

02-18-2000

FORM PTO-1084 (Rev. 8-83) MRD 1-18-00 CMB No. 0801-0011 (exp. 4/94)

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U.S. DEPARTMENT OF COMMERCE 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):

Nat Sherman, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: December 16, 1999

2. Name and address of receiving party(ies)

Name: Merrill Lynch Business Financial Services, Inc.

Internal Address:

Street Address: 222 North LaSalle Street Chicago IL 60601

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, 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

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

A. Trademark Application No.(s)

see attached

B. Trademark Registration No.(s)

see attached

Additional numbers attached? Yes No

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

Name: Federal Research Corp

Internal Address:

Street Address: 400 Seventh St NW

Suite 101

City: Washington State: DC ZIP: 20004

6. Total number of applications and registrations involved:

11

7. Total fee (37 CFR 3.41): \$2910.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

FC:481 40.00 DP FC:482 250.00 DP

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.

Panel J. Sudberg Name of Person Signing

Signature

1/12/00 Date

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

10

**EXHIBIT B TO
PATENT, TRADEMARK AND LICENSE MORTGAGE**

U.S. Trademarks, Trade Names and Service Marks

Mark	Status	Application #	Registration	Filed	Registration Date	Renewed	Goods	Term	Renewal Date
Cigaretillos	Registered	75-038,770	2,052,214	1/3/96	4/15/97		International Class 34	10 years	4/15/2007
Fantasia	Registered	75-039,744	2,015,795	1/3/96	11/12/96		International Class 34	10 years	11/12/06
Mardi Gras	Registered	74-058,553	1,639,917	5/14/90	4/2/91		International Class 34	10 years	04/02/01
MCD	Registered	75-039,748	2,036,884	1/3/96	2/11/97		International Class 34	10 years	2/11/07
Nat Sherman	Registered	75-039,745	2,019,294	1/3/96	11/26/96		International Class 34	10 years	11/26/06
Nat Sherman Naturals	Pending	75-734,207		6/23/99			International Class 34		
Salvador Rogriguez and Design	Registered		676,221		3/31/59				
Sherman's	Registered	75-039,746	2,128,089	1/3/96	1/13/98		International Class 34		
Sherman's	Registered	71-587,132	548,046	11/1/49	9/11/51	9/11/91	International Class 34 - cigarettes		
The Original Natural	Pending	75/734,208		6/23/99			International Class 34		
Tobacconist To The World	Registered	126,216	1,109,739	5/11/77	12/19/78	12/19/98			

**PREPARED BY AND
WHEN RECORDED MAIL TO:**

Steven Bright, Esq.
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Schwartz LLC
33 West Monroe Street
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Chicago, Illinois 60603

**PATENT, TRADEMARK AND LICENSE MORTGAGE -
NAT SHERMAN, INC.**

THIS PATENT, TRADEMARK AND LICENSE MORTGAGE (the "Mortgage") made as of December 16, 1999, by **NAT SHERMAN, INC.**, with offices at 629 West 54th Street, New York, New York 10019 ("Mortgagor"), in favor of **MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.**, with offices at 222 North LaSalle Street, Chicago, Illinois 60601 ("Mortgagee"):

W I T N E S S E T H:

WHEREAS, Mortgagor and Mortgagee are parties to a certain Loan and Security Agreement of even date herewith (said loan and security agreement, as may be amended, modified and/or restated from time to time shall hereinafter be referred to as the "Loan Agreement"), which Loan Agreement provides: (i) for Mortgagee to extend credit to or for the account of Mortgagor; and (ii) for the grant by Mortgagor to Mortgagee of a security interest in all of Mortgagor's assets, including, without limitation, its patents, patent applications, trademarks, trademark applications, trade names, service marks, service mark applications, goodwill and licenses;

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

1. Incorporation of Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

2. Mortgage of Patents, Trademarks and Licenses. To secure the complete and timely satisfaction of all of the "Obligations" (as defined in the Loan Agreement), Mortgagor hereby grants, bargains, assigns, mortgages, pledges, sells, creates a security interest in, transfers and conveys to Mortgagee, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale, to the extent permitted by law, all of Mortgagor's right, title and interest in and to all of its now existing and hereafter created or acquired:

