

12-21-2001



UNITED STATES

101922972

TRADemark OFFICE

RECORDATION FORM COVER SHEET

TRADEMARKS ONLY

10-3001

To the Honorable Commissioner of Patents and Trademarks:

Please record the attached original document or copy thereof.

1. Name and address of conveying party:

Jacobson Stores Inc.  
3333 Sargent Road  
Jackson, Michigan 49201

A Michigan corporation.

2. Name and address of receiving party:

Fleet Retail Finance, Inc.  
40 Broad Street  
Boston, MA 02109

A Delaware corporation.

3. Nature of conveyance: Trademark Collateral Security and Pledge Agreement dated as of July 18, 2001

4. Execution Date: July 18, 2001

5. Registration numbers:

1197477

See attached Schedule A

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

Joseph F. Gilday  
Bingham Dana LLP  
150 Federal Street  
Boston, MA 02110

7. Total number of applications and registrations involved: 25

12/20/2001 TDIAZ1

00000165 1197477

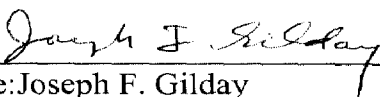
01 FC:481  
02 FD:482

40.00 DP  
600.00 DP

BUSDOCS:1051747.1

8. Total fee enclosed: \$640.00
  
9. Deposit account number: [Not applicable]
  
10. 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.

  
Name: Joseph F. Gilday  
Date: October 30, 2001

Total number of pages submitted (including cover sheet and any attached Schedules, and conveyance document and any attached Schedules): 21

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks  
Box Assignment  
Washington, D.C. 20231

Sent via U.S. Post Office Express Mail on October 30, 2001, Receipt No. EL 791206451 US.

## SCHEDULE A

### Trademarks and Trademark Registrations

<u>Trademark</u> or <u>Service Mark</u>	Registrations - United States Patent and Trademark Office <u>Registration No.</u>	<u>Registration Date</u>
Jacobson's	1,197,477	June 8, 1982
Jacobson's	1,179,214	November 11, 1981
Jacobson's	1,140,848	October 28, 1980
Miss J Shop	825,800	March 14, 1967
Northridge	804,748	March 1, 1966
Clairewood	1,442,530	March 9, 1987
Mr. J. Shop	1,535,413	April 18, 1989
Take 5 & Design	2,049,984	April 1, 1997
Signore!!!	1,664,185	November 12, 1991
Leyla Mitra	1,627,266	December 11, 1990
Jacobson's & Design (bow)	1,628,771	December 18, 1990
J Club	1,714,685	September 8, 1992
Active Attitudes	1,749,447	January 26, 1993
Cortland Collection	1,550,260	August 1, 1989
Ms. J & Block Design	2,245,065	October 11, 1999
Ms. J	2,255,902	November 22, 1999
Susan Lynn	1,911,495	August 15, 1995
Che Bella	1,942,845	December 19, 1995
Sydney Daniels	1,957,798	February 20, 1996
Take 5 Sport & Design	2,053,593	April 15, 1997
Attitudes by Leyla Mitra	2,000,100	September 10, 1996

<u>Trademark</u> or <u>Service Mark</u>	Pending Applications - United States Patent and Trademark Office <u>Serial No.</u>	<u>Filing Date</u>
Concept Edge		Application to be made after first use
Jake's Kids & Design		Application to be made after first use
Jacobson's Enjoy		Application to be made after first use
Jacobson's Applause		Application to be made after first use

**TRADEMARK COLLATERAL  
SECURITY AND PLEDGE AGREEMENT**

**TRADEMARK COLLATERAL SECURITY AND PLEDGE AGREEMENT** dated as of July 18, 2001 among Jacobson Stores Inc., a Michigan Corporation having its principal executive offices at 3333 Sargent Road, Jackson, Michigan 49201, (the "Assignor"), and Fleet Retail Finance, Inc., a Delaware Corporation having an office at 40 Broad Street, Boston, Massachusetts 02109, as agent (hereinafter, in such capacity, the "Agent") for itself and other financial institutions (hereinafter, collectively, the "Revolving Credit Lenders") which are, or may in the future become, parties to an Amended and Restated Loan and Security Agreement dated as of July 18, 2001 (as amended and in effect from time to time, the "Loan and Security Agreement"), among the Assignor, Jacobson Stores Realty Company, Jacobson Credit Corp., the Revolving Credit Lenders and the Agent.

