

RECO' TR

06-28-2000



D #

To the Honorable Commissioner of Patents

101391040

original documents or copy thereof.

1. Name of conveying party(ies):

THE BANK OF NEW YORK

6-2-00

- Individual(s)
- General Partnership
- Corporation-Delaware
- Other

Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: November 24, 1997

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

Name: CHASE MANHATTAN BANK USA, NATIONAL ASSOCIATION

Address: 270 Park Avenue City: New York State: N.Y. Zip: 10017-2070

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation
- Other - United States Banking Association

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 Applications

Mark	Serial No.

B. Trademark Registrations

Mark	Reg. No.
QUIK CALL	1,641,527

Additional numbers attached?  Yes  No

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

Name: Darby & Darby P.C.  
Street Address: 805 Third Avenue, 27th Floor  
City: New York State: New York Zip: 10022-7513

EXPRESS MAIL CERTIFICATE

Date: 6/2/00 Label No. 628220643

I hereby certify that, on the date indicated above I deposited this paper or fee with the U.S. Postal Service & that it was addressed for delivery to the Commissioner of Patents & Trademarks, Washington D.C. 20231 by Express Mail Post Office to Address: \_\_\_\_\_

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41):.....\$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 04-0100

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

Name (Print)

Signature

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.

Randi S. Miller  
Name of Person Signing

Randi S. Miller  
Signature

June 2, 2000  
Date

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

12

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

INSTRUMENT OF  
ASSIGNMENT AND ASSUMPTION

AGREEMENT, dated as of November 24, 1997, among  
THE BANK OF NEW YORK COMPANY, INC., a New York corporation  
("BNY Co."), THE BANK OF NEW YORK (DELAWARE), a Delaware  
banking corporation ("Bank"), and CHASE MANHATTAN BANK USA,  
NATIONAL ASSOCIATION, a national banking association  
("Purchaser").

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W I T N E S S E T H:

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WHEREAS, BNY Co., Bank and Purchaser are parties  
to a certain Purchase and Sale Agreement, dated as of  
October 21, 1997 (the "Purchase and Sale Agreement");

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WHEREAS, pursuant to the Purchase and Sale  
Agreement, BNY Co. and Bank have agreed to sell to  
Purchaser, to the extent owned by Bank, the Acquired Account  
Assets, and Purchaser has agreed to purchase the Acquired  
Account Assets and to assume the Assumed Account  
Liabilities, as such terms are defined in the Purchase and  
Sale Agreement; and

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WHEREAS, the Acquired Account Assets include,  
inter alia, the Accounts and certain Assigned Account  
Contracts (as such terms are defined in the Purchase and  
Sale Agreement) and the Assumed Account Liabilities include,  
inter alia, certain liabilities and obligations associated  
with the Accounts;

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NOW, THEREFORE, in consideration of the foregoing  
and the mutual covenants and agreements hereinafter set  
forth, each of BNY Co. and Bank, jointly and severally, and  
Purchaser agree as follows:

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1. Assignment of Acquired Account Assets.

Effective as of the date hereof, Bank does hereby sell,  
convey and assign unto Purchaser upon the terms and  
conditions set forth in the Purchase and Sale Agreement, all  
of Bank's right, title and interest in, to and under the  
Acquired Account Assets and Purchaser hereby accepts the  
foregoing assignment of the Acquired Account Assets.

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2. Assumption of Assumed Account Liabilities.  
Effective as of the date hereof, Purchaser does hereby assume, and agrees to pay, defend, discharge and perform all Assumed Account Liabilities. Without limitation to the generality of the foregoing, Purchaser shall be obligated to perform the obligations of the Bank as if it were the Bank for the purposes of the Accounts, as such terms are defined in the Purchase and Sale Agreement.

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3. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE CONFLICT OF LAWS LAWS OF SUCH STATE.

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4. Counterparts. This Agreement may be executed in one or more counterparts all of which shall together constitute one and the same instrument.

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IN WITNESS WHEREOF, this Agreement has been signed on behalf of each of the parties hereto as of the day and year first above written.

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THE BANK OF NEW YORK  
COMPANY, INC.

