

02-05-2002

Form PTO-1594
1-31/92

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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

101971778

1-23-02

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof

1. Name of Conveying Part(ies):

McZand Herbal, Inc.
P.O. Box 2039
Boulder, CO 80306

- Individual(s)
- General Partnership
- Corporation-State (California)
- Other: _____
- Association
- Limited Partnership

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

3. Nature of conveyance:

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

Execution Date: May 10, 2000

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

Name: Botanical Laboratories, Inc.
Internal Address: _____

Street Address: 1441 West Smith Road

City: Ferndale State: WA Zip: 98248

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Washington
- 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 names(s) & address(es) attached: Yes No

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

A. Trademark Application No.(s):

B. Trademark Registration No.(s)

1,672,353
1,676,529
1,676,528

Additional numbers attached: Yes No

Additional numbers attached: Yes No

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

Name: George G. Grigel

Internal Address: Wells, St. John, Roberts, Gregory &

Matkin, P.S.

Street Address: 601 W. First Avenue, Suite 1300

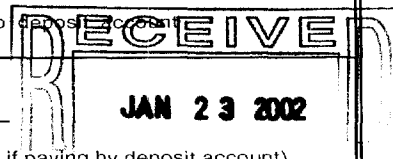
City: Spokane State: WA Zip: 99201-3828

6. Total number of applications and registrations involved. 3

7. Total fee (37 CFR 3.41). \$ 90.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number
23-0925

(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.

George G. Grigel
Name of Person Signing

Signature

12-31-2001
Date

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET, ATTACHMENTS AND DOCUMENT: 19

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02/05/2002 LMUELLER 00000085 1672353

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

COPY

AGREEMENT OF PURCHASE AND SALE

Dated as of May 10, 2000

among

MCZAND HERBAL, INC.

and

CERTAIN SHAREHOLDERS OF
MCZAND HERBAL, INC.

and

BOTANICAL LABORATORIES, INC.



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TRADEMARK
REEL: 002436 FRAME: 0868

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THIS AGREEMENT OF PURCHASE AND SALE is executed as of May 10, 2000, by and among BOTANICAL LABORATORIES, INC., a Washington corporation ("Buyer"); BOULDER VENTURES, LP, BOULDER VENTURES II, L.P., BOULDER VENTURES II (Annex), L.P., JANET ZAND AND MICHAEL MCGUFFIN (the "Shareholders"), who own a majority of the stock of MCZAND HERBAL, INC., a California corporation ("Seller"); and Seller.

WHEREAS, the Shareholders own a majority of the issued and outstanding stock of Seller.

WHEREAS, the shareholders and the Board of Directors of Seller have approved the acquisition of substantially all of the assets of Seller by Buyer on the terms and conditions hereinafter set forth.

WHEREAS, the Board of Directors of Buyer has approved the acquisition of such assets by Buyer on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the representations, warranties and agreements herein contained, the parties agree as follows:

ARTICLE I

Sale of Assets and Assumption of Liabilities

SECTION 1.01. Sale of Assets.

(a) Purchased Assets. At the Closing (as defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer and Buyer shall accept and purchase all of Seller's right, title and interest in and to all of the assets, properties and rights of Seller existing at the close of business on the day of the Closing (the "Purchased Assets") including, without limitation all assets, properties and rights reflected in the Schedule of Purchased Assets attached hereto and

labeled Schedule 1.01(a), together with all assets, properties and rights of a similar nature acquired by Seller since the date of said Schedule, less such assets, properties and rights as may have been disposed of since said date in the ordinary course of business. Without limiting the generality of the foregoing, the Purchased Assets shall include all of Seller's cash, marketable securities, prepaid expenses, income tax refunds, accounts receivable and notes receivable, inventory, machinery, equipment, spare parts, computer equipment, office furniture and equipment, supplies, fixtures, motor vehicles and all intangible assets, properties and rights required for or incident to the conduct of the Seller's business, including contract rights, purchase orders, technical information, trade secrets, trade names, patents, formulas, processes, know-how, clearances, licenses, permits, customer lists, trade lists, books, business records, good will, and all rights in and to the names "McZand Herbal," "Zand" and "Herbs for Kids" or any variation thereof and any other names used by Seller in the course of its business, but specifically excluding the Excluded Assets.

SECTION 1.02. Excluded Assets. The foregoing notwithstanding, Buyer shall not purchase, and Seller shall not be deemed to sell, any of those assets which are listed in the Schedule of Excluded Assets attached hereto and labeled Schedule 1.02 (collectively, the "Excluded Assets").

SECTION 1.03. Assumption of Liabilities.

