

06-24-2004

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Tab settings ⇨ ⇨ ⇨



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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):

Harry and David

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

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

3. Nature of conveyance:

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

Execution Date: June 17, 2004

2. Name and address of receiving party(ies)

Name: GMAC Commercial Finance LLC,  
Internal as 1st Lien Collateral Agent  
Address: \_\_\_\_\_

Street Address: 1290 Avenue of the Americas  
City: New York State: NY Zip: 10104

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

Other Limited Liability Company  
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) \_\_\_\_\_

See Attached Schedule A

B. Trademark Registration No.(s) \_\_\_\_\_

See Attached Schedule A

Additional number(s) attached  Yes  No

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

Name: Elizabeth J. Burns

Internal Address: Latham & Watkins

Street Address: 233 S. Wacker Drive  
Suite 5800

City: Chicago State: IL Zip: 60606

6. Total number of applications and registrations involved: \_\_\_\_\_

**52**

7. Total fee (37 CFR 3.41).....\$ 1,315.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

DO NOT USE THIS SPACE

9. Signature.

Elizabeth J. Burns  
Name of Person Signing

Elizabeth J. Burns  
Signature

6/23/04  
Date

Total number of pages including cover sheet, attachments, and document: **13**

06/25/2004 BT0N11 00000016 76568403

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

01 FC:8521 40.00 DP  
02 FC:8522 1275.00 DP  
03 FC:8523 170.00 DP

6-24-04

**Schedule A**

Mark Name	Description	Filing Date	App. No.	Reg. Date	Reg. No.	Renewal
HARVESTING A LEGEND	annual promotional theme for retail and mail order services in the field of foods, flowers, and other gifts, via the Internet and through catalogs and signage	12/22/2003	76/568,403			
AMERICA'S FAVORITE BUSINESS GIFTS	mail order services in the field of foods, flowers, and other gifts	12/2/2003	76/565,166			
GIFT E- NOUNCEMENT	providing temporary use of on-line non- downloadable software for use in creating customized announcements of gifts	3/7/2002	76/379,928	1/21/2003	2,677,518	1/21/2013
HARVEST HOTLINE	providing information in the field of shipping of harvested fruit by providing shipping dates of orders by a dedicated telephone line	1/13/1998	75/417,590	12/14/1999	2,301,034	12/14/2009
MOOSE MUNCH CALL YOUR MOM ON MAY 12...(BUT CALL US TODAY!)	candy	11/29/1994	74/604,129	9/17/1996	2,000,672	9/17/2006
HARRY AND DAVID HEARTHSIDE SOUPS	mail order services in the field of foods, flowers and other gifts	10/21/1996	75/184,829	8/26/1997	2,091,423	8/26/2007
THE LIGHT SIZE IS THE RIGHT SIZE	dried soup mixes	12/5/1995	75/028,024	6/24/1997	2,074,493	6/24/2007
HEAVENLY HEARTS	mail order services in the field of fresh fruits	3/3/1997	75/250,893	5/12/1998	2,157,770	5/12/2008
SO BIG AND JUICY, YOU EAT THEM WITH A SPOON	candy and chocolate	11/26/2001	76/342,045	5/20/2003	2,718,029	5/20/2013
ORIGINAL OREGON VEGGIE CLUB	fresh pears	12/21/2001	76/352,649	9/24/2002	2,624,862	9/24/2012
CLUB MEDLEY	bakery goods and sauces	11/13/1989	73/838437	6/12/1990	1,601,683	6/12/2010
THE FAVORITE	mail order services in the field of fresh vegetables	1/23/1991	74/132,844	11/2/1993	1,802,945	11/2/2013
HARRY AND DAVID'S TOWER OF CHOCOLATES	mail order services in the field of fresh fruits and vegetables	5/6/1992	74/272,856	12/22/1992	1,742,002	12/22/2012
	mail order services in the field of gift food items	11/19/1991	74/223,092	3/23/1993	1,760,420	3/23/2013
	meats and processed foods, staple foods	6/10/1987	73/666,079	5/31/1988	1,490,371	5/31/2008
	candy	2/27/1991	74/143,461	4/14/1992	1,683,115	4/14/2012

