

01-09-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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EET 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):

HealthMedia, Inc.

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 11/22/02

2. Name and address of receiving party(ies)

Name: Theodore M. Dacko

Internal

Address:

Street Address: 130 S. First St.

City: Ann Arbor State: MI Zip: 48104

- Individual(s) citizenship U.S. 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

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

A. Trademark Application No.(s) 76/199356

B. Trademark Registration No.(s) 2,577,770

Additional number(s) attached Yes No

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

Name: David Walker

Internal Address: Bodman, Longley & Dahling LLP

Street Address: 110 Miller, Suite 300

City: Ann Arbor State: MI Zip: 48104

6. Total number of applications and registrations involved:

12

7. Total fee (37 CFR 3.41): \$ 315.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

02-2880

01/08/2003 DBYRNE 00000164 76199356

DO NOT USE THIS SPACE

01 FC: 4521 02 FC: 4522

Signature.

40.00 DP 275.00 DP

David Walker

Name of Person Signing

Signature

Signature

1/3/03

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

TRADEMARK REEL: 2644 FRAME: 0433

RECORDATION FORM COVER SHEET CONTINUATION

**HEALTHMEDIA, INC. (DEBTOR)
and THEODORE M. DACKO (SECURED PARTY)**

TRADEMARK REGISTRATION NUMBERS

76/159,203

76/159,068

76/331,012

76/175,466

76/159,204

76/158,989

2,538,639

2,456,312

2,324,542

2,276,506

SECURITY AGREEMENT

HEALTHMEDIA, INC. (the "Debtor")

Taxpayer I.D. No.: 38-3414346

Chief executive office: 130 S. First Street, Ann Arbor, MI 48104

Grant of Security Interest. The Debtor grants to Theodore M. Dacko, an individual, the secured party hereinafter referred to as "Secured Party", a continuing security interest in the Collateral listed below, to secure the payment and performance of the Secured Promissory Note, dated as of November 22, 2002, in the amount of \$5,000, granted by the Debtor to the Secured Party, or any additional Secured Promissory Notes issued to the Debtor under the Note Purchase Agreement, dated as of November 22, 2002, between Debtor and the Secured Party (collectively, the "Promissory Note"); provided, however, that such security interest shall be subject and subordinate to the rights of such other creditors of Debtor as set forth in any one or more subordination agreements executed by Secured Party in compliance with the terms and conditions of the Promissory Note, and the security interest, and the rights of the Secured Party hereunder, are subject to the Amended and Restated Intercreditor Agreement dated as of October 11, 2002, among the Debtor, the Secured Party and certain other creditors of the Debtor, which shall control in the event of any conflict between this Security Agreement and such Amended and Restated Intercreditor Agreement.

Debt shall include each and every debt, liability and obligation of every type and description now owed or arising at a later time, whether they are direct or indirect, joint, several, or joint and several and whether or not of the same type or class as presently outstanding, arising out of or evidenced by the Promissory Note, which shall collectively be referred to as "Liabilities." Liabilities shall also include all interest, costs, expenses and reasonable attorney's fees accruing to or incurred by the Secured Party in collecting the Liabilities or in the protection, maintenance or liquidation of the Collateral.

Collateral. All of the Debtor's Accounts Receivable and Intellectual Property (as defined below), customer contracts, all substitutions and replacements for, and all additions and accessions to, any and all of the foregoing, all proceeds, including but not limited to stock rights, subscription rights, dividends, stock dividends, stock splits, or liquidating dividends, and all cash, instruments, accounts, chattel paper and general intangibles arising from the sale, rent, lease, casualty loss or other disposition of the Collateral, and any Collateral returned to, repossessed by or stopped in transit by the Debtor, and all of the Debtor's books and records which relate to the Collateral. Where the Collateral is in the possession of the Secured Party, the Debtor agrees to deliver to the Secured Party any property that represents an increase in the Collateral or profits or proceeds of the Collateral.

"**Accounts Receivable**" shall consist of accounts, chattel paper and general intangibles as those terms are defined in the Michigan Uniform Commercial Code ("UCC"). Also included is any right to a refund of taxes paid at any time to any governmental entity. Also included are letters of credit, and drafts under them, given in support of Accounts Receivable. Debtor warrants that its chief executive office is at the address shown above.

"**Copyrights**" shall consist of all United States copyrights and mask works, whether or not registered, and all applications for registration of all copyrights and mask works, including, but not limited to all copyrights and mask works, and including without limitation (a) the right to sue or otherwise recover for any and all past, present and future infringements and

misappropriations thereof; (b) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Copyright Licenses entered into in connection therewith, and damages and payments for past or future infringements thereof); and (c) all rights corresponding thereto and all modifications, adaptations, translations, enhancements and derivative works, renewals thereof, and all other rights of any kind whatsoever of the Company accruing thereunder or pertaining thereto.

“Copyright License” shall consist of all license agreements with any other person in connection with any of the Copyrights or such other person's copyrights, whether the Company is a licensor or a licensee under any such license agreement, subject, in each case, to the terms of such license agreements and the right to prepare for sale, sell and advertise for sale, all inventory now or hereafter covered by such licenses.

