

03-28-2003

Docket No.:

3-28-03

Tab settings



102402469

ached original documents or copy thereof.

To the Honorable Commissioner of Patents

1. Name of conveying party(ies):

Giftco, Inc.

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

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

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

Execution Date: February 28, 2003

2. Name and address of receiving party(ies):

Name: PNC Bank, National Association

Internal Address: Suite 2980

Street Address: One South Wacker Drive

City: Chicago State: IL ZIP: 60606

- Individual(s) citizenship
- Association national association
- General Partnership
- Limited Partnership
- Corporation-State
- Other

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

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

A. Trademark Application No.(s)

See Schedule A, attached

B. Trademark Registration No.(s)

See Schedule A, attached

Additional numbers  Yes  No

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

Name: Thomas W. Ryan, Esq.

Internal Address: Piper Rudnick

203 North LaSalle Street, Suite 1800

Street Address:

City: Chicago State: IL ZIP: 60601

6. Total number of applications and registrations involved:

74

7. Total fee (37 CFR 3.41): \$ 1,865

- Enclosed
- Any deficiency is Authorized to be charged to deposit account

8. Deposit account number:

18-2284

03/28/2003 6TOM11 00000093 78194243

DO NOT USE THIS SPACE

01 FC:8521  
02 FC:8522

40.00 DP  
1825.00 DP

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.

Thomas W. Ryan

Name of Person Signing

Signature

3/24/2003

Date

Total number of pages including cover sheet, attachments, and

TRADEMARK

**SCHEDULE A**

**GIFTCO, INC. SERVICEMARK and TRADEMARK LIST**

<b><u>Serial No.</u></b>	<b><u>Registration No.</u></b>	<b><u>Mark</u></b>
78/194,243		SAVINGS ZONE
78/173,502		Design-Baker Snowman
78/173,495		Design-Caroling Snowman
78/173,479		Design-Toboggan Snowman
78/171,745		FAMILY GIFT STORES
78/090,000		SPEEDY-SEALER
78/154,603		S'MORE LOVE
78/154,976		U R 2 CUTE
78/153,601		LIMITED EDITION
78/086,743		HOLIDAY GIFT SHOP
76/397,754		THE ORIGINAL SANTA'S SECRET SHOP EST. 1968
76/398,016		FUN SERVICES
76/397,752		SIR FUN BEAR
76/436,425		RASPBERRY RAPTURE
76/397,753		SANTA'S SECRET SHOP
76/334,813		TUBE TOPPERS
76/021,488	2,643,728	TOUCH-BRIGHT
76/436,427		DARLING DIVAS
76/436,426		DARLING DIVAS HAILEY, JASMINE, SAMANTHA
76/321,092		SPEED SEAL
76/334,812		SPEEDY-SEALER
76/021,486	2,605,490	HOLIDAY STATION
76/021,487	2,602,088	TOUCH-BRIGHT
76/264,096		HOLIDAY DELIGHTS
76/017,489	2,595,332	SNOWFLAKE SHOP
76/397,751		SANTA'S WORKSHOP
75/056,245	2,090,023	HOLIDAY TOWN
75/637,328		LIMITED EDITION
75/357,468	2,587,018	GIFT AVENUE
75/432,440	2,567,705	INCENTIVEENVELOPE
75/569,569		RASPBERRY DREAMS
75/602,239	2,437,489	TRADITIONAL HOLIDAY CLASSICS
75/602,238	2,423,919	CHRISTMAS COUNTDOWN
75/569,570	2,386,357	COCONUT DREAMS
75/558,732	2,392,119	PARK AVENUE WRAP
75/472,542	2,396,254	ELEGANT ACCENTS

<u>Serial No.</u>	<u>Registration No.</u>	<u>Mark</u>
75/436,932	2,402,441	THE GUMDROP SHOP
75/436,930	2,309,827	SANTA'S CANDY CANE EXPRESS
75/432,855	2,451,289	HOLIDAY SURPRISE STORE
75/432,830	2,451,288	HOLIDAY SECRET BOUTIQUE
75/432,829	2,457,668	THE HOLIDAY SNOWMAN SHOP
75/432,828	2,465,986	JINGLE BELL SHOP
75/432,827	2,504,883	PRIZES GALORE
75/432,442	2,504,882	PRIZE MAGIC
75/432,441	2,504,881	REACH FOR THE STARS
75/432,439	2,412,766	PRIZEENVELOPE
75/432,438	2,507,364	AWARDENVELOPE
75/428,024	2,504,878	SURFIN FOR PRIZE
75/428,023	2,383,730	LOCKER FULL OF PRIZES
75/428,017	2,383,729	GALAXY OF PRIZES
75/428,015	2,504,877	BLAST OFF FOR PRIZES
75/380,186	2,243,831	FUN BUGS
75/349,586	2,366,690	MILLENIUM 2000 COLLECTABLES
75/349,584	2,366,689	TURN OF THE CENTURY COLLECTABLES
75/349,583	2,366,688	COLLECTION 2000
75/349,582	2,364,930	GIFTS FOR THE 21 <sup>ST</sup> CENTURY
75/245,582	2,194,262	SCHOOL DESIGNS
75/211,029	2,181,388	HOLIDAY PACKAGE PALS
75/211,028	2,219,462	SPORT PACKAGE PALS
75/151,974	2,243,127	ELEGANT ACCENTS
75/079,814	2,151,269	GINGERBREAD SHOP
75/039,365	2,133,124	HOLIDAY WISH STORE
74/564,692	1,913,883	FUN SERVICES
74/700,990	2,088,120	YOUNG SHOPPERS CLUB
74/662,826	2,019,901	LOOK-OUT
74/634,073	2,034,298	SCHOOL DESIGNS
73/225,626	1,178,603	GOOD NEIGHBOR GENERAL STORE
73/225,625	1,165,934	MOTHER'S DAY BOUTIQUE
73/822,251	1,672,416	GIFTCO
73/755,680	1,548,329	HAPPY EGGS
72/306,367	925,691	FUN SERVICES INC.
72/309,368	924,903	FUN SERVICES

