

3-1-2002

03-01-2002



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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2) Tab settings

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

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

1. Name of conveying party(ies): 3-1-02 Ebonite International, Inc., a Kentucky corporation

2. Name and address of receiving party(ies) Name: Faball Enterprises, Inc. Internal Address: Street Address: 8709 X-Ograph Avenue City: Jennings State: MO Zip: 63136

3. Nature of conveyance: [X] Security Agreement [] Change of Name Execution Date: February 8, 2002

[X] Corporation-State Missouri Additional name(s) & address(es) attached? [X] 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 [X] Yes [] No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Myka L. Hopgood Internal Address: Wyatt, Tarrant & Combs, LLP Street Address: 500 West Jefferson St., Suite 2700 City: Louisville State: KY Zip: 40202

6. Total number of applications and registrations involved: 8 7. Total fee (37 CFR 3.41): \$215.00 [X] Enclosed [] Authorized to be charged to deposit account 8. Deposit account number: N/A

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. Myka L. Hopgood Name of Person Signing Signature Date 2-27-02

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

03/01/2002 DBYRNE 01 FC:481 02 FC:482

00000175 2336721 40.00 OP 175.00 OP

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

TRADEMARK REEL: 002451 FRAME: 0128

TRADEMARK REGISTRATION NOS.

<u>Mark/Country</u>	<u>Reg. No./Serial No. Issued</u>
CLAW + Design U.S.	Reg. No. 2,336,721 Issued: March 28, 2000
FAB & Design U.S.	Reg. No. 1,331,009 Issued: April 16, 1985
HAMMER + Design U.S.	Reg. No. 1,331,008 Issued: April 16, 1985
HAMMERTHANE U.S.	Reg. No. 2,064,721 Issued May 27, 1997
NAIL & Design U.S.	Reg. No. 1,422,022 Issued: Dec. 23, 1986
NAIL + Design U.S.	Reg. No. 2,306,599 Issued: Jan. 4, 2000
RAZOR + Design U.S.	Reg. No. 1,978,397 Issued: June 4, 1996
SLEDGE HAMMER U.S.	Reg. No. 2,378,904 Issued: Aug. 22, 2000

10165733.1

TRADEMARK SECURITY AGREEMENT

This Trademark Security Agreement (the "Agreement"), dated February 8th, 2002, is entered into between EBONITE INTERNATIONAL, INC. (the "Assignor"), and FABALL ENTERPRISES, INC., (the "Assignee").

WHEREAS, pursuant to that certain Intellectual Property Sale and Purchase Agreement (the "Purchase Agreement") of even date herewith by and between Assignor, Assignee and John S. Wonders, Assignor has purchased certain assets owned by Assignee and in partial payment of the purchase price therefor has given to Assignee its promissory note of even date herewith in the principal amount of \$2,500,000 (the "Note"). As security for payment of the Note, Assignor has agreed to grant to the Assignee a security interest in, and upon the occurrence of an uncured Event of Default, as defined in the Note, to conditionally assign to the Assignee for the benefit of the Assignor, certain trademarks and related assets more particularly described herein upon the following terms and conditions.

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

1. Except as otherwise expressly provided herein, capitalized terms used in this Agreement shall have the respective meanings given to them in the Note.

2. To secure the payment and performance of all indebtedness and other obligations of the Assignor under the Note, Assignor hereby grants to the Assignee a security interest in, and subject to Sections 5, 6 and 7 hereof, and only upon the occurrence and during the continuance of an uncured Event of Default, assigns and conveys to Assignee all of the right, title and interest of Assignor in and to the registered and common law trademarks now owned by Assignor in the United States and any other country or province, and the applications, if any, for the registration of trademarks filed with the United States Patent and Trademark Office or any country, province or state, that are specifically listed on Schedule A hereto (the "Trademarks"), including [i] all proceeds of the Trademarks (such as, by way of example, license royalties and proceeds of infringement suits), [ii] all registrations and recordings with respect to the Trademarks, [iii] the right to sue for past, present and future infringements of the Trademarks, [iv] all reissues, divisions, continuations, renewals, extensions and continuations-in-part of the Trademarks, [v] all licenses and other agreements relating in whole or in part to the Trademarks, including all rights to payments in respect thereof, [vi] the goodwill of the business to which any of the Trademarks relate, and, [vii] to the extent not included above, all general intangibles (as such term is defined in the Uniform Commercial Code) of the Assignor related to the Trademarks (the Trademarks and related items listed in clauses [i] through [vii] above being hereafter collectively called the "Collateral"). The parties expressly acknowledge and agree that the Assignor is not granting a security interest in, or assigning or conveying any of its right, title or interest in or to, any of its properties, including trademarks, service marks, or any other intellectual property owned or used by the Assignor, except the Collateral specifically described herein.