- (i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on Exhibit A attached hereto and hereby made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, damages and payments now and hereafter due or payable under or with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d) of this subsection 2(i), are sometimes hereinafter referred to individually as a "Patent" and, collectively, as the "Patents");
- (ii) trademarks, trademark registrations, trademark applications, trade names, service marks, service mark registrations and service mark applications, including, without limitation, the trademarks, trade names, service marks and applications and registrations thereof listed on Exhibit B attached hereto and hereby made a part hereof, and (a) renewals or extensions, thereof, (b) all income, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names, service marks and applications and registrations thereof, together with the items described in clauses (a) - (d) of this subsection 2(ii), are sometimes hereinafter referred to individually as a "Trademark" and, collectively, as the "Trademarks");
- (iii) to the extent assignable, all license agreements with respect to any of the Patents or the Trademarks or any other patent, trademark, service mark or any application or registration thereof or any other trade name between Mortgagor and any other party, whether Mortgagor is a licensor or licensee under any such license agreement (all of the foregoing license agreements and Mortgagor's rights thereunder are hereinafter referred to collectively as the "Licenses"); and
- (iv) the goodwill of Mortgagor's business connected with, and symbolized by, the Trademarks.

3. Warranties and Representations. Mortgagor warrants and represents to Mortgagee that:

- (i) The Patents, Trademarks and Licenses have not been adjudged invalid or unenforceable and have not been canceled, in whole or in part, and are presently subsisting;
- (ii) Each of the Patents, Trademarks and Licenses is valid and enforceable;
- (iii) Mortgagor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, Trademarks and Licenses, free and clear of any liens, charges and encumbrances, including, without limitation, licenses, shop rights and covenants by Mortgagor not to sue third persons;

- (iv) Mortgagor has adopted, used and is currently using all of the Trademarks;
- (v) Mortgagor has no notice of any suits or actions commenced or threatened with reference to the Patents, Trademarks or Licenses; and
- (vi) Mortgagor has the unqualified right to execute and deliver this Mortgage and perform its terms and has entered or will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants contained herein.

4. Restrictions on Future Agreements. Mortgagor agrees that until the Obligations shall have been satisfied in full, Mortgagor shall not sell or assign its interest in, or grant any license under, the Patents, Trademarks or Licenses, or enter into any other agreement with respect to the Patents, Trademarks or Licenses which is inconsistent with Mortgagor's obligations under this Mortgage, without the prior written consent of Mortgagee, and Mortgagor further agrees that it shall not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to Mortgagee under this Mortgage; provided, however, that nothing in this Section 4 shall be deemed to limit Mortgagor's ability to grant or obtain rights under license agreements pertaining to the Patents, Trademarks or Licenses entered into by Mortgagor after the date hereof in the ordinary course of Mortgagor's business, which license agreements and Mortgagor's rights thereunder shall constitute Licenses and be subject to the terms of this Mortgage. Mortgagor and Mortgagee mutually acknowledge that Mortgagor may wish to license the use of some or all of the Patents in foreign countries. Mortgagee hereby consents to such licenses in foreign countries done in the ordinary course of business.

5. New Patents, Trademarks and Licenses. Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, the Patents and Trademarks listed on Exhibits A and B, respectively, constitute all of the Patents and Trademarks now owned by Mortgagor. If, before Mortgagor's Obligations shall have been satisfied in full, Mortgagor shall (i) become aware of any existing Patents, Trademarks or Licenses of which Mortgagor has not previously informed Mortgagee, (ii) obtain rights to any new patentable inventions, Patents, Trademarks or Licenses, or (iii) become entitled to the benefit of any Patents, Trademarks, or Licenses or any improvement on any Patent, the provisions of this Mortgage shall automatically apply thereto and Mortgagor shall give to Mortgagee prompt written notice thereof. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibits A and B, as applicable, to include any such Patents and Trademarks.

6. Royalties; Terms. The term of the mortgages granted herein shall extend until the earlier of: (i) the expiration of each of the respective Patents, Trademarks and Licenses assigned hereunder; or (ii) the Obligations have been paid in full. Upon the occurrence of an Event of Default (as defined in the Loan Agreement), Mortgagor agrees that the use by Mortgagee of all Patents, Trademarks and Licenses shall be worldwide and without any liability for royalties or other related charges from Mortgagee to the Mortgagor.

7. Mortgagee's Right to Inspect. Mortgagee shall have the right, at any time and from time to time during normal business hours and prior to payment in full of the Obligations, to inspect Mortgagor's premises and to examine Mortgagor's books, records and operations, including, without limitation, Mortgagor's quality control processes. Mortgagor agrees (i) 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 (ii) to provide Mortgagee, upon Mortgagee's request from time to time, with a certificate of an officer of Mortgagor certifying Mortgagor's compliance with the foregoing. Upon the occurrence of an Event of Default, Mortgagor agrees that Mortgagee, or an agent appointed by Mortgagee, shall have the right to establish such additional product quality controls as Mortgagee, or said agent, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold, leased or licensed by Mortgagor under the Trademarks.

