

12-17-2002

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

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

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

1. Name of conveying party(ies): Gary's Operating, Inc.

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State, Other

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

2. Name and address of receiving party(ies) Name: Gryphon Advisors II, LLC

Internal Address: Suite 2750

Street Address: 1 Embarcadero Center

City: San Francisco State: CA Zip: 94111

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

Other limited liability company

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

3. Nature of conveyance:

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

Execution Date: 12/03/2002

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

A. Trademark Application No.(s)

76385569 76385568

B. Trademark Registration No.(s)

1297975 1269494 1738832

Additional number(s) attached Yes No

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

Name: Deborah E. Taylor

Internal Address: c/o Latham & Watkins

Street Address: 633 West 5th Street,

Suite 4000

City: Los Angeles State: CA Zip: 90071

6. Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41): \$ 140.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

(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.

Deborah E. Taylor

Name of Person Signing

Signature

December 5, 2002

Date

Total number of pages including cover sheet, attachments, and document: 9

12/16/2002 DRYRNE 00000200 76385569

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

01 FC:0521 02 FC:0522

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TRADEMARK REEL: 002634 FRAME: 0035

**TRADEMARK SECURITY AGREEMENT  
(GARY'S OPERATING)**

This **TRADEMARK SECURITY AGREEMENT** (this "**Agreement**"), dated as of December 3, 2002, is entered into by GARY'S OPERATING, INC., a Delaware corporation ("**Grantor**"), in favor of GRYPHON ADVISORS II, LLC, a Delaware limited liability company ("**Grantee**");

RECITALS:

A. GII Acquisition, Inc., an Illinois corporation ("**GII**"), and Grantor (GII and Grantor are referred to collectively in this Agreement as the "**Borrowers**") intend to enter into a Credit Agreement, dated as of the date of this Agreement (such Credit Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), with Grantee providing for extensions of credit and other financial accommodations to be made to Borrowers by Grantee.

B. It is a condition precedent to the making of loans and other financial accommodations under the Credit Agreement that Grantor execute and deliver this Agreement.

C. Pursuant to the terms of the Security Agreement, dated as of the date of this Agreement, by and among Grantor, GII Acquisition, Inc. and Grantee (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"), Grantor has granted to Grantee a security interest in substantially all of the assets of Grantor including all right, title and interest of Grantor in, to and under all Trademarks (as defined in the Security Agreement) now owned or acquired in the future by Grantor, together with the goodwill of the business symbolized by Grantor's Trademarks, and all products and proceeds thereof, to secure the payment of all amounts owing by the Borrowers to Grantee.

In consideration of the foregoing and for other good and valuable consideration, receipt and sufficiency of which are acknowledged, Grantor agrees as follows:

1. Incorporation of Credit Agreement and Security Agreement; Defined Terms. The Credit Agreement and Security Agreement and the terms and provisions of such agreements are incorporated in this Agreement in their entirety by this reference to such agreements. All terms capitalized but not otherwise defined in this Agreement shall have the same meanings in this Agreement as in the Security Agreement.

2. Grant and Reaffirmation of Grant of Security Interests. To secure the complete and timely payment and satisfaction of the Obligations, Grantor grants to Grantee, and reaffirms its grant pursuant to the Security Agreement of, a continuing security interest in Grantor's entire right, title and interest in and to the following (all of the following items or types of property being herein collectively referred to as the "**Trademark Collateral**"), whether now owned or existing or hereafter created or acquired:

- a. each Trademark and each application for Trademark, including those listed on Schedule 1, together with any reissues, continuations or extensions of each such Trademark, and all of the goodwill of the business connected with the use of, and symbolized by, each such Trademark; and

- b. all products and proceeds of the forgoing, including without limitation, any claim by Grantor against third parties for past, present or future (a) infringement or dilution of any Trademark, or (b) injury to the goodwill associated with any Trademark.

3. Warranties and Representations. Grantor warrants and represents to Grantee that:

- a. Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Trademark, free and clear of any liens, charges and encumbrances, including without limitation licenses and covenants by Grantor not to sue third persons, except for the liens created by the Trademark Security Agreement, dated as of January 30, 2001, between Grantor and Heller Financial, Inc. in its capacity as agent for the lenders party to the Second Amended and Restated Credit Agreement, dated as of December 12, 2001;
- b. Grantor has no notice of any suits or actions commenced or threatened with reference to any Trademark; and
- c. Grantor has the unqualified right to execute and deliver this Agreement and perform its terms.

4. Restrictions on Future Agreements. Grantor agrees that until the Obligations shall have been satisfied in full and the Credit Agreement shall have been terminated, Grantor shall not, without the prior written consent of Grantee, sell, pledge or assign its interest in, or grant any license under, any Trademark or enter into any other agreement with respect to any Trademark (except for any such license contained in, or entered into pursuant to, a franchise agreement entered into by Grantor in the ordinary course of its business), and Grantor further agrees that it shall not take any action or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity or enforcement of the rights transferred to Grantee under this Agreement.

5. Product Quality. Grantor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used in a manner consistent with commercially reasonable business practices and (ii) to provide Grantee, upon Grantee's request from time to time, with a certificate of an officer of Grantor certifying Grantor's compliance with the foregoing. Subject to the terms and conditions of that certain Intercreditor Agreement, dated as of the date of this Assignment, by and among The Gingiss Group, Inc., the Borrowers, Gingiss Formalwear, Inc., Gingiss International, Inc., Heller Financial, Inc., Antares Capital Corporation and the Gryphon Agent (as defined in such agreement) (the "**Intercreditor Agreement**") and upon the occurrence of an Event of Default, Grantor agrees that Grantee, or a conservator appointed by Grantee, shall have the right to establish such additional product quality controls as Grantee, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Grantor under the Trademarks.