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By Robert Keilman  
Name: Robert E. Keilman  
Title: Comptroller

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THE BANK OF NEW YORK  
(DELAWARE)

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By \_\_\_\_\_  
Name:  
Title:

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CHASE MANHATTAN BANK USA,  
NATIONAL ASSOCIATION

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By \_\_\_\_\_  
Name:  
Title:

2. Assumption of Assumed Account Liabilities.

Effective as of the date hereof, Purchaser does hereby assume, and agrees to pay, defend, discharge and perform all assumed Account Liabilities. Without limitation to the generality of the foregoing, Purchaser shall be obligated to perform the obligations of the Bank as if it were the Bank for the purposes of the Accounts, as such terms are defined in the Purchase and Sale Agreement.

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THE BANK OF NEW YORK  
COMPANY, INC.

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By \_\_\_\_\_  
Name:  
Title:

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THE BANK OF NEW YORK  
(DELAWARE)

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By Catherine Marsh  
Name:  
Title: CATHERINE MARSH, PRESIDENT & COO

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CHASE MANHATTAN BANK USA,  
NATIONAL ASSOCIATION

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By \_\_\_\_\_  
Name:  
Title:

2. Assumption of Assumed Account Liabilities.

effective as of the date hereof, Purchaser does hereby assume, and agrees to pay, defend, discharge and perform all assumed Account Liabilities. Without limitation to the generality of the foregoing, Purchaser shall be obligated to perform the obligations of the Bank as if it were the Bank for the purposes of the Accounts, as such terms are defined in the Purchase and Sale Agreement.

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on behalf of each of the parties hereto as of the day and year first above written.

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THE BANK OF NEW YORK  
COMPANY, INC.

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By \_\_\_\_\_  
Name:  
Title:

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THE BANK OF NEW YORK  
(DELAWARE)

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By \_\_\_\_\_  
Name:  
Title:

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CHASE MANHATTAN BANK USA,  
NATIONAL ASSOCIATION

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By Michael J. Barnett  
Name: Michael J. Barnett  
Title: President

PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT, dated as of October 21, 1997 (this "Agreement"), among THE BANK OF NEW YORK COMPANY, INC., a New York corporation ("BNY Co."), THE BANK OF NEW YORK (DELAWARE), a Delaware banking corporation ("Bank"), and CHASE MANHATTAN BANK USA, NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States ("Purchaser").

W I T N E S S E T H:

In consideration of the representations, warranties and mutual promises and covenants herein set forth, the parties hereby agree as follows:

CERTAIN DEFINITIONS

The following terms, as used herein, have the following meanings:

"Accounts" means all accounts (individual, corporate or otherwise) under which a purchase, cash advance or other credit or debit transaction may be or has been made by a Cardholder (or a Person authorized by such Cardholder) pursuant to a Cardholder Agreement in effect; provided, however, that such term shall specifically not include any Excluded Account.

"Accrued Interest" means the aggregate amount of all finance charges that were accrued and earned on the Accounts as of the Cut-Off Time, but were not posted to the Accounts.

"Acquired Account Assets" means all right, title and interest of Bank in and to the following assets and properties, except to the extent they constitute Excluded Assets:

(i) all of the Accounts and Gross Credit Card Receivables, any applications for Accounts pending and any solicitations for Accounts outstanding;

(ii) "Consumers Edge," "Consumers Edge Cashback," "Consumers Edge Grace," "Consumers Edge Horizons,"

"Consumers Edge Prime," "Consumers Privilege and Design," "Golfer's Classic," "Quik Call," "Tennis Advantage" and "Texas Edge" and all related trade marks, trade names, service marks and service names ("Trademarks");

(iii) all Cardholder Agreements and related documentation;

(iv) all rights under all Assigned Account Contracts;

(v) all goodwill associated with the Acquired Account Assets; and

(vi) the Cardholder List.

"Acquired Assets" means the Acquired Account Assets and the Acquired Other Assets.

"Acquired Other Assets" means all right, title and interest of Bank in and to any and all assets and properties, of any kind whatsoever, principally used in the conduct of the Business, except to the extent they constitute Acquired Account Assets or Excluded Assets, including, without limitation:

(i) leases for the Bank Offices;

(ii) all correspondence, records, files, customer lists, extracts from books of account and other data, whether in electronic or hard copy format, to the extent relating to the Acquired Assets or relating principally to the Business, other than those relating principally to any Excluded Asset;

(iii) all receivables (other than Gross Credit Card Receivables), inventories, prepayments for goods and services, operating supplies, computer systems, machinery, equipment, vehicles, office furniture and other tangible personal property principally used in the conduct of the Business, and rights under leases with respect to the foregoing;

(iv) all rights under all Assigned Other Contracts;

ARTICLE I

PURCHASE, SALE AND ASSUMPTION

SECTION 1.1. Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement, (i) at the time of the Closing and effective from and after the Cut-Off Time, Bank agrees to sell, convey and assign to Purchaser, to the extent owned by Bank, free and clear of all Liens, except Permissible Liens, the Acquired Account Assets, and Purchaser agrees to purchase all the Acquired Account Assets and (ii) at the time of the Assignment, Bank agrees to convey and assign to Purchaser, to the extent owned by Bank, free and clear of all Liens, except Permissible Liens, the Acquired Other Assets.

