

FORM PTO-1595 (Modified)

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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

101983115

ONLY

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

<p>1. Name of conveying party(ies): PETER HARRIS CLOTHES, INC.</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State NEW YORK <input type="checkbox"/> Other</p> <p style="text-align: right; font-size: 2em;">1.28.02</p>	<p>2. Name and address of receiving party(ies):</p> <p>Name: IBJ WHITEHALL BUSINESS CREDIT CORP. Internal Address: Street Address: 45 BRAINTREE HILL OFFICE PARK City: BRAINTREE State: MA Zip: 02184</p> <p><input type="checkbox"/> Individual(s) citizenship <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State DELAWARE <input type="checkbox"/> Other</p> <p>If assignee is not domiciled in the United States, a domestic designation is <input type="checkbox"/> Yes <input type="checkbox"/> No (Designations must be a separate document from Additional name(s) & address(es) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Additional names(s) of conveying party(ies) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input checked="" type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other</p> <p>Execution Date: DECEMBER 10, 2001</p>	

4. Application number(s) or registration numbers(s):
If this document is being filed together with a new application, the execution date of the application is:

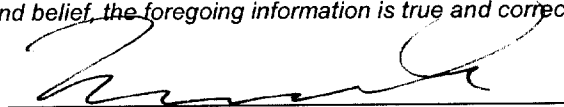
<p>A. Trademark Application No. (s)</p>	<p>B. Trademark Registration No.(s)</p> <table border="1"> <tr> <td style="text-align: center;">1,153,532</td> <td style="text-align: center;">1,973,408</td> </tr> <tr> <td style="text-align: center;">1,972,282</td> <td style="text-align: center;">1,996,268</td> </tr> </table>	1,153,532	1,973,408	1,972,282	1,996,268
1,153,532	1,973,408				
1,972,282	1,996,268				

Additional numbers attached? Yes No

<p>5. Name and address of party of whom correspondence concerning document should be mailed:</p> <p>Name: Mark S. Leonardo, Esq.</p> <p>Internal Address: Brown, Rudnick, Freed & Gesmer, P.C. Box IP, 18th Floor</p> <p>Street Address: One Financial Center</p> <p>City: Boston State: MA Zip: 02111</p>	<p>6. Total number of applications and patents involved: 4</p> <p>7. Total fee (37 CFR 3.41):.....\$115.00</p> <p><input checked="" type="checkbox"/> Enclosed – Any excess or insufficiency should be credited or debited to deposit account: <input type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number: 50-0369</p>
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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.

Mark S. Leonardo (41,433)  January 7, 2002
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 12

02/13/2002 6TON11 00000010 1153532

01 FC:481 40.00 OF
02 FC:482 75.00 OP

TRADEMARK AND TRADEMARK
APPLICATIONS SECURITY AGREEMENT

This Trademark and Trademark Application Security Agreement (the "TM Security Agreement") is made as of the 10 day of December, 2001, by Peter Harris Clothes, Inc. (hereinafter, the "Company"), a New York corporation with offices at 952 Troy-Schenectady Road, Latham, New York 12110 and IBJ Whitehall Business Credit Corporation, by and through its division IBJ Whitehall Retail Finance, a Delaware corporation, with offices at 45 Braintree Hill Office Park, Braintree, MA 02184 ("Lender").

RECITALS

WHEREAS, pursuant to the Loan and Security Agreement dated December 10, 2001 (as amended from time to time, the "**Loan Agreement**") made between Company, as Lead Borrower, on behalf of itself and the Borrowers identified therein (collectively, the "**Borrowers**"), the Lender has agreed to make certain Loans (as defined in the Loan Agreement, hereinafter, the "**Loans**") available to the Borrowers;

WHEREAS, pursuant to the Loan Agreement the Company has granted to the Lender a security interest in the Collateral (as defined in the Loan Agreement) to secure the Liabilities (as defined in the Loan Agreement) of the Borrowers to the Lender;

WHEREAS, as a condition, among others, to the establishment of the credit facilities contemplated by the Loan Agreement, and to further secure the Liabilities and to more fully vest the security interest granted in the Loan Agreement, the Company has executed this TM Security Agreement.

