

11-12-2002



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

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

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

1. Name of conveying party(ies): Plastimayd Corporation

11-5-02

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

2. Name and address of receiving party(ies)

Name: Tamarack Mezzanine Partners, L.P. Internal Address:

Street Address: 522 SW Fifth Avenue, Suite 915

City: Portland State: OR Zip: 97204

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State, 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

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

3. Nature of conveyance:

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

Execution Date: 09/04/02

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1583720 1535763, 1522286, 1531990, 1554684

Additional number(s) attached Yes No

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

Name: Ellen Bachman

Internal Address: Preston Gates & Ellis LLP

Street Address: 222 SW Columbia St. Suite 1400

City: Portland State: OR Zip: 97201

6. Total number of applications and registrations involved: 6

7. Total fee (37 CFR 3.41) \$ 165.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Signature of Todd Mulvaney

Signature of Ellen Bachman

Date: 9-4-02

Total number of pages including cover sheet, attachments, and document: 8

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

TRADEMARK REEL: 002614 FRAME: 0076

Vertical stamp: TRADEMARK SECTION, 11/12/2002, LMI/ELER, 00000033, 1583720, 40,000.00, 125.00

**4.B., con't.** Additional Trademark Registration Numbers

2437246

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT ("Agreement"), dated as of this 4<sup>th</sup> day of September, 2002 ("Effective Date") is made by and between PLASTIMAYD CORPORATION, an Oregon corporation ("Debtor"), having its principal place of business at 14450 S.E. 98<sup>th</sup> Court, Clackamas, Oregon 97015, and TAMARACK MEZZANINE PARTNERS, L.P., a Delaware Limited Partnership ("Secured Party"), having its principal place of business at 522 S.W. Fifth Avenue, Suite 915, Portland, Oregon 97204.

## RECITALS

A. Debtor, Secured Party and JAM Acquisitions Company ("JAM") have entered into a Subordinated Loan and Security Agreement of even date (as the same may be amended, supplemented or restated from time to time, the "Loan Agreement") setting forth the terms on which Secured Party will make a loan to Debtor and JAM.

B. As a further condition to making any loan or other financial accommodation under the Loan Agreement or otherwise, Secured Party has required the execution and delivery of this Agreement by Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Agreement and herein, the parties hereby agree as follows:

## AGREEMENT

1. **Recitals and Definitions.** The recitals are incorporated in and made a part of this Agreement. All capitalized terms defined in the Recitals, in other provisions of this Agreement or in the Loan Agreement and that are not otherwise defined in this Agreement shall have the meanings given to them therein. The conventions contained in Section 1.2 of the Loan Agreement are incorporated in this Agreement by reference. In addition, the following terms have the meanings set forth below:

1.1 **Obligations** means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Loan Agreement) that Debtor may now or at any time hereafter owe to Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several, or joint and several, and including specifically, but not limited to, the Loan (as defined in the Loan Agreement).

1.2 **Trademarks** means all Debtor's right, title and interest in and to all registered and unregistered trademarks, service marks, collective marks, the respective goodwill associated with each, and licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit 1.2.

1.3 **Domain Names** means all Debtor's right, title and interest in and to any and all domain names registered by Debtor, all as presently registered or hereafter arising or acquired, including, without limitation, the domains listed on Exhibit 1.2.

2. **Security Interest.** Debtor hereby irrevocably pledges and assigns to, and grants Secured Party a security interest, with power of sale and assignment to the extent permitted by law (the "Security Interest"), in the Trademarks and Domain Names to secure payment of the Obligations.

Furthermore, Debtor hereby provides Secured Party the Registrant Name Change Agreement Version 4.0 – Transfers and the Domain Name Holder Change (collectively, “Transfer Agreement”), signed in blank, in the forms attached hereto as Exhibit 2 and incorporated herein by reference. Such Transfer Agreement shall be held in pledge by Secured Party and will not be filed unless and until Secured Party exercises its rights under an Event of Default under the Loan Documents.

3. **Representations, Warranties and Agreements.** Debtor hereby covenants, represents, warrants, and agrees to the following:

3.1 **Existence; Authority.** Debtor is a corporation, having full power to and authority to make and deliver this Agreement. The execution, delivery and performance of this Agreement by Debtor have been duly authorized by all necessary actions of Debtor’s board of directors, and if necessary its stockholders, and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or Debtor’s articles of incorporation or bylaws or any agreement presently binding on it. This Agreement has been duly executed and delivered by Debtor and constitutes Debtor’s lawful, binding and legally enforceable obligation. The authorization, execution, delivery and performance of this Agreement do not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency, other than filing with the U.S. Patent and Trademark Office.

