

FORM PTO-1595
(Rev. 6-93)

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

**RECORDATION FORM COVER SHEET
PATENTS ONLY**

To the Commissioner of Patents
Please record the attached original documents or copy thereof.

ATTN.: BOX ASSIGNMENT

1. Name of conveying parties:

Overton's, Inc. (a North Carolina corporation)
and
Overton's Acquisition Corp., (a Delaware corporation)

Additional name(s) & address(es) attached? No
Additional name(s) of conveying party(ies) attached? No

2. Name and address of receiving party:

Name: Capitalsource Finance LLC
(a Delaware limited liability company)

Address: 4445 Willard Avenue, 12th Floor
Chevy Chase, MD 20815

Additional name(s) & address(es) attached?
Yes No

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: August 29, 2003

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

A. Patent Application No.(s) B. Patent No.(s) 5,197,149
D306,938
4,701,963

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

Name: Cathleen F. Baraloto
Paralegal
Address: Morgan, Lewis & Bockius LLP
Attn: TMSU
1111 Pennsylvania Avenue, N.W.
City: Washington State: DC Zip: 20004

6. Total number of applications and patents involved: 3

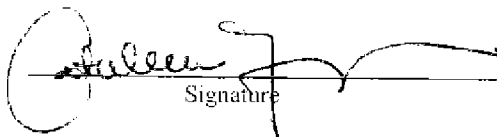
7. Total fee (37 C.F.R. §3.41): \$120.00
 Authorized to be charged to deposit account 13-4520
 Debit insufficiency or credit over payment to Deposit Account No. 13-4520

8. Deposit account number: 13-4520
Attach duplicate of page if paying by deposit account

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.

Cathleen F. Baraloto
Name of Person Signing



Signature

November 12, 2003
Date

Total number of pages including cover sheet, attachments and documents: 13

CH \$120.00 134520 5197149

**INTELLECTUAL PROPERTY
SECURITY AGREEMENT**

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "**Agreement**"), dated August 29, 2003, is by and among OVERTON'S, INC., a North Carolina corporation, and OVERTON'S ACQUISITION CORP., a Delaware corporation (individually a "**Debtor**", and collectively, "**Debtors**"), and CAPITALSOURCE FINANCE LLC, a Delaware limited liability company, as a Lender and administrative, payment, and collateral agent for the Lenders (in such capacities, "**Secured Party**") pursuant to the Loan Agreement (as defined below).

WITNESSETH:

WHEREAS, Debtors have adopted, used and is using, and are the owners of the entire right, title, and interest in and to (a) the trademarks, trade names, terms, designs and applications, (b) the copyrights, rights and interests in copyrights, works protectable by copyrights, registrations and applications, (c) the patents and patent applications and the inventions, invention disclosures, improvements and patentable inventions, and (d) the domain names and registrations, each described in Exhibit A hereto and made a part hereof; and

WHEREAS, Secured Party, Lenders, and Debtors have entered or are about to enter into financing arrangements pursuant to which Lenders may make loans and advances and provide other financial accommodations to Debtors as set forth in the Revolving Credit, Term Loan and Security Agreement, dated as of the date hereof, by and among Debtors, Secured Party, and other Lenders party thereto from time to time (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "**Loan Agreement**") and other agreements, documents and instruments referred to therein or at any time executed and/or delivered in connection therewith or related thereto, including, but not limited to, this Agreement (all of the foregoing, together with the Loan Agreement, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, being collectively referred to herein as the "**Loan Documents**"). Capitalized terms used but not defined in this Agreement shall have the meanings set forth in the Loan Agreement; and

WHEREAS, in order to induce Secured Party and Lenders to enter into the Loan Agreement and the other Loan Documents and to make loans and advances and provide other financial accommodations to Debtors pursuant thereto, Debtors have agreed to grant to Secured Party, for the benefit of Lenders, certain collateral security as set forth herein;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Debtor hereby agrees as follows:

1. GRANT OF SECURITY INTEREST

As collateral security for the prompt performance, observance and indefeasible payment in full in cash of all of the Obligations (as hereinafter defined), each Debtor hereby grants to Secured Party, for the benefit of Secured Party and Lenders, a continuing security interest in and a general lien upon, the following (being collectively referred to herein as the "**Collateral**"):