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**TRADEMARK COLLATERAL  
SECURITY AND PLEDGE AGREEMENT**

**DATED as of February 28, 2003**

**between**

**GIFTCO, INC.  
(BORROWER)**

**and**

**PNC BANK, NATIONAL ASSOCIATION  
(AS LENDER AND AS AGENT)**

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**TRADEMARK COLLATERAL  
SECURITY AND PLEDGE AGREEMENT**

**TRADEMARK COLLATERAL SECURITY AND PLEDGE AGREEMENT** ("**Trademark Agreement**") dated as of February 28, 2003, between **GIFTCO, INC.**, an Illinois corporation having its principal place of business at 700 Woodlands Parkway, Vernon Hills, Illinois 60061 (the "**Assignor**"), and **PNC BANK, NATIONAL ASSOCIATION**, having an office at One South Wacker Drive, Suite 2980, Chicago, Illinois 60606 (the "**Assignee**"), its successors and assigns, as agent for itself and on behalf of the Lenders as may exist from time to time under the Loan Agreement (as defined below).

**WHEREAS**, the Assignor, the Assignee and the Lenders are parties to a Revolving Credit and Security Agreement, dated February 28, 2003 (as amended and in effect from time to time, the "**Loan Agreement**"), among the Assignor, New Design, Inc., G2, Inc., the Assignee and the Lenders.

**WHEREAS**, it is a condition precedent to the Lenders making any loans or otherwise extending credit to the Assignor under the Loan Agreement that the Assignor execute and deliver to the Assignee a trademark agreement in substantially the form hereof;

**WHEREAS**, pursuant to the Loan Agreement, the Assignor has granted to the Assignee a security interest in certain of the Assignor's personal property and other assets, including without limitation the trademarks, service marks, trademark and service mark registrations, and trademark and service mark registration applications listed on Schedule A attached hereto, all to secure the payment and performance of the Obligations (as defined in the Loan Agreement); and

**WHEREAS**, this Trademark Collateral Security and Pledge Agreement is supplemental to the provisions contained in the Loan Agreement;

**NOW, THEREFORE**, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**I. DEFINITIONS**

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings provided therefor in the Loan Agreement. In addition, the following terms shall have the meanings set forth in this §1 or elsewhere in this Trademark Agreement referred to below:

**Assignment of Marks.** See §2.1.

**Associated Goodwill.** All goodwill of the Assignor and its business, products and services appurtenant to, associated with or symbolized by the Trademarks and the use thereof.

**Pledged Trademarks.** All of the Assignor's right, title and interest in and to all of the Trademarks, the Trademark Registrations, the Trademark License Rights, the Trademark Rights, the Associated Goodwill, the Related Assets, and all accessions to, substitutions for,

replacements of, and all products and proceeds of any and all of the foregoing. Notwithstanding the foregoing, Pledged Trademarks shall not include, and Assignor shall be deemed not to have granted a security interest in, or pledged, mortgaged, assigned or otherwise transferred to Assignee, any rights or interests in any license, contract or agreement to which Assignor is a party to the extent, but only to the extent, that such a grant would, under the terms of such license, contract or agreement, result in a breach of the terms of, or constitute a default under, such license, lease, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to 9-406, 9-407 or 9-408 of the UCC or other applicable law); provided, that immediately upon the ineffectiveness, lapse or termination of any such restriction, the Pledged Trademarks shall include, and Assignor shall be deemed to have granted a security interest in, and to have pledged and mortgaged, all such rights and interests, as if such provision had never been in effect; and provided, further, that notwithstanding any such restriction, Pledged Trademarks shall, to the extent such restriction does not by its terms apply thereto, include all rights incident or appurtenant to any such rights or interests and the right to receive all proceeds derived from or in connection with the sale, assignment or transfer of such rights and interests.

**PTO.** The United States Patent and Trademark Office.

**Related Assets.** All assets, rights and interests of the Assignor that uniquely reflect or embody the Associated Goodwill, including the following:

(a) all patents, inventions, copyrights, trade secrets, confidential information, formulae, methods or processes, compounds, recipes, know-how, methods and operating systems, drawings, descriptions, formulations, manufacturing and production and delivery procedures, quality control procedures, product and service specifications, catalogs, price lists, and advertising materials, relating to the manufacture, production, delivery, provision and sale of goods or services under or in association with any of the Trademarks; and

(b) the following documents and things in the possession or under the control of the Assignor, or subject to its demand for possession or control, related to the production, delivery, provision and sale by the Assignor, or any affiliate, franchisee, licensee or contractor, of products or services sold by or under the authority of the Assignor in connection with the Trademarks or Trademark Rights, whether prior to, on or subsequent to the date hereof:

