

98,159

07-21-1998

Form PTO-1504

REC

SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

OMB No. 0651-0011 (exp. 4/94)



100769687

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):

Intersweet, Inc.

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

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

2. Name and address of receiving party(ies)

Name: William A. Brandt, Jr.

Internal Address: Trustee-Assignee

Street Address: 70 West Madison Street

City: Chicago State IL ZIP 60602

- 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

3. Nature of conveyance:

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

Execution Date April 22, 1998

4. Application number(s) or patent number(s)

A. Trademark Application No. (s)

74/429,533
71/711,865
75/386,179

B. Trademark Registration No. (s)

1,716,153; 1,680,518; 1,285,439;
1,646,198; 1,602,631; 1,563,621;
1,471,548; 1,452,404; 1,314,884;
1,474,371; 1,396,010; 1,380,649

Additional numbers attached? Yes No

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

Name Irwin C. Alter

Internal Address ALTER AND WEISS

Street Address 105 W. Adams

Suite 2700

City Chicago State IL ZIP 60603

6. Total number of applications and registrations involved: 15

7. Total fee (37 CFR 3.41) \$ 390.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number 0111154

(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.

Irwin C. Alter
Name of Person Signing

Irwin C. Alter
Signature

July 16, 1998
Date

Total number of pages including cover sheet, attachments, and fee: _____

REMARK

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments

REEL: 1758 FRAME: 0938

MRD 7-17-98

07/20/1998 JMWTK/BS 00000119 1216153

100.00 DP
100.00 DP

TRUST AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS OF
INTERSWEET, INC.

THIS TRUST AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS is made and entered into this 22nd day of April, 1998, by and between INTERSWEET INC., an Illinois corporation, located at 7301 Ridgeway, Skokie, IL 60076 (hereinafter referred to as "INTERSWEET") and WILLIAM A. BRANDT, JR. of DEVELOPMENT SPECIALISTS, INC., located at 70 West Madison Street, Suite 2300, Chicago, Illinois 60602-4205 (hereinafter referred to as the "TRUSTEE/ASSIGNEE").

W I T N E S S E T H:

WHEREAS, INTERSWEET is indebted to various persons, corporations and other entitles and is unable to pay its debts in full, and has decided to discontinue its business, and is desirous of transferring its property to an Assignee for the benefit of its creditors so that the property so transferred may be expeditiously liquidated and the proceeds thereof be fairly distributed to its creditors without any preference or priority, except such priority as is established and permitted by applicable law;

NOW, THEREFORE, in consideration of INTERSWEET's existing indebtedness to its creditors, the express undertakings of the TRUSTEE/ASSIGNEE and the mutual covenants contained herein, it is hereby AGREED:

1. Creation and Object of Trust. The name of this Trust shall be the "INTERSWEET TRUST" and its object shall be the orderly liquidation of the assets and property of INTERSWEET and the distribution of the proceeds therefrom to creditors of INTERSWEET in accordance with applicable law. INTERSWEET hereby nominates and

appoints William A. Brandt, Jr. as TRUSTEE/ASSIGNEE to carry out the purpose of this Trust in accordance with its terms and conditions. The TRUSTEE/ASSIGNEE shall have the powers and duties hereinafter set forth, and shall receive reasonable compensation for his services and reimbursement of his expenses, including, but not limited to reimbursement of his attorneys' fees and costs. The TRUSTEE/ASSIGNEE may serve without bond. In the event of death, inability or refusal to act, or the resignation of William A. Brandt, Jr. as TRUSTEE/ASSIGNEE, then, in any such event, John Wheeler, also of Development Specialists, Inc., is hereby appointed as SUCCESSOR TRUSTEE/ASSIGNEE with all the duties, rights, and powers herein imposed upon and granted to William A. Brandt, Jr., as original TRUSTEE/ASSIGNEE.

