

MRD 12-22-00

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FORM PTO-1594 RECORD A1  
(Rev. 6-93)

01-16-2001

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U.S. DEPARTMENT OF COMMERCE



OMB No. 0651-0011 (exp. 4/94)

101583356

12-22-2000

U.S. Patent & TMO/TM Mail Rpt. Dt. #40

# TRADEMARKS ONLY

Tab settings → → →

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

1. Name of conveying party(ies):  
**BOXER HOLDINGS, INC.**  
**1265 Folsom Street**  
**San Francisco, CA 94103**

Individuals(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State **California**  
 Other \_\_\_\_\_

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

2. Name and address of receiving party(ies)  
Name: **THE CIT GROUP/COMMERCIAL SERVICES, INC.**  
Internal Address:  
Street Address: **300 South Grand Avenue**  
City: **Los Angeles** State: **California** ZIP: **90071**

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-State **California**  
 Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  
\_\_\_\_\_  
(Designations must be a separate document from assignment)

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

3. Nature of conveyance:

Assignment                               Merger  
 **Security Agreement**               Change of Name  
 Other \_\_\_\_\_

Execution Date: **December 1, 2000**

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

A. Trademark Application No.(s)  
75-731518, 75-703305  
Additional numbers attached?  Yes  No

B. Trademark Registration No.  
**1777238, 2016193**

US PATENT & TRADEMARK OFFICE  
RECEIVED  
DEC 22 A 8 22  
TRADEMARK FEE PROCESSING

5. Name and address of party to whom correspondence concerning document should be mailed:  
**Mr. Michael Wright**  
Name: **Buchalter, Nemer, Fields & Younger**

01/12/2001 COMMED 00000078 200052 75731518  
01 FC:481 40.00 CH  
02 FC:482 1250.00 CH

Street Address: **601 South Figueroa Street, 24th Floor**  
City: **Los Angeles** State: **California** ZIP: **90017**

6. Total number of applications and registrations involved: 51

7. Total fee (37 CFR 3.41) ..... \$ 1290<sup>00</sup>  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
20-0052  
(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.  
*Christine E. Wikstrom*   
**MR. MICHAEL WRIGHT** \_\_\_\_\_  
Name of Person Signing                      Signature  
Total number of pages including cover sheet, attachments, and document: \_\_\_\_\_  
Date: 12-7-00

TRADEMARK

**REGISTERED TRADEMARKS AND SERVICE MARKS**

<u>Trademark of Service Mark</u>	<u>Registration Date</u>	<u>Registration No.</u>
ALMOST BASIC	06-15-93	1777238
DOT	06-16-99	75/731518
FAMILY DINER	11-12-96	2016193
FLYTAB DESIGN	05-07-96	1973563
HYSTERICAL FABRICS FOR FABULOUS PEOPLE	07-28-92	1703362
JOE BOXER	04-21-98	2151915
JOE BOXER	07-02-96	1984619
JOE BOXER	10-26-93	1801580
JOE BOXER	07-01-86	1399568
JOE BOXER	05-13-97	2060335
JOE BOXER & Design	03-06-90	1585824
JOE BOXER BOY	06-14-94	1839984
JOE BOXER GIRLFRIEND	10-12-93	1798747
JOE BOXER GIRLFRIEND	06-30-98	2170389
JOE BOXER HOME!	12-28-93	1814295
JUST GO TO SLEEP!	08-04-92	1705098
LICKY LOGO	03-04-97	2041783
LICKY LOGO	01-07-97	2028591
MADE IN THE U.S. EH?	04-20-93	1765944
S6X	12-01-98	2206494
SLEEPYGIRL	08-02-94	1848226

SLURP ICON	03-28-00	2335182
SMILEY LOGO AND JOE BOXER	02-18-97	2038467
UN	07-23-96	1988147
UNDER (EXPOSED)	10-24-95	1929053
VERBAL LINGERIE	06-08-93	1775928
WILD ELEPHANT	08-03-93	1786183
WITH UNDERWEAR LIKE THIS WHO NEEDS PANTS	12-27-94	1869686
JOE BOXER	05-05-92	SAM2834
JOE BOXER & DESIGN	05-05-92	SAM283