NOW THEREFORE, For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Company and the Lender agree as follows:

1. Terms used herein which are defined in the Loan Agreement are used as so defined.
2. To secure the Liabilities, the Company hereby grants a security interest in favor of, and collaterally assigns to the Lender, with power of sale (which power of sale shall be exercisable only following the occurrence of an Event of Default as defined in the Loan Agreement and used herein as so defined), in and to the following and all proceeds thereof:
 - a. All of the Company's now owned or existing or hereafter acquired or arising trademarks, trademark applications, service marks, registered service marks and service mark applications including, without limitation, those listed on *EXHIBIT A* annexed hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, and service mark applications.
 - b. All renewals of any of the foregoing.
 - c. All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.
 - d. The right to sue for past, present and future infringements and dilutions of any of the foregoing.
 - e. All of Company's rights corresponding to any of the foregoing throughout the world.

All of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications described in Subsection 2(a), together with the items respectively described in Subsections 2(b) through and including 2(e) are hereinafter individually and/or collectively referred to as the "**Marks**".

3. Until this TM Security Agreement is terminated in writing by a duly authorized officer of the Lender, the Company shall undertake the following with respect to each Mark:

a. Pay all renewal fees and other fees and costs associated with maintaining the Marks which are registered and with the processing of such Marks.

b. At the Company's sole cost, expense, and risk, pursue the prompt, diligent, processing of each Application for Registration which is the subject of the security interest created herein and not abandon or delay any such efforts.

c. At the Company's sole cost, expense, and risk, take any and all action which Company deems necessary or desirable to protect the Marks, including, without limitation, the prosecution and defense of infringement actions.

4. In the event of

a. the Company's failure, within Five (5) days of written notice from the Lender, to cure any failure by the Company to perform any of the Company's obligations set forth in Section 3, above, and/or

b. the occurrence of any Event of Default,

the Lender acting in its own name or in that of the Company may (but shall not be required to) act in the Company's place and stead and/or in the Lender's own right in connection therewith.

5. Company represents and warrants that:

a. **EXHIBIT A** includes all of the registered trademarks, Federal trademark applications, registered service marks and Federal service mark applications now owned by the Company.

b. No liens, claims or security interests have been granted in any Mark by the Company to any Person other than to the Lender.

6. In order to further secure the Liabilities:

a. The Company shall give the Lender written notice (with reasonable detail) within Ten (10) days following the occurrence of any of the following:

i. The Company obtains rights to, and files applications for registration of, any new trademarks, or service marks, or otherwise acquires ownership of any newly registered trademarks, registered service marks, trademark applications, or service mark applications (other than Company's right to sell products containing the trademarks of others in the ordinary course of Company's business).

ii. The Company becomes entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor (other than Company's right to sell products in containing the trademarks of others' the ordinary course of Company's business).

iii. The Company enters into any new trademark license agreement or service mark license agreement.

b. The provisions of this TM Security Agreement shall automatically apply to any such additional property or rights described in 6(a), above, all of which shall be deemed to be and treated as "Marks" within the meaning of this TM Security Agreement.

c. The Company hereby authorizes the Lender to modify this agreement by amending EXHIBIT A to include any future registered trademarks, trademark applications, registered service marks and service mark applications, written notice of which is so given, *provided*, *however*, the modification of said EXHIBIT shall not be a condition to the creation or perfection of the security interest created hereby.

7. Upon the occurrence of any Event of Default, the Lender may exercise all rights and remedies of a secured party upon default under the Uniform Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with respect to the Marks, in addition to which the Lender, subject to the terms of the Loan Agreement, may sell, license, assign, transfer, or otherwise dispose of the Marks. Any person may conclusively rely upon an affidavit of an officer of the Lender that an Event of Default has occurred and that the Lender is authorized to exercise such rights and remedies.

8. The Company hereby irrevocably constitutes and designates the Lender as and for the Company's attorney in fact, effective with and upon the Lender's first exercise (the "**First Exercise**") of such powers following the occurrence of any Event of Default:

a. To exercise any of the rights and powers referenced in Section 3.

b. To execute all and singular such instruments, documents, and papers as the Lender determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Marks.

