

04-20-1999



101014730

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger

Change of Name

Other

Effective Date
Month Day Year

Conveying Party

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

04/22/1999 VBRODM 00000027 2197100

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40.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231
REEL: 001885 FRAME: 0426

REEL: 1885 FRAME: 0426

56.02.5
4-20-99
MCD

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Registration Number(s)

<input type="text" value="2197100"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

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. Charges to deposit account are authorized, as indicated herein.

Jennifer D. LeDoux

April 19, 1999

Name of Person Signing

Signature

Date Signed

EXHIBIT A

Trademarks

<u>Trademark</u>	<u>Jurisdiction</u>	<u>Registration No.</u>	<u>Registration Date</u>
Nino Toscani	United States	2,197,100	October 20, 1998

Trademark Applications

<u>Trademark</u>	<u>Jurisdiction</u>	<u>Serial No.</u>	<u>Application Date</u>
None.			

EXHIBIT B

CERTIFICATE

The undersigned officer of **DAG ACQUISITION CORPORATION** (the "Company"), DOES HEREBY CERTIFY to **PNC BANK, NATIONAL ASSOCIATION** ("Agent") as agent for itself and certain other financial institutions ("Lenders") as are parties from time to time to the Revolving Credit, Term Loan and Security Agreement among Agent, the Company, the other borrowers from time to time party thereto, and Lenders, that the quality of the products associated with the Trademarks listed on Exhibit A of the Trademark Security Agreement dated April __, 1999, between the Company and Agent (as amended from time to time to include future trademarks and trademark applications) (the "Agreement"), has been maintained at a level consistent with the quality of such products at the time of the execution of the Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Certificate, this __ day of _____, _____.

DAG ACQUISITION CORPORATION

By: _____

Name: _____

Title: _____

TRADEMARK SECURITY AGREEMENT

This **TRADEMARK SECURITY AGREEMENT** is made this 15 day of April, 1999, between **PNC BANK, NATIONAL ASSOCIATION**, a national association having an office at 1600 Market Street, 31st Floor, Philadelphia, Pennsylvania 19103, as collateral and administrative agent for itself and Lenders (as hereinafter defined), and **DAG ACQUISITION CORPORATION**, a Delaware corporation having its principal place of business at 7400 Morgan Road, Liverpool, New York 13090 (the "Company").

WITNESSETH:

WHEREAS, the Company desires to obtain loans from certain financial institutions ("Lenders") as are parties from time to time to that certain Revolving Credit, Term Loan and Security Agreement dated the date hereof by and among the Company, the other borrowers party thereto from time to time (collectively with the Company, the "Borrowers"), Agent and Lenders (hereinafter referred to, together with all amendments thereto, as the "Loan Agreement"); and

WHEREAS, Lenders are willing to make loans to the Borrowers from time to time, in Lenders' discretion, provided the Company executes this Agreement;

WHEREAS, the Company has contemporaneously herewith pursuant to the Loan Agreement, granted to Agent, for its benefit and the benefit of Lenders, a lien upon and security interest in the Company's now existing or hereafter acquired machinery, equipment, equipment formulations, manufacturing procedures, quality control procedures and product specifications relating to products sold under the Trademarks (as hereinafter defined);

NOW, THEREFORE, for Ten Dollars (\$10.00) and other valuable consideration, and in consideration of the premises, the Company hereby agrees with Lender as follows:

1. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed to them in the Loan Agreement.

2. To secure the prompt payment and performance of the Obligations, the Company hereby pledges, assigns and grants to Agent, for the pro rata benefit of Lenders, a continuing security interest in and lien upon all of the following property of the Company, whether now owned or existing or hereafter acquired (the "Collateral"):

(a) all trademarks, trademark registrations, tradenames and trademark applications, including, without limitation, the trademarks and applications listed on Exhibit A attached hereto and made a part hereof (as the same may be amended from time to time), and (i) all renewals thereof, (ii) all income, royalties, damages and payments now or hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and

future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trademark registrations, tradenames and applications, together with the items described in clauses (i)-(iv), are hereinafter collectively referred to as the "Trademarks");

(b) the goodwill of the Company's business connected with and symbolized by the Trademarks; and

(c) all proceeds of the foregoing.