**WHEREAS**, it is a condition precedent to the Revolving Credit Lenders' making any loans or otherwise extending credit to the Assignor under the Loan and Security Agreement that the Assignor execute and deliver to the Agent, for the benefit of the Revolving Credit Lenders and the Agent, a trademark agreement in substantially the form hereof;

**WHEREAS**, the Assignor has executed and delivered to the Agent, for the benefit of the Revolving Credit Lenders and the Agent, the Loan and Security Agreement pursuant to which the Assignor has granted to the Agent, for the benefit of the Revolving Credit Lenders and the Agent, a security interest in certain of the Assignor's personal property and fixture assets, including without limitation the trademarks, service marks, trademark and service mark registrations, and trademark and service mark registration applications listed on Schedule A attached hereto, all to secure the payment and performance of the Liabilities (as defined in the Loan and Security Agreement); and

**WHEREAS**, this Trademark Agreement is supplemental to the provisions contained in the Loan and Security Agreement;

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**1. DEFINITIONS.**

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefor in the Loan and Security Agreement. In addition, the following terms shall have the meanings set forth in this §1 or elsewhere in this Trademark Agreement referred to below:

Assignment of Marks. See §2.1.

Associated Goodwill. All goodwill of the Assignor and its business, products and services appurtenant to, associated with or symbolized by the Trademarks and the use thereof.

Pledged Trademarks. All of the Assignor's right, title and interest in and to all of the Trademarks, the Trademark Registrations, the Trademark License Rights, the Trademark Rights, the Associated Goodwill, the Related Assets, and all accessions to, substitutions for, replacements of, and all products and proceeds of any and all of the foregoing.

PTO. The United States Patent and Trademark Office.

Related Assets. All assets, rights and interests of the Assignor that uniquely reflect or embody the Associated Goodwill, including the following:

(a) all patents, inventions, copyrights, trade secrets, confidential information, formulae, methods or processes, compounds, recipes, know-how, methods and operating systems, drawings, descriptions, formulations, manufacturing and production and delivery procedures, quality control procedures, product and service specifications, catalogs, price lists, and advertising materials, relating to the manufacture, production, delivery, provision and sale of goods or services under or in association with any of the Trademarks; and

(b) the following documents and things in the possession or under the control of the Assignor, or subject to its demand for possession or control, related to the production, delivery, provision and sale by the Assignor, or any affiliate, franchisee, licensee or contractor, of products or services sold by or under the authority of the Assignor in connection with the Trademarks or Trademark Rights, whether prior to, on or subsequent to the date hereof:

(i) all lists, contracts, ancillary documents and other information that identify, describe or provide information with respect to any customers, dealers or distributors of the Assignor, its affiliates or franchisees or licensees or contractors, for products or services sold under or in connection with the Trademarks or Trademark Rights, including all lists and documents containing information regarding each customer's, dealer's or distributor's name and address, credit, payment, discount, delivery and other sale terms, and history, pattern and total of purchases by brand, product, style, size and quantity;

(ii) all agreements (including franchise agreements), product and service specification documents and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision and sale of products or services under or in connection with the Trademarks or Trademark Rights;

(iii) all documents and agreements relating to the identity and locations of all sources of supply, all terms of purchase and delivery, for all materials, components, raw materials and other supplies and services used in the manufacture, production, provision, delivery and sale of products or services under or in connection with the Trademarks or Trademark Rights; and

(iv) all agreements and documents constituting or concerning the present or future, current or proposed advertising and promotion by the Assignor (or any of its affiliates, franchisees, licensees or contractors) of products or services sold under or in connection with the Trademarks or Trademark Rights.

Trademark Agreement. This Trademark Collateral Security and Pledge Agreement, as amended and in effect from time to time.

Trademark License Rights. Any and all present or future rights and interests of the Assignor pursuant to any and all past, present and future franchising or licensing agreements in favor of the Assignor, or to which the Assignor is a party, pertaining to any Trademarks, Trademark Registrations, or Trademark Rights owned or used by third parties in the past, present or future, including the right (but not the obligation) in the name of the Assignor or, while any Borrower is InDefault, the Agent to enforce, and sue and recover for, any breach or violation of any such agreement to which the Assignor is a party.

