

09-08-2005

Form PTO-1594

(Rev 6-93)

8/25/05

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U.S. Department of Commerce

Patent and Trademark Office

inal documents or copy thereof.

To the Honorable Commissioner of

1. Name of conveying party(ies):

YONKERS RACING CORPORATION, INC.

- Individual(s)
- General Partnership
- Corporation (New York)
- Other
- 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: August 12, 2005

2. Name of receiving party(ies):

Name: MERRILL LYNCH CAPITAL CORPORATION, as Administrative Agent

Internal Address: _____

Street Address: 4 World Financial Center

City: New York State: New York ZIP: 10080

Country: _____

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation
- 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

TRADEMARK FEE PROCESS RECEIVED
2005 AUG 25 10:52
US PATENT & TRADEMARK OFFICE

4. Application number(s) or trademark number(s):

If this document is being filed together with a new application, the execution date of the application is _____

A. Trademark Application No.(s)

B. Trademark No.(s)

2,432,830

Additional numbers attached Yes No

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

Name: Nora A. Whitescarver
Internal Address: Mayer, Brown Rowe & Maw LLP

Street Address: 1909 K Street, NW

City: Washington State: DC ZIP: 20006

6. Total number of applications and trademarks involved: 58

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

- Enclosed (Check No. 4096)
- 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.

Nora A. Whitescarver
Name of Person Signing

Nora A. Whitescarver
Signature

August 24, 2005
Date

88/07/2005 LHWELLER 00000006 2432830

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48.00 00

Total number of pages comprising cover sheet and document attachments: 10

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08-25-2005

TRADEMARK

U.S. Patent & TM Office TM Mail Rcpt Dt. #10

REEL: 003217 FRAME: 0895

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (“**Trademark Security Agreement**”) made as of the 12th day of August, 2005, between YONKERS RACING CORPORATION, INC., a New York corporation with its principal offices at 810 Yonkers Avenue, Yonkers, New York (the “**Debtor**”) and MERRILL LYNCH CAPITAL CORPORATION (“**Merrill**”), in its capacity as Administrative Agent and having an office at 4 World Financial Center, 250 Vesey Street (Floor 16), New York, New York 10080 (in such capacity and together with its successors and assigns, the “**Secured Party**”), for the various financial institutions (the “**Lenders**”) that are or may become parties to (i) that certain Building Loan Agreement dated as of the date hereof, among the Borrower, Merrill, as the Administrative Agent for the Lenders, Merrill Lynch, Pierce, Fenner and Smith Incorporated, as the Lead Arranger and Sole Book Runner, Bear Stearns Corporate Lending Inc., as the Syndication Agent for the Lenders and Hudson Valley Bank, Manufacturers and Traders Trust Company, Commerce Bank N.A. and CIT Lending Services Corporation, as the Co-Documentation Agents for the Lenders (as such agreement may be amended, amended and restated, supplemented or otherwise modified from time to time, the “**Building Loan Agreement**”) and (ii) that certain Project Loan Agreement dated as of the date hereof, among the Borrower, Merrill, as the Administrative Agent for the Lenders, Merrill Lynch, Pierce, Fenner and Smith Incorporated, as the Lead Arranger and Sole Book Runner, Bear Stearns Corporate Lending Inc., as the Syndication Agent for the Lenders and Hudson Valley Bank, Manufacturers and Traders Trust Company, Commerce Bank N.A. and CIT Lending Services Corporation, as the Co-Documentation Agents for the Lenders (as such agreement may be amended, amended and restated, supplemented or otherwise modified from time to time, the “**Project Loan Agreement**” and, together with the Building Loan Agreement, the “**Loan Agreements**”).

