

08-03-2000



HEET

ILY

Docket No.:

41092/20861

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To the Honorable Commissioner of ,

101421982

the attached original documents or copy thereof.

1. Name of conveying party(ies):

MySeasons.com, Inc.

Handwritten: 6.27.00

- Individual(s)
- General Partnership
- Corporation-State Delaware
- Other

- Association
- Limited Partnership

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

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

Execution Date: 5/16/2000

2. Name and address of receiving party(ies):

Name: National Gardening Association, Inc.

Internal Address: _____

Street Address: 180 Flynn Avenue

City: Burlington State: VT ZIP: 05401

Individual(s) citizenship _____

Association _____

General Partnership _____

Limited Partnership _____

Corporation-State Vermont

Other _____

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

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

A. Trademark Application No.(s)

75/829335
76/051515

B. Trademark Registration No.(s)

Additional numbers Yes No

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

Name: Mitzi G. Cherry

Internal Address: Thompson Coburn LLP

Street Address: One Firststar Plaza

City: St. Louis State: MO ZIP: 63101

6. Total number of applications and registrations involved:.....

2

7. Total fee (37 CFR 3.41):.....\$ \$65.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

20-0823 (if fee deficient)

08/02/2000 NTHA11 00000127 75829335

DO NOT USE THIS SPACE

01 FC:481
02 FC:482

40.00 OP
25.00 OP

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.

Mitzi G. Cherry

Name of Person Signing

Handwritten Signature: Mitzi G. Cherry

Signature

6/22/2000

Date

Total number of pages including cover sheet, attachments, and

13

TRADEMARK

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is made and entered into this 16th day of May, 2000, by MYSEASONS.COM, INC., a Delaware corporation ("Debtor"), in favor of NATIONAL GARDENING ASSOCIATION, INC., a Vermont not-for-profit corporation ("Secured Party").

WITNESSETH:

WHEREAS, Debtor is herewith executing and delivering to Secured Party its Promissory Note dated the date hereof and payable to the order of Secured Party in the original principal amount \$1,250,000.00, as the same may from time to time be amended, restated, modified, extended or renewed (the "Note"); and

WHEREAS, as a condition precedent to the Secured Party's accepting the Note, the Secured Party has required that Debtor execute and deliver this Agreement to the Secured Party as security for payment of the Note; and

WHEREAS, in order to induce the Secured Party to accept the Note, Debtor has agreed to execute and deliver this Agreement to the Secured Party; and

WHEREAS, this Agreement is being executed in connection with and in addition to that certain Security Agreement dated the date hereof and executed by Debtor in favor of Secured Party (the "Security Agreement") and under which Debtor has granted to the Secured Party a lien on and security interest in, among other things, all accounts, inventory, general intangibles, machinery, equipment, books, records, goodwill, copyrights, patents and trademarks now owned or hereafter acquired by Debtor and all proceeds thereof;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby covenants and agrees with the Secured Party as follows:

1. Grant of Security Interest. For value received, Debtor hereby collaterally assigns to the Secured Party, and grants the Secured Party a security interest in and lien on, all of Debtor's right, title and interest in, to and under the following described property, whether now owned and existing or hereafter created, acquired or arising:

(a) all trademarks, service marks, trademark or service mark registrations, trade names, trade styles, trademark or service mark applications, domain names and domain name registrations and brand names, including, without limitation, common law rights and each mark and application listed on Schedules A and B, respectively, attached hereto and incorporated herein by reference; and (i) renewals or extensions thereof, (ii) all income, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, license royalties, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof and (iv) 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 (i) through (iv) of this subsection (a) are hereinafter collectively referred to herein as the "Trademarks");

(b) the goodwill of Debtor's business connected with and symbolized by the Trademarks; and

(c) all proceeds, including, without limitation, proceeds which constitute property of the types described in (a) and (b) above and any rents and profits of any of the foregoing items, whether cash or noncash, immediate or remote, and insurance proceeds, and all products of (a) and (b), and any indemnities, warranties and guaranties payable by reason of loss or damage to or otherwise with respect to any of the foregoing items;

to secure the payment of any and all of the Secured Obligations (as defined in the Security Agreement).