Trademark Registrations. All present or future federal, state, local and foreign registrations of the Trademarks, all present and future applications for any such registrations (and any such registrations thereof upon approval of such applications), together with the right (but not the obligation) to apply for such registrations (and prosecute such applications) in the name of the Assignor or, while any Borrower is InDefault, the Agent, and to take any and all actions necessary or appropriate to maintain such registrations in effect and renew and extend such registrations.

Trademark Rights. Any and all present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law or otherwise, including the following: all such rights arising out of or associated with the Trademark Registrations; the right (but not the obligation) to register claims under any state, federal or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of the Assignor or, while any Borrower is InDefault, the Agent for any and all past, present and future infringements or dilution of or any other damages or injury to the Trademarks, the Trademark Rights, or the Associated Goodwill, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, dilution, damage or injury; and the Trademark License Rights.

**Trademarks.** All of the trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, elements of package or trade dress, and other source and product or service identifiers, used or associated with or appurtenant to the products, services and businesses of the Assignor, that (i) are set forth on Schedule A hereto, or (ii) are now owned, held or used by the Assignor, in the Assignor's business, or with the Assignor's products and services, or in which the Assignor has any right, title or interest, or (iii) are in the future adopted, acquired, owned, held and used by the Assignor in the Assignor's business or with the Assignor's products and services, or in which the Assignor in the future acquires any right, title or interest.

use. With respect to any Trademark, all uses of such Trademark by, for or in connection with the Assignor or its business or for the direct or indirect benefit of the Assignor or its business, including all such uses by the Assignor itself, by any of the affiliates of the Assignor, or by any franchisee, licensee or contractor of the Assignor.

Unless otherwise provided herein, the rules of interpretation set forth in §19.14 of the Loan and Security Agreement shall be applicable to this Trademark Agreement.

## **2. GRANT OF SECURITY INTEREST.**

**2.1. Security Interest; Assignment of Marks.** As collateral security for the payment and performance in full of all of the Liabilities, the Assignor hereby unconditionally grants to the Agent, for the benefit of the Revolving Credit Lenders and the Agent, a continuing security interest in and first priority lien on the Pledged Trademarks, and pledges and mortgages (but does not transfer title to) the Pledged Trademarks to the Agent for the benefit of the Revolving Credit Lenders and the Agent. In addition, the Assignor has executed in blank and delivered to the Agent an assignment of federally registered trademarks in substantially the form of Exhibit 1 hereto (the "Assignment of Marks"). The Assignor hereby authorizes the Agent to complete as assignee and record with the PTO the Assignment of Marks upon the occurrence and during the continuance of an Event of Default and the proper exercise of the Agent's remedies under this Trademark Agreement and the Loan and Security Agreement.

**2.2. Conditional Assignment.** In addition to, and not by way of limitation of, the grant, pledge and mortgage of the Pledged Trademarks provided in §2.1, the Assignor grants, assigns, transfers, conveys and sets over to the Agent, for the benefit of the Revolving Credit Lenders and the Agent, the Assignor's entire right, title and interest in and to the Pledged Trademarks; provided that such grant, assignment, transfer and conveyance shall be and become of force and effect only (i) upon or after the occurrence and during the continuance of an Event of Default and (ii) either (A) upon the written demand of the Agent at any time during such continuance or (B) immediately and automatically (without notice or action of any kind by the Agent) upon an Event of Default for which acceleration of the Loans is automatic under the Loan and Security Agreement or upon the sale or other disposition of or foreclosure upon the Collateral pursuant to the Loan and Security Agreement and applicable law (including

the transfer or other disposition of the Collateral by the Assignor to the Agent or its nominee in lieu of foreclosure).