8. Release of Mortgage. This Mortgage is made for collateral purposes only. Upon payment in full of the Obligations, Mortgagee shall execute and deliver to Mortgagor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary or proper to re-vest in Mortgagor full title to the Patents, Trademarks and Licenses, subject to any disposition thereof which may have been made by Mortgagee pursuant hereto or pursuant to the Loan Agreement.

9. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and costs, incurred by Mortgagee in connection with 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 in protecting, maintaining or preserving the Patents, Trademarks and Licenses, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, Trademarks and Licenses, shall be borne by and paid by Mortgagor on demand by Mortgagee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate prescribed in the Loan Agreement.

10. Duties of Mortgagor. Mortgagor shall have the duty (i) to prosecute diligently any patent, trademark or service mark applications pending as of the date hereof or thereafter until the Obligations shall have been paid in full, (ii) to make application on unpatented but patentable inventions and on trademarks and service marks, as appropriate, and to the extent commercially reasonable and consistent with the corporation's prior practices and (iii) to preserve and maintain all rights in the Patents, Trademarks and Licenses. Any expenses incurred in connection with Mortgagor's obligations under this Section 10 shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a patent, trademark or service mark application, or abandon any pending patent application, or any other Patent, Trademark or License without the consent of Mortgagee.

11. Mortgagee's Right to Sue. Mortgagee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents, Trademarks and Licenses, and, if Mortgagee shall commence any such suit, Mortgagor shall, at the request of Mortgagee, do any and all lawful acts and execute any and all proper documents required by Mortgagee in aid of such enforcement and Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all reasonable costs and expenses incurred by Mortgagee in the exercise of its rights under this Section 11.

12. Waivers. No course of dealing between Mortgagor and Mortgagee, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee, any right, power or privilege hereunder or under the Loan 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.

13. Severability. The provisions of this Mortgage 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 Mortgage in any jurisdiction.

14. Modification. This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney; Effect on Financing Agreement. All of Mortgagee's rights and remedies with respect to the Patents, Trademarks and Licenses, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Upon the occurrence of an Event of Default, Mortgagor hereby authorizes Mortgagee to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its sole discretion, as Mortgagor's true and lawful attorney-in-fact, with power to: (i) endorse Mortgagor's name on all applications, documents, papers and instruments necessary or desirable for Mortgagee in the use of the Patents, Trademarks and

Licenses; (ii) take any other actions with respect to the Patents, Trademarks and Licenses as Mortgagee deems to be in the best interest of Mortgagee; (iii) grant or issue any exclusive or non-exclusive license under the Patents, Trademarks or Licenses to anyone; or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks or Licenses to anyone. Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Obligations shall have been paid in full and have been terminated. Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee shall have, in addition to all other rights and remedies given it by the terms of this Mortgage and the Loan 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 the Patents, Trademarks or Licenses may be located.

16. Binding Effect; Benefits. This Mortgage shall be binding upon the Mortgagor and its respective successors and assigns, and shall inure to the benefit of Mortgagee, its successors, nominees and assigns.

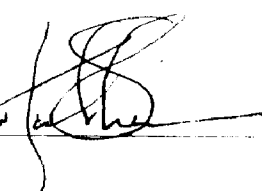
17. Governing Law. This Mortgage shall be deemed a contract made under the internal laws of the State of Illinois and for all purposes shall be construed in accordance with the laws of the State of Illinois.

18. Headings. Section headings used herein are for convenience only and shall not modify the provisions which they precede.

19. Further Assurances. Mortgagor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Mortgagee shall reasonably request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage in favor of Mortgagee as of the date first written above.

NAT SHERMAN, INC.

By: Joel Sherman 

Title: President

ATTEST:

By: 

Title: VP

EXHIBIT A TO PATENT, TRADEMARK AND LICENSE MORTGAGE

Patents

NONE

EXHIBIT B TO PATENT, TRADEMARK AND LICENSE MORTGAGE

Trademarks, Trade Names and Services Marks

SEE ATTACHED LIST

**EXHIBIT B TO
PATENT, TRADEMARK AND LICENSE MORTGAGE**

U.S. Trademarks, Trade Names and Service Marks

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