

09-24-1998



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To the Honorable Commissioner of Patents and Trademarks 100836631

and all other documents or copy thereof.

M&D 9-18-98

1. Name of conveying party(ies):

Temptronic Corporation
55 Chapel Street
Newton, MA 02158

- Individual(s)
- General Partnership
- Corporation-State MA
- 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: June 29, 1998

2. Name and address of receiving party(ies)

Name: BankBoston, N.A.

Internal Address:

Street Address: 100 Federal Street

City: Boston State: MA ZIP: 02110

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

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 patent number(s):

A. Trademark Application No.(s)

75/233,615

B. Trademark Registration No.(s)

1,094,283	1,197,134	1,433,671
1,085,339	1,271,584	1,938,952
1,218,146	1,465,031	

Additional numbers attached? Yes No

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

Name: Christopher E. Kondracki

Internal Address:

Street Address: 2001 Jefferson Davis Highway,
Suite 505

City: Arlington State: VA ZIP: 22202

6. Total number of applications and registrations involved: 9

7. Total fee (37 CFR 3.41).....\$ 240.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

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.

Christopher E. Kondracki
Name of Person Signing

Christopher E. Kondracki
Signature

Sept. 17, 1998
Date

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

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**TRADEMARK AND TRADEMARK
APPLICATIONS SECURITY AGREEMENT**

BankBoston, N.A..

June 29, 1998

THIS AGREEMENT is made between

BankBoston, N.A. (the "**Lender**"), a national banking association with offices at 100 Federal Street, Massachusetts 02110

and

Temptronic Corporation (hereinafter, the "**Borrower**"), a Massachusetts corporation with its principal executive offices at 55 Chapel Street, Newton, Massachusetts 02158

in consideration of the mutual covenants contained herein and benefits to be derived herefrom,

WITNESSETH:

1. **BACKGROUND:** The Lender and the Borrower have entered in a certain Loan and Security Agreement (Domestic Line) of even date (as such agreement may be modified, supplemented, amended or restated from time to time, hereinafter, the "**Loan Agreement**") pursuant to which a credit facility has been established in favor of the Borrower and under which the Borrower's Liabilities are to be secured by certain of the Borrower's assets, including all Marks. (Terms used herein which are defined in the Loan Agreement are used as so defined).

2. **GRANT OF SECURITY INTEREST:** To secure the Liabilities, the Borrower hereby creates a security interest in favor of the Lender, with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default) in and to the following and all proceeds thereof (collectively, the "**TM Collateral**"):

(a) All of the Borrower's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks and service mark applications including, without limitation, those listed on **EXHIBIT A** annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark

1 applications, service marks, registered service marks, and service mark applications.

2 (b) All renewals of any of the foregoing.

3 (c) All income, royalties, damages and payments now and hereafter due and/or
4 payable under and with respect to any of the foregoing, including, without limitation, payments under all
5 licenses entered into in connection therewith and damages and payments for past or future infringements
6 or dilutions thereof.

7 (d) The right to sue for past, present and future infringements and dilutions of any of
8 the foregoing.

9 (e) All of Borrower's rights corresponding to any of the foregoing throughout the
10 world.

11
12 **3. PROTECTION OF MARKS BY BORROWER:**

The Borrower shall undertake
13 the following with respect to the items described in Sections 2(a) and 2(b) (collectively, the "**Marks**") until
14 the relevant Mark is no longer used or useful in the business of the Borrower:

15 (a) Pay all renewal fees and other fees and costs associated with maintaining the
16 Marks and with the processing of the Marks.

17 (b) At the Borrower's sole cost, expense, and risk, pursue the prompt, diligent,
18 processing of each Application for Registration which is the subject of the security interest created herein
19 and not abandon or delay any such efforts, unless the relevant Mark is determined to be unregistrable.

20 (c) At the Borrower's sole cost, expense, and risk, take any and all action which the
21 Borrower, in the Borrower's reasonable discretion, deems as desirable to protect the Marks, including,
22 without limitation, but subject to Borrower's discretion, the prosecution and defense of infringement
23 actions.

24
25 **4. BORROWER'S REPRESENTATIONS AND WARRANTIES:**

The Borrower
26 represents and warrants that:

27 (a) **EXHIBIT A** includes all of the registered trademarks, Federal trademark
28 applications, registered service marks and Federal service mark applications now owned by the Borrower.

29 (b) All TM Collateral is and shall remain, free and clear of all liens, Encumbrances, or
30 security interests of any Person other than the Lender except for Permitted Encumbrances (as defined in
31 the Loan Agreement).

32 (c) The Borrower shall give the Lender written notice (with reasonable detail) within
33 Ten (10) days following the occurrence of any of the following:

34 (i) The Borrower's obtaining rights to, and filing applications for registration

1 of, any new trademarks, or service marks, or otherwise acquiring ownership of any additional
2 registered trademarks, registered service marks, trademark applications, or service mark
3 applications, (other than the Borrower's right to sell products containing the trademarks of others
4 in the ordinary course of Borrower's business).