“Intellectual Property” shall consist of all Patents, Copyrights and Trademarks now or hereafter owned by the Company, including, without limitation, all Software, as defined in Section 9-102(1)(vvv) of the UCC, including, without limitation, the items listed on the attached Schedule of Intellectual Property.

“Patents” shall consist of all United States letters patent, patent applications and patentable inventions, and including without limitation (a) all inventions and improvements described and claimed therein, and patentable inventions, (b) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (c) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto, and (d) all rights corresponding thereto in the United States and all reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions thereof, all improvements thereon, and all other rights of any kind whatsoever of the Company accruing thereunder or pertaining thereto.

“Trademarks” shall consist of all trademarks, service marks, trade names, trade dress or other indicia of trade origin, trademark and service mark registrations, and applications for trademark or service mark registrations (except for “intent to use” applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of said Act has been filed), and any renewals thereof, and including without limitation (a) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (b) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all Trademark Licenses entered into in connection therewith, and damages and payments for past or future infringements thereof) and (c) all rights corresponding thereto in the United States and all other rights of any kind whatsoever of the Company accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each such trademark, service mark, trade name, trade dress or other indicia of trade origin.

Warranties and Covenants. The Debtor warrants and covenants to the Secured Party that:

1. It will pay its Liabilities to the Secured Party secured by this Security Agreement;
2. It is or will become the owner of the Collateral free from any liens, encumbrances or security interests, except for this security interest, and existing liens disclosed to and accepted by the Secured Party in writing, and will defend the Collateral against all claims and demands of all persons at any time claiming any interest in it;

3. It will keep the Collateral free of liens, encumbrances and other security interests, maintain it in good repair, not use it illegally, and exhibit it to the Secured Party on demand;

4. It will not sell or offer to sell or otherwise transfer the Collateral, nor change the location of the Collateral, without the written consent of the Secured Party, except in the ordinary course of business;

5. It will pay promptly when due all taxes and assessments upon the Collateral, or for its use or operation;

6. No financing statement covering all or any part of the Collateral or any proceeds is on file in any public office, unless the Secured Party has approved that filing. Immediately after execution of this Security Agreement, Debtor will execute one or more financing statements or other documentation, in form satisfactory to Secured Party and will pay the cost of filing them in all public offices, as is necessary to perfect the security interest granted under this Security Agreement;

7. It will immediately notify Secured Party in writing of any name change or any change in business organization;

8. It will provide any information that Secured Party may reasonably request, and will permit Secured Party upon prior notice to inspect and copy its books and records during normal business hours.

Accounts Receivable. The Debtor acknowledges that the Collateral includes Accounts Receivable and until the Secured Party gives notice to Debtor to the contrary, Debtor will, in the usual course of its business and at its own cost and expense, on the Secured Party's behalf but not as the Secured Party's agent, demand and receive and use its best efforts to collect all moneys due or to become due on the Accounts Receivable. Until the Secured Party gives notice to Debtor to the contrary or until the Debtor is in default, it may use the funds collected in its business. Upon notice from the Secured Party or upon default, the Debtor agrees that all sums of money it receives on account of or in payment or settlement of the Accounts Receivable shall be held by it as trustee for the Secured Party without commingling with any of its funds, and shall immediately be delivered to the Secured Party with endorsement to the Secured Party's order of any check or similar instrument. It is agreed that, at any time the Secured Party elects, it shall be entitled, in its own name or in the name of the Debtor or otherwise, but at the expense and cost of the Debtor, to collect, demand, receive, sue for or compromise any and all Accounts Receivable, and to give good and sufficient releases, to endorse any checks, drafts or other orders for the payment of money payable to the Debtor in payment and, in its discretion, to file any claims or take any action or proceeding which the Secured Party may deem necessary or advisable. It is expressly understood and agreed, however, that the Secured Party shall not be required or obligated in any manner to make any demand or to make any inquiry as to the nature or sufficiency of any payment received by it or to present or file any claim or take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times. All notices required in this paragraph will be immediately effective when sent. Such notices need not be given prior to the Secured Party taking action.

Representations by Debtor. Debtor represents: (a) that the execution and delivery of this Security Agreement and the performance of the obligations it imposes do not violate any law, conflict with any agreement by which it is bound, or require the consent or approval of any governmental authority or any third party; (b) that this Security Agreement is a valid and binding agreement, enforceable according to its terms; and (c) that all of the representations of Debtor

under the Note Purchase Agreement, dated as of October 11, 2002, between Debtor and Secured Party are true as of the date of this Security Agreement. Debtor further represents: (a) that it is duly organized, existing and in good standing pursuant to the laws under which it is organized; and (b) that the execution and delivery of this Security Agreement and the performance of the obligations it imposes (i) are within its powers and have been duly authorized by all necessary action of its governing body; and (ii) do not contravene the terms of its certificate/articles of incorporation or organization, its by-laws, or any partnership, operating or other agreement governing its affairs.

