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9-24-99

09-28-1999

U.S. Department of Commerce  
Patent and Trademark Office

RECORD  
RECEIVED



101157060

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original document(s) of copy hereof.

1. Name of conveying party(ies): **OPR/FINANCE**  
Name: Eileen Fisher, 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: Finova Capital Corporation  
Address: 111 West 40<sup>th</sup> Street  
New York, New York 10018

3. Nature of conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Other \_\_\_\_\_  
Execution Date: July 20, 1999

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)

B. Trademark Registration No.(s)

2,003,225      1,994,312

Additional numbers attached?  Yes  No

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

Baila H. Celedonia, Esq.  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, NY 10036-6799

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41)..... \$ 65.00

Enclosed

Any deficiency is authorized to be charged to Deposit Account No. 03-3415.

8. Deposit Account No. 03-3415

(Attach duplicate copy of this page if paying by deposit account)

09/27/1999 DNGUYEN 00000168 2003225

01 FC:481      40.00 DP  
02 FC:482      25.00 DP

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.

Baila H. Celedonia, Esq.

*Baila H. Celedonia*      Sept. 21, 1999  
Signature      Date

Total number of pages including cover sheet, attachments, and document: 8

Mail to: Commissioner of Patents & Trademarks, Box Assignments, Washington, D.C. 20231

## TRADEMARK SECURITY AGREEMENT

THIS SECURITY AGREEMENT is entered into as of the 20<sup>th</sup> day of July, 1999, by and between EILEEN FISHER, INC. a New York corporation having its principal place of business at 2 Bridge Street, Irvington, NY (the "Borrower"), and FINOVA CAPITAL CORPORATION, a Delaware corporation with a usual place of business at 111 West 40<sup>th</sup> Street, New York, New York 10018 ("FINOVA").

NOW, THEREFORE, in consideration of the premises, Borrower hereby agrees with FINOVA as follows:

1. Grant of Security Interest. Borrower hereby mortgages, pledges and grants to FINOVA a security interest in all of Borrower's right, title and interest in all of Borrower's right, title and interest in and to the following described property (collectively, the "Collateral"), to secure the prompt payment and performance of any and all obligations, liabilities and indebtedness of Borrower to FINOVA arising from that certain Loan and Security Agreement between Borrower and FINOVA Capital Corporation, dated as of even date herewith (the "Loan Agreement"), whether such obligations are direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising (collectively, the "Obligations"). FINOVA's security interest in the Collateral is presently subject to the first priority security interest in the Collateral held by Bank Leumi, USA.

The collateral shall consist of the following:

(a) Each of the trademarks, and rights and interests that may be protected as trademarks, which are presently, or in the future may be, owned, created, acquired or used (whether pursuant to a license or otherwise) by Borrower, in whole or in part, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(b) All of Borrower's right, title and interest, in and to the trademarks and trademark registrations listed on Schedule A attached hereto, as the same may be updated hereafter from time to time;

(c) All of Borrower's right title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country, and to apply for, renew and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Borrower or in the name of FINOVA for past, present and future infringements of the trademarks, registrations or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country, and the associated goodwill of the business

symbolized by each of the trademarks including, but not limited to all customer lists and other records of the Borrower relating to the distribution of products bearing the trademarks;

(d) All general intangibles relating to the Collateral; and

(e) All proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

2. Warranties and Representations. Borrower hereby warrants and represents to FINOVA the following:

(a) A true and complete schedule setting forth all federal and state trademark registrations owned or controlled by Borrower or licensed to Borrower, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Schedule A;

(b) To the best of Borrower's knowledge, each of the trademarks and trademark registrations is valid and enforceable, and Borrower is not presently aware of any past, present or prospective claim by any third party that any of the trademarks are invalid or unenforceable, or that the use of any trademarks violates the rights of any third person, or of any basis for any such claims;

(c) To the best of Borrower's knowledge, Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the trademarks and trademark registrations free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses (except for the license rights of Subsidiaries and of third party customers, if any, to non-exclusive licenses that Borrower has made and/or that it will make in the ordinary course of business), shop rights and covenants by Borrower not to sue third persons;

(d) Borrower has used and will continue to use proper statutory notice in connection with its use of each of the trademarks;

(e) Borrower has used and will continue to use consistent standards of high quality (which may be consistent with Borrower's past practices) in the manufacture, sale and delivery of products and services sold or delivered under or in connection with the trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to maintain the validity of the trademarks;

(f) Except for the filing of financing statements with the County Clerk, Westchester County and the Secretary of State of the State of New York under the Uniform

Commercial Code and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either for the grant by Borrower of the security interest hereunder or for the execution, delivery or performance of this Agreement by Borrower or for the perfection of or the exercise by FINOVA of its rights hereunder to the Collateral in the United States.

