

01-17-2003

Form PTO-1594

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

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102340635

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):

Lernco, Inc.

1-13-03

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State
☐ Other Delaware

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

3. Nature of conveyance:

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

Execution Date: November 27, 2002

2. Name and address of receiving party(ies)

Name: CapitalSource Finance LLC

Internal Address: 12th Floor

Street Address: 4445 Willard Avenue

City: Chevy Chase State: MD Zip: 20815

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☐ Corporation-State
☒ Other Delaware Limited Liability Company

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) 1,431,895;

1,133,390; 1,122,084; 2,260,860

Additional number(s) attached ☒ Yes ☐ No

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

Name: Monica P. McCabe

Internal Address: Piper Rudnick LLP

Street Address: 1251 Avenue of the Americas

City: New York State: NY Zip: 10020

6. Total number of applications and registrations involved:

9

7. Total fee (37 CFR 3.41).....\$ 240

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number:

501303

OFFICE OF RECORDS
FINANCE SECTION
JAN 13 AM 7:35

DO NOT USE THIS SPACE

9. Signature.

Monica P. McCabe

Name of Person Signing

MUELLER 00000139 1431895

Signature

Date

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

01/16/2003

01 FC:8521
02 FC:852240.00
200.00

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

TRADEMARK
REEL: 002651 FRAME: 0434

Additional Trademark Registration Nos.

1,987,113; 2,507,567; 2,629,986; 2,460,184; 2,573,780

**COLLATERAL ASSIGNMENT OF TRADEMARKS
(SECURITY AGREEMENT)**

COLLATERAL ASSIGNMENT OF TRADEMARKS (SECURITY AGREEMENT)
(this "Agreement"), dated November 27, 2002, between LERNCO, INC., a Delaware corporation with offices at 450 West 33rd Street, New York, New York 10001, ("Pledgor"), and CAPITALSOURCE FINANCE LLC, a Delaware limited liability company, with an office at 4445 Willard Avenue, 12th Floor, Chevy Chase, Maryland 20815 ("Pledgee"), in its capacity as agent.

W I T N E S S E T H:

WHEREAS, Pledgee, Pledgor, Lerner New York, Inc., a Delaware corporation ("Company Borrower"), Nevada Receivable Factoring, Inc., a Nevada corporation, Associated Lerner Shops of America, Inc., a New York corporation, Lerner New York GC, LLC, an Ohio limited liability company, and Lerner New York Holding, Inc., a Delaware corporation ("Holdings Borrower", and together with Company Borrower, the "Borrower"), have entered into that certain Note Purchase and Security Agreement, dated as of the date hereof (the "Note Purchase Agreement", and, together with all agreements entered into in connection therewith, the "Note Purchase Documents"; initially capitalized terms used herein without definitions shall have the meanings given in the Note Purchase Agreement), pursuant to which Pledgee and the Purchasers have made and may in the future, in their discretion, make certain loans and advances and extend credit to Pledgor, subject to the terms and provisions of the Note Purchase Documents;

WHEREAS, in connection with the Note Purchase Documents, Pledgor has executed that certain Guaranty and Security Agreement dated as of the date hereof in favor of Pledgee as agent for the Purchasers (the "Guaranty"), pursuant to which Pledgor has guaranteed the obligations of Borrower to Pledgee and the Purchasers under the Note Purchase Documents;

WHEREAS, Pledgor owns all right, title, and interest in and to, among other things, all the trademarks, United States trademarks and trademark registrations, and the trademark applications and tradenames, set forth on Exhibit A hereto (the "Trademarks"); and

WHEREAS, in furtherance of the terms of the Note Purchase Agreement, Pledgor is entering into this Agreement to further evidence the Pledgor's granting to Pledgee of a security interest in the Trademarks and the goodwill and certain other assets with respect to the Trademarks, as further set forth herein.

WHEREAS, the rights of the Pledgee hereunder shall be subordinate to those of Congress Financial Corporation pursuant to that certain Subordination Agreement of even date herewith, as further provided in Section 19 hereof.

