

10-02-1998

COVER SHEET
ONLY

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office



100842707

Tab settings

To the Honorable Comm.

record the attached original documents or copy thereof.

1. Name of conveying party(ies):

H.M. Quackenbush, Inc.



09-18-1998

U.S. Patent & TMO/TM Mail Rpt Dt. #11

- Individual(s)
- General Partnership
- Corporation-State
- Other _____

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: May 2, 1994

Name and address of receiving party(ies)

Name: M.E. Heuck Company

Internal Address: _____

Street Address: 3274 Beekman Street

City: Cincinnati State: OH ZIP: 45223

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

If assignee is not domiciled in the United States, a domestic representative 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 patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,093,614

Additional numbers attached? Yes No

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

Name: Robert P. Lane, Jr., Esq.

Internal Address: Bond, Schoeneck & King, LLP

Street Address: One Lincoln Center

City: Syracuse State: NY ZIP: 13202

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

(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.

Roger W. Heuck, President

Name of Person Signing

X Roger W. Heuck
Signature

X September 14, 1998

Date

Total number of pages including cover sheet, attachments, and document: 10

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

TRADEMARK
REEL: 1794 FRAME: 0558

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TT0011
01/01/1998
01 FC:461

TRADEMARK AGREEMENT

Agreement dated May 2, 1994 by and between H.M. Quackenbush, Inc., a New York corporation with its principal offices located at P.O. Box 429, 220 Prospect Street, Herkimer, New York ("Assignor"), and the M.E. Heuck Company, an Ohio corporation with its principal offices located at 3274 Beekman Street, Cincinnati, Ohio ("Assignee").

RECITALS

A. Assignor is in the metal finishing business, and in the business of manufacturing and distributing certain housewares, namely steel and plastic nutcrackers, nut picks, steel and plastic seafood forks, and wooden nut bowls as described on Exhibit A (hereafter referred to as the "Product Line"). Pursuant to a Manufacturing Agreement being entered into simultaneously herewith, Assignor has agreed to sell all its rights to the Product Line to Assignee.

B. Assignor has adopted, used, and is using certain marks listed on Exhibit B (hereinafter identified as the "Trademarks") on or in association with the Product Line.

C. Assignee desires to obtain an assignment of the Trademarks to be used in conjunction with the marketing, sale, and distribution of housewares including the Product Line.

D. Assignor is willing to grant such as assignment to Assignee upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the following mutual covenants, the parties agree as follows:

1. Trademark Assignment. Assignor hereby assigns to Assignee all its right, title and interest in and to the said Trademarks for use on housewares, and any federal or state registrations thereof, together with the good will of the business symbolized thereby. This assignment shall expressly include the right of Assignee to apply for an renew federal and state registrations of the Trademarks in its own name.

Assignor shall retain the right to use the Trademarks in connection with its metal finishing business and as part of its tradename.

2. Trademark Use. Assignor expressly agrees that Assignee shall acquire by this assignment the exclusive right to use the Trademarks on all products in the housewares field, including seafood related or nut related products which are developed or acquired by Assignee after the date hereof and which were not originally in the Product Line acquired from Assignor (collectively referred to as the (Products")), provided that Assignee must obtain the written consent of Assignor prior to using the Trademarks on any Product which is not seafood related or nut related.

3. Royalties.

(a) In consideration of the assignment by Assignor to Assignee under this Agreement, Assignee shall pay Assignor the following royalties:

(i) For the period through December 31, 1994, Assignee shall not be obligated to pay any royalties.

(ii) For the period from January 1, 1995 through

December 31, 2000, Assignee shall pay Assignor royalties equal to 2% of total net sales of all Products sold.

(iii) For each year after January 1, 2001, Assignee shall pay Assignor royalties of 1% of total net sales of all Products sold.

(b) For purposes of this Section, the term "total net sales" shall mean gross sales of Products shipped by Assignee from the Product Line, less allowances, returns, return of preference payments resulting from bankruptcy, and adjustments made to uncollected accounts.

(c) Royalties shall be paid within 30 days after the end of each March, June, September and December based upon net sales of Products made during the calendar quarters then ending.

(d) Assignee shall send Assignor a written statement with each royalty payment showing the total number of Products sold by Assignee within the United States or abroad, the gross sales from those sales, and the total net sales for the given period.