3. After-Acquired Trademark Rights. If Borrower shall obtain rights to any new trademarks, the provisions of this Agreement shall automatically apply thereto. Borrower shall give prompt notice in writing to FINOVA with respect to any such new trademarks or renewal or extension of any trademark registration. Borrower shall bear any reasonable expenses incurred in connection with future applications for trademark registration.

4. Litigation and Proceedings. Borrower shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and its own expense, such suits, administrative proceedings or other actions for infringement or other damages as are in its reasonable business judgment necessary to protect any material portion of the Collateral. Borrower shall provide to FINOVA any information with respect thereto requested by FINOVA. FINOVA shall provide at Borrower's expense all necessary cooperation in connection with any such suit, proceeding or action, including, without limitation, joining as a necessary party. Following Borrower's becoming aware thereof, Borrower shall notify FINOVA of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state or foreign court regarding Borrower's claim of ownership in any of such trademarks, its right to apply for the same, or its right to keep and maintain such trademark rights.

5. Power of Attorney. Borrower grants FINOVA a power of attorney (which shall not be exercised absent the occurrence of an Event of Default hereunder), having the full authority, and in the place of Borrower and in the name of Borrower, from time to time in FINOVA's discretion to take any action and to execute any instrument which FINOVA may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of the Loan Agreement:

(a) To endorse Borrower's name on all applications, documents, papers and instruments necessary for FINOVA to use or maintain the Collateral;

(b) To ask, demand, collect, sue for, recover, impound, receive and give acquittance and receipts for money due or to become due under or in respect of any of the Collateral;

(c) To file any claims or take any action or institute any proceedings that FINOVA may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce FINOVA's rights with respect to any of the Collateral or otherwise to

enforce FINOVA's rights with respect to any of the Collateral and to assign, pledge, convey or otherwise transfer title in or dispose of the Collateral to any person.

6. Right to Inspect. Borrower grants to FINOVA and its employees and agents the right to visit Borrower'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 at reasonable times during regular business hours upon reasonable prior notice.

7. Events of Default. The occurrence of an Event of Default (as defined in the Loan Agreement) under the Loan Agreement.

8. Specific Remedies. Upon the occurrence of any Even of Default:

(a) FINOVA shall have such remedies as are available to it under the Uniform Commercial Code and under the Loan Agreement;

(b) FINOVA may notify licensees to make royalty payments on license agreements directly to FINOVA;

(c) FINOVA may sell or assign the Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as FINOVA deems advisable. Any requirement of reasonable notice of any disposition of the Collateral shall be satisfied if such notice is sent to Borrower ten (10) days prior to such disposition. Borrower shall be credited with the net proceeds of such sale only when they are actually received by FINOVA, and Borrower shall continue to be liable for any deficiency remaining after the Collateral is sold or collected;

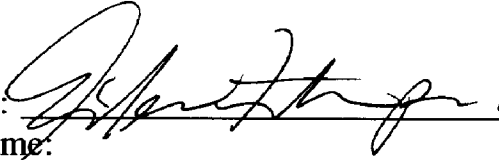
(d) If the sale is to be a public sale, FINOVA shall also give notice of the time and place by publishing a notice one time at least ten (10) calendar days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held; and

(e) To the maximum extent permitted by applicable law, FINOVA may be the purchaser of any or all of the Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any Collateral payable by FINOVA at such sale.

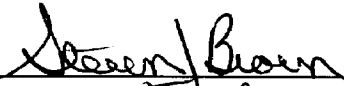
9. Governing Law. All acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Borrower and FINOVA have caused this Agreement to be executed by their duly authorized officers as of the date first above written.

EILEEN FISHER, INC.

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

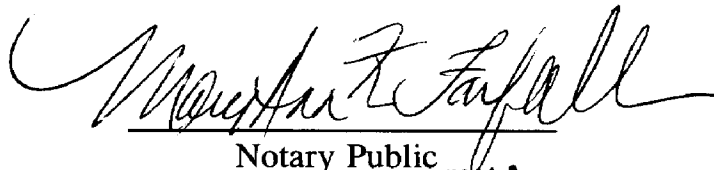
FINOVA CAPITAL CORPORATION

By:   
Name: STEVEN J. BROWN  
Title: VICE PRESIDENT

State of New York )

County of NY ) : ss.:

On this 20<sup>th</sup> day of July, 1999, before me personally came Eileen Fisher to me known who, being duly sworn, did depose and say that he resides at \_\_\_\_\_, that she is the PRESIDENT of Eileen Fisher, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

