

**TRADEMARK AND TRADEMARK
APPLICATION SECURITY AGREEMENT**

Date: February 26, 2001

This Trademark and Trademark Application Security Agreement (the "**TM Security Agreement**") is made as of the 26th day of February, 2001 by ZonePerfect Nutrition Company, a Massachusetts corporation with its principal executive offices at 120 Boylston Street, Suite 800, Boston, Massachusetts (the "**Borrower**"), and First Massachusetts Bank, N.A., with offices at 7 New England Executive Park, Burlington, Massachusetts, (the "**Lender**").

RECITALS

WHEREAS, pursuant to the Loan and Security Agreement dated as of the date hereof, as same may be amended, modified or replaced from time to time (the "**Loan Agreement**"), made by and between, the Borrower and the Lender, the Lender has agreed to make certain loans (the "**Loans**") available to the Borrower;

WHEREAS, under the Loan Agreement, the Borrower has created a security interest in the Borrower's assets to secure all obligations and liabilities, whether now existing or hereafter arising, of the Borrower to the Lender (hereinafter, the "**Liabilities**");

WHEREAS, as a condition, among others, to the continuation of the credit facilities contemplated by the Loan Agreement, and to further secure the Liabilities, the parties hereto shall execute this TM Security Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Borrower and the Lender agree as follows:

1. To secure the Liabilities, the Borrower hereby grants a security interest in favor of the Lender, with power of sale, in and to the following and all proceeds thereof:

(a) All of the Borrower's now owned or existing or hereafter acquired or arising trademarks, trade registrations, trademark applications, service marks, registered service marks and service mark applications including, without limitation, the trademarks, registered trademarks, trade mark applications, service marks, registered service marks and service mark applications listed on **EXHIBIT A** annexed hereto and

made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks or service mark applications.

(b) All renewals of any of the foregoing.

(c) All income, royalties, damages and payments now and hereafter due and/or payable under and with respect to any of the foregoing, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof.

(d) The right to sue for past, present and future infringements and dilutions of any of the foregoing.

(e) All of Borrower's rights corresponding to any of the foregoing throughout the world.

All of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications described in Subsection 1.(a), together with the items respectively described in Subsections 1.(b) through and including 1.(e) are hereinafter individually and/or collectively referred to as the "**Trademarks**".

2. Until this TM Security Agreement is terminated, the Borrower shall undertake the following with respect to each Trademark to the extent prudent in the exercise of its reasonable business judgment and provided that any failure to do so does not have a material adverse effect on the Borrower and its subsidiaries on a consolidated basis:

(a) Pay all renewal fees and other fees and costs associated with maintaining the Trademarks and with the processing of the Trademarks.

(b) At Borrower's sole cost, expense, and risk, pursue the prompt, diligent processing of each Application for Registration which is the subject of the foregoing assignment and not abandon or delay any such efforts.

(c) At Borrower's sole cost, expense, and risk, take any and all action which Borrower deems desirable to protect the Trademarks, including, without limitation, but subject to Borrower's discretion, the prosecution and defense of infringement actions.

3. Upon the occurrence of any Event of Default (as defined in the Loan Agreement), and until such Event of Default is cured, the Lender acting in its own name or in that of the Borrower may (but shall not be required to) act in the Borrower's place and stead and/or in the Lender's own right in connection with the obligations set forth in Section 2, above.

4. The Borrower represents and warrants that:

(a) The Trademarks listed on *EXHIBIT A* include all of the U.S. registered trademarks, U.S. trademark applications, U.S. registered service marks and U.S. service mark applications now owned by the Borrower.

(b) No liens, claims or security interests have been granted by the Borrower to any person or entity in such Trademarks other than to the Lender or as otherwise permitted pursuant to the Loan Agreement.

5. In order to further secure the Liabilities:

(a) The Borrower shall give the Lender written notice (with reasonable detail) within thirty (30) days following the occurrence of any of the following, provided that the failure to do so shall not be considered a material breach of this Trademark Security Agreement or the Loan Agreement:

(i) The Borrower obtains rights to any new registered trademarks, registered service marks or service mark applications, (other than Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business)

(ii) The Borrower becomes entitled to the benefit of any registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor (other than Borrower's right to sell products containing the trademarks of others in the ordinary course of Borrower's business).

(iii) The Borrower enters into any new trademark license agreement or service mark license agreement by which the Borrower is authorized to use any trademark or service mark owned by a third party.

(b) The provisions of this TM Security Agreement shall automatically apply to any such additional property or rights described in 5.(a), above, all of which shall be deemed to be and treated as "Trademarks" within the meaning of this TM Security Agreement.

(c) The Borrower hereby authorizes the Lender to modify this agreement by amending *EXHIBIT A* to include any future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, written notice of which is so given, provided, however, the modification of said *EXHIBIT* shall not be a condition to the creation or perfection of the security interest and TM Security Agreement created hereby.