The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until the within TM Security Agreement is terminated by a duly authorized officer of the Lender, but shall be exercisable only following the occurrence of an Event of Default.

9. Any use by the Lender of the Marks as authorized hereunder in connection with the exercise of the Lender's rights and remedies under the within TM Security Agreement and the Loan Agreement shall be coextensive with Company's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Lender to the Company. Such use by the Lender shall be permitted only with and upon the First Exercise following the occurrence of an Event of Default.

10. Lender hereby acknowledges that the Company shall continue to have the exclusive right, prior to notice from the Lender following the occurrence of an Event of Default, to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by Company to protect the Marks against encroachment by third parties; provided, however, that Company first notifies Lender in writing of its intention to sue for enforcement of the Marks against a particular party. All costs arising in connection with any infringement shall be borne by Company.

11. Following the payment and satisfaction of all Liabilities, and the termination of any obligation of the Lender to provide loans or financial accommodations under the credit facility contemplated by the Loan Agreement, this TM Security Agreement shall terminate and the Lender shall execute and deliver to Company all such instruments as the Company reasonably may request to release any encumbrance in favor of the Lender created hereby or pursuant hereto, subject, however, to any disposition thereof which may have been made by Lender pursuant hereto or pursuant to the Loan Agreement.

12. The Company shall, at the request of the Lender, do any and all acts and execute any and all documents required by the Lender in connection with the protection, preservation, and enforcement of the Lender's rights hereunder.

13. The Company shall, upon demand, reimburse the Lender for all reasonable costs and expenses incurred by the Lender in the exercise of any rights hereunder (including, without limitation, reasonable fees and expenses of counsel).

14. Lender hereby acknowledges that the Company shall continue to have the exclusive right, prior to notice from the Lender following the occurrence of an Event of Default, to sue for past, present and future infringement of the Marks including the right to seek injunctions and/or money damages, in an effort by Company to protect the Marks against encroachment by third parties; provided, however, that Company first notifies Lender in writing of its intention to sue for enforcement of the Marks against a particular party. All costs arising in connection with any infringement shall be borne by Company.

15. Neither anything contained in the within TM Security Agreement or in the Loan Agreement nor any act, omission, or circumstance may be construed as directly or indirectly conveying to the Lender any rights in and to the Marks, which rights are effective except following the occurrence of any Event of Default (and in such circumstances, only with and upon the First Exercise).

16. This TM Security Agreement is intended to be supplemental of the Loan Agreement. All provisions of the Loan Agreement shall apply to the Marks and the Lender shall have the same rights with respect to any and all security interests in the Marks granted the Lender to secure the Liabilities hereunder as thereunder. In the event of a conflict between this TM Security

Agreement and the Loan Agreement, the terms of this TM Security Agreement shall control with respect to the Marks and the Loan Agreement with respect to all other collateral.

IN WITNESS WHEREOF, the Company and the Lender respectively have caused this TM Security Agreement to be executed by officers duly authorized so to do on the date first above written.

Remainder of page intentionally left blank

Peter Harris Clothes, Inc.
(The "Company")

IBJ WHITEHALL BUSINESS CREDIT CORPORATION, by and through its division
IBJ WHITEHALL RETAIL FINANCE ("Lender")

By: 

Name: Peter H. Elitzer
Title: President

By: 

Print Name: John L. Palermo
Title: V.P.

THE OF
COUNTY OF _____, SS

Then personally appeared before me _____ who acknowledged that such person the duly authorized of the Company and that such person had executed the foregoing instrument on its behalf.

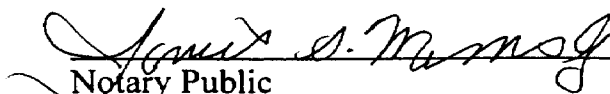
Witness my hand and seal this ___ day of _____, 2001.

Notary Public
My Commission Expires:

THE ~~OF~~ COMMONWEALTH OF Massachusetts
COUNTY OF Suffolk, SS

Then personally appeared before me John L. Palermo who acknowledged that such person the duly authorized of the Lender and that such person had executed the foregoing instrument on its behalf.

Witness my hand and seal this 16th day of December, 2001.


Notary Public
My Commission Expires: