

04-05-1999

FORM PTO-1594 (Rev. 6-93) OMB No. 0651-0011 (exp. 4/94) 3-30-99

SHEET Y

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office



To the Honorable Commissioner of

101001319

attached original documents or copy thereof.

msd 3/30/99

1. Name of conveying party(ies):

General Products & Services Corporation.

- Individual(s)
- General Partnership
- Corporation (Delaware)
- Other
- Association
- Limited Liability

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

3. Nature of conveyance:

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

Execution Date: March 5, 1999

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

Name: Finova Capital Corporation
Internal Address: 311 South Wacker Drive, Suite 4400
City: Chicago State: IL ZIP: 60606

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

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

A. Trademark Application No.(s)

SEE ATTACHED SCHEDULE B

B. Trademark registration No.(s)

SEE ATTACHED SCHEDULE A

Additional numbers attached? Yes No

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

Name: VEDDER,PRICE, KAUFMAN & KAMMHOLZ

Attention: Tammy S. Settle

Internal Address:

Street Address: 222 North LaSalle Street Suite 2600

City: Chicago State: IL ZIP: 60601

6. Total number of applications and registrations involved: 23

7. Total Fee (37 CFR 3.41) \$ 590.00

- Enclosed
- Authorized to be charged to deposit account (Any Deficiencies)

8. Deposit account number: 22-0259

(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.

Tammy S. Settle
Name of Person Signing

Signature

March 29, 1999
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 and Trademarks
Box Assignments
Washington, D.C. 20231

03/31/1999 JSHABAZZ 00000086 1122934

01 FC:481
02 FC:482

40.00 OP
550.00 OP

TRADEMARK
REEL: 1877 FRAME: 0578

TRADEMARK AND LICENSE SECURITY AGREEMENT
between General Products & Services Corporation
and Finova Capital Corporation
TRADEMARK REGISTRATIONS
SCHEDULE A

MARK	REGISTRATION NO.
BUCKEYE & DESIGN	1,122,934
BUCKEYE & DESIGN	791,916
BUCKEYE & DESIGN	558,984
C AND DESIGN	1,204,703
CHESTY & DESIGN	426,899
CHESTY	748,139
CORN CLOUDS	819,208
CURLIE	1,324,856
FAMOUS VITA-BOY AND DESIGN	686,964
FLAHERTY'S	1,743,371
GAMEPLAN SNAX	2,192,384
HAB-ITS	851,152
KING KORN & DESIGN	417,289
KING KORN & DESIGN	592,496
KRINKLET	709,724
SEYFERT'S & DESIGN	798,869
TIATEROS	1,152,586
TORTICOS	1,149,065
WATER BOY	851,452
KRUNCHERS! NO MORE WIMPY CHIMPS!	1,465,704
SNACKTIME	930,102

TRADEMARK AND LICENSE SECURITY AGREEMENT
between General Products & Services Corporation
and Finova Capital Corporation

TRADEMARK APPLICATIONS
SCHEDULE B

MARK	APPLICATION NO.
CAIN'S MARCELLE	75/313,819
KIDS SNAX	75/529,605

TRADEMARK AND LICENSE SECURITY AGREEMENT

TRADEMARK AND LICENSE SECURITY AGREEMENT ("Agreement") dated as of March 5, 1999, is made by GENERAL PRODUCTS & SERVICES CORPORATION, a Delaware corporation, ("Borrower") in favor of FINOVA CAPITAL CORPORATION, a Delaware corporation, whose address is 311 South Wacker Drive, Suite 4400, Chicago, Illinois 60606 ("Lender").

WITNESSETH:

WHEREAS, Lender and Borrower have entered into that certain Loan and Security Agreement, dated of even date herewith (the "Loan Agreement") pursuant to which, among other things, the Borrower has granted to the Lender a security interest in substantially all of its assets to secure the Borrower's prompt and complete payment, performance and/or observance of all of the Borrower's obligations and liabilities under or in connection with the Loan Agreement and the Borrower's obligations and liabilities under any other Loan Document (the "Obligations"); and

WHEREAS, Lender has required, as a further condition to entering into the Loan Agreement and to secure the Obligations thereunder that the Borrower execute this Agreement.

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

1. Defined Terms.

- (i) Unless otherwise defined herein, the capitalized terms used herein which are defined in the Loan Agreement shall have the meanings specified in the Loan Agreement.
- (ii) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and schedule references are to this Agreement unless otherwise specified.
- (iii) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Borrower hereby grants to Lender a first priority security interest, having priority over all other security interests, with power of sale (to the

extent permitted by applicable law) in all of Borrower's interest in now owned or existing and filed and hereafter acquired or arising and filed:

- (i) trademarks, registered trademarks and trademark applications, trademark registrations, trade names, service marks, registered service marks, service mark applications, and service mark registrations, including, without limitation, the registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule A, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, and (d) all of Borrower's rights corresponding thereto throughout the world (all of the foregoing registered trademarks, trademark applications, registered service marks and service mark applications, together with the items described in clauses (a)-(d) in this paragraph 2(i), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");
- (ii) the goodwill of Borrower's business connected with and symbolized by the Trademarks; and
- (iii) license agreements with any other party in connection with any Trademarks or such other party's trademarks, registered trademarks, trademark applications, trademark registrations, trade names, service marks, registered service marks, service mark applications and service mark registrations, whether Borrower is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of Lender's rights under the Loan Agreement (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement.

