

08-17-2001



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8-13-01

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

13 2001

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year
- Merger
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKATA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

- Individual  General Partnership  Limited Partnership  Corporation  Association
  - Other
- If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Citizenship/State of Incorporation/Organization

FOR OFFICE USE ONLY

08/16/2001 DBYRNE 00000131 75737175

01 FC:481 40.00 OP  
02 FC:482 50.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

TRADEMARK

REEL: 002350 FRAME: 0104

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**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. Charges to deposit account are authorized, as indicated herein.

Kimberly E. Keenan

Name of Person Signing

Kimberly E. Keenan

Signature

8-9-01

Date Signed

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is entered into as of June 7, 2001, by and between LUNA VINEYARDS, INC. ("Debtor"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

### RECITALS

WHEREAS, Bank has extended or will hereafter extend credit to Debtor, and to secure its obligations to Bank, Debtor has executed or will hereafter execute various agreements, including without limitation, that certain Continuing Security Agreement: Rights to Payment and Inventory dated as of April 3, 2001, covering among other items, various proprietary rights, trademarks, service marks and other general intangibles (which security agreement, together with any and all amendments and modifications thereto from time to time entered into, and any security agreements at any time hereafter executed in replacement and/or in substitution thereof and/or in addition thereto, shall be referred to herein as the "Security Agreement"); and

WHEREAS, Debtor and Bank wish to supplement the Security Agreement and further clarify their respective rights and obligations with regard to certain collateral in an instrument to be recorded with the United States Patent and Trademark Office and elsewhere.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, Debtor and Bank hereby agree as follows:

1. Security Interests. Pursuant to the Security Agreement and subject to and upon the additional terms, covenants and conditions hereof, Debtor hereby grants to Bank a security interest in all of Debtor's now owned or existing and hereafter acquired or arising right, title and interest in the following (the "Property"):

(a) all trademarks, service marks, trade names, proprietary labels, logos and general intangibles of like nature and/or related to any of the foregoing in which Debtor now has or at any time hereafter acquires an interest including, without limitation, the registered trademarks and service marks and the trademarks and service marks pending registration described in Exhibit A attached hereto and incorporated herein by this reference, and including all rights under or interest in any licenses of any of the foregoing and related license agreements with any other party, in each case unless otherwise prohibited under circumstances where the granting of the security interest would have the effect under applicable law of terminating, or permitting termination of the license for breach and where the licensor, other than any affiliate of Debtor, has elected such termination remedy), and the right to manufacture or prepare for sale and sell any and all inventory or other property now or hereafter owned by Debtor and now or hereafter covered by such licenses;

(b) the goodwill in Debtor's business and products associated with any such trademarks, service marks, trade names, proprietary labels, logos and other general intangibles;

(c) the right to sue, in Bank's name or joined with Debtor, for past, present or future infringements of rights in any such trademarks, service marks, trade names, proprietary labels and other general intangibles; and

(d) all (i) products of (ii) substitutions and replacements for, (iii) registrations, renewals and/or extensions of, and (iv) proceeds from the sale or other disposition of any of the

foregoing, including insurance proceeds and any rights of subrogation resulting from the damage or destruction thereof.

2. Obligations Secured. The obligations secured hereby are the payment and performance of: (a) all present and future Indebtedness of Debtor to Bank; (b) all obligations of Debtor and rights of Bank under this Agreement; and (c) all present and future obligations of Debtor to Bank of other kinds. The word "Indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Debtor, or any of them, heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Debtor may be liable individually or jointly with others, or whether recovery upon such Indebtedness may be or hereafter becomes unenforceable.

3. Termination. This Agreement will terminate upon the performance of all obligations of Debtor to Bank, including without limitation, the payment of all Indebtedness of Debtor to Bank, and the termination of all commitments of Bank to extend credit to Debtor, existing at the time Bank receives written notice from Debtor of the termination of this Agreement.

4. Protection of Security Interest. Debtor hereby covenants and agrees to prepare, execute, acknowledge, deliver and record or file such instruments and documents and to do and perform all other acts which may be necessary or which Bank reasonably deems necessary or appropriate to perfect or protect Bank's security interest in the Property. Concurrently with the filing of any trademark application or the acquisition of any interest in or to any trademark hereafter, Debtor shall duly execute, acknowledge and record in the United States Patent and Trademark Office a Trademark Security Agreement substantially in the form of this Agreement; provided that Exhibit A to each such Trademark Security Agreement shall describe (with such particularity as may be required by said Patent and Trademark Office or other applicable governmental authorities or agencies from time to time) only the additional trademarks and applications which have not been previously recorded as subject to Bank's security interest.

5. Assignments and Licenses. Debtor agrees not to sell or assign its interest in, or grant any license under, the Property, without Bank's prior written consent; provided however, that so long as no Event of Default exists, Debtor may grant such bona fide licenses for good and valuable consideration as are necessary and usual in the ordinary course of Debtor's business as it is presently conducted and as it may be legally expanded, on the condition that such licenses so granted shall be subject to the terms and conditions of this Agreement and the other Loan Documents.

6. Warranties. In addition to the representations and warranties made by Debtor in the Security Agreement, Debtor represents and warrants that:

(a) the Property listed on Exhibit A represents all of the registered trademarks, service marks, trade names and logos and all of the pending applications for any trademarks, service marks, trade names and logos in which Debtor has any rights as of the date of this Agreement, whether pursuant to a license or otherwise;

(b) the information set forth in Exhibit A is entirely correct; and

(c) Debtor (i) has rights in and good title to the existing Property; (ii) with respect to the Property listed on Exhibit A other than that from which Debtor's rights derive as a licensee, Debtor is the sole and exclusive owner thereof, free and clear of any liens, claims, charges, encumbrances, security interests, and rights of others (other than the security interests and rights of Bank), including, without limitation, licenses, registered user agreements and covenants by Debtor not to sue others; (iii) with respect to any Property for which Debtor is either a licensor or a licensee pursuant to a license or licensing agreement regarding such Property, each such license or licensing agreement is in full force and effect, the Debtor is not in default of any of its obligations thereunder and other than the parties to such license or licensing agreements, no other person or entity has any rights in or to any of the Property, and the past, present and contemplated future use of the Property by the Debtor has not, does not and will not infringe upon or violate any right, privilege or license agreement of or with any other person or entity.

7. Covenants. Debtor hereby covenants and agrees to cooperate with Bank in whatever manner may be necessary or which Bank may deem necessary or appropriate so that Bank may enjoy its rights and interests hereunder to the fullest extent. Such cooperation shall include, without limitation:

(a) prompt preparation and execution (at Debtor's expense) of all petitions, oaths, specifications, declarations or other papers that may be necessary or which Bank reasonably may deem necessary or appropriate for prosecuting any applications for the registration, renewal or extension of any Property in which Bank acquires a security interest hereunder and for prosecuting infringement proceedings involving any such Property; and

(b) prompt assistance and cooperation (at Debtor's expense) in the prosecuting of any legal actions or other proceedings involving any Property or application pertaining to any Property in which Bank acquires a security interest hereunder, including without limitation, oppositions, cancellation proceedings, priority contests, public use proceedings and court actions alleging infringement or any other cause of action.

8. Defense of Property; Indemnity. Debtor hereby covenants and agrees promptly upon request of Bank to defend the Property and Bank's rights and interests therein and to promptly notify Bank of any event, occurrence or legal action which affects the Property or the rights of the parties in relation thereto. Debtor acknowledges that Bank may, but shall have no obligation whatsoever to, commence any legal action or other proceeding to defend the Property or to contest the use by any other party of the Property or any portion thereof. Debtor shall unconditionally indemnify Bank and hold Bank harmless from and against all claims, causes of action, damages, liability, costs and expenses, including reasonable attorneys' fees, that Bank may be subject to in connection with this Agreement except those arising out of the gross negligence or willful misconduct of Bank, including without limitation, Property infringement suits that may be brought against Bank.