Mark Name	Description	Filing Date	App. No.	Reg. Date	Reg. No.	Renewal
LIGHT SIZE CLUBS	mail order services in the field of fresh fruits	4/19/1991	74/159,836	6/23/1992	1,696,650	6/23/2012
FAVORITES CLUB	mail order services in the field of gift items	8/29/1991	74/199,302	8/18/1992	1,708,950	8/18/2012
BASKETS BY YOU	mail order services in the field of gift baskets containing food and other items	7/26/1989	74/082,289	4/14/1992	1,683,344	4/14/2012
MAVERICK TRIPLE TREAT	fresh fruit; namely, pears	12/24/1990	74/126,296	11/12/1991	1,664,304	11/12/2011
	fresh fruit, namely, packages containing pears, oranges and apples	12/24/1990	74/126,297	11/12/1991	1,664,305	11/12/2011
MERRY MIX-UP	packages including fresh fruit namely, pears and apples, nuts (unshelled), figs, dates, prunes, trail mix and glazed cherries	2/12/1991	74/139,653	1/14/1992	1,671,916	1/14/2012
HARRY AND DAVID (STYL)	mail order services	6/27/1988	73/736,543	3/7/1989	1,529,034	3/7/2009
WILD 'N RARE	nutritional supplements (class 5); smoothies (class 32)	6/30/2003	76/526,377			
MOOSE MUNCH	candy, coffee and bakery desserts	8/18/2003	76/541,385			
ALL THE BEST FOR GIFTS OR GUESTS	mail order services in the field of foods, flowers and other gifts	6/7/2001	76/269,275	2/19/2002	2,540,387	2/19/2012
BEARWINKLE	stuffed toy animals	5/8/2002	76/404,507	12/16/2003	2,795,776	12/16/2013
HARVEST HOTLINE	providing information in the field of shipping of harvested fruit by providing shipping dates of orders by a dedicated telephone line	2/11/2003	76/489,398	2/24/2004	2,816,557	2/24/2014
CRATER LAKE CRUNCH	snack mix consisting primarily of one or more of the following ingredients - granola, dried fruit, raisins, chocolate covered ingredients, yogurt covered ingredients, chocolate chips, white chocolate chips, nuts and pretzels (in Class 29)	3/10/2003	76/496,082			

Mark Name	Description	Filing Date	App. No.	Reg. Date	Reg. No.	Renewal
	snack mix consisting primarily of one or more of the following ingredients - granola, dried fruit, raisins, chocolate covered ingredients, yogurt covered ingredients, chocolate chips, white chocolate chips, nuts and pretzels (in Class 30)					
HARRY AND DAVID'S COOKIES FOR CONNOISSEURS	retail store services, online retail store services, and mail order catalog services in the field of bakery goods	2/15/2000	75/919,211	11/6/2001	2,505,492	11/6/2011
EASY ENTERTAINING	mail order services in the field of foods, flowers, and other gifts	1/5/1999	75/616,046	11/28/2000	2,409,346	11/28/2010
HARRY AND DAVID'S OFF THE PAGE & DESIGN WILD 'N SPICY	retail store services	12/6/2000	76/177,056	6/4/2002	2,575,673	6/4/2012
	cheese dips, processed olives, and jellies; salsas, taco chips, relishes, mustards, hot sauces, and biscuits; non-alcoholic cocktail drink mix, namely, margarita mix and bloody mary mix	3/24/1998	75/455,458	11/21/2000	2,406,736	11/21/2010
ALWAYS APPROPRIATE, ALWAYS APPRECIATED AMERICA'S FAVORITE BUSINESS GIFTS	mail order services in the field of foods, flowers, and other gifts	9/1/1998	75/547,201	2/27/2001	2,432,069	2/27/2011
HAPPY HOLIDAYS ARE OUR BUSINESS	mail order services in the field of foods, flowers, and other gifts	9/1/1998	75/547,200	1/4/2000	2,306,720	1/4/2010
FRUIT-OF-THE-MONTH-CLUB	mail order services in the field of foods, flowers, and other gifts	12/30/1998	75/613,640	6/12/2001	2,460,142	6/12/2011
H&D PORTRAITS AND DESIGN	preserved/processed fruits, cheese	11/4/1969	72/342,637	12/29/1970	905,212	12/29/2010
ROYAL RIVERA PEARS SO BIG AND JUICY, YOU EAT THEM WITH A SPOON	fresh fruits, fruit	11/18/1963	72/181,354	7/14/1964	773,302	7/14/2004
ROYAL BEURRE OREGOLD	preserves	12/19/1960	72/110,436	2/6/1962	727,298	2/6/2012
HARRY AND DAVID (STYL)	fresh pears	5/9/1975	73/051,959	4/5/1977	1,062,873	4/5/2007
CHERRYDILLS	fresh fruits	2/18/1939	71/416,175	6/27/1939	368,755	6/27/2009
ROYAL RIVIERA	preserved fruits, candy, cured meats	2/10/1964	72/186,355	8/3/1965	793,717	8/3/2005
	pickled cherries	9/8/1964	72/201,425	4/19/1966	807,323	4/19/2006
	fresh pears	9/19/1936	71/383,445	3/2/1937	343,706	3/2/2007

