

10-15-2004

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

Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings ⇨ ⇨ ⇨



102859969

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

10-21-01

1. Name of conveying party(ies): **Escalate, Inc.**

Individual(s) Association

General Partnership Limited Partnership

XX Corporation – State: **Delaware**

Other _____

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

3. Nature of conveyance:

Assignment Merger

XX Security Agreement Change of Name

Other _____

Execution Date: **August 31, 2004**

2. Name and address of receiving party(ies)

Name: **Wells Fargo Foothill, Inc.**

Internal Address: _____

Street Address: **2450 Colorado Avenue, Suite 3000 West**

City: **Santa Monica** State: **CA** Zip: **90404**

Individual(s) citizenship _____

Association _____

General Partnership _____

Limited Partnership _____

XX Corporation-State **California**

Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes **XX** No **N/A**
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes **XX** No

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)

B. Trademark Registration No.(s) **2678568, et al.**

Additional number(s) attached: **XX** Yes No

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

Name: **Michele A. Eason**

Internal Address: **Paralegal, Bank & Finance**

Street Address: **Buchalter Nemer Fields & Younger**

601 S. Figueroa St., 24th Floor

City: **Los Angeles** State: **CA** Zip: **90017**

6. Total number of applications and registrations involved: ~~Ten (10)~~ **3**
THREE

7. Total fee (37 CFR 3.41).....\$ **90.00**

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)

10/14/2004 MSETACHE 00000269 200052 2678568

01 FC:8321 40.00 DA
02 FC:8322 50.00 DA

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.

Michele A. Eason

Name of Person Signing

Michele A. Eason
Signature

October 8, 2004

Date

Total number of pages including cover sheet, attachments, and document: **Six (6)**

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

TRADEMARK
REEL: 003063 FRAME: 0983

Schedule I

Trademark License Agreement by and between UPS Internet Services, Inc. and the Company dated August 20, 2003, for UPS trademarks.

Trademark	Filing Date	Registration Number	Jurisdiction
Circles Logo	December 6, 1999	<u>2678568</u>	United States
ESCALATE	October 16, 1999	<u>2543411</u>	United States
ESCALATE and Circles Logo	December 3, 1999	<u>2556893</u>	United States
Circles Logo	May 10, 2000	1684927	European Community
ESCALATE	April 17, 2000	1614429	European Community
ESCALATE and Circles Logo	May 31, 2000	1685130	European Community
Circles Logo	May 31, 2000	00/3031701	France
ESCALATE	April 17, 2000	2000 3022051	France
ESCALATE and Circles Logo	May 31, 2000	2000 3031699	France
ESCALATE	October 22, 1999	71.232	Morroco

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (this "Trademark Security Agreement") is made this 31st day of August, 2004, between ESCALATE, INC., a Delaware corporation ("Grantor"), and WELLS FARGO FOOTHILL, INC., a California corporation (together with its successors, "Secured Party").

WITNESSETH:

WHEREAS, GERS Holdings, Inc., a Delaware corporation ("Holdings"), and GERS, Inc., a Delaware corporation ("GERS") and collectively, jointly and severally, with Holdings, "Borrowers" and each individually, a "Borrower") and Secured Party have previously entered into that certain Loan and Security Agreement, dated as of July 3, 2003 (as amended, restated, modified, renewed or extended from time to time, the "Loan Agreement");

WHEREAS, Holdings and GERS Escalate MergerSub, Inc., a Delaware corporation ("MergerSub"), and Grantor have previously entered into that certain Agreement and Plan of Merger and Reorganization, dated as of July 30, 2004 (the "Merger Agreement"), pursuant to which (a) MergerSub was merged with and into Grantor, (b) MergerSub's separate existence terminated, (c) Grantor continued as the surviving corporation, and (d) Grantor thereafter became a wholly owned subsidiary of Holdings (the "Merger");

WHEREAS, Grantor, as a Subsidiary of Holdings, will benefit by virtue of the financial accommodations extended to Borrowers by Secured Party under the Loan Agreement;