**PENDING TRADEMARKS AND SERVICE MARKS**

<u>Trademark of Service Mark</u>	<u>Filing Date</u>	<u>Serial No.</u>
AMERICAN JOE	05-12-99	75/703305
BRAND IS THE AMUSEMENT PARK, THE PRODUCT IS THE SOUVENIR, THE	09-10-97	75/355919
CHANGE DAILY	01-15-99	75/621951
CLEAN FRESH UNDER WEAR (STACKED)	02-03-97	75/235062
GIRLFRIEND BY JOE BOXER	03-05-98	75-444815
JOE BOXER	05-23-00	76/053420
JOE BOXER	04-01-99	75/673408
JOE BOXER	12-08-99	75/868196
JOE BOXER	05-03-99	75/696137
JOE BOXER	10-09-97	75/370960

**PENDING TRADEMARKS AND SERVICE MARKS** (continued)

<u>Trademark of Service Mark</u>	<u>Filing Date</u>	<u>Serial No.</u>
JOE BOXER	04-01-99	75/673039
JOE BOXER	06-18-98	75/504741
JOE BOXER & DESIGN	06-30-99	75-742660
JOE BOXER GIRLFRIEND	03-07-96	75/071157
JOE BOXER GIRLFRIEND	09-20-99	75/804318
JOE TO GO	05-03-99	75/696136
LICKY LOGO	12-08-99	75/868195
LICKY LOGO	04-15-99	75/683874
LICKY LOGO	06-18-98	75/504735
MR. LICKY DESIGN	07-09-98	75/515831
REPUBLIC OF JOE	05-03-99	75/696138

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

This **INTELLECTUAL PROPERTY SECURITY AGREEMENT** (“Agreement”), dated as of December 1, 2000, is entered into between **BOXER HOLDINGS, INC.**, a California corporation (“Debtor”), **BNP PARIBAS**, a French banking corporation acting through its San Francisco Branch (“BNP Paribas”), **THE CIT GROUP/COMMERCIAL SERVICES, INC.**, a New York corporation, in its capacity as factor and lender (“CIT”) (BNP Paribas and CIT are referred to collectively herein as the “Lenders”), and **THE CIT GROUP/COMMERCIAL SERVICES, INC.** a New York corporation, in its capacity as agent for the Lenders (“Agent”), in light of the following:

- A. BNP Paribas and CIT is each providing financial services to Joe Boxer Corporation, a California corporation (“Borrower”). BNP Paribas is providing financial services to Debtor.
- B. Debtor is concurrently executing and delivering to CIT the CIT Guaranty;
- C. Debtor and Borrower are concurrently executing and delivering to BNP Paribas the BNP Paribas Amended Loan Agreement; and
- D. Debtor is the owner of certain intellectual property, identified below, in which Debtor is granting a security interest to Lenders.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other good and valuable consideration, the parties hereto mutually agree as follows:

## 1. DEFINITIONS AND CONSTRUCTION.

**1.1 Definitions.** The following terms, as used in this Agreement, have the following meanings:

“BNP Paribas Amended Loan Agreement” means that certain Loan and Security Agreement dated as of May 1, 1999, as amended by the Second Forebearance and Amendment Agreement, of even date herewith, by and between BNP Paribas, Debtor and Borrower.

“CIT Guaranty” means that certain continuing guaranty, of even date herewith, in which Debtor has guaranteed the Obligations of Borrower to CIT.

“Code” means the California Uniform Commercial Code, as amended and supplemented from time to time, and any successor statute.

