

03-28-2003



Form PTO-1594 (Rev 10/02) **3-25-03** REC
OMB No. 0651-0027 (exp. 6/30/2005) TI

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

102402582

Tab settings

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

1. Name of conveying party(ies):
Forever 21, Inc.

- Individual(s)
- General Partnership
- Corporation-State **Delaware**
- 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: **March 7, 2003**

2. Name and address of receiving party(ies)

Name: **CapitalSource Finance, LLC**

Internal

Address:

Street Address: **4445 Willard Avenue**

City: **Chevy Chase** State: **MD** Zip: **20815**

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

Other **limited liability company/Delaware**

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) **76196458, 76196459, 76359538, 76085191, 76355328, 76356399, 76359488, 76359489**

B. Trademark Registration No.(s) **2067637**

2583457

Additional number(s) attached Yes No

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

Name: **Mary Ellen Welch Rogers**

Internal Address:

Ruberto, Israel & Weiner, P.C.

Street Address: **100 N. Washington St.**

City: **Boston** State: **MA** Zip: **02114**

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41).....\$ **265**

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

501715

RECORDS SECTION
MAR 25 2003
M 7:18

DO NOT USE THIS SPACE

9. Signature.

Mary Ellen Welch Rogers

Name of Person Signing

Signature

March 25, 2003

Date

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

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

03/27/2003 DIAZI 00000112 501715 76196458
01 FC:8521
02 FC:8522

TRADEMARK
REEL: 002701 FRAME: 0001

PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (the "**Agreement**"), dated as of March 7, 2003, is made by and between FOREVER 21, INC., a Delaware corporation; FOREVER 21 RETAIL, INC., a California corporation; FOREVER 21 INTERNATIONAL HOLDINGS, INC., a Delaware corporation; and FOREVER 21 LOGISTICS, LLC, a Delaware limited liability company, each having a business location at the address set forth below next to its signature (collectively, the "**Debtor**"), and CAPITALSOURCE FINANCE LLC, a Delaware limited liability corporation (the "**Secured Party**").

Recitals

A. WHEREAS, the Debtor and the Secured Party are parties to a Term Loan and Security Agreement of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, the "**Loan Agreement**") setting forth the terms on which the Secured Party may now or hereafter extend credit to or for the account of the Debtor.

B. WHEREAS, as a condition to extending credit to or for the account of the Debtor, 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 Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Loan Agreement 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 Loan Agreement) 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 Loan Agreement).

"**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.

"**Security Interest**" has the meaning given in Section 2.

"**Trademarks**" means all of the Debtor's right, title and interest in and to:
(i) trademarks, service marks, collective membership marks, registrations and

applications for registration for each, and the respective goodwill associated with each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor. (iv) 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, assigns to, and grants the Secured Party a security interest (the "**Security Interest**"), with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of the Debtor.

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

(a) *Existence; Authority*. Each Debtor is a corporation or limited liability company (as the case may be) duly organized or formed (as the case may be), validly existing and in good standing under the laws of its state of incorporation, and this Agreement has been duly and validly authorized by all necessary corporate or limited liability company (as the case may be) action on the part of such Debtor.

(b) *Patents*. Exhibit A accurately lists all Patents owned or controlled by the Debtor as of the date hereof, or to which the Debtor has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, the Debtor owns, controls or has a right to have assigned to it any Patents not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then the Debtor shall within sixty (60) days provide written notice to the Secured Party with a replacement Exhibit A, which upon acceptance by the Secured Party shall become part of this Agreement.

(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 applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to the Debtor's or any Affiliate's business(es). If after the date hereof, the Debtor owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to the Debtor's or any Affiliate's business(es)), or if Exhibit B ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then the Debtor shall promptly provide written notice to the Secured Party with a replacement Exhibit B, which upon acceptance by the Secured Party shall become part of this Agreement.

