

Form PTO-1594 (Rev. 06/04)  
OMB Collection 0651-0027 (exp. 6/30/2005)

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

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies)/Execution Date(s):**

A. Marc & Co., Inc.

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other: \_\_\_\_\_

Citizenship: NY

Execution Date(s): 11/03/04

Additional names of conveying parties attached?  Yes  No

**3. Nature of conveyance:**

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other: \_\_\_\_\_

**2. Name and address of receiving party(ies):**

Additional names, addresses, or citizenship attached?  Yes  No

Name: CapitalSource Finance LLC

Internal Address: \_\_\_\_\_

Street Address: 4445 Willard Avenue, 12th Floor

City: Chevy Chase

State: MD

Country: US Zip: 20815

- Association
  - General Partnership
  - Limited Partnership
  - Corporation
  - Other: Limited Liability Company
- Citizenship: \_\_\_\_\_

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)

**4. Application number(s) or registration number(s) and**

A. Trademark Application No.(s):

76/179,978 76/367,126 76/179,977 76/179,978  
76/367,126 76/179,977 75/658,275

**Identification or description of the Trademark(s):**

B. Trademark Registration No.(s):

1,221,846 2,621,337 2,591,849 2,582,714 2,653,171  
2,647,906 2,350,537 2,352,322

Additional sheet(s) attached?  Yes  No

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

Name: Christopher E. Kondracki

Address: 2001 Jefferson Davis Highway

Suite 1007

Arlington, Virginia 22202

Phone Number: (703) 415-1555

Fax Number: (703) 415-1557

Email Address: \_\_\_\_\_

**6. Total number of applications and registrations involved:**

**15**

**7. Total Fee (37 CFR 2.6(b)(6) & 3.41):**

**\$ 390.00**

- Authorized to be charged by credit card
- Authorized to be charged by Deposit Account
- Fees Enclosed

**8. Payment Information:**

Deposit Account Number: 19-3545

Authorized User Name: Christopher E. Kondracki

**9. Signature:**



Signature

12/10/04

Date

Christopher E. Kondracki  
Name of Person Signing

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

**16**

CH \$315.00 193545 76179978

## **Conveying Party(ies)**

Andrew & Suzanne Company Inc. - New York Corporation

Ash Retail Corp. – New Jersey Corporation

Ash Retail of Easthampton, Inc. – New York Corporation

AM Apparel Holdings, Inc. – Delaware Corporation

**INTELLECTUAL PROPERTY SECURITY AGREEMENT**

**INTELLECTUAL PROPERTY SECURITY AGREEMENT AND COLLATERAL ASSIGNMENT**, dated as of November 5, 2004 (this "Agreement"), made by and between **A. MARC & CO., INC.**, a New York corporation, **ANDREW & SUZANNE COMPANY INC.**, a New York corporation, **ASH RETAIL CORP.**, a New Jersey corporation, and **ASH RETAIL OF EASTHAMPTON, INC.**, a New York corporation (individually a "Borrower" and collectively, the "Borrowers") and **AM APPAREL HOLDINGS, INC.**, a Delaware corporation (together with the Borrowers, individually, a "Credit Party" and collectively, the "Credit Parties"), in favor of **CAPITALSOURCE FINANCE LLC**, a Delaware limited liability company as administrative and collateral agent (the "Agent") for itself and certain other lenders.

**WITNESSETH:**

**WHEREAS**, pursuant to the Term Loan and Security Loan Agreement dated as of November 5, 2004 by and among the Credit Parties, Agent and the lenders party thereto (collectively, the "Lenders") (as amended, supplemented or otherwise modified from time to time the "Loan Agreement"), the Credit Parties have granted a security interest to Agent, for the benefit of itself and the Lenders, in, among other things, all right, title and interest of the Credit Parties in, to and under all of the Credit Parties' Intellectual Property (as defined below), whether now existing or hereafter arising or acquired as security for the Obligations from time to time owing by the Credit Parties under the Loan Agreement; and

**WHEREAS**, each Credit Party is the owner of the entire right, title and interest in, to and under such Credit Party's respective Intellectual Property listed on Schedule 1 hereto; and

**NOW, THEREFORE**, in consideration of the premises and to induce the Agent and Lenders to enter into the Loan Agreement, the Credit Parties hereby agree with the Agent as follows:

**1. Defined Terms.**

(a) **Definitions.** Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Loan Agreement.

(b) **Definitions of Certain Terms Used Herein.** As used herein, the following terms shall have the following meanings:

**"Copyrights"** shall mean, with respect to any Credit Party, all of such Credit Party's now existing or hereafter acquired right, title, and interest in and to: (i) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country, and all research and development relating to the foregoing; and (ii) all renewals of any of the foregoing.