Mark Name	Description	Filing Date	App. No.	Reg. Date	Reg. No.	Renewal
TOWER OF TREATS	gift package of fruit, candy, nuts, and cheese	6/7/1966	72/247,505	10/24/1967	837,603	10/24/2007
WILD 'N RARE (STYLIZED)	fruit preserves	8/31/1965	72/226,841	10/10/1967	836,816	10/10/2007
HARRY AND DAVID	fresh fruits	10/14/1942	71/456,183	2/9/1943	400,009	2/9/2013
FRUIT-OF-THE-MONTH CLUB	mail order services	8/20/1979	73/228,291	6/30/1981	1,159,530	6/30/2011
FRUIT-OF-THE-MONTH CLUB	fresh fruits	9/21/1940	71/436,216	3/25/1941	386,023	3/25/2011
ALPHONSE LAVALLE	fresh grapes	10/25/1984	73/505,603	6/11/1985	1,341,314	6/11/2005
SO EASY, IT PRACTICALLY SERVES ITSELF	sliced ham	3/19/1998	75/453,447	6/22/1999	2,256,132	6/22/2009
Ruby Delicious	Fresh seedless red grapes	9/29/1982	73/392,873	11/06/1984	1,304,438	—

# TRADEMARK SECURITY AGREEMENT

TRADEMARK SECURITY AGREEMENT, dated as of June 17, 2004, by HARRY AND DAVID, an Oregon corporation ("Grantor"), in favor of GMAC Commercial Finance LLC, a Delaware limited liability company, in its capacity as Collateral Agent for the Secured Parties. All capitalized terms used but not otherwise defined herein have the meanings given to them in the Security Agreement (as defined below).

## WITNESSETH:

WHEREAS, pursuant to that certain Credit Agreement dated as of the date hereof (including all annexes, exhibits or schedules thereto, and as from time to time amended, restated, supplemented, or otherwise modified, the "Credit Agreement") by and among the Bear Creek Corporation, a Delaware corporation, the Persons named therein as Guarantors, the other Persons signatory thereto from time to time as Lenders, GMAC Commercial Finance LLC, as Collateral Agent (the "Collateral Agent"), UBS Loan Finance LLC, as Swingline Lender, the other Agents party thereto, and UBS, AG, Stamford Branch, as Issuing Bank, Administrative Collateral Agent and Administrative Agent (the "Administrative Agent"), Lenders have agreed to make the Loans and the Issuing Bank has agreed to issue Letters of Credit for the benefit of Borrower and guaranteed by Grantor;