(d) **Affiliates.** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by the Debtor, constitute Patents or Trademarks and would be material to the Debtor's business. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such material items, then the Debtor shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to the Debtor; or (ii) notify the Secured Party of such item(s) and cause such Affiliate to execute and deliver to the Secured Party a patent and trademark security agreement substantially in the form of this Agreement.

(e) **Title.** The Debtor has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. 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 Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(f) **No Sale.** Except as permitted in the Loan Agreement, the Debtor will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without the Secured Party's prior written consent, which consent shall not be unreasonably withheld.

(g) **Defense.** The Debtor will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

(h) **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 obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. Unless the Debtor determines in its reasonable business judgment to abandon a Patent or Trademark, 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 or renewal in support thereof, without first providing the Secured Party: (i) sufficient written notice, of at least thirty (30) days, to allow the Secured Party to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal 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 or renewal, should such be necessary or desirable.

(i) **Secured Party's Right to Take Action.** If the Debtor fails in any material respect 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 (h), 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 or take steps to prevent such intended abandonment 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 or prevent such intended abandonment.

(j) *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 reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the Default Rate.

(k) *Power of Attorney.* To facilitate the Secured Party's taking action under subsection (i) 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 Loan Agreement as provided therein and the payment and performance of all Obligations (other than indemnity obligations under the Loan Agreement and documents related thereto that are not then due and payable or for which any events or claims that would give rise thereto are not then pending).

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 Loan Agreement, shall occur; or (b) the Debtor shall fail promptly to observe or perform any material 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 Loan Agreement.

(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 can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by both the Secured Party and the Debtor. 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. All notices to be given to Debtor under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. 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 the State of Maryland 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.

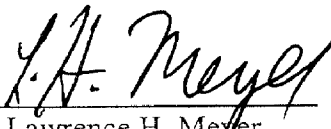
8. Counterparts. This Agreement may be executed in any number of counterparts and by different parties to this Agreement on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile transmission shall be deemed to be an original signature hereto.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.


IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

FOREVER 21, INC.,
FOREVER 21 RETAIL, INC.,
FOREVER 21 INTERNATIONAL HOLDINGS,
INC. and
FOREVER 21 LOGISTICS, LLC
2001 South Alameda Street
Los Angeles, CA 90058

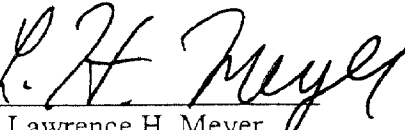
FOREVER 21, INC.

By: 
Name: Lawrence H. Meyer
Title: Chief Financial Officer

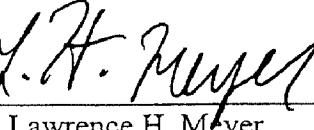
FOREVER 21 RETAIL, INC.

By: 
Name: Lawrence H. Meyer
Title: Chief Financial Officer

FOREVER 21 INTERNATIONAL
HOLDINGS, INC.

By: 
Name: Lawrence H. Meyer
Title: Chief Financial Officer

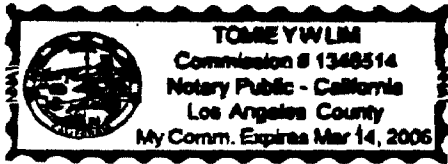
FOREVER 21 LOGISTICS, LLC

By: 
Name: Lawrence H. Meyer
Title: Chief Financial Officer

STATE OF CALIFORNIA)
)
COUNTY OF *Los Angeles*)

On March 6th, 2003, before me, Tomie YW Lim, Notary Public, personally appeared Lawrance H. Meyer, personally known to me OR proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name (~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.