**2.3. Supplemental to Security Agreement.** Pursuant to the Loan and Security Agreement the Assignor has granted to the Agent, for the benefit of the Revolving Credit Lenders and the Agent, a continuing security interest in and lien on the Collateral (including the Pledged Trademarks). The Loan and Security Agreement, and all rights and interests of the Agent in and to the Collateral (including the Pledged Trademarks) thereunder, are hereby ratified and confirmed in all respects. In no event shall this Trademark Agreement, the grant, assignment, transfer and conveyance of the Pledged Trademarks hereunder, or the recordation of this Trademark Agreement (or any document hereunder) with the PTO, adversely affect or impair, in any way or to any extent, the Loan and Security Agreement, the security interest of the Agent in the Collateral (including the Pledged Trademarks) pursuant to the Loan and Security Agreement and this Trademark Agreement, the attachment and perfection of such security interest under the Uniform Commercial Code (including the security interest in the Pledged Trademarks), or any present or future rights and interests of the Agent in and to the Collateral under or in connection with the Loan and Security Agreement, this Trademark Agreement or the Uniform Commercial Code. Any and all rights and interests of the Agent in and to the Pledged Trademarks (and any and all Liabilities of the Assignor with respect to the Pledged Trademarks) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of the Agent (and the Liabilities of the Assignor) in, to or with respect to the Collateral (including the Pledged Trademarks) provided in or arising under or in connection with the Loan and Security Agreement and shall not be in derogation thereof.

### **3. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

The Assignor represents, warrants and covenants that: as of the date of this Trademark Agreement (i) Schedule A sets forth a true and complete list of all Trademark Registrations owned, licensed, controlled or used by the Assignor; (ii) the Trademarks and Trademark Registrations are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and there is no litigation or proceeding pending concerning the validity or enforceability of the Trademarks or Trademark Registrations; (iii) to the best of the Assignor's knowledge, each of the Trademarks and Trademark Registrations is valid and enforceable; (iv) to the best of the Assignor's knowledge, there is no infringement by others of the Trademarks, Trademark Registrations or Trademark Rights; (v) no claim has been made to Assignor that the use of any of the Trademarks does or may violate the rights of any third person, and to the best of the Assignor's knowledge, there is no infringement by the Assignor of the trademark rights of others; (vi) the Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks (other than ownership and other rights reserved by third party owners with respect to Trademarks that the Assignor is licensed to use), free and clear of any liens, charges, encumbrances and adverse claims, including pledges, assignments, licenses, registered user agreements and covenants by the Assignor not to sue third persons, other than the security interest and assignment



created by the Loan and Security Agreement and this Trademark Agreement and Permitted Encumbrances; (vii) the Assignor has the unqualified right to enter into this Trademark Agreement and to perform its terms; (viii) the Assignor has used, and will continue to use, proper statutory and other appropriate proprietary notices in connection with its use of the Trademarks; (ix) the Assignor has used, and will continue to use for the duration of this Trademark Agreement, appropriate standards of quality (as reasonably determined by Assignor so as not to impair the value of the Trademarks) in its manufacture and provision of products and services sold or provided under the Trademarks; (x) this Trademark Agreement, together with the Loan and Security Agreement, will create in favor of the Agent a valid and perfected first priority security interest in the Pledged Trademarks upon making the filings referred to in clause (xi) of this §3; and (xi) except for the filing of financing statements under the Uniform Commercial Code and the recording of this Trademark Agreement and the assignment attached as Exhibit 1 with the PTO, no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (A) for the grant by the Assignor or the effectiveness of the security interest and assignment granted hereby or for the execution, delivery and performance of this Trademark Agreement by the Assignor, or (B) for the perfection of or the exercise by the Agent of any of its rights and remedies hereunder.

#### **4. INSPECTION RIGHTS.**

The Assignor hereby grants to each of the Agent and the Revolving Credit Lenders and its employees and agents the right to visit the Assignor's plants and facilities that 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.

#### **5. NO TRANSFER OR INCONSISTENT AGREEMENTS.**

Without the Agent's prior written consent, the Assignor will not (i) mortgage, pledge, assign, encumber, grant a security interest in, transfer, license or alienate any of the Pledged Trademarks, or (ii) enter into any agreement (for example, a license agreement) that is inconsistent with the Assignor's obligations under this Trademark Agreement or the Loan and Security Agreement, except for Permitted Encumbrances and transfers permitted under Section 4.13(d) of the Loan and Security Agreement.