WHEREAS, the Administrative Agent, the Collateral Agent and Lenders are willing to make the Loans and the Issuing Bank is willing to issue Letters of Credit as provided for in the Credit Agreement, but only upon the condition, among others, that Grantor shall have executed and delivered to Collateral Agent, for the benefit of the Secured Parties, that certain Security Agreement dated as of the date herewith (including all annexes, exhibits or schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Security Agreement");

WHEREAS, pursuant to the Security Agreement, Grantor authorized the Collateral Agent to file filings with the United States Patent and Trademark Office (or any successor office or any similar office in any other country) or other documents for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted by Grantor thereunder, without the signature of Grantor, naming Grantor, as debtor, and the Collateral Agent, as secured party;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees as follows:

1. DEFINED TERMS. "Trademark License" means rights under any written agreement now owned or hereafter acquired by Grantor granting any right to use any Trademark.

2. GRANT OF SECURITY INTEREST IN TRADEMARK COLLATERAL. Grantor hereby grants to Collateral Agent, on behalf of the Secured Parties, as security for the Secured Obligations, a continuing first priority security interest in all of Grantor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired

(collectively, the "Trademark Collateral"), except to the extent such a security interest is prohibited without the consent of third party or would otherwise result in loss by any Loan Party of any material rights therein:

- (a) all of its Trademarks and Trademark Licenses to which it is a party including, without limitation, those referred to on Schedule I hereto;
- (b) all reissues, continuations or extensions of the foregoing;
- (c) all goodwill of the business connected with the use of, and symbolized by, each Trademark and each Trademark License; and
- (d) all products and proceeds of the foregoing, including, without limitation, any claim by Grantor against third parties for past, present or future (i) infringement or dilution of any Trademark or Trademark licensed under any Trademark License or (ii) injury to the goodwill associated with any Trademark or any Trademark licensed under any Trademark License.

3. SECURITY AGREEMENT. The security interests granted pursuant to this Trademark Security Agreement are granted in conjunction with the security interests granted to Collateral Agent, on behalf of the Secured Parties, pursuant to the Security Agreement. Grantor hereby acknowledges and affirms that the rights and remedies of Collateral Agent with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

[signature page follows]

IN WITNESS WHEREOF, Grantor has caused this Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.


HARRY AND DAVID

By: George  
Name: GEORGE MAJOROS, JR  
Title: PRESIDENT



ACCEPTED AND ACKNOWLEDGED BY:

