

09-30-2004

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0021 (exp. 6/30/2005)



DEPARTMENT OF COMMERCE
Patent and Trademark Office

RECORD
TRA.

102847991

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

MYSTAR COMMUNICATIONS CORPORATION

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

Citizenship (see guidelines) _____

Execution Date(s) July 26, 1999

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other RELEASE OF ASSIGNMENT
- Merger
- Change of Name

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: BANK ONE, NA

Internal Address: KY1-4340

Street Address: 312 SOUTH 4TH STREET

City: LOUISVILLE

State: KENTUCKY

Country: JEFFERSON Zip: 40202

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other NATIONAL ASSOCIATION

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

73751247

B. Trademark Registration No.(s)

1538535

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

NIGHT BREEZE

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

Name: BANK ONE, NA

Internal Address: KY1-4340

ATTN: SANDY SMITH

Street Address: 312 SOUTH 4TH STREET

City: LOUISVILLE

State: KENTUCKY Zip: 40202

Phone Number: 502-566-8075

Fax Number: 502-566-8274

Email Address: sandra_l.smith@bankone.com

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 40.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature:

Douglas E. Blank
Signature

09/15/2004

Date

Douglas E. Blank
Name of Person Signing

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

Documents to be recorded (including cover sheet) should be faxed to (703) 306-6995, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

09/30/2004 EDCOPEP 00000051 73751247

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TRADEMARK
REEL: 003083 FRAME: 0858

**ASSIGNMENT, SECURITY AGREEMENT
AND MORTGAGE - TRADEMARKS**

THIS AGREEMENT is made this 26th day of July, 1999, between MYSTAR COMMUNICATIONS CORPORATION, an Indiana corporation ("Borrower") having an office at 10585 North Meridian Street, Suite 101, Indianapolis, Indiana 46290-1066, and BANK ONE, INDIANA, N A, a national banking association ("Bank") having an office at One Indiana Square, Indianapolis, Indiana 46266

WHEREAS, Borrower has adopted the terms and designs described in Schedule A annexed hereto and made a part hereof,

WHEREAS, as a condition to Bank making any loans or advances to Borrower pursuant to a certain Credit and Security Agreement dated as of the date hereof (the "Credit Agreement") between Borrower and Bank, Bank has required the execution and delivery of this Agreement by Borrower,

NOW, THEREFORE, IT IS AGREED that, for and in consideration of the loans and advances to be made by Bank under the Credit Agreement, and other good and valuable consideration, the receipt of which is hereby acknowledged, and as collateral security for the full and prompt payment and performance of all Obligations (as hereinafter defined), Borrower does hereby mortgage to and pledge with Bank, and grant to Bank a security interest in, any and all of its right, title and interest in and to, and assigns to Bank (i) each of the Trademarks (as hereinafter defined), the goodwill of the business symbolized by each of the Trademarks, all customer lists and other records of Borrower relating to the distribution of products bearing the Trademarks, each of the registrations and applications for registration described in Schedule A, and any formulas of Borrower used or usable in connection with the Trademarks, and (ii) any and all proceeds of the foregoing, including, without limitation, any claims by Borrower against third parties for past, present and future infringement of Trademarks (collectively, the "Collateral")

1 Terms defined in the Credit Agreement and not otherwise defined herein shall have the meaning set forth in the Credit Agreement. As used in this Agreement, unless the context otherwise requires

"Trademarks" shall mean (i) all trademarks, trade names, trade styles, service marks, prints and labels on which said trademarks, trade names, trade styles and service marks have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all rights, title and interest therein and thereto acquired under common law or statute, whether by use or registration, and all registrations and recordings thereof, and applications therefor, including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof, or any other country or any political subdivision thereof, all whether now owned or hereafter acquired by Borrower, including, but not limited to, those described in Schedule A annexed hereto and made a part hereof, and (ii) all amendments, extensions or renewals thereof and all licenses thereof

"Obligations" shall mean all indebtedness, obligations, liabilities and agreements of any kind of Borrower to Bank, including, without limitation, the obligations and indebtedness contemplated by the Credit Agreement, now existing or hereafter arising, direct or indirect (including participations or any interest of Bank in obligations of Borrower to others), acquired outright, conditionally, or as collateral security from another, absolute or contingent, joint or several, secured or unsecured, due or not, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, and all loan agreements, documents and instruments evidencing any of the foregoing obligations or under which any of the foregoing obligations may have been issued, created,

assumed or guaranteed, and all extensions, renewals, refundings, replacements, amendments and modifications of the foregoing