Tomie YW Lim

Signature of Notary

Exhibit A

REGISTERED US PATENTS

<u>Patent</u>	<u>Registration Date</u>	<u>Serial No.</u>	<u>Patent No.</u>
Single Hanging Rack, Design patent	09/24/02	29/152,216	US D463,160 S
4-Way Hanging Rack, Design patent	10/01/02	29/152,191	US D463,679 S
Double Hanging Rack, Design patent	12/2/02	29/152,193	US D466,331
Triple Hanging Rack, Design patent	2/25/03	29/152,194	US D470,685
2-Tier Table, Design Patent	1/14/03	29/152,288	US D468,562

PENDING PATENTS

NONE

Exhibit B

REGISTERED US TRADEMARKS AND SERVICE MARKS

<u>Trademark or Service Mark</u>	<u>Registration Date</u>	<u>Registration No.</u>
FOREVER 21	06/03/97	2,067,637
FOREVER 21	06/18/02	2,583,457

PENDING US TRADEMARKS AND SERVICE MARKS

<u>Trademark or Service Mark</u>	<u>Filing Date</u>	<u>Serial No.</u>
FOREVER XXI	01/19/01	76/196,458
FOREVER XXI	01/19/01	76/196,459
FASHION 21	01/16/202	76/359,538
FOREVER 21	07/07/00	76/085,191
XXI	01/04/02	76/355,328
XXI	01/08/02	76/356,399
XXI	01/16/02	76/359,488
XXI FOREVER	01/16/02	76/359,489

NON-US APPLICATIONS AND REGISTRATIONS

<u>Trademark or Service Mark</u>	<u>Filing or Registration Date</u>	<u>Serial/Registration No.</u>
FOREVER 21 – Argentina	08/31/01	1842287
FOREVER 21 – Australia	06/22/00	839943
FOREVER 21 – Brazil	06/14/00	822803607
FOREVER 21 – Canada	03/13/00	1050844
FOREVER 21 – China	06/28/01	1593415
FOREVER 21 – China	04/14/02	1749731
FOREVER 21 – CTM	05/16/00	001657832
FOREVER 21 – Hong Kong	10/05/01	B11427
FOREVER 21 – Indonesia	07/20/01	J00.2001.15641-15741
FOREVER 21 – Israel	11/12/01	135860
FOREVER 21 – Malaysia	6/26/01	2001/07963
FOREVER 21 – Mexico	03/15/00	415693
FOREVER 21 – Panama	07/24/00	108925
FOREVER 21 – Philippines	06/06/00	4-2000-04681
FOREVER 21 – Philippines	10/10/01	4-2001-07623
FOREVER 21 – Singapore	05/24/00	T00/08659G
FOREVER 21 – S. Korea	04/26/00	41-2000-12302
FOREVER 21 – S. Korea	11/14/00	71-2000-159
FOREVER 21 – Taiwan	06/10/01	00143274
FOREVER XXI – Canada	06/20/01	1107176

March 25, 2003

VIA U.S. EXPRESS MAIL (EK492125141US)

Commissioner of Patents & Trademarks
Box Assignments
Washington, D.C. 20231

Re: Fashion 21, Inc./Forever 21, Inc./08757-8

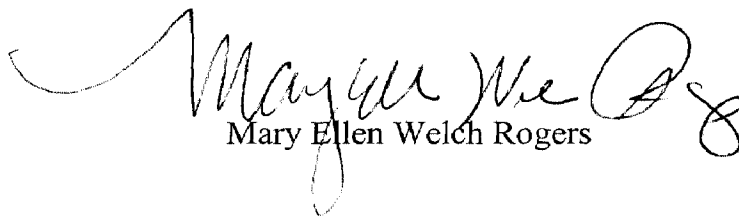
Dear Sir/Madam:

Enclosed please find Recordation Form Cover Sheet Trademarks Only, together with Patent and Trademark Security Agreement in connection with the above-referenced. You are hereby authorized to withdraw the filing fee of \$265.00 from our deposit account.

Additionally, please date stamp the extra copy of the cover letter as evidence of receipt of same and return in the enclosed self-addressed stamped envelope provided herein.

If you have any questions, please do not hesitate to contact me.

Very truly yours,


Mary Ellen Welch Rogers

MEWR:mar
Enclosures

U:\AMR\DM\MER\Forever 21\USPTO Ltr 3-25-03 enclosing Security Agreement.wpd