5 (ii) The Borrower's becoming entitled to the benefit of any registered
6 trademarks, trademark applications, trademark licenses, trademark license renewals, registered
7 service marks, service mark applications, service mark licenses or service mark license renewals
8 whether as licensee or licensor (other than Borrower's right to sell products containing the
9 trademarks of others in the ordinary course of Borrower's business).

10 (iii) The Borrower's entering into any new trademark license agreement or
11 service mark license agreement.

12
13 **5 AGREEMENT APPLIES TO FUTURE MARKS:**

14 (a) The provisions of this Security Agreement shall automatically apply to any such
15 additional property or rights described in 4(c), above, all of which shall be deemed to be and treated as
16 "Marks" within the meaning of this Agreement.

17 (b) The Borrower hereby authorizes the Lender following the occurrence and during
18 the continuance of an Event of Default to take all such action to protect the Lender's interest in and
19 concerning any future registered trademarks, trademark applications, registered service marks and
20 service mark applications, written notice of which is so given, *provided, however*, the Lender's taking of
21 such action shall not be a condition to the creation or perfection of the security interest created hereby.

22
23 **6. BORROWER'S RIGHTS TO ENFORCE MARKS:** Prior to the Lender's giving of
24 notice to the Borrower following the occurrence and during the continuance of an Event of Default, the
25 Borrower shall have the exclusive right to sue for past, present and future infringement of the Marks
26 including the right to seek injunctions and/or money damages, in an effort by Borrower to protect the
27 Marks against encroachment by third parties, *provided, however*:

28 (a) The Borrower first provides the Lender with written notice of the Borrower's
29 intention to so sue for enforcement of any Mark.

30 (b) Any money damages awarded or received by the Borrower on account of such
31 suit (or the threat of such suit) shall constitute TM Collateral.

32 (c) Following the occurrence and during the continuance of any Event of Default, the
33 Lender, by notice to the Borrower may terminate or limit the Borrower's rights under this Section 6.
34

1 7. **LENDER'S ACTIONS TO PROTECT MARKS:** In the event of

2 (a) the Borrower's failure, within Five (5) days of written notice from the Lender, to
3 cure any failure by the Borrower to perform any of the Borrower's obligations set forth in Section 3; and/or

4 (b) the occurrence of any Event of Default,
5 the Lender, acting in its own name or in that of the Borrower, may (but shall not be required to) act in the
6 Borrower's place and stead and/or in the Lender's own right in connection therewith.
7

8 8. **RIGHTS UPON DEFAULT:** Upon the occurrence and during the continuance of any

9 Event of Default, the Lender may exercise all rights and remedies of a secured party upon default under
10 the Uniform Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter
11 106), with respect to the Marks, in addition to which the Lender may sell, license, assign, transfer, or
12 otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the
13 Lender that an Event of Default has occurred and that the Lender is authorized to exercise such rights and
14 remedies.
15

16 9. **LENDER AS ATTORNEY IN FACT:**

17 (a) The Borrower hereby irrevocably constitutes and designates the Lender as and
18 for the Borrower's attorney in fact, effective following the occurrence and during the continuance of any
19 Event of Default:

20 (i) To exercise any of the rights and powers referenced in Sections 3 and
21 5(b).

22 (ii) To execute all such instruments, documents, and papers as the Lender
23 determines to be appropriate in connection with the exercise of such rights and remedies and to
24 cause the sale, license, assignment, transfer, or other disposition of the Marks.

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

27 (c) The Lender shall not be obligated to do any of the acts or to exercise any of the
28 powers authorized by Section 9(a) herein, but if the Lender elects to do any such act or to exercise any of
29 such powers, it shall not be accountable for more than it actually receives as a result of such exercise of
30 power, and shall not be responsible to the Borrower for any act or omission to act except for any act or
31 omission to act as to which there is a final determination made in a judicial proceeding (in which
32 proceeding the Lender has had an opportunity to be heard) which determination includes a specific finding
33 that the subject act or omission to act had been grossly negligent or in actual bad faith.
34

1 10. **LENDER'S RIGHTS:**

2 (a) Any use by the Lender of the Marks, as authorized hereunder in connection with
3 the exercise of the Lenders' rights and remedies under this Agreement and under the Loan Agreement
4 shall be coextensive with the Borrower's rights thereunder and with respect thereto and without any
5 liability for royalties or other related charges.

6 (b) None of this Agreement, the Loan Agreement, or any act, omission, or
7 circumstance taken or arising hereunder may be construed as directly or indirectly conveying to the
8 Lender any rights in and to the Marks, which rights are ineffective except following the occurrence of any
9 Event of Default.

