

10-04-2002

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Form **PTO-1594**
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)



102241014

Tab settings ⇌ ⇌ ⇌ ▼

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

1. Name of conveying party(ies):

NetJewels.com, Inc. **10-1-02**

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

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

3. Nature of conveyance:

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

Execution Date: 9/11/02

2. Name and address of receiving party(ies)

Name: ice.com, Inc.

Internal Address: Suite 102

Street Address: 1085 St. Alexandre

City: Montreal State: Quebec Zip: H2Z1P4

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Delaware
- 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 name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s) N/A

B. Trademark Registration No.(s)

~~2,599,976~~

Additional number(s) attached Yes No

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

Name: Gadi Navon

Internal Address: Strategic Law Partners, LLP

Street Address: 500 S. Grand Ave.

Suite 2050

City: L.A. State: CA Zip: 90071

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

N/A

(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.

Moshe Krasnanski

Name of Person Signing

Signature

09/30/02

Date

Total number of pages including cover sheet, attachments, and document: 9

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

10/04/2002 01FC1481 00000005 2599976

01 FC:1481

40.00 DP

TRADEMARK
REEL: 002593 FRAME: 0041

DOMAIN NAME AND CUSTOMER LIST

PURCHASE AGREEMENT

This Domain Name and Customer List Purchase Agreement (the "**Agreement**") is entered into as of September 11, 2002 by and among ice.com, Inc., a Delaware corporation (the "**Buyer**") and NetJewels.com Inc., a Canadian corporation (the "**Seller**").

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer (i) the domain name "NetJewels.com" (the "**Domain Name**") and the United States Registered Trade Mark "NetJewels", Reg. No. 2,599,976 (the "**Registered Trademark**"), and (ii) Seller's entire e-mail mailing list (the "**Customer List**") in accordance with the terms of this Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the parties hereto hereby agree as follows:

ARTICLE 1 PURCHASE AND SALE

1.1 Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to sell, convey, transfer, assign and deliver to Buyer, and Buyer hereby agrees to purchase from Seller (collectively, the "**Acquisition**"), all of Seller's right, title and interest in and to the Domain Name, Registered Trademark and the Customer List (the "**Acquisition Assets**") free and clear of all liens, restrictions and claims of any kind whatsoever (collectively, "**Encumbrances**").

In addition, and without limiting the foregoing, Seller hereby assigns to Buyer all right, title and interest in and to all trademarks, service marks, trade names, domain names, logos and trade dress relating to the Seller's NetJewels business (collectively, the "**Trademarks**"), and the Acquisition Assets shall be deemed to include the Trademarks. This assignment includes the Registered Trademark, and all other registrations and applications for registration in the United States or any other country or jurisdiction pertaining to the Trademarks, any common law rights therein, and the goodwill associated therewith. This assignment also includes the right to sue and recover damages for past and future infringements of Seller's rights in the Trademarks and to bring any proceeding in the United States Patent and Trademark Office or any equivalent agency in any other country for cancellation or opposition or other proceeding in connection with the Trademarks. The right, title and interest to the Trademarks is to be held and enjoyed by Buyer and Buyer's successors and assigns as fully and exclusively as it would have been held and enjoyed by Seller had this assignment not been made.

The parties hereby acknowledge and agree that Buyer shall not assume or be obligated to perform any liabilities or obligations of Seller, whether fixed, accrued or contingent, known or unknown, whether presently in existence or arising hereafter and including any sales or other taxes of any kind resulting from the Acquisition (collectively the "Liabilities"), and Seller agrees to pay all of the Liabilities.

1.2 Purchase Price. In consideration for the sale of the Acquisition Assets, Buyer will pay to Seller, or to Seller's lawful and permitted assigns under Section 4.10, an amount equal to 15% of the NetJewels Revenue (as defined below) during the Revenue Sharing Period (as defined below). Buyer shall make such payments on a quarterly basis, on or before the 20th day following the end of each calendar quarter, with respect to the prior quarter's NetJewels Revenue; provided, however, that payments for the final quarter of the Revenue Sharing Period shall be made on the date that is 100 days following the end of the Revenue Sharing Period (so as to allow Buyer to process returns, chargebacks and the like prior to making the final payment).