SECTION 1.2. Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, (i) at the time of the Closing and effective from and after the Cut-Off Time, Purchaser agrees to assume, pay, defend, discharge and perform as and when due all Liabilities related to, associated with or arising out of the Acquired Account Assets which are incurred on or after the Cut-Off Time (the "Assumed Account Liabilities") and (ii) at and after the time of the Assignment, Purchaser agrees to assume, pay, defend, discharge and perform as and when due all Liabilities related to, associated with or arising out of the Acquired Other Assets which are incurred on or after the Assignment (the "Assumed Other Liabilities" and, together with the Assumed Account Liabilities, the "Assumed Liabilities"):

SECTION 1.3. Excluded Liabilities.

Notwithstanding any provision in this Agreement or any other writing to the contrary, Purchaser is assuming only the Assumed Liabilities and is not assuming any other Liability of Bank (or any predecessor of Bank or any prior owner of all or part of its businesses and assets) of whatever nature, whether presently in existence or arising hereafter. All such other Liabilities shall be retained by and remain Liabilities of Bank (all such Liabilities not being assumed being herein referred to as the "Excluded Liabilities"). Without limiting the generality of the foregoing, each of the following shall constitute Excluded Liabilities:

(a) any Liability for Taxes with respect to the Business for any period prior to the Closing Date;



account to the age and length of use of same, ordinary wear and tear excepted), are adequate and suitable for their present uses and, in the case of plants, buildings and other structures (including, without limitation, the roofs thereof), are structurally sound.

(c) The plants, buildings and structures included in the Acquired Assets (or the plants, buildings, structures and equipment, the leases for which are being assumed by or otherwise transferred or subleased to Purchaser) currently have access to (i) public roads or valid easements over private streets or private property for such ingress to and egress from all such plants, buildings and structures and (ii) water supply, storm and sanitary sewer facilities, telephone, gas and electrical connections, fire protection, drainage and other public utilities, in each case as is necessary for the conduct of the Business as it has heretofore been conducted.

(d) The continued use, occupancy and operation of the Bank Offices as currently used, occupied and operated does not constitute a nonconforming use under any applicable ordinances.

SECTION 3.5. Acquired Assets and Assumed Liabilities. Except as set forth on Schedule 3.5 hereto, assuming the Required Consents are obtained, upon consummation of the transactions contemplated hereby, including the execution and delivery to Purchaser by the appropriate parties hereto of any necessary instruments of assignment and bills of sale in accordance with the terms hereof:

(i) all the right, title and interest of Bank in and to the Accounts will be validly vested in Purchaser, free and clear of all Liens other than Permissible Liens; all such right, title and interest will be validly assigned to Purchaser; and such assignment shall be enforceable against all other Persons including without limitation, creditors of the Business;

(ii) Purchaser will have acquired good and marketable title in and to, or a valid leasehold interest in, each other Acquired Asset purported to be assigned to it, free and clear of all Liens other than Permissible Liens; and

compliance with all Environmental Permits; such Environmental Permits are valid and in full force and effect.

(b) There has been no environmental investigation, study, audit, test or review conducted by the Bank of any Acquired Asset or Real Property which has not been provided to Purchaser prior to the date hereof.

(c) For the purposes of this Agreement, the following terms shall have the following meanings:

(i) "Environmental Claim" means any notice (written or oral) by any Person alleging potential liability (including, without limitations potential liability for investigatory costs, cleanup costs, governmental response costs natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting, from (A) the presence, or release into the environment, of any Hazardous Substance at any location, whether or not owned by Bank or (B) circumstances forming the basis of any violation, or alleged violation, or any Environmental Law.

(ii) "Environmental Laws" means all federal, state, local and foreign laws (including, without limitation, common law) and regulations or any treaty, judicial decision, regulation, rule, judgment, order, decree, injunction, permit or governmental restriction or any agreement with any governmental authority as now in effect relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including, without limitation, relating to noise, emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

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SECTION 3.13. Intellectual Property.