#### **6. AFTER-ACQUIRED TRADEMARKS, ETC.**

**6.1. After-acquired Trademarks.** If, before the Liabilities shall have been finally paid and satisfied in full, the Assignor shall obtain any right, title or interest in or to any other or new Trademarks, Trademark Registrations or Trademark Rights, the provisions of this Trademark Agreement shall automatically apply thereto and the Assignor shall promptly provide to the Agent notice thereof in writing and execute and deliver to the Agent such documents or instruments as the Agent may reasonably request further to implement, preserve or evidence the Agent's interest therein.

**6.2. Amendment to Schedule.** The Assignor authorizes the Agent to modify this Trademark Agreement and the Assignment of Marks, without the necessity of the Assignor's further approval or signature, by amending Exhibit A hereto and the Annex to the Assignment of Marks to include any future or other Trademarks, Trademark Registrations or Trademark Rights under §2 or §6.

## **7. TRADEMARK PROSECUTION.**

**7.1. Assignor Responsible.** The Assignor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with the Pledged Trademarks, and shall hold each of the Agent and the Revolving Credit Lenders harmless from any and all costs, damages, liabilities and expenses that may be incurred by the Agent or any Revolving Credit Lender in connection with the Agent's interest in the Pledged Trademarks or any other action or failure to act in connection with this Trademark Agreement or the transactions contemplated hereby. In respect of such responsibility, the Assignor shall retain trademark counsel acceptable to the Agent.

**7.2. Assignor's Duties, etc.** The Assignor shall have the right and, to the extent Assignor deems it appropriate in its reasonable business judgment exercised so as not to impair the value of the Trademarks, the duty, through trademark counsel acceptable to the Agent, to prosecute diligently any trademark registration applications of the Trademarks pending as of the date of this Trademark Agreement or thereafter, to preserve and maintain all rights in the Trademarks and Trademark Registrations, including the filing of appropriate renewal applications and other instruments to maintain in effect the Trademark Registrations and the payment when due of all registration renewal fees and other fees, taxes and other expenses that shall be incurred or that shall accrue with respect to any of the Trademarks or Trademark Registrations; provided, however, that as long as Assignor is not InDefault, Assignor shall have no obligation to use or to maintain any Pledged Trademarks (1) noted on Schedule A as having been or intended to be abandoned, (2) that relates exclusively to any product that has been, or is in the process of being, discontinued, abandoned or terminated, (3) that is being replaced with a Pledged Trademark substantially similar to the Pledged Trademark that may be abandoned or otherwise become invalid, (4) that is substantially the same as another Pledged Trademark that is in full force, or (5) that Assignor determines in its reasonable business judgment exercised so as not to impair the value of the Trademarks, is no longer advantageous to its business. Any expenses incurred in connection with such applications and actions shall be borne by the Assignor. Except as otherwise provided in the above proviso in this Section 7.2, the Assignor shall not abandon any filed trademark registration application, or any Trademark Registration or Trademark, without the consent of the Agent, which consent shall not be unreasonably withheld.

**7.3. Assignor's Enforcement Rights.** The Assignor shall have the right and, only to the extent the Assignor deems appropriate in its reasonable business judgment exercise so as not to impair the value of the Trademarks, the duty to bring suit or other action in the Assignor's own name to maintain and enforce the Trademarks, the

Trademark Registrations and the Trademark Rights. The Assignor may require the Agent to join in such suit or action as necessary to assure the Assignor's ability to bring and maintain any such suit or action in any proper forum if (but only if) the Agent is completely satisfied that such joinder will not subject the Agent or any Revolving Credit Lender to any risk of liability. The Assignor shall promptly, upon demand, reimburse and indemnify the Agent for all damages, costs and expenses, including legal fees, incurred by the Agent pursuant to this §7.3.

**7.4. Protection of Trademarks, etc.** In general, except as otherwise provided in Section 7.2 or 7.3, the Assignor shall take any and all such actions (including institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate to properly maintain, protect, preserve, care for and enforce the Pledged Trademarks. Except as otherwise provided in Section 7.2 or 7.3, the Assignor shall not take or fail to take any action, nor permit any action to be taken or not taken by others under its control, that would adversely affect the validity, grant or enforcement of the Pledged Trademarks.

**7.5. Notification by Assignor.** Promptly upon obtaining knowledge thereof, the Assignor will notify the Agent in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the Trademarks or Trademark Registrations or the Assignor's rights, title or interests in and to the Pledged Trademarks, and of any event that does or reasonably could materially adversely affect the value of any of the Pledged Trademarks, the ability of the Assignor or the Agent to dispose of any of the Pledged Trademarks or the rights and remedies of the Agent in relation thereto (including but not limited to the levy of any legal process against any of the Pledged Trademarks).