6. Upon the occurrence and during the continuance of any Event of Default (as defined in the Loan Agreement), the Lender may exercise all rights and remedies of a secured party under the Uniform Commercial Code as adopted in Massachusetts (Massachusetts General Laws, Chapter 106), with respect to the Trademarks, in addition to which the Lender, subject to the terms of the Loan Agreement, may sell, license, assign, transfer, or otherwise dispose of the Trademarks. Any person may conclusively rely upon an affidavit of an officer of the Lender that an Event of Default and demand has occurred and is continuing and that the Lender is authorized to exercise such rights and remedies.

7. Effective upon the occurrence and during the continuance of any Event of Default (as defined in the Loan Agreement), the Borrower hereby irrevocably constitutes and designates the Lender as and for the Borrower's attorney in fact:

(a) To exercise any of the rights exercisable and powers referenced in Section 2.

(b) To execute all and singular such instruments, documents, and papers as the Lender determines to be appropriate in connection with the exercise of such rights and remedies and to cause the sale, license, assignment, transfer, or other disposition of the Trademarks.

The within grant of a power of attorney, being coupled with an interest, shall be irrevocable until the within TM Security Agreement is terminated.

8. Any use by the Lender of the Trademarks as authorized hereunder in connection with the exercise of the Lender's right and remedies under the within

TM Security Agreement and the Loan Agreement shall be coextensive with the Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Lender to the Borrower.

9. The Lender hereby grants to the Borrower the right, following the occurrence and during the continuance of an Event of Default (as defined in the Loan Agreement), to sue for past, present and future infringement of the Trademarks including the right to seek injunctions and/or money damages, in an effort by the Borrower to protect the Trademarks against encroachment by third parties. The Borrower shall notify Lender in writing of any such suit for enforcement of the trademarks against a particular party. All reasonable costs arising in connection with any such suit for enforcement shall be borne by the Borrower.

10. Following the payment and satisfaction of all Liabilities, and the termination of any obligation of the Lender to provide loans or financial accommodations under the credit facility contemplated by the Loan Agreement, this TM Security Agreement shall terminate and the Lender shall promptly execute and deliver to the Borrower all such instruments as the Borrower reasonably may request to evidence such termination and to the extent, if any, necessary to re-vest in the Borrower full title to the Trademarks and the associated goodwill, subject to any disposition thereof which may have been made by the Lender pursuant hereto or pursuant to the Loan Agreement.

11. The Borrower shall, at the request of the Lender, do any and all acts and execute any and all documents reasonably required by the Lender in connection with the protection, preservation, and enforcement of the Lender's rights hereunder.

12. The Borrower shall, upon demand, reimburse the Lender for all reasonable costs and expenses incurred by the Lender in the exercise of any rights hereunder (including, without limitation, reasonable fees and expenses of counsel).

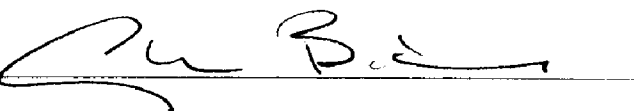
13. This TM Security Agreement is intended to be supplemental of the Loan Agreement. All provisions of the Loan Agreement shall apply to the Trademarks

and the Lender shall have the same rights with respect to any and all Trademarks granted the Lender to secure the Liabilities hereunder as thereunder. In the event of a conflict between this TM Security Agreement and the Loan Agreement, the terms of this TM Security Agreement shall control with respect to the Trademarks, and the Loan Agreement shall control with respect to all other collateral.

IN WITNESS WHEREOF, the Borrower and the Lender respectively have caused this TM Security Agreement to be executed by officers duly authorized so to do on the date first above written.

ZonePerfect Nutrition Company
(the "Borrower")

First Massachusetts Bank, N.A.
(The "Lender")

By 

By 

Title:

Title: Vice President

Commonwealth of Massachusetts
County of Suffolk

Then personally appeared before me Christopher P. Baker who acknowledged that such person is the duly authorized CEO + President of ZonePerfect Nutrition Company and that such person executed the foregoing instrument as his free act and deed on its behalf.

Witness my hand and seal this 26th day of February, 2001.

Michele A. Shaver
Notary Public
My Commission Expires: May 31, 2002

Commonwealth of Massachusetts
County of Suffolk

Then personally appeared before me Greer Willingham, who acknowledged that such person is the duly authorized Vice President of First Massachusetts Bank, N.A., and that such person executed the foregoing instrument on its behalf.

Witness my hand and seal this 26th day of February, 2001.

Michelle A Shaver
, Notary Public

My Commission Expires: May 31, 2002

619095.1

EXHIBIT A

US Trademark and Service Mark Registrations

<u>Trademark</u>	<u>Registration Number</u>
ZONE PERFECT	2,408,977
ZONE MANAGER	2,275,155
ZONE PERFECT	2,294,807
ZONE PERFECT	2,269,790
EICOTECH	2,234,812
EICOTEC	1,833,098

US Trademark and Service Mark Applications

<u>Trademark</u>	<u>Serial Number</u>
ZONE PERFECT	76-127,079
ZONE PERFECT & Design	75-426,013
ZONE TRAINER	75-140,244
ZONE UNIVERSITY	75-421,041