**“Collateral” means:**

(i) All of the Debtor’s right, title and interest in each of the trademarks and all other rights and interests which are capable of being protected as trademarks (including trademarks, service marks, designs, logos, indicia, tradenames, corporate names, company names, business names, fictitious business names, trade styles, and other source or business identifiers, and applications pertaining thereto), which are presently, or in the future may be, owned, created, acquired, or used (whether pursuant to a license or otherwise) by Debtor, in whole or in part, together with the goodwill of the business connected with the use of and symbolized by the trademarks, and all trademark rights, including future and existing rights, with respect thereto in perpetuity throughout the world, including all proceeds thereof accrued or received from and after the date hereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(ii) All of Debtor’s right, title and interest in each of the works and copyrights therein which are presently, or in the future may be created, owned, issued, acquired, or used (whether pursuant to a license or otherwise) by Debtor, in whole or in part, and all rights with respect thereto in perpetuity throughout the world, including, without limitation, all reproduction and allied rights necessary for production, distribution, and exploitation of said works and all copyrights and copyright registrations therein and all renewals and extensions thereof, and all translations, adaptations and other versions of said works now made or hereafter created and all proceeds thereof accrued or received from and after the date hereof (including license royalties and proceeds of infringement suits), foreign filing rights, and rights to extend such works and copyright registrations;

(iii) All of Debtor's right to the trademarks, including trademark registrations and pending trademark applications, listed on Schedule A, attached hereto, as the same may be updated hereafter from time to time (the “Trademarks”), together with the goodwill of the business connected with the use of and symbolized by the Trademarks;

(iv) All of Debtor's right, title, and interest, in and to the works and copyright registrations listed on Schedule B, attached hereto, as the same may be updated hereafter from time to time (the “Copyrights”);

(v) All of Debtor's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew, and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Debtor or in the name of Lenders for past, present, and future infringements of all trademarks and rights and interest which are capable of being protected as trademarks, registrations, or trademark rights and all rights (but not

obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill;

(vi) All of Debtor's right, title, and interest in all copyrighted works and to file applications for registration under federal copyright law or regulation of any foreign country, and the right (without obligation) to sue in the name of Debtor or in the name of Lenders for past, present, and future infringements of the copyrights, and all rights (but not obligations) corresponding thereto in the United States and any foreign country;

(vii) All of Debtor's pending U.S. trademark or service mark applications filed on an intent-to-use basis, but only after such time as an Amendment to Allege Use or Statement of Use is filed and accepted by the PTO and the marks are actually used in commerce;

(viii) All past, present and future proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral; and

(ix) All general intangibles relating to the foregoing.

"Intercreditor Agreement" means that certain intercreditor agreement, of even date herewith, by and between CIT and BNP Paribas.

"Lenders" means CIT and BNP Paribas.

"Obligations" means (a) all obligations, liabilities, and indebtedness of Debtor to CIT, whether direct, indirect, liquidated, or contingent, and whether arising under this Agreement, and the CIT Guaranty or otherwise, including all costs and expenses described in Section 12.8 (Fees and Expenses) hereof; and (b) all obligations, liabilities, and indebtedness of Debtor to BNP Paribas, whether direct, indirect, liquidated, or contingent, and whether arising under this Agreement, the BNP Paribas Amended Loan Agreement, or otherwise, including all expenses described in Section 12.8 (Fees and Expenses) hereof.

"Van Mar" shall mean Van Mar, Inc., a New Jersey corporation.

**1.2 Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, and the term "including" is not limiting. The words "hereof," "herein," "hereby," "hereunder" and other similar terms refer to this Agreement as a whole and not to any particular provision of this Agreement. Any reference herein to any documents, includes any and all alterations, amendments, extensions, modifications, renewals, or supplements thereto or thereof, as applicable. Neither this Agreement nor any uncertainty or ambiguity

herein shall be construed or resolved against Agent, Lenders or Debtor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by Agent, Lenders and Debtor and their respective counsel, and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of Agent, Lenders and Debtor.

## **2. GRANT OF SECURITY INTEREST.**

Debtor hereby grants to each Lender a first-priority, pari passu security interest in and mortgage on all of Debtor's right, title, and interest in and to the Collateral to secure all present and future obligations owing to BNP Paribas under the BNP Paribas Amended Loan Agreement and this Agreement, and all of Debtor's right, title, and interest in and to the Collateral to secure all present and future obligations owing to CIT under the CIT Guaranty and this Agreement, respectively. The rights of the Lenders in the Collateral interest shall be as set forth in the Intercreditor Agreement.

## **3. REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Debtor hereby represents, warrants, and covenants that:

### **3.1 Trademarks; Copyrights.**

(i) A true and complete schedule setting forth all federal and state trademark and service mark registrations and pending applications owned or controlled by Debtor or licensed to Debtor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule A; and

(ii) A true and complete schedule setting forth all copyright registrations owned or controlled by Debtor or licensed to Debtor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule B.