NOW THEREFORE, that for valuable consideration received and to be received, as security for the full payment and performance of the Guaranteed Obligations (as defined in the Guaranty), and to induce Pledgee and the Purchasers to make loans and advances to Borrower,

Pledgor hereby grants to Pledgee, for itself and the ratable benefit of the Purchasers, a security interest in:

- (a) the Trademarks;
- (b) all registrations of the Trademarks in any State of the United States and any foreign countries and localities;
- (c) all tradenames, trademarks and trademark registrations hereafter adopted or acquired and used, including, but not limited to, those which are based upon or derived from the Trademarks or any variations thereof (the "Future Trademarks");
- (d) all extensions, renewals, and continuations of the Trademarks and Future Trademarks and the registrations referred to in clause (b) above;
- (e) all rights to sue for past, present and future infringements of the Trademarks and Future Trademarks;
- (f) all packaging, labeling, trade names, service marks, logos, and trade dress including or containing the Trademarks and Future Trademarks, or a representation thereof, or any variation thereof;
- (g) all licenses and other agreements under which Pledgor is licensor, but only to the extent that the grant of a security interest therein would not be prohibited by or be a breach of terms thereof, and all fees, rents, royalties, proceeds or monies thereunder, relating to the Trademarks and Future Trademarks and the use thereof; and
- (h) all goodwill of Pledgor's business connected with, symbolized by or in any way related to the items set forth in clauses (a) through (g) above.

All of the foregoing items set forth in clauses (a) through (h) are hereinafter referred to collectively as the "Collateral."

AND Pledgor hereby covenants with Pledgee as follows:

1. Pledgor's Obligations. Pledgor agrees that, notwithstanding this Agreement, it will perform and discharge and remain liable for all its covenants, duties, and obligations arising in connection with the Collateral and any licenses and agreements related thereto. Pledgee shall have no obligation or liability in connection with the Collateral or any licenses or agreements relating thereto by reason of this Agreement or any payment received by Pledgee or any Purchaser relating to the Collateral, nor shall Pledgee or any Purchaser be required to perform any covenant, duty, or obligation of Pledgor arising in connection with the Collateral or any license or agreement related thereto or to take any other action regarding the Collateral or any such licenses or agreement.
2. Representations and Warranties. Pledgor represents and warrants to Pledgee that:

(a) Pledgor is the owner of the Collateral, and no adverse claims have been made with respect to its title to or the validity of the Collateral;

(b) the Trademarks are the only trademarks, trademark registrations, trademark applications and trade names in which Pledgor has any or all right, title and interest;

(c) none of the Collateral is subject to any mortgage, pledge, lien, security interest, lease, charge, encumbrance or license (by Pledgor as licensor), except for Pledgee's interests granted hereunder; and

(d) when this Agreement is filed in the United States Patent and Trademark Office (the "Trademark Office") and the Pledgee has taken the other actions contemplated in this Agreement and by the Note Purchase Documents, if, and to the extent that a security interest may be perfected in such collateral under applicable law, this Agreement will create a legal and valid perfected and continuing lien on and security interest in the Collateral in favor of Pledgee (except for any non-U.S. Trademarks), enforceable against Pledgor and all third parties, subject to no other mortgage, lien, charge, encumbrance, or security or other interest.

3. Covenants. Pledgor will maintain the Collateral, defend the Collateral against the claims of all persons, and will maintain and renew all registrations of the Collateral; notwithstanding the foregoing, Pledgor will not be required to maintain, renew or defend any Collateral which no longer has any material economic value. Pledgor will maintain at least the same standards of quality (which Pledgee has reviewed) for the goods and services in connection with which the Trademarks are used as Pledgor maintained for such goods and services prior to entering into this Agreement. Pledgee shall have the right to enter upon Pledgor's premises as provided in the Note Purchase Documents to monitor such quality standards. Without limiting the generality of the foregoing, and so long as any Trademark or Future Trademark has material economic value, Pledgor shall not permit the expiration, termination or abandonment of such Trademark or Future Trademark without the prior written consent of Pledgee. If, before the Obligations have been satisfied in full and the Note Purchase Documents have been terminated, Pledgor shall obtain rights to or be licensed to use any new trademark, or become entitled to the benefit of any trademark application or trademark registration, the provisions of Section 1 hereof shall automatically apply thereto and Pledgor shall give Pledgee prompt notice thereof in writing.