(e) Assignee reserves the right to offset against any royalty payments due under this Agreement any payments that Assignor owes Assignee under the Asset Purchase Agreement as a result of a breach of representation and warranty and/or the payment of any sales tax by Assignee for which Assignor is obligated.

4. Term. This Agreement shall continue from the date hereof through December 31, 2000, and thereafter shall be automatically

renewed on a year to year basis unless Buyer notifies Seller in writing at least 120 days prior to the end of the year that it does not elect to renew this Agreement effective January 1 of the next year.

5. Payment in U.S. Dollars. Assignee shall make all royalty payments required under this Agreement in United states dollars. If sales are not in American dollars to overseas customers, royalties due on sales made outside the United states shall be translated at the rate of exchange published in the Wall Street Journal for the currency of the country in which the royalty is accrued on the last business day of the calendar quarter in which such sales were made, unless Assignee has adopted some other commonly accepted method for converting currency and which Assignee uniformly applies in each reporting period.

6. Promotion of Products. Assignee shall in good faith expend reasonable commercial efforts to promote the Products throughout North America but failure to do so is not grounds for termination, but shall constitute a breach of this Agreement for which Assignor may obtain other legal or equitable relief, providing the conditions in the next two sentences have been satisfied. Assignee shall only be in breach of the Agreement, if Assignor has sent Assignee written notice of Assignee's failure to promote the Products throughout North America in good faith expending reasonable commercial efforts and Assignee has not cured such failure within three months of the date of such notice. In the event of failure to cure such breach within the three month

period, Assignor may obtain legal or equitable relief based on any breach from and after a date six months before the date of the notice, provided further, that such action must be initiated within six months of the date of such notice in order for this condition to be satisfied.

7. Third Party Infringement. If either party learns of an infringement of the Trademarks by a third party, that party shall promptly notify the other party. Assignee, in its sole discretion, and at its expense, may take all appropriate action and commence all necessary actions and proceedings to stop the third party's infringing use of the Trademarks. Any monetary recoveries obtained in any such action or proceeding may be retained by Assignee. Assignor agrees to assist and cooperate with Assignee in the prosecution of any infringement action or proceeding, at Assignee's expense. Should Assignee elect not to initiate proceedings against the infringing third party, Assignor may (but shall not be obligated to) do so in Assignor's own name and at Assignor's expense. Any monetary recoveries obtained in any action or proceeding commenced by Assignor shall be retained by Assignor. Assignee agrees to assist and cooperate with Assignor in the prosecution of any infringement action or proceeding brought by Assignor, at Assignor's expense.

8. Inspection and Audit. Assignor shall have the right to inspect the corporate books and records of Assignee to assure compliance with the royalty provisions of this Agreement upon three (3) days written notice during reasonable business hours. Assignor

may, at its own expense, require an audit of Assignee's corporate books and records pertaining to the marketing, sales and distribution of the Products.

9. Relationship of Parties. Nothing in this Agreement shall be deemed to constitute or create between the parties an employment relationship, a partnership, joint venture or agency. No party shall hold itself out as the agent of the other, nor shall a party have the authority or hold itself out as having the authority to bind or create liability for the other party by its intentional or negligent act or omission.

10. Representation and Warranty. Assignor represents and warrants to Assignee that it owns the Trademarks and that it has the authority to assign the Trademarks to Assignee in accordance with the terms of this Agreement.

11. Termination.

(a) Assignor's right to terminate this Agreement is limited to only Assignee's failure to pay royalty payments. Any other breaches of Agreement by Assignee must be submitted to Arbitration pursuant to Section 15. The exercise of Assignor's right to terminate the Agreement is subject to the provisions of this Section 11(a). In the event Assignee fails to make royalty payments as provided under this Agreement when due, Assignor may give written notice of such failure to Assignee. If Assignee fails to make payments pursuant to the notice within ten (10) business days of receipt, Assignor shall have the right to terminate the Agreement and Assignee shall immediately assign the Trademarks and

any federal or state registrations thereof to Assignor, provided, however, that if Assignee disputes with Assignor the amount of royalty payments due, Assignee tenders or has tendered payment, whether or not accepted by Assignor, of the amount Assignee asserts is due, and Assignee submits the dispute to arbitration pursuant to Section 15, Assignor's right to terminate the Agreement for failure to make royalty payments with respect to the written notice of default shall be void, but not with respect to any future written notices of default.