**"Copyright Licenses"** shall mean all agreements, whether written or oral, providing for the grant by or to any Credit Party of any right to use any Copyright.

**"Loan Agreement"** shall have the meaning assigned to such term in the preliminary statement of this Agreement.

"Intellectual Property" shall mean all: (i) Trademarks and Trademark Licenses; (ii) Patents and Patent Licenses; (iii) Copyrights and Copyright Licenses; (iv) goodwill of the business symbolized by any Trademark, Trademark License, Patent, Patent License, Copyright or Copyright License, including, without limitation, records relating to the distribution of products or services bearing such Trademark, Patent or Copyright; (v) all customer lists and customer information, (vi) all income, fees, royalties and other payments at any time due or payable with respect to any Trademark, Patent or Copyright, including, without limitation, payments under all Licenses at any time entered into in connection therewith; (vii) books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any Trademark, Trademark License, Patent, Patent License, Copyright or Copyright License; (viii) the right to sue for all past, present and future infringements of any Trademark, Patent or Copyright; (ix) all other intellectual property; and (x) all common law and other rights throughout the world in and to all of the foregoing.

"TP Collateral" shall have the meaning assigned to such term in Section 2 hereof.

"Licenses" shall mean, collectively, the Trademark Licenses, the Patent Licenses, and the Copyright Licenses.

"Patents" shall mean, with respect to any Credit Party, all of such Credit Party's now existing or hereafter acquired right, title and interest in and to: (i) all patents, patent applications, inventions, invention disclosures and improvements, and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country, and all research and development relating to the foregoing; and (ii) the reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing.

"Patent Licenses" shall mean all agreements, whether written or oral, providing for the grant by or to any Credit Party of any right to manufacture, use or sell any invention covered by a Patent.

"Trademarks" shall mean, with respect to any Credit Party, all of such Credit Party's now existing or hereafter acquired right, title, and interest in and to: (i) all of such Credit Party's trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other country, and all research and development relating to the foregoing; (ii) all renewals thereof; (iii) the entire goodwill of the such Credit Party's business connected with and symbolized by the foregoing or the use thereof; and (iv) all designs and general intangibles of a like nature.

"Trademark Licenses" shall mean all agreements, whether written or oral, providing for the grant by or to any Credit Party of any right to use any Trademark.

(c) Other Definitional Provisions.

(i) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular

provision of this Agreement, and section and paragraph references are to this Agreement unless otherwise specified.

(ii) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

2. **Grant of Security Interest.** To secure the payment and performance of the Obligations, each Credit Party hereby confirms and acknowledges that it has granted, assigned and conveyed (and, to the extent not previously granted under the Loan Agreement, does hereby grant, assign and convey) to Agent for the benefit of itself and the Lenders a security interest in such Credit Party's entire right, title and interest in its respective Intellectual Property and all proprietary rights relating to or arising from such Intellectual Property, in each case whether now owned or hereafter acquired by such Credit Party, and including, without limitation, each Credit Party's right, title and interest in and to each Intellectual Property and proprietary rights identified on Schedule 1 attached hereto and made a part hereof, and the right to sue for past, present and future infringements and dilutions, and all rights corresponding thereto throughout the world, and the entire goodwill of such Credit Party's business connected with and symbolized by the Intellectual Property and all income, fees, royalties, proceeds and other payments at any time due or payable with respect to any of the foregoing (referred to collectively as the "IP Collateral").

3. **Protection of Intellectual Property by Credit Parties.** The Credit Parties shall, at their sole cost, expense and risk, undertake the following with respect to the Intellectual Property:

(a) Pay all renewal fees and other fees and costs associated with maintaining the Intellectual Property and with the processing of the Intellectual Property and take all other reasonable and necessary steps to maintain each registration of the Intellectual Property.

(b) Take all actions reasonably necessary to prevent any of the Intellectual Property from becoming forfeited, abandoned, dedicated to the public, invalidated or impaired in any way.

(c) Pursue the prompt, diligent processing of each application for registration which is the subject of the security interest created herein and not abandon or delay any such efforts.

(d) Take any and all action which the Credit Parties reasonably deem appropriate under the circumstances to protect the Intellectual Property from infringement, misappropriation or dilution, including, without limitation, the prosecution and defense of infringement actions.

4. **Representations and Warranties.** Each Credit Party represents and warrants that:

(a) Schedule I is a true, correct and complete list of all Intellectual Property owned by the Credit Parties as of the date hereof.

