

08-12-2002

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Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings



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

102186357

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

1. Name of conveying party(ies): Milton D. Myer Company 8-12-02
Individual(s) Association General Partnership Limited Partnership Corporation-State (Pennsylvania) Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) Name: Hilco Capital LP Internal Address: One Northbrook Place, Suite 200 Street Address: Northbrook State: IL Zip: 60062
Individual(s) citizenship Association General Partnership Limited Partnership Delaware Corporation-State Other
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

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other
Execution Date: June 19, 2002

4. Application number(s) or registration number(s): A. Trademark Application No.(s) 75/822,217 75/853,023 B. Trademark Registration No.(s) SEE ATTACHED SCHEDULE 3.13
Additional number(s) attached Yes No

6. Total number of applications and registrations involved: 13

5. Name and address of party to whom correspondence concerning document should be mailed: Name: TAMMY S. SETTLE Internal Address: Vedder, Price, Kaufman & Kammholz 222 N. LaSalle St., 24th Floor Street Address: Chicago State: IL Zip: 60601

7. Total fee (37 CFR 3.41): \$ 340.00 Enclosed Authorized to be charged to deposit account (Charge any deficiencies or credit any overpayment to the acct)
8. Deposit account number: 22-0259 (Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. TAMMY S. SETTLE Signature Date Aug 9 2002
Total number of pages including cover sheet, attachments, and document: 14

08/12/2002 TBIAZI 00000103 220259 75822217

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

01 FC:481 40.00 CH 02 FC:482 300.00 CH

TRADEMARK REEL: 002559 FRAME: 0262

Schedule 3.13
Intellectual Property

Patents

None

Trademarks

<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Status</u>
The Terrible Football	1,149,061	3-24-81	Live
MYCO	1,230,041	3-8-83	Live
Family Toy Warehouse	1,487,909	5-10-88	Live
We've Got It! Family Toy Warehouse	1,847,964	8-2-94	Dead
Family Toy Warehouse	1,847,965	8-2-94	Dead
Family Toy Warehouse	1,847,966	8-2-94	Dead
Where The Fun Is Always On Sale	2,106,852	10-21-97	Live
Stick Figure	2,125,252	12-30-97	Live
Family Fun Club Family Toy Warehouse	2,168,955	6-30-98	Live
Family Toy	2,374,714	8-8-00	Live
Itza Great Toy Co.	2,491,302	9-18-01	Live

<u>Mark</u>	<u>Serial Number/ Application Number</u>	<u>Filing Date</u>	<u>Status</u>
Helping Children Learn Piece By Piece	75/822,217	10-13-99	Dead
Operation: Kidz, A Whole New Way To Treat Our Children	75/853,023	10-18-99	Dead

TRADEMARK AND LICENSE SECURITY AGREEMENT

TRADEMARK AND LICENSE SECURITY AGREEMENT ("Agreement") dated as of June 19, 2002, made by Milton D. Myer Company, a Pennsylvania corporation, Debtor and Debtor-in-Possession ("Grantor"); and Hilco Capital LP, a Delaware limited partnership ("Hilco").

W I T N E S S E T H:

WHEREAS, Hilco and the Grantor have entered into that certain Debtor-in-Possession Loan and Security Agreement (the "Loan Agreement"), dated of even date herewith, pursuant to which Hilco, subject to the terms and conditions set forth therein, has agreed to extend certain credit facilities to the Grantor;

WHEREAS, Hilco has required, as a further condition to entering into the Loan Agreement and to secure the Obligations under the Loan Agreement and the Loan Documents, that Grantor execute this Agreement.

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

1. Defined Terms.

- (i) When used herein, (a) capitalized terms which are not otherwise defined have the meanings assigned thereto in the Loan Agreement; and (b) the following terms have the following meanings:

Collateral see Section 2.

Default means the occurrence of any of the following events: (a) any Event of Default; or (b) any warranty of any of the Grantor herein is untrue or misleading in any material respect and, as a result thereof, Hilco's security interest in any material portion of the Collateral is not perfected or Hilco's rights and remedies with respect to any material portion of the Collateral are materially impaired or otherwise materially adversely affected.

- (ii) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and

any successor statutes and regulations. Unless otherwise provided, all references to any instruments or agreements to which Hilco is a party, including, without limitation, references to the Loan Agreement and any of the Loan Documents, shall include any and all modifications or amendments thereto and any and all extensions or renewals thereof.

2. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, each of the Grantor hereby grants to Hilco a first priority security interest, having priority over all other security interests, with power of sale (to the extent permitted by applicable law) in all of such Grantor's interest in now owned or existing and hereafter acquired or arising (collectively, the "Collateral"):

- (i) trademarks, registered trademarks and trademark applications, trademark registrations, trade names, service marks, registered service marks, service mark applications, and service mark registrations, including, without limitation, the registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule A, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, and (d) all of such Grantor's rights corresponding thereto throughout the world (all of the foregoing registered trademarks, trademark applications, registered service marks and service mark applications, together with the items described in clauses (a)-(d) in this paragraph 2(i), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");
- (ii) the goodwill of such Grantor's business connected with and symbolized by the Trademarks; and
- (iii) license agreements with any other party in connection with any Trademarks or such other party's trademarks, registered trademarks, trademark applications, trademark registrations, trade names, service marks, registered service marks, service mark applications and service mark registrations, whether such Grantor is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B, and the right upon the occurrence and during the continuance of a Default to use the foregoing in connection with the enforcement of Hilco's rights under the Loan Agreement (all of the foregoing being hereinafter referred to collectively as the "Licenses").

3. Restrictions on Future Agreements. Each of the Grantor will not, without Hilco's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and such Grantor further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others

subject to its control, including licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to Hilco under this Agreement or the rights associated with those Trademarks which are necessary or desirable in the operation of such Grantor's business.

4. New Trademarks and Licenses. Each of the Grantor represents and warrants that the Trademarks and Licenses listed on Schedule A and Schedule B, respectively, include all of the Trademarks and Licenses now owned or held by such Grantor. If, prior to the termination of this Agreement, any Grantor shall (i) obtain rights to any new Trademark or Licenses or (ii) become entitled to the benefit of any new or existing Trademark or License, the provisions of Section 2 shall automatically apply thereto and such Grantor shall notify Hilco in writing (with reasonable detail) of such changes once every six months; provided that such Grantor shall, within five (5) days of approval, notify Hilco and provide Hilco with copies of any new registration of an application for a domestic Trademark by the United States Patent and Trademark Office. Each of the Grantor hereby authorizes Hilco to unilaterally modify this Agreement by (a) amending Schedule A or Schedule B, as the case may be, to include any Trademarks or Licenses which are described under Section 2, or under this Section 4, and (b) filing with the United States Patent and Trademark Office, in addition to and not in substitution for, this Agreement, a duplicate original of this Agreement containing on Schedule A or Schedule B thereto, as the case may be, the revised list of Trademarks and/or Licenses under Section 2 or this Section 4. Notwithstanding the foregoing, each of the Grantor hereby agrees that Hilco's security interest shall extend to all of the collateral listed in Section 2 and this Section 4, regardless of whether Hilco actually amends Schedule A and Schedule B.

5. Additional Parties. To the extent permitted by the Loan Agreement, at any time after the date of this Agreement, one or more additional Persons may become parties hereto by executing and delivering to Hilco a counterpart signature page to this Agreement together with supplements to the Schedules hereto setting forth all relevant information with respect to such party as of the date of such delivery. Immediately upon such execution and delivery (and without any further action), each such additional Person will become a party to, and will be bound by all the terms of, this Agreement. Without limiting the generality of the foregoing, upon such additional Person's execution of such counterpart, each reference to "Grantor" herein shall include such additional Person and such Person shall be deemed to have thereupon granted to Hilco a first priority security interest in all of its Collateral, as provided herein.

6. Royalties. Each of the Grantor hereby agrees that the use by Hilco of the Trademarks and Licenses as described in Section 2 and Section 4 and as authorized hereunder shall be, to the extent permitted by applicable law, co-extensive with such Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Hilco to such Grantor.

7. Nature and Continuation of Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall remain in full force and effect until the Obligations have been paid in full and the Loan Agreement terminated. At such time, the rights granted to Hilco hereunder shall also terminate.

8. Right to Inspect; Further Assignments and Security Interests. Hilco shall have the right, consistent with the Loan Agreement at any reasonable time and from time to time, to inspect the premises and to examine the books, records, and operations of each Grantor relating to the Trademarks and the Licenses, including, without limitation, such Grantor's quality control processes; provided, that in conducting such inspections and examinations, Hilco shall use reasonable efforts not to disturb unnecessarily the conduct of such Grantor's ordinary business operations. During the existence of an Event of Default, and subject to the terms of the Loan Agreement, each of the Grantor agrees that Hilco or a conservator appointed by Hilco, shall have the right to establish such reasonable additional product quality controls as Hilco or such conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by such Grantor under the Trademarks or the Licenses. Each of the Grantor agrees (i) not to sell or assign its respective interests in, or grant any license under, the Trademarks or the Licenses without the prior written consent of Hilco, (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof, and (iii) not to reduce the quality of such products in any material respect without the prior written consent of Hilco.

