

4-19-00

05-11-2000



To the Honorable Commissioner of Patents and Trademarks

original documents or copy thereof.

1. Name of conveying party(ies):  
 Book Stacks Unlimited, Inc.  
 1300 East 9<sup>th</sup> Street, Suite 1810  
 Cleveland, Ohio 44114

[ ] Individual(s) [ ] Association  
 [ ] General Partnership [ ] Limited Partnership  
 [x] Corporation: Ohio  
 [ ] Other:

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

3. Nature of conveyance:  
 [x] Assignment [ ] Merger  
 [ ] Security Agreement [ ] Change of Name  
 [ ] Other:

Execution Date: October 27, 1999

101353232

Name: barnesandnoble.com llc  
 Street Address: 76 Ninth Avenue, 11<sup>th</sup> Floor  
 Attn:  
 City: New York State: New York Zip Code: 10011

[ ] Individual(s) citizenship: \_\_\_\_\_  
 [ ] Association \_\_\_\_\_  
 [ ] General Partnership \_\_\_\_\_  
 [ ] Limited Partnership \_\_\_\_\_  
 [ ] Corporation \_\_\_\_\_

[x] Other: Delaware Limited Liability Company

If assignee is not domiciled in the United States, a domestic representative designation is attached: [ ] Yes [x] No  
 (Designations must be a separate document from Assignment)  
 Additional name(s) & address(es) attached? [ ] Yes [x] No

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COPY/FINANCE

4. Application number(s) or registration number(s):  
 A. Trademark Application No.(s)

B. Trademark Registration No.(s)  
 2,223,338

Additional numbers attached? [ ] Yes [x] No

5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: Todd Braverman, Esq.  
 Internal Address: Robinson, Silverman, Pearce, Aronsohn & Berman, LLP  
 Street Address: 1290 Avenue of the Americas  
 City: New York State: New York Zip: 10104

6. Total number of applications and registrations involved: [ 1 ]  
 7. Total fee (37 CFR 3.41): \$40.00  
 [x] Enclosed  
 [ ] Authorized to be charged to deposit account  
 8. Deposit account number  
 (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.*

Todd Braverman, Esq.  
Name of Person Signing

Todd Braverman  
Signature

4/19/00  
Date

Total number of pages comprising cover sheet: [ 1 ]

Do not detach this portion

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

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

## ASSIGNMENT

WHEREAS, Book Stacks Unlimited, Inc., an Ohio corporation ("Assignor"), is the owner of all right, title and interest in and to the trademark BOOKS.COM and Registration No. 2,223,338 thereof in the United States Patent and Trademark Office (collectively, the "Mark") and the goodwill of the business associated with the Mark;

WHEREAS, barnesandnoble.com llc ("Assignee"), a Delaware limited liability company with a place of business at 76 Ninth Avenue, New York, New York 10011, desires to acquire the Mark, and the goodwill of the business associated with the Mark; and

WHEREAS, Assignor is a wholly-owned subsidiary of Cendant Membership Services, Inc. ("Cendant").

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby assign unto Assignee the entire right, title and interest in and to the Mark, together with the goodwill of the business symbolized thereby, and 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 said Mark or the registration thereof or such associated goodwill.

Assignor agrees to execute and deliver at the reasonable request of Assignee, all papers, instruments, and assignments, and to perform any other reasonable acts the Assignee may reasonably require in order to vest all of Assignor's rights, title and interest in and to the Mark in the Assignee and/or to provide evidence to support any of the foregoing in the event such evidence reasonably is deemed necessary by the Assignee, to the extent such evidence is in the possession or control of Assignor; *provided*, that Assignee shall reimburse Assignor for all costs associated with such request, which Assignee shall pay to Assignor within ten (10) days of its receipt of an invoice from Assignor.

In consideration of the assignment of the Mark, together with the goodwill of the business symbolized thereby, Assignee shall, seven (7) days following the Effective Date (as hereinafter defined), pay to Assignor, the lump sum of twenty-five thousand dollars (\$25,000).

Each of Assignor and Cendant on the one hand, and Assignee on the other, represents and warrants that: (a) it has the full authority to enter into and fully perform its obligations under this Assignment, (b) the execution, delivery and performance of this Assignment by it does not conflict with any other agreement to which it is a party and/or by which it is bound; (c) it shall not enter into any agreement with any third party that is inconsistent with the provisions of this Assignment, and (d) it shall comply with all applicable laws and regulations applicable to its activities in furtherance of this Assignment.

Assignor further represents and warrants to Assignee that Assignor (i) is the sole and exclusive owner of the Mark, (ii) neither this Assignment nor, to Assignor's knowledge, the

Mark, infringe or will infringe on or violate the copyrights, trademark rights, rights of contract or other rights of any third party, and (iii) shall refrain in the future from adopting or seeking registration of any term that is likely to cause confusion with the Mark.