(i) all lists, contracts, ancillary documents and other information that identify, describe or provide information with respect to any customers, dealers or distributors of the Assignor, its affiliates or franchisees or licensees or contractors, for products or services sold under or in connection with the Trademarks or Trademark Rights, including all lists and documents containing information regarding each customer's, dealer's or distributor's name and address, credit, payment, discount, delivery and other sale terms, and history, pattern and total of purchases by brand, product, style, size and quantity;



(ii) all agreements (including franchise agreements), product and service specification documents and operating, production and quality control manuals relating to or used in the design, manufacture, production, delivery, provision and sale of products or services under or in connection with the Trademarks or Trademark Rights;

(iii) all documents and agreements relating to the identity and locations of all sources of supply, all terms of purchase and delivery, for all materials, components, raw materials and other supplies and services used in the manufacture, production, provision, delivery and sale of products or services under or in connection with the Trademarks or Trademark Rights; and

(iv) all agreements and documents constituting or concerning the present or future, current or proposed advertising and promotion by the Assignor (or any of its affiliates, franchisees, licensees or contractors) of products or services sold under or in connection with the Trademarks or Trademark Rights.

**Trademark Agreement.** This Trademark Collateral Security and Pledge Agreement, as amended and in effect from time to time.

**Trademark License Rights.** Any and all past, present or future rights and interests of the Assignor pursuant to any and all past, present and future franchising or licensing agreements in favor of the Assignor, or to which the Assignor is a party, pertaining to any Trademarks, Trademark Registrations, or Trademark Rights owned or used by third parties in the past, present or future, including the right (but not the obligation) in the name of the Assignor or the Assignee to enforce, and sue and recover for, any breach or violation of any such agreement to which the Assignor is a party. Notwithstanding the foregoing, Trademark License Rights shall not include, and Assignor shall be deemed not have granted a security interest in, or pledged, mortgaged, assigned or otherwise transferred to Assignee, any rights or interests in any license, contract or agreement to which Assignor is a party to the extent, but only to the extent, that such a grant would, under the terms of such license, contract or agreement, result in a breach of the terms of, or constitute a default under, such license, lease, contract or agreement (other than to the extent that any such term would be rendered ineffective pursuant to 9-406, 9-407 or 9-408 of the UCC or other applicable law); provided, that immediately upon the ineffectiveness, lapse or termination of any such restriction, the Trademark License Rights shall include, and Assignor shall be deemed to have granted a security interest in, and to have pledged and mortgaged, all such rights and interests, as if such provision had never been in effect; and provided, further, that notwithstanding any such restriction, Trademark License Rights shall, to the extent such restriction does not by its terms apply thereto, include all rights incident or appurtenant to any such rights or interests and the right to receive all proceeds derived from or in connection with the sale, assignment or transfer of such rights and interests.

**Trademark Registrations.** All past, present or future federal, state, local and foreign registrations of the Trademarks, all past, present and future applications for any such registrations (and any such registrations thereof upon approval of such applications), together with the right (but not the obligation) to apply for such registrations (and prosecute such applications) in the name of the Assignor or the Assignee, and to take any and all actions

necessary or appropriate to maintain such registrations in effect and renew and extend such registrations.

**Trademark Rights.** Any and all past, present or future rights in, to and associated with the Trademarks throughout the world, whether arising under federal law, state law, common law, foreign law or otherwise, including the following: all such rights arising out of or associated with the Trademark Registrations; the right (but not the obligation) to register claims under any state, federal or foreign trademark law or regulation; the right (but not the obligation) to sue or bring opposition or cancellation proceedings in the name of the Assignor or the Assignee for any and all past, present and future infringements or dilution of or any other damages or injury to the Trademarks, the Trademark Rights, or the Associated Goodwill, and the rights to damages or profits due or accrued arising out of or in connection with any such past, present or future infringement, dilution, damage or injury; and the Trademark License Rights.

**Trademarks.** All of the trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, elements of package or trade dress, and other source and product or service identifiers, used or associated with or appurtenant to the products, services and businesses of the Assignor (other than any of the foregoing that are licensed to Assignor), that (i) are set forth on Schedule A hereto, or (ii) have been adopted, acquired, owned, held or used by the Assignor or are now owned, held or used by the Assignor, in the Assignor's business, or with the Assignor's products and services, or in which the Assignor has any right, title or interest, or (iii) are in the future adopted, acquired, owned, held and used by the Assignor in the Assignor's business or with the Assignor's products and services, or in which the Assignor in the future acquires any right, title or interest.

**Use.** With respect to any Trademark, all uses of such Trademark by, for or in connection with the Assignor or its business or for the direct or indirect benefit of the Assignor or its business, including all such uses by the Assignor itself, by any of the affiliates of the Assignor, or by any franchisee, licensee or contractor of the Assignor.

Unless otherwise provided herein, the rules of interpretation set forth in the Loan Agreement shall be applicable to this Trademark Agreement.

## II. **GRANT OF SECURITY INTEREST**

### 2.1 **Security Interest; Assignment of Marks.**

As collateral security for the payment and performance in full of all of the Obligations, the Assignor hereby unconditionally grants to the Assignee a continuing security interest in and first priority lien on the Pledged Trademarks, and pledges and mortgages (but does not transfer title to) the Pledged Trademarks to the Assignee. In addition, the Assignor has executed in blank and delivered to the Assignee an assignment of federally registered trademarks in substantially the form of Exhibit 1 hereto (the "**Assignment of Marks**"). The Assignor hereby authorizes the Assignee to complete as assignee and record with the PTO the Assignment of Marks upon the occurrence and during the continuance of an Event of Default and the proper exercise of the Assignee's remedies under this Trademark Agreement and the Loan Agreement.