2 Borrower hereby represents, warrants, covenants and agrees as follows

(a) To the best of its knowledge following appropriate inquiry, Borrower has the sole, full and clear title to the Trademarks in the United States and all other countries for the goods and services on which they are used by Borrower, and the registrations thereof are valid and existing and in full force and effect,

(b) Borrower will perform all acts and execute all documents, including, without limitation, assignments for security in form suitable for filing with the United States Patent and Trademark Office and state and local governments in the United States and in other countries, substantially in the form of Exhibit 1 hereof, reasonably requested by Bank at any time to evidence, perfect, maintain, record and enforce Bank's interest in the Collateral or otherwise in furtherance of the provisions of this Agreement, and Borrower hereby authorizes Bank to execute and file one or more financing statements (and similar documents) or copies thereof or of this Agreement with respect to the Collateral signed only by Bank,

(c) Except to the extent that Bank, upon prior written notice of Borrower, shall consent, which consent shall not be unreasonably withheld, Borrower (either itself or through permitted licensees) will continue to use the Trademarks on all services and goods applicable to its current line to maintain the Trademarks and their registrations in full force free from any claim of abandonment for nonuse and Borrower will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any Trademark or its registration may become invalidated,

(d) Borrower will promptly pay Bank for any and all sums, costs, and expenses which Bank may pay or incur pursuant to the provisions of this Agreement or in enforcing the Obligations, the Collateral or the security interest granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, travel, and reasonable attorneys' fees, all of which together with interest at the highest rate then payable on the Obligations shall be part of the Obligations and be payable on demand,

(e) In no event shall Borrower, either itself or through any agent, employee, licensee or designee, file an application for any Trademark registration with the United States Patent and Trademark Office or any similar office or agency in any state of the United States or in any other country or any political subdivision thereof, unless it will promptly inform Bank, and, upon request of Bank, execute and deliver any and all assignments, agreements, instruments, documents and papers as Bank may reasonably request to evidence Bank's interest in such Trademark and the goodwill and general intangibles of Borrower relating thereto or represented thereby and Borrower hereby constitutes Bank its attorney-in-fact for the limited purpose of executing and filing all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed, such power being coupled with an interest is irrevocable until the Obligations are paid in full. Borrower hereby authorizes Bank to modify this Assignment by amending Schedule A to include any future Trademarks as provided above or under this subsection (e),

(f) Borrower has the right and power to make the assignment and to grant the security interest herein granted, and the Collateral is not now, and at all times will not be, subject to any

licenses, liens, mortgages, assignments, security interests or encumbrances of any nature whatsoever, except for the Assignment, and except in favor of Bank and to the best knowledge of Borrower, none of the Collateral is subject to any claim,

(g) Except to the extent that Bank, upon prior written notice of Borrower, shall consent, Borrower will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license, or otherwise dispose of any of the Collateral, and nothing in this Agreement shall be deemed a consent by Bank to any such action except as expressly permitted herein,

(h) As of the date hereof, Borrower has no Trademark registrations in, or the subject of pending applications in, the United States patent and Trademark Office or any similar office or agency in any state of the United States, or in any other country or any political subdivision thereof other than those described in Schedule A hereto,

(i) Borrower will take all reasonable and necessary steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, to maintain each application and registration of the Trademarks, including, without limitation, if applicable, paying of maintenance fees, applications for extensions, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings (except to the extent that dedication, abandonment or invalidation is permitted under subsection 2(c) hereof),

(j) Borrower assumes all responsibility and liability arising from the use of its Trademarks, and Borrower hereby indemnifies and holds Bank harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of any alleged defect in any product manufactured, promoted or sold by Borrower (or any affiliate or subsidiary thereof) in connection with any Trademark or out of the manufacture, promotion, labelling, sale or advertisement of any such product by Borrower (or any affiliate or subsidiary thereof) Borrower agrees that Bank does not assume, and shall have no responsibility for, the payment of any sums due or to become due under any agreement or contract included in the Collateral or the performance of any obligations to be performed under or with respect to any such agreement or contract by Borrower, and Borrower hereby agrees to indemnify and hold Bank harmless with respect to any and all claims by any person relating thereto,