WHEREAS, in order to induce Secured Party to consent to the Merger and continue to extend the financial accommodations to Borrowers under the Loan Agreement and the other Loan Documents, Grantor has executed that certain General Continuing Guaranty, dated as of August 31, 2004 (the "Guaranty"), pursuant to which Grantor has guaranteed the obligations of Borrowers under the Loan Agreement;

WHEREAS, in consideration of Secured Party's consent to the Merger and the financial benefit Grantor will receive as a result of the financial accommodations extended by Secured Party to Borrowers, Grantor has executed and delivered that certain Security Agreement, dated as of August 31, 2004 (the "Security Agreement"), to Secured Party, pursuant to which Grantor has granted a continuing security interest in and to the Collateral in order to secure the prompt and complete payment, observance and performance of, the obligations of Grantor arising from time to time under the Security Agreement and the other Loan Documents to which Grantor is or from time to time becomes a party to, including, without limitation, the Guaranty;

WHEREAS, pursuant to the Security Agreement, Grantor is required to execute and deliver to Secured Party, for itself and the Bank Product Provider, this Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees as follows:

1. **DEFINED TERMS.** All capitalized terms used but not otherwise defined herein have the meanings given to them in the Security Agreement and/or the Loan Agreement.

2. **GRANT OF SECURITY INTEREST IN TRADEMARK COLLATERAL.** Grantor hereby grants to Secured Party, for itself and the Bank Product Provider, a continuing first priority security interest in all of Grantor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired (collectively, the "Trademark Collateral"):

(a) all of its Trademarks and Trademark Intellectual Property Licenses to which it is a party including those referred to on Schedule I hereto;

(b) all reissues, continuations or extensions of the foregoing;

(c) all goodwill of the business connected with the use of, and symbolized by, each Trademark and each Trademark Intellectual Property License; and

(d) all products and proceeds of the foregoing, including, without limitation, any claim by Grantor against third parties for past, present or future (i) infringement or dilution of any Trademark or any Trademark licensed under any Intellectual Property License or (ii) injury to the goodwill associated with any Trademark or any Trademark licensed under any Intellectual Property License.

3. **SECURITY AGREEMENT.** The security interests granted pursuant to this Trademark Security Agreement are granted in conjunction with the security interests granted to Secured Party, for itself and the Bank Product Provider, pursuant to the Security Agreement. Grantor hereby acknowledges and affirms that the rights and remedies of Secured Party with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

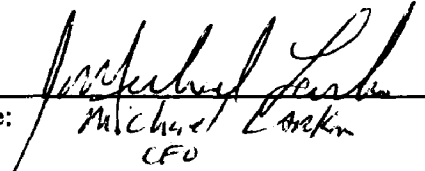
4. **AUTHORIZATION TO SUPPLEMENT.** If Grantor shall obtain rights to any new trademarks, the provisions of this Trademark Security Agreement shall automatically apply thereto. Grantor shall give prompt notice in writing to Secured Party with respect to any such new trademarks or renewal or extension of any trademark registration. Without limiting Grantor's obligations under this Section 4, Grantor hereby authorize Secured Party unilaterally to modify this Agreement by amending Schedule I to include any such new trademark rights of Grantor. Notwithstanding the foregoing, no failure to so modify this Trademark Security Agreement or amend Schedule I shall in any way affect, invalidate or detract from Secured Party's continuing security interest in all Collateral, whether or not listed on Schedule I.

5. **COUNTERPARTS.** This Trademark Security Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument. In proving this Trademark Security Agreement or any other Loan Document in any judicial proceedings, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom such enforcement is sought. Any signatures delivered by a party by facsimile transmission or by e-mail transmission shall be deemed an original signature hereto.

[signature page follows]

IN WITNESS WHEREOF, Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

ESCALATE, INC.

By: 
Name: Michael Lockin
Title: CFO

ACCEPTED AND ACKNOWLEDGED BY:

WELLS FARGO FOOTHILL, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

ESCALATE, INC.

By: _____
Name:
Title:

ACCEPTED AND ACKNOWLEDGED BY:

WELLS FARGO FOOTHILL, INC.

By: _____
Name: Thomas P. Shughrue
Title: Vice President