## **2.2 Conditional Assignment.**

In addition to, and not by way of limitation of, the grant, pledge and mortgage of the Pledged Trademarks provided in §2.1, the Assignor grants, assigns, transfers, conveys and sets over to the Assignee the Assignor's entire right, title and interest in and to the Pledged Trademarks; provided that such grant, assignment, transfer and conveyance shall be and become of force and effect only (i) upon or after the occurrence and during the continuance of an Event of Default and (ii) either (A) upon the written demand of the Assignee at any time during such continuance or (B) immediately and automatically (without notice or action of any kind by the Assignee) upon an Event of Default for which acceleration of the Loans is automatic under the Loan Agreement or upon the sale or other disposition of or foreclosure upon the Collateral pursuant to the Loan Agreement and applicable law (including the transfer or other disposition of the Collateral by the Assignor to the Assignee or its nominee in lieu of foreclosure).

## **2.3 Supplemental to Loan Agreement.**

Pursuant to the Loan Agreement the Assignor has granted to the Assignee a continuing security interest in and lien on the Collateral (including the Pledged Trademarks). The Loan Agreement, and all rights and interests of the Assignee in and to the Collateral (including the Pledged Trademarks) thereunder, are hereby ratified and confirmed in all respects. In no event shall this Trademark Agreement, the grant, assignment, transfer and conveyance of the Pledged Trademarks hereunder, or the recordation of this Trademark Agreement (or any document hereunder) with the PTO, adversely affect or impair, in any way or to any extent, the Loan Agreement, the security interest of the Assignee in the Collateral (including the Pledged Trademarks) pursuant to the Loan Agreement and this Trademark Agreement, the attachment and perfection of such security interest under the UCC (including the security interest in the Pledged Marks), or any present or future rights and interests of the Assignee in and to the Collateral under or in connection with the Loan Agreement, this Trademark Agreement or the UCC. Any and all rights and interests of the Assignee in and to the Pledged Trademarks (and any and all obligations of the Assignor with respect to the Pledged Trademarks) provided herein, or arising hereunder or in connection herewith, shall only supplement and be cumulative and in addition to the rights and interests of the Assignee (and the obligations of the Assignor) in, to or with respect to the Collateral (including the Pledged Trademarks) provided in or arising under or in connection with the Loan Agreement and shall not be in derogation thereof.

## **III. REPRESENTATIONS, WARRANTIES AND COVENANTS**

The Assignor represents, warrants and covenants that: (i) Schedule A sets forth as of the date hereof a true and complete list of all Trademark Registrations now owned, licensed, controlled or used by the Assignor; (ii) to the best of the Assignor's knowledge, the Trademarks and Trademark Registrations are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and there is no litigation or proceeding pending concerning the validity or enforceability of the Trademarks or Trademark Registrations; (iii) to the best of the Assignor's knowledge, each of the Trademarks and Trademark Registrations is valid and enforceable; (iv) to the best of the Assignor's knowledge, there is no infringement by others of the Trademarks, Trademark Registrations or Trademark Rights; (v) to the best of the Assignor's knowledge, no claim has been made that the use of any of the Trademarks does or may violate

the rights of any third person, and to the best of the Assignor's knowledge, there is no infringement by the Assignor of the trademark rights of others; (vi) the Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks (other than ownership and other rights reserved by third party owners with respect to Trademarks that the Assignor is licensed to use), free and clear of any liens, charges, encumbrances and adverse claims, including pledges, assignments, licenses, registered user agreements and covenants by the Assignor not to sue third persons, other than the security interest and assignment created by the Loan Agreement and this Trademark Agreement and other than Permitted Encumbrances; (vii) the Assignor has the unqualified right to enter into this Trademark Agreement and to perform its terms; (viii) the Assignor has used, and will continue to use, proper statutory and other appropriate proprietary notices in connection with its use of the Trademarks; (ix) the Assignor has used, and will continue to use for the duration of this Trademark Agreement, consistent standards of quality in its manufacture and provision of products and services sold or provided under the Trademarks; (x) this Trademark Agreement, together with the Loan Agreement, will create in favor of the Assignee a valid and perfected first priority security interest in the Pledged Trademarks upon making the filings referred to in clause (xi) of this §III; and (xi) except for the filing of financing statements with the Secretary of State for the State of Illinois under the UCC and the recording of this Trademark Agreement with the PTO, no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (A) for the grant by the Assignor or the effectiveness of the security interest and assignment granted hereby or for the execution, delivery and performance of this Trademark Agreement by the Assignor, or (B) for the perfection of or the exercise by the Assignee of any of its rights and remedies hereunder.

#### **IV. INSPECTION RIGHTS**

The Assignor hereby grants to the Assignee and its employees and agents the right during business hours and at any other reasonable time to visit the Assignor's plants and facilities that manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto in accordance with the provisions of Section 4.10 of the Loan Agreement.

#### **V. NO TRANSFER OR INCONSISTENT AGREEMENTS**

Without the Assignee's prior written consent, the Assignor will not (i) mortgage, pledge, encumber or grant a security interest in any of the Pledged Trademarks, except for Permitted Encumbrances, (ii) at any time after the date hereof enter into any agreement (for example, a license agreement) that violates or constitutes a breach of the Assignor's obligations under this Trademark Agreement or the Loan Agreement, or (iii) assign, transfer or license any of the Pledged Trademarks other than in the ordinary course of business.