4. Use Prior to Default. Effective until Pledgee's exercise of its rights and remedies upon an Event of Default under and as defined in the Note Purchase Documents (an "Event of Default"), Pledgor shall be entitled to use the Collateral in the ordinary course of its business, subject to the terms and covenants of the Note Purchase Documents and this Agreement.

5. Remedies Upon Default. Whenever any Event of Default shall occur and be continuing, Pledgee shall have all the rights and remedies granted to it in such event by the Note Purchase Documents, which rights and remedies are specifically incorporated herein by reference and made a part hereof, and any and all rights and remedies of law available to Pledgee. Pledgee in such event may collect directly any payments due to Pledgor in respect of the Collateral and may sell, license, lease, assign, or otherwise dispose of the Collateral in the

manner set forth in the Note Purchase Documents. Pledgor agrees that, in the event of any disposition of the Collateral upon and during the continuance of any such Event of Default, it will duly execute, acknowledge, and deliver all documents necessary or advisable to record title to the Collateral in any transferee or transferees thereof, including, without limitation, valid, recordable assignments of the Trademarks or Future Trademarks. In the event Pledgor fails or refuses to execute and deliver such documents, Pledgor hereby irrevocably appoints Pledgee as its attorney-in-fact, with power of substitution, to execute, deliver, and record any such documents on Pledgor's behalf as provided in the Note Purchase Documents. Notwithstanding any provision hereof to the contrary, during the continuance of an Event of Default, Pledgor may sell any merchandise or services bearing the Trademarks and Future Trademarks in the ordinary course of its business and in a manner consistent with its past practices, until it receives written notice from Pledgee to the contrary. The preceding sentence shall not limit any right or remedy granted to Pledgee with respect to Pledgor's inventory under the Note Purchase Documents or any other agreement now or hereinafter in effect. Without limiting the generality of any provision hereof or of any of the other Note Purchase Documents, for the purpose of enabling Pledgee to exercise the rights and remedies hereunder and under the other Note Purchase Documents, Pledgor hereby grants to Pledgee, to the extent assignable and to the extent that the same would not conflict with any agreements (other than any agreement between Pledgor and any Obligor (as defined in the Note Purchase Agreement)) or otherwise result in the revocation or dilution of any rights in any of the Collateral forming the subject thereof, an irrevocable, non-exclusive license (exercisable upon the occurrence of or during the continuance of an Event of Default) without payment of royalty or other compensation to Pledgor or any other Obligor, to use, assign, license or sublicense any of Collateral now owned or hereafter acquired by Pledgor, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof.

6. Cumulative Remedies. The rights and remedies provided herein are cumulative and not exclusive of any other rights or remedies provided by law. The rights and remedies provided herein are intended to be in addition to and not in substitution of the rights and remedies provided by the Note Purchase Documents or any other agreement or instrument delivered in connection therewith.

7. Amendments and Waivers. This Agreement may not be modified, supplemented, or amended, or any of its provisions waived except in a writing signed by Pledgor and Pledgee. Pledgor hereby authorizes Pledgee to modify this Agreement by amending Exhibit A hereto to include any Future Trademarks.

8. Waiver of Rights. No course of dealing between the parties to this Agreement or any failure or delay on the part of any such party in exercising any rights or remedies hereunder shall operate as a waiver of any rights and remedies of such party or any other party, and no single or partial exercise of any rights or remedies by one party hereunder shall operate as a waiver or preclude the exercise of any other rights and remedies of such party or any other party. No waiver by Pledgee of any breach or default by Pledgor shall be deemed a waiver of any other previous breach or default or of any breach or default occurring thereafter.

9. Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto; provided, however, that

no interest herein or in or to the Collateral may be assigned by Pledgor without the prior written consent of Pledgee; and, provided further, that Pledgee may assign the rights and benefits hereof to any party acquiring any interest in the Guaranteed Obligations or any part thereof.