3.2 **Trademarks and Domain Names.** Exhibit 1.2 accurately lists all Trademarks and Domain Names owned, registered or controlled by Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all registrations pertaining thereto and of all Domain Names. Furthermore, Debtor will not change registrars from VeriSign, Inc. without prior express written consent from Secured Party for the plastimayd.com domain name. Furthermore, Debtor will not change registrars from OzNic.com without prior express written consent from Secured Party for the plastimayd.net domain name, unless such change is to VeriSign, Inc. only.

3.3 **Title.** Debtor has absolute title to each Trademark and Domain Name listed on Exhibit 1.2, free and clear of all security interests, liens and encumbrances, except the Security Interest and Senior Lender’s security interest. Debtor (i) will have, at the time Debtor acquires any rights in Trademarks and Domain Names hereafter arising, absolute title to each such Trademark and Domain Name free and clear of all security interests, liens and encumbrances, except the Security Interest and Senior Lender’s security interest, and (ii) will keep all Trademarks and Domain Names free and clear of all security interests, liens and encumbrances, except the Security Interest and Senior Lender’s security interest.

3.4 **Maintenance.** Debtor will at its own expense maintain the Trademarks and Domain Names to the extent reasonably advisable in its business including, but not limited to, filing all applications to register and all affidavits and renewals possible with respect to issued registrations. Debtor covenants that it will not abandon nor fail to pay any maintenance fee, renewal fee, or annuity due and payable on any Trademark or Domain Name nor fail to file any required affidavit in support thereof, without first providing Secured Party: (i) sufficient written notice, as provided in the Loan Agreement, to allow Secured Party to timely pay any such maintenance fees, renewal fees, or annuities which may become due on any of said Trademarks or Domain Names, or to file any affidavit with respect thereto (however, Secured Party shall have no obligation to make any such payments), and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit, should such be necessary or desirable.

3.5 **No Sale or Assignment.** Except for Permitted Liens, Debtor will not sell, assign or otherwise dispose of the Trademarks or Domain Names, or any interest therein, without Secured Party’s prior written consent.

3.6 **Defense.** Debtor will at its own expense, and using its best efforts, protect and defend the Trademarks and Domain Names against all claims or demands of all persons other than Secured Party.

3.7 **Secured Party's Right to Take Action.** If Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after Secured Party gives Debtor written notice thereof (or in the case of the agreements contained in Section 3.4, immediately upon the occurrence of such failure, without notice or lapse of time), or if Debtor notifies Secured Party that it intends to abandon a Trademark or not renew a Domain Name, Secured Party may (but need not) perform or observe such covenant or agreement on behalf and in the name, place and stead of Debtor (or, at Secured Party's option, in Secured Party's own name) and may (but need not) take any and all other actions which Secured Party may reasonably deem necessary to cure or correct such failure.

3.8 **Power of Attorney.** To facilitate Secured Party's taking action under Section 3.7 and exercising its rights under Section 6, Debtor hereby irrevocably appoints (which appointment is coupled with an interest) Secured Party, or its delegate, as the attorney-in-fact of Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Debtor under this Section 3, or, necessary for Secured Party, after an Event of Default, to enforce or use the Trademarks or Domain Names or to grant or issue any exclusive or non-exclusive license under the Trademarks or Domain Names to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Trademarks or Domain Names to any third party. Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Loan Agreement as provided therein and the payment and performance of all Obligations (as defined therein).

3.9 **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Debtor shall pay Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorney fees) incurred by Secured Party in connection with or as a result of Secured Party's taking action under Section 3.7 or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by Secured Party at the highest rate then applicable to any of the Obligations.

4. **Debtor's Use of the Trademarks and Domain Names.** Debtor shall be permitted to control and manage the Trademarks and Domain Names and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default, as defined in Section 5, occurs and remains uncured.

5. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (i) an Event of Default, as defined in the Loan Agreement, shall occur; or (ii) Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (iii) any of the representations or warranties contained in Section 3 shall prove to have been inaccurate in any material respect when made.

6. **Remedies for Events of Default.** Upon the occurrence of an Event of Default and at any time thereafter, Secured Party may, at its option, take any or all of the following actions, in addition to all others available under the other Loan Documents, at law or in equity:

6.1 Secured Party may exercise any or all remedies available under the Loan Agreement.

6.2 Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Trademarks and Domain Names and all goodwill associated therewith.