RECITALS:

WHEREAS, Debtor and Secured Party, in its capacity as Administrative Agent for the Lenders, are parties to the Security Agreement dated as of August 12 2005 (as amended, supplemented, amended and restated or otherwise modified from time to time, the “**Master Security Agreement**”). Unless otherwise defined herein or the context otherwise requires, terms used in this Trademark Security Agreement, including its preamble and recitals, have the meanings provided in the Master Security Agreement; and

WHEREAS, Debtor has adopted and is using the trademark and trade name listed in Schedule A annexed to this Trademark Security Agreement and made a part of this Trademark Security Agreement; and

WHEREAS, as a condition precedent to making the Building Loan Facility and the Project Loan Facility available to the Borrower under each applicable Loan Agreement, the Debtor is required to execute and deliver this Security Agreement; and

WHEREAS, the Debtor has duly authorized the execution, delivery and performance of this Trademark Security Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Lenders to make the Building Loan Facility and the Project Loan Facility available to the Borrower pursuant to each applicable Loan Agreement, the Debtor agrees as follows:

1. Debtor and Secured Party, intending to be legally bound hereby, agree that, as security for the full and timely payment in full of all of the Obligations of the Debtor and each other Obligor now or hereafter existing under the Building Loan Agreement, the Global Building Loan Note, each Building Loan Note, the Project Loan Agreement, the Global Project Loan Note, each Project Loan Note and each other Loan Document to which any Obligor is or may become a party, whether for principal, interest, costs, fees, expenses or otherwise, Debtor has, pursuant to the Master Security Agreement, and by this Trademark Security Agreement the Debtor reaffirms that Debtor has, mortgaged to and pledged with the Secured Party, and granted to the Secured Party a security interest in, all its right, title and interest in and to (i) the trademark and trade name described in Schedule A to this Trademark Security Agreement and any other trademarks, trade names and designs that Debtor may adopt and use, in the U.S. or foreign countries, in connection with its business after the date of this Trademark Security Agreement, (collectively, the “**Trademark**”), together with the good will of the business symbolized thereby, (ii) all registrations and pending trademark applications owned presently or obtained or filed hereafter, both in the United States and in foreign countries, including that identified on Schedule A (the “**Registration**”), and (iii) any and all proceeds of the foregoing, including, without limitation, any royalties, claims for infringement and proceeds of sale or other disposition (collectively, the “**Trademark Collateral**”).

2. Debtor represents, warrants, covenants and agrees as follows:

(a) Debtor owns the Trademark and Registration listed in Schedule A; to the extent indicated in Schedule A, the Trademark is registered in the United States Patent and Trademark Office; Debtor is the record owner in the United States Patent and Trademark Office of such Registration and it is in full force and effect.

(b) Debtor has the right and power to make the mortgage and pledge and grant the security interest granted in this Trademark Security Agreement and in the Master Security Agreement; and the Trademark Collateral is not now, and will not at any time be, subject to any liens, mortgages, pledges, security interests, licenses or encumbrances or claims of any nature whatsoever created by or through Debtor, except in favor of the Secured Party.

(c) Except to the extent that the Secured Party, upon prior written notice from Debtor, shall consent, Debtor will not assign, sell, transfer or otherwise dispose of, mortgage, pledge, hypothecate, grant a security interest in or lien upon, license, encumber or otherwise allow any claim to be created against any of the Trademark Collateral.

(d) Debtor will take all reasonable steps necessary to maintain and defend the Trademark and registration of the Trademark in the United States Patent

and Trademark Office, or any similar office, including, without limitation, filing of affidavits of use and incontestability and renewal applications, and taking part in opposition, interference and cancellation proceedings.

(e) Debtor will perform all acts and execute any documents, including, without limitation, assignments suitable for filing with the United States Patent and Trademark Office and Uniform Commercial Code financing statements, reasonably requested of it by the Secured Party at any time to evidence, perfect and maintain the rights in the Trademark Collateral granted to the Secured Party under this Trademark Security Agreement. Debtor will promptly notify Secured Party at the time Debtor adopts for use in its business any Trademarks not described on Schedule A to this Trademark Security Agreement and files any applications to register a Trademark. To the extent permitted by law, Debtor hereby authorizes the Secured Party to execute and file such assignments and financing statements (and/or similar documents) with respect to the Trademark Collateral, or copies thereof or of this Trademark Security Agreement, signed only by the Secured Party.