(b) In the event Assignee is declared bankrupt or insolvent by a court of competent jurisdiction, files or has filed against it a petition in bankruptcy or seeking reorganization, or makes an assignment for the benefit of creditors, Assignee shall immediately assign the said Trademarks and any federal or state registrations thereof to Assignor, and shall execute all such documents as may be required by counsel for Assignor to effect this assignment and the recording thereof.

(c) Any such assignment under the Paragraph 11(a) or 11(b) hereof shall not effect the right of Assignor to receive royalty payments due at the time of termination, or which become due after such assignment based upon rights vested prior to termination, and shall not prejudice any cause of action or claim of either Assignor or Assignee accruing under this Agreement. Upon the assignment of the Trademarks to Assignor under this Paragraph, Assignee shall immediately discontinue any further use of the Trademarks upon completion of sale of all Products in inventory.

12. Assignment. Assignor may assign this Agreement without the prior written approval of the Assignee. Assignee may assign this Agreement to any entity into which Assignee has combined or merged or to any entity that has acquired all the inventory and equipment of Assignee, provided:

(i) such entity acknowledges to Assignor that it will agree to all the terms and conditions of this Agreement;

(ii) the entity has a Higher net worth after the transaction than Assignee had before the transaction; and

(iii) the entity has five years experience in the housewares industry or has at least five years of successful experience in the marketing of name brand consumer products.

13. Severability. If any provision of this Agreement is invalid or unenforceable by reason of any rule of law, administrative order or judicial decision, the invalid or unenforceable provision shall be severed and all other provisions of this Agreement shall remain in full force and effect.


14. Amendment. This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by each of the parties.

15. Arbitration. All disputes between the parties relative to the terms and conditions of this Agreement, except as may be applicable in Section 11(a), shall be resolved by arbitration under the commercial rules of the American Arbitration Association. The parties shall select a single Arbitrator from the American Arbitration Association panels and the Arbitrator shall have the

right to provide that the prevailing party in the arbitration shall be entitled to recover its attorneys' fees and expenses of arbitration (including the fees of the arbitrator) as part of the award. All arbitration proceedings shall take place in Cincinnati, Ohio or Syracuse, New York as selected by the first party seeking arbitration.

16. Entire Agreement. This Agreement sets forth the entire understanding between the parties pertaining to the subject matter hereof. This Agreement supersedes and replaces all prior Agreements, either oral or written, between Assignor and Assignee pertaining to this subject matter.

H.M. QUACKENBUSH, INC.

By: 
Title: CHAIRMAN & CHIEF EXECUTIVE OFFICER

M.E. HEUCK CO.

By: _____
Title: _____

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right to provide that the prevailing party in the arbitration shall be entitled to recover its attorneys' fees and expenses of arbitration (including the fees of the arbitrator) as part of the award. All arbitration proceedings shall take place in Cincinnati, Ohio or Syracuse, New York as selected by the first party seeking arbitration.

16. Entire Agreement. This Agreement sets forth the entire understanding between the parties pertaining to the subject matter hereof. This Agreement supersedes and replaces all prior Agreements, either oral or written, between Assignor and Assignee pertaining to this subject matter.

H.M. QUACKENBUSH, INC.

By: _____
Title: _____

M.E. HEUCK CO.

By: (Signature)
Title: PRESIDENT

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EXHIBIT A

Product Line



H.M. Quackenbush, Inc.

HOUSEWARES PRICE LIST No. 93 - Effective April 1, 1993

PAGE 1

QUALITY • DEPENDABILITY • TRADITION • SINCE 1871

ITEM NO.	UPC NO.	ITEM & PACK DESCRIPTION	COST/EACH	QUANTITY		MASTER		
				Master	Inner	Weight	Cube	
NUTCRACKERS/NUTCRACKERS & PICKS (CARDED)								
FB	07210	Steel Nutcracker - Standard Shipper	0.77	72	12	19	0.69	
FB2	"	- Counter Display	0.77	24	N/A	7	0.26	
FBS	"	- Shelf Extender	0.77	24	N/A	7	0.2	
FBF	"	- Floor Display	0.77	48	N/A	14	0.57	
724	07240	Steel Nutcracker & 2 Picks - Standard Shipper	0.97	72	12	23	0.69	
7242	"	- Counter Display	0.97	24	N/A	8	0.26	
724S	"	- Shelf Extender	0.97	24	N/A	8	0.2	
724F	"	- Floor Display	0.97	48	N/A	16	0.57	
724D	"	- Floor Display	0.97	72	N/A	26	1.31	
727	07270	Steel Nutcracker & 4 Picks, Standard Shipper	1.14	72	12	29	1.18	
7272	"	- Counter Display	1.14	24	N/A	10	0.38	
727D	"	- Floor Display	1.14	72	N/A	30	1.31	