6. Grantee's Right to Sue. Subject to the terms and conditions of the Intercreditor Agreement and the occurrence of an Event of Default, Grantee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and, if Grantee shall commence any such suit, Grantor shall, at the request of Grantee, do any and all lawful acts and execute any and all proper documents required by Grantee in aid of such enforcement and

Grantor shall promptly, upon demand, reimburse and indemnify Grantee for all costs and expenses incurred by Grantee in the exercise of its rights under this Section 6.


7. Cumulative Remedies; Power of Attorney. Grantor acknowledges and affirms that the rights and remedies of Grantee with respect to the Trademarks, whether established by this Agreement, by the Security Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently (subject to the terms and conditions of the Intercreditor Agreement). Grantor authorizes Grantee, subject to the terms and conditions of the Intercreditor Agreement and any license contained in, or entered into pursuant to, a franchise agreement entered into by Grantor in the ordinary course of its business and upon the occurrence of an Event of Default, to make, constitute and appoint any officer or agent of Grantee as Grantee may select, in its sole discretion, as Grantor's true and lawful attorney-in-fact, with power to (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for Grantee in the use of the Trademarks or (ii) take any other actions with respect to the Trademarks as Grantee deems to be in the best interest of Grantee, or (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone. Grantor ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Borrowers' Obligations shall have been paid in full and the Credit Agreement has been terminated. Grantor further acknowledges and agrees that the use by Grantee of the Trademarks shall be worldwide, except as limited by their terms and subject to any license contained in, or entered into pursuant to, a franchise agreement entered into by Grantor in the ordinary course of its business, and without any liability for royalties or related charges from Grantee to Grantor.

8. Intercreditor Agreement. This Agreement, and all rights and remedies of Grantee under this Agreement, are subject to the provisions of the Intercreditor Agreement. Except as expressly permitted under the Intercreditor Agreement, (a) Grantee shall not (in its capacity as the lender under the Credit Agreement) ask, demand, sue for, exercise or otherwise assert any right or remedy in respect of all or any part of the Collateral or any Liens (as defined in the Intercreditor Agreement) thereon, or take any action to enforce, foreclose upon, take possession of or sell all or any part of the Collateral or any Liens on the Collateral, whether under the provisions of any state or federal law, including, without limitation, the UCC, or under any contract or agreement, or otherwise, and (b) the sole right of Grantee (resulting from its capacity as the lender under the Credit Agreement; it being understood that Grantee may have other rights in its capacity as a securityholder of The Gingiss Group, Inc. or otherwise) with respect to the Collateral shall be to hold a Lien thereon, to the extent granted pursuant to the Loan Documents to secure the Obligations. Grantor shall not be required to take any action under this Agreement to the extent such action would breach or otherwise conflict with the provisions of the Intercreditor Agreement.

*{Signature Page(s) Follow}*

IN WITNESS WHEREOF, Grantor has duly executed this Agreement as of the date first written above.

**GARY'S OPERATING, INC.**, a Delaware corporation

By:   
 Name: Michael J. Corrao  
 Title: C.E.O.

Agreed and Accepted as of the day and year first written above:

**GRYPHON ADVISORS II, LLC**

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

Trademark Security Agreement (Gary's Operating)

ACKNOWLEDGEMENT

STATE OF Illinois )  
 ) ss.  
COUNTY OF Cook )

On the 3rd day of December, 2002, before me personally appeared Michael J. Curran, to me personally known or proved to me on the basis of satisfactory evidence to be the person described in and who executed the foregoing instrument, who being by me duly sworn, did depose and say that s/he is CEO of Gary's Operating, Inc., a Delaware corporation described in and which executed the foregoing instrument; that the said instrument was signed on behalf of said corporation by order of its Board of Directors; and that s/he acknowledged said instrument to be the free act and deed of said corporation.

.....  
"OFFICIAL SEAL"  
LINDA BANCZOSZEK  
Notary Public, State of Illinois  
My Commission Expires 10/21/06  
.....

Linda Banczoszek  
Notary Public

{Seal}

My commission expires: 10/21/06

Trademark Security Agreement (Gary's Operating)

TOTAL P.38

IN WITNESS WHEREOF, Grantor has duly executed this Agreement as of the date first written above.

**GARY'S OPERATING, INC.**, a Delaware corporation

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

Agreed and Accepted as of the day and year first written above:

**GRYPHON ADVISORS II, LLC**

By: *R. David Andrews*  
Name: *R. David Andrews*  
Title: *President*

Trademark Security Agreement (Gary's Operating)

**SCHEDULE A****TRADEMARK REGISTRATIONS**

<b>Grantor</b>	<b>Trademark Description</b>	<b>U.S. Registration No.</b>	<b>Expiration Date</b>
Gary's Operating, Inc.	Computux	1297975 (USA)	9/25/04
Gary's Operating, Inc.	Gary's in Fanciful Script	19316 (California)	
Gary's Operating, Inc.	Gary's	14395 (California)	
Gary's Operating, Inc.	Gary's	1269494 (USA)	3/6/04
Gary's Operating, Inc.	Jeffrey Morton Formal Wear	1738832 (USA)	12/8/02

**TRADEMARK APPLICATIONS**

<b>Grantor</b>	<b>Trademark Description</b>	<b>U.S. Application No.</b>	<b>Expiration Date</b>
Gary's Operating, Inc.	Bucciani Uomo	76/385569 (USA)	
Gary's Operating, Inc.	Carlo Bucciani	76/385568 (USA)	



## TRADEMARK REGISTRATIONS

<b>U.S. Registration No.</b>
1297975 (USA)
1269494 (USA)
1738832 (USA)

## TRADEMARK APPLICATIONS

<b>U.S. Application No.</b>
76/385569 (USA)
76/385568 (USA)