#### **VI. AFTER-ACQUIRED TRADEMARKS, ETC**

##### **6.1 After-acquired Trademarks.**

If, before the Obligations shall have been finally paid and satisfied in full, the Assignor shall obtain any right, title or interest in or to any other or new Trademarks, Trademark

Registrations or Trademark Rights, the provisions of this Trademark Agreement shall automatically apply thereto and the Assignor shall promptly ( but not more frequently than once during each fiscal quarter) provide to the Assignee notice in writing of any Trademark Registrations and execute and deliver to the Assignee such documents or instruments as the Assignee may reasonably request further to implement, preserve or evidence the Assignee's interest therein.

## **6.2 Amendment to Schedule.**

The Assignor authorizes the Assignee to modify this Trademark Agreement and the Assignment of Marks, without the necessity of the Assignor's further approval or signature, by amending Exhibit A hereto and the Annex to the Assignment of Marks to include any future or other Trademarks, Trademark Registrations or Trademark Rights under §II or §VI. Assignee will provide Assignor with ten Business Days prior written notice of any such amendment.

## **VII. TRADEMARK PROSECUTION**

### **7.1 Assignor Responsible.**

The Assignor shall assume full and complete responsibility for the prosecution, defense, enforcement or any other necessary or desirable actions in connection with the Pledged Trademarks, and shall hold the Assignee harmless from any and all costs, damages, liabilities and expenses that may be incurred by the Assignee in connection with the Assignee's interest in the Pledged Trademarks or any other action or failure to act in connection with this Trademark Agreement or the transactions contemplated hereby. In respect of such responsibility, the Assignor shall retain Vedder, Price, Kaufman & Kammholz or other trademark counsel reasonably acceptable to the Assignee.

### **7.2 Assignor's Duties, etc.**

The Assignor shall have the right and the duty, through Vedder, Price, Kaufman & Kammholz or other trademark counsel reasonably acceptable to the Assignee, to prosecute diligently any trademark registration applications of the Trademarks pending as of the date of this Trademark Agreement or thereafter that are used in or otherwise necessary or desirable to the Assignor's business, to preserve and maintain all rights in the Trademarks and Trademark Registrations that are used in or otherwise necessary or desirable to the Assignor's business, including the filing of appropriate renewal applications and other instruments to maintain in effect the Trademark Registrations that are used in or otherwise necessary or desirable to the Assignor's business and the payment when due of all registration renewal fees and other fees, taxes and other expenses that shall be incurred or that shall accrue with respect to any of the Trademarks or Trademark Registrations that are used in or otherwise necessary or desirable to the Assignor's business. Any expenses incurred in connection with such applications and actions shall be borne by the Assignor. The Assignor shall not abandon any filed trademark registration application, or any Trademark Registration or Trademark that is used in or otherwise necessary or desirable to the Assignor's business, without the consent of the Assignee, which consent shall not be unreasonably withheld.

### **7.3 Assignor's Enforcement Rights.**

The Assignor shall have the right and the duty to bring suit or other action in the Assignor's own name to maintain and enforce the Trademarks, the Trademark Registrations and the Trademark Rights that are used in or otherwise necessary or desirable to the Assignor's business. The Assignor may require the Assignee to join in such suit or action as necessary to assure the Assignor's ability to bring and maintain any such suit or action in any proper forum if (but only if) the Assignee is completely satisfied that such joinder will not subject the Assignee to any risk of liability. The Assignor shall promptly, upon demand, reimburse and indemnify the Assignee for all damages, costs and expenses, including legal fees, incurred by the Assignee pursuant to this §7.3.

### **7.4 Protection of Trademarks, etc.**

In general, the Assignor shall take any and all such actions (including institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate to properly maintain, protect, preserve, care for and enforce the Pledged Trademarks that are used in or otherwise necessary or desirable to the Assignor's business. The Assignor shall not take or fail to take any action, nor permit any action to be taken or not taken by others under its control, that would adversely affect the validity, grant or enforcement of the Pledged Trademarks that are used in or otherwise necessary or desirable to the Assignor's business.

### **7.5 Notification by Assignor.**

Promptly upon obtaining knowledge thereof, the Assignor will notify the Assignee in writing of the institution of, or any final adverse determination in, any proceeding in the PTO or any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the Trademarks or Trademark Registrations or the Assignor's rights, title or interests in and to the Pledged Trademarks, and of any event that does or reasonably could materially adversely affect the value of any of the Pledged Trademarks, the ability of the Assignor or the Assignee to dispose of any of the Pledged Trademarks or the rights and remedies of the Assignee in relation thereto (including but not limited to the levy of any legal process against any of the Pledged Trademarks).

## **VIII. REMEDIES**

Upon the occurrence and during the continuance of an Event of Default, the Assignee shall have, in addition to all other rights and remedies given it by this Trademark Agreement (including, without limitation, those set forth in §2.2), and the Loan Agreement, those allowed by law and the rights and remedies of a secured party under the UCC as in effect in the State of Illinois, and, without limiting the generality of the foregoing, the Assignee may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to the Assignor, all of which are hereby expressly waived, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Pledged Trademarks, or any interest that the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Pledged Trademarks all expenses incurred by the Assignee in attempting to enforce this Trademark Agreement (including all reasonable

expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in or by reference in the Loan Agreement. Notice of any sale, license or other disposition of the Pledged Trademarks shall be given to the Assignor at least ten (10) days before the time that any intended public sale or other public disposition of the Pledged Trademarks is to be made or after which any private sale or other private disposition of the Pledged Trademarks may be made, which the Assignor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, the Assignee may, to the extent permitted under applicable law, purchase or license the whole or any part of the Pledged Trademarks or interests therein sold, licensed or otherwise disposed of.