(a) all of Debtor's now existing or hereafter acquired right, title, and interest in and to: (i) all of Debtor's trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks and logos (including without limitation goodwill), 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, including, without limitation, those listed on Exhibit A hereto, and all research and development relating to the foregoing; (ii) all renewals thereof; and (iii) all designs and general intangibles of a like nature (all of the foregoing being collectively referred to herein as the "**Trademarks**");

(b) all of Debtor'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, including, without limitation, those listed on Exhibit A hereto, and all rights in research and development relating to the foregoing; and (ii) the reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing (all of the foregoing being collectively referred to herein as the "**Patents**");

(c) all of Debtor'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, including, without limitation, those listed on Exhibit A hereto, and all research and development relating to the foregoing, and (ii) all renewals of any of the foregoing (all of the foregoing being collectively referred to herein as the "**Copyrights**");

(d) all of Debtor's now existing or hereafter acquired right, title, and interest in and to: (i) domain names and registrations (including without limitation goodwill), including, without limitation, those listed on Exhibit A hereto, and (ii) all renewals of any of the foregoing (all of the foregoing being collectively referred to herein as the "**Domain Names**");

(e) the goodwill of the business symbolized by any Trademark, Patent, Copyright or Domain Name, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing such Trademark, Patent, Copyright or Domain Name;

(f) all income, fees, royalties and other payments at any time due or payable to the Debtor with respect thereto, including, without limitation, payments under all licenses at any time entered into in connection therewith;

(g) all of the Debtor's now existing or hereafter acquired rights to sue for past, present and future infringements thereof;

(h) all of the Debtor's now existing or hereafter acquired rights corresponding thereto throughout the world; and

(i) any and all other proceeds of any of the foregoing to which the Debtor is entitled, including, without limitation, damages and payments or claims by Debtor against third parties for past or future infringement of any of the Collateral.

2. OBLIGATIONS SECURED

The security interest, lien and other interests granted to Secured Party pursuant to this Agreement shall secure the prompt performance, observance and payment in full of any and all obligations, liabilities and indebtedness of every kind, nature and description owing by Debtors to Secured Party, Lenders and/or their respective affiliates, including principal, interest, charges, fees, costs and expenses, however evidenced, whether as principal, surety, endorser, guarantor or otherwise, whether arising under this Agreement, the Loan Agreement, the other Loan Documents or otherwise, whether now existing or hereafter arising, whether arising before, during or after the initial or any renewal term of the Loan Agreement or after the commencement of any case with respect to any Debtor under the United States Bankruptcy Code or any similar statute (including, without limitation, the payment of interest and other amounts which would accrue and become due but for the commencement of such case), whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, and however acquired by Secured Party or Lenders (all of the foregoing being collectively referred to herein as the "Obligations").

3. REPRESENTATIONS, WARRANTIES AND COVENANTS

Each Debtor hereby represents, warrants and covenants with and to Secured Party the following (all of such representations, warranties and covenants being continuing so long as any of the Obligations are outstanding):

- (a) Debtors shall pay and perform all of the Obligations according to their terms.
- (b) All of the existing Collateral is valid and subsisting in full force and effect, and Debtors own the sole, full and clear title thereto, and the right and power to grant the security interest and conditional assignment granted hereunder. Each Debtor shall, at Debtors' expense, perform all reasonable acts and execute all documents reasonably necessary to maintain the existence of the Collateral consisting of registered Trademarks, Patents, Copyrights and/or Domain Names as registered and to maintain the existence of all of the Collateral as valid and subsisting, including, without limitation, the filing of any renewal affidavits and applications provided that the Debtors in the ordinary course of business may abandon any patented or registered Collateral if in the Debtor's reasonable business judgment the maintenance of such Collateral is not in the best interests of the Company. The Collateral is not subject to any liens, claims, mortgages, assignments, licenses, security interests or encumbrances of any nature whatsoever, except: (i) the security interests granted hereunder and pursuant to the Loan Documents, (ii) the security interests permitted under the Loan Documents, and (iii) the licenses and encumbrances described under Section 3(e) below.
- (c) Debtors shall not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license relating to the Collateral, or otherwise dispose of any of the Collateral, in each case without the prior written consent of Secured Party, except as otherwise permitted herein or in the Loan Agreement. Nothing in this Agreement shall be deemed a consent by Secured Party to any such action, except as such action is expressly permitted hereunder.
- (d) Debtors shall, at Debtors' expense, promptly perform all reasonable acts and execute all documents reasonably requested at any time by Secured Party to evidence, perfect, maintain, record or enforce the security interest in the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Each Debtor hereby authorizes Secured Party to execute and file one or more financing statements (or similar documents) with respect to the Collateral. Each Debtor further authorizes Secured Party to have this Agreement or any other similar security agreement or any

