

05-09-2002



SHEET

1/1

Docket No.:

D

102082835

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):
Foothill Capital Corporation

3:29:02

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

Additional names(s) of conveying party(ies) Yes No

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

Name: Simmons Company

Internal Address: _____

Street Address: One Concourse Parkway

City: Atlanta State: GA ZIP: 30328

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

If assignee is not domiciled in the United States, a domestic designation is Yes No
(Designations must be a separate document from Additional name(s) & address(es) Yes No

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other Release of Security Interest

Execution Date: February 12, 2002

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

| | |
|---------------------------------|--|
| A. Trademark Application No.(s) | B. Trademark Registration No.(s) |
| | <u>US 522,187</u> <u>US 382,488</u> <u>US 768,188</u> <u>US 1,157,343</u> |

Additional numbers Yes No

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

Name: Ropes & Gray

Internal Address: c/o Edward Black

Street Address: One International Place

City: Boston State: MA ZIP: 02110

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41):.....\$ \$115.00

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: 18-1945

03-29-2002
U.S. Patent & TMO/TM Mail Rpt Dt. #73

05/09/2002 6TOM11 00000036 181945 522187

01 FC:481 40.00 CH
02 FC:482 75.00 CH

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.

Charles Larsen *Charles O Larsen* March 26, 2002
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and

3

TRADEMARK

REEL: 002501 FRAME: 0895

Creditor's Consents Obtained by Seller

The undersigned, Foothill Capital Corporation ("Foothill") hereby consents to the acquisition (the "Acquisition") of the Acquired Assets as that term is defined in the Asset Purchase Agreement ("APA") dated as of October __, 2001, between Simmons Company (Simmons") and Simmons Upholstery, L.L.C. ("SU"), on the following terms and conditions:

1. All rights to payment for the Acquired Assets, whether or not evidenced by a promissory note or other agreement or instrument, shall be irrevocably assigned to and payable only to Foothill in par funds without offset or counterclaim, and shall be paid immediately when due pursuant to the wire transfer instructions provided to Simmons by Foothill. If a promissory note or notes are issued with respect to any such right to payment, or any portion thereof, the original note or notes shall be delivered to Foothill immediately upon execution thereof, duly endorsed to Foothill without recourse.

2. All rights to payment under the Option Agreement, whether or not evidenced by a promissory note or other agreement or instrument, shall be irrevocably assigned to and payable only to Foothill in par funds without offset or counterclaim, and shall be paid immediately when due pursuant to the wire transfer instructions provided to Simmons by Foothill. If a promissory note or notes are issued with respect to any such right to payment, or any portion thereof, the original note or notes shall be delivered to Foothill immediately upon execution thereof, duly endorsed to Foothill without recourse.

3. In the event of foreclosure by Foothill on the tangible inventory of SU existing at the time of such foreclosure (the "Existing Inventory") in which Foothill now or hereafter holds a security interest, Simmons hereby grants Foothill a limited license to use trademarks, trade names, patents and licensed technology of Simmons for the sole purpose of, and solely to the extent necessary for, selling the Existing Inventory on commercially reasonable terms, on the condition that Foothill shall pay to Simmons any royalties or other amounts that SU would have owed Simmons on sales of the existing inventory under agreements between Simmons and SU, at such times as those royalties or other amounts would have been owed, along with statements detailing the calculation of such royalties or amounts. In

addition, in each instance where SU is restricted under any agreements between Simmons and SU from assigning or transferring any rights in such trademarks, trade names, patents and licensed technology, Simmons hereby gives its consent to any such assignment by SU to Foothill, solely to the extent necessary to permit Foothill to sell the Existing Inventory pursuant to the preceding sentence.

4. Each document for which notice is required to be given to SU shall be amended, and is hereby amended, to add Foothill as an additional party entitled to all notices to which SU is entitled, with a copy to Jesse H. Austin, III, Esq., Paul, Hastings, Janofsky & Walker, LLP. The addresses of Foothill and Jesse H. Austin, III are set forth below.

In consideration of the foregoing, Foothill hereby consents to the Acquisition and agrees to execute such releases, including without limitation releases pursuant to UCC-3 filings, as are reasonably requested by Simmons in connection with the Acquired Assets.

FOOTHILL CAPITAL CORPORATION

By: 

Title: *Vice President*

Read and Agreed to:

SIMMONS COMPANY

By: 

Brian P. Breen

Vice President and Assistant Treasurer