3. Assignor covenants and warrants that:

A. Assignor has the corporate power and authority to enter into this Agreement and perform its terms;

B. this Agreement constitutes the legal, valid and binding obligation of the Assignor, enforceable in accordance with its terms;

C. the making and performance by the Assignor of this Agreement and the grant of the security interest hereunder have been duly authorized by all necessary corporate action, and do not and will not violate the provisions of any applicable law or regulation, the Assignor's articles of incorporation or bylaws, and do not and will not result in a breach of, or constitute a default under, or require any consent (other than consents that have been obtained and that are in full force and effect and copies of which have been delivered to the Assignee) or create any lien, charge or encumbrance under any agreement, instrument or document, or the provisions of any order, writ, judgment, injunction, decree, determination or award of any court, government or governmental agency or instrumentality, applicable to the Assignor or to any of the assets of the Assignor to which the Assignor is a party or by which the Assignor or any of the assets of the Assignor may be bound or affected;

D. so long as the Note remains outstanding, the Assignor at all times will be the sole direct or indirect beneficial owner of the Collateral hereunder; and

E. this Agreement grants to the Assignee a first priority lien upon and first priority perfected security interest in the Collateral.

4. Unless an uncured Event of Default shall have occurred and be continuing, Assignor, as owner of the Collateral, shall have the right to use the Collateral on and in connection with products sold by Assignor, for the Assignor's own benefit and account. Unless an uncured Event of Default shall have occurred and be continuing, Assignor shall have the right to grant any license under any of the Trademarks in the ordinary course of Assignor's business.

5. Upon the occurrence and during the continuance of any uncured Event of Default, Assignor's right to use the Collateral, as set forth in Section 4, shall terminate, and the Assignee shall thereupon have, in addition to all other rights and remedies given it by the Note, this Agreement, those allowed by the federal laws of the United States and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in a jurisdiction in which any of the Collateral may be located, the right to transfer or assign, in good faith on commercially reasonable terms and without negligence or willful misconduct, all or from time to time any part of the Collateral, and after deducting from the proceeds of sale or other disposition of the Collateral all expenses (including reasonable fees and expenses for brokers and attorneys) relating to such sale or disposition, shall apply the remainder of such proceeds toward the payment of the Note as the Assignee. Any remainder of the proceeds after payment in full of the Note shall be paid over to the Assignor, and this Agreement shall terminate. Notwithstanding the foregoing, notice of any transfer or assignment or other disposition of the Collateral shall be given to such Assignor at least thirty (30) days before the time that any intended public or private

transfer or assignment or other disposition of the Collateral is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition, and during which period Assignor will have the right to pay to Assignee the amount of the Note due and payable plus any reasonable expenses incurred by Assignee in connection with any such proposed transfer, assignment or disposition, and upon such payment Assignee will release all interest in the Collateral, and this Agreement will terminate. At any such transfer or assignment or other disposition, Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Collateral sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

6. Subject to Section 7 hereof, if any uncured Event of Default shall have occurred and be continuing, Assignor hereby authorizes and empowers Assignee to make, constitute and appoint any officer or agent of Assignee, as Assignee may select in its discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use the Collateral, or to grant or issue, on commercially reasonable terms, any exclusive or nonexclusive license under the Collateral to any third person, or necessary for Assignee to assign, pledge, convey or otherwise transfer title in or dispose of, on commercially reasonable terms, the Collateral to any third Person. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof other than acts or omissions which are grossly negligent or constitute willful misconduct. This power of attorney, being coupled with an interest, shall be irrevocable for the life of this Agreement.