As used herein, "Revenue Sharing Period" means the period which begins on the date of the first email from Buyer to the Customer List and ends on the date that is 30 months thereafter.

As used herein, "NetJewels Revenue" shall mean an amount equal to (a) the aggregate revenue generated by sales from Buyer during that quarter to (i) persons on the Customer List who do not also appear on Buyer's email mailing list ("NetJewels Customers") and (ii) persons who are redirected to the Buyer's website from the NetJewels.com web site, minus (b) (i) taxes or shipping fees or charges, and (ii) returns or credit card losses or chargebacks or the like by NetJewels Customers incurred during that quarter (and, in the case of the last quarter during the Revenue Sharing Period, for a period of 90 days thereafter).

1.3 Delivery and Transfer upon Execution; Further Assurances. The Acquisition shall take place concurrently with the execution and delivery hereof, at which time Seller shall transfer and assign to Buyer its entire right, title and interest in and to the Acquisition Assets pursuant to a Bill of Sale in form substantially the same as Exhibit A attached hereto. Upon execution hereof, Seller shall promptly deliver to Buyer, in such forms as Buyer may reasonably request (whether electronic and/or hard copy), the Customer List.

At and after the time of execution and delivery hereof, Seller shall execute and deliver and such other instruments of transfer (including a duly executed domain name assignment and Assignment of Trademark #2,599,976), and shall take such other actions, as may be reasonably requested by Buyer in order to vest in Buyer all right, title and interest of Seller in and to the Acquisition Assets and otherwise in order to carry out the purpose and intent of this Agreement.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES

2.1 **Representations and Warranties of Seller.** The Seller represents and warrants to Buyer as follows:

(a) **Organization; Authority; No Conflicts.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the state or other jurisdiction in which it was incorporated. Seller has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, and all corporate action on its part necessary for such execution, delivery and performance has been duly taken. The execution and delivery by Seller of this Agreement does not, and the performance and consummation of the transactions contemplated by this Agreement will not, result in any conflict with, breach or violation of or default, termination or forfeiture under any terms or provisions of (i) its Articles of Incorporation or Bylaws, (ii) any statute, rule, regulation, or any judicial, governmental, regulatory or administrative decree, order or judgment, or (iii) any contract, agreement or instrument to which it is a party or by which it is bound. No consent, approval, authorization, order, registration, qualification or filing of or with any court or any regulatory authority or any other governmental or administrative body is required on the part of Seller for the consummation by it of the transactions contemplated by this Agreement.

(b) **Title to Assets; Infringement.** Seller owns the Acquisition Assets (including any intellectual property rights therein), free and clear of all Encumbrances, and upon consummation of the transactions contemplated hereby, Buyer shall receive good and marketable title to the Acquisition Assets free and clear of all Encumbrances. Seller has not, prior to the date hereof, sold, licensed or otherwise transferred to any third party any rights or interest in the Acquisition Assets (including any rights to use the Customer List). To Seller's knowledge, no other person or entity has made a claim, or has threatened to make a claim, that the Acquisition Assets infringe upon any other person's or entity's intellectual property rights, nor, to Seller's knowledge, is there any reasonable basis for such a claim.

(c) **Compliance with Laws and Policies.** To Seller's knowledge, Seller has complied in all material respects with all applicable laws, regulations and policies in acquiring the information contained in the Customer List, including applicable privacy laws and policies and the like and, to Seller's knowledge, the sale of the Customer List as contemplated hereby does not and will not violate any such laws or policies.