(a) Schedule 3.13 contains a list of all Trademarks being acquired by Purchaser pursuant hereto, specifying as to each, as applicable: (i) the owner or licensor of such Trademark, (ii) the jurisdictions by or in which such Trademark has been issued or registered or in which an

application for such issuance or registration has been filed, (iii) the registration or application numbers and (iv) the termination or expiration dates.

(b) Neither Bank nor any of its Affiliates is party to any license, sublicense or other agreement pursuant to which any other Person is authorized to use any Intellectual Property Right or Trademark.

(c) (i) Since October 1, 1994, Bank has not been a defendant in any Action relating to, or otherwise has been notified of, any alleged claim of infringement of any Intellectual Property Right or Trademark, and Bank has no knowledge of any other such infringement by Bank, and (ii) Bank has no outstanding claim or suit for, and has no knowledge of, any continuing infringement by any other Person of any Intellectual Property Rights or Trademarks.

SECTION 3.14. Representations. The representations and warranties of Bank contained in this Agreement, disregarding all qualifications and exceptions contained therein relating to "Material", "Material Adverse Effect", or "materiality" in any other form, are true and correct with only such exceptions as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 3.15. Sale of Cardholder List. Other than the sale, lease or license of the Cardholder List to enhancement and marketing vendors, co-brand partners and Affiliates of Bank, in the ordinary course of business, none of Bank or any of its Affiliates has sold, transferred or otherwise provided the Cardholder List, in whole or in part, to any third party for their independent use. Each such enhancement and marketing vendor and co-brand partner in all cases was restricted to a specific one-time use of the Cardholder List and required to return the Cardholder List to Bank upon completion of its permitted use. Each such enhancement and marketing vendor, co-brand partner and Affiliate was prohibited from disclosing or transferring the Cardholder List to any other Person.

SECTION 3.16. License. Bank is licensed to participate to the extent of its participation on the date of this Agreement and on the Closing Date in the Visa USA, Inc. credit card program and in the MasterCard International, Inc. credit card program.

Patent & Edmonds LLP

October 7, 1997

Page 2

TRADEMARK REPORT

CONSUMERS PRIVILEGE AND DESIGN

Ref: 005782-0035-999

UNITED STATES

Owner: THE BANK OF NEW YORK (DELAWARE)

PENDING APP.

App No : 75/188099      OCTOBER 21, 1986

Class(es): 36  
A BONUS PROGRAM WHICH PROVIDES DISCOUNTS TO CREDIT CARD CARDHOLDERS OF THE BANK OF NEW YORK

GOLFER'S CLASSIC

Ref: 005782-0005-999

UNITED STATES

Owner: THE BANK OF NEW YORK (DELAWARE)

Reg No : 1,422,288      DECEMBER 23, 1986      RENEWAL DUE:      DECEMBER 23, 2006      REGISTERED  
App No : 697,588      MAY 08, 1986

Class(es): 36  
A CREDIT CARD SERVICES DIRECTED PRIMARILY TO GOLFERS

OLARK CALL

Ref: 005782-0017-999

UNITED STATES

Owner: THE BANK OF NEW YORK (DELAWARE)

Reg No : 1,641,627      APRIL 16, 1991      RENEWAL DUE:      APRIL 16, 2001      REGISTERED  
App No : 74/040711      MARCH 21, 1990      USE AFF. DUE:      APRIL 16, 1997

Class(es): 36  
A CUSTOMER TELEPHONE CALL-IN SERVICE WITH COMPUTER CALL RESPONSE WHEREBY CUSTOMERS ARE APPRISED OF INFORMATION CONCERNING THEIR BANK ACCOUNTS

TENNIS ADVANTAGE

Ref: 005782-0011-999

UNITED STATES

Owner: THE BANK OF NEW YORK (DELAWARE)

Reg No : 1,488,484      APRIL 26, 1988      RENEWAL DUE:      APRIL 26, 2008      REGISTERED  
App No : 679,248      AUGUST 18, 1987

Class(es): 36  
A CREDIT CARD SERVICES

TEXAS EDGE

Ref: 005782-0019-999

UNITED STATES

Owner: THE BANK OF NEW YORK (DELAWARE)

Reg No : 1,823,890      FEBRUARY 22, 1994      RENEWAL DUE:      FEBRUARY 22, 2004      REGISTERED  
App No : 74/237618      JANUARY 14, 1992      SEC. 8 &/OR 15:      FEBRUARY 22, 2000

Class(es): 36  
A CREDIT CARD SERVICES