(k) Bank may, in its reasonable discretion, pay any amount or do any act required of Borrower hereunder or requested by Bank to preserve, defend, protect, maintain, record or enforce Borrower's obligations contained herein, the Obligations, the Collateral, or the right, title and interest granted Bank herein, and which Borrower fails to do or pay, and any such payments shall be deemed an advance by Bank to Borrower and shall be payable on demand together with interest thereon at a rate equal to the highest rate then payable on the Obligations, and

(l) Borrower agrees that if it, or any affiliate or subsidiary thereof, learns of any use by any person of any term or design likely to cause confusion with any Trademark, it shall promptly notify Bank of such use and, if reasonably requested by Bank, shall join with Bank, at its expense, in such action as Bank, in its reasonable discretion, may deem advisable for the protection of Bank's interest in and to the Trademarks

3 Upon the occurrence of an Event of Default (as defined in the Credit Agreement) (whenever used herein, the term "Event of Default" having such meaning), in addition to all other rights and remedies of Bank, whether under law, the Credit Agreement or otherwise, all such rights and remedies being cumulative, not exclusive and enforceable alternatively, successively or concurrently, without (except as provided herein) notice to, or consent by, Borrower, Bank shall have the following rights and remedies

(a) Bank may, at any time after an Event of Default, give written notice to Borrower that Borrower shall not make any further use of the Trademarks or any mark similar thereto for any purpose,

(b) Bank may, at any time and from time to time, upon ten (10) days' prior notice to Borrower, license, whether on an exclusive or non-exclusive basis, any of the Trademarks anywhere in the world for such term or terms, on such conditions, and in such manner, as Bank shall in its sole discretion determine,

(c) Bank may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of Borrower in, to and under any one or more license agreements with respect to the Collateral, and take or refrain from taking any action under any thereof, and Borrower hereby releases Bank from, and agrees to hold Bank free and harmless from and against any claims arising out of, any action taken or omitted to be taken with respect to any such license agreement except for Bank's actions or inactions constituting gross negligence or intentional misconduct,

(d) Bank may, at any time and from time to time, upon ten (10) days' prior notice to Borrower, assign, sell, buy, or otherwise dispose of the Collateral or any of it, either with or without special or other conditions or stipulations, and with power also to execute assurances, and do all other acts and things for completing the assignment, sale or disposition which Bank shall, in its sole discretion, deem appropriate or proper, and

(e) In addition to the foregoing, in order to implement the assignment, sale or other disposal of any of the Collateral pursuant to subsection 3(d) hereof, Bank may, at any time, pursuant to the authority granted in the Power of Attorney described in section 4 hereof (such authority becoming effective on the occurrence or continuation as hereinabove provided of an Event of Default), execute and deliver on behalf of Borrower, one or more instruments of assignment of the Trademarks in form suitable for filing, recording or registration in any country. Borrower agrees to pay when due all reasonable costs incurred in any such transfer of the Trademarks, including any taxes, fees and reasonable attorneys' fees, and all such costs shall be added to the Obligations. Bank may apply the proceeds actually received from any such license, assignment, sale or other disposition to the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all legal and other expenses which may be incurred by Bank, and then to the Obligations, in such order as to principal or interest as Bank may reasonably desire, and Borrower shall remain liable and will pay Bank on demand any deficiency remaining, together with interest thereon at a rate equal to the highest rate then payable on the Obligations and the balance of any expenses unpaid. Nothing herein contained shall be construed as requiring Bank to take any such action at any time. In the event of any such license, assignment, sale or other disposition of the Collateral, or any of it, after the occurrence or continuation as hereinabove provided in an Event of Default, Borrower shall supply any of its tooling, know-how and expertise relating to the manufacture and/or sale of the

products covered by the Trademarks, and its customer lists and other records relating to the Trademarks and to the distribution of said products, to Bank or its designee

4 Concurrently with the execution and delivery hereof, Borrower is executing and delivering to Bank, in the form of Exhibit 2 hereto, four (4) originals of a Power of Attorney, coupled with an interest, for the implementation of the assignment, sale or other disposal of the Trademarks pursuant to subsections 3(d) and (e) hereof and Borrower hereby releases Bank from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by Bank, under the powers of attorney granted herein other than actions taken or omitted to be taken through the gross negligence or willful misconduct of Bank