Assignor agrees to defend, indemnify and hold harmless Assignee, its subsidiaries, affiliates, parents and their respective successors, assigns, officers, directors, employees and agents from and against any judgment, loss, damage, cost or expense (including reasonable attorneys' fees) arising out of or in connection with any actual or threatened claim, suit, action or proceeding of any kind by any third party with respect to (i) any breach or alleged breach of the representations, covenants, agreements or obligations by Assignor hereunder; (ii) in the case of any intellectual property dispute concerning the Mark where the cause of action arose on or prior to the date hereof, or (iii) Assignor's business or operations with respect to matters occurring on or prior to the date that is six (6) months after the Effective Date.

Assignee agrees to defend, indemnify and hold harmless Assignor, its subsidiaries, affiliates, parents and their respective successors, assigns, officers, directors, employees and agents from and against any judgment, loss, damage, cost or expense (including reasonable attorneys' fees) arising out of or in connection with any actual or threatened claim, suit, action or proceeding of any kind by any third party with respect to (i) any breach or alleged breach of the representations, covenants, agreements or obligations by Assignee hereunder; or (ii) in the case of any intellectual property dispute concerning the Mark where the cause of action arose after the date hereof.

In seeking indemnification hereunder, the party seeking indemnification shall give the indemnifying party (i) reasonably prompt notice of the relevant claim; *provided, however*, that failure to provide such notice shall not relieve the indemnifying party from its liability or obligation hereunder except to the extent of any material prejudice directly resulting from such failure; (ii) reasonable cooperation, at the expense of the indemnifying party, in the defense of such claim; and (iii) the right to control the defense and settlement of any such claim; *provided, however*, that the indemnifying party shall not, without the prior written approval of party seeking indemnification, settle or dispose of any claims in a manner that adversely affects rights or interest of the party seeking indemnification. The party seeking indemnification shall have the right to participate in the defense at its expense.

**LIMITATION OF LIABILITY.** IN NO EVENT SHALL ANY PARTY TO THIS ASSIGNMENT HAVE ANY LIABILITY TO ANY OTHER PARTY UNDER THIS ASSIGNMENT FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. ALL PARTIES UNDERSTAND AND AGREE THAT THE PAYMENT AS PROVIDED HEREIN REFLECTS, AND IS SET IN RELIANCE UPON, THIS ALLOCATION OF RISK AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES AND OTHER LIMITATIONS

OF LIABILITY SET FORTH IN THIS ASSIGNMENT. IN NO EVENT SHALL ANY PARTY'S AGGREGATE LIABILITY UNDER THIS ASSIGNMENT AND THE DOMAIN NAME TRANSFER AGREEMENT (AS HEREINAFTER DEFINED), COLLECTIVELY, TO ANY PARTY TO THIS AGREEMENT OR ANY OTHER PARTY EXCEED SIX HUNDRED THOUSAND DOLLARS (\$600,000) IN THE AGGREGATE.

Cendant hereby guarantees all of Assignor's obligations hereunder, including without limitation, Assignor's indemnification obligations herein.

It is mutually understood and agreed by Assignor and Assignee that the effectiveness of this Agreement is expressly contingent upon (i) the execution of that certain Affiliation Agreement dated October 27, 1999 to be entered into by Assignee, Cendant Member Services, Inc., Netmarket Group Inc., and Days Inn of America, Inc., (ii) Assignor's receipt of Assignee's payment under that certain Domain Name Transfer and Sale Agreement dated October 27, 1999 (the "Domain Name Transfer Agreement") to be entered into by Assignor, Assignee and Cendant Member Services, Inc., and (iii) Assignor's receipt of Assignee's payment under that certain Marketing Agreement dated October 27, 1999 to be entered into by Assignor and Assignee.

Executed at New York, New York this 27th day of October 1999 (the "Effective Date")

BOOK STACKS UNLIMITED, INC.

BARNESANDNOBLE.COM LLC

By: Peter McGonagle

By: \_\_\_\_\_

Name: Peter McGonagle

Name: \_\_\_\_\_

Title: Senior Vice President

Title: \_\_\_\_\_

CENDANT MEMBERSHIP SERVICES, INC.

By: Peter McGonagle

Name: Peter McGonagle

Title: Senior Vice President

OF LIABILITY SET FORTH IN THIS ASSIGNMENT. IN NO EVENT SHALL ANY PARTY'S AGGREGATE LIABILITY UNDER THIS ASSIGNMENT AND THE DOMAIN NAME TRANSFER AGREEMENT (AS HEREINAFTER DEFINED), COLLECTIVELY, TO ANY PARTY TO THIS AGREEMENT OR ANY OTHER PARTY EXCEED SIX HUNDRED THOUSAND DOLLARS (\$600,000) IN THE AGGREGATE.

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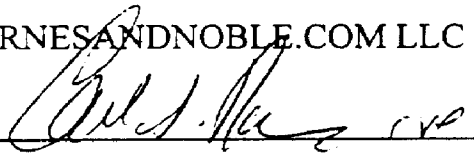
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Executed at New York, New York this 27th day of October 1999 (the "Effective Date")

BOOK STACKS UNLIMITED, INC.

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

BARNESANDNOBLE.COM LLC

By:   
Name: CARL S. ROSENDORF  
Title: SENIOR VICE PRESIDENT

CENDANT MEMBERSHIP SERVICES, INC.

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