(b) Except as set forth in Schedule I, none of the Intellectual Property is the subject of any licensing or franchise agreement pursuant to which any Credit Party is the licensor or franchisor.

(c) The Intellectual Property identified on Schedule I hereto, is valid and enforceable and no claim has been made that the use of any of the Intellectual Property does or may violate the rights of any third person, and no material claim has been asserted and is pending by any Person challenging or questioning the use by any Credit Party of any of the Intellectual Property owned by any Credit Party or

the validity or effectiveness of any of the Intellectual Property owned by any Credit Party, nor does any Credit Party know of any valid basis for any such claim.

(d) Each Credit Party owns, or is licensed to use, all Intellectual Property necessary for the conduct of its business as currently conducted, and such Credit Party is the sole and exclusive owner of the entire right, title and interest in, under and to, free and clear of any liens, charges and encumbrances, the Intellectual Property, other than Permitted Liens and Liens in favor of the Agent.

(e) No holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or any Credit Party's rights in, any Intellectual Property in any respect that could reasonably be expected to have a Material Adverse Effect on the business or the property of any Credit Party.

(f) Each Credit Party has the legal right and authority to enter into this Agreement and perform its terms.

(g) The Credit Parties shall give the Agent written notice (with reasonable detail) in accordance with Section 6.1(h) of the Loan Agreement following the occurrence of any of the following:

(i) The Credit Parties' obtaining rights to, and filing applications for registration of, any new Intellectual Property, or otherwise acquiring ownership of any newly registered Intellectual Property.

(ii) The Credit Parties' becoming entitled to the benefit of any registered Intellectual Property whether as licensee or licensor.

(iii) The Credit Parties' entering into any new Licenses.

(iv) The Credit Parties' knowing or having reason to know, that any application or registration relating to any material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office or any court or tribunal) regarding the Credit Parties' ownership of, or the validity of, any material Intellectual Property or the Credit Parties' right to register the same or to own and maintain the same.

(h) No Credit Party shall enter into any new Licenses except as provided for, and pursuant to the terms and provisions of, the Loan Agreement.

5. **No Violation of Loan Agreement.** The representations, warranties or covenants contained herein are supplemental to those representations, warranties and covenants contained in the Loan Agreement, and shall not be deemed to modify any such representation, warranty or covenant contained in the Loan Agreement.

6. **Agreement Applies to Future Intellectual Property.**

(a) The provisions of this Agreement shall automatically apply to any such additional property or rights described in Sections 4(g)(i), 4(g)(ii) and 4(g)(iii) above, all of which shall be deemed to be and treated as "Intellectual Property" within the meaning of this Agreement.

(b) Upon the reasonable request of the Agent, the Credit Parties shall execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Agent may request to evidence the Agent's security interest in any Intellectual Property and the goodwill of the Credit Parties relating thereto or represented thereby (including, without limitation, filings with the United States Patent and Trademark Office or any similar office), and the Credit Parties hereby constitute the Agent as their attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; *provided, however*, the Agent's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

**7. Credit Parties' Rights To Enforce Intellectual Property.** Prior to the Agent's giving of notice to the Credit Parties (i) following the occurrence and during the continuance of an Event of Default or (ii) pursuant to Section 8(a) below, the Credit Parties shall have the exclusive right to sue for past, present and future infringement of the Intellectual Property including the right to seek injunctions and/or money damages, in an effort by the Credit Parties to protect the Intellectual Property against encroachment by third parties, *provided, however*:

(a) The Credit Parties first provide the Agent with written notice of the Credit Parties' intention to so sue for enforcement of any Intellectual Property. If, in the reasonable opinion of the Agent, the Credit Parties have failed to take appropriate action within sixty (60) days after such notice is given to Agent, upon notice to the Credit Parties, the Agent may (but shall not be required to) itself take such action in the name of the Credit Parties.

(b) Any money damages awarded or received by the Credit Parties on account of such suit (or the threat of such suit) shall constitute IP Collateral.

(c) Any damages recovered in any action pursuant to this Section, net of costs and attorneys' fees reasonably incurred, to be applied as provided in Sections 2.5 or 9.2 of the Loan Agreement, as applicable.

(d) Following the occurrence of any Event of Default, the Agent, by notice to the Credit Parties may terminate or limit the Credit Parties' rights under this Section 7.

**8. Agent's Actions To Protect Intellectual Property.** In the event of:

(a) the Credit Parties' failure, within five (5) days of written notice from the Agent, to cure any failure by the Credit Parties to observe or perform any of the Credit Parties' covenants, agreements or other obligations hereunder; and/or

(b) the occurrence and continuance of any other Event of Default,

the Agent, acting in its own name or in that of the Credit Parties, may (but shall not be required to) act in the Credit Parties' place and stead and/or in the Agent's own right in connection therewith.