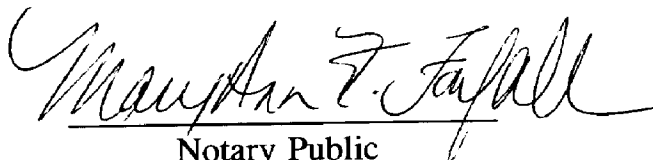


Notary Public  
MARY ANN K. FARFALLA  
Notary Public State of New York  
No. 02FA6001431  
Qualified in Kings County  
Commission Expires Jan 12, 2000

State of New York )

County of NY ) : ss.:

On this 20<sup>th</sup> day of July, 1999, before me personally came Steven Brown to me known who, being duly sworn, did depose and say that he resides at \_\_\_\_\_, that he is the Vice Pres. of FINOVA CAPITAL CORPORATION, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.



Notary Public  
MARY ANN K. FARFALLA  
Notary Public State of New York  
No. 02FA6001431  
Qualified in Kings County  
Commission Expires Jan 12, 2000

SCHEDULE A

1 of 2 Complete record

05016172 -- TRADEMARKSCAN(=)-Federal

EILEEN FISHER and Design  
INTL CLASS: 25 (Clothing)  
US CLASS: 22 (Games, Toys, & Sporting Goods)  
39 (Clothing)

STATUS: Registered

GOODS/SERVICES: LADIES PANTS, SHIRTS, SKIRTS, TOPS, JACKETS, DRESSES, SHORTS, TANK TOPS,  
SWEATERS, AND COATS

SERIAL NO.: 75-016,172

REG. NO.: 2,003,225

REGISTERED: September 24, 1996

FIRST USE: February 27, 1995 (Intl Class 25)

FIRST COMMERCE: February 27, 1995 (Intl Class 25)

FILED: October 24, 1995

PUBLISHED: July 2, 1996

ORIGINAL APPLICANT: EILEEN FISHER, INC. (New York Corporation), 2 BRIDGE STREET, IRVINGTON, NY  
(New York), 10533, USA (United States of America)

OWNER AT PUBLICATION: EILEEN FISHER, INC. (New York Corporation), 2 BRIDGE STREET, IRVINGTON,  
NY (New York), 10533, USA (United States of America)

ORIGINAL REGISTRANT: EILEEN FISHER, INC. (New York Corporation), 2 BRIDGE STREET, IRVINGTON, NY  
(New York), 10533, USA (United States of America)

LINING: THE STIPPLING IN THE MARK IS FOR SHADING PURPOSES ONLY AND DOES NOT INDICATE COLOR.

PORTRAIT: THE NAME IN THE MARK IDENTIFIES A LIVING INDIVIDUAL WHOSE CONSENT IS OF RECORD.

OTHER U.S. REGISTRATIONS: 1646904; 1727788

FILING CORRESPONDENT: ROBERT L. SLATER, JR., ROBERT L SLATER, SLATER & COLE LLP, 11 BROADWAY,  
NEW YORK NY 10004

EILEEN  
FISHER

2 of 2 Complete record

04434563 -- TRADEMARKSCAN(r)-Federal

EILEEN FISHER and Design  
INTL CLASS: 25 (Clothing)  
US CLASS: 22 (Games, Toys, & Sporting Goods)  
39 (Clothing)

STATUS: Registered

GOODS/SERVICES: LADIES PANTS, SHIRTS, SKIRTS, TOPS, JACKETS, DRESSES, SHORTS, TANK TOPS,  
SWEATERS, AND COATS

SERIAL NO.: 74-434,563

REG. NO.: 1,994,312

REGISTERED: August 20, 1996

FIRST USE: March 25, 1991 (Intl Class 25)

FIRST COMMERCE: March 25, 1991 (Intl Class 25)

FILED: September 13, 1993

PUBLISHED: May 28, 1996

SUSPENDED: November 3, 1994

ORIGINAL APPLICANT: EILEEN FISHER, INC. (New York Corporation), 1 BRIDGE STREET, IRVINGTON, NY  
(New York), 10533, USA (United States of America)

OWNER AT PUBLICATION: EILEEN FISHER, INC. (New York Corporation), 1 BRIDGE STREET, IRVINGTON,  
NY (New York), 10533, USA (United States of America)

PORTRAIT: "EILEEN FISHER" IS THE NAME OF A LIVING INDIVIDUAL WHOSE CONSENT IS OF RECORD.

FILING CORRESPONDENT: ROBERT L. SLATER, JR., 11 BROADWAY, SUITE 1101, NEW YORK, NY 10004

E-I-L-E-E-N-F-I-S-H-E-R