3. The Company represents and warrants to Agent and Lenders that:

(a) Each of the Trademarks is subsisting and has not been adjudged invalid or unenforceable;

(b) Upon filing of this Agreement in the United States Patent and Trademark Office, this Agreement will create a legal and valid perfected lien upon and security interest in the Collateral (other than foreign trademarks), enforceable against Borrower and all third Persons in accordance with its terms;

(c) No claim has been made that the use of any of the Trademarks does or may violate the rights of any third Person;

(d) The Company is the sole and exclusive owner of the entire right, title and interest in and to all of the Collateral, free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses, registered user agreements and covenants by the Company not to sue third Persons; and

(e) The Company has the corporate power and authority to enter into this Agreement and perform its terms.

4. The Company covenants and agrees with Agent and Lenders that:

(a) The Company will maintain the quality of the products associated with the Trademarks, at a level consistent with the quality at the time of this Agreement, and will, upon Agent's request, provide Agent quarterly with a certificate to that effect in the form attached hereto as Exhibit B executed by an officer of the Company;

(b) The Company will not change the quality of the products associated with the Trademarks without Agent's prior written consent; and

(c) The Company has used and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Trademarks, including,

without limitation, filing an affidavit of use with the United States Patent and Trademark Office for each Trademark as required by Applicable Law to maintain the registration thereof without loss of protection therefor.

5. At all reasonable times upon not less than twenty-four hours prior oral or written notice to the Company, Agent and its agents, and each Lender in the company of Agent or its agents, shall have the right to visit the Company's plants and facilities which manufacture, inspect or store products sold under any of the Trademarks and to inspect the products and quality control records relating thereto. The Company shall do any and all acts reasonably required by Lender to ensure the Company's compliance with paragraph 4(c) of this Agreement.

6. The Company agrees that, until all of the Obligations have been satisfied in full, it will not enter into any agreement (including, without limitation, any license agreement) which is inconsistent with the Company's duties under this Agreement.

7. If, before the Obligations have been satisfied in full, the Company shall obtain rights to any new trademarks, or become entitled to the benefit of any trademark application or trademark or any renewal of any Trademark, the provisions of paragraph 2 hereof shall automatically apply thereto, and the Company shall give to Agent prompt notice thereof in writing.

8. The Company authorizes Agent to modify this Agreement by amending Exhibit A to include any future trademarks and trademark applications within the definition of Trademarks under paragraph 2 or paragraph 7 hereof.

9. Upon and at any time after the occurrence of an Event of Default, Agent shall have, in addition to all other rights and remedies given it by this Agreement, all rights and remedies under Applicable Law and all rights and remedies of a secured party under the Uniform Commercial Code as adopted and then in force in the State of New York. Without limiting the generality of the foregoing, Agent may immediately, for the pro rata benefit of Lenders, without demand of performance and without notice (except as described in the next sentence, if required by Applicable Law, or demand, each of which the Company hereby waives, collect directly any payments due the Company in respect of the Collateral, or sell at public or private sale or otherwise realize upon all or from time to time, any of the Collateral. The Company hereby agrees that five (5) days written notice to the Company of any public or private sale or other disposition of any of the Collateral shall be reasonable notice; provided, however, that no notice shall be required hereunder if not otherwise required by Applicable Law. At any such sale or disposition, Agent may, to the extent permitted by law, purchase the whole or any part of the Collateral sold, free from any right of redemption on the part of the Company, which right the Company hereby waives and releases. After deducting from the proceeds of such sale or other disposition of the Collateral all costs and expenses incurred by Agent or Lenders in enforcing their respective rights hereunder (including, without limitation, all reasonable attorneys' fees), Agent shall apply the remainder of such proceeds to the payment of the Obligations for the pro rata benefit of Lenders in such order and manner as Agent in its sole discretion may determine. Any remainder of the proceeds after payment in full of the Obligations

shall be paid over to the Company. If any deficiency shall arise, the Company and each guarantor of the Obligations shall remain jointly and severally liable to Lenders therefor.

10. The Company hereby makes, constitutes and appoints Agent and any officer or agent of Agent as Agent may select as the Company's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall occur and be continuing: to endorse the Company's name on all applications, documents, papers and instruments necessary for Agent to continue the registration of or to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to any other Person, or to assign, pledge, convey or otherwise transfer title in or dispose of the Collateral to any other Person. The Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until all of the Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated.

11. At such time as all of the Obligations shall have been satisfied finally and in full and the Loan Agreement shall have been terminated, Agent shall execute and deliver to the Company all releases and other instruments necessary to terminate Agent's security interest in the Collateral.

