except the Security Interest.

(e) **No Sale.** The Debtor will not sell or otherwise dispose of the Patents or Trademarks, or any interest therein, without the Secured Party’s prior written consent.

(f) **Defense.** The Debtor will at its own expense, and using its best efforts, protect and defend the Patents and Trademarks against all claims or demands of all persons other than the Secured Party.

(g) **Maintenance.** The Debtor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to register and all affidavits and renewals possible with respect to issued registrations. The Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit in support thereof, without first providing the Secured Party: (i) sufficient written notice, as provided in the Guaranty, to allow the Secured Party to timely pay any such maintenance fees or annuity which may become due on any of said Patents or Trademarks, or to file any affidavit with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit, should such be necessary or desirable.

(h) **Secured Party's Right to Take Action.** If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (g), immediately upon the occurrence of such failure, without notice or lapse of time), or if the Debtor notifies the Secured Party that it intends to abandon a Patent or Trademark, the Secured Party may (but need not) perform or observe such covenant or agreement on behalf and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure.

(i) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (h) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the highest rate then applicable to any of the Obligations.

(j) **Power of Attorney.** To facilitate the Secured Party's taking action under subsection (h) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Debtor under this Section 3, or, necessary for the Secured Party, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third

party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Guaranty as provided therein and the payment and performance of all Obligations (as defined therein).

4. Debtor's Use of the Patents and Trademarks. The Debtor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Guaranty and the Credit Agreement, shall occur; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may exercise any or all remedies available under the Guaranty.

(b) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) The Secured Party may enforce the Patents and Trademarks and any licenses thereunder, and if Secured Party shall commence any suit for such enforcement, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

7. Miscellaneous. This Agreement has been duly and validly authorized by all necessary action, corporate or otherwise. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party

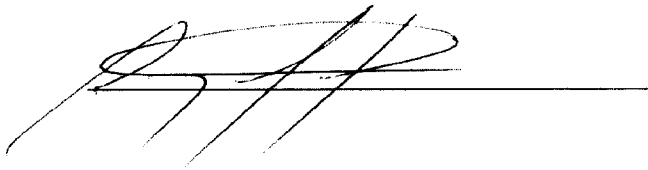
and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of New York without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.





STATE OF NY )  
COUNTY OF NY )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of December, 2002, by Dhamendra Lachman, Vice President of Wells Fargo Business Credit, Inc., a Minnesota corporation, on behalf of the Secured Party.



Notary Public

**SEGISMUNDO CASTELLAR**  
Notary Public, State of New York  
No. 01CA5032224  
Qualified in Queens County  
Certificate Filed in New York County  
Commission Expires Aug. 22, 2006

EXHIBIT A

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS  
AND COLLECTIVE MEMBERSHIP MARKS  
REGISTRATIONS

<u>Trademark</u>	<u>Registration Number</u>	<u>Serial Number</u>
1. THE SCALE STORE	R1693634	74-075239
2. THURMAN SCALE	R1916217	74-558432
3. TS THURMAN SCALE	R1916219	74-558511

APPLICATIONS

None

COLLECTIVE MEMBERSHIP MARKS

None

UNREGISTERED MARKS

None

GREENBERG  
ATTORNEYS AT LAW  
TRAURIG

Linda S. Berk, Paralegal  
(215) 988-7807  
berkl@gtlaw.com

February 10, 2003

**VIA FEDERAL EXPRESS**

U.S. Patent and Trademark Office  
Office of Public Records  
Attn: Customer Services Counter  
1213 Jefferson Davis Highway  
3rd Floor  
Arlington, VA 22202

**Re: Wells Fargo Business Credit, Inc. to Fancor, Inc., et al  
Our File No. 50255.010500**

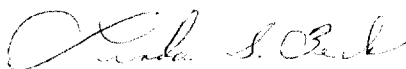
Dear Sir/Madam:

In regard to the above-captioned matter, enclosed please find the following:

1. An original of the Trademark Security Agreement and Mortgage;
  2. An original trademark recordation form cover sheet
  3. This firm's check in the amount of \$90.00 to cover the filing fee for 3 trademarks;
- and
4. One (1) self addressed postage paid envelope.

Please record the original Agreement and return it to us at the above address in the envelope provided. If you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,



Linda S. Berk,  
Paralegal

LSB/lb  
Enclosures  
60403v1

GREENBERG TRAURIG, LLP

2700 TWO COMMERCE SQUARE 2001 MARKET STREET PHILADELPHIA, PENNSYLVANIA 19103  
215-988-7800 FAX 215-988-7801 www.gtlaw.com

MIAMI NEW YORK WASHINGTON, D.C. ATLANTA PHILADELPHIA TYSONS CORNER CHICAGO BOSTON PHOENIX WILMINGTON LOS ANGELES DENVER  
SAO PAULO FORT LAUDERDALE BOCA RATON WEST PALM BEACH ORLANDO TALLAHASSEE

**TRADEMARK**

**RECORDED: 02/13/2003**

**REEL: 002670 FRAME: 0315**