**3.2 Validity; Enforceability.** Each of the Trademarks and Copyrights listed on Schedules A and B is valid and enforceable, and Debtor is not presently aware of any past, present, or prospective claim by any third party that any of the Trademarks or Copyrights are invalid or unenforceable, or that the use of any Trademarks or Copyrights violates the rights of any third person, or of any basis for any such claims.

**3.3 Title.** Debtor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the Trademarks and Copyrights listed on Schedules A and B, free and clear of any liens, charges, and encumbrances, including pledges, assignments, licenses, joint ownership rights, shop rights, and covenants by Debtor not to sue third persons.



**3.4 Notice.** Debtor has used and will continue to use proper statutory notice in connection with its use of each of the Trademarks and Copyrights.

**3.5 Quality.** Debtor has used and will continue to use consistent standards of high quality (which may be consistent with Debtor's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the Trademarks and Copyrights, including, to the extent applicable, in the operation and maintenance of its merchandising and licensing operations, and will continue to maintain the validity of the Trademarks and Copyrights.

**3.6 Perfection of Security Interest.** Except for the filing of a financing statement with the Secretary of State of California and filings with the United States Patent and Trademark Office and the U.S. Copyright Office necessary to perfect the security interests created hereunder, no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by Debtor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by Debtor or for the perfection of or the exercise by Lenders and/or Agent of their rights hereunder to the Collateral in the United States.

**3.7 No Liens.** Debtor will not create, incur, assume or permit to exist any pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, priority, or other security agreement or preferential arrangement, charge, or encumbrance of any kind or nature whatsoever upon the Collateral or any of the property of Debtor; provided, however, that Debtor may grant a subordinated lien in the Collateral to Van Mar subject to the prior written consent of each Lender to the terms of the subordination.

#### **4. AFTER-ACQUIRED TRADEMARKS, SERVICE MARKS OR WORKS.**

If Debtor shall obtain rights to any new trademarks, service marks, or works, the provisions of this Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to Lenders with respect to any such new trademarks, service marks, or works, or renewal or extension of any trademark, service mark or copyright registration. Debtor shall bear any expenses incurred in connection with future trademark, service mark, and copyright applications and registrations.

#### **5. LITIGATION AND PROCEEDINGS.**

Debtor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings, or other action for infringement or other damages as are in its reasonable business judgment necessary to protect the Collateral. Debtor shall provide to Lenders any information with respect thereto requested by Lenders. Lenders shall provide at Debtor's

expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following Debtor's becoming aware thereof, Debtor shall notify Lenders of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, U.S. Copyright Office, or any United States, state, or foreign court regarding Debtor's claim of ownership in any of the trademarks, service marks or copyrights, its right to apply for the same, or its right to keep and maintain such trademark, service mark or copyright rights.

## **6. POWER OF ATTORNEY.**

Debtor grants Agent or any successor agent power of attorney, having the full authority, and in the place of Debtor and in the name of Debtor, from time to time following an Event of Default in Agent's discretion, to take any action and to execute any instrument which Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of this Agreement: to endorse Debtor's name on all applications, documents, papers, and instruments necessary for Agent to use or maintain the Collateral; to ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral; to file any claims or take any action or institute any proceedings that Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce Lenders' rights with respect to any of the Collateral and to assign, pledge, convey, or otherwise transfer title in or dispose of the Collateral to any person.

## **7. RIGHT TO INSPECT.**

Debtor grants to Lenders, Agent and their employees and agents the right to visit Debtor's plants and facilities which manufacture, inspect, or store products sold under any of the Trademarks or incorporating any of the Copyrights, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

## **8. EVENTS OF DEFAULT.**

Any of the following events shall be an Event of Default:

**8.1 Guaranty.** An event of default shall occur under the CIT Guaranty.

**8.2 Amended Loan Agreement.** An event of default shall occur under the BNP Paribas Amended Loan Agreement.

**8.3 Misrepresentation.** Any representation or warranty made herein by Debtor or in any document furnished to CIT or BNP Paribas by Debtor under this Agreement is incorrect in any material respect when made or when reaffirmed.