10. Future Acts. Until the Guaranteed Obligations shall have been paid in full, Pledgor shall have the duty to make applications on material unregistered, but registrable as trademarks, Collateral owned by Pledgor in any location where Pledgor does business, to prosecute such applications diligently, and to preserve and maintain all rights in the material Trademarks and the other material Collateral. Any expenses incurred in connection with such applications and other actions shall be borne by Pledgor. Pledgor shall not abandon any right to file a trademark application or registration for any trademark, or abandon any such pending trademark application or registration, without the consent of Pledgee, except to the extent that the trademark covered by such application or registration has no material economic value.

11. Enforcement. Upon Pledgor's failure to do so after Pledgee's demand, or upon the occurrence and during the continuance of an Event of Default, Pledgee shall have the right but shall in no way be obligated to bring suit in its own name to enforce the Trademarks and Future Trademarks and any license thereunder having economic value to the Pledgee, in which event Pledgor shall at the request of Pledgee do any and all lawful acts and execute any and all proper documents required by Pledgee in aid of such enforcement and Pledgor shall promptly, upon demand, reimburse and indemnify Pledgee or its agents for all costs and expenses incurred by Pledgee in the exercise of its rights under this Section 11.

12. Release. At such time as Pledgor shall completely satisfy all of the non-contingent Guaranteed Obligations, and the Note Purchase Documents have been terminated, other than upon enforcement of Pledgee's remedies under the Note Purchase Documents after an Event of Default, Pledgee will, at Pledgor's sole cost and expense, execute and deliver to Pledgor a release or other instrument as may be necessary or proper to release Pledgor's lien in the Collateral, subject to any dispositions thereof which may have been made by Pledgee pursuant hereto and as may be necessary to record such release with the U.S. Patents and Trademarks Office, or equivalent authority.

13. Severability. If any clause or provision of this Agreement shall be held invalid or unenforceable, in whole or in part, in any jurisdiction, such invalidity or unenforceability shall attach only to such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such or any other clause or provision in any other jurisdiction.

14. Notices. All notices, requests and demands to or upon Pledgor or Pledgee under this Agreement shall be given in the manner prescribed by the Note Purchase Documents.

15. Governing Law. This Agreement shall be governed by and construed, applied, and enforced in accordance with the federal laws of the United States of America applicable to trademarks and the laws of the State of Maryland, except that no doctrine of choice of law shall be used to apply the laws of any other State or jurisdiction. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated only in the state and federal courts located in the State of Maryland (except that Pledgee shall have the right to bring any action or proceeding against Pledgor or its property in the courts of any other

jurisdiction which Pledgee deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against Pledgor or its property). PLEDGOR AND PLEDGEE EACH WAIVES THE RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND ANY RIGHT EITHER MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, LACK OF PERSONAL JURISDICTION, OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 15.

16. Counterparts, etc. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall have the same force and effect as the delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile shall also deliver an original executed counterpart, but the failure to do so shall not affect the validity, enforceability or binding effect of this Agreement.

17. Supplement. This Agreement is a supplement to, and is hereby incorporated into, the Note Purchase Documents and made a part thereof.

18. Interpretation. To the extent that any covenants set forth in Section 3 hereto, or representations or warranties set forth in Section 2 hereto are in direct conflict with the terms of any covenants, representations or warranties contained in the Note Purchase Documents, the terms of such section shall control. To the extent any other provisions of this Agreement are in direct conflict with the terms of any other provisions of the Note Purchase Documents, the terms of the Note Purchase Documents shall control.

19. SUBORDINATION AGREEMENT CONTROLS. THIS AGREEMENT SHALL BE SUBJECT TO THE TERMS AND PROVISIONS OF THE SUBORDINATION AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, TO THE EXTENT ANY PROVISION OF THIS AGREEMENT REQUIRES A DELIVERY OF ANY COLLATERAL TO THE AGENT, SUCH REQUIREMENT SHALL BE DEEMED SATISFIED, SO LONG AS SENIOR DEBT DOCUMENTS ARE IN EFFECT, IF SUCH DELIVERY IS MADE TO THE APPROPRIATE REPRESENTATIVE OF THE SENIOR DEBT IN ACCORDANCE WITH, AND TO THE EXTENT REQUIRED BY, THE SENIOR DEBT DOCUMENTS. EACH GRANTOR HEREBY ACKNOWLEDGES THAT ONCE ALL SENIOR DEBT HAS BEEN REPAYED IN FULL AND THE SENIOR DEBT DOCUMENTS HAVE BEEN TERMINATED, SUCH DELIVERIES SHALL BE MADE PROMPTLY TO THE SECURED PARTY.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