**9. Rights Upon Default.** Upon the occurrence of any Event of Default, the Agent may exercise all rights and remedies as provided for in the Loan Agreement.

**10. Agent as Attorney In Fact.**

(a) The Credit Parties hereby irrevocably constitute and designate the Agent as and for the Credit Parties' attorney in fact, effective following the occurrence and during the continuance of an Event of Default:

(i) To supplement and amend from time to time Schedule I of this Agreement to include any new or additional Intellectual Property of the Credit Parties.

(ii) To exercise any of the rights and powers referenced herein.

(iii) To execute all such instruments, documents, and papers as the Agent determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Intellectual Property.

(b) The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until this Agreement is terminated by a duly authorized officer of the Agent.

(c) The Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 10, but if the Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to any Credit Party for any act or omission to act except for any act or omission to act as to which there is a final determination made in a judicial proceeding (in which proceeding the Agent has had an opportunity to be heard) which determination includes a specific finding that the subject act or omission to act had been grossly negligent or in actual bad faith.

**11. Agent's Rights.** Any use by the Agent of the Intellectual Property, as authorized hereunder in connection with the exercise of the Agent's rights and remedies under this Agreement and under the Loan Agreement shall be coextensive with the Credit Parties' rights thereunder and with respect thereto and without any liability for royalties or other related charges.

**12. No Limitation; Loan Agreement.** This Agreement has been executed and delivered by the Credit Parties for the purpose of recording the security interest granted to the Agent with respect to the IP Collateral with the United States Patent and Trademark Office. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interest granted to the Agent under the Loan Agreement. The Loan Agreement (and all rights and remedies of the Credit Parties, the Agent, and the Lenders thereunder) shall remain in full force and effect in accordance with its terms. In the event of a conflict between this Agreement and the Loan Agreement, the terms of this Agreement shall control with respect to the IP Collateral and the Loan Agreement with respect to all other Collateral.

**13. Termination; Release of Trademark Collateral.** This Agreement and all obligations of the Credit Parties and the Agent hereunder shall terminate on the date upon which the Obligations are performed in full and indefeasibly paid in full in cash and the Loan Agreement and other Loan Documents are terminated in accordance with the terms of the Loan Agreement. Upon termination of this Agreement, the Agent shall, at the expense of the Credit Parties, take such actions required by the Loan Agreement to release its security interest in the IP Collateral.

**14. Binding Effect; Benefits.** This Agreement shall be binding upon the Credit Parties and their respective successors and assigns, and shall inure to the benefit of the Agent, the Lenders and their respective successors and assigns.



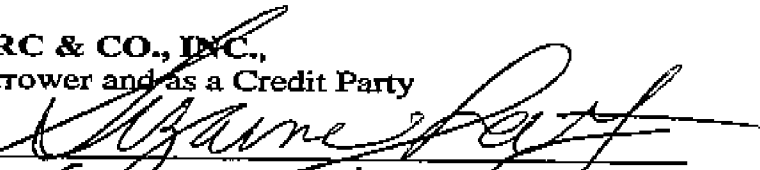
**15. GOVERNING LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS CHOICE OF LAW PROVISIONS.**

[Remainder Of Page Intentionally Left Blank]


*Signature Page to IP Security Agreement*

IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security to be executed by its duly authorized representatives as of the date first above written.


**A. MARC & CO., INC.,**  
as a Borrower and as a Credit Party

By:   
Name: Suzanne Schwartz  
Title: Vice President and Secretary

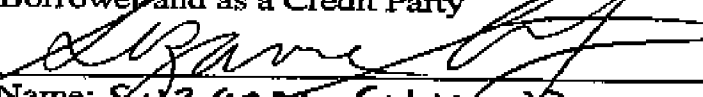
**ANDREW & SUZANNE COMPANY INC.,**  
as a Borrower and as a Credit Party

By:   
Name: Suzanne Schwartz  
Title: Vice President and Secretary


**ASH RETAIL CORP.,**  
as a Borrower and as a Credit Party

By:   
Name: Suzanne Schwartz  
Title: Vice President, Treasurer & Secretary

**ASH RETAIL OF EASTHAMPTON, INC.,**  
as a Borrower and as a Credit Party

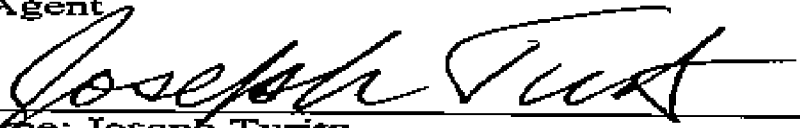
By:   
Name: Suzanne Schwartz  
Title: Vice President & Secretary