SEAFOOD UTENSILS (CARDED)

L104	01040	Steel Shellfish Cracker & 2 Forks, Standard Shipper	1.28	72	12	25	0.69
L104D	"	- Counter Display	1.28	24	N/A	8	0.26
L104F	"	- Floor Display	1.28	48	N/A	18	0.57
L108	01080	4 Steel Shellfish Forks, Standard Shipper	1.11	72	12	13	0.69
L108D	"	- Counter Display	1.11	24	N/A	5	0.26
710	07100	Steel Shellfish Cracker, Standard Shipper	0.77	72	12	19	0.69
7102	"	- Counter Display	0.77	24	N/A	7	0.26
712	07120	Steel Shellfish Cracker & 2 Picks, Standard Shipper	0.97	72	12	23	0.69
7122	"	- Counter Display	0.97	24	N/A	8	0.26
PB	01010	Plastic Shellfish Cracker, Standard Shipper	0.45	60	10	7	0.69
PB4	"	- Counter Display Rack for 48 ea. PB	7.00	N/A	N/A	N/A	N/A
PB2	"	- Counter Display Rack for 24 ea. PB	5.00	N/A	N/A	N/A	N/A
SHELLFISH COMBO 1	N/A	Combination Shellfish Utensil Floor Display #1 with 1 doz. ea. L104, L108, 710, 712	50.16	48	N/A	15	0.57
SHELLFISH COMBO 2	N/A	Combination Shellfish Utensil Floor Display #2 with 1 doz. ea. L104, L108, 712, PB	47.16	48	N/A	13	0.57

Note: All carded items available on pre-loaded clip strips

BULK PACK ITEMS

F	N/A	Steel Nut & Shellfish Cracker	0.70	144	12	32	0.23
P	"	Plastic Nut & Shellfish Cracker	0.34	100	N/A	7	0.36
PP	"	Plastic Nut & Shellfish Cracker with Printing	0.45	100	N/A	7	0.36
27R	"	Steel Nut & Shellfish Pick	0.11	1152	144	34	0.23
L	"	Steel Shellfish Fork	0.24	576	72	21	0.23

Note: Steel products are nickel plated. Call for pricing on brass and gold plated products in bulk pack.

POLYBAG SETS

361	N/A	Steel Nut & Shellfish Cracker, Standard Shipper	0.73	144	12	34	0.44
362	"	Steel Nut & Shellfish Cracker & 6 Picks, Shipper	1.26	144	12	60	0.44
367	"	Steel Nut & Shellfish Cracker & 4 Picks, Shipper	1.10	144	12	51	0.44
364	"	Steel Nut & Shellfish Cracker & 2 Picks, Shipper	0.91	144	12	43	0.44
365	"	Steel Nut & Shellfish Cracker, Fork & Wet Napkin, Shipper	0.99	72	6	20	0.44
366	"	Steel Nut & Shellfish Cracker, Fork, Wet Napkin, Placemat, Bib & Napkin, Shipper	1.08	72	N/A	22	0.44
FL	"	Steel Shellfish Cracker & Fork, Shipper	0.97	144	N/A	20	0.44
F2L	"	Steel Shellfish Cracker & 2 Forks, Shipper	1.20	144	N/A	22	0.44
P1	"	Plastic Shellfish Cracker, Fork & Wet Napkin, Shipper	0.46	55	N/A	5	0.36
P1P	"	Same as above, with Printing	0.57	55	N/A	5	0.36
P2	"	Plastic Shellfish Cracker, Fork, Wet Napkin, Placemat, Bib & Napkin, Shipper	0.82	30	N/A	4	0.36
P2P	"	Same as above, with Printing	0.92	30	N/A	4	0.36

TRADEMARK
REEL: 1794 FRAME: 0570



H.M. Quackenbush, Inc.