5 No provision hereof shall be modified, altered or limited except by a written instrument expressly referring to this Agreement and executed by the party to be charged. The execution and delivery of this Agreement has been authorized by the Board of Directors of Borrower and by any necessary vote or consent of stockholders thereof. This Agreement shall be binding upon the successors, assigns or other legal representatives of Borrower, and shall, together with the rights and remedies of Bank hereunder, inure to the benefit of Bank, its successors, assigns or other legal representatives. This Agreement, the Obligations and the Collateral shall be governed in all respects by the laws of the United States and the laws of the State of Indiana. Borrower hereby submits to the non-exclusive jurisdiction of the state courts of the State of Indiana and the federal courts of the United States of America located in such State in any action or proceeding arising under this Agreement. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby.

6 Bank shall reassign without warranties all of the Collateral to Borrower upon the repayment of the Obligations and the termination of the Credit Agreement.

IN WITNESS WHEREOF, Borrower and Bank have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

"BORROWER"
MYSTAR COMMUNICATIONS CORPORATION

By Michael S. Maurer
Michael S. Maurer, Chairman

"BANK"
BANK ONE, INDIANA, N A

By William R. Lockwood
William R. Lockwood, Vice President

SCHEDULE A TO SECURITY AGREEMENT**TRADEMARKS****MYSTAR COMMUNICATIONS CORPORATION****REGISTERED TRADEMARKS (1)**

<u>Registration Number</u>	<u>Description of Mark</u>	<u>Date of Registration</u>	<u>State or Country</u>
1538535	Night Breeze	May 9, 1989	USA

TRADEMARK APPLICATIONS

<u>Application Number</u>	<u>Description of Mark</u>	<u>Date of Registration</u>	<u>State or Country</u>
None			

- (1) All trademarks owned by MyStar Communications Corporation and registered in the United States, the states of the United States, and/or foreign countries

Exhibit 1 to Security Agreement

ASSIGNMENT FOR SECURITY

(TRADEMARKS)

WHEREAS, MyStar Communications Corporation, an Indiana corporation (herein referred to as "Assignor"), has adopted, used and is using the trademarks listed on the annexed Schedule 1-A, which trademarks are registered in the United States Patent and Trademark Office (the "Trademarks"),

WHEREAS, Assignor is obligated to Bank One, Indiana, N A , a national banking association (herein referred to as "Assignee"), and has entered into an Assignment, Security Agreement and Mortgage-Trademarks (the "Agreement") in favor of Assignee, and

WHEREAS, pursuant to the Agreement, Assignor has assigned to Assignee and granted to Assignee a security interest in, and mortgage on, all right, title and interest of Assignor in and to the Trademarks, together with the goodwill of the business symbolized by the Trademarks, and all proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement thereof, to secure the payment, performance and observance of the Obligations, as defined in the Agreement,

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby further assign unto Assignee and grant to Assignee a security interest in, and mortgage on, the Trademarks to secure the prompt payment, performance and observance of the Obligations

Assignor does hereby further acknowledge and affirm that the rights and remedies of Assignee with respect to the assignment of, security interest in, and mortgage on the Trademarks made and granted hereby are more fully set forth in the Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein

IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed by its officer thereunto duly authorized as of the 26th day of July, 1999

ATTEST

MYSTAR COMMUNICATIONS CORPORATION

By _____

By _____

Printed _____

Title _____

STATE OF INDIANA)
) SS
COUNTY OF MARION)

On this ___ day of July, 1999, before me personally appeared _____
and _____, to me known, who, being by me duly sworn, did depose and say that
they are the _____ and _____ of Mystar Communications Corporation,
the corporation described in and which executed the foregoing instrument, and that they executed the
foregoing instrument on behalf of said corporation

Notary Public

Printed

My County of Residence

My Commission Expires

This Instrument Prepared By Bradley S Fuson
Krieg DeVault Alexander & Capehart, LLP
2800 One Indiana Square
Indianapolis, Indiana 46204-2017
(317) 636-4341

SCHEDULE 1-A TO ASSIGNMENT FOR SECURITY**TRADEMARKS****MYSTAR COMMUNICATIONS CORPORATION**

Registered Trademarks

<u>Registration Number</u>	<u>Description of Mark</u>	<u>Date of Registration</u>	<u>State or Country</u>
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TRADEMARK APPLICATIONS

