

7-20-04

07-23-2004

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/2005)



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

REC
102797389
TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

GUND, INC.

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

Citizenship (see guidelines) _____

Execution Date(s) June 23, 2004

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

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

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Wachovia Bank, National

Internal Association

Address: _____

Street Address: 190 River Road

City: Summit

State: NJ

Country: USA Zip: 07901

- Association Citizenship _____
- General Partnership Citizenship _____
- Limited Partnership Citizenship _____
- Corporation Citizenship _____
- Other _____ Citizenship _____

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

76/481,116; 76/397,057; 76/437,327

B. Trademark Registration No.(s)

2,784,156; 2,479,541; 2,664,098

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

07/22/2004 METACHE 00000012 76481116

01 FC:0521
02 FC:0522

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

Name: Edward J. Albowicz, Esq.

Internal Address: _____

Wilentz, Goldman & Spitzer, P.A.

Street Address: 90 Woodbridge Center Drive

City: Woodbridge

State: NJ Zip: 07095

Phone Number: (732) 855-6194

Fax Number: (732) 855-6117

Email Address: Albowe@wilentz.com

6. Total number of applications and registrations involved:

19

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 490.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed Not to exceed \$490.00

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature:

Edward J. Albowicz
Signature

July 20, 2004

Date

EDWARD J. ALBOWICZ, ESQ.

Name of Person Signing

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

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

Continuation of Item 4

<u>Mark</u>	<u>Registration Number</u>
BABY GUND (Stylized) & Teddy Logo	2,846,300
BABY GUND	2,095,301
BABY GUND	1,743,975
GOTTA GETTA GUND	1,232,054
GOTTA GETTA GUND	1,483,406
GOTTA GETTA GUND	2,499,072
GOTTA GETTA GUND & UMBRELLA Design	1,510,266
GUND	1,545,472
GUND	2,375,567
GUND	2,258,978
GUND	2,543,939
GUND & Design	746,186
GUND & Bear Design	1,546,555

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT is made on the 23 day of June, 2004 by and between GUND, INC., a New Jersey corporation, having its principal office at One Runyons Lane, Edison, New Jersey 08817 (the "Assignor") and WACHOVIA BANK, NATIONAL ASSOCIATION, having an office at 190 River Road, Summit, New Jersey 07901 (the "Assignee").

WITNESSETH:

WHEREAS, Assignor has executed and delivered a certain Amended and Restated Loan Agreement dated March 30, 1999 with the Assignee (as has been, is being and may further be amended, restated and/or extended from time to time, the "Loan Agreement"), a certain Amended and Restated Promissory Note in the original principal amount of \$5,000,000 in favor of the Assignee dated March 30, 1999 (as amended, restated, modified and/or replaced from time to time, the "Note") and other loan documents executed in connection therewith (all of which are collectively referred to as the "Loan Documents") to secure loans by Assignee to Assignor in the aggregate amount of \$5,000,000; and

WHEREAS, the Assignor owns the United States trademark applications and trademarks listed in Schedule A hereto, along with the good-will of the Assignor to which such trademark applications and trademarks relate ("Trademarks"); and

WHEREAS, pursuant to the Loan Agreement, the Assignor is required to and has conveyed and granted to Assignee a security interest in, among other things, all right, title and interest of the Assignor in, to and under all of the Assignor's said Trademarks.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor does hereby absolutely grant to Assignee security interest in all of the Assignor's right, title and interest in, to and under the following, whether presently existing or hereafter arising or acquired:

- (a) Each of the Trademarks.

Said grant of security interest includes, without limitation, all proceeds thereof, the right to sue for past, present, and future infringements thereof and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof.

- 1) Assignor covenants and warrants that:

(a) it is the true and lawful exclusive owner of all the Trademarks listed on Schedule A;

(b) The Trademarks are subsisting and have not been adjudged invalid or unenforceable;

(c) Each of the Trademarks is valid and enforceable;

(d) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses, registered user agreements, and covenants by Assignor not to sue third persons, other than the security interest to Assignee pursuant to this Agreement except that Assignor herein discloses that it has an active BABYGUND licensing program;

(e) Assignor has the unqualified right to enter into this Agreement and perform its terms;

(f) Assignor will use its best efforts for the duration of this Agreement, to give proper statutory notice in connection with its use of the Trademarks;

(g) Assignor has used, and will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture or use of products sold under the Trademarks;

(h) The Assignor hereby agrees not to divest itself of any right under any Trademark, which divestiture is reasonably likely to have a material adverse effect on Assignor's business, its properties, or its ability to perform its obligations under the Loan Agreement; and

(i) The Assignor agrees to promptly, upon learning thereof, furnish Assignee in writing all pertinent information available to the Assignor with respect to any infringement or other violation of the Assignor's rights in any Trademark, which infringement or violation is reasonably likely to have a material adverse effect on the Assignor, its properties or its ability to perform its obligations under the Loan Agreement and other Loan Documents (as defined in the Loan Agreement). The Assignor further agrees to prosecute any Persons infringing upon any Trademark to the extent such infringement could have a material adverse affect on the Assignor, its properties or its ability to perform its obligations under the Loan Agreement or other Loan Documents (the "Obligations").