7. At such time as Assignor shall have indefeasibly paid in full the Note, this Agreement shall terminate (the "Termination Date"). Assignee hereby authorizes and empowers Assignor to make, constitute and appoint any officer or agent of Assignor, as Assignor may select in its discretion, as Assignee's true and lawful attorney-in-fact, with the power to endorse Assignee's name on all deeds, assignments and other instruments as may be necessary or proper to release the security interest created hereby and to reassign to Assignor any and all rights granted to the Assignee in and to the Collateral pursuant to this Agreement. Assignee hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof other than acts or omissions which are grossly negligent or constitute willful misconduct. This power of attorney is coupled with an interest and shall be irrevocable.

8. Assignor shall preserve and maintain all rights in the Collateral, including without limitation the payment of all maintenance fees, renewal fees or taxes. Assignor may elect not to preserve or maintain its rights in certain Trademarks provided such election is with the prior consent of Assignee, which consent will not be unreasonably withheld.

9. Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorney's fees and reasonable expenses incurred by Assignee in connection with 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, the protection, maintenance or preservation of the Collateral (in the event that Assignor fails to discharge its duty to pay the Note in full pursuant to Section 7 or otherwise), or the defense or

prosecution of any actions or proceedings arising out of or related to the Collateral, shall be borne and paid by Assignor within thirty (30) days of demand by Assignee, and if not paid within such time, shall be added to the principal amount of the Note and shall bear interest at the highest rate prescribed in the Note.

10. Assignor shall have the right to bring suit, action or other proceeding in its own name, to enforce the Trademarks and any licenses thereunder. Assignee shall cooperate with Assignor, at Assignor's reasonable request and expense, in the prosecution or defense of any suit, action or proceeding with respect to the Trademarks.

11. No course of dealing between Assignor and Assignee, nor any failure to exercise nor any delay in exercising, on the part of Assignor or Assignee, any right, power or privilege hereunder or under the Note or the Purchase Agreement shall operate as a waiver of such right, power or privilege, 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.

12. All of Assignee's rights and remedies with respect to the Collateral, whether established hereby or by the Note, the Purchase Agreement or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

13. 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 clause or provision of this Agreement in any jurisdiction.

14. This Agreement is subject to modification only by a writing signed by the parties.

15. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

16. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Kentucky without regard to its conflicts of law principles.

17. ASSIGNOR AND ASSIGNEE EACH HEREBY IRREVOCABLY CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF THE CIRCUIT COURT OF CHRISTIAN COUNTY, KENTUCKY AND THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY, OR OF THE STATE COURTS LOCATED IN ST. LOUIS COUNTY, MISSOURI OR THE UNITED STATES DISTRICT COURT IN THE EASTERN DISTRICT OF MISSOURI WITH RESPECT TO THIS AGREEMENT TO THE FULL EXTENT PERMITTED BY LAW.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized, as of the date first above written.

Assignor:

EBONITE INTERNATIONAL, INC.

By: W.T. Scheid

Name: William T Scheid

Title: President

Assignee:

FABALL ENTERPRISES, INC.

By: _____

Name: _____

Title: _____

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or agents thereunto duly authorized, as of the date first above written.

Assignor:

EBONITE INTERNATIONAL, INC.

By: _____

Name: _____

Title: _____

Assignee:

FABALL ENTERPRISES, INC.