6.3 Secured Party may enforce the Trademarks and any licenses thereunder and the Domain Names, and if Secured Party shall commence any suit for such enforcement, Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

6.4 Secured Party may immediately file the Transfer Agreement with VeriSign, Inc. or OzNic.com and transfer the Domain Names into its possession and ownership.

## 7. **Miscellaneous.**

7.1 **Waiver and Modification.** This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Secured Party. A waiver signed by Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Secured Party's rights or remedies.

7.2 **Cumulative Rights.** All rights and remedies of Secured Party shall be cumulative and may be exercised singularly or concurrently, at Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

7.3 **No Obligation to Preserve Rights.** Secured Party shall not be obligated to preserve any rights Debtor may have against prior parties, to realize on the Trademarks or Domain Names at all or in any particular manner or order, or to apply any cash proceeds of Trademarks or Domain Names in any particular order of application.

7.4 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Debtor and Secured Party and their respective participants, successors and assigns and shall take effect when signed by Debtor and delivered to Secured Party, and Debtor waives notice of Secured Party's acceptance hereof.

7.5 **Copy Effective.** A photographic, facsimile, or other reproduction of this Agreement signed by Debtor shall have the same force and effect as the original for all purposes.

7.6 **Oregon Law Governs.** This Agreement shall be governed by the internal law of the State of Oregon without regard to conflicts of law provisions.

7.7 **Mutual Waiver Of Jury Trial.** Because disputes arising in connection with complex financial transactions similar to the relationship between Debtor and Secured Party are most quickly and economically resolved by an experienced and expert person and the parties wish applicable state and federal laws to apply (rather than arbitration rules), the parties desire that their disputes be resolved by a judge applying such applicable laws. BOTH DEBTOR AND SECURED PARTY SPECIFICALLY WAIVE ANY RIGHT IT MAY HAVE TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, CROSS-CLAIM, COUNTERCLAIM, THIRD PARTY CLAIM OR ANY OTHER CLAIM (COLLECTIVELY, "CLAIMS") ASSERTED BY ONE AGAINST THE OTHER. This waiver extends to all such Claims, including, without limitation, Claims that involve persons or entities other than Debtor and Secured Party; Claims which arise out of or are in any way connected to the relationship among Debtor and Secured Party; and any Claims for damages, breach of contract arising out of this Agreement, any other Loan Document or any of the Equity Agreements, specific performance, or any equitable or legal relief of any kind.


7.8 **Unenforceability.** If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby.

7.9 **Survival.** All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the obligations.

IN WITNESS WHEREOF, the parties have executed this Intellectual Property Security Agreement as of the date written above.

**DEBTOR:**

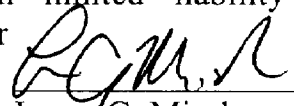
PLASTIMAYD CORPORATION, an Oregon corporation

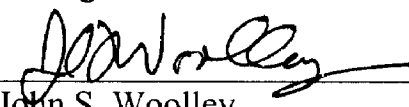
By:   
Name: Todd McKinney  
Title: President

**SECURED PARTY:**

TAMARACK MEZZANINE PARTNERS, L.P., a Delaware Limited Partnership

By Tamarack Capital Partners, LLC, an Oregon limited liability company, general partner

By:   
Name: Loree G. Misch  
Title: Manager

By:   
Name: John S. Woolley  
Title: Manager

**EXHIBIT 1.2  
TRADEMARKS, SERVICE MARKS,  
COLLECTIVE MEMBERSHIP MARKS AND DOMAIN NAMES**

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**Registrations**

<b>Mark</b>	<b>Registration Number</b>	<b>Registration Date</b>
PLASTIMAYD (class 22)	1,583,720	2-20-90
PLASTIMAYD (class 37)	1,535,763	4-18-89
PLASTIMAYD (class 1)	1,522,286	1-31-89
SPACE ARENA	1,531,990	3-28-89
UNIFLEX	1,554,684	9-5-89
ULTRA-MAYD	2,437,246	3-20-01

**Unregistered Marks**

PERMABAYD 25  
UNWELD  
TEX-TRED  
PERMAWALL  
POOL PATCH  
VINYL LIQUID WELD  
SUPER FIT  
SURE FIT

**Domain Names:**

Plastimayd.com  
Plastimayd.net