2.1 **Representations and Warranties of Buyer.** Buyer represents and warrants to Seller as follows:

(a) **Organization and Standing.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. Buyer has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement, and all corporate action on its part necessary for such execution, delivery and

performance has been duly taken. The execution and delivery by Buyer of this Agreement does not, and the performance and consummation of the transactions contemplated by this Agreement will not, result in any conflict with, breach or violation of or default, termination or forfeiture under any terms or provisions of (i) its Articles of Incorporation or Bylaws, (ii) any statute, rule, regulation, or any judicial, governmental, regulatory or administrative decree, order or judgment, or (iii) any contract, agreement or instrument to which it is a party or by which it is bound. No consent, approval, authorization, order, registration, qualification or filing of or with any court or any regulatory authority or any other governmental or administrative body is required on the part of Buyer for the consummation by it of the transactions contemplated by this Agreement.

ARTICLE 3 COVENANTS

3.1 **Web Site.** Seller will cooperate with Buyer to transfer the Domain Name to Buyer and to cause all hits to the Web Site to be redirected to one or more other web sites as directed by Buyer.

3.2 **Customer Notice; Customer List.** Promptly following the execution of this Agreement, Seller shall send an email, to be drafted mutually by Buyer and Seller and subject to the approval of each, to each of the NetJewels Customers announcing a new relationship between Buyer and Seller. Promptly thereafter, Seller shall destroy all copies, whether electronic or hard copies, of the Customer List and Seller will no longer make use of (including any resale of) the Customer List in any way.

3.3 **Restrictions on Resale.** Buyer shall not re-sell the Customer List during the Revenue Sharing Period; *provided, however,* that it may sell the Customer List as a part of a sale of the Buyer's business, subject to the provisions of Article 4.10 hereof.

3.4 **Estimated Sales Projections.** Concurrently with the execution hereof, Buyer shall deliver to Seller an estimate of the projected amount of the NetJewels Revenue during the Revenue Sharing Period. The parties acknowledge agree that: (i) such estimate is based in material part upon information provided by Seller; (ii) such information is only an estimate, and is not in any way to be construed as a representation or warranty of the Buyer as to the actual amount of NetJewels Revenue; and (iii) Seller shall have no liability to Buyer whatsoever for any inaccuracies in such estimates.

3.5 **Favored Vendor.** Buyer agrees that D.G. Jewelry shall be a "favored vendor" of Buyer, meaning that Buyer shall use D.G. Jewelry as a supplier when Buyer deems it to be commercially reasonable (in its sole discretion) to do so. The parties acknowledge that this provision shall not be construed in any way as an obligation of Buyer to make any purchases from, or to otherwise do business with, D.G. Jewelry, and Buyer shall be free at all times to do business with alternate vendors in its sole discretion.

3.6 Records; Inspection. Buyer will keep accurate records, in reasonable detail, of NetJewels Revenues and payments made to Seller throughout the Revenue Sharing Period. Buyer will make such data available to Seller from time to time at Seller's reasonable request, so that Seller may inspect such records for the purpose of confirming the accuracy of the payments made by Buyer to Seller hereunder, *provided, however*, that such inspections shall be limited to not more than once per quarter and shall otherwise be done in such a manner as to minimize disruption to Buyer and Buyer's business.

3.7 Confidentiality. The parties agree to keep the terms and conditions of this Agreement, including its existence, confidential and not to disclose such information to any third party without the consent of the other (i) except as required by law or (ii) to third parties as may be necessary or desirable from time to time in connection with business transactions so long as such third parties first agree to keep the information confidential.

ARTICLE 4 MISCELLANEOUS

4.1 Termination. This Agreement shall terminate on the earlier of (i) the mutual written agreement of the parties; or (ii) thirty days following after the expiration of the Revenue Sharing Period.

4.2 Indemnification. All representations and warranties of Seller in this Agreement shall survive the execution, delivery, and performance of this Agreement. Seller agrees to indemnify, defend and hold harmless Buyer against and in respect of, any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, remedies and penalties, including interest, penalties and reasonable attorney's fees and expenses that the Buyer shall incur or suffer, and which arise from or are attributable to by reason of or in connection with (i) any breach or inaccuracy of any of Seller's representations, warranties or covenants contained in this Agreement (other than the estimated sales projections referred to in Article 3.4 hereof) or (ii) any Liability. Buyer may offset any such indemnification obligations against its payments to Seller hereunder.