#### **IX. COLLATERAL PROTECTION**

If the Assignor shall fail to do any act that it has covenanted to do hereunder, or if any representation or warranty of the Assignor shall be breached, the Assignee, in its own name or that of the Assignor (in the sole discretion of the Assignee), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and the Assignor agrees promptly to reimburse the Assignee for any cost or expense incurred by the Assignee in so doing.

#### **X. POWER OF ATTORNEY**

If any Event of Default shall have occurred and be continuing, the Assignor does hereby make, constitute and appoint the Assignee (and any officer or agent of the Assignee as the Assignee may select in its exclusive discretion) as the Assignor's true and lawful attorney-in-fact, with full power of substitution and with the power to endorse the Assignor's name on all applications, documents, papers and instruments necessary for the Assignee to use the Pledged Trademarks, or to grant or issue any exclusive or nonexclusive license of any of the Pledged Trademarks to any third person, or to take any and all actions necessary for the Assignee to assign, pledge, convey or otherwise transfer title in or dispose of any of the Pledged Trademarks or any interest of the Assignor therein to any third person, and, in general, to execute and deliver any instruments or documents and do all other acts that the Assignor is obligated to execute and do hereunder. The Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and releases the Assignee from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by the Assignee under this power of attorney (except for the Assignee's gross negligence or willful misconduct). This power of attorney is coupled with an interest and shall be irrevocable for the duration of this Trademark Agreement.

#### **XI. FURTHER ASSURANCES**

The Assignor shall, at any time and from time to time, and at its expense, make, execute, acknowledge and deliver, and file and record as necessary or appropriate with governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things (including, without limitation, obtaining consents of third parties), as the Assignee may reasonably request or as may be necessary or appropriate in order to implement and effect fully the intentions, purposes and

provisions of this Trademark Agreement, or to assure and confirm to the Assignee the grant, perfection and priority of the Assignee's security interest in the Pledged Trademarks.

## **XII. TERMINATION**

At such time as all of the Obligations have been finally paid and satisfied in full (other than contingent indemnity Obligations and fully cash collateralized contingent reimbursement Obligations in respect of Letters of Credit that are outstanding as of the termination of this Trademark Agreement), this Trademark Agreement shall terminate and the Assignee shall, upon the written request and at the expense of the Assignor, execute and deliver to the Assignor all deeds, assignments and other instruments as may be necessary or proper to reassign and reconvey to and re-vest in the Assignor the entire right, title and interest to the Pledged Trademarks previously granted, assigned, transferred and conveyed to the Assignee by the Assignor pursuant to this Trademark Agreement, as fully as if this Trademark Agreement had not been made, subject to any disposition of all or any part thereof that may have been made by the Assignee pursuant hereto or the Loan Agreement.

## **XIII. COURSE OF DEALING**

No course of dealing between the Assignor and the Assignee, nor any failure to exercise, nor any delay in exercising, on the part of the Assignee, any right, power or privilege hereunder or under the Loan Agreement or any other 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.

## **XIV. EXPENSES**

Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and expenses incurred by the Assignee in connection with the preparation of this Trademark Agreement and all other documents relating hereto, the consummation of the transactions contemplated hereby or the enforcement hereof, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance or renewal fees, encumbrances, or otherwise protecting, maintaining or preserving the Pledged Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Pledged Trademarks, shall be borne and paid by the Assignor.

## **XV. OVERDUE AMOUNTS**

Until paid, all amounts due and payable by the Assignor hereunder shall be a debt secured by the Pledged Trademarks and other Collateral and shall following the date Assignee notifies Assignor of the amount due and payable bear, whether before or after judgment, interest at the Default Rate for Domestic Rate Loans set forth in the Loan Agreement.

## **XVI. NO ASSUMPTION OF LIABILITY; INDEMNIFICATION**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE ASSIGNEE ASSUMES NO LIABILITIES OF THE ASSIGNOR WITH RESPECT TO



ANY CLAIM OR CLAIMS REGARDING THE ASSIGNOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, ANY OF THE PLEDGED TRADEMARKS OR ANY USE, LICENSE OR SUBLICENSE THEREOF, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE. ALL OF SUCH LIABILITIES SHALL BE EXCLUSIVELY THE RESPONSIBILITY OF THE ASSIGNOR, AND THE ASSIGNOR SHALL INDEMNIFY THE ASSIGNEE FOR ANY AND ALL COSTS, EXPENSES, DAMAGES AND CLAIMS, INCLUDING LEGAL FEES, INCURRED BY THE ASSIGNEE WITH RESPECT TO SUCH LIABILITIES.