memorandum thereof filed with the United States Patent and Trademark Office, the United States Copyright Office and/or any other appropriate federal, state or government office or in any other country.

(e) As of the date hereof, Debtors do not have any Trademarks, Patents, Copyrights or Domain Names registered, or subject to pending applications, in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, other than those described in Exhibit A hereto and has not granted any licenses with respect to any of the Collateral or otherwise encumbered such Collateral other than as set forth in Exhibit B hereto.

(f) Debtors shall, concurrently with the execution and delivery of this Agreement, execute and deliver to Secured Party five (5) originals of a Special Power of Attorney in the form of Exhibit C annexed hereto.

(g) Secured Party may, in its discretion, pay any amount or do any act which Debtors fail to pay or do as required hereunder or as requested by Secured Party to preserve, defend, protect, maintain, record or enforce the Obligations, the Collateral, or the security interest granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, attorneys' fees and legal expenses. Each Debtor shall be liable to Secured Party for any such payment, which payment shall be deemed an Advance by Secured Party to Debtors, shall be payable on demand together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement and shall be part of the Obligations secured hereby.

(h) If, after the date hereof, any Debtor shall (i) obtain any registered trademark, patent, copyright or domain name, or apply for any such registration in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, or in any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, or (ii) become the owner of any trademark, patent, copyright or domain name registrations or applications for trademark, patent, copyright or domain name registration used in the United States or any State thereof, political subdivision thereof or in any other country, the provisions of Section 1 hereof shall automatically apply thereto. Upon the request of Secured Party, the applicable Debtor shall promptly execute and deliver to Secured Party any and all documents and such other papers as may be requested by Secured Party to evidence the security interest in Trademark, Patent, Copyright or Domain Name, as the case may be, in favor of Secured Party.

(i) Debtors shall render any reasonable assistance, as Secured Party shall determine is necessary, to Secured Party in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office, any federal or state court, or any similar office or agency in the United States, any State thereof, any political subdivision thereof or in any other country, to maintain such application and registration of any Collateral as Debtors' exclusive property and to protect Secured Party's interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

(j) No material infringement or unauthorized use presently is being made of any Collateral that would adversely affect in any material respect the fair market value of the Collateral or the benefits of this Agreement granted to Secured Party, including, without limitation, the validity, priority or perfection of the security interest granted herein or the remedies of Secured Party hereunder. Debtors shall promptly notify Secured Party if any Debtor (or any affiliate or subsidiary thereof) learns of any use by any person of any term or design which infringes on any Collateral or is likely to cause confusion with any such Collateral. If requested by Secured Party, Debtors, at Debtors' expense, shall join with Secured

Party in such action as Secured Party, in Secured Party's discretion, may deem advisable for the protection of Secured Party's interest in and to the Collateral.

(k) Debtors assume all responsibility and liability arising from the use of the Collateral and Debtors hereby indemnify and hold Secured Party harmless from and against any claim, suit, loss, damage, or expense (including attorneys' fees and legal expenses) arising out of any alleged defect in any product manufactured, promoted, or sold by any Debtor (or any affiliate or subsidiary thereof) in connection with any Collateral or out of the manufacture, promotion, labeling, sale or advertisement of any such product by any Debtor (or any affiliate or subsidiary thereof). The foregoing indemnity shall survive the payment of the Obligations, the termination of this Agreement and the termination or non-renewal of the Loan Agreement.

(l) Debtors shall promptly pay Secured Party for any and all expenditures reasonably made by Secured Party pursuant to the provisions of this Agreement or for the defense, protection or enforcement of the Obligations, the Collateral, or the security interests granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, travel expenses, and attorneys' fees and legal expenses. Such expenditures shall be payable on demand, together with interest at the rate then applicable to the Obligations set forth in the Loan Agreements and shall be part of the Obligations secured hereby.