2. Representations, Warranties and Covenants of Debtor. Debtor hereby represents and warrants to the Secured Party, and covenants and agrees with the Secured Party, that:

(a) all of the Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and, to the best of Debtor's knowledge, are not at this time the subject of any challenge to their validity or enforceability;

(b) to the best of Debtor's knowledge, each of the Trademarks is valid and enforceable;

(c) (i) no claim has been made that the use of any of the Trademarks does or may violate the rights of any third person and (ii) no claims for trademark infringement have been commenced in connection with any of the Trademarks;

(d) Debtor 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 and all liens, charges and encumbrances, including, without limitation, any and all pledges, assignments, licenses, registered user agreements and covenants by Debtor not to sue third persons, excluding only security interests granted to the Secured Party;

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

(f) Debtor has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Trademarks;

(g) Debtor has the royalty-free right and license to use the Trademarks and agrees not to transfer any rights or interest in any of the Trademarks during the term of this Agreement; and

(h) Debtor has no notice of any suits or actions commenced or threatened with reference to any of the Trademarks.

3. Inspection Rights; Product Quality. Debtor will permit inspection of Debtor's facilities from which products are sold under any of the Trademarks and inspection of the records relating thereto by the Secured Party during normal business hours. Debtor will reimburse the Secured Party upon demand for all costs and expenses incurred by Secured Party in connection with any such inspection conducted by Secured Party while any Event of Default under the Security Agreement has occurred and is continuing. A representative of Debtor may be present during any such inspection,

provided that a particular representative's availability or unavailability shall not inhibit or delay such inspection.

4. Further Assurances. Debtor agrees that at any time and from time to time, at the expense of Debtor, Debtor will promptly execute and deliver to the Secured Party any and all further instruments and documents and take any and all further action that may be necessary, or that the Secured Party may reasonably request, in order to perfect and protect the security interest granted hereby with respect to the Trademarks (including without limitation Trademarks covered by Paragraph 5 below) or to enable the Secured Party to exercise its rights and remedies hereunder with respect to the same.

5. Additional Trademarks. If Debtor shall (i) become aware of any existing Trademarks of which Debtor has not previously informed the Secured Party, (ii) obtain rights to any new Trademarks or (iii) become entitled to the benefit of any Trademarks which benefit is not in existence on the date hereof, the provisions of this Agreement shall automatically apply thereto and Debtor shall give the Secured Party prompt written notice thereof.

6. Modification by Secured Party. Debtor authorizes the Secured Party to modify this Agreement by amending Schedules A and B to include any future trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service applications covered by Paragraphs 1 and 5 hereof, without the signature of Debtor if permitted by applicable law.

7. Use of Trademarks. So long as no Event of Default has occurred and is continuing, Debtor may use the Trademarks in any lawful manner not inconsistent with this Agreement on and in connection with products or services sold by Debtor, for Debtor's own benefit and account and for none other.

8. Default. If any Event of Default shall have occurred and be continuing, the Secured Party shall have, in addition to all other rights and remedies given it by this Agreement, those 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 Trademarks may be located and, without limiting the generality of the foregoing, the Secured Party may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Debtor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, all or from time to time any of the Trademarks (together with the goodwill of Debtor associated therewith) or any interest which Debtor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including, without limitation, all expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Secured Obligations in the order and manner as is set forth in the Security Agreement. Notice of any sale or other disposition of any of the Trademarks shall be given to Debtor at least ten (10) Business Days before the time of any intended public or private sale or other disposition of such Trademarks is to be made, which Debtor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, the Secured Party or any holder of any of the Secured Obligations may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right of redemption on the part of Debtor, which right is hereby waived and released. Debtor agrees that upon the occurrence and continuance of any Event of Default, the use by the Secured Party of the Trademarks shall be worldwide, and without any liability for royalties or other related charges from the Secured Party to Debtor. If an Event of Default shall occur and be continuing, the Secured Party shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce any and all of the Trademarks, and, if the Secured Party shall commence any such suit, Debtor shall, at the request of the Secured Party, do any and all lawful acts and execute any and all proper documents required by the

Secured Party in aid of such enforcement and the Debtor shall promptly, upon demand, reimburse and indemnify the Secured Party for all costs and expenses incurred by the Secured Party in the exercise of its rights under this Agreement. All of Secured Party's rights and remedies with respect to the Trademarks, whether established hereby, by the Security Agreement or by any other agreement or by law shall be cumulative and may be exercised singularly or concurrently.