By: John S. Wonders, Sr

Name: John S. Wonders, Sr

Title: President

SCHEDULE A
TO
TRADEMARK SECURITY AGREEMENT

LIST OF TRADEMARKS

<u>Mark/Country</u> <u>Class No.</u>	<u>Reg. No./Serial No.</u> <u>Issued/ Filed</u>	<u>Status</u>
CLAW + Design U.S. Class 28, bowling balls	Reg. No. 2,336,721 Issued: March 28, 2000	5 th Yr. Affidavit due 3/29/2005
FAB & Design U.S. Class 25 and 28	Reg. No. 1,331,009	10 Yr. Renewal due Issued: April 16, 1985 April 16, 2005
FAB & Design South Korea Class 43 – Bowling balls	Reg. No. 158909 Issued: Sept. 5, 1988	Renew 9/5/08
FAB, HOME OF THE HAMMER & Design Japan Class 24	Reg. No. 2043896 Issued: April 26, 1988	10 Yr. Renewal due April 26, 2008
HAMMER + Design U.S. Class 25, 26 and 28/Clothing and bowling balls	Reg. No. 1,331,008 Issued: April 16, 1985	10 Yr. Renewal due 4/16/2005
HAMMER + Design Japan Class 24 – Bowling balls	Reg. No. 1887218	Expires 9/29/06
HAMMER + Design Japan Class 17 – Clothing	Reg. No. 2,079,380	Renew 9/30/08
HAMMER + Design China	Reg. No. 867294	Renew 8/27/2006

Class 28 – Bowling balls and implements

HAMMERTHANE

U.S.

Class 28 – Bowling balls

Reg. No. 2,064,721
Issued: May 27, 1997

5th Yr. Affidavit due
May 28, 2002

NAIL & Design

U.S.

Class 25 – Clothing

Class 26 – Patches for clothing

Class 28 – Bowling balls

Reg. No. 1,422,022
Issued: Dec. 23, 1986

10 Yr. Renewal due
12/23/2006

NAIL + Design

U.S.

Class 28 – Bowling balls

Reg. No. 2,306,599
Issued: Jan. 4, 2000

5th Yr. Affidavit due
Jan 5, 2005

NAIL + Design

China

Class 25 – Clothing

Reg. No. 871778
Filed: Sept. 14, 1996

Renewal due
Sept. 13, 2006

NAIL + Design

China

Class 28 – Bowling balls and equipment

Reg. No. 869203
Filed: Sept. 14, 1996

Renewal due
Sept. 13, 2006

RAZOR + Design

U.S.

Class 28 – Bowling balls

Reg. No. 1,978,397
Issued: June 4, 1996

5th Yr. Affidavit due
June 5, 2002

SLEDGE HAMMER

U.S.

Class 28 – Bowling balls

Reg. No. 2,378,904
Issued: Aug. 22, 2000

5th Yr. Affidavit due
Aug. 22, 2005

February 28, 2002

VIA FEDERAL EXPRESS

Commissioner of Patents & Trademarks
Crystal Gateway 4, Suite 300
1213 Jefferson Davis Highway
Arlington, Virginia 22202

Re: Ebonite International, Inc./Faball Enterprises, Inc.

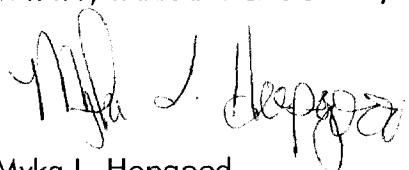
Dear Sir:

Enclosed please find a Recordation Form Cover Sheet for Trademarks Only along with an attached page listing Trademark Registration Numbers and a Trademark Security Agreement for recordation. Also enclosed is our check in the amount of \$215.00 made payable to the Commissioner of Patents and Trademarks to cover the total recording fee for these documents.

Please send verification of the receipt date and recordation, along with any correspondence regarding this matter, to me in the enclosed stamped, self-addressed envelope.

Very truly yours,

WYATT, TARRANT & COMBS, LLP



Myka L. Hopgood

M-H:lmo
Enclosures
10165770.1

10165770.1

www.wyattfirm.com

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500 West Jefferson Street, Suite 2800
Louisville, KY 40202-2898
502.589.5235

311 West Main Street
Frankfort, KY 40601-1807
502.223.2104

2525 West End Avenue, Suite 1500
Nashville, TN 37203-1423
615.244.0020

101 West Spring Street, Suite 500
New Albany, IN 47150-3610
812.945.3561