PLEDGOR

LERNCO, INC.,
a Delaware corporation

By: 

Name: Richard Crystal

Title: Pres. & CEO

PLEDGEE

CAPITALSOURCE FINANCE LLC, a Delaware
limited liability company, as Agent

By: 

Name: Joseph Turitz

Title: Senior Counsel

NEW YORK ALL-PURPOSE ACKNOWLEDGMENT

STATE OF NEW YORK)
COUNTY OF New York) ss.
)

On November 27, 2002, before me, PATRICK B. GARBE,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared RICHARD CRYSTAL,
Name of Signer(s)

≤ personally known to me – **OR** – ≤ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

PATRICK B. GARBE
Notary Public, State of New York
No. 01GA5061506
Qualified in New York County
Commission Expires June 10, 2006

Patrick B. Garbe
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

| CAPACITY(IES) CLAIMED BY SIGNER(S) | | DESCRIPTION OF ATTACHED DOCUMENT |
|---|------------------------|--|
| ≤ Individual | | |
| ≤ Corporate Officer | | |
| ≤ Partner(s) | ≤ Limited ≤ General | Collateral Assignment of Trademarks Title or Type of Document |
| ≤ Attorney-In-Fact | | Number of Pages |
| ≤ Trustee(s) | | |
| ≤ Guardian/Conservator | | |
| ≤ Other: _____ | | Date of Document |
| Signer is Representing: Name of Person(s) or Entity(ies) _____ _____ | | Signer(s) Other Than Named Above |

MARYLAND ALL-PURPOSE ACKNOWLEDGMENT

STATE OF MARYLAND)

COUNTY OF Montgomery)

) ss.

On Nov. 27, 2002, before me, Mary B. Leino, Notary Public,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

Personally appeared Joseph Turitz,
Name of Signer(s)

☒ personally known to me – **OR** – ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires: 1/5/04

Mary B. Leino
Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY(IES) CLAIMED BY SIGNER(S)

- | | | | |
|--------------------------|----------------------|--------------------------|---------|
| <input type="checkbox"/> | Individual | | |
| <input type="checkbox"/> | Corporate Officer | | |
| | | <small>Title(s)</small> | |
| <input type="checkbox"/> | Partner(s) | <input type="checkbox"/> | Limited |
| | | <input type="checkbox"/> | General |
| <input type="checkbox"/> | Attorney-In-Fact | | |
| <input type="checkbox"/> | Trustee(s) | | |
| <input type="checkbox"/> | Guardian/Conservator | | |
| <input type="checkbox"/> | Other: | | |

Signer is Representing:
Name of Person(s) or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Collateral Assignment of Trademarks

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

TRADEMARK

REEL: 002651 FRAME: 0445

EXHIBIT A

List of Trademarks

| <u>Title or Mark</u> | <u>Registration/Application No.</u> | <u>Registration/Filing Date</u> |
|---|-------------------------------------|---------------------------------|
| LERNER (Words Only) | 1431895 | March 10, 1987 |
| LERNER (Stylized Letters) | 1133390 | April 15, 1980 |
| LERNER (Words Only) | 1122084 | July 10, 1979 |
| LERNER NEW YORK (Words Only) | 2260860 | July 13, 1999 |
| LERNER NEW YORK (Words Only) | 1987113 | July 16, 1996 |
| NEW YORK & COMPANY (Words Only) | 2507567 | November 13, 2001 |
| NEW YORK & COMPANY (Words Only) | 2629986 | October 8, 2002 |
| NY & CO. (Words Only) | 2460184 | June 12, 2001 |
| NY JEANS NEW YORK & COMPANY (Words Only) | 2573780 | May 28, 2002 |