9. Duties of Grantor. Each of the Grantor shall have the duty, to the extent desirable in the normal conduct of such Grantor's business and consistent with such Grantor's current business practices: (i) to prosecute diligently any trademark applications or registrations or service mark applications or registrations that are part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, (ii) to make applications for trademarks and service marks as such Grantor deems appropriate, and (iii) to take reasonable steps to preserve and maintain all of such Grantor's rights in the trademark and service mark applications and trademark and service mark registrations that are part of the Trademarks. Any expenses incurred in connection with the foregoing shall be borne by such Grantor. No Grantor shall abandon any material trademark or service mark which is the subject of a registered trademark, service mark or application therefor and which is or shall be, in such Grantor's commercially reasonable business judgment, necessary or economically desirable in the operation of such Grantor's business. Grantor agrees to retain an experienced trademark attorney reasonably acceptable to Hilco for the filing and prosecution of all such applications and other proceedings, provided that Hilco expressly agrees that the attorneys at Faegre & Benson LLP constitute such experienced trademark attorneys. Hilco shall have no duty with respect to the Trademarks or Licenses. Without limiting the generality of the foregoing, Hilco shall be under no obligation to take any steps necessary to preserve rights in the Trademarks and Licenses against any other parties, but may do so at Hilco's option during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of the Grantor and added to the Obligations secured hereby.

10. Hilco's Right to Sue. During the existence of an Event of Default, and subject to the terms of the Loan Agreement, Hilco shall have the right, but shall not be obligated, to bring suit to enforce the Trademarks and the Licenses and, if Hilco shall commence any such suit, each of the Grantor shall, at the request of Hilco, do any and all lawful acts and execute any and all proper documents required by Hilco in aid of such enforcement. Each of the Grantor shall, upon demand, promptly reimburse and indemnify Hilco for all costs and reasonable expenses incurred by Hilco in the exercise of its rights under this Section 10 (including, without limitation, all attorneys' and paralegals' fees). If, for any reason whatsoever, Hilco is not reimbursed with

respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby.

11. Waivers. No course of dealing between any Grantor and Hilco, and no failure to exercise or delay in exercising on the part of Hilco any right, power or privilege hereunder or under the Loan Agreement or Loan Documents shall operate as a waiver of any of Hilco's rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Loan Agreement or Loan Documents shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

12. Hilco's Exercise of Rights and Remedies Upon Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that during the existence of an Event of Default, Hilco may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement or Loan Documents. Without limiting the generality of the foregoing, each Grantor acknowledges and agrees that (i) the Trademarks and the Licenses comprise a portion of the Collateral and Hilco shall have the right to exercise its rights under the Loan Agreement with respect to the Trademarks and the Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) during the existence of an Event of Default, Hilco or its nominee may use the Trademarks and Licenses to complete the manufacture of, assemble, package, distribute, prepare for sale and sell the inventory, or for any other purpose in connection with the conduct of such Grantor's business. Any proceeds of any of the Collateral may be applied by Hilco to the payment of expenses in connection with the enforcement of Hilco's rights and remedies hereunder and in connection with the Collateral, including, without limitation, reasonable attorneys' fees and legal expenses, and any balance of such proceeds may be applied by Hilco toward the payment of such of the Obligations, and in such order of application, as Hilco may from time to time elect (and, after payment in full of all Obligations, any excess shall be delivered to the Company or as a court of competent jurisdiction shall direct).

13. Intent-to-Use Applications. Notwithstanding any provision of this Agreement, the applicable Uniform Commercial Code or any other agreement or law, in no event shall any party be required or permitted to assign, convey or transfer any trademark or service mark that is the subject of an application for registration under Section 1(b) of the Lanham Act (15 U.S.C. § 1051(b)), as amended, prior to the filing of the verified statement of use under Section 1(d) of the Lanham Act (15 U.S.C. § 1051(d)), as amended.

14. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

15. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in ****[Section 5]**** and Section 4 hereof or by a writing signed by the parties hereto.

16. Cumulative Remedies; Power of Attorney. All of Hilco's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. Each of the Grantor hereby irrevocably appoints Hilco as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise to carry out the acts described below. During the existence of an Event of Default, each of the Grantor hereby authorizes Hilco to, in its sole discretion, (i) endorse such Grantor's name on all applications, documents, papers and instruments necessary or desirable for Hilco in the use of the Trademarks and the Licenses, (ii) take any other actions with respect to the Trademarks and the Licenses as Hilco reasonably deems are in its best interest, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone on commercially reasonable terms. Hilco shall take no action pursuant to subsection (i), (ii), (iii) or (iv) of this Section 16 without taking like action with respect to the entire goodwill of such Grantor's business connected with the use of, and symbolized by, such Trademarks. Each of the Grantor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 7 hereof. Each of the Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Hilco under the Loan Agreement or Loan Documents, but rather is intended to facilitate the exercise of such rights and remedies. Hilco shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which, respectively, either (y) the Trademarks may be located or deemed located, or (z) the Licenses were granted.