3. Restrictions on Future Agreements. Borrower will not, without Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Borrower further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to Lender under this Agreement or the rights associated with those Trademarks which are necessary or desirable in the operation of Borrower's business.

4. New Trademarks and Licenses. Borrower represents and warrants that the Trademarks and Licenses listed on Schedule A and Schedule B, respectively, include all of the registered Trademarks and Licenses now owned or held by Borrower. If, prior to the termination of this Agreement, Borrower shall (i) obtain rights to any new registered Trademark or Licenses or (ii) becomes entitled to the benefit of any new or existing Trademark or License, the provisions of Section 2 shall automatically apply thereto and Borrower shall give to Lender prompt written notice thereof. Borrower hereby authorizes Lender to unilaterally modify this Agreement by (a) amending Schedule A or Schedule B, as the case may be, to include any registered Trademarks or Licenses which are described under Section 2, or under this Section 4, and (b) filing with the Patent and Trademark Office, in addition to and not in substitution for, this Agreement, a duplicate original of this Agreement containing on Schedule A or Schedule B thereto, as the case may be, the revised list of registered Trademarks and/or Licenses under Section 2 or this Section 4. Notwithstanding the foregoing, the Borrower hereby agrees that Lender's security interest shall extend to all of the collateral listed in Section 2 and this Section 4, regardless of whether Lender actually amends Schedule A and Schedule B.

5. Royalties. Borrower hereby agrees that the use by Lender of the Trademarks and Licenses as described in Section 2 and Section 4 and as authorized hereunder shall be, to the extent permitted by applicable law, co-extensive with Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Lender to Borrower.

6. Nature and Continuation of Lender's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall remain in full force and effect until the Obligations have been paid in full and the Loan Agreement terminated. At such time, the rights granted to Lender hereunder shall also terminate.

7. Right to Inspect; Further Assignments and Security Interests. Lender shall have the right, consistent with the Loan Agreement at any reasonable time and from time to time, to inspect Borrower's premises and to examine Borrower's books, records, and operations relating to the Trademarks and the Licenses, including, without limitation, Borrower's quality control processes; provided, that in conducting such inspections and examinations, Lender shall use reasonable efforts not to disturb unnecessarily the conduct of Borrower's ordinary business operations. From and after the occurrence of an Event of Default, and subject to the terms of the Loan Agreement, Borrower agrees that Lender or a conservator appointed by Lender, shall have the right to establish such reasonable additional product quality controls as Lender or such conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Borrower under the Trademarks or the Licenses. Borrower agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the Licenses without the prior written consent of Lender, (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof, and (iii) not to change the quality of such products in any material respect without the prior written consent of Lender.

8. Duties of Borrower. Borrower shall have the duty, to the extent desirable in the normal conduct of Borrower's business and consistent with Borrower's current business practices:

(i) to prosecute diligently any trademark applications or registrations or service mark applications or registrations that are part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, (ii) to make applications for trademarks and service marks as Borrower deems appropriate, and (iii) to take reasonable steps to preserve and maintain all of Borrower's rights in the trademark and service mark applications and trademark and service mark registrations that are part of the Trademarks. Any expenses incurred in connection with the foregoing shall be borne by Borrower. Borrower shall not abandon any material trademark or service mark which is the subject of a registered trademark, service mark or application therefor and which is or shall be necessary or economically desirable in the operation of the Borrower's business. Borrower agrees to retain an experienced trademark attorney reasonably acceptable to Lender for the filing and prosecution of all such applications and other proceedings. Lender shall not have any duty with respect to the Trademarks or Licenses. Without limiting the generality of the foregoing, Lender shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks and Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of Borrower and added to the Obligations secured hereby.

9. Lender's Right to Sue. From and after the occurrence and during the continuance of an Event of Default, and subject to the terms of the Loan Agreement, Lender shall have the right, but shall not be obligated, to bring suit to enforce the Trademarks and the Licenses and, if Lender shall commence any such suit, Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement. Borrower shall, upon demand, promptly reimburse and indemnify Lender for all costs and reasonable expenses incurred by Lender in the exercise of its rights under this Section 9 (including, without limitation, all attorneys' and paralegals' fees). If, for any reason whatsoever, Lender is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby.