(m) Debtors shall deliver to Secured Party all documents, instruments and other items as may be reasonably necessary for Secured Party to file this Agreement with the United States Patent and Trademark Office and 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 in order to record its security interest granted hereby. If, before the Obligations are paid in full, any Debtor acquires any new Trademarks, Patents, Copyrights, or Domain Names, or rights thereto, Debtors shall give to Secured Party prompt written notice thereof, and this Agreement shall apply to any such new Trademarks, Patents, Copyrights or Domain Name. Debtors shall: (i) prosecute diligently any trademark, patent, copyright or domain name application at any time pending as reasonably deemed appropriate by Debtors, so long as no Event of Default has occurred, or as determined by Secured Party in its Permitted Discretion upon the occurrence and continuance of an Event of Default; (ii) make application for registration or issuance of all new trademarks, patents, copyrights and domain names, as reasonably deemed appropriate by Debtors; (iii) preserve and maintain all rights in the Collateral; and (iv) use their best efforts to obtain any consents, waivers or agreements necessary to enable Secured Party to exercise its remedies with respect to the Collateral. Debtors shall not abandon any material right to file a trademark, patent, copyright or domain name application nor shall Debtors abandon any material pending trademark, patent, copyright or domain name application, or material Trademark, Patent, Copyright or Domain Name unless Debtors in their reasonable business judgment, in the ordinary course of business, has determined that such abandonment is in the best interests of the Debtors. Each Debtor represents and warrants to Secured Party that the execution, delivery and performance of this Agreement by such Debtor will not violate or cause a default under any of the Collateral or any agreement in connection therewith.

(n) Debtors, at their own cost, shall cooperate with Secured Party to prepare and file such amendments, updates, instructions or documents with the United States Patent and Trademark Office and the United States Copyright Office as is necessary to create, maintain and perfect or renew the security interest granted hereby or otherwise to effect fully the purposes, terms and conditions of this Agreement.

4. EVENTS OF DEFAULT

All Obligations shall become immediately due and payable, without notice or demand, at the option of Secured Party, upon the occurrence of any Event of Default, as such term is defined in the Loan Agreement (each an "Event of Default" hereunder). Without limiting the generality of the foregoing, any breach or failure to perform any term or condition of this Agreement by any Debtor shall constitute an Event of Default.

5. RIGHTS AND REMEDIES

At any time an Event of Default exists or has occurred and is continuing, in addition to all other rights and remedies of Secured Party, whether provided under this Agreement, the Loan Agreement, the other Loan Documents, applicable law or otherwise, Secured Party shall have the following rights and remedies which may be exercised without notice to, or consent by, Debtors except as such notice or consent is expressly provided for hereunder:

(a) Secured Party may require that neither Debtors nor any affiliate or subsidiary of Debtors make any use of the Collateral for any purpose whatsoever. Secured Party may make use of any Collateral for the sale of goods, completion of work-in-process or rendering of services in connection with enforcing any other security interest granted to Secured Party by Debtors or any subsidiary or affiliate of Debtor or for such other reason as Secured Party may determine.

(b) Secured Party may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as Secured Party shall in its discretion deem appropriate subject to any agreement to which a Debtor is a party. Such license or licenses may be general, special or otherwise, and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions, and all foreign countries.

(c) Secured Party may assign, sell or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations except that if notice to Debtors of intended disposition of Collateral is required by law, the giving of ten (10) days prior written notice to Debtors of any proposed disposition shall be deemed reasonable notice thereof and each Debtors waive any other notice with respect thereto. Secured Party shall have the power to buy the Collateral or any part thereof, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in its discretion, deem appropriate or proper to complete such assignment, sale, or disposition. In any such event, Debtors shall be liable for any deficiency.

(d) In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral pursuant to the terms hereof, Secured Party may at any time execute and deliver on behalf of Debtor, pursuant to the authority granted in the Powers of Attorney described in Section 3(f) hereof, one or more instruments of assignment of the Collateral (or any application, registration, or recording relating thereto), in form suitable for filing, recording, or registration. Debtors agree to pay Secured Party on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, and attorneys' fees and legal expenses. Debtors agree that Secured Party has no obligation to preserve rights to the Collateral against any other parties.