9. Definitions. All capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings ascribed to them in the Security Agreement.

10. Termination of Agreement. At such time as Debtor shall pay all of the Secured Obligations in full, this Agreement shall terminate and the Secured Party shall execute and deliver to Debtor all instruments as may be necessary or proper to extinguish the Secured Party's security interest therein, subject to any disposition thereof which may have been made by the Secured Party pursuant hereto.

11. Preservation of Trademarks. Debtor shall have the duty (i) to file and prosecute diligently any trademark or service mark applications pending as of the date hereof or hereafter, (ii) to make federal application on unregistered trademarks and service marks, as commercially reasonable and (iii) to preserve and maintain all rights in the Trademarks, as commercially reasonable. Any expenses incurred in connection with Debtor's obligations under this Section 11 shall be borne by Debtor.

12. Secured Party Appointed Attorney-In-Fact. If any Event of Default shall have occurred and be continuing, Debtor hereby authorizes and empowers the Secured Party to make, constitute and appoint any officer or agent of the Secured Party as the Secured Party may select, in its sole discretion, as Debtor's true and lawful attorney-in-fact, with the power to endorse Debtor's name on all applications, documents, papers and instruments necessary for the Secured Party to use the Trademarks, or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for the Secured Party to assign, pledge, convey or otherwise transfer title to or dispose of the Trademarks to anyone else. Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable for the duration of this Agreement.

13. No Waiver. No course of dealing between Debtor and the Secured Party, nor any failure to exercise, nor any delay in exercising, on the part of the Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. Severability. 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.

15. Amendments. This Agreement is subject to amendment or modification only by a writing signed by Debtor and the Secured Party, except as provided in Paragraph 6 above.


16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that neither party may

assign or delegate any of its rights of obligations under this Agreement without the prior written consent of the other party.

17. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the substantive laws of the State of New York (without reference to conflict of law principles).

IN WITNESS WHEREOF, Debtor and the Secured Party have executed this Trademark Security Agreement this 16th day of May, 2000.

MYSEASONS.COM, INC. ("Debtor")

By  _____
Barry Marchessault
President and Chief Executive Officer

NATIONAL GARDENING ASSOCIATION, INC.
(the "Secured Party")

By _____
David E. Els
President

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that neither party may assign or delegate any of its rights of obligations under this Agreement without the prior written consent of the other party.


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By _____
Barry Marchessault
President and Chief Executive Officer

NATIONAL GARDENING ASSOCIATION, INC.
(the "Secured Party")

By _____

David E. Els
President

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF ~~NEW YORK~~ ^{New Jersey})
)
COUNTY OF ~~NEW YORK~~ ^{Somerset})

On this 16th day of May, 2000, before me personally appeared Barry Marchessault, to me personally known, who, being by me duly sworn, did say that he is the President/CEO of MYSEASONS.COM, INC., a Delaware corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said Barry Marchessault acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(Seal) _____
My Commission Expires: 8/04
Notary Public #141940
My Commission Expires 8/04

STATE OF VERMONT)
)
COUNTY OF CHITTENDEN)

On this 15th day of May, 2000, before me personally appeared David E. Els, to me personally known, who, being by me duly sworn, did say that he is the President of NATIONAL GARDENING ASSOCIATION, INC., a Vermont not-for-profit corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said David E. Els acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official seal in the County and State aforesaid, the day and year first above written.

(Seal) _____
My Commission Expires: _____
Notary Public

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

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(Seal)

Notary Public

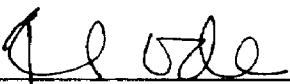
My Commission Expires: _____.

STATE OF VERMONT)
)
COUNTY OF CHITTENDEN)

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IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official seal in the County and State aforesaid, the day and year first above written.

(Seal)



Notary Public

My Commission Expires: 2/10/03.

SCHEDULE A

United States Trademarks

GoGarden!
The Backyard Companion
Learning Garden

SCHEDULE B

United States Trademark Applications

None