10
11 11. **INTENT:** It is intended that this Agreement supplement the Loan Agreement. The
12 Lender shall have the same rights, remedies, powers, privileges and discretions, with respect to the
13 security interests created in the TM Collateral as in all other Collateral under the Loan Agreement. In the
14 event of a conflict between this Agreement and the Loan Agreement, the terms of this Agreement shall
15 control with respect to the TM Collateral and the Loan Agreement with respect to all other Collateral.

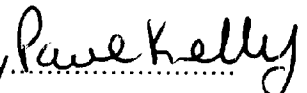
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18 12. **CHOICE OF LAWS:** It is intended that this Agreement take effect as a sealed
19 instrument and that all rights and obligations hereunder, including matters of construction, validity, and
20 performance, shall be governed by the laws of The Commonwealth of Massachusetts.

21
22
23 IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this Agreement
24 to be executed by their respective duly authorized officers as of the date first above written.

25
26 TEMPTRONIC CORPORATION
27 (The "Borrower")

BANKBOSTON, N.A.
(The "Lender")

28
29 By 

By 

30 Name WILLIAM C. TEOHLE

Name Paul Kelly

31
32 Title CFO

Title Vice President

33
34
35
June 29, 1998

1 THE COMMONWEALTH OF MASSACHUSETTS
2 COUNTY OF *Suffolk*, SS

3
4 Then personally appeared before me *WILLIAM O'ROOLE* who acknowledged that
5 such person is the duly authorized *CEO* of Temptronic Corporation and that
6 such person had executed the foregoing instrument on its behalf.

7
8 Witness my hand and seal this *24th* day of *June*, 1998

9
10 *Teresa A. Bergon*
11 *Teresa A. Bergon* Notary Public

12
13 My Commission Expires: *6/26/2003*

14
15
16
17 THE COMMONWEALTH OF MASSACHUSETTS
18 COUNTY OF *Suffolk*

19
20 Then personally appeared before me *Paul Kelly*, who acknowledged that such
21 person is the duly authorized *V.P.* of BankBoston, N.A. and that such
22 person executed the foregoing instrument on its behalf.

23
24 Witness my hand and seal this *29th* day of *June*, 1998

25
26 *Teresa A. Bergon*
27 *Teresa A. Bergon* Notary Public

28
29 My Commission Expires: *6/26/2003*

30
31 313040.2

EXHIBIT A

Borrower's now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks, and Federal trade mark applications:

Trademark/Service Mark Registrations

TRADEMARK	REGISTRATION NUMBER	REGISTRATION DATE
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Trademark Applications

MARK	SERIAL NUMBER	FILING DATE
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313040.2

EXHIBIT A

Borrowers now owned or existing or hereafter acquired or arising registered service marks and Federal service mark applications, registered trademarks, and Federal trade mark applications:

Trademark/Service Mark Registrations

Trademark	Country	Registration No.	Registration Date
TEMPERATURE ON THE SPOT	USA	1094283	June 27, 1978
THERMO STREAM	USA	1085339	February 14, 1978
THERMO SPOT	USA	1218146	November 30, 1982
THERMO CHUCK	USA	1197134	June 8, 1982
THERMO ZONE	USA	1271584	March 27, 1984
THERMO SOCKET	USA	1465031	November 10, 1987
THERMOJOGGER	USA	1433671	March 24, 1987
THERMOFIXTURE	USA	1938952	November 28, 1995
THERMO STREAM	France	1320780	August 22, 1985
THERMO STREAM	Great Britain	B1249075	August 24, 1985
THERMO STREAM	Japan	2384771	February 28, 1992
THERMO SPOT	France	1224085	February 7, 1973
THERMOSPOT	Great Britain	B1007611	March 6, 1973
THERMOSPOT	Japan	1275198	June 10, 1987
THERMOCHUCK	Germany	920938	July 29, 1974
THERMOCHUCK	France	1224083	January 10, 1983
THERMOCHUCK	Great Britain	1007610	March 6, 1973
THERMOCHUCK	Japan	2444346	August 31, 1992

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Trademark/Service Mark Registrations

<u>Trademark</u>	<u>Country</u>	<u>Registration No</u>	<u>Registration Date</u>
TEMPTRONIC & SYMBOL	Japan	1207028	July 17, 1986
THERMO ZONE	France	1320781	August 22, 1985
THERMO ZONE	Japan	2248838	July 30, 1990
THERMO SOCKET	France	1342698	February 14, 1986
THERMO SOCKET	Great Britain	B1260372	June 5, 1987
THERMOSOCKET	Japan	2704082	February 28, 1995

Trademark Applications

<u>Mark</u>	<u>Country</u>	<u>Serial No.</u>	<u>Filing Date</u>
THERMOMAP	USA	75/233615	January 28, 1997
THERMO STREAM	Germany	T24834/9	August 21, 1985
THERMO ZONE	Germany	T24833/9WE	August 21, 1985