17. Binding Effect; Benefits. This Agreement shall be binding upon each of the Grantor and its successors and assigns, and shall inure to the benefit of Hilco, and their nominees, successors and assigns. Each of the Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for such Grantor; provided, however that no Grantor shall voluntarily assign its obligations hereunder without the prior written consent of Hilco.

18. Governing Law/Forum Selection. THIS AGREEMENT SHALL BE INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS AND DECISIONS OF THE STATE OF ILLINOIS WITHOUT GIVING EFFECT TO CONFLICTS OF LAW PRINCIPLES. EACH GRANTOR HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF COOK COUNTY, ILLINOIS AND THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, AT THE SOLE OPTION OF HILCO, OF ANY OTHER COURT IN WHICH HILCO SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY, AS WELL AS TO THE JURISDICTION OF ALL COURTS FROM WHICH AN APPEAL MAY BE TAKEN FROM SUCH COURTS, FOR THE PURPOSE OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR ANY OTHER RELATED DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREBY. EACH GRANTOR EXPRESSLY WAIVES ANY CLAIM

THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED UPON LACK OF VENUE. EACH GRANTOR FURTHER WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON IT. EACH GRANTOR HEREBY IRREVOCABLY APPOINTS CT CORPORATION SYSTEM AS EACH GRANTOR'S AGENT FOR THE PURPOSE OF ACCEPTING SERVICE OF PROCESS WITHIN THE STATE OF ILLINOIS AND EACH GRANTOR AGREES THAT THE FAILURE OF CT CORPORATION SYSTEM TO GIVE ANY NOTICE OF ANY SUCH SERVICE SHALL NOT IMPAIR OR AFFECT THE VALIDITY OF SUCH SERVICE OR OF ANY JUDGMENT RENDERED IN ANY ACTION OR PROCEEDING BASED THEREON. EACH GRANTOR AGREES AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY MESSENGER OR OVERNIGHT COURIER SERVICE (WITH DELIVERY SIGNATURE), CERTIFIED MAIL (RETURN RECEIPT REQUESTED) OR REGISTERED MAIL DIRECTED TO EACH GRANTOR AT THE ADDRESS SET FORTH IN SECTION 12.6 HEREOF OR TO CT CORPORATION AT ITS OFFICES AT 208 SOUTH LASALLE STREET, CHICAGO, ILLINOIS 60604 AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT OR THREE (3) BUSINESS DAYS AFTER THE SAME SHALL HAVE BEEN POSTED TO EITHER SUCH ADDRESS.

19. Jury Trial. EACH OF GRANTOR AND HILCO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDINGS, CLAIMS OR COUNTER-CLAIMS, WHETHER IN CONTRACT OR TORT, AT LAW OR IN EQUITY, ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS EXECUTED AND DELIVERED IN CONNECTION HEREWITH.

20. Notices. Any written notice, consent or other communication provided for in this Agreement shall be delivered in accordance with Section 10.5 of the Loan Agreement.

21. Section Headings. The section headings herein are for convenience of reference only and shall not affect in any way the interpretation of any of the provisions hereof.

22. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile shall also deliver a manually executed counterpart of this Agreement, but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

23. Right of Recordal of Security Interest. Hilco shall have the right, but not the obligation, at the expense of the Grantor, to record this Agreement in the United States Patent and Trademark Office and with such other recording authorities deemed reasonable and proper by Hilco, and Hilco shall advise the Grantor of such recordals. Upon satisfaction in full of the Obligations and termination of the Loan Agreement, the Grantor shall have the right to effect recordal of such satisfaction or termination at the expense of the Grantor in the United States Patent and Trademark Office and with such other recording authorities deemed reasonable and proper by the Grantor. Hilco and the Grantor shall cooperate to effect all such recordals hereunder.

[SIGNATURE PAGE FOLLOWS]

Signature Page to Trademark and License Security Agreement

LENDER:

Hilco Capital LP

By: *Evan Cohen*
Vice President

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

On this 18th day of JUNE, 2002, before me personally came the individual named in the above signature caption, to me known, who, being by me duly sworn, did depose and say that he is an officer of Hilco Capital LP and that he signed his name thereto by like order.

Kathleen Scheuerman
NOTARY PUBLIC



SCHEDULE A

to Trademark and License Security Agreement

TRADEMARKS

Trademark

Number

Date

Company

See Attached

SCHEDULE B

to Trademark and License Security Agreement

LICENSES

See Attached