Default/Remedies. If the Debtor fails to pay any of the Liabilities when due, or if a default by anyone occurs under the terms of any agreement related to any of the Liabilities, or if the Debtor fails to observe or perform any term of this Security Agreement, or if any representation or warranty contained in this Security Agreement is untrue, or if there is a material change in the financial condition of the Debtor which the Secured Party in good faith determines to be materially adverse, then the Secured Party shall have the rights and remedies provided by law or this Security Agreement, including but not limited to the right to require the Debtor to assemble the Collateral and make it available to the Secured Party at a place to be designated by the Secured Party which is reasonably convenient to both parties, the right to take possession of the Collateral with or without demand and with or without process of law, and the right to sell and dispose of it and distribute the proceeds according to law. In connection with the right of the Secured Party to take possession of the Collateral, the Secured Party may take possession of any other items of property in or on the Collateral at the time of taking possession, and hold them for the Debtor without liability on the part of the Secured Party. If there is any statutory requirement for notice, that requirement shall be met if the Secured Party sends notice to the Debtor at least seven (7) days prior to the date of sale, disposition or other event giving rise to the required notice. The Debtor shall be liable for any deficiency remaining after disposition of the Collateral.

Miscellaneous.

1. Where the Collateral is located at, used in or attached to a facility leased by the Debtor, the Debtor will obtain from the lessor a consent to the granting of this security interest and a subordination of the lessor's interest in any of the Collateral, in form acceptable to the Secured Party.

2. At its option the Secured Party may, but shall be under no duty or obligation to, discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Collateral, pay for insurance on the Collateral, and pay for the maintenance and preservation of the Collateral, and the Debtor agrees to reimburse the Secured Party on demand for any payment made or expense incurred by the Secured Party, with interest at the maximum legal rate.

3. No delay on the part of Secured Party in the exercise of any right or remedy shall operate as a waiver, no single or partial exercise by the Secured Party of any right or remedy shall preclude any other exercise of it or the exercise of any other right or remedy, and no waiver or indulgence by the Secured Party of any default shall be effective unless in writing and signed by the Secured Party, nor shall a waiver on one occasion be construed as a waiver of that right on any future occasion.

4. If any provision of this Security Agreement is invalid, it shall be ineffective only to the extent of its invalidity, and the remaining provisions shall be valid and effective.

5. Notice from one party to another relating to this Security Agreement shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's

Execution Final

address, telex number or telecopier number set forth above by any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, with return receipt requested, (c) first class or express mail, postage prepaid, (d) Federal Express or like overnight courier service or (e) telecopy, telex or other wire transmission with request for assurance of receipt in a manner typical with respect to communications of that type. Notice made in accordance with this section shall be deemed delivered on receipt if delivered by hand or wire transmission, on the third business day after mailing if mailed by first class, registered or certified mail, or on the next business day after mailing or deposit with an overnight courier service if delivered by express mail or overnight courier.

6. All rights of the Secured Party shall inure to the benefit of the Secured Party's successors and assigns; and all obligations of the Debtor shall bind the Debtor's heirs, executors, administrators, successors and assigns. If there is more than one Debtor, their obligations are joint and several.

7. A carbon, photographic or other reproduction of this Security Agreement is sufficient, and can be filed as a financing statement. The Secured Party is irrevocably appointed the Debtor's attorney-in-fact to execute any financing statement on Debtor's behalf covering the Collateral.

8. The terms and provisions of this Security Agreement shall be governed by Michigan law.

Waiver of Jury Trial. The Secured Party and the Debtor knowingly and voluntarily waive any right either of them have to a trial by jury in any proceeding (whether sounding in contract or tort) which is in any way connected with this or any related agreement, or the relationship established under them. This provision may only be modified in a written instrument executed by the Secured Party and the Debtor.

End of Agreement – signatures appear on next page

IN WITNESS WHEREOF, the Company has caused this Security Agreement to be duly executed and delivered as of the date and year first written above.

Dated: November 22, 2002

Debtor:

HEALTHMEDIA, INC.,
a Michigan corporation

By: _____

David A. Gregorka
Its: Treasurer

**SCHEDULE OF INTELLECTUAL PROPERTY
(ATTACHED TO THE HEALTHMEDIA, INC.
SECURITY AGREEMENT, DATED AS OF OCTOBER 14, 2002)**

A. The following patent applications:

1. US Patent Application Serial No. 09/632,285
Filed August 3, 2000
"System and Method for Generating Tailored Media Content to Affect an Individual's Health-Related Behaviors"
2. US Patent Application Serial No. 09/631,505
Filed August 3, 2000
"System and Method for Generating Computer Source Code"

B. All Intellectual Property associated with the following products of the Company, including trade names:

HealthMedia®Succeed™
HealthMedia®Breathe™
HealthMedia®Balance™
HealthMedia®Relax™
HealthMedia®Nourish®
HealthMedia®TeenSucceed™
HealthMedia®HealthPortrait™
HealthMedia®CounselorAssist™
HealthMedia®BreatheAdvantage™

C. Trade names and trade marks:

HealthMedia® and the associated registered logo.

All tradename listed above.