## **8. REMEDIES.**

Upon the occurrence and during the continuance of an Event of Default, the Agent shall have, in addition to all other rights and remedies given it by this Trademark Agreement (including, without limitation, those set forth in §2.2), the Loan and Security Agreement and the other Loan Documents, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the Commonwealth of Massachusetts, and, without limiting the generality of the foregoing, the Agent may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to the Assignor, all of which are hereby expressly waived, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Pledged Trademarks, or any interest that the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Pledged Trademarks all expenses incurred by the Agent in attempting to enforce this Trademark Agreement (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Liabilities as set forth in or by reference in the Loan and Security Agreement. Notice of any sale, license or other disposition of the Pledged Trademarks shall be given to the Assignor at least ten (10) days before the time that any intended

public sale or other public disposition of the Pledged Trademarks is to be made or after which any private sale or other private disposition of the Pledged Trademarks may be made, which the Assignor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, the Agent may, to the extent permitted under applicable law, purchase or license the whole or any part of the Pledged Trademarks or interests therein sold, licensed or otherwise disposed of.

#### **9. COLLATERAL PROTECTION.**

If the Assignor shall fail to do any act that it has covenanted to do hereunder, or if any representation or warranty of the Assignor shall be breached, the Agent, in its own name or that of the Assignor (in the sole discretion of the Agent), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and the Assignor agrees promptly to reimburse the Agent for any cost or expense incurred by the Agent in so doing.

#### **10. POWER OF ATTORNEY.**

If any Event of Default shall have occurred and be continuing, the Assignor does hereby make, constitute and appoint the Agent (and any officer or agent of the Agent as the Agent may select in its exclusive discretion) as the Assignor's true and lawful attorney-in-fact, with full power of substitution and with the power to endorse the Assignor's name on all applications, documents, papers and instruments necessary for the Agent to use the Pledged Trademarks, or to grant or issue any exclusive or nonexclusive license of any of the Pledged Trademarks to any third person, or to take any and all actions necessary for the Agent to assign, pledge, convey or otherwise transfer title in or dispose of any of the Pledged Trademarks or any interest of the Assignor therein to any third person, and, in general, to execute and deliver any instruments or documents and do all other acts that the Assignor is obligated to execute and do hereunder. The Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and releases each of the Agent and the Revolving Credit Lenders from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by the Agent under this power of attorney (except for the Agent's gross negligence or willful misconduct). This power of attorney is coupled with an interest and shall be irrevocable for the duration of this Trademark Agreement.

#### **11. FURTHER ASSURANCES.**

The Assignor shall, at any time and from time to time, and at its expense, make, execute, acknowledge and deliver, and file and record as necessary or appropriate with governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things (including, without limitation, obtaining consents of third parties), as the Agent may reasonably request or as may be reasonably necessary or appropriate in order to implement and effect fully the intentions, purposes and provisions of this Trademark

Agreement, or to assure and confirm to the Agent the grant, perfection and priority of the Agent's security interest in the Pledged Trademarks.

## **12. TERMINATION.**

At such time as all of the Liabilities have been finally paid and satisfied in full, this Trademark Agreement shall terminate and the Agent shall, upon the written request and at the expense of the Assignor, execute and deliver to the Assignor all deeds, assignments and other instruments as may be necessary or proper to reassign and reconvey to and re-vest in the Assignor the entire right, title and interest to the Pledged Trademarks previously granted, assigned, transferred and conveyed to the Agent by the Assignor pursuant to this Trademark Agreement, as fully as if this Trademark Agreement had not been made, subject to any disposition of all or any part thereof that may have been made by the Agent pursuant hereto or the Loan and Security Agreement.

## **13. COURSE OF DEALING.**

No course of dealing between the Assignor and the Agent, nor any failure to exercise, nor any delay in exercising, on the part of the Agent, any right, power or privilege hereunder or under the Loan and Security Agreement or any other agreement 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.

