06-16-2004

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

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

Tab settings ⇨⇨⇨ ▼ ▼ ▼ ▼ ▼ ▼ ▼

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.

☐ 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: Ableco Finance LLC, as Agent
Internal Address: Floors 21-23
Street Address: 299 Park Avenue
City: New York State: NY Zip: 10171

☐ 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
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? ☐ Yes ☐ No

OFFICE OF PUBLIC RECORDS
2004 JUN 10 AM 10:13
FINANCE SECTION

3. Nature of conveyance:
☐ Assignment ☐ Merger
☑ Security Agreement ☐ Change of Name
☐ Other
Execution Date: 5/19/2004

4. Application number(s) or registration number(s):
A. Trademark Application No.(s) 78/349358
78/349339 78/402450

B. Trademark Registration No.(s) 1,431895 1,122084
1133390, 1987113, 2260860, 2507567

Additional number(s) attached ☑ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: LaShana C. Jimmar, Paralegal
Internal Address: Paul, Hastings, Janofsky & Walker LLP
Suite 2400
Street Address: 600 Peachtree Street
City: Atlanta State: GA Zip: 30308

6. Total number of applications and registrations involved: 15

7. Total fee (37 CFR 3.41).....$ 390.00
☑ Enclosed
☑ Authorized to be charged to deposit account

8. Deposit account number:
16-0752

DO NOT USE THIS SPACE

9. Signature.

LaShana C. Jimmar, Paralegal — Name of Person Signing
Signature
June 3, 2004 — Date

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

06/15/2004 DBYRNE 00000103 78349358
01 FC:8521 40.00 OP
02 FC:8522 350.00 OP

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

Recordation Form Cover Sheet: Trademarks

Continuation from

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

B. Trademark Registration No. (s)

2,629,986
2,714,767
2,460,184
2,076,151
2,573,780
2,387,472

ATL /1037996.1

COLLATERAL ASSIGNMENT OF TRADEMARKS (SECURITY AGREEMENT)

COLLATERAL ASSIGNMENT OF TRADEMARKS (SECURITY AGREEMENT) (this "Agreement"), dated May 19, 2004, between LERNCO, INC., a Delaware corporation with offices at 450 West 33rd Street, New York, New York 10001 ("Pledgor"), and ABLECO FINANCE LLC, a Delaware limited liability company, with an office at 299 Park Avenue, New York, New York 10171 ("Pledgee"), in its capacity as agent for the Lenders (as defined herein).

W I T N E S S E T H:

WHEREAS, Pledgee, Lerner New York, Inc. ("Lerner" and together with Pledgor and any other person now or hereafter made a party to the Loan Agreement (as defined below) as a "Borrower", collectively referred to as "Borrowers" and individually each a "Borrower"), Pledgor and the lenders from time to time party thereto (the "Lenders") have entered into that certain Term Loan and Security Agreement, dated as of the date hereof (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement" and, together with all agreements entered into in connection therewith, the "Financing Agreements"; initially capitalized terms used herein without definitions shall have the meanings given in the Loan Agreement), pursuant to which the Lenders have made a term loan to Borrowers, subject to the terms and provisions of the Financing Agreements;

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 Financing Agreements, 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.

NOW THEREFORE, for valuable consideration received and to be received, as security for the full payment and performance of the Obligations and to induce Pledgee and the Lenders to make the term loan to Borrowers, Pledgor hereby agrees as follows:

1. Grant of Security Interest. Pledgor hereby grants to Pledgee, for itself and the ratable benefit of the Lenders, 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".

2. 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 Lender relating to the Collateral, nor shall Pledgee or any Lender 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.

3. 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 all right, title and interest;

(c) except for the security interest in favor of the Senior Agent for the benefit of itself and the Senior Lenders created pursuant to the Senior Loan Agreement, none of the Collateral is subject to any prior 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 Financing Agreements, 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 prior mortgage, lien, charge, encumbrance, or security or other interest (except for the security interest in favor of the Senior Agent for the benefit of itself and the Senior Lenders created pursuant to the Senior Loan Agreement).

4. 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 Financing Agreements 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 Financing Agreements have been terminated, Pledgor shall 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.

5. 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 Financing Agreements (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 Financing Agreements and this Agreement.