2. Transfer of Assets. INTERSWEET does hereby grant, convey, assign, transfer and set over to the TRUSTEE/ASSIGNEE, and his SUCCESSOR TRUSTEE/ASSIGNEE, all property and assets of INTERSWEET, whatsoever and wheresoever situated, which are now, or ever have been, used in connection with the operation of INTERSWEET's business. The property and assets transferred shall include, without limitation, if any such assets exists, all real and personal property, tangible and intangible, including, without limitation, all cash on hand, bonds, bank accounts, all accounts receivable, all furniture, fixtures, equipment, leasehold improvements, inventory, general intangibles, patents, insurance premium and/or policy refunds, trade names, trademarks, franchises, service marks, and causes of action. Title to the property and assets of INTERSWEET shall immediately vest in the TRUSTEE/ASSIGNEE

for the use and purposes hereinafter set forth.

3. Powers and Duties of TRUSTEE/ASSIGNEE. The TRUSTEE/ASSIGNEE shall have, *inter alia*, the following powers, rights and duties:

(a) To collect any and all accounts receivable owing to INTERSWEET.

(b) To sell, or otherwise dispose of, if such exists, all real property of INTERSWEET in such manner as the TRUSTEE/ASSIGNEE deems best. The TRUSTEE/ASSIGNEE shall have the power to execute any and all documents necessary to effectuate a sale of said real property and to convey title to same.

(c) To sell, or otherwise dispose of, if such exists, all tangible and intangible personal property of INTERSWEET, including, but not limited to, all of its machinery, equipment, inventory, service marks, trade names, trademarks, patents, franchises, causes of action and general intangibles, at private or public sale upon such notice and upon such terms as the TRUSTEE/ASSIGNEE deems best. The TRUSTEE/ASSIGNEE shall have the power to employ an auctioneer to conduct such a sale and to advertise such sale in such manner as the TRUSTEE/ASSIGNEE deems best. The TRUSTEE/ASSIGNEE shall have the power to execute bills of sale and any other documents necessary to convey title to INTERSWEET's personal property. The TRUSTEE/ASSIGNEE shall have the power to enter into an agreement with any party to participate in a liquidation sale with the TRUSTEE/ASSIGNEE hereunder for the benefit of creditors sharing in the profits from such sale.

(d) To employ attorneys, accountants, and such additional personnel to whatever extent may be necessary to handle the administrative details of this Trust.

(e) To require all creditors of INTERSWEET to whom a balance is now owing to submit verified statements of their accounts.

(f) To settle any and all claims against or in favor of INTERSWEET, with full power to compromise, or in the discretion of the TRUSTEE/ASSIGNEE, to sue or be sued, and to prosecute or defend any claim or claims of any nature whatsoever existing against or in favor of INTERSWEET.

(g) To pay the creditors of INTERSWEET out of the monies which shall come into his hands as TRUSTEE/ASSIGNEE, according to the following priorities:

(1) First, all costs for the preservation of the Trust assets, including the maintenance and insurance thereon, the expenses of operation, and such other administrative expenses as shall be reasonably incurred.

(2) Second, all costs and expenses incidental to the administration of the Trust, including the remuneration of the TRUSTEE/ASSIGNEE and the payment of reasonable compensation for the services of attorneys for the TRUSTEE/ASSIGNEE. These costs and expenses shall include those incidental to the preparation and execution of this Trust Agreement. The TRUSTEE/ASSIGNEE shall also have the right to pay an accountant reasonable compensation for services performed in connection with the administration of this Trust and the attorneys for INTERSWEET for such services as shall be rendered in aid of the administration of this Trust and its property.

(3) Third, all federal taxes of any nature whatsoever owing as of the date of this Trust Agreement, including, but not limited to, federal withholding tax, federal unemployment tax and other federal income, excise, property and employment taxes.

(4) Fourth, all state and county taxes of any nature whatsoever owing as of the date of this Trust

Agreement, including, but not limited to, state and county employment, property and income taxes.

(5) Fifth, with the exception of those classes set forth above, all distributions to other creditors shall be, within each class, pro rata, in accordance with the terms of each creditor's indebtedness, until all such debts are paid in full. The TRUSTEE/ASSIGNEE shall make interim distributions whenever the TRUSTEE/ASSIGNEE accumulates sufficient funds to enable him to make a reasonable distribution. No distribution shall be in an amount less than \$100,000, except the final distribution.

