

03-15-2002

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Form PTO-1594  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)  
Tab settings



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

102017692

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

1. Name of conveying party(ies):

A.H. SCHREIBER CO., INC.

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State New York
- 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.

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

Street Address: 1211 Avenue of the Americas

City: New York State: NY Zip: 10036

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State New York
- 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

3. Nature of conveyance:

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

Execution Date: August 10, 2001

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

A. Trademark Application No.(s)

1227635

B. Trademark Registration No.(s)

See Attached Exhibit 1

Additional number(s) attached  Yes  No

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

Name: DAVID V. RADACK, ESQUIRE

Internal Address: Eckert Seamans

Cherin & Mellott, LLC

USX Tower

Street Address: 600 Grant Street

44th Floor

City: Pittsburgh State: PA Zip: 15219

6. Total number of applications and registrations involved: \_\_\_\_\_

**13**

7. Total fee (37 CFR 3.41).....\$340.00

- 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.

DAVID V. RADACK

February 19, 2002

Signature

Date

**14**

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

03/14/2002 DBYRNE 00000172 1227635

01 FC:481  
02 FC:482

40.00 DP  
300.00 DP

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

**EXHIBIT 1**

<b>Registration No. or Application No.</b>	<b>Registration Date</b>	<b>Mark</b>
1. 704669	09/20/60 (Renewed 09/20/80)	SIRENA MADE IN CALIFORNIA (STYLIZED)
2. 1227635	02/15/83	SIRENA II (STYLIZED)
3. 2000109	09/10/96	LOOK & SEA
4. 2185856	09/01/98	CONCEPTS SIRENA
5. 2270089	08/17/99	COCO BEACH
6. 2317431	02/15/00	SIRENA
7. 2317432	02/15/00	SIRENA SIGNATURES
8. 1139986	09/30/80	WEAR-ABOUTS
9. 1240437	05/31/83	WEAR-ABOUTS (II) (STYLIZED)
10. 2380930	08/29/00	SERINA (MERMAID)
11. 2037335	02/11/97	SUNBOUND
12. 2126393	12/30/97	HOTWATER
13. 2223066	02/09/99	HOTWATER

**GRANT OF SECURITY INTEREST IN  
PATENTS, TRADEMARKS AND LICENSES**

THIS GRANT OF SECURITY INTEREST IN PATENTS, TRADEMARKS AND LICENSES (herein the "Agreement") made as of this 10<sup>th</sup> day of August, 2001, by **A.H. Schreiber Co., Inc.**, a New York corporation, with its principal place of business at 460 West 34<sup>th</sup> Street, New York, New York 10001 (herein the "Company"), and **The CIT Group/Commercial Services, Inc.**, a New York corporation, with offices at 1211 Avenue of the Americas, New York, New York 10036 (herein "CIT").

**W I T N E S E T H:**

WHEREAS, the Company and CIT are parties to certain factoring and/or financing agreements, as the same may be amended from time to time (herein the "Financing Agreement"), which Financing Agreement provides (i) for CIT to make certain loans, advances and extensions of credit, all to or for the account of the Company and (ii) for the grant by the Company to CIT of a security interest in certain of the Company's assets, including, without limitation, its patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, tradenames, goodwill and licenses, all as more fully set forth therein;

NOW THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Company agrees as follows:

1. Definitions. Capitalized terms used herein and defined in the Financing Agreement shall have the meanings set forth therein unless otherwise specifically defined herein.
2. Grant of Security Interest. To secure the payment of the "Obligations" (as defined in the Financing Agreement), the Company hereby grants to CIT a security interest, effective immediately, in all of the Company's right, title and interest in and to all of the following described property, whether now owned or hereafter acquired (collectively herein the "Intellectual Property Collateral"):
  - (i) Patents and patent applications and/or registrations together with the inventions and improvements described and claimed therein including, without limitation, the patents and applications, if any, listed on Schedule A, attached hereto and made a part hereof, and any and all reissues and renewals thereof and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Patent Collateral");

- (ii) Trademarks, trademark registrations and/or applications and tradenames including, without limitation, the trademarks and applications, if any, listed on Schedule B attached hereto and made a part hereof, and any and all reissues and/or renewals thereof, and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademark Collateral");
- (iii) Any license agreement in which the Company is or becomes licensed to use any patents and/or trademarks owned by a third party including, without limitation, the licenses, if any, listed on Schedule C attached hereto and made a part hereof (all of the foregoing are sometimes referred to herein individually and/or collectively as the "License Collateral");
- (iv) The goodwill of the Company's business connected with and symbolized by the Intellectual Property Collateral; and
- (v) All cash and non-cash proceeds of the foregoing.