(a) Assumed Liabilities. As of the Closing Date, Buyer shall undertake, assume, and agree to perform, and otherwise pay, satisfy and discharge as of the Closing the liability of Seller upon those contracts, leases, licenses, purchase orders for equipment or machinery, or other contracts or agreements, listed in Schedule 1.03(a) hereto (collectively, the "Assumed Liabilities").



(b) Excluded Liabilities. Buyer shall not assume, nor does Buyer agree to pay, any debts, liabilities or obligations not identified in Section 1.03(a) hereof, including any federal, state or local taxes of Seller on or measured by income, gross receipts or payroll, whether for the period ending as of the Closing Date or any other period or penalties or interest relating thereto, or, except as set forth in Section 9.02 hereof, any other taxes of Seller of any kind or nature or penalties or interest relating thereto, including, but not limited to, sales, use transfer or documentary taxes, if any, payable in connection with this sale and tax liabilities incurred by Seller as a result of the transactions contemplated by this Agreement. Except for the Assumed Liabilities and as set forth in Section 9.02 or as otherwise set forth herein, in no event shall Buyer assume any liability for any of the following:

(i) Any obligations to pay or contribute any sums to any pension or retirement or similar plan.

(ii) Any fees, expenses or obligations incurred by Seller in connection with this Agreement and the transactions contemplated hereby.

(iii) Any finder's fee or similar charge or commission due to any person or organization which has acted for Seller or any of Seller's shareholders, directors or officers in connection with the transactions contemplated by this Agreement.

(iv) Any salary or bonus payments or vacation pay or fringe benefits of any kind unpaid as of the Closing hereto.

(v) Product liability associated with products shipped prior to the Closing Date.

(vi) Leases, contracts or any other executory contracts not listed in Schedule 1.03(a) hereto.



(vii) Any payables or accrued expenses of any kind.

(viii) Any returns during the period commencing on the Closing Date and ending one year thereafter, or other costs of any nature associated with products manufactured and shipped prior to the Closing; provided that any returns made during such period are not products discontinued by Buyer or products of a type which would not be accepted for return accordance with Buyer's return policy which has been provided to Seller.

(ix) Any environmental liability arising prior to the Closing.

All of the foregoing shall be the responsibility of Seller, and Seller agrees to indemnify and hold Buyer harmless against any such liabilities, debts, obligations, claims or damages therefrom (including incidental and consequential damages), costs and expenses (including reasonable attorneys' fees and expert witness fees), all as more fully provided in Section 6.02 hereinafter set forth.

SECTION 1.04. Closing. The closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities (the "Closing") will take place on May __, 2000 (the date on which the closing occurs being referred to herein as the "Closing Date"), at the offices of Orrick, Herrington & Sutcliffe LLP, San Francisco, California, unless another date or place is agreed to in writing by the parties hereto.

(a) Seller Deliveries. Seller shall deliver or cause to be delivered to Buyer at the Closing:

(i) Properly executed bills of sale, certificates of title and other instruments of conveyance of title, in form reasonably acceptable to Buyer, sufficient to pass title to all

personal property to be conveyed hereunder, free and clear of all liens or encumbrances of any type or nature other than Permitted Liens as defined in Section 2.01(i).

(ii) Consents executed by all necessary parties to permit Buyer to assume Seller's interest in any contracts acquired among the Purchased Assets. Such consents are described in Schedule 1.04(a)(ii) hereto.

(iii) The certificate referred to in Section 5.02(a).

(iv) The Updated Creditor List referred to in Section 1.05(d) hereof.

(v) The Accounts Receivable Statement referred to in Section 4.06(b) hereof.

(vi) Noncompetition Agreements, in the form of Exhibit B-1, Exhibit B-2, Exhibit B-3, Exhibit B-4 and Exhibit B-5 hereto and the consulting agreement in the form of Exhibit C hereto (the "Consulting Agreement"), duly executed by Seller and the other parties thereto.

(vii) A copy of resolutions duly adopted by the Board of Directors of Seller authorizing and approving Seller's execution and delivery of and performance under this Agreement, certified as true and in full force as of the Closing by the Secretary of Seller.

(viii) Certificates of corporate existence and good standing of Seller from its state of incorporation, each dated as of a recent practicable date prior to the Closing Date.

(ix) Such other resolutions, certificates, consents or other documents of authority as provided for herein, or as may be otherwise necessary to convey and transfer the Purchased Assets, and all other instruments or documents that counsel for Buyer may reasonably request in order to assure sufficient transfer of, the Purchased Assets to Buyer, or compliance with the terms and conditions of this Agreement.



All notices given thereunder shall be deemed given at the time of personal delivery or, if mailed, on the earlier of actual receipt as shown on the registry receipt or three business days after the date of such mailing.