3. If an Event of Default (as defined in the Master Security Agreement) has occurred, then, in addition to all other rights and remedies of the Secured Party, whether under law, the Master Security Agreement or otherwise, the Secured Party may, without notice to, or consent by, Debtor, (a) assign, sell or otherwise dispose of or use the Trademark Collateral, or any of it, either with or without special or other conditions or stipulations, with power to buy the Trademark Collateral or any part of it, and with power also to execute assurances, and to do all other acts and things for completing the assignment, sale or disposition which the Secured Party shall, in its sole discretion, deem appropriate or proper; and (b) in order to implement any such assignment, sale or other disposal of any of the Trademark Collateral, pursuant to the authority granted in the Power of Attorney described in Paragraph 4 of this Trademark Security Agreement (such authority becoming effective on the occurrence of an Event of Default), execute and deliver on behalf of Debtor, one or more instruments of assignment of the Trademark (or any application or registration thereof), in form suitable for filing, recording or registration in the United States Patent and Trademark Office. Debtor agrees to pay all reasonable costs and expenses incurred in any such transfer, including any taxes, filing or recording fees, reasonable attorneys' fees and all reasonable travel and other expenses, and all such costs, to the extent paid by the Secured Party, shall be added to the Obligations. The Secured Party may apply the proceeds actually received from any such assignment, sale or other disposition to the reasonable costs and expenses thereof and/or to the Obligations; and Debtor shall remain liable and will pay the Secured Party on demand any deficiency remaining and the balance of any expenses unpaid. Nothing contained in this Trademark Security Agreement shall be construed as requiring the Secured Party to take any action at any time.

4. The Debtor hereby irrevocably appoints the Secured Party the Debtor's attorney-in-fact, with full authority in the place and stead of the Debtor and in the name of the Debtor or otherwise, from time to time in the Secured Party's discretion, following the occurrence and continuation of an Event of Default, to take any action and to execute any instrument which the Secured Party may deem necessary or advisable to accomplish the purposes of this Trademark Security Agreement, including:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Trademark Collateral;

(b) to file any claims or take any action or institute any proceedings which the Secured Party may deem necessary or desirable for the collection of any of the Trademark Collateral or otherwise to enforce the rights of the Secured Party with respect to any of the Trademark Collateral; and

(c) to perform the affirmative obligations of the Debtor hereunder.

The Debtor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section 4 is irrevocable and coupled with an interest.

5. Notwithstanding anything to the contrary contained in this Trademark Security Agreement, upon payment and performance in full of the Obligations and termination of the Master Security Agreement, this Trademark Security Agreement shall terminate and be of no further force and effect and Secured Party shall thereupon terminate its security interest in the Trademark Collateral. Until such time, however, this Trademark Security Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns, provided that, without the prior written consent of Secured Party, the Debtor may not assign this Trademark Security Agreement or any of its rights under this Trademark Security Agreement or delegate any of its duties or obligations under this Trademark Security Agreement, and any such attempted assignment or delegation shall be null and void. This Trademark Security Agreement is not intended and shall not be construed to obligate the Secured Party to take any action whatsoever with respect to the Trademark Collateral or to incur expenses or perform or discharge any obligation, duty or disability of the Debtor.

6. Any provision of this Trademark Security Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such provision and such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Trademark Security Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

7. No failure or delay on the part of Secured Party in exercising any right, remedy, power or privilege under this Trademark Security Agreement shall operate as a waiver thereof or of any other right, remedy, power or privilege of Secured Party under this Trademark Security Agreement or the Master Security Agreement nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges of Secured Party under this Trademark Security Agreement are cumulative and not exclusive of any rights or remedies which it may otherwise have.

8. All notices and other communications provided to any party hereto under this Trademark Security Agreement shall be in writing and addressed, delivered or transmitted to such party at its address or facsimile number set forth below or at such other address or facsimile number as may be designated by such party in a notice to the other parties. All such notices and

communications shall be deemed to have been properly given if (x) hand delivered with receipt acknowledged by the recipient; (y) if mailed, upon the fifth (5th) Business Day after the date on which it is deposited in registered or certified mail, postage prepaid, return receipt requested or (z) if by Federal Express or other nationally-recognized express courier service with instructions to deliver on the following Business Day, on the next Business Day after delivery to such express courier service. Notices and other communications may also be properly given by facsimile but shall be deemed to be received upon automatic facsimile confirmation of receipt thereof by the intended recipient machine therefor with the original of such notice or communication to be given in the manner provided in the second sentence of this paragraph. Notices delivered hereunder shall be addressed as follows:

If to the Debtor:

Yonkers Racing Corporation
810 Yonkers Avenue
Yonkers, New York 10704
Facsimile No.:
Attention: Mr. Timothy Rooney

With a copy to:

Klett, Rooney Lieber & Schorling, P.C.
One Oxford Centre
40th Floor
301 Grant Street
Pittsburgh, Pennsylvania 15219
Facsimile No.: (412) 392-2128
Attention: John A. Barbour, Esq.