**8.4 Breach.** Debtor fails to observe or perform any covenant, condition, or agreement to be observed or performed pursuant to the terms hereof which materially and adversely affects Lenders.

## **9. AUTHORITY AND TERM OF AGENT.**

**9.1 Authority.** Lenders grant Agent power of attorney having the full authority to act on behalf of Lenders in order to: (a) perfect or otherwise protect each Lender's security interest granted under this Agreement and the priority of the Lenders' security interests; and (b) following an Event of Default, enforce Lenders' remedies under this Agreement, including, without limitation, to receive royalty payments made by Debtor's licensees, to conduct a sale pursuant to Section 10.2 (Sale) below and to receive the proceeds of any such sale. In acting following an Event of Default hereunder, the Agent shall consult with the Lenders and, except in emergency circumstances in which action must be taken in the Agent's reasonable judgment to preserve the rights of the Lenders hereunder or to preserve or maximize the value of the Collateral, the Agent shall obtain the consent of the Lenders to remedial action to be taken in respect of the Collateral. Any Collateral or proceeds thereof received by the Agent shall be held in trust for the benefit of the Lenders for distribution as set forth in the Intercreditor Agreement.

**9.2 Term.** Agent shall remain Agent until such time as CIT has received its first share of the proceeds as set forth in the Intercreditor Agreement. Once CIT has received the agreed upon first share of proceeds, then BNP Paribas shall become Agent, as agent acting on behalf of BNP Paribas and CIT.

## **10. SPECIFIC REMEDIES.**

Upon the occurrence of any Event of Default, Lenders shall have, in addition to, other rights given by law or in this Agreement, the CIT Guaranty, the BNP Paribas Amended Loan Agreement or in any other document, all of the rights and remedies with respect to the Collateral of a secured party under the Code, including the following:

**10.1 Notification.** Agent may notify licensees to make royalty payments on license agreements directly to Agent; and

**10.2 Sale.** Agent may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Agent deems advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Debtor five days prior to such disposition. Debtor shall be credited with the net proceeds of such sale only when they are actually received by Agent, and Debtor shall continue to be liable for any deficiency remaining after the Collateral is sold or collected. If the sale is to be a public sale, Agent shall also give notice of the time and place by publishing a notice one time at least five days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held. To the

maximum extent permitted by applicable law, Agent, CIT or BNP Paribas may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any collateral payable by Agent, CIT or Paribas at such sale. The proceeds of any such sale shall be distributed in accordance with the terms and conditions of the Intercreditor Agreement.

**11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.**

**THE VALIDITY OF THIS AGREEMENT, ITS CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES. THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA OR, AT THE SOLE OPTION OF LENDERS, IN ANY OTHER COURT IN WHICH LENDERS SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. EACH OF DEBTOR, LENDERS AND AGENT WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 11. DEBTOR, LENDERS AND AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. DEBTOR, LENDERS AND AGENT REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.**

## 12. GENERAL PROVISIONS.

**12.1 Effectiveness.** This Agreement shall be binding and deemed effective when executed by Debtor, Lenders and Agent.

**12.2 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Debtor may not assign this Agreement or any rights or duties hereunder without the prior written consent of the Lenders. Any prohibited assignment shall be absolutely void. Lenders (either independently or collectively) may assign this Agreement and its rights and duties hereunder, and no consent or approval by Debtor is required in connection with any such assignment; however, neither Lender may assign this Agreement or any rights or duties hereunder without the prior written consent of the other Lender, which consent shall not be unreasonably withheld.