(e) Secured Party shall apply the proceeds from any license, assignment, sale or other disposition of the Collateral in accordance with the Loan Agreement. Debtors shall remain liable to Secured Party for any of the Obligations remaining unpaid after the application of such proceeds, and Debtors shall pay Secured Party on demand any such unpaid amount, together with interest at the rate then applicable to the Obligations set forth in the Loan Agreement.

(f) Debtors shall supply to Secured Party or to Secured Party's designee, upon request, Debtors' knowledge and expertise relating to the manufacture and sale of the products and services bearing the Collateral and Debtors' customer lists and other records relating to the Collateral and the distribution thereof.

(g) Nothing contained herein shall be construed as requiring Secured Party to take any such action at any time. All of Secured Party's rights and remedies, whether provided under this Agreement, the other Loan Documents, applicable law, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

6. ASSIGNMENT OF COLLATERAL

Each Debtor hereby assigns, transfers and conveys to Secured Party all Collateral owned or used by such Debtor to the extent necessary to enable Secured Party, effective upon the occurrence of any Event of Default, to realize on the Collateral and any successor or assign to enjoy the benefits of the Collateral. Notwithstanding any other provision of this Agreement, the assignment, transfer and conveyance shall not be effective as to any U.S. intent-to-use application to register a trademark until the amendment to allege use or statement of use has been accepted. This right and assignment shall inure to the benefit of Secured Party and its successor, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and assignment is granted free of charge, without requirement that any monetary payment whatsoever including, without limitation, any royalty or license fee, be made to Debtors or any other Person by Secured Party or any Lender.

7. INCORPORATION OF LOAN AGREEMENT AND LOAN DOCUMENTS

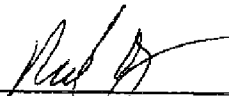
The Loan Agreement and each Loan Document and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

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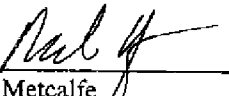
IN WITNESS WHEREOF, Debtors and Secured Party have executed this Agreement as of the day and year first above written.

DEBTORS:

OVERTON'S ACQUISITION CORP.

By: 
Name: Mark Metcalfe
Title: President and Chief Executive Officer

OVERTON'S, INC.

By: 
Name: Mark Metcalfe
Title: President and Chief Executive Officer

SECURED PARTY:

CAPITALSOURCE FINANCE LLC, as Agent

By: _____
Name: _____
Title: _____

STATE OF NORTH CAROLINA
COUNTY OF PITT) ss.:
)

On this 29th day of August 2003, before me personally came Mark Metcalfe, to me known, who being duly sworn, did depose and say, that he is the President and Chief Executive Officer of OVERTON'S ACQUISITION CORP., the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Directors of said corporation.

Paula J. Mitten
Notary Public

My Commission Expires June 24, 2008

IN WITNESS WHEREOF, Debtors and Secured Party have executed this Agreement as of the day and year first above written.

DEBTORS:

OVERTON'S ACQUISITION CORP.


By: _____
Name: Mark Metcalfe
Title: President and Chief Executive Officer

OVERTON'S, INC.

By: _____
Name: Mark Metcalfe
Title: President and Chief Executive Officer

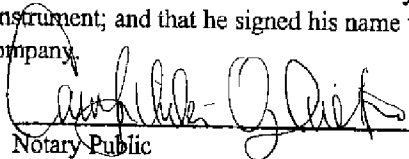
SECURED PARTY:

CAPITALSOURCE FINANCE LLC, as Agent

By:  _____
Name: Joseph Turitz
Title: Associate General Counsel

STATE OF Maryland)
) ss.:
COUNTY OF Montgomery

On this 20 day of August, 2003, before me personally came Joseph Jozif, to me known, who, being duly sworn, did depose and say, that he is the ~~President~~ General Counsel of CAPITALSOURCE FINANCE LLC, the limited liability company described in and which executed the foregoing instrument; and that he signed his name thereto by order of the Board of Managers of said limited liability company.



Notary Public

Carolyn Silva-Quagliato, Notary Public
Montgomery County
State of Maryland

My commission expires: November 1, 2006

IP Security Agreement
1-LA/712917