<u>Application Number</u>	<u>Description of Mark</u>	<u>Date of Registration</u>	<u>State or Country</u>
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Exhibit 2 to Security Agreement

SPECIAL POWER OF ATTORNEY COUPLED WITH AN INTEREST

STATE OF INDIANA)
) SS
COUNTY OF MARION)

KNOW ALL MEN BY THESE PRESENTS, THAT MYSTAR COMMUNICATIONS CORPORATION, an Indiana corporation with its principal office at 10585 North Meridian Street, Suite 101, Indianapolis, Indiana 46290-1066 (hereinafter called "Assignor") hereby appoints and constitutes BANK ONE, INDIANA, N A , a national banking association (hereinafter called "Assignee"), its true and lawful attorney, with full power of substitution, and with full power and authority to perform the following acts on behalf of Assignor

1 For the purpose of assigning, selling or otherwise disposing of all right, title and interest of Assignor in and to any trademarks, trade names, trade styles and service marks, and all registrations, recordings and renewals thereof, and all pending applications therefor, and for the purpose of the recording, registering, filing and prosecution of, or accomplishing any other formality with respect to the foregoing, to execute and deliver any and all agreements, documents, instruments of assignment or other papers necessary or advisable to effect such purpose, and

2 To execute any and all documents, statements, certificates or other papers necessary or advisable in order to obtain the purposes described above as Assignee may in its sole discretion determine

This power of attorney is made pursuant to an Assignment, Security Agreement and Mortgage - Trademarks, dated of even date hereof, between Assignor and Assignee and takes effect solely for the purpose of subsections 3(d) and (e) thereof and is subject to the conditions thereof and may not be revoked until the payment in full of all "Obligations" as defined in such Assignment, Security Agreement and Mortgage

Dated July 26, 1999

ATTEST

MYSTAR COMMUNICATIONS CORPORATION

By _____

By _____

Printed _____

Title _____

STATE OF INDIANA)
) SS
COUNTY OF MARION)

On this _____ day of July, 1999, before me personally appeared _____ and _____, to me known, who, being by me duly sworn, did depose and say that they are the _____ and _____ of Mystar Communications Corporation, the corporation described in and which executed the foregoing instrument, and that they executed the foregoing instrument on behalf of said corporation

Notary Public

Printed

My County of Residence

My Commission Expires

This Instrument Prepared By Bradley S Fuson
Krieg DeVault Alexander & Capehart, LLP
2800 One Indiana Square
Indianapolis, Indiana 46204-2017

IM-235101-1

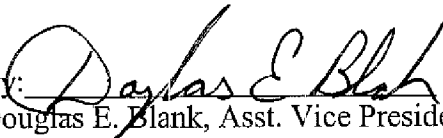
RELEASE OF ASSIGNMENT, SECURITY AGREEMENT
AND MORTGAGE-TRADEMARKS

This Release of Assignment, Security Agreement and Mortgage-Trademarks and Security Interest in Mystar Communications Corporation is executed with effect as of September 21, 2004, by Bank One, NA, a national banking association having its main office in Chicago, Illinois, and being the successor by merger to Bank One, Indiana, NA (the "Lender").

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Lender hereby releases (1) that certain Assignment, Security Agreement and Mortgage-Trademarks (Mystar Communications Corporation) dated July 26, 1999 (the "Agreement"), executed by and between Mystar Communication Corporation an Indiana Corporation and the Lender. The Trademark Application No. 73751247 with the Trademark Registration No. 1538535 also with the description of trademark(s) Night Breeze.

Dated: September 21, 2004

Bank One, NA
Successor in interest to Bank One, Indiana, NA

By: 
Douglas E. Blank, Asst. Vice President

STATE OF KENTUCKY
COUNTY OF JEFFERSON

The forgoing instrument was acknowledge this 21 day of September 2004, by Douglas E. Blank, the Asst. Vice President of Bank One, Na, (successor in interest to Bank One, Indiana, NA) a national banking association having its main office in Chicago, Illinois, for and on behalf of that national association.

In witness whereof, I hereunto set my hand and official seal.



Printed Name: SHAWN DOWNS
Notary Public, State of KY
My Commission expires: MARCH 31, 2008

Return to:
Bank One, NA
Commercial Loan Services
PO Box 33035
Louisville, Ky 40232-9925
Attn: Sandy Smith