**12.3 Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each section applies equally to this entire Agreement.

**12.4 Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lenders or Debtor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

**12.5 Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

**12.6 Amendments in Writing.** This Agreement can only be amended by a writing signed by Lenders, Agent and Debtor.

**12.7 Counterparts; Telefacsimile Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

**12.8 Fees and Expenses.** Debtor shall pay to Agent on demand all costs and expenses that Agent, CIT or BNP Paribas pays or incurs in connection with the negotiation, preparation, consummation, administration, enforcement, and termination of this Agreement, including: (a) reasonable attorneys' and paralegals' fees and disbursements of counsel to Agent, CIT or BNP Paribas; (b) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) for any amendment, supplement, waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby; (c) costs and expenses of lien and title searches; (d) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office, or for filing financing statements, and continuations, and other actions to perfect, protect, and continue the security interest created hereunder; (e) sums paid or incurred to pay any amount or take any action required of Debtor under this Agreement that Debtor fails to pay or take; (f) costs and expenses of preserving and protecting the Collateral; and (g) costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) paid or incurred to enforce the security interest created hereunder, sell or otherwise realize upon the Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made or threatened against Lenders arising out of the transactions contemplated hereby (including preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement or the loan documents regarding costs and expenses to be paid by Debtor. The parties agree that reasonable attorneys' and paralegals' fees and costs incurred in enforcing any judgment are recoverable as a separate item in addition to fees and costs incurred in obtaining the judgment and that the recovery of such attorneys' and paralegals' fees and costs is intended to survive any judgment and is not to be deemed merged into any judgment.

**12.9 Notices.** Except as otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing and shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such e-mail addresses as Agent and Debtor as applicable, may designate to each other in accordance herewith), or telefacsimile to Lenders, Agent or Debtor, as the case may be, at its address set forth below:

If to Debtor:           Boxer Holdings, Inc.  
                                  1265 Folsom Street  
                                  San Francisco, CA 94103  
                                  Attn: Nicholas Graham  
                                  Fax No.: (415) 437-6389

If to CIT:                The CIT Group/Commercial Services, Inc.  
                                  300 South Grand Avenue  
                                  Los Angeles, CA 90071  
                                  Attn: Michael Rosen  
                                  Fax No.: (213) 613-2415

If to BNP Paribas: BNP Paribas  
180 Montgomery Street  
San Francisco, CA 94104  
Attn: Inga Buschbaum  
Fax No.: (415) 391-3390

If to Agent: The CIT Group/Commercial Services, Inc.  
300 South Grand Avenue  
Los Angeles, CA 90071  
Attn: Michael Rosen  
Fax No.: (213) 613-2415

Lenders, Agent and Debtor may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 12.9 shall be deemed received on the earlier of the date of actual receipt or three business days after the deposit thereof in the mail. Debtor acknowledges and agrees that notices sent by Lenders or Agent in connection with the exercise of enforcement rights against Collateral under the provisions of the Code shall be deemed sent when deposited in the mail or personally delivered, or, where permitted by law transmitted by telefacsimile or any other method set forth above.

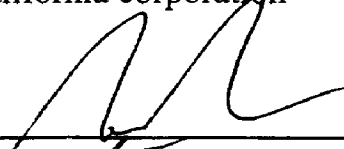
**12.10 Termination By Lenders.** After termination of the CIT Guaranty and BNP Paribas Amended Loan Agreement, and when Lenders have received payment and performance, in full, of all Obligations, Lenders shall execute and deliver to Debtor a termination of all of the security interests granted by Debtor hereunder.

**12.11 Integration.** This Agreement, together with the other loan documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the parties have executed this Intellectual Property Security Agreement on the date first written above.


**BOXER HOLDINGS, INC.,**  
a California corporation


By:   
Title: CEO

**THE CIT GROUP/COMMERCIAL SERVICES, INC.,** a New York corporation

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

**BNP PARIBAS,** a French banking corporation acting through its San Francisco Branch

By:   
Title: Inga Busckmann  
Vice President  
International Division Manager

By:   
Title: Hamed Farhadi  
Vice President

**THE CIT GROUP/COMMERCIAL SERVICES, INC.,** a New York corporation, as Agent

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



IN WITNESS WHEREOF, the parties have executed this Intellectual Property Security Agreement on the date first written above.

**BOXER HOLDINGS, INC.,**  
a California corporation

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

**THE CIT GROUP/COMMERCIAL SERVICES, INC.,** a New York corporation

By: M. R.  
Title: SUP

**BNP PARIBAS,** a French banking corporation  
acting through its San Francisco Branch

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

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

**THE CIT GROUP/COMMERCIAL SERVICES, INC.,** a New York corporation,  
as Agent

By: M. R.  
Title: SUP