6. Remedies Upon Default. Whenever any Event of Default shall occur and be continuing, Pledgee shall have, subject to the Intercreditor Agreement, all the rights and remedies granted to it in such event by the Financing Agreements, 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. Subject to the Intercreditor Agreement, 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 Financing Agreements. 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 Financing Agreements. 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 Financing Agreements or any other agreement now or hereinafter in effect.

7. 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 Financing Agreements or any other agreement or instrument delivered in connection therewith.

8. 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.

9. 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.

10. Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the Pledgor and Pledgee and their respective successors and assigns and shall inure to the benefit of each Lender; 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 Obligations or any part thereof.

11. Future Acts. Until the Obligations shall have been paid in full in cash, 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 written consent of Pledgee, except to the extent that the trademark covered by such application or registration has no material economic value.

12. 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 material economic value to Pledgor or 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 12.

13. Release. At such time as all Obligations have been paid in full in cash, and the Financing Agreements have been terminated, Pledgee will, at Pledgor's sole cost and expense, execute and deliver to Pledgor a release or other instrument as may be reasonably necessary or proper to release Pledgee'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. Patent and Trademark Office, or equivalent authority.

14. 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.

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

16. 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 New York, except that no doctrine of choice of law shall be used to apply the laws of any other State or jurisdiction.

17. Counterparts. 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. Any signatures delivered by a party by facsimile transmission or by e-mail transmission of an adobe file format document (also known as a PDF file) shall be deemed an original signature hereto. Any party delivering an executed counterpart of this Agreement by facsimile or as a PDF file also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

18. Supplement. This Agreement is a supplement to, and is hereby incorporated into, the Financing Agreements and made a part thereof.

19. Interpretation. To the extent that any covenants, or representations or warranties in any other Financing Agreement are in direct conflict with the terms of any covenants in Section 4, or representations or warranties in Section 3, the terms of this Agreement shall control. To the extent any other provisions of this Agreement are in direct conflict with the terms of any other provisions of the Financing Agreements, the terms of the Financing Agreements shall control.

20. Effect of Intercreditor Agreement. So long as the Intercreditor Agreement remains in effect, Pledgor shall not have any liability to Agent or any Lender for failing to carry out any action required under the terms of this Agreement if such action is expressly prohibited under the terms of the Intercreditor Agreement.

TRADEMARK
REEL: 002994 FRAME: 0660

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

PLEDGOR

LERNCO, INC.,
a Delaware corporation

By: _____
Name: Ronald W. Ristau
Title: President

PLEDGEE

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

By: _____
Name: _____
Title: _____

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

PLEDGOR

LERNCO, INC.,
a Delaware corporation

By:_____
Name: Ronald W. Ristau
Title: President

PLEDGEE

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

By:_____
Name: Kevin Genda
Title: Senior Vice President

EXHIBIT A

REGISTERED TRADEMARKS

LERNCO, INC.

Mark	Owner	Reg. #	Reg. Date
LERNER	Lernco, Inc.	1,431,895	3/10/87
LERNER	Lernco, Inc.	1,122,084	7/10/79
LERNER (Stylized)	Lernco, Inc.	1,133,390	4/15/80
LERNER NEW YORK	Lernco, Inc.	1,987,113	7/16/96
LERNER NEW YORK	Lernco, Inc.	2,260,860	7/13/99
NEW YORK & COMPANY	Lernco, Inc.	2,507,567	11/13/01
NEW YORK & COMPANY	Lernco, Inc.	2,629,986	10/8/02
NEW YORK JEANS	Lernco, Inc.	2,714,767	5/13/03
NY & CO	Lernco, Inc.	2,460,184	6/12/01
NY & CO.	Lernco, Inc.	2,076,151	7/1/97
NY JEANS NEW YORK & COMPANY	Lernco, Inc.	2,573,780	5/28/02
NY JEANS NEW YORK & COMPANY*	Lernco, Inc.	2,387,472	9/19/00

* Assignment to Lernco, Inc. recorded at reel/frame 2275/0927 on April 6, 2001

PENDING APPLICATIONS

LERNCO, INC.

Mark	Owner	App. #	App. Date
NEW YORK & COMPANY	Lernco, Inc.	78/349,358	1/8/04
NEW YORK & COMPANY	Lernco, Inc.	78/349,339	1/8/04
NY & CO AND DESIGN	Lernco, Inc.	78/402,450	4/15/04

ATL /1032152.3