9. Appointment. Bank shall have the right, in the name of Debtor, or in the name of Bank or otherwise, without notice to or assent by Debtor, and Debtor hereby irrevocably constitutes and appoints Bank (and any of Bank's officers or employees or agents designated by Bank) as Debtor's true and lawful attorney-in-fact with full power and authority, (a) to sign the name of Debtor on all or any of such documents or instruments and perform all other acts that Bank deems necessary or advisable in order to perfect or continue perfected, maintain the priority or enforceability of or provide notice of Bank's security interest in, the Property, (b) execute any and all other documents and instruments, and perform any and all acts and things

for and on behalf of Debtor, which Bank may deem necessary or advisable to maintain, preserve, or protect the Property and to accomplish the purposes of this Agreement, including without limitation (i) to assert or retain any rights under any license agreement for any of the Property, (ii) after the occurrence of any Event of Default, to defend, settle, adjust or institute any action, suit or proceeding with respect to the Property, and (iii) after the occurrence of any Event of Default, to execute any and all applications, documents, papers and instruments for Bank to use the Property, to grant or issue any exclusive or non-exclusive license with respect to any Property, and to assign, convey or otherwise transfer title in or dispose of any of the Property; provided however, that in no event shall Bank have the unilateral power prior to the occurrence of an Event of Default to assign any of the Property to any person, including itself, without Debtor's written consent. The foregoing shall in no way limit Bank's rights and remedies upon or after the occurrence of an Event of Default. This power of attorney, being coupled with an interest, is irrevocable until termination of the Agreement.

10. Defaults. Upon the failure of Debtor to pay when due any sums owing to Bank or upon occurrence of any Event of Default as defined in the Security Agreement, the Loan Agreement and/or any contract or instrument pursuant to which Debtor may at any time hereafter incur any liabilities, indebtedness or other obligations to Bank, subject to applicable cure provisions, if any, Bank shall have the rights and remedies available to a secured party under law and/or expressly provided in the Security Agreement, the Loan Agreement and/or any such other contract or instrument. In addition, Bank shall have the right to sue for past infringement of the Property and to collect all damages and profits for past infringements.

If any Event of Default shall have occurred and be continuing, and following the giving of any notices required hereby, Bank shall have, in addition to all other rights and remedies given it by this Agreement and the Security 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 Property may be located and, without limiting the generality of the foregoing, Bank 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 expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon the whole or from time to time any part of the Property or any interest which the Debtor may have therein, and after deducting from the proceeds of sale or other disposition of the Property all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Indebtedness secured hereby. Any remainder of the proceeds after payment in full of such obligations shall be paid over to the Debtor or to such other party who may be entitled to such remaining proceeds. Notice of any sale or other disposition of the Property shall be given to Debtor at least five (5) days before the time of any intended public or private sale or other disposition of the Property 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, any holder of any Indebtedness or Bank may, to the extent permissible under applicable law, purchase the whole or any part thereof. Bank shall not be obligated to preserve any rights Debtor may have against prior parties, to liquidate or realize on the Property at all or in any particular manner or order, or apply any cash proceeds of Property in any particular order.

11. Relation to Security Agreement. This Agreement is a supplement to the Security Agreement, and Bank's rights and remedies, and Debtor's obligations and waivers, under the Security Agreement, and the interpretive principles stated in the Security Agreement shall be applicable hereunder; provided however, that this Agreement and the Security Agreement shall be construed together so as to grant Bank the greatest rights and remedies with regard to the

Property; and provided further, that Bank's rights and remedies hereunder may be expressly modified by amendments to the Security Agreement from time to time.

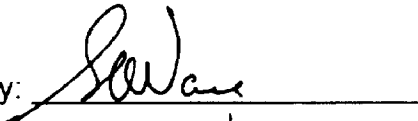
12. Successors; Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties; provided however, that Debtor may not assign this Agreement or any interest herein without Bank's prior written consent.

13. Severability of Provisions. If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any remaining provisions of this Agreement.

14. Governing Law. Except to the extent that Federal law preempts, this Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

LUNA VINEYARDS, INC.

By:   
Title: Co-Chairman

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

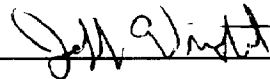
By:   
Title: V.P.

EXHIBIT A  
to  
TRADEMARK SECURITY AGREEMENT  
between  
LUNA VINEYARDS, INC.  
and  
WELLS FARGO BANK, NATIONAL ASSOCIATION  
Dated as of June 7, 2001

TRADEMARKS AND TRADEMARK APPLICATIONS

A. TRADEMARKS:

<u>Registration Number</u>	<u>Title</u>	<u>Registration Date</u>
2,335,360	Amici di Luna	3/28/00
2,169,860	Luna Vineyards	6/30/98

B. TRADEMARK APPLICATIONS:

<u>Application Number</u>	<u>Title</u>	<u>Filing Date</u>
75/737175	Canto	6/25/99

Debtor's Initials 