**XVII. NOTICES.**

All notices and other communications made or required to be given pursuant to this Trademark Agreement shall be in writing and shall be delivered in accordance with Section 16.6 of the Loan Agreement, addressed as follows:

(a) If to Assignee: PNC Bank, National Association  
One South Wacker Drive  
Suite 2980  
Chicago, Illinois 60606  
Attention: Peter Zimmerer  
Telephone: (312) 338-5662  
Telecopier: (312) 338-5618

with a copy to: PNC Bank, National Association  
PNC Agency Services  
One PNC Plaza  
249 Fifth Avenue  
Pittsburgh, Pennsylvania 15222  
Attention: Lisa Pierce  
Telephone: (412) 762-6442  
Telecopier: (412) 762-8672

and a copy to: Piper Rudnick  
203 North LaSalle Street  
Chicago, Illinois 60601-1293  
Attention: William L. Rawson, Esq.  
Telephone: (312) 368-7075  
Telecopier: (312) 630-5347

(b) If to Assignor: Giftco, Inc.  
700 Woodlands Parkway  
Vernon Hills, Illinois 60061-3102  
Attention: Elliott M. Resnik  
Telephone: (847) 478-8400  
Telecopier: (847) 478-1417

with a copy to:

Vedder, Price, Kaufman and Kammholz  
222 North LaSalle Street  
24<sup>th</sup> Floor  
Chicago, Illinois 60601-1003  
Attention: Guy E. Snyder, Esq.  
Telephone: (312) 609-7656  
Telecopier: (312) 609-5005

Any such notice or demand shall be effective as and when provided in Section 16.6 of the Loan Agreement.

### **XVIII. AMENDMENT AND WAIVER.**

This Trademark Agreement is subject to modification only by a writing signed by the Assignee and the Assignor, except as provided in §6.2. The Assignee shall not be deemed to have waived any right hereunder unless such waiver shall be in writing and signed by the Assignee. A waiver on any one occasion shall not be construed as a bar to or waiver of any right on any future occasion.

### **XIX. GOVERNING LAW; CONSENT TO JURISDICTION.**

**THIS TRADEMARK AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT AND SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ILLINOIS.** The Assignor agrees that any suit for the enforcement of this Trademark Agreement may be brought in the courts of the State of Illinois or any federal court sitting therein and consents to the non-exclusive jurisdiction of such court and to service of process in any such suit being made upon the Assignor by mail at the address specified in §17. The Assignor hereby waives any objection that it may now or hereafter have to the venue of any such suit or any such court or that such suit is brought in an inconvenient court.

### **XX. WAIVER OF JURY TRIAL.**

**THE ASSIGNOR WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS TRADEMARK AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER OR THE PERFORMANCE OF ANY SUCH RIGHTS OR OBLIGATIONS.** Except as prohibited by law, the Assignor waives any right which it may have to claim or recover in any litigation referred to in the preceding sentence any special, exemplary, punitive or consequential damages or any damages other than, or in addition to, actual damages. The Assignor (i) certifies that neither the Assignee nor any representative, agent or attorney of the Assignee has represented, expressly or otherwise, that the Assignee would not, in the event of litigation, seek to enforce the foregoing waivers, and (ii) acknowledges that, in entering into the Loan Agreement the Assignee is relying upon, among other things, the waivers and certifications contained in this §XX.

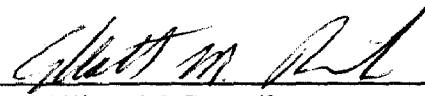
**XXI. MISCELLANEOUS.**

The headings of each section of this Trademark Agreement are for convenience only and shall not define or limit the provisions thereof. This Trademark Agreement and all rights and obligations hereunder shall be binding upon the Assignor and its respective successors and assigns, and shall inure to the benefit of the Assignee and its successors and assigns. In the event of any irreconcilable conflict between the provisions of this Trademark Agreement and the Loan Agreement, the provisions of the Loan Agreement shall control. If any term of this Trademark Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby, and this Trademark Agreement shall be construed and be enforceable as if such invalid, illegal or unenforceable term had not been included herein. The Assignor acknowledges receipt of a copy of this Trademark Agreement.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, this Trademark Agreement has been executed as of the day and year first above written.

**GIFTCO, INC.**, an Illinois corporation

By:   
Name: Elliott M. Resnik  
Title: President

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF ILLINOIS        )  
  ) ss.  
COUNTY OF COOK        )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 29<sup>th</sup> day of February, 2003, personally appeared Elliott M. Resnik to me known personally, and who, being by me duly sworn, deposes and says that he is the President of Giftco, Inc., and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Giftco, Inc. acknowledged said instrument to be the free act and deed of said corporation.

*Ruth A. Cordes*

Notary Public

My commission expires:



**EXHIBIT 1**

**ASSIGNMENT OF TRADEMARKS AND SERVICE MARKS (U.S.)**

**WHEREAS**, GIFTCO, INC., a corporation organized and existing under the laws of the State of Illinois, having a place of business at 700 Woodlands Parkway, Vernon Hills, Illinois 60061 (the "**Assignor**"), has adopted and used and is using the trademarks and service marks (the "**Marks**") identified on the Annex hereto, and is the owner of the registrations of and pending registration applications for such Marks in the United States Patent and Trademark Office identified on such Annex; and

**WHEREAS**, \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, having a place of business at \_\_\_\_\_ (the "**Assignee**"), is desirous of acquiring the Marks and the registrations thereof and registration applications therefor;

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, the Assignor does hereby assign, sell and transfer unto the Assignee all right, title and interest in and to the Marks, together with (i) the registrations of and registration applications for the Marks, (ii) the goodwill of the business symbolized by and associated with the Marks and the registrations thereof, and (iii) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Marks or the registrations thereof or such associated goodwill.

This Assignment of Trademarks and Service Marks (U.S.) is intended to and shall take effect as a sealed instrument at such time as the Assignee shall complete this instrument by inserting its name in the second paragraph above and signing its acceptance of this Assignment of Trademarks and Service Marks (U.S.) below.