10. Waivers. No course of dealing between Borrower and Lender, and no failure to exercise or delay in exercising on the part of Lender any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver of any of Lender's rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Loan Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. Lender's Exercise of Rights and Remedies Upon Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, Lender may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement, or any other agreement executed in connection therewith. Without limiting the generality of the foregoing, Borrower acknowledges and agrees that (i) the Trademarks and the Licenses comprise a portion of the Collateral and Lender shall have the right to exercise its rights under the Loan Agreement with respect to the Trademarks and the Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) from and after the occurrence and during the continuance of an Event of Default, Lender or its nominee may use the Trademarks and Licenses to complete the manufacture of, assemble, package, distribute,

prepare for sale and sell the Inventory, or for any other purpose in connection with the conduct of Borrower's business.

12. Intent-to-Use Applications. Notwithstanding any provision of this Agreement, the applicable Uniform Commercial Code or any other agreement or law, in no event shall any party be required or permitted to assign, convey or transfer any trademark or service mark that is the subject of an application for registration under Section 1(b) of the Lanham Act (15 U.S.C. § 1051(b)), as amended, prior to the filing of the verified statement of use under Section 1(d) of the Lanham Act (15 U.S.C. § 1051(d)), as amended.

13. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

14. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 2 and Section 4 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney. All of Lender's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise to carry out the acts described below. Subject to the terms of the Loan Agreement, upon the occurrence and during the continuance of an Event of Default Borrower hereby authorizes Lender to, in its sole discretion, (i) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for Lender in the use of the Trademarks and the Licenses, (ii) take any other actions with respect to the Trademarks and the Licenses as Lender deems are in its best interest, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone on commercially reasonable terms. Lender shall take no action pursuant to subsection (i), (ii), (iii) or (iv) of this Section 15 without taking like action with respect to the entire goodwill of Borrower's business connected with the use of, and symbolized by, such Trademarks. Borrower hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6 hereof. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies. Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which, respectively, either (y) the Trademarks may be located or deemed located, or (z) the Licenses were granted.

16. Binding Effect; Benefits. This Agreement shall be binding upon Borrower and its successors and assigns, and shall inure to the benefit of Lender and its nominees, successors and assigns. Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Borrower; provided, however that Borrower shall not voluntarily assign its obligations hereunder without the prior written consent of Lender.

17. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (as distinguished from the conflicts of law provisions) and decisions of the State of Arizona governing contracts to be performed entirely within such state. Borrower hereby consents to the exclusive jurisdiction of any state or federal court located within the County of Maricopa in the State of Arizona or, at the sole option of FINOVA, in any other court in which FINOVA shall initiate legal or equitable proceedings and which has subject matter jurisdiction over the matter in controversy. Borrower further waives personal service of any and all process upon it, and consents that all such service of process be made in the manner set forth in the Loan Agreement. Borrower further waives any right it may otherwise have to collaterally attack any judgment entered against it.

18. Jury Trial. FINOVA and Borrower each hereby waive the right to trial by jury in any action or proceeding based upon, arising out of, or in any way relating to: (i) this Agreement; (ii) any other present or future instrument or agreement between FINOVA and Borrower; or (iii) any conduct, acts or omissions of FINOVA or Borrower or any of their partners, directors, officers, employees, agents, attorneys or any other persons affiliated with FINOVA or Borrower, in each of the foregoing cases, whether sounding in contract or tort or otherwise.

19. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

20. Section Headings. The section headings herein are for convenience of reference only and shall not affect in any way the interpretation of any of the provisions hereof.

21. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

22. Right of Recordal of Security Interest. Lender shall have the right, but not the obligation, at the expense of Borrower, to record this Agreement in the United States Patent and Trademark Office and with such other recording authorities deemed reasonable and proper by Lender, and Lender shall advise Borrower of such recordals. Upon satisfaction in full of the Obligations and termination of the Loan Agreement, Borrower shall have the right to effect recordal of such satisfaction or termination at the expense of Borrower in the United States Patent and Trademark Office and with such other recording authorities deemed reasonable and proper by Borrower. Lender and Borrower shall cooperate to effect all such recordals hereunder.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO TRADEMARK AND LICENSE SECURITY AGREEMENT

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement on the day and year first above written.

GENERAL PRODUCTS & SERVICES CORPORATION,
a Delaware corporation

By: 

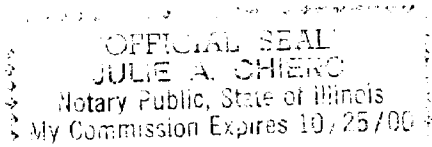
Ron Hirasawa

Its: Chairman / CEO

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing Trademark and License Security Agreement was executed and acknowledged before me this 5th day of March, 1999, by Ron Hirasawa, personally known to me to be the Chairman / CEO of General Products & Services Corporation, a Delaware corporation, on behalf of such entity.

(SEAL)



Notary Public

Julie A. Chienc

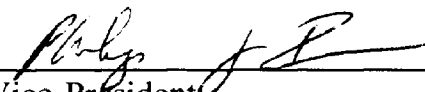
My commission expires

10/25/00

SIGNATURE PAGE TO TRADEMARK AND LICENSE SECURITY AGREEMENT

ACCEPTED AND AGREED:

FINOVA CAPITAL CORPORATION,
a Delaware corporation

By:  _____
Vice President