## **14. EXPENSES.**

Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and expenses incurred by the Agent in connection with the preparation of this Trademark Agreement and all other documents relating hereto, the consummation of the transactions contemplated hereby or the enforcement hereof, 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 or renewal fees, encumbrances, or otherwise protecting, maintaining or preserving the Pledged Trademarks in accordance with the Loan and Security Agreement, this Trademark Agreement and/or the other Loan Documents or in defending or prosecuting any actions or proceedings arising out of or related to the Pledged Trademarks in accordance with the Loan and Security Agreement, this Agreement and/or the other Loan Documents shall be borne and paid by the Assignor.

## **15. OVERDUE AMOUNTS.**

Until paid, all amounts due and payable by the Assignor hereunder shall be a debt secured by the Pledged Trademarks and other Collateral and shall bear, whether before or after judgment, interest at the rate of interest for overdue principal set forth in the Loan and Security Agreement.

**16. NO ASSUMPTION OF LIABILITY; INDEMNIFICATION.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NEITHER THE AGENT NOR ANY REVOLVING CREDIT LENDER ASSUMES ANY LIABILITIES OF THE ASSIGNOR WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING THE ASSIGNOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, ANY OF THE PLEDGED TRADEMARKS OR ASSIGNOR'S USE, LICENSE OR SUBLICENSE THEREOF, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE. ALL OF SUCH LIABILITIES SHALL BE EXCLUSIVELY THE RESPONSIBILITY OF THE ASSIGNOR, AND THE ASSIGNOR SHALL INDEMNIFY THE AGENT AND THE REVOLVING CREDIT LENDERS FOR ANY AND ALL COSTS, EXPENSES, DAMAGES AND CLAIMS, INCLUDING LEGAL FEES, INCURRED BY THE AGENT OR ANY REVOLVING CREDIT LENDER WITH RESPECT TO SUCH LIABILITIES.

**17. NOTICES.**

All notices, requests and other communications hereunder shall be made in the manner set forth in §17 of the Loan and Security Agreement.

**18. AMENDMENT AND WAIVER.**

This Trademark Agreement is subject to modification only by a writing signed by the Agent (with the consent of the Majority Lenders) and the Assignor, except as provided in §6.2. The Agent shall not be deemed to have waived any right hereunder unless such waiver shall be in writing and signed by the Agent and the Majority Lenders. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

**19. GOVERNING LAW; CONSENT TO JURISDICTION.**

THIS TRADEMARK AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS. The Assignor agrees that any suit for the enforcement of this Trademark Agreement may be brought in the courts of the Commonwealth of Massachusetts or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Assignor by mail at the address specified in §17 of the Loan and Security Agreement. The Assignor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

**20. WAIVER OF JURY TRIAL.**

**THE ASSIGNOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS TRADEMARK AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.** Except as prohibited by law, the Assignor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Assignor (i) certifies that neither the Agent or any Revolving Credit Lender nor any representative, agent or attorney of the Agent or any Revolving Credit Lender has represented, expressly or otherwise, that the Agent or any Revolving Credit Lender would not, in the event of litigation, seek to enforce the foregoing waivers, and (ii) acknowledges that, in entering into the Loan and Security Agreement and the other Loan Documents to which the Agent or any Revolving Credit Lender is a party, the Agent and the Revolving Credit Lenders are relying upon, among other things, the waivers and certifications contained in this §20.

**21. MISCELLANEOUS.**

The headings of each section of this Trademark Agreement are for convenience only and shall not define or limit the provisions thereof. This Trademark Agreement and all rights and obligations hereunder shall be binding upon, and inure to the benefit of, the Assignor and its respective successors and assigns, and shall be binding upon, and inure to the benefit of, the Agent, the Revolving Credit Lenders and their respective successors and assigns. In the event of any irreconcilable conflict between the provisions of this Trademark Agreement and the Loan and Security Agreement, the provisions of the Loan and Security Agreement shall control. If any term of this Trademark Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Trademark Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Assignor acknowledges receipt of a copy of this Trademark Agreement.

IN WITNESS WHEREOF, this Trademark Agreement has been executed as of the day and year first above written.

JACOBSON STORES INC.