4.3 Notices. Any notice given hereunder shall be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by facsimile) or the third day after mailing by certified or registered mail, postage prepaid, as follows: (a) if to Buyer: Ice.com, Inc., 1085 St. Alexandre, Suite #102, Montreal, Quebec H2Z 1P4, Attn: President; and (b) if to Seller: NctJewels.com, Inc., 1001 Petrolia Road, North York, Ontario, M3J 2X7, Attn: President; or to such other address as any party may have furnished in writing to the other parties in the manner provided above.

4.4 Entire Agreement; Modifications; Waiver. This Agreement and the documents referred to herein between the parties hereto constitute the final, exclusive and complete understanding of the parties with respect to the subject matter hereof and supersede any and all prior agreements, understandings and discussions with respect thereto. No variation or modification of this Agreement and no waiver of any provision or condition

hereof, or granting of any consent contemplated hereby, shall be valid unless in writing and signed by the party against whom enforcement of any such variation, modification, waiver or consent is sought.

4.5 Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstances is held invalid or unenforceable in any jurisdiction, the remainder hereof, and the application of such provision to such person or circumstance in any other jurisdiction, shall not be effected thereby, and to this end the provisions of this Agreement shall be severable.

4.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall constitute an original copy hereof, but all of which together shall constitute one agreement. Delivery of an executed counterpart of this Agreement by facsimile transmission shall be equally as effective as delivery of an executed hard copy of the same. Any party doing so shall also deliver an executed hard copy of same, but the failure by such party to deliver an executed hard copy shall not affect the validity, enforceability and binding effect of this Agreement.

4.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflict of law provisions.

4.8 Construction; Headings. This Agreement is the mutual product of the parties hereto, and each provision hereof has been subject to the mutual consultation, negotiation and agreement of each of the parties, and shall not be construed for or against any party hereto. The headings used in this Agreement have been inserted for convenience and do not constitute matter to be construed or interpreted in connection with this Agreement.

4.9 Attorneys' Fees. In the event of any suit or other proceeding to construe or enforce any provision of this Agreement or any other agreement to be entered into pursuant hereto, or otherwise in connection with this Agreement, the prevailing party's or parties' reasonable attorney's fees and costs (in addition to all other amounts and relief to which such party or parties may be entitled) shall be paid by the other party or parties.

4.10 Assignment. This Agreement may not be assigned by a party without the prior written consent of the other; provided, however that (i) this Agreement may be assigned by Buyer to a parent, affiliate, or subsidiary of Buyer, or to a successor to its business, and (ii) Seller may assign its right to receive payments hereunder to one or more assignees in connection with the liquidation or dissolution of Seller, provided that such assignment is made in writing and in compliance with all applicable laws, and Buyer's payment obligations to Seller hereunder shall be satisfied (and Buyer shall have no further liability or obligation therefor) by payments made to Seller's assignees in accordance with the terms of this section. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns. Upon any transfer or sale of the

Acquisition Assets by Buyer (including in connection with a sale of Buyer's business), the transferee shall be obligated to assume Buyer's obligations hereunder.

4.11 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than Seller and Buyer and their respective successors and permitted assigns.

4.11 Costs. Each party shall be responsible for and bear its own costs and expenses incurred in connection with the negotiation and closing of the transactions contemplated by this Agreement.

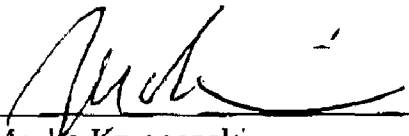
IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the date first above written.

BUYER:

SELLER:

ICE.COM, INC.

NETJEWELS.COM INC.



Moshe Krasnanski,
Executive Vice President

 Sept 12, 2002

Daniel Borkovits President, CEO