**IN WITNESS WHEREOF**, the Assignor, by its duly authorized officer, has executed this assignment, as an instrument under seal, on this 28<sup>th</sup> day of February, 2003.

**GIFTCO, INC.**, an Illinois corporation

By: \_\_\_\_\_  
Name: Elliott M. Resnik  
Title: President

The foregoing assignment of the Marks and the registrations thereof and registration applications therefor by the Assignor to the Assignee is hereby accepted as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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

STATE OF ILLINOIS        )  
                                  ) ss.  
COUNTY OF COOK        )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this \_\_\_\_ day of February, 2003, personally appeared Elliott M. Resnik to me known personally, and who, being by me duly sworn, deposes and says that he is the President of Giftco, Inc., and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Giftco, Inc. acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public  
My commission expires:

ANNEX

**GIFTCO, INC. SERVICEMARK and TRADEMARK LIST**

<u>Serial No.</u>	<u>Registration No.</u>	<u>Mark</u>
78/194,243		SAVINGS ZONE
78/173,502		Design-Baker Snowman
78/173,495		Design-Caroling Snowman
78/173,479		Design-Toboggan Snowman
78/171,745		FAMILY GIFT STORES
78/090,000		SPEEDY-SEALER
78/154,603		S'MORE LOVE
78/154,976		U R 2 CUTE
78/153,601		LIMITED EDITION
78/086,743		HOLIDAY GIFT SHOP
76/397,754		THE ORIGINAL SANTA'S SECRET SHOP EST. 1968
76/398,016		FUN SERVICES
76/397,752		SIR FUN BEAR
76/436,425		RASPBERRY RAPTURE
76/397,753		SANTA'S SECRET SHOP
76/334,813		TUBE TOPPERS
76/021,488	2,643,728	TOUCH-BRIGHT
76/436,427		DARLING DIVAS
76/436,426		DARLING DIVAS HAILEY, JASMINE, SAMANTHA
76/321,092		SPEED SEAL
76/334,812		SPEEDY-SEALER
76/021,486	2,605,490	HOLIDAY STATION
76/021,487	2,602,088	TOUCH-BRIGHT
76/264,096		HOLIDAY DELIGHTS
76/017,489	2,595,332	SNOWFLAKE SHOP
76/397,751		SANTA'S WORKSHOP
75/056,245	2,090,023	HOLIDAY TOWN
75/637,328		LIMITED EDITION
75/357,468	2,587,018	GIFT AVENUE
75/432,440	2,567,705	INCENTIVEENVELOPE
75/569,569		RASPBERRY DREAMS
75/602,239	2,437,489	TRADITIONAL HOLIDAY CLASSICS
75/602,238	2,423,919	CHRISTMAS COUNTDOWN
75/569,570	2,386,357	COCONUT DREAMS
75/558,732	2,392,119	PARK AVENUE WRAP
75/472,542	2,396,254	ELEGANT ACCENTS
75/436,932	2,402,441	THE GUMDROP SHOP

Annex-1



<u>Serial No.</u>	<u>Registration No.</u>	<u>Mark</u>
75/436,930	2,309,827	SANTA'S CANDY CANE EXPRESS
75/432,855	2,451,289	HOLIDAY SURPRISE STORE
75/432,830	2,451,288	HOLIDAY SECRET BOUTIQUE75/432,829
	2,457,668	THE HOLIDAY SNOWMAN SHOP
75/432,828	2,465,986	JINGLE BELL SHOP
75/432,827	2,504,883	PRIZES GALORE
75/432,442	2,504,882	PRIZE MAGIC
75/432,441	2,504,881	REACH FOR THE STARS
75/432,439	2,412,766	PRIZEENVELOPE
75/432,438	2,507,364	AWARDENVELOPE
75/428,024	2,504,878	SURFIN FOR PRIZE
75/428,023	2,383,730	LOCKER FULL OF PRIZES
75/428,017	2,383,729	GALAXY OF PRIZES
75/428,015	2,504,877	BLAST OFF FOR PRIZES
75/380,186	2,243,831	FUN BUGS
75/349,586	2,366,690	MILLENIUM 2000 COLLECTABLES
75/349,584	2,366,689	TURN OF THE CENTURY COLLECTABLES
75/349,583	2,366,688	COLLECTION 2000
75/349,582	2,364,930	GIFTS FOR THE 21 <sup>ST</sup> CENTURY
75/245,582	2,194,262	SCHOOL DESIGNS
75/211,029	2,181,388	HOLIDAY PACKAGE PALS
75/211,028	2,219,462	SPORT PACKAGE PALS
75/151,974	2,243,127	ELEGANT ACCENTS
75/079,814	2,151,269	GINGERBREAD SHOP
75/039,365	2,133,124	HOLIDAY WISH STORE
74/564,692	1,913,883	FUN SERVICES
74/700,990	2,088,120	YOUNG SHOPPERS CLUB
74/662,826	2,019,901	LOOK-OUT
74/634,073	2,034,298	SCHOOL DESIGNS
73/225,626	1,178,603	GOOD NEIGHBOR GENERAL STORE
73/225,625	1,165,934	MOTHER'S DAY BOUTIQUE
73/822,251	1,672,416	GIFTCO
73/755,680	1,548,329	HAPPY EGGS
72/306,367	925,691	FUN SERVICES INC.
72/309,368	924,903	FUN SERVICES

Annex-2

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RECORDED: 03/24/2003

TRADEMARK  
REEL: 002693 FRAME: 0619