(6) The surplus, if any, of the Trust's funds, when all debts of the Trust shall have been paid in full, shall be paid and transferred to the shareholders of INTERSWEET by the TRUSTEE/ASSIGNEE.

4. Employment of Counsel of TRUSTEE/ASSIGNEE. It is hereby represented and agreed by the parties that R. SCOTT AZSTERDA of the law firm of UNDALETTI & HARRIS located at 3500 THREE FIRST NATIONAL PLAZA, CHICAGO, ILL 60602 shall be employed to act as attorney for the TRUSTEE/ASSIGNEE, and shall render such legal services as the TRUSTEE/ASSIGNEE requires during the existence of this Trust. Additional special counsel may be retained by the TRUSTEE/ASSIGNEE should he deem the same necessary to prosecute or defend any legal or equitable action or to perform such other duties as may be required in the circumstances.

5. Rights of Creditors. All rights and remedies of the creditors against any surety or sureties for INTERSWEET are hereby expressly reserved and nothing herein contained shall prevent the creditors or any of them from suing any third parties or persons who may be liable to any of the creditors for all or any part of their claims against INTERSWEET, or from enforcing or otherwise

obtaining the full benefit of any mortgage, charge, pledge, lien or other security which they now hold on any property, creditors or effects of INTERSWEET.

6. Administration of Trust. This Trust shall be administered out of Court. The TRUSTEE/ASSIGNEE shall, however, have the right to ask any court of competent jurisdiction for a declaratory judgment or such other relief as the TRUSTEE/ASSIGNEE may deem necessary, if, in his opinion, said action is desirable in connection with any dispute or claim arising hereunder.

7. Liability of TRUSTEE/ASSIGNEE. It is understood and agreed that the TRUSTEE/ASSIGNEE is to assume no personal liability or responsibility for any of his acts as TRUSTEE/ASSIGNEE herein, but his obligation shall be limited to the performance of the terms and conditions of the Trust Agreement, in good faith and in exercise of his best judgment.

8. Warranties of INTERSWEET. INTERSWEET hereby warrants as follows:

(a) The list of creditors delivered concurrently herewith to the TRUSTEE/ASSIGNEE is complete and correct as reflected by the books and records of INTERSWEET, or through its officers and directors, as to names of said creditors, their addresses and the amounts due them.

(b) INTERSWEET, through its officers and directors, shall perform any and all acts reasonably necessary and proper to assist the TRUSTEE/ASSIGNEE in the orderly liquidation of

INTERSWEET's assets and the collection of monies owing to INTERSWEET, and in the distribution of said monies and the proceeds of asset sales to INTERSWEET's creditors; **provided however**, the officers and directors of INTERSWEET shall only provide a such assistance to the TRUSTEE/ASSIGNEE to the extent, and on the condition that, they are reasonably compensated for such services.

9. Acceptance by TRUSTEE/ASSIGNEE. The TRUSTEE/ASSIGNEE does hereby accept the Trust herein created and agrees to faithfully perform the same according to the best of the TRUSTEE/ASSIGNEE's skill, knowledge and ability. It is understood that the TRUSTEE/ASSIGNEE shall receive reasonable compensation for his services rendered in connection with this Trust.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.


INTERSWEET, INC.

By: 
Its President

Attest: 
Its Secretary

A C C E P T A N C E

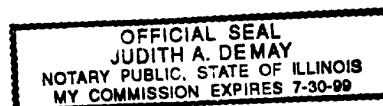
I, William A. Brandt, Jr., the Trustee-Assignee hereinabove named, do hereby accept the Trust hereinafter set forth, not individually, but as Trustee-Assignee, subject to the conditions set forth above.


William A. Brandt, Jr.

At Chicago, Illinois, this 22nd day of April 1998.

Subscribed and Sworn to
before me 22nd day
of APRIL 1998.