SECTION 9.05. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart.

SECTION 9.06. Miscellaneous. This Agreement, including the schedules and exhibits hereto, and the documents and instruments and other agreements between the parties hereto (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, (b) are not intended to confer upon any other person any rights or remedies hereunder or thereunder and (c) shall not be assigned by operation of law or otherwise except as otherwise specifically provided.

SECTION 9.07. Governing Law; Jurisdiction and Venue. This Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of Washington. Each of the parties hereto irrevocably consents to the exclusive jurisdiction of (a) the Supreme Court of the State of Washington, Whatcom County, and (b) any United States District Court in the State of Washington, for the purposes of any Action (as defined below) arising out of this Agreement, any related document or certificate or any transaction contemplated hereby or thereby. Each of the parties hereto agrees to commence any Action relating hereto either in any United States District Court in the State of Washington or if such Action may not be brought in such court for jurisdictional reasons, in the Supreme Court of the

State of Washington, Whatcom County. Each of the parties hereto further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth in Section 9.04 shall be effective service of process for any Action in Washington with respect to any matters to which it has submitted to jurisdiction in this Section 9.07. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any Action arising out of this Agreement, or any transaction contemplated hereby in (i) the Supreme Court of the State of Washington, Whatcom County, or (ii) any United States District Court in the State of Washington, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Action brought in any such court has been brought in an inconvenient forum. For purposes of this Agreement, "Action" means any claim, action, suit or arbitration, or any other proceeding, in each instance by or before any governmental entity or any nongovernmental arbitration, mediation or other nonjudicial dispute resolution body.

-Signature Page Follows-



IN WITNESS WHEREOF, Buyer, the Shareholders and Seller have executed this

Agreement, all as of the date first written above.

MCZAND HERBAL, INC.

BOTANICAL LABORATORIES, INC.

By Caryn D. Ellison
Name: CARYN D ELLISON
Title: CEO

By [Signature]
Name: -
Title: President/CEO

SHAREHOLDERS:

BOULDER VENTURES, LP

By _____
Name:
Title:

BOULDER VENTURES II, L.P.

By _____
Name:
Title:

BOULDER VENTURES II (Annex), L.P.

By _____
Name:
Title:

(Janet Zand)

(Michael McGuffin)

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Agreement, all as of the date first written above.

MCZAND HERBAL, INC.


BOTANICAL LABORATORIES, INC.

By _____
Name:
Title:


By _____
Name:
Title:

SHAREHOLDERS:

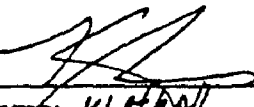
BOULDER VENTURES, LP

By  _____
Name: *K. Wolf*
Title: *Partner*

BOULDER VENTURES II, L.P.

By  _____
Name: *K. Wolf*
Title: *Partner*

BOULDER VENTURES II (Annex), L.P.

By  _____
Name: *K. Wolf*
Title: *Partner*

(Janet Zand)

(Michael McGuffin)

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Agreement, all as of the date first written above.

MCZAND HERBAL, INC.

BOTANICAL LABORATORIES, INC.

By _____
Name:
Title:

By _____
Name:
Title:

SHAREHOLDERS:

BOULDER VENTURES, LP

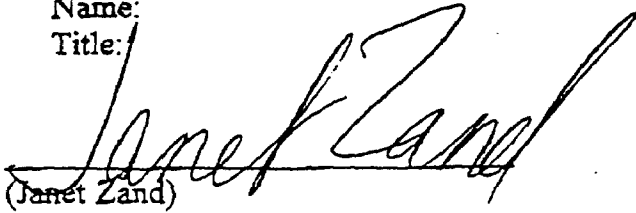
By _____
Name:
Title:

BOULDER VENTURES II, L.P.

By _____
Name:
Title:

BOULDER VENTURES II (Annex), L.P.

By _____
Name:
Title:


(Janet Zand)

(Michael McGuffin)

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Name:
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By _____
Name:
Title:

SHAREHOLDERS:

BOULDER VENTURES, LP

By _____
Name:
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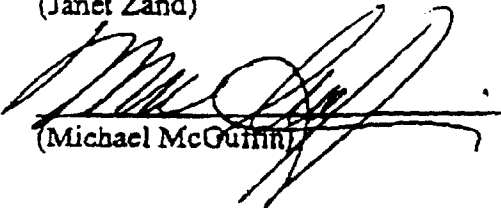
BOULDER VENTURES II, L.P.

By _____
Name:
Title:

BOULDER VENTURES II (Annex), L.P.

By _____
Name:
Title:

(Janet Zand)



(Michael McGuinn)

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