By: [Signature]  
Name: KEVIN C BINKLEY  
Title: VP-TREASURER

FLEET RETAIL FINANCE INC., as Agent

By: [Signature]  
Name:  
Title:

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OR STATE OF MICHIGAN )  
 ) ss.  
COUNTY OF JACKSON )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 16 day of JULY, 2001, personally appeared KEVIN C. BINKLEY to me known personally, and who, being by me duly sworn, deposes and says that he is the VP, Treasurer of JACOBSON STORES, Inc. and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said KEVIN C. BINKLEY acknowledged said instrument to be the free act and deed of said corporation.

[Signature] LYNNE A. GATZ  
Notary Public NOTARY PUBLIC, Jackson County, MI  
My commission expires: My Commission Expires Sept. 5, 2005



## SCHEDULE A

### Trademarks and Trademark Registrations

Trademark or <u>Service Mark</u>	Registrations - United States Patent and Trademark Office <u>Registration No.</u>	<u>Registration Date</u>
Jacobson's	1,197,477	June 8, 1982
Jacobson's	1,179,214	November 11, 1981
Jacobson's	1,140,848	October 28, 1980
Miss J Shop	825,800	March 14, 1967
Northridge	804,748	March 1, 1966
Clairewood	1,442,530	March 9, 1987
Mr. J. Shop	1,535,413	April 18, 1989
Take 5 & Design	2,049,984	April 1, 1997
Signore!!!	1,664,185	November 12, 1991
Leyla Mitra	1,627,266	December 11, 1990
Jacobson's & Design (bow)	1,628,771	December 18, 1990
J Club	1,714,685	September 8, 1992
Active Attitudes	1,749,447	January 26, 1993
Cortland Collection	1,550,260	August 1, 1989
Ms. J & Block Design	2,245,065	October 11, 1999
Ms. J	2,255,902	November 22, 1999
Susan Lynn	1,911,495	August 15, 1995
Che Bella	1,942,845	December 19, 1995
Sydney Daniels	1,957,798	February 20, 1996
Take 5 Sport & Design	2,053,593	April 15, 1997
Attitudes by Leyla Mitra	2,000,100	September 10, 1996

Trademark or <u>Service Mark</u>	Pending Applications - United States Patent and Trademark Office <u>Serial No.</u>	<u>Filing Date</u>
Concept Edge		Application to be made after first use
Jake's Kids & Design		Application to be made after first use
Jacobson's Enjoy		Application to be made after first use
Jacobson's Applause		Application to be made after first use

**EXHIBIT 1**

**ASSIGNMENT OF TRADEMARKS AND SERVICE MARKS (U.S.)**

**WHEREAS**, Jacobson Stores Inc., a corporation organized and existing under the laws of the State of Michigan, having a place of business at 3333 Sargent Road, Jackson, Michigan 49201 (the "Assignor"), has adopted and used and is using the trademarks and service marks (the "Marks") identified on the Annex hereto, and is the owner of the registrations of and pending registration applications for such Marks in the United States Patent and Trademark Office identified on such Annex; and

**WHEREAS**, Fleet Retail Finance Inc., a corporation organized and existing under the laws of the State of Delaware, having a place of business at 40 Broad Street, Boston, Massachusetts 02109 (the "Assignee"), is desirous of acquiring the Marks and the registrations thereof and registration applications therefor;

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, the Assignor does hereby assign, sell and transfer unto the Assignee all right, title and interest in and to the Marks, together with (i) the registrations of and registration applications for the Marks, (ii) the goodwill of the business symbolized by and associated with the Marks and the registrations thereof, and (iii) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Marks or the registrations thereof or such associated goodwill.

This Assignment of Trademarks and Service Marks (U.S.) is intended to and shall take effect as a sealed instrument at such time as the Assignee shall complete this instrument by inserting its name in the second paragraph above and signing its acceptance of this Assignment of Trademarks and Service Marks (U.S.) below.

IN WITNESS WHEREOF, the Assignor, by its duly authorized officer, has executed this assignment, as an instrument under seal, on this \_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**JACOBSON STORES INC.**

By: \_\_\_\_\_

Name:

Title:

The foregoing assignment of the Marks and the registrations thereof and registration applications therefor by the Assignor to the Assignee is hereby accepted as of the \_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

ANNEX

Trademarks and Trademark Registrations

<u>Trademark or Service Mark</u>	<u>Registrations - United States Patent and Trademark Office Registration No.</u>	<u>Registration Date</u>
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