NOTARY PUBLIC



This instrument prepared by:

ACTION BY BOARD OF DIRECTORS AND SHAREHOLDERS

We, the undersigned*, being all members of the Board of Directors (hereinafter referred to as the "Board") and a majority (or all) of the holders of the issued and outstanding equity securities of INTERSWEET INC., an Illinois corporation (hereinafter referred to as the "Company"), without a meeting upon other and further notice, the same being hereby waived, that the following actions be taken by the Company:

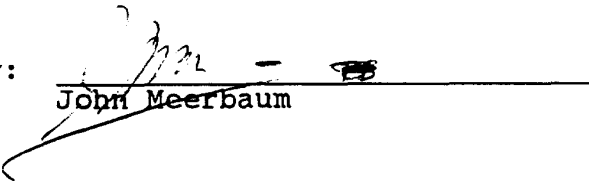
1. IT IS RESOLVED: That the Company is authorized to retain, as special counsel, JOEL H. SHAPIRO of the law firm of Kamenear, Kadison & Anderson, whose address is 20 North Wacker Drive, Suite 4100, Chicago, Illinois 60606.

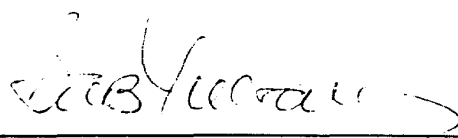
2. IT IS FURTHER RESOLVED: That the Company shall enter into a Trust Agreement for the Benefit of Its Creditors and shall cause to be made an Assignment of its assets to this Trust with the object being an orderly liquidation of the Company's business and assets.

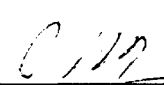
3. IT IS FURTHER RESOLVED: That the officers of the Company are hereby authorized and directed to execute and deliver all necessary papers and documents pertaining to the creation of the Trust and Assignment for the Benefit of Creditors to William A. Brandt, Jr. as TRUSTEE/ASSIGNEE, and said TRUSTEE/ASSIGNEE shall be authorized to do any and all acts necessary in order to fully carry out the intent and purposes of such Trust Agreement for the Benefit of Creditors.

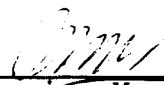
4. IT IS FURTHER RESOLVED: That the officers of the Company are hereby authorized and directed to execute and deliver any and all other papers and documents, and to take any and all other acts which may be necessary in order to fully carry out the intent and purposes of the Trust Agreement and Assignment for the Benefit of Creditors.

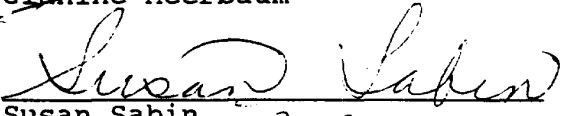
DATED: April 22, 1994 By: 
David Sabin

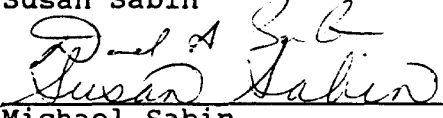
DATED: April 22, 1998 By: 
John Meerbaum

DATED: April 22, 1998 By: 
Gabriella Meerbaum

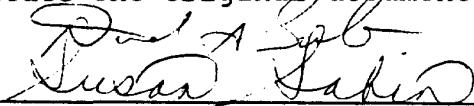
DATED: April 22, 1998 By:  TRUSTEE
Gregory Meerbaum

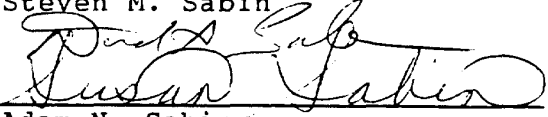
DATED: April 22, 1998 By:  - TRUSTEE
Gianine Meerbaum

DATED: April 22, 1998 By: 
Susan Sabin

DATED: April 22, 1998 By:  > TRUSTEE
Michael Sabin

* This Action by Board of Directors and Shareholders may be executed in counterparts, and when taken together, the counterparts shall constitute one original document.

DATED: April 22, 1998 By:  > TRUSTEE
Steven M. Sabin

DATED: April 22, 1998 By:  > TRUSTEE
Adam N. Sabin