3. CITs Rights. Upon the occurrence of any Event of Default hereunder, CIT shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable state or federal laws. CIT will give the Company reasonable notice of the time and place of any public sale of the Intellectual Property Collateral or the time after which any private sale of the Intellectual Property Collateral or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid to the address of the Company set forth above at least ten (10) days before the date of such sale or disposition. In addition to the foregoing and all other rights and remedies of CIT upon the occurrence of any Event of Default hereunder, CIT shall thereupon have the immediate right to transfer to itself or to sell, assign and transfer to any other person all right, title and interest in and to all or any part of the Intellectual Property Collateral. A formal irrevocable power of attorney (in the form annexed hereto) is being executed and delivered by the Company to CIT concurrently with this Agreement to enable such rights to be carried out. The Company agrees that, in the event CIT exercises its rights hereunder and/or pursuant to said power of attorney in accordance with its terms, after written notification of such exercise from CIT to the Company, the Company shall never thereafter, without the prior written authorization of the owner or owners of such Intellectual Property Collateral, use any of such Intellectual Property Collateral. The condition of the foregoing provision is such that unless and until there occurs an Event of Default under this Agreement, the Company shall continue to own and use the Intellectual Property Collateral in the normal course of its business and to enjoy the benefits, royalties and profits therefrom provided, however, that from and after the occurrence of an Event of Default such right will, upon the exercise by CIT of the rights provided by this Agreement, be revoked and the right of the Company to enjoy the uses,

benefits, royalties and profits of said Intellectual Property Collateral will wholly cease, whereupon CIT or its transferee(s) shall be entitled to all of the Company's right, title and interest in and to the Intellectual Property Collateral hereby so assigned. This Agreement will not operate to place upon CIT any duty or responsibility to maintain the Intellectual Property Collateral.

4. Fees. The Company will pay all filing fees with respect to the security interest created hereby which CIT may deem necessary or advisable in order to perfect and maintain the perfection of its security interest in the Intellectual Property Collateral.
5. Representations and Warranties. The Company represents and warrants: that the Company lawfully possesses and owns the Intellectual Property Collateral and that except for the security interest granted hereby and Permitted Encumbrances (as defined in the Financing Agreement), the Intellectual Property Collateral will be kept free from all liens, security interests, claims and encumbrances whatsoever; that the Company has not made or given any prior assignment, transfer or security interest in the Intellectual Property Collateral or any of the proceeds thereof; that the Intellectual Property Collateral is and will continue to be, in all respects, in full force and effect; and that there are no known infringements of the Intellectual Property Collateral.
6. Application of Proceeds. The proceeds of any sale, transfer or disposition of the Intellectual Property Collateral shall be applied first to all costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses and court costs, incurred by CIT in connection with such sale and the exercise of CIT's rights and remedies hereunder and under the Financing Agreement; next, such proceeds shall be applied to the payment, in whole or in part, of the Obligations due CIT in such order as CIT may elect; and the balance, if any, shall be paid to the Company or as a court of competent jurisdiction may direct.
7. Defense of Claims. The Company will defend at its own cost and expense any action, claim or proceeding affecting the Intellectual Property Collateral or the interest of CIT therein. The Company agrees to reimburse CIT for all costs and expenses incurred by CIT in defending any such action, claim or proceeding.
8. Rights Cumulative. This Agreement shall be in addition to the Financing Agreement and shall not be deemed to affect, modify or limit the Financing Agreement or any rights that CIT has under the Financing Agreement. The Company agrees to execute and deliver to CIT (at the Company's expense) any further documentation or papers necessary to carry out the intent or purpose of this Agreement including, but not limited to, financing statements under the Uniform Commercial Code.
9. Construction and Invalidity. Any provisions hereof contrary to, prohibited by or invalid under any laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof.

10. **CHOICE OF LAW.** THE COMPANY AGREES THAT THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT AND ALL RIGHTS HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THIS AGREEMENT TOGETHER WITH THE FINANCING AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE COMPANY AND CIT WITH RESPECT TO THE INTELLECTUAL PROPERTY COLLATERAL, CAN ONLY BE CHANGED OR MODIFIED IN WRITING AND SHALL BIND AND BENEFIT THE COMPANY, CIT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. THE COMPANY AND CIT EACH HEREBY EXPRESSLY WAIVES ANY RIGHT OF TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER.
11. Events of Default. Any of the following constitutes an Event of Default under this Agreement:
- (i) The Company fails to perform or observe any agreement, covenant or condition required under this Agreement;
  - (ii) Any warranty or representation made by Company, in this Agreement shall be or becomes false or misleading in any material respect; or
  - (iii) The occurrence of any breach of, or default or Event of Default under the Financing Agreement which is not waived in writing by CIT.
12. Notices. The Company covenants and agrees that, with respect to the Intellectual Property Collateral, it will give CIT written notice in the manner provided in the Financing Agreement of:
- (i) any claim by a third party that the Company has infringed on the rights of a third party;
  - (ii) any suspected infringement by a third party on the rights of the Company; or
  - (iii) any Intellectual Property Collateral created, arising or acquired by the Company after the date hereof.
13. Further Assurances. The Company will take any such action as CIT may reasonably require to further confirm or protect CIT's rights under this Agreement in the Intellectual Property Collateral. In furtherance thereof, the Company hereby grants to CIT a power of attorney coupled with an interest which shall be irrevocable during the term of this Agreement to execute any documentation or take any action in the Company's behalf required to effectuate the terms, provisions and conditions of this Agreement.