GMAC COMMERCIAL FINANCE LLC,  
as Collateral Agent

By:   
Name: Michael O'Connell  
Title: Vice President

[Signature Page to Harry and David Trademark Security Agreement]  
S-2

## Schedule I

Mark Name	Description	Filing Date	App. No.	Reg. Date	Reg. No.	Renewal
HARVESTING A LEGEND	annual promotional theme for retail and mail order services in the field of foods, flowers, and other gifts, via the Internet and through catalogs and signage	12/22/2003	76/568,403			
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HARVEST HOTLINE	providing information in the field of shipping of harvested fruit by providing shipping dates of orders by a dedicated telephone line	3/7/2002	76/379,928	1/21/2003	2,677,518	1/21/2013
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HARRY AND DAVID HEARTHSIDE SOUPS	mail order services in the field of foods, flowers and other gifts	11/29/1994	74/604,129	9/17/1996	2,000,672	9/17/2006
THE LIGHT SIZE IS THE RIGHT SIZE	dried soup mixes	10/21/1996	75/184,829	8/26/1997	2,091,423	8/26/2007
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ORIGINAL OREGON VEGGIE CLUB	mail order services in the field of fresh fruits	3/3/1997	75/250,893	5/12/1998	2,157,770	5/12/2008
CLUB MEDLEY	candy and chocolate	11/26/2001	76/342,045	5/20/2003	2,718,029	5/20/2013
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HARRY AND DAVID'S TOWER OF CHOCOLATES	bakery goods and sauces	11/13/1989	73/838437	6/12/1990	1,601,683	6/12/2010
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	fresh fruit, namely, packages containing pears, oranges and apples	12/24/1990	74/126,297	11/12/1991	1,664,305	11/12/2011
	packages including fresh fruit namely, pears and apples, nuts (unshelled), figs, dates, prunes, trail mix and glazed cherries	2/12/1991	74/139,653	1/14/1992	1,671,916	1/14/2012
HARRY AND DAVID (STYL) WILD 'N RARE	mail order services	6/27/1988	73/736,543	3/7/1989	1,529,034	3/7/2009
	nutritional supplements (class 5); smoothies (class 32)	6/30/2003	76/526,377			
MOOSE MUNCH	candy, coffee and bakery desserts	8/18/2003	76/541,385			
ALL THE BEST FOR GIFTS OR GUESTS	mail order services in the field of foods, flowers and other gifts	6/7/2001	76/269,275	2/19/2002	2,540,387	2/19/2012
BEARWINKLE HARVEST HOTLINE	stuffed toy animals	5/8/2002	76/404,507	12/16/2003	2,795,776	12/16/2013
	providing information in the field of shipping of harvested fruit by providing shipping dates of orders by a dedicated telephone line	2/11/2003	76/489,398	2/24/2004	2,816,557	2/24/2014
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	cheese dips, processed olives, and jellies; salsas, tacó chips, relishes, mustards, hot sauces, and biscuits; non-alcoholic cocktail drink mix, namely, margarita mix and bloody mary mix	3/24/1998	75/455,458	11/21/2000	2,406,736	11/21/2010
ALWAYS APPROPRIATE, ALWAYS APPRECIATED AMERICA'S FAVORITE BUSINESS GIFTS HAPPY HOLIDAYS ARE OUR BUSINESS	mail order services in the field of foods, flowers, and other gifts	9/1/1998	75/547,201	2/27/2001	2,432,069	2/27/2011
FRUIT-OF-THE-MONTH-CLUB H&D PORTRAITS AND DESIGN	mail order services in the field of foods, flowers, and other gifts	9/1/1998	75/547,200	1/4/2000	2,306,720	1/4/2010
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ROYAL BEURRE OREGOLD	preserved/processed fruits, cheese	11/4/1969	72/342,637	12/29/1970	905,212	12/29/2010
HARRY AND DAVID (STYL)	fresh fruits, fruit preserves	11/18/1963	72/181,354	7/14/1964	773,302	7/14/2004
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	pickled cherries	9/8/1964	72/201,425	4/19/1966	807,323	4/19/2006
	fresh pears	9/19/1936	71/383,445	3/2/1937	343,706	3/2/2007

NYI-2140098v1  
H&D Trademark Security Agreement

TRADEMARK  
REEL: 002879 FRAME: 0163

Mark Name	Description	Filing Date	App. No.	Reg. Date	Reg. No.	Renewal
TOWER OF TREATS	gift package of fruit, candy, nuts, and cheese	6/7/1966	72/247,505	10/24/1967	837,603	10/24/2007
WILD 'N RARE (STYLIZED)	fruit preserves	8/31/1965	72/226,841	10/10/1967	836,816	10/10/2007
HARRY AND DAVID	fresh fruits	10/14/1942	71/456,183	2/9/1943	400,009	2/9/2013
FRUIT-OF-THE-MONTH CLUB	mail order services	8/20/1979	73/228,291	6/30/1981	1,159,530	6/30/2011
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ALPHONSE LAVALLE	fresh grapes	10/25/1984	73/505,603	6/11/1985	1,341,314	6/11/2005
SO EASY, IT PRACTICALLY SERVES ITSELF	sliced ham	3/19/1998	75/453,447	6/22/1999	2,256,132	6/22/2009
Ruby Delicious	Fresh seedless red grapes	9/29/1982	73/392,873	11/06/1984	1,304,438	—

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H&D Trademark Security Agreement

RECORDED: 06/24/2004

TRADEMARK  
REEL: 002879 FRAME: 0164