If to the Secured Party:

Merrill Lynch Capital Corporation
4 World Financial Center
250 Vesey Street (Floor 16)
New York, New York 10080
Facsimile No.: (212) 738-1186
Attention: Michael E. O'Brien

With a copy to:

Mayer, Brown, Rowe & Maw LLP
1675 Broadway
New York, New York 10019
Facsimile No.: (212) 849-5665
Attention: Douglas L. Wisner, Esq.

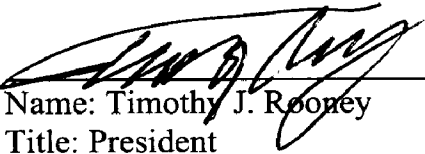
9. THIS TRADEMARK SECURITY AGREEMENT SHALL BE DEEMED TO BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK. THIS TRADEMARK SECURITY AGREEMENT AND THE OTHER LOAN DOCUMENTS CONSTITUTE THE ENTIRE UNDERSTANDING AMONG THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND THEREOF AND SUPERSEDE ANY PRIOR AGREEMENTS, WRITTEN OR ORAL, WITH RESPECT THERETO.

10. The provisions of Section 11.14 of the Building Loan Agreement (and the corresponding section of the Project Loan Agreement) shall apply to this Trademark Security Agreement.

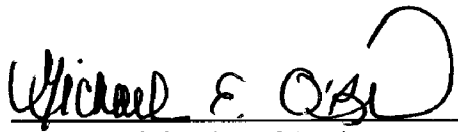
[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed and delivered this Trademark Security Agreement as of the day and year first above written.

YONKERS RACING CORPORATION, a
New York corporation

By: 
Name: Timothy J. Rooney
Title: President

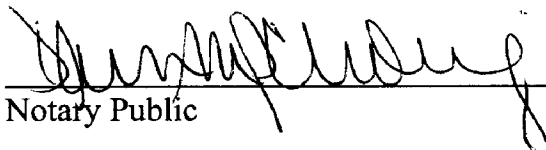
**MERRILL LYNCH CAPITAL
CORPORATION**, as Administrative Agent

By: 
Name: Michael E. O'Brien
Title: Vice President

ACKNOWLEDGMENTS

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

On the 10th day of August in the year 2005, before me, the undersigned, a Notary Public in and for said state, personally appeared **TIMOTHY J. ROONEY** to me known who, being duly sworn did depose and say that he is the President of **YONKERS RACING CORPORATION**, the corporation which executed the foregoing instrument and acknowledged that he executed the same on behalf of said corporation by order of the board of directors of said corporation.

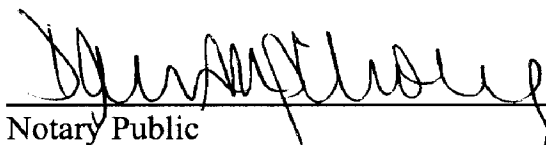


Notary Public

DAWN M. SCHOENIG
NOTARY PUBLIC, State of New York
No. 01SC4900811
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires August 3, 2008

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

On the 10th day of August in the year 2005, before me, the undersigned, a Notary Public in and for said state, personally appeared **MICHAEL E. O'BRIEN** to me known who, being duly sworn did depose and say that he is a Vice President of **MERRILL LYNCH CAPITAL CORPORATION**, the financial institution which executed the foregoing instrument and acknowledged that s/he executed the same on behalf of said financial institution by order of said financial institution.



Notary Public

DAWN M. SCHOENIG
NOTARY PUBLIC, State of New York
No. 01SC4900811
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires August 3, 2008

SCHEDULE A TO TRADEMARK SECURITY AGREEMENT

**REGISTERED TRADEMARK AND
TRADEMARK REGISTRATION
OF YONKERS RACING CORPORATION**

<u>Mark</u>	<u>Registration No.</u>	<u>Issue Date</u>
YONKERS RACEWAY	2,432,830	March 6, 2001