HOUSEWARES PRICE LIST No. 93 - Effective April 1, 1993

PAGE 2

QUALITY • DEPENDABILITY • TRADITION • SINCE 1871

ITEM NO.	UPC NO.	ITEM & PACK DESCRIPTION	COST/EACH	QUANTITY		MASTER		
				Master	Inner	Weight	Cube	
SPECIALTY NUTCRACKERS, GIFT SETS, COCKTAIL FORKS								
NB2	07630	Clipper Pecan Sheller, carded, Counter Display	4.30	24	N/A	9	0.69	
RK	N/A	Clipper Pecan Sheller Repair Kit	0.72	24	N/A	1	0.23	
7400D	07400	Lever Action Nutcracker, gift boxed, Counter Display	9.23	12	N/A	15	0.66	
74006	"	- Six Pack Shipper	9.23	6	N/A	7	0.31	
1050	01050	Nickel Plated Gift Set, 2 ea. Shellfish Crackers, Picks & Forks	3.75	24	N/A	25	tbd	
1060	01060	Brass Plated Gift Set, Same as above	5.99	24	N/A	25	tbd	
1070	01070	Gold Plated Gift Set, Same as above	7.25	24	N/A	25	tbd	
1030	01030	3 Steel Cocktail Forks, carded, Standard Shipper	1.07	72	12	10	0.69	

NUTBOWL SETS (GIFT BOXED)

1180	01180	Walnut Finish Nutbowl, Nutcracker & 4 Picks, Std. Shipper	7.38	12	N/A	28	1.59
11806	"	- Six Pack Shipper	7.38	6	N/A	14	0.84
1180D	"	- Floor Display	7.38	12	N/A	29	2.77
1170	01170	Large Rustic Style Nutbowl, Nutcracker & 2 Picks, Shipper	6.11	12	N/A	32	2.27
11706	"	- Six Pack Shipper	6.11	6	N/A	16	1.2
1170D	"	- Floor Display	6.11	12	N/A	33	2.38
1160	01160	Medium Rustic Wood Nutbowl, Nutcracker & 4 Picks, Shipper	6.11	12	N/A	28	1.59
11606	"	- Six Pack Shipper	6.11	6	N/A	14	0.84
1160D	"	- Floor Display	6.11	12	N/A	29	2.77
1150	01150	Small Rustic Wood Nutbowl, Nutcracker & 2 Picks, Shipper	4.94	12	N/A	19	1.19
1150D	"	- Floor Display	4.94	24	N/A	30	2.24
1140	01140	Contemporary Plastic Nutbowl, Nutcracker & 2 Picks, Shipper	4.45	12	N/A	15	1.22
1140D	"	- Floor Display	4.45	24	N/A	30	2.44
1130	01130	Almond Style Plastic Nutbowl, Nutcracker & 4 Picks, Shipper	4.14	12	N/A	13	1.22
1130D	"	- Floor Display	4.14	24	N/A	26	2.44

Note : 1130 and 1150 Nutbowl Sets are shrink-wrapped, not gift boxed.

TERMS OF SALE

PRICING POLICY : Prices herein are extended to customers ordering \$500 or more of merchandise.

See Dealer Price List for prices extended to customers ordering under \$500 of merchandise.

Prices subject to change without notice. Orders subject to prices in effect at shipment time.

MINIMUM ORDER : \$100 at billing price per invoice. Orders shipped in case lot quantities only.

FREIGHT TERMS : Prepaid on orders of \$500 or more to one destination in the Continental U.S.A. or Canada.

Orders under \$500 are F.O. B. Factory, Herkimer, New York, 13350.

PAYMENT TERMS : Net 30 Days, subject to credit approval in advance.

MFR'S. UPC No. : 41327

NOTES ON IMPRINTED PLASTIC NUTCRACKERS

1. Red or White plastic nutcrackers can be imprinted with white, red, green, blue or black ink.
2. Minimum order for printing is 300 nutcrackers.
3. Customer must provide artwork for customized printed logos.
4. Area available for printing is 1/4" x 3 3/4" on nutcracker handle.
5. Initial set-up charge for printing is \$45, re-orders utilizing same printing is \$40.



H.M. Quackenbush, Inc.

220 PROSPECT STREET, P.O. BOX 429, HERKIMER, NY 13350-0429

TEL : 800-356-2036 or 315-866-3000

FAX : 315-866-2836

TRADEMARK

REEL: 1794 FRAME: 0571

EXHIBIT B
TRADEMARKS

Quackenbush logo (see attached camera ready artwork)

H.M. Quackenbush

Quackenbush

HMQ



H.M. Quackenbush