14. Termination. This Agreement shall terminate upon termination of the Financing Agreement and full, final and indefeasible payment of all Obligations of the Company thereunder. Upon the Company's request, CIT shall within a reasonable time after any such termination execute and deliver to the Company (at the Company's expense) such documents and instruments as are reasonably necessary to evidence such termination and release of the security interest granted herein on any applicable public record.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the 10<sup>th</sup> day of August, 2001.

**A.H. SCHREIBER CO., INC.** (the "Company")

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

Agreed and Accepted this  
15<sup>th</sup> day of August, 2001

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

By: Debra King  
Title: VICE PRESIDENT

14. Termination. This Agreement shall terminate upon termination of the Financing Agreement and full, final and indefeasible payment of all Obligations of the Company thereunder. Upon the Company's request, CIT shall within a reasonable time after any such termination execute and deliver to the Company (at the Company's expense) such documents and instruments as are reasonably necessary to evidence such termination and release of the security interest granted herein on any applicable public record.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the 10<sup>th</sup>  
\_\_ day of August, 2001.

**A.H. SCHREIBER CO., INC.** (the "Company")

By: AL  
Title: VICE PRESIDENT

Agreed and Accepted this  
10<sup>th</sup> day of August, 2001

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

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



14. Termination. This Agreement shall terminate upon termination of the Financing Agreement and full, final and indefeasible payment of all Obligations of the Company thereunder. Upon the Company's request, CIT shall within a reasonable time after any such termination execute and deliver to the Company (at the Company's expense) such documents and instruments as are reasonably necessary to evidence such termination and release of the security interest granted herein on any applicable public record.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the <sup>10<sup>th</sup></sup> day of August, 2001.

**A.H. SCHREIBER CO., INC.** (the "Company")

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

Agreed and Accepted this  
10<sup>th</sup> day of August, 2001

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

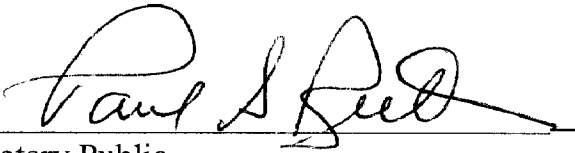
By: Deborah Rogut  
Title: DEBORAH ROGUT  
VICE PRESIDENT

STATE OF )  
 )  
COUNTY OF )

On AUGUST 10, 2001, before me, the undersigned, a notary public in and for said State, personally appeared AVRAM SCHREIBER known to me to be the VICE PRESIDENT of, **A.H. Schreiber Co., Inc.**, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws and a resolution of its board of directors.

WITNESS my hand and official seal.

PAUL S. RETTMAN  
NOTARY PUBLIC, State of New York  
No. 30-4739874  
Qualified in Nassau County  
Commission Expires Nov. 30, 2001

  
Notary Public



**SCHEDULE A TO GRANT OF SECURITY INTEREST IN PATENTS,  
TRADEMARKS AND LICENSES**

**between**

**A.H. SCHREIBER CO., INC.**

**and**

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

**U.S. PATENTS**

Title

Patent No.

Issue Date

**SCHEDULE B TO GRANT OF SECURITY INTEREST IN PATENTS,  
TRADEMARKS AND LICENSES**

between

**A.H. SCHREIBER CO., INC.**

and

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

**U.S. TRADEMARKS**

<u>Title or Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>
Sirena Made in California (Stylized)	704669	09/20/60
Sirena II (Stylized)	1227635	02/15/83
Look & Sea	2000109	09/10/96
Concepts Sirena	2185856	09/01/98
Coco Beach	2270089	08/17/99
Sirena	2317431	02/15/00
Sirena Signatures	2317432	02/15/00
Wear-Abouts	1139986	09/30/80
Wear-Abouts (II) (Stylized)	1240437	05/31/83
Sirena <Mermaid>	2380930	08/29/00
Shell Beach	N/A	N/A
Sunbound	2037335	02/11/97
San Soleil	N/A	N/A
Hot Water	2126393	12/30/97
Hot Water	2223066	02/09/99

**SCHEDULE C TO GRANT OF SECURITY INTEREST IN PATENTS,  
TRADEMARKS AND LICENSES**

between

**A.H. SCHREIBER CO., INC.**

**and**

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

**U.S. LICENSES**

Name

Registration No.

Registration Date