12. Any and all reasonable fees and costs and expenses, including reasonable attorneys' fees and legal expenses, incurred by Agent or any Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining, or preserving the Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to the Collateral, shall be borne and paid by the Company (it being the intent of the Company and Agent that the Company shall be responsible for the payment of all sums, fees, costs and expenses, including, without limitation, all renewal fees with respect to the Trademarks) or, if paid by Agent, shall be paid by the Company **on demand** by Agent and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate prescribed in the Loan Agreement.

13. The Company shall use its commercially reasonable efforts to detect any infringers of the Trademarks and shall notify Agent in writing of infringements detected. The Company shall have the duty to prosecute diligently any trademark application of the Trademarks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full, to make federal application on registrable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings, to file and prosecute lawsuits to enforce the Trademarks and to do any and all acts which are necessary to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with such applications or proceedings shall be borne by the Company. The Company shall not abandon any right to file a trademark application, or any pending trademark application or trademark without the consent of Agent.

14. Notwithstanding anything to the contrary contained in paragraph 13 hereof, after the occurrence of an Event of Default, Agent shall have the right, but shall in no way be obligated, to bring suit instead in its own name to enforce the Trademarks and any license thereunder, in which event the Company shall at the reasonable request of Agent do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Agent to aid such enforcement, and the Company shall promptly, **upon demand**, reimburse and indemnify Lender for all costs and expenses incurred in the exercise of Lender's rights under this paragraph 14. Nothing herein shall be deemed to prohibit the Company from bringing any such suit in its own name at any time that an Event of Default does not exist, if Agent declines to institute such suit.

15. If the Company fails to comply with any of its obligations hereunder, to the extent permitted by Applicable Law, Agent may do so in the Company's name or in Agent's name, but at the Company's expense, and the Company agrees to reimburse Agent in full for all expenses, including reasonable attorneys' fees, incurred by Agent or any Lender in prosecuting, defending or maintaining the Trademarks or Agent's interest therein pursuant to this Agreement.

16. No course of dealing between the Company and Agent or any Lender, nor any failure to exercise, nor any delay in exercising, on the part of Agent or any Lender, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

17. All of Agent's and each Lender's rights and remedies with respect to the Collateral, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

18. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and 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.

19. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 8 hereof.

20. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the Agent and of each Lender and upon the successors of the Company. The Company shall not assign its rights or delegate its duties hereunder without the prior written consent of Agent.

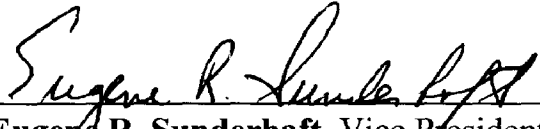
21. Notice of acceptance hereof is hereby waived by the Company.

22. THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN NEW YORK, NEW YORK. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF.

23. THE COMPANY AND AGENT EACH WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE COLLATERAL.

WITNESS the execution hereof under seal as of the day and year first above written.

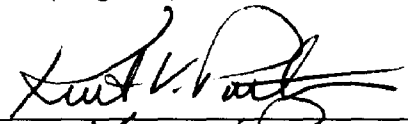
DAG ACQUISITION CORPORATION
("Assignor")

By: 
Eugene R. Sunderhaft, Vice President
and Secretary

[CORPORATE SEAL]

Accepted and Agreed:

PNC BANK, NATIONAL ASSOCIATION,
as Agent ("Agent")

By: 
Name: KURT V. PITKONEN
Title: VP

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

BEFORE ME, the undersigned authority, on this day personally appeared Eugene R. Sunderhaft, Vice President and Secretary of DAG Acquisition Corporation, to me known to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 14th day of April, 1999.

Steven R. Eichel

Notary Public
My Commission Expires: 2/2/00

[NOTARIAL SEAL]

STEVEN R. EICHEL
Notary Public, State of New York
No. 02E16002066
Qualified in Kings County
Certificate Filed in Kings County
Commission Expires February 2, 2000

STATE OF New York)
)
COUNTY OF New York)

BEFORE ME, the undersigned authority, on this day personally appeared Kurt Potkin of PNC BANK, NATIONAL ASSOCIATION, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 14th day of April, 1999.

Steven R. Eichel

Notary Public
My Commission Expires: 2/2/00

[NOTARIAL SEAL]

STEVEN R. EICHEL
Notary Public, State of New York
No. 02E16002066
Qualified in Kings County
Certificate Filed in Kings County
Commission Expires February 2, 2000