**AM APPAREL HOLDINGS, INC.,** as a Credit Party

By:   
Name: James Dworkin  
Title: vice President & Treasurer

***Signature Page to IP Security Agreement***

**CAPITALSOURCE FINANCE LLC,**  
as the Agent

By: 

Name: Joseph Turitz

Title: General Counsel, Corporate Finance Group

**Schedule I**

857953.3

Schedule 5.11  
Intellectual Property

1. Trademarks

Trademark	Current Owner	Country	Serial Number	Filing Date	Reg. Number	Reg. Date
ANDREW MARC  To maintain this registration, a second installment of the registration fee must be paid prior to November 28, 2004. The cost will consist of legal fees of approximately US \$200 and an official fee of approximately US \$950.	AM Licensing Corp.  Andrew & Suzanne Company, Inc. is working to transfer this registration to "Andrew and Suzanne Co., Inc." Fees associated with the transfer will include a legal fee of approximately US \$545 and an official fee of approximately US \$275.	Japan	S62-140656	12/18/1987	2192350	11/28/19
ANDREW MARC	Andrew and Suzanne Company	Japan	H07-101909	10/3/1995	3354640	10/24/19
ANDREW MARC	Andrew & Suzanne Co., Inc.	United States	73/340533	12/7/1981	1,221,846	12/28/19
ANDREW MARC	Andrew & Suzanne Co., Inc.	United States	76/362803	1/25/2002	2,621,337	9/17/20
ANDREW MARC and M Design	Andrew & Suzanne Company	United States	75/402790	12/9/1997	2,591,849	7/9/200
ANDREW MARC INTERACTIVE and Design	Andrew & Suzanne Co., Inc.	United States	75/641601	2/12/1999	2,582,714	6/18/20
ANDREW MARC NEW YORK	Andrew & Suzanne Company, Inc.	United States	76/179978	12/12/2000		
ANDREW MARC NEW YORK	Andrew & Suzanne Company, Inc.	United States	75/982208	12/12/2000	2,653,171	11/26/2
ANDREW MARC NEW YORK	Andrew & Suzanne Co., Inc.	United States	76/367126	2/1/2002		
MARC NEW YORK ANDREW MARC	Andrew & Suzanne Company, Inc.	United States	76/179977	12/12/2000		

Trademark	Current Owner	Country	Serial Number	Filing Date	Reg. Number	Reg. Date
MARC NEW YORK ANDREW MARC	Andrew & Suzanne Company, Inc.	United States	75/982243	12/12/2000	2,647,90 6	11/12/20
The Natural Estate Trust Company	Andrew & Suzanne Company, Inc.	United States	75/348275		2350537	
NETCO	Andrew & Suzanne Company, Inc.	United States	75/348312		2352322	
Andrew Marc New York	Andrew & Suzanne Company, Inc.	United States	76179978		Pending	
Andrew Marc New York	Andrew & Suzanne Company, Inc.	United States	76367126		Pending	
Marc New York Andrew Marc	Andrew & Suzanne Company, Inc.	United States	76179977		Pending	
Marc New York	Andrew & Suzanne Company, Inc.	United States	75658275		Pending	

## 2. Domain Name

- andrewmarc.com registered with Domain Registry of America; expires May 26, 2008

## Ownership &amp; Licensure of Proprietary Rights

Trademark	Current Owner	Country	Serial Number	Filing Date	Reg. Number	Reg. Date	Liens
ANDREW MARC and M Design	Andrew & Suzanne Company, Inc.	United States	75/402790	12/9/1997	2,591,849	7/9/2002	Security Agreement The CIT Group/Commercial Services, Inc.
ANDREW MARC NEW YORK	Andrew & Suzanne Company, Inc.	United States	76/179978	12/12/2000			Security Agreement The CIT Group/Commercial Services, Inc.
ANDREW MARC NEW YORK	Andrew & Suzanne Company, Inc.	United States	75/982208	12/12/2000	2,653,171	11/26/2002	Security Agreement The CIT Group/Commercial Services, Inc.
MARC NEW YORK ANDREW MARC	Andrew & Suzanne Company, Inc.	United States	76/179977	12/12/2000			Security Agreement The CIT Group/Commercial Services, Inc.
MARC NEW YORK ANDREW MARC	Andrew & Suzanne Company, Inc.	United States	75/982243	12/12/2000	2,647,906	11/12/2002	Security Agreement The CIT Group/Commercial Services, Inc.