- 2) Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement which is materially inconsistent with Assignor's obligations under this Agreement, without Assignee's prior written consent, such consent not to be unreasonably withheld or delayed.
- 3) If, before the Obligations have been satisfied in full, any trademark application identified in Schedule A shall mature into a trademark registration, Assignor shall obtain title to any new registration, the provisions hereof shall automatically apply thereto and Assignor shall give to Assignee prompt notice thereof in writing.
- 4) Upon the occurrence of any Event of Default and so long as same continues:
 - a) Assignee shall have, in addition to all other rights and remedies given to it by this Agreement, the Loan Agreement, and other the Loan Documents, those rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in New Jersey in which the Trademarks may be located; and
 - b) Assignee may, in addition to any other remedies which may be available to Assignee, without being deemed to have made an election of remedies, upon demand of performance and after thirty (30) business days written notice (except as may be set forth below) and with public advertisement, sell at public or private sale (or, to the extent required by law, otherwise realize upon in a commercially reasonable manner), all or from time to time, any of the Trademarks, or any interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all reasonable expenses (including all reasonable expenses for broker's fees and legal services), may apply the residue of such proceeds to the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Assignor. Notice of any sale or other disposition of the Trademarks shall be given to Assignor at least thirty (30) business days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which notice Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right or equity of redemption on the part of Assignor, which right and equity of redemption are hereby waived and released.
- 5) At such time as Assignor shall completely satisfy all of the Obligations, this Agreement shall terminate and Assignee shall execute and deliver to Assignor at Assignor's expense all termination statements, releases and

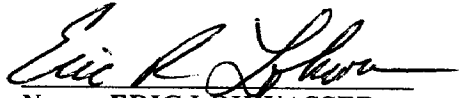
other instruments as may be necessary or proper to re-vest in Assignor full unencumbered title to the Trademarks, subject to any disposition thereof which may have been made by Assignee pursuant hereto and in accordance with the terms hereof.

- 6) Any and all reasonable fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses incurred by Assignee in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Trademarks, in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, or in the enforcement by Assignee of any of its rights or remedies under this Agreement, the Loan Agreement or any other Loan Document shall be borne and paid by Assignor on demand by Assignee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate of interest chargeable pursuant to the Loan Agreement upon an Event of Default.
- 7) Assignor shall have the duty, which duty shall be reasonable and consistent with Assignor's prior such actions, to prosecute diligently any actions for or in connection with Trademarks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full, to make federal application on registrable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings and to do any and all acts which are reasonably necessary or desirable to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with the Trademarks shall be borne by Assignor. The Assignor shall not abandon any Trademarks without the consent of Assignee, which consent shall not be unreasonably withheld or delayed.
- 8) Assignor shall have the right to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Trademarks, in which event Assignee may, if necessary, be joined as a nominal party to such suit if Assignee shall have been satisfied that it is not incurring any risk of liability because of such joinder. Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all damages, costs and expenses, including reasonable attorneys' fees, incurred by Assignee in the fulfillment of the provisions of this paragraph. The obligations of the Assignor under this paragraph shall survive the termination of this Agreement.
- 9) Following the occurrence and during the continuation of an Event of Default, Assignor hereby authorizes and empowers Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to anyone else, or necessary for Assignee to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Agreement.
- 10) If Assignor fails to comply with any of its obligations hereunder, Assignee may do so in Assignor's name or in Assignee's name, but at Assignor's expense, and Assignor hereby agrees to reimburse Assignee in full for all expenses, including reasonable attorneys' fees, incurred by Assignee in protecting, defending and maintaining the Trademarks.
- 11) No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Loan Agreement, or under any Loan Document 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.
- 12) All of Assignee's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Agreement, or by any other agreement(s) or by law, shall be cumulative and may be exercised singly or concurrently.

- 13) The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and 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.
- 14) This Agreement is subject to modification only by a writing signed by the parties, except as provided elsewhere herein.
- 15) The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.
- 16) The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of New Jersey.
- 17) THE PARTIES HERETO AGREE TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN NEW JERSEY IN CONNECTION WITH ANY MATTER ARISING HEREUNDER, INCLUDING THE COLLECTION AND ENFORCEMENT HEREOF. THE ASSIGNOR AND ASSIGNEE EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE ACTIONS OF ASSIGNEE. THIS WAIVER IS MADE KNOWINGLY AND IN CONSIDERATION OF THE ADVANCES MADE UNDER THE LOAN AGREEMENT.
- 18) This Agreement, the Loan Agreement and the other Loan Documents embody the entire agreement and understanding between the Assignor and Assignee and supersedes all prior agreements and understandings relating to the subject matter hereof and thereof.

WITNESS the execution hereof under seal as of the day and year first above written.

ATTEST:



Name: ERIC LOHWASSER

Title: Assistant Secretary

GUND, INC.

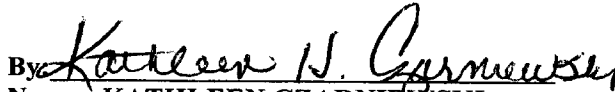


BY:

Name: BRUCE S. RAIFFE

Title: President

WACHOVIA BANK, NATIONAL ASSOCIATION



Name: KATHLEEN CZARNIEWSKI

Title: Senior Vice President

STATE OF NEW JERSEY)
 : ss.
COUNTY OF _____)

I CERTIFY that on June ~~15~~ 2004, BRUCE S. RAIFFE personally came before me and stated under oath to my satisfaction that:

- (a) this person is the President of Gund, Inc., the corporation named in this Instrument;
- (b) this Instrument was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (c) this person knows the proper seal of the corporation which was affixed to this Instrument;
- (d) this person signed this acknowledgement to attest to the truth of these facts.

Signed and sworn to before me on
June ~~15~~, 2004

(sign) Marion L. Ortman (notary)
(type name) MARION L. ORTMANN

MARION L. ORTMANN
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES APR. 16, 2006

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